

**TOWN AND COUNTRY PLANNING ACT 1990**

**APPEAL UNDER SECTION 78**

**Grounds of Appeal prepared for Sarah Flamson against the refusal of application 25/00298/FUL by Hinckley & Bosworth Borough Council for the erection of storage building (B8) associated with Cadeby Tree Trust New Farm, Hinckley Road, Cadeby, Leicestershire, CV13 0BD.**

**Application 25/00298/FUL was received by the LPA 21<sup>st</sup> March 2025 and refused by notice dated 7<sup>th</sup> July 2025.**

**November 2025**

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## **Material Considerations**

1. The starting point for the determination of any proposal remains the Development Plan, and Section 38(6) of the Planning and Compulsory Purchase Act 2004 confirms this statutory requirement and the NPPF (2024) reiterates the approach where planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

## **Principle of development**

2. The delegated officer report confirms the below at the relevant paragraphs:

***“8.13 Table 31 of the latest ELR recommends that the wider application site, New Farm Rural Industries, is categorised as a Class ‘B’ Employment Site. However, this is a recommendation and therefore New Farm Rural Industries is not currently considered to be classified as Class ‘B’ Employment Site. As a result, Policy DM19 of the SADMP for developments within an existing employment site does not apply in these site-specific circumstances. The Applicant agrees with this position as they have not sought to refer to Policy DM19 of the SADMP within their consideration of relevant planning policies in their Planning Statement.”***

And:

***“8.16 In summary, the application site is not considered to represent an existing employment site. The location of the application site does not meet the requirements of Policy DM20 of the SADMP and the Applicant has failed to justify the location of the development in these site-specific circumstances. Therefore, the application site represents new and unjustified commercial development in the designated open countryside. This is considered to result in harm to the character of the area in principle, which is contrary to, and in conflict with, Policies DM4 and DM20 of the SADMP.”***

3. Currently the policies the LPA relies upon are contained within 2009 Core Strategy and the Site Allocations and Development Management Policies Development Plan Document (SADMP) (2016). Since the NPPF was updated on 12th December 2024, this means the ‘tilted’ balance as per Paragraph 11(d) is fully engaged.

4. In addition, the Regulation 18 draft Local Plan 2024 to 2045 consultation runs from 12pm on Friday, 17 October 2025 and will close at 5pm on Friday, 28 November 2025. The latest Local Development Scheme (LDS) outlines further public consultation on the submission Draft Plan (Regulation 19) in 2026, however given its early stage of preparation, the Emerging Local Plan is attributed no weight at the current time.

5. The appellant is somewhat bewildered as to why the LPA would think that the site cannot be considered anything other than an existing and recognised employment site in terms of the Local Plan and supporting documents. The current delegated report makes direct reference to the extensive and longstanding planning history of the site including the approval of application 22/00625/FUL.

6. Appendix 1 contains the application documents for the erection of a similar building to the current appeal. For the avoidance of doubt, the HBBC planning officer was Sullivan Archer who is also the HBBC planning officer allocated to the current appeal.

The delegated report authored by Sullivan Archer into the approval of application 22/00625/FUL states:

### ***“3. Description of the site and surrounding area***

***3.1. The application site relates to the 70-acre New Farm Rural Industries site, which is an employment site that has been established since the early 1980s for the purpose of growing and wholesaling of Christmas Trees. Since this time, the tree production has risen steadily over the years to currently growing trees on 600 acres throughout the Midlands, planting around 150,000 trees per year. The site is south of and outside of the settlement boundary of Cadeby and is surrounded by open fields. The New Farm Rural Industrial site is bounded by the A447 to the west, Sutton Lane to the east and is accessed via a private drive to the south from Stapleton Lane.”***

And:

***“8.4 Although the site is not within the settlement boundary of Cadeby and is therefore in the countryside, the proposal is within an existing employment site. Moreover, as the site is an employment site in connection to the local area of Cadeby, the application is considered to be a local need in order to promote the success and the growth of the local business. This is supported by Paragraph 81 of the NPPF and Policy DM19 of the adopted SADMP that encourages proposals for the development of ‘B’ uses (including ancillary areas) within designated employment sites. (my emphasis) Furthermore, Paragraph 13.8 of Policy DM4 argues that proposals that assist with the diversification of the rural economy without detriment to the environment. This policy is echoed in Paragraphs 84 and 85 of the NPPF.***

***8.5 The proposed built form complements and mirrors the existing buildings and integrates it into the character of the employment site. Due to the presence of these existing buildings on site and the retention of the existing vegetation and landscaping buffers surrounding the site, it is considered that the application does not have a significant adverse impact upon the surrounding area nor the intrinsic beauty of the countryside. By virtue of these factors, the application is in accordance with Paragraphs 84 and 85 of the NPPF, Policies 13 and 17 of the adopted Core Strategy as well as Policies DM4, DM10 and DM19 of the adopted SADMP.”***

7. Why the previous status of the site as an acknowledged and well established employment site has somehow materially diminished in the intervening 3 years is unclear, however it is noteworthy members of the RTPI must base their professional advice on relevant, reliable and supportable evidence and present the results of data and analysis clearly and without improper manipulation.

8. Indeed, Appendix 2 contains an article that appeared in the Hinckley Times on the 21<sup>st</sup> May 2025, that detailed the LPA and council were fully committed to supporting and encouraging the growth of all local businesses. The proposal subject to this appeal was submitted on the basis the LPA were fully aware of the longstanding nature of this family owned and local employment site, and were therefore extremely disappointed for the current delegated report to state:

***“8.42 The development is considered to represent the unjustified urbanisation and commercialisation of the designated open countryside, which causes significant harm to the character of the site, the surrounding area, and the intrinsic value, beauty, open character, and landscape character of the designated countryside in principle.***

***8.43 As such, the application does not accord with Development Plan Policy and is unacceptable in principle, subject to the assessment of all other material considerations. Other material considerations are set out within the next sections of***

***the report.”***

**Case for the appellant: The principle.**

9. The appellant fundamentally disagrees with the baseless suggestion that the appeal proposal is unacceptable in principle, and represents unreasonable behaviour on the part of the LPA by effectively discounting or wilfully ignoring the well established planning history as a rural local employment site.

10. It appears the reason for discounting the employment planning history of the site can be found in the paragraphs below of the delegated report:

***“8.12 For example, the Applicant has highlighted that the application site features within the Council’s Employment Land Review (ELR). However, it is noted that the Applicant has failed to refer to the latest edition of the ELR.***

***Assessment of the Existing Classification of the Application Site***

***8.13 Table 31 of the latest ELR recommends that the wider application site, New Farm Rural Industries, is categorised as a Class ‘B’ Employment Site. However, this is a recommendation and therefore New Farm Rural Industries is not currently considered to be classified as Class ‘B’ Employment Site. As a result, Policy DM19 of the SADMP for developments within an existing employment site does not apply in these site-specific circumstances.”***

11. As noted above, the Regulation 18 draft Local Plan 2024 to 2045 consultation runs from 12pm on Friday, 17 October 2025 and will close at 5pm on Friday, 28 November 2025. The latest Local Development Scheme (LDS) outlines further public consultation on the submission Draft Plan (Regulation 19) in 2026, however given its early stage of preparation, the Emerging Local Plan is attributed no weight at the current time. The current Core Strategy was adopted in December 2009 and will expire in December 2026.

12. On the 13<sup>th</sup> March 2025, an outline planning permission was granted for the demolition of all buildings on site and the development of up to 95 dwellings, together with associated access, open space and landscaping, at Land East of The Common, Barwell, LE9 8BR. The full appeal decision is included in Appendix 3 where at paragraph 12 the Inspector states:

***“The lack of five-year supply, the continuing delay with previously identified sites coming forward and the uncertainty over the timescale of examination and adoption of the emerging local plan are factors to which substantial weight needs to be given. Consequently, the Core Strategy adopted in 2009 has to be regarded as out-of-date as the development strategy put forward has not been achieved.(my emphasis) This reduces the weight that can be given to Core Strategy policies which restrict development including on sites in a Green Wedge.”***

13. Not only is the 2009 CS considered to be out of date, the Inspector judged the entire development strategy (including the economic and employment) had failed. Based on the above, it would be judged as perverse if the appeal site is not rolled forward and incorporated within the New Local Plan and the Council’s 2024 Employment Land Review (ELR), as it has appeared in all of the previous versions of the ELR document.

14. The demonstrable facts are, The New Farm Rural Industries site is a long established and allocated employment site and has featured in previous versions of the HBBC Employment Land and Premises Review. The business has sold Christmas Trees since the

early 1980's and growing and wholesaling since the mid 1990's when the 70 acre farm at Cadeby was originally planted. Since this time the tree production has risen steadily over the years to currently growing trees on 600 acres throughout the Midlands, planting around 150,000 trees per year made up of 45% Nordmann Fir, 25% Norway Spruce, 10% Fraser Fir, 55 Blue Spruce & 15% Pot Grown Trees in all four species.

On the expansion of such local businesses the ELR 2020 Review states the below:

***“10.60 It is difficult to make definitive comments on the split between strategic and local supply, given that historic evidence on strategic take up is based on the completion of a single multi-phase scheme. The picture will likely be different in a few years when the other strategic schemes of the Borough have recorded completions. However, the overall picture still shows that up to 80 percent of historic growth has been to meet local needs. This does suggest that the Borough’s current supply is overly focused on the strategic with only 18.89 ha of realistically available local supply, at this time.*”**

#### **Recommendation 8 – Development in Rural Areas**

***11.33 In rural areas demand and need is more geared to the provision of conversion opportunities rather than allocating land. There are however some existing, established, successful industrial estates, and related locations, where providing expansion land is potentially a viable option, to meet both local needs and contribute to wider requirements as discussed above.”(My emphasis)***

15. The Framework directs that such applications should be considered in the context of the presumption in favour of sustainable development. It is recognised by the Government and the LPA that the growth in the economy is a key element in achieving the spatial objectives of the Core Strategy and the country as a whole. Therefore the principle of the appeal proposal can only be considered wholly appropriate when the material considerations are correctly and impartially weighed within the planning balance.

#### **Case for the appellant: The lack of harm & promotion of local economic growth.**

16. Paragraph 88 of the Framework states planning policies and decisions should enable:

a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed, new buildings;

And

b) the development and diversification of agricultural and other land-based rural businesses;

17. Paragraph 8.42 of the delegated report states:

***“The development is considered to represent the unjustified urbanisation and commercialisation of the designated open countryside, which causes significant harm to the character of the site, the surrounding area, and the intrinsic value, beauty, open character, and landscape character of the designated countryside in principle.”***

18. It is already established the principle of the appeal proposal is acceptable and paragraph 8.56 of the delegated report appears to confirm this by stating:

***“The proposal is within an existing site that has been in use for over 20 years. There are no neighbouring residential properties in the immediate vicinity of the site that do not form part of the wider application site. By virtue of these factors, and the fact that there have been no objections to the scheme, the proposal does not result in any significant adverse impacts to neighbouring residential amenity in accordance with Policy DM10 of the SADMP.”***

19. The reality is the longstanding commercial use of the site is accepted, and by infilling the gap between two buildings of very a similar scale and massing will have negligible impact regarding the already limited views into the centre of the site. The proposed building will be a continuation of the existing built form within the site and will have no material impact on the existing setting of the site. As noted above, the site is a long established local employment site and is recommended for retention in the Employment Land Review July 2024: New Farm Rural Industries, Ashby Road, Cadeby 4.71 B. ***“Fit-for-purpose employment areas; where regeneration policy may mean alternative development is appropriate, but to be resisted if possible.”***

20. By linking the two existing buildings it simply creates more covered storage and is a future proofing exercise creating infill development, rather than creating a separate building elsewhere in the yard at some point in the future. The entire site is held in a family trust and the beneficiaries are the immediate family members of the applicant that previously used to trade under the family name of Theobalds Timber, who operate the existing businesses as a joint family concern. The proposed building will allow flexibility to the current users of the site as covered storage which is always more preferable to open storage during the busiest and wettest periods of the season. The winter season is dominated by the wholesaling of the annual Christmas tree crop for storage, and the other related businesses will use the building for storage and distribution throughout other periods of the year.

21. The applicant knows her business and the trends within the industry far better than the LPA, and exactly what will be needed to remain competitive and to continue to grow future market share. The general flexibility of use the proposed B8 building will provide, is simply not speculative as wrongly characterised by the LPA. Instead the appeal building is part of the overall strategy to securing the continuing success of the associated businesses operating out of the site, which remain closely connected to the original Theobald family business.

## **Conclusion**

22. On this basis permission should not be unreasonably withheld, especially given the entire thrust of the current Government and indeed the Council is to support and encourage all economic growth within the Borough, because “forward thinking” is the watch word phrase at the moment, as per the title of the attached Hinckley Times article (Appendix 2) featuring HBBC CEO Bill Cullen.

23. The appellant will naturally comment further where appropriate, once the LPA Appeal Statement is issued as per the appeal timetable.

## **Appendix 1 to 3**