

**PLANNING STATEMENT
(INCLUDING DESIGN AND ACCESS)**

FOR

**THE PROPOSED ERECTION OF UP TO 7 DWELLINGS
(3 Self-Build/Custom Build Dwellings & 4 Market Dwellings)**

**LAND TO THE EAST OFF
BARWELL ROAD
KIRBY MALLORY
LEICESTERSHIRE**

November 2022

**SANSOM CLARKE
CHARTERED SURVEYORS**

CONTENTS

1.00 THE PLANNING PROPOSAL

2.00 SITE PLANNING HISTORY

3.00 RELEVANT PLANNING POLICIES

4.00 THE PRINCIPLE OF DEVELOPMENT

INC. ASSESSMENT of :-

- **DEVELOPMENT PLAN & FRAMEWORK POLICIES**
- **IMPACT UPON THE CHARACTER AND APPEARANCE OF THE AREA**
- **APPEARANCE, LANDSCAPE, LAYOUT AND SCALE**
- **IMPACT UPON NEIGHBOURING RESIDENTIAL AMENITY**
- **IMPACT UPON HIGHWAYS SAFETY**
- **IMPACT UPON ECOLOGY & BIODIVERSITY**
- **FLOOD RISK & DRAINAGE**

5.00 PLANNING BALANCE & CONCLUSION

6.00 APPENDICES

1.00 THE PLANNING PROPOSAL

1.01 The planning application seeks an outline planning consent for the proposed erection of up to 7 dwellings (3 Self-Build/Custom Build Dwellings and 4 Market Dwellings) with all matters reserved on a small enclosed 0.5ha area parcel of land located to the east off Barwell Road in the Leicestershire village of Kirby Mallory.

1.02 The application site abuts the defined limits to development and the suburban fringe of Kirby Mallory with established high mature field boundary hedgerows framing the application site boundaries.

1.03 The application site comprises of part of a single larger field of relatively flat open land that has historically been utilised for horse grazing. The site is defined to the west by Barwell Road, to the south by open agricultural land and to the north by the settlement boundary by the existing urban residential development

1.04 The site topography is relatively flat, gently rising from the southern boundary up towards the northern boundary.

1.05 The application site currently benefits from an existing vehicle and pedestrian access providing ingress/egress with Barwell Road.

2.00 SITE PLANNING HISTORY

2.01 Includes:-

P/App.Ref.No:05/00828/FUL	- Permanent Retention of Stables and Wagon Shelter.(Withdrawn)
P/App Ref.No: 00/00175/TEMP	- Retention of Stables and Wagon Shelter. (Permitted)
P/App.Ref.No: 97/00042/FUL	- Retention of Stables and Wagon Shelter and Erection of Lean-To Extension. (Permitted)
P/App.Ref.No:93/00700/4	- Erection of Stables.(Permitted)
P/App Ref.No:80/01119/4	- Residential.(Refused)
P/App.Ref.No:80/01118/4	- Residential (Refused)

3.00 RELEVANT PLANNING POLICIES

3.01 Core Strategy (2009)

Policy 7: Key Rural Areas

Policy 15: Affordable Housing

Policy 16: Housing Design, Density, Mix and Design

Policy 19: Green Space and Play Provision

Policy 20: Green Infrastructure

3.02 Site Allocations and Development Policies DPD (2016) (SADMP)

Policy DM1: Presumption in Favour of Development

Policy DM3: Infrastructure and Delivery

Policy DM4: Safeguarding the Countryside - Settlement Separation

Policy DM6: Enhancement of Biodiversity and Geological Interest

Policy DM7: Preventing Pollution and Flooding

Policy DM10: Development and Design

Policy DM17: Highways and Transportation

Policy DM18: Vehicle Parking Standards

3.03 Other Relevant Guidance

Good Design Guide (2020)

Landscape Character Assessment (2017)

Landscape Sensitivity Assessment (2017)

Open Space and Recreation Study (2016)

Housing Need Study (2019)

Affordable Housing (2011)

Leicestershire Highways Design Guide

3.04 The National Planning Policy Framework

Paragraphs 7,8 &9	Achieving Sustainable Development
Paragraph 11	Presumption in Favour of Sustainable Development
Paragraph 3	Preparing and Reviewing Plans
Paragraphs 38 & 47	Decision Making
Paragraphs 54 & 55	Planning Conditions and Obligations
Paragraph 59	Delivering Sufficient Supply of Homes
Paragraph 68	Identifying Land for Homes

Paragraph 78	Rural Homes
Paragraphs 105 & 109	Promoting Sustainable Transport
Paragraphs 117 & 118	Making Effective Use of Land
Paragraphs 124 & 127	Achieving Well Designed Places
Paragraph 63	Meeting the Challenge of Climate Change Flooding & Coastal Changes
Paragraphs 170,178,179 & 180	Conservation & Enhancing The Natural Environment

4.00 THE PRINCIPLE of DEVELOPMENT

4.01 The National Planning Policy Framework (2021) paragraph 68 requires *“strategic policy-making authorities”* to have *“a clear economic understanding of the land available in the area through the preparation of a Strategic Housing Land Availability Assessment”*.

4.02 NPPF (2021) paragraph 82 requires planning policies to *“set out a clear economic vision and strategy which positively and proactively encourages sustainable economic growth, set criteria or identify strategic sites, for local and inward investment to match the strategy and to meet anticipated needs over the plan period”*

4.03 The National Planning Practice Guidance on Housing and Economic Land Availability Assessment provides detailed guidance on how a SHELAA should be undertaken and sets a methodology for how sites should be identified and assessed.

4.04 The principle role of the SHELAA is to:

- identify sites and broad locations with potential for development
- assess their development potential and
- assess their suitability for development and the likelihood of development coming forward (the availability and achievability)

4.05 The subject planning application site was assessed for inclusion in the HBBC’s call for sites SHELAA (2018) and the call for sites (2020) under:

Stage 1: Identification of Sites and Broad Locations:

- sites in and adjoining villages or rural settlements and rural exception sites
- potential urban extensions and new free standing development and
- capable of delivering five or more dwellings (500M² of floor space) and/or above 0.25ha

The assessment procedure considered no noted “Red Constraints”:-

- Functional Floodplain
- Scheduled Monuments
- Internationally and Nationally designated Sites of Biodiversity and Geological Interest and
- Major Hazardous Facilities

Stage 2: Site and Broad Location Assessment

- Suitability
- Availability
- Achievability (inc.viability)

including:-

- Site size, boundaries and location
- Current land use and surrounding area/character
- Land, soil and water quality
- Environmental constraints
- Topographical constraints
- **Accessibility constraints**
- Planning policy considerations

4.06 The subject application is included within the HBBC (2018) and (2020) SHELAA under Reference No:AS461 - having been properly assessed and recognised as being suitable, available and developable without constraints for up to 27 dwellings (2018) and 31 dwellings (2020) respectively.

4.07 The recent Sketchley Lane Inspectorate planning appeal - (APP/K2420/W/20/3260227) indicated that Hinckley and Bosworth Borough Council could only demonstrate a 4.23 year housing land supply therefore the Council are unable to demonstrate the requisite minimum 5 year housing land supply.

4.08 HBBC housing policies are considered to be *out-of-date* and therefore NPPF (2021) Paragraph 11 (d) is triggered where planning permission should be granted *"unless adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole"*.

4.09 In the absence of the requisite minimum 5 year housing land supply plus a 20% , the *"tilted"* balance of NPPF (2021) Paragraph 11(d) is engaged as the supply is a direct genus from the age of the Development Plan and the out-of-date evidence base it relies upon.

4.10 The Council's shortfall in quantum of housing deliveries are further negatively compounded by Leicester City figure of 2992 of additional dwellings to be provided by HBBC (SoCG).

THE DEVELOPMENT PLAN AND FRAMEWORK POLICIES

4.11 Paragraph 2 of the NPPF (2021) states that *"planning law requires that applications for planning permission be determined in accordance with the Development Plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the Development Plan and is a material consideration in planning decisions"*.

4.12 Paragraph 12 of the NPPF (2021) states that *"the presumption in favour of sustainable development does not change the statutory status of the Development Plan as the starting point for decision-making"*. and Paragraph 11 of the NPPF (2021) and Policy DM1 of the adopted Site Allocation and Development Management Policies Development Plan Document (SADMP) (DPD) (2016) set out a presumption in favour of sustainable development and states that development proposals that accord with the Development Plan should be approved unless other material considerations indicate otherwise.

4.13 The Development Plan consists of the Adopted Core Strategy (2009) and the adopted Site Allocations and Development Management Policies (DPD) (2016).

4.14 The Council are unable to demonstrate the requisite minimum 5 year housing land supply (being able to only demonstrate a 4.23 year housing land supply) and therefore the "tilted" balance paragraph 11 (d) of the NPPF (2021) is triggered and with new settlement boundaries not confirmed until the publication of the new Local Plan, this is to be weighed in the balance of the merits of the planning application when considered with the policies of the adopted SADMP (DPD) (2016) and the adopted CS (2009) which attract significant weight given they are considered to be consistent with the Framework and therefore, sustainable development should be approved unless other material considerations indicate otherwise.

4.15 The application site is positioned adjacent to the existing suburban settlement boundary but is recognized that it lies within in countryside as identified in the current Borough Wide Policies Map.

4.16 Policy DM4 of the adopted SADMP (DPD) (2016) is applicable and which seeks to protect the intrinsic value, beauty and open character and landscape character through safeguarding the countryside from unsustainable development.

4.17 It is considered that the planning submission is compliant with Policy DM4 SADMP (DPD) (2016) in so far that:-

i) it does not have a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside, and

ii)it does not undermine the physical and perceived separation and open character between settlements, and

iii)it does not create or exacerbate ribbon development,

iv) the application site is not within a Green Wedge and

v) the application site it is not within the National Forest.

4.18 The planning application seeks the introduction of residential development in countryside which may be considered to result in harm and would necessitate assessment of the contribution to the local economy with mitigation to be weighed in the overall planning balance.

4.19 In this instance - given that Paragraph 11(d) of the NPPF (2021) applies - Paragraph 14 NPPF (2021) may be considered, however criterion (a) and (b) are non-applicable - therefore Paragraph 11(d) NPPF (2021) remains engaged.

4.20 The residential proposal for an application site located outside the defined limits to development and within countryside is contrary to:

- adopted CS Policy 7
- adopted CS Policy 8
- adopted Policy DM 4 SADMP (DPD (2016))

4.21 The application therefore conflicts with the spatial policies of the Development Plan, however Paragraph 11(d) of the NPPF (2021) is engaged and therefore a *"tilted"* balance assessment is to be made, accounting for all material considerations and identifying any resultant harm.

IMPACT ON THE CHARACTER & APPEARANCE of THE AREA

4.22 The application site of circa.0.50ha in area is located adjacent to the existing settlement's southern boundary and is bounded to the west by the tarmac roads of Barwell Road and to the south by open farmland; the site is influenced by the adjacent residential dwellings and domestic garages abutting the northern boundary.

4.23 The application site does not fall into any defined character area designations and is not in/or adjacent to a Conservation Area, is not Green Belt, a Green Local Space nor an ANOB or a National Park, does not contain/is not located adjacent to a Listed Building / Scheduled Monument, nor is the site listed as a SSSI.

4.24 The site contains no features either nationally nor locally designated as notable and its landscape value is considered Low at a localized site-specific level.

4.25 The application site is framed and enclosed by extensive and established mature high hedgerows field boundaries (inc. self-set trees) which assist in creating structure and pattern to the existing landscape; this same screening landscape feature is proposed to be retained and enhanced to assist in mitigation and containment of any perceived visual harm generated from the modest residential development proposal for up to seven dwelling houses

4.26 It is considered that the proposed development would not result in significant adverse landscape and visual effects over the long term with mitigation measures secured via an appropriately worded imposed planning condition(s) on any consent granted and - at a potential future reserved matters planning application stage - to control and secure an appropriate layout, scale and height of the proposed dwellings together with the retention and enhancement of the important established field boundary hedgerows to ensure that the development would have a site-wide, localised Permanent Minor Adverse effect upon the landscape character of the site; at a larger scale it is considered that the proposed development would have a negligible landscape effect due to the containment of the site and its relationship with the existing strong suburban fringe influence adjacent to the site and would not result in an incongruous feature in the area given the existing visual built-form backdrop and the said retained existing field boundary hedgerows.

4.27 At a future Reserved Matters stage the erection of an new 1.200m high soft wood post and rail fence reinforced with a Blackthorn/Quickthorn hedgerow mix to the application site's eastern boundary together with the introduction of new native specimen tree planting throughout the site and the potential for well-vegetated front gardens to the proposed focal dwellings fronting west onto Barwell Road would assist in mitigating the effects on transient highway users with the Magnitude of Change at the Occupation Phase of the proposal, considered to be a Permanent Minor Adverse effect on the landscape.

4.28 The identified protected buildings of The Church of All Saints GII* (C14/15 inc.C18 alterations) and Holy Trees GII are screened by intervening built-form and vegetation therefore there is no inter-visibility between the application site and the designated heritage assets;

nor is there any known key historic, functional or other relevant relationships between the application site and the known heritage assets.

4.29 The proposal would extend the built-form beyond the defined existing settlement boundaries and it is considered that the Magnitude of Change during the Construction Phase of the proposal would result in a Short Term Moderate - High Adverse effect on the landscape.

4.30 Future new tree planting, boundary hedgerow and tree enhancements with small dedicated amenity grass land /wild flower fringe planting areas will give rise to mitigate for any perceived localised Minor Adverse effect(s) up on the character of the site on completion of the development proposal.

4.31 Reserved Matters stage mitigation measures to minimise the harm include:

- retention and enhancement of the existing established mature high hedgerows,
- new high quality native tree specimen tree planting,
- new high quality hedgerow planting to the application site's eastern boundary and ..
- controlled finished ridge heights to dwelling houses abutting the application site northern boundary.

APPEARANCE, LANDSCAPING, LAYOUT AND SCALE

4.32 The outline planning application seeks consent for the erection of up to 7 dwelling houses with all matter reserved.

4.33 The criterion of Appearance, Landscape, Layout and Scale would be subject to a reserved matters application(s) subsequent to the granting of any planning consent.

4.34 Any grant of a planning consent would attract appropriately worded planning conditions and may be worded:-

"An application(s) for the reserved matters shall be made within 18 months from the date of this permission and the development shall be begun not later than two years from the date of the last of the reserved matters to be approved".

"No development shall be commenced until plans and particulars of "the reserved matters" relating to:-

- *appearance,landscape,layout and scale*

"have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried in accordance with the approved details"

4.35 A Landscape report is submitted as part of the supporting planning submission documentation.

IMPACT upon NEIGHBOURING RESIDENTIAL AMENITY

4.36 The immediate adjacent urban residential development situated abutting the application site's northern boundary - includes large private rear garden amenity areas/dedicated parking /shared garaging.

4.37 In the absence of existing residential dwellings positioned on the eastern, western and southern site boundaries, it is considered that no perceived impacts on residential amenity would be evident.

4.38 It is considered that the development proposal is capable of being delivered without any significant adverse affect on the privacy nor amenity of nearby residents and that the occupiers of the adjacent buildings and the amenity of future occupants of the proposed development would not be adversely affected by activities generated from within the site.

4.39) A Noise Impact Assessment is submitted as part of the supporting planning submission documentation.

4.40 It is considered that the submission proposal is capable of being delivered in compliance with both Policy DM10 of the adopted SADPM (DPD) (2016) and with the Council's Good Design Guide (2020).

4.41 It is considered a future reserved matters application would appropriately demonstrate - through appearance, landscape, layout and scale illustrations/documentation - adequate provision for both the retention of and provision of the requisite residential amenity standards for both the occupants of existing residential dwellings and the future occupants of the proposed new dwellings.

IMPACT upon HIGHWAYS SAFETY

4.42 The application proposal is an outline planning application with all matters reserved.

4.43 The ranges of services and facilities within walking distance in Kirby Mallory include a shop, a restaurant, a place of worship, a meeting hall, a recreational play area, leisure and tourism attractions and numerous small/medium scale employment opportunities.

4.44 The application site currently benefits from an existing vehicle and pedestrian access arrangement with Barwell Road (unclassified roadway - intended for local traffic) within a designated 30mph zone and supports an established equine use incorporating stabling and grazing paddocks.

4.45 A future new vehicle access would to be formed with suitable geometry in compliance with current LHA and LHDG current standards/guidance in construction specification, vertical alignment, radii, width and forward visibility splays; the proposed new access arrangement - subject to LHA consultation advice - may/may not require the relocation of the existing 30mph national speed limit (NSL) zone to the south of the new proposed access position to support a suitable and safe vehicle access for the development to serve up to 7 dwelling houses.

4.46 Vehicle parking and turning standards will be provided in compliance with current LHDG standards/guidance.

4.47 The opportunity for cycling (guidance @ 5km distance) and walking (guidance @ 1.5km distance) in lieu of shorter vehicle trips exists given the application site's close proximity to the village core.

4.48 The personal injury collision (PIC) data for Barwell Road indicates two incidents recorded as "*slight*" in severity of injury in 1991 (08.06.99) and 2006 (05.01.06) and one incident recorded as "*slight*" in severity of injury in 2009 (01.10.09) at the Church Road/Shilton Road junction - within the past twenty years and within 250.00M from the existing/proposed site access.

4.49 Traffic movement forecast for the proposed development for 7 dwellinghouses may possibly/probably generate a result in Peak Period Vehicle Trips of:

PEAK PERIOD	TRIP RATE		TRIPS (x7)	
	IN	OUT	IN	OUT
8.00AM - 9.00AM	1	2	7	14
5.00AM - 6.00PM	2	1	14	7

IMPACT upon ECOLOGY

4.50 The presence of protected species is a material consideration in the assessment of a planning submission and it is essential that the presence - or otherwise - of protected species (and to what extent they may/may not be effected by the planning proposal) is established prior to any granting of a planning consent.

4.51 The established mature high hedgerow field boundaries are to be retained (enhanced as required) and at a future Reserved Matters stage the introduction of dedicated located sourced specimen native tree planting and dedicated small amenity areas/wild flower areas may be considered suitably appropriate.

4.52 It is considered that the development proposal is compliant with Policy DM6 of the adopted SADMP (DPD) (2016) and accords with Paragraph 179 of the NPPF (2021).

4.53 As noted by Morph Ecological Consultants (04.01.23), the application site exhibits '*no evidence of protected species*' and the majority of the survey area has '*lower value habitats*'.

FLOODRISK & DRAINAGE

4.54 The application site is identified as being entirely located within the EA's designated Flood Zone 1 where residential development is considered compatible with reference to the PPG flood risk vulnerability table.

4.55 The application site encompasses an area circa 0.50ha.

4.56 It is considered that the planning submission proposal is compliant with DM6 of the SADMP (2016) and accords with paragraphs 159 and 169 of the NPPF (2021).

5.00 PLANNING BALANCE AND CONCLUSION

5.01 The Council cannot demonstrate a minimum 5 year housing land supply and the housing policies in both the adopted SADMP (DPD) (2016) and the adopted Core Strategy (2009) are considered to be out of date as they focused on delivery of a lower housing requirement than now required with the HBBC's current land supply position worsened post the Sketchley Lane appeal decision (APP/K2420/W/20/3260227), where some large sites were discounted from the housing delivery trajectory resulting in the Council only be able to demonstrate a 4.23 year housing land supply.

5.02 It is considered that the "tilted" balance in Paragraph 11(d) of the NPPF (2021) applies where for Decision-Taking, the granting of permission - *"unless adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies within the Framework taken as a whole"* - should be made for sustainable development.

5.03 It is acknowledged that the planning proposal would be in conflict with the adopted Core Strategy Policies 7 and 11 and with Policy DM4 of the adopted SADMP (DPD) (2016). These same policies are consistent with the Framework and are therefore accorded significant weight in the overall planning assessment.

5.04 The planning proposal seeks the consent for the erection of up to 7 dwellings on land located outside - but adjacent to the defined settlement boundary of Kirby Mallory.

5.05 The planning proposal would result in the loss of grade 3(b) agricultural land that has been under permanent horse grazing for in excess of 10 years and it is considered that the this loss of agricultural land would only have Light to Moderate weight in the overall assessment of the planning balance.

5.06 The Government is continually committed to the objective of significantly boosting the supply of housing through the policies and guidance promoted within successive National Planning Policy Framework publications (2012/2018/2019) - including the current NPPF (2021) in Paragraph 60 *"Delivering a sufficient supply of homes"*.

5.07 In the National Planning Policy Framework (2021) , Paragraph 11 states that for decision-taking , where the policies which are most important for determining the application are out-of-date, granting permission unless .." *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits*" and therefore the three overarching interdependent objectives of the strands economic, social and environmental sustainability criterion stand to be assessed.

5.08 The planning proposal would result in Moderate to High economic positive benefits in Boosting the Local (micro/macro) Economy in the construction phases through to the occupation of the development and with on-going economic benefits post completion with the Buying and Selling of the new properties, Financial Contributions for Associated Infrastructure and Council Revenues through the council tax payments generated and the New Homes Bonus for (upto) 7 new dwellings.

5.09 The development proposal for seven dwellinghouses would support and maintain local community services & non-retail services of Kirby Mallory, Peckleton and Stapleton result in a Moderate to High social positive benefits to the area.

5.10 The planning proposal would result in Moderate environmental positive benefits with the High Quality Sustainable Design ,the Retention and Enhancement of the Existing Landscape Features, with no Floodrisk and the introduction of SUDS.

5.11 The planning proposal would be in conflict with the adopted Core Strategy (2009) Policies 7 and 11 and Policy DM4 of the adopted SADMP (PDP)(2016) with the these same policies attracting significant weight being consistent with the Framework (2021).

5.12 It is recognised that the planning proposal would result in a Moderate - High Adverse effect to the character and appearance of the area during the Construction Phase however this impact would be temporary and would reduce to a Permanent Minor Adverse effect in year 1-2 of the Occupation Phase of the development proposal.

5.13 It is considered that on balance this level of harm does not significantly and demonstrably outweigh the identified benefits of the submission scheme proposal when assessed against the Framework (2021) as a whole.

5.14 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and S70 (2) of the Town and Country Planning Act 1990 require that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.

5.15 The Council currently cannot demonstrate the requisite minimum 5 year housing land supply and the adopted Core Strategy (2009) and the adopted SADPM (DPD) (2016) are considered *out-of-date* as they focused on delivery of a lower housing requirement than now required and therefore the “*tilted*” balance in Paragraph 11(d) of the NPPF (2021) is engaged and applies where planning permission should be granted unless adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework (2021) taken as a whole.

5.16 Notwithstanding that the provision of 7 additional dwelling houses would not significantly boost the housing supply in the Borough, the economic and social benefits would be beneficial for the area with no identified significant adverse impacts from the development arising from the development proposal.

5.17 It is considered that subject to appropriately worded planning conditions the planning proposal would not have any significant adverse effects upon residential amenity, flooding and drainage, ...

vehicle or pedestrian safety, ecology and is in accordance with policies 15,16 and 19 of the adopted Core Strategy (2009) and Policies DM1,DM6,DM7, DM10, DM17 and DM18 of the adopted SADMP (DPD) (2016).

5.18 It is therefore considered that the “*presumption in favour of sustainable development*” does apply in this case and “*the proposal is considered to be sustainable development*” and in accordance with Policies DM1,DM4,DM6,DM10,DM11,DM12,DM14,DM17and DM18 of the adopted SADPM (2016) AND the overarching principles of the NPPF (2021) and with substantive material considerations outweighing any conflict with some elements of the adopted Development Plan - it is respectfully requested that planning consent be granted subject appropriate imposed planning conditions.

SANSOM CLARKE
CHARTERED SURVEYORS

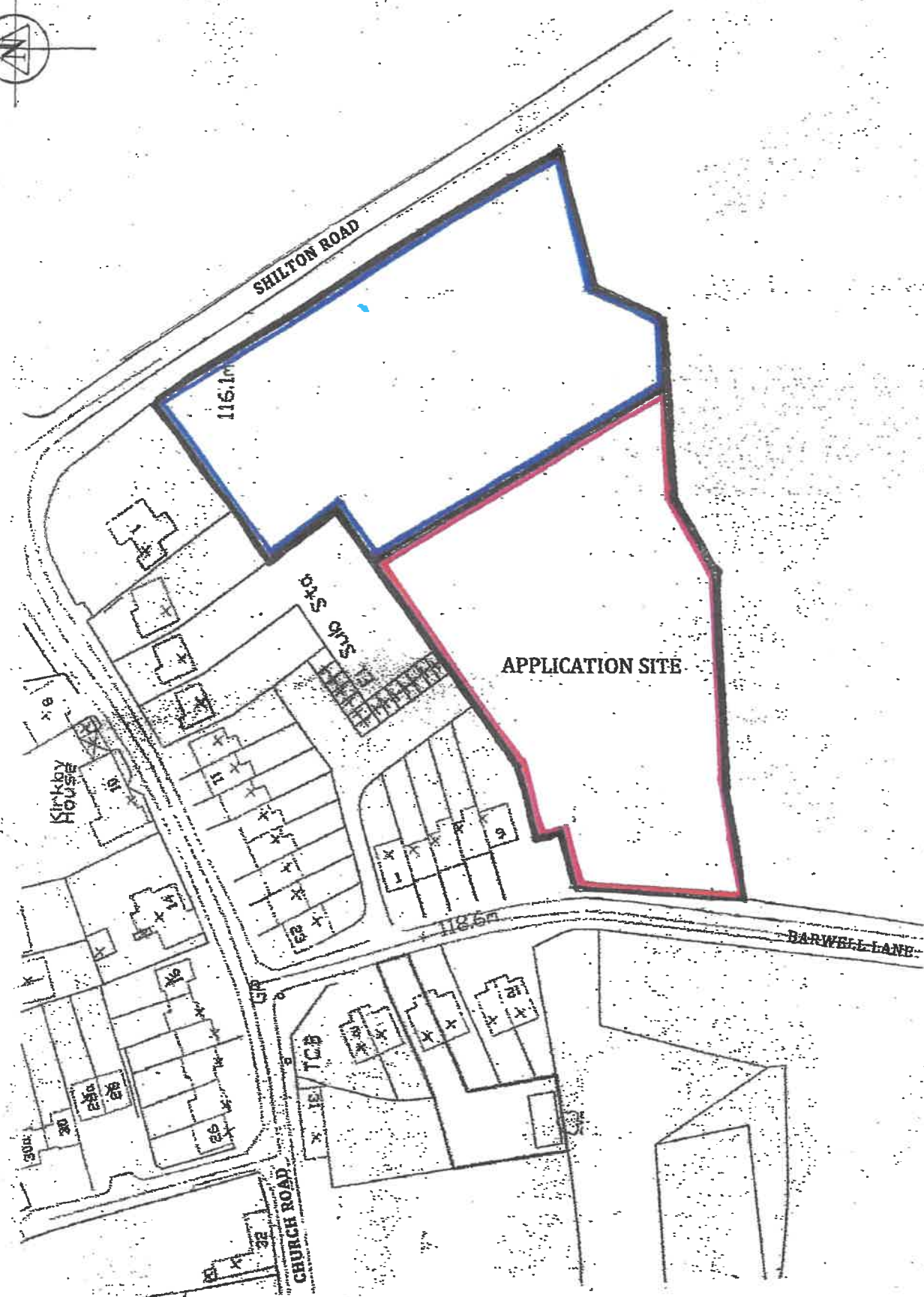
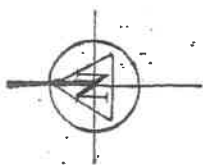
6.00 APPENDICES

6.01 Location Plan.

6.02 Self Build/Custom Build Data.

6.03 S106

SC



LOCATION PLAN 1:1250

SANSOM CLARKE
CHARTERED SURVEYORS

SCALE: 1:1250 @ A4 11/22

HBBC Self-Build/Custom Build Data

Headline Demand Data: (Last updated: 23/06/2023)

- Number of Individuals on the Register: 40
- Number of Individuals Without an Existing Plot: 34
- Number of Detached Dwellings Sought: 38
- Number of Serviced Plots Sought in Rural Areas: 18

Latest Monitoring Position: (Last updated: 23/06/2023)

April 2016 - Oct 2018

- Number of Individuals on the Register: 1
- Cumulative Permissions Granted: 0

Oct 2018 - Oct 2022

- Number of Individuals on the Register: 15
- Cumulative Permissions Granted: 9

Date:

2023

NAMED APPLICANT

AND

HINCKLEY & BOSWORTH BOROUGH COUNCIL

AGREEMENT

Given under Section 106 of the Town and Country Planning Act 1990 (amended)

Relating to the Proposed Development at Land off Barwell Road,
Kirby Mallory, Leicestershire. LE9 7QA

Planning Application Ref.No:1

DRAFT S106

SIGNED as a DEED by
NAMED APPLICANT
In the presence of:

Witness:

Signature:

Name:

Address:

DRAFT S106

THIS AGREEMENT is dated

2023

PARTIES

1 NAMED APPLICANT (Address to be confirmed)

TO

2 HINCKLEY AND BOSWORTH BOROUGH COUNCIL of the
Hinckley Hub, Rugby Way, Hinckley, Leicestershire. LE10 0FR.
(the Council)

1 DEFINITIONS

In this undertaking the following expressions shall have the following meanings (except where the contract otherwise requires)

“the 1990 Act” - means the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991).

“the 2011 Act” - means the Localism Act 2011.

“Application” - means the planning application for submission for the Development proposal as validated and registered by the Council.

“Commencement of Development” - means the date of commencement on which any material operation forming part of the permitted Development as defined within the meaning of Section 56(4) of the 1990 Act being carried out, other than (for the purpose of this Agreement and for no other purpose) operations consisting of site clearance, demolition, archaeological investigation, investigation for the purposes of assessing contamination, remedial action in respect of any contamination, erection of a means of temporary enclosure for the purposes of site security and the display of site notices or advertisements and reference to “Commencement of Development” and all cognate expressions shall be construed accordingly.

“Completion” - means to be used for its intended use as detailed within the Planning Permission.

“Development” - means the development of the Site by the Owner in accordance with the Planning Permission as set out in the Application.

“Dwelling” - means the dwellinghouse to be constructed as part of the Development on the Site including any structure or other structure which may be attached or integral forming part of the Planning Permission other than any ancillary building or structure not attached to the dwellinghouse.

“Family” - means spouses, children, step-children, grandchildren, parents, grandparents, brothers or sisters or half brothers or sisters together with persons with whom they would normally reside to include but not be restricted to spouses children or partner.

“Occupation” and “Occupied” - means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.

“Obligations” - means the covenants, restrictions and planning obligations contained within this Agreement and within First Schedule annexed hereto.

“Land Title” - means the land as registered on the Land Registry and the Land Title relating to the land (or a part parcel of land thereof) benefiting from Planning Permission for the Development.

“Plan” - means the plan in the Second Schedule annexed hereto.

“Planning Permission” - means the planning permission (subject to planning conditions as applicable) granted by the Council pursuant to the Application.

“Site” - means the site as defined and referred to in the Planning Permission.

“Self-Build” - means the building or completion by a) individual(s) b) associations of individuals or c) persons working with or for individuals or associations of individuals of dwellinghouses to be occupied as homes by those individuals in accordance with the requirements of the Self Build and Custom Housebuilding Act 2015 (the Act).

“Occupation Notice” - means the notice in writing to be served upon the Council by the Owner formally notifying the Council of the Owner’s intention to Occupy the Dwelling in accordance with the occupation notice in Third Schedule annexed hereto.

“VAT” - means value added tax chargeable under the Value Added Tax Act 1994.

“Working Days” - means any day except Saturday, Sunday, a bank holiday or a public holiday in England and Wales.

2 CONSTRUCTION of this AGREEMENT

2.1 Where reference is made to any clause, paragraph, schedule or recital that reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Agreement.

2.2 Words importing the singular meaning where the context allows include the plural meaning and vice versa.

2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual people include companies, corporations and firms and all such words shall be interpreted interchangeably in that way.

2.4 Where more than one person is obliged to observe or perform an obligation, the obligation can be enforced against all of them jointly and against them individually.

2.5 Any reference to an Act of Parliament includes any modification, extension or re-enactment of that Act for the time being in force and includes all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under the Act or deriving validly from it.

2.6 Reference to any party in this Agreement shall include the successors in title to that party and to any deriving title through or under that party, and references to any local authority shall include the successors to its various statutory functions.

3 LEGAL BASIS

3.1 This Agreement is made as a Deed under S106 of the 1990 Act.

3.2 The obligations imposed upon the Owner under this Agreement create planning obligations under S106 of the 1990 Act and are enforceable by the Council as the local planning authority.

4 CONDITIONALITY

4.1 This Agreement is conditional upon:-

(i) the granting of Planning Permission and

(ii) the Commencement of Development

except for Clauses 6.1, 11 and 12 which shall come into effect immediately upon completion of this Agreement.

5 THE OWNER'S COVENANTS

5.1 The Owner covenants with the Council to observe and perform the Obligations.

6 MISCELLANEOUS

6.1 Upon completion of this Agreement, the Owner shall pay the fair and reasonable legal costs of the Council incurred in the signing of this Agreement; these said costs are to be jointly agreed prior to the signing of this same Agreement.

6.2 No provision in this Agreement is intended to or will operate to confer any benefit under the Contracts (Rights of Third parties) Act 1999 on a person who is not named as a party to this Agreement, except that the application of that Act shall not prevent all or any of the future successors in title or to the statutory functions of any of the parties to this Agreement from being able to benefit from or to enforce any of the Obligations.

6.3 This Agreement shall be registered as a local land charge by the Council and shall be registered on the Charges Register of the Land Title relating to the Site under the approved Planning Permission by the Owner on each disposal who will provide Office Copies to the Council as evidence of registration.

6.4 Where the agreement, approval, consent or expression of satisfaction is required by one party from another party under the terms of this Agreement, such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.

6.5 Any such agreement, approval, consent or expression of satisfaction shall unless otherwise stated in this Agreement be given on behalf of the Council by an authorised appointed proper officer of the Council.

6.6 Any notices shall be deemed to have been properly served if sent to the principal address or registered office (as appropriate) of the relevant party by recorded postal service.

6.7 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid, illegal, or unenforceable, then such invalidity, illegality or enforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.

6.8 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

6.9 No person shall be liable for any breach of any of the Obligations after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.10 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.

7 WAIVER

7.1 No waiver (whether express or implied) by any party to this Agreement of any breach or default in preforming or observing any provisions of this Agreement by any other party shall constitute a continuing waiver, and no such waiver shall prevent the party granting it (or implied to have done so) from enforcing any of the relevant provisions or from acting upon any subsequent breach or default.

8.00 VAT

8.1 All sums payable under this Agreement shall be deemed to be exclusive of Value Added Tax where applicable, and except where otherwise stated, the party liable to make the payment shall also be liable to pay any Value Added Tax due.

9 JURISDICTION

9.1 This Agreement is governed by and interpreted in accordance with the law of England and Wales; and the County Court in whose district the Site is situated shall have full jurisdiction to hear and determine proceedings arising from or relating to this Agreement or for the enforcement of it's terms or any of them.

10.00 DELIVERY-

10.1 The provision of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

IN WITNESS of which the parties have executed this document as a deed on the date hereof.

FIRST SCHEDULE

Owner's covenants

The Owners covenant and agree:-

1 Commencement of Development

1.1 Not to Commence Development until Notice has been served upon the Council in the form as contained within Appendix 3 to this Agreement addressed to the Head of Development Control confirming the date of Commencement of Occupation.

2 Construction of Development

2.1 To construct or procure the construction of the Development as a Self-Build only.

3 Occupation of the Dwelling

3.1 To use or Occupy the Dwelling as their sole or principal residence unless otherwise sold or let in accordance with paragraph 4 of this Schedule.

4 Sale or Letting by the Owner

4.1 Not to let the Dwelling (or offer so to do) to persons other than Family.

4.2 The Development for the Self-Build Dwelling will be occupied only by the Owners and their Family for a period of three years from the date as specified in the Occupation Notice.

4.3 Pursuant to the period of three years of occupation after completion of the Development , thereafter the restriction in this clause shall cease to have effect to use or Occupy the Dwelling as their sole or principal residence.

DRAFT S106

SECOND SCHEDULE

The Plan

THIRD SCHEDULE

Form of Occupation Notice

OCCUPATION NOTICE

Notice to the Head of Development Control of Commencement of Development

Planning Permission Reference No:

Development Site Address:

Description of the Development:

Date of the signed Section 106 Agreement:

Notice is hereby given to the Council that the Occupation of the approved Self-Build Dwelling shall Commence on - Date:

Name:

Signed:
(for and on behalf of the Owner)

Address:

Date:

Contact telephone number:

Contact email address:

