



WILKINSON
PLANNING

Supporting Statement

SITE

Land West of Breach Lane, Earl Shilton, Leicester,
Leicestershire, LE9 7FB

PROPOSAL FOR

Variation of Condition 2 attached to planning
permission 21/00607/FUL under S.73 of the Town
and Country Planning Act for; Erection of gates and
associated enclosure

PROPOSAL BY

Stronghold Homes Ltd

November 2025

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1.0 Introduction

- 1.1 This statement is prepared in support of; Variation of Condition 2 attached to planning permission 21/00607/FUL under Section 73 of the Town and Country Planning Act for; Erection of gates and associated enclosure at Land West of Breach Lane, Earl Shilton, Leicester, Leicestershire, LE9 7FB ('The site').
- 1.2 This statement is submitted having had regard to the original planning permission, which was approved for; *Erection of 9 Dwellings*. Accordingly, this statement is kept as concise as possible.

2.0 Planning Law and Policy

- 2.1 The 'ability to vary' is set within the heart of Section 73 of The Town and Country Planning Act 1990. This is a clear legal mechanism which is available to the applicant, in order to vary the approved plans held by Condition 2 attached to the original planning permission reference 21/00607/FUL. The reasons for the variations shall now be explained and discussed, relative to the material planning considerations engaged.
- 2.2 It should be common ground that the matters tasked with considering this submission, are:
1. Whether the variations proposed are acceptable in planning terms
 2. Delivery of the development
- 2.3 The consideration of this application fall squarely on whether the proposal accords with the development plan, and whether the scheme is acceptable through a 'fact and degree' approach. Case Law precedent handed down by the Courts shall also be presented. It is also important to set out the general drive of the NPPF, for which all LPA's are required to adhere to.
- 2.4 The National Planning Policy Framework 2024 (NPPF) contains the Government's planning policies for England and sets out how these are expected to be applied. Planning law continues to require that applications for planning permission are determined in accordance

with the Development Plan unless material considerations indicate otherwise. The policies contained within the NPPF are a material consideration and should be taken into account for decision-making purposes.

- 2.5 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, then that determination must be made in accordance with ‘the Plan’ unless material considerations indicate otherwise.
- 2.6 The NPPF is supported by the Planning Practice Guidance (PPG), which assists applicants and decision makers in interpretation the NPPF.
- 2.7 The site does not fall within an area with either an emerging or adopted Neighbourhood Plan.

National Planning Policy Framework (2024)

- 2.8 The NPPF sets out the Government’s planning policies for England and how these should be applied. Paragraph 7 of the NPPF confirms that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 of the NPPF identifies three overarching objectives in order to achieve sustainable development. The NPPF goes on to state, however, that *“they are not criteria against which every decision can or should be judged”* (para. 9). The policy paragraphs, footnotes, and annexes to the NPPF should be considered as a whole. Nevertheless, the key considerations that apply to this application are dealt with below.
- 2.9 Paragraph 11 of the NPPF confirms that there is a presumption in favour of sustainable development.
- 2.10 It will be shown that the application accords with the development plan as a whole because of its compliance with the important policies for its determination. Such a view is entirely consistent with the recent *Corbett*¹ judgment in the Court of Appeal. Thus, in accordance with NPPF paragraph 11(c) planning permission should be granted without delay.

¹ *R (Corbett) v Cornwall Council [2020] EWCA Civ 508.*
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- 2.11 The courts have explained how the “tilted balance” operates in such circumstances. For example, in the case of *Cheshire East*², Mr. Justice Jay stated:

“Another way of putting the matter is that the scales, or the balance, is weighted, loaded, or tilted in favour of the proposal. This is what the presumption in favour of sustainable development means: it is a rebuttable presumption, although will only yield in the face of significant and demonstrable adverse impacts.”

- 2.12 As this statement will explain, the proposal can avoid adverse effects and therefore there is no legal or policy basis to disapply the “tilted balance” in this case. The opportunity to make a contribution to the housing delivery in the plan area, in the short term, is a very important benefit in socio-economic terms alongside its energy efficiency credentials. The delivery of the site in totality alongside its clear public benefits, should weigh heavily in favour.

3.0 Proposal

- 3.1 The proposed changes include the erection of a bespoke entrance gate and a design-led associated enclosure, which will be delivered by expert trade professionals [following on from the expertly delivered high-quality units which are on site and occupied already].
- 3.2 The application is supported by detailed plans to include new drawings showing the erection of entrance gates and an associated enclosure. The proposed gates are designed to complement the dwellings in terms of scale, materials and appearance. The changes are minor in nature and will not alter the scale, or general character of the approved development. There will be no adverse impact on neighbouring amenity.
- 3.3 The erection of entrance gates will improve security, privacy, and the overall sense of community within the development, providing controlled access while contributing to a safe, secure and high-quality residential environment.

4.0 Assessment

- 4.1 As expressed earlier on in this statement, the proposal comprises of two main elements:

² *Cheshire East vs SSCLG (2016) EWHC 571 (Admin)*
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1. Whether the variations proposed are acceptable in planning terms
2. Delivery of the development

4.2 As such, these matters are addressed in turn below.

4.3 Whether the variations proposed are acceptable in planning terms

Planning Policy

4.4 At a local level, policy DM4 and DM10 of the Site Allocations and Development Management Policies 2016 (SADMP), principally encourage good design and layout in new development, whilst protecting residential amenity and character of the surrounding area. DM17 is also relevant, covering highways and transportation criteria. The LPA will grant permission for proposals which meet the design criteria.

4.5 The presumption in favour of sustainable development is set out in the preamble of the Local Plan, and replicates the terms of the presumption as found within paragraph 11 of the NPPF. The Local Plan therefore acknowledges that the presumption in favour of sustainable development is enshrined in national planning policy and is fundamental to the success of the growth in the plan area. As such, the application of the presumption is not simply weighed as a material consideration within the NPPF but is a consideration against which all proposals must be determined. The development plan has primacy, and the LPA would be incorrect in law if they chose not to apply it (*see Basingstoke and Deane*³).

4.6 At a national level, the NPPF places a strong emphasis on good design, in particular through Chapter 12 'Achieving well-designed places' containing a number of policies which support the delivery of good design.

Justification

4.7 The erection of gates at the entrance represents a modest and proportionate enhancement to the approved development. The gates are designed to complement the existing materials and form of the dwellings and their boundary treatments, ensuring a coherent high-quality

³ *Basingstoke and Deane Borough Council v Secretary of State for Levelling Up, Housing and Communities* [2024] EWHC 1916 (Admin)
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finish that contributes positively to the overall character and appearance of the site. The proposal would very much 'finish' the development previously endorsed by the LPA. The design, materials, and scale have been selected to integrate seamlessly with the surrounding context, hence achieving a well-considered and visually appropriate finish to the development.

- 4.8 The gates will provide a clear benefit to the residents of the 9 no. dwellings by improving safety and security on the site. Implementing a controlled access helps deter unauthorised entry and reduces opportunities for crime or antisocial behaviour. This, in turn, provides residents with an enhanced sense of privacy and wellbeing. In addition, the gates will help to manage vehicle movements within the site, ensuring that access is clearly defined and used appropriately, without altering the approved access or visibility splays onto the public highway. The proposed gates will decrease traffic speed, slowing down vehicles entering and leaving the site, without hindering or oppressing existing highways performance.
- 4.9 Overall, the inclusion of the gates constitutes good design in line with the principles of the NPPF, which promotes safe, inclusive, and well-designed places. The proposal completes and refines the development, ensuring a secure, attractive, and functional environment for residents while maintaining compliance with the original planning permission.

Proposal Impacts

- 4.10 As shown on the accompanying plans, the scheme – in the round – would remain largely unaltered and enable completion of these high-quality dwellings, which would carry stand-out public benefits. The overall effect on the visual amenity of the area would be nugatory and certainly not harmful and would enable the scheme to be delivered in full subject to authority permission.
- 4.11 By supporting the proposed variations, the scheme will remain reflective of core design policies. The overall site retains its aesthetic and therefore harmonises with the character and form of the area.
- 4.12 The site will offer high quality dwellings within a gated residence providing the owner / occupiers security and safety. The 9 no. dwellings are approved by Building Regulations to date and will continue to exceed the minimum requirements imposed by the 'Regulations'.

Overall, The erection of the gates and associated enclosure will not alter the access approved; there shall be no negative impact on the site. The existing housing market makes for an incredibly difficult period for new build delivery and accordingly, the alterations sought are in part to enable completion of the site, by providing a well executed development which is attractive to the market. Whilst this matter may not be material, the applicant trusts that the LPA are 'open for business' and that it is supportive of SME developers, as prescribed by paragraph 73 of the NPPF⁴.

Delivery of the development

4.13 The deliverability of a development is an important factor in an assessment as to its sustainability (in terms of its benefits) and in terms of its contribution to the supply of housing.

4.14 The NPPF defines deliverable:

“To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years” and; “Sites with outline planning permission... should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years”.

4.15 The NPPG gives further guidance on those considerations under the chapter heading ‘*Housing and economic land availability assessment*’ and includes three, important concepts; suitability, availability, and achievability. Whilst primarily aimed at aiding the plan-making process, the principles are no less useful when considering the deliverability of this development. The NPPG also identifies information relating to site viability, ownership

⁴ *Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, are essential for Small and Medium Enterprise housebuilders to deliver new homes, and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities should:*

b) seek opportunities, through policies and decisions, to support small sites to come forward for community-led development for housing and self-build and custom- build housing;

d) support the development of windfall sites through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes; and

constraints or infrastructure provision, and a statement of common ground between the LPA and the developer confirming the anticipated build-out rates.

- 4.16 Paragraph 38 clearly prescribes LPAs to act proactively, in enabling development to proceed:

“Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.”

- 4.17 The proposed erection of gates and the associated enclosure is considered acceptable as it would enable the developer to complete and visually complement this well-designed site. Considering the wider scope of the site, a gated residence is arguably justified. The proposed gates are ancillary to the quality of the site. By approving the proposed variation, the scheme will continue to provide said public benefits. There is a reasoned expectation that the development would make a valuable and positive contribution to the community in the short term and at an expeditious rate.

- 4.18 There is no reason to stall delivery and completion of the site by failing to allow the subtle variations sought.

5.0 Conclusion

- 5.1 At the heart of the balancing exercise to be undertaken by decision takers is Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that, if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, determination must be made in accordance with the plan unless material considerations indicate otherwise. Section 70(2) of the Town and Country Planning Act 1990 reinforces that due regard must be paid to such considerations.

- 5.2 It can also be noted that the developer has a strong track record of delivering high-quality schemes, and the proposed amendment represents a minor and logical final element to complete the approved development.
- 5.3 The erection of the gates and associated enclosure is compliant with relevant planning policy, in line with good design practice. We submit that any approach to refuse planning permission based purely on a *de facto* breach of policy, would be wrong for several reasons and would lead to a perverse scenario whereby submission would need to be made through other routes, no matter how logical the proposal is, simply because policy guidance says so. That cannot be right, and it would be manifestly unreasonable.
- 5.4 Accordingly, the proposal to vary Condition 2 is justified in its own right, the proposed gates and enclosure will have no adverse impact on the performance or safety of the highway and will equally be a public benefit to the occupants.
- 5.5 The proposal should be supported by the parties and is deliverable on the ground. This is because this statement has demonstrated how the S.73 of the 'Act' is able to be exercised, and on a sound legal basis.
- 5.6 For all these reasons, the proposal is considered to be acceptable, and it is therefore respectfully requested that the variation be granted in the terms requested.