

**Planning Committee 16 June 2020
Report of the Planning Manager**

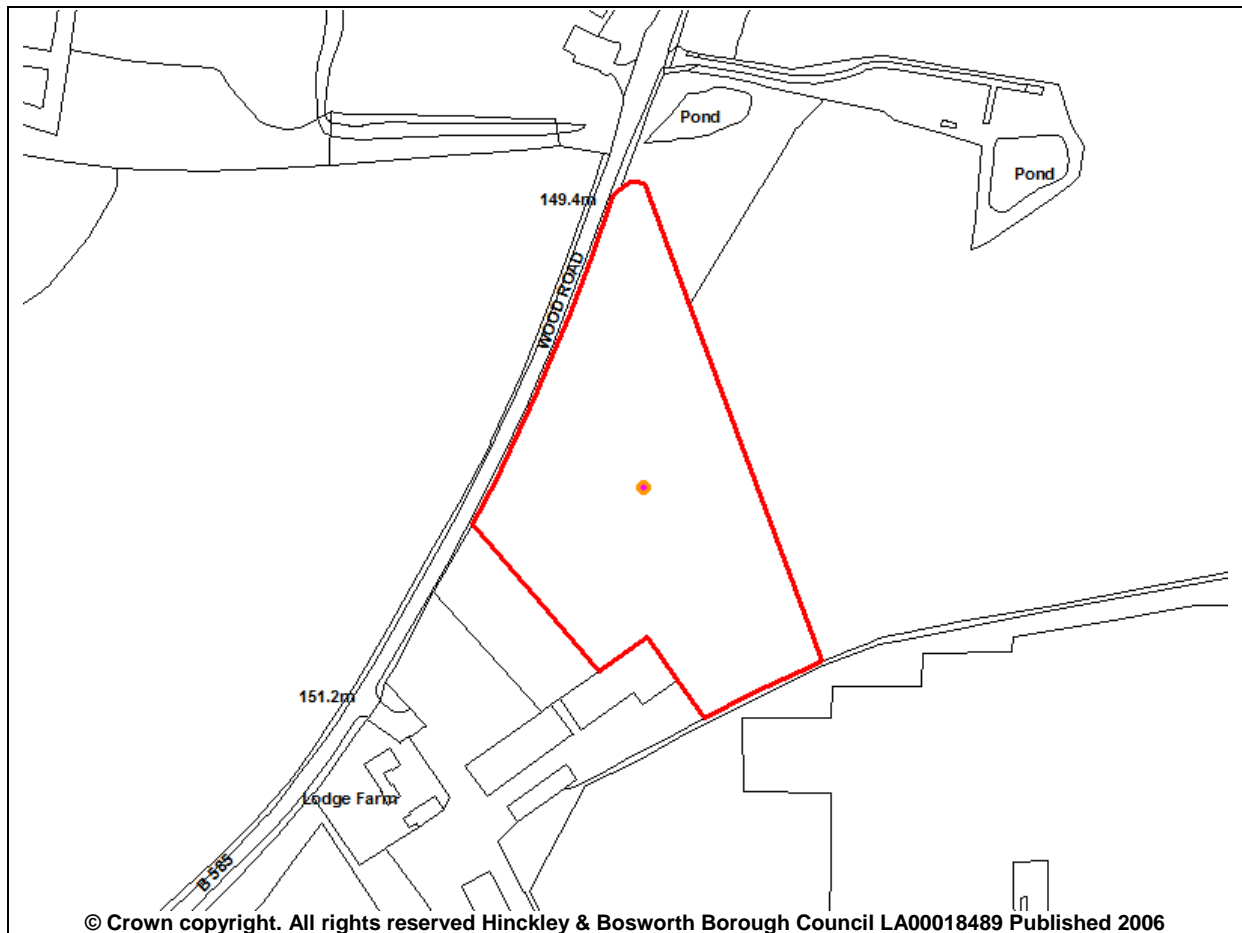
Planning Ref: 20/00020/FUL
Applicant: MW Conway
Ward: Barlestone Nailstone And Osbaston



Hinckley & Bosworth
Borough Council

Site: Land Adjacent Lodge Farm Wood Road, Nailstone

Proposal: Change of use of part of land for the siting of storage container units (Use Class B8) and a machinery and maintenance building, vehicular access, screen wall and screen planting



1. Recommendations

1.1. Refuse planning permission for the reasons at the end of this report.

2. Planning Application Description

2.1. This application seeks full planning consent for the change of use of land for the siting of storage containers, the construction of a building and the creation of a vehicular access leading into the application site as well as serving the land to the north of the proposed storage container site. An area of some 0.2 hectares is proposed to the south of the site where 50 storage containers would be sited predominantly in two rows with some containers placed in the middle of these rows. Each storage container would have a footprint of 6m x 2.6m to a height of 2.6m.

- 2.2. The machinery store would measure some 9.15m x 6.1m to a height of 3.3 metres to its pitch. Comprising of concrete panelling to its base the building would be clad. The proposed access would involve a 7.3 metre wide access from Wood Road with 10m kerbed radii and hard surfacing for at least the first 15 metres. The length of access road into the site would be in excess of 150 metres in length for a width of 6 metres. A lorry turning area would be provided to the north of the proposed storage container area.

3. Description of the Site and Surrounding Area

- 3.1. The application site is part of a larger 2 hectare field located alongside Wood Road in an area of countryside. The vacant Nailstone Colliery site, which is allocated as an Employment Site in the SADMP, is located on the opposite side of Wood Road approximately 175 metres to the north. Country Parks proposed as part of the Employment Allocation at Nailstone Colliery are located to the east and north-west of the application site along with a commercial use taking place from former agricultural buildings at Lodge Farm to the west and a solar farm to the south. An area of broadleaved woodland lies to the north of the site.
- 3.2. There is an existing hedge and ditch along the road frontage. The site comprises a field of unmanaged rough grassland, tall ruderal vegetation and scrub with a damp substrate. There is no vehicular access into the site. An unauthorised access which is subject to an extant enforcement notice has been blocked with a fallen tree trunk and the area beyond it remains as grassland.

4. Relevant Planning History

08/00005/PP	Change of use to residential caravan site for four gypsy families with eight caravans including construction of access road, stables and hardstanding	Dismissed	09.07.2008
09/00014/PP	New access to a field	Dismissed	29.10.2009
09/00020/ENF	Appeal against an Enforcement Notice	Dismissed	21.12.2009
07/01305/COU	Change of use to residential caravan site for four gypsy families with eight caravans including construction of access road, stables and hardstanding	Refused	19.12.2007
09/00336/FUL	New access to a field	Refused	10.06.2009
09/00339/FUL	New access to field	Refused	10.06.2009
10/00970/FUL	Change of use of land to gypsy site for one caravan	Refused	02.02.2011
13/00018/FUL	New access to christmas tree plantation	Planning Permission	02.04.2013

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. No letters of representation have been received during the consultation period.

6. Consultation

- 6.1. No objections have been received from:
- HBBC Environmental Services (Pollution) – subject to a condition
 - LCC Ecology – subject to a condition
 - LCC as Highway Authority – subject to conditions
 - HBBC Waste Services
- 6.2. No comments have been received from Nailstone Parish Council

7. Policy

- 7.1. Core Strategy (2009)
- Policy 17: Rural Needs
- 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 DM10: Development and Design
 - Policy DM17: Highways and Transportation
 - Policy DM18: Vehicle Parking Standards
 - Policy DM20: Provision of Employment Sites
- 7.3. National Planning Policies and Guidance
- National Planning Policy Framework (NPPF) (2019)
 - Planning Practice Guidance (PPG)
- 7.4. Other relevant guidance
- Good Design Guide (2020)
 - National Design Guide (2019)
 - Landscape Character Appraisal (2017)

8. Appraisal

- 8.1. Key Issues
- Assessment against strategic planning policies
 - Design and impact upon the character of the area
 - Impact upon highway safety
 - Ecology
 - Other Matters

Assessment against strategic planning policies

- 8.2. Paragraph 2 of the National Planning Policy Framework (NPPF) states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Paragraph 12 of the NPPF state that the development plan is the starting point for decision making and that the NPPF is a material consideration in determining applications.

- 8.3. The development plan in this instance consists of the adopted Core Strategy (2009) and the adopted Site Allocations and Development Management Policies (SADMP) Development Plan Document (2016).
- 8.4. The proposed site lies outside of any settlement boundary and outside of any employment site allocation. As such, Policy DM4 in the SADMP applies to this site in the countryside. This policy allows for sustainable development within the countryside providing it meets certain criteria. The criterion which could apply for this commercial use would be:
- c) the proposal would significantly contribute to economic growth, job creation and/or diversification of rural businesses.
- 8.5. The proposal is to site storage containers on the land for use by domestic and commercial users to store items. The application form submitted with the proposal states that the equivalent of 2 full-time employees would be required to operate the business. This low level of employment would not be classed as a significant contributor to economic growth, job creation or diversification of rural businesses as required by Policy DM4 and so the proposal would not meet any of the criteria in Policy DM4. As such there is a clear conflict between the proposed development and the policy.
- 8.6. Policy DM4 also highlights a number of other factors which should be considered as part of this proposal in terms of the physical impact of the proposal on the countryside. It is acknowledged that the part of the site proposed to be used is located alongside a commercial use at Lodge Farm. Policy DM20 of the SADMP does state that proposals for new employment sites may be found to be acceptable where they are located adjacent to existing employment areas and there are no suitable alternative sites identified. The employment use at Lodge Farm is not a site allocated as an existing employment area in the SADMP. There is no evidence submitted with the planning application to demonstrate that there are no suitable alternatives in the Borough for a storage container use.
- 8.7. The land to the north east of the site on the opposite side of Wood Road, being the former Nailstone Colliery does have an extant planning permission for an employment use and this land is identified in the SADMP as an existing employment area where the principle of employment uses is accepted.
- 8.8. In comparison, the application site is allocated as countryside. It is not located adjacent to the employment site allocation at Nailstone Colliery for the purposes of Policy DM20. Instead, the application site is adjacent to the Country Park approved as part of this employment allocation. Indeed, as part of the Nailstone Colliery redevelopment scheme, the land to the north west and east of the site would remain as countryside through the creation of a country park and conservation area.
- 8.9. The applicant has questioned two recent planning permissions which they deem are similar proposals to this. Each planning application is assessed on its merits. One of these planning permissions is for storage containers under reference 18/00812/FUL. However, this application site related to previously developed land which has been used as a sewage treatment works and which was located alongside a site with a lawful use for storage containers. The second planning permission ref: 17/01186/REM related to the construction of commercial buildings following the grant of outline consent in 2015 for a significant employment site alongside an existing employment site and so the proposal was deemed to comply with Policy DM20 of the SADMP.
- 8.10. In comparison, the proposed application site is a greenfield site which forms an important part of the open countryside and a limited amount of employment would be generated by this commercial use. As such the principle of the proposed change

of use and creation of a vehicular access on this land for employment uses would not be accepted under Policies DM4 and DM20 of the SADMP.

Design and impact upon the character of the area

- 8.11. 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. Policy DM10 of the SADMP seeks to ensure that new development complements or enhances the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features.
- 8.12. The Borough's Landscape Character Assessment (2017) identifies the site within Landscape Character Area B - Charnwood Fringe Settled Forest Hills (LCA – B) an area recognised as being part of the National Forest and Charnwood Forest. The key characteristics of LCA-B relevant to the application site are its large scale irregular field pattern of mainly arable and some pasture, with smaller fields around settlements where fields are enclosed by hedgerows with scattered trees and its predominantly rural landscape with arable and rough set-aside, influenced by industrial/urban features. The application site is typical of the Landscape Character Area, with its small to medium field pattern enclosed by hedgerows and being rough set-aside land. The site is not a 'valued landscape' for the purposes of Paragraph 170 of the NPPF, does not have any national or local designations and is not unique or remarkable for any landscape purposes.
- 8.13. The application proposal would replace open land with 50 storage containers and a maintenance building. Whilst the proposed storage units would be low in height and sited away from Wood Road being located next to the buildings at Lodge Farm, the form and scale of development proposed across this 0.195 hectare site would introduce a built form to the detriment of the semi-rural character of this countryside.
- 8.14. Mitigation measures have been incorporated into the proposal. This includes landscaping to the north-west of the site along with an indication that the remaining land would be used as a Christmas Tree Plantation. However, being located outside of the application site, the LPA would not have control over the landscaping of the area outlined in blue. The landscaping proposed would still enable views of the proposal from the adjoining land to the east which is designated as a country park. The long access road required to reach this area of land would also be visible from this country park. Views from Wood Road and the land to the north west of the site which is also designated as a country park would also be possible. Indeed, such an expanse of hard surfacing would harm the landscape setting of the site with the creation of the vehicular access involving the removal and cutting back of vegetation along Wood Road.
- 8.15. The proposal would retain the existing hedgerows and trees where possible and screen planting is proposed. Nevertheless, the proposal would extend development beyond the settlement boundary of Nailstone into this area of open countryside and it is considered that the proposal would result in a moderate degree of harm to the character and appearance of the area which would conflict with Policies DM4 and DM10 of the SADMP.

Impact on Highway Safety

- 8.16. Policy DM17 of the SADMP states that all new development should be in accordance with the highway design standards. Policy DM18 ensures that development provides appropriate parking provision.

- 8.17. The proposal would involve the creation of a vehicular access off Wood Road which is a Class II road (B585) with a 60 mph speed limit. A vehicular access has been created within the land edged in blue on the site location plan, however, this access is the subject of an extant enforcement notice which requires that the access is permanently closed and the kerb stones reinstated. The agent has indicated that this access would be permanently closed as part of the proposal.
- 8.18. The proposal would involve the creation of a site access from Wood Road. Being some 7.3 metres in width with 10 metre kerbed radii, the access would be hard surfaced for the first 15 metres along with a gate setback distance of 15 metres. The speed survey results submitted with the application details the 85th percentile speeds of 51mph in a northerly direction and 50 mph in a southerly direction. Based on guidance within the Leicestershire Highway Design Guide visibility splays of 2.4 x 160 metres should be provided at the access in each direction. Plans submitted with the application demonstrate that visibility splays of 120 metres in each direction can be achieved. The Highway Authority has stated that these visibility splays of 120 metres are satisfactory as they would meet the requirements set out in the Design Manual for Roads and Bridges one step below desirable minimum stopping sight distance standards given the measured 85th percentile speed. The Highway Authority also considers that visibility to the south of the access would, in reality be greater than 120 metres given the slight bend in the road. To achieve these visibility splays the roadside hedge would need to be cut back and this would need to form part of an appropriately worded condition.
- 8.19. The Highway Authority has confirmed that the storage units would generate a low level of daily trips. In addition to this, although not part of the proposal, the plans do indicate that the remaining land edged in blue would be used for a Christmas tree plantation. Such a use of land would be seasonal and so the level of trips would be low. As such it is stated that on a peak day the proposal would generate approximately 12 vehicle movements (6 arrivals and 6 departures) per day. The Highway Authority is also satisfied that the level of parking and manoeuvring space provided is sufficient for the use proposed.
- 8.20. Based on the above, it is considered that the impacts of the development on highway safety would not be unacceptable and when considered cumulatively with other developments, the impacts on the road network would not be severe. Therefore, the proposal would be in accordance with Policies DM17 and DM18 of the SADMP (2016) and the National Planning Policy Framework (NPPF).

Ecology

- 8.21. Policy DM6 of the SADMP requires development proposals to demonstrate how they conserve and enhance features of nature conservation. If the harm cannot be prevented, adequately mitigated against or appropriate compensation measures provided, planning permission will be refused.
- 8.22. Paragraph 170 of the NPPF states that development should result in a net gain for biodiversity by including ecological enhancement measures within the proposal.
- 8.23. The presence of protected species is a material consideration in any planning decision, it is essential that the presence or otherwise of protected species, and the extent to which they are affected by proposals is established prior to planning permission being granted. Furthermore, where protected species are present and proposals may result in harm to the species or its habitat, steps should be taken to ensure the long-term protection of the species, such as through attaching appropriate planning conditions.
- 8.24. A Great Crested Newt Mitigation Strategy has been submitted with the application. The site is located to the south-east of the former Nailstone Colliery site which is

currently being redeveloped and has been subject to extensive great crested newt mitigation recently. In close proximity to the application site are a series of former colliery lagoons and a recently created great crested newt mitigation area which supports a large population of the species. The submitted Strategy concludes that the site is unlikely to provide breeding habitat for great crested newts as, despite the damp substrate, any standing water on site is likely to be ephemeral in nature. However, it does provide highly suitable terrestrial habitat for great crested newts due to the unmanaged, dense nature of the vegetation. Mitigation proposals are detailed in the report to ensure that the favourable conservation status of the great crested newt population is maintained throughout the development.

- 8.25. LCC Ecology has found that the Mitigation Strategy submitted is satisfactory and that the application site itself is unlikely to provide any opportunities for breeding GCNs. However, the site is ideal terrestrial habitat for this species and so the mitigation measures outlined in the report will be required. To carry out these mitigation measures a pre-commencement licence would need to be obtained from Natural England and the mitigation would require the installation of 'temporary amphibian fencing' followed by a period of trapping for GCN, relocating any caught to the designated receptor site adjacent to the access track. A planning condition should be imposed on any consent granted to ensure compliance with this mitigation plan.
- 8.26. LCC Ecology further states that given the countryside location, locally native species should be used in any planting plans which should also form part of an appropriately worded condition.
- 8.27. Based on the above, it is considered that the impact of the proposed development on protected species is in accordance with Policy DM6 of the SADMP and the general principles of the NPPF.

Other Matters

- 8.28. The landowner, Mr Benjamin Smith, has submitted a sworn statutory declaration which states that should this planning application be approved then he will not make any further applications for a gypsy site. Should he dispose of the site then he would impose a restrictive covenant on any future owner prohibiting the use of the land as a gypsy site.
- 8.29. The Council's Planning Solicitor has advised that a statutory declaration is commonly used to establish a factual situation and is not, in his opinion, appropriate for declaring future intentions. The proper course for regulating the use of land by agreement is under Section 106 of the Town and Country Planning Act 1990 (as amended) and does not necessarily need to be linked to a specific planning application. Whilst in principle the Council could enter into a Section 106 outwith the remit of this application, to restrict the use would be challengeable as unreasonable in the circumstances.
- 8.30. Therefore, the legal advice is that the application should be considered on its merits and that no consideration should be given to the statutory declaration
- 8.31. Policy DM7 of the SADMP seeks to ensure that adverse impacts from pollution are prevented, this include impacts from noise, land contamination and light. The Council's Environmental Health Officer has confirmed any noise from the proposed machinery store and change of use can be controlled through the restriction on the hours of working of the site. The agent has indicated that the building would only be used between the hours of 0800 to 1700 each day and these hours can form part of a planning condition.

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. 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.
- 9.4. The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Conclusion

- 10.1. The application site is allocated as countryside and so Policy DM4 in the SADMP is relevant. The low level of employment generated would not be classed as a significant contributor to economic growth, job creation or diversification of rural businesses as required by Policy DM4 and so the proposal would not meet any of the criteria in Policy DM4. As such there is a clear conflict between the proposed development and the policy. The site is also not located adjacent to any employment site allocation as required for the purposes of Policy DM20. Indeed, as part of the Nailstone Colliery redevelopment scheme, the land to the north west and east of the site would remain as countryside through the creation of a country park and conservation area.
- 10.2. The proposal would not have any significant adverse impacts upon protected species or on vehicular or pedestrian safety. Whilst the proposal would retain the existing hedgerows and trees where possible and screen planting is proposed, the proposal would extend development into the countryside. As such it is considered that the proposal would harm the character and appearance of the area which would conflict with Policies DM4 and DM10 of the SADMP.
- 10.3. Having regard to Policy DM1 of the SADMP and the presumption in favour of sustainable development along with taking into account the relevant Development Plan policies and material planning considerations, it is considered, on balance that the proposed development does not constitute sustainable development. Therefore, the proposal is recommended for refusal.

11. Recommendation

11.1. Refuse planning permission for the reasons at the end of this report

11.2. Reason

1. The proposed scheme would result in moderate environmental harm to the intrinsic open, undeveloped character and appearance of the site which lies outside of any settlement boundary or employment site allocation as identified in the SADMP. The site currently makes a positive contribution to the wider landscape and in particular land allocated for use as country parks to the north, west and east of the application site as part of an employment allocation at Nailstone Colliery. The proposal would therefore result in a form of unsustainable development that would fail to complement or enhance the character and appearance of the surrounding area and would be in clear conflict with Policies DM1, DM4, DM10 and DM20 of the SADMP.