

Delegated Report

Planning Ref: 23/00515/CONDIT
Applicant: MR T KNAPP
Ward: Burbage, Sketchley and Stretton



Hinckley & Bosworth
Borough Council

Site: Land Rear Of 125 – 131, Lutterworth Road, Burbage

**Proposal: Variation of Conditions 2, 6 and 11 of Planning Permission 22/00452/FUL.
Amendment to Proposed Access and Layout Plan**

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 application seeks to vary Conditions 2, 6 and 11 of planning permission 22/00452/FUL. Application 22/00452/FUL was granted permission for the development of 2no detached two-storey dwellings with vehicular access and parking. This application seeks a change to the previously approved access and layout plan to exclude all works within land owned by the third party - (a 16' strip of land parallel to the north-west boundary). A notice has been served on the landowner as per the application form requirements to formally notify them of the proposed development.
- 2.2. Section 73 of the Town and Country Planning Act 1990 allows applications to be made for permission to develop without complying with a condition previously imposed on a planning permission. Permission granted under Section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and un-amended. It is open to the applicant to decide whether to implement the new permission or the one originally granted.
- 2.3. A decision notice describing the new permission should clearly express that it is made under Section 73. It should set out all of the conditions imposed on the new permission, and, for the purpose of clarity restate the conditions imposed on earlier permissions that continue to have effect.
- 2.4. Existing Condition 2 states:
- 'The development hereby permitted shall only be carried out in accordance with the following details:*
- *Site Location and Block Plan drawing ref 4626/5701 received 9 May 2022*
 - *Proposed Access and Site Layout Plan drawing ref 4626/5702 received 9 May 2022*
 - *Amended General arrangement Plot 5 drawing ref 4626/5750 Rev E received 23 September 2022*
 - *Amended General arrangement Plot 7 drawing ref 4626/5770 Rev E received 23 September 2022*

Reason: To ensure the development is carried out in accordance with the approved plans.

- 2.5. The proposed wording of Condition 2 seeks to change a plan reference and is proposed as follows:

'The development hereby permitted shall only be carried out in accordance with the following details:

- Site Location and Block Plan drawing ref 4626/5701 received 9 May 2022*
- Proposed Access and Site Layout Plan drawing ref 4626/5702 Rev B received 25 May 2023*
- Amended General arrangement Plot 5 drawing ref 4626/5750 Rev E received 23 September 2022*
- Amended General arrangement Plot 7 drawing ref 4626/5770 Rev E received 23 September 2022*

Reason: To ensure the development is carried out in accordance with the approved plans.'

- 2.6. Existing Condition 6 states that:

'No part of the development hereby permitted shall be occupied until such time as the access arrangements shown on drawing number 4626/5702 have been implemented in full. The access arrangement shall be retained as such thereafter.

Reason: To ensure that vehicles entering and leaving the site may pass each other clear of the highway, in a slow and controlled manner, in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD 2016 and the requirements of the National Planning Policy Framework (2021).

- 2.7 The proposed wording of Condition 6 seeks to change the plan reference and is proposed as follows:

'No part of the development hereby permitted shall be occupied until such time as the access arrangements shown on drawing number 4626/5702 Rev B have been implemented in full. The access arrangement shall be retained as such thereafter.

Reason: To ensure that vehicles entering and leaving the site may pass each other clear of the highway, in a slow and controlled manner, in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD 2016 and the requirements of the National Planning Policy Framework (2021).

- 2.8. Existing Condition 11 states that:

'The development hereby permitted shall not be occupied until such time as the parking and turning facilities have been implemented in accordance with approved drawing number 4626/5702. Thereafter the onsite parking provision shall be so maintained 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 accordance with Policies DM17 and DM18 of the Site Allocations and Development

Management Policies DPD 2016 and the National Planning Policy Framework (2021).'

- 2.9. The proposed wording of Condition 11 seeks to change the plan reference and is proposed as follows:

'The development hereby permitted shall not be occupied until such time as the parking and turning facilities have been implemented in accordance with approved drawing number 4626/5702 Rev B. Thereafter the onsite parking provision shall be so maintained 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 accordance with Policies DM17 and DM18 of the Site Allocations and Development Management Policies DPD 2016 and the National Planning Policy Framework (2021).'

3. Description of the site and surrounding area

- 3.1. The application site measures approximately 1136 square metres. The site consists of a parcel of relatively flat land located to the rear of properties 125-131 Lutterworth Road.
- 3.2. The site lies to the south east of Burbage, outside of but directly adjacent to the settlement boundary of Burbage to the west. To the rear of the site and to the south and east beyond mature hedgerows is open countryside.
- 3.3. The proposed site is to be accessed off Lutterworth Road.

4.0. Relevant planning history

- 4.1. 19/00573/FUL – Conversion of existing building to residential use (C3) and a single storey side extension – APPROVED

19/01112/OUT – Residential development (Outline – access only) – APPROVED

20/01111/REM – Approval of Reserved Matters (appearance, landscaping, layout and scale) of outline permission 19/01112/OUT for six dwellings – APPROVED

22/00452/FUL - Proposed construction of 2no detached two-storey dwellings with vehicular access and parking - APPROVED

5. Publicity

- 5.1. The application has been publicised by sending out letters to local residents and displaying a site notice.
- 5.2. One comment has been received stating that part of the land shown within the red line of the application site is their land and not in the ownership of the applicant.

6. Consultation

- 6.1. No objection has been received from the following consultees:

HBBC Waste
HBBC Drainage
HBBC Environmental Health
Burbage Parish Council
Local Highway Authority

7. Policy

7.1. Core Strategy (2009)

- Policy 4: Development in Burbage
- Policy 16: Housing Density, Mix and Design

7.2. Site Allocations and Development Management Policies DPD (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 DM7: Preventing Pollution and Flooding
- Policy DM10: Development and Design
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards

7.3. Burbage Neighbourhood Plan

- Policy 1: Settlement boundary
- Policy 2: Design and Layout
- Policy 4: Parking
- Policy 10: Landscape Character
- Policy 11: Area of Landscape Sensitivity

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

Leicestershire Highway Design Guide (2020)
Good Design Guide

8. Appraisal

8.1. Key Issues

- Principle of development
- Design and impact upon the character of the area
- Impact upon neighbouring residential amenity
- Impact upon highway safety
- Drainage
- Other matters

Principle of development

- 8.2. Paragraph 2 of the National Planning Policy Framework (NPPF) July 2021) states 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 consideration in determining applications. Paragraph 12 of the NPPF confirms 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.

- 8.3. Paragraph 11 of the National Planning Policy Framework (NPPF) and Policy DM1 of the Site Allocation and Development Management Policies Development Plan Document (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. The development plan in this instance consists of the adopted Core Strategy (2009) (CS) the Site Allocations and Development Management Policies DPD (2016) (SADMP).
- 8.4. The principle of development is established through the grant of planning permission for 22/00452/FUL. Since the grant of permission 22/00452/FUL there have been no changes in policy nationally or locally but it is to be noted that the replacement Local Plan for Hinckley and Bosworth has been delayed to 2024 and a further Regulation 19 stage is to be carried out. Therefore this document carries little weight at this time.

Design and impact upon the character of the area

- 8.5. Policy DM10(c), (d) and (e) of the SADMP seeks to ensure that development complements or enhances the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features and the use and application of building materials respects the materials of existing, adjoining/neighbouring buildings and the area generally and incorporates a high standard of landscaping.
- 8.6. Paragraph 134 of the NPPF states 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. Local policy is considered to accord with the NPPF.
- 8.7. The application site lies to rear of existing properties sited along Lutterworth Road and therefore is not prevalent from the main highway. This application seeks to alter the previously approved site layout and access plan in order to exclude all works within land owned by the third party - (a 16' strip parallel to the north-west boundary of the site).
- 8.8. The changes are considered to be minimal from a design and character perspective and will not impact to any greater extent than the existing permission.
- 8.9. There are no new policy/guidance considerations since the grant of the original permission which would alter the assessment of the proposal with respect to design and character.
- 8.10. Overall the scheme is considered to be acceptable and in compliance with Policy DM10(c), (d) and (e) of the SADMP, the Good Design Guide SPD and the requirements of the NPPF.

Impact upon neighbouring residential amenity

- 8.11. 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.

- 8.12. Paragraph 130 of the revised NPPF states that decisions should 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; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
- 8.13. Paragraph 185 of the NPPF states that decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.
- 8.14. The Environmental Services Team has been consulted on this application and has raised no objections.
- 8.15. The proposed changes are not considered to have any effect on residential amenity when compared to the existing permission.
- 8.16. There are no new policy/guidance considerations since the grant of the original permission which would alter the assessment of the proposal with respect to residential amenity.
- 8.17. Therefore, this application is considered to be acceptable in residential amenity terms and in compliance with Policy DM10 a and b of the SADMP, The Good Design Guide SPD and the requirements of the revised NPPF (2021).

Impact upon highway safety

- 8.18. 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 should reflect the highway design standards that are set out in the most up to date guidance adopted by the relevant highways authority (currently this is the Leicestershire Highway Design Guide (LHDG)).
- 8.19. Paragraph 111 of the NPPF (2021) 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.
- 8.20. Paragraph 112 of the NPPF states that development should be designed to enable charging of plug in and other ultra low emission vehicles in safe, accessible and convenient locations.
- 8.21. The local highway authority have raised no objections to the proposed alteration to the original plan and state that they find no material changes in highway safety terms. They note that there appears to be a small increase in size of the bin storage area at the access, and minor layout changes to the internal layout of the scheme but considers that this does not affect the off-street car parking provision.
- 8.22. As such the proposal is considered to accord with Policies DM17 and DM10 (g) and the revised NPPF 2021.

Drainage

- 8.23. Policy DM7 of the SADMP seeks to prevent development from resulting in adverse impacts on flooding by ensuring that development does not create or exacerbate flooding.
- 8.24. Paragraph 167 of the NPPF states that when determining planning applications local planning authorities should ensure that flood risk is not increased elsewhere. Paragraph 169 states that major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The systems used should take account of advice from the LLFA, have appropriate proposed minimum operating standards, have maintenance arrangements for the lifetime of the development and where possible provide multifunctional benefits.
- 8.25. The Council's Drainage team raise no comments or objections to the proposed changes. As such the proposal is considered to accord with Policy DM7 of the SADMP and the requirements of the NPPF.

Other Matters

- 8.26. A Section 73 application cannot be used to vary the time limit for implementation, this condition must therefore remain unchanged from the original permission 22/00452/FUL.
 - 8.27. An objection has been received from a third party stating that land within the red line of the application is within their ownership. The appropriate notice has been served as per the requirements of the application and they are aware of the application as submitted. Any person/body can make a planning application on land not within their ownership as long as the appropriate notice has been served. This is a civil matter not a planning issue.
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 in the consideration 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. **Recommendation**

Grant planning permission subject to the following:

- Planning Conditions

Conditions and Reasons

1. The development hereby permitted shall be begun before the expiration of 22/00452/FUL (Three years from the granting of original planning permission).

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004. The development hereby approved relates to the following details:

2. The development hereby permitted shall be carried out in accordance with the following details:
 - Site Location and Block Plan drawing ref 4626/5701 received 9 May 2022
 - Proposed Access and Site Layout Plan drawing ref 4626/5702 Rev B received 25 May 2023
 - Amended General arrangement Plot 5 drawing ref 4626/5750 Rev E received 23 September 2022
 - Amended General arrangement Plot 7 drawing ref 4626/5770 Rev E received 23 September 2022

Reason: To ensure the development is carried out in accordance with the approved details.

3. No development approved by this permission shall be commenced until a scheme for the investigation of any potential land contamination on the site has been submitted in writing to and agreed in writing by the Local Planning Authority which shall include details of how any contamination shall be dealt with. The approved scheme shall be implemented in accordance with the agreed details and any remediation works so approved shall be carried out prior to the site first being occupied.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised in accordance with Policy DM7 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

4. If during development, contamination not previously identified is found to be present at the site, no further development shall take place until an addendum to the scheme for the investigation of all potential land contamination is submitted in writing to and approved in writing by the Local Planning Authority which shall include details of how the unsuspected contamination shall be dealt with. Any remediation works so approved shall be carried out prior to the first dwelling being occupied.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised in accordance with Policy DM7 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

5. No development shall take place until a 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 ensure bin storage on site is not detrimental to the street scene and the overall design of the scheme in accordance with Policy DM10 of the Site Allocations and Development Management Policies DPD 2016.

6. No part of the development hereby permitted shall be occupied until such time as the access arrangements shown on drawing number 4626/5702 Rev B have been implemented in full. The access arrangement shall be retained as such thereafter.

Reason: To ensure that vehicles entering and leaving the site may pass each other clear of the highway, in a slow and controlled manner, in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD 2016 and the requirements of the National Planning Policy Framework (2021).

7. No part of the development hereby permitted shall be occupied until such time as vehicular visibility splays of 2.4 metres by 43 metres have been provided at the site access. These shall thereafter be permanently maintained with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway.

Reason: To afford adequate visibility at the access to cater for the expected volume of traffic joining the existing highway network, in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD 2016 and the requirements of the National Planning Policy Framework (2021).

8. No part of the development hereby permitted shall be occupied until such time as 2.0 metre by 2.0 metre pedestrian visibility splays have been provided on the highway boundary on both sides of the access with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway and, once provided, shall be so maintained in perpetuity.

Reason: In the interests of pedestrian safety in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD 2016 and the requirements of the National Planning Policy Framework (2021).

9. The development hereby permitted shall not be occupied until such time as the access drive (and any turning space) has been surfaced with tarmacadam, or similar hard bound material (not loose aggregate) for a distance of at least 10 metres behind the highway boundary and, once provided, shall be so maintained in perpetuity.

Reason: To reduce the possibility of deleterious material being deposited in the highway (loose stones etc.) in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD 2016 and the requirements of the NPPF 2021.

10. No part of the development hereby permitted shall be occupied until such time as site drainage details have been provided to and approved in writing by the Local Planning Authority. Thereafter surface water shall not drain into the Public Highway and thereafter shall be so maintained.

Reason: To reduce the possibility of surface water from the site being deposited in the highway causing dangers to road users in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD 2016 and the National Planning Policy Framework (2021).

11. The development hereby permitted shall not be occupied until such time as the parking and turning facilities have been implemented in accordance with approved drawing number 4626/5702 Rev B. Thereafter the onsite parking provision shall be so maintained 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 accordance with Policies DM17 and DM18 of the Site Allocations and Development Management Policies DPD 2016 and the National Planning Policy Framework (2021).

12. No development shall commence on the site until such time as a construction traffic management plan, including as a minimum details of wheel cleansing facilities, vehicle parking facilities, and a timetable for their provision, has been submitted to and approved in writing by the Local Planning Authority. The construction of the development shall thereafter be carried out in accordance with the approved details and timetable.

Reason: To reduce the possibility of deleterious material (mud, stones etc.) being deposited in the highway and becoming a hazard for road users, to ensure that construction traffic does not use unsatisfactory roads and lead to on-street parking problems in the area in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD 2016 and the National Planning Policy Framework 2021.

13. Prior to development above foundation level a scheme for the installation of electric vehicle charging points will be submitted to and approved in writing by the local planning authority. The scheme shall identify the detail of the location and fitting of the unit. The approved details shall be implemented on site prior to occupation of the first dwelling.

Reason: To ensure that the proposals meet the requirements of Policy DM10 (g) of the Site Allocations and Development Management Policies DPD (2016) and Paragraph 112 (e) of the National Planning Policy Framework.

14. No development above foundation level shall commence on site until representative samples of the types and colours of materials to be used on the external elevations of the dwellings hereby permitted have been deposited with and approved in writing by the local planning authority, and the scheme shall be implemented in accordance with those approved materials.

Reason: To ensure that the development has a satisfactory appearance in the interests of visual amenity in accordance with Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

15. No development shall take place until a scheme of hard and soft landscaping works, including boundary treatments, for the site, including an implementation scheme, has been submitted in writing to and approved in writing by the local planning authority. The scheme shall be carried out in full accordance with the approved landscaping scheme. The soft landscaping scheme shall be maintained for a period of five years from the date of planting. During this period any trees or shrubs which die or are damaged, removed, or seriously diseased shall be replaced by trees or shrubs of a

similar size and species to those originally planted at which time shall be specified in writing by the Local Planning Authority.

Reason: To ensure that the development has a satisfactory external appearance in accordance with Policies DM4 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

16. The windows to all bathrooms, WCs and en-suites as shown on the approved plans shall be fitted with obscure glazing to a minimum of level 3 of the Pilkington scale. Once so provided the windows shall be permanently maintained as such at all times thereafter.

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

17. No development shall commence on site until such time as the existing and proposed ground levels of the site, and proposed finished floor levels have been submitted to and agreed in writing by the local planning authority. The development shall then be implemented in accordance with the approved details.

Reason: To ensure that the development has a satisfactory appearance and in the interests of visual amenity in accordance with Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

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

Reason: To safeguard the amenities of neighbouring properties in accordance with Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).