



Town and Country Planning Act 1990
Section 78 Appeal by Ian Fenny

Written statement on behalf of the appellants

Planning Appeal by Ian Fenny following the decision of Hinckley and Bosworth Borough Council to refuse planning permission for the erection of 9 accommodation pods, 4 holiday lodges and a management building with associated internal access roads, parking, landscaping and surface water balancing at Inglenook Farm, Leicester Road, Barwell

Hinckley and Bosworth Borough Council reference 23/00535/FUL

1. Qualifications and Experience

- 1.1 My name is Lance Stewart Wiggins and I am a Director at Lion Planning Ltd. I hold a Post Graduate Diploma in Urban Planning and I am a Member of the Royal Town Planning Institute.
- 1.2 I have over 30 years experience in town and country planning, initially in local government, with the last seventeen years in private practice. Prior to entering planning consultancy, I was Planning Manager for the East Midlands region of David Wilson Homes, a national volume house builder within Barratt Developments.
- 1.3 During my career I have had extensive experience in appearing as an expert witness at Public Inquiries and at hearings in relation to a wide variety of planning applications.
- 1.4 I am fully conversant with the appeal site, its surroundings and the relevant planning policies that apply to it.

2. The Appeal Site and its surroundings

- 2.1 The location and description of the site and its surroundings is detailed in the officers' delegated report for the application. A copy of the officer's report is attached as Appendix 1 to this Statement.

3. Planning History

- 3.1 As confirmed in the planning history section of the report, there are no previous planning applications which are relevant to the appeal application. The appeal application was revised in November 2023 to 9 accommodation pods and 4 lodges from the original submission for 20 accommodation pods and 10 lodges to seek to address officers concerns regarding the impact of the proposals.

4. Planning policies and guidance

4.1 The following planning policy documents and guidance are considered relevant to the determination of the appeal. Compliance with policy and accordance with guidance is assessed in the sections 6 and 7 of this statement.

(i) The Hinckley and Bosworth Local Development Framework Core Strategy, adopted December 2009.

(ii) The Site Allocations and Development Management Policies Development Plan Document, adopted July 2016.

(iii) The revised National Planning Policy Framework, December 2023 (“the Framework”).

5. Determination of the appeal application by the Local Planning Authority

5.1 The appeal application was validated on 1st June 2023. The application was allotted the reference 23/00535/FUL.

5.2 The appeal application was refused on 30th November 2023 under delegated powers.

5.3 The reasons for refusal of the application are reproduced for convenience, below:

1. The proposed development at this location within the open countryside and Green Wedge would introduce an incongruous and unsustainable form of development which would have a significant adverse impact on the intrinsic value, beauty, open character and landscape character of the countryside and visual appearance of the Green Wedge and would be contrary to Policies DM4 and DM10 of the Site Allocations and Development Management Policies DPD, and Policies 6 and 23 of the Core Strategy.
2. Insufficient evidence has been submitted with the application to substantiate that the proposal would not harm protected species. Such a proposal would thus be contrary to Policy DM6 of the SADMP and to guidance within the NPPF.

5.4 In my view, the Council's refusal of the appeal application raises a number of issues and fails to address (or give sufficient weight to) a number of considerations, which weigh in favour of the proposals. I will deal with in turn in the following sections of my statement as set out below.

- Accordance with national planning guidance
- Weight to be attached to the policies that make up the development plan; and
- The impact of the development proposals on the character of the countryside and Green Wedge.
- The harm that would be caused to protected species on the application site.

6. Accordance with National Planning Policy

6.1 The revised Framework retains a presumption in favour of sustainable development. Paragraph 11 confirms that planning permission should be granted for development proposals that accord with an up-to-date development plan without delay. In my view, the appeal proposal should benefit from the presumption as it is in clear accordance with the development plan. Paragraph 11 also caters for the situation where the policies which are most important for determining the application are out of date. The conclusion and planning balance section of the officers report suggests that the 'tilted balance' set out in paragraph 11 d) of the Framework applies, based on the fact that the Borough Council cannot demonstrate a five year housing land supply, despite this not being a housing proposal. In the event that the inspector considers that the 'tilted balance' is engaged, the decision maker is required to consider whether the adverse impacts of the development would significantly and demonstrably outweigh the benefits. My view is that the adverse impacts raised by the Council are not significant enough to demonstrably outweigh the benefits of the scheme (economically and environmentally).

- 6.2 As indicated in the Development Plan Policies section of the Design and Access/Planning Statement for the application, the development plan applicable to planning applications in Barwell comprises the adopted Core Strategy and the policies contained within the adopted Site Allocations and Development Management Development Plan Document (SADM DPD) Local Plan and the Action Area Plan (AAP) for Earl Shilton and Barwell as there is no Neighbourhood Plan in operation. As the appeal site lies outside of the AAP boundary, this document is not material to the consideration of this appeal.
- 6.3 It is clear from the adoption date of the both the Core Strategy and the SADM DPDP that they predate the latest revisions of the Framework (December 2023, July 2021, February 2019 and July 2018) however, the policies contained within both documents are considered to be largely consistent with the guidance set out in the Framework. In accordance with the advice contained in paragraph 225 of the Framework, significant but not full weight can be afforded to the policies contained within both elements of the development plan.
- 6.4 My view is that the overall thrust of the Framework weighs in favour of the development. The Framework seeks the achievement of sustainable development. The three objectives that are required to be met in order that development proposals can be seen as sustainable development are all met by the appeal proposals.
- 6.5 In terms of the **economic objective**, the proposed development would clearly have a positive economic impact by virtue of the employment of labour, contractors and suppliers in the implementation of the appeal scheme, many of whom would be likely to be local to the area.

- 6.6 In addition to the direct economic benefits resulting from the implementation of the scheme, the provision of the accommodation proposed would have further economic benefits for suppliers and tradesmen once the new facility is in operation and fully occupied. The occupiers of the accommodation would spend money in the local shops, on food and drink in local pubs and restaurants and add beneficially to this part of the Borough's economy.
- 6.7 The **social objective** of achieving sustainable development is exemplified in the appeal proposal in a number of ways.
- 6.8 The proposal would support the objective of encouraging sustainable rural tourism and leisure and diversifying agriculture and other land based rural businesses. The scheme has been designed to meet the need to provide well-designed, beautiful and safe places as required by paragraph 8 of the Framework.
- 6.9 Visitors to the appeal site would have easy access to the available local services, including the existing open spaces in Barwell and nearby Earl Shilton.
- 6.10 in terms of the **environmental objective** of the appeal proposal, this will be discussed later in this statement but the conclusion reached in the development would utilise an existing, somewhat neglected site for a beneficial purpose without giving rise to any adverse impacts.
- 6.11 The scheme respects the rural context of the appeal site and proposes a carefully considered design response to its location such that overall, no significant environmental impact would arise. To the extent that the appeal proposal would result in any environmental harm (and the appellant has gone to great lengths to ensure that this would be minimised, including by significantly reducing the scale of the proposal), this would be outweighed by the benefits of the appeal proposals in terms of the provision of additional visitor accommodation and the associated economic, social and environmental benefits.

- 6.12 The appeal proposal constitutes sustainable development, as it would achieve the economic, social and environmental gains sought by paragraph 8 of the Framework. The presumption in favour of sustainable development set out in paragraph 11 of the Framework can, by definition, only be employed by schemes that constitute sustainable development. The appeal scheme constitutes sustainable development as it would accord with the policies set out in an up-to-date development plan and accordingly paragraph 11 of the Framework is engaged.
- 6.15 Section 12 of the Framework relates to achieving well designed and beautiful places. Paragraph 131 advises that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve and that good design is a key aspect of sustainable development. The guidance in paragraph 135 advises that planning (policies and) decisions should ensure that developments will function well and add to the overall quality of the area, that they are visually attractive as a result of good architecture, layout and landscaping and that they are sympathetic to local character and history while not preventing appropriate innovation or change. The appeal proposals have been designed by the project architects (in conjunction with the appellant) with this guidance fully in mind such that the aims set out in paragraph 135 of the Framework have been successfully achieved.
- 6.16 Paragraph 186 advises that if significant harm to biodiversity resulting from development cannot be avoided (through locating on an alternative site with less harmful impacts) adequately mitigated, or a last resort, compensated for, then planning permission should be refused. The appeal proposals would not give rise to significant harm to biodiversity as indicated in the submitted ecology reports and appropriate planning conditions could secure adequate mitigation and the provision of ecological enhancements on site.

7. Weight to be attached to the development plan

- 7.1 As indicated in paragraph 6.2 above, in the absence of a Neighbourhood Plan, and as the appeal site is outside of the AAP area, the development plan for the appeal site comprises the adopted Core Strategy and the SADM DPD.
- 7.2 The Hinckley Core Strategy was adopted in December 2009 and accordingly it predates all versions of the Framework, which was first published in 2012. Notwithstanding the time of preparation of the Core Strategy and the date of its adoption, the policies of the Core Strategy are considered to be largely consistent with the Framework (policy 23 relates to tourism development including accommodation) and accordingly the Core Strategy is still regarded as up to date. Copies of the relevant policies are provided as Appendix 2 to this statement.
- 7.3 The SADM DPD was adopted in 2016 and accordingly this predates all of the published versions of the Framework except the original from 2012. Notwithstanding this, in common with the policies of the Core Strategy, the policies of the SADM DPD are considered to be largely consistent with the Framework (policy DM4 relates to development in the countryside) and accordingly the SADM DPD is still regarded as up to date. Copies of the relevant policies are provided as Appendix 3 to this statement.
- 7.4 In my view, the information submitted to support the appeal proposal, including the submitted plans and the Design and Access Statement (DAS) combine to demonstrate that the new development would comply with policies 6 and 23 of the Core Strategy and policies DM1, DM4, DM6, DM10, DM17 and DM24 of the SADM DPD. It is clear from the officers report that the Council's predominant concern relates to the impact of the development in the Green Wedge despite the clear steer in policy 6 of the Core Strategy that appropriate recreational uses are encouraged in these areas. As indicated in the DAS, the appeal proposals would provide a further recreation opportunity within walking and cycling distance of Barwell and Earl Shilton. The appeal site is well located for public rights of way that lead to the centre of the village.

- 7.5 In terms of the effect of the development on the visual appearance of the area, this will be considered in subsequent sections of this Statement but overall, it is felt that the scale and appearance of the accommodation pods and lodges would not be detrimental to the appearance of the area. The appeal proposals have carefully considered the criteria set out in policy 23 of the Core Strategy and my view is that they meet all of them, including the need to be of a design and scale which is appropriate to minimize impact and assimilate well with the character of the surrounding area.
- 7.6 In common with policy 6 of the Core Strategy, policy DM4 of the SADM DPD supports outdoor recreation provided it does not have a significant adverse affect on intrinsic value, beauty, open character and landscape character of the countryside. My view is that it would not have a significant adverse impact and a landscape statement by an experienced landscape professional is attached as Appendix 4 to this statement to further support this view. Policy DM6 relates to the enhancement of biodiversity. The submitted ecology report and biodiversity net gain assessment demonstrate that following its use for agriculture, the site's habitat value is relatively low, however, the vegetated areas on the periphery of the site would be retained and a number of biodiversity gains would be delivered as demonstrated in the survey and assessment. Existing trees and a pond would be retained and no significant harm to protected species or biodiversity would result from the proposed development.
- 7.7 In light of the above, my view is that the scheme complies with the development plan in that it constitutes sustainable development in the countryside and Green Wedge which could be carried out without any significant detriment to the character of the area.

8. The impact of the development proposals on the character of the countryside and Green Wedge

- 8.1 As indicated in the Landscape Statement provided in appendix 4 to this statement, the appellant's view is that whilst the development would change the character of this small part of the Green Wedge, this would not be to its detriment. In addition, the Statement concludes that the proposal would give rise to a low adverse impact in landscape character terms.
- 8.2 Policy 6 of the Core Strategy advises that acceptable uses in the Green Wedge (which include recreation) should be within easy reach of urban residents and promote the positive management of land. The appeal proposals comply with these requirements. Policy DM4 of the Delivery DPD which relates to the wider countryside, stresses the need to ensure that the scheme does not have a significant adverse effect on the intrinsic value and landscape character of the countryside. In my view, no significant impact would result from this relatively small development of low accommodation pods, single storey lodges and a management building. The development would have no perceptible impact on the separation of settlements, sitting as it does, outside of the built confines of Barwell but a good distance away from Earl Shilton and Elmsthorpe.
- 8.3 In terms of the design of the scheme and its impact on the character of the countryside and Green Wedge, policy DM10 - Development and Design sets out a number of requirements for new built development to be considered acceptable. The officers report acknowledges that the proposed scheme would not have a significant adverse effect on privacy and amenity of nearby residents (criterion a). Furthermore, the occupiers of the accommodation pods and lodges would not be adversely affected by activities in the vicinity of the site. As indicated in the submitted DAS, further criteria in policy DM10 seek to ensure that the scale, mass, layout, design and materials of the development complements or enhances the character of the surrounding area.

- 8.4 Compliance with this criterion is demonstrated by the submitted plans which show low, timber clad, single storey buildings with round roofs and pitched roofs which would echo the rural vernacular. Harsh materials would be avoided, and complementary landscaping would be implemented as part of any approval to ensure that the impact on the surrounding area would not be detrimental.
- 8.5 In light of the above and the contents of the Landscape Statement by Influence Landscape Planning and Design, my view is that the appeal proposal complies with all the relevant criteria set out in policy 6 of the Core Strategy and policies DM4 and DM10 of the Delivery DPD and that this is supported by the contents of the appeal application, this statement and the Landscape Statement, such that it has been demonstrated that no significant harm to the character of the surrounding area would result.

9. The harm that would be caused to protected species on the application site

- 9.1. The second reason for refusal of the application states that insufficient evidence has been submitted with the application to substantiate that the proposal would not harm protected species. Such a proposal would thus be contrary to Policy DM6 of the SADMP and to guidance within the NPPF. The officers report advises that there is no formal objection to the appeal proposals from LCC Ecology but that a significant amount of further information has been requested. A copy of the latest consultation response on behalf of LCC Ecology (from Red Kite Network Ltd) is provided as Appendix 5 to this Statement.
- 9.2 The consultation response appears to relate to the original scheme for 20 pods and 10 lodges (as opposed to the reduced scheme which would occupy significantly less of the appeal site) and it states that a ground level bat assessment and a Construction Environmental Management Plan (CEMP) should be submitted for consideration.

- 9.3 The appeal proposals include the retention of all trees and hedges within the site as recommended in the submitted tree survey and indicated on the submitted revised site plan and accordingly, as recommended in the submitted ecology report it is not felt that a further bat assessment is necessary. In the event that the inspector considers that an assessment for bats would be beneficial in terms of ensuring that lighting would not adversely affect them, this could be the subject of a planning condition rather than being a pre-determination requirement. Similarly, the requirement for a CEMP is routinely the subject of a pre-commencement planning condition and it is considered that this would be appropriate in this instance.
- 9.4 Notwithstanding the fact that the walkover survey was undertaken at a sub-optimal time of the year, the type of grassland on site is easily identifiable at any time of the year. The resulting biodiversity net gain (BNG) assessment has been accepted by both LCC Ecology and the local planning authority and this does not specifically form part of the reasons for refusal of the application. The appeal application was submitted prior to the date when the provision of a 10% net gain became mandatory. Should the inspector consider that a further site walkover and BNG assessment is warranted and be minded to impose that as a condition on an approval, the appellants would be agreeable to this.
- 9.5 With reference to the eDNA survey for great crested newts, this was undertaken on 1st June 2023 as evidenced in the submitted addendum dated 21st June 2023 and in the GCN eDNA report by Nature Metrics (dated 15th June 2023). A copy of this Nature Metrics report is provided as Appendix 6 to this Statement. The survey confirmed that both ponds were negative for eDNA and accordingly that GCN were likely to be absent from them. A habitat suitability index was considered unnecessary in light of these results.
- 9.6 The four recommendations made by Red Kite on page 2 of the consultation response letter are agreed by the appellants and should the inspector consider that these are suitable and necessary conditions to impose on an approval, the appellants would be agreeable to this.

9.7 It is noted that the policy referenced in the second reason for refusal (policy DM6 of the Delivery DPD) advises that development proposals must demonstrate how they conserve and enhance features of nature conservation and geological value rather than focusing solely on protected species. The appeal proposals deliver the necessary biodiversity gains and on all site features related to nature conservation (the existing ponds and hedgerows) are proposed to be retained, buffered and managed favourably to maintain their ecological value. The appeal application is accompanied by an extended phase one habitat survey, a biodiversity net gain assessment and eDNA survey for great crested newts. In light of this, my view is that notwithstanding that the reason for refusal refers to protected species only, policy DM6 is complied with and the advice contained within the Framework is adhered to.

10. Conclusions

10.1 In my view, the appeal proposals constitute sustainable development by reference to the economic, social and environmental objectives set out in paragraph 8 of the Framework. The contents of this statement (and the submitted appeal application) demonstrate that the appeal should be allowed because it accords with development plan policy. The presumption in favour of granting planning permission that paragraph 11 of the Framework provides applies where the scheme accords with an up to date development plan. Paragraph 11 also caters for the situation where the policies which are most important for determining the application are out of date. The conclusion and planning balance section of the officers report suggests that the 'tilted balance' set out in paragraph 11 d) of the Framework applies, based on the fact that the Borough Council cannot demonstrate a five year housing land supply, despite this not being a housing proposal. In the event that the inspector considers that the 'tilted balance' is engaged, the decision maker is required to consider whether the adverse impacts of the development would significantly and demonstrably outweigh the benefits. My view is that the adverse impacts raised by the Council are not significant enough to demonstrably outweigh the benefits of the scheme (economically and environmentally).

- 10.2 The principle of the development proposed is considered to accord with the Framework and the development plan in that it would provide a sustainable tourism and leisure development which would not give rise to any detriment to the character of the countryside. The Council's contention that the appeal proposals would have a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside and visual appearance of the Green Wedge is not justified in the reason for refusal.
- 10.3 Section 38 (6) of the Planning and Compensation Act 2004 and Section 70 (2) of the Town and Planning Country Planning Act 1990 indicate that planning permission should be granted for development proposals that accord with the development plan unless material considerations indicate otherwise. It is my view that the appeal scheme accords with the development plan and that there are no material considerations that would weigh against the proposal in this case. Accordingly, it is considered that planning permission should be granted.

List of appendices

Appendix 1 – Officers report on the appeal application

Appendix 2 – Copies of relevant Core Strategy policies

Appendix 3– Copies of relevant SADM DPD policies

Appendix 4 – Landscape Statement by Influence Landscape Planning and Design Limited, February 2024

Appendix 5 – LCC Ecology comments on the appeal application by Red Kite Network Limited, November 2023

Appendix 6 – Nature Metrics report on eDNA surveys, June 2023