

Planning Committee 27 September 2022
Report of the Planning Manager (Development Management)

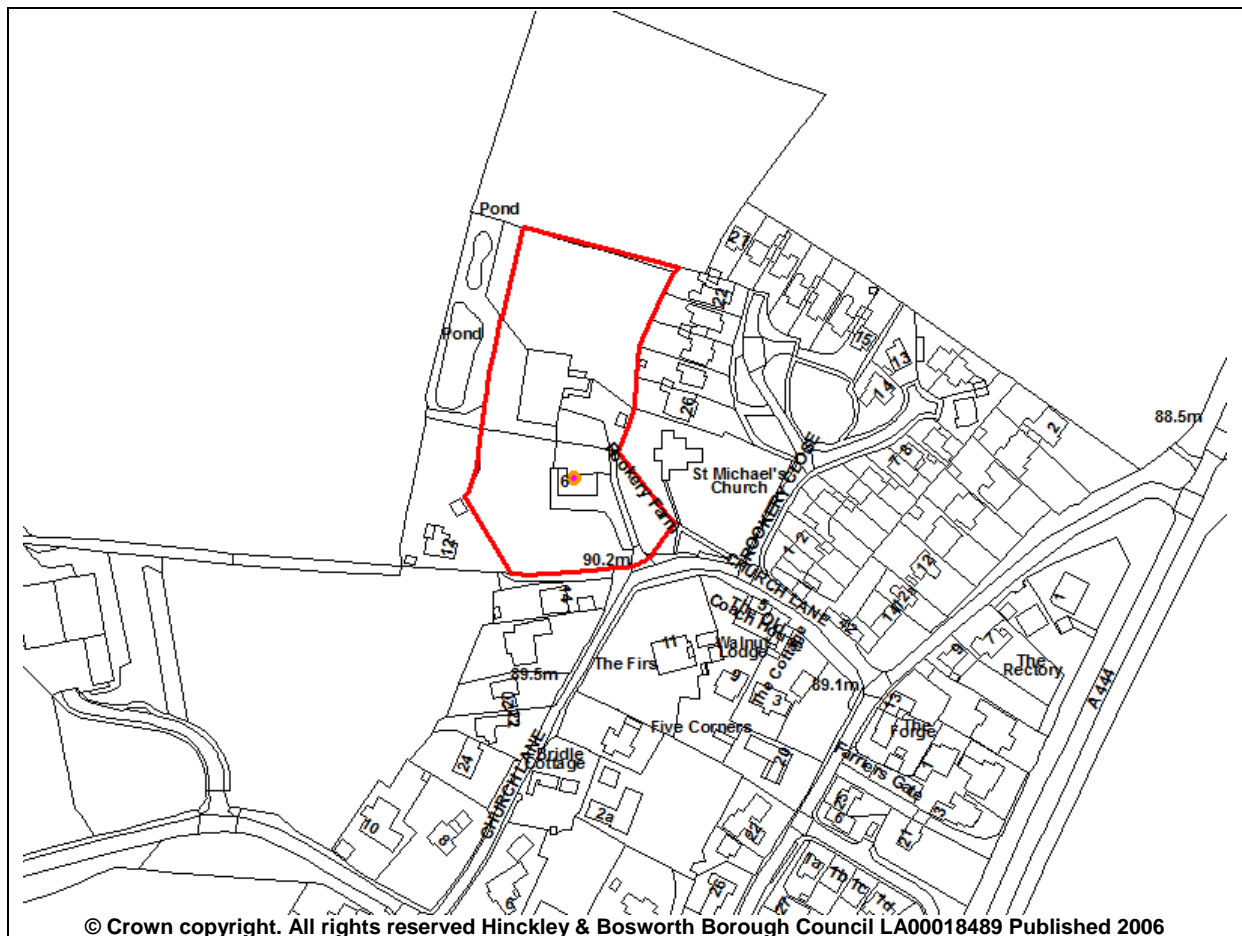


Hinckley & Bosworth
Borough Council

Planning Ref: 21/00402/OUT
Applicant: Simpson
Ward: Twycross Sheepy & Witherley

Site: New Rookery Farm 6 Church Lane Fenny Drayton

Proposal: Residential development of up to 5 dwellings including new car park to serve the Fenny Drayton community and demolition of existing bungalow and agricultural buildings (Outline - access, appearance, layout and scale to be considered)



1. Recommendations

1.1. Grant planning permission subject to:

- Planning conditions outlined at the end of this report

2. Planning application description

- 2.1. The application seeks outline planning permission for the demolition of agricultural buildings and an existing bungalow to be replaced with 5 dwellings and a community car park at Rookery Farm off Church Lane. Access, appearance, layout and scale are all matters to be considered at this stage. The site area is approximately 0.97 ha.

- 2.2 The original application as submitted sought outline planning permission for 14 dwellings but this has subsequently been reduced to 5 dwellings after ongoing consultation with statutory consultees and discussions with the agent.
- 2.3 The area to the north of the application site is shown as being retained as grassland and does not form part of the proposed residential curtilage for the 5 units.
- 2.4 The proposed units are made up of one-and-half storey and two-storey elements/structures.

3. Description of the site and surrounding area

- 3.1 The site is situated off Church Lane, to the north of the rural hamlet of Fenny Drayton. Most of the application site lies adjacent to but outside of the settlement boundary; however, the access to the site is within the confines of Fenny Drayton.
- 3.2 Access to the site from Church Lane is provided along an existing driveway. The site is bound by a timber post and rail fence along Church Lane and a hedgerow flanks a public right of way that is adjacent to the southern boundary of the site. Fenny Drayton is positioned on a gentle sloping ridge top so there are distant views of the countryside available from the vicinity of Church Lane which includes views westwards over the paddock upon the application site.
- 3.3 The nearest town is Atherstone, located outside of Hinckley & Bosworth's area, and on the opposite side of the A5, Watling Street, a major strategic route running along the south-western edge of the borough.

4. Relevant planning history

18/00868/CQGDO

- Change of Use of Agricultural building to 3 dwellings – PRIOR APPROVAL GRANTED

20/00030/OUT

- Demolition of agricultural buildings and erection of 3 dwellings with associated garaging (outline all matters reserved) APPROVED

5. Publicity

- 5.1 The application has been publicised by an advert in the local press, a site notice in close proximity to the site and sending out letters to local residents.
- 5.2 20 letters of objection have been received to the amended scheme raising the following concerns:
- 1) The scheme will have a negative impact on the important vista identified within the Witherley Neighbourhood Plan
 - 2) Fenny Drayton is a rural hamlet and not a sustainable place to live. There is no bus service and there are no facilities
 - 3) The majority of the site lies within open countryside outside the settlement boundary
 - 4) There will be increased traffic movements and Church Lane is unsafe, it has no pavement and is a risk to pedestrians and dog walkers
 - 5) This is not a scheme for infill development or a conversion
 - 6) The settlement boundary should not be moved as a result of the development
 - 7) The proposal is overdevelopment – in terms of height, numbers of units, form and size
 - 8) The local residents are not in favour of proposed community car parking area – who will maintain it/manage it?

- 9) The target for dwellings in the rural area has been exceeded
- 10) The sewers do not have the capacity for additional housing
- 11) 5 houses = 21 bedrooms – this is incompatible with housing need requirements
- 12) There are no details of bin storage
- 13) The proposal will overshadow our property
- 14) The application breaches the ridge heights specified in the previous permission 20/00030/OUT – this increase in height will have a negative impact upon the setting of nearby listed buildings
- 15) The ring of Yew Trees in the Churchyard need to be protected
- 16) The scheme should be contributing towards net zero carbon targets to help with the climate change emergency
- 17) The plan drawings are inaccurate
- 18) The design does not respect the necessary buffer zone (root protection area) which would help avoid loss or damage to ancient/veteran churchyard trees
- 19) A previous planning application on Church Lane for only one additional dwelling reference 99/00552/OUT was specifically refused due to the detrimental effect on highway safety.
- 20) Fenny Drayton hamlet is of historic importance and I am greatly concerned that sometimes there can be a flagrant disregard for such sentiments in pursuit of personal gain. The associated assets in the vicinity of this particular development e.g. mediaeval fishponds, archaeological structures and Yew tree ring are valued by the village residents and heritage organisations. These assets once damaged or removed are lost forever.
- 21) The site retains the filled-in former fish pond to the Medieval Manor and church (filled in without permission by the present land owner), now causing flood risk to neighbouring properties in the immediate area

6. Consultation

6.1. No objection has been received from:

- HBBC ES Pollution (Conditions on contaminated land and construction hours)
- LCC Ecology – landscape details to be provided to include species mix for native hedge
- HBBC Drainage
- HBBC Waste Management (Condition on bin storage and collection required)
- LCC Highways (Conditions)
- LCC Archaeology – subject to an archaeological written scheme of investigation condition
- LCC Drainage

6.2. Witherley Parish Council – objection.

- 1) Over development of the site
- 2) The access road would appear to be not wide enough for traffic and pedestrians safe passage
- 3) Church Lane is a single track lane with no pavement area for pedestrians
- 4) Yew tree circle in the church yard is misrepresented on the drawing (is on the boundary wall) and should be reviewed to keep protected.
- 5) There is a lack of facilities in the village to sustain this size of development.
- 6) The Yew tree root area appears to be incorrect and the development should not encroach the 15 metre perimeter laid down in NPPF standing advice and BS5837.
- 7) Increased traffic onto Church Lane is still an issue.

- 8) Ridge height of the eaves has increased in excess of the specified maximum as approved on application 20/00030 which the Council would request to be lowered to the previous agreed level.
 - 9) It is unclear if the village boundary would be affected by this application being passed and therefore the Council would want it to remain unchanged as per the current position.
- 6.3. Affordable Housing Officer - This response relates to the outline application for development of 5 dwellings in Fenny Drayton. Policy set out in Policy 15 of the Core Strategy includes a requirement for 40% affordable housing to be provided on sites of 4 dwellings or more or 0.13 hectares or more in rural areas. National guidance, set out in the National Planning Policy Framework, has changed this threshold to sites of 10 dwellings or more. By application of this guidance, the site would not cross the threshold for provision of affordable housing
- 6.4. Arboricultural Officer - Due to the lack of detail provided in the submitted tree survey, the yew trees along the west boundary of St Michael and All Angels Church have been inspected to measure the trunk diameters and assess the required root protection areas as requested by Cllr Morrell. No individual tree survey inventory has been provided by the applicant but the Parish Council's Tree Survey identifies six yews and a silver birch along the west boundary as yews T22 – T24, birch T25 and yews T26 – T28.
(Numbered north to south). The trees are positioned with trunk centres 1.2m. – 1.4m. from the boundary retaining wall and not set back as shown on the submitted drawings. The ground level within the churchyard is approximately 0.8m. higher than outside. Radial canopy spreads range from 3.7m. to 5.5m. and should be accurately plotted on submitted site plans. Local historical evidence suggests that the trees are in excess of 400 years old and they do have the characteristics of veteran trees - although not having large diameter trunks. As such and in accordance with Government standing advice, the required root protection areas (rpas) of open grown trees should be 15 x stem diameter. In the absence of proof that the brick wall with older stone foundations has prevented or inhibited root growth across the boundary, the below rpas should be identified on site drawings and all site works designed and carried out, outside the rpas. Root distribution can be physically mapped with radar or ladar. "No-dig" construction of parking bays could be installed inside an rpa if levels permit but parking bays should not be positioned under the trees if they are to be compatible with the trees. No buildings should be constructed within 2m. of a rpa. Where there are existing hard surfaces and buildings to be demolished inside an rpa and they currently protect the ground from compaction, site works could be carried out with a suitable Arboricultural Method Statement, Tree Protection Plan and Arboricultural Supervision Plan showing suitable protection methods.

7. Policy

- 7.1. Core Strategy (2009)
 - Policy 13: Rural Hamlets
 - Policy 16: Housing Density, Mix and Design
- 7.2. Site Allocations and Development Management Policies DPD (2016)
 - Policy DM1: Presumption in Favour of Sustainable Development
 - Policy DM4: Safeguarding the countryside and settlement separation
 - Policy DM6: Enhancement of Biodiversity and Geological Interest
 - Policy DM7: Preventing Pollution and Flooding

- Policy DM10: Development and Design
- Policy DM11: Protecting and Enhancing the Historic Environment
- Policy DM12: Heritage Assets
- 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) (2021)
- Planning Practice Guidance (PPG)
- National Design Guide (2019)

7.4. Other relevant guidance

- Good Design Guide (2020)
- Witherley Neighbourhood Plan – Reg 15/16 stage

8. Appraisal

8.1. Key Issues

- Principle of development
- Heritage impacts and archaeology
- Design and impact upon the character of the area
- Impact upon neighbouring residential amenity
- Impact upon highway safety
- Flood risk and drainage
- Ecology
- Trees
- Contamination
- Planning Obligations
- Planning Balance

Principle of development

- 8.2. Paragraph 2 of the National Planning Policy Framework (NPPF) July 2021) states that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise and that the NPPF is a material consideration in determining applications. Paragraph 12 of the NPPF confirms that the presumption in favour of sustainable development does not change the statutory status of the Development Plan as the starting point for decision making. Where planning applications conflict with an up to date plan, permission should not usually be granted unless other material considerations indicate otherwise.
- 8.3. The current development plan consists of the adopted Core Strategy (2009) and the adopted Site Allocations and Development Management Policies (SADMP) Development Plan Document (2016). The spatial distribution of growth across the Borough during the plan period 2006-2026 is set out in the adopted Core strategy. This identifies and provides allocations for housing and other development in a hierarchy of settlements within the Borough.
- 8.4. Using the standard method as outlined by MHCLG, Hinckley and Bosworth Borough is able to demonstrate 4.89 years of deliverable housing at 1st April 2022. Due to this and the change in the housing figures required for the borough paragraph 11(d) of the NPPF is triggered. Therefore, this application should be determined in accordance with Paragraph 11(d) of the National Planning Policy Framework (NPPF) 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. This is weighed in the balance of the merits of the application when considered with the policies in the SADMP and the Core Strategy which are attributed significant weight as they are consistent with the Framework. Therefore, sustainable development should be approved unless other material considerations indicate otherwise.

- 8.5. The Emerging Local Plan for 2020-39 has been out for consultation at Regulation 19 draft stage (February to March 2022). The LDS anticipates that the Plan will be submitted in spring/summer 2022, and an estimated date for examination of late summer/autumn 2022. This will increase the weight to be afforded to the new Local Plan. The LDS will be updated following the decision taken at Full Council on 6th September.
- 8.6. In terms of the Witherley Neighbourhood Plan, the plan has now been submitted to the Council and has been accepted to proceed to Regulation 16 Submission Consultation by the local authority. The consultation on the plan is scheduled to be undertaken later in September, running for seven weeks. Due to the stage of the plan, which is still subject to consultation, examination, potential major and minor amendments and a public referendum, limited weight is applied only.
- 8.7. The majority of the application lies adjacent to but outside the settlement boundary of Fenny Drayton within open countryside. The site access lies within the settlement boundary for Fenny Drayton but as the majority of the application site is located within open countryside Policy DM4 of the SADMP is applicable. Policy DM4 states that the countryside will first and foremost be safeguarded from unsustainable development. Development in the countryside will be considered sustainable where:
- It is for outdoor sport or recreation purposes (including ancillary buildings) and it can be demonstrated that the proposed scheme cannot be provided within or adjacent to settlement boundaries; or
 - The proposal involves the change of use, re-use or extension of existing buildings which lead to the enhancement of the immediate setting; or
 - It significantly contributes to economic growth, job creation and/or diversification of rural businesses; or
 - It relates to the provision of stand-alone renewable energy developments in line with policy DM2: Renewable Energy and Low Carbon Development; or
 - It relates to the provision of accommodation for a rural worker in line with Policy DM5: Enabling Rural Worker Accommodation and:
 - It does not have a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside; and
 - It does not undermine the physical and perceived separation and open character between settlements; and
 - It does not create or exacerbate ribbon development
- 8.8. The site does not fall under any of the categories identified in Policy DM4 as sustainable development. The purpose of Policy DM4 is to protect the open character and landscape character of the countryside. As such, the proposal conflicts with Policy DM4 of the SADMP.
- 8.9. It is to be noted however that the site adjoins the settlement boundary of Fenny Drayton on three sides – east, south and west and has planning permission for 3 dwellings (planning ref 20/00030/OUT). This is a material consideration as part of the assessment for this proposal. The previous scheme was approved even when the Council could demonstrate a 5-year housing land supply. As previously discussed this is not the case at the current time. In this instance Paragraph 11d of the NPPF must be taken into account which states that permission should be

granted unless adverse impacts would significantly and demonstrably outweigh the benefits. Other material considerations are set out in the following sections.

Impact on Heritage Assets and Archaeology

- 8.10. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on the local planning authority when determining applications for development which affects a listed building or its setting to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural and historic interest which it possesses.
- 8.11. Section 16 of the National Planning Policy Framework (NPPF) provides the national policy on conserving and enhancing the historic environment. In determining planning applications, local planning authorities should take account of paragraph 197 of the NPPF and:
 - a) The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
 - b) The positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
 - c) The desirability of new development making a positive contribution to local character and distinctiveness.
- 8.12. Paragraphs 199-202 of the NPPF require great weight to be given to the conservation of designated heritage assets when considering the impact of a proposed development on its significance, for any harm to the significance of a designated heritage asset to have clear and convincing justification, and for that harm to be weighed against the public benefits of a proposal. Paragraph 206 of the NPPF states that local planning authorities should look for opportunities for new development within conservation areas, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.
- 8.13. Policies DM11 and DM12 of the Site Allocations and Development Management Policies (SADMP) Development Plan Document seek to protect and enhance the historic environment and heritage assets. Policy DM11 states that the Borough Council will protect, conserve and enhance the historic environment throughout the borough. All development proposals affecting the significance of heritage assets and their setting will be assessed in accordance with Policy DM11 and will require justification as set out in this policy. Policy DM12 requires all development proposals to accord with Policy DM10: Development and Design. Policy DM12 also states that all proposals for development affecting the setting of listed buildings will only be permitted where it is demonstrated that the proposals are compatible with the significance of the building and its setting.
- 8.14. The application site is adjacent to the Church of St Michael which is a grade II* listed building of special historic and architectural interest. The site is considered to be located within the immediate setting of this listed building. To the south and on the opposite side of Church Lane is The Firs, this is a grade II listed building of special historic and architectural interest and it is considered to be located within the wider setting of the application site. The grade II* listed Church of St Michael is located immediately to the east of the application site. The church is located within the western section of a larger cemetery and yard and the churchyard brick wall forms most of the eastern boundary of the application site up to Church Lane. The church has a 12th century core and was extended and remodelled in the 14th century. It has a west tower with octagonal spire. The church principally derives its significance from the historic and architectural interest of its built form as a parish church although the church also embodies communal value as a place of worship

and as the social and physical focal point of both the past and present community of Fenny Drayton.

- 8.15. The church is located on marginally higher ground within the north-western historic settlement core. The surrounding church yard provides some separation from surrounding built form to the south and east but there is limited separation to the bungalows on Rookery Close to the north and the small concrete building within the application site to the west. The grassed area within the south-eastern corner of the application site and the paddock within the southern section of the site extend the undeveloped character of the church surroundings away from the immediate confines of the churchyard. The immediate and contained setting of the churchyard contributes positively to the church's significance, reinforcing its historic, architectural and communal values. In addition, by virtue of the height of the church tower and spire and varied topography and features of the surrounding landscape the church can also be seen within a much wider setting.
- 8.16. The grade II listed building The Firs is located to the south of application site on the opposite side of Church Lane. This is an early-19th century Georgian house set within relatively large grounds with a high brick wall to Church Lane. The Firs principally derives its significance from the historic and architectural interest of its built form, whilst the immediate and largely contained setting of the grounds to the house contribute positively to its significance, reinforcing its historic and architectural interest. The Firs and its boundary brick wall opposite the application site are also clearly visible from Church Lane and from within the southern section of the application site itself, although due to the current character of the site and the lack of any historical relationship it is considered the site makes no particular contribution to the significance of this listed building, but rather it has a neutral effect.
- 8.17. Local objection comments include concerns that the current application breaches the ridge heights specified in the previous permission (20/00030/OUT) and that this increase in height will have a negative impact upon the setting of nearby listed buildings.
- 8.18. The Conservation Officer has been consulted throughout the application process and had sight of the original proposals and the latest amendments. The revised scheme is considered to reduce the level of adverse impact upon the significance of the Church with conjoined visibility of the church and plot one in important views from Church Lane now being more limited. Consequently it is considered that the development will respect the setting of the church more satisfactorily with a less than substantial harm at the lower end of the scale.
- 8.19. The proposal as amended will preserve elements of the heritage setting identified and it is considered that the provision of 5 dwellings will provide public benefit and contribute to the shortfall in the current 5 year housing land supply for the Borough. The proposal is therefore considered to comply with Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990, Section 16 of the NPPF and heritage policies DM11 and DM12 of the SADMP.

Archaeology

- 8.20. Policy DM13 states that where a proposal has the potential to impact a site of archaeological interest developers should provide an appropriate assessment detailing the significance of any affected asset. Paragraph 194 of the NPPF reiterates this advice.
- 8.21. The application site is located within the historic medieval and post-medieval settlement core of Fenny Drayton village (HER Ref MLE8930), close to the Grade II* listed medieval church of St Michael. The site also contains earthwork remains of

three fishponds that were recorded here in the 1980s, which are thought to have been associated with a vanished manorial site (MLE3287).

- 8.22. The County Archaeologist has been consulted on the application throughout the process and notes that the submitted Heritage Statement does not make any assessment of the potential impacts of the scheme upon any buried archaeological remains in this location: approval was previously granted for a smaller scheme (20/00030/OUT) located within the current application area, for which no archaeological concerns were raised. However, evidence indicates that the footprint of this smaller development was restricted to an area that had already been subject to ground disturbance and the resulting archaeological impacts were therefore considered likely to be minimal.
- 8.23. This development area is of archaeological interest and also has the potential for further unidentified archaeological deposits. It is anticipated that these remains whilst significant and warranting further archaeological mitigation prior to the impact of development, are not of such importance to represent an obstacle to the determination of the application. Post-determination trial trenching will be required in order to define the full extent and character of the necessary archaeological mitigation programme. It is recommended that the current application is approved subject to conditions for an appropriate programme of archaeological mitigation, including an initial phase of exploratory trial trenching, followed, as necessary by intrusive and non-intrusive investigation and recording.
- 8.24. Subject to the above, the application is considered to be acceptable and in accordance with Policy DM13 of the SADMP and Section 16 of the NPPF in relation to archaeology matters.

Design and impact upon the character of the area

- 8.25. Policy DM10(c), (d) and (e) of the SADMP seeks to ensure that development complements or enhances the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features and the use and application of building materials respects the materials of existing, adjoining/neighbouring buildings and the area generally and incorporates a high standard of landscaping.
- 8.26. Paragraph 134 of the NPPF states development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance. Local policy is considered to accord with the NPPF.
- 8.27. The Council's Good Design Guide (2019) identifies design objectives for Fenny Drayton. These objectives are to retain important boundary walls, landscaping, and orientation of properties around the church, and avoid further encroachment of modern generic domestic form in this area, maintaining visual links to the wider countryside.
- 8.28. This application site falls within the Witherley and Surrounds Sensitivity Area and landscape character area Sence Lowlands. It is a flat-to-gently-rolling lowland vale landscape draining to the River Anker. Predominantly arable with some pasture it is an area of planned and reorganised piecemeal enclosures. The low lying landform allows for long view across the rural landscape. Fenny Drayton has expanded outwards from its historic core to include modern residential areas with some exposed edges adjoining the rural landscape. The assessment area is considered to have a medium sensitivity to development. The Hinckley and Bosworth Landscape Character Assessment Document states that within this character area there may be some capacity for small scale development to existing

villages providing these are sensitively design and avoid features of environmental interest.

- 8.29. This is an outline application where landscape is reserved for future consideration. Scale, appearance, access and layout are all detailed matters in this instance. Local objections have been received which state that the proposal is overdevelopment particularly in terms of height, numbers of units, form and size.
- 8.30. The residential aspect of the scheme proposes a layout comprising a U Shaped development which frames a courtyard area with a centralised grassed feature surrounded by a driveway. The application details state that the scheme has been designed to resemble an enclosed farmstead to complement its rural location. The units are made up of both single storey and two storey barn style properties. Plots 4 & 5 are single-storey structures and Plots 1, 2 & 3 comprise 2 storey structures. Each property is to be provided with 3 parking spaces. The proposal will provide 2x 3 bedroomed properties and 3x 5 bedroomed properties. The maximum ridge height of the one and a half storey elements would be 5.4 metres and the maximum ridge height of the two storey elements as shown on the plans would be 8.11 metres approximately.
- 8.31. The application form details state that the following materials are proposed for the residential units:
- Timber framed doors
 - Timber casement windows
 - Plain clay roof tiles and
 - Handmade red bricks

Material samples are to be included as a condition to be submitted to and approved in writing by the local planning authority should Members be minded to approve the scheme.

- 8.32. Hedgerows are proposed as the boundary treatment between plots and also to the rear of the properties in order to complement the character and appearance of the countryside beyond. Each unit is proposed in a wide, spacious plot fronting onto a courtyard area with private gardens enclosed to the rear. The site plan shows that the units are well spaced out and do not appear as overdevelopment for a site of this size and in this rural location. The north part of the application site is shown on the plans as being retained as grassland and does not form part of the proposed residential curtilages.
- 8.33. As part of the proposals the application also includes the provision of 8 car parking spaces which the applicant is proposing to provide as spaces for the nearby Church, for use by the community. These spaces are to be sited on the eastern side of the application site adjacent to the boundary with a number of trees. The plans state that the car parking is to be located outside of the root protection areas and grasscrete is to be utilised as the ground material for this part of the scheme.
- 8.34. Overall the scheme is considered to be acceptable and in compliance with Policy DM10(c), (d) and (e) of the SADMP, the Good Design Guide SPD and the requirements of the NPPF.
- Impact upon neighbouring residential amenity
- 8.35. Policy DM10 (a) and (b) of the SADMP states development will be permitted provided that it would not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings, including matters of lighting and noise and that the amenity of occupiers would not be adversely affected by activities with in the vicinity of the site.

- 8.36. The Good Design Guide SPD outlines that development will need to provide high quality internal amenity space as this is critical to the quality of life of residents. The guide states that new developments should meet minimum standards of garden sizes and separation distances between dwellings. The National Design Guide also promotes a healthy, comfortable and safe internal and external environment.
- 8.37. Paragraph 130 of the NPPF states that decisions should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience. Paragraph 185 of the NPPF states that decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.
- 8.38. Local residents have raised objections in relation to amenity – specifically overshadowing concerns have been flagged. As set out above, the scheme has been revised to 5 dwellings and comprise one-and-a-half to two-storey building heights. It is considered by virtue of their location relative to the nearest neighbouring properties that the proposed units will not have an adverse impact upon the residential amenity of these neighbouring properties and that a reason for refusal could not be upheld on amenity grounds in this instance.
- 8.39. Subject to conditions this application is considered to be acceptable in amenity terms and in compliance with Policy DM10 a) and b) of the SADMP, The Good Design Guide SPD and the requirements of the NPPF.

Impact upon highway safety

- 8.40. Policy DM17 of the SADMP supports development that makes best use of public transport, provides safe walking and cycling access to facilities, does not have an adverse impact upon highway safety. All proposals for new development and changes of use should reflect the highway design standards that are set out in the most up to date guidance adopted by the relevant highways authority (currently this is the Leicestershire Highway Design Guide (LHDG)).
- 8.41. Policy DM10 (g) states that where parking is to be provided, charging points for electric or low emission vehicles should be included, where feasible.
- 8.42. Paragraph 111 of the NPPF (2021) outlines that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Paragraph 112(e) of the NPPF states development should be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.
- 8.43. The site is to be accessed from Church Lane and a small car park comprising 8 spaces are to be provided as part of the development proposal for the Church/Community.
- 8.44. The local highway authority originally requested that the proposed 8 spaces for the community be removed. The LHA noted that the parking could be accessed by any members of the public, but would likely be used predominately by visitors to the church attending either service or events. Given that the lack of parking situation with regards to the church is an existing situation, the LHA felt that this would encourage people to drive to the site and is therefore likely to create an intensification of use. Local objection has also been received in relation to the provision of this car parking area stating that local residents are not in support of it.

- 8.45. However, in revising the scheme, the applicant retained the proposed spaces on the amended plans. In response to this, the local highway authority stated that whilst they have not changed their position on the matter of the 'Community Car Parking Spaces', given they are to remain on private land it is unlikely that it would be possible to sustain a reason for refusal on highways grounds. As such, if the application is approved the spaces are to be provided in accordance with the approved plans at the expense of the applicant.
- 8.46. Therefore, overall, subject to conditions the Highways Authority have no objection to the scheme in terms of highway safety.
- 8.47. The proposals are considered to have a negligible impact on the highway network. As such, subject to the conditions recommended by the LHA, and an additional condition with respect to EV charging points, the proposal will satisfy policy DM17 and DM10(g) and the requirements of the NPPF.

Flood Risk and Drainage

- 8.48. Policy DM7 of the SADMP seeks to prevent development from resulting in adverse impacts on flooding by ensuring that development does not create or exacerbate flooding.
- 8.49. Paragraph 167 of the NPPF states that when determining planning applications local planning authorities should ensure that flood risk is not increased elsewhere. Paragraph 169 states that major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The systems used should take account of advice from the LLFA, have appropriate proposed minimum operating standards, have maintenance arrangements for the lifetime of the development and where possible provide multifunctional benefits.
- 8.50. The HBBC Drainage Officer and LCC Drainage have raised no objections to the proposals and have not proposed conditions. The development will therefore satisfy Policy DM7 of the SADMP and the NPPF.

Ecology

- 8.51. Policy DM6 of the SADMP requires development proposals to demonstrate how they conserve and enhance features of nature conservation and ecological value. The application submission was supported by an ecological assessment and concludes that the proposal would not have an adverse impact upon the natural environment. The county ecologist has been consulted on the application and is satisfied with the content of the report. It is to be noted that landscaping is not a detailed matter for consideration at this stage and will form part of a future reserved matters application.
- 8.52. There are not considered to be any ecological matters pertinent to the determination of this application and subject to a condition relating to the planting of a native species hedgerow on site the application is considered to be acceptable and accords with Policy DM6 of the SADMP.

Trees

- 8.53. Whilst it is noted that landscaping is not a detailed consideration at the outline stage there are a large number of important and protected trees within close proximity of the site. The Arboricultural Officer was consulted on the application and has been out on site to examine the proposal on the ground and to inspect the trees along the west boundary of St Michael and All Angels Church in order to measure the trunk diameters and assess the required root protection areas.

8.54. The Parish Council's Tree Survey identifies six yews and a silver birch along the west boundary as yews T22 – T24, birch T25 and yews T26 – T28. The trees are positioned with trunk centres 1.2m. – 1.4m. from the boundary retaining wall. The ground level within the churchyard is approximately 0.8m. higher than outside of it. Radial canopy spreads range from 3.7m. to 5.5m. Local historical evidence suggests that the trees are in excess of 400 years old and have the characteristics of veteran trees - although not having large diameter trunks. As such and in accordance with Government standing advice, the required root protection areas (rpas) of open grown trees should be 15 x stem diameter. In the absence of proof that the brick wall with older stone foundations has prevented or inhibited root growth across the boundary, root protection areas should be identified and all site works designed and carried out, outside the rpas. "No-dig" construction of parking bays could be installed inside an rpa if levels permit but parking bays should not be positioned under the trees if they are to be compatible with the trees. No buildings should be constructed within 2m. of a rpa. Where there are existing hard surfaces and buildings to be demolished inside an rpa and they currently protect the ground from compaction, site works could be carried out with a suitable Arboricultural Method Statement, Tree Protection Plan and Arboricultural Supervision Plan showing suitable protection methods.

8.55. Subject to the imposition of suitably worded conditions in relation to trees the application is considered to be acceptable and in accordance with Policy DM10 of the Site Allocations and Development Management Policies DPD 2016.

Contamination

8.56. Policy DM7 of the SADMP states that development proposals must demonstrate appropriate remediation of contaminated land in line with minimum standards. The revised NPPF at paragraphs 183 and 184 sets out policies on development involving contaminated land. The planning practice guidance also offers detailed government advice on this topic

8.57. HBBC Environmental Services Team have been consulted on the proposals and do not raise objections but request conditions in relation to contaminated land. It is considered that the subject to the imposition of these conditions the application is considered to be acceptable and in accordance with development plan policy.

Planning Obligations

8.58. 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. Policy 19 of the Core Strategy identifies standards for play and open space within the borough. Developments should accord with the policy and provide acceptable open space within the development, or if that is not possible contribute towards the provision and maintenance of open space off site. The Open Space and Recreation Study 2016 updates these standards and also identifies the costs for off-site and on-site contributions. No contributions for open space have been sought in this instance.

8.59. 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 and paragraph 57 of the NPPF state that planning obligations must only be sought where they meet all of the following tests:

- A) Necessary to make the development acceptable in planning terms;
- B) Directly related to the development; and
- C) Fairly and reasonably related in scale and kind to the development.

8.60. No planning obligations have been requested from consultees in this instance.

Planning Balance

8.61. 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.

8.62. Using the standard method as outlined by MHCLG, Hinckley and Bosworth Borough is able to demonstrate 4.89 years of deliverable housing at 1st April 2022. Therefore the Council does not have a 5 year housing land supply.

8.63. Under these circumstances, the NPPF sets out, in paragraph 11d) that, for decision makers:

“where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date (8), granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”*

8.64. Footnote 8 in the NPPF states that the application of this approach *“includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years”*.

8.65. Therefore, currently the ‘tilted’ balance in paragraph 11(d) of the NPPF applies and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

8.66. The proposal is considered to be acceptable when taking into account all of the material considerations set out above. There are no adverse impacts associated with this development that would outweigh the benefits identified. Therefore this application is recommended for approval subject to conditions set out below.

9. Equality implications

9.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-

A public authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 9.2 Officers have taken this into account and given due regard to this statutory duty in the consideration of this application.
- 9.3 There are no known equality implications arising directly from this development.
- 9.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Recommendation

10.1 Grant planning permission subject to the following planning conditions.

10.2 Conditions and Reasons

1. Application for the approval of reserved matters shall be made within three years 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 conditions relating to the:-
Landscaping of the site including treatment of private and public space to enhance or protect the site's amenity through hard (boundary treatments) and soft measures and details of boundary planting to reinforce the existing landscaping at the site edges to include native species mix hedgerows 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 adopted Site Allocations and Development Management Policies Development Plan Document (2016).
3. The development hereby permitted shall not be carried other than in accordance with the following details:
Proposed Site Plan ref 2106-032-A-P01 Rev B received 23 November 2021
Proposed Floor Plans ref 2106-032-A-P02 Rev B received 5 September 2022
Proposed Landscape Plan ref 20-032-A-P04 Rev C received 23 November 2021
Proposed Elevations ref 2106-032-A-P03 Rev A received 23 November 2021
Tree Constraints Plan received 31 August 2022
Reason: To ensure the development hereby approved is carried out in accordance with the approved plans.
4. No development above foundation level shall commence on site until representative samples of the types and colours of materials to be used on the external elevations of the dwellings hereby permitted have been deposited with and approved in writing by the local planning authority, and the scheme shall be implemented in accordance with those approved materials.
Reason: To ensure that the development has a satisfactory appearance in the interests of visual amenity in accordance with Policy DM10 of the adopted

Site Allocations and Development Management Policies Development Plan Document (2016).

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

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

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

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

7. Site preparation and construction shall be limited to the following hours:

Monday - Friday 07:30 - 18:00

Saturday 08:00 - 13:00

No working on Sundays and Bank Holidays

Reason: To protect residential amenity and limit noise disturbance in accordance Policies DM7 and DM10 of the Site Allocations and Development Management Policies DPD 2016 and the requirements of the NPPF.

8. No development shall commence until the necessary programme of archaeological work has been completed. The programme will commence with an initial phase of trial trenching to inform a final archaeological mitigation scheme. Each stage will be completed in accordance with a written scheme of investigation (WSI), which has first been submitted to and approved in writing by the local planning authority. For land that is included within the WSI, no demolition/development shall take place other than in accordance with the agreed mitigation 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, recording, dissemination and archiving in accordance with Policy DM13 of the Site Allocations and Development Management Policies DPD 2016 and the requirements of the NPPF.

9. No part of the development hereby permitted shall be occupied until such time as the access arrangements, parking and turning as shown on approved Proposed Site Layout, drawing number 2106-032-A-P01 Rev B have been implemented in full, and once in place shall remain in perpetuity.

Reason: To ensure that vehicles entering and leaving the site may pass each other clear of the highway, in a slow and controlled manner and 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 general highway safety and in accordance with Policy DM18 of the Site Allocations and Development Management Policies DPD 2016 and the National Planning Policy Framework (2021).

10. Notwithstanding the provisions of Part 2 of Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) no gates, barriers, bollards, chains or other such obstructions shall be erected to the vehicular access.

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 DM10 of the Site Allocations and Development Management Policies DPD 2016 and the National Planning Policy Framework (2021).

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

Reason: To reduce the possibility of surface water from the site being deposited in the highway causing dangers to road users in accordance with Policy DM10 of the Site Allocations and Development Management Policies DPD 2016 and the National Planning Policy Framework (2021).

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

Reason: To ensure the bin storage on site is not detrimental to the street scene and overall design of the scheme in accordance with Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

13. Prior to development above damp course level a scheme for the installation of electric vehicle charging points will be submitted to and approved in writing by the local planning authority. The scheme shall identify the number of units to

benefit from electric charging points, together with full detail of the location and fitting of the units.

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

14. A Tree Protection Plan shall have been submitted to and approved in writing by the Local Planning Authority prior to commencement of development. Within the protected areas there shall be no alteration to ground levels, no compaction of the soil, no stacking or storing of any materials and no service trenches shall be dug unless first agreed in writing by the Authority. No work shall commence on site until trees on and adjacent to the site have been securely fenced off with protective barriers to form a construction exclusion zone in accordance with BS 5837:2012 Tree in relation to design, demolition and construction

Reason: To ensure the existing trees are adequately protected during construction in the interests of the visual amenities of the area and in accordance with Policy DM10 of the Site Allocations and Development Management Policies DPD 2016.

15. No works or development shall take place until an auditable system of arboricultural site monitoring by an appointed project arboriculturist has been approved in writing by the Local Planning Authority. This scheme will be appropriate to the scale and duration of the works and will include details of:
- a) Induction and personnel awareness of arboricultural matters
 - b) Identification of individual responsibilities and key personnel
 - c) Statement of delegated powers
 - d) Timing and methods of site visiting and record keeping, including updates
 - e) Procedures for dealing with variations and incidents.
 - f) The scheme of supervision shall be carried out as agreed.
 - g) The scheme of supervision will be administered by a qualified arboriculturist instructed by the applicant and approved by the local planning authority.

Reason: To ensure that the tree protection plan is adequately implemented in the interests of the visual amenities of the area in accordance with Policy DM10 of the Site Allocations and Development Management Policies DPD 2016.

16. No works or development shall take place until a site specific no-dig drive construction method statement has been submitted to and approved in writing by the Local Planning Authority showing that no-dig surfacing is fit for purpose. The development shall be carried out in accordance with the approved details.

Reason: To ensure that trees are not damaged during construction and that soil bulk density will not be increased and be detrimental to long-term tree health.