



Town and Country Planning Act 1990

(As Amended by the Planning and Compulsory Purchase Act 2004)

Section 78 Appeal

Statement of Case on behalf of The Appellants

Appellant: Richardson & Hall Luxury Developments Ltd

Appeal Site: Land at Barwell Constitutional Club, 20 Chapel Street, Barwell, Leicestershire

LPA Reference: 23/00716/FUL

Date: June 2024

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1.0 Introduction

Hinckley and Bosworth Borough Council refused full planning permission for the construction of 3no. residential dwellings with associated vehicular access, parking, amenity space and other works, on land adjacent to Barwell Constitutional Club, Chapel Street Barwell, under local planning authority reference 23/00716/FUL. The decision notice was issued on 29th April 2024, and the appellants are now exercising their right to appeal this decision to the Planning Inspectorate.

A single reason for refusal of planning permission was given, as follows:

1. The development is not judged to meet the standards of good design and represents overdevelopment of the site, leading to adverse impacts upon the amenity of future residents through the relationship between Plots in terms of over dominance and enclosure. Therefore, the development is not in accordance with Section 12 and Paragraph 135 of the National Planning Policy Framework, Policy DM10 of the Site Allocations and Development Management Policies DPD, Policy 22 of the Earl Shilton and Barwell Area Action Plan and the Good Design Guide.”

This Statement accompanies a notice of Appeal being lodged against that decision.

2.0 Background

The appellants first applied to the LPA for pre-application advice on 22nd October 2021, for a scheme of 5 single storey dwellings (a mix of detached and terraced homes).

This request for advice was not acknowledged by the LPA until 10th December 2021, almost 6 weeks later. The acknowledgement letter stated that a response would be provided by 19th November 2021 – a date which had already passed at this stage. The letter provided the name of the officer handling the request, but included an incomplete telephone number and a generic email address. This acknowledgement letter is **item 1** within **Appendix A ‘Pre-Application Correspondence with LPA’**.

The appellants’ agent contacted the LPA querying the response date and asking for the correct contact details of the allocated officer. The officer (Sundas Shaban) duly replied the same day and after a few emails back and forth, it was suggested that early January 2022 may be an achievable date for the advice to be issued. However, by the first week of January 2022, Sundas Shaban had left the LPA and the appellants’ agent was advised to contact a newly appointed replacement (Chris Marsh), with a copy email to the (at the time) Director for Environment and Planning, Matt Bowers.

After much chasing-up by the appellants and their agent, an initial response was received from Chris Marsh on 10th March 2022. This initial response suggested that 5 units on the site would be somewhat cramped, but that the LPA were sympathetic to the proposal and willing to discuss via a Teams video call.

Unfortunately, the video call was never arranged and the pre-application process continued without resolution until April 2022, when the matter was picked up by Chris Brown, replacing Chris Marsh who had left the LPA.

Chris Brown provided advice via telephone to the appellants and followed this up with a summary email. Some tweaks were made to the number of units proposed and the site layout, and a point was reached where Chris Brown confirmed that he had no further advice to offer.

With the confidence of the positive pre-application advice offered by Chris Brown behind them, the appellants instructed their agent to prepare a full application for four units. Correspondence relating

to the pre-application process is included in **Appendix A Item 2**, as a matter of record. The original site layout submitted at Pre-App stage, plus subsequent revisions upon which comments were offered, can be found in **Appendix A Item 3**.

It is also relevant to note that Chris Brown, having provided positive feedback on a scheme of four units on the site, was subsequently promoted to the role of Director for Environment and Planning and still holds this role at the time of writing, according to the Local Authority website. It is not known whether he had any direct oversight of the refusal or whether the team below him simply did not agree with his appraisal of the proposed scheme.

While it is acknowledged that the Inspector's task is to assess the application in front of them, it is considered that the process which informed that application is relevant and pertinent in providing context.

3.0 Site Location and Description

The appeal site is located on the Southern side of Chapel Street, on land within the ownership of Barwell Constitutional Club. The site is bounded by the Club itself to the West and the Chapel Street public highway to the North. To the East is 30 Chapel Street, a residential property, and to the South is the George Ward Centre, a community hub. Please see **Appendix B** for the Site Location and the final revised version of the site layout, prior to determination.

The appeal site is located within the Barwell development boundary, surrounded by predominantly residential areas with residential development on both sides of the public highway. Schools, local shops, places of worship, and public houses/restaurants are all within walking distance along the High Street. Additionally, bus services at the nearby square provide half-hourly travel to Leicester.

The delegated officer's report noted in para 8.6 that "*redevelopment of the site for housing is considered acceptable in principle, subject to all other policy considerations*". Copies of this report, the application forms submitted to Hinckley and Bosworth Borough Council, and the decision notice, are included in **Appendix D**.

Photographs of the site and immediate vicinity are enclosed in **Appendix E**.

4.0 The Appeal Proposal

The appeal proposal was submitted to Hinckley & Bosworth Borough Council via the Planning Portal on 20th July 2023 (see proof of submission, **Appendix C Item 1**).

The application was acknowledged by the LPA on 2nd August 2023, with the description noted as "*Proposed 4no. residential dwellings with associated vehicular access, parking, amenity space and other works*" (**Appendix C Item 2**).

The appeal proposal comprises the construction of a 3 No. single storey dwellings, with parking and amenity space. The volume of development was reduced from 4 No. units during the application process, at the recommendation of the appointed Planning Officer, Mr. David Spring, following consultation with his Team Leader, Ms. Emma Baumber. A copy of the email requesting this reduction in the number of units can be found in **Appendix C Item 5**.

According to the LPA's delegated report, four letters of representation were received, all objecting. One of the most vocal objectors was the owner of 30 Chapel Street, who made numerous comments

and objections during the application process. The individual concerned eventually withdrew their objection following discussions with the appellants and the LPA, and the submission of the 'Revision G' site plan found in **Appendix B**, as this version addressed all of the concerns raised.

The objections received were not published on the LPA's planning portal, and so the appellants and their agent did not have sight of them until a formal request was made 2nd February 2024. The objections were finally issued 7th February 2024. While it is understood that personal details have to be redacted, the lack of context and mixed date order made the public comments very difficult to follow or make much sense of. Please see **Appendix C Items 4 and 5** (the comments were issued as two PDF documents, presumably due to file size).

Barwell Parish Council submitted an objection to the proposals, as noted in the delegated report:

*"Barwell Parish Council – objection on the following grounds:
- not enough parking per unit. DM10 Overdevelopment and DM17 Highways issues due to Chapel Street being a narrow one way system and lack of on road parking."*

The **Local Highways Authority**, as the LPA's consultee with particular reference to Highway safety and parking provision for new developments, did not share the Parish Council's concerns and raised no objection, subject to conditions being attached to any approval.

HBBC Waste had no objections to the application.

HBBC Drainage had no objection to the proposal.

Hinckley and Bosworth CAMRA objected, as noted in the delegated report:

"They appear to be merely revising the layout of the 4 dwellings and the access arrangements to the site in an effort to comply with highway authority requirements. There are still no planning arguments put forward by the applicant to justify how the principle of the proposal meets the adopted and emerging policies of the Local Plan. Unless the Local Planning Authority can be assured that Policy DM25 of the adopted Plan and Policies CLT01 and CLT02 of the emerging Plan are not compromised by the loss of part of a community facility, the application should be refused".

It is relevant to note that, in response to this objection, which was received at the early stage of the process when four units were still being proposed, that the owners of Barwell Constitutional Club wrote to the LPA explaining that funds from the sale of the appeal site would be vital to the Club continuing in the future. This statement can be found in **Appendix F**.

It should also be noted that the decision notice makes no reference to Policy DM25 of the adopted Plan, or Policies CLT01 and CLT02 of the emerging Plan. It is therefore presumed that the LPA were assured that the proposal did not compromise these policies.

HBBC Environmental had no objection to the proposal, subject to a suitably-worded condition being attached which required the inclusion of several acoustic treatments to mitigate the noise pollution from the Constitutional Club and the George Ward Centre.

5.0 Policy Considerations

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 gives priority to the provisions of development plans in determining planning applications and appeals, as well as all other material considerations.

The Courts have held that Central Government's policy contained in Ministerial Statements, Circulars, the **National Planning Policy Framework (NPPF)** are material considerations that must be taken into account by the decision maker, as are previous relevant appeal decisions. The following section reviews the NPPF 2023, the **Hinckley and Bosworth Borough Council Core Strategy (2009)**, the **Earl Shilton and Barwell Area Action Plan 2006-26**, and the **Site Allocations and Development Management Policies DPD (2016)**, the **Good Design Guide (2020)** and considers any relevant matters of national and local policy that arise in relation to this appeal.

The **NPPF** identifies core planning principles which should underpin both plan-making and decision taking. They include the requirement for planning to set out a positive vision for the future of an area, to act creatively to find solutions to enhance places, to encourage the effective use of previously developed land and actively manage the pattern of growth to make the fullest possible use of sustainable transport. Underlining these principles is advice in paragraph 126 of the NPPF 2023, which states 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, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this. So too is effective engagement between applicants, communities, local planning authorities and other interests throughout the process."*

Advice in paragraph 130 of **NPPF 2023** requires planning decisions to aim to ensure that development meets (inter alia) the following criteria:

- a) *will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;*
- b) *are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;*
- c) *are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);*
- d) *establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;*
- e) *optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and*
- f) *create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users⁴⁹; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.*

Advice in paragraphs 15 and 16 of **NPPF 2023** emphasises that *"The planning system should be genuinely plan-led. Succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social and environmental priorities; and a platform for local people to shape their surroundings."*

Plans should:

- a) be prepared with the objective of contributing to the achievement of sustainable development;*
- b) be prepared positively, in a way that is aspirational but deliverable;*
- c) be shaped by early, proportionate and effective engagement between plan-makers and communities, local organisations, businesses, infrastructure providers and operators and statutory consultees;*
- d) contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals;*
- e) be accessible through the use of digital tools to assist public involvement and policy presentation; and*
- f) serve a clear purpose, avoiding unnecessary duplication of policies that apply to a particular area (including policies in this Framework, where relevant).*

The **Core Strategy (2009)** contains Policy 3, which relates specifically to development in Barwell:

“To support the regeneration of Barwell the council will:

- Support development within Barwell settlement boundary to deliver a minimum of 45 new residential dwellings within the settlement boundary of Barwell. The council will seek to diversify the existing housing stock to cater for a range of house types and sizes as supported by Policy 15 and 16. A key aim in Barwell is to encourage prospering households to move into and stay in the area*
- Allocate land for the development of a mixed use Sustainable Urban Extension to the west of Barwell including 2500 environmentally sustainable homes, 15 ha of employment, neighbourhood shops, a new primary school and children’s centre, GP’s, Neighbourhood Policing and green space provision. The employment allocations are to provide for industrial and warehousing developments. They should primarily support local employment opportunities, including starter and grow-on units, and should aim to achieve zero-carbon development. The community services will be provided, in a ‘community hub’, with the primary school and children’s centre at its heart. The feasibility of providing some or all of the energy needs of the Sustainable Urban Extension by sustainable on site power generation will be investigated and if viable, implemented as part of the development. The required facilities, land and buildings will be provided by the developer through appropriate developer contributions and supported by relevant funding streams such as the New Growth Point Initiative. Detailed requirements for this Sustainable Urban Extension including boundaries, facilities to be provided, layout and design, will be set out in an Area Action Plan. All development must be in conformity with this Area Action Plan. No piecemeal developments will be permitted*
- Ensure there is a range of employment opportunities within Barwell*
- Support the regeneration of the Barwell local centre including public realm improvements, traffic calming measures and the provision of additional retail floorspace within the defined Barwell local centre that does not compete with the Hinckley Town Centre as the sub regional centre*
- Support the development of new leisure facilities and sporting hub on land off the A47 in the vicinity of Hinckley United Football Stadium supported by sustainable public transport links including enhanced walking and cycling connections from Barwell, Earl Shilton, Hinckley and Burbage*
- Require transport improvements in line with Policy 5*
- Support the development of the tourism industry in line with Policy 23”*

The **Earl Shilton and Barwell Area Action Plan 2006-26** advises on Development and Design via Policy 22:

“Developments will be permitted providing that the following requirements are met:

It does not adversely affect the privacy and amenity of nearby residents and occupiers of adjacent buildings, including matters of lighting, air quality (including odour), noise, vibration and visual intrusion:

- a) The amenity of occupiers of the proposed development would not be adversely affected by activities in the vicinity of the site*
- b) There is no detriment to the character or appearance of the host building or the surrounding area*
- c) The siting and density respects the character and layout of the area*
- d) It respects the local distinctiveness of existing buildings and landscape settings*
- e) The design respects the scale, proportions and height of the existing building, neighbouring structures and overall street scene*
- f) Fenestrations are well proportioned, well balanced within the elevations and sympathetic to adjoining/neighbouring buildings*
- g) The use and application of building materials respects the materials of existing, adjoining/neighbouring buildings and the local area generally*
- h) It incorporates a high standard of landscaping where this would add to the quality of the design and siting*
- i) It maximises the opportunities for conservation of energy and resources through design, layout, orientation and construction in line with Core Strategy Policy 24*
- j) Where parking is to be provided a minimum of one charging point for electric/low emissions vehicles is included per development scheme (excluding extensions and alterations and change of use) unless it is demonstrated this is not technically feasible*
- k) An appropriate Sustainable Drainage Scheme is submitted to and approved by the Local Planning Authority*
- l) The applicant has demonstrated consideration to community safety through designing out crime*

Favourable consideration will be given to proposals where it can be demonstrated the views of community have significantly influenced the design of the new development. Development which does not meet the above criteria and would result in poor design which fails to improve design standards in the locality will be refused. In exceptional circumstances where outstanding, innovative design is demonstrated (particularly where high levels of sustainability are an integral feature), applications will be considered favourably, even where this may result within some conflict with the above criteria.”

The **AAP** also advises on the safeguarding of community facilities via Policy 24:

“Provision of New Facilities

The Council will encourage the formation of new community facilities across the Borough, where it can be demonstrated that:

- The facility meets the needs of the community it intends to serve; and*

- *It is within a reasonable distance of the above community. Retention of Existing Provision*
The Council will resist the loss of community facilities including ancillary areas. The redevelopment or loss of community facilities will only be appropriate where it can be demonstrated that:
 - a) *An equivalent range of replacement facilities will be provided in an appropriate location within a reasonable distance of the local community; or*
 - b) *There is a surplus of the facility type within the immediate locality exceeding the needs of the community; or*
 - c) *The loss of a small portion of the site would result in wider community benefits on the remainder of the site*

Loss of Existing Facilities Where replacement facilities will not be provided or a surplus cannot be demonstrated and the scheme would not result in wider community benefits on the remainder of the site, the loss of a community facility would only be considered acceptable where it can be demonstrated that:

- i. *The facility has been proactively marketed for a community use for a reasonable period of time at a reasonable marketed rate as supported and demonstrated through a documented formal marketing strategy*
- ii. *It has been offered to the local community for them to take ownership of the facility.”*

The **Site Allocations and Development Management Policies DPD (2016)** includes the following policies relevant to this appeal:

DM1 - Presumption in Favour of Sustainable Development

“Planning applications that accord with the policies in the Local Plan (and, where relevant, with policies in neighbourhood plans) will be approved without delay, unless material considerations indicate otherwise.

Where there are no policies relevant to the application or relevant policies are out of date at the time of making the decision then the Borough Council will grant permission unless material considerations indicate otherwise, taking into account whether:

- a) *Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or*
- b) *Specific policies in that Framework indicate that development should be restricted.”*

DM7 - Preventing Pollution and Flooding

“Adverse impacts from pollution and flooding will be prevented by ensuring that development proposals demonstrate that: drainage function of water bodies in the borough; provided;

- a) *It will not adversely impact the water quality, ecological value or*
- b) *Appropriate containment solutions for oils, fuels and chemicals are provided;*
- c) *All reasonable steps are taken through design, siting and technological solutions to ensure the abatement of obtrusive light to avoid sky glow, glare and light intrusion;*
- d) *It would not cause noise or vibrations of a level which would disturb areas that are valued for their tranquillity in terms of recreation or amenity;*
- e) *Appropriate remediation of contaminated land in line with minimum national standards is undertaken;*
- f) *It will not contribute to poor air quality; unstable land; and*
- g) *It will not result in land instability or further intensify existing*
- h) *h) The development doesn’t create or exacerbate flooding by being located away from areas of flood risk unless adequately mitigated against in line with National Policy.”*

DM10 - Development and Design

“Developments will be permitted providing that the following requirements are met:

- a) It would not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings, including matters of lighting, air quality (including odour), noise, vibration and visual intrusion;*
- b) The amenity of occupiers of the proposed development would not be adversely affected by activities in the vicinity of the site; architectural features;*
- c) It complements or enhances the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features;*
- d) The use and application of building materials respects the materials of existing, adjoining/neighbouring buildings and the local area generally;*
- e) It incorporates a high standard of landscaping where this would add to the quality of the design and siting;*
- f) It maximises opportunities for the conservation of energy and resources through design, layout, orientation and construction in line with Core Strategy Policy 24;*
- g) Where parking is to be provided charging points for electric or low emission vehicles are included where feasible;*
- h) An appropriate Sustainable Drainage Scheme is submitted to and approved by the relevant Authority. Schemes should incorporate wildlife areas, ponds, swales and permeable paving where appropriate;*
- i) It maximises natural surveillance and incorporates the principles of Secured by Design and has considered the incorporation of fire safety measures.*

In exceptional circumstances where outstanding, innovative design is demonstrated (particularly where high levels of sustainability are an integral feature), applications will be considered favourably, even where this may result in some limited conflict with the above criteria”

DM17 - Highways and Transportation

“Development proposals will be supported where they:

- a) Seek to make the best use of existing public transport services and, where appropriate, provide opportunities for improving and sustaining the viability of those services;*
- b) Seek to ensure that there is convenient and safe access for walking and cycling to services and facilities; significant movement;*
- c) Demonstrate that there is not a significant adverse impact upon highway safety;*
- d) That the development is located where the need to travel will be minimised and the use of sustainable transport modes can be maximised; of development on the transport network are not severe.*
- e) Where it can be demonstrated that the residual cumulative impacts of development on the transport network are not severe.*

Where appropriate, improvements will be required to be undertaken to the highways and transportation network to limit any significant impacts arising from the development (taking into account cost effectiveness). All proposals for new development and changes of use should reflect the highway design standards that are set out in the most up to date guidance adopted by the relevant highways authority.”

DM18 - Vehicle Parking Standards

“All proposals for new development will be required to provide an appropriate level of parking provision justified by an assessment of the site location, type of housing, other modes of transport

available (e.g. public transport and cycle provision) and appropriate design. Any development will be expected to provide disabled parking provision.

Developments within Hinckley Town Centre should demonstrate that they would not exacerbate existing problems in the vicinity with increased on-street parking."

DM25 - Community Facilities

"Provision of New Facilities

The Borough Council will seek to support the formation of new community facilities across the borough. To reduce reliance on the private car, where new facilities are to be established it should be demonstrated that they are accessible to the community which they intend to serve by a range of sustainable transport modes.

Retention of Existing Provision

The Borough Council will resist the loss of community facilities including ancillary areas.

The redevelopment or loss of community facilities will only be appropriate where it can be demonstrated that:

- a) An equivalent range of replacement facilities will be provided in an appropriate location within a reasonable distance of the local community; or*
- b) There is a surplus of the facility type within the immediate locality exceeding the needs of the community; or*
- c) The loss of a small portion of the site would result in wider community benefits on the remainder of the site.*

Loss of Existing Facilities

Where replacement facilities will not be provided or a surplus cannot be demonstrated and the scheme would not result in wider community benefits on the remainder of the site, the loss of a community facility would only be considered acceptable where it can be demonstrated that:

- d) The facility has been proactively marketed for a community use for a reasonable period of time at a reasonable marketed rate as supported and demonstrated through a documented formal marketing strategy.*
- e) It has been offered to the local community for them to take ownership of the facility"*

5.0 Planning Considerations

This section considers the planning issues relating to this application and demonstrates, with reference to relevant Local Plan policies and other material considerations, that the appeal against refusal of planning permission should be upheld.

The decision notice issued on 29th April 2024 details a single reason for refusal (as below), namely that the proposal amounts to overdevelopment of the site, which would in turn result in adverse impacts on the amenity of future residents.

The decision notice states:

"1. The development is not judged to meet the standards of good design and represents overdevelopment of the site, leading to adverse impacts upon the amenity of future residents through the relationship between Plots in terms of over dominance and enclosure. Therefore, the development is not in accordance with Section 12 and Paragraph 135 of the National Planning Policy

Framework, Policy DM10 of the Site Allocations and Development Management Policies DPD, Policy 22 of the Earl Shilton and Barwell Area Action Plan and the Good Design Guide.”

The appellants contend that this reason for refusal is highly subjective, a position borne out by the fact that:

- a) A development of four units was supported at Pre-Application stage, by the appointed Planning Officer who subsequently was promoted to Director for Environment and Planning.
- b) No record of the Pre-Application Advice appears to have been retained by the LPA – a copy had to be supplied by the appellant’s agent to Planning Officer, David Spring, following a request on 23rd August 2023 (see **Appendix C, Item 3**).
- c) The application for four units was deemed valid on 20th July 2023 and it was not until 4th October that the Planning Officer, David Spring, asked that the proposal was reduced to three units. The email requesting this change (included in **Appendix C, Item 5**) stated as follows: *“I spoke with my manager about this a few days ago. I realise this is going against the pre app advice for this site but we think 4 dwellings on this plot is too much.”*
- d) The application process proceeded for a further 3 months on the basis of three units, with numerous changes made to the site layout, boundary treatments and the dwellings themselves, in response to feedback from the LPA and its consultees. These amendments are well documented in the delegated report and therefore do not need to be repeated here, but copies of relevant correspondence can be found in **Appendix 3 Items 4 and 6**.

The proposal for three units was still acceptable to Mr. Spring when, on 16th January 2024, he sent an email to the appellants’ agent (**Appendix C, Item 9**) confirming that he had completed his draft delegated report with a recommendation for approval, and sought agreement to the draft pre-commencement conditions which would be attached to the approval.

It was not until 30th January 2023 that any objection to the number of units was raised. This came in the form of an email to the appellants from Ms. Emma Baumber, Team Leader (**Appendix C, Item 10**). A subsequent in-person meeting with Ms. Baumber took place on 15th February, and further revisions to the site plan were submitted for consideration on 27th February and again on 28th March 2024. Regrettably, the LPA maintained its new position that three units were not acceptable, and issued the decision notice one month later.

As noted above, **NPPF 2023 paragraph 16** advises that Local Plans should:

- “c) be shaped by early, proportionate and effective engagement between plan- makers and communities, local organisations, businesses, infrastructure providers and operators and statutory consultees;*
- d) contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals;”*

Furthermore, **NPPF 2023 paragraph 126** states that:

“Being clear about design expectations, and how these will be tested, is essential for achieving this. So too is effective engagement between applicants, communities, local planning authorities and other interests throughout the process.”

It is the appellants’ belief that that the LPA has not adhered to these principles in arriving at their decision.

The appellants have followed the correct process by seeking pre-application advice and subsequently taking that advice forward to a full application. While it is acknowledged that the necessary further consultation that a full application requires may raise concerns that are not considered at pre-application stage, it is reasonable to assume that the number of units which is acceptable on a site should remain consistent. Therefore, it is argued that there was not effective engagement between the LPA and the appellants.

Furthermore, the appellants contend that the policies against which the LPA has made its decision are not clearly written and unambiguous. The LPA has been unable to offer consistent, cohesive advice throughout the process and there appears to be muddled thinking among the various members and levels of authority within the planning department.

The original scheme for five units submitted at Pre-Application stage was reduced to four units on the advice of Chris Brown. This was submitted at full application stage on the strength of the Pre-App advice, but then reduced to three units at the request of David Spring, on the advice of Emma Baumber, two-and-a-half months into the application process. A further three months and numerous minor revisions followed, a recommendation for approval with proposed conditions was drafted and issued, only for the LPA to then decide that three units was not acceptable. The appellants have complied with every amendment request, agreed to every concession and reacted positively to objections raised, but simply have not been able to rely on clear and unambiguous advice from their LPA.

The **Core Strategy 2009** clearly defines Barwell as a focus for development and regeneration in Policy 3. The policy states that sites within the settlement boundary which contribute to a diversification of housing stock and a cater for a range of house types will be supported.

The appeal site is acknowledged by the LPA as being within the Barwell settlement boundary, and proposes the construction of single-storey homes with small gardens, within walking distance of local amenities. It is not too much of a stretch to assume that these homes would be attractive to older residents, and that there is the potential for larger family homes to be freed up as a result of the proposed dwellings being sold.

The appellants contend that the clear benefits of the proposal, many of which are acknowledged in the delegated report, outweigh the inconsistent concerns of overdevelopment.

This is particularly pertinent when taking into account the LPA's failure to demonstrate that it can demonstrate a Five-Year Housing Land Supply. The delegated report acknowledges this to be the case, with the planning officer noting as follows:

"Using the standard method as outlined by MHCLG, Hinckley and Bosworth Borough is able to demonstrate 4.89 years of deliverable housing at 1st April 2022. Due to this and the change in the housing figures required for the Borough paragraph 11(d) of the NPPF is triggered. Therefore, this application should be determined in accordance with Paragraph 11(d) of the National Planning Policy Framework (NPPF) whereby 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. This is weighed in the balance of the merits of the application when considered with the policies in the ESBAPP, SADMP and the Core Strategy which are attributed significant weight as they are consistent with the Framework. Therefore, sustainable development should be approved unless other material considerations indicate otherwise."

The material considerations which ‘*indicate otherwise*’, in the view of the LPA, appear to be summarised in paragraph 8.31 of the delegated report, as follows:

“Overall, the combination of factors contribute to the site appearing over-developed with regards to the relationship and distance between dwellings and boundary treatments including acoustic fencing, meaning that future occupiers would experience a high degree of over dominance. The layout is not judged to be of a high standard of design for future occupants, noting paragraph 135 of the NPPF which states that developments should function well, not just for the short term but over the lifetime of the development and with a high standard of amenity for existing and future users.”

This statement is clearly at odds with not only the pre-application advice provided prior to submission of the formal application, but the request from the LPA that the scheme be reduced from four units to three, some 10 weeks into the application process.

The paragraph immediately prior to this in the delegated report (8.30) also attempts to add weight to this position, with doubt cast onto the suitability of parking and turning arrangements on the site, and the positioning of bin storage:

“Other limitations of the layout include the remoteness of bin storage and parking, especially from Plot 2 and the cramped nature of the parking and turning space in terms of its proximity to Plot 1.”

It is later noted, however, that these concerns are not shared by LCC Highways, the LPA’s statutory consultee for such matters, who had no objections to the proposal (para 8.42):

“The LHA confirm that the dimensions of the parking spaces shown in drawing No. FP002 Rev. A accord with Part 3, Paragraph 3.188 of the LHDG and that the 5.5m- 6.5m aisle width will enable vehicles to turn so that the public highway is approached in a forward gear. In addition, the LHA welcome that the proposed bin store is suitably located as not to interfere with the visibility splays. Whilst officers would question the turning ability from parking spaces for plot 3 in the absence of concerns from LCC highways do not consider this would lead to an unacceptable impact on highway safety.”

The Good Design Guide (GDG) provides guidance to both decision-makers and applicants and “*aspires to substantially raise design quality in Hinckley and Bosworth Borough whilst ensuring that the local identity is preserved and enhanced*” (page 4).

The delegated report refers to the GDG on several occasions, in many cases confirming that the proposal complies with the guidance contained therein.

Para 8.13 notes that “*The garden sizes comply with the standard in the Good Design Guide SPD (80sqm for a 3 bed dwelling). Waste and recycling bins are to be stored at the front of the site which is regrettable in design terms, however, with hedgerow proposed for the front of this area subject to suitable details this could be mitigated to some degree. The SPD (page 36) states that storage for 3 bins per household should be considered in the design process. 3 bins have been proposed per dwelling. 2 Cycle storage spaces have also been provided per dwelling.*”

Para 8.21 notes that “*The Good Design Guide recommends that a principal window to a habitable room should ideally be no less than 8m from the blank side of a single storey neighbouring property, rising to 14m for a two-storey property. In addition, the separation distance between two principal windows to habitable windows should be a minimum of 21m. However, the Good Design Guide also*

states that, “An exception to this rule is in an urban location where it may be acceptable to have a reduced distance where issues of amenity and overlooking are dealt with by good design.”

However, by para 8.29, the conclusion has been drawn that *“It is considered, from an amenity perspective the development is not, on balance, in compliance with policy DM7 & DM10 of the SADMP, policy 22a) of the Earl Shilton and Barwell AAP, the Good Design Guide SPD and paragraph 135 of the NPPF.”*

The overall impression given is that the LPA were minded to approve the application until the 11th hour, at which point, for reasons known only to themselves, they decided to reverse their support for the scheme. It is the opinion of the appellants that the delegated report reads as one written up in support of the application but which then scrambles to find reasons for refusal.

Correspondence between the planning officer and the appellants’ agent demonstrates that all requests for amendments and extensions of time were agreed, with no hint that the proposal was unacceptable. Please see **Appendix C Items 4, 6, 7**.

Appendix C Item 8 details correspondence between the planning officer and the appellants’ agent, during which the LPA requested (via their consultee) that high-level acoustic fencing, up to 3.4m in height, be installed as a means of mitigating noise pollution from the adjacent Constitutional Club and George Ward Centre. This fencing was subsequently deemed by the LPA in their delegated report to contribute to the sense of ‘enclosure’ mentioned in the reason for refusal. No opportunity to look at alternative solutions was offered by the LPA.

It could be argued that the apparent sense of enclosure was created almost entirely by design elements requested by the LPA themselves.

Appendix C Item 11 details correspondence following the in-person meeting, showing attempts to resolve the objections raised and the LPA’s final response confirming their intention to refuse permission.

6.0 Application Precedents

The appellants are aggrieved by the LPA’s decision not only due to the inconsistent nature of the advice given to them and the handling of the application as a whole, but also when viewed in light of other similar schemes which were approved.

Application 22/00370/FUL, described as *‘Proposed construction of 4 no semi detached dormer bungalows and 1 detached dormer bungalow (for occupation by persons over the age of 55 only) with associated parking and amenity space’* was approved on 4th October 2022.

This application proposes the erection of five 1.5-storey units on a backland site within an established residential area of Earl Shilton, which is designated as a *‘Sustainable Urban Extension’* in the Core Strategy, as is Barwell.

The approved site layout plan shows a total footprint for residential development of approximately 318m², within a site area of approximately 1907m² (albeit with an access road and retained parking for the host building covering approximately 688m²).

In simple terms, this means that 1907m² total site area minus 688m² for access and retained parking leaves 1219m² for the actual development (dwellings, gardens, parking etc). 318m² dwelling footprint is **26.1% of 1219m²**.

By comparison, the appeal proposal shows a total footprint of 270m² for residential development, within a site area of 880m². There is no comparable 'access road' as the development is accessed directly off the public highway.

Using the same method for comparison purposes, 270m² dwelling footprint is **30.6% of 880m²**.

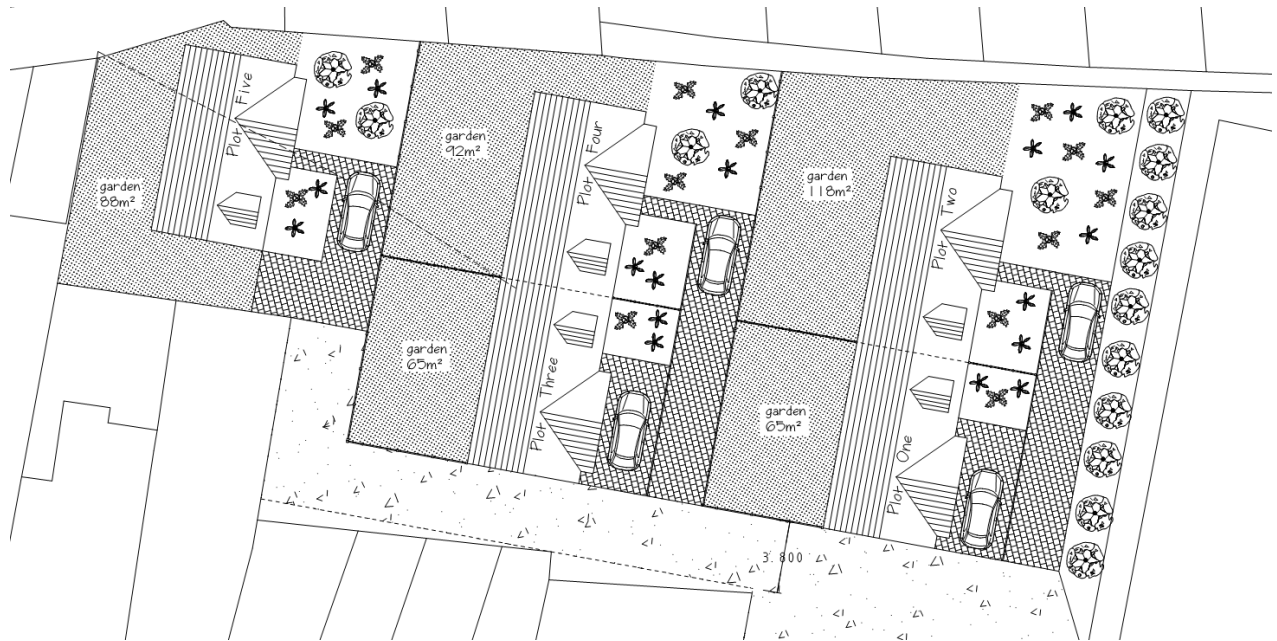


Figure 1 - approved site layout for application 22/00370/FUL (without access road)

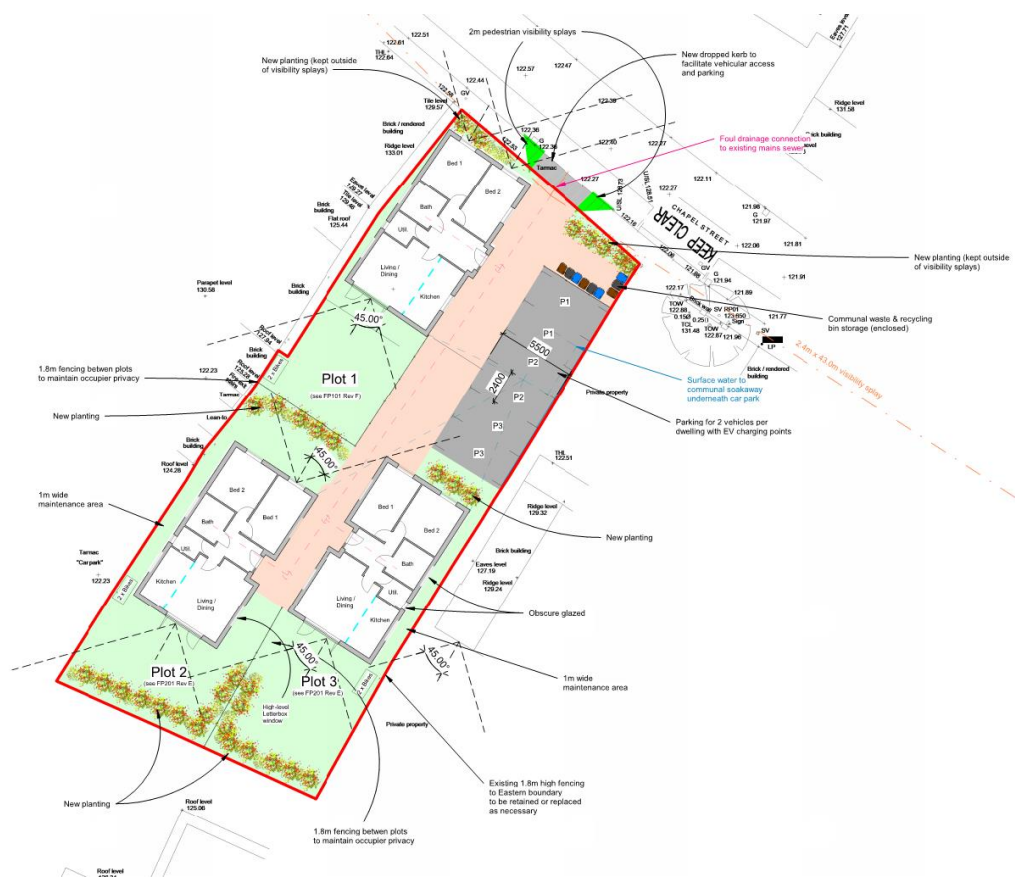


Figure 3 - site layout for the appeal proposal

The delegated report for application 22/00370/FUL refers to the same policy drivers as the appeal proposal, but in that instance raises no objections.

The delegated report for the appeal proposal makes several references to the outlook of windows in habitable rooms, and their relationship to boundary fencing (much of which was introduced at the request of the LPA and its consultees, particularly the acoustic fencing).

Para 8.28 notes that *"The bedroom windows serving both front rooms on Plot 2 would face onto a 1.8m high fence, providing little outlook to the front for both rooms. This is especially the case for Bedroom 2 given the proximity of the tall 3.4m high boundary fence to the north combined with the 1.8- 2m high fencing to other boundaries."*

In the interests of comparison, it is noteworthy that no such concerns were raised when assessing application 22/00370/FUL, which similarly features windows in habitable rooms facing 1.8m high fencing. Also relevant is the fact that low-level fencing between adjoining gardens was deemed acceptable in this instance, but not for the appeal proposal (see **Appendix C Items 6 and 7**). This, of course, is a contributing factor to the suggestion of poor outlook and unacceptable enclosure, along with the high-level fencing acoustic fencing requested by the LPA (see **Appendix C Item 7**).



Figure 4 - separation distances between lounge windows and fencing / boundary walls, as shown in the approved site layout for application 22/00370/FUL. 1.8m fencing highlighted in yellow, 0.9m fencing highlighted in green; boundary highlighting and dimensions added for clarity – please see original drawing 1546/2 for confirmation.

It is clear that these two schemes are comparable in terms of the scale and massing of dwellings, layout, landscaping and boundary treatments. One – application 22/00370/FUL – represents 26.1% development of the portion of the site not given over to access and retained parking, and was deemed to be acceptable and not considered overdevelopment. The other – the appeal proposal – seeks to develop 30.1% of the site and is deemed to be ‘cramped’ and ‘is not judged to meet the standards of good design’.

The only discernible difference between the two proposals is that the one deemed acceptable – application 22/00370/FUL – includes the wording ‘for occupation by persons over the age of 55 only’ within its description. While the appeal proposal did not specifically include this wording in its

description, it is clear that both schemes cater to a similar market. The delegated report for 22/00380/FUL goes as far as to note that *“This proposal seeks to provide accommodation for the over 55 age group. The NPPF is clear that housing is needed for different groups in the community including but not limited to affordable housing, families with children, older people, students, people with disabilities, service families etc”* (para 8.6) and that *“Having assessed the application there are not considered to be any other material considerations that would outweigh the benefits of providing 5 dwellings for the over 55’s in this location.”* (para 8.45). A condition of the approval secures the requirement that *“The development hereby permitted shall only be made available for occupation by persons over the age of 55”*.

This begs the question: if there is a need for housing for the Over 55’s in the community, would securing the appeal development for that age group outweigh the perceived harms of a ‘cramped’ site? And if so, could / should the LPA have proposed this during the application process?

One could argue that a more compact site layout meets the needs of older occupiers more, and that natural surveillance by way of proximity to neighbours would provide a greater sense of security to residents.

7.0 Conclusion

The Appellants feel that Hinckley & Bosworth Borough Council has not applied its own policies consistently and that the lack of a five year housing supply seriously limits the weight given to many of those policies relied upon in the determination of this application.

As a result, the Appellants believe that the Appeal Scheme should be assessed in accordance with paragraph 11(d) of the NPPF. In this context, they assert that planning permission should be granted since the perceived benefits of the Appeal Scheme outweigh any adverse impacts.

We do not agree that the proposal would result in a cramped, overdeveloped site. Correspondence shows that various officers within the LPA did not see the proposal as cramped until very, very late on in the application process. A delegated report recommending approval had been drafted and proposed conditions had been suggested by the planning officer and agreed by the appellants’ agent.

There has been no consistency shown by the LPA in its interpretation of its own policies. The pre-application advice, given by an officer who subsequently was promoted to the position of Director for Environment and Planning, advised that four units on the site would be acceptable. This position was maintained for the first 10 weeks of the application process, at which point the LPA proposed that the scheme be reduced to three units. For three units to now be deemed as overdevelopment suggests that the LPA itself does not know itself (or cannot agree internally) as to what would be appropriate development of the site.

The appellants have followed the correct process by first seeking pre-application advice and then taking the positive feedback forward to a full application, as national planning policy recommends. Every request to amend the proposal has been willingly carried out, every extension of time agreed, opportunities to discuss ways forward or solutions have been taken both remotely and in person at the LPA’s offices. The appellants are at a loss to understand how the LPA have arrived at their decision and why the apparent change of heart occurred at such an incredibly late stage.

While it is true that the LPA have offered the appellants the opportunity of further discussions prior to any future revised application being submitted, the appellants find it hard to put faith in any such

informal advice that might be given, bearing in mind the inconsistency and differing opinions expressed thus far.

To re-confirm, the sole reason for refusal of the application was on the grounds of overdevelopment of the site and the sense of enclosure created by boundary treatments and outlook from habitable windows.

As demonstrated within this statement, the LPA gave the impression that three units was an acceptable amount of development throughout the vast majority of the application process. They contributed to the apparent sense of enclosure by insisting on high-level acoustic fencing along some external boundaries rather than considering other solutions, and by requesting 1.8m high internal fencing between plots, where on similar schemes much lower-level fencing was deemed acceptable.

The appellants have engaged with the correct process throughout, have responded positively to all requests for amendments and have agreed to every extension of time, in the interests of reaching an outcome that was acceptable to all parties.

They have incurred considerable expense in seeking Pre-Application Advice which was never delivered in a formal report and not recorded anywhere by the LPA; and in arranging multiple revisions to architectural drawings during the application process in response to LPA requests (seven revisions to the site layout, thirteen to the dwellings themselves, plus further additional information including acoustic treatment details, street scenes and details of neighbour amenity provision). Yet, in the end, all of this was in vain as a result of the mixed messaging and inconsistencies in the LPA's decision-making.

We therefore respectfully request that this Appeal be allowed, and that planning permission is granted for the proposed development.