

REBUTTAL STATEMENT OF CASE ON BEHALF OF MR DAEMON JOHSON

AGAINST THE REFUSAL OF PLANNING PERMISSION

FOR PROPOSED CHANGE OF USE OF LAND TO PROVIDE A DOG DAY CARE FACILITY AND ASSOCIATED FENCE AT:

LAND SOUTH EAST OF DAWSONS LANE, BARWELL, LEICESTERSHIRE

HINCKLEY AND BOSWORTH BOROUGH COUNCIL REFERENCE: 23/00455/FUL

THE PLANNING INSPECTORATE REFERENCE: APP/K2420/W/24/3337582

HBBC SoC Position	Appellants Rebuttal
Para 2.2 The Appellant refers in their introduction (para. 1.2, pg 3) to some disparity between the description of the overall proposal which is the ‘Change of use of land to provide dog day care facility and associated fence’ and the actual proposal which also included ‘a building, boundary fencing to the facility and site entrance gates’. The appellant acknowledges that the 2.4m high entrance gates were not included in the Council’s description of development, this is because the entrance gates were not included in the appellants application form ‘Description of the proposal’ or documents submitted with the application. They therefore did not form part of the Local Planning Authorities’ (LPA) consideration of the case and were not referenced in the Committee Report (Appendix 1).	The submitted Planning, Design and Access Statement dated 05/05/23 (final version) and attached does reference the entrance gates in the main description and again at paragraphs 1.1 and 2.8.
Para 2.3 It should also be noted that the Design and Access Statement submitted with the appeal which refers to gates	See above. The Planning Design and Access Statement referred to by the LPA was the statement submitted with the 1st application and not the revised application the subject of this appeal.

and associated fencing in paragraph 2.8 was not submitted to the LPA during the determination of the planning application. The version submitted to the LPA is appended at Appendix 2 for completeness and does not reference access gates.	
Para 2.4 In Para 5.16c (pg 15) of the Appellant's SoC the appellant refers to the secure dog walking area, but this was not included in this application. The proposal would therefore not enhance public access to the Green Wedge or provide recreational secure dog walking.	It is important to note that this element of the 1st application was removed in response to concerns raised by the LPA as part of the resubmission (now the subject of this appeal). It was the LPAs view that this element should be removed, it would appease some of the neighbour concerns. Then the LPA have given the fact that we withdrew this element a negative bias without any form of conversation prior to the delegated officers report.
Para 2.5 In Para 5.17 (pg 18) of the SoC the Appellant states it is 'common ground between the parties that this is not a use suitable for the built up area (as demonstrated by the previous dismissed appeal on Wood Street in Hinckley)'. This view is not stated in the LPA's planning report or appeal documents for the Wood Street application and the Appellants point is refuted. The Wood Street case was materially different to the appeal proposal as is set out in the appeal decision (APP/K2420/W/17/3167902) (Appendix 3). In any event as set out within the Committee Report (Appendix 1) it is the LPA's case that the proposal is not for outdoor sport or recreation purposes and thus Policy DM4(a) is not relevant. Were the Inspector minded to agree with the Appellants on this first point, the LPA does not consider that sufficient evidence has been provided that the proposed scheme cannot be provided within or adjacent to settlement boundaries. Although the LPA acknowledge that a rural location, away from residential	The common ground was initially agreed verbally with the Cllr Stuart Bray when he met to discuss the Wood Street case. This position was further supported in the planning application for the current day care location. In 2022 Planning Committee meeting Cllr Bray openly supported our business and indeed stated that he indeed thinks the business is best suited to a rural location. On 6th December 2022 a meeting was held with Bill Cullen, Chief Executive. Cllr Stuart Bray, leader of the HBBC, Chris Brown, Head of Planning and Malcolm Estates Manager. In this meeting it was discussed again that our business is ideally suited to a rural location. A location was suggested by HBBC but it was not suitable as it was too close to houses and would impact on their amenity. A detailed discussion took place outlining why the Dawsons Lane site was bought and that no other sites were available. It was explained that renting was not a

properties would reduce potential for noise and disturbance.	solution for the business as this just resulted in more of the same and did not allow for investment. Where the LPA states that insufficient evidence has been provided that the proposed scheme cannot be provided within or adjacent to the settlement boundaries. Within design and access statement a detailed list of sites of properties was provided and if they were suitable or not. Including if they were suitable they were not cost effective as we would be competing against developers. This point was accepted by the LPA during all of the meetings that the site was suitable and that we had provided sufficient evidence that there is no suitable sites within or adjacent to the settlement boundaries.
Para 2.6 Another application referred to in the SoC is the Rogues Lane permission (HBBC reference 18/00353/FUL). Each application is assessed on its own merits, this permission was materially different to the current proposal as it was 1) Not in the green wedge and 2) Involved the change of use/re-use of an existing agricultural building which complied with Policy DM4(b)	The reference to the Rogues Lane consent was made in the context of applying Policies DM4 and DM10. Importantly, the appeal proposals are virtually identical to the Rogues Lane site (the current home of the appeal proposals). As stated in the Statement of Case the LPA concluded that the operation of Hinckley Pets in Home at Rogues Lane were fully in compliance with the 2 development management policies. The reference made by the LPA to the site being situated in the Green Wedge as being “materially different” is irrelevant as neither policy refers to or addresses Green Wedge issues. We agree that every application is should be assessed on its merits. It is our position our current application has not been assessed on its merits but on the fact that it just does not fit with the LPAs narrow view on what constitutes a suitable business within the green wedge. We argue materially the is little difference in the two applications as the business model is unchanged. Indeed we would say this application is less environmentally impactive as the structure by its very nature is not permanent, should it be removed the land would look intrinsically unchanged.

Para 2.7

Inglenook Farm, adjacent to the appeal site, is referred to several times within the Appellant's SoC. Again, each application is assessed on its own merits, whilst it is acknowledged that both sites are in close proximity to each other, within the Green Wedge and in the countryside the developments approved at Inglenook Farm are materially different. The approvals at Inglenook Farm (23/00131/FUL, 23/00146/FUL and 24/00213/FUL) have been for building(s) immediately adjacent to large preexisting agricultural/equestrian buildings some of which had to be demolished thus the harm to the countryside/green wedge is lesser. Furthermore the site is not located in the same elevated position of the appeal site. With regards to whether they are recreational use, whilst a commercial livery for horses, owners of the horses would still ride from the site and surroundings and therefore has elements of recreational use unlike the appeal proposal which would be purely a commercial venture. Owners of the dogs would not access the site or surroundings owing to the drop off/pick up service.

The LPAs response here is disingenuous at best. It is a basic principle of planning that all applications needs to be judged on their own planning merits, but that is not to ignore clear and obvious precedent in the locality. Inglenook Farm shares a common boundary with the appeal site, is located in the Green Wedge and in a planning sense has been assessed against the same Local Plan Policies.

Whilst the operation of the business is fundamentally different, both businesses proposed new buildings on adjacent fields. Whilst the appeal proposals are on slightly higher ground they are of significantly lesser in scale.

We agree that Inglenook Farm have permission to replace 4 run down barns. However they also received permission to build a new barn making a total of 5. Thus introducing an additional structure into the green wedge.

It is our submission that the site at Inglenook is a commercial enterprise which we fully support and have a fantastic working relationship with them. However for the LPA to suggest that "owners" ride from the site and surrounding area introduces an "element" of recreational use is tenuous at best. Indeed if horses are ridden from the site, which is rarely, they are ridden by the liveries staff.

It should also be noted that there are no bridleways on the appeal site or on any of the adjacent fields north of the A47. As such, the only permitted riding of horses can be within Inglenook Farm itself.

The livery at this location is a high end operation where owners pay for full livery including exercise on site then collect their animals taking them to places for riding.

There is a distinct comparison with their operation and that of Hinckley Pets in Home in the care during the day of the animals in their care.

Para 2.8 With regards to Inglenook Farm, the appellants SoC fails to mention application 23/00535/FUL, also at Inglenook Farm, which was refused as the proposal for 9 accommodation pods, 4 holiday lodges a management building and associated development was judged to be contrary to policies DM4, DM10 and CS6. Another application 23/00366/FUL at Inglenook Farm for the replacement of existing barns was withdrawn following officer concerns with the design of proposed barns and so these comments by the appellant are also rebutted. Links to the planning application details referred to above can be found in Appendix 4, it is clear that the LPA assess each application on its own merits.	HBBC states we have failed to mention 23/00535/FUL. It was an application for camping pods and has no comparison with the activity we have applied for permission. Therefore we considered it and disregarded it as irrelevant. 23/00366/FUL This we were aware of and again was not of relevance to the appeal proposals. This application was for these barns to be demolished and rebuilt. The owner is now undertaking a refurbishment of the barns in line with their permitted development rights, so again was not a material consideration for us.
Para 2.9 Para 6.16 (pg 22) of the SoC fails to mention the word significant from Policy DM4. In Para 8.8 of the Committee Report (Appendix 1) associated with this appeal it states that ‘Policy DM4 of the SADMP states that the development should significantly contribute to economic growth’ and that ‘in a recent appeal decision for development within the countryside within the Hinckley and Bosworth Borough (APP/K2420/C/22/3304695- Decision Date: 24 October 2023) (Appendix 5) an inspector found that the creation of 4 jobs was not considered to be a significant contribution to economic growth or job creation’	Taking the word ‘significant’ in isolation is misleading. Significance relates the scale of the business and the benefits it brings; i.e. the smaller the business is, the smaller the overall benefit will be. An operation the size of the appeal proposals is not significant in the scale of overall boroughwide economic development but should be consider significant in the micro (not macro) sense. The appellants statement of case addresses this very point at para’s 6.16 – 6.19. It is unhelpful that HBBC decide what businesses provide an economic benefit and that it must be significant. The contribution by Hinckley Pets in Home Ltd to the local economy both directly and indirectly Is significant and should not be dismissed. This is made up of the actual financial turnover of the business circa £130,000 per annum. The costs of running the business paid to staff and suppliers £48,000.

	Then the cost benefit of 120 customers being able to work as a result of our business providing them a service. We would ask the Inspector to have regard that we are an established business, supplying a much needed service to the local community.
Para 2.10 In terms of environmental benefits stated at paragraph 7.13 (pg 30), the biodiversity enhancements proposed would need to be linked to the permission to attribute any positive weight to this. At present a landscaping plan has not been submitted and the LPA understands the biodiversity enhancements have already occurred separately to the consideration of this planning application.	A landscaping plan was submitted to the LPA indeed this was addressed in the delegated officer report in a single sentence. The proposed tree planting across the site would improve the quality of the green wedge and would be afforded positive weight. The landscaping plan was detailed and outlined the types of trees and shrubs to be planted. It included those that had already been planted and those that were being supplied by the Woodland Trust in March 2024. 500 trees and shrubs have now been planted however the LPA make scant mention of this in their response.
Para 3.1 As set out fully in the Committee Report (Appendix 1) whilst it is noted that the proposal could generate additional employment, the proposal does not create a significant amount of economic growth. It is therefore considered that the principle of development would not constitute sustainable development within the countryside and would be contrary to Policy DM4 of the Site Allocations and Development Management Policies DPD. Furthermore the	Hinckley Pets in Home Ltd has been trading since 2013 since then it has provided pet services to Hinckley and the broader area. Its day care provision has grown it prominence and the local demand speaks for itself. The LPA hang their argument on the fact that our business does not provide “significant” economic growth. However at no point have they taken into account the economic benefit our business brings to the local community.

land use would not accord with Policy 6 of the Core Strategy.	It is extremely difficult to find suitable locations to trade from due to the nature of the business. The loss of our business to the local economy has not been taken into account. The LPA has not determined the appeal proposals in a positive way. The appellant's Statement of Case clearly set out how the appeal proposals contribute to the three core economic, social and environmental elements of delivering sustainable development.
Para 3.2 The proposed development would significantly harm the character and appearance of the countryside by introducing an uncharacteristic form of development into an area of largely undisturbed, verdant and open countryside. Although improving the quality of the green wedge with 0.5 Hectare of native woodland, this would not outweigh the impact of the proposal which would have an unwarranted and adverse impact on the undeveloped nature of surrounding countryside which is characterised by agriculture. As such, there is unjustified harm to the intrinsic value and beauty of this area of countryside and the visual appearance of the Green Wedge, contrary to Policy DM4 and DM10 of the SADMP, Policy 6 of the Core Strategy and Paragraphs 9, 84, 130 (c) and 174 (b) of the NPPF (2023). The proposal is therefore recommended for refusal.	The LPA opines that our proposal would significantly harm the character and appearance of the countryside by introducing an uncharacteristic form of development into an area of largely undisturbed, verdant and open countryside. The LPA has not directly evidenced the "significant" harm our development would bring to the countryside. They have not taken into account or given due credence to the fact that the site was run down, used as a dumping ground for waste from farming activity elsewhere. In the LPA's questionnaire they state the site cannot be seen from the road, so it is difficult to understand how something that cannot be seen can demonstrably change the appearance of the countryside to the public. The development is of a low environmental impact being a similar structure to a large wooden shed. This can be easily removed and the land returned to nature as and when the use comes to an end. Within 90m of the site is a brick built building that was given permission as a stable. Also Inglenook Farm which is a busy area with many buildings used for a variety of uses.

	Poors Platt allotments are a multi plot site with a variety of sheds, polytunnels and associated detritus. The location is not one of outstanding beauty but rather a multi-use location on the cusp of Barwell and Earl Shilton. The LPA argues that the impact would have an unwarranted and adverse impact on the undeveloped nature of the surrounding countryside characterised by agriculture. However no agricultural activity takes place on Dawson Lane or nearby. As previously stated the activities occurring nearby are either hobby allotment holders, equine grazing, or storage of building materials, or large barns used for a variety of commercial activities.
LPAs Suggested Planning Conditions	Appellants Response
The dog day care facility shall only operate during the following hours: Monday – Friday 10:00-15:30 A maximum of 30 dogs shall be on site, with a maximum of 18 permitted in the external exercise area at any one time. Reason: To help prevent and mitigate noise, odour and pollution in accordance with Policy DM7 of the Site Allocations and Development Management Policies DPD (2016) and the National Planning Policy Framework.	We have no objection to the opening times but would ask for a caveat of “time may vary for contingency of operation” E.g. adverse weather condition, vehicle breakdown. We are currently licenced for 30 dogs per day and this would continue on our new site in line with our licence. We do find that attempting to limit the numbers outside is neither reasonable or proportionate. No other day care has a similar condition. The noise impact assessment does not support the need to limit the numbers as it finds no loss in amenity to the nearest noise receptor point. The provision of the acoustic fencing provides adequate noise mitigation and as such the LPAs request to limit the number of dogs in the outside amenity area is unnecessary and unjustified. The appellants will leave it for the Inspector to decide if this suggested limitation meets the statutory CIL tests.

Prior to the first operation of the dog care facility an acoustic fence shall be erected in accordance with paragraph 1.2.4 of the submitted Noise Impact Assessment Report by Noise Air Acoustics and Air Quality (Report Ref: P6466-R1-V2, dated 12th July 2023) and Amended Block Plan- Drg No. 85/032023/03 (Sept 2023) (Received by the LPA on 07/09/2023). Thereafter the fence shall be retained and maintained in accordance with these details in perpetuity. Reason: To help prevent and mitigate noise pollution in accordance with Policy DM7 of the Site Allocations and Development Management Policies DPD (2016) and the requirements of the NPPF	Not disputed.
Prior to the first operation of the dog care facility a Noise Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Noise Management Plan shall follow the recommendations of the submitted Noise Impact Assessment Report by Noise Air Acoustics and Air Quality (Report Ref: P6466-R1-V2, dated 12th July 2023) and shall include: • detail regarding the management of dogs on site including staff awareness • control measures used to reduce barking along with what actions can be taken when the stimuli is outside the facility • a complaints procedure in the event a complaint is made	This document has already been prepared and we are working with HBBC Environmental Health Dept to deliver these requirements.

We would like to draw the Inspectors attention to a planning decision by Dacorum Borough Council. The application number is 21/02349/FUL.

Please see attached decision notice. The application is part retrospective and in the Green Belt but in essence the business model and the points made in the delegated officers report are a true reflection of our business model.

In this application it can be seen how Dacorum LPA have really worked with the applicant and understood the need, benefit and impact of the business.

The application is presented and the issues vocalised within it and the decision to support the application are a reflection of the decision HBBC LPA should have made if they had worked in a positive way with the appellants.

Attachments

1. Planning Design and Access Statement dated 5th May 2023
2. Dacorum Borough Council Committee Report - application number 21/02349/FUL
3. Dacorum Borough Council Decision Notice - application number 21/02349/FUL