

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78 APPEAL

STATEMENT FOR THE APPELLANT

APPELLANT: Mr G Warren

APPEAL SITE: Land north-east of Old White Cottage, 2 Newbold Road, Desford, Leicestershire

LPA REFERENCE: 24/00975/OUT

REASON FOR APPEAL: Refusal of permission for outline planning application for the construction of a 3-bedroom split-level dwelling with landscaping (self-build). (Scale, landscaping, layout and access to be considered).

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1.0 Introduction

1.1 This statement sets out the appellant's case in relation to the refusal of the planning application 24/00975/OUT for outline consent for the construction of a 3-bedroom split-level dwelling with landscaping (self-build) with scale, landscaping, layout and access to be considered.

1.2 The application was refused on the following grounds:

01

The proposal represents new and unjustified residential development in the designated open countryside. By virtue of its size, scale, layout, ground levels, and siting, the development results in a significant adverse impact to protected trees within the site, the character of the site and the surrounding area, and the intrinsic value, beauty, open character and landscape character of the open countryside.

Therefore, the proposal is contrary to, and in conflict with, Policy H7 of the adopted Desford Neighbourhood Plan, Policies DM4 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document, Chapters 2, 12, and 15 of the National Planning Policy Framework (2024), and the Good Design Guide (2020). The adverse impacts of the development significantly and demonstrably outweigh the potential benefits of the scheme.

02

By virtue of its size, scale, layout, ground levels, and siting, the development results in a significant adverse impact to the protected trees within the site and the rural and verdant character of the site, which provide a positive contribution to the visual amenity, and the rural character, appearance, and significance of the setting of the Desford Conservation Area. The proposal therefore has a significant detrimental impact on the significance and setting of the Desford Conservation Area, which is considered to represent result in less than substantial harm in terms of the National Planning Policy Framework. The harm of the development to the heritage asset is not outweighed by any identified public benefits of the scheme.

Therefore, the proposal is contrary to, and in conflict with, Policy H7 of the adopted Desford Neighbourhood Plan, Policies DM10, DM11, and DM12 of the adopted Site Allocations and Development Management Policies Development Plan Document, Chapters 2, 12, and 16 of the National Planning Policy Framework (2024), the Good Design Guide (2020), and the statutory duty of Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990.

03

By virtue of the size, scale, massing, layout, and siting of the development, the scheme results in significant harm to the future occupiers of the scheme due to poor visual outlook to principal habitable windows, overbearing impacts, an inadequate provision of private outdoor amenity space, and an insufficient level of natural light to habitable windows and the private outdoor amenity space. If approved, the development will create further pressure for the alteration or the

complete removal of the protected trees to provide additional light and space to the proposed dwelling, which would result in additional significant harm to the character of the area.

Therefore, the proposal is contrary to, and conflict with, Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document, Paragraph 135 of the National Planning Policy Framework (2024), and the Good Design Guide (2020). The adverse impacts of the development significantly and demonstrably outweigh the potential benefits of the scheme.

2.0 The Appeal Site and Surroundings

- 2.1 The application site lies to the north-east of 2 Newbold Road and opposite the existing bungalow Woodside, and the rear garden of Sunbreak, a detached dwelling. The site is adjacent to, but outside of the conservation area of Desford.
- 2.2 The application site is well landscaped and accommodates trees of differing ages and species. It is approximately rectangular in shape and borders the highway. Land levels fall from the highway.

3.0 The Proposal

- 3.1 The development comprises the erection of a self-build dwelling in outline. Layout plans, block plan and indicative sections have been provided to demonstrate the intended design ethos and impact of the proposal. The existing access would be used to serve the dwelling.
- 3.2 The plans illustrate a split-level dwelling which would use the contours of the site to provide accommodation over two floors. The dwelling has been sited and designed to minimise the impact on existing trees and to limit future pressure to remove any additional trees on amenity grounds. The layout has also sought to minimise the visual impact of the proposal and to work with the constraints of the site.

4.0 Site History

- 4.1 Application 17/00305/FUL for the erection of two dwellings was refused on the following grounds:

01

By virtue of the location of the application site, the proposed scheme would result in unsustainable and unjustified new residential development in the countryside outside the settlement boundary of Desford, would create ribbon development along the north west side of Little Lane and would result in significant and permanent environmental harm that would neither complement nor enhance the intrinsic value, beauty, undeveloped rural character and verdant appearance of Little Lane and the wider rural landscape. The proposal would therefore be contrary to Policy 8 of the adopted Core Strategy and Policies DM1, DM4, DM6 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and the overarching principles of the National Planning Policy Framework (2012) with particular reference to paragraph 55.

The proposal would result in the loss of a number of trees which provide a positive contribution to visual amenity and the rural character, appearance and significance of the setting of the Desford Conservation Area. The proposal would result in a level of harm to the significance and setting of the Desford Conservation Area that would not be outweighed by any identified public benefits. The proposal would therefore be in conflict with Policies DM1, DM11 and DM12 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), Section 12 of the National Planning Policy Framework (2012) and the statutory duty of Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990.

- 4.2 The subsequent appeal was dismissed.
- 4.3 Application 18/00663/FUL for the erection of two dwellings was refused on the following grounds:

01

By virtue of the location of the application site, the proposed scheme would result in unsustainable and unjustified new residential development in the countryside outside the settlement boundary of Desford, would create ribbon development along the north west side of Little Lane and would result in significant and permanent environmental harm that would neither complement nor enhance the intrinsic value, beauty, undeveloped rural character and verdant appearance of Little Lane and the wider rural landscape. The proposal would therefore be contrary to Policy 8 of the adopted Core Strategy and Policies DM1, DM4, DM6 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and the overarching principles of the National Planning Policy Framework (2018) with particular reference to paragraph 79.

02

The proposal would result in the loss of a number of trees which provide a positive contribution to visual amenity and the rural character, appearance and significance of the setting of the Desford Conservation Area. The proposal would result in a level of harm to the significance and setting of the Desford Conservation Area that would not be outweighed by any identified public benefits. The proposal would therefore be in conflict with Policies DM1, DM11 and DM12 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), Section 16 of the National Planning Policy Framework (2018) and the statutory duty of Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990.

5.0 Planning Policies

- 5.1 In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, an application for planning permission should be determined in accordance with the Development Plan unless other material considerations indicate otherwise. The Development Plan for this area comprises the adopted

Core Strategy (2009) and the adopted Site Allocations and Development Management Policies DPD (2016).

5.2 Relevant policies from these documents are set out below:

Core Strategy (2009)

Policy 7: Key Rural Centres

Policy 8: Key Rural Centres Relating to Leicester

Policy 19: Green Space and Play Provision

Site Allocations and Development Management Policies DPD (2016)

Policy DM1: Presumption in Favour of Sustainable Development

Policy DM3: Infrastructure and Delivery

Policy DM4: Safeguarding the Countryside and Settlement Separation

Policy DM6: Enhancement of Biodiversity and Geological Interest

Policy DM7: Preventing Pollution and Flooding

Policy DM10: Development and Design

Policy DM11: Protecting and Enhancing the Historic Environment

Policy DM12: Heritage Assets

Policy DM17: Highways and Transportation

Policy DM18: Vehicle Parking Standards

5.3 The Desford Neighbourhood Plan was adopted in 2021. Relevant policies are set out below:

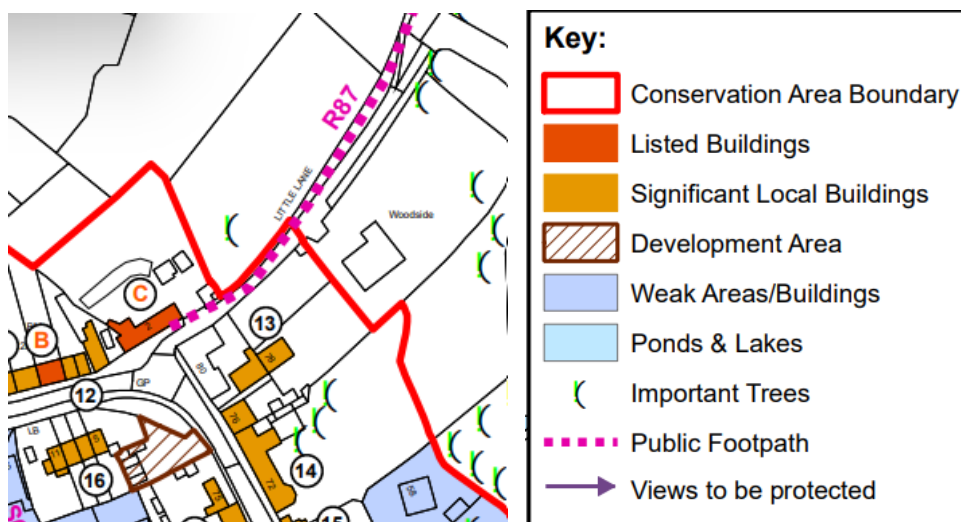
Policy H1: Settlement Boundary

Policy H7: Housing Design

Policy ENV3: Biodiversity General

Policy ENV5: Local Heritage Assets

5.4 Desford Conservation Area Appraisal was adopted in April 2010. An extract from the plan is below:



5.5 The NPPF makes clear that applications for planning permission should be determined in accordance with the Development Plan, unless material considerations indicate otherwise, and in this respect the NPPF is a material consideration in planning decisions.

- 5.6 At the heart of the NPPF is a presumption in favour of sustainable development. There are three overarching objectives which are interdependent and need to be pursued in mutually supportive ways so that opportunities can be taken to secure net gains across each of the different objectives. These are an economic objective, a social objective and an environmental objective. The economic objective seeks to ensure sufficient land of the right types is available in the right places at the right time to support growth. The social objective seeks to support strong, vibrant and healthy communities by ensuring a sufficient number and range of homes can be provided to meet the needs of the present and future generations and by fostering a well-designed and safe built environment. The environmental objective seeks to contribute to protecting and enhancing our natural, built and historic environment, including making effective use of land.
- 5.7 So that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development. For decision-taking this means approving development proposals that accord with an up-to-date development plan without delay or where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or 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.
- 5.8 At paragraph 47 of the NPPF it states planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing.
- 5.9 Section 5 of the NPPF seeks to secure a sufficient supply of homes and at paragraph 78 states in rural areas planning decisions should be responsive to local circumstances and support housing developments that reflect local needs.
- 5.10 Section 11 at paragraph 119 states planning decisions should promote 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.
- 5.11 Section 12 seeks to achieve well-designed places. It states the creation of high-quality buildings is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development and creates better places in which to live. Planning decisions should ensure that developments will function well and add to the overall quality of the area, are visually attractive as a result of good architecture, layout and appropriate and effective landscaping, are sympathetic to local character and history, including the surrounding built environment and landscape setting and establish or maintain a strong sense of place using streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit. It also states permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

- 5.12 Section 15 relates to conserving and enhancing the natural environment. Paragraphs 180 to 182 set out the approach to determining planning applications where there are habitats and biodiversity issues.
- 5.13 Section 16 states heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of existing and future generations. Paragraph 194 states in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. Paragraph 197 states local planning authorities should consider the desirability of sustaining and enhancing the significance of heritage assets and putting them to a viable use consistent with their conservation, the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and the desirability of new development making a positive contribution to local character and distinctiveness.
- 5.14 Paragraph 199 states when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation; this is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 200 states any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Paragraph 201 states where a proposal would lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss.
- 5.15 Paragraph 202 states where a development will lead to less than substantial harm to the significance of the heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
- 5.16 Paragraph 207 states not all elements of a Conservation Area or World Heritage Site will necessarily contribute to its significance. Loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area or World Heritage Site should be treated either as substantial harm under paragraph 201 or less than substantial harm under paragraph 202, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area or World Heritage Site as a whole.
- 5.17 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states in considering whether to grant planning permission or permission in principle for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

- 5.18 Section 72 states special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.

6.0 The Appellant's Case

- 6.1 In terms of the principle of development Policy DM1 provides a presumption in favour of sustainable development. The latest housing statistics, within the Five-Year Housing Land Supply Statement 1 April 2023 – 31 March 2028, stated the Council was able to demonstrate a 5.6-year housing land supply prior to the publication of the revised NPPF in December 2024. The Council now accept that when the next figures are published it is unlikely the Council would be able to demonstrate the required housing land supply.
- 6.2 As such, the development plan policies relating to the supply of housing are now considered to be out-of-date and therefore the presumption in favour of sustainable development within paragraph 11 of the NPPF is triggered.
- 6.3 Although the site is beyond the confines of the settlement it is adjacent to the built-up part of the village with dwellings to the west and south. Furthermore, Desford is a Key Rural Centre, and is therefore a sustainable settlement. The proposal would also provide an additional self-build dwelling to contribute towards the Council target.
- 6.4 In terms of visual impact Policy DM4 requires that development in the countryside does not have an adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside, does not undermine the physical and perceived separation and open character between settlements and does not create or exacerbate ribbon development. This is in contrast to a dwelling recently approved on another site on Little Lane under 22/01097/FUL which comprised a large-scale dwelling which would dominate the site and have a far greater visual impact than the dwelling proposed. Details of this application are at Appendix 1.
- 6.5 Policy DM6 requires that development proposals demonstrate how they conserve and enhance features of nature conservation value including proposals for their long-term future management. On site features should be retained, buffered and managed favourably to maintain their ecological value, connectivity and functionality in the long term. The application was supported by an ecology report and tree survey and impact assessment. These demonstrate positive outcomes on both matters and confirms the woodland requires maintenance and management to ensure its preservation.
- 6.6 Policy DM10 seeks to ensure that development complements or enhances the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features and that the use and application of building materials respects the materials of existing adjoining/neighbouring buildings and the area generally.
- 6.7 The proposal has been formed following consideration of the planning history of the site, the previous proposals and the reasons for refusal. The application seeks permission only for a single, modest dwelling; this represents a reduction in the number of dwellings sought from the previous applications.

- 6.8 The dwelling has been sited and designed to work with the contours and characteristics of the site. The dwelling would be located in the north-west corner of the site, set well back from the highway and footpath so as to minimise the visual impact from the public realm. The site levels have been used to build the dwelling into the existing lower level so that the structure works with the land levels and would be partially screened by the higher levels. The design of the dwelling, comprising three wings, would effectively limit the massing of the building.
- 6.9 The siting has been chosen to minimise the impact on trees within the site. The siting works with the existing trees to safeguard the long-term future of the retained trees. The development would be outside of the root protection areas and there would be minimal changes to levels close to trees. Furthermore, the Siting and layout would provide a high level of amenity to future occupiers and would not result in pressure to remove additional trees in the future. Therefore, although the site comprises an area of woodland, protected by TPO, and provides a verdant rural character to Little Lane, the proposed dwelling would not alter this character given the siting of the dwelling and the large-scale retention of trees.
- 6.10 In terms of residential amenity, Policy DM10 requires that development should not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings. By virtue of the siting, design, scale, size and massing of the proposed dwelling and separation distances, the proposal would not result in any significant overbearing/overshadowing impacts or loss of privacy from overlooking.
- 6.11 Additional noise from traffic to and from the additional dwelling would not be of a scale that would be likely to result in any significant adverse noise impacts on the amenity of neighbouring occupiers. Development of the site is likely to result in additional noise and disturbance to neighbouring occupiers during the construction phase, but this would only be temporary in nature and would not result in any long term/permanent significant adverse impacts on resident's amenities. Therefore, the proposal would not be in conflict with Policy DM10.
- 6.12 In terms of highway safety Policy DM17 supports development that would not have any significant adverse impacts on highway safety. Policy DM18 requires new development to provide an appropriate level of parking provision.
- 6.13 Under the previous application, the Highway Authority confirmed Little Lane is a private, unadopted lane over which there is a public footpath right of way. Whilst physical access is available to the site from Newbold Road, the applicant would have to establish a legal right of way along Little Lane but this is a legal matter and not material to the assessment of the acceptability of the planning application. The Highway Authority advised that the residual cumulative impacts of development could be mitigated and are not considered severe. The Highway Authority were unable to demonstrate that the proposal would result in a material increase in traffic visiting the site. The right of access is already legally established.
- 6.14 It is considered that the situation has not materially changed since that time and that subject to conditions relating to the access width, gate set back and parking and turning areas being constructed in accordance with submitted plans etc. that

there are no issues with highway safety. The plans demonstrate a sufficient level of parking on site, in line with Council policy.

- 6.15 In terms of archaeology, under the previous application, an archaeological field evaluation was submitted and assessed by County Archaeology. The evaluation found no archaeological remains and provided satisfactory evidence that the site had been previously disturbed indicating little potential for the survival of archaeological remains within the site. Therefore, the proposal would not be in conflict with Policy DM13.
- 6.16 In terms of ecology, the previous application raised no objection in principle subject to the application complying with the recommendations contained within the submitted preliminary ecology appraisal and ground level bat roost assessment of trees. It is considered a similar conclusion should be drawn for this current application.
- 6.17 It is considered that a suitable drainage strategy could be adopted for the development. As such, the proposal would be in accordance with Policy DM7. This would entail a sustainable system to reduce/slow the rate of surface runoff.
- 6.18 Overall, within the planning balance, it is considered that the proposal is acceptable in principle, occupying a sustainable location adjacent to the neighbouring dwellings and in close proximity to the built-up part of the sustainable settlement. The tilted balance is applied given the out-of-date housing policies and it has been demonstrated above that there would be no demonstrable harm resulting from the development. The dwelling would be located well within the site and would not adversely affect the rural character of the site or surroundings. Furthermore, the scheme has been designed to safeguard the protected trees. It is considered that the proposal addresses the previous grounds for refusal.

7.0 Heritage Implication

- 7.1 Policies DM11 and DM12 seek to protect and enhance the historic environment and heritage assets and development proposals should ensure the significance of a conservation area is preserved and enhanced. Development affecting the setting of listed buildings will only be permitted where it is demonstrated that the proposals are compatible with the significance of the building and its setting.
- 7.2 The site borders Old White Cottage (2 Newbold Road). The Historic England Listed Building description states:

House. C17, altered C20. Timber framed underbuilt in brick and rendered, thatched roof having a single brick axial stack. To each end are single storey out shots with slate roofs and tall wall stacks. Single storey plus attics 5 bay front with off centre half glazed door and C19 gabled wooden open porch, with to left a pair of 3 light glazing bar casements and to right a pair of 2 light glazing bar casements. In the roof are 3 through eaves thatched eyebrow dormers with C20 2 light casements.
- 7.3 The significance of this grade II building is derived from the architectural merit and age of the building, the well-preserved features and its setting abutting the highway, occupying a prominent location within the street scene. The setting of

the building is largely derived from the immediate environs and not from the wider setting which includes the application site. This provides a tree dominated backdrop which would be maintained as a result of the proposal. The development of this site would not be harmful to the setting of this listed building given the screening and limited nature of the proposed dwelling.

- 7.4 10 Newbold Road is grade II listed. The setting of this building would not be harmed by the proposal given the separation distance and intervening development.
- 7.5 No other listed building would be affected.
- 7.6 The site borders the conservation area. The conservation area appraisal denotes the site accommodates important trees. Although the site is beyond the designation, it acts as a backdrop to the conservation area and forms part of the approach into the village and designation along the footpath travelling east to west.
- 7.7 The site contributes to the setting of the conservation area through the woodland trees within and the rural approach/backdrop. The application site contains a significant number of trees which provides a particular verdant and rural character, with this setting contributing positively to the significance of the conservation area.
- 7.8 The arboricultural survey previously carried out indicates that the greatest number of trees on the site fall within a moderate quality and value category with the survey recommending that their retention should be considered a priority as they are likely to make a substantial contribution to the continued landscape character of the site. The proposal has been carefully designed to minimise tree loss and to work with the trees on the site.
- 7.9 The site could be developed as proposed without resulting in harm to the character and appearance of the site and the contribution it makes to the conservation area.
- 7.10 It is therefore considered that the proposals would maintain the character and appearance of the conservation area and would not result in harm to the setting of the adjacent listed building. The proposals would be visually acceptable and would meet the test set in the above-mentioned Act and comply with policies and guidance.
- 7.11 The conservation area appraisal denotes several significant local buildings. The setting of these would not be affected by the proposed dwelling given the siting, limited size and scale and separation distances.

8.0 Grounds of Appeal

- 8.1 The application was refused partly on the grounds that the development comprises new and unjustified residential development in the open countryside.
- 8.2 The Council confirm that their Planning Policy team are currently reviewing the latest revisions to the NPPF (2024) and the implications for the Council's Five-Year Housing Land Supply. They confirm that a revised position will be published by May 2025 once the monitoring for the 2024/25 year has been

completed. However, they state that it is likely that with the revised need figure of 682 dwellings (649dpa + 5% buffer as per paragraphs 62 and 78(a) of the NPPF), that the Council will be unable to demonstrate a Five-Year Housing Land Supply once the revised position is published.

- 8.3 The Council then confirm that in light of this, and due to the age of relevant housing policies within the adopted Core Strategy, the tilted balance in paragraph 11(d) of the NPPF is triggered in accordance with Footnote 8 and Paragraph 11 of the NPPF.
- 8.4 It is therefore considered that the land use policies contained within the development plan are out of date, in part as they cannot provide the required housing land supply to meet the targets set by the NPPF within the existing settlement boundaries.
- 8.5 Notwithstanding this, the appeal relates to the erection of a dwelling adjacent to the settlement boundary. The site has neighbouring properties immediately to the south and west and is therefore well related physically to the established settlement.
- 8.6 Policy H1 of the DNP confirms that land outside the defined settlement boundary of Desford will be treated as open countryside, where development will be carefully controlled in line with Local and National Strategic Planning Policies. However, this policy is out of date as it is a locational policy and the Council cannot demonstrate the required five-year housing supply. The Council refer to this policy in their Officer Report, seemingly as justification for resisting the proposed dwelling; however, they do not refer to the policy in the reason for refusal.
- 8.7 The Council cannot resist development on the grounds that the proposal is in their opinion new and unjustified residential development in the open countryside when the locational policies are out of date. The tilted balance applies and other factors must come into the planning balance.
- 8.8 The Council state that currently there is a shortfall in self-build cumulative permissions at the end of Base Period 9. The Council confirms that if secured by a unilateral undertaking, this development as a self-build and custom house-build would contribute to this current unmet demand and the cumulative need for permissions by the end of this Base Period (31 October 2024 to 30 October 2025). However, notwithstanding this, the Council then place only moderate weight to the provision of a further self-build dwelling, stating it would make only a small contribution.
- 8.9 The appellant is of the view that whilst the proposed dwelling would only provide a single self-build unit, the Council themselves state the shortfall is "limited". On this basis, a single self-build unit would make a significant contribution to this limited shortfall. If the Council's argument is continued, it could be stated that single self-build dwellings would never make a significant contribution yet surely their cumulative contribution would be significant and would soon address this limited shortfall. It is therefore considered that the Council's assertion that the dwelling should only be given moderate weight is unreasonable and that greater weight should be given to the benefit of a further self-build unit given the accepted shortfall.

- 8.10 The Council partly refused the application on the grounds that the size, scale, layout, ground levels and siting would result in significant adverse impacts to the protected trees, to the character of the site and surrounding area and to the open character of the countryside. The Council further stated that the proposals would be harmful to the rural and verdant character of the site which contributes significantly to the setting of the conservation area. The level of harm was stated to be less than substantial.
- 8.11 In substantiating this view, the Council state that the Desford Conservation Area Appraisal (DCAA) highlights that the character of the conservation area derives from four key factors, including the agricultural origins of the settlement. It states the origins of the settlement can be identified by the open view of the countryside between buildings and a preponderance of woodland trees within and adjacent to the settlement.
- 8.12 The Council further state that the site contains trees that provide a particularly verdant and rural character, which contributes positively to the character, setting, and significance of the conservation area. They also state that whilst the site benefits from a level of screening from public views along Little Lane and the public footpath due to the established hedgerows along the south-eastern and north-eastern boundaries, this vegetation creates a clear transition along Little Lane between the edge of the village and the countryside beyond. The Council concludes that the site forms an important part of this green and largely undeveloped route to and from the settlement with open countryside beyond.
- 8.13 The appellant agrees that the site positively contributes to the setting of the conservation area. It provides a leafy and green space and reinforces the rural attributes of the site and surroundings. However, the appellant is also of the view that the site could be developed as proposed without causing harm to the character and appearance of the site and surroundings.
- 8.14 Taking the issue of trees first, the scheme has been carefully developed to work with the site to provide a unique setting for a bespoke building. Prior to commencement on the design of the dwelling, the attributes of the site were assessed and these identified, amongst other things, that the tree and hedge cover was a key characteristic. The design followed the principle of utilising the landscaping to provide this unique setting for the dwelling; for this to be successful the majority of the trees needed to be retained.
- 8.15 As set out in the impact assessment, the proposal would require the removal of four trees, one group and two-part groups. One tree, T003, and Group G003, are recommended for removal regardless of the development. Two other trees are recommended regardless of the development, trees T005 and T006. One tree is of moderate quality, T002, and is required to be removed to facilitate the proposal. The other tree, T004, is of low quality due to poor unions and is recommended to be removed due to the proximity to the proposed dwelling, and to allow creation of open garden space.
- 8.16 These trees are not high category trees, some require removal regardless of the proposed development, representing good management of the site and the loss of others would not have a significant visually harmful impact on the site or surroundings. The removal of these trees would have minimal impact on the site with the extensive canopy cover retained and being internal to the site.

- 8.17 The trees required to be removed from two groups, G002 and G006, are of low quality and form, having been heavily reduced or coppiced previously. There is some encroachment into the root protection area (RPA) of trees T001 and groups G001, G004, G005, for construction of the dwelling, provision of services and to provide parking. The encroachment into the RPA is however minimal and could be offset to ensure minimal detrimental impact to the trees through use of a no dig construction. The levels of the site allow no dig construction with it dropping from the existing gated access.
- 8.18 The site levels drop towards the location of the proposed dwelling in the south west corner. The design of the dwelling has taken into account the site levels to minimise level changes that impact adjacent trees.
- 8.19 Furthermore, the retained features would be protected during construction by tree protective fencing, and construction exclusion zones (CEZ). Along with the use of no dig construction within the RPA.
- 8.20 It is acknowledged that the proposal would result in the loss of some trees. However, as set out above, some of these should be removed regardless of the development, representing good site management. The removal of the other trees would impact only on lower category trees.
- 8.21 The loss of trees does not automatically mean that this would result in visual harm to a site or wider surroundings. The quality of the tree lost together with the number are further considerations that need to be given weight. In this case, the loss of trees would be minimal, the visual impact due to the loss of the trees would be limited and the amount of retained landscaping would be significant. When viewed from outside of the site the visual impact of the removal of the trees would be limited given the location of the trees to be removed, which are largely set well within the site.
- 8.22 It is therefore considered that the impact through the removal of a limited number of trees would not be significant and would have a limited impact on the character or appearance of the site and surroundings when viewed from outside of the site. The retained trees would be protected during construction as per British Standards.
- 8.23 In terms of the visual impact and the size, scale, layout, ground levels and siting referred to in the reasons for refusal, the appellant considers that the site benefits from a significant level of screening from public views along Little Lane and the public footpath as a result of the established hedgerows along the south-eastern and north-eastern boundaries. This landscaping presents a rural approach towards the more developed part of the village. It is acknowledged that the site makes a positive contribution to the setting of the settlement. However, it is also considered that the intrinsic character and appearance of the site would be retained following the development. The site would retain its heavily landscaped setting with the design, siting and levels of the dwelling working with the contours and landscaping of the site. From along the public highway glimpses of the dwelling would be possible; however, this would be within the dominant landscaped environment.
- 8.24 The Council state that the visual impact of the proposals would be compounded by the significant ground level differences between the development and the

wider site with the proposed parking being higher than the wider site and the private rear amenity space being higher than the wider site to the east.

- 8.25 It is acknowledged that the site varies significantly in levels. These have been used to design a bespoke dwelling that utilises the changes in levels and works with the existing landscaping. Although the parking area would be visible from the public highway the width of opening for the access would be limited, with the mature boundary landscaping remaining along the highway. A suitable hard surface material could be used to minimise the developed appearance of the hardstanding. Furthermore, this area would only be glimpsed through the access opening and would be a temporary and limited view of hardsurfacing and glimpses of parked vehicles. It would be an informal arrangement of parking and turning and would have only a passing visual impact.
- 8.26 The private amenity space would be to the rear of the dwelling and set away from the highway boundary and the footpath. It would not be visually prominent or dominant when viewed from the highway, regardless of the elevated level. The amenity space, hardstanding and the dwelling itself would be set within the heavily landscaped site and would not be unduly prominent or dominant. The proposals would have an impact on the site but this would be limited. It would not significantly dilute the contribution the site makes to the rural edge of the village or to the rural setting of the conservation area.
- 8.27 The proposed dwelling would develop only a small part of the overall site. The dwelling would be adjacent to the western boundary, physically well related but not dominant on the adjacent dwelling. The layout of the building would reduce the visual impact, effectively breaking up the massing of the structure. The dwelling would be set well into the site, behind a significant level of retained landscaping. The design and layout seek to use the contours of the site to limit the overall height of the dwelling, thereby minimizing the visual impact on the site and surroundings.
- 8.28 The Council state that the development would, notwithstanding the use of levels within the site, remain visually prominent from the public footpath due to views from the proposed site access. The appellant accepts the development would be visible from this opening; however, as set out above this would be no more than a glimpse given the narrowness of the opening, the siting of the dwelling and the intervening landscaping.
- 8.29 In their assessment, the Council refer to the impact of the dwelling as ...”the limited visual prominence of the scheme does not justify the significant adverse impacts caused by the size, scale, and layout of the development on the rural and verdant character of the application site and the rural setting of the Conservation Area”.
- 8.30 The Appellant is unclear how a development that would have a limited visual prominence could also result significant adverse effects. The Council accept the siting of the dwelling reduces the visual impact, utilises the topography of the site and have assessed proposed plans which illustrate the retention of a significant level of landscaping. It is considered that the combination of these factors would ensure the character and appearance of the site would not be unduly harmed.

- 8.31 The appellant's heritage statement concluded there would be no harm to the character or appearance of the conservation area. However, it is acknowledged that the Council identify harm at the less than substantial level.
- 8.32 The Council's Conservation Officer considered the scheme to result in harm to the character and appearance of the Desford conservation area. No further details are available regarding these comments; however, the refusal reason states less than substantial harm and the Conservation Officer advised that the scheme must be carefully weighed against the public benefits of the proposal as required by Policies DM11 and DM12 of the Site Allocations and Development Management Policies Development Plan.
- 8.33 In terms of the planning balance and the public benefits, the Council cannot demonstrate the required housing land supply and are also failing to achieve the number of self-build dwellings. The proposal would provide an additional dwelling to the district's housing stock and would boost the supply of self-build dwellings. The proposal would also result in construction employment and its future occupiers would use the shops and services in the local towns and generate council tax receipts. The proposal would also implement sustainable building methods and materials. It is considered that weight can be attached to these economic and social benefits and that these outweigh the limited harm identified.
- 8.34 The final refusal reason related to the size, scale, massing, layout and siting of the proposed dwelling resulting in significant harm to the future occupants of the dwelling due to poor outlook to principal habitable rooms, overlooking impacts, inadequate provision of amenity space and the increased pressure in future to alter or remove protected trees in order to secure a greater level of natural light.
- 8.35 In assessing the application the Council raise no objection on the grounds of impact on existing neighbouring properties. The Council also accepts the proposals meet internal space standards.
- 8.36 The Council raise concerns over the principal habitable window to Bedroom 2 being 1.7m from the shared boundary of 2 Newbold Road which they consider to not provide an adequate level of visual amenity to the bedroom and is likely to result in harm to the residential amenity for the future occupants of the scheme.
- 8.37 The appellant is unsure why visual amenity is referred to; however, it is accepted that this distance is below the standards sought. Notwithstanding this, the dwelling has been designed as a bespoke, self-build for the appellant. As set out above, the dwelling has been designed working with the contours and constraints of the site and within the established landscaped framework. It has been sited and designed to maximise the amenity the site can provide for the future occupants whilst balancing this with successfully integrating the dwelling into the site and surroundings. The proximity of this window to the boundary is acknowledged; however, the outlook from this bedroom was a secondary consideration to the primary factors of utilising the site most effectively for the living areas of the dwelling and experiencing the unique setting and landscaping of the site. The outlook from this bedroom window was reduced to benefit other elements of the build. It is also questioned why outlook from this room is so critical as the primary use of the room is to provide sleeping quarters. The dwelling could be organised differently to address this; however, this would

compromise the amenity for other rooms which would benefit more from the enhanced outlook.

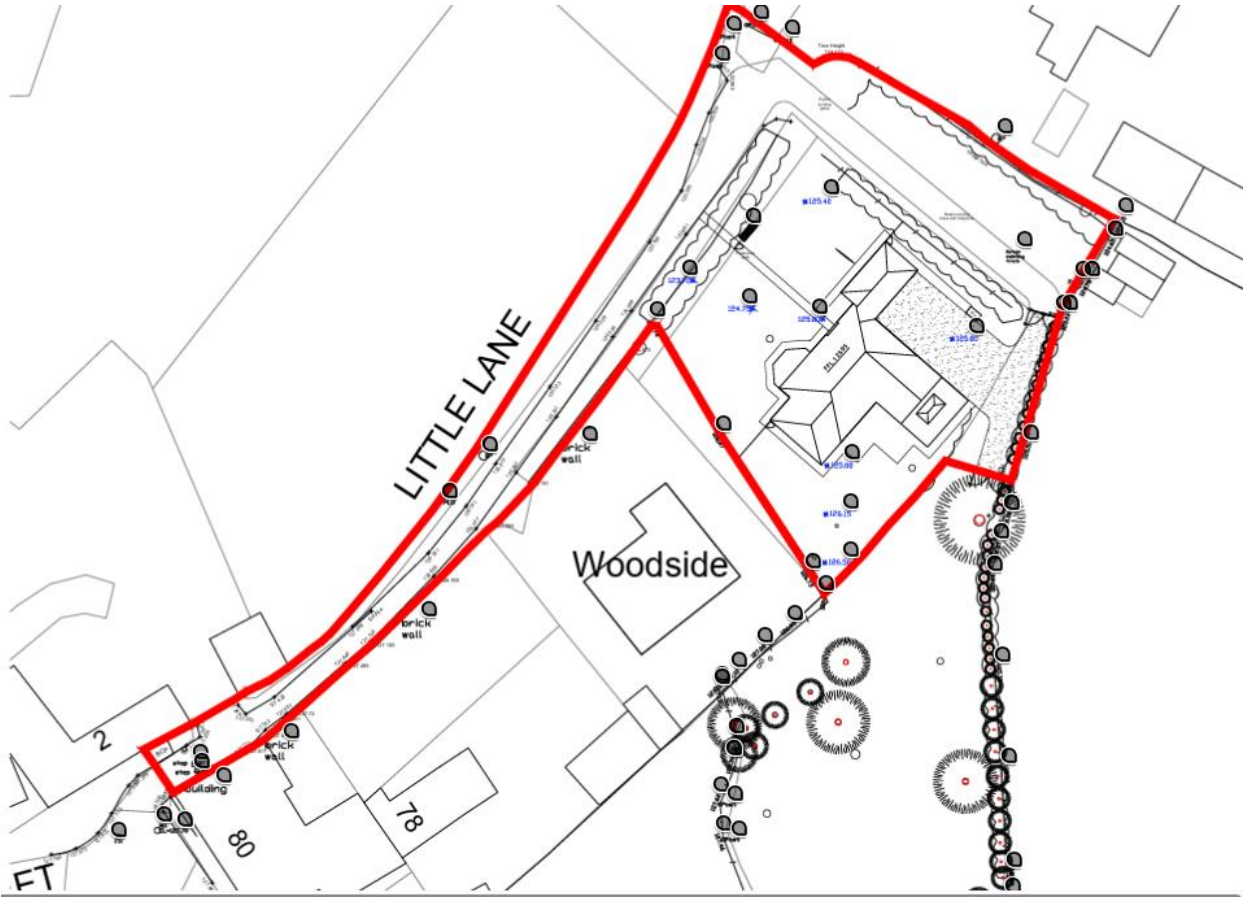
- 8.38 The Council state that the principal window in the kitchen is less than 5m from the two-storey element of the scheme. Whilst this window does not face onto a neighbouring property or a blank elevation, this is less than the 14m separation distance required between a principal habitable window and a two-storey elevation and this is likely to result in an overbearing impact on this habitable room. This is considered to contribute to the harm to the residential amenity of the future occupants of the scheme.
- 8.39 The appellant does not agree that the relationship between the kitchen window and the two-storey element would be harmful to the residential amenities of future occupants of the dwelling. Firstly, the standards are to be used on the basis of the Council stating “every application will be assessed on its own merits depending on the individual characteristics of the site such as orientation, ground levels, window positions, garden size, and shape”.
- 8.40 This site is unique and to impose standard distances which have been designed around modern housing estates is questionable at best. The kitchen window would look towards a wing on the same dwelling; this wall would also angle away from the kitchen. The kitchen would be illuminated by bi-fold doors providing a wall of glass opening onto the courtyard. It is unclear how the amenities of future occupants would suffer as a result of this relationship which includes only elements of their own building. The appellant fundamentally disagrees with the Council’s assertion that this would result in an overbearing impact.
- 8.41 The Council state that the principal habitable window to Bedroom 3 faces onto the protected group of Category ‘B’ trees G001. The principal habitable window to Bedroom 1 also faces towards the Category ‘B’ tree T001. Given the close proximity of these protected trees, the scheme fails to provide an adequate level of natural light to these habitable rooms, which is considered to result in significant harm to the residential amenity of the future occupants of the scheme. If approved, the development will create further pressure for the alteration or the complete removal of the protected trees to provide additional light and space to the proposed dwelling, which would result in additional significant harm to the character of the area.
- 8.42 The appellant is of the view that as set out above, the design is bespoke for the site and applicant. The unique setting of the dwelling is a key element to the proposal and the aim to work with the site and its constraints. This results in compromises being made in order to maximise other elements. In this case, an enhanced outlook from this bedroom has been foregone to achieve other higher ranking objectives such as views to the rear or the inside/outside living on the ground floor. The trees are protected and the Council would retain jurisdiction over any application to remove these trees. The owner would develop and occupy the dwelling in full knowledge of these constraints.
- 8.43 The Council state that to comply with the Good Design Guide, three-bedroom houses should provide a minimum of 80sqm of private outdoor amenity space with a minimum length of 7m. The Council note that whilst the development does provide a hard surfaced rear amenity area that exceeds 7m in length, this area is only 66.7sqm in area, which is less than the requirements of the Good Design Guide. The Council state that given the two-storey element of the scheme to the

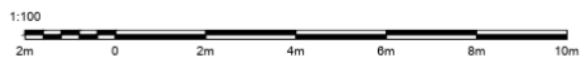
south and west, and the retention of the existing protected trees to the east, this area of private open space is not considered to be provided with an adequate level of natural light.

- 8.44 The appellant is of the view that again a bespoke approach has been taken to maximise the natural potential of the site. The overall site is large and the proposal does not represent over-development or a cramped form of development. A smaller private amenity space has been sought in order to minimise the intrusion into the natural elements of the site and the appellant has foregone a larger formal garden to achieve this. The Council standards are a general guide and should not be imposed as a one size fits all. In terms of natural light, the appellant seeks to work with the site and to accept any limitations the site might provide as a balance to securing the bespoke dwelling.

9.0 Conclusion

- 9.1 It has been demonstrated above that the proposed development is acceptable in principle, is not harmful to the character or appearance of the site or surroundings and would not result in harm to the character or appearance of the conservation area. The proposal would not be harmful to the residential amenities of occupiers of neighbouring properties and would provide a satisfactory level of amenity for future occupants. Furthermore, it is not harmful to highway safety, ecology or protected trees.
- 9.2 It is respectfully requested that the appeal is allowed.





FRONT ELEVATION

