



TOWN AND COUNTRY PLANNING ACT 1990

APPEAL STATEMENT

**Outline application for the provision of a
single dwelling (all matters reserved except
for access and layout)**

**In respect of
21 Greenmoor Road
Burbage
Hinckley
LE10 2LS**

**Statement on behalf of
Ms T Cleall**

September 2024 – V2

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APPENDICES

1. Details pertaining to application reference: 21/01361/FUL - Sketchleys Ltd, Rugby Road, Burbage. *'Development of a new 5 bedroom house with associated garage and landscaping'*
2. Details pertaining to application reference: 14/01189/OUT - Sketchley Hill House, Rugby Road, Burbage. *'Erection of 9 dwellings and associated roads and car parking, following demolition of existing property (outline - access, layout and siting)'*
3. Details pertaining to application reference: 22/00236/FUL. *'Erection of 3no dwellings with vehicle access improvements, associated parking, amenity space and refuse/recycling facilities'*
4. Land adjacent to Lockey Farm, Hunts Lane, Desford, Leicestershire LE9 9LJ. Appeal Reference: APP/K2420/W/23/3332401
5. High Court Judgment Wavendon Properties Limited v SSHCLG [2019] EWHC 1524
6. High Court Judgment R v Rochdale Metropolitan Borough Council ex Party Milne (2000)

1. INTRODUCTION

- 1.1 This Appeal Statement has been prepared on behalf of the Appellant, Tracey Cleall. The Appeal is made pursuant to Section 78 of the Town and Country Planning Act 1990 on land at 21 Greenmoor Road, Burbage, Hinckley, Leicestershire, LE10 2LS.
- 1.2 The appeal follows the decision of Hinckley and Bosworth Borough Council to refuse an outline planning application (Ref: 24/00275/OUT) for the provision of a single dwelling (all matters reserved except for access and layout).
- 1.3 The application was validated by the Council on 22 March 2024, but subsequently refused on 14 May 2024 for the following reason:
 1. *"The development fails to complement, respect, or enhance the character of the surrounding area as a result of its back-land location, layout, and access and it considered to have a significant detrimental effect on the character and appearance of the area. This harm is considered to significantly and demonstrably outweigh any potential benefits of the scheme. As a result, the scheme is in conflict with, and contrary to the Good Design Guide (2020), Policy 2 of the Burbage Neighbourhood Plan (2021), Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), and Section 12 of the National Planning Policy Framework (December 2023)".*
- 1.4 This Appeal Statement seeks to justify why the proposal is an acceptable form of development and present a case why the Appeal should be allowed having regard to material considerations and the planning balance.

2. THE SITE AND SURROUNDING AREA

- 2.1 The Appeal site is located within the identified settlement boundary of Burbage and is currently utilised as a part of the private garden land associated with 21 Greenmoor Road. Greenmoor Road has pre-dominantly a linear form of development with a mixture of bungalows, dormers and larger houses. They are mainly detached dwellings.
- 2.2 21 Greenmoor Road is a three-bedroom, detached, dormer bungalow that is constructed from brick and tile. The host dwelling was demolished and rebuilt via planning permissions 15/01042/FUL and 20/00198/CONDIT. Greenmoor Road itself is wholly residential in character and comprises a variety of bungalows and two-storey residential properties that feature long gardens that back on to Rugby Road. Rugby Road is a residential road.
- 2.3 Rugby Road is a main commuter road through Burbage into Hinckley, and forms a link to the motorway network. By the Appeal site, it is a 30 mph zone, with the area embedded within Burbage. Along its length, the character of Rugby Road varies significantly. Towards the motorway it is bounded by open fields but as it enters the built up areas it has a mixture of houses fronting the road and ones that turn their backs to the road and have garden fences out on to the road.
- 2.4 Just beyond the site the road falls away down towards Hinckley town centre although it is relatively flat where the site is circa 70 metres away from the crest of the hill.

- 2.5 Following a recent planning permission, there is evidence of backland/infill development occurring off Rugby Road adjacent to Sketchley Hill House on opposite side of Rugby Road. Here the Council approved three dwellings under reference 22/00236/FUL. Details are provided in Section 5 of this Statement, and in the supporting appendices.



A new dwelling is being formed off Rugby road, adjacent to Sketchley Hill House (and near to the Appeal site), having recently been approved by the Council

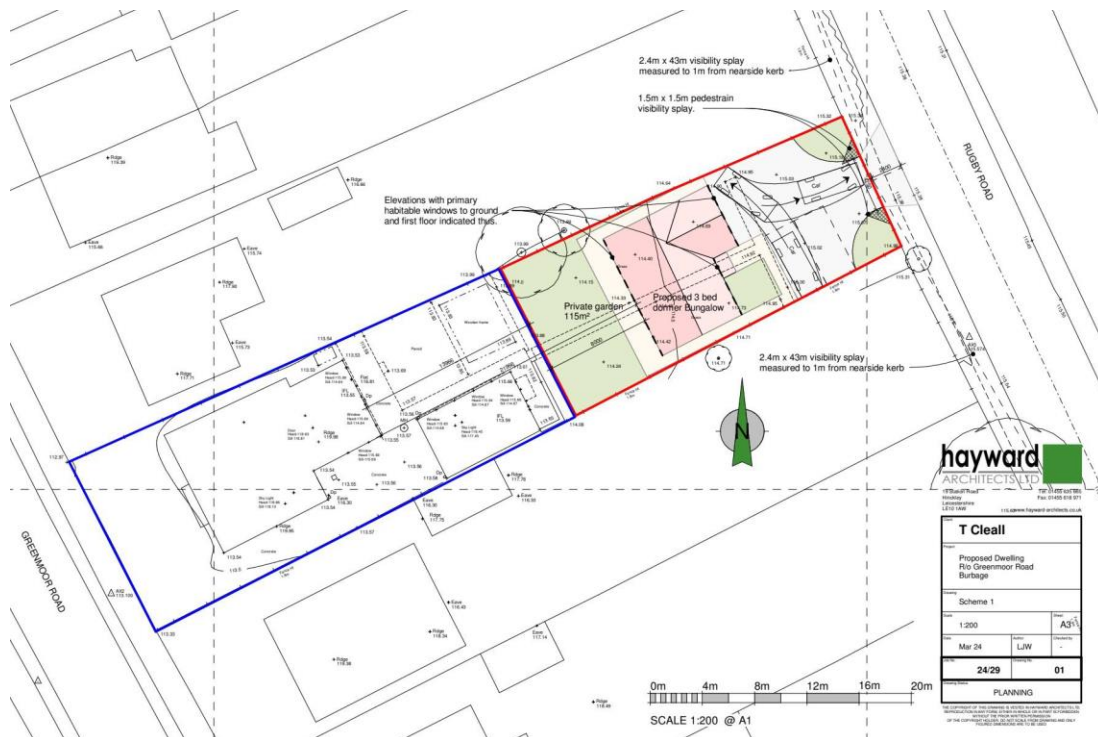


Three backland plots are being constructed, adjacent to Sketchley Hill House and near to the Appeal Site

- 2.6 The site lies in Flood Zone 1 (lowest risk) and does not fall within a Conservation Area. The site is within the Burbage Neighbourhood Plan area.

3. THE PROPOSAL

- 3.1 The Appeal proposal is to form a single dwelling to the rear of number 21 Greenmoor Road. The dwelling will front onto Rugby Road, with a dedicated vehicular access point provided. All matters except access and layout are reserved.
- 3.2 The development has an access with an effective width of 4.25m where it meets the highway. Vehicular visibility splays of 2.4m by 43m in both directions are attainable from the site. The access has been designed to be capable of enabling comprehensive development, extending into the gardens of neighbouring plots.
- 3.3 The internal layout provides an L-shaped property that will form a three bedroom dormer bungalow. It provided two parking spaces to the front, along with circulation space to allow vehicles to enter and exit in a forward gear. To the rear is a private garden of 115 sqm.



Proposed block plan

4. PLANNING POLICY

- 4.1 The starting point for assessing development proposals is always the Development Plan. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states *"if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise"*.
- 4.2 The development plan for the purposes of this appeal covers the period from 2006 to 2026 and comprises the combination of the Hinckley & Bosworth Core Strategy, adopted in 2009, the Hinckley & Bosworth Local Plan Site Allocations and Development Management Policies DPD ('the SADMP DPD'), adopted in 2016, and the Burbage Neighbourhood Plan, made in 2021.
- 4.3 In terms of the policy position for Hinckley and Bosworth Borough, it has been repeatedly accepted by the Council that the Development Plan is out of date and that paragraph 11 (d) of the National Planning Policy Framework (NPPF) (presumption in favour of sustainable development) is triggered. This is stated within the Officer's Report to the appeal proposal (paragraph 8.48).
- 4.4 In terms of the Development Plan, the 'titled balance' is triggered by two means:
 1. The Council cannot currently identify a five year housing land supply.
 2. The Core Strategy housing requirements are predicated on those from the 2004 Regional Spatial Strategy. The requirement set out within the Core Strategy is lower than the latest Standard Method figure, which is the correct figures to be used according to

Government publications. This incorrect baseline housing requirement means that the associated policies seeking to control development are out of date.

- 4.5 This appeal therefore needs to be considered in respect of tilted balance being triggered.

Hinckley and Bosworth Core Strategy 2009

- 4.6 There are no policies from the Core Strategy cited in Council's reason for refusal. The Key Diagram identifies Burbage as part of the Hinckley Urban Area (HUA); development is directed to the HUA as the highest order location within the Borough.
- 4.7 Policy 4 of the Strategy identifies the housing and employment requirements for Burbage. The Appellant considers this to be one of the most important policies to the appeal proposal. It is now out of date, having been based on superseded housing requirements as noted above.
- 4.8 It is not considered that the proposal conflicts with this policy, as firstly Policy 4 is not a reason for refusal (so it is a matter of common ground), but secondly the site meets the requirements of the Core Strategy, as far as possible, being located where new residential development is to be primarily focused.

Site Allocations and Development Management Policies Development Plan Document 2016

- 4.9 Policy DM10 is cited as a reason for refusal in the decision notice. The policy outlines the design criteria which all developments must meet. These requirements can be summarised as being:
- a. not having a significant adverse effect on residential amenity;
 - b. amenity of occupiers of the development would not be adversely affected by activities in the vicinity of the site;
 - c. it complements and enhances the character of the surrounding area, regards scale, layout, density, mass, design, materials and details;
 - d. use of materials respects the existing, adjoining/ neighbouring buildings and local area generally;
 - e. incorporates a high standard of landscaping where it would add to the quality of design and siting;
 - f. maximises opportunities for conservation and energy in line with Core Strategy Policy 24;
 - g. where parking is provided charging points for EV are included where feasible;
 - h. an appropriate drainage scheme is submitted and approved; and
 - i. it maximises natural surveillance and incorporates the principles of Secured by Design.

Burbage Neighbourhood Plan 2021

- 4.10 Policy 2 of the Burbage Neighbourhood Plan is cited in the decision notice as a reason for refusal, it relates to design and layout and states *"Any future residential development within the Parish of Burbage must respect its surroundings and, where appropriate, should follow the existing pattern of development and should retain existing important natural features on the site, such as trees, hedgerows and streams"*.

- 4.11 Policy 1 is not cited in the decision notice, but should be considered one of the most important policies to the appeal proposal, given it defines a settlement boundary where residential development on land within the boundary is supported, (subject to complying with other development plan policies). As an 'in-principle' matter, it is not considered that the proposal is in conflict with Policy 1.

Hinckley and Bosworth Council Good Design Guide SPD 2020

- 4.12 The Council's Good Design Guide is cited in the reason for refusal and forms a Supplementary Planning Document having been produced by the Council in 2020.

- 4.13 The Guide provides advice on infill sites. This states *"Building plots should be of similar size and shape to the wider context, allowing sufficient space between buildings. Built development should be of similar footprint, plot position and layout to the wider context, allowing sufficient space between buildings and not adversely impacting upon the prevailing grain of development. Built development should also be of similar scale, mass and roof form to the wider context, allowing it to sit comfortably within the street scene. Wherever possible, development should respect building lines"*.

- 4.14 There is also advice set out in dealing with backland sites. This states:

"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. At a minimum, it will need to demonstrate that it will not result in loss of amenity to neighbouring properties by way of overlooking, overshadowing or noise".

"Habitable rooms within a rear elevation should ideally not be less than 8m from the blank side of a single storey neighbouring property, rising to 12m for a two storey property, and 15m for a three storey property. Habitable rooms within rear elevations of neighbouring properties should never be less than 21m apart".

"It will also be required to demonstrate that it would not result in the over-densification of the land, leading to a loss of character. A figure ground plan can provide a useful tool to demonstrate how new development can sit comfortably within its environment".

"Where these conditions can be demonstrated, 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".

- 4.15 The Design Guide does not at any point prohibit the introduction of new access points, which is reflected by figure 31 indicating that a new access is acceptable where there is no conflict.

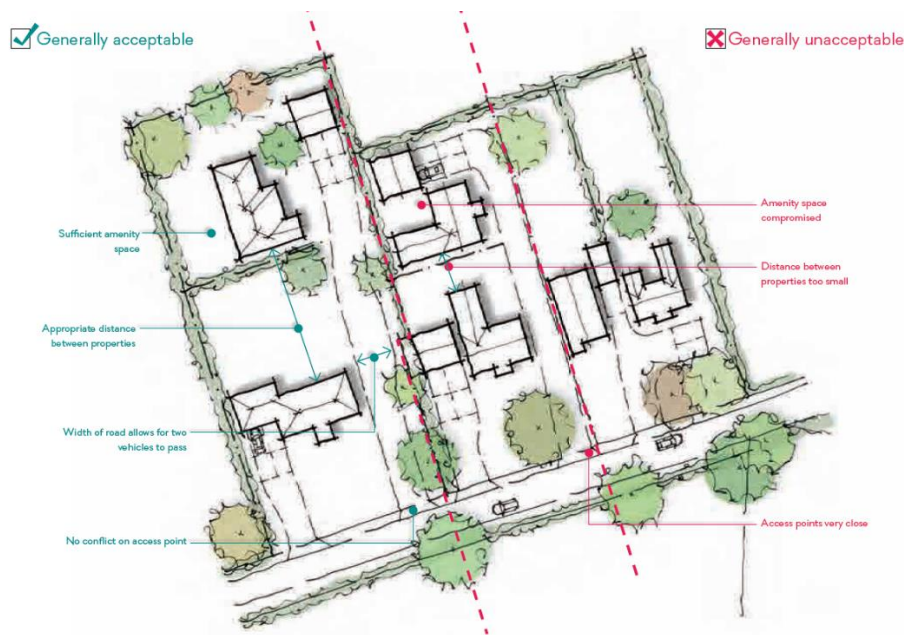


Figure 31 of the Council's Good Design Guide, relating to backland site considerations. New access points are generally acceptable where there is no conflict

- 4.16 Section 5 covers existing residential development but defines acceptable garden proportions. The Council's general guideline for garden sizes is a minimum garden length of 7m, 80sqm for a three bedroom house, and 60sqm for a two bedroom home. It is however stated that this could vary dependent on design so as not to preclude innovation.

Regulation 18 Hinckley and Bosworth Local Plan 2020 – 2041 (Consultation Draft Plan, July 2024)

- 4.17 The Council published its Regulation 18 Local Plan in July 2024 for the period 2020 to 2041. The Council also published its Five year housing land supply (5YHLS) Statement for 1 April 2023 to 31 March 2028 alongside it. The Council state they have 5.6 years supply based on a Local Housing Need figure of 433 dwellings per annum (which is based on the Standard Method used in the 2023 NPPF).
- 4.18 The draft Local Plan at paragraph 1.12 explains that following conclusion of the Regulation 19 consultation, a series of significant issues became apparent that would make submission of a sound plan in line with the published Local Development Scheme impossible at that time. These issues included changes in the affordability ratios which meant that under the Standard Methodology calculation the Council's annual housing figure to be provided for in the Local Plan rose from 444 dwellings per annum (dpa) to 472 dpa. This meant that the Council needed to identify additional sites to meet an increase in its own local housing requirement. Furthermore, the quantum of unmet need from Leicester City was finalised. The proposed distribution was based on the Leicestershire-wide Housing and Economic Needs Assessment (HENA) study which was jointly commissioned by all the Leicestershire districts, Leicester City and Leicestershire County Council.
- 4.19 At paragraph 1.31 of the draft plan it explains "To help ensure that the identified housing and employment need across Leicester and Leicestershire Housing Market Area (HMA) and

Functional Economic Market Area (FEMA) need is achieved up to 2036, a specific Statement of Common Ground (SoCG) was prepared jointly between each local planning authority (LPA) within the Leicester and Leicestershire HMA. This sets out how the HMA and FEMA need will be distributed across the LPAs including the un-met need arising from Leicester City. The proposed share of the unmet need apportioned to Hinckley and Bosworth was an additional 187 dpa to be added to the council's annual housing figure of 472 dpa equating to 659 dpa. Although the Council accepts that as a member of the Leicester and Leicestershire housing market area (HMA) it has a duty to help address any unmet need, the figure of 187 dpa is disputed due to the final manual adjustment that is made to the formula behind the distribution based on historic stock growth. Although this objection is an 'area of disagreement' detailed in the SoCG, the Borough Council resolved to become a signatory to the SoCG at Council on 30 January 2024".

- 4.20 Paragraph 4.29 of the draft plan states "*The SoCG sets out the proposed distribution of an additional 102 dpa beyond the standard method. This part of the HENA distribution is not disputed in the SoCG, however the final step in the distribution is disputed. This final step would seek to apportion a further 85 dpa to the housing need for the borough*".
- 4.21 Paragraph 4.30 of the draft plan explains that the Council has adopted housing figures contained in the agreed SoCG as a basis for the housing requirement in the Local Plan. Provision is made in Policy SP02 for 13,862 dwellings over the plan period (660 dpa).
- 4.22 Appendix 3 to the draft plan shows where its proposed housing allocations are intended. It is recognised that this will have relevance to the application of paragraph 226 of the 2023 NPPF. The draft plan is not well advanced and for the purposes of this Appeal proposal policies set out within it should be given limited weight.

National Planning Policy Framework December 2023

- 4.23 Section 12 of the NPPF is cited in decision notice, which seeks to achieve well-designed and beautiful places, which is recognised as being fundamental to what the planning process should achieve, with good design being a key aspect of sustainable development [paragraph 131]. Plans should, at the most appropriate level, set out a clear design vision and expectations, so that applicants have as much certainty as possible about what is likely to be acceptable [paragraph 132].
- 4.24 Planning decisions should ensure developments will function well and add to the overall quality of the area, be visually attractive and sympathetic to local character and history, establish a strong sense of place, optimise the potential of the site and create places that are safe, inclusive and accessible, which promote health and wellbeing with a high standard of amenity [paragraph 135].
- 4.25 Significant weight should be given to development which reflects local design policies on design [paragraph 139a].
- 4.26 No other Sections of the NPPF are cited in the reason for refusal, however other paragraphs are still relevant to determining this Appeal, which are set out below.
- 4.27 The Framework at paragraph 7 recognises the purpose of the planning system is to contribute to the achievement of sustainable development. So that sustainable development is pursued positively, at the heart of the Framework is a presumption in favour

of sustainable development which for decision taking means approving development proposals that accord with an up-to-date Development Plan without delay [paragraph 11c]. Limb (d) states 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:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear 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.*

4.28 The presumption in favour does not change the statutory status of the Development Plan as the starting point for decision making [paragraph 12]. In situations where the presumption at paragraph 11 applies to applications for housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided the following apply:

- a) the neighbourhood plan became part of the development plan five years or less before the date on which the decision is made; and*
- b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement.*

4.29 Planning authorities should approach decisions on proposed developments in a positive and creative way [paragraph 38]. Planning law requires that applications for planning permission be determined in accordance with the Development Plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales, unless a longer period has been agreed by the applicant in writing [paragraph 47]. Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions [paragraph 55]. Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects [paragraph 56].

4.30 Section 5 of the Framework relates to delivering a sufficient supply of homes. Paragraph 60 relays that it is the Government's objective to significantly boost the supply of homes, with the overall aim being to meet as much of an area's identified housing need as possible. Paragraph 70 recognises that 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, with limb (d) of the paragraph supporting the development of windfall sites through policies and decisions giving great weight to the benefits of using suitable sites within existing settlements for homes. An allowance can be made for windfall sites as part of anticipated supply [paragraph 72].

4.31 Local planning authorities are not required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing for decision making purposes if the following criteria are met:

- a) their adopted plan is less than five years old; and*
- b) that adopted plan identified at least a five year supply of specific, deliverable sites at the time that its examination concluded [paragraph 76]*

- 4.32 In all other circumstances, local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide either a minimum of five years' worth of housing, or a minimum of four years' worth of housing if the provisions in paragraph 226 apply. The supply should be demonstrated against either the housing requirement set out in adopted strategic policies, or against the local housing need where the strategic policies are more than five years old [paragraph 77].
- 4.33 Section 6 of the NPPF relates to building a strong, competitive economy. Paragraph 86 stated policies should seek to address potential barriers to investment, such as inadequate housing.
- 4.34 Section 9 covers promoting sustainable transport. Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe [paragraph 115].
- 4.35 The policies in this Framework are material considerations which should be taken into account in dealing with applications from the day of its publication. Plans may also need to be revised to reflect policy changes which this Framework has made [paragraph 224].
- 4.36 Existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given) [paragraph 225].
- 4.37 Paragraph 226 states that *"From the date of publication of this revision of the Framework, for decision-making purposes only, certain local planning authorities will only be required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of four years' worth of housing (with a buffer, if applicable, as set out in paragraph 77) against the housing requirement set out in adopted strategic policies, or against local housing need where the strategic policies are more than five years old, instead of a minimum of five years as set out in paragraph 77 of this Framework. This policy applies to those authorities which have an emerging local plan that has either been submitted for examination or has reached Regulation 18 or Regulation 19 (Town and Country Planning (Local Planning) (England) Regulations 2012) stage, including both a policies map and proposed allocations towards meeting housing need. This provision does not apply to authorities who are not required to demonstrate a housing land supply, as set out in paragraph 76. These arrangements will apply for a period of two years from the publication date of this revision of the Framework"*.

Draft National Planning Policy Framework (Consultation version, July 2024)

- 4.38 The Government announced a draft NPPF for consultation in July 2024, which was supported by a Written Ministerial Statement outlining a clear commitment to increasing levels of housing supply. The Written Ministerial Statement (30 July) is a material planning consideration (as per paragraph 6 of the December 2023 NPPF).
- 4.39 The Government are seeking to overhaul the Standard Method for calculating housing supply, with the new method being based on housing stock, instead of household predictions; and incorporates an uplift where house prices are most out of step with local incomes. The resulting effect will be every other region in the country outside of London will see an increase in their local housing need numbers, with over two-thirds of authorities

seeing their numbers go up by over 200 homes a year. The proposed Framework makes housing numbers mandatory, and removes the option for local authorities to exercise a four year housing land supply in future. Paragraph 226 is overhauled with no transitional arrangements for decision taking, and in respect of plan making there is a pyrrhic victory for planning authorities who do adopt new plans under transitional arrangements because they then have to set straight to preparing a plan under the new NPPF (as per paragraph 227). The previous emphasis on 'beautiful' design would also be removed from the Framework.

- 4.40 The change in the Standard Method will significantly increase the need for the Council to deliver more homes, which would be more in keeping with the apportionment of unmet need from Leicestershire. This is summarised in the table below.

Hinckley and Bosworth Housing requirements	
Current Core Strategy Requirement	450 dwellings per annum
Current Standard Method	432 dwellings per annum
Proposed Standard Method	689 dwellings per annum
Percentage change in the Standard Method	59%
Percentage change from the Core Strategy	53%
Net Additional Dwellings (3 Year average)	535 dwellings
Change from annual delivery	29%

Table 1: Assessment of potential changes to housing need under the proposed Standard Methodology

- 4.41 The proposed Standard Methodology is still higher than the figure set out in the Draft Regulation 18 Local Plan which proposes 660 dwellings per annum.
- 4.42 When announcing the NPPF for consultation, it was published with a supporting Written Ministerial Statement (WMS) dated 30 July 2024. This WMS is a material planning consideration under paragraph 6 of the current NPPF. Within the Ministerial Statement it was made clear by the Government that *"we are in the middle of the most acute housing crisis in living memory"*. The Statement when recognising that homes needed to be built in the right places expanded to state *"the first port of call for development should be brownfield land"* before relaying that changes to the current definition of brownfield land were proposed and that the Government were seeking to strengthen expectations that plans should promote an uplift in density in urban areas. The WMS also covers reforms to make sure every local authority has a development plan in place, with too many areas not having up to date plans, which is why the Government's goal is for local plans to be in place as quickly as possible.



5. PLANNING HISTORY

Appeal site

- 5.1 The following applications relate to the Appeal site, as set out below.

Application reference: 15/01042/FUL

'Demolition of existing bungalow and erection of two storey dwelling and double garage'

- 5.2 An application to demolish an existing bungalow and construct a replacement two-storey dwelling and double garage was submitted to the Council in September 2015, and subsequently approved on 24 December 2015. The officers report records the site benefiting from a long and generously sized rear garden. The officer also concluded that the site is in a sustainable location within the settlement boundary of Burbage, where residential development is generally acceptable in principle. As layout, scale, design and appearance of the scheme were all found to complement the character and appearance of the area, without any adverse material impact on amenities, the scheme was found compliant with the Development Plan and permission granted.



Approved site layout (Application reference: 15/01042/FUL)

Application reference: 20/00198/CONDIT

'Variation of condition 2 of planning permission 15/01042/FUL to include single storey front extension'

- 5.3 A variation of condition 2 was approved by the Council in May 2020 to include a single storey front extension to the dwelling.

Other relevant applications in the surrounding area

- 5.4 There are other approvals in the surrounding area, which are relevant to the Appeal proposal. These are set out below.

Sketchleys Ltd, Rugby Road, Burbage, Hinckley, Leicestershire

Application reference: 21/01361/FUL

'Development of a new 5 bedroom house with associated garage and landscaping'

- 5.5 An application for a five bedroom dwelling with vehicular access served off Rugby Road was approved by the Council in August 2022. The Officer's Report records the site as being part of the large plot which was formerly garden area to Sketchley Hill House dwelling within a large plot that borders the site to the south.
- 5.6 The proposed building was set back from the Rugby Road frontage by approximately 38 metres with a triple garage proposed in front of the dwelling but that is also set back from the Rugby Road frontage by over 24 metres. A rear garden of over 20 metres depth is provided.



A new infill dwelling was approved off Rugby Road under reference: 21/01361/FUL

- 5.7 In appraising the proposal, the Case Officer within their report noted that the site formed part of the large curtilage which was associated with the existing dwelling, and the proposed dwelling was large but similar in scale to the existing neighbouring dwelling on the main road frontage. The dwelling was considered characteristic of the large adjacent dwelling that fronts the main road, rather than the smaller dwellings that front onto side roads. The dwelling was noted as being appropriately set back from the highway, and away from the closest of trees which are protected by a TPO. At paragraph 8.13 the Officer concluded that the detailed design of the dwelling was acceptable, and the scheme had an acceptable impact on the character of the area in accordance with the Burbage Neighbourhood Plan and Policy DM10 and the NPPF.



The proposed street elevation, clearly showed the dwelling is visible from the street scene along Rugby Road

- 5.8 The proposal was found compliant with local policies, and no mention of the presumption in favour of sustainable development was made in the Officer's Report in respect of a housing land supply position. The approval is relevant as it is recent and lies just opposite the Appeal site so is characteristic of the surrounding area. Full details are provided at [Appendix 1](#).

Sketchley Hill House, Rugby Road, Burbage, Hinckley, Leicestershire, LE10 2ND

Application reference: 14/01189/OUT

'Erection of 9 dwellings and associated roads and car parking, following demolition of existing property (outline - access, layout and siting)'

- 5.9 The Council granted outline consent for 9 dwellings under 14/01189/OUT on land at Sketchley Hill House in December 2016. The delegated report (dated December 2016) noted that the site was directly accessible off Rugby Road, and the Parish Council raised no objections to the application. The Council were noted as having a five year housing land supply position in place at the time, whilst the principle of development of the site at outline stage was recorded as being sustainable and therefore acceptable in terms of strategic planning policies, subject to all other planning matters being addressed.
- 5.10 Policy DM10 was the still the relevant design policy back in 2016 for the assessment of impact upon the character of the area, and good design was still recognised as a key aspect of sustainable development under the previous NPPF. Limited weight was afforded to the Burbage Village Design Statement in the officer's report.



Approved site layout (reference: 14/01189/OUT)

- 5.11 The Planning Officer found that the plot 1 would be set back from the highway, in line with the existing neighbourhood property to the north. This was considered to be in keeping with the surrounding grass verges along Rugby Road and thus maintaining the open character of the area.
- 5.12 In respect of the proposed level of density, the officers report recorded '*the proposed linear siting of the plots will mean that the views of Plots 2 – 9 from Rugby Road will be limited. Further, the linear siting of the plots would be in keeping with surrounding neighbouring properties to the site, and thus would be in keeping with the character of the area in this regard*'. The proposed revised layout was also considered to demonstrate that, in appearance, the overall density of the site would be similar to that of the adjacent residential development on The Ridgeway and Lupin Close. The Officer's Report relayed that the layout indicated that the individual plot sizes would vary within the site and this would reflect the general nature of neighbouring plot sizes. In conclusion, the Officer found that '*subject to design, scale and landscaping being considered at the reserved matters stage, the current outline proposal is in accordance with Policy DM10 of the SADMP and the NPPF in respect of design and impact on the character of the area*'.
- 5.13 The approval is relevant to the Appeal proposal as the site lies in the immediately surrounding area. Policy DM10 of the Development Plan also remains the Council's policy for considering design, and thus the approval is materially relevant in respect of consistency in determining proposals particularly when layout was a matter for full consideration. Full details are provided at [Appendix 2](#).

Application reference: 22/00236/FUL

'Erection of 3no dwellings with vehicle access improvements, associated parking, amenity space and refuse/recycling facilities'

- 5.14 The Council approved the formation of three dwellings on the north-eastern side of Rugby Road, opposite the Appeal site, in October 2022.



Existing and proposed block plan (Approved under reference: 22/00236/FUL)

- 5.15 The Officer's Report noted that the site was only accessible from Rugby Road, with the access road running more or less parallel to the boundary of the site. The Local Highway Authority raised no objection to the principle of the development and were satisfied that there were no patterns in the personal injury collisions in the previous five years which could be exacerbated by the proposals.
- 5.16 The Officer's Report records the site as being in a sustainable urban location within the settlement boundary of Burbage, with access to a full range of services and facilities and sustainable transport modes. This was found to accord with the strategic planning objectives of Policy 4 of the Core Strategy, and Policy 1 of the Neighbourhood Plan.
- 5.17 In respect of design the Officer paid regard to the Council's Good Design Guide which outlines that built development on infill sites should be of similar footprint, plot position and layout to the wider context, allowing sufficient space between buildings and not adversely impacting on the prevailing grain of development. The layout and scale of development were found to complement the character of the surrounding area and be in accordance with Policy DM10 of the adopted SADMP, and policies 2 and 4 of the Neighbourhood Plan. The proposal was also found not result in any significant adverse impacts on the amenities of the occupiers of any neighbouring properties.

- 5.18 In conclusion the officer found the scheme complied with Policy DM1, DM3, DM7, DM10, DM17 and DM18 of the SADMP (2016), Policies 4 and 19 of the Core Strategy (2009) and Policies 1, 2 and 4 of the Burbage Neighbourhood Plan (2020). The approval is relevant as it is a recent decision and shows the Council have found infill/backland development acceptable in the area immediately surrounding the Appeal site. Full details are provided at [Appendix 3](#).

Land adjacent to Lockey Farm, Hunts Lane, Desford, Leicestershire LE9 9LJ
Appeal Reference: APP/K2420/W/23/3332401

- 5.19 In the appeal decision reached at Hunts Farm, Desford (for up to 100 dwellings) it was found at paragraph 10 that due to the age of the development plan, and the changes in national policy since it was adopted, and the changes in circumstances regarding development needs and requirements since it was adopted and inconsistencies between the development plan and the NPPF that the 'policies most important' in determining the appeal were 'out of date'. This is relevant as we can also see at paragraph 35 that the Inspector found irrespective of the Council's housing land supply position, the presumption in favour of sustainable development was still agreed to be triggered. At paragraph 36 the Inspector found that there was no conflict with the Neighbourhood Plan and so did not consider applying paragraph 14 of the Framework. The appeal was recently allowed on 25 March 2024. The decision is relevant to correctly applying the presumption in favour of sustainable development. A copy is provided at [Appendix 4](#).

Relevant legal judgements

[Wavendon Properties Limited v SSHCLG \[2019\] EWHC 1524](#)

- 5.20 The main issue in this case concerned the meaning of the phrase "*the policies which are most important for determining the application are out-of-date*" in paragraph 11(d) of the NPPF; critical insofar as it acts as a trigger for engaging the tilted balance. This differs from the former 2012 NPPF which referred to the situation where "*relevant policies are out-of-date*" (paragraphs 54 and 58).
- 5.21 The decision clarified the steps one should go through to carry out the exercise required by paragraph 11(d). The first step was found to be to identify which were the policies most important for determining the application. Having done so, it is then necessary for the decision taker to examine each of those policies, applying the Framework to see whether they are out-of-date. Following this, the next step is an assessment of all the '*basket of policies*' most important to the decision to reach a conclusion whether, taken overall, they could be concluded to be out-of-date or not for the purposes of the decision. This overall assessment includes bearing in mind there may be some consistency and some inconsistency with the Framework and that some may have been overtaken by events and others not. If they were found to be out-of-date overall, then the presumption would be triggered. The assessment therefore is a matter of planning judgement dependent upon the evaluation of the policies for consistency with the Framework taken together with the relevant facts at the time of determination (paragraphs 58 and 73). A copy of the judgement is provided at [Appendix 5](#).

6. THE PLANNING CASE ON BEHALF OF THE APPELLANT

6.1 The Appeal proposal was refused by the Council on the following grounds:

1. *“The development fails to complement, respect, or enhance the character of the surrounding as a result of its back-land location, layout, and access and it considered to have a significant detrimental effect on the character and appearance of the area. This harm is considered to significantly and demonstrably outweigh any potential benefits of the scheme. As a result, the scheme is in conflict with, and contrary to the Good Design Guide (2020), Policy 2 of the Burbage Neighbourhood Plan (2021), Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), and Section 12 of the National Planning Policy Framework (December 2023)”.*

6.2 Paragraph 8.8 of the officer’s report acknowledges that the proposal is acceptable in principle . The decision notice does not cite Policy 4 of the Core Strategy or Policy 1 of the Neighbourhood Plan as reasons for refusal, which reflects there is no conflict with their strategic objective to sequentially steer residential development to within the settlement boundaries of Burbage and make efficient use of developed land. Burbage is part of the most sustainable urban location within the Borough (the Hinckley Urban Area), such that occupiers of any new development would have full access to all necessary services and facilities, with easy access to Hinckley Town Centre; it is also located on a frequent bus route and within 800 metres walking distance of Hinckley Railway Station, which links to Birmingham and Leicester. The two policies should therefore be included within the basket of most important policies to determining the Appeal proposal even if there is no conflict with them.

6.3 The reason for refusal is evidently design based, arguing the scheme is contrary to the character and appearance of the area. A response to the reason for refusal is on that basis set out on behalf of the Appellant below, which includes a full planning balance of the scheme .

Character and Appearance

6.4 Layout and access are the sole matters for consideration under this Appeal, with scale and appearance and landscaping all being reserved.

6.5 The Appeal proposal is for a form of infill development, located to the rear of number 21 Greenmoor Road. The proposed dwelling however is positioned to front onto Rugby Road; the suggestion that the scheme is back land development is therefore questioned. The site has full frontage onto a public highway, from which safe access can be secured. The arrangement also provides active surveillance to the public domain. This is a recommendation which is encouraged within in the Council’s Design Guide but also a requirement of Policy DM10(i) which the scheme accords with. The Design Guide does not oppose back land or infill development; in fact, it sets out advice on how such development can successfully occur.

6.6 Vehicular access is taken from Rugby Road. This will not be an uncharacteristic feature of the surrounding area, as the Council recently approved three infill / back land dwellings under application reference: 22/00236/FUL on land adjacent Sketchley Hill House which similarly are accessed from Rugby Road albeit at a higher density than under this Appeal proposal. Consent has also been granted for a single unit infill (application 21/01361/FUL). Both also illustrate the acceptance of the Council for infill and backland development in this specific location; both approvals are within close proximity to the appeal site and taking access off the same highway.

- 6.7 The National Planning Policy Framework at paragraph 139 gives substantial weight to proposals which reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides. The Council's Good Design Guide does not prohibit the introduction of access roads to support infill or back land development opportunities, and neither does the National Planning Policy Framework. The planning history as set out in Section 5 of this Statement shows the Council has supported other instances of infill and back land development in the nearby area.
- 6.8 The Design Guide relays that for infill development, plots should be of similar size and shape to the wider context, allowing sufficient space between buildings. In respect of this it needs to be recognised that residential amenity (loss of privacy, overlooking, overbearing development) is not a reason for refusal. The scheme ensures that future occupiers are provided with an acceptable rear garden space in accordance with the separation distances and garden standards set out in the Council's Design Guide. This supports the Appellants position that sufficient space between buildings is achieved in accordance with the Council's Design Guide.
- 6.9 The proposed dwelling is shown on the layout plan as being positioned over 10.5m from the edge of the site boundary adjoining the public highway. This provides space for two parking spaces to the front of the property and accommodation of a turning head allowing vehicles to enter and leave the site in a forward gear. The rear garden space is 115sqm which is more than sufficient for amenity purposes of future occupants. The set back from the highway is acceptable as the design of the layout is clearly functional and efficient. The layout design also enables comprehensive development to be delivered through future extension to the site. This affords scope for an internal private access/service road, commensurate to that of the dwellings constructed on the opposite side of Rugby Road to the Appeal site.
- 6.10 The NPPF actively supports making the efficient use of land within settlements for housing with great weight as set out at paragraph 70(d) which is a merit of the proposal to be considered in the planning balance. This scheme is providing a single property but with scope to unlock access to a number of similarly sized rear gardens. A number of neighbours have expressed interest to the Appellant in respect of developing their land as part of a wider complex of properties, subject to consent being secure at no. 21 to create the access.
- 6.11 The magnitude of visual change from the Appeal proposal is expected to be low, given the dwelling is set back from the highway, with the main view of the development being limited to that along its access driveway. The magnitude of change *'as the crow flies'* does not represent a public viewpoint, and the Landscape Institutes 'Guidelines for Landscape and Visual Impact Assessment' is clear at section 6.16 that *'only from viewpoints which the proposal will actually be seen by different groups of people should be identified'* for assessment purposes. The Officer's Report does not suggest or indicate any following of the Landscape Institutes Guidelines having been applied when visually assessing the impact of a given development.
- 6.12 Whilst neighbouring residents may see a minor degree of visual change it must be recognised there is no private right to a view in planning terms and there is no reason for refusal on amenity grounds in respect of the submitted layout; the proposal is fully in accordance with the privacy/separation distances set out in the Council's Design Guide SPD. There is also no objection from the Council's Environmental Health officer. The planning officer at paragraphs 8.26 to 8.35 found the scheme complied with Policy DM10(a)&(b) and the Good Design Guide

on amenity grounds. The Appeal proposal accords with the requirement in Policy 2 of the Neighbourhood Plan for development to respect its surroundings, given it can clearly be assimilated into its setting without causing undue harm to its neighbours.

- 6.13 Policy 2 of the Neighbourhood Plan applies some discretion in respect of *'following the existing pattern of development'* as the policy clearly states this applies *"where appropriate"* which can only mean it is not a hard and fast rule which must apply everywhere. Whilst paragraph 14.2 of the Neighbourhood plan advises in its policy preamble that *'buildings should respect established building lines'*, it does not state *'must'*. In any event, the Appeal proposal does not break any established building line, it introduces a line of development which reflects set back distances to the other side of Rugby Road and so will appear in keeping with the character and appearance of its surroundings. As noted above, it has the ability to represent the creation of a new cluster of properties on the western side of Rugby Road, more efficiently utilising existing land within the settlement without undermining the established pattern of development of the wider area.
- 6.14 In respect of seeking to deliver development which is in keeping with its surroundings, back land and infill development is not alien to Rugby Road. The Council supported a stereotypical back land development served off a much wider access point (5m) when approving 3 dwellings off Rugby Road under application reference: 22/00236/FUL. The scheme is in accordance with Policy 2 of the Neighbourhood plan seeking development to follow the pattern of development in the area.
- 6.15 Whilst Policy 2 of the Neighbourhood Plan states *'development should retain important natural features on the site, such as trees, hedgerows and streams'* the scheme does not result in the loss of any important trees given Policy 12 of the Neighbourhood Plan (important trees) is not cited in the reason for refusal. The existing trees which front the highway are low grade quality akin to self-set trees, and their removal is not considered to result in undue harm. The existing trees along the northern boundary are shown as being retained on the proposed block plan, with layout being a matter for determination ensuring that they can be retained. For all the above reasons the proposal accords with Policy 2 of the Neighbourhood Plan.
- 6.16 It seems somewhat unreasonable for the Council (within the Officer's Report) to now suggest that a width of 4.25m is harmful or overengineered in respect of Appeal proposal with regard to impact on character and appearance when the three dwelling scheme approved at Sketchley Lane House was found acceptable and in accordance with Policy DM10. Comparatively the nearest dwelling to the highway under the approval at Sketchley Lane House is setback some 104m from the edge of the highway which will result in future occupants at that location having to drag their wheelie bins unacceptable distances given a waste vehicle would not be expected to enter that shared driveway given the lack of sufficient turnaround space; yet the Council still found that scheme complied with Policy DM10 and national policy in respect of attaining good design.
- 6.17 As noted above, the proposed access is compliant with being able to serve up to 6 units, allowing comprehensive development (subject to further approval for additional dwellings on neighbouring plots. However, even for a single plot, this width assists in being able to make sure that vehicles can safely enter and exit the site in a forward gear, and allow for the safe presentation of bins for collection off the public highway. County Highways did not object to the proposal, a point that needs to be positively considered. Likewise, positive discussions have occurred with neighbours in respect of potential additional plots served off this access.

it should also be noted that there was no public objection from any neighbour; this is a rare situation and is a material consideration.

- 6.18 Scale, appearance and landscaping are all reserved matters. The site is generally flat and even and we consider there is scope to achieve a two storey dwelling in height at reserved matters stages. This would not appear out of character for the area, given the predominance of properties which are two-storey in height along Rugby Road. A high quality landscape scheme can be agreed at reserved matters stage, ensuring it is high quality. Scale, design, materials and details can similar be agreed at a later stage in respect of Policy DM10(c)&(d)
- 6.19 In respect of the Appeal proposal being outline, with solely layout and access for consideration, I find the scheme to be in accordance with Policy DM10 of the SADMP, and Policy 2 of the Neighbourhood Plan. I also find the scheme to accord with the design guidance set out in the Council's Good Design Guide. As these are the sole policies in the reason for refusal, this should mean allowing the Appeal in accordance with Paragraph 11c of the NPPF.

Access

- 6.20 Access is not a reason for refusal but is still a matter for consideration under the Appeal proposal. The officers report records that the Local Highway Authority were satisfied that the access arrangements are acceptable. The development benefits from pedestrian visibility splays of 1.5m on either side of the access, and whilst the highway authority stated 2m splays should be provided on either side of the access they were satisfied that they could be provided within the site and so secured by condition. This accords with advice set out at paragraph 55 of the Framework.
- 6.21 Paragraph 115 of the NPPF states that '*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 would be severe*'. Evidently this is not the case, with the Local Highway Authority not only accepting that the access arrangements were acceptable, but that having reviewed the Personal Injury Collisions data they were unable to find any trends or patterns. As such, the LHA are satisfied that the proposals are unlikely to introduce any new highway safety issues within the vicinity of the appeal site. The officers report confirmed that the scheme accords with policies DM17 and DM18 of the SADMP, as well as being in accordance with the Leicestershire Highway Design Guide. The proposed access arrangement is acceptable in highway terms with no statutory objection on this matter.

Most important policies to determine the appeal

- 6.22 The Appellant considers the most important policies to determine this Appeal to include the Council's housing policies which are out-of-date as they were based on the regional housing need requirements, the strategy is over a decade old, and the housing requirements is subject to significant change under requirement to accommodate some of the unmet need from Leicester City. These include Core Strategy Policy 4 which seeks to steer development to within settlement boundaries. Paragraph 11(d) of the NPPF is therefore triggered regardless of whether the Council can identify a five year housing land supply; it simply affects the weight to be afforded to the delivery of housing. It should however be noted that whilst this policy is out of date, the Appeal proposal is not in conflict with its objectives.
- 6.23 Policy DM1 of the SADMP applies a presumption in favour of sustainable development set out within the NPPF. Policy DM1 states that where there are no policies relevant to the application

or relevant policies are out-of-date at the time of making the decision then the Borough Council will grant permission unless material considerations indicate otherwise. As argued above, the most important development plan policies for the purposes of this appeal are out-of-date and therefore it is considered that there is no conflict between the appeal proposal and this policy.

- 6.24 Policy DM10 sets out design criteria to which proposed development must meet. For reasons set out in this Appeal statement, there is no reason to conclude that the proposal does not comply with this policy.
- 6.25 Policy 1 of the Neighbourhood Plan is an important policy as it also seeks to support development where it is located inside of settlement boundaries, but is also based upon the housing figures taken from the Core Strategy and is thus out-of-date. The Neighbourhood Plan Examiner observed that Burbage ‘...remains the most sustainable development location in the settlement hierarchy in terms of access to services and transport. It is the second largest community in the district and its position in the settlement hierarchy is likely to continue in the new local plan’. Paragraph 14 of the NPPF does not apply, as because the Neighbourhood Plan does not contain ‘policies and allocations to meet its identified housing requirement’. The Neighbourhood Plan does not contain any allocations for housing. The Appeal proposal accords with the objective of the policy thus there is no conflict, which is another reason why paragraph 14 of the Framework does not apply.
- 6.26 Policy 2 of the Neighbourhood Plan states that residential development must respect its surroundings and, where appropriate, should follow the existing pattern of development and should retain existing important natural features on the site, such as trees, hedgerows and streams. This Appeal statement has found the proposal (in respect of layout and access for consideration) accords with its requirements subject to consideration at reserved matters stages (with regard to landscape, scale and appearance).
- 6.27 For reasons set out in this Appeal Statement, it has been found that the proposal accords with the Development Plan. As the basket of most important policies contain housing policies which are out-of-date the scheme should also benefit from the tilted balance in favour of sustainable development as per paragraph 11(d) of the Framework.

Planning Balance

- 6.28 Both Paragraph 2 and 11(c) of the NPPF, as well as Section 38(6) of the Compulsory Purchase Act make clear that applications can be determined in accordance with the Development Plan, although for the purposes of decision-taking material considerations (such as the NPPF) can be taken into account. Under Section 38(6) where material planning considerations have been raised a ‘flat planning’ balance applies. Where paragraph 11(d) of the NPPF applies a titled balance in favour of sustainable development is triggered.
- 6.29 When undertaking the planning balance, one must recall that it is widely acknowledged that for development to accord with the Development Plan, it does not need to accord with every facet of it; indeed this is rarely possible. This approach is endorsed in the High Court judgment *R v Rochdale Metropolitan Borough Council ex Parte Milne (2000)* [Appendix 6] where Justice Sullivan commented (at paragraph 49) that taking into account the numerous conflicting interests that a Development Plan seeks to reconcile it would be difficult to find any project of any significance that was wholly in accordance with every relevant policy within the Plan. At paragraph 50 of the judgment, Justice Sullivan found ‘it is enough that the proposal accords

with the development plan considered as a whole, it does not have to accord with each and every policy therein'. Non-compliance with one section of a policy, or in fact a whole policy, does not therefore necessarily render a proposal to not be in conformity with the Development Plan.

- 6.30 As noted above, it is the Appellant's position that the proposal accords with the Development Plan and that planning consent should be granted. Notwithstanding this, in line with the NPPF a planning balance is also provided below. Paragraph 8 of the NPPF notes that there are three overarching objectives to sustainable development, which are social, economic and environmental. The planning balance is carried out on that basis.

Social

- 6.31 The proposal is for a single dwelling, which should be given favourable weight as it will help the Council in meeting (and potentially maintaining) its housing land supply position which is variable given the housing requirement has kept changing over recent years. This is a social benefit of the scheme, particularly when the Written Ministerial Statement which accompanied the 2024 consultation NPPF recognises we are in a housing crisis. The expected dwelling which would result from the proposal would help in meeting the needs of a family, which is a clear social benefit.
- 6.32 High quality living standards for future occupants are also expected to be delivered, given the scale parameters of the property and size of the associated garden being over 1.5 times the recommended size requirement for a three bedroom property. The dwelling can be designed to meet Lifetime Homes standard helping to ensure occupants are able to remain living in their own home as long as possible, which is a social benefit of the scheme. It also has scope to become a self-build project for someone.
- 6.33 The proposal would also offer potential for a New Homes Bonus to be secured and generate jobs during its construction phase through the sourcing of local materials, as well as expenditure in the local economy once occupied. The new homes bonus could be spent at the Councils discretion providing social benefits to the area. Occupation would help support services in the local area.
- 6.34 Overall, the social benefits are moderate and clearly favourable.

Economic

- 6.35 The proposal would provide employment opportunities throughout the construction phase, for ground workers, builders, tilers, plasterers, electricians, landscapers, kitchen fitters and other services. It would also generate additional employment to professional services to support the construction of the property (architect, structural engineer, Building Inspector). This would all benefit the local economy and associated supply chains.
- 6.36 There would also be spend from the construction workers to local facilities, along with additional spend upon first occupation. Based upon the average spend, around £5,000 is expected to be generated on initial outlays by the occupants on internal and external fixtures and furnishings.

- 6.37 These represent clear economic benefits, albeit temporary in duration and relatively small due to the development only being a single property, they should still be given significant weight within the overall balance. The economic benefits are entirely positive.

Environmental

- 6.38 The development layout has been sensitively designed as a single detached dwelling, which will be set back from the highway reflective of development along the eastern aspect of Rugby Road. The proposal would not have an unacceptable overbearing or overshadowing impact, nor would it result in an unacceptable loss of privacy to adjoining neighbours. The living standards proposed are also expected to be acceptable, given the scale parameters proposed would meet modern day living expectations. Space is also provided around the boundaries of the site to allow additional landscaping to be provided, which represents an efficient use of the land. A high quality landscaping scheme can be brought forward at Reserved Matters Stage, ensuring the scheme complements and enhances the area.
- 6.39 Visual impact is limited to the change which would occur down the access drive, which limits the magnitude of change in the wider context. The National Planning Policy Framework at paragraph 139 gives substantial weight to proposals which reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides.
- 6.40 The assessment of the scheme in this Appeal Statement finds the scheme compliant with the Council's Design Guide. Similarly, the site accords with the strategic policy objectives set out in the Core Strategy directing development to inside of settlement boundaries favouring urban locations such as Burbage. Paragraph 70(d) of the NPPF supporting the development of windfall sites in policies and decisions giving great weight to the benefits of using suitable sites within existing settlements for homes.
- 6.41 It should be noted that the planning application associated with this proposal was submitted prior to the latest Biodiversity Net Gain regulations taking effect. The scheme currently offers little by way of ecological value. There is scope to include additional tree planting as part of the reserved matters detail but overall it is accepted that neutral weight should be given to ecological benefits associated with the scheme.
- 6.42 Overall, the environmental benefits are positive, and can be given significant weight in favour of the proposal.

Planning Balance Summary

- 6.43 As this Appeal Statement shows, the planning balance overall is clearly favourable and under Section 38(6) of the Planning and Compulsory Purchase Act 2004, material considerations such as those raised in [Section 5](#) of this Statement can be taken into account under a flat planning balance. This means allowing the Appeal.
- 6.44 The Appellants second case to make is that the Council's housing policies are "*out of date*" for the purposes of paragraph 11(d) of the Framework. Whilst we expect the Council to argue that it has now a sufficient housing land supply in place, the position the Inspector took in the Hunts Lane appeal decision in Desford is relevant and material. At paragraph 35 of the decision, the Inspector found that irrespective of the Council's housing land supply position the presumption in favour of sustainable development (tilted in favour at paragraph 11d of

the NPPF) was still triggered. The Council in a long series of appeal cases made to the Planning Inspectorate has long held the position that the presumption in favour was triggered on two grounds, that being (a) their housing land supply position, but also (b) their housing policies were “out-of-date”.

<i>Benefit/harm</i>	<i>Weight</i>
Efficient use of developed land to provide a dwelling house	<i>Great weight, beneficial</i>
Contribution toward meeting/maintaining housing supply amidst a housing crisis	<i>Moderate, beneficial</i>
Construction benefits (albeit temporary)	<i>Moderate, beneficial</i>
Support toward supporting facilities and services	<i>Limited, beneficial</i>
Lifetime Homes standard housing for long term needs	<i>Limited, beneficial</i>
Design guidance (SPD) compliant scheme	<i>Substantial, beneficial</i>

Table 2: Summary of benefits/harm arising from the Appeal proposal

- 6.45 Applying the Framework correctly, paragraph 226 of the NPPF should not frustrate the joint application of paragraphs 11(d) and 224 where housing policies have consistently been accepted by the authority as being “out of date”. The emerging draft Local Plan (Regulation 18 consultation) does not affect this position. Paragraph 3 of the Framework is clear that the NPPF needs to be taken and read as a whole, which includes taking Written Ministerial Statements into account as set out at paragraph 6. The Written Ministerial Statement published on 30 July is clear that the Government expect planning authorities to get their plans ‘up to date’ as soon as possible. For all the above reasons, the Appeal should also benefit from a favourable planning balance under paragraph 11(d).

7. COSTS APPLICATION

- 7.1 The Appellant reserves their right to apply for full costs against the Council once the full case of the Council in respect of this appeal is known.
- 7.2 At the point of determination of the application, the Council accepted that paragraph 11 (d) of the NPPF was triggered, meaning that proposals should be approved unless identified harm significantly and demonstrably outweighs the benefits. The scheme is shown to be in a sustainable location and capable of being delivered in a manner that does not cause any loss of amenity or highway safety issues. It would provide an initial dwelling in a manner akin to that of the properties directly opposite the Appeal site on Rugby Road, with a potential service road created off the proposed access to serve a number of properties. The plot width, and overall property size is comparable to the surrounding area. There is no single facet or cumulative elements that warranted refusal of this application. Consequently it is considered that the application should have been approved, negating the need for an appeal.
- 7.3 Additionally, the application was not considered correctly, given the site does not represent a back land proposal. It has a full active frontage to a highway from which access is proposed.

The basis of consideration of the proposal as a back land plot is therefore considered flawed and consequently resulted in the mis-application of policy in the determination of the application.

8. CONCLUSIONS

- 8.1 The Appeal proposal was refused by the Council on the grounds that it failed to complement, respect or enhance the character of the surrounding area having a significant detrimental effect as a result of its back land location, layout and access. The alleged conflict with policy and design guidance was argued to result in harm which significantly and demonstrably outweighed any potential benefits of the scheme.
- 8.2 Paragraph 8.8 of the Officer's Report acknowledges that the proposal is acceptable in principle. The decision notice does not cite Policy 4 of the Core Strategy or Policy 1 of the Neighbourhood Plan as reasons for refusal, which reflects there is no conflict with their strategic objective to sequentially steer residential development to within the settlement boundaries of Burbage and make efficient use of developed land. Burbage is one of the most sustainable locations in the Council's settlement hierarchy ensuring that the occupiers of any new development have sufficient access to the services and facilities. The two policies should therefore be included within the basket of most important policies to determining the Appeal proposal even if there is no conflict with them.
- 8.3 The National Planning Policy Framework at paragraph 139 gives substantial weight to proposals which reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides. The Council's Good Design Guide does not prohibit the introduction of access roads to support infill or back land development opportunities, and neither does the National Planning Policy Framework.
- 8.4 As this Appeal Statement has set out, it is clear that the Council's Design Guide SPD does not prohibit back land development, neither does the NPPF. The scheme has been assessed against the guidance set out in the Council's Design SPD and is found to comply with its recommendations.
- 8.5 Vehicular access is taken from Rugby Road, to which the site has a full frontage. The proposal in itself should not therefore be considered to be back land development, but simply infill development in a sustainable location. The Council's assessment of the land is quite simply incorrect.
- 8.6 The provision of infill development to Rugby Road is not an uncharacteristic feature of the surrounding area, as the Council recently approved three infill / back land dwellings under application reference: 22/00236/FUL on land adjacent Sketchley Hill House which similarly are accessed from Rugby Road, albeit at a higher density than under this Appeal proposal. This scheme however represents a true back land development. The planning history as set out in Section 5 of this Statement shows the Council has supported other instances of infill and back land development in the nearby area. These decisions are material planning considerations with regard to Section 38(6) which can trigger a '*flat planning balance*'. The proposal will not appear out of keeping with its surroundings.
- 8.7 Whilst Policy 2 of the Neighbourhood Plan states 'development should retain important natural features on the site, such as trees, hedgerows and streams' the scheme does not result

in the loss of any important trees given Policy 12 of the Neighbourhood Plan (important trees) is not cited in the reason for refusal. The existing trees which front the highway are low grade quality akin to self-set trees, and their removal is not considered to result in undue harm. They are not formally protected. The existing trees along the northern boundary are shown as being retained on the proposed block plan, with layout being a matter for determination ensuring that they can be retained. For reasons set out in this Statement the proposal accords with Policy 2 of the Neighbourhood Plan.

- 8.8 Scale, appearance and landscaping are all reserved matters. The site is generally flat and even and we consider there is scope to achieve a two storey dwelling in height at reserved matters stages. This would not appear out of character for the area, given the predominance of properties which are two-storey in height along Rugby Road. A high quality landscape scheme can be agreed at reserved matters stage, ensuring it is high quality. Scale, design, materials and details can similar be agreed at a later stage in respect of Policy DM10(c)&(d) In respect of the Appeal proposal being outline, with solely layout and access for consideration, the scheme is in accordance with Policy DM10 of the SADMP, and Policy 2 of the Neighbourhood Plan. The scheme also accords with the design guidance set out in the Council's Good Design Guide. As these are the sole policies in the reason for refusal, this should mean allowing the Appeal in accordance with Paragraph 11c of the NPPF.
- 8.9 Applying the Framework correctly, paragraph 226 of the NPPF should not frustrate the joint application of paragraphs 11(d) and 224 where housing policies have consistently been accepted by the authority as being "out of date". Paragraph 3 of the Framework is clear that the NPPF needs to be taken and read as a whole, which includes taking Written Ministerial Statements into account as set out at paragraph 6. The Written Ministerial Statement published on 30 July is clear that the Government expect planning authorities to get their plans 'up to date' as soon as possible. For all the above reasons, the Appeal should also benefit from a favourable planning balance under paragraph 11(d). The Inspector is respectfully invited to allow the Appeal.



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