

Item No. 4

Application Reference Number P/20/2124/2

Application Type:	Full	Date Valid:	12/01/2021
Applicant:	Mr D Knight		
Proposal:	Erection of one dwelling - variation of Condition 9 of planning permission reference P/19/0920/2 - erection of boundary fences.		
Location:	Land adjacent to 6 Gisborough Way Loughborough. LE11 4FU		
Parish:	Loughborough	Ward:	Loughborough Garendon
Case Officer:	Deborah Liggins	Tel No:	07864 603401

This item is referred to Plans Committee due to the complex planning history of the site. The original scheme granted under P/16/1833/2 was considered by members and included condition 12 which reads

“Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015, (or any order revoking and re-enacting that Order, with or without modifications), no gate, wall, fence or other means of enclosure shall be constructed or erected within 5 metres of the highway boundary onto Gisborough Way or within 4 metres of the highway boundary onto Byland Way.

REASON: In order to provide an open aspect to the front and side of the property, in the interests of the character and appearance of the area.”

This condition was carried forward as condition 9 of planning permission P/19/0920/s and this application seeks to vary that planning permission.

Description of the Site & Proposal

The site lies within the Loughborough Limits to Development and within a Primarily Residential Area as defined in Policy ST/2 of the Borough of Charnwood Local Plan and Policy CS1 of the adopted Core Strategy. The site is located at the corner of Gisborough Way and Byland Way and the dwelling onsite is nearing completion.

When permission was granted for the dwelling under application P/19/090/2, it was subject to conditions. Condition 9 of that permission reads: -

“Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015, (or any order revoking and re-enacting that Order, with or without modifications), no gate, wall, fence or other means of enclosure shall be constructed or erected within 5 metres of the highway boundary onto Gisborough Way or within 4 metres of the highway boundary onto Byland Way.”

The application is made under Section S73 of the Town and Country Planning Act, to effectively remove Condition 9 of planning permission reference P/19/0920/2 which related to the erection and position of boundary fences at the site. This application also now considers proposed landscaping in addition to revised boundary treatments. Although

fences have been erected on part of the application site boundaries, these are unauthorised and would be replaced by the details now being sought for approval. These are:

- The erection of a 1.8m high close boarded fence along the Gisborough Way boundary. This would be positioned 2m back from the highway boundary (existing fence is positioned 1m back) and
- The erection of a 1.8m high close boarded fence perpendicular to this and set back 5m from the Byland Way highway boundary to meet and not project beyond the front elevation of the house.
- Tree and shrub planting would take place in front of the Byland Way fence and a mixed hedge would be planted in front of the Gisborough Way fence comprising Hawthorn, Blackthorn, Wild Privet and Holly. All landscaping is proposed to take place within the first planting season following completion of the development, although for precision, it is recommended that this be amended to be carried out in the first planting season following first occupation of the dwelling.

As this application is made under section 73 it is a new permission in its own right that sits alongside P/19/0920/2. As either permission can be implemented the earlier consent represents a “fall back” situation. In this respect there are no new material considerations other than those raised by the variation of condition 9 itself. These are the changed height and position of boundary fences and new landscaping as set out above. The principal of the residential dwelling at this site does not need to be reconsidered as part of this application.

The application is accompanied by a supporting statement from the applicant setting out that the original condition is thought to be unreasonable, given the appearance and siting of similar fences on properties in the area which he believes sets a precedent for the proposal also being acceptable. This statement also sets out that the original condition, removing permitted development rights for closer fencing to the highway boundary did not stem from highway safety concerns. The applicant also correctly points out that the original condition would not prevent the planting of a hedge closer than the stipulated distances which over time, would have the same effect of enclosing the land. The applicant considers the original condition was imposed unfairly as the land was previously utilised as public open space and that members and locals sought to retain its character and appearance as such, even though it had become privately owned land.

Boundary	Adjacent land use
South-west	Opposite front elevation of 11 Gisborough Way
North-west	6 Gisborough Way
North-east	5 Byland Way
South-east	Opposite side elevation of 8 Gisborough Way

Development Plan Policies

Planning law requires applications for planning permission to be determined in accordance with the development plan, unless material planning considerations indicate otherwise. The development plan for Charnwood currently comprises the Charnwood Local Plan (2011-2028) Core Strategy, the saved policies of the Borough of Charnwood

Local Plan and the Quorn Neighbourhood Plan. The policies below would be the most relevant ones to the determination this planning application.

Charnwood Local Plan 2011-2028 Core Strategy (adopted 9 November 2015)

The following policies are relevant to this application:

Policy CS1 sets out the development strategy for the Borough and places emphasis on Loughborough and Shepshed for delivering much of the Borough's growth in the plan period. Quorn is identified as a Service Centre because of its good access to services and facilities, employment and educational establishments. Approximately 3,000 homes are expected to be provided within Service Centres within the plan period.

Policy CS2 – High Quality Design requires developments to make a positive contribution to Charnwood, reinforcing a sense of place. Development should respect and enhance the character of the area, having regard to scale, massing, height, landscape, layout, materials and access; protect the amenity of people who live or work nearby, provide attractive well managed public and private spaces; well defined and legible streets and spaces and reduce their impact on climate change.

Borough of Charnwood Local Plan (adopted 12 January 2004 (saved policies)

The saved policies relevant to this proposal include:

Policy ST/2 – Limits to Development - States that built development will be confined to allocated sites and other land within the Limits to Development identified on the proposals map, subject to specific exceptions.

Policy EV/1 – Design - seeks to ensure a high standard of design for developments, which, inter alia, respects and enhances the local environment, is of a design, layout, scale and mass compatible with the locality and utilises materials appropriate to the locality

Policy TR/18 – Parking Provision in New Development - indicates that planning permission will not be granted for development unless off-street parking for vehicles, including cycles, and servicing arrangements are included to secure highway safety and minimize harm to visual and local amenities. The policy promotes standards that would require 2 parking spaces for a dwelling with 3 or less bedrooms and 3 spaces for a dwelling with 4 or more bedrooms although it states that this will be used as the starting point in assessing the level of provision and represent the maximum level. The quantity of parking allowed should reflect the proposed use and the location of development, the availability of public off-street parking; the current or potential accessibility by non-car modes and the scope for practical measures to significantly reduce the use of private car trips to and from a site.

- Policy ENV4 states that developments which result in unacceptable adverse impact on trees, woodland and hedges of environmental significance will not be supported.

- Policy EVN5 – seeks to protect sites of historic environment significance and states development proposals that would have a detrimental impact on them will not be supported unless the need for and benefits arising from the development outweigh the loss.

Development Plan Policy Weighting

The policies contained within the Core Strategy and Local Plan are over 5 years old, therefore there is a need to take account of changing circumstances affecting the area, or any relevant changes in national policy. With the exception of policies for the allocation of housing, the relevant policies listed above are considered compliant with the NPPF and up to date meaning there is no reason to reduce the weight to be given to them.

Other Material Considerations

National Planning Policy Framework (2019)

This confirms that planning applications are to be determined in accordance with the development plan unless material considerations indicate otherwise.

The National Planning Policy Framework (NPPF) is a material consideration in planning decisions. The Framework contains a presumption in favour of sustainable development and defines 3 roles a development must fulfil in order to be sustainable:

- An economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places to support growth and innovation
- A social role – supporting strong, vibrant and healthy communities by providing the supply of housing required to meet the needs of present and future generations, and by creating a high quality built development with accessible local services
- An environmental role – contributing to protecting and enhancing our natural, built and historic environment

Paragraph 8 identifies the economic and social roles of the planning system, both to build a strong responsive economy by ensuring land (and presumably buildings) are available in the right place at the right time, and supporting the health of the community by ensuring housing for present needs that has a high quality built environment, which encompasses social and cultural well-being.

Paragraph 10 states at the heart of the Framework is a presumption in favour of sustainable development.

Paragraphs 15-33 set out that the planning system should be genuinely plan-led and that succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social and environmental priorities and a platform for local people to shape their surroundings. Paragraph 31 states that the preparation and review of all policies should be underpinned by relevant and up-to-date evidence.

Paragraph 38 indicates that local planning authorities should approach decisions on proposed development in a positive and creative way and work proactively with applicants to secure developments that will improve the economic, social and environmental

conditions of the area. Decision-makers should seek to approve applications for sustainable development where possible.

Paragraph 47 of the NPPF states that planning law requires that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing.

Paragraph 54 sets out that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

Paragraph 55 states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

Paragraph 109 states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Chapter 12 (Paras 124-131) of the NPPF concerns itself with achieving well-designed places and sets out that good design is a key aspect of sustainable development. The use of visual tools and design codes is encouraged as is the development of design policies alongside local communities and neighbourhood plans.

Paragraph 130 states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between the permission and completion, as a result of changes being made to the permitted scheme.

Paragraph 180 requires that decisions on planning applications should ensure that new development is appropriate for its location taking into account the likely effects of pollution on health, living conditions and the natural environment, including mitigating noise.

National Design Guide (2019)

The National Planning Policy Framework makes clear that creating high quality buildings and places is fundamental to what the planning and development process should achieve. This design guide, the National Design Guide, illustrates how well-designed places that are beautiful, enduring and successful can be achieved in practice. It forms part of the Government's collection of planning practice guidance and should be read alongside the separate planning practice guidance on design process and tools.

As well as helping to inform development proposals and their assessment by local planning authorities, it supports paragraph 130 of the National Planning Policy

Framework which states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

National Planning Practice Guidance (PPG)

The National Planning Practice Guidance (PPG) reinforces and provides additional guidance on the policy requirements of the Framework and provides extensive guidance on design and other planning objectives that can be achieved through getting good design. These include the consideration of local character, landscaping setting, safe, connected and efficient streets, crime prevention, security measures, access and inclusion, efficient use of natural resources and cohesive and vibrant neighbourhoods.

ID 26 - Paragraphs 001-003 states that good design matters and what this can achieve through good plan making. Paragraph 004 notes that weight can be given to outstanding or innovative design and developments of poor quality design should be refused. Paragraph 007 states that planning should promote local character. New development should be integrated within existing surroundings.

The role of health and wellbeing is also considered in the PPG. Active and healthy lifestyles should be encouraged that are made easy through the pattern of development; good urban design, good access to local services and facilities; green open space and safe places for active play and food growing and which are all accessible by walking, cycling and public transport can be important contributions to achieving this.

The Crime and Disorder Act 1998

This places a duty on the local planning authority to do all that it reasonably can to prevent crime and disorder in its area. The potential impact on community safety is therefore a material consideration in the determination of planning applications.

The Leicestershire Highways Design Guide (2018)

This is a guide for use by developers and published by Leicestershire County Council, the local highway authority, and provides information to developers and local planning authorities to assist in the design of road layouts in new development. The purpose of the guidance is to help achieve development that provides for the safe and free movement of all road users, including cars, lorries, pedestrians, cyclists and public transport. Design elements are encouraged which provide road layouts which meet the needs of all users and restrain vehicle dominance, create an environment that is safe for all road users and in which people are encouraged to walk, cycle and use public transport and feel safe doing so; as well as to help create quality developments in which to live, work and play. The document also sets out the quantum of off-street car parking required to be provided in new housing development.

Supplementary Planning Document - Charnwood Design (January 2020)

This document sets out the Borough Council's expectations in terms of securing high quality design in all new development. Schemes should respond well to local character, have positive impacts on the environment and be adaptable to meet future needs and provide spaces and buildings that help improve people's quality of life. The document is a material consideration in the determination of planning applications.

Draft Charnwood Local Plan 2019-2036

The Draft Local Plan sets out the Council's preferred options for draft policies which are yet to be tested through an Examination in Public before they can become part of the development plan for Charnwood. The policies therefore carry limited weight at the current time. These include policies which would seek to make provision for at least 19,716 homes between 2019 and 2036 and require these to be delivered to a high standard of design quality.

Relevant Planning History

Reference	Description	Decision & Date
P/93/2971/2	Erection of 27 houses and bungalows	Granted conditionally 27/01/1994
P/14/1773/2	Site for the erection of two detached dwellings	Refused 30/03/2015
P/15/1638/2	Site for the erection of 1 dwelling (Revised scheme – P/14/1773/2 refers)	Refused 07/10/2015
P/16/1833/2	Site for the erection of 1 dwelling (Revised scheme P/15/1638/2 refers)	Granted conditionally 16/10/2017
P/18/1160/2	Reserved atters submission for landscaping proposals	Withdrawn 30/10/2018
P/18/1657/2	(Land adj No. 6) – Erection of one dwelling	Refused 25/10/2018
P/18/2594/2	Landscaping proposals – condition 7 of P/15/1638/2 refers	Withdrawn
P/19/0920/2	Erection of 1 dwelling (Retrospective application	Granted conditionally 17/01/2020
P/20/0805/2	Discharge of Conditions 2 & 4 of application P/19/0920/2	Withdrawn 30/07/2020

Responses of Statutory Consultees

None

Other Comments Received

Comments have been received from the following neighbours and concerns are summarised below. Full copies of representations are available to view on the Council's website.

Byland Way
 Gisborough Way – 6, 12, 17, 19
 Lindisfarne Drive – 12, 16
 Mount Grace Road - 12
 No address supplied – Parish, Manon

Concerns include:-

- An open area of land is a feature of all road junctions within the estate and its loss would be out of character
- The existing boundary fence is too high

- The dwelling has its approved garden area separated off with a further fence to possibly create a second plot for future development.
- A fence with a set back of 5m would allow more amenity planting
- The proposal would completely ruin the area
- The dwelling would directly overlook another property causing a loss of privacy, sunlight and daylight
- The fence position and height should be rectified leaving the area landscaped and in keeping with other areas on the estate

Other Matters

Some neighbours appear aggrieved that the development did not originally proceed in strict accordance with the approved plan and are concerned that conditions attached to any subsequent planning permission would not be adhered to. The applicant has regularised the variations from the approved scheme through the grant of planning permission under P/19/0920/2 and the dwelling, with the exception of boundary fencing, accords with the approved plans of that planning permission. Any future breaches of planning control will be investigated by the local planning authority, should they occur.

Consideration of the Planning Issues

The key issues in considering this application are considered to be:

- Design and Impact on the Visual Amenity of the Area

Design and Impact on the Visual Amenity of the Area

The previous report to the Plans Committee (when application P/16/1833.2 was considered) set out that although the loss of the former public open space was met with considerable local objection, there was no legal requirement under any previous planning permission for it to be retained as such and the land owner was under no obligation to offer the land to the local authority or a management company for it to be retained as public open space. This remains the case with the current owners of the land. Given the land had no formal protection as public open space or amenity land, it was previously considered that, on balance, the development of it for a dwelling was acceptable in this sustainable location.

It was also recognised in the consideration of the original application that the undeveloped site made some contribution to the street scene, the space was not considered to be significant to the layout of the estate. The condition which is now being sought to be varied (which removed permitted development rights for fences forward of specific set-backs from the highway boundary) was imposed so that some openness remained on the corner of the site, with space being retained to the front, sides and rear.

The proposed fence fronting Byland Way would be set back 5m from the back edge of Byland Way pavement with a mixed hedgerow planted immediately in front of it. The space between the hedge and the highway boundary would also allow for some lawn, tree and shrub planting as shown on the revised plan ROC\571\PD\502F received by the local planning authority on 3rd March 2021.

The proposed fence fronting Gisborough Way would be positioned 2m from the back edge of the footway and this would allow for the establishment of a mixed hedge as shown on the submitted revised plan. Whilst this fence would be forward of the front elevation of the dwelling at No. 6, it is considered that this would still allow for the necessary pedestrian and traffic visibility splays at the corner of the driveway to that property at the north-western corner of the site. The position of the proposed fence at the Byland Way boundary would also not impede highway visibility and there are no highway safety concerns about the proposed height or position of the fences.

There are many examples within the estate of fences being erected significantly closer to highway boundaries than those now proposed. Examples of such can be seen at 1 Gisborough Way, 2 Gisborough Way, 8 Gisborough Way, No's 2, 4 and 16 Lindisfarne Drive, 2 Kingswood and No. 10 Byland Way. Here, fences have been erected in positions closer than 1m of the highway boundary, and some to replace original vegetation and hedgerows.

It is not therefore considered that the revised proposal would either be out of character with the locality or harmful to the street scene. The proposed fences are of a type commonly used on the estate and the proposed height of 1.8m is not considered excessive. It is however considered necessary, in the event planning permission is granted, to ensure the revised location of the proposed lower fences is carried out within two months of the date of any permission to ensure the work is completed in a timely fashion in the interests of the overall appearance of the development.

Conclusion

The proposed fences and landscaping are considered acceptable in this location and would not cause visual harm to the appearance of the street scene in accordance with Policy CS2 of the Charnwood Local Plan (2011-2028) Core Strategy and Policy EV/1 of the Borough of Charnwood Local Plan or the adopted Supplementary Planning Document on Design. It is also considered the proposal would not cause additional highway dangers and would accord with the Leicestershire Highways Design Guide.

It is recommended, therefore, that planning permission be granted, subject to the following conditions.

RECOMMENDATION:-

Grant Conditionally

- 1 The development shall be carried out only in accordance with the details and specifications included in the submitted application, and shown on the following drawings:
ROC\571\PD\501 - Floor Plan and Elevations - received 26th April 2019 and as approved under P/19/0920/2

ROC\571\PD\502A - Site Location Plan - received 26th April 2019 and as approved under P/19/0920/2

ROC\571\PD\502F - Site layout and landscaping plan - received 3rd March 2021

REASON: To make sure that the scheme takes the form agreed by the authority and thus results in a satisfactory form of development.

2. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015, (or any order revoking and re-enacting that Order, with or without modifications), no gate, wall, fence or other means of enclosure shall be constructed or erected closer to the highway boundary than the means of enclosure shown on the plan approved under condition 1 above.

REASON: In order to provide an open aspect to the front and side of the property, in the interests of the character and appearance of the area.
- 3 Within 2 months of the date of this permission, the existing fences shall be removed and the approved fences shown on Plan No. ROC\571\PD\502F received 3rd March 2021 shall be erected in their authorised positions.

REASON: To ensure the satisfactory, overall appearance of the completed development.
- 4 The landscaping scheme shall be fully completed, in accordance with the details shown on Plan No. ROC\571\PD\502F received 3rd March 2021, in the first planting and seeding seasons following the first occupation of the dwelling or in accordance with a programme previously agreed in writing by the local planning authority. Any trees or plants removed, dying, being severely damaged or becoming seriously diseased, within 5 years of planting shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted.

REASON: To make sure that the appearance of the completed development is satisfactory and to help assimilate the development into its surroundings.
- 5 Notwithstanding the submitted information, prior to the first occupation of the dwelling hereby approved, a minimum of two 2.4m x 4.8m car parking spaces to the front of the dwelling shall be provided and made available for use. The spaces shall be surfaced in either a porous hard bound (not loose) material, or if a non-porous material is used, surface water shall be discharged into a suitable drainage system within the site. These spaces shall always remain available for the parking of vehicles and shall not therefore be used for any other purpose, at any time.

REASON: To ensure adequate off street car parking, in the interest of highway safety.
- 6 No vehicular access gates, barriers, bollards, chains or other such obstructions shall be erected to the vehicular access.

Reason: To enable vehicles to stand clear of the highway in order to protect the free and safe passage of traffic, including pedestrians, in the public highway.
- 7 Notwithstanding the provisions of The Town and Country Planning (General

Permitted Development) (England) Order 2015, (or any order revoking and re-enacting that Order, with or without modifications), no additional openings or windows shall be inserted in the north-western (rear) elevation of the building, at either first floor or roof level.

REASON: To prevent undue overlooking of nearby dwellings, in the interests of the privacy of nearby residents.

The following advice notes will be attached to a decision

- 1 **DEVELOPMENT PLAN POLICIES RELEVANT TO THIS DECISION**
- Policies CS1 and CS2 of the Charnwood Local Plan 2011/2028 Core Strategy, policies EV/1 and TR/18 of the Borough of Charnwood Local Plan (adopted 12th January 2004) along with the provisions of the National Planning Policy Framework have been considered in reaching a decision on this application. The proposed development complies with the requirements of these policies.
- 2 Planning permission has been granted for this development because the Council has determined that, although representations have been received against the proposal, it is generally in accord with the terms of the above-mentioned policies along with the Council's adopted Supplementary Planning Document 'Design' and, therefore, no harm would arise such as to warrant refusal of planning permission.
- 3 Care should be taken during site works to make sure that hours of operation, methods of work, dust and disposal of waste do not unduly disturb nearby residents.
- 4 This planning permission does not permit the carrying out of access alterations in the highway. Before such work can begin, separate permits or agreements will be required under the Highways Act 1980 from either the Adoptions team (for 'major' accesses) or the Highways Manager. For further information, including contact details, visit the County Council website as follows: -
For 'major' accesses - see Part 6 of the "6Cs Design Guide" at www.leics.gov.uk/6csdg
For other minor, domestic accesses, contact the Service Centre Tel: 0116 3050001.
- 5 The decision has been reached taking into account paragraph 38 of the National Planning Policy Framework and in accordance with The Town and Country Planning (Development Management Procedure) (England) Order 2015.

