



Appeal Decision

Hearing held on 28 February 2024

Site visit made on 29 February 2024

by C Beeby BA (Hons) MIPROW

an Inspector appointed by the Secretary of State

Decision date: 27 March 2024

Appeal Ref: APP/K2420/W/23/3320919

Chapel Fields Livery Stables, Chapel Lane, Witherley, Atherstone, CV9 3LR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by A R Cartwright and D Walker against the decision of Hinckley and Bosworth Borough Council.
 - The application Ref 21/01305/FUL, dated 20 October 2021, was refused by notice dated 22 December 2022.
 - The development proposed is the construction of five detached dwellings with associated garages, parking provision, access and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of five detached dwellings with associated garages, parking provision, access and landscaping at Chapel Fields Livery Stables, Chapel Lane, Witherley, Atherstone, CV9 3LR in accordance with the terms of the application, Ref 21/01305/FUL, subject to the seventeen conditions in the attached Schedule of Conditions.

Application for costs

2. An application for costs was made by A R Cartwright and D Walker, against Hinckley and Bosworth Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. A revised National Planning Policy Framework came into force on 19 December 2023 (the Framework). The parties were invited to submit comments on whether the revised Framework has relevance to the case.
4. Paragraph 226 of the Framework states that authorities which have an emerging local plan that has either been submitted for examination or has reached Regulation 18 or Regulation 19 stage need only identify and update annually a supply of four years' worth of housing sites, instead of a minimum of five years as set out elsewhere in the Framework. Whilst a new local plan was in preparation at the time of the appeal and had reached Regulation 19 stage, work on this has ceased and the new plan will now undergo Regulation 18 and Regulation 19 consultations in some months' time. The Council consequently does not benefit from the provisions of paragraph 226 of the Framework, so that it is currently necessary for it to identify annually a five-year housing land supply (5YHLS) in accordance with paragraph 77.

5. In refusing permission for locational reasons the Council partially relies on Policy DM1 of the Site Allocations and Development Management Policies DPD (2016) (the SADMP). The policy sets out a presumption in favour of sustainable development. Whilst it consequently indicates the basis on which all applications in the area will be determined, its particular relevance to this main issue has not been demonstrated. As a result, I consider that it is not directly relevant to the first reason for refusal of permission. Accordingly, I have not considered the policy further in determining the first main issue.

Main Issues

6. The main issues are:

- Whether the proposed development would provide a suitable site for housing, having regard to its effect on the appearance of the area and the proximity of services and facilities;
- The effect of the proposed development on the living conditions of the occupiers of Plot 1, with particular regard to noise levels; and
- The effect of the proposed development on a community facility.

Reasons

Location

7. The appeal site lies adjacent to the settlement boundary set by the development plan for Witherley and is consequently in the countryside for local policy purposes. The site is a roadside strip of land at the edge of a field which separates the Parish Room hall and Chapelfield House, a detached dwelling which lies further along Chapel Lane. A former stable block and a metal barn lie within an area of hardstanding at one end of the site and the remainder of the site comprises an overgrown area with a number of trees. The site lies close to the junction of Chapel Lane and Atterton Lane, where residential development includes some examples of relatively closely-spaced dwellings.
8. Policy DM4 of the SADMP concerns safeguarding the countryside and settlement separation. It sets out the types of development which will be considered sustainable at such locations. The appeal proposal does not form one of the forms of development described and, as a result, it conflicts with Policy DM4.
9. The site lies in the Sence Lowlands Landscape Character Area, which is assessed in the Hinckley and Bosworth Borough Landscape Character Assessment of 2017 (the LCA). Key identified characteristics of the LCA include a flat to gently rolling lowland vale landscape giving rise to extensive and open views and a rural dispersed settlement pattern of linear villages, scattered farmsteads and barns. Key sensitivities and values of the LCA include a dispersed settlement pattern of small historic villages and the recreational value of the area for walking and cycling. Landscape strategies include the retention of hedgerows; the conservation of open rural views; the retention of areas of rural character; to respect and enhance the strong character of the villages; and to maintain and enhance recreational assets, including the rights of way network.

10. A submitted Landscape and Visual Impact Assessment finds that the proposal would not cause significant harm to the key characteristics and sensitivities of the LCA. It considers that the main views of the site are at a close distance from the public right of way behind it or Chapel Lane, and that middle and longer-distance views from the wider area are not afforded. It concludes that the proposal would not result in significant harm to the landscape character or visual environment.
11. The stables and barn are disused, partially overgrown and limited in scale, so that they are relatively unobtrusive within many views. The somewhat unkempt condition of the site and buildings is a temporary matter and consequently does not affect the site's inherent visual qualities. The removal of dilapidated buildings and overgrown hard surfacing consequently does not form a benefit of the proposal.
12. The site's vegetation and lack of significant built form result in a spacious and rural appearance which makes a moderate positive contribution to the character and appearance of the area within surrounding close views including those from Atterton Lane to the north, the unadopted road Chapel Lane, and the public right of way behind the site.
13. In filling the gap in development at the edge of the village, the scheme would reduce the site's positive contribution to its rural setting. It would erode the village's spacious and green setting within close views from the south and north, and would consequently conflict with the LCA's Strategy to retain areas of rural character. Its effect on medium and longer-distance views would be limited or minimal due to the screening effect of surrounding built or natural form and to the limiting effect of the relatively flat topography on visibility from greater distances.
14. The landscape harm arises, in the main, from the loss of the site's spacious and rural character to development. Once built, a somewhat urbanised appearance would arise from the development's closely-spaced buildings. Nevertheless, as set out above, the site's context includes dwellings which are relatively closely spaced, so that the scheme would not appear so incongruous within its setting as to be unacceptable in this regard.
15. The development would be highly visible to users of the public right of way where it passes through the field behind the site and from the corner of the adjacent field. It would be partially screened behind Chapelfield House and vegetation within more distant views from the public right of way where it crosses fields to the south-east of the site.
16. Proposed hedgerow planting would provide some limited softening of the development's visual effect, but could not overcome the effect of the loss of the site's spacious and rural appearance. As a result, the scheme does not contribute to and enhance the natural and local environment and hence does not gain support from the provisions of the Framework in this regard.
17. A previous appeal decision¹ dismissed a proposal for ten houses on an area including the appeal site and an area of the adjacent paddock, which would have resulted in housing up to three dwellings deep into the site. The current scheme has a linear layout which resolves the previous Inspector's concerns

¹ APP/K2420/W/18/3197865

regarding the visual effect of the depth of development, and which accords with the characteristic settlement pattern of linear villages identified in the LCA. Whilst, as set out above, some concerns regarding the loss of spaciousness and rural character remain, these are reduced due to the more limited scale of the development and site area which is now proposed. Hedgerow along the site's frontage would be lost, conflicting with the landscape strategy of the LCA. However, the hedgerow extends for only part of the frontage, so that new planting over the entire frontage, including the area which currently has no hedgerow, would provide some mitigation for this loss.

18. My attention has been drawn to a recent outline planning application² for up to 50 dwellings on land adjacent to Kennel Lane in Witherley. The Kennel Lane site is a field which lies adjacent to the village's settlement boundary and which adjoins the field to the south of the appeal site for a short distance. The Council concluded, with reference to Policy DM4 of the SADMP, that the Kennel Lane development would not have a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside.
19. Whilst I note the conclusions of the Kennel Lane report, I am required to make my own assessment of the effect of the appeal proposal in the particular circumstances of the case. The final criteria of Policy DM4 are only required to be fulfilled if a scheme accords with the initial criteria. In this case I have already found that the appeal proposal would conflict with one of the initial requirements of Policy DM4, and have reached a conclusion on its effect on the area's appearance with regard to site-specific factors. It is consequently unnecessary for me to go on to assess the scheme against the later criterion in the policy, against which the Kennel Lane scheme was assessed.
20. An appeal decision³ submitted by the Council at the hearing concerned a proposal for up to nine dwellings elsewhere in the borough. In assessing the effect of that proposal on the character and appearance of the area, the decision identified that the pattern of development in the site's context was generally linear. The development proposed would have projected a significant distance back from the road and would have created a new row of development which was perpendicular to it. The decision found that this depth would have been at odds with the existing linear form of development and hence would not sit comfortably in its context due to its conflict with the established layout.
21. Elements of the appeal site and the other site are similar, including their open character and edge of settlement location. Nevertheless, the appeal scheme proposes a linear development, whereas the other scheme would have projected into the site. Thus, the two schemes are not so similar that the conclusions of the other decision attract any more than minimal weight in my determination.
22. The overall level of harm to the area's character and appearance would consequently be limited due to the limited scale of the development now proposed and to the generally close-range and limited nature of the affected views.
23. Turning to the proximity of services and facilities, the previous appeal decision regarding the site identified that Witherley was classified as a Rural Village in

² Ref: 22/01190/OUT

³ APP/K2420/W/23/3317284

the Core Strategy, due to its limited services. The available services remain limited, as the village currently has a primary school, place of worship, public house, community hall, football pitch and playground, and a limited bus service.

24. The village lies close to the settlements of Mancetter and Atherstone, which have a greater range of services and facilities of the type likely to meet most day-to-day needs. It is submitted that facilities in Atherstone lie 1.5 miles from the site, with those in Mancetter being one mile away. A surfaced pedestrian route between the appeal site and the two settlements would necessitate the use of Kennel Lane or Bridge Lane through the village, both of which currently have only partial footways and lighting. Use would then be made of a marked crossing of the A5 road, which comprises three lanes of traffic at this point, with a central refuge, at a point where the 50 mile per hour speed limit meets a bend in the road which is signed "30 miles per hour maximum". Such factors may result in some pedestrians feeling less safe to use the routes.
25. The Manual for Streets states that walkable neighbourhoods typically have a range of facilities within about 800 metres which may be accessed comfortably on foot. The distance between the appeal site and day-to-day facilities in Mancetter or Atherstone would be a considerably longer walk. This consideration and the characteristics of the available surfaced routes are consequently likely to deter a proportion of pedestrians from regularly walking between the site and facilities in the two adjacent settlements. An extract from a council cycle map depicts lanes to the north of Witherley to be suitable for cycle use between the village and Atherstone. The bus service times before me would not allow for travel to complete a standard working day at another location.
26. For these reasons, occupiers of the development are most likely to use the private car for the majority of their day-to-day trips. However, whilst private vehicular trips would be necessary to reach services and facilities in nearby settlements, these would be short in duration due to the proximity of the site to these. The limited facilities within the village would allow for some trips to be made on foot or by cycle. Furthermore, the Framework states that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and that this should be taken into account in decision-making. In this regard I am mindful that access to sustainable transport opportunities nearby, in Atherstone, would be available to the occupiers of the rural development. For these reasons, the harm in this regard would be limited.
27. My attention has been drawn to a number of other development schemes. I have minimal details on the circumstances of these. Nevertheless, even if the other developments and circumstances were similar, they would not inevitably provide an example that should be followed even if harm results. Accordingly, the other developments do not alter my conclusions on the current scheme.
28. Whilst I acknowledge the recreational benefits of proximity to the countryside, and that changes in lifestyles have reduced the need for a proportion of the population to commute to work, my decision must be made in accordance with the development plan unless material considerations indicate otherwise. There is nothing before me to suggest that these are considerations of sufficient significance to be determinative on this issue. As a result, they are matters which attract only minimal weight in my decision.

29. Thus, the proposed development would fail to provide a suitable site for housing, having regard to its effect on the appearance of the area and the proximity of services and facilities. The scheme consequently conflicts with Policy DM4 of the SADMP, which seeks to achieve a particular distribution of development across the area. Additional conflict exists with Policy 12 of the Core Strategy (the CS), which states that the council will support housing development within the settlement boundaries of Rural Villages that provides a mix of housing types and tenures. These conflicts would result in harm in achieving the planned strategy. As the scheme would provide a limited number of houses, that harm is limited in degree.
30. The limited harm which the scheme would cause to the area's character and appearance results in conflict with Policy DM10 of the SADMP, which states that development will be permitted where it complements or enhances the character of the surrounding area with regard to layout (amongst other matters).
31. The limited harm which arises with regard to the proximity of services and facilities results in conflict with the Framework provision that in assessing applications for development, it should be ensured that appropriate opportunities to promote sustainable transport modes can be taken up, given the type of development and its location.
32. The decision notice concludes that the proposal's location would fail to enhance or maintain the vitality of rural communities, citing conflict with the provisions of the Framework in this regard. Nevertheless, the village has a primary school and public house, which occupiers of the new housing could reasonably be expected to use and thereby support, thus contributing to the vitality of the rural community. As a result, the suggested conflict with the Framework in this regard does not arise.

Living conditions

33. The Parish Room is a hall which lies between the appeal site and existing dwellings. It is relatively modest in scale, with a small area for the parking of only approximately two-three vehicles if they are not to be tandem parked. The windows to the hall are double glazed, with one openable panel on each window frame.
34. The hall's schedule of events indicates that it is booked to host a limited number of regular classes per week during March 2024. These include craft and exercise classes. Only one of these is likely to include any significant degree of amplified music, which is a morning exercise class which is held twice a week, for an hour at each time. There are no indications of any other events planned at the facility. Notwithstanding this, the hall is available for hire and has no restrictions on its hours of use, so that it could hold functions which include amplified music late into the night.
35. The previous appeal decision at the site found that five of the dwellings then proposed would be in close proximity to the adjacent Parish Room, and that well-attended social events at the building with music occurring during the day or late into the evening would annoy and disturb future occupants of the five dwellings, with a resulting significant adverse effect on their living conditions.

36. A Noise Assessment has been submitted with the current appeal. This sets out guidance from the relevant British Standard (BS) for acoustic requirements within buildings. The assessment records the results of a survey carried out at the development site for five days in June 2021. No large events took place at the Parish Room over that period, and COVID-19 restrictions in force at that time would have prevented these. Measured sound levels over the period at the proposed location of the garden to Plot 1 achieved the BS criteria without further mitigation, in typical conditions.
37. The assessment anticipates some noise break-out from the Parish Room during live music events, particularly when windows are open on its eastern and southern elevations. As the property at Plot 1 would lie closest to the parish room, it would be most affected by such noise. Archive data on the levels of noise from venues during a live pop/rock band performance and a disco was used, as no such events occurred at the hall over the measurement period. This is reasonable in the absence of such an event.
38. The assessment recommends that all habitable rooms which directly overlook the hall should have an appropriate acoustic rated glazing system and alternative means of ventilation to control external noise break-in during occasional music events at the venue. The assessment does not discuss whether the sound levels in the garden to Plot 1 would be acceptable during such events, or whether mitigation would consequently be required, in any detail.
39. It is likely that noise levels in the garden to Plot 1 would exceed the BS limits if windows at the hall are open and amplified music is being played at an event. There is minimal evidence before me on the frequency of events which include amplified music at the hall, although it is submitted that a neighbourhood organisation holds fundraising parties at the hall. The schedule for March shows two dance classes per week, held on weekday mornings for a limited time, and identifies no private functions. Events with amplified music are likely to include an element of dancing, and the small size of the hall suggests that it could accommodate only a limited number of people dancing. Furthermore, the hall has minimal adjacent parking. Whilst the hall is evidently a valued community facility which is in regular use, these considerations are likely to limit the frequency with which it is booked for social functions which will specifically include amplified music. This is supported by the view of the Council that such events are held at the hall on an occasional basis.
40. The warmer months, when windows would be likely to be opened during events at the hall, would coincide with the period when the occupiers of Plot 1 would be most likely to spend time in their garden. The hall lies close to a number of dwellings and their rear gardens on Chapel Lane, Atterton Lane and Kennel Lane, at a comparable distance to that which is currently proposed. The venue has large openable windows within the elevation facing these properties, in the same way as its eastern elevation, which would face the proposed development.
41. Thus, if amplified music, which frequently has a tonal quality which is likely to carry some distance, had occurred sufficiently frequently through open windows at the hall to have caused disturbance to surrounding residents using their gardens, it is likely that there would be a record of noise complaints in respect of the venue, particularly as there are no restrictions to limit the time

when events must finish. However, there are no recorded complaints concerning noise from the venue. Furthermore, the Council's environmental health department did not raise concerns regarding the proposal, subject to conditions.

42. The concerns of the previous Inspector related to the living conditions of the occupiers of five dwellings with regard to potential noise from the hall heard both within gardens and inside dwellings. Only one dwelling would now lie adjacent to the hall and the proposed mitigation measures would adequately control noise within the dwelling.
43. Furthermore, in view of the above considerations (including the additional evidence submitted since the previous appeal), the evidence does not convince me that events with amplified music of a sufficient volume and duration to cause disturbance would be held at the Parish Room sufficiently frequently to cause any more than a minimal adverse effect on the quality of life of the occupiers of Plot 1 with regard to the use of their garden.
44. Nevertheless, the proposed development would cause some harm to the living conditions of the occupiers of Plot 1, with particular regard to noise levels. The proposal consequently conflicts with the element of Policy DM10 of the SADMP which states that developments will be permitted providing that, amongst other matters, the amenity of occupiers of the scheme would not be adversely affected by activities in the vicinity of the site. The harm in this regard would be minimal.

Effect on community facility

45. The previous appeal decision considered that the harm which was identified to the living conditions of future occupiers of that development could result in restrictions being placed on the use of the Parish Room, which would significantly reduce its value as a facility enjoyed by the community.
46. Following the submission of further evidence on the matter, I have found that the proposal would have a minimal adverse effect on the living conditions of the occupiers of Plot 1 with regard to the use of their garden. As a result, it is unlikely that the proposal would result in restrictions being placed on the use of the Parish Room.
47. Thus, the proposal would have an acceptable effect on a community facility. It consequently complies with Policy DM25 of the SADMP, which states that the Council will resist the loss of community facilities, and with the aim of the Framework to support strong, vibrant and healthy communities.

Other Matters

48. Interested parties raise concerns regarding drainage in the area. Photographs submitted at the hearing show recent flooding at Atterton Lane near the site. Whilst I am sympathetic to the challenges caused by these matters, Atterton Lane is under the control of the highway authority, and neither they nor the water authority have raised objection to the appeal scheme. The submitted drainage strategy report concludes that the surface water strategy would improve the site's runoff rate. The concerns raised by interested parties provide support for the imposition of conditions requiring the approval and implementation of a surface water disposal scheme at the site and to ensure that surface water from the development does not drain onto the highway. In

light of these considerations, I am satisfied that the proposal would not have an unacceptable effect on drainage matters in the vicinity.

49. I have had regard to other matters raised, including concerns about the proposal's effect on highways and biodiversity. However, these concerns lack substantive supporting evidence or any objection from the relevant bodies. I consequently lack an evidential basis to pursue the matters further.

Other Considerations

50. The proposal would contribute a limited number of dwellings in an area without a 5YHLS. At 4.89 years of supply, the level of shortfall is modest. In view of these considerations, the provision of housing attracts limited weight in the proposal's favour.
51. A submitted Biodiversity Net Gain assessment concludes that the proposal would result in a gain of 10.38% on the pre-development score. The assessment is undisputed and I see no reason to disagree. This consideration attracts limited weight as a benefit as it aligns with the new mandatory requirements for biodiversity net gain in respect of such developments.
52. Time-limited economic benefits would arise during the construction period. Enduring economic and social benefits would additionally arise from the likely subsequent support for local services and facilities, including the village primary school and public house, by occupiers of the development. These benefits would be limited due to the limited scale of the development proposed.
53. The Framework states that planning policies and decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs. The appeal site lies outside the village's settlement boundary and outside its built-up area. As a result, it does not lie within the settlement, so that the proposal does not benefit from the Framework provision.

Whether the proposal conflicts with the development plan as a whole

54. Policy 12 of the CS and Policies DM4 and DM10 of the SADMP are engaged by the appeal scheme and are central to my decision, as they concern issues which give rise to the majority of the identified harm. Policy DM25 of the SADMP is more peripheral in this regard.
55. There is no dispute that Policies 12 of the CS and DM4 of the SADMP are in substance out-of-date, as they relate to an earlier housing requirement which was lower than the current assessed need. I see no reason to disagree with this view. Nevertheless, the policies aim, respectively, to support existing services in villages and to protect the intrinsic value, beauty, open character and landscape character of the countryside. These aims align with those of the Framework. Furthermore, as there is only a modest level of housing shortfall in the borough, this consideration reduces the weight attached to the conflict with the policies by only a modest degree. The limited conflict identified with the two policies in respect of the first main issue consequently carries moderate weight.
56. In requiring development to complement or enhance the character of the surrounding area, Policy DM10 of the SADMP is consistent with the design aims

of the Framework. As a result, the identified limited conflict with Policy DM10 in terms of character and appearance carries full weight.

57. Policy DM10 further states that the amenity of occupiers of the scheme must not be adversely affected by activities in the vicinity of the site. This provision is inconsistent with the Framework, which sets out that planning decisions should prevent new development from being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution, and should avoid noise giving rise to significant adverse impacts on health and the quality of life. The difference between the two levels of effect in terms of noise which is allowed for by Policy DM10 and the Framework is consequently considerable. Thus, the minimal policy conflict in respect of the living conditions main issue carries only limited weight.
58. Limited harm is identified to arise in respect of both the proposal's effect on the character and appearance of the area and in achieving the planned strategy. The scheme consequently conflicts with the three central policies engaged. These conflicts carry moderate or full weight. The policy conflict in respect of the living conditions main issue is minimal, and carries only limited weight.
59. The proposal complies with Policy DM25 of the SADMP. As the relevant part of that policy states that the Council will resist the loss of community facilities, it seeks to identify an absence of harm rather than a particular benefit of the proposal. The effect of the policy compliance in this regard is consequently neutral.
60. Thus, taking into account both policies that oppose and support the proposed development, the proposal conflicts with the development plan as a whole.

Paragraph 11d) balance

61. As the Council cannot currently demonstrate a 5YHLS and this is an application for the provision of housing, the development plan policies which are most important for determining the application are deemed to be out-of-date for the purpose of paragraph 11d) of the Framework.
62. I am therefore required to consider, as set out in Framework paragraph 11(d)i, whether the application of policies in the Framework that protect areas of assets of particular importance provides a clear reason for refusal. The application of these policies does not provide a clear reason for refusing permission.
63. It is consequently necessary to apply the test in paragraph 11(d)ii, which states that in such circumstances permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
64. The scheme would result in limited harm in achieving the planned distribution of development across the area. Limited importance is attached to this adverse impact because the relevant policies do not respond to a current assessed housing need, and therefore do not form part of a framework for meeting housing needs as set out in the Framework.
65. The proposal would cause limited harm to the character and appearance of the area, a consideration which attracts limited importance as, whilst the

development would be small in scale and would generally affect only close views, it would conflict with the Framework aim for developments to be sympathetic to local character, including landscape setting.

66. Limited harm would arise due to the identified limitations on the use of sustainable transport modes from the location. This consideration conflicts with the Framework provision that appropriate opportunities to promote sustainable transport modes should be taken up, and attracts limited importance due to the effect of the proposal's location in this regard.
67. The scheme would cause minimal harm to the living conditions of future occupiers of the development. The Framework provides that planning decisions should prevent new development from being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution, and that planning decisions should avoid noise giving rise to significant adverse impacts on health and the quality of life. As the identified harm in this regard would consequently be acceptable according to the provisions of the Framework, it attracts only minimal importance.
68. Conversely, the scheme would provide housing in an area without a 5YHLS, meeting the Framework objective to significantly boost the supply of homes. It would result in a net gain for biodiversity, and would provide economic and social benefits, aligning with the Framework's aims in these regards. Limited importance is attached to each of the three considerations, in accordance with the development's relatively small size and, in terms of the benefit of housing provision, with the modest degree of shortfall in 5YHLS.
69. Thus, the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The proposal consequently benefits from the presumption in favour of sustainable development.

Planning Balance

70. The proposal conflicts with the development plan as a whole. However, the outcome of the Framework paragraph 11d) process indicates that it benefits from the presumption in favour of sustainable development. Whilst no other material considerations indicate that my decision should be taken otherwise than in accordance with the development plan, the presumption in favour of sustainable development is a consideration of sufficient weight to indicate that, in this case, planning permission should be granted, notwithstanding the identified conflict with the development plan. Thus, material considerations indicate that the decision should be taken otherwise than in accordance with the development plan.

Conditions

71. I have made minor amendments to the wording of some of the suggested conditions for clarity.
72. The plans condition is imposed to create certainty for all parties and to allow for applications for minor material amendments.
73. Conditions 3 and 4 concerning archaeology are imposed to ensure satisfactory archaeological investigation, recording, dissemination and archiving in accordance with Policy DM13 of the SADMP. The conditions are pre-

commencement conditions to provide protection for any archaeological remains over the full course of development.

74. Condition 5 concerning waste and recycling is imposed to ensure that the development's bin storage does not harm the character and appearance of the area in accordance with Policy DM10 of the SADMP. The condition is a pre-commencement condition to ensure that satisfactory arrangements in this regard are allowed for from the initial stages of development.
75. Condition 6 concerning potential contamination at the site is imposed to ensure that risks from land contamination to the future users of the land and neighbouring land are minimised in accordance with Policy DM7 of the SADMP. The condition is a pre-commencement condition to prevent harm from any contamination at the site arising to construction staff and surrounding occupiers, as well as to occupiers of the finished development.
76. Condition 7 concerning a construction method statement is imposed to minimise disruption to neighbouring residents in accordance with Policies DM7 and DM10 of the SADMP. The condition is a pre-commencement condition so that suitable measures are in place from the start of works at the site.
77. Conditions 8 and 9 concerning surface water are imposed to prevent flooding by ensuring the satisfactory storage and disposal of surface water from the site and to prevent an increase in flood risk, maintain the existing surface water runoff quality, and to prevent damage to the final surface water management systems through the entire development construction phase, in accordance with Policy DM7 of the SADMP. The conditions are pre-commencement conditions to allow for suitable drainage measures to be in place from the start of development.
78. Condition 10 concerning working hours at the site is imposed to minimise disruption to neighbouring residents in accordance with Policies DM7 and DM10 of the SADMP.
79. Condition 11 concerning noise is imposed to protect the living conditions of future occupiers of the development in accordance with Policy DM10 of the SADMP. The condition relates to all dwellings at the development in accordance with the recommendations of the Council's Environmental Services department.
80. Condition 12 concerning biodiversity is imposed to ensure that the development provides biodiversity enhancement in accordance with Policy DM6 of the SADMP and the provisions of paragraph 180 of the Framework.
81. Condition 13 concerning a landscape and ecological management plan is imposed to protect the character and appearance of the area in accordance with Policy DM10 of the SADMP.
82. Condition 14 concerning maintenance of the drainage system is imposed to establish a suitable maintenance regime which may be monitored over time and which will ensure the long-term performance, both in terms of flood risk and water quality, of the surface water drainage system (including sustainable drainage systems) within the development, in accordance with Policy DM7 of the SADMP. An additional suggested condition concerning drainage is not imposed as it would duplicate other drainage conditions and is consequently unnecessary.

83. Condition 15 concerning access arrangements is imposed to mitigate the impact of the development, in the general interests of highway safety and in accordance with Policy DM17 of the SADMP and paragraph 114 of the Framework.
84. Condition 16 concerning lighting is imposed to protect the appearance of the area, biodiversity and local residents from nuisance from artificial light in accordance with Policies DM6, DM7 and DM10 of the SADMP.
85. Condition 17 concerning access is imposed to enable a vehicle to stand clear of the road in order to protect the free and safe passage of traffic including pedestrians on Chapel Lane, in accordance with Policy DM17 of the SADMP.

Conclusion

86. For the reasons given above the appeal should be allowed.

C Beeby

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Clare Clarke	Planning Director, Pegasus Group
Nicola Lea	Land Manager, Cartwrights
James Morton	Associate Director, Aspect Landscape Planning
Eleanor Overton	Planning Director, Pegasus Group
Michael Whitcroft	Hoare Lea

FOR THE LOCAL PLANNING AUTHORITY:

Tim Hartley	Team Leader
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INTERESTED PARTIES:

David Albrighton	Witherley and Atterton Neighbours' Association
Jackie Albrighton	As above
Richard Wade	As above

DOCUMENTS

- Appeal Decision APP/K2420/W/23/3317284 dated 24 November 2023
- Statement of Common Ground concerning planning appeal at Land Adjacent to Locky Farm, Hunts Lane, Desford, Leicestershire
- Witherley Allocations plan from Site Allocations and Development Management Policies Development Plan Document
- Schedule of events in Witherley March 2024

PHOTOGRAPHS

- Two photographs of flooding in Witherley

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 21.4021.09B (Location Plan and Proposed Block Plan), 21.4021.10B (Proposed Site and Roof Plan), 21.4021.11 (Elevation and Floor Plans, Plot 1), 21.4021.12 (Elevation and Floor Plans, Plot 2), 21.4021.13 (Elevation Plans, Plot 3), 21.4021.14 (Floor Plans, Plot 3), 21.4021.15 (Elevation Plans, Plots 4 and 5), 21.4021.16 (Floor Plans, Plots 4 and 5), 21.4021.17 (Garages, Plots 1, 2 and 3), 21.4021.18 (Garages, Plots 4 and 5) .
- 3) No demolition/development shall take place within the area shown outlined in red on plan no. 21.4021.09B until a Written Scheme of Investigation shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions, and:
 - the programme and methodology of site investigation and recording, including an initial phase of trial trenching to inform a final archaeological mitigation scheme;
 - the programme for post investigation assessment;
 - the provision to be made for analysis of the site investigation and recording;
 - the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - the provision to be made for archive deposition of the analysis and records of the site investigation;
 - the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- 4) No demolition/development shall take place other than in accordance with the Written Scheme of Investigation approved under Condition 3).
- 5) No development shall take place until a scheme that makes provision for waste and recycling storage and collection across the site shall have been submitted to and approved in writing by the local planning authority. The scheme shall address accessibility to storage facilities and adequate collection point space at the adopted highway boundary. Development shall be carried out in accordance with the approved details.
- 6) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development

shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 30 days of the report being completed and approved in writing by the local planning authority. The verification report shall include details of the remediation works and quality assurance certificates to show that the works have been carried out in full accordance with the approved methodology. Details of any post-remedial sampling and analysis to show that the site has reached the required clean-up criteria shall be included in the verification report together with the necessary documentation detailing any waste materials which have been removed from the site.

- 7) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- measures to control the emission of dust, odour, noise, smoke, light, land contamination and dirt during construction;
 - a procedure for the investigation of complaints.

The approved Construction Method Statement shall state how such controls shall be monitored. The Statement shall be adhered to throughout the construction period for the development.

- 8) Development shall not commence until details of a surface water disposal scheme shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details, which shall ensure that surface water shall not drain onto the highway at any time after the drainage scheme has been implemented.
- 9) Development shall not commence until drainage works for the management of surface water on site during construction of the development shall have been carried out in accordance with details which shall have been submitted to and approved in writing by the local planning authority.
- 10) Demolition or construction works shall take place only between 0730 and 1830 on Mondays-Fridays, 0900-1400 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 11) Development above floor plate level shall not take place until a scheme for protecting the proposed dwellings from noise from music at the adjacent Parish Room shall have been submitted to and approved in writing by the local planning authority. All works which form part of the scheme shall be completed before any part of the dwellings is occupied, and those works shall be retained thereafter.

- 12) Further to the conclusions and recommendations of the Griffin Ecology Ltd Botanical Survey and updated Biodiversity Impact Assessment received by the local planning authority on 20 June 2022, development above floor plate level shall not take place until details of how a Biodiversity Net Gain on baseline conditions shall be achieved and maintained on the site shall have been submitted to and approved in writing by the local planning authority. The site shall be maintained and managed in accordance with the approved details thereafter.
- 13) The development hereby permitted shall not be occupied until a Landscape and Ecological Management Plan, including long-term objectives, management responsibilities and maintenance schedules for the development site, shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved plan.
- 14) The development hereby permitted shall not be occupied until details of the long-term maintenance of the surface water drainage system within the development shall have been submitted to and approved in writing by the local planning authority. The system shall be maintained in accordance with the approved details.
- 15) The development hereby permitted shall not be occupied until the highway works, access arrangements and parking and turning areas shown on drawing number 21.4021.10B received by the local planning authority on 22 October 2021 have been implemented in full.
- 16) Prior to installation, the details of any external lighting to be provided in association with the development hereby permitted shall be submitted to and approved in writing by the local planning authority. This information shall include a layout plan with beam orientation, a schedule of equipment proposed in the design (luminaire type, mounting height, aiming angles and luminaire profiles), and shall demonstrate that the lighting will not cause harm to bats or their habitats. The details shall be installed, maintained and operated as approved.
- 17) 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 modification), no vehicular access gates, barriers, bollards, chains or other such obstructions shall be erected within a distance of 5 metres from the boundary of Chapel Lane.

*****End of Schedule of Conditions*****