

HINCKLEY AND BOSWORTH BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990



**Hinckley & Bosworth
Borough Council**

WRITTEN STATEMENT ON BEHALF OF THE LOCAL PLANNING AUTHORITY

PLANNING APPEAL BY MR CHRISTOPHER MCMANUS

**AGAINST THE REFUSAL OF PLANNING PERMISSION FOR THE PROPOSED
CHANGE OF USE AND CONVERSION OF EXISTING REDUNDANT RURAL
BUILDING TO A SINGLE FAMILY DWELLING HOUSE, LANDSCAPING AND
ASSOCIATED WORKS (SELF-BUILD)**

AT

**POND BARN, COLD COMFORT FARM,
ROGUES LANE, HINCKLEY**

HINCKLEY AND BOSWORTH BOROUGH COUNCIL REFERENCE

24/00551/FUL

THE PLANNING INSPECTORATE REFERENCE

APP/K2420/W/24/3357989

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1. INTRODUCTION

- 1.1. This statement is to be read in conjunction with the previously submitted Appeal Questionnaire papers, in full support of the decision of Hinckley and Bosworth Borough Council to refuse planning permission for the change of use and conversion of an existing rural building to a dwellinghouse with landscaping, and associated works at Pond Barn, Cold Comfort Farm, Rogues Lane, Hinckley.

2. DESCRIPTION OF THE APPEAL SITE AND THE PROPOSAL

The Appeal Site

- 2.1 The appeal site is located to the north of, and outside of the identified settlement boundary of Hinckley within the open countryside. The site features the existing building that is proposed to be converted within this appeal, and two existing storage containers. The structure within the site was approved as an agricultural building via application 10/00318/GDO. At the time, it was claimed that the building was required for the storage of agricultural equipment (principally haymaking equipment) for an agricultural landholding of 5.8 hectares.
- 2.2 The application site within application 10/00318/GDO included the appeal site and the field to the north that is adjacent to Rogues Lane. At the time, the 2010 application site was distinct from Cold Comfort Farm, but the site has since been repurchased by the Appellant. As confirmed within the Appellant's submitted Policy Statement, the agricultural use of the site and the building has ceased.
- 2.3 Since its construction, part of the existing building was granted retrospective planning permission via application 18/00353/FUL for a change of use into a dog day care centre, which was licensed to care for 30 dogs.
- 2.4 The appeal site is wholly rural in character and is surrounded by open agricultural fields. Beyond the field to the north of the site is Rogues Lane, which is an adopted but unclassified road subject to the National Speed Limit. Beyond the field to the west of the application site, through which the site's access track runs, is Middlefield Lane, which is an un-adopted highway.
- 2.5 Beyond Rogues Lane to the north of the site are two agricultural properties, Westmoreland Farm and Valley Farm. Beyond Middlefield Lane to the northwest of the site is Five Acres, which is an established Gypsy and Traveller Site. There are further agricultural farms and associated dwellinghouses to the east of the site, which are separated from Pond Barn by agricultural fields.
- 2.6 Cold Comfort Farm is to the southwest of the site within a separate parcel of land. To the southwest of the Cold Comfort Farm complex are several residential properties (The Barn, The Cow Shed, Bullrush Cottage, Willow Cottage, and Lilly Cottage) and Lante Fields Farm that are all independent from Cold Comfort Farm.

The Appeal Proposal

- 2.7 This appeal proposal seeks full planning permission for the conversion of an existing building into a two-storey four-bedroom dwellinghouse at Pond Barn, Cold Comfort Barn, Rogues Lane, Hinckley. The development is constructed with aluminium standing seam cladding and grey Cedral boarding.

3. SITE HISTORY

3.1 24/00149/P3CQ

- Change of use of agricultural steel framed barn into a single dwellinghouse (C3) (Revised Scheme of planning application 23/01012/P3CQ)
- Prior Approval Refused
- 11.04.2023

Prior approval was refused because the development was not considered to consist of a change of use of a building and the land within its curtilage from an agricultural use, nor was it considered to be within an established agricultural unit. The proposed demolition works were also not considered to be reasonably necessary to carry out the building operations to the extent reasonably necessary for the building to function as a dwellinghouse.

3.2 23/01012/P3CQ

- Change of use of agricultural steel framed barn into a single dwellinghouse (C3)
- Prior Approval Refused
- 13.12.2023

The development was refused because the proposal was not considered to consist of a change of use of a building and the land within its curtilage from an agricultural use, nor was it considered to be within an established agricultural unit. Therefore, the scheme was not considered to benefit from Permitted Development Rights.

3.3 18/00353/FUL

- Change of use to a dog day care centre (retrospective)
- Permitted
- 14.09.2018

3.4 10/00318/GDO

- Erection of agricultural building
- Permitted
- 25.05.2010

3.5 10/00055/GDO

- Erection of agricultural building
- Permitted
- 23.02.2010

This permission was rescinded via a unilateral undertaking submitted with application 10/00318/AGDO.

4. NATIONAL POLICIES

4.1 National Planning Policy Framework (NPPF) (December 2024).

It is noted that the NPPF was revised after the determination of the planning application in December 2024.

4.2 National Planning Practice Guidance (PPG).

4.3 National Design Guide (NDG) (2019).

5. LOCAL POLICIES

5.1 The Development Plan policies referred to for the purposes of the application were:

5.2 Core Strategy (2009):

- N/A.

5.3 Site Allocations and Development Management Policies Development Plan Document (SADMP) (2016):

- Policy DM1: Presumption in Favour of Sustainable Development
- Policy DM4: Safeguarding the Countryside and Settlement Separation
- Policy DM6: Enhancement of Biodiversity and Geological Interest
- Policy DM10: Development and Design
- Policy DM15: Redundant Rural Buildings
- Policy DM17: Highway and Transportation
- Policy DM18: Vehicle Parking Standards

5.4 Other Relevant Guidance:

- HBBC Good Design Guide (GDG) (2020)
- Leicestershire Highways Design Guide (LHDG) (2024)
- Technical Housing Standards – Nationally Described Space Standards (2015)

It is noted that the LHDG was revised after the determination of the planning application in December 2024.

6. THE CASE FOR THE LOCAL PLANNING AUTHORITY

6.1 The planning application 24/00551/FUL was refused on 18 September 2024 under delegated powers for the following reasons:

1. The building that is the subject of this application is not redundant or disused and the proposal represents new and unjustified isolated residential development outside of any identified settlement boundary in the countryside. Due to the location of the development, the future occupants of the scheme are likely to be dependent on private motorised transport to meet their day-to-day needs, which results in environmental harm. Ultimately, the urbanising effects of the development fundamentally and detrimentally alter the character and appearance of the site, its immediate setting, and the surrounding area. These significant adverse effects are considered to be contrary to, and in conflict with, Policies DM4, DM10, DM15, and DM17 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) as well as Paragraph 84, Sections 5, 12 and 15, and the overarching aims of the National Planning Policy Framework (December 2023). This harm is considered to significantly and demonstrably outweigh any potential benefits of the development.
2. The Applicant has failed to demonstrate that their proposal is exempt from their mandatory biodiversity net gain requirements. As a result, the application has failed to deliver the mandatory 10% biodiversity net gain, which is contrary to, and in conflict with the requirements of Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021).

Determination of the Appeal Proposal

- 6.2 As confirmed at Paragraph 8.30 of the Delegated Report, the age of the relevant housing policies within the adopted Core Strategy are out of date. Therefore, the 'tilted' balance in Paragraph 11(d) of the NPPF is triggered within the determination of this appeal.
- 6.3 However, as highlighted by Paragraph 8.3 of the Delegated Report, in accordance with Paragraph 225 (now 232) of the NPPF, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the NPPF. Due weight should be given to existing policies according to their degree of consistency with the NPPF
- 6.4 For decision taking, Paragraph 11(d) of the NPPF requires planning permission to be granted unless:
- i. The application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or

- ii. Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
- 6.5 Footnote 9 of the NPPF confirms that these key policies include: Paragraphs 66 and 84 of Chapter 5 (Delivering a Sufficiently Supply of Homes), 91 of Chapter 7 (Ensuring the Vitality of Town Centres), 110 and 115 of Chapter 9 (Promoting Sustainable Transport), 129 of Chapter 11 (Making Effective Use of Land), and 135, and 139 of Chapter 12 (Achieving Well-Designed Places).
- 6.6 It is noted that Key Policy Paragraphs 66, 91 and 110 of the NPPF are not applicable in these site-specific circumstances.
- 6.7 Paragraph 137 of the NPPF states that applicants, where applicable, should provide sufficient information to demonstrate how their proposals will meet the design expectations set out in local and national policy.
- 6.8 Key Policy Paragraph 139 of the NPPF states that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design (as contained in the National Design Guide and National Model Design Code), taking into account any local design guidance and supplementary planning documents such as design guides and codes.

The Transport Sustainability of the Development's Location

- 6.9 Paragraph 161 of the NPPF confirms that the planning system should support the transition to net zero by 2050. It should help to shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and association infrastructure.
- 6.10 Chapter 9 of the NPPF promotes sustainable transport. Ultimately, Key Policy Paragraph 84 of the NPPF confirms that planning decisions should avoid the development of isolated homes in the countryside.
- 6.11 Whilst the application site is not considered to be isolated from nearby residential development, the application site is considered to be in an isolated location in the designated open countryside in an area of poor transport sustainability that is located away from services and facilities. Therefore, Key Policy Paragraph 84 of the NPPF applies to the determination of this appeal proposal.
- 6.12 Key Policy Paragraph 115(a) and (b) of the NPPF states that in assessing specific applications for development, it should be ensured that sustainable transport modes are prioritised taking account of the vision for the site, the type of development, and

- its location, and ensure a safe and suitable access to the site can be achieved for all users.
- 6.13 Key Policy Paragraph 129(c) of the NPPF confirms that planning decisions should support development that makes efficient use of land, taking into account the availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use.
- 6.14 Key Policy Paragraph 135(f) of the NPPF confirms that places should be safe, inclusive, and accessible, which promote health and wellbeing.
- 6.15 Policy DM17(a), (b), and (d) of the SADMP requires development proposals to:
- (a) Seek to make the best use of existing public transport services and, where appropriate, provide opportunities for improving and sustainable the viability of those services; and
 - (b) Provide a convenient and safe access for walking and cycling to services and facilities; and
 - (d) Be located where the need to travel will be minimised and the use of sustainable transport modes can be maximised.
- 6.16 Highway Development Management (HDM) Policy 1 of the Leicestershire Highway Design Guide (LHDG) states that development must be accessible for all highway users and maximise the uptake of sustainable travel choices.
- 6.17 Paragraph 83 of Guidance Point M2 of the National Design Guide (NDG) confirms that in well-designed places, people should not need to rely on the car for everyday journeys, including getting to workplaces, shops, schools, and other facilities.
- 6.18 In light of the above, there is a clear requirement within local and national planning policy and guidance to reduce the dependence on private motorised travel. The Appellant does not dispute this.
- 6.19 However, at Paragraph 6.40 of their Statement, the Appellant has suggested that the proposal is in accordance with Policy DM17 of the SADMP because the development is not considered detrimental to highway safety.
- 6.20 It is clear within the reasons for refusal and the contents of the Delegated Report that the Local Planning Authority have not refused the appeal proposal on highway safety grounds. This demonstrates that the Appellant has failed to read or understand the full requirements of Policy DM17 of the SADMP and the requirements of wider local and national planning policy and guidance.
- 6.21 Paragraph 6.5 of the Appellant's Statement highlights that the appeal site is, *"Located in the countryside."*

6.22 The first reason for the refusal of planning application 24/00551/FUL states that:

“Due to the location of the development the future occupants of the scheme are likely to be dependent on private motorised transport to meet their day-to-day needs, which results in environmental harm.”

6.23 The Appellant has not sought to refute this statement. On the contrary, Paragraph 6.34 of the Appellant’s Statement confirms that:

“Given the countryside location of the building, [the use of the building] is reliant upon motorised transport.”

6.24 Therefore, as acknowledged by the Appellant, the development fails to provide a safe and suitable access for pedestrians and cyclists, and, as a result of this and by virtue of the scheme’s location, the scheme results in the future occupants of the scheme being dependent on private motorised transport to meet their day-to-day needs. This results in environmental harm that is contrary to, and conflict with, Chapter 9 of the NPPF, Paragraphs 115, 129, 135, and 161 of the NPPF, Guidance Point M2 of the NDG, Policy DM17(a), (b), and (d) of the SADMP, and HDM Policy 1 of the LHDG.

6.25 To justify their development proposal, Paragraph 6.34 of the Appellant’s Statement refers to the existing use of the structure. The approval of the dog day care centre, as a commercial use, via 18/00853/FUL has significant and materially different circumstances and considerations than the proposal for a new residential property in an isolated location.

6.26 Whilst the dog day care use of the site would generate vehicle movements in its own right, this disregards the fact that the appeal proposal is for a new residential use, where the users of the site would have significantly different requirements to the users of the dog day care use. Furthermore, this comparison overlooks the fact that local and national planning policy and guidance actively discourages new residential development in unsustainable locations that cannot be access services and facilities via active travel methods and public transport. Therefore, this justification carries no weight in the planning balance.

6.27 Paragraph 6.36 of the Appellant’s Statement also suggests that the proposal shall support nearby facilities and services within Stoke Golding to the north.

6.28 Stoke Golding is 2.3km to the north of the appeal site via two unlit public highways that are subject to the National Speed Limit, which do not benefit from any pedestrian footways. In addition, there is no bus service linking the appeal site to Stoke Golding and the village only has one small convenience store that sells a limited range of food items. Therefore, the future occupants will have to travel further than Stoke Golding to meet their day-to-day needs. Given the above, it is not considered that this provides suitable justification to outweigh the unsustainable location of the appeal proposal and therefore this attracts very little weight in the planning balance.

- 6.29 Finally, Paragraph 6.35 of the Appellant's Statement refers to the other residential dwellings within close proximity to the site, such as those at Cold Comfort Farm. Ultimately, each application should be determined on its own merits and site-specific circumstances. In this instance, the unsustainable location of the development is a contributing factor the scheme's significant adverse impacts on the environment and on the character and appearance of the site, its immediate setting, the surrounding area, and the intrinsic value, beauty, open character, and landscape of the countryside.
- 6.30 In summary, the Appellant's Statement confirms that elements of the first reason for the refusal of planning application 24/00551/FUL are accurate. This is because the appeal proposal results in significant environmental harm in principle as the future occupants of this proposed isolated dwelling are dependent on private motorised transport to meet their day-to-day needs. This is contrary to, and in conflict with Chapter 9 and Key Policy Paragraphs 84, 115, 129, and 135 of the NPPF, Policy DM17(a), (b), and (d) of the SADMP, HDM Policy 1 of the LHDG, and the NDG. Therefore, the respective elements of the first reason for the refusal of planning application 24/00551/FUL remain valid.

Impact upon the Character of the Surrounding Area and the Open Countryside

- 6.31 Chapter 11 of the NPPF promotes an effective use of land in meeting the need for homes and other uses while safeguarding and improving the environment and ensuring safe and healthy living conditions. This demonstrates that safeguarding and improving the environment and the character of the countryside is an effective use of land.
- 6.32 Key Policy Paragraph 129(d) of the NPPF states that planning decisions should support development that makes an effective use of land, taking into account the desirability of maintaining and area's prevailing character and setting (including residential gardens), or of promoting regeneration and change.
- 6.33 Chapter 12 of the NPPF confirms that good design is a key aspect of sustainable development, and the creation of high quality, beautiful, and sustainable buildings and places is fundamental to what the planning and development process should achieve. Key Policy Paragraph 135 of the NPPF details the six national policy requirements of development to ensure the creation of well-designed and beautiful places.
- 6.34 Notably, Key Policy Paragraphs 135(a) and (c) of the NPPF require development to:
- "Function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development,"*
- and to be:

“Sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change.”

- 6.35 Policy DM10(c) of the SADMP states that developments will be permitted where they complement or enhance the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features.
- 6.36 Guidance Point C1 of the NDG confirms that well-designed new development should respond positively to the features of the site itself and the surrounding context beyond including the existing built development and landscape character, amongst others.
- 6.37 Guidance Point I1 of the NGD highlights that new developments should consider the composition of street scenes and individual buildings and their elements including the height, scale, massing and relationship between buildings, as well as views, vistas and landmarks, and landscaping, amongst others.
- 6.38 Ultimately, Guidance Point I2 of the NDG advised that well-designed places should contribute to local distinctiveness.
- 6.39 Outside of defined settlement boundaries, the countryside is not regarded as a sustainable location for new development. New and unjustified dwellings are not a form of development that are considered protect the character of these rural countryside locations. Chapter 15 of the NPPF requires planning policies and decisions to conserve and enhance the natural and local environment. Paragraph 187(b) specifically highlights that this should be achieved by, *“Recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services.”*
- 6.40 This is supported by Policy DM4 of the SADMP, which states that the Council will protect the intrinsic value, beauty, open character, and landscape character of the countryside from unsustainable development.

The Appeal Proposal’s Classification as the Reuse of a Redundant or Disused Building

- 6.41 Key Policy Paragraph 84 of the NPPF confirms that planning decisions should avoid the development of isolated homes in the countryside, unless one or more circumstances apply. The circumstances set out at Paragraph 84(c) of the NPPF include developments that would re-use redundant or disused buildings and enhance its immediate setting.
- 6.42 This is consistent with Policy DM4(b) of the SADMP, which only considers residential development in the countryside sustainable where the proposal involves the change of use, re-use or extension of existing buildings which lead to the enhancement of the immediate setting.

- 6.43 Importantly, Policy DM4 of the SADMP also requires that development meet five further requirements to be considered as sustainable development. One of these requirements is Policy DM4(i) of the SADMP, which states that development in the countryside will be considered sustainable where it does not have a significant adverse effect on the intrinsic value, beauty, open character, and landscape character of the countryside.
- 6.44 Paragraph 13.6 of the SADMP confirms that any proposal, which relates to the reuse of a redundant building in the countryside, must have specific regard to Policy DM15 of the SADMP.
- 6.45 Policy DM15(a) of the SADMP states that proposed development outside of settlement boundaries for the re-use and/or adaptation of redundant or disused rural buildings will be supported where the applicant demonstrates the building is no longer viable in its current use.
- 6.46 Paragraph 6.28 of the Appellant's Statement suggests that Policy DM15 of the SADMP can only be afforded limited weight because the requirements of Paragraph 84(c) of the latest version of the NPPF does not refer to the viability of the existing structure.
- 6.47 The Local Planning Authority notes that when the SADMP was adopted, and therefore considered in conformity with national planning policy, Paragraph 55 of the relevant edition of the NPPF (2012) did not refer to the viability of the existing structure. Therefore, the Appellant's assertion is not justification to reduce the weight attached to Policy DM15 of the SADMP. Ultimately, Policy DM15 of the SADMP supports the reuse or adaptation of redundant or disused buildings, which result in the enhancement of the immediate setting, subject to four factors that support this objective. As a result, Policy DM15 of the SADMP is consistent with the requirements of the NPPF and attracts full weight in the planning balance in accordance with Paragraph 232 of the NPPF.
- 6.48 Paragraph 6.24 of the Appellant's Statement confirms that the dog day care use is not being renewed and consequently the, "*Building will therefore become redundant.*" As set out at Paragraphs 8.19 and 8.20 of the Delegated Report, the discontinued use of the building for a dog day care business is due to the Appellant terminating the lease and not as a result of any desire from the dog day care business to find alternative premises. Attached to this Statement at Appendix A is the Design and Access Statement submitted by the dog day care owner for their refused planning application 23/00455/FUL, which states at Paragraph 1.4 that, "*Our landlord has given us notice to quit at our earliest opportunity.*"
- 6.49 Crucially, the Appellant does not state that the building is currently redundant in its use. This can be seen at Paragraph 6.11 of the Appellant's Statement, which suggests that a benefit of the proposal is that it prevents, "*The building becoming redundant.*" Ultimately, Paragraph 6.27 of the Appellant's Statement confirms that the rolling contract with the dog day care use, "*Will terminate at the end of December 2024.*"

- 6.50 Therefore, on three separate occasions within their Statement alone, the Appellant has demonstrated that, at the time of submitting the planning application 24/00551/FUL, the determination of the planning application, and the submission of an appeal against the refusal of the 24/00551/FUL, the building was not disused or redundant as it was still being actively used by the dog day care use. Therefore, the appeal proposal did not meet the requirements of Policies DM4 or DM15 of the SADMP or Paragraph 84(c) of the NPPF.
- 6.51 The Appellant has also failed to address the Local Planning Authority's assessment of the development between Paragraphs 8.12 and 8.14 of the Delegated Officer Report. In summary, the Appellant has failed to demonstrate that the existing uses of the structure are not viable, nor that the development is capable of complying within Policy DM15(a) of the SADMP. The building is of recent construction and in sound condition and is therefore not redundant. The fact that the Appellant would like to profit from turning the building into a dwelling in the countryside does not make it redundant or disused.
- 6.52 Paragraphs 6.25 to 6.27 of the Appellant's Statement refer to the fact that the property is no longer required in relation to an agricultural use.
- 6.53 The Appellant's Statement again fails to acknowledge the Local Planning Authority's assessment of this from Paragraphs 8.15 to 8.25 of the Delegated Officer Report. The Local Planning Authority do not consider the structure at Pond Barn to have ever been used in relation to agricultural use, nor has Cold Comfort Farm ever been a part of established agricultural use.
- 6.54 As confirmed in Paragraph 8.19 of the Delegated Report, the Appellant has not sought to refute that the structure is used for storage and for a dog day-care facility, nor that the property is capable of working or functioning adequately for these uses. Importantly, as highlighted at Paragraph 8.64 of the Delegated Report, approval of the appeal proposal in these circumstances would undermine local and national planning policy and guidance that restrict development in the designated open countryside. Such an approval would set an entirely inappropriate precedent in relation to the eviction of businesses from rural buildings to convert these structures into dwellings. The Appellant's Statement has not sought to refute these statements.
- 6.55 In summary, the appeal proposal does not comply with the local and national policies that restrict development in the designated open countryside. Therefore, the development represents new and unjustified residential development in an isolated and unsustainable location in the designated open countryside. This results in significant harm to the character of the site, the surrounding area, and the designated open countryside in principle.

The Appeal Proposal's Impact on the Character of the Surrounding Area

- 6.56 Paragraph 6.17 of the Appellant's Statement attempts to justify their appeal proposal by suggesting that the existing building has, "*Blended into the landscape.*"

- 6.57 Notably the existing structure was approved for agricultural use and is agricultural in character. This is significantly different to the use of the structure for a residential use. Contrary to the assertions of Paragraph 6.12 of the Appellant's Statement, the introduction of a residential use into the designated open countryside in principle represents the encroachment of urbanising features into its intrinsic value, beauty, open character, and landscape character.
- 6.58 As highlighted at Paragraph 6.55 of this Statement, the development represents new and unjustified residential development in an isolated and unsustainable location in the designated open countryside. This fundamentally and detrimentally alters the rural and agricultural character of the site and the surrounding area through the domestication and urbanisation of the site. These impacts result in a significant adverse impact on the character of the site, the surrounding area, and the intrinsic value, beauty, open character, and landscape character of the designated open countryside.
- 6.59 Whilst views of the site from Rogues Lane are limited, this does not suggest that the permanent adverse impacts of the development on the character of the site and the surrounding area can be disregarded.
- 6.60 Ultimately, the Appellant has failed to provide any comment on the impact of the domestication of the site on the character of the area. Instead, Paragraph 6.8 of the Appellant's Statement refers to the urbanising effect of the previous dog day care use of the site and its use of, *"Harsh domestic solid fencing."*
- 6.61 Given that the Appellant has terminated the dog day care facility's contracted use of the site, the associated fencing is no longer required. It is therefore clear that the Appellant is taking advantage of a situation that is entirely of their own making in an attempt to justify their appeal proposal.
- 6.62 In addition, Paragraph 8.12 of the Committee Report for planning application 18/00353/FUL (cf. Appendix B) clearly sets out that the close boarded fencing:
- "Would not be a welcomed feature within this countryside location", but that, "Given the fence would be set below the height of the existing building, constructed of compatible timber materials the fencing would not be prominent, and additional landscaping could be provided to further mitigate any impact."*
- 6.63 There is a significant material difference between the character of a commercial use associated with animal welfare and the character of a residential use. In these site-specific circumstances, the domesticating effect of a dwellinghouse introduces an incongruous feature into the rural character of the surrounding area that has a significantly greater adverse impact on the intrinsic value, beauty, open character, and landscape character of the designated open countryside than the previous dog day care facility.
- 6.64 Whilst Paragraph 6.11 of the Appellant's Statement suggests that the scheme would lead to an enhancement of the building and its wider setting, this assertion

fails to appreciate the significant and detrimental impacts of the domestication of the rural character of the surrounding area. Notably, the Appellant has not sought to refute how the incongruous residential uses cause significant harm to the character of the designated open countryside.

- 6.65 As highlighted by the Appellant, the dog day care use has ceased within the site and therefore the existing boundary treatment can be removed from the site without the benefit of planning permission. Even if the dog day care facility was still in operation, this boundary treatment could have been altered, removed, or screened with hedging at any time to enhance the character of the area without the benefit of planning permission. Therefore, this justification attracts little weight in the planning balance.
- 6.66 In addition, Paragraph 6.19 of the Appellant's Statement suggests that a benefit of the development is that it can, *"Secure the future of the redundant building and site preventing it from being left vacant and vulnerable to vandalism."* As above, the long-term maintenance of the building in its current state is not a material consideration of this appeal and any possible future negligence in maintaining the structure is not suitable justification for the approval of this development.
- 6.67 Ultimately, if the Appellant does not wish to maintain the structure, they can remove it from the appeal site without planning permission. Therefore, this justification attracts little weight in the planning balance.

Summary

- 6.68 In summary, the Appellant has confirmed that the building is not redundant or disused, and that the proposal is in an unsustainable location where the future occupants of the proposal would be dependent on private motorised transport to meet their day-to-day needs. Therefore, development does not comply with the requirements of local and national policy and guidance that restrict residential development beyond identified settlement boundaries in the designated countryside.
- 6.69 Given the above, the development represents new and unjustified residential development that introduces incongruous and domesticating features and uses into the rural character of the site, the surrounding area, and the countryside. These urbanising effects fundamentally and detrimentally alter the character and appearance of the area, and these adverse impacts are exacerbated by the unsustainable location of the development.
- 6.70 The Appellant has failed to suitably justify the acceptability of their development in these site-specific circumstances, and this failure is heightened by the omission of any attempt by Appellant to address the Local Planning Authority's concerns with the scheme as detailed within the Delegated Report or the reasons for refusal. Ultimately, the Appellant has not even sought to argue that the considerable adverse impacts of the development do not significantly and demonstrably outweigh the benefits of the development in these site-specific circumstances.

- 6.71 By virtue of these factors, the first reason for refusal remains valid and the adverse impacts of the scheme significantly and demonstrably outweigh any potential benefits of the development as per the planning balance from Paragraphs 8.60 to 8.67 of the Delegated Officer Report. Therefore, the appeal proposal is contrary to, and in conflict with, Policies DM4, DM10, DM15, and DM17 of the SADMP, Chapters 2, 12, and 15 of the NPPF (including Key Policy Paragraphs 84, 115(a) and (b), 129, and 135 of the NPPF), the NDG, the Good Design Guide, and HDM Policy 1 of the LHDG. In accordance with Key Policy Paragraph 139 of the NPPF, the development should be refused.

Eligibility of the Appeal Proposal as Self-Build and Custom-Build Development

- 6.72 As per Regulation 8(c) of The Biodiversity Gain Requirements (Exemptions) Regulations 2024, the biodiversity gain planning condition does not apply in relation to development that consists exclusively of dwellings which are self-build or custom housebuilding.
- 6.73 Section 1 of the Self-Build and Custom Housebuilding Act 2015 defines self-build and custom housebuilding as the building or completion of houses by individuals, associations of individuals, or persons working with or for individuals or associations of individuals, to be occupied as homes by those individuals.
- 6.74 Paragraph 016 of Planning Practice Guidance (Reference ID: 57-016-20210208) confirms that in considering whether a home is a self-build or custom-build home, relevant authorities must be satisfied that the initial owner of the home will have primary input into its final design and layout.
- 6.75 Therefore, whilst the application form states that the development is exempt from biodiversity net gain because it is a self-build development, the Appellant has not included the self-build status within the description of their development.
- 6.76 Although Section 5.2 of the Design and Access Statement states that the Appellant sought a four-bedroom development, this does not sufficiently demonstrate that the Appellant had primary input into the final design and layout of the proposal. Even at this stage, the only basis the Appellant has utilised to demonstrate this is to assert that they had sole influence in the design of the proposal.
- 6.77 Contrary to the assertions of the Paragraph 6.55 of the Appellant's Statement, the Local Planning Authority requested further evidence on the self-build status of the development via email on 22 July 2024, 29 July 2024 and 05 August 2024 (cf Appendix C). These requests also included the completion of the Council's Custom Self-Build Evidence Form. Even at this stage, the Appellant has not provided a completed copy of this Evidence Form.
- 6.78 Contrary to the assertions with Paragraph 6.46 of the Appellant's Statement, the description of the planning description is not sufficient to secure the self-build and custom house-build status of the development.

- 6.79 This was confirmed by the Inspector at Paragraph 40 of the dismissed appeal decision of the application at The Warren, 6 Chapel Lane, Osgathorpe, Leicester (APP/G2435/W/23/3324219) (cf. Appendix D).

“In my view, relying on the description of the proposed development as custom-build is not in itself sufficient to ensure compliance in an enforceable manner.”

- 6.80 Although the Case Officer for the planning application considered that a pre-commencement condition would secure the self-build status of the development at the time, recent appeal decisions have since then confirmed that such an approach would not be suitable. Paragraphs 40 to 42 of the appeal decision for the development at the Land adjoining The Causeway, Church Causeway, Church Langton, Market Harborough (APP/F2415/W/24/3338486) (cf. Appendix E), highlight that:

“There are numerous enforceability issues with the [Self-build] condition as proposed. Firstly, in relation to knowing for sure that the person will live in it, meaning enforcement action is unlikely to be possible until the house is completely built and occupied.

Secondly, if the LPA did not consider that the occupier was a person who had primary input into the design, and took enforcement action, in order to comply, the third party would have to get the person who built the house (and presumably sold it to them) to return to live in the property. It would be impractical and unreasonable to require this. In such circumstances, it is likely that enforcement action would also be unreasonable.

I therefore do not consider that a condition in this instance would meet the tests of the Framework. In the absence of an appropriate mechanism to secure the development as self-build and custom housebuilding, I cannot give any weight to the contribution that the appeal scheme would make in helping address the Council’s shortfall in this respect.”

- 6.81 In light of the above, in the absence of an appropriate mechanism to secure the development as self-build and custom housebuilding, the Applicant has failed to demonstrate that their proposal is exempt from their mandatory biodiversity net gain requirements. As a result, the application has failed to deliver the mandatory 10% biodiversity net gain, which is contrary to, and in conflict with the requirements of Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021).

7. CONCLUSIONS

- 7.1 To summarise, Section 38(6) of the Planning and Compensation Act 2004 and Section 70(2) of the Town and Country Planning Act 1990 indicates that planning permission should be granted for development proposals that accord with the Development Plan unless material considerations indicate otherwise.

- 7.2 It is acknowledged that the Development Plan was adopted prior to the publication of the latest NPPF. However, as a result of the strong consistency with the wording of the NPPF, due weight should be given to the policies within the Development Plan, such as Policies DM4, DM10, DM15 and DM17 of the SADMP, in accordance with Paragraph 232 of the NPPF.
- 7.3 In the determination of this appeal, the ‘tilted’ balance in Paragraph 11(d) of the NPPF is triggered whereby planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
- 7.4 As per the Delegated Report, the Local Planning Authority do not consider the appeal proposal to constitute sustainable development. The scheme represents new and unjustified isolated residential development that results in permanent adverse impacts to the rural character of the site and the surrounding area, and the intrinsic value, beauty, open character, and landscape character of the designed open countryside. The development is contrary to, and in conflict with, all applicable Key Policy Paragraphs of the NPPF and the harm of the development significantly and demonstrably outweighs the benefits of the scheme.
- 7.5 Furthermore, the Appellant has failed to demonstrate that their proposal is exempt from their mandatory biodiversity net gain requirements. As a result, the application has failed to deliver the mandatory 10% biodiversity net gain, which is contrary to, and in conflict with the requirements of Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021).
- 7.6 There are no other material considerations to indicate that the proposal should be determined other than in accordance with the adopted Development Plan in this case.
- 7.7 With regard to the information contained in this Statement and that submitted with the Appeal Questionnaire, Hinckley and Bosworth Borough Council respectfully requests that the appeal be dismissed. However, if the Inspector is minded not to do so, the Local Planning Authority requests that a suitably worded planning obligation is submitted to secure the self-build and custom house-build status of the development, and that the following conditions suggested below are attached to any permission.

8. CONDITIONS

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

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

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

- Existing Floor Plans and Elevation 3833-01-A (submitted: 03.06.2024)
- Proposed Elevations 8895-03 – 0200 (submitted: 03.06.2024)
- Proposed First Floor Plan 8895-03 – 0101 (submitted: 03.06.2024)
- Proposed Ground Floor Plan 8895-03 - 0100 (submitted: 03.06.2024)
- Proposed Roof Plan 8895-03 – 0102 (submitted: 03.06.2024)
- Proposed Site Layout 8895 03 0002 PL3 (submitted: 13.08.2024)
- Site Location Plan 8895 03 001 PL3 (submitted: 13.08.2024)

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

3. Prior to the commencement of the development, a Biodiversity Enhancement and Management Plan (BEMP) shall be submitted to, and approved in writing by, the Local Planning Authority. The BEMP shall be accompanied by the Statutory Biodiversity Net Gain Metric and shall demonstrate measurable biodiversity net gain. The Plan shall include:

- (a) Description, evaluation, and location of the ecological features and biodiversity enhancement measures to be created and managed; and
- (b) Ecological trends and constraints on site that might influence management; and
- (c) Aims and objectives of biodiversity enhancement and their management, including for protected species; and
- (d) Appropriate management options for achieving the aims and objectives of the project; and
- (e) Prescriptions for management actions; and
- (f) Preparation of a work schedule; and
- (g) Details of the body or organisation responsible for implementation of the plan; and
- (h) Ongoing monitoring and remedial measures.

The development shall be implemented in accordance with the approved BEMP.

Reason: In order to protect the protected wildlife species and their habitats that are known to exist on site to accord with Policy DM6 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

4. No development shall take place until a scheme of hard and soft landscaping works, including boundary treatments, for the site, including an implementation scheme, has been submitted in writing to, and approved in writing by, the Local Planning Authority. The scheme shall be carried out in full accordance with the approved landscaping scheme in the first planting season following the first occupation of the development.

The soft landscaping scheme shall be maintained for a period of five years from the date of planting. During this period any trees or shrubs which die or are damaged, removed, or seriously diseased shall be replaced by trees or shrubs of a similar size and species to those originally planted at which time shall be specified in writing by the Local Planning Authority.

Reason: To ensure that the development has a satisfactory external appearance in accordance with Policies DM4 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

5. The development hereby permitted shall not be occupied until such time as the parking and turning facilities have been implemented in accordance with HSSP drawing 8895-03-0002 (Proposed Site Layout) (submitted: 13.08.2024). Thereafter the onsite parking provision shall be so maintained in perpetuity.

Reason: To ensure that adequate off-street parking provision is made to reduce the possibility of the proposed development leading to on-street parking problems locally (and to enable vehicles to enter and leave the site in a forward direction) in the interests of highway safety and in accordance with the National Planning Policy Framework (2024).

6. The development hereby permitted shall not be first used until such time as the scheme makes adequate provision for waste and recycling storage of containers and collection across the site which has been submitted to, and approved in writing by, the Local Planning Authority. The details should address accessibility to storage facilities and confirm adequate space is provided at the adopted highway boundary to store and service wheeled containers. The development shall be implemented in accordance with the approved plans.

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

7. The materials to be used on the external elevations of the proposed development shall accord with those detailed within the Proposed Elevations 8895-03 – 0200 (submitted: 03.06.2024).

Reason: To ensure that the development has a satisfactory external appearance in accordance with Policies DM4 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

8. Notwithstanding the provisions of Classes A, AA, B, C, D, and E of Part 1 of Schedule 2 of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no enlargement, improvement or other alteration to the dwelling shall be carried out unless planning permission for such development has been granted by the Local Planning Authority.

Reason: To protect the character of the surrounding area and to safeguard the privacy and amenity of neighbouring dwellings from potential overlooking in accordance with Policies DM4 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

9. APPENDICES

9.1 (See separate documents)

9.2 **Appendix A:** Design and Access Statement for Refused Application 23/00455/FUL

9.3 **Appendix B:** Committee Report for Planning Permission 18/00353/FUL

9.4 **Appendix C:** Written Requests for CSB Details from the Appellant

9.5 **Appendix D:** Appeal Decision – The Warren, 6 Chapel Lane, Osgathorpe, Leicester (APP/G2435/W/23/3324219)

9.6 **Appendix E:** Appeal Decision – Land adjoining The Causeway, Church Causeway, Church Langton, Market Bosworth (APP/F2415/W/24/3338486)