HINCKLEY AND BOSWORTH BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL UNDER SECTION 78

Hinckley & Bosworth Borough Council

APPEAL BY MR FRANK DOWNES AGAINST THE REFUSAL OF PLANNING PERMISSION FOR THE ERECTION OF FIVE DWELLINGS AT 9 SPA LANE, HINCKLEY.

HBBC REFERENCE: 10/00980/FUL

THE PLANNING INSPECTORATE REFERENCE: APP/K2420/A/11/2159958/NWF

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1.0 Section 1: Introduction

1.1 This statement is to be read in conjunction with the previously submitted Appeal Questionnaire papers, in full support of the decision of Hinckley and Bosworth Borough Council to refuse planning permission 10/00980/FUL for the erection of five dwellings at 9 Spa Lane, Hinckley, Leicestershire.

2.0 Section 2: Site Description and Proposal.

2.1 The application site measures measure approximately 0.22 hectares and is currently used as an orchard/garden and occupied by a tennis court which has been used in conjunction with Bala House, College Lane.

2.2 The site is bound to all sides by residential curtilages; the site is adjoined to the north by residential dwellings on Bowling Green Road, to the east by residential dwellings on College Lane, and to the south and west by residential dwellings on London Road and Spa Lane, respectively.

2.3 The scheme proposes the erection of a five two storey, four bedroomed detached dwellings. The development will be served by an existing access to Spa Lane which also serves the neighbouring dwelling No. 9 Spa Lane.

2.4 There are two principle issues in this appeal, the overdevelopment on the site and the impact upon character and the impact upon the trees and vegetation within the site and two further issues the lack of any definitive sustainable design measures within the proposed development and failure to address the increase in pressure placed on the play and open space facilities of the local area.

3.0 Section 3: Site History

3.1 Outline planning permission was granted for the erection of four dwelling in 1972 (ref: 71/5407). This scheme proposed three dwellings on the land to the rear and one fronting Spa Lane (in the current position of No.9 Spa Lane). No reserved matters consent was subsequently granted. There are a number of other planning applications approved between 1982 and 1994 for extensions and alterations.

3.2 A subsequent planning application was approved (ref: 11/00224/FUL) on 24 May 2011 for the erection of four dwellings.

4.0 Section 4: Government Guidance

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

4.2 Planning Policy Statement 3 ‘Housing’ sets out the national planning policy framework for delivering the Government’s housing objectives. Paragraph 16 lists matters to be considered when assessing design quality; this includes assessing the extent to which the proposed development is well integrated with and compliments, the neighbouring buildings and the local area more generally in terms of scale, density layout and access.

4.3 Planning Policy Guidance Note 13 'Transport' sets out national transport planning policy. Paragraph 6 states that Local Planning Authorities should accommodate housing principally within urban areas and promotes accessibility to services by public transport, walking and cycling and reduces the need to travel.

5.0 Section 5: The Development Plan Policies

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

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

5.3 Policy 1 of the Local Development Framework Core Strategy 'Development in Hinckley' seeks to diversify the existing housing stock in the town centre to cater for a range of house types and sizes;

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

5.5 Policy 24 of the Local Development Framework Core Strategy 'Sustainable Design and Technology' seeks to ensure that all new homes in Hinckley, Burbage, Barwell and Earl Shilton will be constructed to a minimum of Code Level 3 of the Code for Sustainable Homes.

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

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

5.8 Saved Policy RES5 of the adopted Hinckley and Bosworth Local Plan 'Residential Proposals on Unallocated Sites' states that on sites that are not specifically allocated in the plan for housing, planning permission will only be granted for new residential development if the site lies within a settlement boundary and the siting, design and layout of the proposal do not conflict with the relevant plan policies.

5.9 Saved Policy BE1 of the adopted Hinckley and Bosworth Local Plan 'Design and Siting of Development' seeks to ensure a high standard of design in order to secure attractive development and to safeguard and enhance the existing environment. Development should complement or enhance the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features. Development should ensure adequate highway visibility for road users and adequate provision for on and off street parking for residents and visitors together with turning facilities and should not adversely affect the occupiers of neighbouring properties.

5.10 Saved Policy T5 of the adopted Hinckley and Bosworth Local Plan 'Highway Design and Vehicle Parking Standards' refers to the application of appropriate standards for highway design and parking targets for new developments. Leicestershire County Council's

document 'Highways, Transportation and Development' provides further highway design guidance and parking targets.

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

5.12 Hinckley and Bosworth Borough Council Supplementary Planning Guidance (SPG): New Residential Development provides a series of standards that new residential development should achieve in respect of density, design, layout, space between buildings and highways and parking.

5.13 Hinckley and Bosworth Borough Council Supplementary Planning Document (SPD): 'Play and Open Space provides further information on the policy supporting play and open space provision including a breakdown of the cost to maintain and provide various types of formal and informal open space.

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

6.0 Section 6: The Case for the Local Planning Authority

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

7.0 Reason for Refusal 1: Overdevelopment and Impact Upon Character

7.1 In the opinion of the Local Planning Authority, the proposal constitutes a scheme which overdevelops the site by virtue of the density, layout, footprint and scale. The proposal fails to respect the established character of the surrounding area and would therefore not complement or enhance the surrounding area. The development would therefore be contrary to Policies BE1 and RES5 of the adopted Hinckley and Bosworth Local Plan, the Council's Supplementary Planning Guidance on New Residential Development and the guidance contained within Planning Policy Statement 3: Housing.

7.2 The surrounding locality comprises of mixed density development, with low density to the east and west and higher densities to the north and south. The site is situated within the garden area of Bala House, in a backland location and it is considered that by virtue of this backland positioning that development should be at a lower density. This is demonstrated by the large dwellings in large plots which are present immediately to the east and west of the site which are set back from the roadside and located in backland positions off College Lane and is also supported by the higher density forms of dwellings which exist to the road frontages of Bowling Green and London Road. It is therefore considered that the scheme is too dense and by virtue of the number of units results in a form of development which overdevelops this backland site.

7.3 The area is also mixed in terms of the scale and footprints of dwellings. The area to the east of the site is characterised by large detached dwellings occupying large footprints with the area to the north and south characterised by smaller detached, semi-detached and terraced dwellings occupying smaller footprints.

7.4 The character of the site at the time of determining the application is one that is undeveloped and open in appearance and therefore given the high density, combined with the two storey proportions proposed it was considered that there would be glimpses of the proposed development through the existing trees and gaps in the streetscene, which would adversely alter the open backland character of the site.

7.5 The Council recently approved a scheme for the erection of four dwellings on this site (ref: 11/00224/FUL) on 25 May 2011, on the basis that it allowed a greater separation between the proposed dwellings themselves and between the proposed and neighbouring dwellings, thus creating a scheme which was less dense and allowed more of the open character of the site to be retained. It is therefore maintained that a scheme for five dwellings would be harmful to the open character of the site.

7.6 It is considered that the accumulative impact as a result of the proposed density, layout, footprint and scale of the scheme failed to respect the established character and was considered to have a detrimental impact upon the open character of the site. On this basis, the Council respectfully requests that the appeal should be dismissed.

8.0 Reason for Refusal 2: Impact Upon Trees

8.1 In the opinion of the Local Planning Authority the applicant has failed to demonstrate that the proposed development would not detrimentally affect the trees and vegetation within the site which if lost would have an adverse impact upon the character of the area, contrary to Policy BE1 of the adopted Hinckley and Bosworth Local Plan.

It is important to note that these trees lie outside of the application site and with the ownership and management of a third party. Its is the role of the local planning authority to reasonably protect both trees and third party interests so far as they are material in the determination of such a planning application. It therefore the case of the local planning authority the development as proposed would have an adverse impact upon these trees and the wider natural landscape.

8.2 Saved Local Plan Policy BE1 of the adopted Hinckley and Bosworth's Local Plan states that development should avoid the loss of vegetation and features which contribute to the quality of the local environment.

8.3 The Council considered that trees and vegetation are important features in any locality and in this particular area of Hinckley trees are an intrinsic feature of this urban area. In this case the two willow trees to the eastern boundary of the site are considered to contribute to the character and quality of the local environment by way of providing valuable landscape greening in the urban environment.

8.4 It is the case of the local planning authority that there is insufficient distance between the proposed dwelling and the trees and consequently is likely to have a detrimental impact upon these trees and if lost could impact upon the character of the area.

9.0 Reason for Refusal 3: Code Level 3

9.1 In the opinion of the Local Planning Authority the applicant has failed to demonstrate that the proposed development would be built to Code Level 3 of the Code for Sustainable

Homes, contrary to Policy 24 of the adopted Hinckley and Bosworth Local Development Framework Core Strategy (2009).

9.2 In line with the overarching guidance contained within Planning Policy Guidance Statement 1 and Planning Policy Statement 3, sustainable development has an important role to play in meeting climate change and resource efficiency initiatives.

9.3 The Council through the adoption of the Local Development Framework Core Strategy is committed to promoting and securing sustainable development in accordance with the overarching intentions of PPS1 and PPS3.

9.4 Spatial Objective 12 within the Local Development Framework Core Strategy seeks to minimise the impact of climate change by promoting the prudent use of resource through sustainable patterns of development, investment in green infrastructure, minimising the use of resources and energy, increasing reuse and recycling of natural resources, increasing the use of renewable energy technologies and minimising pollution, including greenhouse gas emissions

9.5 In support of Spatial Objective 12, Policy 24 of the Core Strategy, requires the dwellings proposed on this site would need to be constructed to a minimum of Code Level 3 of the Code for Sustainable Homes.

9.6 However, no sustainable design or technology measures were submitted to demonstrate that the proposal would comply with the criteria of Policy 24 of the adopted Core Strategy and as such there was considered a distinct lack of definitive sustainable design measures within the proposed development and therefore the development was in direct conflict with the provisions and requirements of the development plan.

9.7 Should the development be found acceptable and the appeal be allowed, the Council respectfully requests that a suitably worded condition be attached to ensure the dwellings are delivered to Code for Sustainable Homes Level 3 as required by Policy 24.

10.0 <u>Reason for Refusal 4: Play and Open Space</u>

10.1 In the opinion of the Local Planning Authority, the lack of any definitive measures to address the increase in pressure placed on the play and open space facilities of the local area by the proposed development would not accord with Government Guidance Circular 5/05, Policies REC3 and IMP1 of the adopted Hinckley and Bosworth Local Plan, and the Supplementary Planning Document on Play and Open Space 2008.

10.2 In line with the overarching guidance contained within Planning Policy Guidance Note 17 and Planning Policy Statement 3, open space has an important role to play in meeting a broad range of recreational needs of different sectors of the community. Outdoor playing space is one element of open space which has a value above and beyond its use for sport, active recreation and play. Playing fields and playing space contribute significantly to the amenity of a community and to the environment.

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

10.4 Saved Policy REC3 of the Adopted Hinckley and Bosworth Local Plan requires applications for new residential development to provide informal children's play space, however the Adopted Supplementary Planning Document: Play and Open Space suggest that where on site provision cannot be delivered that a developer contribution can be sought. In this case no on site provision is being proposed and therefore a developer contribution towards the pressure the development will place upon an area of local open space will be required should the development be acceptable. In this case the application site is within 400 metres of Queens Park (local open space) and it is the Council's intention that a contribution be sought to enhance and maintain this existing open space, in accordance with the objectives of the Green Space Strategy (2005-2010) and the Quantity/Accessibility Audits of Provision (2007).

10.5 The value of the contribution requested is typically £1250.80 per unit, and as such the scheme results in a net gain of 5 dwellings a total figure of £6254.00 is sought (£4089.00 for the provision and £2165.00 for the maintenance). The contribution has been calculated in accordance with the Play and Open Space SPD.

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

10.7 The play and open space contribution requested in respect of the proposal is considered necessary to make the development acceptable (to secure compliance with the development plan and national planning guidance), to be directly related to the nature of the proposal and is reasonably related in scale and kind to the development. In the application negotiations the applicant did not challenge the contribution request on any of these grounds and submitted a draft Unilateral Undertaking.

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

11.0 Section 11: Comments on Appellant's Grounds of Appeal

11.1 Case of the Appellant: Reason 1. The appellant claims that the committee report confirms that there would be no detrimental impact in terms of residential amenity and that the footprints are comparable with surrounding dwellings.

11.2 The reason for refusal relates to the impact upon the character of the area in terms of density, massing, scale and footprint and not the direct impact upon the occupiers of surrounding residential dwellings. It is considered that this matter has been addressed within section 7.0 of the report.

11.3 Case of the Appellant: Reason 2. The appellant claims that the site is not located within a Conservation Area and nor are the trees identified as T1 & T2 afforded protection by a Tree Preservation Order and that works can be undertaken without detriment to the overall health of the trees.

11.4 Notwithstanding the lack of formal protection the 2 no. trees in question were considered important within this setting and is a material planning consideration. In the absence of

any commitment of their removal it is reasonable for the LPA to assume they are to be retained. In this case this has occurred and the development would for the reasons discussed above impact upon them to an unacceptable degree.

11.5 Case for the Appellant: Reason 3. The appellant claims that to accord with the Policy 24 of the adopted Core Strategy that a condition can be imposed, accordingly there is a general agreement on this matter.

11.6 Case for the Appellant Reason 4. The appellant claims that this reason for refusal can be overcome and that a completed S106 / Unilateral Undertaking agreement accompanies this appeal.

11.7 In the absence of a signed unilateral undertaking, there is no commitment that formalises the provision of either on or off site play and open space and the development is therefore unacceptable and at odds with the requirements of Saved Policies IMP1, and REC3 of the Adopted Hinckley and Bosworth Local Plan and the Adopted Supplementary Planning Document: Play and Open Space for the reason sited previously in this statement.

11.8 Case of the Appellant: Reason 5. The appellant claims that the Council continues to have a large deficit in its 5 year housing supply and that the scheme can make a cumulative contribution to this supply. The appellant also notes a number of other approved application sites, constituting backland development and sites outside of the settlement boundary.

11.9 At the time of writing the report the Council had a shortfall of 477 dwellings in Hinckley and it was acknowledged that this should be given weight in the determination of the application. In the opinion of the Local Planning Authority PPS3 states that in deciding applications where local authorities do not have an update to date five year housing land supply the development still has to be in line with planning for housing objectives, reflecting the need and demand for housing in, and the spatial vision for, the area which also does not undermine wider policy objectives. In the opinion of the Local Planning Authority the spatial vision for the area is defined through the policies within the Local Plan, in this case Policies RES5 and BE1. Policy RES5 states that planning permission will only be granted for new residential development if the site lies within the settlement boundary and the siting, design and layout of the proposal does not conflict with the relevant plan policies. The site in the settlement boundary and therefore there is a presumption in favour of development subject to the development being in accordance with the other plan policies and therefore fell to be considered against Policy BE1. Policy BE1 seeks to ensure development complements or enhances the character of the surrounding area. It is on this basis that the application was assessed when considering whether the criteria in paragraph 69 of PPS3 was met and in this case it was considered contrary to Policy BE1.

It is in the opinion of the Local Planning Authority that each application is considered on a case by case basis and on each application's own merits and as such the lack of five year housing land supply may provide an overriding justification in some cases. In this case, the Local Planning Authority considered that the identified harm to the character of the area and the relatively small number of dwellings (5.no) that was to be provided as a result of the development did not constitute an overriding justification in favour of the development to outweighing the lack of 5 year land supply.

12.0 Section 12: Conclusions & Conditions

12.1 With regard to the information contained in this statement and that submitted with the Appeal Questionnaire, Hinckley and Bosworth Borough Council respectfully requests that the appeal be dismissed. However, if the Inspector is minded not to do so, the Local Planning Authority requests that an Agreement under Section 106 of the Town and Country Planning Act 1990 to provide off-site financial contributions towards play and open space is secured and the following conditions imposed:-

12.2 The development hereby permitted shall be begun before the expiration of three years from the date of this permission. *REASON: To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.*

12.3 The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details, as follows: M1210/C; M1210/0; M1210/1F; M1210/2a; M1210/3b; M1210/4b; M1210/5b; M1210/7a; M1210/8; M1210/9a; M1210/10; M1210/11; M1210/15; M1210/16 received by the Local Planning Authority on 8 December 2010 *REASON: For the avoidance of doubt and in the interests of proper planning.*

12.4 No development shall commence until representative samples of the types and colours of materials to be used on the external elevations of the proposed dwellings and garages have been deposited with and approved in writing by the Local Planning Authority, and the scheme shall be implemented in accordance with those approved materials. *REASON: To ensure that the development has a satisfactory external appearance to accord with Policy BE1 of the adopted Hinckley and Bosworth Local Plan.*

12.5 Notwithstanding the details submitted no development shall commence until full details of both hard and soft landscape works, including defined residential curtilage, have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include: Means of enclosure and boundary treatments; Hard surfacing materials; Schedules of plants, noting species, plant sizes, planting plans and proposed numbers/densities where appropriate; Implementation programme. *REASON: In the interests of visual amenity to accord with Policy BE1 of the adopted Hinckley & Bosworth Local Plan.*

12.6 The approved hard and soft landscaping scheme shall be carried out in accordance with the approved details. The soft landscaping scheme shall be maintained for a period of five years from the date of planting. During this period any trees or shrubs which die or are damaged, removed, or seriously diseased shall be replaced by trees or shrubs of a similar size and species to those originally planted at which time shall be specified in writing by the Local Planning Authority. *REASON: In the interests of visual amenity to accord with Policy BE1 of the adopted Hinckley & Bosworth Local Plan.*

12.7 All windows serving rooms labelled En-suite and Bathroom, as identified on Plot 1 Drawings No.'s M1210/4b and M1210/7a shall be fitted with obscure glass and be retained this way thereafter. *REASON: To safeguard amenities of neighbouring properties to accord with Policy BE1 of the adopted Hinckley & Bosworth Local Plan.*

12.8 No dwelling hereby approved shall be occupied until (i) a scheme that makes provision for refuse and recycling storage, and collection, across the site has been submitted to and approved in writing by the Local Planning Authority. The details should

address to accessibility to storage facilities for the residents/collection crews across the site, and adequate collection point space as the adopted public highway; (ii) The approved details should be fully installed and made available for use before the dwelling is first occupied. *REASON: In the interests of visual amenity, to accord with Policy BE1 of the adopted Hinckley & Bosworth Local Plan.*

12.9 Prior to the commencement of development, a Code for Sustainable Homes Design Stage Assessment, carried out by a qualified code assessor, demonstrating that the dwellings hereby approved can be constructed to a minimum of Code Level 3 shall be provided to the Local Planning Authority. In addition, prior to the first occupation of the dwelling hereby approved, a final certificate demonstrating that the dwelling has been constructed to a minimum of Code Level 3 shall be provided to the Local Planning Authority. *REASON: In the interests of sustainable development to accord with Policy 24 of the adopted Hinckley and Bosworth Local Development Framework Core Strategy.*

12.10 The car parking facilities, including the garages, shall permanently remain available for car parking. *REASON: To ensure that adequate off-street parking provision is made to reduce the possibilities of the proposed development leading to on-street parking problems in the area to accord with Policy T5 of the adopted Hinckley & Bosworth Local Plan.*

12.11 For the period of the construction of the development, vehicle parking facilities shall be provided within the site and all vehicles associated with the development shall be parked within the site. *REASON: To ensure that adequate off-street parking provision is made to reduce the possibilities of development of the site leading to on-street parking problems in the area during construction due to the constrained nature of the access to the to accord with Policy T5 of the adopted Hinckley & Bosworth Local Plan.*

12.12 No development shall commence until a scheme for root protection and protective fencing of two willow trees in accordance BS 5837:2005 (as identified in drawing no. M1210/1f) is first submitted to and approved in writing by the Local Planning Authority. *REASON: In the interest of protecting the trees during construction and quality of life extended where possible to preserve the appearance of the area in accordance with the requirements of Policy BE1 of the adopted Hinckley and Bosworth Local Plan.*

Appendix A: Site Photographs







