

**Planning Committee 15 October 2019
Report of the Planning Manager**

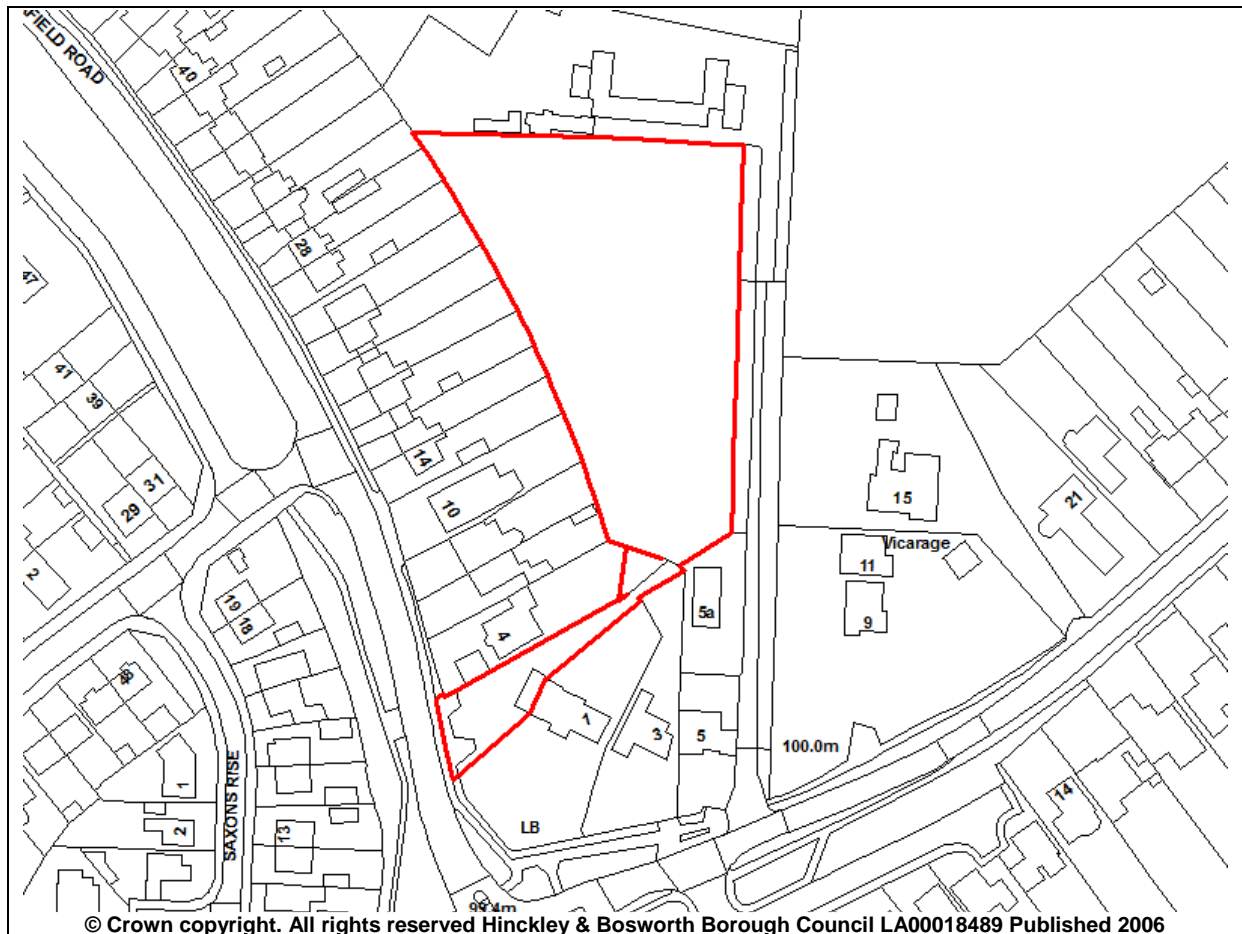
Planning Ref: 19/00785/OUT
Applicant: Mr Phil Walker
Ward: Ratby Bagworth And Thornton



Hinckley & Bosworth
Borough Council

Site: Land Rear Of 4 - 28 Markfield Road Ratby

Proposal: Erection of four dwellings (outline - access, layout and scale)



1. Recommendations

1.1. Grant planning permission subject to:

- Planning conditions outlined at the end of this report.

1.2. That the Planning Manager be given powers to determine the final detail of planning conditions.

2. Planning Application Description

- 2.1.** This application seeks outline planning permission (access, layout and scale only) for the erection of four new dwellings on land to the rear of Nos. 4 – 28, Markfield Road, Ratby. Matters relating to appearance and landscaping are reserved for later consideration therefore the submitted designs and landscaping details are indicative only.

- 2.2. The proposed access to the site would be via an upgraded and improved existing access to be constructed between 4 Markfield Road and 1 Groby Road through the side and rear garden of 1 Groby Road and part of the rear garden of 4 Markfield Road and would include the demolition of an existing brick and tile garage serving 1 Groby Road. The proposed access would be 4.25 metres wide with 0.5 metre margins, be surfaced in tarmacadam or block paving, have visibility splays of 2.4 metres x 43 metres at its junction with Markfield Road along with 2 metre x 2 metre pedestrian visibility splays. Acoustic fencing is proposed along both sides of the access. The existing second access to 1 Groby Road would be closed.
- 2.3. The proposed layout and an indicative only street scene (submitted to demonstrate scale) includes four detached three or four bedroom dwellings, one single storey dwelling and three 1½ storey dwellings with accommodation within the roof space (with eaves of a maximum height of 3.3 metres and ridges of a maximum height of 7.4 metres).
- 2.4. A Planning Statement, Design and Access Statement, Tree Survey and Biodiversity Report/Ecological Assessment have been submitted to support the application.
- 2.5. The application is a resubmission of a previously refused scheme (reference 17/00123/OUT) that was also subsequently dismissed at appeal (reference. APP/K2420/W/17/3184407) based at least in part on the ability of the Council being able to demonstrate a five year housing land supply at that time.
- 2.6. The submitted site plans include details of potential extensions and alterations to 1 Groby Road, Ratby but these are not part of the description of development and not included within the red edge application site and therefore have not been assessed as part of the scheme.

3. Description of the Site and Surrounding Area

- 3.1. The application site measures approximately 0.42 hectares and comprises a grassed paddock to the rear (north east) of 4 – 28 Markfield Road and part of the residential garden of 1 Groby Road. The paddock lies outside but adjacent to the settlement boundary of Ratby. Whilst it is relatively flat, it occupies a higher ground level than the houses fronting Markfield Road. The paddock is enclosed by 1.8 – 2 metre high timber fencing and occasional hedgerow and contains a large number of trees located predominantly around the perimeter of the site. There are residential properties to the west, south and part east of the site. There are stables to the north and an access road serving the stables along the east boundary of the site with a separate grassed field beyond.

4. Relevant Planning History

15/01272/OUT	Erection of up to nine dwellings (outline - access only)	Refused	08.02.2016
17/00123/OUT	Erection of four dwellings (Outline - access, layout and scale)	Refused	29.03.2017
		Appeal	09.02.2018
		Dismissed	

5. Publicity

- 5.1. The application has been publicised by sending out letters to local residents. A site notice was also posted within the vicinity of the site.
- 5.2. Responses have been received from 5 separate addresses, 4 of which object to the application on the following grounds:-
- 1) No additional residential sites are required in Ratby to meet housing allocation;
 - 2) Highway safety, access is too close to a busy and dangerous roundabout;

- 3) Adverse impact on green field wildlife haven within the Green Wedge and National Forest;
 - 4) Site is higher than adjacent gardens and would exacerbate existing flooding;
 - 5) Site is too close to M1 and unsuitable for housing due to potential pollution;
 - 6) Adverse effects on residential amenity and wildlife from light pollution;
 - 7) Lack of local infrastructure in Ratby to serve additional development;
 - 8) Restrictive covenant on the land;
- 5.3. One letter of support has been received stating that the land is not visible from the road, there is an existing access to the land, the scale of the development will provide quality homes to Ratby with minimal impact on the environment and the scheme would be similar to approved schemes with access roads close to junctions.

6. Consultation

- 6.1. No objection, some subject to informative notes, has been received from:-
Leicestershire County Council (Ecology)
Severn Trent Water Limited
National Grid/Cadent Gas
Environmental Health (Pollution)
- 6.2. No objection subject to conditions has been received from:-
Leicestershire County Council (Highways)
Leicestershire County Council (Archaeology)
Environmental Health (Drainage)
Street Scene Services (Waste)
- 6.3. Groby Parish Council: object to the scheme on the grounds that the proposed access is close to a mini-roundabout and will exacerbate traffic problems and there is insufficient capacity within local schools and healthcare facilities.
- 6.4. No response has been received from:-
Ratby Parish Council
Arboricultural Officer

7. Policy

- 7.1. Core Strategy (2009)
- Policy 7: Key Rural Centres
 - Policy 8: Key Rural Centres Relating to Leicester
 - Policy 15: Affordable Housing
 - Policy 19: Green Space and Play Provision
 - Policy 21: National Forest
- 7.2. Site Allocations and Development Management Policies (SADMP) DPD (2016)
- Policy DM1: Presumption in Favour of Sustainable Development
 - Policy DM3: Infrastructure and Delivery
 - 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 DM11: Protecting and Enhancing the Historic Environment
 - Policy DM13: Preserving the Borough's Archaeology
 - Policy DM17: Highways and Transportation
 - Policy DM18: Vehicle Parking Standards

7.3. National Planning Policies and Guidance

- National Planning Policy Framework (NPPF) (2019)
- Planning Practice Guidance (PPG)
- Community Infrastructure Levy (CIL) Regulations (2010)

7.4. Other relevant guidance

- Affordable Housing Supplementary Planning Document
- Ratby Village Design Statement (RVDS)
- Open Space and Recreation Study (2016)

8. Appraisal

8.1. Key Issues

- Assessment against strategic planning policies
- Layout/scale and impact upon the character of the area
- Archaeology
- Impact upon neighbouring residential amenity
- Impact upon highway safety
- Biodiversity/Trees
- Drainage/Flooding
- Pollution
- Affordable housing
- Infrastructure contributions
- Other issues
- Planning balance

Assessment against strategic planning policies

8.2. Paragraph 2 of the National Planning Policy Framework (NPPF) (2019) 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) and the Site Allocations and Development Management Policies DPD (2016).

8.4. 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. Ratby is identified as a Key Rural Centre within Policy 8 of the Core Strategy. Policy 8 of the adopted Core Strategy states that to support local services in Ratby land will be allocated for the development of a minimum of 75 new dwellings, an allocation which has already been exceeded and has generated an objection to this scheme.

8.5. Notwithstanding this, the housing policies in the development plan are considered to be out-of-date as they focus on delivery of a lower housing requirement than required by the up-to-date figure and the Council is unable to demonstrate a 5 year

housing land supply when using the standard method set out by Ministry Housing Communities and Local Government (MHCLG). Therefore, the application should be determined in accordance with Paragraph 11(d) of the Framework whereby permission should be granted unless adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

- 8.6. The consideration under Paragraph 11 (d) is weighed in the balance of the merits of any application and considered with the policies in the Site Allocations and Development Policies DPD and the Core Strategy which can be attributed significant weight as they are consistent with the Framework.
- 8.7. Objections to the application have been received on the grounds that the site is within the Green Wedge and boundaries of the National Forest.
- 8.8. However, the site no longer lies within the Rothley Brook Meadow Green Wedge as defined in the adopted SADMP. The site is however within the boundaries of the National Forest where Policy 21 of the adopted Core Strategy seeks to ensure that the siting of new development is appropriately related to its setting within the forest and that development respects the character and appearance of the wider countryside.
- 8.9. The site is located outside of but adjacent to the adopted settlement boundary of Ratby as defined in the adopted SADMP and is therefore in the countryside. Policy DM4 of the adopted SADMP states that the countryside will first and foremost be safeguarded from unsustainable development to protect its intrinsic beauty, open character and landscape character. Forms of development that the policy may consider to be sustainable in the countryside (subject to a number of other criteria) do not include new residential development.
- 8.10. The application is for the development of housing outside the settlement of Ratby within the countryside and is in conflict with the adopted strategic spatial planning Policies 8 and 21 of the Core Strategy and Policy DM4 of the adopted SADMP.
- 8.11. However, given that the Council is currently unable to demonstrate a five year housing land supply, paragraph 11(d) of the NPPF is engaged and therefore a 'tilted balance' assessment must be made and the proposal will need to be carefully weighed in the planning balance along with the detailed assessment of all other material planning considerations in this case.

Layout/scale and impact upon the character of the area

- 8.12. Policy 21 of the Core Strategy requires proposals within the National Forest to contribute to the National Forest Strategy. Development will be supported where the siting and scale of development is appropriate to its setting, the development respects the character of the wider countryside and the development does not adversely affect the working landscape of the forest of wider landscape.
- 8.13. Policy DM4 of the SADMP requires that development in the countryside does not have an adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside, does not undermine the physical and perceived separation and open character between settlements and does not create or exacerbate ribbon development.
- 8.14. Policy DM10 (c) of the SADMP seeks to ensure that new development should complement or enhance the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features.
- 8.15. The majority of the application site is rural in character being a grassed paddock with perimeter trees and hedgerows providing enclosure. The fields to the north are

also currently used for rural recreational purposes (equestrian) although there is a separate application for major residential development of that site that is currently pending consideration.

- 8.16. The previous appeal Inspector considered that the introduction of residential built form into the undeveloped application site, which lies beyond the settlement boundary and therefore in the countryside, would harm the site's currently open and undeveloped character and appearance in conflict with Policy DM4 of the adopted SADMP which seeks to protect the intrinsic value, beauty, open character and landscape character of the countryside.
- 8.17. Notwithstanding this, and in the context of the lack of a demonstrable five year housing land supply, the site is enclosed on three sides by built development and is well enclosed from the wider open landscape to the north by existing perimeter trees and hedgerows. By virtue of its scale and enclosure, it is considered that the proposed residential development of the site would result in only limited harm to the wider surrounding landscape within the National Forest.
- 8.18. In addition, by virtue of existing development along Groby Road up to the M1 motorway, the proposal would not undermine the separation and open rural character of the wider area between Ratby and Groby to any significant degree or result in the creation or exacerbation of ribbon development and would not be in conflict with these criteria of the policy.
- 8.19. The site is located to the rear of the existing dwellings fronting Markfield Road and Groby Road to the west and south respectively and other residential development at depth to part of the east boundary. By virtue of the built development at depth to the east of the site, the previous appeal Inspector considered that the layout and scale of the appeal scheme, and as now re-submitted in this current outline application, would not appear incongruous or at odds with the character/pattern of development of the surrounding area and therefore would not be in significant conflict with Policy DM10 (c) of the adopted SADMP. Neither would it conflict with the requirements of Policy 21 of the Core Strategy.

Archaeology

- 8.20. Policies DM11 and DM13 of the adopted SADMP and Section 16 of the NPPF seek to protect and enhance the historic environment, including archaeology. Where proposals have the potential to impact a site of archaeological interest, full archaeological investigation and recording by an approved archaeological organisation will be required before development commences.
- 8.21. Leicestershire County Council (Archaeology) has assessed the scheme and considers that by virtue of its location in close proximity to known archaeological remains and its previously undeveloped nature, there is a potential for buried archaeological remains within the site to be preserved in situ and potentially affected by the proposal which includes ground excavation for foundations, services and landscaping. As a consequence, it is recommended that an appropriate programme of archaeological investigation and mitigation is undertaken, including as necessary intrusive and non-intrusive investigation and recording. These measures should be secured by the imposition of planning conditions if the application be approved to ensure satisfactory archaeological investigation and recording in accordance with Policies DM11 and DM13 of the adopted SADMP and Section 16 of the NPPF (2019).

Impact upon neighbouring residential amenity

- 8.22. Policy DM10 of the adopted SADMP requires that development would not have a significant adverse effect on the privacy and amenity of nearby residents and

occupiers of adjacent buildings and that the amenity of the future occupiers of proposed development would not be adversely affected by activities in the vicinity of the site.

- 8.23. Objections to the application have been received on the grounds that the proposal would result adverse impacts on neighbouring residents amenity from light pollution.
- 8.24. There are residential properties to the south west of the site whose private rear gardens back onto the application site and these are situated on a lower ground level. There are also private residential gardens to the south of the site and a detached dwelling (5a Groby Road) located adjacent to the south east boundary of the site.
- 8.25. By virtue of the layout and low density proposed (9.5 dwellings per hectare), separation distances and orientation of all of the proposed dwellings to existing dwellings and the scale of the proposed dwellings, the scheme would not result in any significant adverse overbearing impacts or loss of privacy from overlooking to any neighbouring properties. By virtue of the low number of dwellings and the inclusion of additional land to move the access away from 5a Groby Road together with mitigation in the form of acoustic fencing/landscaping along both sides, the proposal would be unlikely to result in any significant adverse impacts on any neighbouring properties as a result of traffic movements to and from the site.
- 8.26. Any noise and disturbance to existing neighbouring occupiers during the construction phase of the development would be temporary in nature and would not result in any long term or significant adverse impacts on residential amenity.
- 8.27. The proposal would not result in any significant adverse impacts on the amenity of the occupiers of any neighbouring properties and would therefore be in accordance with Policy DM10 of the adopted SADMP.

Impact upon highway safety

- 8.28. Policy DM17 of the adopted SADMP supports development that would not have any significant adverse impacts on highway safety. Policy DM18 requires new development to provide an appropriate level of parking provision. Policy 109 of the Framework states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the cumulative impacts on the road network would be severe.
- 8.29. Objections have been received on the grounds of adverse impacts on highway and pedestrian safety as a result of the proximity of the proposed access to a busy mini-roundabout/junction and increase in traffic movements in and out of the site.
- 8.30. The scheme proposes that the existing two accesses to 1 Groby Road would be closed and a new shared private drive would be constructed between the two to serve the existing dwelling and the proposed development. The proposed layout would be capable of providing an access of adequate width, surfacing and visibility to serve the development together with satisfactory off-street turning and vehicle parking to serve each plot and replacement off-street vehicle parking to serve the existing dwelling.
- 8.31. Leicestershire County Council (Highways) has assessed the application and considers that the residual cumulative impacts of development can be mitigated and are not considered to be severe. The position of the proposed access in relation to the nearby mini-roundabout/junction is considered to be acceptable. The Highway Authority considers that a satisfactory access could be provided to serve the small scale of development proposed and therefore raises no objections to the proposal on highway safety grounds subject to the imposition of a number of highway related conditions.

- 8.32. By virtue of the small scale of development and the proposed access design standards, the proposal would not result in any significant adverse impacts on highway or pedestrian safety or adverse impacts on the local road network and would therefore be in accordance with Policies DM17 and DM18 of the adopted SADMP.

Biodiversity/Trees

- 8.33. Policy DM6 of the adopted SADMP requires development proposals to demonstrate how they conserve and enhance biodiversity. Paragraph 170 of the NPPF states that development should result in a net gain for biodiversity by including ecological enhancement measures within the proposal.
- 8.34. Objections to the application have been received on the grounds that the proposal would have adverse impacts on wildlife using the site.
- 8.35. A Biodiversity Report/Ecological Assessment and Tree Survey have been submitted to support the application.
- 8.36. The Biodiversity Report/Ecological Assessment found no evidence of protected species on site and concludes that the proposed development of the site would be unlikely to have any adverse impact on the biodiversity of the area as the features that are of ecological value (hedges and trees) could be incorporated into the layout of the site.
- 8.37. Leicestershire County Council (Ecology) has assessed the report and raises no objections to the proposal subject to the recommendation in the report in respect of vegetation removal and nesting birds.
- 8.38. A Tree Survey has been submitted to support the application. The proposed layout would result in a vast majority of the trees and hedgerows around the site being retained and additional planting could be secured by condition to replace those to be lost as a result of development of the site. The proposal would not result in the loss of any trees of particular significance.
- 8.39. The proposal would conserve the more significant features of biodiversity potential on the site. Notwithstanding the objections received, it is considered that subject to appropriate landscaping of the scheme (which is to be considered at the reserved matters stage) to provide biodiversity enhancements, the proposal would be in accordance with Policy DM6 of the adopted SADMP and Policy 21 of the Core Strategy.

Drainage/Flooding

- 8.40. Policy DM7 of the adopted SADMP requires that development does not create or exacerbate flooding.
- 8.41. Objections have been received on the grounds that the development would result in flooding from an increase in surface water run-off (from additional hard surfacing and natural springs) on this elevated land.
- 8.42. There is no evidence to suggest that this issue could not be adequately addressed by a suitable surface water drainage system incorporating sustainable drainage principles and a condition to require such details for prior approval is recommended by Environmental Health (Drainage) should the application be approved to ensure accordance with Policy DM7 of the adopted SADMP. Severn Trent Water Limited have assessed the proposal and raise no objections.

Pollution

- 8.43. Policy DM7 of the SADMP seeks to ensure that adverse impacts from pollution are prevented, this include impacts from noise, land contamination and light.

- 8.44. Objections have been received that the site is unsuitable for residential development due to its proximity to the M1 motorway resulting in potential health issues from pollution.
- 8.45. The nearest part of the site is over 100 metres from the motorway embankment and the carriageway is located approximately 130 metres away and set on a much lower ground level within a cutting. There are residential properties much closer to the M1 motorway to the east of the site. There is no evidence to suggest that there would be any significant noise, light or other health related issues from residential development of the site. No objections have been received from Environmental Health (Pollution).

Affordable housing

- 8.46. Policy 15 of the adopted Core Strategy seeks the provision of 40% affordable housing on sites of four or more dwellings or on sites of 0.13 hectares or more in rural areas.
- 8.47. Notwithstanding the requirements of Policy 15 of the adopted Core Strategy, Planning Practice Guidance in paragraph: 023 Reference ID: 23b-023-20190315 revised on 15 March 2019 states that the provision of affordable housing should only be sought for residential developments that are major developments. For housing development, major development is defined in the National Planning Policy Framework as development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more. The proposal does not meet either trigger for the provision of affordable housing in this case.

Infrastructure contributions

- 8.48. Policy DM3 of the adopted SADMP requires development to contribute towards the provision and maintenance of necessary infrastructure to mitigate the impact of additional development on community services and facilities. To support the provision of mixed, sustainable communities. Policy 19 of the adopted Core Strategy seeks to address existing deficiencies in the quality, quantity and accessibility of green space and children's play provision within settlements.
- 8.49. The request for any planning obligations (infrastructure contributions) must be considered alongside the requirement contained within the Community Infrastructure Levy Regulations 2010 (CIL). The CIL Regulations confirm that where developer contributions are requested they need to be necessary to make the development acceptable in planning terms, directly related and fairly and reasonably related in scale and kind to the development proposed.
- 8.50. The nearest public amenity green space to the application site is Burroughs Road Green Space (reference RAT08) which has a quality score of 74% in the Open Space and Recreation Study (2016) which is close to the target quality score of 80%.
- 8.51. Any requested infrastructure contribution for public play and open space facilities would need to be necessary to make the development acceptable in planning terms and therefore CIL compliant.
- 8.52. However, in this case, the proposal is for only four additional dwellings which would not have any significant impact on existing play and open space facilities. The development is considered to be acceptable in planning terms without any contribution and therefore the contribution would not be CIL compliant in this case. Therefore, notwithstanding Policy DM3 of the adopted SADMP and Policy 19 of the adopted Core Strategy, no contribution has been pursued in this case.

Other issues

- 8.53. Street Scene Services (Waste) recommend the imposition of a condition to require the submission of a scheme for refuse and recycling collection and storage to serve the development. However, the submitted plans indicate the provision of a suitable communal collection point inside the site close to the highway boundary. A condition is therefore unnecessary in this case.

Planning Balance

- 8.54. 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.
- 8.55. Since the previously dismissed appeal decision for a similar development of the site, the housing policies in the adopted Core Strategy and the adopted SADMP are now considered to be out of date as they focussed on delivery of a lower housing requirement than required by the up-to-date figure. The Council also cannot demonstrate a 5 year housing land supply. Therefore, the 'tilted' balance in paragraph 11(d) of the NPPF applies where the 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.
- 8.56. The proposal would be in conflict with Policy DM4 of the adopted SADMP as it does not support new residential development outside the settlement boundary. This policy is in accordance with the NPPF and has significant weight.
- 8.57. The proposal, whilst involving development on open land, by virtue of its small scale, close relationship to surrounding built form and good enclosure has been found to have a limited impact on the character of the wider landscape and no significant adverse impact on the pattern of development in the area so any conflict with Policy DM10 (c) of the adopted SADMP is limited. Weighed against the conflict with the Development Plan is the Government's commitment to significantly boosting the supply of housing through the NPPF.
- 8.58. Paragraph 11d of the NPPF states that the harm identified should be significant and demonstrably out weigh the benefits of the scheme. It is therefore important to identify the benefits of the scheme. Following the three strands of sustainability the benefits are broken down into economic, social and environmental:
- 8.59. The proposal would result in modest economic benefits through the construction of the scheme and their future occupation providing ongoing support to local businesses, services and facilities.
- 8.60. The proposal would result in modest social benefits through the delivery of four new dwellings towards addressing the current shortfall of housing in the Borough.
- 8.61. The site has been found to have relatively low biodiversity value, a majority being maintained grassland. However, some modest environmental benefits could be provided to biodiversity from the retention of the more valuable biodiversity features in the site and from additional landscaping.
- 8.62. Notwithstanding that the proposal would extend development beyond the settlement boundary of Ratby and the previous inspectors decision, by virtue of its small scale, close relationship to existing built form and enclosure, it has been concluded that the proposal would result in only limited harm to the character and appearance of the wider landscape and rural setting of Ratby as a result of the visual impact of built development in this location. The proposal would result in modest economic, social and environmental benefits. Whilst some harm has been identified, it is

considered that on balance, that harm does not significantly and demonstrably outweigh the identified benefits of the scheme. Therefore, the presumption in favour of sustainable development does apply in this case and material considerations do justify making a decision other than in accordance with the development plan.

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. 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.

10.2. The application site is outside the settlement boundary of Ratby in the countryside and within the National Forest boundary where strategic adopted development plan Policies 8 and 21 of the adopted Core Strategy and DM4 of the adopted SADMP seek to protect the countryside from unsustainable development, including new residential development. The proposal is in clear conflict with these strategic planning policies of the development plan.

10.3. However, the housing policies in the adopted Core Strategy and the adopted SADMP are out of date and the Council cannot demonstrate a 5 year housing land supply. Therefore, the 'tilted' balance in paragraph 11(d) of the NPPF applies where 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.

10.4. By virtue of its small scale, close relationship to existing built form and enclosure, it has been concluded that the proposal would result in only limited harm to the character and appearance of the wider landscape and rural setting of Ratby as a result of the visual impact of built development in this location. The proposal would result in modest economic, social and environmental benefits.

- 10.5. Notwithstanding the objections received, subject to the imposition of conditions and/or mitigation measures where necessary, the proposed scheme would not result in any significant adverse impacts on archaeological remains, the residential amenity of the occupiers of neighbouring properties, the amenities of the future occupiers of the development, highway safety, biodiversity, flooding, land contamination, the National Forest or local infrastructure facilities. Subject to conditions, the proposal would therefore be in accordance with Policies DM6, DM7, DM10, DM11, DM13, DM17 and DM18 of the adopted SADMP and Policy 21 of the Core Strategy.
- 10.6. On balance it is considered that the limited harm identified to the character and appearance of the countryside from new residential development would not significantly and demonstrably outweigh the identified, albeit modest, benefits of the scheme. Therefore, the presumption in favour of sustainable development does apply in this case and material considerations do justify making a decision other than in accordance with the development plan. The application is therefore recommended for approval subject to the conditions at the end of this report.

11. Recommendation

11.1. Grant planning permission subject to:

- Planning conditions outlined at the end of this report.

11.2. That the Planning Manager be given powers to determine the final detail of planning conditions.

11.3. Conditions and Reasons

1. Application for the approval of reserved matters shall be made within 18 months from the date of this permission and the development shall be begun not later than two years 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 be commenced until plans and particulars of "the reserved matters" referred to in the above condition relating to the:-

- a) appearance
- b) landscaping

have been submitted to and approved, in writing, by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

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 carried out otherwise than in complete accordance with the submitted application details, as follows: Site Location Plan at scale 1:1250, Proposed Site Plan at scale 1:500 on Drawing No. 16.3240.04 and the scale parameters submitted on Proposed Site Plan/Illustrative Street Scene on Drawing No. 16.3240.08 and Illustrative Street Scene on Drawing No. 16.3240.04 both received by the local planning authority on 12 July 2019.

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).

4. No development shall commence until a written scheme of investigation (WSI), informed by an initial stage of trial trenching, has been submitted to and approved in writing by the local planning authority. For land that is included within the WSI, no development shall take place other than in accordance with the agreed WSI, which shall include the statement of significance and research objectives, and;
 - The programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works;
 - The programme for post-investigation assessment and subsequent analysis, publication & dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.

Reason: To ensure satisfactory archaeological investigation and recording in accordance with Policies DM11 and DM13 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and section 16 of the National Planning Policy Framework (2019).

5. No part of the development hereby permitted shall be occupied until such time as surface water drainage details and calculations, incorporating sustainable drainage principles (SuDS) have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full accordance with the approved details prior to the completion of development and hereafter surface water shall not drain into the Public Highway and shall be permanently so maintained at all times.

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 adopted Site Allocations and Development Management Policies Development Plan Document (2016) and paragraphs 108 and 110 of the National Planning Policy Framework (2019).

6. Notwithstanding the submitted details, 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).

7. Notwithstanding the submitted details, before any development commences on the site, including site works of any description, a Tree Protection Plan prepared by a suitably qualified arboriculturist shall be submitted to and approved in writing by the local planning authority. The plan shall include protective barriers to form a secure construction exclusion zone and root protection area in accordance with British Standard 5837:2012 Trees in relation to design, any trenches for services are required within the fenced-off areas, they shall be excavated and back-filled by hand and any tree roots or clumps of roots encountered with a diameter of 25cm or more shall be left un-

severed. The development shall be implemented in accordance with the approved Tree Protection Plan.

Reason: To ensure that the trees on site are to be retained and adequately protected during and after construction in the interests of the visual amenities of the area and biodiversity in accordance with Policy DM6 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and paragraph 170 of the National Planning Policy Framework (2019).

8. During the construction period, none of the trees or hedges indicated to be retained shall be cut down, uprooted or destroyed, nor shall be topped or lopped other than in accordance with the approved plans, without the written approval of the Local Planning Authority. If any of the trees or hedges to be retained are removed, uprooted or destroyed or dies, a replacement shall be planted at the same place and that tree or hedge shall be of such size and species, and shall be planted at such time, as specified in writing by the Local Planning Authority.

Reason: To ensure that the existing trees on the site are retained and protected in accordance with Policy DM6 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and paragraph 170 of the National Planning Policy Framework (2019).

9. Notwithstanding the submitted details, the proposed access shall have a width of a minimum of 4.25 metres and shall be surfaced in a hard-bound material with a 7.3 metre dropped crossing. The access once provided shall be permanently so maintained at all times 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 the interests of general highway safety and in accordance with Policy DM17 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and paragraph 108 of the National Planning Policy Framework (2019).

10. 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 and 2.0 metre by 2.0 metre visibility splays have been provided on the highway boundary on both sides of the access. These shall thereafter be permanently so 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 the interests of general highway safety, and in accordance with Policy DM17 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and paragraph 108 of the National Planning Policy Framework (2019).

11. The development hereby permitted shall not be occupied until such time as the parking and turning facilities have been implemented in accordance with Proposed Site Plan Drawing No. 16.3240.04 received by the local planning authority on 12 July 2019 and with a minimum of two spaces for a dwelling with up to three bedrooms and three spaces for a dwelling with four or more bedrooms. Thereafter the on-site parking provision shall be so maintained at all times.

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 Policies DM17 and DM18 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and paragraphs 108 and 110 of the National Planning Policy Framework (2019).

12. Notwithstanding the provisions of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) no vehicular access gates, barriers, bollards, chains or other such obstructions shall be erected within a distance of 5 metres of the highway boundary. Any vehicular access gates, barriers, bollards, chains or other such obstructions shall be hung so as to open away from the highway.

Reason: To enable a vehicle to stand clear of the highway in order to protect the free and safe passage of traffic including pedestrians in the public highway in accordance with Policy DM17 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and Paragraphs 108 and 110 of the National Planning Policy Framework (2019).

11.4. 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 or call 01455 238141.
2. Application forms to discharge conditions and further information can be found on the planning portal website www.planningportal.gov.uk
3. Planning Permission does not give you approval to work on the public highway. To carry out off-site works associated with this planning permission, separate approval must first be obtained from Leicestershire County Council as Local Highway Authority. This will take the form of a major section 184 permit/section 278 agreement. It is strongly recommended that you make contact with Leicestershire County Council at the earliest opportunity to allow time for the process to be completed. The Local Highway Authority reserve the right to charge commuted sums in respect of ongoing maintenance where the item in question is above and beyond what is required for the safe and satisfactory functioning of the highway. For further information please refer to the Leicestershire Design Guide which is available at <https://resources.leicestershire.gov.uk/environment-and-planning/planning/leicestershire-highway-design-guide>.
4. All proposed off site highway works, and internal road layouts shall be designed in accordance with Leicestershire County Council's latest design guidance, as Local Highway Authority. For further information please refer to the Leicestershire Design Guide which is available at <https://resources.leicestershire.gov.uk/environment-and-planning/planning/leicestershire-highway-design-guide>.
5. In relation to Condition 5, where soakaway drainage is initially proposed, the suitability of the ground strata for infiltration should be ascertained by means of the test described in BRE Digest 365, and the results submitted to the local planning authority and approved by the Building Control Surveyor before development is commenced. If the ground strata proves to be unsuitable for infiltration, alternative sustainable drainage system proposals will require the

further approval of the local planning authority before this condition can be discharged.

6. Severn Trent Water advise that although their statutory sewer records do not show any public sewers within the area you have specified, there may be sewers that have been recently adopted under the Transfer of Sewers Regulations (2011). Public sewers have statutory protection and may not be built close to, directly over or diverted without separate consent. You are advised to contact Severn Trent Water Limited to discuss your proposals. Severn Trent Water will seek to assist you in obtaining a solution which protects both the public sewer and the proposed development.
7. Before any works are commenced on site, the applicant/developer's attention is drawn to the consultation response from National Grid/Cadent Gas in respect of your responsibilities and regard to gas pipes and associated apparatus in the vicinity of the site.
8. The recommendations in the submitted Biodiversity Report by Curious Ecologists should be followed when development of the site takes place.