

HINCKLEY AND BOSWORTH BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990



**Hinckley & Bosworth
Borough Council**

WRITTEN STATEMENT ON BEHALF OF THE LOCAL PLANNING AUTHORITY

PLANNING APPEAL BY MR J LAWRENCE

**AGAINST THE REFUSAL OF OUTLINE PLANNING PERMISSION FOR THE
CONSTRUCTION OF UP TO 7 DWELLINGS, INCLUDING 3 SELF-BUILD
DWELLINGS, AND GARAGE (RE-SUBMISSION OF 22/01181/OUT)**

AT

**LAND LOCATED TO THE EAST OFF BARWELL ROAD,
KIRKBY MALLORY, LEICESTERSHIRE, LE9 7QA**

HINCKLEY AND BOSWORTH BOROUGH COUNCIL REFERENCE

23/00842/OUT

THE PLANNING INSPECTORATE REFERENCE

6005892

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1. INTRODUCTION

- 1.1. This statement is to be read in conjunction with the previously submitted Appeal Questionnaire papers, in full support of the decision of Hinckley and Bosworth Borough Council to refuse outline planning permission for the construction of 7 dwellings, including 3 self-build dwellings, and garages (re-submission of 22/01181/OUT) at land located to the east off Barwell Road, Kirkby Mallory.

2. DESCRIPTION OF THE APPEAL SITE AND THE PROPOSAL

- 2.1. The description of the appeal proposal and the appeal site are detailed at Sections 2 and 3 of the Delegated Officer Report ('Delegated Report') respectively.

3. SITE HISTORY

- 3.1. The relevant planning history for the appeal site is detailed at Section 4 of the Delegated Report.

4. POLICIES

- 4.1 The relevant local and national planning policies and legislation in the determination of this appeal proposal are detailed at Section 7 of the Delegated Report.

5. THE CASE FOR THE LOCAL PLANNING AUTHORITY

- 5.1 The planning application was refused on 16 January 2025 under delegated powers for the following reasons:

1. The development represents unjustified residential development in an unsustainable location that fails to promote sustainable transport. The future occupants of the scheme would be dependent on private motorised transport to meet their day-to-day needs, and this results in significant environmental harm. As a result the proposal is contrary to, and in conflict with, the requirements of Policies DM4 and DM17 of the Site Allocations and Development Management Policies Development Plan Document (2016), and Paragraphs 8, 139, and 187, and Sections 9 and 15 of the National Planning Policy Framework (2024).
2. The application site lies outside of the defined settlement boundary of Kirkby Mallory and so lies within the countryside. The development of up to seven dwellings on the site would result in a significant, detrimental, irreversible, urbanising and domesticating effect on the intrinsic value, beauty, open character and landscape character of the countryside. This harm significantly and demonstrably outweighs the benefits of the development. The proposal is contrary to and in conflict with Policies DM4 and DM10 of the Site Allocations and Development Management Policies Development Document (2016) and Paragraphs 139 and 187, and Sections 2, 9, 11, 12 and 15 of the National Planning Policy Framework (2024).

- 5.2 The four pages detailing the Appellant's case at Section 7 of their Appeal Statement solely relies on: the Council's lack of five-year housing land supply (Paragraphs 7.4 and 7.15), a list of amenity types near to the appeal site (Paragraph 7.9), the conclusions of their previously submitted Landscape Report (Paragraph 7.12), a previous appeal decision in the countryside (Paragraph 7.16), and the fact the site was partially included within the Council's Strategic Housing and Economic Land Availability Assessment ('SHELAA') (2022) (Paragraph 8.05).

Strategic Housing and Economic Land Availability Assessment (SHELAA)

- 5.3 Firstly, Paragraph 2.3 of the SHELAA confirms that:

"The SHELAA is an evidence base document to inform plan making. It is not a decision-making document, and it does not in itself determine whether or not a site should be granted planning permission or allocated for development."

- 5.4 Therefore, the presence of the appeal site within the SHELAA should not carry any positive weight in the determination of the appeal proposal.

Housing Land Supply and the Countryside Appeal

- 5.5 Secondly, the appeal referred to by the Appellant relates to the development for up to 95 dwellings at the Land east of The Common in Barwell. Notably, there are significant material differences between a proposal for major development next to one of the Borough's largest residential areas and the current appeal's proposal for the development of seven residential properties outside of the settlement boundaries of a rural hamlet. Ultimately, every development should be assessed on its own site-specific merits. Therefore, this previous appeal decision should not be afforded any positive weight in the determination of this current appeal.
- 5.6 In addition, the housing land supply position, and the resultant weight to the Council's Development Plan Policies within this previous appeal decision no longer reflects the current five-year housing land supply of the Council and would not be an appropriate basis to determine this current appeal on. Since the determination of planning application 23/00482/OUT and the appeal in Barwell, the Council's Planning Policy team have reviewed the revisions to the 2024 version of the NPPF and its implications for the Council's Five-Year Housing Land Supply. As of April 2024, the Council had a 5.26-year supply of land for housing. However, the Council can no longer demonstrate a five-year housing land supply, and the latest figures as of April 2025 are expected to demonstrate that the Council has a housing land supply of up to 3.95 years.
- 5.7 Notwithstanding the above, in accordance with Paragraph 8.12 of the Delegated Officer Report, and contrary to the assertions of Paragraph 8.01 of the Appellant's Statement, Policy DM4 of the adopted Site Allocations and Development Management Policies Development Plan Document ('SADMP') should be given significant weight in the determination of this appeal.

- 5.8 This is a position that is shared with Inspector's within the determination of latest appeal decisions within the Borough relating to minor residential development, including self-build developments and schemes in the designated open countryside, such as the appeal decisions at The Cottage in Desford (cf. Appendix A), The White House in Wellsborough (cf. Appendix B), and land southwest of Sibson Road in Sheepy Parva (cf. Appendix C).

Sustainability of the Location of the Appeal Site

- 5.9 The Local Planning Authority strongly refute that the appeal site would be in a sustainable location for development. Contrary to Paragraph 7.9 of the Appellant's Statement, the provision of one small shop that sells a very limited range of goods, a restaurant, a park, a restaurant, an alternative education provider, and a race circuit would not demonstrate that a proposal outside of the identified settlement boundary of this rural hamlet would be in a sustainable location for new residential development. This is a position that was shared by Leicestershire County Council as the Local Highway Authority who stated within their response to the 23/00842/OUT that, "The proposals are not in a sustainable location in transport terms." Notably, the Appellant has not sought to dispute that the future occupiers of the development would not be dependent on private motorised transport to meet their day-to-day needs as explained within the first reason for refusal.

Landscape Harm

- 5.10 The Appellant's Appeal Statement fails to have any regard to the Council's assessment of the impact of the appeal development and its review of the submitted Landscape Report, which is detailed between Paragraphs 8.37 and 8.49 within the Delegated Officer Report. As confirmed within the Delegated Officer Report, the Local Planning Authority's position is that the Landscape Report significantly underestimates the significant and permanent harm of the development on the character and appearance of the site, the surrounding area, and the designated open countryside. The Appellant has not sought to refute the concerns raised by the Council.

Self-Build and Custom Housebuilding

- 5.11 As per Paragraph 8.35 of the Delegated Officer Report, if secured by a Unilateral Undertaking, the development would contribute to the unmet demand for self-build housing within the Borough. The planning application nor the current planning appeal have been accompanied by a Unilateral Undertaking. Since the determination of 23/00842/FUL, several appeal decisions have confirmed that if a development does not legally secure the scheme's contribution towards self-build and custom housebuilding, then the associated benefits could not be afforded any positive weight in the planning balance. This is a view that has been taken by Inspectors within the determination of Pond Barn (cf. Appendix D), and the Causeway in Church Langton (cf. Appendix E). The latest position should on the weighting of unsecured self-building and custom housebuilding should be considered in the planning balance for this appeal.

6. CONCLUSION

- 6.1 To summarise, Section 38 (6) of the Planning and Compensation Act 2004 and Section 70 (2) of the Town and Country Planning Act 1990 indicates that planning permission should be granted for development proposals that accord with the Development Plan unless material considerations indicate otherwise.
- 6.2 The 'tilted' balance at Paragraph 11(d) of the NPPF would be triggered within the determination of this appeal whereby planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
- 6.3 The Appellant has not sought to identify any additional planning benefits of the scheme, nor has the Appellant sought to refute the planning benefits identified and weighted by the Local Planning Authority. Therefore, the economic and social benefits through the construction of the scheme and the subsequent activities of future residents should be afforded limited positive weight in the balance.
- 6.4 In addition, in accordance with the latest appeal decisions regarding this matter, due to the absence of any mechanism to legally secure three of the proposed dwellings as self-build and custom house builds, the associated benefit of this would not attract any positive weight within the determination of this current appeal.
- 6.5 As such, the appeal proposal would result in a significant, detrimental, irreversible, urbanising and domesticating effect on the intrinsic value, beauty, open character, and landscape character of the designated open countryside. Given the above, the development would not be well design and would fail to reflect local design policies and government guidance on design. In accordance with Paragraph 139 of the NPPF, the appeal proposal should be dismissed. As a result, and as per Paragraph 8.73 of the Delegated Officer Report, this should attract significant negative weight in the planning balance.
- 6.6 The development also results in significant environmental harm through the siting of new residential development in an unsustainable location where the future occupants of the scheme would be dependent on private motorised transport to meet their day-to-day needs. As per Paragraph 8.74 of the Delegated Officer Report, this should attract significant negative weight in the planning balance.
- 6.7 In light of the above, the development proposal would be contrary to, and in conflict with, Policies DM4, DM10, and DM17 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), and Chapters 2, 9, 11, 12, and 15 of the National Planning Policy Framework (2024), including all applicable Key Policy Paragraphs 115, 129, 135, and 139.
- 6.8 In accordance with Paragraph 11(d) of the NPPF, it is therefore requested that the appeal is dismissed as the significant and permanent harm of the development on the character of the surrounding area and the environment would significantly and demonstrably outweigh the potential benefits of the development when assessed against the policies in the NPPF taken as a whole.

- 6.9 There are no other material considerations to indicate that the proposal should be determined other than in accordance with the adopted Development Plan in this case. With regard to the information contained in this statement and that submitted with the Appeal Questionnaire, Hinckley and Bosworth Borough Council respectfully requests that the appeal be dismissed.
- 6.10 However, if the Inspector is minded not to do so, the Local Planning Authority requests the inclusion of the following conditions and reasons suggested below.

7. CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2. No development shall commence until details of the layout, scale, appearance, landscaping, and access (hereafter called the reserved matters) have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved reserved matters.

Reason: To ensure a satisfactory form of development in accordance with Policies DM1, DM4, and DM10 of the Site Allocations and Development Management Policies Development Plan Document (2016).

3. The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details received by the Local Planning Authority as follows:

- Site Location Plan (submitted: 22.08.2023)

Reason: To ensure a satisfactory form of development in accordance with Policies DM1, DM4, and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

4. Prior to the commencement of development, a Construction Traffic Management Plan, including, as a minimum, details of the routing of construction traffic, wheel cleansing facilities, vehicle parking facilities, and a timetable for their provision, shall be submitted to and approved in writing by the Local Planning Authority. The construction of the development shall thereafter be carried out in accordance with the approved details and timetable.

Reason: To reduce the possibility of deleterious material (mud, stones etc.) being deposited in the highway and becoming a hazard for road users, to ensure that construction traffic does not use unsatisfactory roads and lead to on-street parking problems in the area in accordance with Policy DM17 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and the National Planning Policy Framework (2024).

5. Prior to the commencement of development (including vegetation clearance), an Ecological Mitigation Compensation and Enhancement Strategy shall be submitted to, and approved in writing by, the Local Planning Authority. These measures shall include, but are not limited to, native planting, wildflower grassland creation, and integrated bird and bat boxes within the new properties. The measures should also achieve measurable Biodiversity Net Gain. Any mitigation, compensation or enhancement measures need to be clearly shown on all relevant submitted plans and elevations. All works are to proceed strictly in accordance with the approved scheme.

Reason: To enhance protected and priority species and habitats in accordance with Policy DM6 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

6. Prior to the commencement of development, a scheme demonstrating that the proposed dwellings will meet the requirements of BS8233-2014 shall be submitted to, and approved in writing by, the Local Planning Authority. All works which form part of the scheme shall be completed before any of the permitted dwellings are first occupied.

Reason: To ensure that the future occupiers of the development are provided with a high standard of residential amenity and are protected from noise and disturbance in accordance with Policy DM7 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), and Paragraph 135 of the National Planning Policy Framework (2024).

7. Any forthcoming Reserved Matters application shall include a surface water drainage strategy.

Reason: To prevent flooding by ensuring the satisfactory storage and disposal of surface water from the site, and to minimise the risk of pollution in accordance with Policy DM7 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

8. Any forthcoming Reserved Matters application shall include details of a scheme to provide a pedestrian footway alongside Barwell Road between the existing footway and the site access.

Reason: To mitigate the impact of the development, in the general interests of highway safety and in accordance with Policy DM17 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and the National Planning Policy Framework (2024).

9. Any forthcoming Reserved Matters application shall include details of how the matters for which approval is being sought for the proposed development have taken into consideration and respond to the guidance within the National Design Guide (2019) and Building for a Healthy Life (2020).

Reason: To support the creation of high quality and sustainable buildings and places and to ensure a satisfactory form of development in accordance with Policies DM1 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), and Chapter 12 of the National Planning Policy Framework (2024).

10. Any forthcoming Reserved Matters application shall include details that demonstrate that all dwellings within the development comply with the minimum bedroom, storage, and internal area requirements of the Nationally Described Space Standards (2015).

Reason: To ensure that the development provides a high standard of residential amenity for the future occupants of the scheme in accordance with Paragraph 6.21 of the Design and Access Statement, Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and Paragraph 135 of the National Planning Policy Framework (2024).

11. Any forthcoming Reserved Matters application shall include details for the adequate provision for waste and recycling storage of containers and collection across the site. The details should address accessibility to storage facilities and confirm adequate space is provided at the adopted highway boundary to store and service wheeled containers.

Reason: To support the policies within the Wheeled Bin and Container Policy (updated March 2018) and to ensure that there is adequate provision of waste and recycling storage so that the amenity of the occupants of the proposed development are not adversely affected in accordance with Hinckley and Bosworth Borough Council's Wheeled Bin and Contained Policy (updated March 2018), Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and Section 46 of the Environmental Protection Act 1990.

12. Any forthcoming Reserved Matters application shall include details for secure cycle parking in accordance with the guidance with the Good Design Guide (2020), Leicestershire Highway Design Guide (2020), and the Building for a Healthy Life (2020).

Reason: To promote travel by sustainable modes in accordance with Policy DM17 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), and Section 9 of the National Planning Policy Framework (2024).

13. Any forthcoming Reserved Matters application shall include details of external lighting across the site (including on any non-adopted highways and footpaths). This information shall include a layout plan with beam orientation, a schedule of equipment proposed in the design (luminaire type, mounting height, aiming angles and luminaire profiles), and details of its maintenance and operation. The external lighting shall then be installed, maintained, and operated in accordance with the approved details prior to the first occupation of the development.

Reason: To ensure a satisfactory form of development and to create places that are safe, inclusive, and accessible, which promote health and well-being, and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience in accordance with Policies DM1 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and Paragraph 135 of the National Planning Policy Framework (2024).

8. APPENDICES

8.1 (See separate documents)

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| 8.2 | Appendix A | Appeal Decision (6001009)
(The Cottage, Station Road, Desford) |
| 8.3 | Appendix B | Appeal Decision (3364808)
(Land north east of Old White Cottage, Desford) |
| 8.4 | Appendix C | Appeal Decision (3361154)
(Land SW Sibson Road, Sheepy Parva) |
| 8.5 | Appendix D | Appeal Decision (3357989)
(Cold Comfort Farm, Rogues Lane, Stoke Golding) |
| 8.6 | Appendix E | Appeal Decision (333846)
(Land adjoining The Causeway, Church Langton) |