

Recommendation: Conditional approval	
20201345	1-1A Monsell Drive
Proposal:	Variation of conditions 11 (TPO trees to be protected from damage) & 12 (Existing trees, shrubs, hedges to be protected) attached to planning permission 20191818 (Demolition of existing apartment buildings (Class C3); Construction of two and three storey Care Home (60 Bed) (Class C2) to allow for changes to the tree protection measures and felling of four trees protected by TPO N4.0177 (Amended plan received 7/10/2020)
Applicant:	Mr Adrian Doyle
View application and responses:	https://planning.leicester.gov.uk/Planning/Display/20201345
Expiry Date:	30 October 2020
ACB	WARD: Aylestone



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Summary

- The application is being reported to committee due to the number of objections received.
- 17 objections have been received on the grounds that too many trees would be felled.
- Issues are the impact on the trees and amenity
- Application is recommended for approval.

The Site

The application relates to a site which is on the corner of Lutterworth Road and Monsell Drive which was originally occupied by a two-storey detached house. The site is located within an area that is largely residential in character.

The site is currently being developed as a care home.

27 individual trees on the application site and the adjacent undeveloped site are protected by a Tree Preservation Order (TPO) no N4.177. The TPO further covers a group of trees which are mainly Cypress trees on the boundary with 60 Lutterworth Road.

To the east of the site is a vacant plot which was occupied by a house. There are residential properties to the north, south and west of the site.

Background

In July 2005, permission was granted (20032496) for the erection of two 3-storey apartment blocks comprising 17 2-bedroom flats. This entailed demolition of the house that occupied the site.

In February 2006 planning permission (20051768) was refused for an increased number of flats to 24 on the grounds of increased traffic generation and a loss of character to the area. The scale of the buildings was similar to that previously approved.

An appeal against this decision was subsequently dismissed. The Inspector concluded that the proposed development would have no material effect on highway safety or traffic congestion in the area or on the availability of parking. Neither would it have a material detrimental effect on the character of the area with reference to density. However, the Inspector dismissed the appeal on the grounds that the proposed development was likely to result in future demands for the trees to the front of the development to be removed which would expose the buildings and they would appear stark and conspicuous on the prominent corner of Lutterworth Road and Monsell Drive. This, she concluded, would have a material harmful effect on the character and appearance of the site and the surrounding area.

Planning permission 20032496 has been implemented, with the smaller block facing Monsell Drive being predominantly complete and the external shell of the larger of the two blocks being finished. These buildings have since been demolished.

In July 2011 planning permission 20110503 was granted for change of use from seventeen self-contained flats to care home (62 bed); two-storey link extension; three storey extensions at front of blocks A and B; two storey and single storey extension at rear of block A. This permission was not implemented and has expired.

In January 2018 planning permission 20162240 was granted for change of use from flats to care home (50 bed and 4 x 2 bed assisted living apartments) (Class C2); construction of three storey extension at front; three storey extension at side and

rear; single storey detached bin store; single storey detached cycle store; associated landscaping and car parking. The development has not commenced.

In June 2018 planning permission 20180439 was granted to vary condition 22 of planning permission 20162240 to allow for the removal of the basement, an increase in height of the three-storey extension and the removal of the assisted living element to create an additional 10 bedrooms for the care home. This development has not commenced.

In August 2018 consent was granted under application 20181490 for the felling of one of the protected trees.

In March 2019 consent was granted for the felling of another of the protected trees.

Details have been submitted and agreed to discharge conditions 2, 3 11,12, 13, 14, 17, 20 and 21 of planning permission 20180439.

In December 2019 planning permission 20191818 was granted for the demolition of the apartment buildings and the construction of a two and three storey care home (60 bed) (Class C2). The development has commenced.

In March 2020 a report was received that the tree protection fencing was not in the position shown on the approved plans and that there had been some changes to the land levels which were also not shown. An investigation found that the tree protection fencing around 3 trees to the north east corner of the site was not in the correct place. This application has been submitted as a result of the investigation.

The Proposal

The proposal is to vary conditions 11 and 12 attached to planning permission 20191818 (“the extant consent”) to allow for a reduced tree protection area around three trees to the north east corner of the site.

The proposal also includes the felling of a Cypress tree in the garden area to allow for benches to be installed and the felling of some of the trees on the boundary of the site with 60 Lutterworth Road. One Plum tree and two Beech trees would have canopies reduced to allow for scaffolding to be installed.

Amended plans have been received that remove the felling of one of the Cypress trees and clarify that 3 trees to the boundary with 60 Lutterworth Road that are covered by the TPO will be felled. The amended plans also show that T19 of the TPO to the front of the site will be felled and a replacement tree will be planted.

Policy Considerations

National Planning Policy Framework (NPPF) 2019

The National Planning Policy Framework (NPPF) 2019 sets out the Government’s planning policies for England and how these are expected to be applied.

Paragraph 2 states that applications for planning permission must be determined in accordance with development plans unless material considerations indicate otherwise.

Paragraph 11 states that there will be a presumption in favour of sustainable development.

Paragraph 170 states that decisions should contribute to and enhance the natural and local environment by minimising impact on and providing net gains for biodiversity and prevent new development from contributing to, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability.

Development Plan policies

Development plan policies relevant to this application are listed at the end of this report.

Consultations

Trees and Woodlands – In light of the finished levels of the site the proposal is acceptable and would result in minimal tree loss, most of which will be at the back of the site and new development, not seen by the public, there would remain sufficient tree cover on the rear boundary. It would not be possible to construct to the approved plans without the removal/changes to tree protection due to the car parking provision and these changes are therefore acceptable. Following receipt of the amended plans they confirm that the proposal to fell T19 and details of its replacement are acceptable.

Representations

17 objections have been received. The grounds of objection are;

- The developer knew the site had protected trees and should work around them
- The tree protection to the north east corner has already been located in the proposed position and has never been in the approved position
- The proposal will cause more damage to trees and lead to further applications to remove them.
- The previous buildings should not have been allowed to be demolished.
- The proposal will have more of an impact on wildlife in the area.
- Impact on residential amenity of neighbouring property due to further felling of trees on the southern boundary.
- Removing more trees will impact on drainage.

Cllr Porter has objected to the application on the grounds that the loss of trees would affect the amenity of the occupiers of neighbouring properties. Further that the developers should have been fully aware of the protection and that if the application is approved the whole tree protection policy should be abandoned.

Consideration

The principle of the development, including the design of the buildings and its surround has been established by the extant consent. This is an application to vary the conditions attached to an earlier permission the Council is only required to consider the questions of the conditions subject to which a new planning permission could be granted. However, the application must be determined according to the current development plan and relevant material considerations. There have been no changes to the materials considerations or Development Plan since the extant consent was granted but access for machinery to construct the approved development and the method of construction of the car park have resulted in a need to amend conditions 11 and 12 of the extant consent.

The main issues under consideration is the impact on the protected trees, removal of trees and visual and general amenity.

Although the application is for a variation of condition, if approved it would result in a new planning permission for the development, and as a result the other proposed conditions from the extant consent also need reviewing.

Impact on trees

The site is covered by a TPO and the extant consent included details of the tree protection methods. The majority of protection methods would remain as approved however in the north east corner of the site the protective fencing needs to be moved so that it is directly adjacent to the current position of tree T19 of the TPO and 3.3m from T17 of the TPO. This is to allow for construction of the parking spaces and for machinery to access the north east part of the site to enable the construction to occur. This part of the development has already occurred on site. I do not consider that it would result in significant compaction of the soil around the roots to result in the loss of these trees. I therefore consider that this element of the application is acceptable.

Government guidance on TPOs states that a local planning authority's consent is not required for carrying out work on trees subject to an Order so far as such work is necessary to implement a full planning permission. For example, the Order is overridden if a tree has to be removed to make way for a new building for which full planning permission has been granted. Condition 11 was therefore imposed to ensure that the protected trees would be retained on the site.

The proposal also includes felling of three Cypress trees on the boundary with 60 Lutterworth Road which are part of the group section of the TPO. I consider that this is acceptable as sufficient tree cover would remain.

The tree identified as T19 is located on the boundary with Monsell Drive and there are a number other mature trees in this location The amended plans show that tree T19 (Lime) of the TPO would be felled and replaced with a *Tilia cordata* 'Rancho' to be located near to T6 of the TPO. T19 needs to be felled as it is adjacent to the car park area and would suffer damage in the longer term. I consider that the proposal to

fell T19 and its replacement is acceptable. Condition 15 will ensure a suitable size of replacement tree is planted.

Amenity

The site has a dense coverage of trees and the removal of 4 trees will not significantly harm the visual amenity of the site and wider area to warrant a refusal.

As this is an application for variation of conditions it would result in a new planning permission being granted and therefore the other conditions require reviewing.

Other matters

A number of the objections say that the developers should have been aware of the tree protection. I consider that the developers were aware of the protected nature of the trees, however, plans for developments often change once contractors have been appointed and the application reflects the changing nature of the development.

One of the objections states that the previous buildings should not have been demolished. This has already been approved under the extant consent as the previous buildings on the site were found not to be of adequate construction standards and therefore had to be demolished in order to make use of the site.

Removal of the 4 trees is unlikely to significantly harm wildlife due to the still dense tree coverage on the site and the Nature Conservation Officer has not raised any objections

Condition 1

The development has already commenced; however, all planning permissions must have a start date and therefore I recommend a condition to reflect the approved start date.

Condition 2

The materials to be used were detailed in the original application and I therefore recommend a revised condition to reflect this.

Condition 3

Plant and machinery have not been installed yet and I therefore recommend a revised condition to reflect the previously approved details.

Condition 4

The parking areas have not yet been provided and the development is not occupied. I therefore recommend the same condition.

Condition 5

The cycle parking has not been provided and I therefore recommend a revised condition to reflect the approved details.

Condition 6

The Travel Plan is still a requirement and I therefore recommend the same condition.

Condition 7

The works to Monsell Drive has not been completed and I therefore recommend the same condition.

Condition 8

This is a condition which will require ongoing compliance and I therefore recommend the same condition.

Condition 9

The gate has not yet been installed and I therefore recommend the same condition.

Condition 10

All works are still to be carried out in accordance with the British Standard and I therefore recommend the same condition

Conditions 11, 12 and 13 are recommended to be amended to reflect the amended details.

Condition 14

The development is still at construction phase and therefore I recommend a revised version of the condition.

Condition 15

There is still a requirement for the trees lost to be replaced and I therefore recommend the same condition.

Condition 16

The combined heat and power system have not yet been installed and I therefore recommend the same condition to confirm its satisfactory operation.

Condition 17

The landscaping scheme has not yet been installed due to the stage of development. I therefore recommend the same condition.

Condition 18

There will still be a requirement for bin storage and I therefore recommend a revised version of the condition.

Condition 19

The sustainable drainage system has not yet been installed and the condition requires ongoing compliance. I therefore recommend a revised version of the condition.

Condition 20

Application 20201503 has been approved to discharge this condition. I therefore recommend an amended condition to reflect the approved details and require the installation to be carried out.

Condition 21

No plan of the lighting to be installed has yet been received and I therefore recommend the same condition.

Condition 22

The drainage has not yet been installed and I therefore recommend the same condition

Condition 23

The approved plans have not been amended and I therefore recommend a revised version of the condition.

Other matters

A number of the objections say that the developers should have been aware of the tree protection. I consider that the developers were aware of the protected nature of the trees, however, plans for developments often change once contractors have been appointed and the application reflects the changing nature of the development.

The previous buildings on the site were found not to be of adequate construction standards and therefore had to be demolished in order to make use of the site.

Conclusion

In conclusion, I consider that the changes to the tree protection areas will not have a significant impact on the root system of the trees to result in their loss. I further consider that due to dense tree coverage on the site the removal of three further trees adjacent to 60 Lutterworth Road and T19 fronting Monsell Drive will not have a significant impact on the amenity value of the trees or on the visual amenity of the site and wider area and complies with planning policy for the area.

I recommend that this application is APPROVED subject to the following conditions

CONDITIONS

1. The development shall be begun by 13 December 2022. (To comply with Section 91 of the Town & Country Planning Act 1990.)
2. The walls, roof, windows doors and other external materials shall be constructed in accordance with the details submitted in the application form and plan AL(0)060 submitted with application 20191818. (In the interests of visual amenity, and in accordance with Core Strategy policy CS3.)
3. Plant and machinery shall only be operated and installed in accordance with the details submitted on approved plan SK-001 rev P2 submitted to the City Council as Local Planning Authority under application 20191818 on 19 November 2019. (In the interests of the amenities of nearby occupiers, and in accordance with policy PS10 of the City of Leicester Local Plan.)
4. Before the occupation of any part of the development, all parking areas shall be surfaced and marked out in accordance with details which shall first have been submitted to and approved by the City Council as local planning authority, and shall be retained for parking and not used for any other purpose. (To ensure that parking can take place in a satisfactory manner, and in accordance with policy AM11 of the City of Leicester Local Plan and Core Strategy policy CS3.)
5. No part of the development shall be occupied until secure and covered cycle parking has been provided and retained thereafter, in accordance with the details shown on the approved plan AL(9)901 rev J submitted with application 20191818. (In the interests of the satisfactory development of the site and in accordance with policy AM02 of the City of Leicester Local Plan).
6. The use shall only operate in accordance with the details submitted in the Travel Plan dated October 2016 and approved under application 20162240 The plan shall be maintained and operated thereafter. (To promote sustainable transport and in accordance with policies AM01, AM02, and AM11 of the City of Leicester Local Plan and policies CS14 and CS15 of the Core Strategy).
7. All street works shall be constructed in accordance with the Council's standards contained in the "6Cs Design Guide" (view from www.leicester.gov.uk/6cs-design-guide). (To achieve a satisfactory form of development, and in accordance with policy AM01 of the City of Leicester Local Plan and Core Strategy policy CS3.)
8. No part of the development shall be occupied until the 2 metre by 2 metre sight lines on each side of each vehicular access have been provided, and they shall be retained thereafter. (In the interests of the safety of pedestrians and other road users, and in accordance with policy AM01 of the City of Leicester Local Plan and Core Strategy policy CS3.)
9. The gate at the entrance from Monsell Drive shall be set back at least 5m from the footway and retained as such. (In the interests of highway safety and in

accordance with policy AM01 of the City of Leicester Local Plan and Core Strategy policy CS3.)

10. All works shall be carried out in accordance with British Standard for Tree Work BS 3998:2010. (In the interests of the health and amenity value of the trees and in accordance with Policy UD06 of the City of Leicester Local Plan and Core Strategy policy CS3.)

11. All trees on the site subject to a Tree Preservation Order except for those to be felled shall be protected from damage during building operations, in accordance with details submitted on the approved plan ref no 4074 rev D received by the City Council as local planning authority on 9 October 2020 (In the interests of amenity, and in accordance with policy UD06 of the City of Leicester Local Plan and Core Strategy policy CS3.)

12. Prior to the commence of the development, all existing trees, shrubs or hedges to be retained on the site shall be protected by fences erected not within the root protection area in accordance with details submitted within the approved plan ref no 4074 rev D received by the City Council as local planning authority on 9 October 2020 No materials whatsoever shall be stored, rubbish dumped, fires lit or buildings erected within these fences; no changes in ground level shall be made within the spread of any tree, shrub or hedge without the previous written approval of the local planning authority. No trees shall be used as anchorages, nor shall any items whatsoever be affixed to any retained tree. (In the interests of amenity, and in accordance with policy UD06 of the City of Leicester Local Plan and Core Strategy policy CS3.)

13. All vegetation intended for clearance shall be clearly identified on site in accordance with details submitted on plan ref no 4074 rev D received by the City Council as local planning authority on 9 October 2020, before any clearance is begun. (In the interests of amenity, and in accordance with policy UD06 of the City of Leicester Local Plan and Core Strategy policy CS3.)

14. During works of demolition and construction all operations shall only be carried out in accordance with the details shown on plan SK(8)910 received by the City Council as Local Planning Authority on 13 August 2018 under application 20191818 in respect of temporary site entrances, temporary storage areas for soil and other materials, and the placing of plant and site huts. (To ensure the satisfactory development of the site, and in accordance with policy UD06 of the City of Leicester Local Plan and Core Strategy policy CS3.)

15. In the first planting season following the removal of each tree, a replacement tree shall be planted. The replacement tree(s) shall be 2:1 at 14/16 Extra Heavy Standard of the same species unless an alternative scheme has first been submitted to and approved by the City Council as local planning authority. All replacement trees shall be maintained for a minimum period of five years following planting. Any tree that dies, becomes seriously damaged or is removed shall be replaced by another of the same specification at the same place in the first available planting season. (In the interests of the amenity of the area, and in accordance with policy UD06 of the City of Leicester Local Plan and Core Strategy policy CS3.)

16. No part of the development shall be occupied until evidence demonstrating satisfactory operation of the approved Combined Heat and Power based community based heating and hot water system including on-site installation has been submitted to and approved in writing by the City Council. (In the interests of securing energy efficiency in accordance with Policy CS2 of the Core Strategy.)

17. The approved landscaping scheme shall be carried out within one year of completion of the development. For a period of not less than five years from the date of planting, the applicant or owners of the land shall maintain all planted material. This material shall be replaced if it dies, is removed or becomes seriously diseased. The replacement planting shall be completed in the next planting season in accordance with the approved landscaping scheme. (In the interests of amenity, and in accordance with policy UD06 of the City of Leicester Local Plan and Core Strategy policy CS3.)

18. No part of the development shall be occupied until the arrangements for storage of bins shown on the approved plans AL(9)904 under application 20191818 have been provided. These arrangements shall be maintained thereafter. (In the interests of the amenities of the surrounding area, and in accordance with policy PS10 of the City of Leicester Local Plan and Core Strategy policy CS3.)

19. No part of the development shall be occupied until the Sustainable Drainage System (SuDS) for the site has been completed in accordance with the approved details shown on plan DD150 submitted with application 20191818. The Sustainable Drainage System shall be managed and maintained thereafter in accordance with the approved management and maintenance plan. (To reduce surface water runoff and to secure other related benefits in accordance with policy CS02 of the Core Strategy.)

20. The development shall not be occupied until the 8 bird bricks and 10 bat tubes approved under application 20201503 have been installed under the supervision of an ecologist. The bat tubes and bird boxes shall be retained thereafter. (In the interests of biodiversity and in accordance with policy CS17 of the Leicester Core Strategy.)

21. Before any external lighting is installed a detailed design plan of lighting to be used which shows the locations of lights, their type of light emittance and wavelength, together with a lux contour map showing the variation in light, shall be submitted to and approved in writing by the local planning authority. The lighting shall be designed to cause minimum disturbance to protected species that may inhabit the site with appropriate areas remaining dark and a maximum of 1 lux on vegetated areas where considered necessary. The approved scheme shall be implemented and retained thereafter. No additional lighting shall be installed without prior agreement from the Local Planning Authority. (In the interests of protecting wildlife habitats and in accordance with saved policy BE22 of the City of Leicester Local Plan and policy CS 17 of the Leicester Core Strategy)

22. The use shall not commence until the drainage, and especially foul drainage, has been installed in accordance with the details shown on plan DD150 approved by

the City Council as local planning authority under application 20181828. It shall be retained and maintained thereafter. (To ensure appropriate drainage is installed in accordance with policy CS02 of the Core Strategy

23. The development hereby approved shall be carried out solely in accordance with the following drawings submitted under application 20191818:

AL(1)105 rev A (Roof Plan) received 23 September 2019

AL(1)104 rev A(Attic Plan) received 23 September 2019

AL(1)103 rev A(Second Floor Plan) received 23 September 2019

AL(1)102 rev A (First Floor Plan) received 23 September 2019

AL(1)101 rev A (Ground Floor Plan) received 23 September 2019

AL(1)140 rev A, AL(1)141 rev A and AL(1)142 rev A (Elevations) received 23 September 2019

AL(9)901 rev J (Site Plan) received 23 September 2019

AL(9)902 rev K (Landscaping) received 19 November 2019

and 4074 rev D (Tree Protection Plan submitted with this application and received on 9 October 2020

Unless otherwise submitted to and approved by the City Council as local planning authority. (For the avoidance of doubt.)

NOTES FOR APPLICANT

1. Development on the site shall avoid the bird nesting season (March to September), but if necessary a re-check for nests should be made by an ecologist (or an appointed competent person) not more than 24 hours prior to the commencement of works and evidence provided to the City Council as Local Planning Authority. If any nests or birds in the process of building a nest are found, these areas will be retained (left undisturbed) until the nest is no longer in use and all the young have fledged. An appropriate standoff zone will also be marked out to avoid disturbance whilst the nest is in use. All wild birds are protected under the Wildlife and Countryside Act (1981) as amended making it an offence to kill, injure or disturb a wild bird during the nesting season or to damage or destroy an active nest or eggs during that time.

2. The City Council, as local planning authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received. This planning application has been the subject of positive and proactive discussions with the applicant during the process (and/or pre-application).

The decision to grant planning permission with appropriate conditions taking account of those material considerations in accordance with the presumption in favour of sustainable development as set out in the NPPF 2019 is considered to be a positive outcome of these discussions.

Policies relating to this recommendation

2006_AM01 Planning permission will only be granted where the needs of pedestrians and people with disabilities are incorporated into the design and routes are as direct as possible to key destinations.

- 2006_AM02 Planning permission will only be granted where the needs of cyclists have been incorporated into the design and new or improved cycling routes should link directly and safely to key destinations.
- 2006_AM11 Proposals for parking provision for non-residential development should not exceed the maximum standards specified in Appendix 01.
- 2006_BE16 Planning permission will be granted for the development of renewable energy installations where local impacts are not outweighed by wider benefits. Major developments must realise their potential for incorporating renewable energy technologies.
- 2006_BE20 Developments that are likely to create flood risk onsite or elsewhere will only be permitted if adequate mitigation measures can be implemented.
- 2006_PS10 Criteria will be used to assess planning applications which concern the amenity of existing or proposed residents.
- 2006_PS11 Control over proposals which have the potential to pollute, and over proposals which are sensitive to pollution near existing polluting uses; support for alternative fuels etc.
- 2006_UD06 New development should not impinge upon landscape features that have amenity value whether they are within or outside the site unless it can meet criteria.
- 2014_CS02 Development must mitigate and adapt to climate change and reduce greenhouse gas emissions. The policy sets out principles which provide the climate change policy context for the City.
- 2014_CS03 The Council will require high quality, well designed developments that contribute positively to the character and appearance of the local natural and built environment. The policy sets out design objectives for urban form, connections and access, public spaces, the historic environment, and 'Building for Life'.
- 2014_CS13 The Council will seek to maintain and enhance the quality of the green network so that residents and visitors have easy access to good quality green space, sport and recreation provision that meets the needs of local people.
- 2014_CS14 The Council will seek to ensure that new development is easily accessible to all future users including by alternative means of travel to the car; and will aim to develop and maintain a Transport Network that will maximise accessibility, manage congestion and air quality, and accommodate the impacts of new development.
- 2014_CS17 The policy sets out measures to require new development to maintain, enhance and strengthen connections for wildlife, both within and beyond the identified biodiversity network.
- 2014_CS19 New development must be supported by the required infrastructure at the appropriate stage. Developer contributions will be sought where needs arise as a result of the development either individually or collectively.