



Town and Country Planning Act 1990

Section 78 Planning Appeal

STATEMENT OF CASE

for

Hinckley & Bosworth Borough Council

Appeal by:

Harrow Estates

Proposal:

Outline Planning application for up to 95 dwellings with associated access, open space and landscaping following demolition of all buildings on site

Appeal Site:

Land East of The Common, Barwell, Leicestershire

JANUARY 2025 [CD Version]

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1. EXECUTIVE SUMMARY

- 1.1 I – Mrs Laura Ashton - am a Chartered Town & Country Planner, a Director of LAUK Planning Ltd and have over 17 years professional experience spanning planning consultancy and development management in Local Government. This statement is provided following the Appellant's lodge of an appeal against the Local Planning Authority's (LPA) refusal of planning application reference 23/01229/OUT. I was the author of a delegated report that assessed the scheme against planning policy and material considerations which found that the benefits of the scheme are significantly and demonstrably outweighed by other impacts such that planning permission should be refused.
- 1.2 My statement is supplemented and should be read alongside the Statement of Case prepared by Mr Nigel Wakefield. This statement summarises the harm arising from the development in relation to landscape and visual impact.
- 1.3 Section 38(6) of the Planning & Compulsory Purchase Act 2004 states that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The Council's failure to demonstrate a five year housing land supply is a material consideration. The tilted balance as set out in paragraph 11(d) of the NPPF is considered to be engaged due to the Council's current inability to demonstrate a five-year housing land supply such that the policies which are most important for determining the application are out-of-date. Accordingly, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination. This statement shows that the policies that are most important in determining this appeal are consistent with the framework and remain to be held in significant weight.
- 1.4 Section 6 of this statement outlines the specific harm arising from the development proposals and shows the scheme to be in conflict with the policies that are most important in determining the application and accordingly this appeal.
- 1.5 An assessment of the benefits of the scheme is also undertaken in considering whether material considerations indicate that a departure from the development plan is warranted and/or whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits arising from the scheme.

- 1.6 There are clearly social benefits associated with the provision of market and affordable housing arising from the development for which there is need, to which and this is held in **significant positive weight** should be attributed. There are also some social and environmental benefits associated with the provision of new footpaths within the scheme. This benefit should be attributed **limited weight** as it is tempered due to its limited scale and the fact that the footpath would be of diminished recreational value due to its route next to a housing development.
- 1.7 Notwithstanding the environmental harms raised in section 6 of this statement, there would be environmental benefits arising from the development in terms of Biodiversity Net Gain. This is a benefit to which **moderate positive weight** should be attributed.
- 1.8 Economic benefits would arise from the scheme as a result of the generation of jobs during the construction phase, albeit time limited, and the effects of the additional population occupying the scheme and their ability to patron local businesses. This benefit should be attributed **moderate positive weight**.
- 1.9 The benefits of the scheme need to be weighed against the harms identified. The harms include a **significant** impact on the local landscape character, a **significant** impact in terms of visual effects, **substantial harm** to the function of the Green Wedge, **significant harm** to the intrinsic value, beauty and undeveloped rural character of the area and **significant harm** to the existing settlement character. Together these harms should be afforded **substantial weight**.
- 1.10 Taking all relevant matters into consideration, the adverse impacts of the appeal scheme would significantly and demonstrably outweigh its benefits having regard to the key policies outlined in paragraph 11d ii of the NPPF. The development is not considered to represent a sustainable form of development, and I consider that the appeal should be dismissed

2. QUALIFICATIONS & EXPERIENCE

- 2.1 I, Mrs Laura Ashton, hold a Bachelor of Arts (Honours) degree in Town & Country Planning from the University of the West of England and a Masters of Science in Development Planning from the University of Reading. I have worked in a professional capacity in Town & Country Planning for over 17 years working for private consultancies, Local Authorities and a medium sized housebuilder. I am a fully chartered member of the RTPI.
- 2.2 I am currently employed by LAUK Planning Limited as a Director. I have held this position since 2018. LAUK Planning Limited is an independent planning consultancy which offers Town & Country Planning Services to a range of public and private sector clients. The consultancy services I provide to the public sector involve major and complex casework. Prior to my current role, I was employed as a Planning Manager for Bewley Homes before which I was employed in a Team Manager position in Development Management at Wokingham Borough Council.
- 2.3 My statement is provided in support of the Local Planning Authority's (LPA) decision to refuse to grant planning permission. This appeal relates to the refusal of planning application reference 23/01229/OUT. I am very familiar with the site, its context and planning history because I represented the Council as a planning witness at a public inquiry concerned with a similar proposed development on the same site. I was the author of the delegated report and recommended that the Council should refuse to grant planning permission. My recommendation was followed, and the application was refused under delegated powers.
- 2.4 This statement will consider the relevant planning policy, guidance and material considerations that are pertinent to this appeal. The appeal scheme will be assessed in this statement against this policy, guidance and material considerations. A planning balance exercise will also be undertaken in accordance with section 38(6) of the Planning & Compulsory Purchase Act 2004 and section 70(2) of the Town & Country Planning Act 1990. This statement considers matters in respect of reason for refusal one and focuses on issues pertaining to character and general planning matters. Whilst reasons for refusal 3 and 4 have not yet been fully resolved at this stage, it is hoped that they will be addressed through a legal undertaken. It is anticipated that the content of this document will be discussed at the hearing.
- 2.5 A statement has also been prepared on behalf of the LPA by Nigel Wakefield in respect of matters arising from Landscape and Visual Impact and the Green Wedge designation that is applicable to the appeal site. Mr Wakefield's evidence, on which I rely, articulates the specific harm to the Green Wedge, landscape character and visual effects arising from the appeal

development. These matters are explored in this statement, and I draw upon, but do not seek to duplicate, the content of his statement. This statement summarises the harm identified by Mr Wakefield and this harm is weighed into the overall planning balance set out in Section 7.

- 2.6 A Statement of Common Ground, which includes matters relating to Housing Land Supply, has been prepared to assist the Inspector in understanding the agreed Housing Land Supply Position. A signed and agreed version of this Statement of Common Ground has been made available to the Inspector.
- 2.7 This statement has been prepared in accordance with the guidance of my professional institution. I confirm that the opinions expressed in this document are my true and professional opinions.

3. BACKGROUND

- 3.1 This section of this statement sets out the background to this appeal, where appropriate referring to the Statement of Common Ground that has been produced in collaboration with the Appellant.

Planning History

- 3.2 The site's planning history that is relevant to this appeal is set out in the delegated report (**CB-B-26**), and the Statement of Common Ground (**CD-A-5**). I will not duplicate this information for the purposes of this statement.

Site Description

- 3.3 A comprehensive description of the appeal site is provided in the Council's delegated report (**CB-B-26**) and in the Statement of Common Ground. I will not duplicate this information for the purposes of this statement.

Description of Development

- 3.4 A description of the appeal development is set out in the Council's delegated report (**CB-B-26**) and in the Statement of Common Ground (**CD-A-5**). I will not duplicate this for the purposes of this statement yet, in brief, the appeal development seeks outline planning consent for the erection of up to 95 dwellings on the appeal site. All matters are reserved with the exception of the point of access from the highway which is a matter to be considered in detail for the purposes of this appeal.

Reasons for Refusal

- 3.5 The Council's reasons for refusal that will inform the Inspector's assessment of the appeal scheme are as follows:

1. The proposed development would result in an unsustainable residential development in the designated countryside outside the settlement boundary of Barwell and located within the Hinckley/Barwell/Earl Shilton/Burbage Green Wedge. From the development would arise harmful impacts upon the intrinsic value, beauty and undeveloped rural character of the area; landscape character; public views; the function of the Green Wedge; and harm to the existing settlement character and pattern. The development proposals are contrary to Policy 6 of the Core Strategy,

Policies DM4 and DM10 of the Site Allocations & Development Management Policies Development Plan Document (2016).

2. The applicant has failed to demonstrate that the development would not have a severe cumulative impact on the highways network and has not shown that the development would pose no risk to highway safety. The development proposals are contrary to policy DM17 of the Site Allocations & Development Management Policies Development Plan Document (2016) and the advice contained in the NPPF.

3. In the absence of a completed Legal Agreement, the proposed development fails to make adequate provision for affordable housing, contrary to policy 15 of the Core Strategy and section 6 of the NPPF.

4. In the absence of a completed legal agreement the proposed development fails to provide planning obligations that would mitigate the development's impact on infrastructure contrary to Core Strategy policy 19, policy DM3 of the Site Allocations & Development Management Policies Development Plan Document (2016) and paragraph 55 of the NPPF

3.6 Reasons for refusal 2 related to an insufficiency of information, at the time of decision making, to allow the Council to reach a decision on matters of importance. Reason for refusal 2 related to highway safety and the impact that the appeal development would have on the highway network. Whilst the appeal has been ongoing the Appellant has since provided sufficient information to address the Highway Authority's concerns such that reason for Refusal 2 is considered to be addressed (**CD-F-1**). The current position of the Highway Authority is that it raises no objection to the appeal scheme provided that appropriately worded conditions are applied and a mechanism for securing planning obligations is available should the appeal be allowed. It is the view of the Council that Reason for Refusal 2 falls away and is no longer a matter of dispute in the context of this hearing.

4. POLICY CONTEXT

- 4.1 Section 70 of the Town & Country Planning Act 1990 and section 38 of Planning & Compulsory Purchase Act 2004 provide that planning decisions must be made in accordance with the development plan unless there are material considerations to indicate otherwise.

The Development Plan

- 4.2 The Development Plan, insofar as it is relevant to this appeal, comprises Hinckley & Bosworth Core Strategy (CS) (2009) (**CD-C-1**); Hinckley & Bosworth Borough Council Site Allocations & Development Management Policies DPD (SADMP) (2016) (**CD-C-2**); and the Earl Shilton & Barwell Area Action Plan (ES&B AAP) (2014) (**CD-C-3**).

Core Strategy (CD-C-1)

- 4.3 The following Core Strategy Policies are considered to be of particular relevance to the appeal:

- Policy 6: Hinckley/Barwell/Earl Shilton/Burbage Green Wedge
- Policy 20: Green Infrastructure

Site Allocations & Development Management Policies (CD-C-2)

- 4.4 The following SADMP policies are considered to be of particular relevance to this appeal:

- Policy DM1: Presumption in Favour of Sustainable Development
- Policy DM4: Safeguarding the Countryside and Settlement Separation
- Policy DM10: Development and Design

Earl Shilton & Barwell Area Action Plan (CD-C-3)

- 4.5 The following ES&B is not considered to contain any policies that are of particular relevance to this appeal. It is however worth noting that the AAP does not allocate the appeal site for development.

Material Considerations

National Planning Policy Framework (CD-C-19) & National Planning Practice Guidance

4.6 Chapter 2 of the NPPF (**CD-C-19**) sets out Government's guidance aimed at "Achieving Sustainable Development". The NPPG also contains a chapter on "*Housing supply and delivery*". Further updates to the NPPG following the publication of the NPPF 2024 on 12th December 2024 are anticipated and it may be appropriate to make further comments in due course as to any such guidance.

4.7 Chapter 12 of the NPPF provides guidance aimed at "*Achieving well-designed places*"

4.8 Chapter 15 of the NPPF sets out the Government's approach to achieving the objective of "*Conserving and enhancing the natural environment*". Similarly, the NPPG contains a useful chapter relating to the "*Natural Environment*" (**CD-C-19**).

Additional Planning Guidance

4.9 The following documents are considered to contain guidance that is of relevance to the determination of this appeal:

- Hinckley & Bosworth Landscape Character Assessment (2017) (**CD-C-9**)
- Green Wedge Review (2020) (**CD-C-10**)
- Leicester & Leicestershire Housing and Economic Needs Assessment (HEDNA) (**CD-E-4**)
- Hinckley & Bosworth Residential Land Availability Monitoring Statement 1 April 2022 – 30 September 2023 (**CD-E-15**)

Key Implications of the Decision Taking Framework

4.10 The NPPF is an important material planning consideration in the determination of this appeal. Paragraph 11(d) sets out a presumption in favour of sustainable development. For decision-taking this means: "*where there are no relevant development plan policies, or the policies which are the most important for determining the application are out-of-date(8), granting planning permission unless: ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places, and providing affordable homes, individually or in combination*". Footnote 8 to paragraph 11 clarifies "*this includes, for applications involving the provision of housing, situations where: the*

local planning authority cannot demonstrate a five year housing land supply of deliverable sites (with the appropriate buffer, as set out in paragraph 78); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years”.

4.11 The Council’s strategic policy document which sets the Borough’s housing requirement is the Core Strategy. As the Core Strategy was adopted in 2009, the policies contained within it that are specific to housing are more than five years old. In accordance with paragraph 68, footnote 34 of the NPPF, the Council is obliged to derive their local housing need from the Standard Method.

4.12 The Council’s latest housing land supply position is set out within its 5YHLS Statement and has a base date of 1 April 2023. The Statement sets out a requirement under the current Standard Housing Method (SHM) to deliver 433 dwellings per annum (dpa) from 1 April 2024. For consistency, the requirement has been recalculated to the base date of the Statement – that is 1 April 2023; the agreed annual requirement is, therefore, 468.

4.13 The National Planning Policy Framework (NPPF) was updated on 12 December 2024 and the National Planning Practice Guidance has revised the standard method for calculating the local housing need assessment. As a result, the Council must re-visit its Five-Year Housing Land Supply (5YHLS) position. Whilst further assessment must be made, the Council are now unlikely to be able to demonstrate a 5YHLS, which is one of the circumstances for engaging the ‘tilted’ balance of Paragraph 11(d). In any event, due to the age of relevant housing policies within the adopted Core Strategy (2009) and its outdated basis for setting a housing requirement, the ‘tilted’ balance in Paragraph 11(d) of the NPPF (2024) was already triggered in accordance with Footnote 8 and Paragraph 11.

5. RELEVANT CASE LAW AND APPEAL DECISIONS

Relevant Case Law

- 5.1 There are a number of recent High Court judgments which are relevant in respect of the application of the presumption of sustainable development set out in the NPPF and the level of weight which may be afforded to policies which may be considered to be out-of-date. The most relevant cases, in my view, are set out below.

Wavendon Properties Limited v SSHCLG [2019] EWHC 1524 (CD-D-14)

- 5.2 The main issue in this case concerned the meaning of the phrase *“the policies which are most important for determining the application are out-of-date”* as referred to in then paragraph 11(d) of the NPPF with particular reference to this paragraph as a “trigger” for engaging the tilted balance. This differs from the former 2012 NPPF which referred to the situation where *“relevant policies are out-of-date”* (paragraphs 54 and 58).

- 5.3 The decision clarified the steps one should go through to carry out the exercise required by paragraph 11(d). The first step was found to be to identify which were the policies most important for determining the application. Having done so it is then necessary for the decision taker to examine each of those policies, applying the Framework to see whether they are out-of-date. Having done so, the next step is an assessment of all the *‘basket of policies’* most important to the decision to reach a conclusion whether, taken overall, they could be concluded to be out-of-date or not for the purposes of the decision. This overall assessment includes the appreciation that there may be some consistency and some inconsistency with the NPPF and that some policies may have been overtaken by events and others not. If they were found to be out-of-date overall, then the presumption would be triggered. The assessment therefore is a matter of planning judgement dependent upon the evaluation of the policies for consistency with the NPPF taken together with the relevant facts at the time of determination (paragraphs 58 and 73).

Paul Newman New Homes Ltd v SSHCLG [2019] EWHC 2367 (CD-D-15)

- 5.4 This judgment relates to a challenge to an Inspector’s decision on the grounds of whether the tilted balance in paragraph 11 of the 2018 NPPF was engaged. In deciding to dismiss the appeal

against non-determination, the Inspector found that the tilted balance did not apply due to the existence of a single relevant up-to-date policy.

- 5.5 All of the policies in the Local Plan, including the policy in question, were saved from a time expired Plan. However, the Council could demonstrate a five-year housing land supply. The judgment confirms that a single relevant policy is sufficient to prevent the first trigger (*“where there are no relevant development plan policies”*). “Relevance” connotes no more than some real role in the determination of the application; there was no requirement that there should be a body of policy, or policies, sufficient for a determination of the acceptability of the application in principle (paragraph 32).
- 5.6 The second trigger in paragraph 11d is that *“the policies which are most important for determining the application are out-of-date”*. Based on the relevant case law arising from the 2012 Framework, *“out-of-date”* did not mean time expired policies but has different and wider connotations. The use of the plural *“policies”* in the Framework means that a single up-to-date policy can be sufficient to block the second trigger (paragraph 36).
- 5.7 The Court did not accept that paragraph 11(d) of the 2018 Framework should be interpreted as if it were in the language of paragraph 14 of the 2012 Framework. It was right to consider the 2018 Framework on its own, as such a document should be construed in general without reference to previous policies or versions. The difference in language between the two versions must be intentional. The triggers would cover many of the same situations, but the focus was differently expressed (paragraph 37).

Gladman Developments Ltd v SSHCLG [2020] EWHC 518 (CD-D-16)

- 5.8 Gladman made two linked statutory review challenges to two Planning Inspectors’ appeal decisions relating to the “tilted balance” within paragraph 11(d) of the NPPF 2019. Gladman contended that decision makers should have adopted a two-stage approach, firstly carrying out the presumption in favour of sustainable development “titled balance” exercise under paragraph 11d(ii) of the NPPF, disregarding the Development Plan, before going on secondly, to apply the presumption in favour of the Development Plan (s.38(6) Planning and Compulsory Purchase Act (PCPA) 2004) balancing exercise, taking into account relevant Development Plan policies.

5.9 However, the High Court ruled that paragraph 11d(ii) of the NPPF does not require Development Plan policies to be excluded from consideration in the “tilted balance” exercise. The High Court agreed with the SSHCLG and the Local Planning Authority’s submissions that there was no legal justification for requiring the tilted balance in paragraph 11d(ii) and the s38(6) PCPA 2004 balance to be carried out in two stages and it is a matter for the decision maker, having had regard to the relevant Development Plan policies and other material considerations, whether to apply the two balances together or separately (paragraphs 107 – 108).

5.10 The Court also made other important observations which included that, in interpreting planning policy, the meaning of policies must be considered objectively, having regard to the full range of circumstances in which they may be applied, and not through the prism of a party which has been unsuccessful in a planning decision (paragraph 99).

Peel Investments (North) Limited v SSHCLG, Salford City Council [2020] EWCA Civ 1175 (CD-D-17)

5.11 The two main issues arising in this appeal to the Court of Appeal were the correct interpretation of the term "out-of-date" in paragraph 11d of the NPPF and the proper application of policies contained within Development Plan documents which are time-expired and/or where there is a lack of policy in respect of the strategic issue of housing supply.

5.12 The Court found that there is nothing in paragraph 11(d) of the 2018 NPPF, nor its predecessor paragraph 14 of the 2012 Framework, to suggest that the expiry of the period of the Plan automatically renders the policies in the Plan out-of-date in every case. This reflects paragraph 213 of the current NPPF (paragraph 65).

5.13 Lord Justice Baker did not accept the appellant's submission that a Plan, without strategic housing policies, is automatically out-of-date for the purposes of paragraph 11(d) so as to engage the tilted balance (paragraph 68).

Paul Newman New Homes Ltd v SSHCLG [2021] EWCA CIV 15 (CD-D-18)

5.14 The developer appealed to the Court of Appeal on two grounds. Firstly, that the judge erred in construing paragraph 11(d) of the NPPF contrary to its natural meaning and when read in context and secondly that the judge erred in agreeing with the inspector’s interpretation of

Policy GP.35 of the Local Plan that the policy was intended to guide decision-making at the outline application stage.

- 5.15 On Ground 2, Lady Justice Andrews said that the inspector and the judge *“fairly and rightly”* acknowledged that elements of GP.35 were more relevant to a Reserved Matters (full) application than to an outline application. *“However, as the judge said, that did not mean that the inspector fell into error when she decided that there were aspects that remained relevant to the fundamental question of whether a satisfactory development could be achieved in principle. As the judge pointed out at paragraph 60 of his judgment, the drafting of local plan policies is not as rigorous or necessarily as logically and clearly structured a process as the drafting of a statute.”* (paragraph 22)
- 5.16 Lady Justice Andrews agreed with Judge Ouseley’s interpretation of the policy therefore the Council’s understanding of its policy and the Inspector’s interpretation of it were correct. She dismissed the appeal on Ground 2.
- 5.17 Her Ladyship did not find it helpful to consider the language of the 2012 NPPF, which the developer’s lawyer relied on. *“The 2012 NPPF was replaced by the 2018 version, which uses different language and, unlike its predecessor, deals in one place with all the considerations that determine whether the tilted balance should apply.”*
- 5.18 Her Ladyship agreed that *“the concept of ‘relevance’ means that the policy or policies must have a real role to play in the determination of the application, but there is no requirement that it or they should be enough in themselves to enable the decision-maker to grant or refuse that application”* (paragraph 39).
- 5.19 The inspector and the judge had correctly concluded that Policy GP.35 *“was not confined in its ambit to matters of detail arising only at the reserved matters stage, the question whether that policy was relevant and how important it was to the determination of the application under consideration were quintessential matters of planning judgment”* (paragraph 42). The interpretation of paragraph 11(d) was upheld and the appeal dismissed on Ground 1.

Gladman Developments Ltd v SSHCLG & Corby BC & Uttlesford DC [2021] EWCA Civ 104 (CD-D-19)

- 5.20 The Court of Appeal, in this case, dismissed the appellant's challenges, upholding the decisions of the Secretary of State's inspectors. Gladman argued that it was a misinterpretation of the tilted balance in paragraph 11d(ii) of the NPPF to have any regard to Development Plan policies when answering the paragraph 11d(ii) question, whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of doing so, when assessed against the policies in the NPPF taken as a whole.
- 5.21 The issues in the appeal were first, whether a decision maker when applying the tilted balance under paragraph 11d(ii), is required not to take into account relevant policies of the Development Plan and secondly, as a connected issue, whether it is necessary for the tilted balance and the duty in s38(6) of the Planning and Compulsory Purchase Act 2004 to be performed as separate and sequential steps in a two-stage approach.
- 5.22 On the first issue, the Court of Appeal concluded:
- the provisions on decision-taking in the second part of paragraph 11 of the NPPF set out a policy to guide decision-makers on the performance of their statutory responsibilities under s70(2) of the Town and Country Planning Act 1990 and s38(6) of the PCPA 2004, in the specific circumstances to which they relate (paragraph 49);
 - decision-makers are not legally bound to disregard policies of the development plan when applying the tilted balance under paragraph 11(d)(ii) (paragraph 42);
 - it is neither a misinterpretation nor misapplication of paragraph 11(d)(ii), or taking into account an immaterial consideration, to have regard to development plan policies when dealing with the tilted balance question (paragraph 51);
 - the exercise of assessing a development's compliance with the policies in the NPPF could properly embrace consideration of related policies in the development plan, and sometimes this would make good sense because of the relationship between the two (paragraph 42);
 - the performance of the statutory duty under s38(6) and the performance of the tilted balance exercise may be inter-related, and conflict or compliance with development plan policies can bear on the assessment required by the NPPF policy in paragraph 11(d)(ii) (paragraph 43);
 - the policies of the development plan will often inform the balancing exercise required under paragraph 11(d)(ii) (paragraph 59);

- in many cases it will facilitate the assessment of adverse impacts and benefits in the tilted balance to consider not only the relevant policies of the NPPF but also the corresponding policies of the development plan (paragraph 59);
- a complete assessment under paragraph 11(d)(ii), in which adverse impacts and benefits are fully weighed and considered, may well be better achieved if relevant policies of the development plan are taken into account (paragraph 60);
- whether and how policies of the plan are taken into account in the application of paragraph 11(d)(ii) will be a matter for the decision-maker's planning judgment, in the circumstances of the case in hand (paragraph 61).

5.23 On the second issue, the Court of Appeal concluded:

- there is nothing to prevent an approach in which the application of the tilted balance under paragraph 11(d)(ii) is incorporated into the decision-making under s70(2) of the TCPA 1990 and s38(6) of the PCPA 2004 in one all-encompassing stage (paragraph 66);
- the presumptions in both paragraph 11(d)(ii) and s38(6) can lawfully be applied together (paragraph 67);
- a decision-maker is not obliged to combine in a single exercise the paragraph 11(d)(ii) assessment and the assessment required to discharge the duty in s38(6), although they lawfully can (paragraph 66);
- if this is how it is done, the decision-maker must keep in mind the statutory primacy of the development plan and must make the decision, as s38(6) requires, in accordance with the development plan unless material considerations indicate otherwise
- so that the integrity of the section 38(6) assessment can be assured (paragraph 67); - It is not necessary to consider twice, in separate steps, matters that arise both under the relevant policies of the development plan and under the policies of the NPPF (paragraph 67).

Relevant Appeal Decisions

5.24 There are a number of appeal decisions that are relevant to this appeal and are material considerations.

Appeal by Gladman on Land East of The Common, Barwell (APP/K2420/W/17/3188948) (CD-D-1)

5.25 The Council successfully defended a previous appeal by Gladman relating to an outline proposal for up to 185 dwellings on essentially the same appeal site (APP/K2420/W/17/3188948). The two main issues in the appeal were the effect of the proposed development on the character and appearance of the area and the Green Wedge; and whether there were any other material considerations, including the delivery of market and affordable housing in the context of the housing land supply that determine the development should be approved, other than in accordance with the Development Plan. The Inspector dismissed the appeal on 20 July 2018, offering the following comments:

- *"Located in the Green Wedge and outside of the current settlement boundary, it was common ground that the proposal would, on its face, conflict with Core Strategy Policy 6 and Policy DM4 of the Site Allocations and Development Management Policies Development Plan Document, adopted 2016 (the SADMP)." [Paragraph 11]*
- *"overall, I consider it not to be a 'valued' landscape." [Paragraph 17]*
- *"In landscape terms... it provides an important role in the setting of the settlement and as a buffer to the A47 and the rural character beyond." [Paragraph 21]*
- *"I do find that the appeal scheme would represent a large incursion of housing into a landscape which, while being on the edge of a town retains a strong rural character, particularly where perceived from the adjacent roads and footpaths." [Paragraph 27]*
- *"Core Strategy Policy 6 is permissive of certain developments, the list of which does not include housing. However, this is not, and cannot be a Green Belt style policy, and other land uses can be considered against further criteria, including that the development should retain the function of the Green Wedge, retain green networks, retain and enhance public access and retain the visual appearance of the area. I am satisfied that such an approach is consistent with the Framework." Paragraph 30*
- *"A site specific Green Wedge Review presented to the Inquiry by the appellant concluded that there would be a negligible effect on the separation of Barwell and Earl Shilton, that the proposed development would establish a more defensible boundary, enhancing the guiding of development form, and that the opening up of the open space to public access would enhance its recreational role while providing connectivity to the paddocks below Shilton Road, maintaining the green lung element. In practical terms, the settlements of Barwell and Earl Shilton are already joined near the junction of Leicester Road, Shilton Road and Hinckley Road. However, this was the case when the Green Wedge was reviewed and its key role in preventing coalescence of the towns*

identified. A gap is established by the Green Wedge from The Common across to Elmes Thorpe Lane, with the extension of open paddocks extending up to Shilton Road providing an important green lung element and a clear appreciation of the town's setting and relationship to the wider countryside." [Paragraphs 31 and 32]

- *"While I note the appellant's argument that housing would not extend further east than the individual plots on Dawson's Lane, I am not convinced by this. A housing estate of the scale promoted here would undoubtedly have a far greater density and impact than the individual houses in expansive plots found along Dawson's Lane and the housing would project substantially southward, beyond the existing housing on The Common. For those passing along Dawson's Lane or along The Common, or those with glimpsed views from the allotments and back from the footpath linking to Leicester Road, or even from the future paths associated with the development were it to occur, the estate would be clearly perceived as a significant incursion into the Green Wedge. While this may represent only a small part of the wider Green Wedge, it is a substantial part of the Area C considered in the 2011 review. To suggest that the function of the Green Wedge is not affected because only a relatively small part would be lost is not a sufficient argument on its own, and is one that if repeated would lead to substantial erosion of that function. This proposal would result in increased coalescence of the settlements of Barwell and Earl Shilton."* [Paragraphs 33 and 34]
- The Council could demonstrate a 5.5 or at worst 1 5.1 year supply of land for housing. [Paragraphs 77 and 78]. However, the 'tilted balance' was engaged as a result of the policies in the development plan being out of date. [Paragraph 86]
- The Inspector found that Policy DM4 was consistent with the Framework and gave the policy significant weight (at paragraph 87).
- *"The proposal would result in the delivery of up to 185 houses, including up to 37 affordable homes. That nationally there is a need for housing is accepted, that there is a local need for affordable housing is also accepted. However, although these benefits were agreed by the Council to be significant, in light of my findings on the five year HLS, this tempers the weight that I ascribe to the provision of this housing."* [Paragraph 88]
- *"To this [benefits associated with the provision of housing] I can add economic benefits associated with construction, albeit these would only be temporary, additional spend in Barwell, although there is no evidence that the town needs additional housing to support its level of facilities and services. I note the SoCG accords*

these significant weight, although these are benefits that would arise with any housing development. I give moderate weight to the enhanced access provided by the open space proposed and some further moderate weight to the enhanced biodiversity associated with the reinforcement and new planting of hedgerows and trees.” [Paragraph 89]

- *The Inspector found that Policy DM4 was consistent with the Framework and gave the policy significant weight (at paragraph 87).*
- *“I have identified harm to the landscape character and appearance of the area. On its own, because of the relatively contained nature of the site, this would attract moderate weight, and I am conscious that to meet the housing needs, greenfield sites adjacent to current settlement boundaries may have already been permitted and are likely to be permitted into the future. However, the site is also an integral part of a Green Wedge, I have set out above that I consider the site would significantly erode the function of coalescence, visual appearance and the green lung element afforded by this site. These harms together lead me to conclude that substantial harm arises to the character and appearance of the countryside, the setting of the town and the function of the Green Wedge. On balance, and in light of my findings on the provision of housing in the Borough, I consider that these adverse effects significantly and demonstrably outweigh the benefits I have identified.”* [Paragraph 90]

Appeal by Harrow Estates, Land East of the Common, Barwell APP/K2420/W/22/3295558 (CD-D-2)

5.26 The Inspector in deciding the most recent appeal noted the loss of Green Wedge. Whilst she identified no harm in respect of settlement separation, she noted the role played by the Green Wedge in providing easy access from the urban areas into green spaces, thereby contributing towards the quality of life for local residents. In this regard the Inspector observed that there is currently no public access to the site she stated that:

- *“The development could provide access into and through the site by way of creation of new footpaths. However, its value as a Green Wedge i.e., a green space, would be significantly diminished by the development. Furthermore, whilst footpaths across the site might provide a route to Burbage Common this is equally accessible along The Common and other routes.*
- *“Furthermore, even though public access is not currently available onto the appeal site, based on submissions from local residents, it is clear it still has a function as green*

space. It enhances the local area and makes an attractive contribution to the quality of life of nearby urban residents who are presently able to enjoy it from the adjacent public footpaths and allotments, for example. This would be diminished by the development.”

- The Inspector concluded her consideration of Green Wedge matters by observed that *“By virtue of the physical loss of Green Wedge and the resulting diminishing of its value and the effects that would have on the quality of life of local residents, I find that the development would not retain the function of the Green Wedge nor would it retain the visual appearance of the area.”*
- *“The section of Dawsons Lane which runs along the north boundary of the site is currently bound by thick hedgerow. It was put to me at the Inquiry that this hedgerow could be retained in order to screen views, and the Illustrative Masterplan indicates this also. The Testing Layout for 100 houses, however, shows two properties in very close proximity to Dawsons Lane which would create pressure for the removal of this hedgerow, and providing 110 houses would only add to this. The appellant is, however, willing to reduce the number of houses proposed down to 95 which would enable this hedgerow to be retained at reserved matters stage. Notwithstanding this, houses of the scale indicated, i.e., with a maximum height of 9m, would be visible above this hedgerow to users of Dawsons Lane. Therefore, even with the retention of this hedgerow Dawsons Lane would experience an urbanising impact as a result of the development.”*
- *“On the evidence before me, therefore, I am not satisfied that a development of the quantum of houses proposed could be accommodated on the site in a manner which would respect the character and appearance of the area. In coming to this finding I have had regard to the appellant’s concession to reduce the development to ‘up to 95 dwellings’ but there is no evidence before me of what this may look like, and I am not satisfied such a small reduction in dwellings would overcome my concerns.”*

Land at Sketchley Meadows (APP/K2420/W/20/3260227 & 3301735) (CD-D-20 & CD-D-21)

5.27 Land at Sketchley Meadows has been the subject of an appeal referenced APP/K2420/W/20/3260227. The scheme proposed the demolition of existing poultry and cattle buildings to allow the construction of a mixed-use development comprising up to 30,000 square metres of Class B2 General Industrial and B7 Warehousing and Distribution Uses as an

extension to Sketchley Meadows Business Park, plus the construction of up to 140 dwellings with access off Sketchley Lane.

5.28 The application was initially rejected by the Council's planning committee due to its impact upon the Green Corridor within which it was located, its impact upon the open character and landscape, and highway grounds. The appeal was dismissed on 7 May 2021, with the Inspector making the following comments in reaching this decision:

- The appellant had increased the provision of affordable housing from 20% to 40% [Paragraph 3]
- The appeal site comprised several grassland fields, forming part of LCA F 'Burbage Common Rolling Farmland in the Council's Landscape Character Area Assessment. A key characteristic of the adjoining UCA1: Burbage is a ridgetop settlement. The most relevant key characteristics of LCA F to the appeal site include medium to large scale field pattern with smaller scale pasture fields around the settlement, urban fringe influences, along with major transport corridors [Paragraph 12]
- The appellant acknowledged that the site is a transitional zone between existing industrial premises, and residential uses. The Inspector found that the importance of this function had not been properly taken into account in the assessment of likely effects of the scheme on landscape character... *"The sense of separation between industrial and residential uses, and of openness, within this part of the landscape, would be largely lost. This would be a fundamental alteration to the landscape resource."* [Paragraph 14]
- In terms of perceptual qualities, the landscape sensitivity assessment, states that the fields in the east retain some rurality, particularly around Sketchley Grange Hotel, where well treed field boundaries combine with mature specimens within the field to create a distinctive local landscape from the rest of the area. Buildings and activities on associated hardstanding to the south of the hotel would be particularly exposed on this higher part of the appeal site [Paragraph 15]
- The bridleway along the eastern boundary of the appeal site currently provides users with intermittent views over the open appeal site, which contains some visually interesting ridge and furrow earthworks, and in places views towards the wider countryside beyond. This is particularly so from part of the bridleway which is contiguous with Policy 9 of the Green Corridor in the emerging Neighbourhood Plan. Two storey development to the north of The Spinney would break up the existing

visual link between the bridleway and the wider and more distant countryside. The loss of these views would significantly detract from the visual amenity of the area [Paragraph 16]

- Sketchley lane currently has the feel of a semi-rural lane. The proposed access to the residential area, which would include visibility splays, would open up a gap along the lane providing views of houses. This would have an urbanising influence on the lane. So too would a traffic calming scheme for the lane. It was evident from my site visits that measures such as road widening, additional or roadside verges or vegetation, could give the lane a much more urban look and the feel. This would harm the character and appearance of the area and diminish the enjoyment users derived from travelling along the lane [Paragraph 17].
- *“The intrinsic value of this part of the countryside outside the settlement boundary of Burbage largely derives from the contribution its open character makes to the separation of industrial/commercial and residential/hotel development.”* [Paragraph 18]
- *“From the evidence adduced at the Inquiry and from my site visits, I consider that the proposed development would have an adverse effect on the character and appearance of the area of major significance. This is a consideration that should be given substantial weight in the planning balance.”* [Paragraph 19]
- *“I find that HBBC cannot demonstrate a five-year housing land supply. The shortfall of 288 dwellings is a significant factor in favour of granting planning permission for the appeal scheme.”* [Paragraph 33]
- *“HBBC applies Policy DM4 with some flexibility, but that is a different consideration to assessing compliance. The intention of Policy DM4 is to ‘protect’ certain attributes of the countryside by safeguarding it from unsustainable development. Within this overall ambition the policy bites where, amongst other things, development in the countryside would have a significant adverse effect on those attributes. This is not inconsistent with paragraph 170 b) of the NPPF, which provides that planning policies should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. Having regard to NPPF paragraph 213, the reference to ‘protect’ in Policy DM4 does not materially diminish the due weight the policy attracts.”* [Paragraph 47]

5.29 Land of Sketchley Lane has been the subject of a more recent appeal decision which followed a public inquiry which took place at the end of 2022. The decision was dated 4th January 2023 and was allowed, granting outline planning permission for up to 150 dwellings (appeal reference APP/K2420/W/22/3301735). The Inspector made the following remarks:

- *“In describing the appeal site as having “...some of the attributes of a semi-rural area...with significant parts... subject to substantial urban influences and is a transitional zone between existing industrial premises and residential uses”, my colleague [Inspector determining the earlier appeal] chose his words very carefully. Here, the adjoining uses, some of which are at a higher level, comprise an extensive Business Park with tall utilitarian buildings, a sprawling hotel complex, substantial housing areas to the north, east and south and the heavily trafficked A5. Together these elements exert a very significant influence on the character of the site resulting in the site displaying a classic urban fringe character”. [Paragraph 11]*
- *“The LPA accepts that it cannot demonstrate a 5-year supply of deliverable housing sites and, as far as I am aware there are no constraints that would prevent the early implementation of this proposal. Indeed the appellant would accept a significant reduction in the time limits attached to the submission of reserved matters. The provision of up to 120 (80%) market homes would be consistent with the objective of boosting the supply of homes. Similarly, whilst the scale AH proposed is policy compliant, the early provision of 30 (20%) would address the acknowledged acute need for affordable housing in the district. Economic benefits include, amongst other things, job creation during the construction stage and increased local expenditure from new residents. These matters attract significant weight” [Paragraph 26]*
- *“The site lies outside the settlement boundary and for the application of development plan policy is countryside. BNP [Burbage Neighbourhood Plan] Policy 1 is supportive of residential development on land within or adjacent to the settlement boundary subject to compliance with other development plan policies. These policies are broadly consistent with the Framework.” [Paragraph 31]*
- *“The remaining relevant policies are DPD Policies DM4 – Safeguarding the Countryside and Settlement Separation and DM10 – Development and Design. Policy DM4 seeks to protect the intrinsic value, beauty, open and landscape character of the countryside by safeguarding it from unsustainable development and where it does not have a significant adverse effect on the value, beauty, open character, and landscape character of the countryside. Policy DM10c indicates that development will be*

permitted where it would complement or enhance the character of the surrounding area, having regard to scale, layout, density, mass, design, materials, and architectural features.” [Paragraph 32]

- *“The scheme would have a moderate adverse landscape and visual effect at Year 1 reducing to minor as the landscaping matures and the development, particularly the traffic calming measures, would not have an adverse effect on the character of Sketchley Lane. This harm falls well below the threshold required by DPD Policy DM4 to conflict with the policy i.e., a significant adverse effect. As layout, design and materials are all reserve matters, I have no reason to conclude that the proposal would conflict with DPD Policy DM10. Accordingly, the proposal would not conflict with the development plan read as a whole.” [Paragraph 33]*
- *“Notwithstanding the above, even if the degree of landscape and visual harm did exceed the threshold set by DPD Policy DM4, the adverse impacts of the development, including loss of B&MV agricultural land and some ridge and furrow earthworks, do not significantly and demonstrably outweigh the benefits.” [Paragraph 34]*

Land East of Peckleton Lane, Desford (APP/K2420/W/19/3235401) (CD-D-22)

- 5.30 This appeal related to an outline application proposing up to 80 dwellings on land adjacent to, but outside, the limits to development of Desford. The application was rejected due to its adverse impact upon the intrinsic value, beauty and open character of the countryside. Policy DM4 of the Site Allocations and Development Management Policies Development Plan Document (DPD) was cited in the reason for refusal.
- 5.31 The Inspector allowed the appeal on 18 December 2019, making the following comments:
- *“the proposed development would cause some harm through the loss of a small part of the landscape character type identified. However, given the visual containment of the site, and with the use of conditions to secure the retention and enhancement of existing boundary vegetation, I am satisfied that the development would not be unduly intrusive to the wider countryside. As such, the harm would be limited. Nevertheless, this harm would mean that there would be some conflict with Policy DM4 of the SADMP.” (Paragraph 17)*
 - *“There was some discussion as to whether Policy DM4 is consistent with the Framework, inasmuch as it sets out at the start that it seeks to protect the intrinsic character, beauty, open character and landscape character of the countryside. However, it is clear that it is protection from unsustainable development that is sought,*

rather than a blanket protection of all countryside. In that regard, I find no conflict with the Framework, which sets out a presumption in favour of sustainable development. However, the matter of whether a development can be considered sustainable or not is a product of the overall planning balance.” [Paragraph 18]

- *“The proposal would provide both market and affordable housing contributing to economic growth and a prosperous rural economy, that the Framework attributes significant weight towards. The dispute between the parties as to whether the proposal would meet local needs in Desford does not detract from the fact that there is a boroughwide shortfall that has no immediate remedy in a plan-led system. The fact that Desford has already seen housing growth in excess of the minimum requirement set out in the CS demonstrates this and does not preclude any further development if found to be sustainable.” [Paragraph 47]*

5.32 This decision is of relevance to the interpretation of Policy DM4.

Appeal by Davidsons Developments Ltd on Land at Wykin Lane, Stoke Golding (APP/K2420/W/20/3262295) (CD-D-8)

5.33 This appeal sought consent for up to 55 dwellings on land adjacent to, but outside of, the settlement limits of Stoke Golding. This was an outline scheme with only access for consideration. The application was refused on landscape and highway impact grounds. 4.44 The Inspector approved this appeal on 21 May 2021, offering the following comments in reaching this decision:

- *“The site makes a limited contribution in terms of the wider landscape character area due to its size, location and screening. However, in terms of the site itself and its immediate context, the landscape value, susceptibility and sensitivity is of a medium.... While I concur with the Council and appellant that the site and surrounding area do not comprise a valued landscape for the purposes of NPPF paragraph 170(a), it is evident that they are valued by local residents including as part of recreational routes from the village to the countryside. In visual terms, the site can only be seen in glimpses along or near to the boundary apart from in private viewpoints. Thus, I consider the existing site makes a moderate positive contribution to the character and appearance of the countryside.” [Paragraph 33]*
- *“Regardless of the details at reserved matters stage, the change from an undeveloped grass field to a residential development of up to 55 homes would represent a*

fundamental change to the character and appearance of the site itself.” [Paragraph 36]

- *“There remains a need for development to be sustainable, while settlement boundaries continue to be an important tool to guide development even if they are somewhat dated or under review. Nevertheless, these permissions are an indication that the spatial strategy and settlement boundaries in the borough have been applied in a flexible rather than a rigid way due to specific circumstances. Therefore, this provides an additional reason to state that CS Policies 7 and 11 are out of date. As such, I consider only moderate weight can be afforded to CS Policies 7 and 11 and any conflict with them insofar as they seek housing development within settlement boundaries and set housing targets for Stoke Golding.” [Paragraph 82]*
- *“To the extent that SADMP Policy DM4 seeks to implement the CS through its approach to the countryside and settlement boundaries, it is also out of date. In terms of weight, the emphasis of the policy is to promote sustainable development in the countryside and protect it from unsustainable proposals. In that regard, there is broad compliance with the NPPF including paragraph 170(b) and so the policy can be afforded significant weight. Market housing schemes such as this appeal are automatically in conflict with the policy as they do not fall within the exceptions in (a) to (e). Nevertheless, it is for the decision maker to consider how much weight to give to the conflict based on the effect of the development on the countryside. In this instance, I have found that the negative effects would be no greater than moderate. Therefore, I attribute no more than moderate weight to the conflict with Policy DM4.” [Paragraph 84]*

- 5.34 The decision is relevant as it reinforces the view that the Council have taken a flexible approach to development outside of settlement boundaries, given its housing land supply position, and that each case is considered by the Council on its merits.

Appeal APP/K2420/W/20/3265133 Land to the South of Cunnery Close, Barlestone (CD-D-23)

- 5.35 This appeal related to residential development for up to 176 dwellings with public open space, landscaping and sustainable drainage systems (SuDS) (Outline - access only) on land to the south of Cunnery Close, Barlestone. The main issues in the appeal were (1) the effect of the development on the character and appearance of the area; (2) the effect of the development on highway operations and safety; and (3) the effect of the development on the living

conditions of residents to the south side of Cunnery Close with regard to noise and disturbance, outlook and overlooking.

5.36 The Inspector dismissed the appeal in July 2021, making the following comments:

- Views identified within the Council's Urban Character Area appraisal would be lost along the length of the site boundary, which would be detrimental to the character and appearance of the area. [Paragraph 13]
- The depth of the development would be very apparent to existing residents and given its location on the valley side would also be very apparent in views from the south and southwest. Moreover, there would be very limited connectivity to the existing street layout with just one vehicular access to the remaining village and very limited pedestrian links [Paragraph 21]
- The proposal was contrary to Policy DM4 and DM10(c). There was also conflict with paragraph 170 of the NPPF in respect of the conservation and enhancement of the natural and local environment, and paragraph 127 which requires development to be sympathetic to local character including the surrounding built environment and landscape setting. There was conflict with Policies CS7 and CS11, and the proposals failed to concur with guidance and strategies set out in the LCA and UCA. [Paragraph 25]
- The Housing Land Supply position was found to around 4.39 years, representing a significant shortfall across the District. The most important policies for determining the appeal were out of date. [Paragraphs 58 and 59]
- Policies DM4 and DM10 were found to have a high degree of consistency with the NPPF and given substantial weight. [Paragraphs 62, 83 and 84]
- The evidence before the Inspector indicated that there were sites available for housing development in less intrusive and sensitive locations. [Paragraph 90]

Appeal APP/K2420/W/21/3279808 Land at Station Road, Market Bosworth (CD-D-24)

5.37 This appeal related to an outline application for up to 63 dwellings on land at Station Road, in Market Bosworth. The appeal was dismissed in February 2022, with the Inspector notably finding in the decision that:

- Policy DM4 is consistent with the National Planning Policy Framework [Paragraph 19]

Appeal APP/K2420/W/21/3285060 Land off Beech Drive, Thornton (CD-D-25)

5.38 This appeal related to a full application for 49 dwellings on land off Beech Drive, at Thornton. The appeal was allowed on 12 May 2022, with the Inspectors decision finding:

- A proposal for market and affordable housing within the open countryside does not fall within the criteria of Policy DM4. Consequently, on a straightforward reading of the policy such a proposal would conflict with it [Paragraph 4]
- The Council agreed that housing has to be delivered outside of settlement boundaries, with regard to its housing land supply position, however that does not mean a development free for all and it remains necessary to determine each application on a case-by-case basis [Paragraph 5]
- Policy DM4 was found to be consistent with the NPPF and can be given significant weight [Paragraph 29]

Appeal by Bruton Knowles on Land at Crabtree Farm, Hinckley Road, Barwell (APP/K2420/W/19/3222850) (CD-D-7)

5.39 This appeal related to the erection of up to 25 dwellings, plus land for a new burial ground. The site in question abutted, but was beyond, the limits to development of Barwell, a settlement that forms part of the key Hinckley Principal Urban Area. The main issues considered were whether the site was in an acceptable location having regard to the Development Plan and national policies; and the effect of the proposed development on the character and appearance of the area and on the role and function of the Green Wedge which it is located within.

5.40 This appeal was allowed on 2 July 2019, on the basis of the Housing Land Supply at that time being between 2.94 and 4.15 years (paragraph 5). Even at 4.15 years supply, it was considered to be a significant shortfall (paragraph 7). In addition, the Inspector made the following relevant comments: -

- *“The residential element proposed would cause some harm through the loss of a small part of the land of the landscape character type identified. However, given the visual containment of the site, and with the use of conditions to constrain residential development to the eastern part of the site combined with re-enforcement of the*

existing boundary planting, the development would not be readily perceived in views across the adjacent countryside.” [Paragraph 25]

- *“There was some discussion as to whether policy DM4 is consistent with the Framework, in as much as it sets out at the start that it seeks to protect the intrinsic character, beauty, open character and landscape character of the countryside. However, it is clear that it is protection from unsustainable development that is sought, rather than a blanket protection of all countryside. In that regard, I find no conflict with the Framework, which sets out a presumption in favour of sustainable development. However, the matter of whether a development can be considered sustainable or not is a product of the overall planning balance.” [Paragraph 26]*

- 5.41 The decision is relevant because the appeal site is also located in Barwell and, in respect of the Inspectors comments on Policy DM4 being found to centre upon protection from unsustainable development rather than a blanket protection of all countryside, proposals will very much be considered by the Council on a case-by-case basis.
- 5.42 The appeals contained in **CD-D-26 - 28** involve appeals relating to the Green Wedge, that are within reasonably close proximity to the site, and where the protection of the Green Wedge was upheld.

Conclusions on Appeal Decisions

- 5.43 The key messages to be drawn from the appeal decisions referenced above in the context of the current appeal are that SADMP policies DM4 and DM10 together with Core Strategy policy 6 are all consistent with the Framework despite being out of date and that the test of sustainability is determined by the planning balance. The conclusions made by the previous Inspectors in connection with the appeal site are considered in more detail elsewhere in this statement.

6. HARM TO RURAL CHARACTER; LANDSCAPE CHARACTER, PUBLIC VIEWS, GREEN WEDGE FUNCTION AND SETTLEMENT CHARACTER AND PATTERN

6.1 Reason for refusal 1 states that:

“The proposed development would result in an unsustainable residential development in the designated countryside outside the settlement boundary of Barwell and located within the Hinckley/Barwell/Earl Shilton/Burbage Green Wedge. From the development would arise harmful impacts upon the intrinsic value, beauty and undeveloped rural character of the area; landscape character; public views; the function of the Green Wedge; and harm to the existing settlement character and pattern. The development proposals are contrary to Policy 6 of the Core Strategy, Policies DM4 and DM10 of the Site Allocations & Development Management Policies Development Plan Document (2016).”

6.2 The Appeal site lies outside the settlement boundary of Barwell and is subsequently regarded as “Countryside” as identified in SADMP Policy DM4. The purpose of policy DM4 is to safeguard the countryside and settlement separation. It aims to protect the countryside’s *“intrinsic value, beauty, open character and landscape character”* and to safeguard the countryside from *“unsustainable development”*. DM4 at a) to e) provides a list of development that is regarded to be sustainable in the countryside. The development proposals do not fall within any of the categories of development. However, the Council has been applying DM4 flexibly acknowledging that there may be times where housing development is in principle capable of being sustainable beyond development boundaries in the countryside so long as criteria i) to v) are met.

6.3 The key criteria in this case are i), ii) and iv). For the reasons set out below the appeal proposals are regarded as being contrary to the provisions of policy DM4.

6.4 In addition to being located outside of the settlement and in the “countryside”, the appeal site is also located within the Hinckley/Barwell/Earl Shilton/Burbage Green Wedge. The function of the green wedge is set out at paragraph 4.28 in the Core Strategy - it protects the separation of the settlements, helping to protect their individual identities and provides easy access from the urban areas into green spaces and contributes towards the quality of life for residents in their urban areas. The Green Wedge also provides a “green lung” to urban

areas; this relates to environmental value such as green infrastructure, wildlife sites, air quality and flood alleviation measures.

6.5 Policy 6 of the Core Strategy identifies acceptable land uses, provided the operational development associated with the use does not damage the function of the green wedge. The acceptable uses are as follows:

- a) Agriculture, including allotments and horticulture not accompanied by retail development
- b) Recreation
- c) Forestry
- d) Footpaths, bridleways and cycleways
- e) Burial grounds
- f) Use for nature conservation

6.6 It is also stated in the policy that development in the Green Wedge should:

- a) Retain the function of the Green Wedge
- b) Retain and create green networks between the countryside and open spaces within the urban areas
- c) Retain and enhance public areas to the Green Wedge, especially for recreation; and
- d) Should retain the visual appearance of the area

6.7 Policy 20 of the Core Strategy highlights that the Green Infrastructure Network outlined in the key diagram is a key priority for the Council. The Hinckley/Barwell/Earl Shilton/Burbage Green Wedge is clearly shown on the key diagram located on page 25 of the Core Strategy and is listed amongst the components of the Green Infrastructure Network included in policy 20. The proposal for residential development is not a form of development supported by Policies 6 and 20 of the Core Strategy and the appeal development would therefore conflict with the development plan.

- 6.8 Paragraphs 39 to 41 of the previous appeal decision (**CD-D-2**), relating to the appeal site, set out that development on the site would have an effect on the character and appearance of the area and on the Hinckley/Barwell/Earl Shilton Green Wedge.
- 6.9 The current application has reduced the proposed development to 95 units, however, the fact remains that any substantial development on this parcel, including that now proposed, is contrary to policy 6. Whilst the development proposal now utilise a field next to the Enterprise Centre, the development extends as far eastwards as previously proposed and extends further south compared to previously proposed. Seemingly the area identified on the indicative masterplan to accommodate housing has grown albeit to be developed as a lower density. For the reasons outlined above the principle of residential development on this site is contrary to the spatial policies within the development plan, specifically Policy 6 and 20 of the Core Strategy and Policy DM4 of the SADMP.
- 6.10 The conflict with Policies 6 and 20 of the Core Strategy and DM4 of the SADMP go to the very heart of the plan because the development is at odds with the vision that underpins the plan. The vision was derived from extensive public consultation and sets the resident's expectations for development within the Borough. The development conflicts with the spatial objective 9 set out of page 21 of the Core Strategy which, in respect of achieving the environmental vision for the borough aims to achieve *"Identity, Distinctiveness and Quality of Design"*. This is to be achieved by ensuring *"development contributes to the local distinctiveness of the borough, and enhances both settlement identity and the environment through the quality of sustainable design. Design and other measures will be used to develop strong community identities and neighbourhood pride."* The increased coalescence between Barwell and Earl Shilton and the loss of rural setting as a result of the development is considered to prejudice the identity and distinctiveness of the settlement. Whilst Spatial Objective 5 aims to achieve homes for everyone, this is also caveated that *"All housing will be high quality, locally distinctive, sustainable developments."* The development proposals are subsequently at odds with two priorities of the plan – the protection of the Network of Green Infrastructure and the desire to maintain distinctiveness and identity.

Design and impact upon the character of the area

- 6.11 Policy DM4 of the adopted SADMP requires that development in the countryside must not have a significant 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. As outlined below, as significant effects arise in respect of all the features or attributes of the countryside that policy DM4 lists and seeks to protect, there is a clear conflict with this policy.

- 6.12 As noted above, Policy 6 of the Core Strategy identifies acceptable land uses within the green wedge and also identifies that land uses should retain the function of the green wedge, retain and create green networks between the countryside and open spaces within urban areas, retain and enhance public access to the green wedge, especially for recreation and should retain the visual appearance of the area.
- 6.13 Policy DM10 of the adopted SADMP 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.

Landscape Character

- 6.14 The application site is situated within the Character Area F: Hinckley, Barwell and Burbage Fringe identified within the Hinckley and Bosworth Landscape Character Assessment (LCA) (2017). The key characteristics of the area are:
- Large scale, gently rolling arable and pasture farmland with local variations in topography influenced by small streams.
 - Burbage Common and ancient woodland is of national and local importance as an ecological and recreational resource.
 - Medium to large scale rectilinear field pattern bounded by low hedgerows and post and wire fencing with smaller scale pasture fields around the settlements. Field boundaries and hedgerows generally follow contours.
 - Urban fringe influences as a result of exposed settlement edges of Hinckley and Earl Shilton situated on higher ground and recreational uses around Burbage Common.
 - Sparse settlement within the area, comprising individual buildings and scattered farm complexes.

- Major transport corridors dissect the landscape and introduce noise and movement.
- Open landform and lack of tree cover allows for expansive and distant views to edge of settlement, often situated on the skyline, and punctuated by major infrastructure.
- Public rights of way including the Leicestershire Round, concentrated around Burbage Common and extending outside the borough into Blaby.
- Green Wedge providing separation between Hinckley and Barwell and green infrastructure to the cluster of settlements of Burbage, Hinckley, Barwell and Earl Shilton.

6.15 The landscape statement of Mr Wakefield shows that the site-specific landscape effects will be **moderate to major adverse** which is significant, and these effects will not reduce in the long term as the openness of the landscape will be permanently lost as will the grassland and rural character of the site is replaced by residential development

6.16 Overall Mr Wakefield's statement shows that the adverse landscape effects arising from the development at the district and site and local level count against appeal scheme and give rise to some significant effects (where moderate and above) that will harm the landscape character.

Visual Impact

6.17 Mr Wakefield's assessment shows that the submitted LVIA underplays the visual effects of the proposed development as set out above. This is particularly the case from Dawson's Lane, The Common, Garner Close and Shilton Road due to the loss of medium and long-distance views, the proximity of residential development overlooking the site, the sensitivity of receptor from Shilton Road, the fact that residential development will still be partially visible and the impact of lighting at night. Lighting will likely be seen from The Common on the access road and from Shilton Road from above within the Green Wedge. There are a number of visual effects that are moderate or above that amount to significant impacts.

6.18 Notably Mr Wakefield concurs with the previous inspector in concluding that the reduction of scheme from 110 dwellings to 95 dwellings will not overcome the Green Wedge and

landscape visual impacts of this proposed scheme nor would it retain the visual appearance of the area. It has been shown that the combined adverse visual effects weigh heavily against the proposals for the appeal site.

Green Wedge

6.19 As noted above, a Green Wedge Review was undertaken in 2020 (CD-C-10) which reviews the two green wedges within the borough and assists in determining whether any alterations to the boundaries should be made. Within this review Area C: East of The Common and south of Shilton Road is assessed, which includes the appeal site. The assessment pro-forma in appendix c of the Review notes that *“Due to the sloping topography of the green wedge, development of this site would have a substantial visual impact and bring development closer to the A47, compromising the integrity of the wedge”*. It also observes that the Green Wedge in this location provides *“green open space in a predominantly urban environment”*. The assessment of this area concludes (page 38):

- i. *‘The topography enables a unique character to the edge of Barwell; there are long distance views from Shilton Road. From this vantage point it is possible to view Burbage, Elmesthorpe and the spire of the church in Stoney Stanton. Paragraph 24 of the Inspector’s Planning Appeal Decision for Shilton Road also found this area was particularly sensitive in terms of providing a green lung. The Inspector stated ‘I consider the scheme would have a substantial and adverse effect on the third purpose – that of providing a green lung into the urban areas. Attributable in no small part to the elevation of Shilton Road, the existence of the appeal site as undeveloped land ensures the extension of the countryside into the built-up area of Barwell in a particularly attractive manner’. The Landscape Character Assessment (2017) supports this and identifies that a key sensitivity within this area is the ‘extensive visibility and long distance views across open expanses of rolling farmland’ and ‘any change/development has the potential to be widely visible’.*
- ii. *This area helps to guide development form and contributes collaboratively to the prevention of the merging of settlements. It provides access via public rights of way, allotments and horse paddocks, performing the role of a green lung and a recreational resource.*

- iii. *The area is particularly sensitive to coalescence, providing a green lung and acting as recreational resource. It also plays an important role in connecting Barwell to Earl Shilton and provides intravisibility between a number of the settlements.'*
- iv. *In the recent Appeal Decision at The Common, Barwell, the Inspector identified that the appeal site would was an integral part of the Green Wedge. He noted that 'the site would significantly erode the function of coalescence, visual appearance and the green lung element afforded by this site. These harms together lead me to conclude that substantial harm arises to the character and appearance of the countryside'. This highlights the importance of this area in the function of the green wedge.'*

6.20 Ultimately the Green Wedge review recommends that no changes to the Green Wedge boundary should be made in the vicinity of the appeal site. The site itself consists of a number of agricultural fields/paddocks, divided by boundary hedgerows and trees. The site slopes upwards towards Barwell. The site is bound by residential development to the west (The Common); a mixture of paddocks and residential to the north and allotments and agriculture to the west, and is adjacent to agricultural fields to the south and the southern most part is bound by the A47. The site is distinctively different in character to the urban form of the village of Barwell and is rural in nature.

6.21 Whilst there are a number of hedgerows and trees within the application site, due to the sloping topography there are still public views into the site both locally from The Common and Dawson's Lane and from further afield. Additionally, this site enables long distance views from Barwell to Burbage and other village's key vistas. This site therefore provides a 'green lung' located on the edge of Barwell which plays an important contribution towards the quality of life for residents within the urban area of Barwell and plays an important role in the setting of the settlement. It has a recreational and perceptual value to those using the surrounding footpaths and footways.

6.22 The appeal development incorporates a large area of proposed green infrastructure. It is proposed that this would include informal footpaths linking into the existing pedestrian routes through the village, areas of amenity and meadow grassland, equipped area of play space, proposed attenuation area. Whilst there is a large area of public open space proposed on site,

it is considered that this does not remove or outweigh the harm of the built development upon the character of the area as the overall amount of green space is reduced, as is the separation between the two settlements. The presence of existing built incursions within the Green Wedge, including the buildings around Inglenook Farm and White Oaks, would be exacerbated by the proposed development. The recreational value of the allotments as a countryside pursuit and the use of Dawson's Lane by walkers would also be degraded by the presence of additional built form.

- 6.23 Whilst the inclusion of public footpaths within the development is a public benefit and promotes countryside access; the development overall narrows the area of open land and changes its characteristics. Those using surrounding routes would have an altered experience from entering the countryside to one of passing through or near an urban extension. The meadow grassland is an existing feature and subsequently can't be regarded as a benefit of the scheme. Furthermore if it is used for grazing livestock, public access is unlikely.
- 6.24 The appeal site plays an important role in the functioning and appearance of the Green Wedge. The Inspector for 2018 appeal described the site is being '*an integral part of a Green Wedge*'. There is no reason why a different conclusion could now be made.
- 6.25 Based on the current appeal proposals Mr Wakefield's statement shows that there would be a substantial adverse effect on the Green Wedge functions of guiding development and providing a green lung into urban areas and a medium adverse effect on the prevention of the merging settlements. This would in combination erode the functionality of the Green Wedge. Whilst there will be some benefits in relation to an improvement to the recreational resource and through some of the landscape mitigation measures; these benefits do not outweigh the greater adverse effects on the designated green wedge.
- 6.26 These conclusions are reinforced by the Inspector deciding the earlier appeal. She stated that:

"By virtue of the physical loss of Green Wedge and the resulting diminishing of its value and the effects that would have on the quality of life of local residents, I find that the development would not retain the function of the Green Wedge nor would it retain the visual appearance of the area."

"I am not satisfied that such a small reduction in dwellings would overcome my concerns". In making this comment the Inspector would have had regard for the fact that the application was in outline form and that the layout was not fixed. Whilst the

inclusion of additional paddocks have allowed for additional landscaping within the housing layout, the development remains dense, particularly on the western side of the site.'

- 6.27 Mr Wakefield concludes that, whilst the previous Inspector did not have the current masterplan before her; given that the scheme has a larger footprint and the development is more visible The Common, is now closer to the northwest corner and open views of the countryside will be lost, a scheme to 95 units could not be said to retain the function of the Green Wedge or would it retain the visual appearance of the area. Mr Wakefield's conclusion support the ruling of the previous Inspector considering the earlier appeal on the site that found an unacceptable level of harm irrespective of the number of units proposed.

Relationship with Existing Built Form

- 6.28 The proposed access off The Common and the indicative layout of the housing that hugs the bend in the access road relates poorly to the edge of the settlement. Again, the proposed development, in this respect, appears tacked on, and will erode the sense of arrival and departure when travelling through the settlement. This is harmful to the settlement's identity when at present there is a clear sense of arrival/departure and clear definition between the built and natural environment. The lack of permeability with the existing settlement also highlights the development's poor relationship with the existing settlement.

Impact on Character Conclusions

- 6.29 The residential development of this site would have a significant harmful impact upon the local landscape character and the green wedge. It would result in an incompatible use within the green wedge and a countryside location. Significant impacts have been shown to arise in respect of landscape character and visual effects and substantial harm arises from the loss of over 11% of area C of the Green Wedge. The proposal amounts to significant built development which would undermine the physical and perceived separation between Barwell and Earl Shilton. This harm weighs against the development and is afforded substantial weight.
- 6.30 The harms identified above together with the Green Wedge designation point to it being an illogical proposition and one that weighs on favour of a plan-led strategic approach to development.
- 6.31 For the reasons outlined above it is considered that the proposed development would have a significant harmful impact upon the intrinsic value, beauty and undeveloped rural character

of the area, green wedge, harmful to the existing settlement character and is therefore contrary to Policy 6 of the Core Strategy, Policies DM4 and DM10 of the SADMP. The appeal proposals are in conflict with the development plan read as a whole.

- 6.32 Whilst reasons for refusal 3 and 4 have not yet been fully resolved at this stage, it is hoped that they will be addressed through a legal undertaken. It is anticipated that the content of this document will be discussed at the hearing. If satisfactory provision is not made to mitigate the development's impact on services and infrastructure, this is further harm that weighs against the scheme and should be accounted of in the overall planning balance. It is anticipated that an update on these matters will be provided to assist the Inspector in their determination.

7. PLANNING BALANCE

- 7.1 The titled balance as set out in paragraph 11(d) of the NPPF is considered to be engaged due to the Council's current inability to demonstrate a five-year housing land supply. Accordingly, permission should be granted unless adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes.

The Most Important Policies

- 7.2 The 'most important' policies for the determining the application and therefore this appeal, which relates to the approach taken to the presumption in favour of sustainable development within the Wavendon judgment (**CD-D-14**), are set out below.

Core Strategy Policy 6: Hinckley/Barwell/Earl Shilton/Burbage Green Wedge

- 7.3 Originally introduced by Structure and Regional Plans, this Green Wedge was identified in the Core Strategy, with specific policy controls set out in Policy 6, but with a requirement for a review as part of the development of the SADMP. Subsequent periodic reviews of the Green Wedge have been undertaken. The SADMP refers to the Green Wedge in various policies, but seeks protection through compliance with Policy 6 of the Core Strategy.
- 7.4 Core Strategy policy 6 referred to in reason for refusal 1. Core Strategy policy 6 is out of date due to its potential role in influencing the location of new housing developments in the absence of a five year housing land supply. Appeal reference 3188948 (**CD-D-1**), which relates to the appeal site confirms that this policy is consistent with the NPPF. Paragraph 30 of the appeal decision noted that Core Strategy policy 6 *"is permissive of certain developments, the list of which does not include housing. However, this is not, and cannot be a Green Belt style policy, and other land uses can be considered against further criteria, including that the development should retain the function of the Green Wedge, retain green networks, retain and enhance public access and retain the visual appearance of the area."* The Inspector confirmed that *"I am satisfied that such an approach is consistent with the Framework."* I share this view particularly in the light of the flexible

approach the Council takes to the application of this policy. I subsequently hold Core Strategy policy 6 in **significant weight** for the purposes of determining this appeal.

Core Strategy Policy 20: Green Infrastructure

7.5 Core Strategy policy 20 provides that the Green Infrastructure Network shown on the key diagram is a key priority for the Council. The relevance to this appeal is that the Green Wedge is shown on the Key Diagram and is subsequently a key priority for the Council. Policy 20 further sets a list of “interventions” to assist the delivery of the plan. For the Hinckley/Barwell/Earl Shilton/Burbage Green Wedge, the intervention is to “*look to develop into a large scale recreational asset to service the Sustainable Urban Extensions and residents living in North Hinckley*” sets. This policy in effect notes the Green Wedge as a priority whilst, as observed above, the protection of the Green Wedge is afforded by policy 6. On this basis and given the high level nature of this policy I would suggest that it is neither out of date nor inconsistent with the framework.

7.6 Core Strategy policy 20 is not noted in the reason for refusal because the protection of the Green Wedge is afforded by other policies. Policy 20 merely identifies the Green Wedge as a priority in the Borough’s Green Infrastructure Network and suggests an intervention to assist in delivering the plan. The intervention is not directly relevant to the appeal.

SADMP Policy DM4: Safeguarding the Countryside and Settlement Separation

7.7 Policy DM4 is cited in the first reason for refusal. Although the Council accept that it is out of date by way of its current housing land supply position, it has been found to remain consistent with the Framework by a number of Planning Inspectors [CD-D-20 to CD-D-25]. Indeed, even the previous Inspector dealing with this particular inquiry site found the policy consistent with the Framework [CD-C-19 paragraph 87].

7.8 The objectives of Policy DM4 are the protection of the countryside from unsustainable development, and it does not apply a blanket protection. This is where the consistency with the Framework lies, and the Council consider each proposal on a case-by-case basis. I give Policy DM4 **significant weight**.

SADMP Policy DM10: Development and Design

- 7.9 Policy DM10 is cited within reason for refusal 1, Limb (c) is pertinent to this appeal as it requires developments to compliment or enhance the character of the surrounding area with regard to scale, layout, density, mass, design, material and architectural features.
- 7.10 The policy has previously been found consistent with the Framework within a number of appeal decisions. I give the policy very significant weight

Benefits arising from the development, and planning balance

- 7.11 Section 38(6) of the Planning & Compulsory Purchase Act 2004 states that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The Council's failure to demonstrate a five year housing land supply is a material consideration that might point to the development plan not being followed. My assessment above which is supported by a number of appeal decisions show that the policies that are most important in determining this appeal are consistent with the framework and remain to be held in significant weight.
- 7.12 It remains that an assessment of the benefits of the scheme should be undertaken to show whether a departure from the development plan is warranted and/or to show whether any adverse impacts of granting permission – those outlined in section 6 above – would significantly and demonstrably outweigh the benefits significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
- 7.13 There are clearly social benefits associated with the provision of market and affordable housing arising from the development for which there is need. This is a benefit that should, in my view, be held in **significant positive weight**. – There are also some social and environmental benefits associated with the provision of new footpaths within the scheme. This benefit is held in **limited weight** as it is tempered due to its limited scale and the fact that the footpath on the majority would be of diminished recreational value due to its route next to a housing development. Furthermore, the purpose of the remaining green space and its accessibility is unclear.

- 7.14 Notwithstanding the environmental harms raised in section 6 of this statement, there would be environmental benefits arising from the development in terms of Biodiversity Net Gain. The gains in biodiversity of 23.5% are a benefit arising from the development. As these figures are in excess of the 10% BNG expected of development, this is a benefit that is held in **moderate positive weight**.
- 7.15 Economic benefits would arise from the scheme as a result of the generation of jobs during the construction phase, albeit time limited, and the effects of the additional population occupying the scheme and their ability to patron local businesses. This benefit is held in **moderate positive weight**. The benefits of the scheme need to be weighed against the harms identified. The harms include a **significant** impact on the local landscape character, a **significant** impact in terms of visual effects, **substantial harm** to the function of the Green Wedge, **significant harm** to the intrinsic value, beauty and undeveloped rural character of the area and **significant harm** to the existing settlement character. Together these harms should be afforded **substantial weight**.

Overall Balance

- 7.16 Paragraph 8 of the NPPF finds that there are three overarching objectives to achieving sustainable development, to be pursued in mutually supportive ways. Assessed against the presumption of sustainable development set out in the Development Plan and when balancing the social, environmental and economic aspects of the development, the proposal is not considered to promote sustainable development. Whilst there are significant social benefits and moderate environmental and economic benefits, these come at a substantial cost to the environment and socially when considering the social impacts associated with the diminishment of the Green Wedge.
- 7.17 In summary the harms balanced against the benefits comprise The harms include a **significant** impact on the local landscape character, a **significant** impact in terms of visual effects, **substantial harm** to the function of the Green Wedge, **significant harm** to the intrinsic value, beauty and undeveloped rural character of the area and **significant harm** to the existing settlement character. Together these harms should be afforded **substantial weight**.
- 7.18 Taking all the above into account, I find that the adverse impacts of the appeal scheme would significantly and demonstrably outweigh its benefits. The development is not considered to represent a sustainable form of development when considering key policies

for directing development to sustainable locations, making effective use of land, securing well designed places and providing affordable homes individually or in combination. I consider that the appeal should be dismissed.