

## **Extras Report – 23<sup>rd</sup> November 2023**

**Item No.5a**

**Pages 7-39**

**Planning Application Number P/23/0170/2**

**Site Address: Lodge Farm, Sileby**

### **Updates**

#### **Update 1**

At paragraph 9.9.3 of the officer's report to this Plans Committee it was recorded that no consultation response had been received from Leicestershire County Council's minerals planning team. A response has been received on 15th November.

"The County Planning Authority has no objections to the proposal."

#### **Update 2**

The description of the proposal at page 6 of the agenda dated 15<sup>th</sup> November 2023 reads:

"Outline Planning Application for proposed bungalow dwelling (all matters reserved except Access)"

The description of the proposal at the top of the report on page 7 of the agenda reads:

"Outline Planning Application for proposed self-build custom bungalow dwelling (all matters reserved except Access)"

The description on page 7 is correct, and the description on page 6 should be updated. It was always the case that the applicant proposed to build a self-build custom designed bungalow. The original application form, and the supporting planning statement submitted with the application were explicit about this from the outset.

#### **Update 3**

On 20<sup>th</sup> November the agent emailed the case officer setting out a number of queries on some of the draft planning conditions and questioning whether there was an overlap between draft condition 10 and the recommended S106 agreement. The agent's queries are set out in the following table, in the agent's own words.

	Draft Condition
4	The width of the access seems excessive for a single dwelling. The HDG suggests a width of 4.25m for a private drive serving less than 5 dwellings.
8	This condition should refer to minimum heights as it would be impossible to keep them permanently at these heights.
10	This condition doubles up with the suggested 106. We do not agree that this is necessary at all but if it must be included, we would prefer it takes the form of a condition.

#### Update 4

The use of a Unilateral Undertaking to protect self-build sites for the purpose intended is quite novel in Charnwood. Whilst the recommendation in the officer's report is necessarily in abbreviated form, by drawing upon national guidance it would be more thorough to amend this description somewhat.

#### **Officer Response to Update 1**

The subject consultation response is succinct. It does not expand upon why the County Council does not object to the proposal, nor discuss the application of policies within Leicestershire County Council Minerals and Waste Local Plan (MWLP) (2019).

Policy M11 (Safeguarding of Mineral Resources) within the MWLP tells us that planning permission will be granted for development which is incompatible with the safeguarding of mineral resources if one of five tests is satisfied. These are:

- (i) the applicant can demonstrate that the mineral concerned is no longer of any value or potential value; or
- (ii) the mineral can be extracted satisfactorily prior to the incompatible development taking place; or
- (iii) the incompatible development is of a temporary nature and can be completed and the site restored to a condition that does not inhibit extraction within the timescale that the mineral is likely to be needed; or
- (iv) there is an overriding need for the incompatible development; or
- (v) the development comprises one of the types of development listed in Table 4

In all cases, proposals for incompatible forms of development should be supported by an assessment of the effect of the proposal upon the mineral resource beneath or adjacent to it. No such assessment was submitted in this case.

The proposal does not satisfy any of the first four policy criteria above, and so we must look to criterion (v), and to Table 4 for exceptions.

Table 4: Types of development exempt from safeguarding
a) applications for householder development;
b) applications for alterations and extensions to existing buildings and for change of use of existing development, unless intensifying activity on site;
c) applications that are in accordance with the development plan where the plan took account of the prevention of unnecessary mineral sterilisation and determined that prior extraction should not be considered when development applications came forward;
d) applications for advertisement or listed building consent;
e) applications for reserved matters including subsequent applications after outline consent has been granted;
f) prior notifications (telecoms, forestry, agriculture, demolition);
g) Certificates of Lawfulness of Existing Use or Development (CLEUD) and Certificates of Lawfulness of Proposed Use or Development (CLOPUD);
h) applications for works to trees; or
i) development types already specified in a DPD (Development Plan Document) as exempt from the need for consideration on safeguarding grounds.

The consultation response from LCC does not tell us which of the M11 policy criteria were addressed, or which, if any of the exceptions in Table 4 were thought to be applicable.

The County's minerals planning team were consulted because the site is within a Minerals Consultation Area. The supporting text to Policy M11 explains that these consultation areas are comprehensive and include a significant buffer around the geological resources being protected.

Given that the expertise in the safeguarding of mineral resources is vested in the County Council's expert team, we must defer to their detailed knowledge of the resource being safeguarded in this area, and whether the proposed development compromises that safeguarding. In their expert opinion, in this sole respect, they offer no objection.

In the planning balance, at paragraph 10.5 in the officer's report, a conflict with policy M11 of the Leicestershire Minerals and Waste Plan is cited as having some weight in the consideration. Notwithstanding the recent consultation response from LCC mineral planning team, the lack of explanation about how their conclusion was reached we cannot say that there is no conflict with M11. Even if that consultation response had been more comprehensive and had persuaded the Charnwood planning officers that no conflict arises with policy M11, the planning balance would not have been altered by such an assessment.

In the context of the tilted balance at NPPF 11d(ii), and the legislative obligation to satisfy the needs of the various groups identified by paragraph 62 of the NPPF, the benefit of the proposal outweighs the adverse impacts, regardless of the consultation response from the County Council.

### **Officer Response to Update 3**

#### **Condition 4**

The site layout plan which was tabled with the application as a drawing for approval included a note saying, "existing driveway amended to 5m in width", so perhaps it wasn't altogether unexpected that some widening might be necessary. The reference to the Highway Design Guide (HDG) is presumably to the table on page 62 of Part 3 Design Guidance<sup>1</sup> which accompanies Figure DG17. This table relates only to accesses serving dwellings. In this case the access serves a farmyard and a dwelling. Whilst we acknowledge that the owners no longer operate an active farm business, the buildings remain, and there must be some expectation of farm vehicles accessing and egressing the yard along the shared lane. Therefore, the minimum width of the lane, closest to the highway, should be enough to accommodate a car meeting farm traffic.

Footnote (a) to the table on page 62, discusses widening of a driveway still further to 5m, if its length is over 25m, as would be the case here.

The HDG guidance referenced by the agent is not directly relatable to the circumstances at this site, and a degree of flexibility is necessary in interpretation of that guidance. The condition as drafted aims to describe a safe means of access, which would obviate the need for any vehicles to reverse onto the highway when meeting exiting vehicles. No change to the draft condition is thought necessary.

#### **Condition 8**

It is agreed that the heights of hedges being retained to provide landscaping enclosure for the site should be referred to as minimum heights, rather than fixed heights. Therefore, a revised version of condition 8 is proposed below.

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<sup>1</sup> [Part 3 - Design guidance \(leicestershire.gov.uk\)](http://leicestershire.gov.uk)

## Condition 10

The draft planning condition requires that an assessment of the biodiversity impact is undertaken alongside any application for approval of reserved matters, as described in policy CS13. The S106 agreement would then provide for the payment of a sum toward off-site mitigation, should on-site BNG prove to be unachievable. The inference from the agent is that because the application site is currently comprised of a lawn associated with the applicant's current home, together with the hedgerows protected by draft Condition 8 that the existing biodiversity which might be measured as being a baseline is negligible. However, policy CS13 does not provide for a spectrum of pre-development situations, nor a sliding scale of development proposals. All development proposals should be accompanied by ecological surveys and assessment of the impacts on biodiversity. The Biodiversity Planning Guidance, approved by Cabinet on 9th June 2022 provides further clarification on how biodiversity loss can be avoided or mitigated on-site and where this is not possible compensated for offsite. As such it is a material consideration in decision making.

Both the condition and the obligation are necessary in order to make the development proposal acceptable.

### **Officer Response to Update 4**

The purpose of the proposed Unilateral Undertaking is to ensure that the development proposed delivers the benefit it relies upon in the planning balance, namely a plot upon which a custom-built home might be erected, in accordance with the legislation.

The Planning Practice Guidance on self-build and custom housebuilding, published in 2016 and updated in February 2021, includes guidance on how local authorities might identify qualifying people, maintain a register of names of qualifying people, and how to ensure that suitable sites are available for the intended purpose, amongst other related matters. Having had further regard to this guidance a modest revision to Recommendation A is proposed below.

### **Recommendation A**

That Recommendation A in the officer's report is changed to the following:

That authority is given to the Head of Planning and Growth and the Head of Strategic Support to enter into a planning obligation under section 106 of the Town and Country Planning Act 1990, or to negotiate the terms of a Unilateral Undertaking with the applicant, on terms to be finalised by the parties, as set out below:

Unilateral Undertaking	That the ownership of the site will be restricted for a period of 5 years following the grant of this permission to “Qualifying self-build and Custom Housebuilding Developer”, and that <u>the initial owner of the homes will have primary input into its final design and layout</u> and any dwelling commenced on the site will be constructed by a qualifying person. This Undertaking will be registered as a Local Land Charge and is entered into pursuant to Section 106 of the Act
Section 106 – Bilateral Agreement	An agreement which would secure offsite compensation in respect of biodiversity, should on site net gain not be achievable, in accordance with the Biodiversity Impact Assessment to be submitted and approved with the reserved matters application.

The proposed changes between the officer’s report and this revised recommendation are underlined for easy identification

**Recommendation B**

That Recommendation B in the officer’s report is changed such that its draft condition 8 is re-worded to read:

8	<p>The existing 5m high evergreen hedge directly to the east of the proposed bungalow shall be retained, along with the existing 2.7m high hedge along Ratcliffe Road, both retained at minimum heights of 5m and 2.7m in perpetuity. Any trees or shrubs which die should be replaced with similar species during the first available planning season and grown on to the heights described for the respective hedges.</p> <p>REASON: To make sure that a satisfactory landscaping scheme for the development is provided so that it integrates into the landscape and surrounding area and complies with policies CS2 and CS11 of the Adopted Core Strategy and policy EV1 from the emerging Charnwood Local Plan 2021-37.</p>
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The proposed changes between the officer’s report and this revised recommendation are underlined for easy identification

**Item No. 5b**

**Pages 40-55**

**Planning Application Number P/23/1323/2**

**Site Address: 4 Goldfinch Close, Loughborough**

**Updates**

Update 1- Comments from The Council's Planning Policy Team

Policy H7 of the emerging Charnwood Local Plan 2021-37 states that:

*We will support new houses in multiple occupation, conversions of small houses in multiple occupation to large houses in multiple occupation or extensions to large houses in multiple occupation in Loughborough where:*

- *the concentration of houses in multiple occupation is less than 10% within the area defined by a 100m radius from the centre of the building to which the application relates, or the development would not otherwise result in an over-concentration of houses in multiple occupation taking into account local geographical factors;*

This approach seeks to explicitly control certain aspects of the intensification of HMO use as well as the creation of new HMOs.

The current Housing SPD refers to new HMOs and resisting “further Houses in Multiple Occupation (small or large)”. The parent policy (CS4) states: We will support the well-being, character and amenity of our communities by managing the proportion of houses in multiple occupation.

The current HMO concentration in the 100m radius around the application site is 72.5%.

There is clearly a judgement to be made about the relative balance to give the emerging policy against the existing policy and guidance, and the meaning of the words in the existing policy and guidance. However, there are examples of refusals in circumstances of applications for C4 to sui generis conversions in areas of high concentrations under existing policy (P/18/2564/2, P/19/0229/2).

**Officer Response**

Based on the maps and propensity, the 72.5% measurement arises from there being 58 properties within 100 m. pf the application site. The application will not change the propensity or frequency of Houses in Multiple Occupation as the use is already such a property. It therefore does not conflict with Policy CS4 of the Core Strategy which is founded upon “managing the proportion” of such properties: the proportion will not change.

Using a conservative approach that if the 58 houses each had 6 residents (this conservative as several in the 100m catchment are larger type Houses in Multiple Occupation), there are a minimum of 348 residents in such occupation in total. The 2 further residents arising from the application therefore represent a 0.57% increase in population housed in such accommodation.

It is considered that this figure is so minor that it would be impossible to demonstrate 'social balance' will be materially altered and certainly not harmed. It is further considered that it is not possible to demonstrate harm from the proposed expansion due to the limit in scale of the proposal for the reasons set out in the main report.

### **Recommendation**

No change to the recommendation

### **Item No.5c**

#### **Pages 56-79**

#### **Planning Application Number P/23/0450/2**

#### **Site Address: Old Park Farm, Burton on the Wolds**

### **Updates**

No updates to report.