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TOWN AND COUNTRY PLANNING ACT 1990
SECTION 78

PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990
SECTIONS 20 and 74

Appeal By	:	**Mrs P Taylor**
Site	:	**4 Pipe Lane** **Orton on the Hill** **Atherstone** **Warwickshire** **CV9 3NF**
PINS Reference	:	**APP/K2420/A/12/2169798** **APP/K2420/E/12/2169799**
LPA Reference	:	**11/00602/FUL** **11/00603/CON**
Appellant's Reference	:	**CET/3448**
Date	:	**12th March 2012**

APPELLANT'S WRITTEN STATEMENT

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1.0 INTRODUCTION

Appeal A

1.1 This appeal is made under Section 78 of the Town and Country Planning Act 1990 against the refusal to grant planning permission. The appeal is made by Mrs P Taylor against the decision of Hinckley and Bosworth Borough Council. The application (reference 11/00602/FUL) dated 20th July 2011 was refused by notice dated 23rd November 2011 (Appendix 1). The development proposed was demolition of existing bungalow and erection of 6 no. dwellings, improvements to existing access and associated works.

Appeal B

1.2 This appeal is made under Sections 20 and 74 of the Planning (Listed Building and Conservation Areas) Act 1990 against a refusal to grant Conservation Area consent. The appeal is made by Mrs P Taylor against the decision of Hinckley and Bosworth Borough Council. The application (ref: 11/00603/CON) dated 20th July 2011 was refused by notice dated 24th November 2011 (Appendix 2). The demolition proposed is the demolition of existing bungalow.

1.3 The applications were determined by Hinckley and Bosworth Borough Council on the basis of the following documents.

1. Planning & Heritage Statement
2. Design & Access Statement
3. 3448/99B Amended Location Plan
4. 09.02.01 Rev A: Scheme – Site Plan and Section
5. 09.02.02 Rev A: Scheme – Site Layout
6. 09.02.03 Rev A: Scheme – Unit 1
7. 09.02.04 Scheme – Unit 2-6 Plans GF
8. 09.02.05 Scheme – Unit 2-6 Plans FF
9. 09.02.06 Scheme – Unit 2-6 Elevations 1/2

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10. 09.02.07 Scheme – Unit 2-6 Elevations 2/2
11. 09.02.08 Scheme – Garage Building
12. 09.02.09 Scheme – Storage Building
13. 09.02.10 Rev A: Scheme – Landscaping
14. 09/036/10/01 Highway and Property Survey March 2010
15. 09/036/03Cross Section A-B
16. 09/036/02a Property Level and Detail Survey
17. 09.02.010A: Survey
18. Draft Section 106 Agreement dated 2011
19. Aboricultural Survey Report and Generic Method Statement dated April 2010
20. 3448/6 Location of Photographs
21. Transport Appraisal dated 13th July 2011
22. Drainage Assessment
23. Archaeological Evaluation dated 10th May 2010
24. Archaeological Desk Based Assessment dated April 2009
25. Protected Species Assessment dated 17th January 2011
26. Addendum to Planning & Heritage Statement
27. 11217-01c Layout 1 – Junction Improvements
28. 09.02.02 Rev B: Scheme Site Layout

The Appeal Site

1.4 Photographs of the application site and its surroundings are provided at Appendix 3. The application site is located within the Settlement Boundary defined for Orton on the Hill in the Hinckley and Bosworth Local Plan (Appendix 4). The site is also located within the Orton on the Hill Conservation Area (Appendix 5).

1.5 The application site comprises some 0.51 hectares. It is located on the northwest side of Pipe Lane, some 60 metres southwest of its junction with Sheepy Lane. The application has a site frontage to Pipe Lane comprising some 70 metres.

1.6 The application site comprises the site of a detached bungalow, 4 Pipe Lane, which is set within a substantial residential plot. The bungalow has

an "L" shaped plan. It is constructed in brick with a pitched roof. The remainder of the application site comprises part of the surrounding paddock. The paddock has boundaries on all sides of hedgerows of indigenous species. The residential curtilage of 4 Pipe Lane is separated from the paddock by low level wire fencing. There is an existing vehicular access to the bungalow from Pipe Lane.

1.7 The application site adjoins residential development off The Green to the northwest and off Pipe Lane to the south and southwest. The relationship of the proposed development to the surrounding pattern of development is illustrated on the plan (no. 3448.4) provided at Appendix 6.

The Appeal Proposals

1.8 Planning permission and Conservation Area consent is sought for the demolition of the existing bungalow, number 4 Pipe Lane. It is proposed that the site be redeveloped by way of the erection of 6 no. dwellings. The application includes provision for the formation of a new access to Pipe Lane. The scheme has been conceived to have the layout of a farmstead, typical of those to be found within Orton on the Hill comprising a large farmhouse, to the front of the site, and the remainder of the dwellings provided as a range of outbuildings to the rear of the farmhouse, arranged around a courtyard.

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2.0 PLANNING POLICY

National Planning Policy

2.1 PPS1 commences **"Planning shapes the places where people live and work and the country we live in. Good planning ensures that we get the right development, in the right place and at the right time".** It continues at paragraph 2 **"Good planning is a positive and proactive process, operating in the public interest..."**. It is clear both from the title to the PPS and the tenor of the document that sustainability is at the heart of the policy. It is recognised in PPS1 that good design ensures attractive, usable, durable and adaptable places and is a key element in achieving sustainable development and that good design is indivisible from good planning (paragraph 33).

2.2 In the document 'The Planning System: General Principles', it advises that the planning system does not exist to protect the private interests of one person against the activities of another, although private interests may coincide with public interest. The basic question when considering the impact of development upon neighbouring properties is stated to be:-

> **"Not whether owners and occupiers of neighbouring properties will experience financial or other loss, from a particular development, but whether the proposal would unacceptably affect amenities and existing use of land and buildings which ought to be protected in the public interest."** (paragraph 29).

2.3 The Government's Policy for housing is set out in PPS3. The Government's Policy is stated (paragraph 36) to be to ensure that housing is developed in suitable locations which offer a range of community facilities with good access to jobs, key services and infrastructure. This is to be achieved by making **"effective use of land, existing infrastructure and available public and private investment"**.

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2.4 On 23rd March 2011, the Rt Hon Greg Clark MP, Minister for State, issued a written statement entitled 'Planning for Growth' that sets out the steps the Government expects local planning authorities to take with immediate effect. In this respect, the Rt Hon Greg Clark stated:-

> **"the Government's top priority in reforming the planning system is to promote sustainable economic growth and jobs. Government's clear expectation is that the answer to development and growth should wherever possible be "yes", except where this would compromise the key sustainable development principles set out in National Planning Policy."**

2.5 The statement went on to state:

> **"When deciding whether to grant planning permission, local planning authorities should support enterprise and facilitate housing, economic and other forms of sustainable development".**

2.6 Greg Clark indicated that the Secretary of State for Communities and Local Government would take the principles of this statement into account when determining applications that come before him for decisions.

2.7 In the context of the Government's Planning for Growth agenda, the Secretary of State issued the National Planning Policy Framework: Consultation Draft in July 2011. Having regard to the document 'The Planning System: General Principles' which was issued by the Office of the then Deputy Prime Minister at the time of issuing PPS1 in January 2005, it states (paragraph 14), that emerging policies in the form of draft policy statements and guidance can be regarded as material considerations depending on the context. Their existence may indicate that relevant policies are under review and the circumstances which had led to the review, may need to be taken into account.

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2.8 The emerging Draft National Planning Policy Framework is, as the name suggests, draft and cannot be given the same weight as adopted policy. Nevertheless, it has to be afforded some moderate weight given that it indicates the direction in which future planning policy is to be directed.

2.9 In respect of the appeal proposals, the main policies within the Draft National Planning Policy Framework that have some bearing upon the appeal proposals are Policies 13, 14, 107, 108, 110 and 111. At Policy 14 of the Draft National Planning Policy Framework the Government sets out a presumption in favour of sustainable development and advises that "**local planning authorities should plan positively for new development, and approve all individual proposals wherever possible**". The Government's key housing objective (Policy 107) is to increase significantly the development of new homes. The Draft Policy advises that applications for housing (Policy 110) "**should be considered in accordance with the presumption in favour of sustainable development. It is submitted that the proposed development will provide for housing and economic activity in accordance with the Government's Planning for Growth agenda and the emerging National Planning Policy Framework**"....

The Development Plan

2.10 The Development Plan includes saved policies of the Hinckley and Bosworth Local Plan (adopted February 2001) and the Hinckley and Bosworth Core Strategy (adopted December 2009). Relevant extracts from the Hinckley and Bosworth Local Plan are enclosed as Appendix 7 and relevant extracts from the Hinckley and Bosworth Core Strategy are enclosed as Appendix 8.

2.11 The application site is located within the Settlement Boundary defined for Orton on the Hill in the Hinckley and Bosworth Local Plan. Local Plan Policy RES5 relates to proposals for residential development on unallocated sites. It indicates that planning permission will be granted for any residential development on such sites provided that the site lies within the boundaries of an urban area of rural settlement as defined on the

Proposals Map and where the siting, design and layout of the proposal do not conflict with the relevant Plan Policies.

2.12 Orton on the Hill is identified at paragraph 4.45 of the Core Strategy as a Rural Hamlet. Core Strategy Policy 13 indicates that in Rural Hamlets the Council will support housing development within the Settlement Boundaries that provides for a mix of housing types and tenures. Core Strategy Policy 15 promotes the provision of mixed, sustainable communities and indicates that the Council expect a proportion of affordable housing to be provided on eligible sites. In rural areas eligible sites are those comprising four dwellings or more or 0.13 hectares in site area. In such circumstances, the affordable housing target on site will be 40%.

2.13 Core Strategy Policy 16 requires a mix of housing types and tenures to be provided on all sites of ten or more dwellings and it indicates that proposals for new residential development will be required to meet a minimum density of at least 30 dwellings per hectare within and adjoining the key rural centres, rural villages and rural hamlets. It goes on to say that in exceptional circumstances, **"where individual site characteristics dictate and are justified, a lower density may be acceptable"**.

2.14 Local Plan Policy BE1 relates to the design and siting of development and states that the Borough Council will seek to ensure high standard design in order to safeguard and enhance the existing environment and that planning permission will be granted where the development complements or enhances the character of the surrounding area with regard to design, materials and architectural features, and is not prejudicial to the comprehensive development of a larger area and does not adversely affect the occupiers of neighbouring properties. Local Plan Policy BE19 relates to Open Spaces and areas of special character within settlements and states that any area of land or visual break between buildings identified as making a contribution to the special character of a settlement should be retained.

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2.15 Local Plan Policy BE7 relates to development in Conservation Areas. Within the Conservation Areas the Policy seeks to preserve or enhance the special character of a Conservation Area, including buildings, related spaces, views in and out of the area, topography and vegetation. Policy BE8 indicates that applications for the demolition of buildings in Conservation Areas will be refused except where it can be demonstrated that the loss of the building will not be detrimental to the character or appearance of the Conservation Area and that there are proposals for its replacement which will preserve or enhance the character or appearance of the Conservation Area.

Orton on the Hill Conservation Area

2.16 The application site is located within the Orton on the Hill Conservation Area. The Conservation Area Management Plan was adopted in March 2009 (Appendix 5). The existing bungalow at 4 Pipe Lane and its curtilage is identified as a "**weak area/building**". The curtilage of 4 Pipe Lane, together with the remainder of the planning application site is identified as "**potential development area**". The paddock to the north east of the application site is identified as a "**key space**" containing important trees. The Conservation Area Management Plan goes on to state:

> "**The large paddock that fronts The Green is important in visual terms. The vista along The Green looking towards the parish church emphasises the village's rural character reinforced by its grass verges and continuous hedgerows. Any new development fronting the road will have detrimental impact being visually prominent. The opening at the field gate to the paddock will also need to be considerably widened to accommodate road access.**"

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3.0 PLANNING CONSIDERATIONS

3.1 The appeal applications were reported to Hinckley and Bosworth Planning Committee at its meeting on 15th November 2011. It will be noted that the Deputy Chief Executive (Community Direction) had recommended that both the application for planning permission and that for Conservation Area consent (see Appendices 9 and 10) be approved. Contrary to the recommendation of the Deputy Chief Executive, both applications were refused for the reasons set out on the decision notices (see Appendices 1 and 2).

3.2 Whilst the Secretary of State has advised (paragraph B20 to the Annex of Circular 03/09) that Planning Authorities are not bound to accept the recommendations of their Officers, however, if Officers' professional or technical advice is not followed **"Authorities will need to show reasonable planning grounds for taking of contrary decision and produce relevant evidence on appeal to support the decision in all respects."** It is now proposed to examine the issues identified above having regard to National Planning Policy, the Development Plan and all other material considerations to establish whether or not the proposed development will cause demonstrable harm to any interests of acknowledged importance which could not be overcome by the imposition of reasonable conditions and hence whether or not the Planning Authority have reasonable planning grounds for taking a decision contrary to its Officer's advice.

3.3 Having regard to the reasons for refusing the appeal applications (Appendices 1 and 2), and the reports of the Deputy Chief Executive to the Planning Committee (Appendices 9 and 10), it is submitted that the principal issues raised in this appeal are as follows:

1. The effect of the proposal upon the character and appearance of the Orton on the Hill Conservation Area.
2. The effect of the proposed development upon the safety of pedestrians using Pipe Lane.
3. The implications of the proposal for the Development Plan and other planning policy relating to sustainable development in rural areas.
4. Whether or not the proposed development makes adequate provision for affordable housing.

Issue 1: Character and Appearance of the Area

3.4 The application site is located wholly within the Residential Development Boundary defined by Orton on the Hill in the Hinckley and Bosworth Local Plan. It is submitted that the principle of residential development on this site would be entirely consistent with Local Plan Policy RES5, together with Core Strategy Policy 13. It is evident from the Planning Officer's Report to Committee (see Appendix 9) that there is no objection to the principle of residential development on the appeal site since the Planning Officer concludes:

> **"In summary, there is no objection in principle to the erection of 6 dwellings within the settlement boundary of Orton on the Hill which would provide affordable housing in a rural area of identified need. For the reasons discussed in this report, it is not considered the scheme would be in conflict with adopted Development Plan policy."**

3.5 PPS5 distinguishes between designated heritage assets such as listed buildings and Conservation Areas and assets which are not covered by any statutory designation. PPS5 stresses the importance of identifying and assessing the significance of heritage assets. The heritage interest which contributes to significance may be archaeological, architectural, artistic or

historic. In cases where there would be harm to significance, PPS5 advocates a proportionate approach whereby decision makers should weigh any benefits of the proposal under consideration against the harm.

3.6 The application site is located within the Orton on the Hill Conservation Area (Appendix 5). As such, there is a requirement to ensure that the development preserves or enhances the character or appearance of the area.

3.7 The Orton on the Hill Conservation Area document (Appendix 5) identifies the existing bungalow and its curtilage at 4 Pipe Lane as a "**weak area/building**" with the remainder of the application site as being a "**potential development area**". The application site is not located within the area identified as "**key space**" or within an area where "**vistas are to be protected**".

3.8 A previous Local Plan Inspector (see Appendix 11) stated that the site does not "**have a vital role as a refreshing contrast to neighbouring built development; nor does it form a foreground or backdrop to that development, much of which is largely hidden behind trees**".

3.9 The Council's second reason for refusing the planning application (see Appendix 1) suggests that the appeal site acts "**as a visual break between buildings which contributes to the special character of the area**" and as such the proposed development would be contrary to Local Plan Policy BE19. It will be evident from considering Local Plan Policy BE19 (see Appendix 7) that the policy reads as follows:

> "**The local planning authority will seek to retain any open area of land or visual break between buildings identified as making a contribution to the special character of a settlement. Planning permission will not be granted where development would adversely affect the contribution of the designated area to that special character. Designated areas are identified on settlement inset plans and on the proposals map.**"
> (CT Planning emphasis)

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3.10 The appeal site is not identified on the Orton on the Hill inset map (Appendix 4) as an area of open land or a visual break between buildings. It is thus not a designated area. As such, Policy BE19 does not apply to the appeal site since the policy only seeks to withhold planning permission where development would adversely affect the contribution of "**the designated area to that special character**".

3.11 The existing bungalow at 4 Pipe Lane, is a relative utilitarian building which is identified in the Conservation Area document (Appendix 5) as being a "**weak area/building**". It is respectfully submitted that in these circumstances the existing bungalow is not to be regarded as a heritage asset. In her report to Committee, the Planning Officer considered the contribution of the bungalow to the Orton on the Hill Conservation Area and stated (see page 81 at Appendix 10):-

> "**... it is not considered that the dwelling makes a significant positive contribution to the street scene and character and appearance of the conservation area to deem it worthy of retention. It is considered that the dwelling currently detracts from the character and appearance of the conservation area, and as such there is no in principle objection to its removal.**"

3.12 The views of the Planning Officer were evidently shared by the Council's Conservation Officer who, in the consultation response to the application for Conservation Area consent (Appendix 12) stated **"the proposed will improve the conservation area and is supported"**.

3.13 It is thus submitted that the existing bungalow at 4 Pipe Lane does not represent a heritage asset.

3.14 The relationship of the application site to the existing settlement pattern is identified on the plan (no. 3448.4) enclosed at Appendix 6. It is evident from this plan that there is no rigid pattern of development in the surrounding area. There are examples of properties being sited both close to the highway and behind substantial front gardens. It is evident that the

existing pattern of development within Orton on the Hill comprises a wide variety of dwellings in terms of their design, siting and age. There is also a wide variety in the types of dwellings to be found in the locality.

3.15 The character of residential development in the vicinity of the application site could be described as a variety of dwelling types, styles and sizes, on plots of different sizes. There is thus no local distinctiveness of design that needs to be followed.

3.16 The design of the proposed dwellings are informed by, and appropriate to, the context and are particularly respectful to the character and appearance of development to be found throughout the Orton on the Hill Conservation Area.

3.17 The proposed development has been conceived to have the appearance of a large farmhouse at the front of the site with a range of outbuildings to its rear arranged around a courtyard having the appearance of outbuildings/barns. The proposed development would thus have the appearance of a converted farmstead of which there are a number of examples throughout Orton on the Hill.

3.18 The proposed residential development is of a deceptively simple design which would add visual interest. The proposed design would secure an enhancement of an identified weak area/building within the Conservation Area and realise the development of the "**potential development area**", identified in the Conservation Area document. The form of development proposed responds to the circumstances of the application site in respect of its topography and the existence of trees. The form of development proposed, that is a large house reminiscent of a farmhouse at the front of the site with a range of outbuildings to the rear, means that the majority of the development is screened from view from Pipe Lane by the dwelling proposed on Plot 1. As a consequence, the proposed development would not appear intrusive in the street scene. The proposed development would not therefore have an adverse effect on the character and appearance of the surrounding area. Rather, the proposed design which incorporates elements of design apparent in the wider area, will blend in

with the existing pattern of development, securing the development of a potential development area identified in the Conservation Area document.

3.19 The design of the proposed development is of a quality anticipated by National Planning Policy and would enhance the character and the appearance of the designated Conservation Area. The proposed development is thus entirely consistent with Local Plan Policy RES5 and Core Strategy Policy 13. The proposed development is of a design of the highest order which will preserve or enhance the character or appearance of the Conservation Area and in these circumstances the demolition of the bungalow would be consistent with Local Plan Policy BE8.

3.20 Enclosed as Appendix 13 is the Conservation Officer's consultation response in respect of the application for planning permission. Commenting on the design of the proposed development, the Conservation Officer states **"This is a good scheme which [sic] is supported."**

3.21 Commenting on the impact of the proposed development upon the character and appearance of the Conservation Area, the Planning Officer, in her report to Committee (Appendix 9), made the following conclusion (see page 69):

> **"In summary, <u>the proposed development accords with the general siting and scale of existing dwellings within the vicinity, ensuring that the development in keeping with the scale and character of existing dwellings and the design and use of materials is considered to contribute positively to the character and appearance of the Conservation Area</u>. Accumulatively the scheme is considered to be in accordance with the guidance contained with PPS3, Policy BE1 of the Adopted Local Plan, principles outlined in the Council's SPG on new residential development and is considered to preserve the conservation in accordance with Policy BE7 of the**

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Adopted Local Plan and Policy 13 within the Adopted Core Strategy." (CT Planning emphasis)

3.22 It is thus submitted that the proposed development would procure a significant enhancement to the site by removing a **"weak area/building"** and realising the development of a **"potential development area"**. The size and massing of the proposed development, combined with its materials of construction results in a form of development which is entirely appropriate to its context which will make a positive contribution towards the character and appearance of the Conservation Area procuring a significant enhancement to its appearance. Thus the objective of preserving or enhancing the character or appearance of the Orton on the Hill Conservation Area is satisfied. Consequently, the proposed development is considered to be entirely consistent with Local Plan Policies RES5, BE7 and BE8, together with Core Strategy Policy 13.

Issue 2: Pedestrian Safety

3.23 The latest consultation response from Leicestershire County Council in its capacity as the Highway Authority was issued on 28th October 2011 (see Appendix 14). It will be noted that the Highways Authority conclude that **"as such the proposals are considered <u>acceptable</u> subject to the following conditions..."** (CT Planning emphasis) Of these conditions, Condition 3 stated:

> **"Before development commences a scheme of pedestrian improvements along Pipe Lane to the Sheepy Lane junction shall be submitted to and agreed in writing by the LPA. The scheme approved shall be completed prior to first occupation of the dwelling hereby approved."**

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3.24 The reason suggested by Leicestershire County Council for imposing this condition was stated to be:

> **"The highway fronting the site has no separate facility for pedestrians and the proposal would lead to an increase in pedestrian movement along the highway. The footway is therefore required <u>for the safety of pedestrians</u>."** (CT Planning emphasis)

3.25 The Planning Officer, in her supplementary report to Committee (Appendix 15) stated:

> **"... the Borough Council does not consider that this condition is either necessary or reasonable and as such would fail to meet the requirements of Circular 11/95. It is also considered a footpath/footway from the proposed access drive to the junction could involve the removal of hedgerows and would be to the detriment of the Conservation Area. As such, the Borough Council does not consider that this condition should be carried forward and the Director of Environment and Transport (Highways) therefore subsequently recommends refusal."**

3.26 The consultation response from Leicestershire County Council of 28th October 2011 (Appendix 14) followed on from an exchange of correspondence between Leicestershire County Council, Hinckley and Bosworth Borough Council, CT Planning and David Tucker Associates, highway consultants to the appellant. In his email of 26th October 2011 to the case officer Ebbony Mattley of Hinckley and Bosworth Borough Council, Dominic Young, Leicestershire County Council's Highways Officer states:

> **"<u>My view on this one is that the highway safety argument as a stand alone reason for refusal is not sufficiently strong</u>. The visibility reason was very much seen as a secondary reason to the sustainability argument. If, as seems to be the case, the LPA are minded to support housing in this location, then I**

> **would reluctantly withdraw our objection as I do think I could defend a reason on visibility grounds alone.**
>
> **I have emailed the highway consultant directly today to see whether the applicant would be willing to front the pedestrian footway I refer to in my consultation response.**
>
> **Should they be willing to accept a condition I will be prepared to make a more favourable recommendation.**" (CT Planning emphasis)

3.27 Reasons for refusal should be "**complete, precise, specific and relevant to the application**" (paragraph B16 of Circular 03/2009). Planning Authorities are expected **"to produce evidence at appeal stage to substantiate each reason for refusal with reference to the Development Plan and all other material considerations including any relevant judicial authority**." It is thus evident from Dominic Young's email of 26th October 2011 (Appendix 16) that "**the highway safety argument as a stand alone reason for refusal is not sufficiently strong**". It must therefore be concluded from Mr Young's statement that the Council's third reason for refusal is neither complete, precise, specific or relevant to the application.

3.28 In respect of the Highway Authority's request for a condition to secure the provision of a footpath between the appeal site and the junction to the east it is respectfully submitted that if the highway safety objection is not strong enough on its own to justify refusal, then a request for the provision of a footpath could not pass the tests for imposing a condition provided at paragraph 14 of Circular 11/95 since it would not be necessary or reasonable in all other respects.

3.29 Throughout the Settlement Boundary of Orton on the Hill (see Appendix 4) and the Designated Conservation Area (Appendix 5), the vast majority of roads do not have a formal footpath. Pedestrians walking in the highway are a characteristic of the Conservation Area and the village itself. There is absolutely no evidence provided by Leicestershire County Council to demonstrate that the safety of pedestrians using the lanes within Orton on the Hill are compromised by them having to share the highway surface

with motorised vehicles. However, were it to be found that a footpath was necessary in the interests of public safety, then the Appellant controls land between the appeal site and the Pipe Lane/Main Street junction in which a footpath could be provided and secured by appropriate conditions.

3.30 In conclusion on this issue therefore, it is submitted that if the Highway Authority themselves do not see that there is a highway safety argument that is sufficiently strong to stand alone, it must therefore be concluded that there is not a highway objection to the proposed development. In that context, a requirement for the provision of a footpath along the site frontage is nothing more than a sop to the Highways Authority and the provision of such a condition does not pass the six tests required for a condition as set out in Circular 11/95. It is thus respectfully submitted that the proposed development will not result in harm to the safety of pedestrians using Pipe Lane.

Issue 3: Sustainability

3.31 The Council's fourth reason for refusal states that the Planning Authority consider the appeal site to be located in an unsustainable location, remote from key services and public transport where journeys would be reliant upon private car journeys contrary to PPS1, PPS7 and PPG13.

3.32 The appeal site is located wholly within the Residential Development Boundary defined for Orton on the Hill in the Adopted Hinckley and Bosworth Local Plan (Appendix 4). Local Plan Policy RES5, together with Core Strategy Policy 13 support housebuilding on sites within the Residential Development Boundary. Consequently, the principle of constructing new residential development in Orton on the Hill is supported by current Development Plan policy.

3.33 Orton on the Hill is identified as a rural hamlet at paragraph 4.45 of the Hinckley and Bosworth Core Strategy. Rural hamlets are recognised as having "**limited, if any services and generally rely on key rural centres or surrounding urban areas for schooling, employment and provision of goods and services**". Notwithstanding this, Core Strategy Policy 13 indicates that the Council will "**support housing development**

within Settlement Boundaries that provides for a mix of housing types and tenures as detailed in Policy 15 and 16" and similarly support development that complies with Policy 17: Local Needs Housing.

3.34 It will be noted that the Hinckley and Bosworth Core Strategy was adopted in December 2009. Its policies post-date PPS1, PPS7 and PPG13 upon which the Council's fourth reason for refusal relies. PPS12 (paragraph 4.48) states that the examination of any Development Plan Document is concerned with two separate matters of **"legal compliance and soundness"**. Under Section 20(5)(a) of the Planning and Compulsory Purchase Act 2004 an Inspector is charged with firstly checking that the Plan has complied with legislation. This includes checking that the Plan **"has regard to National Policy"**. In addition, Section 20(5)(b) of the Act requires the Inspector to determine whether the plan is **"sound"**. At paragraph 4.52 of PPS12, it states that to be **"sound"** a Core Strategy should be **"JUSTIFIED, EFFECTIVE and consistent with NATIONAL POLICY"**. It is therefore respectfully submitted that when the Inspector examined the Hinckley and Bosworth Core Strategy he must has been satisfied that it was legally compliant with the Planning and Compulsory Purchase Act 2004 and that it was sound. In this respect the Inspector, having regard to the advice contained at paragraphs 4.50 and 4.52 of PPS12 must have been satisfied that the Hinckley and Bosworth Core Strategy had both regard to National Policy and was consistent with National Policy. The Inspector who examined the Hinckley and Bosworth Core Strategy must thus have been satisfied that the document was consistent with National Planning Policy which would have included PPS1, PPS7 and PPG13, all of which were extant at the time that the examination took place in May and October 2009.

3.35 Core Strategy Policy 13 states that development in rural hamlets such as Orton on the Hill will be confined to infill housing development. Infill development is not defined. It is noted, however, that the Planning Officer, in her supplementary report to the Committee (Appendix 15) sought to define infill development by stating:-

> **"Infill development refers to sites that fall within settlement boundaries, where there is a presumption in favour of sustainable development. It is the intention of the policy to further strengthen the Council's presumption against development that falls outside of the settlement boundaries of rural locations. The site, by virtue of its siting within the settlement boundary of Orton on the Hill therefore constitutes infill development".**

3.36 The appeal site lies wholly within the Development Boundary defined for Orton on the Hill (see Appendix 4). The proposed development comprises infill development within the Settlement Boundary in accordance with Local Plan Policy 13.

3.37 Having regard to Core Strategy Policy 13, the applications will provide for a mix of housing types insofar as the development proposals 5 three bedroom properties and 1 four bedroom property. It is proposed that two of the six houses proposed will be made available to a social registered landlord as affordable housing units for social rented housing. The proposed development thus will secure a mix of tenures.

3.38 Insofar as the proposed development is within the Settlement Boundary of Orton on the Hill, it provides for a mix of house types and a mixture of tenures, it is precisely the form of development that Policy 13 of the recently adopted Hinckley and Bosworth Core Strategy seeks to support.

3.39 If residential development within Orton on the Hill was so unsustainable, remote from key services and public transport resulting in a reliance upon the private car, and hence was so objectionable in the context of PPS1, PPS7 and PPG 13, then it is respectfully submitted that the Inspector who recently examined the Hinckley and Bosworth Core Strategy would have recommended the exclusion of the settlement from the list of rural hamlets identified at paragraph 4.45 of the Core. As a consequence, Orton on the Hill is therefore subject to the provisions of Core Strategy Policy 13.

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Issue 4: Affordable Housing

3.40 Having regard to Core Strategy Policy 15, the proposed development is above the threshold for the provision of affordable housing on sites within rural areas (four dwellings or more or 0.13 hectares or more). As a consequence, the affordable housing target for on-site provision is some 40%. It is therefore proposed that some 2 units within the application site (amounting to some 33%) will be made available to a registered social landlord as affordable housing. The provision of this affordable housing provision is to be secured through the use of a unilateral undertaking under the provisions of Section 106 of the 1990 Act. The unilateral undertaking will be submitted under separate cover by the appellant.

3.41 The above situation is exactly the situation that was stated by the appellant at paragraph 26 of the Design & Access Statement that accompanied the planning application. The Council's fifth reason for refusal is understood to be purely a procedural reason for refusal since a Section 106 Agreement was not in place at the time of refusing the application to secure the provision of affordable housing; a Section 106 Agreement would only be signed upon the grant of planning permission. It is thus submitted that the unilateral undertaking which will be submitted by the appellant under separate cover will address the Council's fifth reason for refusal.

Conditions

3.42 Having regard to the advice in Circular 11/95, it is submitted that should the Inspector be minded to allow this appeal and grant planning permission, any permission should be subject to the conditions set out at Appendix 17.

CT Planning

Conclusion

3.43 The proposed development involves the removal of 1 dwelling which is identified by the Planning Authority in its Conservation Area Appraisal to be detrimental to the character and appearance of the Orton on the Hill Conservation Area. There is a comprehensive replacement scheme for the application site which is considered to both preserve and enhance the character and appearance of the Orton on the Hill Conservation Area. The impact of the demolition of the bungalow upon the Conservation Area will not in this context, cause harm to the character or appearance of the Orton on the Hill Conservation Area. Appropriate conditions can be used to ensure that the redevelopment of the site follows within a reasonable timeframe.

3.44 The proposed development is to take place entirely within the Settlement Boundary defined for Orton on the Hill in the Hinckley and Bosworth Local Plan. The application site is identified within the Orton on the Hill Conservation Area document as a "**potential development area**" with the existing bungalow being identified as a "**weak area/building**".

3.45 The proposed development is of a design that is of the highest order. The siting and scale of the proposed development is well related in terms of its scale and location to existing dwellings within the vicinity and the design of the proposed development would contribute positively to the character and appearance of the Conservation Area.

3.46 The proposed development relates to the erection of 6 dwellings of mixed housing type and tenure wholly within the Settlement Boundary for Orton on the Hill. The proposed development is thus entirely consistent with Core Strategy Policy 13.

3.47 It is evident that the Highways Authority accept that there is no highway safety argument which could stand alone as a reason for refusal; in these circumstances, it is respectfully submitted that the failure to provide a footpath between the appeal site and the junction of Pipe Lane with Main Street to the east of the site will not result in harm to highway safety, including that of pedestrians using Orton Lane.

CT Planning

3.48 The appellant proposes that some 2 units within the application site will be made available to a registered social landlord as affordable housing. The appellant will be submitting under separate cover a unilateral undertaking to secure the provision of this affordable housing. In this respect the proposed development is entirely consistent with Core Strategy Policy 15.

3.49 In the light of the above circumstances the Inspector is respectfully requested to uphold these appeals and grant planning permission and Conservation Area consent.

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4.0 APPENDICES

Appendix 1	:	Decision Notice 11/00602/FUL dated 23rd November 2011
Appendix 2	:	Decision Notice 11/00603/CON dated 24th November 2011
Appendix 3	:	Photographs of the appeal site and its surroundings
Appendix 4	:	Orton on the Hill Settlement Boundary
Appendix 5	:	Orton on the Hill Conservation Area Appraisal – March 2009
Appendix 6	:	Drawing 3448/4: Settlement Pattern
Appendix 7	:	Relevant extracts from the Hinckley and Bosworth Local Plan
Appendix 8	:	Relevant extracts from the Hinckley and Bosworth Core Strategy
Appendix 9	:	Planning Officer's Report to Planning Committee in respect of application 11/00602/FUL
Appendix 10	:	Planning Officer's Report to Committee in respect of application 11/00603/CON
Appendix 11	:	Objections to Local Plan : Inspector's Remarks
Appendix 12	:	11/00603/CON : Conservation Officer Consultation Response dated 4th October 2011
Appendix 13	:	11/00602/FUL : Conservation Officer Consultation Response dated 4th October 2011
Appendix 14	:	Consultation Response from Leicestershire County Council dated 28th October 2011
Appendix 15	:	Planning Officer's Supplemental Report to the Planning Committee in respect of application 11/00602/FUL

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Appendix 16	:	Email from Dominic Young, Leicestershire County Council to Ebbony Mattley of Hinckley and Bosworth Borough Council dated 26th October 2011
Appendix 17	:	Draft conditions

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