

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL UNDER SECTION 78

Grounds of Appeal prepared for Mr & Mrs Morley against the refusal of application 24/00872/OUT by Hinckley & Bosworth Borough Council for outline planning permission for the erection of a single self-build dwelling (all matters reserved except for access) land south west of Sibson Road, Sheepy Parva, Leicestershire, CV9 3RE (Easting 433254 Northing 301328).

Application 24/00872/OUT was received by the LPA 16th September 2024 and refused by notice dated 11th November 2024.

February 2025

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Material Considerations

1. The starting point for the determination of any proposal remains the Development Plan, and Section 38(6) of the Planning and Compulsory Purchase Act 2004 confirms this statutory requirement and the NPPF (2024) reiterates the approach where 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 consideration in planning decisions and where planning applications conflict with an up-to-date plan, development permission should not usually be granted unless other material considerations indicate otherwise.

2. Local Plan policy should follow the approach of the presumption in favour of sustainable development where such development should be approved without delay. On this basis the Government is committed to ensuring the planning system supports all sustainable development.

3. On the 30th July 2024, the Deputy Prime Minister wrote to all local authority Leaders and Chief Executives in England stating:

“Underpinning plan making – at the strategic and local level – must be suitably ambitious housing targets. That is why we have confirmed today that we intend to restore the standard method as the required approach for assessing housing needs and planning for homes, and reverse the wider changes made to the NPPF in December 2023 that were detrimental to housing supply.

But simply going back to the previous position is not enough, because it failed to deliver enough homes. So, we are also consulting on a new standard method to ensure local plans are ambitious enough to support the Government’s commitment to build 1.5 million new homes over the next five years. The new method sees a distribution that will drive growth in every corner of the country.”

4. Currently the policies the LPA relies upon are contained within 2009 Core Strategy and the Site Allocations and Development Management Policies Development Plan Document (SADMP) (2016). The NPPF was updated on 12th December 2024 alongside the NPPG that revised the standard method for calculating the local housing need assessment and, as a consequence, the LPA are unable to demonstrate a 5YHLS, which is one of the key circumstances for the engagement of the ‘tilted’ balance as per Paragraph 11(d).

5. In addition, the Emerging Local Plan for 2020-41 has been consulted upon at Regulation 18 draft stage, with the consultation period ending in September 2024. The latest Local Development Scheme (LDS) outlines further public consultation on the submission Draft Plan (Regulation 19) in 2025. At this stage given its early stage of preparation the Emerging Local Plan is attributed no weight when determining this appeal.

Main Issue

6. The LPA is currently in the position where all housing supply policies and settlement boundaries are out of date and cannot demonstrate a robust 5YHLS or Self-Build Housing Register. Regarding the emerging Local Plan for 2020-2041, the LPA acknowledge between 15,000 and 20,000 new homes will need to be built within the Borough during this period, the vast majority of which will be built outside existing settlement boundaries. With specific reference to the Sheepy Parish Neighbourhood Plan (SPNP 2022) it is noted the emerging Local Plan continues to identify Sheepy Magna as a ‘Rural Village’ where there will be ***“A presumption of a minimum of 50 dwellings in each rural village to help maintain***

services in those settlements." On this matter the LPA agree the settlement boundary of Sheepy Magna is currently very tightly drawn and certainly would not allow an additional 50 dwellings to be accommodated, meaning the existing settlement boundary will need to re-drawn at some point in the future and this may also include extending the current settlement boundary to incorporate Sheepy Parva and the appeal site.

7. Furthermore, the SPNP notes Sheepy Parva adjoins Sheepy Magna on the B585 and are "twin settlements" only separated by the River Sence. In this respect, both Sheepy Magna and Sheepy Parva have equal accessibility via existing footpath linkages to all of the twin villages facilities and services. This means Sheepy Magna and Sheepy Parva are equally sustainable in terms of location and position within the LP settlement hierarchy. Indeed, paragraphs 8.15 and 8.16 of the delegated report states the restaurant, village pub, primary school, bus and church are all within nationally recognised walking distance of the appeal site, along existing and lit footpaths.

8. In this policy context the appeal scheme represents an integrated and sustainable development in accordance with paragraphs 73 and 83 of the Framework that state:

"Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly."

And:

"To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby."

9. Indeed, the pre-eminent case law in this specific context is **Julian Wood v SSCLG & Gravesham Borough Council 2015** where the judgement established that boundaries as defined in a development plan are not determinative in establishing whether a development would be limited infilling in a village. Instead, it is the physical circumstances of a site and its relationship to a settlement on the ground that are relevant in considering whether a site can be considered as acceptable infill. As Sheepy Magna and Sheepy Parva are physically linked and described as "twin villages" equally sharing the existing services and facilities, limited infilling can take place outside of the defined settlement boundary where the appeal site is intimately linked to the existing settlement, as in this instance.

10. From this perspective, Policy DM4 is considered to be out of date as the purpose of the policy is to only limit unsustainable development in isolated and remote rural areas which is clearly not the case with the appeal site. The HBBC Local Plan dates back to 2009 and the Site Allocation DPD 2016 and does not contain policies such as Policy LP3 of the North Warwickshire Borough Council Local Plan (2021) that reflects the Framework's restriction to development in the Green Belt and provides details of how Green Belt policy will be implemented at the local level. In relation to infilling, the Policy LP3 states that:

'limited infilling may also be acceptable where a site is clearly part of the built form of a settlement, i.e. where there is substantial built development around three or more sides of a site.'

11. HBBC does not contain any Green Belt allocation, however the trust of Policy LP3 could be equally applied in this specific instance when combined with the case law established via **Julian Wood**. When viewed in both plan form and from on the ground, the appeal site is

bounded by residential development on three sides to the extent the Conservation Officer states:

“A small section of front boundary hedgerow would need to be removed to provide a suitable vehicular access to the site. In my opinion the minor loss only of a typical and historic landscape feature would result in a negligible visual change within the setting of the two listed buildings and will not affect how their respective significance is appreciated or understood. The access for the proposed development will therefore not cause harm to the significance of any designated heritage assets, so consequently the proposal accords with Policies DM11 and DM12 of the Site Allocations and Development Management Policies DPD, section 16 of the NPPF and the statutory duty of Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990.”

12. In terms of the SPNP and the requirement accommodate a minimum of 50 additional dwellings up to 2041 in Sheepy Magna / Sheepy Parva, The Right to Build Task Force states:

“Balancing desire to manage settlements, neighbourhood and infrastructure with statutory requirements to support self/custom build housing can be done. A single dwelling or small minor development, brought forward by/for local residents is the type of small-scale organic growth which was historically a cornerstone of English housing. (My emphasis) Approving proposals for minor development of a few modest homes outside but proximate to a settlement, or supporting family homes in urban backland or gardens, are unlikely to jeopardise strategic spatial strategy or strategic policies.”

13. Regarding the above and in light of the **Julian Wood** case law, the first sentence of the reason of refusal appears “generic” and “non site specific” by stating:

“The development represents unjustified residential development outside the existing built form into the open countryside. This results in an irreversible and detrimental urbanising effect on the character of the countryside, whilst also resulting in residential development in an unsustainable location.”

14. The assumption appears to be because Sheepy Parva does not have a defined settlement boundary, the appeal proposal is automatically deemed unacceptable in principle and can only be described as unsustainable development, and no other balancing material considerations need to be weighed. This is in contrast to the approach taken by the Conservation Officer who clearly considered the appeal proposal in much finer detail and wider context where he states:

“It should be noted that depending on the details of the appearance, landscaping, layout and scale of a proposed dwelling on the application site then there is the possibility that such a development would result in greater than negligible changes within the setting of the two listed buildings, so an assessment of the impact of the proposal on their significance will be required at the reserved matters application stage.”

15. The comments above demonstrate the mind of the Conservation Officer was open to consider the appeal proposal within the direct vicinity and in relation to the existing and mainly modern built form including the nearby Listed Buildings. When approaching Sheepy Parva from the east along the Sibson Road, the first property is Meadowside a relatively modern bungalow with an associated annex, and then Forest View directly opposite the appeal site that is an imposing modern property, followed by South Riding directly adjacent to the appeal site that again is recently extended with modern design cues and materials. It

is not until you reach the road junction with the B585, that the traditional range of historic agricultural buildings can be found in the form of Manor Farm.

16. The built form of Meadowside, Forest View and South Riding through modern extensions and alterations has already created an urbanising effect to a material degree. The current built form ends / begins with Meadowside meaning the location of the appeal proposal would be read as infill development, rather than ribbon development in accordance with the case law cited above.

17. In terms of its assimilation within the existing street scene and neighbouring properties, paragraph 8.63 of the delegated report states:

“No details of the design of the development have been submitted at this stage. Nevertheless, it is considered that the scheme can be 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 in accordance with the Good Design Guide, Policy S8 of the Neighbourhood Plan, and Policy DM10 of the SADMP.”

Principle of development

18. Based on the material considerations raised above, the LPA have failed to provide cogent and compelling reasons to substantiate the reason of refusal in terms of the principle of development. Notwithstanding Sheepy Parva is not subject to a defined settlement boundary, currently all settlement boundaries are out of date including Policy DM4 and the housing policies of the Neighbourhood Plan. In terms of the weight given to existing local services, the presence of a primary school weighs heavily in favour of the sustainability credentials of any rural settlement, particularly so when it is within walking distance of the appeal site. If Sheepy Magna is designated with the settlement hierarchy as a sustainable location for the potential growth of another 50 new dwellings, then by extension the “twin village” of Sheepy Parva must also logically fall within this category, wholly in accordance with paragraph 83 of the Framework that states:

“To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.”

And para 5.15 of the NP

“The draft Local Plan continues to identify Sheepy Magna as a ‘Rural Village’ and there is a presumption that at least 50 new homes are to be allocated in each Rural Village over the period 2020 to 2039. The final housing provision will consider other planning policy priorities, constraints on land supply and other wider strategic planning issues. This will include planning constraints, such as the ongoing flood issues affecting the village.”

19. With the principle of development considered acceptable, we must now turn to the other significant material consideration in this specific appeal, namely the self-build nature of the project. The NP acknowledges local house prices are high compared to neighbouring settlements and a high proportion of homes are detached and there are high levels of under-occupancy. When it comes to the provision of market housing units which cater for older households, there is a key supply gap which urgently needs to be addressed. The NP notes while bungalows require more land and are therefore not attractive for developers, it is important that efforts are made within new developments to provide for older households.

20. As discussed with the LPA during a face to face meeting prior to determination, the applicants and their young family has outgrown the existing bungalow they occupy on Mill Lane, Sheepy Parva which means their self-build proposal could potential provide a "triple whammy". An existing older household within the Parish currently living in a under occupied former family home, would be very interested in downsizing to a smaller bungalow, thereby releasing their current family home onto the open market, whilst the applicant can build a future proof family for their specific personal needs and this would be in accordance of Policy S11: Housing Mix, where new housing development shall provide for a mix of housing types that will be informed by the most up to date evidence of housing need.

21. On this matter the SPNP states:

"5.20 Using data from the 2011 Census, compared to Hinckley and Bosworth Borough, Sheepy Parish has a smaller proportion of young householders (under 35) but more households over the age of 65. Local house prices are high compared to neighbouring settlements, a high proportion of homes are detached and there are high levels of under-occupancy.

5.21 The provision of market housing units which cater for older households is a key supply gap which urgently needs to be addressed. While bungalows require more land and are therefore not attractive for developers, it is important that efforts are made within new developments to provide for older households."

The HBBC Self-Build Register

22. The delegated report confirms the LPA cannot demonstrate and up to date self-build register and in this respect the *Right to Build Task Force Custom and Self-Build Planning Guidance PG3.3: NPPF and Right to Build legislation – Delivering appropriate permissions (January 2024 – Version 3)* states:

"Where there are no policies and/or LPAs are not meeting their duty in relation to provision of CSB plots, the fact of an application delivering CSB plots should be given significant weight in the planning balance. Where there are no planning harms, it is possible that meeting the LPA's statutory duties will be sufficient to indicate an approval, even in the case of a minor departure in relation to a local policy.(My emphasis)

However, notwithstanding the above, where a council cannot demonstrate that plots are being secured there is an increased risk of approval by appeal and this should be considered in the context of the approach taken in terms of planning for sites and granting permissions. Availability of CSB plots should be a factor in the determination of the application and given significant weight in the planning balance."(My emphasis)

23. Although the LPA confirm there is a shortfall in the supply of self-build plots, it is claimed the shortfall is not considered significant as per para 8.80 of the delegated report below:

"8.80 It is acknowledged that the Council has a shortfall in the supply of custom and self-build developments of 6 or fewer dwellings from base period 9, with 21 or fewer permissions now required within Base Period 10 31st October 2024 to 30th October 2025. The Framework states that small and medium sized sites can make an important contribution to meeting housing requirements of an area and can be built out quickly. The proposal would deliver one new dwelling which would make a positive contribution to addressing the minor shortfall in self-build plots. As the

scheme is only for one dwelling and the shortfall is not considered to be significant, nor is it a persistent shortfall with the LPA having just entered this, the LPA affords moderate positive weight to this aspect of the proposal.”

24. The LPA were previously challenged on the integrity and validity of the HBBC Self-Build Register as demonstrated by an assessment undertaken by Marrons in January 2023, that is included in Appendix 1. The contents and conclusion of the Marrons Report were raised over several occasions during the determination of the current appeal and the LPA have maintained the position they do not accept the Marrons findings below:

“6.10 In respect of supply, the Council has confirmed through a Freedom of Information request (Appendix 1) a total of 7 planning permissions (to Base Period 7 – October 2022). It is clear that on average 1 self / custom build planning permissions are issued annually, which compares with an average of 16 registrations to the Council’s self / custom build register per annum.

6.11 Based upon the Council’s own data it did not meet its statutory obligations in permissioning a sufficient number of plots to meet the demand in the Base Periods prior to rationalising its Right to Build Register in Summer 2021, and it continues to face significant issue in needing to permission a sufficient number of plots to meet the requirements of those on its Register.

6.12 The evidence presented within this Report demonstrates a clear and significant demand for self-build and custom build plots within Hinckley and Bosworth. The Proposed Development will make a contribution towards the Borough’s housing supply, meeting a local need for selfbuild and custom building plots, which should be afforded significant weight, particularly in the absence of any identifiable supply of self/ custom build plots.”

25. Harborough District Council faced a similar situation in relation to the appeal decision letter included in Appendix 2 dated 2nd February 2023. Upon examining the LPA register and self-build figures in greater detail the Inspector found at para 28 & 29:

“The current position, as of 30 October 2022, is that since the introduction of the Act 3 plots have been provided to meet the demand for 48 plots. This leaves an unmet demand for 45 plots. This is a considerable shortfall. It was agreed by the parties at the hearing that with permission having been granted for the Lutterworth East Strategic Development Area (SDA) that an additional 15 plots will be provided. However, as the Council’s appeal statement notes, these plots are not yet available and so cannot be included.

It is anticipated that permission may well be granted in 2023 for the Scraftoft SDA which in time will provide 10 self-build plots. Considerably more plots though than those provided by the SDAs will be needed to address the burgeoning demand. Next year with the inclusion of register entries from 2019 – 2020 demand will almost double and in the following two years demand will continue to increase by significant amounts.”

26. With regards to the current HBBC Self-Build Register (23rd December 2024) Base Periods 1 to 5 remain purged / missing of any entries and notwithstanding the figures contained with the delegated report associated with this appeal, in fact only two self-build applications were approved (23/01065/FUL & 24/00454/OUT) during Base Period 9 as per the email extract below:

*“RE: PG4.1 Addressing undersupply of Custom and Self-build Homes (June 2024):
Established Common Ground. Fri 14/02/2025 10:51*

Morning Daisy,

Given your response below and in terms of agreed common ground, currently the policies the LPA relies upon are contained within 2009 Core Strategy and the Site Allocations and Development Management Policies Development Plan Document (SADMP) (2016).

Since the NPPF was updated on 12th December 2024, all housing policies and settlement boundaries are out of date and the LPA are unable to demonstrate a 5YHLS meaning the ‘tilted’ balance as per Paragraph 11(d) is engaged.

In addition, the Emerging Local Plan for 2020-41 has been consulted upon at Regulation 18 draft stage, with the consultation period ending in September of 2024. The latest Local Development Scheme (LDS) outlines further public consultation on the submission Draft Plan (Regulation 19) in 2025, however given its early stage of preparation, the Emerging Local Plan is attributed no weight at the current time.

In terms of the current HBBC self-build register, there is an acknowledged shortfall following the publication of the figures associated with Base Period 9, where only two self-build applications were approved (23/01065/FUL & 24/00454/OUT) and the LPA cannot cite a single example of an associated UU linked to either of these applications, or indeed, in any previous Base Period.

Given the above and for the avoidance of doubt, can the LPA please confirm the shortfall figure from Base Period 9 that has rolled over into Base Period 10, and how many self-build permissions are the LPA required to approve between 31 Oct 2024 - 30 Oct 2025?

Sorry to labour this point, however if the LPA can give the specific figures regarding the above via return email at this juncture, these can again be used as a point of common ground for the benefit of the Planning Inspectorate.

Kind Regards,

Simon

Simon Cheshire BA(Hons) DipTP MRTPI”

27. The email above was directed to Daisy Shields MRTPI a Senior Planning Officer (Policy) and the Head of Planning and both Team Leaders of development management were copied in, however no reply was received prior to the submission of the appeal, therefore once provided, the figures can be expanded upon where appropriate via the Final Comments stage.

28. Under such circumstances, The Right to Build Task Force guidance is directly aimed to assist the LPA in relation to addressing an undersupply of self-build plots states the below:

“18. The basics of the statutory duties for delivering self/custom build homes are set out in the Task Force Guidance note PG3.3: National Planning Policy Framework and Right to Build legislation Delivering appropriate permissions. Local Planning Authorities have a statutory duty to consider the demand for custom and self-build (CSB) homes in plan making and decision taking. Councils are required to consider self-build in planning, housing, land disposal, and regeneration functions. This legal responsibility is set out in (s2(1)) of the Self and Custom Housebuilding Act 2015.

19. *The Housing and Planning Act 2016 introduced the specific legal duty on authorities to provide at least a number of permissions for self/custom build homes based on a figure linked to the self-build register. Subsequent legislation, such as the Levelling Up and Regeneration Act (LURA) 2023 (s123) and the Biodiversity Gain Requirements regulations make it clear that there is ongoing commitment to this housebuilding sector. Significantly the LURA makes it clear that any past under-supply of permissions is rolled forward. This clarifies that simply taking people off the self-build register does not eliminate the requirement to provide at least an equivalent number of permissions.*

20. *While the legislation refers to the custom and self-build register as a primary consideration, councils are encouraged in policy to consider the wider strategic demand for self/custom build housing. Where there is a mismatch between the target dwelling types of those joining the register and the housing demand profile in an area, councils can help enable delivery of more size-appropriate and well-located plots through policies and actions. Attempting to meet demand through suppressing the self-build registers is not helpful in ensuring delivery." (My emphasis)*

The Planning Balance

29. When looking in the round and the fact the tilted balance is triggered, it is considered the decision notice does not provide a cogent or compelling reason of refusal but rather represents a vague and generic statement that cannot be reasonably substantiated when subject to closer scrutiny. The appeal site is not located in an isolated or remote rural location, but instead would be located in between modern residential properties set in a similarly sized plot, that will represent a continuity of appearance in an already peri-urban street scene.

30. The appeal site is within walking distance of all the local amenities and services of the twin villages of Sheepy Magna and Sheepy Parva and the applicant would be likely to continue to use a private vehicle for some trips, however the development is only for one dwelling therefore the number of vehicle movements would be likely to be limited, therefore the harm from vehicle movements is given limited negative weight.

31. The LPA claim the scheme is for one self-build dwelling only and the current shortfall in the Self-Build Register is not considered to be significant, nor is it a persistent shortfall. The Marrons self-build assessment casts serious doubt over this assertion made by the LPA, and as the official figures released regarding Base Period 9 show, only two approvals were granted, meaning the average of granting only a single self-build approval per year since the Registered was first compiled, remains a more reliable and realistic figure.

32. Via the LPA statement, the council will have the opportunity to demonstrate to the Inspector there is, or never has been, any attempt to meet demand through the suppression of entries on the Register, and the findings of the Inspector in relation to the appeal decision in Harborough District Council (Appendix 2) does not equally apply to HBBC in this particular instance.

Conclusion

33. The specific material considerations of this appeal clearly demonstrates the appeal proposal is situated within the twin village of Sheepy Parva and is within walking distance to all of the shared amenities and facilities of Sheepy Magna and is therefore equally sustainable in this respect, given the case law already cited. The emerging LP and SPNP acknowledge the twin villages will be allocated in the region of 50 new dwellings due to their current standing within the settlement hierarchy. However, it is unlikely the New Local Plan

will be adopted until 2026 at the earliest and in the meantime, the LPA has a lawful duty to grant sufficient self-build approvals irrespective of any 5YHLS or existing settlement boundaries.

33. Based on the previous Marrons Appraisal (Jan 2023) and the current HBBC Self-build Register website link dated 23/12/2024, it is considered the LPA have failed to demonstrate an up to date Self-Build Register as set out in (s2(1)) of the Self and Custom Housebuilding Act 2015, indeed since the Act gained Royal Assent. The appellant will naturally respond accordingly where appropriate once the LPA Statement of Case is received. However, it is respectfully requested the appeal is allowed on the basis the LPA have failed to provide cogent and compelling reasons to substantiate the reason of refusal, with particular reference to the legal requirement to grant sufficient self-build and custom approvals and to publish and maintain an up to date, valid and robust Self-Build Register at all times.