

**Planning Committee 30<sup>th</sup> July 2024**  
**Report of the Head of Planning**



Hinckley & Bosworth  
Borough Council

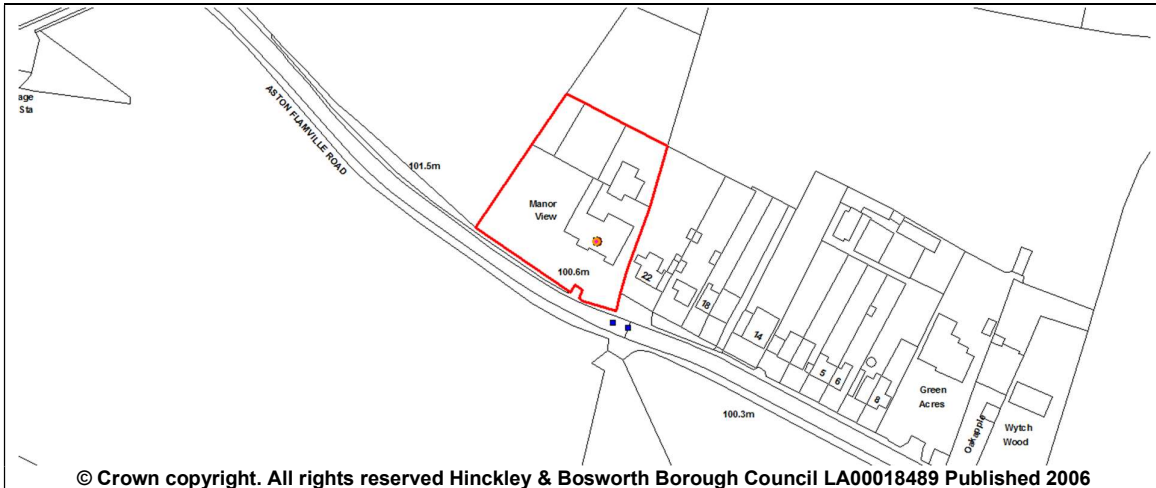
**Planning Ref: 24/00274/FUL**

**Applicant: Mrs Jelfs**

**Ward: Burbage St Catherines and Lash Hill**

**Site: Manor View, Aston Flamville Road, Burbage, Hinckley**

**Proposal: Extensions and alterations of existing ancillary building to form early years day nursery (Class E) with associated car parking**



## **1. Recommendations**

- 1.1. That the application be approved subject to:
- Confirmation of an acceptable highway situation from LCC Highways
  - Confirmation of acceptable impacts on residential amenity (noise) from HBBC's Environment Team
  - Conditions outlined at the end of this report
  - The Head of Planning be given powers to determine the final detail of the conditions.

## **2. Planning Application Description**

- 2.1. The application seeks permission for extensions and alterations to an existing residential outbuilding and to change its use to form an early years day nursery (Class E).

- 2.2. The Planning, Design and Access Statement submitted with the application states:

"The applicant is currently the owner of Green Acres Preschool and Nursery that opened in 2013 to care for children from 0 to 5 years where the existing nursery is located a short distance to the east of the proposed site. After many successful years of catering for the day care needs of parents in Burbage, Hinckley & surrounding areas, Green Acres has reached capacity and has a large waiting list. Clearly, there is now a need to expand the facilities by means of opening another nursery. With the Government expansion of free childcare, we are already seeing an increase in demand for places county and indeed countrywide."

- 2.3. The proposed extensions/alterations are substantial and include an increase in the ridge height of the building creating a first floor alongside a 9.6m deep, two storey front extension to the existing building. New windows, doors, a porch and canopy are proposed with the external walls proposed to be rendered. The proposal includes a clock tower and there is some resemblance in the proposed design to a traditional school-like appearance.
- 2.4. The nursery would provide up to 86 places for children under the age of 5 and would employ up to 17 staff both full and part time. Opening hours for the nursery are proposed to be 07:30 – 18:00 hours Monday to Friday, to match the applicant's current nearby nursery (Green Acres Preschool and Nursery).
- 2.5. The proposal seeks to utilise the existing site access from Aston Flamville Road. The Transport Statement submitted with the application outlines that 57 car parking spaces (including six disabled spaces) for staff and parents will be provided through the formalisation of existing car parking on site at present.
- 2.6. The application is accompanied by the following reports and documents:
  - Planning, Design and Access Statement
  - Proposed Plans
  - Transport Statement

### **3. Description of the Site and Surrounding Area**

- 3.1. The application site is located to the north of Aston Flamville Road and is the first in a linear row of predominantly houses which run east-west along this northern side of Aston Flamville Road. These houses are currently surrounded by open countryside. The site comprises an existing dwelling (Manor View) which is situated in extensive grounds with a large car parking area, paddock and the ancillary garage/storage building that is the subject of this planning application.
- 3.2. Alongside the residential use of the dwelling 'Burbage Dance Studio', a dance school, operates from the dwelling. The application submission states the dance school is only open in the evenings between 16:30 and 20:00 hours and caters for two couples at any one time.
- 3.3. Furthermore as outlined above, the applicant operates the existing Green Acres Pre-School and Nursery which lies approximately 150m away to the east, in this same linear development of housing.
- 3.4. The proposal must be viewed within the context of the recent approval of application 23/00673/OUT for the residential development of up to 343 dwellings (Class C3), including provision of public open space, associated infrastructure at 'land opposite and south of pumping station, Aston Flamville Road, Burbage'. This development will bring built development and associated open space to the western boundary of the application site, meaning that the site and adjacent housing will become an extension to the built form of Burbage.

### **4. Relevant planning history**

#### **04/00259/FUL**

- Extension and partial change of use to create dance studio
- Refused
- 22.04.2004

**04/00838/FUL**

- Extension to form dance studio including change of use of barn to garage
- Refused
- 12.08.2004

**04/01498/FUL**

- Extensions and alterations to dwelling change of use of ground floor to dance studio barn to domestic garage and garden area to car park
- Refused
- 23.03.2005

**05/00373/FUL**

- Extensions and alterations to dwelling change of use of ground floor to dance studio barn to domestic garage and garden area to car park and repositioning of conservatory
- Approved
- 31.05.2005

**05/00773/FUL**

- Erection of lounge extension
- Approved
- 07.09.2005

**08/00005/FUL**

- Ground floor extension
- Approved
- 26.02.2008

**16/01137/CLUE**

- Certificate of lawful development for occupation of dwelling to be unrestricted, in breach of condition 2 (agricultural occupancy) of planning permission reference 70/3353/05.
- Certificate Granted
- 08.02.2017

**5. Publicity**

- 5.1. The application has been publicised by sending out letters to the occupiers of neighbouring properties and a site notice was displayed. An issue did arise with initial neighbour notification letters being returned, an additional letter was subsequently sent to the adjacent neighbour.
- 5.2. Objections have been received from 10 households, raising the following concerns and points:
  - Increase bulk and massing of the nursery would impact neighbour in terms of an overbearing impact
  - Concerns about a loss of privacy
  - The intensive use of the site is unsuitable for a quiet domestic setting and noise would be harmful to surrounding residents amenity
  - No noise impact assessment has been submitted
  - No drainage details have been provided, the site is adjacent to a culvert and the existing sewage drains under neighbouring gardens
  - The Transport Statement is poor

- The access is close to a “blind bend” on a 60mph road
- The proposal will cause additional traffic, with concerns raised regarding highway safety, environment impacts and air quality
- To achieve visibility splays hedgerows will need to be removed and some are not within the applicants ownership so this cannot be relied on
- The parking arrangement is very tight and it’s unclear how this relates with the wider use of the site
- The pavement between the proposed and existing nursery is narrow and not suitable for pushchairs
- The site is in an unsustainable location with users likely to be reliant on cars
- There is a lack of information on waste storage
- There is an electricity pylon in the garden of the nursery which doesn’t appear to have been considered
- Concerns on the cumulative impact of two nurseries in terms of traffic and noise issues

## **6. Consultation**

### **6.1. Blaby District Council**

- “There is an existing children’s day nursery (Green acres) for a maximum of 50 children at any one time located approximately 130-150 metres away from this application. As such, it is advised that the cumulative impacts are taken into account with the proposal, along with the relevant HBBC planning policies and national planning policies”.

### **6.2 LCC Highway Authority (LHA)**

- “The Local Highway Authority does not consider that the application as submitted fully assesses the highway impact of the proposed development and further information is required as set out in this response. Without this information the Local Highway Authority is unable to provide final highway advice on this application.

#### Background

The Local Highway Authority (LHA) has been re-consulted by Hinckley & Bosworth Borough Council as the Local Planning Authority (LPA) on a full application for extensions and alterations of an existing ancillary building to form an early years day nursery (Class E) with associated car parking. The proposals are located at Manor View, Aston Flamville Road, Burbage, Hinckley. The LHA previously advised additional information was required in respect of the proposals within its observations submitted to the LPA on 16th April 2024. Notably, the following points:

- Clarification on the location of the Applicants speed survey;
- Further consideration of the site access arrangements, including to visibility splays and existing vegetation/ parking as well as the location of the access;
- Provision of an RSA1 for any new access proposals as well as a designer’s response to any problems raised;
- Consideration of the proximity of the roundabout proposed as part of application 23/00673/OUT; and
- Further information in respect of the proposed parking arrangements as it appears that the proposals to formalise the ‘existing’ parking arrangements do not reflect what is actually present on-site and may actually result in additional parking spaces being constructed.

The Applicant has submitted an e-mail to the LPA dated 18th April 2024 with the view to resolving the above points, along with Savoy Consulting drawing number DWG-03 which details the visibility splays and parking arrangements.

#### Site Access

The LHA previously requested clarification as to the location of the speed survey which was undertaken by the Applicant to inform the visibility splays. The Applicant has confirmed this was undertaken in the immediate vicinity of the site access. The LHA therefore accept the Applicants speed survey.

The LHA requested clarity as to what the 2.4 x 109m visibility splay in each direction was provided. This has been removed from Savoy Consulting drawing number DWG-03 by the Applicant. It was previously highlighted that the visibility splay to the southeast of the access crosses over existing hedgerow, trees, fencing and gates associated with land within the Applicants red line boundary. The LHA advise it would require nothing within the splays higher than 0.6 metres above the level of the adjacent footway/verge within the visibility splay. On this basis, the LHA advised the Applicant to remove the existing hedgerow/ trees/ fencing and gates which fall within the visibility splay. The Applicant has responded stating they would be agreeable to nothing within the visibility splays over 0.6m height and that this could be conditioned. The parking spaces which were previously shown to fall within this splay have also been removed. On the basis the Applicant agrees to the visibility splay requirements, the LHA advise it is likely the hedgerow fronting the site, as well as the fence/ gates to an existing access are likely to require removal.

The LHA previously advised to the northwest, the visibility splay appeared to cross third party land i.e. the neighbouring field, and was obstructed by the existing hedgerow, which also restricted the available visibility on the site visit. The Applicant's revised drawing, which shows the visibility splays off-set 1.0m into the carriageway, still appear to show the visibility splay (blue line) falling within third party land and being obstructed by the neighbouring hedgerow. In addition, the LHA previously advised is was aware of application reference 23/00673/OUT for up to 343 dwellings at land opposite and south of pumping station, Aston Flamville Road, Burbage. As part of that application, a roundabout is proposed immediately to the northwest of the site access. That application was granted planning permission on 8th April 2024. The LHA suggested that given the proposals would intensify the use of the existing access and due to concerns with visibility splays in the current location and the proximity of the proposed roundabout, the Applicant should seek to relocate the site access further to the southeast of the site. The Applicant has not addressed the LHA's concerns in respect of visibility splays to the northwest, or the proximity of the proposed roundabout from the access. The LHA cannot currently see any reason why the site access could not be relocated. As advised previously, the LHA would require a Stage 1 Road Safety Audit for any new or amended access arrangements.

#### Internal Layout

The LHA previously advised that 57 car parking spaces were proposed within the site and that this was formalising what was already on-site at present. The LHA advised no detailed breakdown as to the level of staff on site at any one time had been provided, however it was considered the proposed level of parking exceeded the requirements set out within the Highway Requirements for Development Part 4' document within the Leicestershire Highway Design Guide and would be acceptable.

The LHA also requested clarification as to the current level of usage of the parking area throughout the day. It was advised there appeared to be a dance

studio which shares the same access and presumably the same parking area would be shared. The LHA sought clarification as to whether the opening times differ for each use for example and, if not, the maximum number of attendees at the dance studio. The Applicant has advised that the dance studio is only open in the evenings between 16:30 and 20:00 hours and caters for a maximum of two couples at any one time.

As advised further above as part of the Site Access comments, the LHA previously advised six car parking spaces appear to fall within the south-eastern visibility splay at the site access, which was highlighted to be of concern for the LHA. It was also advised the submitted drawing also detailed the spaces in the same location as existing trees. In addition, it was highlighted a number of car parking spaces are shown along and close up to the north-western boundary of the site, where trees are also detailed. The LHA requested clarity in respect of the parking provision, as based on a site visit, the drawing did not appear to accurately reflect the existing situation and it was considered unclear whether additional parking is in fact being constructed/ proposed.

The Applicant has now submitted Savoy Consulting drawing number DWG-03, which has removed the six parking spaces which were previously shown within the visibility splay at the site access. The LHA advises that while the parking arrangements are considered to be acceptable and could accommodate parking for both the dance studio and nursery, the revised drawing still shows several car parking spaces along and close up to the north-western boundary of the site, where trees are also detailed. The LHA believe the drawing does not accurately reflect the existing situation and the Applicant has not addressed this comment. Therefore, the LHA maintains its belief that these spaces are currently not present on-site and should the drawing be conditioned by the LPA, the spaces would need to be constructed. The LHA advise the LPA that the proposals as shown could result in the removal of a number of trees within the site along its north-western boundary.

#### Closing

The LHA requires the Applicant to submit additional information to the LPA in respect of the following points, for further consideration by the LHA:

- Further consideration of the site access in terms of visibility splays and the location
- Provision of an RSA1 for any new access proposals as well as a designer's response to any problems raised; and
- Consideration of the proximity of the roundabout proposed as part of application 23/00673/OUT.

**Officer Note:** HBBC are awaiting additional comments from LCC Highways in response to additional correspondence from the applicant's agent. Additional comments will be reported on the Supplementary List.

### 6.3 **HBBC Environmental Health –**

#### *Initial comments:*

“Please can the applicant describe how noise, particularly from outdoor use will be controlled?

Is any external plant proposed, if so please provide details”

Subsequent comments following submission of additional information:

“Would it be possible in the interest of good acoustic design to locate both outdoor units on the northern façade- that will direct noise away from the neighbouring garden. If that would be possible I have no objection and no further comments.”

Officer Note: Officers have request additional comments/detail with regards to the impact of noise from children on surrounding residents and the potential cumulative impact from the nearby nursery. Further comments will be reported on the Supplementary List.

6.4 **HBBC Waste Management –**  
“No comments or objections”

6.5 **Burbage Parish Council-**  
“Burbage Parish Council has no objections to this application”.

## 7. **Policy**

7.1. Core Strategy (2009)

- Policy 4: Development in Burbage

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 DM7: Preventing Pollution and Flooding
- Policy DM10: Development and Design
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards

7.3. Burbage Neighbourhood Plan (2021)

7.4. National Planning Policies and Guidance

- National Planning Policy Framework (NPPF) (2023)
- Planning Practice Guidance (PPG)
- National Design Guide (2019)

7.5. Other relevant guidance

- Good Design Guide (2020)
- Leicestershire Highway Design Guide

## 8. **Appraisal**

8.1. The key issues in respect of this application are:

- Principle of Development
- Impact upon Highway Safety
- Design and impact upon the character of the area and countryside
- Impact upon Residential Amenity
- Flood Risk and Drainage

### Principle of Development

8.2. 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. Paragraph 2 of the National Planning Policy Framework (NPPF) repeats this and states 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) and Burbage Neighbourhood Plan (2021).
- 8.4. The Emerging Local Plan for 2020-39 has previously been out for consultation at Regulation 19 draft stage (February to March 2022). The latest Local Development Scheme (LDS) was published on 8<sup>th</sup> February 2024. The updated LDS extends the Local Plan period to 2041, revises the timetable for production of the Local Plan and establishes key milestones for public consultations. A second Regulation 18 Consultation will occur in Summer 2024, owing to the need for consultation the emerging Local Plan would be attributed very limited weight.
- 8.2. The site is located in the countryside outside of the settlement boundary of Burbage. Policy DM4 is therefore applicable, the policy states “To protect its intrinsic value, beauty, open character and landscape character, the countryside will first and foremost be safeguarded from unsustainable development.” The policy lists types of development which will be considered sustainable, of relevance to this proposal is criteria b) which supports a proposal involving the change of use, re-use or extension of existing buildings which lead to then enhancement of the immediate setting. The proposal complies in principle with this being an application to change the use of and extend an existing building, the proposal would however not enhance the immediate setting but have a neutral impact. There is therefore some conflict to Policy DM4 in that regard.
- 8.3. Concerns have been raised with regards to the sustainability of the site and likelihood that future users would need to drive to the nursery. At present this is likely as the site is not located in a location which is readily accessible by public transport or walking. However, this is the same for the existing nursery 150m from the site. Furthermore, as highlighted above the proposal must be viewed within the context of the recent approval of application 23/00673/OUT for the residential development of up to 343 dwellings (Class C3) immediately adjacent to the application site. Whilst reserved matters detail have yet to be determined, this consented development will introduce housing and associated infrastructure (including footpath improvements) immediately adjacent to the application site. Thus, the nursery will be sited in an accessible location and in close proximity to future residents. In light of this adjacent consented development, it is considered that the site is therefore not wholly unsustainable.

#### Impact upon Highway Safety

- 8.5. 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)). Policy DM18 states that all proposals for new development will be required to provide an appropriate level of parking provision justified by an assessment of the site location, other modes of transport available (e.g. public transport and cycle provision) and appropriate design. Any development will be expected to provide disabled parking provision.

- 8.6. Policy DM10(g) states that where parking is to be provided, charging points for electric or low emission vehicles should be included, where feasible.
- 8.7. Paragraph 114 of the NPPF states that it should be ensured that safe and suitable access to the site can be achieved for all users Paragraph 115 of the NPPF 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 116(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.
- 8.8. Concerns regarding highways have been raised in objection comments from residents. In particular concerns have been raised regarding the level of onsite parking, general traffic levels and safety concerns owing to the speed of traffic on Aston Flamville Road.
- 8.9. The proposal seeks to utilise the existing access point from Aston Flamville Road and formalise the existing parking arrangements in place creating 57 parking spaces including 6 disabled spaces
- 8.10. As can be seen at paragraph 6.2 of this report LCC Highways have raised a number of concerns and have requested additional information. The applicant's agent has provided a rebuttal/additional information and the latest position from LCC highways will be reported to members within the Supplementary Information.

#### Design and Layout

- 8.11. Policy DM4(b) requires applications for the change of use, re-use or extension of existing buildings to lead to an enhancement of the immediate setting. The policy goes on to state that development in the countryside should not have a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside; should not undermine the physical and perceived separation and open character between settlements; and should not create or exacerbate ribbon development.
- 8.12. 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.
- 8.13. 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.

- 8.14. The proposed extensions are substantial and will significantly alter the appearance of the existing building. It is also likely that the building will be visible from Aston Flamville Road when approaching the site from the west. The extensions and increase in scale of the building will introduce new built form from this view and to the rear of the existing dwelling contrary to the building line of the immediate neighbouring dwellings. However, the site has a number of outbuildings and extensions to the rear which are visible from Aston Flamville Road and the building would be viewed in the context of the surrounding houses, mitigating this impact slightly. Further mitigation is provided through the slight screening by trees along the western boundary of the site, but a landscape condition is recommended requiring further details of landscaping to be submitted and this should focus on additional tree planting along this boundary.
- 8.15. Of particular importance again, is the consented housing development which will bring built development close to the western boundary of the application site. Once completed this development will alter the building line of Aston Flamville Road with housing proposed to be set back from the existing row of housing and application site and the development will also largely screen the nursery except when immediately adjacent to the site. Even when visible, it will be viewed in context of the housing development.
- 8.16. No details of waste storage have been provided, a condition is recommended requiring the submission of this prior to the first use of the development to ensure this is sited in a suitable location and not to the detriment of visual or residential amenity.
- 8.17. Overall, in light of the approved surrounding development, the proposal is judged to complement the surrounding character with regards to layout, density, mass, design, materials and architectural features and complies with Policy DM10 of the SADMP. Whilst the scheme would not enhance the immediate setting, it would not adversely impact the character of the countryside and the impact on the character of the countryside is therefore accepted.

#### Impact upon Residential Amenity

- 8.18. 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.
- 8.19. Paragraph 135 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.
- 8.20. Paragraph 191 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.
- 8.21. Overdominance and privacy concerns have been raised by residents in the objection comments received alongside concerns surrounding noise and disturbance.

- 8.22. The building is proposed to be increased in height from approximately 3.8m to 7.1m, with the eaves height increasing from 2.7m to 5m. At its closest point the building is sited approximately 5m from the shared boundary with the only immediate neighbouring residential property- 'Ty Isaf'. The separation distance between the proposed nursery building and dwelling itself is approximately 21m. The separation distance is judged to be sufficient to minimise adverse overdominance to the dwelling itself. Being located to the north west of the dwelling, the proposal would also not result in an adverse loss of light to the dwelling. An additional sense of enclosure and some limited loss of evening light to the garden of Ty Isaf may occur as a result of the additional height of the building, however, this is judged to be limited owing to the building being set back from the garden boundary and the presence of trees along the shared boundary at present. Furthermore Ty Isaf benefits from a large garden to the rear, therefore, the impact of the building itself is unlikely to effect the enjoyment of the garden as a whole.
- 8.23. The rear elevation of the host dwelling 'Manor View' faces the proposed nursery building, the building would be sited at its closest point 10m from the ground floor lounge window and first floor habitable windows. Other windows at ground floor are for the dance studio (non habitable rooms). The proposal by virtue of its proximity to the dwelling will result in an additional sense of enclosure to this property. This is partly mitigated by the low eaves height with the roof pitching away from the dwelling and limited number of habitable room windows at ground floor. There would likely be some additional impact, however, officers are satisfied this would not be significantly adverse. The building is to the north of the dwelling therefore would not result in a loss of light to the dwelling.
- 8.24. A condition is recommended requiring all first floor windows in the southern elevation to be obscure glazed, this will prevent adverse overlooking to Manor View and Ty Isaf. The ground floor windows will not introduce additional adverse overlooking owing to the boundary treatments between the properties.
- 8.25. With regards to noise and disturbance, the proposed use will generate additional noise through comings and goings of staff/parents and children as well as the day to day operation of the site. HBBC's Environment Team were consulted on the application. Additional information and amendments have been made with regard to plant equipment which is now judged to be acceptable. Further clarification and detail has been requested from the Environment Team with regards to noise and disturbance from the operation of the nursery and potential cumulative impacts which will be reported on the Supplementary List. It is likely that the proposal would cause some additional noise, however, nurseries are not uncommon in residential areas and one exists in the immediate area.
- 8.26. It is considered that owing to the siting, layout and design of the development the built form of the proposal, subject to conditions, would 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. Further information will be reported in the Supplementary List with regards to noise and disturbance impacts.

#### Flood Risk and Drainage

- 8.27. 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.

- 8.28. Paragraph 173 of the NPPF states that when determining planning applications local planning authorities should ensure that flood risk is not increased elsewhere. Paragraph 175 states that major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate.
- 8.29. The site is located within Flood Zone 1 at low risk from fluvial flooding and at low risk of surface water flooding. No surface or foul water drainage details have been submitted. HBBC's drainage officer has raised no objections, however, in light of the neighbouring objection comments and attention brought to the presence of the culvert and foul drainage arrangements a condition is recommended requiring full details of surface water and foul water drainage to be submitted and approved prior to development.
- 8.30. Subject to the submission of a detailed surface and foul water drainage strategy the proposal is therefore judged to comply with Policy DM7 of the SADMP and the NPPF.

#### Conclusions and Planning Balance

- 8.31. 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.
- 8.4 The site is located in the countryside outside of the settlement boundary of Burbage. Policy DM4 is therefore applicable, of relevance to this proposed is criteria b) which supports a proposal involving the change of use, re-use or extension of existing buildings which lead to then enhancement of the immediate setting. The proposal complies in principle with this being an application to change the use of and extend an existing building. The proposal is located immediately adjacent to a consented site for up to 343 dwellings, therefore is not judged to be an unsustainable location.
- 8.5 The proposal would not result in an enhancement to the immediate setting, but is acceptable in design terms, subject to conditions, especially owing to the adjacent consented residential development.
- 8.6 Further detail will be reported on the Supplementary List with regards to the highway impact and the proposal is only recommended for approval subject to the previous concerns being overcome. Similarly, further engagement has been sought from the HBBC Environment Team with regards to noise and disturbance.
- 8.7 Otherwise, subject to conditions, the proposal is judged to be acceptable with regards to residential amenity (from the built form) and flooding and drainage.
- 8.8 Limited conflict remains with policy DM4 as a result of the proposal not demonstrating an enhancement to the countryside, this conflict is tempered owing to the adjacent approved residential development. But in any event, would be outweighed through the social and economic benefit of providing a nursery in this location.

#### **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 That the application be **approved** subject to the conditions set out below and subject to LCC highways and the EHO confirming they are satisfied with the impact of the development on the highway and latterly noise and disturbance impacts.

## 11. Conditions:

Officer Note: A draft list of conditions is included below, this will be updated and completed on the Supplementary List and will include Highway/Noise related conditions (if applicable) on receipt of the final comments from LCC highways and the EHO.

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

**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. The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details, as follows:

- Plans numbers to be inserted.

**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. No development shall take place until a scheme of hard and soft landscaping works, including boundary treatments, for the site and including an implementation scheme, has been submitted in writing to and approved in writing by the local planning authority. The scheme shall be carried out in full accordance with the approved landscaping scheme. The soft landscaping scheme shall be maintained for a period of five years from the date of planting.

During this period any trees or shrubs which die or are damaged, removed, or seriously diseased shall be replaced by trees or shrubs of a similar size and species to those originally planted at which time shall be specified in writing by the Local Planning Authority.

**Reason:** To ensure that the development has a satisfactory external appearance in accordance with Policies DM4 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

4. No development shall commence above foundation level until representative samples of the types and colours of materials to be used on the external elevations of the proposed nursery 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 external appearance to accord with Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document 2016.

5. Prior to the first use of the nursery hereby approved a scheme that makes provision for waste and recycling storage and collection across the site shall be submitted in writing to and approved in writing by the Local Planning Authority. The details should address accessibility to storage facilities and adequate collection point space at the adopted highway boundary. The approved scheme shall be implemented in accordance with the agreed details prior to the first use of the nursery and thereafter retained in perpetuity.

**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) and the National Planning Policy Framework (2023).

6. No development approved by this planning permission shall take place until such time as a surface water drainage and foul sewage disposal scheme has been submitted in writing 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 prevent flooding by ensuring the satisfactory storage and disposal of surface and foul water from the site and to reduce the possibility of surface water from the site being deposited in the highway causing dangers to road users, in accordance with Policy DM7 and Policy DM17 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and the National Planning Policy Framework (2023).

7. The premises shall be used for an early years day nursery only and for no other purpose, including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.

**Reason:** To ensure the proposed development is compatible with existing development in the locality in accordance with Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

8. The hours of operation for the nursery shall not take place other than between the hours: 07:30 – 18:00 hours Monday to Friday. The nursery shall provide no more than 86 places for children under the age of 5.

**Reason:** To protect the amenities of the occupiers of neighbouring residential properties from unsatisfactory noise and disturbance in accordance with Policies DM7 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

9. The first floor windows in the south elevation shall be fitted with obscure glazing to a minimum of level 3 of the Pilkington scale and non-openable. Once so provided the window(s) shall be permanently maintained as such at all times thereafter.

**Reason:** To safeguard the privacy and amenity of neighbouring dwellings from potential overlooking in accordance with Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).