

Planning Committee 11 October 2016  
Report of the Chief Planning and Development Officer



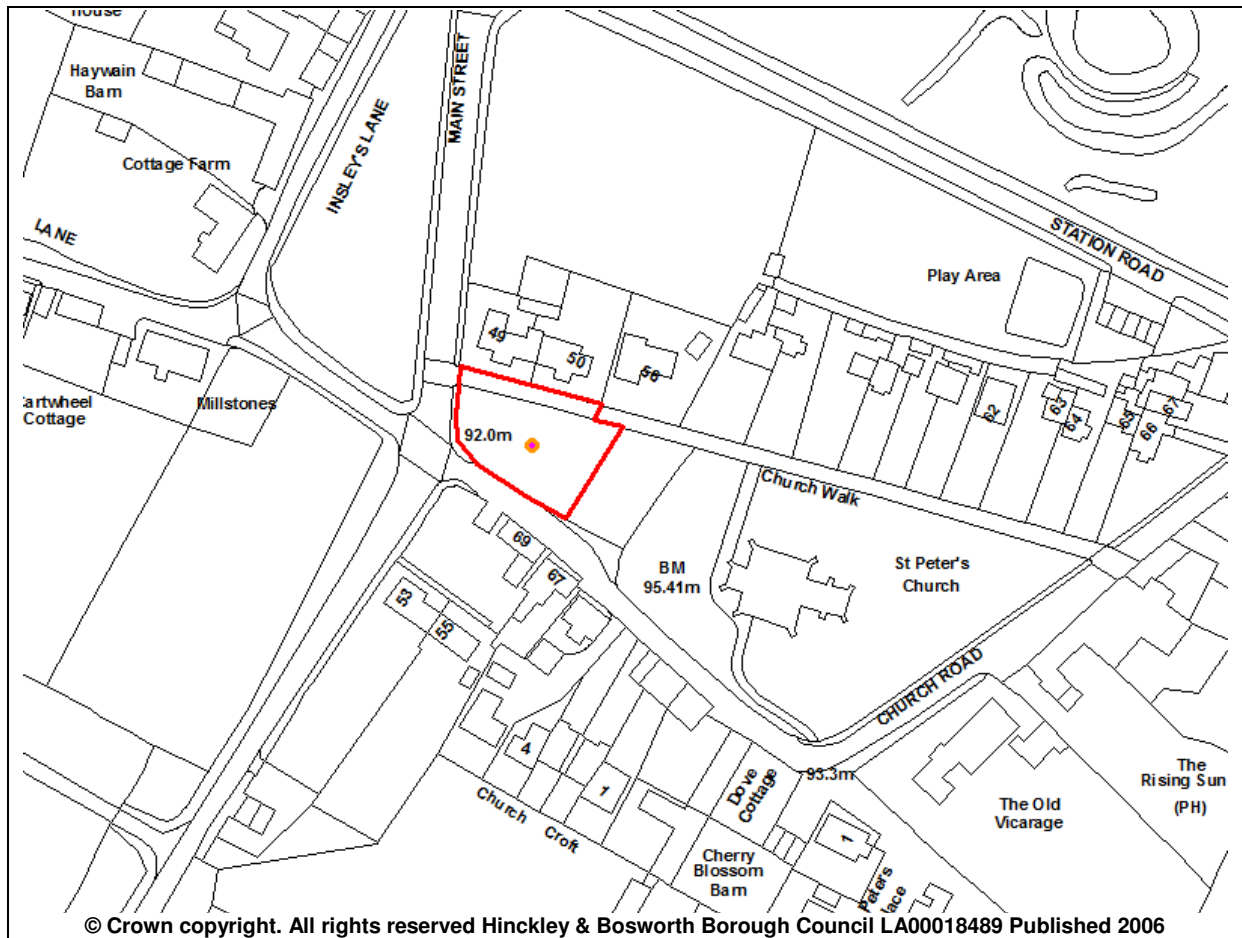
Hinckley & Bosworth  
Borough Council

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Planning Ref: 16/00654/COU  
Applicant: Shackerstone Parish Council  
Ward: Cadeby Carlton M Bosworth & Shackerstone

Site: Land North West Of St Peters C Of E Parish  
Church Church Road Shackerstone

Proposal: Change of use from open land to a burial ground



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**1. Recommendations**

- 1.1. Grant planning permission subject to:
- Planning conditions outlined at the end of this report.

**2. Planning Application Description**

- 2.1. This application seeks planning permission for a change of use from open land to a burial ground. This is to allow an extension to the adjacent burial ground.

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

- 3.1. The application site is located within the settlement boundary and conservation area of Shackerstone. Shackerstone is a rural hamlet with primarily low density, residential development and open spaces surrounding the application site. To the

north of the site are dwellings fronting onto Church Walk which adjoins the northern boundary of the site and is a private road adjoining Main Street and Church Road with a public Right of Way over it. To the east, the site adjoins an existing burial ground operated by the Parish Council which adjoins St Peter's Church and cemetery. To the south, dwellings front onto the southern side of Church Road which separates the site. To the west is the village green, separated by Main Street.

- 3.2. The application site forms a rectangular parcel of land. The land is undeveloped with no formal use although is being maintained with a manicured garden appearance. The northern boundary of the site, adjoining Church Walk is open. The southern and western boundaries comprise a low red brick wall with hedgerow above and the eastern boundary comprises a low red brick wall. There are several trees in and surrounding the site with two prominent apple trees in the centre of the site.

#### **4. Relevant Planning History**

None relevant.

#### **5. Publicity**

- 5.1. The application has been publicised by sending out letters to local residents. A site notice was also posted within the vicinity of the site and a notice was displayed in the local press.

- 5.2. Five representations of objection have been received in response to the above publicity. The representations are summarised below:

- 1) The Parish Council has failed to adequately maintain the existing cemetery
- 2) A lack of pre-application consultation was undertaken by the Parish Council
- 3) The site is marked as an area of key space in the Shackerstone Conservation Area appraisal
- 4) The space provides attractive views towards the church
- 5) The change of use will destroy the character of the village and conservation area
- 6) There are infrequent local burials and the spaces would be used by people due to a shortage elsewhere
- 7) The land has been restored and maintained from a derelict site and is now attractive
- 8) Disturbance of users of the cemetery on the dwellings fronting Church Walk
- 9) There is no right for vehicles to use Church Walk
- 10) New burial sites have traditionally been located away from populated areas
- 11) The Hydrogeological Risk Assessment does not include environmental considerations
- 12) Car parking issues would be exacerbated
- 13) Vehicular access will not be granted for use along Church Walk
- 14) Groundwater pollution.

#### **6. Consultation**

- 6.1. No objection, some subject to conditions, has been received from the following:

Ashby Canal Association  
Environmental Health (Pollution)  
Environmental Health (Drainage)  
Leicestershire County Council (Highways)

- 6.2. Conservation Officer – limited harm to the character and appearance of the conservation area that would be considered 'less than substantial' and should be weighed against the wider benefits.

- 6.3. No comments have been received from the Environment Agency.
- 6.4. Hinckley and Bosworth CPRE – object to the application for the following reasons:
- 1) Impact on residents from parking, funerals and visitors
  - 2) Loss of a well-maintained part of the conservation area which would destroy the character
  - 3) Allowing a new cemetery in the middle of a small community may set a precedent.

## **7. Policy**

### 7.1. Core Strategy (2009)

- Policy 13: Rural Hamlets

### 7.2. Site Allocations and Development Management Policies DPD (2016)

- DM1: Presumption in Favour of Sustainable Development
- DM7: Preventing Pollution and Flooding
- DM10: Development and Design
- DM11: Protecting and Enhancing the Historic Environment
- DM12: Heritage Assets

### 7.3. National Planning Policies and Guidance

- National Planning Policy Framework (NPPF) (2012)
- Planning Practice Guidance (PPG)
- Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990

### 7.4. Other relevant guidance

- Shackerstone Conservation Area Appraisal and Management Plan (2009)

## **8. Appraisal**

### 8.1. Key Issues

- Assessment against strategic planning policies
- Impact upon the character of the area and heritage assets
- Impact upon neighbouring residential amenity
- Impact upon the highway
- Impact upon pollution
- Other matters

#### Assessment against strategic planning policies

8.2. Policy 13 of the Core Strategy relates to development in Rural Hamlets. However, this policy is silent on the matter of the provision of burial grounds. There are no policies within the Development Plan that seek to guide the location for the provision of additional burial grounds.

8.3. Policy DM1 of the SADMP states that where there are no policies relevant to the application then the Borough Council will grant planning permission unless material considerations indicate otherwise, taking into account whether:

- Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or
  - Specific policies in that Framework indicate that development should be restricted.
- 8.4. Paragraph 70 of the NPPF seeks to ensure that to deliver social, recreational and cultural facilities and services the community needs, decision should ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.
- 8.5. The application site is proposed to be used to provide additional burial grounds. The land immediately to the east of the application site is designated as open space as it comprises the existing burial ground run by the Parish Council and the cemetery associated with St Peter's church. The burial ground would extend the provision of burial grounds in the hamlet. The burial grounds' close proximity to the population to which it would serve would make it easy for visitors and give people the choice to be buried close to where they may have a local connection or near to other family members. The existing cemetery serving the church and burial ground operated by the Parish Council presents an integrated approach between the surrounding population and the community facility. The proposed change of use of the application site presents a suitable solution for the future provision of burial grounds.
- 8.6. The proposed change of use is considered to be acceptable in accordance with Policy DM1 of the SADMP and paragraph 70 of the NPPF, unless any material planning considerations, assessed below, are considered to demonstrably outweigh the benefits.

Impact upon the character of the area and heritage assets

- 8.7. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on the local planning authority when determining applications for development which affects a listed building or its setting, to have special regard to the desirability of preserving the listed building's setting and any features of special architectural and historic interest which it possesses. Section 72 of the same act provides that, when determining applications for development which affects any buildings or other land in a conservation area, a local planning authority shall pay special attention to the desirability of preserving or enhancing the character and appearance of that area.
- 8.8. Policies DM11 and DM12 of the SADMP seek to protect and enhance the historic environment and heritage assets. The proposed development is within the conservation area and is located in close proximity to the Grade II\* listed St Peter's church. Policy DM10 of the SADMP seeks to ensure that new development should complement or enhance the character of the surrounding area.
- 8.9. The application site is a well-maintained area of green space with an open and verdant character. The site is identified as a key green space in the Shackerstone Conservation Area appraisal. The appraisal recognises the contribution the areas of green space make to the rural character.
- 8.10. The land is proposed as an extension to the existing adjacent cemetery to the east. The site is currently bounded by a hedge and 3 foot high brick wall to the southern and western boundaries and a similar wall along the eastern boundary resulting in open views across the site to St Peter's church from the entrance to Church Walk adjoining Main Street. The land is laid to lawn and includes a number of fine specimen trees.

- 8.11. A new 3 foot brick wall, to match the existing wall along the east boundary, is proposed along the northern boundary adjoining Church Walk. The low level of the proposed wall would maintain the visibility and openness of the land and ensure views across the site of St Peter's church tower remain unaltered. This would have no impact on the setting of the listed church building and thus cause no harm to its significance. The impact of the construction of the wall to the low height would have a negligible impact on the open character of the site.
- 8.12. The supporting statement notes that the existing trees would be retained and the land would remain of lawn until the burials take place. Retention of the trees is proposed to be secured through the imposition of a planning condition to prohibit burials within the root protection area.
- 8.13. The Parish Council has a burial ground policy which seeks to ensure the visual appearance and character of the burial grounds are not adversely impacted. The policy ensures the following:
- Plots are delineated with a minimum size of 4 foot by 8 foot;
  - Headstones are limited to 3 foot in height and 2 foot 6 inches wide with no kerb sets for ease of mowing and maintenance;
  - If the family wishes to erect a memorial or headstone, the clerk must first be notified and approve the design and wording;
  - There shall be no planting on the plots and the graves are to be levelled to the existing contour of the grass surrounding the grave and be re-turfed;
- 8.14. The visual impact of the change from lawn to burial plots in accordance with the burial ground rules set by the Parish Council, and as demonstrated by the existing cemetery extension adjacent, would be negligible and would retain the verdant and open character of the site. The Parish Council rules for the size of headstones shall also be imposed as a planning condition as these could be subject to variation. Additionally, permitted development rights for small ancillary buildings shall be removed in order to retain the undeveloped nature of the land.
- 8.15. There are 11 spaces remaining in the existing burial ground which would be used prior to using the proposed burial ground. Permission is being sought at this stage due to the opportunity to secure the land in conjunction with the liquidating of the Gopsall Estate by the Crown Estates. Burial rates have been and are expected to remain at an approximate rate of one burial per year. The use of the site for burials and the introduction of cemetery paraphernalia would be an elongated process aiding a sympathetic transition between the existing and proposed use.
- 8.16. The additional burial ground provision would result in additional funerals and visitors. There would be additional on-street car parking and vehicular traffic movements associated with funerals and visitors. However, there is expected to be approximately one burial per year and the disturbance associated with a funeral, or future visits to burial plots, is not considered to be significant or frequent enough to cause harm to the tranquil and peaceful character of the area.
- 8.17. Although the low brick wall and change of use to a burial ground would retain the open and verdant character of the site and views across the site, there would be enclosure of the site and introduction of paraphernalia which would cause some harm to the character of the conservation area. However, this harm is considered to be less than substantial and in accordance with Policy DM11 of the SADMP and paragraph 134 of the NPPF this harm should be weighted against the public benefits arising. Recent case law has established that the desirability of preserving the heritage asset when carrying out the balancing exercise, and that a finding of harm to a conservation area gives rise to a strong presumption against planning permission being granted unless considerable public benefits outweigh that harm.

- 8.18. The harm to the character and appearance of the conservation area would be negligible, as demonstrated by the character and appearance of the adjacent cemetery extension. The change of use would provide considerable public benefit through the provision of additional burial grounds within the hamlet. The burial ground's close proximity to the population to which it would serve would make it easy for visitors and give people the choice to be buried close to where they may have a local connection or near to other family members. The site presents a suitable solution for the future provision of burial grounds. It is considered that the benefit of securing the land for the use of the community is considerable and outweighs the harm caused by the introduction of the low brick wall and cemetery paraphernalia.
- 8.19. The proposal is also not considered to impact on the setting of the adjacent St Peters church. Therefore, it is considered that the proposal is in accordance with Policies DM10, DM11 and DM12. In making the above assessment, special attention has been had to the provisions of Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Impact upon neighbouring residential amenity

- 8.20. Policy DM10 of the SADMP seeks to ensure that development proposals do not harm the amenity of neighbouring residential properties.
- 8.21. The change of use of the open land would not result in physical development and therefore would not impact on the occupiers of neighbouring properties with regards to overbearing, overshadowing or overlooking. The change of use would result in an increase in the number of visitors to the site over time as the plots are used. Due to the nature of the reason for visiting a burial, it is not considered that visitors to the grounds would cause a level of disturbance that would have an adverse impact on the occupiers of surrounding dwellings. Funerals on the grounds would not cause undue noise or disturbance above the level associated with funerals on the existing, adjacent burial ground.
- 8.22. It is considered that the change of use would not have an adverse impact on neighbouring amenity in accordance with Policy DM10 of the SADMP.

Impact upon Highway Safety

- 8.23. Policy DM17 of the SADMP seeks to ensure that development proposals ensure convenient and safe access for walking to facilities and demonstrate that there is not a significant adverse impact upon highway safety.
- 8.24. The proposal would increase the capacity of the burial ground in addition to that provided by St Peter's Church and the adjacent burial ground operated by the Parish Council. The vehicular and pedestrian access would remain unchanged from the existing arrangements serving the Parish Council burial ground adjacent with an access gate to be provided between the two burial ground sites. A gate would be provided in the proposed brick wall on the northern boundary to allow pedestrian access from the Public Right of Way along Church Walk.
- 8.25. Burial rates and funerals are anticipated to continue at the existing rate of approximately one burial per year. These events are likely to generate additional vehicular traffic and car parking within the vicinity of the site. There is on-street car parking available in the vicinity of the site that could be used by those attending the events. Due to the expected frequency of these events it is not considered that the additional vehicular movements and on-street car parking would have a significant adverse impact on highway safety.

- 8.26. The proposed change of use would not have an adverse impact on highway safety and would retain safe and convenient pedestrian access to the site in accordance with Policy DM17 of the SADMP.

Impact on pollution

- 8.27. Policy DM7 of the SDAMP seeks to ensure that development does not have adverse impacts from pollution.
- 8.28. The applicant has submitted a Hydrogeological Risk Assessment with the application. The assessment concludes that the sites present a low risk of impacting on groundwater quality due to their proximity to aquifers and the flood risk in the area and that the site offers a very good potential site for cemetery development. Environmental Health (Pollution) has been consulted and no objection has been raised. The Environment Agency was consulted and has made no formal comments.
- 8.29. It is considered that the change of use to the land as a burial ground would not have an adverse impact with regard to pollution and is in accordance with Policy DM7 of the SADMP.

Other matters

- 8.30. Concern has been raised over the Parish Council's lack of consultation with the community prior to the submission of an application. The NPPF encourages early engagement with the local community before submitting an application although this is not a statutory requirement. The Parish Council has commented that they carried out consultation with residents delivering a leaflet to each household providing information about the proposals, and inviting comments.
- 8.31. A representation was received commenting that although there is a Public Right of Way over Church Walk. The road is in private ownership and vehicular access would not be granted. The Parish Council has confirmed that the land acquisition from the Crown Estate would include the whole of the section of Church Walk alongside the cemetery extension and there are no issues relating to the right of access.

**9. Equality Implications**

- 9.1. Section 149 of the Equalities Act 2010 created the public sector equality duty. Section 149 states:-
- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 9.2. Officers have taken this into account and given due regard to this statutory duty in the consideration of this application. The Committee must also ensure the same when determining this planning application.
- 9.3. There are no known equality implications arising directly from this development.

## 10. Conclusion

- 10.1. The application site is located within the settlement boundary of Shackerstone. The change of use would secure future provision of burial plots for people in the area wishing to be buried where they have a local connection or near to family members. The change of use would cause a less than substantial harm to the character and appearance of the conservation area and would not have an impact on the setting of St Peter's church. The less than substantial harm to the conservation area is considered to be outweighed by the wider public benefit of the proposal. The use would not have unacceptable impacts on groundwater quality, neighbouring amenity or highway safety. Therefore, in accordance with Policy DM1 of the SADMP and the provisions of the National Planning Policy Framework, it is not considered that there are any adverse impacts of granting planning permission that would demonstrably outweigh the benefits. Additionally, the proposal is considered to be in accordance with Policies DM7, DM10, DM11 and DM12 of the SADMP. In the assessment of the impact on heritage assets, the local planning authority has paid special attention to Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

## 11. Recommendation

- 11.1. Grant planning permission subject to:

- Planning conditions outlined at the end of this report.

### 11.2. Conditions and Reasons

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 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, details and materials:

- 16-01 - Block Plan and Location Plan (received on 18 July 2016)
- Landscaping Plan (received on 2 September 2016)

**Reason:** To ensure a satisfactory impact of the development to accord with Policies DM1 and DM10 of the adopted Site Allocations and Development Management Policies DPD.

3. Before any development commences, representative samples of the bricks to be used on the wall along the northern boundary of the site and an elevation plan, shall be deposited with and approved in writing by the Local Planning Authority. The wall shall be constructed in accordance with those approved bricks.

**Reason:** To ensure that the development maintains a satisfactory appearance and in the interests of visual amenity to accord with Policies DM10, DM11 and DM12 of the Site Allocations and Development Management Policies DPD.

4. Before any development commences, details of the proposed gates in the northern and eastern boundary walls of the application site shall be submitted to and approved in writing by the Local Planning Authority. The gates shall be constructed in accordance with those approved details.



**Reason:** To ensure that the development maintains a satisfactory appearance and in the interests of visual amenity to accord with Policies DM10, DM11 and DM12 of the Site Allocations and Development Management Policies DPD.

5. Before any development commences, a tree report, prepared by a qualified arboriculturalist, shall be submitted to and approved by the Local Planning Authority. The tree report shall detail the root protection areas of the trees within and adjoining the application site. No burial plots shall be permitted within the root protection areas of the trees identified in the approved report.

**Reason:** To ensure that the development maintains a satisfactory appearance and in the interests of visual amenity to accord with Policies DM10, DM11 and DM12 of the Site Allocations and Development Management Policies DPD.

6. All burial plots and associated land surrounding, hereby permitted, shall be prepared and maintained in accordance with the details submitted by the applicant entitled 'Rules relating to the maintenance of Shackerstone Parish Council Cemeteries at Shackerstone and Congerstone'.

**Reason:** To ensure that the development maintains a satisfactory appearance and in the interests of visual amenity to accord with Policies DM10, DM11 and DM12 of the Site Allocations and Development Management Policies DPD.

7. Notwithstanding the provisions of Part 12 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order) 2015 (or any order revoking or re-enacting that order with or without modification) no small ancillary buildings shall be erected or constructed on the site without the grant of planning permission for such buildings by the Local Planning Authority.

**Reason:** To ensure that the development maintains a satisfactory appearance and in the interests of visual amenity to accord with Policies DM10, DM11 and DM12 of the Site Allocations and Development Management Policies DPD.

### 11.3. Notes to Applicant

1. The approved development may require Building Regulations Approval, for further information please contact the Building Control team via e-mail at [buildingcontrol@hinckley-bosworth.gov.uk](mailto:buildingcontrol@hinckley-bosworth.gov.uk) or call 01455 238141.