

**Planning Committee 20th December 2022
Report of the Planning Manager**

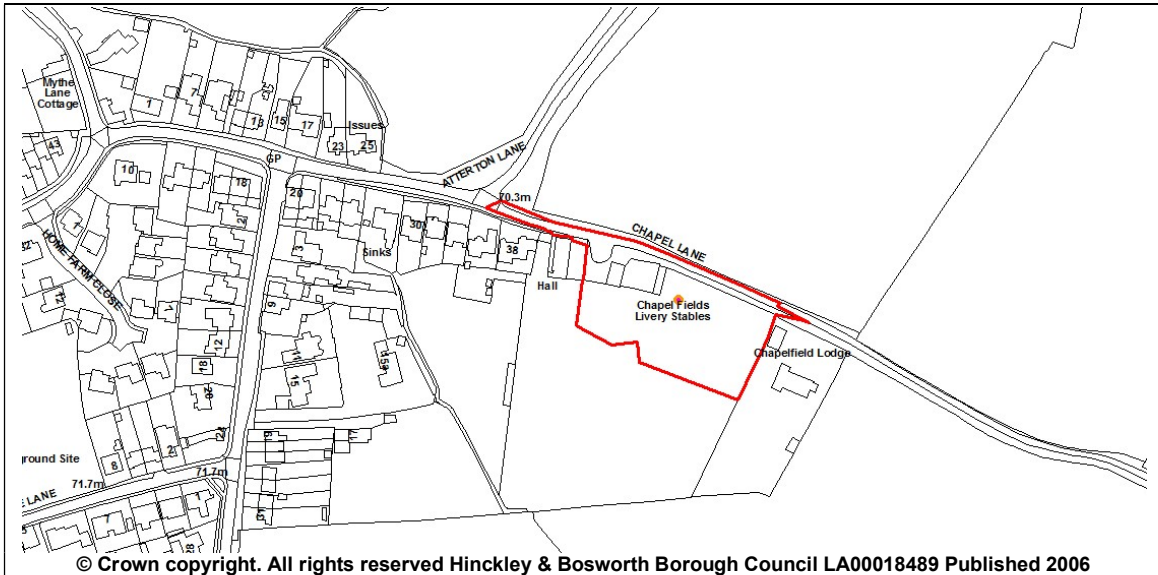


Hinckley & Bosworth
Borough Council

**Planning Ref: 21/01305/FUL
Applicant: A R Cartwright and D Walker
Ward: Twycross, Sheepy and Witherley**

Site: Chapel Fields Livery Stables, Chapel Lane, Witherley, Atherstone, Leicestershire

Proposal: The construction of five detached dwellings, with associated garages, parking provision, access and landscaping



1. Recommendations

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

2. Planning application description

2.1. The application seeks full planning permission for the erection of five detached two storey dwellings on land at Chapel Lane, Witherley. Plots 1 and 2 have the upper floor within the roof space and each have three bedrooms. Plots 3, 4 and 5 are two storey with plot 3 having four bedrooms and plots 4 and 5 each having five bedrooms. The two smaller dwellings have a garage each with two tandem parking spaces in front of the garage. The three larger dwellings each have a double garage with Plot 3 having two parking spaces in front of the garage and plots 4 and 5 each having four spaces in front of the garage.

2.2. The existing lane in front of the dwellings is to be widened to 4.8 metres and a 2m wide footpath is provided. Properties front on to Chapel Lane and have rear gardens at least 20m in depth. The properties are traditional in design and are faced in brick with pitched tiled roofs with several elements of brick detailing including chimneys. Gardens are separated by 1.8m high close-boarded timber fencing with native species hedging to the rear boundary supplemented by post and rail fencing.

- 2.3. The paddock to the rear of the proposed gardens is predominantly given over to landscaping and providing a biodiversity net gain. An area of land to the rear of the Parish Room is indicated as being set aside for parking/amenity space for the parish but this does not form part of the application and it should be noted cannot be secured via condition or legal agreement as the parking is not considered necessary to make the proposed development acceptable in planning terms. As such it does not fulfil any of the six tests for a valid condition or the CIL tests for requiring planning obligations. The paddock, and land to the rear of the Parish Room, are not within the red line, but are owned by the applicant.
- 2.4. The application is accompanied by the following reports and documents:
- Flood Risk Assessment
 - Landscape and Visual Impact Assessment
 - Transport Assessment
 - SuDS Strategy Report
 - Preliminary Ecological Appraisal
 - Biodiversity Net Gain Assessment
 - Noise Assessment
 - Planning Statement
 - Tree Survey Report

3. Description of the site and surrounding area

- 3.1. The application site covers an area of just under half a hectare and fronts Chapel Lane between the Parish Hall to the west and Chapelfield Lodge to the east. To the north and south is open agricultural land. The dwelling to the east is surrounded by farmland and to the west of the Parish Room is the village of Witherley. Beyond the application site Chapel Lane serves just a handful of properties and is a no through road. The site is generally flat with a small fall to the south and from Chapel Lane there are distant views in all directions, particularly to the south.
- 3.2. A public footpath runs in a north/south direction immediately to the west of the Parish Room through the paddock of which the application site forms part and that is in the ownership of the applicant. One of the current applicants was the owner of the site in 2015 when an application for 10 dwellings was submitted and was also the owner of the site in 1997 when an application for an agricultural building on the site was submitted. As is set out in the submitted Landscape and Visual Impact Assessment the site has the appearance of dereliction and degradation. This description relates predominantly to a small area in the north-west corner where a small block of stables and an open fronted corrugated steel barn still stand although they are much overgrown by vegetation to the point that much of the small previously developed part of the site has blended into the landscape.
- 3.3. The tree survey sets out that there is one category A tree on the site on the site frontage and one category B tree set slightly back from the road frontage close to the Parish Room. There are also a few smaller category C trees. Trees fall within four categories, the highest category, A, being trees of high value and high quality with category U being trees that are unsuitable for retention.
- 3.4. The site lies within the countryside outside of the settlement boundary of Witherley. Part of the western boundary of the site, where it borders the Parish Room, is adjacent to the settlement boundary of the village.

4. Relevant planning history

4.1. The application site has the following relevant planning history:

15/00441/FUL

- Erection of 10 dwellings and associated access
- Refused by the Planning Committee
- 11.10.2017

Two reasons for refusal:

1. The proposal would result in unsustainable residential development in the designated countryside outside the settlement boundary of Witherley. The proposal would fail to complement or enhance the intrinsic value, beauty, undeveloped rural character of the countryside and the rural setting of the village. The proposal is therefore contrary to Policy 12 of the Core Strategy (2009) and Policies DM1, DM4 and DM10 of the Site Allocations and Development Management Policies DPD (2016).
2. By virtue of the location, layout and scale, the proposed development would not complement the existing surrounding built form and would adversely impact on the rural character of the countryside and setting of the village. The proposed development would be contrary to Policies DM4 and DM10 of the Site Allocations and Development Management Policies DPD (2016).

A subsequent appeal was dismissed. The Inspector considered that the proposed development would:

- cause demonstrable harm to the character and appearance of the countryside and landscape, contrary to Policies DM4 and DM10
- result in a significant adverse effect on the amenity of future occupiers due to use of the Parish Room
- conflict with the spatial strategy of the development plan by virtue of its siting within the countryside

5. Publicity

5.1. Neighbours of four neighbouring properties have been notified of the application. In addition the application has been advertised by means of both site and press notices.

5.2. Representations from 24 households have been received. Of these 17 are objections, six are in support of the application and one neither supports nor objects to the application. The following comments have been made:

- 1) The site on Chapel Lane was identified as the third site of preference in the Neighbourhood Plan. The development is reasonable given Witherley does have amenities to support additional houses
- 2) The site doesn't pose a flood risk
- 3) Chapel Lane is a private, narrow, single track road and can't support this amount of extra traffic
- 4) The dwellings would increase the risk of flooding in the village. The junction of Chapel Lane and Atterton Lane floods regularly
- 5) The village needs more homes, this will benefit the community allowing it to thrive and be more sustainable

- 6) The village needs more low cost housing, it does not need more large 5 bedroom houses
- 7) This is unsustainable development in the designated countryside outside of the settlement boundary
- 8) The development fails to complement or enhance the intrinsic value, beauty, undeveloped rural character of the countryside and its rural setting resulting in significant harm to the character of the site. Given the proximity of the Parish Room the application site contributes significantly to the scenery of the village and emphasises its rural character
- 9) The scheme would have an urbanising effect in views from the public footpath on the approach from the south
- 10) This is contrary to policies DM1, DM4 and DM10 of the Council's Site Allocations and Development Management Policies Development Plan Document and policy 12 of the Core Strategy
- 11) The site is not allocated for development by either the Council or by the Parish in the Neighbourhood Plan
- 12) This would put further strain on the road junctions at Kennel Lane and Bridge Lane with the A5
- 13) The proposed widening of Chapel Lane would fundamentally and unsympathetically alter the character of the rural lane resulting in an urbanising effect
- 14) The development could result in complaints about noise from the Parish Room and is likely to result in a significant reduction in its value as a facility to be enjoyed by the community which is contrary to policy DM10
- 15) The detrimental change to the character of the area would impact upon everyone using the Parish Room
- 16) The scheme would impact on views and vistas to and from the village
- 17) The village sewers are already overloaded
- 18) The reasons why the Inspector dismissed the previous appeal still stand
- 19) The site does not currently have an urban fringe character, contrary to what the submitted Landscape and Visual Impact assessment states
- 20) Even with the proposed road widening there is no room for visitor parking or for delivery vans to park and turn
- 21) There is a pinch point at the Parish Room and the increased traffic would make it unsafe for pedestrians exiting the hall
- 22) The Highways Agency (now National Highways) has previously stated that they will not support any housing development in Witherley until improvements have been made to the two access points into the village from the A5. Those improvements have not taken place and the level of traffic on the A5 has increased since
- 23) Parking associated with the Parish Room has in the past caused problems with access to the kennels and the farm at the end of the lane – this will just make matters worse
- 24) Chapel Lane is not subject to the 30mph speed limit
- 25) Chapel Lane is the only access to Drayton Barn Farm which is where an 800 acre mixed farming enterprise is run from. It is also the only access to the farm's diversification business, the Witherley Kennels and Cattery that serves 60 boarding kennels including a rehoming centre for dogs and 40 cattery pens which can attract up to 100 vehicle movements a day on its own not including farm traffic
- 26) The scheme does not maximise use of sustainable transport modes and so is contrary to paragraph 8c of the NPPF

5.3. The Parochial Church Council, which owns the Parish Room, has also objected to the proposal on the following grounds:

- 1) There are already difficulties for cars manoeuvring in and out of the small car park adjacent to the Parish Room
- 2) The developer does not own the verge on Chapel Lane or the adjacent grass verge – safe pedestrian access to the Parish Room must be maintained
- 3) The current small car park is not sufficient for the number of users and the proposed development will adversely affect the availability of roadside parking
- 4) The Parish Room is used for a variety of events that have involved music/late nights. The noise assessment was undertaken in June 2021 when many activities had not started back up again. The PCC would not wish the future of the hall to be restricted because of its proximity to the proposed houses
- 5) The PCC notes the gift of land adjacent to the Parish Room to be set aside for use as additional parking and/or amenity space and asks that if permission is granted then this is secured via planning condition or S106 obligation

Officer comment: As set out above the land identified on the plans as additional parking for the Parish Room does not fall within the red line and does not form part of the application and cannot be secured for the reasons set out above at paragraph 2.3.

6. Consultation

- 6.1. Witherley Parish Council – Objects to the application. The Parish Council considered the application at a public meeting and at its full council meeting in December 2021. Objections and observations are made as follows:
 - Disappointment that the application doesn't reflect the design style specified in the draft Witherley Neighbourhood Plan
 - If permission is granted, then there should be an attenuation pond on the site to deal with surface water; hard surfaces should be minimised; and septic tanks should be provided
 - Policy 12 of the Core Strategy supports development within settlement boundaries that provides a mix of housing types – the Parish Council does not consider that this scheme complies with that policy
 - Policy 12 also identifies that the Borough Council has stated that land will only be allocated for limited housing development in Witherley if the identified problems at the Kennel Lane/A5 junction are overcome
 - The response from the Parish Council then lists comments made at the public meeting all of which are listed above in Section 5 of this report
- 6.2. National Highways – no comment to make on the proposal.
- 6.3. Severn Trent Water – foul and surface water connections are proposed to the public combined water sewer. The disposal of surface water by means of soakaways should be considered as the primary method. If this is not practical and there is no watercourse available as an alternative, other sustainable methods should be explored. If these are found unsuitable, satisfactory evidence will need to be submitted, before a discharge to the public sewerage system is considered.
- 6.4. Leicestershire Police – No objections but provides advice.
- 6.5. LCC Highway Authority – The impacts of the proposed development on highway safety would not be unacceptable, and when considered cumulatively with other developments, the impacts on the road safety network would not be severe. Based

on the information provided the development therefore does not conflict with paragraph 111 of the National Planning Policy Framework (2021).

It is noted that only the first 37 metres of Chapel Lane is adopted, and this terminates at the Parish Room. As such, all dwellings access onto a private road. It is noted that the applicant intends to widen the private road to 4.8m adjacent to the site. However, this narrows to 3.7m adjacent to the Parish Hall. It is then the intention of the Applicant to widen the adopted public highway.

The Applicant is also proposing a 2m wide footway to the front of the site where it meets the private road. This is welcomed. A scheme for street lighting is also provided within the Transport Statement. The Applicant is also proposing a scheme of white lining adjacent to the Parish Hall to reinforce that the road narrows. Whilst the majority of this will be within the private road it is partly shown within the highway.

The amount of parking, size of spaces and size of garages are all in accordance with the Leicestershire Highways Design Guide. A standard condition regarding the provision of the highway works and parking spaces is required.

- 6.6. LCC Ecology – Reports regarding great crested newts and bats have been submitted and are satisfactory. No conditions or mitigation is required. The ecology survey was carried out immediately after the grassland was cut and a further botanical survey should be undertaken at the optimal time of year (between May and September), in order to accurately assess the quality of grassland and inform net gain calculations. The proposed development will result in significant removal of habitats, including grassland. The Biodiversity Net Gain Assessment submitted states that a net gain calculation has been produced but the details are required before an informed comment can be made. In addition a biodiversity improvement plan is required in order to show how any losses will be met and a plan showing where any habitat creation will take place.

Officer comment: The additional information required has been submitted and while there is a net loss in biodiversity on the site itself the remainder of the field is in the ownership of the applicant and additional habitat creation could be secured via condition in order to achieve a biodiversity net gain.

- 6.7. LCC Archaeology – A condition requiring A programme of archaeological work is required prior to any development, including demolition, taking place.
- 6.8. HBBC Waste – No objections subject to a condition regarding waste and recycling storage and collection.
- 6.9. HBBC Affordable Housing – Guidance in the NPPF supersedes Policy 15 of the Core Strategy which included 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. The NPPF sets out that affordable housing should not be sought for developments fewer than 10 dwellings. As the development is for 5 dwellings, no affordable housing is required.
- 6.10. HBBC Environmental Services – The noise impact assessment recommends that mitigation is provided to protect residents from music noise levels. The report states that “available site test data indicates that the typical sound reduction across a partially open window of a furnished room is approximately 20 decibels for mid-frequencies”. Complaints regarding noise from live music is often related to the low

frequency elements of that noise. A condition regarding noise attenuation is required to protect the proposed dwellings from music at the adjacent Parish Hall and as no time limits are enforceable at the hall, night-time noise should be taken into account. Conditions are also required regarding contamination and hours of construction.

- 6.11. HBBC Arboricultural Officer – The tree survey indicates trees that would need to be removed to facilitate development. These include a 12m high category B tree which the Council should consider as important for retention. Proposed plot 5 is far too close to a category A tree and clarification is required to ascertain if this tree has veteran characteristics.

7. Policy

7.1. Core Strategy (2009)

- Policy 12: Rural Village
- Policy 16: Housing Density, Mix and Design

7.2. Site Allocations and Development Management Policies DPD (SADMP) (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 DM13: Preserving the Borough's Archaeology
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards
- Policy DM25: Community Facilities

7.4. National Planning Policies and Guidance

- National Planning Policy Framework (NPPF) (2021)
- Planning Practice Guidance (PPG)
- National Design Guide (2019)

7.5. Other relevant guidance

- Good Design Guide (2020)
- Highway Design Guide
- Landscape Character Assessment (2017)

- 7.5. Witherley Neighbourhood Plan was subject to public consultation between 16 September and 4 November and so the consultation period has only recently closed, and representations have not yet been analysed. At this stage the draft Plan only carries limited weight in the decision-making process. As set out in the Neighbourhood Plan there were no residential allocations in Witherley Parish in the SADMP because of development constraints in Witherley itself and because other settlements were categorised at the lower end of the settlement hierarchy and considered not to be sustainable settlements for the purposes of allocating housing sites.

- 7.6. One site is allocated for new housing in the draft Neighbourhood Plan and that is the former hunt kennels on Kennel Lane with is allocated for a total of 15 dwellings comprising a mix of converted buildings and new build houses.

8. Appraisal

8.1. It is considered that the key issues in the determination of this application are:

- Principle of Development
- Design and Impact upon the Character of the Area
- Residential Amenity
- Highway Safety
- Flood Risk and Drainage
- Ecology, Biodiversity and Trees

Principle of Development

8.2. Paragraph 2 of the National Planning Policy Framework (NPPF) July 2021) states that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise and that the NPPF is a material consideration in determining applications. Paragraph 12 of the NPPF confirms that the presumption in favour of sustainable development does not change the statutory status of the Development Plan as the starting point for decision making.

8.3. Paragraph 11 of the National Planning Policy Framework (NPPF) and Policy DM1 of the Site Allocation and Development Management Policies Development Plan Document (SADMP) set out a presumption in favour of sustainable development, and state that development proposals that accord with the development plan should be approved unless other material considerations indicate otherwise. The development plan in this instance consists of the adopted Core Strategy (2009) (CS) the Site Allocations and Development Management Policies DPD (2016) (SADMP).

8.4. The Emerging Local Plan for 2020-39 has been out for consultation and is at Regulation 19 draft stage (February to March 2022).

8.5. Using the standard method as outlined by MHCLG, Hinckley and Bosworth Borough Council 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.

8.6. Witherley is a rural village within the Borough of Hinckley. The Core Strategy sets out that rural villages have more limited services than key rural centres. A primary school and bus services are considered essential, and a public house is considered desirable. These services are considered key to the functioning of a village as they provide a community 'heart'. Witherley benefits from all three of these services although the bus services are limited. The Draft Neighbourhood Plan sets out at page 9 that the household questionnaire sent to every household in the parish, which includes the rural hamlets of Fenny Drayton and Ratcliffe Culey as well as the even smaller Atterton, identified the lack of public transport, speeding traffic,

lack of pavements, need for a shop, new development, lack of leisure facilities, sewerage problems and flooding as the range of issues facing parishioners.

8.7. Policy 12 of the Core Strategy seeks to support existing services in such villages. It states that housing developments within settlement boundaries will be supported where they provide a mix of housing types and tenures. Specifically regarding Witherley, Policy 12 states that the Borough Council will work with the Highways Agency (now National Highways) to address identified problems with the A5/Kennel Lane junction. It states that if these problems can be overcome, the Council will allocate land for limited housing development.

8.8. As set out above the site lies adjacent to but outside of the settlement boundary for the village. Therefore the site lies within the countryside and 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, 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; or
- It relates to the provision of accommodation for a rural worker; 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

8.7 The proposed development does not fall within any category of sustainable development that is considered acceptable in the countryside. The proposal is not supported by either Policy 12 of the Core Strategy or Policy DM4 of the SADMP. The purpose of Policy DM4 is to protect the intrinsic beauty, open character and landscape character of the countryside. As such, the proposal conflicts with Policy DM4 of the SADMP.

8.8. Although there is clear conflict with the spatial policies of the development plan paragraph 11(d) of the NPPF is engaged and therefore a 'tilted balance' assessment must be made. This must take into account all material considerations and any harm arising from the conflict with Policy DM4 must therefore be weighed in the planning balance along with the detailed assessment of the other relevant planning considerations in this case. Other material considerations are set out within the next sections of the report.

Design and Impact upon the Character of the Area

8.10. 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.

- 8.11. The Good Design Guide SPD provides guidance upon how to design an appropriate new residential development. This includes appraising the context, creating appropriate urban structures through blocks, streets, enclosure, open space and landscaping, parking, amenity space and design detailing. The SPD advocates the use of a Building for Life Assessment.
- 8.12. 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.
- 8.13. The application site falls within the large Sense Lowlands landscape character area. Page 59 of the Council's Landscape Character Assessment states that key characteristics of this landscape include flat to gently rolling landscape giving rise to extensive and open views, a well-ordered agricultural landscape featuring low hedgerows and mature hedgerow trees and a rural and tranquil character.
- 8.14. Trees are dealt with in greater detail below but none of the existing trees on the site would be retained. The character of the site and this section of Chapel Lane would be completely transformed, and the rural character of the site and this section of lane would be replaced by a suburban character. The dwellings and garages would form a prominent wall of development in views from Chapel Lane and from the public footpath south of the site as the layout of the site is such that between each of the five houses is a pitched roofed double garage with a gap of just 0.8m between the garage and the dwelling thus forming a near complete wall of built development for a distance of 90 metres.
- 8.15. The submitted LVIA sets out that the site is "an unmanaged and neglected area of poor quality comprising; barns and stables, areas of hardstanding, areas of invaded scrub and poor quality vegetation and generally lacking intact and appropriate enclosing elements. The landscape parcel of the site is chaotic and lacks coherence as a result." However, as has been established the site is in the same ownership now as it was in 2015. Images from Google Streetview show that this description applies to a very small corner of the site immediately around the two buildings on the site.
- 8.16. It is considered reasonable to conclude that the reason the site does not appear in a better condition is a deliberate choice. The site is described in the LVIA as variously "poor quality", "unmanaged", "unkempt", "derelict", "neglected" and "chaotic", in an attempt to promote residential development of the site that in November 2018 an Inspector found to cause "demonstrable harm to the character and appearance of the countryside and landscape through loss of a significant part of the appeal site which is of moderate value to the landscape, to built development."
- 8.17. It is considered that the individual design of the properties is good but little regard has been paid to their context. The design and layout appear more suited to a new large housing estate within a town rather than a site within the countryside on the edge of a rural village. The wall of development that the layout establishes is indicative of the lack of regard to the site context. The scheme is considered to clearly fail the requirement set out in Policy DM10 that development is required to

complement or enhance the character of the surrounding area with regard to scale, layout, density and mass.

- 8.18. The proposed development would have a significantly harmful effect on the character of the site and surrounding area contrary to the requirements of Policy DM10 of the SADMP, the Good Design Guide SPD and the requirements of the NPPF.

Residential Amenity

- 8.19. Policy DM10 (a) and (b) of the SADMP states development will be permitted provided that it would not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings, including matters of lighting and noise and that the amenity of occupiers would not be adversely affected by activities within the vicinity of the site.
- 8.20. Policy DM25 of the SADMP states that the Council will resist the loss of community facilities.
- 8.21. 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.
- 8.22. 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.
- 8.23. 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.
- 8.24. To the west the development is separated from existing neighbouring property by the Parish Room. To the east the existing dwelling has a substantial hedge to the common boundary and outbuilding adjacent so that the dwelling is effectively screened from the new development. It is considered that the proposed development would have no significant detrimental effect on the amenity of any neighbouring occupiers. The noise report makes no assessment of the estimated impact on the garden to plot 1.
- 8.25. The submitted noise assessment was undertaken during Covid restrictions when no events were taking place. The report states that noise levels from similar establishments were used to generate the report's findings. It is not stated whether those similar establishments had large windows to the side and rear. The report does though state that "it is expected that during larger events at the Parish Room, there is potential for entertainment noise to impact upon the development".
- 8.26. The Council's Environmental Services Team has identified the need for noise mitigation from music at events at the Parish Rooms which is located less than 10 metres from the rear garden of plot 1. The frequency of use of the Parish Room has

been highlighted by the Parochial Church Council. Previously, the Inspector noted that the Parish Room was an important well-used community asset located beyond the continuous built form of the village and surrounded by open countryside on three sides. The Inspector considered that there was currently little scope for noise associated with its use causing annoyance or nuisance to neighbours and noted that there are no planning conditions that restrict its hours of use.

- 8.27. The Parish Room has large windows in its sides and in its front and rear. As a result, noise generated within the building can easily escape, particularly in warmer weather when windows are open or future residents would want to enjoy their private rear gardens. In the absence of any planning restrictions on the hours of use of the Parish Room, well attended social events at the building with music occurring during the day or late into the night would annoy and disturb future occupants of plot 1 at the very least and have a significant adverse effect on their living conditions. Mitigation measures to habitable rooms would fail to deal with noise heard in private rear gardens and, given the short distance involved acoustic fencing would fail to be effective. This is likely to result in restrictions being placed on the use of the Parish Room which would significantly reduce its value as a facility enjoyed by the community, particularly so when the lack of facilities has been identified as an issue facing villages within the parish.
- 8.28. Paragraph 187 of the NPPF states that decisions should ensure that new development can be integrated effectively with existing community facilities and that existing facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Officers consider that the amenity of occupiers of the proposed development would be significantly adversely affected by use of the Parish Room. This would be contrary to Policy DM10 of the SADMP, which amongst other things, seeks to prevent such harm. It would also be contrary to the aims of DM25 of the SADMP which seeks to resist the loss of community facilities.
- 8.29. The proposed development is considered likely to have a significant detrimental effect on the amenity of future occupiers of plot 1 contrary to the requirements of Policy DM10 of the SADMP and the NPPF. Furthermore the proposed development is likely to result in restrictions being placed on the use of the Parish Room which would significantly reduce its value as a facility enjoyed by the community, particularly so when the lack of facilities has been identified as an issue facing villages within the parish, contrary to Policy DM25 of the SADMP and the overarching aims of the NPPF to support strong, vibrant and healthy communities.

Impact upon highway safety

- 8.30. 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 highway authority (currently this is the Leicestershire Highway Design Guide (LHDG)).
- 8.31. Policy DM10(g) states that where parking is to be provided, charging points for electric or low emission vehicles should be included, where feasible.
- 8.32. Paragraph 111 of the NPPF (2019) 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.

- 8.33. The site access is an unadopted lane that accesses two farms, one of which operates a kennels and cattery. Representations have been received from the owners/operators of these farms expressing concern at the proposals. The Local Highway Authority has assessed the application and considers that the proposals meet the requirements of the Leicestershire Highways Design Guide has no objections to the proposed development or to the widening and white lining to Chapel Lane subject to a single standard condition.
- 8.34. Although the LHA has no accident statistics as the lane is unadopted it is considered that while concerns regarding highway safety are legitimate they do not reach the threshold set out at paragraph 111 of the NPPF that there would be an unacceptable impact on highway safety or that the cumulative impacts on the highway network would be severe.
- 8.35. It is not considered that the proposal will have any significant negative impact on the highway network to the extent that refusal or amendment of the application is required. As such the proposal satisfies Policy DM17 and DM10(g) of the SADMP and the NPPF.

Flood Risk and Drainage

- 8.36. 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.
- 8.37. 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.
- 8.38. The site lies within Flood Zone 1 of the Environment Agency Flood Maps and is not shown to be at risk from surface water flooding although the field beyond the rear boundary of the proposed gardens is liable to flooding from both rivers and surface water as is the highway to the west of the site as mentioned in comments from residents. Severn Trent raises no objection, and it is considered that given the circumstances surface water drainage can be adequately dealt with via condition should permission be granted. Subject to this condition the development is considered to be acceptable with respect to flooding and surface water runoff issues and satisfies Policy DM7 of the SADMP and the NPPF.

Ecology, Biodiversity and Trees

- 8.39. Policy DM6 of the SADMP states that development proposals must demonstrate how they conserve and enhance features of nature conservation and geological value. The policy states that on-site features should be retained, buffered and managed favourably.

- 8.40. Paragraph 174 of the NPPF states that planning decisions should contribute to and enhance the natural environment by recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services which includes trees. Paragraph 180 states that development resulting in the loss of veteran trees should be refused unless there are wholly exceptional reasons.
- 8.41. The submitted layout shows the single category A tree on the site being retained but Council's Arboricultural Officer has been consulted and has stated that this tree is far too close to the proposed dwelling on plot 5. It is therefore considered that this application will result in ecological impacts that are contrary to the requirements of Policy DM6 of the SADMP and to the requirements of the NPPF.

Other Issues

- 8.42. Archaeology – the County considers that the interests of the archaeology of the site can be secured via condition.

Planning Balance

- 8.43. 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.
- 8.44. This application relates to the erection of five dwellings on a site within the countryside where just a very small part of the site can be considered previously developed land. The history of the larger site is that an appeal into the refusal of an application for 10 dwellings was dismissed in October 2018. The most recent housing land monitoring statement for the period 2020 -2021 indicates, that the Council cannot demonstrate a 5-year housing land supply. This is also a key material consideration and under these circumstances, the NPPF 2021 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”*
- 8.45. 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”.*
- 8.46. 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. The degree to which the proposed

development conflicts with Policy DM4 of the SADMP is significant and it is considered that the impact on the character and appearance of the area would be severe given the nature of the site and access currently and the detailed design and layout of the proposed development which would result in the loss of all existing planting on the site and a wall of development fronting an urbanised Chapel Lane.

- 8.47. Paragraph 8 of the NPPF sets out three overarching objectives for sustainable development which are interdependent and need to be pursued in mutually supportive ways.
- 8.48. The scheme would provide economic benefits through the creation of jobs and demand for services during the construction phases and from the future occupation of the development supporting the local economy.
- 8.49. Socially, the scheme would provide a modest contribution towards housing supply within the borough. Car parking for the Parish Room does not form part of the application and cannot be secured via legal agreement as such a provision is not necessary to make the scheme acceptable in planning terms. Any social benefits though are balanced by the impact of noise from the Parish Room on the amenity of future residents and the likely restrictions that would be placed on this important, well-used community facility. It is realistic that the scheme would cause significant harm to the vibrancy of the community, contrary to the social objective of sustainable development contained in the NPPF.
- 8.50. Environmentally, as the site lies within the countryside and is not allocated, there would be conflict with the spatial strategy of the development plan and the NPPF which is clear that the planning system should be genuinely plan led with plans acting as a platform for local people to shape their surroundings. There would be significant harm caused to character and appearance of the countryside and landscape through the proposed uncharacteristically dense frontage development on Chapel Lane which also results in the loss of a category A tree of possible veteran status.
- 8.51. In addition the site is located within a rural area, and this is not a sustainable location. Occupiers of the proposed development would be heavily reliant on the use of private cars for trips to shops, services and work/school as the immediate area has no such facilities. Therefore the proposal is contrary to paragraph 79 of the NPPF which states that housing should be located where it will enhance or maintain the vitality of rural communities.
- 8.52. Having assessed the application it is considered that the adverse impacts of the proposal significantly and demonstrably outweigh the benefits of the scheme when assessed against the policies of the development plan and the NPPF as a whole. Consequently the presumption in favour of development set out within policy DM1 and the NPPF does not apply, and material considerations do not indicate that planning permission should be granted for a scheme that is not in accordance with the development plan.
- 8.53. As such the application is recommended for refusal.

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. **Refuse planning permission for the reasons set out below.**

11. Reasons

1. By virtue of the location of the application site within the open countryside, the proposed scheme would result in unsustainable and unjustified ribbon development of new residential development in the designated countryside beyond the settlement boundary on Chapel Lane outside the rural village of Witherley and the resulting urbanisation of the site would result in significant and permanent environmental harm to the intrinsic value, beauty, open character and landscape character and verdant appearance of the site and its contribution to the surrounding area. The proposal would therefore be contrary to Policy 12 of the adopted Core Strategy and Policies DM1, DM4 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and the overarching principles of the National Planning Policy Framework (2021) and this harm would significantly outweigh the benefits when considered against the Framework as a whole.
2. The site is located within a rural area, and this is not a sustainable location. This location would be heavily reliant on the use of private cars for trips to shops, services and work/school as the immediate area has no such facilities. Therefore the proposal is contrary to paragraph 79 of the NPPF which states that housing should be located where it will enhance or maintain the vitality of rural communities.
3. The development results in the loss of a Category A tree of possible veteran status contrary to the requirements of Policies DM6 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and the requirements of the National Planning Policy Framework (2021).

4. The proposed development is considered likely to have a significant detrimental effect on the amenity of future occupiers of plot 1 as a result of noise and disturbance from events at the adjacent Parish Rooms contrary to the requirements of Policy DM10 of the SADMP and the NPPF. Furthermore the proposed development is likely to result in restrictions being placed on the use of the Parish Room which would significantly reduce its value as a facility enjoyed by the community, particularly so when the lack of facilities has been identified as an issue facing villages within the parish, contrary to Policy DM25 of the SADMP and the overarching aims of the NPPF to support strong, vibrant and healthy communities.