

HINCKLEY AND BOSWORTH BOROUGH COUNCIL
TOWN AND COUNTRY PLANNING ACT 1990



Hinckley & Bosworth
Borough Council

**WRITTEN STATEMENT ON BEHALF OF
THE LOCAL PLANNING AUTHORITY**

PLANNING APPEAL BY MS MICHELLE HALL

**AGAINST THE REFUSAL OF PLANNING PERMISSION FOR CONSTRUCTION OF A
NEW ONE BEDROOM BUNGALOW WITH NEW DROPPED KERBS TO FORM NEW
FOOTPATH CROSSING**

AT:

22 OAKS DRIVE, NEWBOLD VERDON, LEICESTER, LE9 9PH

**HINCKLEY AND BOSWORTH BOROUGH COUNCIL REFERENCE:
23/00443/FUL**

**THE PLANNING INSPECTORATE REFERENCE:
APP/K2420/W/23/3333787**

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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 for construction of a new one bedroom bungalow with new dropped kerbs to form new footpath crossing.

2. DESCRIPTION OF THE APPEAL SITE, THE SURROUNDING AREA, AND THE PROPOSAL

- 2.1. The appeal site comprises a plot of land within the settlement boundary of Newbold Verdon, currently part of the garden area to No. 22 Oaks Drive. No. 22 fronts onto Oaks Drive with the rear garden returning round the side along Peters Avenue and also includes land to the rear of the garden to 20 Oaks Drive.
- 2.2. The site lies adjacent to a row of detached, gabled roof bungalows along Peters Avenue that provides a distinctive character to the area. Properties in the vicinity are constructed of light red facing bricks, brown concrete roof tiles and white uPVC window frames.
- 2.3. This appeal proposal seeks full planning permission for a new one bedroom bungalow with new dropped kerbs to form new footpath crossing. The proposed bungalow will be 7.2m wide and up to 8m deep. The roof is 5.2m at the ridge and 2.6m to the eaves.
- 2.4. The proposed bungalow will be finished with bricks, windows and roof tiles to match older buildings in the immediate vicinity. The first floor windows at 22 Oaks Drive are less than 9m from the site and the rear elevation of the pair of dwellings at 18 and 20 Oaks Drive is just 11m from the site at its closest point.

3. SITE HISTORY

3.1. 89/00871/4

- Retirement bungalow to rear of 22 Oaks Drive
- Approved
- 22.08.89

3.2. 17/00026/HOU

- Erection of side and rear extension.
- Approved.
- 06.03.2017

3.2. 22/00730/FUL

- Two storey side and single storey rear extension.
- Refused
- 04.10.2022

4. NATIONAL POLICIES

- 4.1 National Planning Policy Framework (NPPF) (Dec 2023).
- 4.2 National Planning Practice Guidance (PPG).
- 4.3 National Design Guide (NDG) (2019).

5. LOCAL POLICIES

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

5.2 Site Allocations and Development Management Policies (SADMP) DPD (2016)

- Policy DM1: Presumption in Favour of Sustainable Development
- Policy DM10: Development and Design
- Policy DM17: Highway and Transportation
- Policy DM18: Vehicle Parking Standards

5.3 Other relevant guidance

- Good Design Guide (GDG) (2020)
- Leicestershire Highways Design Guide (LHDG)

6. THE CASE FOR THE LOCAL PLANNING AUTHORITY

6.1 The planning application was refused under delegated powers for the following reason:

1. The proposed development represents a contrived form of development that is significantly uncharacteristic of the surrounding area contrary to Policy DM10 of the Site Allocations and Development Management Policies Development Plan Document, the Councils Good Design Guide and the requirements of Section 12 of the NPPF 2021. In addition the proposed private rear garden would fail to provide future occupiers of the proposed dwelling with sufficient amenity as a result of significant overlooking from habitable room first floor windows at 16 to 22 Oaks Drive. The proposed development is therefore contrary to Policy DM10 of the Site Allocations and Development Management Policies Development Plan Document and the requirements of paragraph 130 of the NPPF 2021.

6.2 Therefore, it is considered that the two main planning issues in relation to this appeal are firstly the effect of the proposed development on the character and appearance of the area and secondly the effect of the proposed development on the amenity of future occupants. These concerns are addressed within this Statement of Case.

Housing Land Supply

6.3 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 most important for determining the application are out-of-date, granting 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”.

6.4 Footnote 8 to paragraph 11 clarifies:

“This includes, for applications involving the provision of housing, situations where: (a) the local planning authority cannot demonstrate a five year supply (or a four year

supply, if applicable, as set out in paragraph 226) of deliverable housing sites (with a buffer, if applicable, as set out in paragraph 77) and does not benefit from the provisions of paragraph 76; or (b) where the Housing Delivery Test indicates that the delivery of housing was below 75% of the housing requirement over the previous three years". The Council is not seeking to argue that paragraph 226 and therefore the need for only a four year supply is currently applicable.

- 6.5 The Council's strategic policy document which sets the Borough's housing requirement is the Core Strategy. As Core Strategy was adopted in 2009, the policies contained within it that are specific to housing are more than five years old.
- 6.6 The Council's latest confirmed housing land supply position is set out within its 'Residential Land Availability Monitoring Statement 1 April 2021 to 31 March 2022'. This paper is based on the need to deliver 472 dwellings per annum, demonstrating a housing supply calculated at 4.89 years under the Standard Method. The Council acknowledges that it cannot currently demonstrate a five year housing land supply position, and so by way of footnote 8 of the Framework the 'tilted balance' element of the presumption in favour of sustainable development as set out in paragraph 11(d) is triggered.

Impact upon the character of the area

- 6.7 Policy DM10 of the SADMP indicates that development will be permitted providing it meets good standards of design including that it would complement or enhance the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features and would not have a significant adverse effect on the privacy and amenity of nearby residents.
- 6.8 The Council's Good Design Guide SPD sets out the process to be followed to ensure good quality design for new residential development. The SPD provides specific advice relating to "backland" development as well as infill development. It is considered that the proposal features elements of both backland and infill development. The Design Guide provides that where an existing plot is proposed to be subdivided to create additional development in backland locations, this will require clear and convincing justification in relation to its context. Some sites may be able to accommodate this type of development, whereas others will not. It will also be required to demonstrate that the density is also in keeping with the prevailing character of the surrounding area.
- 6.9 With regard to infill sites the Good Design Guide states that building plots should be of similar size and shape to the wider context, allowing sufficient space between buildings. As can be seen from the submitted site and location plans the plot size is significantly smaller than others in the area.
- 6.10 The Design Guide advises that existing access arrangements should be used to serve new development wherever possible, to avoid unnecessarily 'puncturing' the character of the street scene and allowing highways to dominate. Development should respect wider building lines and not back onto the street. Boundary treatments should also be carefully utilised to assimilate new development into its context, reflecting those seen in the wider frontage and seeking to avoid gaps that break down sense of place.
- 6.11 Paragraph 135 of the NPPF states that decisions should ensure that developments are sympathetic to local character, including the surrounding built environment and landscape setting. It also states that developments should maintain a strong sense

of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live.

- 6.12 Paragraph 139 of the NPPF states development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance. Local policy is considered to accord with the NPPF.
- 6.13 The site lies adjacent to a row of detached, gabled roof bungalows along Peters Avenue that provides a distinctive character to the area.
- 6.14 As is clear from the Council's Good Design Guide the development of both backland and infill sites requires careful consideration. The Good Design Guide sets out that where an existing plot is proposed to be subdivided to create additional development in 'backland' locations it will require clear and convincing justification in relation to its context. While the plot does have a frontage to Peters Avenue no justification for the subdivision of the plot has been provided.
- 6.15 The proposed plot size is markedly different to its neighbours and to the prevailing character of the surrounding area. In order to address the concerns raised the dwelling has been brought closer to Peter Avenue, so that it is noticeably forward of the building line established by other bungalows on the street with just over 4.6m being provided between the dwelling and the footway.
- 6.16 It is considered that the proposal represents a contrived form of development that would be at odds with the existing pattern of development, significantly diminishing the character and appearance of the area.
- 6.17 As such the proposal would not be reflective of the wider urban grain and would be an uncharacteristic development that would be significantly harmful to the character of the area. Having regard to the scale and density of the proposed dwelling, it would result in the development appearing as an uncharacteristic overdevelopment of the application site. The development could certainly not be described as being sympathetic to local character as required by paragraph 135c) of the Framework or as maintaining a strong sense of place as currently found on St Peters Avenue as required by paragraph 135d) of the Framework.
- 6.18 This would be contrary to Policy DM10 of the Site Allocations and Development Management Policies Development Plan Document, which seeks to ensure that proposed development would complement or enhance the character of the surrounding area, with regards to scale, layout, density, mass, design, materials and architectural features. The proposed development would also fail to meet the requirements of paragraph 135 of the Framework or the advice set out in the Council's Good Design Guide.

Impact on residential amenity

- 6.19 Policy DM10 at part b) states that development will be permitted where the amenity of occupiers of the proposed development would not be adversely affected by activities in the vicinity of the site.
- 6.20 Policy DM10 states that developments will be permitted provided that they do not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings.

- 6.21 Paragraph 135 of the NPPF states that decisions should ensure that developments create places with a high standard of amenity for both existing and future users.
- 6.22 The Council's Good Design Guide, at page 42, states that as a minimum, a proposal for backland development will need to demonstrate that it will not result in loss of amenity to neighbouring properties by way of overlooking, overshadowing or noise. At page 44 it points out that gardens are an important part of the quality of life afforded by a house and that over-development leaving a significantly reduced garden area can affect its appeal in the longer term.
- 6.23 The Good Design Guide states, at page 44, that a general guideline for garden sizes is a minimum garden length of 7 metres and an area of 80 square metres for a three bed house and 60 square metres for a two bed house
- 6.24 The rear garden, which provides private amenity space, meets the minimum garden length set out in the GDG only in part due to the rear garden boundary being angled in comparison to the dwelling. The rear garden varies in depth between 2 metres and 8 metres. When combining the three distinct garden areas to the front, rear and side of the proposed dwelling the scheme meets the requirement in terms of its garden size.
- 6.25 The site plans show a 1.8m fence bordering the rear garden, which would provide some screening but this private amenity space is overlooked to a significant extent by the first floor habitable room windows of the surrounding houses, 16 to 22 Oaks Drive to the north and east and which are oriented such as to exacerbate the sense of enclosure and overlooking of the proposed main rear garden.
- 6.26 The first floor windows at 22 Oaks Drive are 8.5m from the site and the rear elevation of the pair of dwellings at 18 and 20 Oaks Drive is just 11m from the site at its closest point.
- 6.27 The small private rear garden is to a greater or lesser degree overlooked by the four two storey dwellings comprising 16 to 22 Oaks Drive. The combined effect of these upper floor windows is that future residents would experience the feeling of being constantly overlooked when they are in the small rear garden and would experience a lack of privacy. The degree of overlooking and lack of privacy is considered to result in a significant detrimental effect on the amenity of future occupiers of the proposed dwelling.
- 6.28 As such the proposal would be contrary to the requirements of Policy DM10 of the Site Allocations and Development Management Policies Development Plan Document, the requirements of paragraph 135 of the Framework and the Council's Good Design Guide.

7. COMMENTS ON THE APPELLANT'S CASE

- 7.1. The Appellant refers at paragraph 2.4 of their statement to the wording of the delegated officer report. It is confirmed that the reference at paragraph 1.1 of the delegated report to granting permission is a drafting error that should have been corrected.
- 7.2. At paragraph 2.5 of their statement the Appellant refers to the bungalow aligning with the established building line of neighbouring properties. This is not the case. The submitted location plan shows that Peters Avenue forms a gentle curve. The submitted site plan shows that the left hand side of the proposed dwelling aligns

with the projecting right hand side of the adjacent property 66 Peters Avenue but that the right hand side of the proposed dwelling projects further forwards. While this is a feature of the other bungalows on the road it is clear that this alignment does not follow through to 65 Peters Avenue or to 64 Peters Avenue which are both set further back taking account of the slight curve of the road. The submitted site plan demonstrates that the proposed dwelling will be appreciably and uncharacteristically closer to the highway than other properties on Peters Avenue. This is further evidenced by the fact that the Appellant has moved the proposed parking from the front of the dwelling to the side, acknowledging that unlike other dwellings on Peters Avenue there is insufficient space in front of the dwelling to accommodate parking.

7.3 At paragraph 6.4 the Appellant emphasises that paragraph 69 of the NPPF gives great weight to the benefits of windfall sites to meeting housing requirements. The LPA would instead emphasise that great weight should only be given where these sites are suitable.

7.4 Section 7.5 of the Appellant's statement deals with residential amenity and concentrates on the window to window separation distances contained within the Good Design Guide. The LPA has never argued that the proposal does not meet these required minimum distances. The Appellant ignores the significant overlooking and the lack of privacy that results from the proximity and orientation of neighbouring two storey dwellings on Oaks Drive.

8. **CONCLUSIONS**

8.1. Council acknowledges that it cannot currently demonstrate a five year housing land supply position, and so by way of footnote 8 of the Framework the 'tilted balance' element of the presumption in favour of sustainable development as set out in paragraph 11(d) is triggered. Planning permission should therefore be granted for sustainable development unless adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

8.2. The development would make a contribution to the supply of housing although this benefit would be tempered to limited weight in the planning balance given that it relates to a small single dwelling. There would also be economic benefits in terms of the construction of the development, and those associated with the resultant increase in local population; although such positive weight would again be limited to very limited weight due to the small scale of the proposal.

8.3. The scheme results in the development of a new dwelling that fails to be sympathetic to the local character of the surrounding area, as a result of its position. Significant weight in the planning balance is given to this harm.

8.4. The proposal would also fail to provide future occupiers with adequate amenity as a result of the effect of the significant degree of overlooking of the proposed dwelling from the habitable first floor windows of dwellings at 16 to 22 Oaks Drive. Significant weight is given to this harm in the planning balance.

8.5. The benefits and adverse impacts are carefully weighed in the planning balance and it is considered that the limited public benefits of the scheme identified above would be significantly and demonstrably outweighed by the significant harm arising from the proposed development.

- 8.6. Weighing all the above factors into the planning balance, and having regard to the NPPF as a whole, all relevant policies of the Development Plan, in applying paragraph 11 of the NPPF, it is considered that the adverse impacts significantly and demonstrably outweigh the identifiable benefits of the proposal as a whole.
- 8.7. 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 the inclusion of the conditions and suggested below.

9. **CONDITIONS**

1. 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 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details, as follows:

- Proposed Elevations, Floor Plan and Site Location, Drg No. B23/12/SK01 (Received 04/05/2023).
- Proposed Site Plan, Drg No. BS23/12/SK02 Rev A (Received 13/05/2023)

Reason: To ensure a satisfactory form of development in accordance with Policies DM1 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

3. No development above foundation level shall commence on site until representative samples of the types and colours of materials to be used on the external elevations of the dwellings hereby permitted 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 appearance in the interests of visual amenity in accordance with Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

4. Notwithstanding the provisions of Article 3, Schedule 2, Part 1, Classes A, AA, B, C, D and E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, (or any Order revoking and re-enacting that Order with or without modification), the dwelling hereby approved shall not be enlarged, improved or otherwise altered unless planning permission for such development has first been granted by the Local Planning Authority.

Reason: To safeguard then amenity of future occupiers and of neighbouring residents in accordance with Policy DM10 of the Site Allocations and Development Management Policies Development Plan Document (2016).