HINCKLEY AND BOSWORTH BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL UNDER SECTION 73

Hinckley & Bosworth Borough Council

APPEAL BY MR SEAN LYALL AGAINST THE REFUSAL OF PLANNING PERMISSION FOR THE PARTIAL DEMOLITION OF EXISTING BUILDINGS TO FORM A REFURBISHED OFFICE AND DWELLING AND THE ERECTION OF ONE NEW DWELLING AT 128 MAIN STREET MARKFIELD

HBBC REFERENCE: 11/00764/FUL

THE PLANNING INSPECTORATE REFERENCE: APP/K2420/E/11/2167067/NWF

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1.0 Section 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 partial demolition of existing buildings to form a refurbished office and dwelling and the erection of one new dwelling at 128 Main Street, Markfield.

2.0 Section 2: Site Description and Proposal

2.1 This is a full planning application for a mixed use development comprising the conversion of the existing Miners Welfare Institute to form three separate office units and a 1-bedroomed bungalow to the rear and the erection of a detached dwelling with associated car parking and detached garage to the south.

2.2 The proposals also involve the partial demolition of a section of the Miners Welfare Institute which includes the store room and boiler room located between the hall and canteen, the two toilet extensions along the southern elevation and the removal of the stone wall and gates to the western boundary facing onto Main Street.

2.3 The site area measures 766 square metres and is located to the east of Main Street within the Markfield Conservation Area. The single storey building occupies the northern half of the site and is primarily of brick construction with a variety of roof materials including corrugated sheets, slates, concrete tiles and timber/roofing felt. The front elevation to Main Street is constructed of stone and rendered wall above. The site is enclosed on three sides by walls of stone or brick construction. There are residential properties to the north, south and west and an area of public open space to the east. The dwellings to the west and south front directly onto the highway and those to the north are set back with small front gardens.

2.4 The two main issues in this appeal is the impact of the two storey dwelling by virtue of its siting and mass upon the amenities of the occupiers of the surrounding residential properties and the and failure to address the increase in pressure placed on the play and open space facilities of the local area.

3.0 Section 3: Site History

3.1 Conservation Area Consent (ref: 09/00946/CON) and Planning Permission (ref: 09/00945/FUL) was granted, subject to the imposition of planning conditions for the demolition the existing meeting hall and re-development on three town houses in 2010. These permissions are now extant. This planning application is a resubmission of 11/00572/FUL which was withdrawn.

4.0 Section 4: Government Guidance

4.1 Planning Policy Statement 1: 'Delivering Sustainable Development' refers to the delivery of sustainable development through the planning system. It advises that planning policies should protect and enhance the environment, promote high quality design and reinforce local distinctiveness.

4.2 Planning Policy Statement 3: ‘Housing’ sets out the national planning policy framework for delivering the Government’s housing objectives. This document states at paragraph 12

that good design is fundamental to the development of high quality new housing. Paragraph 13 reflecting guidance in PPS1 states that good design should contribute positively towards making places better for people. Design which is inappropriate in its context, or which fails to improve the character and quality of an area and the way it functions, should not be accepted. Paragraph 16 lists matters to be considered when assessing design quality; this includes assessing the extent to which the proposed development is well integrated with and compliments, the neighbouring buildings and the local area more generally in terms of scale, density, layout and access.

4.3 Planning Policy Statement 5: 'Planning for the Historic Environment' sets out the Government's objectives on the conservation of the historic environment. It states that Local Planning Authorities should seek to identify and assess the particular significance of any element of the historic environment that may be affected by the relevant proposal.

4.4 Planning Policy Statement 9: 'Biodiversity and Geological Conservation' sets out planning policies on protection of biodiversity and geological conservation through the planning system.

4.5 Planning Policy Guidance 13: 'Transport' sets out national transport planning policy. With regards to parking provision this states that Local Authorities should 'not require developers to provide more spaces than they themselves wish' and that 'reducing the amount of parking in new development is essential, as part of a package of planning and transport measures, to promote sustainable travel choices'.

4.6 Planning Policy Statement 23: 'Planning and Pollution Control' sets out national planning guidance on pollution of land, air and water.

4.7 Planning Policy Guidance 24: 'Planning and Noise' guides Local Authorities on the use of planning powers to minimise the adverse impact of noise. It outlines the considerations to be taken into account in determining planning applications both for noise-sensitive developments and for those activities which generate noise.

4.8 The National Planning Policy Framework (Draft). The draft National Planning Policy Framework was published for consultation on 25 July 2011. The Government's intention is to reduce the current 1,000 pages of national planning policy [some of which are referred to above] into a `clearer, simpler, more coherent framework, easier to understand and easier to put into practice'. The Inspector in a recent inquiry considered that although the draft was a material consideration he gave it little weight because it is a consultation and subject to change. This approach was accepted by the Secretary of State in a letter of 24 October 2011, in his consideration of the inspector's report. The current national policies therefore continue to apply with significant weight.

5.0 Section 5: The Development Plan Policies

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

5.2 Hinckley and Bosworth Borough Council Local Development Framework: Core Strategy (adopted December 2009);

5.3 Policy 19: 'Green Space and Play Provision' of the Local Development Framework Core Strategy seeks to ensure that all residents have access to sufficient, high quality and accessible green spaces and play areas.

5.4 Hinckley and Bosworth Local Plan (adopted February 2001) with all policies referred to within the Local Plan have been 'saved';

5.5 Saved Policy BE1: 'Design and Siting of Development' of the adopted Hinckley and Bosworth Plan states that planning permission for development proposals will be granted where they: complement or enhance the character of the surrounding area; ensure adequate highway visibility and parking standards; do not adversely affect the amenities of neighbouring properties; incorporate landscaping to a high standard; and would not be prejudicial to the comprehensive development of a larger area of land of which the development forms part.

5.6 Saved Policy REC3: 'New Residential Development - Outdoor Play Space for Children' of the adopted Hinckley and Bosworth Plan requires the appropriate level of open space to be provided within development sites or, alternatively, a financial contribution to be negotiated towards the provision of new recreation facilities within the vicinity of the site or towards the improvement of existing facilities in the area.

5.7 Saved Policy IMP1: 'Contributions Towards the Provision of Infrastructure and Facilities' of the adopted Hinckley and Bosworth Plan requires contributions towards the provision of infrastructure and facilities to serve the development commensurate with the scale and nature of the development proposed.

5.8 Hinckley and Bosworth Borough Council Supplementary Planning Document (SPD): 'Play and Open Space' provides a framework for the provision of play and open space and financial contributions to support the requirements of Policy REC3.

5.9 Copies of the relevant policies and guidance with explanatory text were submitted previously with the Appeal Questionnaire.

6.0 Section 6: The Case for the Local Planning Authority

6.1 On the basis of the reasons set out below, the Council asserts that the planning permission should be refused.

6.2 <u>Reason for Refusal 1: Impact Upon Residential Amenity</u>

6.3 In the opinion of the Local Planning Authority the proposed detached two storey dwelling by virtue of its siting and mass will result in an unacceptable form of development that will have an adverse overbearing impact upon the amenities of the occupiers of No's 116-118 Main Street contrary to Policy BE1 of the adopted Hinckley and Bosworth Local Plan 2001.

6.4 The massing, design and siting of the current two storey dwelling, differs significantly from the terraced properties, approved in the previous planning permission (ref: 09/00945/FUL).

6.5 During the course of the application, an additional plan was received on 7 November 2011 showing the proposed two storey detached dwelling on this scheme, overlaid onto the row of terraced properties which were approved on the previously scheme (ref: 09/00945/FUL).

6.6 The previous scheme consisted of a row of three terraced properties with a car port providing vehicular access to the rear of the site where the car parking spaces are sited. The row of dwellings were orientated at an angle which corresponds with the existing dwellings located to the south. The angled siting of the end property adjacent No 118 is reflected in its differing separation distances from the southern boundary. The distance to the boundary being 2.4 metres at the front and 0.8m at the rear. The front elevation was set back 5.8m from the western boundary resulting in the front of the dwelling being slightly behind the rear elevation of No 118. The depth of the dwellings were 8.5 metres in length, with a height of 9.3 metres to the ridge with the chimney extending a further 0.9 metres above the ridge. The design of the properties were such that the side elevation is a gable end.

6.7 In considering the current proposal, an amended plan was requested to alter the roof to the rear from a gable to a hip design and to re-site the two storey detached dwelling further west and south. Amended plans were subsequently received on 15 November 2011 showing the re-siting of this proposed detached dwelling 0.5 metres further to the west, 0.5 metres off the southern boundary and a reduction of the ridge height of the projecting gable element to the rear by 0.5 metres. There was no alterations to the roof design, accordingly the Local Planning Authority's request for a gable to hip alteration had not been accepted. This resulted in a proposed dwelling sited 0.5 metres from the common boundary, and between 1.8 – 3.6 metres from the sites frontage due to the angle of the dwelling. The depth of the dwelling would be 10.4 metres, extending the full length of No. 118's rear garden. Due to the configuration of the dwelling, the height of the proposed dwelling would be a maximum of 7.4 metres, with the rearward gable projection now measuring a maximum of 7.15 metres.

6.8 Notwithstanding the siting improvements, it is the opinion of the Local Planning Authority that the proximity of the proposed dwelling to the southern boundary with No. 118 Main Street, and the retention of the gabled projection to the rear would further exacerbate the sense of enclosure resulting in an overbearing impact and would adversely affect the amenities of the occupiers of that property, by having an overbearing impact on the rear elevation of that dwelling.

6.9 As a result of the cumulative effects of the increase in depth and reduction in separation distance from No. 118 Main Street, it is considered that this proposed scheme in comparison to that previously approved would result in an un-acceptable overbearing impact upon the residential amenity of the adjacent neighbouring dwellings, conflicting with the objectives of Policy BE1 of the Adopted Hinckley and Bosworth Local Plan.

6.10 <u>Reason for Refusal 2: Play and Open Space</u>

6.11 In the opinion of the Local Planning Authority, the lack of any definitive measures to address the increase in pressure placed on the play and open space facilities of the local area by the proposed development would not accord with Government Guidance Circular 5/05, Policies REC3 and IMP1 of the adopted Hinckley and Bosworth Local Plan, and the Supplementary Planning Document on Play and Open Space.

6.12 In line with the overarching guidance contained within Planning Policy Guidance Note 17 and Planning Policy Statement 3, open space has an important role to play in meeting a broad range of recreational needs of different sectors of the community.

6.13 The Council seeks to make provision for a full range of recreational opportunities for all members of the community and expanding existing facilities and providing for new facilities in appropriate locations. Any provision should be located where it has the least impact on the environment and where it is readily accessible to all sections of the community to which that facility is intended to serve.

6.14 Saved Policy REC3 of the Adopted Hinckley and Bosworth Local Plan requires applications for new residential development to provide informal children's play space, however the Adopted Supplementary Planning Document: Play and Open Space suggest that where on site provision cannot be delivered that a developer contribution can be sought. In this case no on site provision is being proposed and therefore a developer contribution towards the pressure the development will place upon an area of local open space will be required to ensure compliance with Policy REC3 of the Adopted Hinckley and Bosworth Local Plan.

6.15 In this case the application site is within 400 metres of Mayflower Close Recreation Ground (neighbourhood park) and it is the Council's intention that a contribution be sought to enhance and maintain this existing open space, in accordance with the objectives of the Green Space Strategy (2005-2010) and the Quantity/Accessibility Audits of Provision (2007). In addition, Markfield Parish Council and identified that they have plans in place to improve and provide further equipment at the Mayflower Close Recreational Ground.

6.16 To ensure compliance with Policy REC3, in accordance with the requirements of the Supplementary Planning Guidance: Play and Open Space, the value of the contribution requested is £1,250.80 per unit, although there is a reduction of 75% for the 1 bedroomed unit, as such a total contribution of £2,188.90 is sought; (£1,431.15 for the provision and £757 for maintenance).

6.17 The provision of any developer contribution must be considered alongside the guidance contained within Circular 05/05 and more recently in the Community Infrastructure Levy Regulations 2010 (CIL). CIL confirms that where developer contributions are requested they need to be necessary, directly related and fairly and reasonably related in scale and kind to the development proposed.

6.18 The size of the proposed three bedroom detached dwelling would appeal to families and given the proximity of the application site to this open space it is considered that the future occupiers would use the facility, thereby increasing wear and tear and requiring more equipment.

6.19 The play and open space contribution requested in respect of the proposal is considered necessary to make the development acceptable (to secure compliance with the development plan and national planning guidance), to be directly related to the nature of the proposal and is reasonably related in scale and kind to the development.

6.20 Should the development be found acceptable and the appeal be allowed, the Council respectfully requests that play and open space provision be secured via a unilateral undertaking.

7.0 Section 7: Comments on Appellant's Grounds of Appeal

7.1 The appellant contends that the proposal fully accords with Policy BE1. The appellant does not consider that the proposal will adversely affect the occupiers of the neighbouring properties as the proposal sits approximately 0.5 metres from the common boundary, is located to the north as to not cause any overshadowing and there are no windows and therefore no potential for overlooking. The appellant also refers to their positive responses to the requests of the case officer and numerous minor changes incorporated in the scheme and that no letters of objection were received raising concerns in relation to the impact upon 116/118 Main Street.

7.2 In the opinion of the Local Planning Authority, the first reason for refusal relates to the overbearing impact, and does not relate to overshadowing, loss of light or overlooking. It is acknowledged that the applicant has worked in a positive manner throughout the process, however it was still considered that there was a requested to alter the roof to the rear from a gable to a hip design which, if amended would have been able to overcome this reason for refusal. It is considered that this matter has been addressed within section 6.2 – 6.7 of this report

7.3 The appellant confirms that a draft Heads of Terms was submitted with the planning application and that a Unilateral Undertaking is also enclosed within the appeal submission.

7.4 In the opinion of the Local Planning Authority, in the absence of a signed Unilateral Undertaking, there is no commitment that formalises the provision of either on or off site play and open space and the development is therefore un-acceptable and at odds with the requirements of Saved Policies REC3 and IMP1 of the adopted Hinckley and Bosworth Local Plan, and the Supplementary Planning Document on Play and Open Space.

7.5 The appellant details the comparisons to the previously approved scheme and that this is capable of being a material consideration. The appellant believes that the current proposal is more in character with the scale of the Conservation Area and has far less impact upon adjacent residential properties. It was not possible to move the dwelling further from the boundary as this would result in significantly impacting on the width of the house and to the detriment of the street scene.

7.6 The Local Planning Authority does not contend that the previously approved scheme is a material consideration in the determination of any such application and this appeal. The Local Planning Authority's case is one whereby the differences between the two schemes are material considerations as considered within sections 6.2 – 6.7 of this report.

8.0 Section 8: Conclusions & Conditions

8.1 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 the inclusion of the following conditions:

8.2 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 51 of the Planning and Compulsory Purchase Act 2004.*

8.3 The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details, as follows:-

Existing Site Plan Drawing No. 020.PD.02A; Existing Elevations Drawing No. 020.PD.03A; Existing North Elevation on Boundary Line with 132 Main Street Drawing No. 020.PD.04A; Existing Building Plan Drawing No. 020.PD.05A; Proposed Elevations – North on Boundary with 132 Main Street and East (Rear of Office) Drawing No. 020.PD.15A; Proposed Office – Floor Plan Drawing No. 020.PD.18A; Proposed 2 Bed Bungalow – Floor Plan Drawing No. 020.PD.19A received on 20 September 2011; Proposed Elevations – Garage Drawing No. 020.PD.22; Proposed Elevations – Bungalow Drawing No. 020.PD.23; Proposed Elevations – Bungalow Drawing No. 020.PD.24 received on 04 October 2011;

Additional plans received, as follows: - Large Car Swept Analysis Drawing No. 451 Revision P2 received on 21 October 2011; Proposed Comparison of Amenity for 116/118 Main Street Drawing No. 020.PD.26 received on 7 November 2011;

Amended plans received, as follows:- Proposed Site Plan Drawing No. 020.PD.10F; Proposed Landscaping Plan Drawing No. 020.PD.11F; Proposed Elevations – West Drawing No. 020.PD.12G; Proposed Elevations – South Drawing No. 020.PD.13E; Proposed Elevations – North and East Drawing No. 020.PD.14E; Proposed Elevations – House Drawing No. 020.PD.21A; Proposed Elevations – South Drawing No. 020.PD.25A received on 15 November 2011.*REASON: For the avoidance of doubt and in the interests of proper planning.*

8.4 Before any development commences, representative samples of the types and colours of materials to be used on the external elevations of the proposed dwellings and the colour finish to the roof of the offices shall be deposited with and approved in writing by the Local Planning Authority, and the scheme shall be implemented in accordance with those approved materials. *REASON: To ensure that the development has a satisfactory external appearance to accord with Policies BE1 and BE7 of the adopted Hinckley and Bosworth Local Plan.*

8.5 Before development commences, full details of the window and door style, reveal, cill, header treatment and materials of construction shall be submitted to and approved in writing by the Local Planning Authority. The works shall be implemented in accordance with the approved details. *REASON: To ensure that the development has a satisfactory external appearance to accord with Policies BE1 and BE7 of the adopted Hinckley and Bosworth Local Plan*.

8.6 Before development commences, full details of the eaves and verge treatment, guttering and down pipe (including materials and method of fixing) shall be submitted to and approved in writing by the Local Planning Authority. The works shall be implemented in accordance with the approved details. *REASON: To ensure that the development has a satisfactory external appearance to accord with Policies BE1 and BE7 of the adopted Hinckley and Bosworth Local Plan.*

8.7 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended by (Amendment) (No.2) (England) Order 2008 (or any order revoking or re-enacting that Order with or without modification) development within Schedule 2, Part 1, Classes A, B and C to both dwellings and Part 1, Class D to the bungalow shall not be carried out to the proposed dwellings unless planning

permission for such development has first been granted by the Local Planning Authority. *REASON: To safeguard the character and appearance of the Markfield Conservation Area and in the interests of highway safety and residential amenity in accordance with the requirements of Policies BE1, BE7 and T5 of the Adopted Hinckley and Bosworth Local Plan.*

8.8 No development shall commence on site until such time as the existing and proposed ground levels of the site, and proposed finished floor levels have been submitted to and agreed in writing by the Local Planning Authority. The approved proposed ground levels and finished floor levels shall then be implemented in accordance with the approved details. *REASON: To ensure that the development has a satisfactory external appearance to accord with Policy BE7 of the adopted Hinckley & Bosworth Local Plan.*

8.9 Before any development commences, representative samples of the types and colours of materials to be used on the surfacing of the access, turning and parking areas shall be deposited with and approved in writing by the Local Planning Authority, and the scheme shall be implemented in accordance with those approved materials. *REASON: To ensure that the development has a satisfactory external appearance to accord with Policies BE1 and BE7 of the adopted Hinckley & Bosworth Local Plan.*

8.10 No gates shall be erected to the vehicular access at any time. *REASON: To enable a vehicle to stand clear of the highway in order to protect the free and safe passage of traffic and pedestrians, in the interests of highway safety, in accordance with Policy T5 of the adopted Local Plan.*

8.11 Prior to the development hereby permitted being brought into use, cycle parking provision shall be made to the satisfaction of the Local Planning Authority and once provided shall be maintained and kept available for use thereafter. *REASON: To ensure an appropriate method of cycle storage is provided and in the interests of sustainable travel, in accordance with Policy T9 of the adopted Local Plan 2001.*

8.12 Any windows or doors at ground floor level on the western elevation of the office building shall be of a type other than outward opening and shall thereafter be retained. *REASON: In the interests of pedestrian safety in accordance with Policy BE1 of the adopted Local Plan.*

8.13 The demolition hereby permitted shall not be undertaken unless and until:-

a) a binding contract for carrying out of the works of re-development of the site in accordance with the planning permission hereby granted has been entered into, and its contents have been agreed by the Local Planning Authority.

b) a phasing scheme, which shall include a timetable for the scheduling of demolition and construction works for each phase, has been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in strict accordance with the agreed timetable of works. *REASON: To protect the character and appearance of the conservation area in the interests of visual amenity to accord with Policy BE8 of the adopted Hinckley and Bosworth Local Plan.*

8.14 Prior to the commencement of the demolition hereby permitted a construction management plan, including wheel cleansing facilities and vehicle parking facilities, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.

REASON: To protect the amenities of surrounding properties and in the interest of highway safety to accord with Policies BE1 and T5 of the adopted Hinckley and Bosworth Local Plan.

8.15 For the period of the demolition and construction of the development, vehicle parking facilities shall be provided within the site in accordance with the provisions of the construction management plan. *REASON: To ensure that adequate off-street parking provision is made to reduce the possibilities of development of the site leading to on-street parking problems in the area during construction to accord with Policy T5 of the adopted Hinckley and Bosworth Local Plan.*

8.16 Demolition and Construction hours shall be limited to 07:30-18:00hrs Monday to Friday and 08:00-13:00hrs Saturdays with no working on Sundays or Bank Holidays. *REASON: To ensure the development does not have an adverse impact on the amenities of surrounding properties in terms of noise to accord with Policy BE1 of the adopted Local Plan.*

8.17 Before any development is commenced on the site, including demolition, each of the trees (indicated on Landscaping Plan 020.PD.11E) shall be securely fenced off by protective fencing on a scaffolding framework in accordance with B. S. 5837.2005 Figure 2 erected along the edge of the root protection area identified on Landscaping Plan 020.PD.11E. Within the areas so fenced off, the existing ground level shall be neither raised or lowered, (except as may be approved by the Local Planning Authority as part of the development) and no materials, equipment, machinery or temporary buildings or surplus soil shall be placed or stored thereon. If any trenches for services are required in the fenced-off areas, they shall be excavated and back-filled by hand and any tree roots encountered with a diameter of 5cm or more shall be left un-severed. *REASON: To ensure the protection of these important conservation area and protected trees in accordance with the requirements of Policy BE7 of the Adopted Hinckley and Bosworth Local Plan.*

8.18 Prior to the first occupation of the residential units hereby approved a scheme that makes provision for waste and recycling storage across the site shall first be submitted to and approved in writing to the Local Planning authority. The details should address accessibility to storage facilities for residents/collection crews, and adequate collection point space at the adopted highway boundary. *REASON: In the interests of visual amenity, to accord with Policy BE1 of the adopted Hinckley and Bosworth Local Plan.*

8.19 Suggested Notes to Applicant

8.20 Should permission be granted, you are reminded to comply with the conditions of application reference: 11/00765/CON.

8.21 This permission does not convey any authority to enter onto land or into any building not within the control of the applicant except for the circumstances provided for in The Party Wall etc Act 1996.

8.22 Bats, nesting birds, great crested newts and certain other species are protected by law. A watching brief (maintained by the applicant and all workers on site) for all protected species should be maintained throughout the development. If any such species are discovered before or during the works, the works must be suspended and the local office of Natural England contacted for advice.

8.23 The suitability of the ground for soakaways should be ascertained by using the test in B R E Digest No. 365 before development is commenced. The porosity test and soakaway design requires the approval of the Building Control Section. The soakaway must be constructed using concrete ring sections with a liftable cover or other approved materials to the satisfaction of the Local Authority.

Appendix A: Site Photographs



