

oHINCKLEY AND BOSWORTH BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990



**Hinckley & Bosworth
Borough Council**

WRITTEN STATEMENT ON BEHALF OF THE LOCAL PLANNING AUTHORITY

AWARD OF COSTS CLAIM REBUTTAL

**AGAINST THE REFUSAL OF PLANNING PERMISSION FOR THE PROPOSED
CHANGE OF USE OF AGRICULTURAL LAND TO DOMESTIC GARDEN**

AT

**LAND OPPOSITE PADDOCK VIEW, TWYCROSS ROAD,
SHEEPY MAGNA, CV9 3RT**

HINCKLEY AND BOSWORTH BOROUGH COUNCIL REFERENCE

25/00081/FUL

THE PLANNING INSPECTORATE REFERENCE

APP/K2420/W/25/3367598

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1. INTRODUCTION

- 1.1. This Rebuttal Statement is prepared by Hinckley and Bosworth Borough Council as the Local Planning Authority against the Award of Costs Claim raised during the appeal process against the refusal of planning application 25/00081/FUL by the Appellants, Mr. and Mrs. Pratt.
- 1.2. This statement is to be read in conjunction with the previously submitted Appeal Questionnaire papers and the Appeal Statement, in full support of the decision of Hinckley and Bosworth Borough Council to refuse planning permission for the change of use of agricultural land to domestic garden at the Land opposite Paddock View, Twycross Road, Sheepy Magna.

2. THE AWARD OF COSTS PROCESS AND GUIDANCE

- 2.1 The Planning Practise Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

Paragraph 030 Reference ID: 16-030-20140306.

- 2.2 The aim of the costs regime is to:

- encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case
- encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay
- discourage unnecessary appeals by encouraging all parties to consider a revised planning application which meets reasonable local objections

Paragraph: 028 Reference ID: 16-028-20140306.

- 2.3 Unreasonable behaviour in the context of an application for an award of costs may be either:

- procedural (relating to the process); or
- substantive (relating to the issues arising from the merits of the appeal).

The Inspector has discretion when deciding an award, enabling extenuating circumstances to be taken into account.

Paragraph: 031 Reference ID: 16-031-20140306

2.4 Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples of this include, but are not limited to:

- Preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy, and any other material considerations
- Failure to substantiate each reason for refusal
- Acting contrary to, or not following, well-established case law
- Persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable

Paragraph: 049 Reference ID: 16-049-20140306.

2.5 However, where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs.

Paragraph: 050 Reference ID: 16-050-20140306.

3. THE LOCAL PLANNING AUTHORITY'S CASE REGARDING COSTS

The Unreasonableness of the Local Planning Authority

3.1 Within their Award of Costs submission, the Appellants have not directly stated why they have applied for costs against the Local Planning Authority. Importantly, the Appellants' Award of Costs submission does not mention the word, "*Unreasonable*," nor does it directly state any specific actions that were undertaken by the Local Planning Authority within the determination of planning application 25/00081/FUL, which the Appellants considered to be substantively or procedurally unreasonable.

Built Form and the Application of Development Plan Policies

3.2 Paragraph 2 of the Appellants' Award of Costs submission highlights that no built form was proposed as part of the appeal proposal. This is not disputed by the Local Planning Authority, and it is mentioned at Paragraph 2.1 of the Delegated Report for planning application 25/00081/FUL ('the Delegated Report.')

3.3 Furthermore, Paragraph 2 of the Appellants' Awards of Costs submission refers to Paragraph 9 of the allowed Appeal Decision at 12 Rodney Gardens, Sheepy Magna following the refusal of planning application 22/00916/FUL. Paragraph 9 of this Appeal Decision highlights that buildings, structures, and other means of closure can be controlled by planning condition.

3.4 The Local Planning Authority has not disputed this position during the determination of planning application 25/00081/FUL or this appeal proposal. This can be seen by the fact that the Council confirmed that Permitted Development Rights could be removed via planning condition at Paragraph 8.23 of the Delegated Report.

3.5 For clarity, Paragraph 8.23 of the Delegated Report states:

“The impact of the development can be reduced through the removal of Permitted Development Rights from the application site to prevent the provision of any incidental building, pools or means of enclosure. However, this does not address the detrimental impacts of severing an area of agricultural land from its wider arable field, which positively contributes to the rural setting of the surrounding area, and the subsequent significant adverse impacts of domesticating this land for residential purposes.”

3.6 It is noted that the Appellants have not sought to refer to Paragraph 8.23 of the Delegated Report within their Award of Costs submission or their Appeal Statement.

3.7 Furthermore, it is not considered that the intention of Paragraphs 2 to 4 of the Appellants’ Award of Costs submission is clear in demonstrating how the Local Planning Authority have been unreasonable during the determination of planning application 25/00081/FUL.

3.8 The Local Planning Authority have interpreted Paragraphs 2 to 4 of the Appellants’ Award of Costs submission as suggesting that because no built form was created within this development, then the proposal cannot conflict with Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (SADMP) (2016) or Policy S8 of the adopted Sheepy Parish Neighbourhood Plan (SPNP) (2022). If this represents the position of the Appellants, then it is considered that the Appellants have misguided themselves on the requirements of the policies within the Development Plan.

3.9 For the avoidance of doubt, Policy DM10 of the SADMP states:

“Developments will be permitted providing that the following requirements are met:

- (a) It would not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings, including matters of lighting, air quality (including odour), noise, vibration and visual intrusion; and*
- (b) The amenity of occupiers of the proposed development would not be adversely affected by activities in the vicinity of the site; and*
- (c) It complements or enhances the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features; and*
- (d) The use and application of building materials respects the materials of existing, adjoining/neighbouring buildings and the local area generally; and*
- (e) It incorporates a high standard of landscaping where this would add to the quality of the design and siting; and*

- (f) *It maximises opportunities for the conservation of energy and resources through design, layout, orientation and construction in line with Core Strategy Policy 24; and*
- (g) *Where parking is to be provided charging points for electric or low emission vehicles are included where feasible; and*
- (h) *An appropriate Sustainable Drainage Scheme is submitted to and approved by the relevant Authority. Schemes should incorporate wildlife areas, ponds, swales and permeable paving where appropriate; and*
- (i) *It maximises natural surveillance and incorporates the principles of Secured by Design and has considered the incorporation of fire safety measures.*

In exceptional circumstances where outstanding, innovative design is demonstrated (particularly where high levels of sustainability are an integral feature), applications will be considered favourably, even where this may result in some limited conflict with the above criteria.”

3.10 Paragraph 8.13 of the Delegated Report specifically refers to Policy DM10(c) of the SADMP within the determination of planning application 25/00081/FUL.

3.11 Policy S8 of the SPNP states:

“Development proposals should be designed with evident care so as to:

- (a) *Respond positively to the character of the area in which it is located as set out in the Design Guide in Appendix 5. Innovative design that is appropriate to the prevailing character of the area is encouraged; and*
- (b) *Demonstrably respond to the features of its setting; and*
- (c) *Work with the scale, form and character of the location and make a positive contribution to the street-scene; and*
- (d) *Protect important local features such as traditional walls, hedgerows and trees; and*
- (e) *Be future-proofed with low carbon heating and high levels of energy efficiency; and*
- (f) *Show appropriate regard for the amenities of neighbouring properties including daylight/sunlight, privacy, air quality, noise and light pollution; and*
- (g) *Provide a safe and suitable access with appropriate on-site parking provision.”*

3.12 Paragraph 8.14 of the Delegated Report specifically refers to Policy S8(a), (b), (c), and (d) of the SPNP.

3.13 As detailed above, the provision of, or absence of, built form does not suggest that a proposal appropriately meets the policy tests to be considered acceptable development by the Development Plan. The key word within these two planning policies is 'Development.' This is consistent with Paragraph 7 of the NPPF, which confirms that the purpose of the planning system is to contribute to the achievement of sustainable development.

3.14 'Development' is defined by Section 55(1) of the Town and Country Planning Act 1990 (as amended) as:

"The carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land."

3.15 Given the above, the policy tests for the Policy DM10 of the SADMP and Policy S8 of the SPNP relate to whether the material change of use of the site meets the requirements of each policy and not whether the scheme includes the provision of any built form. Therefore, the Local Planning Authority has properly exercised its development management responsibilities and acted reasonably in accordance with the Development Plan and the National Planning Policy Framework.

Material Considerations

3.16 Paragraph 5 of the Appellants' Award of Costs submission then states that planning authorities will be at risk of an award costs for unsubstantiated objections where they fail to adequately assess all relevant material considerations at the time of issuing the refusal.

3.17 Importantly, Paragraph 5 of the Appellants' Award of Costs submission does not state that the Local Planning Authority did not adequately assess all relevant material considerations at the time of refusing planning application 25/00081/FUL.

3.18 Notwithstanding this, Paragraphs 6 to 8 of the Appellants' Award of Costs submission refers to the Appeal Decision at land east of The Common, Barwell following the refusal of planning application, 23/01229/OUT, which was for a development of up to 95 dwelling.

3.19 The second Paragraph 6 of the Appellants' Award of Costs submission suggests that the conclusions of the Appeal Decision at land east of The Common, Barwell state that the policies within the adopted Core Strategy (2009) are out of date and subsequently suggests that this conclusion is a significant material consideration within the determination of the current appeal.

3.20 The Local Planning Authority did not rely on any of the policies within the adopted Core Strategy within the reason for the refusal of planning application 25/00081/FUL, nor did any of the policies within the adopted Core Strategy form part of the assessment of the development within Section 8 of the Delegated Report.

- 3.21 Paragraph 7 of the Appellants' Award of Costs submission then expands on the conclusions of the Inspector to state that Policies DM4 and DM10 of the SADMP are out of date.
- 3.22 Once again, this has not been refuted by the Local Planning Authority, and Paragraphs 8.3, 8.4 and 8.35 of the Delegated Report highlight that the SADMP is over five years old and therefore out of date.
- 3.23 Ultimately, as per Paragraph 8 of the Appellants' Award of Costs submission, *"The weight for a material consideration is a matter for the decision maker."*
- 3.24 Whilst the appeal decision at the Land east of The Common, Barwell is considered to be a material consideration with the determination of planning application 25/00081/FUL, the Local Planning Authority refute that it should attract, *"Significant verging on overwhelming,"* weight in the determination of this current appeal. This position is detailed further at Paragraphs 6.12 to 6.19 of the Council's Appeal Statement.
- 3.25 To summarise the Council's Appeal Statement, the Inspector considered Policy DM4 of the SADMP to carry limited weight in the determination of the appeal at land east of The Common due to the Council's housing land supply position of 3.55 years supply of land for housing. The Supplemental Statement of Common Ground within this previous appeal confirmed that this housing land supply position was only agreed for the purposes of that specific appeal and it did not reflect the current five-year housing land supply position of the Council.
- 3.26 Furthermore, the emphasis of Policy DM4 of the SADMP is to promote sustainable development proposals within the countryside and to safeguard it from unsustainable schemes, rather than to apply a blanket protection. In this regard, Policy DM4 is consistent with, and accords with, the NPPF. Appendices B to G of the Council's Appeal Statement provide recent appeal decisions that support this view.
- 3.27 Importantly, this current appeal proposal is not for the provision of new dwellinghouses and therefore there are significant and material differences between the development at land east of The Common, Barwell and the current appeal site.
- 3.28 Given the above, it is considered that the Local Planning Authority has properly exercised its development management responsibilities and has acted reasonably in accordance with the Development Plan, national policy, and all other material considerations.

Substantiation of the Reasons for Refusal

- 3.29 Paragraphs 8 and 10 of the Appellants' Award of Costs submission claims that the Local Planning Authority have not provided cogent or compelling reasons to substantiate the reason for the refusal of planning application 25/00081/FUL.

- 3.30 This is strongly refuted by the Local Planning Authority.
- 3.31 The reason for the refusal of planning application 25/00081/FUL states the development results in significant harm to the character of the surrounding area and the intrinsic value, beauty, open character, and landscape character of the designated countryside.
- 3.32 This conclusion was made based on the assessment of the principle of the development at Paragraphs 8.2 to 8.10 of the Delegated Report. Paragraph 8.9 of the Delegated Report confirms that the development does not comply with any of the criteria of Policy DM4 of the SADMP or Policy S1 of the SPNP, which is confirmed by the Appellants at Page 5 of their Planning Statement. Therefore, the development proposal was unacceptable in principle, subject to the assessment of all other material considerations. The Appellants have not sought to disagree with this conclusion.
- 3.33 Paragraphs 8.11 to 8.25 of the Delegated Report then assess the development's impact on the character of the area, which included addressing the material considerations raised by the Appellants, which are detailed at Paragraph 8.15, and comparing the appeal proposal against the recent planning decisions made at 12 Rodney Gardens, 14 Rodney Gardens, and Holly Tree Cottage at Paragraphs 8.15 to 8.19. It is noted that the Appellants have not referred to this assessment within their Appeal Statement or their Award of Costs submission, nor refuted the Council's assessment.
- 3.34 In addition, this is supported by a planning balance from Paragraphs 8.32 to 8.41 of the Delegated Report, which assesses the benefits and material considerations of the scheme against the harmful impacts of the development. It is noted that the Appellants have not sought to identify any benefits of the development within their Appeal Statement.
- 3.35 Ultimately, Paragraph 8.41 of the Delegated Report concludes that the adverse impacts of the development are considered to significantly and demonstrably outweigh the benefits of the proposal in these site-specific circumstances. It is noted that the Appellants have not referred to this assessment within their Appeal Statement or their Award of Costs submission, nor refuted the Council's conclusion with any appropriate justification.
- 3.36 By virtue of the above factors, alongside the provision of an Appeal Statement to defend the Council's decision to refuse planning application 25/00081/FUL, the Local Planning Authority has properly exercised its development management responsibilities and has reasonably provided full and comprehensive justification for the decision reached within the determination of planning application 25/000781/FUL.

4. CONCLUSIONS

- 4.1 In conclusion, the Local Planning Authority strongly refute the accusation that it has been substantively or procedural unreasonable throughout the process of application 25/00081/FUL.
- 4.2 Hinckley and Bosworth Borough Council as the Local Planning Authority, in the proper exercise of the development management responsibilities, has determined the application in accordance with planning law. Appropriate weight was given to all relevant factors in the assessment of the development, and this has been extensively documented within the Delegated Report and further reviewed within the Local Planning Authority's Appeal Statement. Whilst the Local Planning Authority has reached a different conclusion to the Appellants, this is not a ground for the award of costs, nor does it demonstrate that the Local Planning Authority acted unreasonably or contrary to well-established case law.
- 4.3 The determination of the application was carried out in a timely manner and with full and comprehensive justification for the decision reached. The reason for the refusal of planning application 25/00081/FUL is considered to be entirely reasonable and to stand up to scrutiny on the planning merits of the particular case.
- 4.4 In summary, the Local Planning Authority has not acted unreasonably in determining the application and therefore it is respectfully requested that the claim for appeal costs be dismissed.