

Delegated Report

Planning Reference 25/00233/OUT
Applicant(s) Mr A Green
Ward Earl Shilton



Hinckley & Bosworth
Borough Council

Application Site Land north of Woodlands, High Tor East, Earl Shilton

Proposal Outline planning permission for the erection of a single (self-build) dwelling (All matters reserved except access)

Case Officer Sullivan Archer (Senior Planning Officer)

1. Recommendations

1.1. Refuse planning permission subject to:

- Planning reasons detailed at the end of this report.

2. Planning Application Description

2.1. This planning application seeks outline planning permission for the provision of a single self-build dwelling at land north of Woodlands, High Tor East, Earl Shilton. Only Access is sought for approval within this outline application and all other matters are reserved.

2.2. No details have been provided regarding the appearance, scale, layout or landscaping of the development.

3. Description of the Site and the Surrounding Area

3.1. The 425sqm application site is located to the north of, and outside of the settlement boundary of, Earl Shilton in the designated open countryside within the Earl Shilton North and Barwell West Landscape Sensitivity Area (LSA) within the wider Stoke Golding Rolling Farmland Landscape Character Area (LCA).

3.2. The LSA has a rural character and the sports playing fields and allotment gardens to the northeast of Earl Shilton create a blurring of the settlement boundary. The LSA is considered to have an overall medium to high sensitivity to residential development.

3.3. The site is identified within the Council's latest Open Space and Recreation Study (2016) as a part of the Keats Lane Allotments Open Space and Recreational Facility (EAR32).

- 3.4. The application site lies within an area of allotments and is currently laid out as an allotment, but there appears to be an area of residential garden to the rear of the site, which is separated from, and distinct from, the adjacent neighbouring dwelling, The Woodlands. The Woodlands is adjacent to the southern boundary of the application site and features a brick-built bungalow with an attached double garage.
- 3.5. The site is accessed via High Tor East, which is a partly unadopted and private road, subject to a 30mph speed limit. Public Right of Way, Footpath U27, runs halfway up this highway, which is maintainable by Leicestershire County Council. This Public Footpath connects to Public Footpath T94, which runs in a northerly direction 127m to the east of the application.
- 3.6. High Tor East serves dwellings of a variety of ages, styles, designs, scales, and sizes and therefore the area does not feature a discernible unique character. There is continuous development along High Tor East that ends at the dwellings 'The Woodlands' and 'Bardon View' to the east and south of the application site respectively. Although High Tor East is reasonably flat as it enters the area of the allotments, there is an impression of descending a sharp slope in this location. Whilst the land within the application site itself is flat, the site lies on this sloping land and is notably lower in ground level than the other dwellings along High Tor East.
- 3.7. To the north and west of the application site are further allotments within the Keats Lane Allotments, beyond these areas are open agricultural fields. The allotments themselves are largely open and relate well to the open countryside beyond. To the south and southeast of the application site is residential development within Earl Shilton.

4. Relevant Planning History

4.1 24/00138/OUT

- Outline planning permission (access only) for the erection of a single dwelling (C3 self-build)
- Refused
- 05.04.2024

The application was refused for the following reasons:

1. The development represents unjustified and unrestricted residential development that extends beyond the existing built form into the open countryside. This domestication of the application site results in an irreversible and detrimental urbanising and domesticating effect on the intrinsic value, beauty, open character, and landscape character of the countryside. This harm significantly and demonstrably outweighs the benefits of the development, and therefore the proposal is in conflict with, and is contrary to, the Good Design Guide, Policy 22 of the adopted Earl Shilton and Barwell Area Action Plan (2014), Policies DM4 and DM10 of the adopted Site

Allocations and Development Management Policies Development Plan Document (2016), as well as Sections 2, 11, 12, and 15 of the National Planning Policy Framework (December 2023).

2. The development results in the unjustified loss of recreational allotment land within the Keats Lane Allotments that is identified within the adopted Earl Shilton and Barwell Area Action Plan (2014) and the Council's Open Space and Recreation Study (2016) as an Open Space and Recreation Facility. This loss causes significant adverse social impacts to the wider community of Earl Shilton that significantly and demonstrably outweigh the benefits of the development, contrary to, and in conflict with, Policy 25 of the adopted Earl Shilton and Barwell Area Action Plan (2014), Policy DM8 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), as well as Paragraph 103 and Section 8 of the National Planning Policy Framework (December 2023).

4.2 **22/00980/OUT**

- One new dwelling
- Withdrawn
- 14.11.2022

The application was withdrawn by the Applicant following confirmation from the Local Planning Authority that the development was recommended for refusal due to its harm to the character of the surrounding area and the designated countryside, and therefore conflict with Policy DM4 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

5. Publicity

- 5.1 The application has been publicised by sending out letters to local residents, and a site notice was also posted within the vicinity of the site.

- 5.2 In total, six responses have been received from the public, who have objected to the development for several reasons including:

- Ecology concerns
 - Harm to protected species
- Harm to the character of the area
 - The development is outside of the settlement boundary of Earl Shilton
 - Extension of built form into the countryside
 - Harm to the countryside
 - The site is not surplus nor previously developed land

- Harm to residential amenity
 - The development will diminish the quality of life for existing residents
 - Noise pollution
- Highway safety concerns
 - The access past Woodlands and Bardon View is very restricted
 - Damage to the existing highway
 - Danger to allotment users
 - Disruption to access to allotments
 - Exacerbation of on-street parking situation
 - The existing highway is saturated
 - High Tor East is an unadopted road
 - High Tor East is a steep dirt track beyond Bardon View
 - High Tor East is not of sufficient width for two cars to pass each other
 - High Tor East is not suitable for additional traffic
 - Insufficient turning facilities along High Tor East
 - Irresponsible addition of further properties on an inaccessible road
 - Pedestrian safety concerns
- Infrastructure
 - There are currently no mains services at the site for gas, water, electricity, or sewers
- Insufficient information has been submitted to indicate that the scheme is acceptable
- Harm to the existing allotments
 - Allotments are very precious, and we can't afford to lose any more to building land
 - Approval of this development sets a precedent for the loss of further allotments
 - The land is designated as part of an Open Space Sports and Recreation Facility
 - Loss of light to existing allotment users
- Planning History
 - The application site has already been refused for a single dwelling
 - The other planning applications referred to within this submission are not comparable or applicable to this development
- The proposal does not represent sustainable development

5.3 No further responses have been received.

6. Consultation

6.1 The Council's Waste Management Department and Earl Shilton Town Council did not respond to the planning application.

6.2 There have no objections to the application from the following consultants:

- Hinckley & Bosworth Borough Council (HBBC)'s Drainage Department
- HBBC's Environmental Services (subject to conditions)

Ecology

6.3 The County Council's Ecology Department confirmed that the site is situated on the edge of Earl Shilton and links directly to the wider countryside where there are records of protected species in close proximity. No ecology information has been submitted to support the outline planning application and therefore the Ecology Department had a holding objection until an ecology survey had been submitted to establish the presence or absence of protected species.

6.4 This holding objection was submitted on 10 April 2025, and no ecological information has been submitted by the Applicant to support the planning application since this time. Therefore, the Applicant has failed to comply with the statutory requirements within Paragraphs 98 and 99 of the ODMP Circular 06/2006 (Biodiversity and Geological Conservation).

Highways

6.5 Leicestershire County Council as the Local Highway Authority (LHA) confirmed that High Tor East is classified as a private road 82m from its confluence with Keats Lane. Therefore, private rights for vehicular access along High Tor East to the application site are a matter for all the adjoining property owners, who share responsibility for maintaining the lane for vehicular traffic.

6.6 The LHA stated that the proposed development should not adversely affect the Public Footpath U27 and provided seven informatives for the Applicant associated with this.

Pollution

6.7 The Council's Environmental Services Department requested two planning conditions in relation to the investigation of any potential land contamination within the site.

6.8 No further responses have been received.

7. Policy

7.1 Core Strategy (2009):

- Policy 2: Development in Earl Shilton
- Policy 19: Green Space and Play Provision

7.2 Site Allocations and Development Management Policies Development Plan Document (SADMP) (2016):

- Policy DM1: Presumption in Favour of Sustainable Development
- Policy DM4: Safeguarding the Countryside and Settlement Separation
- Policy DM6: Enhancement of Biodiversity and Geological Interest
- Policy DM7: Preventing Pollution and Flooding
- Policy DM8: Safeguarding Open Space, Sport and Recreation Facilities
- Policy DM10: Development and Design
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards

7.3 Earl Shilton and Barwell Area Action Plan (ESBAAP) (2014):

- Policy 22: Development and Design
- Policy 25: Safeguarding Open Space, Sport, and Recreational Facilities

7.4 National Planning Policies and Guidance:

- National Planning Policy Framework (NPPF) (2024)
- Planning Practice Guidance (PPG)
- National Design Guide (2019)
- Levelling-Up and Regeneration Act (LURA) (2023)
- Self-Build and Custom Housebuilding Act (2015)

7.5 Other Relevant Guidance:

- Good Design Guide (2020)
- Landscape Character Assessment (LCA) (2017)
- Landscape Sensitivity Assessment (LSA) (2017)
- Leicestershire Highway Design Guide (LHDG) (2022)
- Open Space and Recreation Study (2016)

8. Appraisal

8.1 The key issues in respect of this application are therefore:

- Principle of development
- Housing land supply
- Impact upon the character of the area

- Impact upon residential amenity
- Impact upon parking provision and highway safety
- Planning balance

Principle of Development

- 8.2 Paragraph 2 of the National Planning Policy Framework (NPPF) identifies that planning law requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The NPPF is a material planning consideration in planning decisions.
- 8.3 Paragraph 7 of the NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. The three overarching objectives of sustainable development (economic, social, and environmental) are detailed within Paragraph 8 of the NPPF. Therefore, in accordance with Paragraph 11 of the NPPF, planning decisions should apply a presumption in favour of sustainable development.
- 8.4 However, Paragraph 12 of the NPPF confirms that the presumption in favour of sustainable development does not change the statutory status of the Development Plan as the starting point for decision making. The current Development Plan consists of the adopted Core Strategy and the adopted Site Allocations and Development Management Policies Development Plan Document (SADMP).
- 8.5 Both the Core Strategy and the SADMP are over 5 years old and were adopted prior to the publication of the current NPPF. Paragraph 34 of the NPPF states that policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years and should then be updated as necessary.
- 8.6 Nevertheless, in accordance with Paragraph 232 of the NPPF, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the NPPF. Due weight should be given to existing policies according to their degree of consistency with the NPPF. Ultimately, the closer the policies in the plan are to the policies in the NPPF, the greater weight they may be given.
- 8.7 Policy 2 of the adopted Core Strategy states the housing development will be supported within the identified settlement boundary of Earl Shilton to deliver a minimum of 10 new residential dwellings.
- 8.8 Notwithstanding this, the application site is not within the identified settlement boundary of Earl Shilton.
- 8.9 Chapter 11 of the NPPF promotes an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. This demonstrates that safeguarding and improving the environment is an effective use of land.

- 8.10 As a result, outside defined settlement boundaries, the countryside is not regarded as a sustainable location for new development. Chapter 15 of the NPPF requires planning policies and decisions to conserve and enhance the natural and local environment. Paragraph 187(b) specifically highlights that this should be achieved by, *“Recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services.”*
- 8.11 This is supported by Policy DM4 of the SADMP, which states that the Council will protect the intrinsic value, beauty, open character, and landscape character of the countryside from unsustainable development. To ensure this, Policy DM4 of the SADMP only considers development in the countryside sustainable where:
- (a) It is for outdoor sport or recreation purposes (including ancillary buildings) and it can be demonstrated that the proposed scheme cannot be provided within or adjacent to settlement boundaries; or
 - (b) The proposal involves the change of use, re-use or extension of existing buildings which lead to the enhancement of the immediate setting; or
 - (c) It significantly contributes to economic growth, job creation and/or diversification of rural businesses; or
 - (d) It relates to the provision of stand-alone renewable energy developments in line with Policy DM2: Renewable Energy and Low Carbon Development; or
 - (e) It relates to the provision of accommodation for a rural worker in line with Policy DM5 - Enabling Rural Worker Accommodation.
- 8.12 Therefore, the proposed development does not relate to, or comply with, any of the criteria in Policy DM4 of the SADMP, but this does not mean that the development is not sustainable.
- 8.13 Importantly, Policy DM4 of the SADMP also requires that development meets five further requirements to be considered as sustainable development. These are discussed in detail further in the report.
- 8.14 For example, the Application Form suggests that the site is surplus previously developed land. However, this statement is not mentioned within the Planning Statement.
- 8.15 It is noted that the definition of ‘previously developed land’ within the NPPF excludes, *“Land in built-up areas such as residential gardens, parks, recreation grounds, and allotments.”* In light of this, Local Planning Authority do not consider the site to represent previously developed land.
- 8.16 In addition, the application site is identified within Appendix 6 of the ESBAAP and the Council’s latest Open Space and Recreation Study (2016) as a part of the Keats Lane Allotments Open Space and Recreational Facility (EAR32).

- 8.17 Paragraph 125(b) of the NPPF confirms that planning decisions should recognise that some undeveloped land can perform many functions, such as for wildlife, recreation, flood risk mitigation, cooling/shading, carbon storage or food production. Allotments are considered to represent areas of undeveloped land for recreation and food production.
- 8.18 Chapter 8 of the NPPF requires planning policies and decisions to aim to achieve healthy, inclusive, and safe places and beautiful buildings, which enable and support healthy lifestyles, especially where this would address identified local health and wellbeing needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments, and layouts that encourage walking and cycling.
- 8.19 Paragraph 4.62 of the adopted Core Strategy states that an important component of green infrastructure is the green spaces and play areas that are integral to both urban and rural communities. The provision of high-quality green spaces and play areas in the right areas can have significant benefits in relation to health, community cohesion, and general wellbeing.
- 8.20 Paragraph 104 of the NPPF states that existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:
- (a) An assessment has been undertaken which has clearly shown the open space, buildings, or land to be surplus to requirements; or
 - (b) The loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or
 - (c) The development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.
- 8.21 Policy DM8 of the SADMP supplements Policy 19 of the adopted Core Strategy by seeking to safeguard existing facilities whilst enabling flexibility to accommodate for identified surpluses, improvements or replacement facilities. Policy DM8 of the SADMP states that planning permission will not be granted for proposals resulting in the loss of land or buildings in recreational or sporting use and areas of open space, as identified in the most recent Open Space, Sport and Recreational Facilities Study, except where:
- (a) A replacement of an equivalent typology is provided, as defined by the most recent Open Space, Sport, and Recreational Facilities Study, in an appropriate location serving the local community; or
 - (b) It is demonstrated that there is a surplus of recreational land, facilities, or open space of the same typology exceeding the needs of the local community; or

- (c) The development of a small part of a larger site in recreational use would result in the enhancement of recreational facilities on the remainder of the site, or on a nearby site serving the same community.

These requirements are echoed within Policy 25 of the ESBAAP.

- 8.22 The unjustified loss of recreational allotment land formed a reason for refusal within the previous application 24/00138/OUT for a single dwelling within this application. In spite of this, the Applicant has not undertaken an assessment, nor provided any justification to demonstrate that the open space and land is surplus to requirement within this application. Moreover, the Applicant has not proposed to replace the open space with an equivalent or better provision.
- 8.23 Whilst the Planning Statement suggests that the land is no longer utilised as an allotment by the Applicant, this does not suggest that the land does not form part of the Keats Lane Allotments as allocated within the Development Plan, nor that it could not still be used as an allotment in accordance with this designated use.
- 8.24 Therefore, the proposal results in the loss of an area of Local Green Space that is designated within the ESBAAP and the Council's latest Open Space and Recreation Study. This is considered to detrimentally impact the Local Green Space in principle and causes significant adverse social impacts to the wider community of Earl Shilton. Therefore, the development is contrary to, and in conflict with Paragraphs 104 and 125, and Chapter 8 of the NPPF, Policy DM8 of the SADMP, and Policy 25 of the ESBAAP.
- 8.25 In summary, the Council considers that the proposal is offered no support by Policy DM4 of the SADMP, nor Policy 2 of the adopted Core Strategy, and represents new and unjustified residential development in the designated countryside, which causes harm to the character of the area in principle. This is considered to be contrary to, and in conflict with, Chapters 11, 12, and 15 of the NPPF, Policy 2 of the adopted Core Strategy, and Policy DM4 of the SADMP.
- 8.26 Furthermore, the scheme results in the loss of allotments and open space as identified within the Open Space and Recreation Study, which is considered to be contrary to, and in conflict with, Paragraphs 8(b), 104, and 125(b), and Chapter 8 of the NPPF, Policy DM8 of the SADMP, and Policy 25 of the ESBAAP.
- 8.27 As such, the application does not accord with Development Plan Policy and is unacceptable in principle, subject to the assessment of all other material considerations. Other material considerations are set out within the next sections of the report.

Housing Land Supply

- 8.28 Chapter 5 of the NPPF requires planning policies and decisions to deliver a sufficient supply of homes to support the Government's objective of significantly boosting the supply of homes without unnecessary delay. The overall aim should be

to meet an area's identified housing need, including an appropriate mix of housing types for the local community.

- 8.29 Paragraph 73 of the NPPF states that small and medium sized sites, such as windfall sites, can make an important contribution to meeting the housing requirements of an area, are essential for Small and Medium Enterprise housebuilders to deliver new homes, and are often built out relatively quickly.
- 8.30 Paragraph 11(d) of the NPPF states that planning decisions should apply a presumption in favour of sustainable development where there are no relevant Development Plan policies, or the policies which are most important for determining the application are out-of-date. Footnote 8 of Paragraph 11 of the NPPF highlights that housing policies are considered to be out-of-date where local planning authorities cannot demonstrate a five-year supply of deliverable housing sites.
- 8.31 The Planning Policy team are currently reviewing the latest revisions to the NPPF within the 2024 version of the document and its implications for the Council's Five-Year Housing Land Supply. A revised position will be published by May 2025 once the monitoring for the 2024/25 year has been completed. It is however likely that, with the revised need figure of 682 dwellings (649dpa + 5% buffer as per Paragraphs 62 and 78(a) of the NPPF), that the Council will be unable to demonstrate a Five-Year Housing Land Supply once the revised position is published.
- 8.32 In light of this, and due to the age of relevant housing policies within the adopted Core Strategy, the 'tilted' balance in Paragraph 11(d) of the NPPF is triggered in accordance with Footnote 8 and Paragraph 11 of the NPPF. For decision-taking, Paragraph 11(d) of the NPPF requires planning permission to be granted unless:
- i. The application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or
 - 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.
- 8.33 Footnote 7 of the NPPF confirms that areas and assets of particular importance include habitat sites (and those listed in Paragraph 189 of the NPPF) and/or designated as Sites of Special Scientific Interest (SSSI); land designated as Green Belt, Local Green Space, a National Landscape, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in Footnote 75 of the NPPF); and areas at risk of flooding or coastal change.

- 8.34 The proposal results in the loss of an area of Local Green Space that is designated within the ESBAAP and the Council's latest Open Space and Recreation Study. This is considered to detrimentally impact the Local Green Space in principle. Therefore, the application of policies within the NPPF that protect areas of particular importance provide a strong reason for refusing the proposed development. Given the above, the 'tilted' balance required by Paragraph 11(d)(ii) of the NPPF is disengaged and the appeal proposal should be determined in accordance with the 'normal' balance as set out at Paragraph 2 of the NPPF.
- 8.35 Nevertheless, Footnote 9 of the NPPF confirms that these key policy paragraphs referred to within Paragraph 11(d)(ii) of the NPPF include Paragraphs 66 and 84 of Chapter 5 (Delivering a Sufficiently Supply of Homes), 91 of Chapter 7 (Ensuring the Vitality of Town Centres), 110 and 115 of Chapter 9 (Promoting Sustainable Transport), 129 of Chapter 11 (Making Effective Use of Land), and 135, and 139 of Chapter 12 (Achieving Well-Designed Places).
- 8.36 In this instance, only Key Policy Paragraphs 115, 129, 135, and 139 are applicable to this development.
- 8.37 The development is for one residential property, and therefore Policy 15 (Affordable Housing) and Policy 16 (Housing Density, Mix and Design) of the adopted Core Strategy are not applicable for this scheme.
- 8.38 Whilst it is unlikely that the Council are unable to deliver a five-year supply of land for housing, the minor benefit of providing one dwelling within this application site towards the Council's supply of housing is considered to attract limited weight in the planning balance.

Custom and Self-Build Housing (CSB)

- 8.39 Paragraph 63 of the NPPF states that the need, size, type, and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. These groups should include (but are not limited to) those who wish to commission or build their own homes.
- 8.40 To promote the development of a good mix of sites, Paragraph 73(b) and (d) of the NPPF states that local planning authorities should seek opportunities to support small sites to come forward for community-led development for housing and self-build and custom-build housing and support the development of windfall sites by giving great weight to the benefits of using suitable sites within existing settlements for homes respectively.
- 8.41 The application site is not within the existing settlement boundary of Earl Shilton and therefore the great weight detailed within Paragraph 73(d) of the NPPF does not apply in these site-specific circumstances.

- 8.42 Section 1 of the Self-Build and Custom Housebuilding Act 2015 defines self-build and custom housebuilding as the building or completion of houses by individuals, associations of individuals, or persons working with or for individuals or associations of individuals, to be occupied as homes by those individuals.
- 8.43 The Applicant has stated within their Application Form and within the title and introduction of their Planning Statement that the proposed development is classified as a 'custom house-build and self-build' (CSB) scheme within the definition provided within the Self-Build and Custom Housebuilding Act 2015. This is a material consideration within this planning application.
- 8.44 However, it is noted that other supporting information has been submitted within this application to demonstrate or indicate how the development shall meet the definition of a custom house-build or self-build for the purposes of the Self-Build and Custom Housebuilding Act 2015.
- 8.45 Section 2A of the Self-Build and Custom Housebuilding Act places a statutory duty on the Local Planning Authority to give permission to a sufficient number of self-build and custom housebuilding developments on serviced plots to meet the demand for self-build and custom housebuilding in the Authority's area.
- 8.46 The demand for self-building and custom housebuilding arising in an authority's area in a base period is evidence by the number of entries added during that period to the authority's Self-Build and Custom Housebuilding Register. At the end of each base period, the Local Planning Authority have three years in which to approve an equivalent number of plots of land for self-build and custom housebuilding on serviced plots of land as there are entries for that base period. However, there is no duty for the Local Planning Authority to grant permission for land that specifically meets the requirements expressed by those on the Register.
- 8.47 Currently, the Council has supplied less suitable cumulative permissions than the cumulative required demand for self-build and custom house-build dwellings at the end of Base Period 9, which results in a modest shortfall of five self-build and custom-house build dwellings.
- 8.48 If secured by a UU, this development as a self-build and custom house-build would contribute to the current unmet demand and the cumulative need for permissions by the end of this Base Period (31 October 2024 to 30 October 2025).
- 8.49 The Applicant has submitted a Unilateral Undertaking (UU) during the application process to secure the development as a CSB development.
- 8.50 Notwithstanding the above, whilst the Local Planning Authority are not meeting their statutory duty to permit a sufficient number of self-build and custom house-build schemes, the current proposal would only provide one additional dwelling to this supply. As such, the benefits of this small contribution in addressing the limited current shortfall in the Council's provision self-build and custom housebuilding developments is considered to attract only moderate weight in the planning balance.

Design and Impact upon the Character of the Area

- 8.51 Key Policy Paragraph 129(d) of the NPPF states that planning decisions should support development that makes an effective use of land, taking into account the desirability of maintaining an area's prevailing character and setting (including residential gardens), or of promoting regeneration and change.
- 8.52 Chapter 12 of the NPPF confirms that good design is a key aspect of sustainable development, and the creation of high quality, beautiful, and sustainable buildings and places is fundamental to what the planning and development process should achieve. Key Policy Paragraph 135 of the NPPF details the six national policy requirements of development to ensure the creation of well-designed and beautiful places.
- 8.53 Guidance Point C1 of the National Design Guide (NDG) confirms that well-designed new development should respond positively to the features of the site itself and the surrounding context beyond including the existing built development and landscape character, amongst others.
- 8.54 Guidance Point I1 of the NGD highlights that new developments should consider the composition of street scenes and individual buildings and their elements including the height, scale, massing and relationship between buildings, as well as views, vistas, landmarks, and landscaping, amongst others.
- 8.55 Key Policy Paragraph 139 of the NPPF states that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design (as contained in the National Design Guide and National Model Design Code), taking into account any local design guidance and supplementary planning documents such as design guides and codes.
- 8.56 Policy DM4(i) and (iii) of the SADMP states that development in the countryside will be considered sustainable where:
- i.) It does not have a significant adverse effect on the intrinsic value, beauty, open character, and landscape character of the countryside; and
 - iii.) It does not create or exacerbate ribbon development.
- 8.57 Policy DM10(c) of the SADMP states that developments will be permitted where they complement or enhance the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features.
- 8.58 Policy 22 of the ESBAAP requires development to ensure that it does not result in detriment to the character of appearance of the host building or the surrounding area. Furthermore, Policy 22 requires development to respect the local distinctiveness of existing buildings and landscape settings, and its design should respect the scale, proportions, and heights of existing buildings, neighbouring structures, and the overall street scene.

- 8.59 No details have been submitted in relation to the precise appearance, siting, scale, layout, or landscaping of the development.
- 8.60 The development represents new, unjustified, and unrestricted residential development in the designated open countryside and results in the loss of public open space that is identified within the Open Space and Recreation Study. By virtue of these factors, the development is unacceptable in principle and results in significant harm to the character of the area, including the Earl Shilton North and Barwell West Landscape Sensitivity Area, the Stoke Golding Rolling Farmland Landscape Character Area, and the intrinsic value, beauty, open character, and landscape character of the countryside.
- 8.61 The provision of residential development in this application site fundamentally and detrimentally alters the character of the application site from a rural area of allocated open space to a private residential use. Whilst the application site is adjacent to existing residential properties, there is a clear distinction between the residential properties and their associated gardens on High Tor East and the allotments beyond.
- 8.62 The proposal intrudes beyond the area of built residential development on High Tor East into the designated open countryside. This is considered to exacerbate the existing ribbon development of High Tor East, which is contrary to, and in conflict with, the requirements of Policy DM4(iii) of the SADMP and results in significant harm to the character of the area.
- 8.63 As the development encroaches into the designated open countryside and the allocated area of public open space, any residential development within this site is considered to represent a prominent and incongruous domesticating feature in the verdant and rural local landscape. The considerable impact of a dwelling in this location on the character of the area is also heightened by the clear level differences between the application site and the other dwellings along High Tor East, and the visual prominence of the development from the Keats Lane Allotments and Public Footpaths T94 and U27.
- 8.64 In summary, the development represents new, unjustified, and unrestricted residential development in the designated open countryside, which is protected from unsustainable development by local and national planning policy. The proposal is considered to result in the permanent domestication of the site, which intrudes into the verdant rural character of the application site and the surrounding area. This harm is heightened by the visual prominence of the development from public views.
- 8.65 In light of the above, the scheme is considered to cause a significant and irreversible impact upon the character of the site and the surrounding area, including the Earl Shilton North and Barwell West Landscape Sensitivity Area, the Stoke Golding Rolling Farmland Landscape Character Area, and the intrinsic value, beauty, open character, and landscape character of the countryside.

- 8.66 By virtue of these factors, the development is contrary to, and in conflict with, Chapters 12 and 15 of the NPPF, including Key Policy Paragraphs 129 and 135, Policies DM4 and DM10 of the SADMP, Policy 22 of the ESBAAP, the National Design Guide, and the Good Design Guide. As a result, the scheme is not considered to be well designed and fails to reflect local design policies and government guidance on design as a matter of principle. In accordance with Key Policy Paragraph 139 of the NPPF, it is considered that the development should be refused.

Impact upon Residential Amenity

- 8.67 Key Policy Paragraph 135(f) of the NPPF requires planning policies and decisions to ensure that developments create places that are safe, inclusive, and accessible, which promote health and well-being, and a high standard of amenity for existing and future users.
- 8.68 Paragraph 14.2 of the SADMP states that new development should be located and designed in such a way that the amenity of both existing residents and occupiers is fully considered when assessing planning applications.
- 8.69 Policy DM10(a) and (b) of the SADMP states development will be permitted provided that 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 and noise and that the amenity of occupiers would not be adversely affected by activities within the vicinity of the site.
- 8.70 Policy 22 of the ESBAAP states that development will be permitted provided that the amenity of occupiers of the proposed development would not be adversely affected by the activities within the vicinity of the site.
- 8.71 The Good Design Guide SPD outlines that development will need to demonstrate that it will not result in loss of amenity to neighbouring properties by way of overlooking, overshadowing or noise.
- 8.72 No details of the design of the development have been submitted at this stage.
- 8.73 Nevertheless, it is considered that through the use of planning conditions and the Council's continued role in assessing detailed plans at the Reserved Matters stage of this development, that sufficient scrutiny and control is retained to ensure that the scheme is designed to prevent any significant harm to the residential amenity of neighbouring dwellings or the future occupants of the scheme at the Reserved Matters stage of the development in accordance with the Good Design Guide, Policy 22 of the ESBAAP, and Policy DM10 of the SADMP.

Impact upon Parking Provision and Highway Safety

- 8.74 Key Policy Paragraph 115(b) of the NPPF states that planning decisions should ensure that developments provide safe and suitable access to the site for all users. In accordance with Paragraph 115(d) of the NPPF, any proposal should ensure that any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree through a vision-led approach.
- 8.75 Ultimately, development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios in accordance with Paragraph 116 of the NPPF.
- 8.76 To support this, Policy DM17 of the SADMP states that development proposals need to demonstrate that there is not a significant adverse impact upon highway safety, and that the residual cumulative impacts of development on the transport network are not severe. All proposals for new development and changes of use should reflect the highway design standards that are set out in the most up to date guidance adopted by the relevant highway authority (currently this is the Leicestershire Highway Design Guide (LHDG)).
- 8.77 The proposal is located approximately 145m to the north of the junction of High Tor East/Keats Lane. Although the access onto Keats Lane is not in accordance with Leicestershire Highway Design Guide (LHDG) standards, it is acknowledged that:
- High Tor East is a private road
 - The nature of Keats Lane, given it is narrow with prevalent on-street vehicle parking means speeds are likely to be lower than posted
 - Keats Lane and High Tor East are cul-de-sacs, meaning the number of trips using these roads are likely to be lower
 - There have been no recorded personal injury collisions within 200m of the junction of Keats Lane/High Tor East within the last five years
- 8.78 The Applicant has not submitted a drawing which specifically provides details in respect of the site access arrangements. A red line boundary has, however, been provided which details that High Tor East falls within the Applicant's red line boundary between the site and Keats Lane. On the basis High Tor East is not adopted, and in light of the previous comments of the Local Highway Authority within refused planning application 24/00138/OUT, the Local Planning Authority would not seek to resist the application on the grounds of highway safety.
- 8.79 No details of the quantum, dimensions, or layout of the parking provision for the application site. Notwithstanding this, it is considered that sufficient off-street parking that complies with the requirements of the LHDG and Policy DM18 of the SADMP can be provided within the application site during the Reserved Matters Stage of the development.

- 8.80 It is not considered that the proposal is likely to affect the enjoyment of the Public Footpath U27.
- 8.81 In summary, subject to further information being provided by the Applicant, it is considered that the proposal does not create an unacceptable impact on highway safety or the road network. Therefore, the scheme is regarded as in accordance with Policies DM17 and DM18 of the SADMP and the LHDG.

Planning Balance

- 8.82 To summarise, the Local Planning Authority are unlikely to be able to demonstrate a five-year supply of land for housing. In light of this, and due to the age of relevant housing policies within the adopted Core Strategy, the 'tilted' balance in Paragraph 11(d) of the NPPF is triggered in accordance with Footnote 8 and Paragraph 11 of the NPPF.
- 8.83 In accordance with Paragraph 11(d)(ii) of the NPPF, planning permission should be granted unless:
- i. The application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or
 - 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.
- 8.84 Paragraph 137 of the NPPF states that applicants, where applicable, should provide sufficient information to demonstrate how their proposals will meet the design expectations set out in local and national policy.
- 8.85 Notably, the Applicant has failed to identify any benefits of the scheme within their Planning Statement, nor demonstrate how the proposal meets the design expectations set out in local and national policy.
- 8.86 Instead, the Applicant has referred to the Court of Appeal's decision on the *DLA Delivery Ltd v Baroness Cumberledge of Newick* [2018] EWCA Civ 1305. Paragraph 34 of this decision confirms that, "*Consistency in planning decision-making is important,*" and, "*There will be cases in which it would be unreasonable for the Secretary of State not to have regard to a previous appeal decision bearing on the issues in the appeal decision he is considering.*"
- 8.87 It is a material planning consideration within the determination of this planning application that two proposals for the development of a single dwelling within this site have been withdrawn and refused via applications 22/00980/OUT and

24/00138/OUT respectively due to their harm to the character of the surrounding area and the countryside, and due to the unjustified loss of public open space.

- 8.88 It is noted that the Applicant has failed to have any regard to the planning history of the site, and the submitted details fail to make attempt to demonstrate how the proposal meets the design expectations set out in local and national policy in light of the previous reasons for refusal within application 24/00138/OUT.
- 8.89 In lieu of having regard to these key material considerations, the Applicant has referred to four alternative planning applications (24/00484/OUT, 23/00982/OUT, 18/00701/FUL, and 23/01229/OUT) within Earl Shilton and Barwell.
- 8.90 Planning applications 24/00484/OUT and 23/01129/OUT were for major developments of up to 33 and 95 dwellings respectively. Therefore, these applications had significantly different material considerations in comparison to the current proposal and the benefits associated with these schemes are not comparable to the development of a single dwelling. Importantly, neither of these planning applications referred to by the Applicant resulted in the loss of allocated public open space. As a result, these planning decisions attract very little weight within the determination of this planning application.
- 8.91 At the time of writing this report, planning application 23/00982/OUT has not been determined but members of the Council's Planning Committee resolved to approve the planning application on 24 September 2024.
- 8.92 Nevertheless, planning application 23/00982/OUT was supported by a Landscape and Visual Impact Assessment, and Paragraphs 3.2 and 3.3 of the Committee Report for this application confirmed that half of the site already benefitted from an approved residential use, and the site was surrounded by land that either was in residential use or had received planning permission for their conversion into residential uses. Importantly, this planning application did not result in the loss of allocated public open space. Therefore, the proposal within planning application 23/00982/OUT had significantly and materially different to the circumstances to this current planning application and therefore this material consideration is considered to attract very little weight within the determination of this planning application.
- 8.93 Planning application 18/00701/FUL was for two dwellings at land south of Woodlands, High Tor East, Earl Shilton. It is noted that this proposal is located in between existing residential properties along High Tor East and therefore the current application site has a materially differently relationship to the character of the surrounding area. Therefore, this material consideration is considered to attract little weight within the determination of this planning application.
- 8.94 Notwithstanding the above, every application must be determined on its own merits.

- 8.95 Whilst the Council is unlikely to be able to deliver a five-year supply of land for housing, the provision of one dwelling within this application site to the Council's supply of housing is considered to attract limited weight in the planning balance.
- 8.96 It is acknowledged that there are potential social benefits from the scheme such as providing housing for a range of occupants including families, and economic benefits associated with the construction of the dwelling and the future occupant's opportunity to act as new customers and employees for local businesses and services. Nevertheless, these benefits when associated with one dwelling are modest and are not considered to maintain or enhance the local community. In addition, there are no planning benefits such as affordable housing or essential infrastructure provision as identified within Paragraph 12.13 of the SADMP.
- 8.97 Whilst the Local Planning Authority are not currently meeting their statutory duty to permit a sufficient number of self-build and custom house-build schemes, the proposal would only provide one additional dwelling to this supply. As such, the benefits of this small contribution in addressing the limited current shortfall in the Council's provision self-build and custom housebuilding developments is considered to attract moderate weight in the planning balance providing it is appropriately secured by a Unilateral Undertaking.
- 8.98 On the other hand, the proposal significantly detrimentally impacts on, and results in the unjustified loss of, an area of a designated Local Green Space that is designated within ESBAAP and the Council's latest Open Space and Recreation Study. This loss causes significant adverse social impacts to the wider community of Earl Shilton. As a result, the proposal is contrary to, and in conflict with, Paragraphs 8(b), 104, and 125(b), and Chapter 8 of the NPPF, Policy DM8 of the SADMP, and Policy 25 of the ESBAAP. This attracts significant weight in the planning balance.
- 8.99 Therefore, the application of policies within the NPPF that protect areas of particular importance provide a strong reason for refusing the proposed development. Given the above, the 'tilted' balance required by Paragraph 11(d)(ii) of the NPPF is disengaged and the appeal proposal should be determined in accordance with the 'normal' balance as set out at Paragraph 2 of the NPPF.
- 8.100 No ecology information has been submitted to support the outline planning application, and therefore the Applicant has failed to demonstrate that protected species and their habitats are not adversely affected by this proposal.
- 8.101 As a result, the Applicant has failed to comply with the statutory requirements within Paragraphs 98 and 99 of the ODMP Circular 06/2006 (Biodiversity and Geological Conservation). Therefore, the development is contrary to, and in conflict with the of the ODMP Circular 06/2006, Chapter 15 of the NPPF, and Policy DM6 of the SADMP. This attracts substantial weight in the planning balance.
- 8.102 Of greatest importance the scheme is considered to have a significant and irreversible impact upon the character of the site and the surrounding area,

including the Earl Shilton North and Barwell West Landscape Sensitivity Area, the Stoke Golding Rolling Farmland Landscape Character Area, and the intrinsic value, beauty, open character, and landscape character of the countryside. By virtue of these factors, the development is contrary to, and in conflict with, Chapters 12 and 15 of the NPPF, including Key Policy Paragraphs 129 and 135, Policies DM4 and DM10 of the SADMP, Policy 22 of the ESBAAP, the National Design Guide, and the Good Design Guide. As a result, the scheme is not considered to be well designed and fails to reflect local design policies and government guidance on design as a matter of principle. This attracts substantial weight in the planning balance. In accordance with Key Policy Paragraph 139 of the NPPF, it is considered that the development should be refused.

- 8.103 To conclude, the application of policies within the NPPF that protect areas of particular importance provide a strong reason for refusing the proposed development, and therefore the 'tilted' balance required by Paragraph 11(d)(ii) of the NPPF is disengaged.
- 8.104 The proposal results in the unjustified loss of an area of a designated Local Green Space, significant harm to the character of the surrounding area and the designated open countryside and fails to demonstrate that protected species and their habitats are not adversely affected by this proposal. These impacts significantly and demonstrably outweigh the benefits of the proposed development. As a result, the scheme is not well designed and fails to reflect local design policies and government guidance on design as a matter of principle. In accordance with Key Policy Paragraph 139 of the NPPF, it is considered that the development should be refused.

9. Equality Implications

- 9.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states: -
- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 9.2 Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.

9.3 There are no known equality implications arising directly from this development.

9.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Conclusion

10.1 Taking national and local planning policies into account, and regarding all relevant material considerations, it is recommended that planning permission to be refused.

11. Recommendation

11.1 **Refuse planning permission** subject to:

- Planning reasons detailed at the end of this report.

11.2 Reasons

1. The development represents unjustified and unrestricted residential development that exacerbates ribbon development and extends beyond the existing built form of High Tor East into the designated open countryside. The domestication of the application site results an irreversible and detrimental urbanising and domestic effect that causes significant harm to the character of the site and the surrounding area, including the Earl Shilton North and Barwell West Landscape Sensitivity Area, the Stoke Golding Rolling Farmland Landscape Character Area, and the intrinsic value, beauty, open character, and landscape character of the countryside.

By virtue of these factors, the development is conflict with, and is contrary to, Chapters 2, 11, 12, and 15 of the National Planning Policy Framework (2024), including Key Policy Paragraphs 129 and 135, Policy 2 of the adopted Core Strategy (2009), Policies DM4 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), Policy 22 of the adopted Earl Shilton and Barwell Area Action Plan (2014), the National Design Guide (2019), and the Good Design Guide (2020).

As a result, the scheme is not well designed and fails to reflect local design policies and government guidance on design as a matter of principle. In accordance with Key Policy Paragraph 139 of the NPPF, the development is refused.

2. The development detrimentally impacts and results in the unjustified loss of Local Green Space within the Keats Lane Allotments that is identified within

the adopted Earl Shilton and Barwell Area Action Plan (2014) and the Council's Open Space and Recreation Study (2016) as an Open Space and Recreation Facility. This loss causes significant adverse social impacts to the wider community of Earl Shilton.

Therefore, the proposal is contrary to, and in conflict with, Paragraph 105 and Chapter 8 of the National Planning Policy Framework (2024), Policy DM8 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), and Policy 25 of the adopted Earl Shilton and Barwell Area Action Plan (2014).

3. The Applicant has failed to demonstrate that protected species and their habitats are not adversely affected by this proposal. Therefore, the development is contrary to, and in conflict with, the statutory requirements of Paragraphs 98 and 99 of the ODMP Circular 06/2006 (Biodiversity and Geological Conservation), as well as Chapter 15 of the National Planning Policy Framework (NPPF) (2024), and Policy DM6 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

Notes to Applicant(s)

1. The application has been determined in accordance with the following submitted details:
 - Application Form (submitted: 10.03.2025)
 - Block Plan, Drg No. 1639/BP (submitted: 10.03.2025)
 - Design Access, Planning Statement (submitted: 10.03.2025)
 - Site Location Plan, Drg No. 1639/SL (submitted: 10.03.2025)