

Report to Planning Committee 7 September 2023

Business Manager Lead: Lisa Hughes – Planning Development

Lead Officer: Yeung Browne, Planner, Ex 5893

Report Summary			
Application Number	23/01128/FUL		
Proposal	Proposed four-bedroom family bungalow on Brownfield Site		
Location	Land at The Bungalow, Moor Lane, East Stoke		
Applicant	Mr Salmon	Agent	Place For Humans - Joe Robertshaw
Web Link	https://publicaccess.newark-sherwooddc.gov.uk/online-applications/simpleSearchResults.do?action=firstPage		
Registered	04.07.2023	Target Date	28.08.2023
Recommendation	That planning permission is refused as reasons set out in Section 10.		

In line with the Council’s Scheme of Delegation, as the Parish Council’s support is contrary to the Officer recommendation to refuse, the local ward members, Councillors Neil Allen, Simon Haynes and Jack Kellas have been notified. Councillors Neil Allen and Simon Haynes have requested to call-in this application to Planning Committee with the following reasons for referral:

- **Dispute the site is within the countryside**
- **The loss of protected trees and reduced space on the other trees could be mitigated by re-planting of trees**
- **The application is supported by the Parish Council.**

1.0 The Site

The application site relates to an area of land to the north of Moor Lane and to the south west of a property known as The Bungalow which is set back from the lane. The site is enclosed by a metal palisade fence with a vehicular access to the south of the site from Moor Lane.

The Council has served a Tree Preservation Order (N401) on the walnut trees to the front of the site.

Since the refusal of a previous application (22/00917/FUL), the site has been cleared of caravans and steel containers.

2.0 Relevant Planning History

22/01360/FUL - Proposed four-bedroom family bungalow (re-submission of 22/00917/FUL). Refused 26.08.2022 for the following reasons:

01

In the opinion of the Local Planning Authority, the proposed development would result in an additional dwelling within the open countryside outside of the main built-up area of East Stoke. Together Spatial Policy 3 of the 2019 Amended Core Strategy (ACS) and Policy DM8 of the Allocations and Development Management DPD (2013) strictly control and limit the types of development in the countryside to a number of exceptions such as the design being of exceptional quality. It is considered that the proposal as put forward is not of exceptional quality, nor truly outstanding nor does it reflect the highest standards in architecture. The proposal would also result in unnecessary suburban encroachment into the open countryside which would result in an uncharacteristic form of development that would have an adverse impact on landscape character and the rural setting of the village.

The proposal does not therefore represent a sustainable form of development and is contrary to Spatial Policy 3 (Rural Areas) and Core Policy 13 (Landscape Character) of the ACS (2019) and Policies DM5 and DM8 of the Newark and Sherwood Allocations & Development Management DPD (2013) which represent the relevant parts of the Development Plan as well as National Planning Policy Framework (2021) particularly paragraph 80, which is a material planning consideration.

02

The applicant has failed to demonstrate that existing landscape features on the site would be retained, protected or improved, through the submission of an arboricultural survey and impact assessment. In addition, the applicant has failed to provide an ecological survey prior to the determination of the application therefore the Local Planning Authority is unable to determine if there would be any adverse impacts on the ecological value of the site and whether these can be avoided, compensated for or mitigated.

As such the Local Planning Authority is unable properly assess the impact the development would have and whether these impacts would be adverse on the ecological value of the site or to the longevity of the existing trees. The proposal is therefore in conflict with Core Policy 12 of the Amended Core Strategy and policy DM5 of the Allocations and Development Management DPD as well as the NPPF which is a material planning consideration.

22/00917/FUL - Proposed detached dwelling. Refused 06.07.2022 with the following reasons:

01

In the opinion of the District Council, the proposed development would result in an additional dwelling within the open countryside outside of the main built up area of East Stoke. Policy DM8 of the Allocations and Development Management DPD (2013) and strictly controls and limits the types of development in the countryside to amongst other things occupation for an essential need by a rural worker and a design being of exceptional quality. It is considered that the proposal as put forward is not of exceptional quality, truly outstanding or reflects the highest standards in architecture. The proposal would also result in unnecessary suburban encroachment into the open

countryside which would result in an uncharacteristic form of development that would have an adverse impact on landscape character and the rural setting of the village.

The proposal does not therefore represent a sustainable form of development within the District and is therefore contrary to Spatial Policy 3 (Rural Areas) and Core Policy 13 (Landscape Character) of the Amended Core Strategy (2019) and Policy DM5 and DM8 of the Newark and Sherwood Allocations & Development Management DPD (2013) and paragraph 80 of the National Planning Policy Framework (2021).

02

Paragraph 180 of the NPPF (2021) states "Development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate."

The applicant has failed to demonstrate that existing landscape features on the site would be retained, protected or improved, through the submission of an arboricultural survey. In addition the applicant has failed to provide an ecological survey prior to the determination of the application therefore the Local Planning Authority is unable to determine if there would be any adverse impacts on the ecological value of the site.

As such the Local Planning Authority is unable assess the impact the development would have and whether these impacts would be adverse on the ecological value of the site or to the longevity of the existing trees. The proposal is therefore in conflict with Core Policy 12 of the Amended Core Strategy and policy DM5 of the Allocations and Development Management DPD as well as the NPPF which is a material planning consideration.

21/02483/PIP - Application for permission in principle for residential development of 1 to 2 dwellings Refused 24.12.2021 with the following reason:

In the opinion of the District Council, the proposed development is unable to comply with policy DM8 of the Newark and Sherwood Allocations and Development Management DPD (2013) and paragraph 80 of the National Planning Policy Framework due to the detached nature of the parcel of land from the built up settlement of East Stoke, resulting in the site being located in the open countryside.

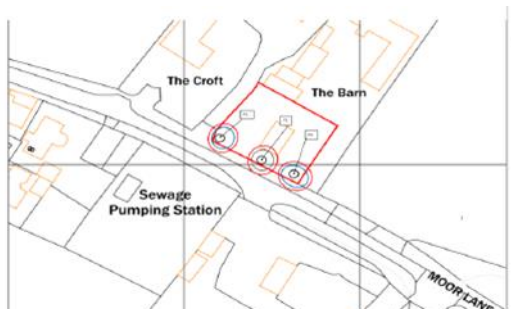
The proposal does not therefore represent a sustainable form of development and is contrary to Policy DM8 of the Newark and Sherwood Allocations & Development Management DPD (2013) and paragraph 80 of the National Planning Policy Framework (2021).

3.0 The Proposal

Despite the description of development referring to a bungalow, the proposal is for the erection of a one-and-a-half story dwelling with rooms within the roof served by rooflights and dormer windows. At ground floor the property would comprise a hall, an open plan kitchen/living room, utility/boot room, w.c, lounge, bathroom, two bedrooms, study and attached double garage. At first floor a further two ensuite bedrooms are proposed, one with dressing room.

The approximate dimensions of the building are: 22m (length) x 15.6m (depth) x 7.0m (ridge) x 2.7m (eaves) and 8.65m to the top of the chimney.

The current proposed scheme is the same as the previously refused planning applications 22/00917/FUL and 22/01360/FUL (drawings created by Architecture North Ltd). The current application is represented by a different agent (Place For Humans - Joe Robertshaw) than the previous applications. A new design and access statement, a tree survey and arboricultural impact assessment have also been submitted to support to this current application.



The submitted tree survey and arboricultural impact assessment indicate that one of the three Walnut trees (T2) will be removed as result of this application, and the other two (T1 and T3) will require minor excavation and soil moving within the roof protection area (RPA).

Drawings and documents submitted with the application:

- DRWG no. (01)01 Rev A00 Existing site plan/block plan;
- DRWG no. (01)02 Rev A00 Existing block plan/site plan;
- DRWG no. (01)03 Rev A00 Existing elevations and block plan;
- DRWG no. (01)04 Rev A00 Proposed site plan/block plan;
- DRWG no. (01)05 Rev A00 Proposed block plan;
- DRWG no. (01)06 Rev A00 Proposed elevations and floorplan;
- Design and Access Statement by Place For Humans - Joe Robertshaw received 30 June 2023
- Tree Survey & Arboricultural Impact Assessment by Pro Hort Horticulture Managed – Jason Harker dated 07 June 2023 received 30 June 2023

4.0 Departure/Public Advertisement Procedure

Seven properties have been individually notified by letter. A site notice was placed near to the proposed site on 18 July 2023.

Site visit undertaken 18 July 2023.

5.0 Planning Policy Framework

The Development Plan

Newark and Sherwood Amended Core Strategy DPD (adopted March 2019)

- Spatial Policy 1 – Settlement Hierarchy
- Spatial Policy 2 - Spatial Distribution of Growth
- Spatial Policy 3 – Rural Areas
- Spatial Policy 7 – Sustainable Transport
- Core Policy 9 – Sustainable Design
- Core Policy 12 – Biodiversity and Green Infrastructure
- Core Policy 13 – Landscape Character

Allocations & Development Management DPD

- Policy DM5 – Design
- Policy DM7 – Biodiversity and Green Infrastructure
- Policy DM8 – Development in the Open Countryside

Other Material Planning Considerations

- National Planning Policy Framework 2021
- Planning Practice Guidance
- Landscape Character Assessment Supplementary Planning Document 2013
- Residential Cycle and Car Parking Standards & Design Guide Supplementary Planning Document June 2021
- Newark and Sherwood District Wide Housing Needs Assessment December 2020

6.0 Consultations

NB: Comments below are provided in summary - for comments in full please see the online planning file.

(a) Statutory Consultations

NCC Highway Authority – This application can be considered under Standing Advice. This current proposal scheme is the same as planning applications 22/00917/FUL and 22/01360/FUL, which were refused permission, but highway reasons were not cited therefore their comments from 22/00917/FUL are repeated for awareness:-

“The access width will be acceptable, three parking spaces are to be provided and there is space to manoeuvre to enter and leave the site in a forward gear. Visibility on exit from the site is also acceptable due to the wide verge. We would not wish to raise objection and would request conditions.”

(b) Town/Parish Council

East Stoke Parish Council – Support to the proposed development, do not consider the application site is in open countryside.

(c) Representations/Non-Statutory Consultation

NSDC Environmental Health (contamination) – *“Photographs submitted with a previous application show evidence of burning and the site has been described as a builders yard in previous applications. There is clearly the potential for contamination to be present from these previous uses. I would therefore request the use of the full phased contamination condition.”*

NSDC Tree and Landscape Officer – Conclude that the proposal will result in the loss of protected trees and have a negative impact on the character and amenity of the local area. The submitted tree report is in error condemning significant trees, not taking into account the future growth of retained trees.

NSDC Biodiversity and Ecology Lead Officer – *The application site appears to be unmanaged, and although in a different un-managed state from that present when previous planning applications were under consideration, there appears to be no material change that should alter the previous requests from NSDC for development within the application site to be informed by an ecological appraisal. This should be undertaken by a suitably experienced and qualified ecologist. In addition, having reviewed the Arboricultural Assessment (ProHort – June 2023), images 3 and 4 in the report show decay on T2 with one of the features a large knot hole. Knot holes are a classic potential roost feature (PRF) and an authoritative ground level assessment undertaken by a competent ecologist would have identified this as such, and then followed up this initial assessment with further investigation to reach a reasoned decision as to whether there would likely be any impacts to bats as a result of the proposed removal of this tree. Consequently, the statement in Section 7.0 of the report is not accepted that none of the trees have features suitable to support roosting bats. A proper assessment needs to be completed by a suitably experienced ecologist and this should form part of the wider ecological appraisal that is required.*

Letters of representation have been received from 3 local residents. One states no objection to the proposal and the other two letters of support can be summarised as:

- The site was previously garden for a house behind so it is not open countryside;
- This proposal will enhance the area;
- A high quality domestic residence there would be preferable than shipping containers and multiple occupancy mobile homes use.

7.0 Appraisal

The key issues in assessing this proposal relate to the

1. The Principle of Development
2. Housing Mix and Density
3. Impact on Landscape Character and Visual Amenity
4. Impact on Residential Amenity
5. Highways and Parking
6. Impact upon Protected Trees and Ecology
7. Flooding/surface water run-off

These issues will now be discussed in turn with a conclusion that follows.

Principle of development

The National Planning Policy Framework (NPPF) promotes the principle of a presumption in favour of sustainable development and recognises the duty under the Planning Acts for planning applications to be determined in accordance with the development plan, unless material considerations indicate otherwise, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004. The NPPF refers to the presumption in favour of sustainable development being at the heart of development and sees sustainable development as a golden thread running through both plan making and decision taking. This is confirmed at the development plan level under Policy DM12 of the Allocations and Development Management DPD (ADMDDPD).

The Council is of the view that it has and can robustly demonstrate a 5 year housing land supply and policies of the Development Plan are therefore considered up to date for the purposes of decision making.

Spatial Policy 1 (Settlement Hierarchy) and 2 (Spatial Distribution of Growth) of the Newark and Sherwood Amended Core Strategy (ACS) set out the settlement hierarchy and new housing growth for the district and East Stoke does not feature within it. The settlement is therefore an 'other village' and so the development should be considered against Spatial Policy 3 of the ACS. This policy states that beyond Principal Villages, proposals for new development will be considered against the criteria of location, scale, need, impact and character. Spatial Policy 3 (Rural Areas) states that development should be located in villages, this means locations within the existing built extent of the village, which includes dwellings and their gardens, commercial premises, farmyards and community facilities. It would not normally include undeveloped land, fields, paddocks or open space which form the edge of built form. As East Stoke does not have a defined village envelope, whether the site is in the village or not, is a matter of planning judgement.

The agent for the current planning application identifies the site as brownfield (as noted in the description of development) describing the site in the application form as '*derelict previously developed land – former curtilage with fixed surface infrastructure of a Class C5 holiday let*'. There is currently no use class C5 (this refers to a potential new use class being considered by government) and officers do not agree the site meets the definition of 'previously developed land' (otherwise known as brownfield) as set out in the NPPF. From reviewing aerial photographs, the application appears to have been severed as curtilage from the property to the north at some point after 2007 when it was used for the unauthorised storage of caravans and steel containers, which have since been cleared from the site. The site remains physically separate from the dwelling to the north.

The Council, in refusing the two previous applications, has already determined that the site lies outside of the village. Furthermore, an Inspector considering a recent appeal opposite the site (planning reference 20/01027/FUL for the erection of two dwellings with garages and new vehicular access) concluded that the land was outside of the village in the open countryside.

Specifically, the Inspector stated that '*8. The small housing development of Brownlow Close, where the pedestrian footpath terminates, abruptly signifies the end of the continuous built development on the south side of Moor Lane*' and goes on to say that '*11. Even though there is residential development opposite the appeal site, this consists of two low-rise detached dwelling that are set back into their plots. They are physically detached from the tight pattern of development of East Stoke by an agricultural field spatially separating their relationship from the rest of the built up character.*'

Taking the lead from this appeal decision, officers concurred with the Inspectors findings and concluded that the application site is located within the open countryside and detached from the built-up character of the rest of East Stoke. Therefore, development must be assessed against Spatial Policy 3 (Rural Areas) of the Amended Core Strategy which signposts readers to Policy DM8 (Development in the Open Countryside) of the Allocations and Development Management DPD. There have been no changes in site circumstances since this appeal decision or indeed the previous two refusals relating to this site to allow a different conclusion to be reached.

Policy DM8 (Development in the Open Countryside) states permission will only be granted where

dwelling is for rural workers or *'of exceptional quality or innovative nature of design, reflect the highest standards of architecture, significantly enhance their immediate setting and be sensitive to the defining characteristics of the local area.'* Paragraph 80 of the NPPF (2021) states dwellings in the countryside should be avoided unless *'it is of exceptional quality and truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas and significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.'*

The proposal has not been advanced as dwellings for rural workers that need to live in the countryside. The exceptional quality and truly outstanding criteria are extremely high bars to which to attain. There is nothing within the submission that would enable the decision maker to conclude that this proposal reaches this high bar. This would require considerably more detail than has been provided, including, but not limited to, architectural features and building techniques. The proposal is not outstanding nor innovative. The proposal does not reflect the highest standards in architecture, would not help raise the standards of design in the District and would not significantly enhance its immediate setting or be sensitive to the defining characteristics of the local area. The proposal therefore fails to accord with Paragraph 80 of the NPPF and Policy DM8 of the Development Plan in this open countryside location.

In summary the proposal is for a speculative market dwelling, not meeting the occupation requirements of the NPPF or DM8 of the ADMDPD. There have been no changes in national or local policy since the 2022 applications; the details of the current proposal remain the same as the former applications in 2022 apart from an additional Tree Survey & Arboricultural Impact Assessment and a new design and access statement submitted by a different agent.

Housing Mix and Density

In accordance with the NPPF, the proposal would contribute in a very minor way (1 dwelling) to the supply of housing. Core Policy 3 confirms that the Local Planning Authority (LPA) will normally expect development densities of no lower than an average of 30 dwellings per hectare. The site area of 0.08 hectare means the density of development 26.7 dwellings per hectare falling within the aspirations of the policy. However, given that the site is within open countryside, surrounded by open field, provision of 1 dwelling is not disputed in principle.

The Council commissioned a District-wide Housing Needs Survey to be carried out in 2020 by Arc4. This survey identifies that the site falls within the Rural South sub area where the predominant housing need (39.9%) is for 3 bed houses followed by (37%) for 4 or more bedrooms houses. The property proposed, being a 4/5 bedroom dwelling (the study could be a 5th bedroom) could contribute to meeting an identified need in the sub area. There is therefore no objection to the provision of this dwelling, which would broadly align with the most up to date housing needs evidence currently available.

Impact on Landscape Character and Visual Amenity

A high level Landscape Character Assessment (LCA) has been prepared to inform the policy approach identified within Core Policy 13 (Landscape Character). The LCA provides an objective methodology for assessing the varied landscape within the District and contains information about the character, condition and sensitivity of the landscape. The LCA has recognised a series of Policy Zones across

the 5 Landscape Character types represented across the District. Core Policy 13 indicates that the development proposals should positively address the recommended actions of the Landscape Policy Zones in which the proposals lie and demonstrate that such development would contribute towards meeting the landscape conservation and enhancement aims for the area.

The Council's Landscape Character Assessment SPD shows the site falling within South Nottinghamshire Farmlands Policy Zone SNPZ07 (Elston village farmlands). This has a generally flat and open landscape of moderate condition and sensitivity. The landscape policy action is to 'conserve and create' by creating new hedgerows restoring land and enhancing tree cover.

Although located within the open countryside, the site is within a small pocket of existing built development as opposed to being located surrounding by existing open fields. Nonetheless the proposal would result in unnecessary suburban encroachment into the open countryside which would be detrimental to the landscape character. Thus, it is contrary to Core Policy 13 and the Landscape Character SPD.

Core Policy 9 'Sustainable Design' requires new development proposals to, amongst other things, "achieve a high standard of sustainable design and layout that is capable of being accessible to all and of an appropriate form and scale to its context complementing the existing built and landscape environments" and "demonstrate an effective and efficient use of land that, when appropriate, promotes the re-use of previously developed land and that optimises site potential at a level suitable to local character".

In accordance with Core Policy 9, all proposals for new development are assessed with reference to the design criteria outlined in Policy DM5 'Design' of the Allocation and Development Management DPD.

Policy DM5 of the ADMDPD states the local distinctiveness of the Districts character in built form should be reflected in the scale, form, mass, layout, design, materials and detailing of proposals. The NPPF paragraph 127 states that proposals should respond to local character and history, including the surrounding built environment and landscape setting. Proposals should be visually attractive as a result of good architecture, layout and appropriate and effective landscaping.

Chapter 12 of the NPPF (2021) paragraph 126 provides guidance in respect of achieving well-designed places confirming that, 'the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.'

The Croft to the northwest of the proposed site is a single storey dwelling set back from Moor Lane by c.20m. The Bungalow is an 'L' shape dwelling consist of a single storey element to the east and one and a half storey element to the north, sited to the northeast of the proposed site which is also set back from Moor Lane by c.40m.

The proposal is to position a dwelling set back from Moor Lane by c.2.7m. The proposed scheme would see a substantial one and a half storey dwelling positioned north to Moor Lane and adjacent to open fields to the east. While the dwelling would be set back from the adopted highway, due to its proposed height at approximately 7m to the ridge and 8.65m to the top of the chimney, the building would be highly visible. The proposal is also considered to be erode the landscape with

further unnecessary built development in the open countryside which would be directly contrary to the provisions of the SPD.

The proposal is therefore considered contrary to the provisions of Policy DM5 of the ADMDPD which requires new development to reflect the local distinctiveness and be in keeping with the general character and density of existing development in the area. The proposed development would also feature further encroachment into the open countryside which is a contrary to the provisions of Core Policy 9 and 13 and Policy DM5 as well as the Landscape Character Assessment SPD.

Impact on Residential Amenity

Policy DM5 of the DPD states that development should have regard to its impact upon the amenity of surrounding land uses and neighbouring development to ensure that the amenities of neighbours and land users are not detrimentally impacted. The NPPF seeks to secure high quality design and a high standard of amenity for all existing and future occupants of land and buildings.

The proposal is approximately 20m east of The Croft and 17m south of The Barn. Due to the distance and the design of the proposal as submitted, the proposal would not result in harm to neighbour amenity from overbearing, loss of privacy or light impacts.

It is not considered that the proposal will have an unacceptable impact on the amenity of nearby neighbouring occupiers in terms of massing, overshadowing or overlooking, and that the proposal complies with Policy DM5 of the DPD.

Impact on Highway Safety

Spatial Policy 7 (Sustainable Transport) of the Core Strategy seeks to ensure that vehicular traffic generated does not create parking or traffic problems and Policy DM5 of the DPD requires the provision of safe access to new development and appropriate parking provision. Paragraph 110 of the NPPF states that schemes can be supported where they provide safe and suitable access for all.

The Council's Residential Parking SPD states that a minimum of 3 parking spaces should be provided for dwellings of this size in this location as well as secure cycle parking and space for equipment.

The Highways Authority was consulted on the proposal development and confirmed that this current application can be considered under Standing Advice.

It is considered the proposed would result in an acceptable access width for vehicles as well as vehicles being able to manoeuvre within the site to exit in a forward gear, subject to imposition of conditions such as surfacing materials at the access, ensuring a dropped vehicle crossing and surface water discharge provision. The Council is satisfied that the required parking provision is achievable within the site, as well as the cycle provision which could be provided within the garage whilst still maintaining sufficient spaces for vehicles.

The proposal is therefore accords with the NPPF, Spatial Policy 7 of the ACS as well as Policy DM5 of the ADMDPD.

Impact upon Protected Trees and Ecology

Core Policy 12 (Biodiversity and Green Infrastructure) states that the Council will seek to conserve and enhance the biodiversity of the District and that proposals will be expected to take into account the need for the continued protection of the District's ecological and biological assets. Traditional rural buildings often provide a habitat for a variety of species, some of which may be protected by law. Policy DM7 (Biodiversity and Green Infrastructure) supports the requirements of Core Policy 12 and states that development proposals affecting sites of ecological importance should be supported by an up to date ecological assessment. Policy DM5 seeks to avoid adverse impacts upon ecological interest and protected species.

The NPPF (2021) states when determining planning application LPAs should apply the following principles as stated within paragraph 180 of the NPPF. This states that if *"significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. Development whose primary objective is to enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity."*

Since the refusal of the previous applications, the Council has served a Tree Preservation Order on the group of walnut trees to the front of the site along Moor Lane. These trees would be affected by the construction and siting of the dwelling and the installation of the driveway.

The Tree Survey & Arboricultural Impact Assessment by Pro Hort Horticulture Managed states T2 (the middle Walnut tree) will be removed, suggesting that this Walnut tree has a number of branches broken and snapped off. The survey claimed this has caused damage and there is rot in the main trunk. Due to the rot in the trunk and the proximity to the road, this tree is recommended for removal on the grounds of Health and Safety; and the other two trees (T1 and T3) will require minor excavation and soil moving within the roof protection area (RPA).

While a tree survey and arboricultural impact assessment has been submitted with the application, the conclusions are not agreed. Furthermore, no mitigation or compensation has been proposed for the loss of a protected tree and the impact to the root protection area of the others. The avenue of Walnut trees adjacent to Moor Lane are considered significant in the street scene now enjoying protected status. Any removal of these trees would need to be replaced to preserve the avenue and the public amenity value of the area.

The Council's Tree and Landscape Officer (TO) advises that a tree having "rot" is not considered sufficient justification to allow the tree removal, as the submitted tree survey and arboricultural report does not include further information or clarification giving specifics as to the cause, extent of the decay and the likelihood of failure. The TO strongly advises this tree should be retained and allowed to achieve full growth.

In accordance with British Standard (BS) 5837, all trees to the road frontage under Tree Preservation Order (TPO) are considered category A; no development is to occur within the root protection area of the protected trees, and any development must take into account the full size of the trees at maturity.

A mature crown spread for a walnut tree should be expected to be between 20 and 25m. In accordance with para. 5.3.4 of BS 5837 the default position is that development should be located outside of the Root Protection Areas of trees/hedges to be retained. A realistic assessment of the

probable impact of any proposed development on the trees and vice versa should also take into account the characteristics and condition of the trees, with due allowance and space for their future growth and maintenance requirements.

This hasn't been demonstrated here. When placing the measurements onto the block plan it shows that proposal would prejudice the retention of protected trees to the front with the trees clashing with the proposed development. This would put future pressure on the cutting back/removal of these features due to leaf dropping nuisance/general maintenance requirements which would also impact the character of the area.

It is noted that one of the Ward Councillors suggested the loss of a protected tree and reduced space on other protected trees could be mitigated by additional replanting of trees. The submitted Tree Survey & Arboricultural Impact Assessment by Pro Hort Horticulture Managed has not included any mitigation to the loss of a protect tree and reduce space for the others, nor has any re-planting scheme been put forward for consideration. It is therefore not possible to fully appraise the impact of mitigation. However, as referenced above, trees are only protected when they are considered to have public benefits and are beneficial to the wider character of an area. The loss of one tree and likely impact (to their detriment) of others leading to their loss is considered cannot be mitigated by their replacement with smaller trees.

The previous applications refused in 2022 also refer to the applicant having failed to demonstrate the impact on the ecological value of the site. This remains the position now. No ecological appraisal has been submitted.

The Council's Lead Officer for Biodiversity and Ecology has noted that the site is unmanaged and should be informed by an ecological appraisal. They have also noted that the potential for bat roosts has been discussed in the Arboricultural Assessment. Images 3 and 4 in the report show decay on Tree 2 with one of the features a large knot hole. Knot holes are a classic potential roost feature (PRF) and an authoritative ground level assessment undertaken by a competent ecologist would have identified this as such, and then followed up this initial assessment with further investigation to reach a reasoned decision as to whether there would likely be any impacts to bats as a result of the proposed removal of this tree. Consequently, they do not accept the statement in Section 7.0 of the report that none of the trees have features suitable to support roosting bats. A proper assessment needs to be completed by a suitably experienced ecologist and this should form part of the wider ecological appraisal that is required.

It therefore remains that insufficient information has been provided with this application to satisfactorily demonstrate that the proposal would not compromise the long-term life span and positive contribution of the protected trees along the southern boundary. Any adverse impact on the health and life span of these features would have consequential implications on their ongoing positive contribution to the character of the area and local biodiversity. As such, the proposal would conflict with the aims of Policies CP12, DM5 and DM7, which requires development to be appropriately designed and sited to protect and conserve the ecological assets and the biodiversity of the district. It also fails to meet the objectives of the NPPF.

Land contamination

The agent has contested comments provided by our Environmental Health Officer (EHO) in relation to land contamination, with regards to 'the burning' of materials on the site, stating that the images

are unclear and blurry at best (provided by the applicant/agent as part of the application). The agent states that he is unclear on the EH officer's justification for requesting a 'Full phase' contamination report as part of a condition in the event that planning permission is approved. The agent further states that *'as this appears to not be in accordance with the Local List; the EH officer's reasons are not clear, and no evidence has been presented in this application to support his claims, nor provided any'*.

The EHO has responded identifying the former use of the site as a builders yard and because the application is to introduce sensitive residential receptors by construction of a residential dwelling with gardens clarifies that *not* all former contaminative uses can be listed for obvious reasons. The planning application form section 'existing use' requires the applicant to state the sensitivity of the proposed use of the site. Residential houses with gardens are the most sensitive use possible in terms of vulnerability to contamination and that alone should trigger the need for an investigation/report (as the form states). The obligation lies with the developer to prove that the land is 'suitable for use' and not the local authority to prove that it is potentially contaminated. As such in the event of an approval it would be recommended that a condition is imposed to deal with the potential for land contamination.

Flooding/surface water run-off

The site is located within flood zone 1 and an area at risk from surface water flooding. I do not consider the proposal would have a harmful impact upon surface water run-off to the application and nearby sites.

8.0 Implications

In writing this report and in putting forward recommendations officers have considered the following implications; Data Protection, Equality and Diversity, Financial, Human Rights, Legal, Safeguarding, Sustainability, and Crime and Disorder and where appropriate they have made reference to these implications and added suitable expert comment where appropriate.

9.0 Planning Balance and Conclusion

Due to the location and the detached nature of the site from the main settlement of East Stoke, the land is considered to be located within the open countryside whereby new development is assessed against paragraph 80 of the NPPF (2021) and policy DM8 of the ADMDPD. The proposal does not meet any of the exceptions to the presumption against development as set out in the Development Plan policies. The principle of a new dwelling in this location is therefore considered to be contrary to policy. This position remains consistent insofar as the two previous applications have drawn the same conclusion as has the appeal decision relating to the potential residential development on the land opposite.

In addition, the proposal would result in unnecessary encroachment into the open countryside to the detriment of the landscape character. The applicant also has not included details of how it would impact upon local ecology, and the findings of the submitted tree survey and arboricultural impact assessment are not agreed, as it condemns a significant tree for loss without adequate justification, and fails to take into account the future growth of retained trees leading to harm.

The proposal has been assessed to have a neutral impact upon neighbour amenity, highway safety

and parking provision. It would represent a minor benefit in terms of adding one house to the supply of units that would comply with the local identified need but this is not considered to tip the balance of acceptability to a positive outcome. Therefore, the proposal is considered to be contrary to Spatial Policy 3 and Core Policies 9, 12 and 13 of the ACS and Policies DM5, DM7 and DM8 of the ADMDPD as well as the NPPF, a material planning consideration.

10.0 Recommendation

That planning permission is refused for the reasons shown below:

01

In the opinion of the Local Planning Authority, the proposed development would result in an additional dwelling within the open countryside outside of the main built-up area of East Stoke. Together, Spatial Policy 3 of the 2019 Amended Core Strategy (ACS) and Policy DM8 (Development in the Open Countryside) of the Allocations and Development Management Development Plan Document (2013) strictly control and limit the types of development in the countryside to a number of exceptions such as the design being of exceptional quality or a rural workers dwelling. The proposal as advanced does not meet any of the exceptions listed within policy and would result in unnecessary suburban encroachment into the open countryside which would result in an uncharacteristic form of development that would have an adverse impact on landscape character and the rural setting of the village. The proposal does not therefore represent a sustainable form of development and is contrary to Spatial Policy 3 (Rural Areas) and Core Policy 13 (Landscape Character) of the ACS (2019) and Policies DM5 and DM8 of the Newark and Sherwood Allocations & Development Management DPD (2013) which represent the relevant parts of the Development Plan as well as National Planning Policy Framework (2021) particularly paragraph 80, which is a material planning consideration.

02

The site contains a group of protected trees which positively contribute to the character and appearance of the area. The proposed scheme would result in loss of one protected tree without adequate justification and doesn't allow the remaining trees the space to grow to their full potential which would lead to harm. Furthermore, the applicant has failed to provide an ecological survey prior to the determination of the application therefore the Local Planning Authority is unable to determine if there would be any adverse impacts on the ecological value of the site and whether these can be avoided, compensated for, or mitigated. The proposal is therefore contrary to Core Policy 12 (Biodiversity and Green Infrastructure) of the Amended Core Strategy (2019) and Policies DM5 (Design) and DM7 (Biodiversity and Green Infrastructure) of the Allocations and Development Management DPD (adopted July 2013) as well as the National Planning Policy Framework which forms a material planning consideration.

Informatives

01

The application is clearly contrary to the Development Plan and other material planning considerations, as detailed in the above reason(s) for refusal. Working positively and proactively with the applicants would not have afforded the opportunity to overcome these problems, giving a

false sense of hope and potentially incurring the applicants further unnecessary time and/or expense.

02

You are advised that as of 1st December 2011, the Newark and Sherwood Community Infrastructure Levy (CIL) Charging Schedule came into effect. Whilst the above application has been refused by the Local Planning Authority you are advised that CIL applies to all planning permissions granted on or after this date. Thus any successful appeal against this decision may therefore be subject to CIL (depending on the location and type of development proposed). Full details are available on the Council's website www.newark-sherwooddc.gov.uk/cil/

03

For the avoidance of doubt the application was refused on the following plans and documents:

- DRWG no. (01)04 Rev A00 Proposed site plan/block plan;
- DRWG no. (01)05 Rev A00 Proposed block plan;
- DRWG no. (01)06 Rev A00 Proposed elevations and floorplan;
- Design and Access Statement by Place For Humans - Joe Robertshaw received 30 June 2023
- Tree Survey & Arboricultural Impact Assessment by Pro Hort Horticulture Managed – Jason Harker dated 07 June 2023 received 30 June 2023

BACKGROUND PAPERS

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Application case file.

Committee Plan - 23/01128/FUL



