

Planning Committee 6 March 2018
Report of the Planning Manager (Development Management)

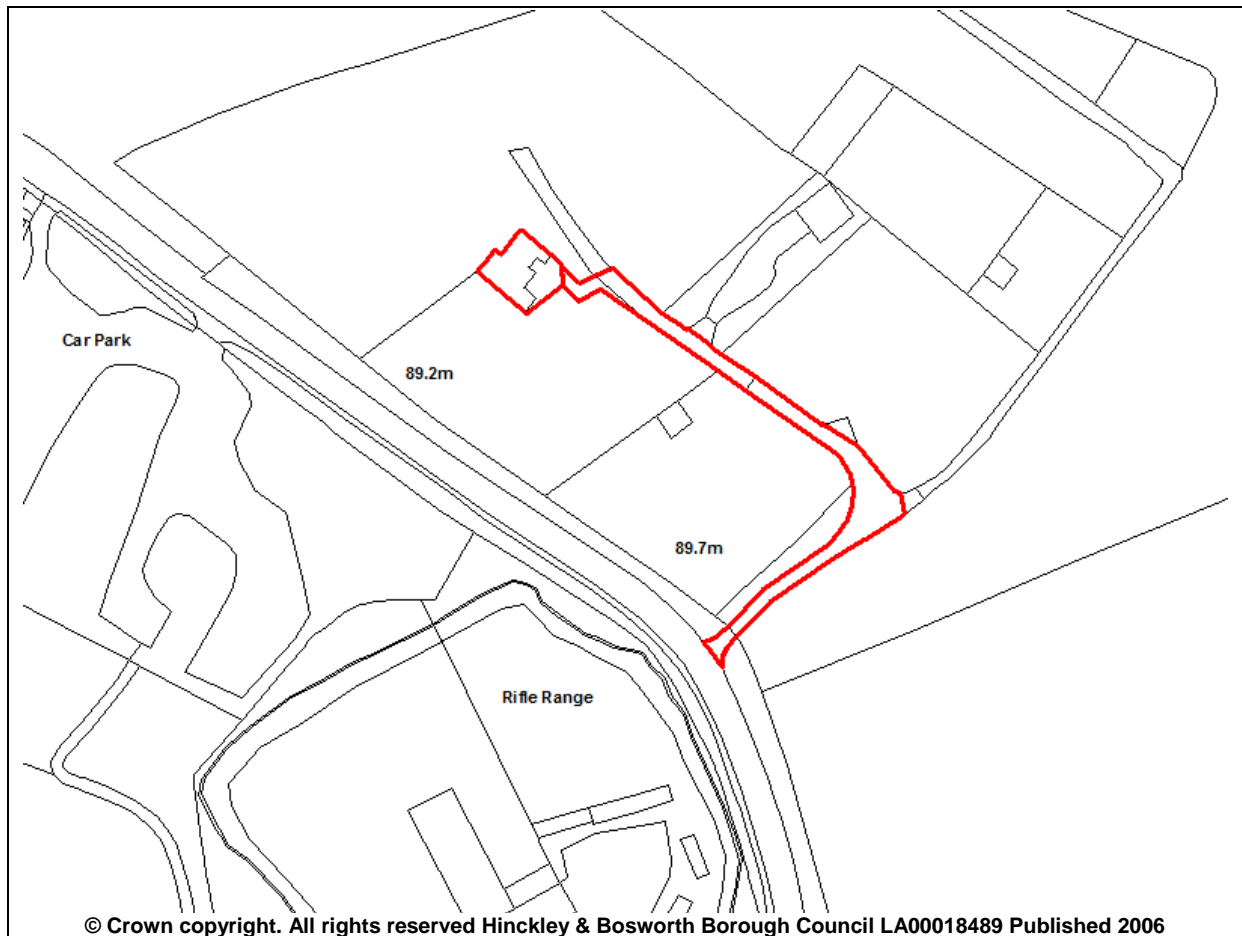


Hinckley & Bosworth
Borough Council

Planning Ref: 17/01002/FUL
Applicant: Mr Arthur McDonagh
Ward: Groby

Site: Allotment Gardens Newtown Linford Lane Groby

Proposal: Application for the replacement of an existing dwelling with a new dwelling



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1. Recommendations

1.1. **Refuse planning permission** subject to the reasons at the end of this report.

2. Planning Application Description

2.1. This application is for the replacement of an existing dwelling with a new dwelling. The 'existing dwelling' referred to is a building situated within the 'Klondyke' site which was granted a Certificate of Lawful Development on appeal on 2 June 2017. The Certificate certified that operational development comprising the erection of a dwellinghouse was lawful.

2.2. The Appeal decision made the point that the Certificate did not address the lawfulness of any existing use of that building and if a lawful use of the dwelling for residential purposes was to be sought, a fresh application would be necessary pursuant to section 191(1)(a) of the Town and Country Planning Act 1990.

- 2.3. The proposed dwelling which would replace the building currently on site would be single storey and would be sited in the approximate location of the existing building. It would have an approximate footprint of 98.3m²; which would be slightly smaller than the building which it would replace.
- 2.4. Were permission to be granted for the proposed replacement dwelling, Section 75(3) of the Town and Country Planning Act 1990 states that “if no use is so specified, the permission shall be construed as including permission to use the building for the purpose for which it is designed”
- 2.5. This has been clarified by the Court of Appeal in **Barnet v. SSCLG (2009)**
“Permission to construct a new dwelling on non-residential land will carry with it permission to use the new building for residential purposes: see section 75(3) of the 1990 Act. Thus there is in a sense a built-in application for a change of use of land in such cases, and the extent of the land covered by the implicit permission for a change of use will normally be ascertained by reference to the site as defined on the site plan.”
- 2.6. Therefore, should planning permission be granted for the current application; any such grant of permission would include the residential use as well as the operational development.

3. Description of the Site and Surrounding Area

- 3.1. The application site lies to the north of Newtown Linford Lane and is known locally as ‘The Klondyke’. The site is located within the Green Wedge as well as within the National Forest. It is outside of any settlement boundary therefore located within the open countryside. Groby Pool Site of Special Scientific Interest is located to the west on the opposite side of Newtown Linford Lane.
- 3.2. The Klondyke site was originally allotment gardens; divided up into various different sections in various ownerships. The application site itself is a fenced compound which contains an area of hardstanding and a building which was granted a Certificate of Lawful Development in 2017 as outlined above. This piece of land lies within the north east section of the wider ‘Klondyke’ site and is accessed via the existing access track serving the wider site which runs from Newtown Linford Lane.
- 3.3. Various parts of the wider site; including the land which forms the subject of the current application have been subject to enforcement action in relation to various breaches of planning control over the last decade; some of which is still ongoing.

4. Relevant Planning History

05/00019/ENF	Appeal against Enforcement Notice (Change of Use)	Dismissed	17.08.2006
06/00005/PP	Change of use of land to permanent residential for siting of six caravans and three toilet blocks	Dismissed	17.08.2006

16/00003/CLD	Application for a Certificate of Lawful Existing Use for a dwelling	Allowed	02.06.2017
16/00006/ENF	Appeal	Withdrawn	30.03.2017
05/00366/COU	Change of use of land to permanent residential for siting of six caravans and three toilet blocks	Refused	15.06.2005
07/01241/COU	Change of use of allotment gardens to create farm space and erection of day centre and stables	App Returned	05.12.2007
08/00186/FUL	Erection of three timber stables and one tack room and associated area of hard standing	Refused	04.06.2008
15/00933/CLUE	Application for a Certificate of Lawful Existing Use for a dwelling	Refused	02.11.2015

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 and a notice was displayed in the local press.
- 5.2. Eight letters of objection were received which raised the following issues:
- 1) No doubt an attempt to open the door to much larger development
 - 2) Ownership of the applicant is debatable
 - 3) Residents were promised a Compulsory Purchase Order on this site
 - 4) Land is allotment gardens so occupation of a dwelling would constitute a change of use
 - 5) Falls short of minimum standard one would expect a household to enjoy
 - 6) Loss of any potential recreational use of the land should be avoided. Land is part of a diverse recreational area which includes Groby Pool SSSI, Newtown Linford Lane Meadow, Groby Fishing Lakes, the Small Bore Rifle and Pistol Club and Sheet Hedges Wood
 - 7) Development north of the A50 should be discouraged
 - 8) Land should be cleared and developed to form a community facility
 - 9) Existing dwelling drawing should be named "Dwelling House"; throughout the application they falsely refer to "Dwelling" and not "Dwelling House"
 - 10) Existing dwelling drawing shows a shower but there is no provision for a water supply. Is there water not declared? Should Severn Trent be consulted?
 - 11) Environmental Health raised no objection yet there is no evidence of an in depth survey of the plot or surrounding area. Given the unauthorised uses that have taken place all sorts of pollution may be present

- 12) A condition is recommended in relation to adequate provision of refuse and recycling containers and access for service of the containers. This is laudable but will be ignored. Waste is already being disposed of without such provision
- 13) Flies in the face of the Groby poll
- 14) Detrimental to mineral reserves on the land and make way for the applicants known and stated ambition for the whole site to become a caravan site
- 15) Land has never had planning permission for residential use so an application for a replacement dwelling makes no sense
- 16) Land is subject to an existing Enforcement Notice from 2007 which required the occupiers to return it to its previous state by removal of hardcore
- 17) Conflict with Policy 9 of the Core Strategy and Policies DM1, DM10, DM14 and DM4 of the SADMP
- 18) Replacement dwelling would not be similar to what is currently on the site
- 19) Submitted plans do not show any garden provision
- 20) Small garage; therefore no usable parking for two cars
No provision for services to the site i.e. electric generator or energy storage

6. Consultation

- 6.1. LCC Highways does not object subject to conditions.
- 6.2. LCC Ecology notes that the proposed development is sited very close to woodland where a number of badger setts have been recorded. A badger survey should therefore be completed and submitted. Should badgers be recorded, a mitigation plan would also be required.
- 6.3. LCC Archaeology do not consider that any archaeological work is required as part of the scheme.
- 6.4. HBBC Private Sector Housing comment that the proposed dwelling should ensure full compliance with current Building Regulations and make sure there is sufficient and compliant drainage provision, fire safety arrangements within the dwelling and compliant thermal insulation. A suitable and sufficient fixed heating system should be installed in each habitable room capable of heating each room at a reasonable cost to between 18-21 degrees C when the outdoor temperature is -1 degrees C.
- 6.5. HBBC Environmental Services object to the proposed development given that the site does not have lawful domestic use and as this application could establish such use investigations are required into how noise, vibration and dust are likely to impact on the use and how these could be mitigated to an acceptable level. As this information has not been submitted, it is recommended that the application be refused.
- 6.6. HBBC Drainage Officer does not object but recommends notes to applicant.
- 6.7. HBBC Waste does not object.
- 6.8. Midland Quarry Products object to the application:
 - 1) Proximity to the permitted quarry development in terms of both permitted extraction areas and proximity of the processing plant in terms of noise.
 - 2) Do not consider that the proposed dwelling accords with the Local Plan as it would be much bigger than that which is replaces. The CLEUD also does not appear to include residential access to and from the property.
- 6.9. The Mineral Planning Authority object to the proposed development which would conflict with Policy MCS10 and Policy MDC8 of the Leicestershire Minerals Development Framework Core Strategy & Development Control Policies up to 2021 which seeks to safeguard proven mineral resources from sterilisation and Policies M11 and M12 of the emerging Leicestershire Minerals and Waste Local Plan.

- 6.10. Groby Parish Council object to the application for the following reasons:
- 1) Conflict with Policy 9 of the Core Strategy – Rothley Brook Meadow Green Wedge
 - 2) Fails to meet three elements of sustainability as set out in the NPPF; in economic terms it would sterilise valuable mineral resource, in environmental terms a modern brick dwelling would not enhance/be consistent with existing surrounding; in social terms it would not support the identified need to restore the land to a proper planning purpose
 - 3) Not consistent with objectives of Policy DM4 of the SADMP
 - 4) Does not meet the majority of requirements of Policy DM10; in particular in relation to the impact on the amenity of occupiers of the proposed development due to activities in the vicinity of the site i.e. the quarry
 - 5) There is planning permission for a HGV access road to the quarry which would be in close proximity to the proposed dwelling
 - 6) Does not meet any of the requirements of Policy DM14; would not enhance the immediate setting; no garden/amenity area which could not be provided within the existing curtilage; does not accord with DM10
 - 7) Planning application form and Planning Statement make a number of incorrect claims that could be prejudicial in consideration of the proposal

7. Policy

7.1. Leicestershire Minerals Development Framework Core Strategy and Development Control Policies DPD

- Policy MCS10: Strategy for resource management
- Policy MDC8: Safeguarding Mineral Resources

7.2. Core Strategy (2009)

- Policy 9: Rothley Brook Meadow Green Wedge
- Policy 21: National Forest

7.3. 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 DM14: Replacement Dwellings in Rural Areas
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards

7.4. Emerging Leicestershire Minerals and Waste Local Plan

- Policy M11: Safeguarding of Mineral Resources
- Policy M12: Safeguarding of Existing Minerals Sites and Associated Minerals Infrastructure

7.5 National Planning Policies and Guidance

- National Planning Policy Framework (NPPF) (2012)
- Planning Practice Guidance (PPG)

8. Appraisal

8.1. Key Issues

- Assessment against strategic planning policies
- Design and impact upon the character of the area

- Impact upon neighbouring residential amenity
- Impact upon highway safety
- Drainage

Assessment against strategic planning policies

- 8.2. Paragraph 11 of the National Planning Policy Framework (NPPF) confirms that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Paragraph 12 of the NPPF states that the development plan is the starting point for decision making and that proposed development that accords with an up to date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise. Paragraph 13 confirms that the NPPF constitutes guidance and is a material consideration in determining planning applications.
- 8.3. The development plan in this instance consists of the Leicestershire Minerals Development Framework Core Strategy and Development Control Policies DPD, the adopted Core Strategy (2009) the adopted Site Allocations and Development Management Policies (SADMP) Development Plan Document (2016) and the emerging Emerging Leicestershire Minerals and Waste Local Plan.
- 8.4. Policy DM1 of the SADMP provides a presumption in favour of sustainable development that is in accordance with the development plan. The site is located outside of any settlement boundary and is therefore in the countryside as defined in the SADMP. Policy DM4 of the SADMP states that to protect its intrinsic value, beauty, open character and landscape character, the countryside will be first and foremost safeguarded from unsustainable development. The policy goes on to list a number of categories of development that would be considered sustainable within the countryside subject to meeting a number of other criteria set out within the second part of Policy DM4. The policy does not identify replacement dwellings within the countryside as sustainable development within the countryside.
- 8.5. The spatial distribution of growth across the Borough during the plan period 2006-2026 is set out in the adopted Core Strategy. Policy 11 of the adopted Core Strategy states that to support local services and maintain rural population levels the Council will allocate land for the development of a minimum of 110 new dwellings in Groby.
- 8.6. The most recent figure available (April 2017) confirm that the Council is able to demonstrate a five year housing land supply of 5.74 years. Therefore the relevant development plan policies relating to the supply of housing are considered up to date and in accordance with paragraphs 47 and 49 of the NPPF. There is therefore no current overriding need for additional housing for Groby.
- 8.7. Policy 9 of the Core Strategy provides details of those land uses which will be considered acceptable within the Green Wedge; provided that the operational development associated with such uses does not damage the function of the Green Wedge. Residential development is not included within the acceptable land uses.
- 8.8. Policy DM14 of the SADMP deals with replacement dwellings outside the settlement boundary; subject to compliance with the criteria set out within this policy; namely that it leads to an enhancement of the immediate setting and general character of the area and where the new dwelling is proportionate to the size, scale, mass and footprint of the original dwelling and situated within the original curtilage and meets the design criteria set out in Policy DM10.
- 8.9. Therefore whilst the proposal is not in accordance with Policy 9 of the Core Strategy or Policy DM4 of the SADMP; in principle the proposed development could be

acceptable subject to compliance with the relevant criteria within Policy DM14. The issue to be determined in this case is whether a proposal for a replacement dwelling can be made for a building which is lawful and is defined as a dwelling in the certificate of lawfulness but does not have a certificate of lawfulness in relation to the use as a dwellinghouse.

Mineral Reserves

- 8.10. Given that the building itself is already lawful; it could be argued that there would be no material harm in the use of the dwelling. However, given the location of the site; adjacent to Groby Quarry; the compound itself being approximately 50 metres from the boundary with the Quarry, it is contended that in this instance there would in fact be material harm caused if permission were to be granted for this development due to the impact that this would have in terms of the potential sterilisation of mineral reserves.
- 8.11. The NPPF requires at Para 144 that the 'benefits of mineral extraction should be given great weight' when determining planning applications and should not normally permit other development proposals in mineral safeguarding areas where they might constrain potential future use for these purposes; Whilst district councils are not mineral planning authorities, they have an important role in safeguarding minerals by consulting the mineral planning authority and taking account of the local minerals plan before determining a planning application on any proposal for non-minerals development within it; and when determining planning applications, doing so in accordance with development policy on minerals safeguarding, and taking account of the views of the mineral planning authority on the risk of preventing minerals extraction.
- 8.12. The application area lies within a Minerals Consultation Area notified to HBBC and within a Mineral Safeguarding Area in the emerging Minerals and Waste Local Plan which will be submitted for examination on 23rd March 2018. The adopted Leicestershire Minerals Core Strategy and Development Control Policies document which forms part of the Development Plan for the area contains policies to protect valuable mineral resources from sterilisation by other forms of development.
- 8.13. This is therefore significant and material in the determination of this application for a replacement dwelling given the fact that whilst this is an application to replace an existing dwelling; the result of granting this permission would be to allow for the use of the dwelling for residential purposes which at present is not lawful.
- 8.14. Leicestershire Minerals Development Framework Core Strategy & Development Control Policies document seeks to safeguard proven mineral reserves from sterilisation. Policy MCS10 is to safeguard deposits of sand and gravel, limestone, igneous rock, shallow coal, fireclay, brick clay, gypsum, building and roofing stone in Leicestershire that are of current or future economic importance.
- 8.15. Policy MDC8 – Safeguarding Mineral Resources also applies; Groby Quarry and its igneous rock resource already lie within a Minerals Consultation Zone and are mapped on Key Diagram Figure 1, and it is identified as a Mineral Safeguarding Area (MSA) in the emerging Leicestershire Minerals and Waste Local Plan. Minerals are a non-renewable resource and minerals safeguarding is the process of ensuring that non-minerals development does not needlessly prevent the future extraction of mineral resources, of local and national importance. The main purpose of Mineral Safeguarding Areas (MSA) is to protect a mineral resource for the long term for future generations.

- 8.16. The Plan is to be submitted for examination by an Inspector on 23rd March and there have been no objections to the proposal to include this area as a MSA therefore significant weight can be given to this document.
- 8.17. As noted above, the application site adjoins Groby Quarry, for which there is extant permission for the extraction of hard rock and related development. The location of new residential accommodation; within 50 metres of the boundary with the Quarry would be likely to result in adverse living conditions for the occupants of the application site. Furthermore, the introduction of such accommodation could seriously prejudice the extraction and working of the permitted mineral (and related) operations at Groby.
- 8.18. Planning permission was granted on 1st October 1996 for the Quarrying of Stone, Construction of a Conveyor Tunnel and Processing Plant and Associated Ancillary Development. This is expected to release 90 million tonnes of stone. The planning permission is implemented but no stone extraction is currently taking place within Groby Quarry because the quarry development is on hold pending Cliffe Quarry Hill Quarry, a sister quarry operated by the same company a few miles to the north west who operate Groby Quarry, approaching the end of its life. Although no stone extraction is taking place in Groby Quarry ancillary quarrying activity in the form of a coated roadstone plant and ready mix concrete plant do currently operate within the Quarry.
- 8.19. Given the particular qualities of the rock at this location, its proximity to important markets of the South East of England, and the limited amount of such workable resource; the permitted mineral reserve at Groby Quarry is of regional and national importance.
- 8.20. As a condition of the 1996 planning permission a new access to Groby Quarry must be constructed off Newtown Linford Lane at a point west of the site. For a length of about 50 metres the proposed quarry access road would run adjacent to the northern boundary of the wider Klondyke site. The average daily lorry movements on the new access road were calculated at 1122 at the time of the quarry application in 1996.
- 8.21. The existing planning conditions on the extant planning permissions require the site operator to comply with set blast and noise limits. If the proposal were to be allowed then when Groby Quarry starts extracting mineral again it is considered that the Quarry operator would be unable to comply with planning conditions imposed to protect the amenity of nearby residential properties. Significant adverse environmental impact would thus be experienced by residents of the application site unless the Minerals Planning Authority enforced those conditions. Complying with planning conditions to protect the amenity of residents at the application site would severely constrain the working of the existing permitted reserve of rock at Groby Quarry.
- 8.22. The Minerals Planning Authority note that it is unaware of any mitigation measures which would enable the permitted Groby Quarry operation to take place in such close proximity to a residential property without causing an unacceptable environmental impact to the occupiers. The quarry development would be seriously compromised and the sterilisation of valuable mineral reserves would be likely to result.
- 8.23. The onus rests on the applicants to demonstrate that the proposed development is acceptable and it is for the applicants to provide evidence to demonstrate that the proposed development would not infringe on the activities of the quarry as asserted by LCC Minerals and MQP.

- 8.24. The applicants were given the opportunity to respond to the objections raised by the Minerals Planning Authority and MQP but have yet to provide any information to demonstrate that the proposed development would not impact upon the workability of and have the potential to sterilise the mineral resource at Groby Quarry.
- 8.25. In addition to the above; it is possible that the mineral resource extends under the application site and consequently there could be sterilisation of that resource as well. It would be for the applicant to demonstrate that that there was no valuable mineral resource under their land.
- 8.26. If the applicant does not provide evidence to address the issues identified by LCC Minerals and MQP it is appropriate for the Committee to refuse permission on the basis that he has failed to demonstrate that the proposed development would not have an adverse impact upon the quarry operations contrary to the Minerals Core Strategy and the emerging Waste Plan. That burden would remain should the applicant appeal any refusal.
- 8.27. It is therefore considered that whilst the application could be considered acceptable subject to compliance with the requirements of Policy DM14; given that in this instance the grant of permission for a replacement dwelling would allow for a lawful use of the dwelling where none currently exists which would, as the Council is advised by the Minerals Planning Authority, likely result in the sterilisation of minerals; the application would be contrary to Paragraph 144 of the NPPF and Policies MCS10 and MDC8 of the Leicestershire Minerals Development Framework Core Strategy & Development Control Policies document and the emerging Leicestershire Minerals and Waste Local Plan.
- 8.28. These factors also impact on consideration of the application for a replacement dwelling pursuant to Policies DM4 DM10 and DM14 and this is dealt with later in the report.

Design and impact upon the character of the area

- 8.29. Notwithstanding the concerns raised regarding sterilisation of the mineral resource; the acceptability of the proposed development must also be assessed against the policies within the Core Strategy and the SADMP. As set out above; Policy DM14 allows for the replacement of dwellings within rural areas subject to certain criteria. However, the provisions of Policy 9 and 21 of the Core Strategy and Policy DM4 of the SADMP should also be met in terms of the appropriateness of proposed development within the Green Wedge, National Forest and the wider open countryside.
- 8.30. Policy 9 requires that any land use or associated development proposed within the Green Wedge should retain the visual appearance of the area. Similarly, Policy 21 of the Core Strategy requires that any new development reflects the Forest context in their accompanying landscape proposals; is appropriate in terms of its siting and scale; respects the character and appearance of the wider countryside and does not adversely affect the existing facilities and working landscape of the Forest or wider countryside. Policy 21 also provides that new development within the National Forest will be required to reflect the Forest context in their accompanying landscape proposals. Development shall provide on-site or nearby landscaping that meets the National Forest development planting guidelines.
- 8.31. Policy DM4 requires that development in the countryside should not have an adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside. Policy DM10 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 that the use and application of building materials respects the materials of existing adjoining/neighbouring buildings and the area generally.

- 8.32. Policy DM14 provides that a proposal for the demolition and rebuild of an existing dwelling outside the settlement boundary will be supported where it leads to an enhancement of the immediate setting and general character of the area, and the new dwelling is proportionate to the size, scale, mass and footprint of the original dwelling and situated within the original curtilage.
- 8.33. The replacement of a dwelling can lead to improved design and construction standards leading to better energy efficiency. It can also overcome poor construction techniques employed with the original dwelling and can provide accommodation and facilities which more appropriately accord with modern life. The existing dwelling is unattractive in terms of its appearance; and it is considered that the proposed brick and tile replacement bungalow would introduce a much better design quality which would enhance the immediate setting and general character of the area.
- 8.34. It is proposed to provide additional planting within the confines of the compound; in addition; the site sits within the wider Klondyke site which itself is already well screened from view by existing planting. In addition it is proposed to provide 1.8 metre high close boarded timber fencing to replace the sheet metal cladding which currently encloses the compound. Again, this would be considered to improve upon the current appearance of the site. Accordingly it is considered that the proposal would satisfy criterion a) of Policy DM14 and criterion c) of Policy DM10.
- 8.35. The existing dwelling has a footprint of 117m². The proposed replacement dwelling would have a footprint of 98.3m² and would be sited within the curtilage of the original dwelling. The existing property has a maximum height of approximately 2.8 metres, the replacement dwelling would have an eaves height of approximately 2.7 metres with a ridge height of approximately 4.8 metres. Policy DM14 allows for modest increases in size, scale, mass and footprint and it considered that this is not a disproportionate increase in size.
- 8.36. Whilst there is no proposal to provide a rear garden area to serve the replacement dwelling; it does not currently benefit from such an area and indeed it is difficult to see how this could practically be achieved given the confined space available. It is proposed however to provide a paved concrete courtyard with a small grassed area to the front of the dwelling which would provide the site with private amenity space given the proposed boundary treatments. In addition, given that the application site sits within the wider Klondyke site within the Green Wedge and open countryside; adjacent to Groby Pool SSSI, Newtown Linford Lane Meadow, Groby Fishing Lakes and Sheet Hedges Wood there are plenty of opportunities to access green space locally.
- 8.37. Whilst it is considered that the proposed replacement dwelling would comply with the requirements of paragraphs (c) and (d) of Policy DM10, it is nevertheless considered that occupiers of the proposed development (and permission for a replacement dwelling would bring with it permission for the residential use of the new dwelling) could be adversely affected by the operation of Groby Quarry as set out above.
- 8.38. No information has been supplied by the applicant to demonstrate how the above identified impacts on occupiers of the replacement dwelling, from quarry operations might be mitigated to an acceptable level. It is therefore concluded that the proposed development would not meet the requirement in paragraph (b) of Policy DM10 and as a result of that the development would fail to comply with the requirements set out within Policy DM14

Impact upon neighbouring residential amenity

- 8.39. Policy DM10 (criterion (a)) requires that development would not have a significant adverse effect on the privacy or amenity of nearby residents and occupiers of adjacent buildings.
- 8.40. The closest residential properties to the application site are Pool Tail Cottage; which lies to the opposite side of Groby Pool; and The White House located to the north of Groby Quarry approximately half way between the Quarry and Newtown Linford. It is not considered that there would be any adverse impact on neighbouring amenity of nearby residents as a result of the proposed development, nor is it considered that the proposed use would have any adverse impact on other land owners of the Klondyke site.
- 8.41. The proposal would therefore be in accordance with criterion (a) of Policy DM10.

Impact upon highway safety

- 8.42. 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.
- 8.43. Access to the site is gained via an unmade track leading from Newtown Linford Lane, which is a classified road. Newtown Linford Lane is a winding rural highway, which is moderately trafficked and is subject to the national speed limit of 60mph. It is not proposed to alter the existing access from Newtown Linford Lane and LCC Highways considers that the existing track has adequate width and visibility at its junction to provide satisfactory access to serve the proposed dwelling.
- 8.44. The application form provides that there are currently two parking spaces serving the compound and two spaces would be retained if planning permission were granted for this proposal which meets the standards required by LCC Highways for this size of dwelling.
- 8.45. The proposal would therefore be in accordance with Policies DM17 and DM18 of the adopted SADMP in terms of highway safety.

Drainage

- 8.46. It is proposed that the dwelling would be served by a septic tank to dispose of foul sewage. It is also proposed to connect to the existing drainage system and to dispose of surface water by SUDs. HBBC Drainage Officer does not object to the proposed development. It is therefore considered to comply with Policy DM7 of the SADMP.

Biodiversity and Geology

- 8.47. LCC Ecology note that the proposed development is close to woodland where badger setts have been recorded, it is therefore recommended that should permission be granted that a badger survey be completed and submitted in support of the application. This was highlighted to the applicant but no survey has been received.
- 8.48. Whilst Groby Pool Site of Specific Scientific Interest is located immediately to the North West there is no evidence to suggest the development would directly harm the habitats associated with it, the proximity of the development is not likely to have an adverse visual intrusion on its wider setting and enjoyment as a well used informal recreational resource.
- 8.49. In the absence of a badger survey the Council are unable to determine the impact of the development on the ecology of the immediate area and therefore the application is contrary to Policy DM6 of the SADMP.

Other considerations

- 8.50. It has been highlighted that the application makes no provision for the storage of waste; however this could be conditioned if the application was recommended for approval; indeed a suitable condition has been proposed by HBBC Waste.
- 8.51. Groby Parish Council considers that a full tree survey should be carried out; however there are no trees within the compound site itself and this is therefore not considered necessary. It is noted that only a selective planning history is listed; however the Borough Council has access to the full history regardless.
- 8.52. It has been noted that the land which forms the subject of this application is subject to an Enforcement Notice served in 2007, this is incorrect.
- 8.53. A query has been raised as to why no objection to the proposed works has been raised by HBBC Environmental Health given that there is no evidence of an in depth survey of the plot or surrounding area and all sorts of pollution may be present. Given that this is an application for a replacement dwelling which would be sited approximately on the same footprint as that which is currently on site, it is considered unlikely that this land would be contaminated from uses elsewhere on the site.
- 8.54. The Parish Council consider that the application misrepresents the current situation regarding the dwelling house suggesting that the use was considered to be lawful on appeal. However, this decision is made on the basis that it is only the building operation which is lawful as a result of the CLEUD application.
- 8.55. The Parish Council also raise concerns regarding the fact that there are no mains services to the site (prohibited by a 2011 injunction). The existing dwelling relies on a petrol/diesel generator for electricity and gas bottles for heating yet there is no safe storage or housing for a generator, its fuel or gas bottles shown on the application plans. In the event that the recommendation was to approve the application; a note to applicant could be added to highlight to the applicant that the proposed dwelling should ensure full compliance with current Building Regulations and make sure there is sufficient and compliant drainage provision, fire safety arrangements within the dwelling and compliant thermal insulation. As an aside, it should be noted that the 2011 Injunction was an Interim Injunction which is no longer in place therefore the provisions of this Injunction are no longer of relevance.
- 8.56. Reference is made to the resolution to compulsorily purchase the site and the Groby Poll which expressed the desire by residents for this course of action to proceed. However, these issues are not material to the determination of this application.

9. Equality Implications

- 9.1. Where No Known Implications 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. The Committee must also ensure the same when determining this planning application.

9.3 There are no known equality implications arising directly from this development.

10. Conclusion

10.1. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan is the starting point for decision making. The development plan in this instance consists of the Leicestershire Minerals Development Framework Core Strategy and Development Control Policies DPD, the Core Strategy (2009), the Site Allocations and Development Management Policies (SADMP) Development Plan Document (2016) and the Emerging Leicestershire Minerals and Waste Local Plan.

10.2. In this case the building to be replaced; albeit defined as a dwelling and lawful as a dwelling cannot lawfully be used as a dwelling; and therefore this application would in effect grant residential use where none currently exists. Given that there is already a building on site there would arguably be no further adverse impact on the countryside or green wedge as a result of the use of this building becoming established. The replacement dwelling would be more attractive in design terms; albeit that given the extensive screening to the site this would not be readily appreciated from outside the site.

10.3. The applicant has however failed to demonstrate that the proposed development would not have an adverse impact upon Groby Quarry. The proposed development would therefore fail to comply with Policies MCS10 and MDC8 of The Minerals Core Strategy and Policies M11 and M12 of the emerging Leicestershire Minerals and Waste Plan.

10.4 In addition, the applicant has failed to demonstrate that the noise, vibration and dust from the quarry could be mitigated to an acceptable level in terms of impact on the occupier of the replacement dwelling and as such the development does not satisfy requirement (b) in Policy DM10 and as a result the proposed development does not satisfy the requirements of Policy DM14.

10.5. Finally, the applicant has failed to provide a badger survey which would be required in order to determine the presence of badgers within the site; to demonstrate that the impact on any badgers could be accommodated and mitigated.

10.6. The application is therefore contrary to Policies MCS10 and MDC8 of the Leicestershire Minerals Development Framework Core Strategy and Development Control Policies DPD, Policies DM1, DM6, DM14 and criterion b of Policy DM10 of the Site Allocations and Development Management Policies DPD and Policies M11 and M12 of the Emerging Minerals and Waste Plan.

10.7. It is therefore recommended that the application should be refused for the reasons set out below.

11. Recommendation

11.1. Refuse planning permission for the following reasons

11.2. Reasons

1. The applicant has failed to demonstrate that the proposed development would not sterilise nationally important mineral resources at Groby Quarry, the extraction of which has the benefit of planning permission or mineral resource extending beyond the existing permission. The proposed development would therefore be contrary to Paragraph 144 of the NPPF, Policies MCS10 and MDC8 of the Leicestershire Minerals Development Framework Core Strategy and Development Control Policies document and the emerging Leicestershire Minerals and Waste Plan, Policies M11 and M12 as contained in the Leicestershire Minerals and Waste Local Plan Submission document.
2. Insufficient information has been provided to demonstrate that future occupiers would not be adversely affected by noise, vibration and dust nor how such matters could be mitigated to an acceptable level. In the absence of such information the proposed development is contrary to criterion (b) of Policy DM10 of the SADMP and criterion (c) of Policy DM14 of the Site Allocations and Development Management Policies DPD 2016.
3. Insufficient information has been submitted to demonstrate that the development would not have an adverse effect on badgers which are recorded in the locality. In the absence of a badger survey the applicant has failed to demonstrate that the impact on any badgers could be accommodated and mitigated. The application is therefore contrary to Policy DM6 of the Site Allocations and Development Management Policies DPD 2016.

11.3. Notes to Applicant

1. This application has been determined having regard to the following documents and plans submitted with the application:-

Site Location Plan (revised) 15_686A_001A
Existing Site Plan Dwg No: 15_686A_002
Proposed Site Plan Dwg No: 15_686A_003
Existing Dwelling Dwg No: 15_686A_MCD04
Proposed Dwelling Dwg No: 15_686A_005
Planning Statement