

HINCKLEY AND BOSWORTH BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990



**Hinckley & Bosworth
Borough Council**

STATEMENT OF CASE OF THE LOCAL PLANNING AUTHORITY

PLANNING APPEAL BY MR & MRS GAGIN

**AGAINST THE REFUSAL OF PLANNING APPLICATION 23/01195/FUL FOR A
PROPOSED DWELLING WITH DETACHED GARAGE AND CREATION OF NEW
ACCESS (RESUBMISSION OF 22/01071/FUL) (SELF-BUILD)**

**LAND NORTH EAST OF THE HOVEL, SPINNEY DRIVE, BOTCHESTON,
LEICESTERSHIRE**

LOCAL PLANNING AUTHORITY REFERENCE: 23/01195/FUL

PLANNING INSPECTORATE REFERENCE: APP/K2420/W/24/3348843

OCTOBER 2024

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1. INTRODUCTION

- 1.1. This Statement should be read in conjunction with the previously submitted appeal questionnaire papers, particularly the Delegated Report, and is submitted in full support of the decision of Hinckley and Bosworth Borough Council to refuse planning permission for a proposed dwelling with detached garage and creation of new access at land north east of The Hovel, Spinney Drive, Botcheston, Leicestershire.

2. **DESCRIPTION OF THE APPEAL SITE, THE SURROUNDING AREA, AND THE PROPOSAL**

2.1. Sections 2 and 3 of the Delegated Report sets out a description of the site and surrounding area and a description of the planning application and so these are not repeated here.

2.2. One matter that this statement does need to address though is the issue of the loss of what appear to be mature, healthy, impactful trees from the site. The case officer did not require an arboricultural report to be submitted but the Inspector will note on their site visit that the trees that would be lost from the site appear to be amongst the better trees on the site.

3. **SITE HISTORY**

- 3.1 The relevant planning history of the site is set out in the Council's Delegated Report. Paragraph 4.2 of the Delegated Report refers to an application submitted by the same applicants as on this current appeal on a site on the opposite site of Spinney Lane. Application 21/00887/FUL was approved in October 2023 and the Committee report and decision notice for that application are attached at Appendix 1 and Appendix 2 to this Statement.
- 3.2 The application that is the subject of this appeal was refused under delegated powers for the following two reasons:
- 1) The application site is located outside of any identified settlement boundary and within the open countryside, where new, unrestricted residential development is not considered sustainable development. The scheme, by virtue of its size, scale, volume, massing, and layout is considered to result in an urbanising and significantly adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside resulting in significant harm to the character and appearance of the site and surrounding area. Overall, the benefits of the development of one residential dwelling are not considered to outweigh the significant and demonstrably adverse impacts of the scheme to the intrinsic value, beauty, open character and landscape character of the countryside. Consequently, the development is contrary to, and in conflict with, Policies DM1, DM4, and DM10 of the Site Allocations and Development Management Policies Development Plan Document (2016), Policy 13 of the adopted Core Strategy (2009), Policy H1 of the Desford Neighbourhood Plan, Paragraphs 8, 83, 84, 128(c), 135(c), 180 and Sections 9, 11, 12, and 15 of the National Planning Policy Framework (Dec 2023) the Good Design Guide.
 - 2) The unsustainable location of the proposed dwelling is considered to result in the future occupants of the scheme having limited access to facilities, services, employment and retail needs, and sustainable modes of transport, and being reliant upon the use of private motor vehicles. This is not considered to create an accessible development that promotes health and wellbeing for future users, which is contrary to, and in conflict with, Policy DM17 of the Site Allocations and Development Management Policies Development Plan Document, Paragraphs 8(c), 128(c), and 135(f), as well as Sections 9, and 12 of the National Planning Policy Framework (Dec 2023).

4. **RELEVANT PLANNING POLICY**

- 4.1 Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 provide that planning decisions must be made in accordance with the development plan unless there are material considerations to indicate otherwise.
- 4.2 It is the National Planning Policy Framework December 2023 (NPPF) (the Framework) that is of key relevance to this appeal. Paragraph 2 confirms that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise and that the NPPF is a material consideration in determining applications.
- 4.3 Paragraph 8 of the NPPF sets out that achieving sustainable development means that the planning system has three overarching objectives:
- a) An economic objective;
 - b) A social objective – to support strong, vibrant and healthy communities... by fostering places with accessible services... that support communities' health, social and cultural well-being; and
 - c) An environmental objective – to protect and enhance our natural, built and historic environment...
- 4.4 Paragraph 11 of the Framework sets out a presumption in favour of sustainable development and states that development proposals that accord with the development plan should be approved without delay or that where there are no relevant development plan policies, or the policies that are the most important for determining the application are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.
- 4.5 Paragraph 225 of the Framework confirms that existing policies should not be considered out-of-date simply because they were adopted or made, prior to the publication of the Framework and that due weight should be given to them according to their degree of consistency with the Framework.
- 4.6 Paragraph 12 of the NPPF confirms that the presumption in favour of sustainable development does not change the statutory status of the Development Plan as the starting point for decision making.
- 4.7 On 29 July 2024 the City Council published an updated five year housing land supply calculation. This updates the five year housing land supply position from March 2023 to March 2028 and demonstrates a 5.6 year supply of housing, with a surplus supply of 145 dwellings over the five year period.
- 4.8 For decision taking, a five year housing land supply is a material consideration in all relevant applications and appeals for dwellings in the Borough. Despite being able to demonstrate a housing land supply, due to the age of the relevant housing

policies in the Core Strategy, in accordance with the requirements of 11d) of the NPPF, the Council should still grant permission 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.

- 4.9 Paragraph 83 of the Framework relates to rural housing and states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities.
- 4.10 Paragraph 84 of the Framework relates to isolated homes in the countryside, and it is important to point out that the LPA does not consider the site to be isolated.
- 4.11 Paragraph 114 of the Framework states that in assessing applications for development, it should be ensured that safe and suitable access to the site can be achieved for all users.
- 4.12 Paragraph 116 of the Framework states that applications for development should, so far as possible, facilitate access to high quality public transport.
- 4.13 Paragraph 128 of the Framework states that planning decisions should support development that makes efficient use of land, taking into account the availability and capacity of infrastructure and services, both existing and proposed, as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use.
- 4.14 Section 12 of the Framework is titled 'Achieving well-designed and beautiful places', and paragraph 131 sets out that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development and creates better places in which to live and work. Paragraph 135 states that decisions should ensure that developments are visually attractive; are sympathetic to local character; and create places that promote health and well-being with a high standard of amenity for existing and future users.
- 4.15 Paragraph 180 of the Framework states that planning decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside... and of trees and woodland.
- 4.16 The requirements of Policies DM4, DM10 and DM17 of the Council's Site Allocations and Development Management Policies Development Plan Document (SADMP) and Policy H1 of the Desford Neighbourhood Plan are set out in the Delegated Report and so are not repeated here.
- 4.17 Policy 21 of the Core Strategy states that to support the implementation of the National Forest, proposals that contribute to the delivery of the National Forest Strategy, which principally in relation to this application relates to increasing woodland cover, will be supported provided that the development respects the character and appearance of the wider countryside.

- 4.18 Policy 22 of the Core Strategy states that within Charnwood Forest, proposals will be supported that retain local character and complement the local landscape and enhance woodland and habitat provision and connectivity.

5. RELEVANT APPEAL/APPLICATION DECISIONS

- 5.1 There is one relevant appeal decision that the LPA wishes to bring to the attention of the Inspector.
- 5.2 The relevant appeal is attached at Appendix 4. The appeal reference is APP/K2420/W/23/3317284 and it is considered relevant as it relates to a site within the countryside, adjacent to a village in the Borough that had no shops but did have other facilities such as a village school close to the site. There are also many ways in which the appeal is different from the current appeal under consideration and the LPA acknowledges that all appeals on different sites will have different material planning considerations. There are though some key points of principle that the LPA wishes to bring to the Inspector's attention.
- 5.3 Firstly, the Inspector on appeal 3317284, as have many other Inspectors, confirmed that the provision of new dwellings in the countryside was contrary to Policy DM4 of the SADMP and, at paragraph 15 of the decision letter, that Policy DM4 was consistent with the Framework which required that planning policies (and decisions) contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.
- 5.4 Secondly, even though the settlement in that instance was a higher order Rural Village, the Inspector at paragraph 13 of their decision, confirmed that as there were no shops in the settlement and that it would not be possible to meet the majority of daily needs within the village. The Inspector found that public transport options were extremely limited and that it was likely that future occupiers would use private cars for the majority of their day-to-day trips. Importantly, the Inspector found that development would not minimise the need to travel or maximise the use of sustainable travel modes as required by SADMP Policy DM17 and that it would also conflict with the objective of the Framework to promote sustainable transport.

6 THE CASE FOR THE LPA

- 6.1 The two reasons for refusal are set out above at paragraph 3.2. Section 8 of the Council's Delegated Report sets out the reasoning behind the refusal of permission and this Statement seeks to avoid repeating the points that are made there. The Delegated Report should be read alongside this Statement and together they form the case for the LPA.
- 6.2 The LPA considers that its case is made well in the Delegated Report. This statement will seek to minimise repetitions of the points that have already been made.
- 6.3 The Delegated Report sets out the Council's main concerns that the proposed development was contrary to the requirements of the development plan in that the proposal represented development in the countryside that was contrary to Policies DM4, DM10 and DM17 of the SADMP and Policy H1 of the Desford Neighbourhood Plan, that it would have a significant detrimental effect on the character and appearance of the site and surrounding area and that it was located in an unsustainable location with no safe access to services and facilities and where occupiers would be reliant on private cars to meet their day-to-day needs.
- 6.4 The Committee report on application 21/00887/FUL sets out very clearly the key difference between that application and the current appeal – that the site on the north-west side of the access lane was part of the garden of the existing house to the south-west and as such that site represented an infill development which was specifically not considered to set any precedent for development on the south-east side of the access lane which has a very different character as countryside compared to the continuous residential development on the western side.
- 6.5 The proposed development would be very clearly seen as an uncharacteristic development within and extending into the countryside which would be significantly at odds with and detrimental to the site and surrounding area on this south-east side of the access lane.
- 6.6 Paragraph 3 of the Framework requires that it be read as a whole. Section 4 of this Statement sets out the numerous ways in which the proposal fails to accord with the requirements of the Framework. The proposal fails in the Framework's social objective in that it fails to support a strong, vibrant and healthy community as residents would be reliant on private cars to meet their day-to-day needs given the lack of facilities and services within a reasonable and safe walking distance of the site. The proposal fails in the Framework's environmental objective as it fails to protect and enhance the natural environment and fail to recognise the intrinsic character and beauty of the countryside and would instead have a significant detrimental effect on the character of the site and surrounding area.
- 6.7 The Council is able to demonstrate a five year supply of housing that further reduces the limited benefits that can be attributed to the development.

- 6.8 The Delegated Report clearly sets out how the proposal fails to accord with the requirements of Policies DM4, DM10 and DM17 of the SADMP, with Policy 13 of the Core Strategy and with Policy H1 of the Desford Neighbourhood Plan. In addition it is considered that the proposal is contrary to Policies 21 and 22 of the Core Strategy regarding the National Forest and Charnwood Forest although it is recognised that these policies are not referred to in the Council's decision notice.
- 6.9 The Appellants have failed to even attempt a reasoned case for the scheme and instead fall back on simple assertion, with a complete absence of evidence, that the appeal should be allowed.

7 COMMENTS ON THE APPELLANT'S CASE

- 7.1 The Appellant provides a statement in support of the appeal. Nowhere in the statement do the Appellants address the issue of whether or not the dwelling is a self-build dwelling. Given that this formed a substantial part of the Delegated Report the LPA assumes that the dwelling is not a self-build development. This would tend to confirm the opinion of the LPA touched on at paragraph 8.40 of the Delegated Report that this was a cynical attempt to sway the planning balance in favour of approval of the planning application. It is therefore considered that the dwelling should not be considered to be a self-build project.
- 7.2 The Appellants' statement refers at paragraph 5.3 and 5.4 to Core Strategy Policy 17: Local Needs. It should be pointed out, as the Appellant is aware, that the site does not lie within the hamlet of Botcheston but instead lies within the countryside as the Appellants acknowledge at paragraphs 2.1 and 6.3 of their statement.
- 7.3 The LPA rejects the assertion made at 6.6 of the Appellants' statement that the proposal would mirror other properties along Spinney Drive to the south west of the appeal site. This statement ignores the fact that the south-east site of Spinney Drive has a completely different character to the north-west, one side is clearly open countryside, the other clearly domestic properties set behind maintained garden hedges.
- 7.4 The LPA similarly disagrees with the Appellants' assessment at paragraph 6.8 that the proposed dwelling would be viewed from the south-east along with the existing dwellings to the north east. The existing dwelling to the north is long established and currently set well back from the highway and screened by substantial planting. The new property, sited as it is close to the southern boundary of the site, would be clearly prominent in the views north and east along Spiney Drive, in contrast to other development in the vicinity. The development would contrast significantly with other dwellings all of which are long established or have been approved within the gardens of existing established dwellings and would be viewed as an exception to the wider residential development along Spinney Drive.
- 7.5 At paragraph 6.9 the Appellants make the statement that the site is not isolated from other residential properties. The LPA does not disagree and at no point has it raised this as an issue. The point is that the site lies within the countryside, as do other dwellings in the vicinity which are either long established or have been approved as genuine infill properties that were within the gardens of existing properties. The LPA strongly disagrees with the statement made in paragraph 6.9 that the property infills to the south – there are no other dwellings to the south, there are open fields. It is incorrect to characterise the proposed scheme as infill development.
- 7.6 In stating at paragraph 6.9 that the site is not considered to have any particular beauty, this disregards the wording of Policy DM4 of the SADMP that countryside has intrinsic value and beauty. This is supported by paragraph 180 of the Framework which states that decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

This proposal fails to recognise the intrinsic character and beauty of the countryside.

- 7.7 The historic mapping shown at paragraph 6.10 does not accurately show the location of the appeal site in the larger of the three images. Neither is it accurate to say, as the Appellants do at paragraphs 6.10 and 6.11 that the site forms part of the curtilage of The Old School House. The Appellants inaccurate statements continue when they state at paragraph 6.12 that the site has not been part of the undeveloped countryside and that it is not undeveloped. The site and the surrounding area are designated as countryside and there has never been any built development on the appeal site.
- 7.8 The Appellants then simply asserts at paragraph 6.13 that the proposal would be in accordance with Policies DM4 and DM10 of the SADMP, Policy H7 of the Neighbourhood Plan and the requirements of the NPPF without any considered assessment of those policies or of the Framework. The extent to which the proposal fails to accord with these policies and with the Framework is explained in comparative great detail in the Delegated Report as supplemented by this Statement.
- 7.9 Paragraph 6.15 addresses the Council's second reason for refusal which relates to the unsustainable location of the site and that future occupiers would be reliant on private vehicles to access services and facilities. The Appellant's response in this paragraph ignores that the site does not lie within the hamlet of Botcheston or that the site is located approximately 800 metres in a direct line from the Botcheston settlement boundary. The closest shop, as acknowledged by the Appellants, is over 2 miles away in Desford. It is of little relevance that Botcheston has a bus service to Leicester when the closest bus stop, close to the junction of Main Street and Markfield Lane, is almost a mile's walk from the appeal site along a route which for the most part is unlit and has no pavement.
- 7.10 It is therefore simply not correct to say, as the Appellants do at paragraph 6.17 that the appeal site is in close proximity to facilities and services within other settlements.
- 7.11 It is simply not correct to say, as the Appellants do at paragraph 6.18 that the appeal site lies within a rural community. It is already established and acknowledged by the Appellants that the site lies within the countryside.
- 7.12 It is simply not correct to say, as the Appellants do at paragraph 6.19 that the bus service is within walking distance of the appeal site – it is over 1400 metres from the site. This far exceeds any recognised acceptable walking distance. The Chartered Institution of Highways and Transportation advises that the maximum distance to a bus stop should be no more than 400 metres and the Leicestershire Highway Design Guide, at paragraph 3.67 states that in rural areas the walking distance to a bus stop should be no more than 800 metres.
- 7.13 Paragraph 6.20 of the Appellants statement is therefore considered to defy logic – the appeal site is not within a sustainable location, it is not within a rural community, there are no services in the vicinity to support and there is no reasonable access to public transport.

- 7.14 At paragraph 6.22 the Appellant turns to their previous planning permission on the site directly opposite the appeal site across Spinney Drive. As the Appellants point out at paragraph 6.24 this previous application was considered acceptable as it was considered to be infill development. Bordering that site to the south-west was the dwelling known as The Hovel. Bordering the site to the north-east is the dwelling known as The Grange. The Appellants suggest at paragraph 6.24 that there was open land between the site of this previous approval and the garden of the dwelling to the south-west. Again this is not correct, and the site formed part of the rear garden of The Hovel. Attached at Appendix 3 is the red line location plan from application 15/00905/HOU which was for a single storey side extension to the dwelling that was approved in October 2015.
- 7.15 The Appellants appear not to have read the report on planning application 21/00887/FUL too closely. At paragraph 9.6 of the Committee report for that application, which is attached at Appendix 1, states that it was determined that the proposal would not have a significant adverse effect on the countryside as the proposal was an infill development and as “the development would not set a precedent for development on the south-eastern side of the access lane...” Paragraph 11.2 of the Committee report then clearly sets out that the application site was located outside of the settlement boundary of the rural hamlet of Botcheston and that Policy 13 of the Core Strategy outlined that such hamlets have limited if any services and that as such development was confined to infill housing development which the proposed development was considered to be. Given the clarity of the Committee report it is surprising at the very least that the Appellants stated at paragraph 6.24 that the appeal site is not considered to be any different from the site that was the subject of application 21/00887/FUL and that there has been no change in policy since that application was approved.
- 7.16 At paragraph 6.25 the Appellants again simply assert without any justification that it can be clearly demonstrated that the application site is within a sustainable location. The LPA has evidenced that the opposite is the case.
- 7.17 The LPA disagrees fundamentally with the conclusions that the Appellants reach in paragraphs 8.1 to 8.5 of their statement.

8 PLANNING BALANCE AND CONCLUSIONS

- 8.1 The most important policies for the determining of this appeal those set out in the two reasons for refusal.
- 8.2 It is acknowledged that the tilted balance as set out at paragraph 11d) of the NPPF is engaged due to the age of the Core Strategy but the Council is able now to demonstrate a five-year housing land supply. Accordingly, permission should be granted unless adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- 8.3 The development represents a development of the site that is contrary in principle to Policies DM4 and DM17 of the SADMP and Policy H1 of the Desford Neighbourhood Plan as the site is located in an unsustainable countryside location remote from any services and facilities and from public transport. As such the proposal fails to meet the objective of the Framework to promote sustainable transport. Policies DM4, DM10, DM17 and H1 are considered to be consistent with the Framework in seeking to enhance the local environment by recognising the intrinsic character and beauty of the countryside and in seeking to ensure that development is sympathetic to local character. Significant weight is attached to the degree of conflict with these policies
- 8.4 The proposal fails to complement or enhance the character of the area as required by Policy DM10 of the SADMP and would instead result in significant harm to the character and appearance of the countryside. It is the Council's view that given the nature of the proposal significant weight should be given to the harm that is caused.
- 8.5 There are no shops or services within the vicinity of the site. Much of the walking route to the nearest bus stop is on narrow, unlit roads that have no pavement. Occupiers would be reliant on private cars for their day-to-day needs. Development in this location would not minimise the need to travel or maximise the use of sustainable travel modes as required by Policy DM17 of the SADMP. The conflicts with development plan policy and with the Framework are given significant weight.

Benefits arising from the development

- 8.6 The LPA considers that there are very limited social benefits arising from the provision of a single dwelling given that the Council is able to demonstrate a five year supply of housing land. In addition, there are no planning benefits such as affordable housing, self-build housing or essential infrastructure. The claim that this is a self-build dwelling has been addressed in the Delegated Report and it is notable that the Appellant's statement does not assert otherwise.
- 8.7 Economic benefits would arise from the scheme through jobs and spend during the construction phase and through economic activity of occupiers but are considered to carry negligible weight.

- 8.8 It is not considered that in this particular case there are any environmental benefits arising from the development of an undeveloped piece of land within the countryside and the loss of healthy mature trees.

Overall Balance

- 8.9 Paragraph 8 of the NPPF states that there are three overarching objectives to achieving sustainable development and that these are interdependent and need to be pursued in mutually supportive ways so that opportunities can be taken to secure net gains across each of the different objectives.
- 8.10 The development of the appeal site would fail to meet the environmental or social objectives of sustainable development.
- 8.11 Assessed against a presumption of sustainable development set out in the Development Plan and in the NPPF when balancing the social, environmental and economic aspects of the development, the proposal is not considered to promote sustainable development. There are negligible benefits that come at cost to the environment that are significant, and social costs, through the unsustainable location of the site which would render occupiers reliant on a private car to meet their day-to-day needs, that are also considered to be significant.
- 8.12 Weighing the totality of harm and taking all the above into account, it is considered that the adverse impacts of the appeal scheme would significantly and demonstrably outweigh its benefits. As such the development is not considered to represent a sustainable form of development. The LPA therefore requests that the appeal should be dismissed.

9 CONDITIONS

9.1 The following conditions are considered to be necessary.

1. Standard time limit condition
2. Standard approved plans condition
3. A condition requiring adequate provision for waste and recycling storage of containers for the written approval of the LPA which should address accessibility to storage facilities at the adopted highway boundary
4. The development hereby approved shall be implemented in strict accordance with the measures stated in Section 5.0 (Herpetofauna Precautionary Working Method Statement) of the Preliminary Ecological Appraisal report (FPCR, April 2023).
5. Prior to the commencement of development details of how a Biodiversity Net Gain on baseline conditions shall be achieved and maintained on the site shall be submitted to and agreed in writing by the Local Planning Authority. The site shall be maintained and managed in accordance with the approved details thereafter.
6. Before any development commences on the site, including site works of any description, a Tree Protection Plan prepared by a suitably qualified arboriculturist shall be submitted to and approved in writing by the local planning authority. The plan shall include protective barriers to form a secure construction exclusion zone and root protection area in accordance with British Standard 5837:2012 Trees in relation to design, any trenches for services are required within the fenced-off areas, they shall be excavated and back-filled by hand and any tree roots or clumps of roots encountered with a diameter of 25cm or more shall be left un-severed. The development shall be implemented in accordance with the approved Tree Protection Plan.

10 APPENDICES

Appendix 1: The Delegated Report for application 21/00887/FUL on the site opposite

Appendix 2: The Decision Notice for application 21/00887/FUL

Appendix 3: The red line location plan from application 15/00905/HOU

Appendix 4: Appeal decision APP/K2420/W/23/3317284 for a site on Bagworth Road, Nailstone