

Planning Appeal: Land South of Burbage

Appellants' Statement of Case

**In relation to Planning Application Reference:
24/00083/HYB**

Prepared on behalf of BDW Trading Ltd (Redrow Homes Midlands)
and Mr Peter Andrew Farmer

30 April 2026

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1.0 Introduction

- 1.1 Lichfields has been instructed by BDW Trading Ltd (Redrow Homes Midlands) and Mr Peter Andrew Farm (“the Appellants”) to lodge an Appeal under s78 of the Town and Country Planning Act 1990 (as amended) against the decision of Hinckley and Bosworth Borough Council (“the Council”) to refuse planning permission for 422 residential dwellings, 11 self-build homes and land for a care home, on Land South of Burbage (“the Site”).
- 1.2 In December 2023, the Appellants submitted a hybrid application (Application Reference: 24/00083/HYB) (the “Application”) to the Council via the planning portal for the following form of development at the Site:
- “Hybrid planning application for 422 dwellings, public open space, associated infrastructure and the demolition of 65 and 65a Coventry Road, and Burbage Fields Farm and outline planning application for a residential care home and up to 11no. self-build plots (all matters reserved except for access).”*
- 1.3 In essence, part of the application was seeking full planning permission for 422 residential dwellings (Class C3), access, public open space, and the other was seeking outline planning permission for a care home with an indicative capacity of 66 bedspaces, and 11 self-build housing plots.
- 1.4 The Application was validated on the 26th of January 2024, which confirmed that the statutory determination deadline was 26th April 2024 (CD F15). However, the Application was subject to several rounds of consultation with Statutory Consultees, and further revised submissions were made to remedy any comments raised by the Council or its Statutory Consultees. As a result, the Applicant agreed to several extensions of time [EoT] with the Council to facilitate these, which finally extended the statutory determination period up to 23rd January 2026 (CD F16).
- 1.5 Consequently, the Application was refused by the Council on 22nd January 2026 for the following reasons (“the RfR”) (CD D1):
- “The applicant has failed to demonstrate that safe and suitable access for all users would be provided to the development from Coventry Road. The proposal, if permitted, could consequently result in an unacceptable form of development and could lead to dangers for highway users. The residual cumulative highway and access impacts of the development are considered to be severe and significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies in the National Planning Policy Framework (2024) taken as a whole, contrary to Policy DM17 of the Site Allocations and Development Management Policies DPD (2016) and paragraphs 115 and 116 of the National Planning Policy Framework (2024).”*
- 1.6 This Statement of Case [SoC] is prepared on behalf of the Appellants and sets out their case for why the appeal should be allowed, and planning permission should be granted for the development. This SoC is also supported by a Highways Statement (CD G2.3) and Landscape Statement (CD G2.4), which are appended to this SoC. This SoC should also be read alongside the draft Statement of Common Ground [SoCG] (CD G3) and draft Highways SoCG (CD G4). It has been drafted in accordance with the guidance in Annex J of

2.0 Key Background Information

- 2.1 The Site comprises c.26.498 ha of land mainly used for agricultural pastureland (See the Site Location Plan at CD B139). The Site slopes towards the southeast from the highest part in the north at approximately 126mAOD to the lowest part in the south at approximately 107mAOD.
- 2.2 The Site itself is comprised of nine irregular parcels of greenfield land that are currently used for pasture grazing of agricultural livestock. In addition, the Site is occupied by the Burbage Fields Farmhouse and associated outbuildings, located to the south west of the Site.
- 2.3 The majority of the eastern boundary of the Site is bound by trees and hedgerows, with greenfield land beyond. A small section of the Site to the east is bound by a hedgerow with Workhouse Lane directly adjoining the boundary. The northern boundary of the Site is bound by hedgerow, with the most northern point of the Site adjoining the built-up boundary of Burbage. Part of the western Site boundary is bound by the existing built-up boundary of Burbage. The remainder of the western boundary is bordered by Bullfurlong Lane and open countryside. The southern Site boundary comprises a fence line, trees and hedgerows, beyond which lies the M69 and associated barrier planting. A small section of the Site to the east extends across Workhouse Lane, to the east, which is bound by Flanders Close at the easternmost boundary.

Site Context

- 2.4 The Site abuts the Burbage settlement boundary, immediately adjacent to the Ambion Way residential development to the east, and further residential development along Bullfurlong Lane and Coventry Road to the west and north. The Site is located c.600m from the centre of Burbage, c.2.7km to the south of the centre of Hinckley, and c.20km to the south-west of the centre of Leicester.
- 2.5 The Site is sustainably located on the edge of Burbage, which is one of the four main urban areas of the Borough. The Site therefore would provide future residents with access to a range of facilities, providing a mix of shops, restaurants and pubs, a library, a medical centre and pharmacy, and a post office.
- 2.6 The nearest primary school to the Site is the Burbage Church of England Infant School, which is located approximately 500 metres to the north and is accessible within a c.10-minute walk. In terms of secondary schools, the nearest secondary school to the Site is Hastings High School, which is located c.1.2km to the north of the Site. The Site is also well-served by public transport, with the bus stops on Lutterworth Road within 5-minute walk, providing access to Burbage and Hinckley town centres.
- 2.7 In terms of accessibility to public transport, the Site is located 2.3km (9 minutes via car) from Hinckley train station, offering connections to larger settlements such as Nuneaton and Leicester. This offers suitable access to further employment opportunities, services and facilities in addition to Burbage's existing provision of amenities. The Site is in close proximity to a number of bus stops; Crossways bus stop is 110m (1-minute walk) from the Site, whilst Robinson Way bus stop and Pyeharps Road bus stop are located 250m (3-

minute walk) and 400m (5-minute walk) away from the Site, offering regular service to Nuneaton.

Designation and Allocations

- 2.8 The Environment Agency's [EAs] Map identifies the Site as being located within Flood Zone 1 and being at low risk of flooding; however, there are areas of 'moderate' to 'high' surface water flooding located within the centre of the site. There are no heritage assets on or within close proximity to the Site, nor are there any Tree Preservation Orders within the Site, and there is no evidence of protected species within or in close proximity to the Site. The Burbage Round Public Right of Way [PRoW] crosses the Site.
- 2.9 In summary, the Site is not subject to any statutory or non-statutory planning and land-use designations, nor is it allocated within the Local Plan 2006-2026 ("the Local Plan"), or Burbage Neighbourhood Plan 2015-2026 (2021) [BNP] per se. However, the Site is located adjacent to the Settlement Boundary of Burbage, as defined in the recently made BNP. Therefore, in principle, the residential development of the Site adjacent to the Settlement Boundary is in accordance with the Development Plan – this is discussed further in Section 8 of this SoC.

Planning History

- 2.10 Based on the Council's online records, the following planning history is identified for the Site:
- 1 Application Reference: 04/00934/COU – Change of use from agriculture to recreational land – Withdrawn 17/02/2005;
 - 2 Application Reference: 04/01455/COU – Change of use from agriculture to recreational land – **Approved** 23/02/2005;
 - 3 Application Reference: 21/00502/OUT - Outline planning application for the erection of up to 80 residential dwellings (Use Class C3), open space provision and associated infrastructure, with all matters reserved except access – Refused 16/08/2022 – **Appeal Allowed** 30/10/2023;
 - 4 Application Reference: 25/00971/REM – Approval of reserved matters (appearance, layout, scale and landscaping) of outline planning permission 21/00502/OUT for the construction of 77 residential dwellings – Pending Determination.
- 2.11 Based on the Council's online records, the following planning history is identified on land near the Site which is relevant to this application:
- 1 **Land To The South West Of Lutterworth Road**
 - a Application Reference: 14/01205/OUT – Residential development for up to 80 dwellings, open space and associated works (outline - access only) – Refused 02/04/2015;
 - b Application Reference: 15/01292/OUT – Residential development for up to 80 dwellings, open space and associated works (outline - access only) (resubmission) – Approved 27/01/2016;
 - c Application Reference: 17/00795/REM – Approval of reserved matters (appearance, layout, scale and landscaping) of outline planning permission

15/01292/OUT for residential development of 72 dwellings) – Approved
10/11/2017;

- d Application Reference: 18/00918/CONDIT – Variation of Condition 4 of planning permission reference 15/01292/OUT to enable the extension of construction working hours to 8:00-18:00 hours Monday to Friday and 8:00-13:00 hours on Saturdays with no working on Sundays or Bank Holidays. construction for up to 80 dwellings, open space and associated works (15/01292/OUT) – Withdrawn 13/12/2018; and
- e Application Reference: 20/01085/DISCON – Application to fully discharge condition 13 (noise) attached to planning permission 15/01292/OUT – Discharged 23/12/2020.

Figure 2.1



Application Background

- 2.12 Lichfields was appointed by the Appellant in February 2021 to prepare and submit a hybrid application for the Site. An Environmental Impact Assessment [EIA] Screening Request was submitted to the Council on 27 July 2021 for up to 600 dwellings, made under Regulation 6 of the Town and Country Planning (EIA) Regulations 2017 (as updated) (“the EIA Regulations”). Consequently, the Council confirmed on 16 August 2021 that an EIA is not required for this development.
- 2.13 The Application was prepared and consequently submitted to the Council in December 2023. It was validated on 26th January 2024 and assigned application reference 24/00083/HYB. Following several rounds of consultation between 2024 and 2025, further information was submitted in response to several consultation responses made by Statutory

Consultees and several meetings were held with the Case Officer to discuss the application. The genesis of this is set out in the Core Documents list (CD G2.2).

2.14

In light of various responses from Statutory Consultees, the Appellant made several rounds of amendments to the proposed development, reflecting the feedback received, over the course of the Application. Consequently, the Appellant submitted a suite of revised layouts and drawings, as well as updated technical reports and drawings, to the Council at multiple stages throughout the determination of the Application – this is reflected in the Core Documents (CD G2.2). A summary of the key amendments to the layout comprises:

- The proposed care home has been relocated to a more accessible and central location within the Site;
- An amendment to the affordable housing mix to reduce the percentage of 1x bed units;
- The development has been pulled further back from the western boundary/Bullfurlong Lane, and a wider green buffer has been created here (between 17m –24m GI corridor);
- Speed calming and road widening have been added;
- The introduction of a section of segregated cycleway from the Coventry Road entrance into the site for approximately 440 metre;
- A shared foot/cycle network loop around the development core and which extends to the emergency access link on the eastern edge of the site on Workhouse Lane;
- A reduction in the amount of shared private drives;
- Raised tables added along the road network as speed control measures;
- Car parking spaces have been widened where necessary;
- New swales have been included to address the comments made by the Lead Local Flood Authority;
- A new 3-bed house type range has been introduced;
- The number of M4(2) homes has increased (259 of the proposed market/ affordable dwellings will now be M4(2) compliant in comparison with 219 previously);
- The proposed development will provide 85 affordable homes, as opposed to 84 previously. The market housing provision will reduce from 338 to 337 dwellings, with the overall number of houses remaining at 422;
- The tenure split of affordable homes is shown to include Affordable Rent, Shared Ownership and First Homes;
- Updated Landscape and Visual Impact Assessment; and
- An Open Space Typologies plan which adheres to the Open Space Assessment 2025 requirements (published October 2025).

2.15

Key supplementary submissions related to:

- A Letter of Support (CD B12), prepared by LNT Care Developments, who are an established Care Home Developer and Operator with a portfolio across the UK, has also been submitted in support of the care home element of the scheme. Crucially, it expresses an interest in securing a suitable scheme within Burbage;

- Trial trenching was undertaken on the site, which did not identify any finds of archaeological significance (CD 58);
- As a result of the Mead Judgment, a Sequential Test (CD B97) and Supplementary Planning Statement (CD B96) were submitted to the Council. However, consequently, following the changes to the Planning Practice Guidance [PPG] in September 2025, in verbal correspondence, the Case Officer agreed that, as there were no objections to the site-specific Flood Risk Assessment by the LLFA, a Sequential Test was no longer required; and
- A Landscape Rebuttal Brief Note was submitted to the Council in response to comments received. The Council were satisfied that there were no significant adverse landscape harms, subject to conditions.

2.16 Importantly, the Appellant notes that a result of the iterative updates to the Application, most Statutory Consultees raise no objections, subject to conditions. The above is reflected in the Officer's Report (CD C1), which raises no technical objections, save for highways, and confirms that the application accords with the Development Plan and National Planning Policy Framework (2024) [NPPF] respectively. It will also be agreed through the SoCG (CD G2.2).

3.0 The Appeal Proposal

- 3.1 The Application was made in hybrid form, with part of the application seeking full planning permission for 422 residential dwellings (Class C3), access, public open space, and the other was seeking outline planning permission for a care home with an indicative capacity of 66 bedspaces (Class C2), and 11 self-build housing plots. The description of development was as follows:

“Hybrid planning application for 422 dwellings, public open space, associated infrastructure and the demolition of 65 and 65a Coventry Road, and Burbage Fields Farm and outline planning application for a residential care home and up to 11no. self-build plots (all matters reserved except for access).”

- 3.2 The Application would deliver 422 residential (Class C3) dwellings, of which 20% would be affordable (c.85 dwellings) and 219 would be M4(2) compliant. The average density would equate to c.32.46 dwellings per hectare (dph), based on a net developable area of c.13.13 ha excluding open space. The net developable area for the whole Site, including the self-build plots and the care home, is 14.01 ha. In addition to 422 residential dwellings (Class C3), the proposed development would make provision for a care home with an indicative capacity of 66 bedspaces (Class C2), and 11 self-build housing plots.
- 3.3 The Site Layout Plan (CD B137) also shows how a mix of housing types and tenures could be accommodated on the Site, including 7 bungalows and M4(2) dwellings. The Design and Access Statement (CD B23) and Design and Access Addendum (CD B60) demonstrate how the scale and density of development would be appropriate in the context of the surrounding area. The existing PRoW is retained and incorporated into the proposed open space.
- 3.4 The Landscape Masterplan (CD B138.1-138.2) demonstrates how the Site could deliver a total of 9.346 hectares of open space comprising a mix of public open space, including formal and informal green space, a Sustainable Urban Drainage System [SuDs], planting and children’s play provision. The Site Layout envisage public open space being created along the eastern and southern boundaries, with SuDs acting as a focal feature. Additional open spaces will be provided in between the residential parcels, enhancing the landscape-led nature of the proposals with LEAP positioned towards the centre of the Site. The southern boundary of the Site would comprise a linear strip of open space and a MUGA, further enhancing the area and providing a natural barrier to the M69. Existing trees and hedgerows along the boundaries of the Site would be protected and form an integral part of the scheme, enhancing the character and sense of place.

The eastern area of the Site would be accessed via an extension of Flanders Close, which provides access to Lutterworth Road. This would enable the development to incorporate a shared pedestrian/cycle route link to the phase one development and access to the wider Burbage area. Another primary point of access will be achieved via an extension of Coventry Road and the provision of a primary street through the existing residential area comprised of two dwellings. There will be no through traffic between Coventry Road and Flanders Close, however, provision will be made for pedestrians, cyclists and emergency vehicles. A further pedestrian/cycle link will lead from Bullfurlong Lane, which runs adjacent to the

western boundary of the Site. Detailed site access drawings are set out in the Transport Assessment (CD B46.1-B46.5).

3.5 In light of the iterative amendments made to the Application during determination, the Appellant considers that the following technical reports and drawings comprise the final proposed development for the purposes of this Appeal:

- Design and Access Statement (CD B23) and Addendum (CD B60);
- Planning and Affordable Housing Statement (CD A2);
- Older Persons Need Assessment (CD A6);
- Flood Risk Assessment (CD B103), Sequential Test (CD B97) and Supplementary Planning Statement (CD B96);
- Noise Impact Assessment (CD B91);
- Landscape and Visual Impact Assessment (CD B56-B57) and Revised Briefing Note (CD B94);
- Transport Assessment (CD B46.1-B46.5);
- Residential Travel Plan (CD B47);
- Employee Travel Plan (CD A37);
- Ecological Mitigation and Enhancement Strategy (CD B95);
- Bird Survey (CD A42);
- Species Survey (CD A43);
- Biodiversity Net Gain Report CD B128);
- Biodiversity Net Gain Calculations (CD B129);
- Arboricultural Assessment (CD B87);
- Archaeological Desk-Based Assessment (CD B93);
- Air Quality Assessment (CD B48);
- Statement of Community Engagement (CD A3);
- Utilities Statement (CD A49);
- Phase 1 Risk Assessment (CD A45);
- Sequential Test (CD B97);
- Supplementary Planning Statement (CD B96);
- Planning Drawings, including:
 - i) Road Hierarchy Plan (CD B149);
 - ii) Highway Adoption Plan (CD B141);
 - iii) Parking Strategy Plan CD B148);
 - iv) Landscape Masterplan (CD B138.1-138.2);
 - v) Bat Boxes, Bird Bricks and Hedgehog Highways Plan (CD B150);

- vi) Engineering Layout Plans (CD B99.1-99.5);
- vii) Drainage Strategy (CD B100.1-100.3);
- viii) Fire Distance Plan (CD B142);
- ix) Bin Refuse Plan (CD B147);
- x) Affordable Housing Plan (CD B144);
- xi) Materials Layout Plan (CD B136);
- xii) Surface Materials Plan (CD B145);
- xiii) Enclosures Plan (CD B140);
- xiv) Street Scenes (CD B132);
- xv) Location Plan (CD B139);
- xvi) Site Layout (CD B137);
- xvii) Topographical Survey (CD B143);
- xviii) Character Area Layout (CD B151);
- xix) House Types and Garages Packs (CD B80-B82); and
- xx) Open Space Typologies Plan (CD B134).

4.0 Planning Policy Context

4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 [PCPA] and Section 70(2) of the Town and Country Planning Act 1990 [TCPA], require that regard is to be had to the Development Plan for the purpose of any determination to be made under the Planning Acts and that the determination should be made in accordance with the Development Plan unless material considerations indicate otherwise. This in effect requires that a balancing exercise is undertaken to determine whether the conditions presented by each case warrant whether an application should be permitted or refused.

4.2 The Development Plan for this area comprises:

- The Local Plan 2006-2026:
 - Core Strategy (2009) [CS]; and
 - Site Allocations and Development Management Policies DPD (2016) [SADMP DPD].
- BNP 2015-2026 (2021).

Core Strategy (2009)

4.3 The CS (adopted December 2009) provides the overarching strategy and long-term vision for the Borough, to guide the future development of the Borough up to 2026, with other development plan documents implementing this strategy and identifying sites for development. The CS was prepared in conformity with the now revoked East Midlands Regional Plan and National Planning Guidance.

4.4 It is considered that the following policies are of relevance to this Appeal:

- Policy 4 (Development in Burbage);
- Policy 15 (Affordable Housing); and
- Policy 19 (Green Space and Play Provision).

Site Allocations and Development Management Policies DPD (2016)

4.5 The SADMP DPD (adopted July 2016) allocates land to deliver the development requirements outlined in the CS, including (*inter alia*) housing and employment. In addition, it also includes development management policies that apply across the Borough, and which will be utilised in the determination of planning applications. It was prepared in accordance with the CS and the first iteration of the NPPF (2012).

4.6 It is considered that the following policies are of relevance to this Appeal:

- Policy DM1 (Presumption in favour of Sustainable Development);
- Policy DM4 (Safeguarding the Countryside and Settlement Separation);
- Policy DM3 (Infrastructure and Delivery);
- Policy DM6 (Enhancement of Biodiversity and Geological Interest);

- Policy DM7 (Preventing Pollution and Flooding);
- Policy DM10 (Development and Design);
- Policy DM11 (Protecting and Enhancing the Historic Environment);
- Policy DM12 (Heritage Assets);
- Policy DM13 (Preserving the Borough's Archaeology); and
- Policy DM18 (Vehicle Parking Standards).

Burbage Neighbourhood Plan 2015- 2026

- 4.7 The BNP underwent Examination in March 2020, and following recommended modifications from the Examiner, the Council recommended that the plan proceed to referendum. However, due to COVID-19 and changes to the PPG, the BNP has been unable to hold a referendum at that time. Consequently, BNP underwent a referendum on 6 May 2021, and a positive referendum result was achieved. Following this, the BNP was formally made by the Council on 10 May 2021, and forms part of the Development Plan. Importantly, the policies in the BNP should be given full weight when determining planning applications in the neighbourhood area, and as it forms the most recently adopted Development Plan document, it should take precedence over existing policies in the CS and SADMP DPD.
- 4.8 It is considered that the following policies are of relevance to this Appeal:
- Policy 1 (Settlement Boundary);
 - Policy 3 (Design and Layout);
 - Policy 4 (Parking);
 - Policy 5 (Footpaths and Cycleways);
 - Policy 7 (Protection of other Important Green Spaces);
 - Policy 8 (Ridge and Furrow Fields);
 - Policy 9 (Wildlife and Green Corridors); and
 - Policy 13 (Important Trees and Hedges).

Weight given to the Development Plan

- 4.9 The Council can currently only demonstrate a five-year housing land supply position of 3.44 years – as set out below in Section 5.0. Consequently, the policies most important for determining the application are considered to be out of date (NPPF para 11(d) and footnote 8). The proposed development should therefore be considered in accordance with the 'tilted balance', as set out in paragraph 11(d) of the NPPF. It should be noted that the BNP does not benefit from NPPF paragraph 14 protections as it does not make any allocations to meet its identified housing requirement.

5.0 Other Material Considerations

National Planning Policy Framework (2024)

- 5.1 Since the submission of the Application, the NPPF has been updated (in December 2024). The NPPF sets out the Government's planning policies for England and how these are expected to be applied, and was updated to take a more 'permissive' approach to development, including strengthening the presumption in favour of sustainable development to assist in significantly boosting the supply of housing to meet the Government's objective of delivering 1.5 million homes by 2029. This revised Framework replaces the previous NPPF published in March 2012, revised in July 2018 and updated in February 2019, July 2021, September 2023 and December 2023.
- 5.2 The Appellant will demonstrate that the proposed development is in accordance with the Framework when taken as a whole and will contribute towards the achievement of sustainable development. However, it is considered that the most important paragraphs for this Appeal include:
- Paragraph 11(d);
 - Paragraph 115;
 - Paragraph 116
 - Paragraph 118.

Emerging Hinckley and Bosworth Review 2024-2045

- 5.3 The Council were previously progressing a Local Plan Review 2020 to 2039 and undertook a consultation on the 'Pre-Submission Local Plan Regulation 19' (Wednesday 9 February 2022 to Wednesday 23 March 2022). The Site was not allocated for residential development within the Pre-Submission plan. However, the Council elected not to proceed with this version of the Local Plan Review due to changes to the NPPF.
- 5.4 Consequently, the Council has consulted on two Regulation 18 versions of the Local Plan Review in 2024 (July-September) and 2025 (October-November), which extend the plan period to 2024-2045. Again, the Site is not allocated for residential development within this Local Plan Review.
- 5.5 Notably, this Local Plan Review will supersede the CS and SADMP DPD upon its adoption. However, the Council has not submitted this Local Plan Review for Examination in Public [EiP], and the latest Local Development Scheme [LDS] (March 2025) indicates that the Council will not be submitting the plan for EiP until November 2026 – in advance of the December 2026 deadline. As such, the emerging Local Plan Review carries extremely limited weight in the determination of planning applications and this Appeal.

Supplementary Planning Documents

- 5.6 The Council has produced several Supplementary Planning Documents [SPDs] to provide more detail on the application of adopted policies within the Local Plan 2006-2026 or specific subjects. Whilst SPDs do not form part of the Development Plan, they remain a

material consideration in the determination of the application. In this context, the SPDs below adopted SPDs are of relevance:

- **Affordable Housing SPD:** The Affordable Housing SPD (adopted February 2011) [AH SPD] expands upon policies contained within the CS and provides additional planning guidance; and
- **The Good Design Guide SPD:** The Good Design Guide SPD (adopted March 2020) provides (*inter alia*) Borough-wide strategic urban design principles that all development should seek to reflect, together with introducing the key components of development as a means of describing design and highlighting how good design can mitigate potential impacts on climate change.

Open Space Assessment (2025)

- 5.7 The 'Open Space Assessment (2025)' [OSA] (CD F13) was prepared to update the Council's 'Open Space and Recreation Study (October 2016)' [OSRS]. The purpose of the OSA was to set out an assessment of open space and recreational facilities within the Borough, along with an assessment of quality, quantity and accessibility. In addition to this, it also infers how the OSA should be used to inform planning applications. The OSA is, however, not a Development Plan document. Crucially, the OSA has not been through Examination, and therefore, the weight to be attached to this evidence should be reduced, reflecting the fact that it has not been tested through the examination process.¹

Five Year Housing Land Supply (5YHLS) Statement 1 April 2024 – 31 March 2029

- 5.8 At the time of submission of the Application, the Council was unable to demonstrate a five year housing land supply ("5YHLS"), with their position set out in the 'Residential Land Availability Monitoring Statement 1 April 2021 – 31 March 2022' only demonstrating a 4.89 years supply of land for the 1 April 2022 – 31 March 2027 five year period, with a shortfall of 56 dwellings.
- 5.9 More recently, the Council has published their latest position in November 2025. The Council's latest five year housing land supply position is set out in the 'Five Year Housing Land Supply (5YHLS) Statement 1 April 2024 – 31 March 2029' (CD F14), which confirms that the Council is able demonstrate a 5.26 years supply of land for the 1 April 2024 – 31 March 2029 five year period, with a surplus of 395 dwellings.

Other Documents

- 5.10 The Appellant may refer to other documents (provided as Core Documents) of relevance to the Application as required.

¹ William Davis Ltd v Charnwood BC Queen's Bench Division (Administrative Court) 23 November 2017 [2017] EWHC 3006 (Admin)

6.0 The Reason for Refusal and Outstanding Matters & Issues in Dispute

Reason for Refusal

- 6.1 The Application was subject to several rounds of consultation with Statutory Consultees, and further revised submissions were made to remedy any comments raised by the Council or its Statutory Consultees. As a result, the Applicant agreed to several EoT with the Council to facilitate these, which finally extended the statutory determination period up to 23rd January 2026 (CD F16).
- 6.2 The Appellant and the Council have held meetings throughout the determination period in order to resolve outstanding technical issues, most of which were resolved subject to conditions – this is reflected in the Officer's Report (CD C1), in which no principal or technical objections were raised, save for highways, and is agreed in the SoCG (CD G3).
- 6.3 In particular, the Council's Case Officer was supportive of the development proposals and suggested that the Application would likely be written up with a recommendation for approval, subject to overcoming any outstanding technical objections. Indeed, the Case Officer was clear that as the *"case officer for this site and being aware of the work/revisions and time this application has taken to get to this point – in terms of layout, design and open space provision, I think this is one of the best schemes I've dealt with to date (in my 23 year career)." (CD F17).*
- 6.4 However, whilst the Appellant sought to resolve the LHA's objections throughout the determination of the Application, ultimately, in light of their final technical objection on highway safety grounds (CD E84), the Application was subsequently refused on 22 January 2026 with the following RfR (CD D1):

"The applicant has failed to demonstrate that safe and suitable access for all users would be provided to the development from Coventry Road. The proposal, if permitted, could consequently result in an unacceptable form of development and could lead to dangers for highway users. The residual cumulative highway and access impacts of the development are considered to be severe and significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies in the National Planning Policy Framework (2024) taken as a whole, contrary to Policy DM17 of the Site Allocations and Development Management Policies DPD (2016) and paragraphs 115 and 116 of the National Planning Policy Framework (2024)."

Outstanding Matters & Issues in Dispute

- 6.5 In light of the RfR, in respect of some technical highway matters, no further comments have been received from the LHA, and consequently, there remain some outstanding technical objections; namely, the safety and suitability of the primary access from Coventry Road.
- 6.6 In this regard, a Transport Assessment [TA] (CD B46.1-B46.5), Residential Travel Plan [RTP] (CD B47), and Employment Travel Plan [ETP] (CD A37), prepared by Rodgers Leask Ltd, were submitted in support of the Application. The proposed site access off Coventry Road was shown by Drawing 21390-RLL-23-XX-DR-D-5008P05 (CD F8). Visibility splays

for the proposed site access junction were provided in accordance with the Leicestershire Highway Design Guide (CD F9).

- 6.7 Throughout the determination of the Application, the LHA provided piecemeal responses to the Application (see CD E14, CD E26, CD E34, E47, E49, E66), and in particular in relation to the proposed access off Coventry Road. Consequently, in their last consultation response (CD E84), the LHA stated that the proposed Coventry Road access is unsuitable for a development of this scale, as a simple priority T-junction is not adequate to safely serve 378 dwellings and a 66-bed care home. Whilst they recognise that the visibility splays meet technical guidance, in their view, the overall access arrangement was still considered as unsafe because traffic volumes necessitate a ghost right-turn lane, which has not been provided within the development proposals. In their view, without this, there is an increased risk of rear-end collisions, congestion, and unsafe manoeuvres at the junction.
- 6.8 Furthermore, the LHA considered that these safety concerns are compounded by the high levels of on-street parking along Coventry Road, which regularly force vehicles onto the wrong side of the carriageway, creating further conflict with traffic entering and exiting the site. Whilst the LHA notes that a Traffic Regulation Order [TRO] could be applied for, to restrict parking, the outcome of such a process cannot be guaranteed through planning, as it requires a separate process and consultation. In their view, this is a risk to the Appellant in terms of eventual delivery; however, the TRO can be applied for in tandem with the S278 works required to deliver the site access, should permission be granted.

7.0 Appeal Procedure and Presentation of Evidence

- 7.1 It is the Appellant's position that a Public Inquiry is the appropriate appeal route. Matters in relation to highway safety are anticipated to be contested between the LHA and the Appellant. This will require detailed evidence. An advocate will be needed to explore these matters in detail.
- 7.2 This issue can only be properly tested through formal questioning of expert witnesses by an advocate, which would not be permissible under the informal Hearing procedure. It is also anticipated that there will be a need to make legal submissions, which again best dealt with through the Inquiry procedure.
- 7.3 In addition to the complexity of the case, the scheme has attracted a significant amount of local interest. Indeed, the Application received over 200 separate public comments from local residents/third parties raising the various concerns/objections. Moreover, an objection was also received from the Burbage Parish Council. It is therefore considered that a public Inquiry is the most efficient way to deal with issues raised by local residents, particularly if a Rule 6 party is formed. The Parish Council could be a potential Rule 6 party.
- 7.4 Furthermore, it is highly likely that the Appeal will take more than 2 days to be heard, which exceeds the normal practice for an informal Hearing
- 7.5 To this end, the Appellant is strongly of the view that a public Inquiry is the appropriate procedure for the determination of this Appeal due to the complexity of the highways issue, the need to interrogate the Council's 5YHLS in detail, the need for advocate questioning, and the level of local opposition.
- 7.6 Based on Statutory Consultee responses, the Officer's Report (CD C1), and SOCG (CD G3), it is not anticipated that matters relating to Principle of Development, Design, Landscape and Visual Impacts, Impact on Residential Amenity, Flood risk and drainage, Ecology and biodiversity, Trees and hedgerows, Heritage and archaeology, Noise, Air Quality, Ground Contamination and Stability, and Minerals will be raised and therefore no need for these to be addressed in evidence.
- 7.7 It is anticipated that in order to address the RfR, evidence will be presented in relation to:
- 1 Highways – Safety and suitability of the proposed Coventry Road access; and
 - 2 5YHLS – The scale of the Council's shortfall, and persistence of the Council's inability to demonstrate a 5YHLS.
- 7.8 The Appellant also reserves the right to adduce evidence in respect of five-year housing land supply should the Council's position materially change prior to the opening of the Inquiry.

8.0 The Appellant's Case

Main Issues

- 8.1 This Appeal is lodged against the Council's Refusal of the Appellant's development for 422 residential dwellings, 11 self-build homes and land for a care home at the Site.
- 8.2 The Appellant considers that the principle of development, and other technical matters, are resolved and are not matters of dispute between the Appellant and the Council – as set out in Section 2.0 of this SoC, confirmed in the Case Officer's Report (CD C1) and agreed in the SoCG (CD G3). Notwithstanding this, the Appellant reserves the right to provide further technical evidence where the Council or any other parties raise other issues within their own SoC.
- 8.3 However, having regard to the above-stated RfR (CD D1), it is apparent that the principal matters relating to the Application are whether the proposed access from Coventry Road would be suitable and safe. It is therefore this highway matter that the Appellants ask the Inspector to consider in this appeal and form the basis of their case. To this end, the Appellant's case is set out below:

1. Highways

- 8.4 To support this SoC, Mode Transport have prepared the supporting Highways Statement (CD G2.3), which summarises the LHA's iterative consultation responses, the nature of the evidence submitted during determination, and their view on the safety and suitability of the access. In essence, it sets out how the Appellant has gone to great lengths to address the LHA's concerns in relation to the principal access being delivered from Coventry Road.
- 8.5 Ultimately, in the Appellant's view, they have extensively addressed this matter during the determination of the Application and are satisfied that sufficient and robust evidence has been submitted to substantiate this position. Indeed, to ensure a robust approach was undertaken, the Appellant has sought several second opinions on the highways material submitted in support of the Application to seek an independent and objective view of the acceptability of their proposals. Moreover, a new highways consultant has been appointed in support of this Appeal.
- 8.6 To this end, the Appellants will demonstrate that the proposed Coventry Road access would '*not have an adverse impact on highway safety*' (Policy DM17) or '*an unacceptable impact on highway safety*' (Para 116), subject to conditions.

2. Five Year Housing Land Supply

- 8.7 The Council's latest 5YHLS position was published in November 2025 (CD F14) and confirms that the Council is able to demonstrate a 5.26 years supply of land for the 1 April 2024 – 31 March 2029 five year period, with a surplus of 395 dwellings. However, it is noted that Officer Report appears to acknowledge that the Council's 5YHLS position is out of date, suggesting an up-to-date position could be expected to show a 3.95-year supply (Para 8.12, CD C1). However, the Appellant contends that the changes resulting from the revised NPPF and SM would result in the Council's position being lower still, without reviewing the 'deliverability' of any of the Sites in the Council's supply.

- 8.8 Whilst it is common ground that the Council cannot demonstrate a 5YHLS and the 'tilted balance' is engaged – see SoCG (CD G3) – the Appellants will demonstrate that in terms of both supply and delivery, the Council has a 'significant' shortfall – far greater than assumed by the Council in the Officer's Report (CD C1) – and significant weight should be placed on housing delivery, including the delivery of affordable homes. The Appellant's will also demonstrate that this shortfall is 'persistent'. The Appellant also reserves the right to adduce further evidence in respect of 5YHLS should the Council's position materially change prior to the opening of the Inquiry.

Third Party Objections

- 8.9 In addition to the issues raised by the LHA, a number of objections were received from third parties to the Application. The Appellant reserves the right to produce further evidence in respect of third-party objections, where these emerge through the Appeal process. A summary response to the concerns raised will be provided as part of the Planning Proof of Evidence.

9.0 **Planning Conditions and Section 106 Obligations**

Draft Planning Conditions

- 9.1 Planning conditions had been proposed by the Council prior to the refusal of the Application, which reflect the Council's standard planning conditions, and those requested by Statutory Consultees as a part of their consultation responses. These are set out in the SoCG (CD G3), submitted in support of this Appeal.
- 9.2 Whilst the Appellant is satisfied that most suggested conditions are acceptable, the Appellant has some concerns in relation to the timing triggers proposed in some conditions. For the purposes of discussion, the Appellant has included these in the SoCG. However, the Appellant reserves the right to comment on detailed wording and will continue to discuss amendments with the Inspector and Council in due course. Importantly, the Appellants will seek to agree on these conditions with the Council via the SoCG.
- 9.3 It should be noted that, in the interest of benefitting the Council's 5YHLS in the short term, and in light of the proposed direction of travel set out in the draft NPPF – namely, draft NPPF Policy HO13(2) – Redrow would be amenable to the imposition of shorter implementation condition in respect of the full element of the proposed development (i.e. Development should be begun within 2-years, rather than 3-years). This is reflected in draft Condition 7 in the SoCG (CD G3).

Section 106 Obligations

- 9.4 Having regard to relevant planning policy requirements, the findings presented in the technical reports which supported the Application, requests made by Statutory Consultees, and in accordance with the Planning Inspectorate's Guidance,² a draft S106 Agreement (CD G6) has been provided with this Appeal. Importantly, both the Appellant and the Council are satisfied that the proposed obligations satisfy the statutory tests that are set out in the Community Infrastructure Regulations 2010 (as amended) and Paragraph 58 of the NPPF.
- 9.5 However, it should be noted that whilst the LHA was made aware of the preparation of the draft S106, no inputs have been received from the LHA on highway matters/clauses. Indeed, the Appellant notes that the LHA (CD E84) requested a financial contribution to mitigate the development's impact on the A47 / Dodwells / Coventry Road / A5 junction. However, to date, the LHA has not specified a monetary amount for the contribution, its anticipated trigger, specified a scheme that the monies will be used towards, nor the calculation by which costs are intended to be apportioned.
- 9.6 On the face of it, the Appellant considers that the LHA's request does not meet the statutory test, and it has not been included in the draft S106 (blue pencil) as such. However, S106 discussions are ongoing between the Council and the Appellant, and whilst some of the Council's requests remain unjustified, amendments to obligations will continue to be negotiated and, where appropriate, reflected in an agreed SoCG and final draft S106.

² Making your appeal: How to complete your planning appeal form (27th January 2025)

10.0 Planning Balance and Conclusion

- 10.1 Section 38(6) of the PCPA and Section 70(2) of the Town and Country Planning Act 1990 require planning applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 10.2 As demonstrated by this SoC, supporting SoCG (CD G3), and the Officer's Report (CD C1), the Appellant considers that there are no technical reasons which would preclude the approval of the proposed development, save for the disputed matter of Highways.
- 10.3 However, the Appellants will demonstrate beyond the Highway Statement (CD G2.3) that the proposed Coventry Road access would '*not have an adverse impact on highway safety*' (Policy DM17) or '*an unacceptable impact on highway safety*' (Para 116), subject to conditions.
- 10.4 It is the Appellant's position that paragraph 11(d) of the NPPF applies and the 'tilted balance' is engaged for decision-making purposes and should apply in the determination of this Appeal. As noted previously, the BNP does not benefit from paragraph 14 protections. It is expected that this will be common ground with the Council; however, the Appellants will also demonstrate that the scale of the Council's shortfall is significant and persistent.
- 10.5 An assessment of the developments' economic, environmental and social impacts and benefits is set out in the supporting SoCG (CD G3) and will be agreed with the Council in due course. However, it is the Appellant's case that the Development Plan is out-of-date, and Appellants will demonstrate – in the context of the balancing exercise – that the benefits of the proposed development demonstrably and significantly outweigh any adverse impacts.
- 10.6 The Appellant will conclude that the proposed development represents sustainable development having economic, social and environmental benefits. As a result, planning permission should be granted subject to the imposition of any necessary conditions and S106 obligations.
- 10.7 Overall, in conclusion, the Appellants will demonstrate that the benefits of the proposed development comprising this Appeal clearly and demonstrably outweigh any harm that would result, and as a consequence, planning permission should be granted.

Appendix 1 Core Documents List

Appendix 2 Highways Statement

Appendix 3 Landscape Statement

Birmingham
0121 713 1530
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