

Delegated report

Planning Ref: 23/00824/OUT

Applicant: Mr J Lawrence

Ward: Newbold Verdon with Desford and Peckleton



Hinckley & Bosworth
Borough Council

Site: Land at Barwell Lane, Kirkby Mallory, Leicestershire

Proposal: Outline planning application for the construction of up to 7 dwellings, including 3 self-build dwellings, and garages (re-submission of 22/01181/OUT)

1. Recommendations

1.1. Refuse Planning Permission:

Refuse planning permission subject to the reasons at the end of this report.

2. Planning Application Description

- 2.1. The application seeks outline permission for the erection of up to 7 dwellings, including up to 3 self-build dwellings, and garages. All matters are reserved but the site is such that access can only be taken from Barwell Lane.
- 2.2. The application forms set out that three of the proposed seven dwellings are self-build or custom build dwellings.
- 2.3. An illustrative layout is provided that demonstrates how seven detached dwellings and seven double garages could be accommodated on the site. It also shows how a belt of landscaping to the east of the site could be provided on land owned by the applicant beyond the red edged line of the application.
- 2.4. The application is accompanied by the following reports and documents:
 - Planning Statement
 - Landscape Report
 - Noise Assessment Report
 - Ecological Report

3. Description of the Site and Surrounding Area

- 3.1. The site covers just over 0.5 hectares and lies to the south of the rural hamlet of Kirkby Mallory. The site forms part of a larger field that is used to keep horses and there is a stable building in the south west corner of the site. The site lies outside of the settlement boundary of Kirkby Mallory and so is within the countryside.
- 3.2. The site is bordered by a dwelling on Barwell Lane and by a garage court on its northern boundary. To the east is that part of the larger field that is also owned by the applicant, beyond which is Shilton Road and beyond that open farmland. To the south is open farmland that falls gently to the south such that wide views of the surrounding countryside are afforded from the site. To the west beyond Barwell Lane are paddocks beyond with Mallory Park racing circuit further to the west.
- 3.3. Barwell Lane lies at a slightly lower level than the site and there is a mature, well maintained hedge on the boundary to the highway. The hedge to the southern boundary is sparser and has more small trees. The northern boundary consists of fencing and hedging.

- 3.4. Barwell Lane is subject to the national speed limit and the 30mph zone begins just before the existing site entrance which is in the north west corner of the site
- 3.5. Although there is hedging on two sides of the site there are clear views of the site from Peckleton Road/Kirkby Lane when entering Kirkby Mallory from the east.
- 3.6. Kirkby Mallory does not have a conservation area and the closest listed building is a Grade II dwelling located over 110 metres from the northern corner of the site and separated by intervening built development.

4. Relevant Planning History

- 4.1. 22/01181/OUT – Erection of up to seven dwellings and garages (access only) – Refused January 2023 on two grounds 1) unsustainable development outside of the settlement boundary that has significant detrimental impacts on the countryside; and 2) failure to demonstrate adequate and safe access.

00/00176/TEMP – Retention of stables and wagon shelter – Approved April 2000

80/01119/4 – Residential development – Refused September 1980

5. Publicity

- 5.1. The application has been publicised by sending out letters to 36 neighbouring properties. A site notice was also posted at the site.
- 5.2. A total of 13 objections from 12 separate addresses have been received from the occupiers of neighbouring properties, raising the following concerns and points:
- There is a lack of infrastructure, no school, no GP, no bus service, no mains gas, poor internet connection
 - There is no safe access on to the narrow Barwell Lane from the site – the road network can't cope with additional traffic and there have been lots of accidents on Barwell Lane over the years
 - There is already too much traffic noise, speeding vehicles and air pollution
 - This is just a repeat of the earlier refusal and the reasons for refusing the proposal have not changed
 - Access on to Barwell Lane is dangerous as it is within a few metres of the 60mph speed limit
 - The site lies outside of the village in an unsustainable location and would have a significant detrimental effect on the countryside and on the character of Kirkby Mallory
 - Drainage on Barwell Lane is already very poor and the road floods often
 - There would be a detrimental effect on wildlife
 - Kirkby Mallory has already absorbed three phases of new housing at Church Road, Preston Close and Summers Close
 - More people moving in to the village and then complaining about the race track would be disastrous for Mallory Park
 - Encouraging more car journeys is not sustainable or appropriate when environmental concerns are increasing
 - The self-build homes mean a longer period of disturbance for neighbouring residents
 - This would be contrary to the Development Plan
 - The site frontage has no footway or street lighting

- 5.3. There have been no letters of support for the application other than from the Applicant who has submitted additional information during the processing of the application.

6. Consultation

- 6.1. **Kirkby Mallory, Peckleton and Stapleton Parish Council** – Strongly objects to the proposal for the following reasons:

- There does not seem to be any provision to access the rest of the land once the proposed houses are built.
Officer comment: There is no information submitted regarding how the site would be laid out and access to the rest of the field could easily be incorporated into the development
- There is a lack of facilities in the village, no bus service.
- The development is outside the village boundary.
- Barwell Lane is a narrow and winding country lane that is only just wide enough for two cars to pass. A large number of accidents occur each year on the road already, primarily due to the inappropriate use of speed (the holes in the hedge, which increase in number each week, clearly evidence where speeding cars have left the road). The road in places is not in good order and just past the site floods when there is heavy rain.
- The entrance is dangerous and there is limited information about how this would be made safe. The existing vehicle access is just a farm gate with infrequent traffic due to the current limited use of the site. The access is used on average twice a month, considerably different to the proposed usage. With likely two vehicles per household multiplied by 7 households, entering and leaving the site twice per day, that would equate to 840 trips in and out of the site per month which would be a 42,000% increase in traffic. In addition, moving the entrance further down Barwell Lane only increases the hazard due to the speeds of traffic entering the village.
- The supporting information submitted with the application states that there would be no impact on existing residential amenity. Neighbouring properties all have drives that open onto Barwell Lane next to the site and therefore the 42,000% increase in traffic as a result of this development would have a significant impact on residents' ability to safely access their own front drives. Given the junction on to Church Road is also so close by, the resulting traffic queues would also severely impact the air and noise quality for which Kirkby Mallory residents already suffer.
Officer comment: The use of this statistic is highly misleading. The increase in traffic referred to is that using the access into and out of the site, not the increase in the volume of traffic using Barwell Lane
- The supporting information outlines personal injury collision data but does not take into consideration the traffic collisions and incidents that have taken place due to the narrow highway entering the village. Barwell Lane is already extremely hazardous due to the narrowing and bends in the road, so statements made about the impact of the development are incorrect.

- 6.2. **LCC Highway Authority** – The Local Highway Advice (LHA) advice is that, in its view, the impacts of the development on highway safety would not be unacceptable, and when considered with other developments, the impacts on the road network would not be severe. Based on the information provided, the development therefore does not conflict with paragraph 116 of the National Planning Policy Framework (2024).

This application is a re-submission of outline application 22/01181/OUT, which was refused with a highways reason for refusal. The LHA advised that additional information was required in order to fully assess the proposals as part of that application.

Access to the site is not to be determined as part of this application. The Applicant has detailed that there is an existing access to the site off Barwell Lane and that a new access would be constructed fully in accordance with the Leicestershire Highway Design Guide (LHDG). Barwell Lane is an unclassified road with the speed limit changing from 30mph to the national speed limit immediately to the south of the existing access. The Applicant has not provided any details as to where the location of the access would be along the site frontage with Barwell Lane, or details of the available visibility splays.

If outline permission was granted the Applicant will need to demonstrate that a safe and suitable access could be achieved to the site at Reserved Matters stage, which would need to be designed fully in accordance with the LHDG. If the site access was to fall in the location of the national speed limit, then relocation of the 30mph speed limit would be required. The LHA has no objection in principle to the proposals at this stage.

Based on available records there have been no recorded Personal Injury Collisions recorded along Barwell Lane in the last five years (from the junction with Church Road to 500m south of the site).

The local area does not include any education facilities or sustainable transport options such as bus stops served by an hourly bus service. On this basis, the LHA consider the proposals are not in a sustainable location in transport terms.

If permission is granted conditions regarding a construction traffic management plan and the provision of a footway are requested.

- 6.3. **LCC Ecology** – No further comments to make than those made on the previous application that the Ecological Assessment Survey showed no evidence of protected species and that the majority of the survey area had lower habitat values. Given the site and habitats present Biodiversity Net Gain should be achievable given the extent of land ownership. The boundary hedgerows are higher value habitats which need protecting. Evidence of Biodiversity Net Gain would be required at Reserved Matters stage and a condition to this effect is requested.
- 6.4. **HBBC Waste** – No objections subject to a condition regarding waste and recycling storage and collection.
- 6.5. **HBBC Environmental Health** – The Noise Impact Assessment recommends that a condition is applied to any permission requiring the developer to demonstrate that the proposed dwellings will be constructed to meet the requirements of BS8233-2014. Therefore such a condition is requested.
- 6.6. **HBBC Drainage** – No objection subject to a condition regarding surface water drainage.
- 7. **Policy**
 - 7.1. Core Strategy (2009)

- Policy 13: Rural Hamlets
 - Policy 17: Rural Needs
- 7.2. Site Allocations and Development Management Policies DPD (2016)
- Policy DM1: Presumption in Favour of Sustainable Development
 - Policy DM4: Safeguarding the Countryside and Settlement Separation
 - Policy DM10: Development and Design
 - Policy DM11: Protecting and Enhancing the Historic Environment
 - Policy DM12: Heritage Assets
 - Policy DM17: Highways and Transportation
 - Policy DM18: Vehicle Parking Standards
- 7.3. National Planning Policies and Guidance
- National Planning Policy Framework (NPPF) (2024)
 - Planning Practice Guidance (PPG)
 - National Design Guide (2019)
 - Levelling-Up and Regeneration Act (LURA) (2023)
 - Self-Build and Custom Housebuilding Act 2015
- 7.4. Other relevant guidance
- Good Design Guide (2020)
 - HBBC Housing Needs Study (April 2024)
 - Leicestershire Highway Design Guide (2022)
 - Landscape Character Assessment (2017)
 - Landscape Sensitivity Study (2017)
 - Leicestershire Minerals and Waste Local Plan (2019)

8. Appraisal

- 8.1. As this is an outline planning application with all matters reserved except for access, the number of detailed considerations relevant at this stage are limited. Nonetheless, the following represent the key issues:
- Principle of Development
 - Housing Land Supply
 - Self-Build and Custom Build Development
 - Impact on the Character and Appearance of the Area
 - Impact on Residential Amenity
 - Impact upon Highway Safety
 - Flood Risk and Drainage
 - Ecology and Biodiversity

Principle of Development

- 8.2. Paragraph 2 of the National Planning Policy Framework (NPPF) states that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise and that the NPPF is a material consideration in determining applications. Paragraph 12 of the NPPF confirms 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.
- 8.3. Paragraph 11 of the National Planning Policy Framework (NPPF) and Policy DM1 of the Site Allocation and Development Management Policies Development Plan

Document (SADMP) set out a presumption in favour of sustainable development, and state that development proposals that accord with the development plan should be approved unless other material considerations indicate otherwise. The development plan in this instance consists of the adopted Core Strategy (2009) (CS) and the Site Allocations and Development Management Policies DPD (2016) (SADMP).

- 8.4. Section 15 of the NPPF relates to conserving and enhancing the natural environment. Paragraph 187 of the Framework states that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.
- 8.5. The Core Strategy (CS) sets out the settlement hierarchy for the Borough and at paragraph 4.29 it states that the focus of most new development will be in and around the Hinckley sub-regional centre as this is where there is a concentration of services, where accessibility can be maximised and modal choice made available. The application site is located adjacent to the settlement of Kirkby Mallory which is identified as a Rural Hamlet. Paragraph 4.45 of the Core Strategy sets out that Rural Hamlets have limited, if any services and generally rely on Key Rural centres or surrounding urban areas for schooling, employment and the provision of goods and services. Paragraph 4.46 states that because of the limited services in hamlets, development will be confined to infill housing development, local choice schemes and conversion of agricultural buildings to employment uses.
- 8.6. The site is on land which is designated as countryside. As such Policies DM4 of the SADMP is one of the policies most relevant with regard to determination of the application.
- 8.7. Both the adopted Core Strategy and the SADMP are over 5 years old, and Paragraph 34 of the NPPF states that policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years and should then be updated as necessary. Paragraph 232 of the NPPF states though that existing policies should not be considered out-of-date simply because they were adopted prior to the publication of the Framework. Due weight should be given to them, according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
- 8.8. Policy DM4 of the SADMP states “that to protect its intrinsic value, beauty, open character and landscape character, the countryside will first and foremost be safeguarded from unsustainable development. While there are differences with the Framework both seek to enhance the local environment by recognising the intrinsic character and beauty of the countryside.
- 8.9. Development in the countryside will be considered sustainable by Policy DM4 where:
 - a) It is for outdoor sport or recreation purposes (including ancillary buildings) and it can be demonstrated that the proposed scheme cannot be provided within or adjacent to settlement boundaries; or
 - b) The proposal involves the change of use, re-use or extension of existing buildings which lead to the enhancement of the immediate setting; or
 - c) It significantly contributes to economic growth, job creation and/or diversification of rural businesses; or
 - d) It relates to the provision of stand-alone renewable energy developments in line with Policy DM2: Renewable Energy and Low Carbon Development; or

e) It relates to the provision of accommodation for a rural worker in line with Policy DM5 - Enabling Rural Worker Accommodation”.

- 8.10. The proposed development does not relate to any of the criteria above in either Policy DM4, but this does not mean that the development is not sustainable. The application seeks to justify development in this location on the grounds that the Council lacks a 5 year housing land supply and that the site is adjacent to the settlement boundary and is capable of development. The urbanising effects of the proposal are said by the applicant to be minimised, not significant and acceptable given that over time new landscaping will grow and the applicant considers that the development is not out of character within its settlement edge location. The proposal is also supported by a Landscape Report setting out the impact on the wider landscape character.
- 8.11. Officers take a different view with regard to Policy DM4, and this is explored in greater detail in the section relating to the effect of the development on the character and appearance of the area. Importantly Policy DM4 also requires that development meets five further requirements, of which the key one relevant to this particular application is that development is only considered to be sustainable where it does not have a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside.
- 8.12. It is considered that the proposed development fails to comply with Policy DM4. To the extent that Policy DM4 seeks to implement the Core Strategy through its approach to the countryside and settlement boundaries it is out of date. In terms though of the weight that should be afforded to Policy DM4 the emphasis of the policy is to promote sustainable development proposals within the countryside and protect it from unsustainable proposals. In that regard Policy DM4 is broadly consistent with and accords with the aims of the NPPF as set out in Paragraph 187 of the Framework. Therefore, in accordance with Paragraph 232 of the NPPF, which states that due weight should be given to out-of-date policies according to their degree of consistency with the NPPF, Policy DM4 can be afforded significant weight.
- 8.13. Policy DM17 states that development proposals will be supported where they seek to make the best use of existing transport services and, where appropriate, provide opportunities for improving and sustaining the viability of those services and where the need to travel will be minimised and the use of sustainable transport modes can be maximised.
- 8.14. Policy 13 of the Core Strategy sets out that in rural hamlets the Council will support housing developments within settlement boundaries and will support affordable housing schemes that meet a local need outside of the settlement boundary only where the need cannot be met within it.
- 8.15. Policy 17 of the Core Strategy allows for small scale development to meet a local need adjacent to settlement boundaries provided that the need is a) identified in a plan such as a Neighbourhood Plan and b) cannot be met within the settlement and is otherwise acceptable. The proposal does not include any affordable dwellings and so does not comply with this policy.
- 8.16. The scheme would provide three self-build dwellings, and this aspect of the application is explored in greater detail below.

- 8.17. The Council considers that the proposal is offered no support by Policy DM4 of the SADMP or by Policy 13 of the Core Strategy. Kirkby Mallory is not served by any public transport service. It has no primary school, and its only shop is small and sells a very limited range of goods. Kirkby Mallory is not considered a sustainable location for residential development that lies outside of the settlement boundary unless it meets a local need, which this does not.
- 8.18. As such the application does not accord with Policy 13 of the Core Strategy or with Policies DM4 or DM17 of the SADMP and is therefore unacceptable in principle.

Housing Land Supply

- 8.19. 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.
- 8.20. The National Planning Policy Framework was updated on 12 December 2024 and National Planning Practice Guidance has revised the standard method for calculating the local housing need assessment. As a result the Council must revisit its five-year housing land supply position. Whilst further assessment must be made, the Council is unlikely to be able to demonstrate that it has a five year supply of housing land, which is one of the circumstances for engaging the tilted balance of paragraph 11(d) of the NPPF. In any event, due to the age of relevant housing policies within the Core Strategy, the tilted balance is already triggered in accordance with Paragraph 11 and footnote 8 of the NPPF.
- 8.21. Therefore, this application should be determined in accordance with Paragraph 11(d) of the NPPF whereby 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. This is weighed in the balance of the merits of the application when considered with the policies in the SADMP and the Core Strategy which are attributed significant weight where they are broadly consistent with the Framework. Therefore, sustainable development should be approved unless other material considerations indicate otherwise. It should be noted that the assessment of housing land supply is due to be updated very soon.
- 8.22. Paragraph 11d) of the NPPF states that, for decision makers:
“where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date (8), granting permission unless:
i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.”
- 8.23. Footnote 8 in the NPPF states that the application of this approach includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites or

where the Housing Delivery Test indicates that the delivery of housing was below 75% the housing requirement over the previous three years.

- 8.24. Paragraph 61 of the NPPF sets out that *“it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay”*.
- 8.25. Paragraph 73 of the NPPF states that small and medium sized sites can make an important contribution to meeting the housing requirement of an area. It also states that local planning authorities should seek opportunities to support small sites to come forward for community-led development for housing and self-build housing and give great weight to the benefits of using sustainable sites within existing settlements for homes.
- 8.26. Paragraph 3 of the NPPF confirms that the Framework must be read as a whole. It is important to note that in order to promote sustainable development in rural areas, Paragraph 83 of the NPPF requires new housing to be located where it will enhance or maintain the vitality of rural communities.
- 8.27. As highlighted above, the site does not lie within the settlement boundary of Kirkby Mallory. As such the application site is not considered to be in a location that enhances or maintains the vitality of the rural hamlet, nor is it considered to represent sustainable development in principle.
- 8.28. The development is for up to seven dwellings and therefore Policy 15 (Affordable housing) and Policy 16 (Housing density, Mix and Design) of the Core Strategy are not applicable to this scheme
- 8.29. The provision of up to 7 dwellings is not considered to be a significant benefit to the housing land supply within the Borough. Therefore, it is considered that limited to moderate weight only should be given to the benefits of the application in terms of housing land supply.

Self-Build and Custom Build Development

- 8.30. Further to Paragraph 61 of the NPPF, Paragraph 63 confirms that people wishing to commission or build their own homes are a group to which Paragraph 61 refers.
- 8.31. Up to three of the proposed up to seven dwellings are proposed as self-build dwellings within the definition provided in the Self-Build and Custom Housebuilding Act 2015, which is a material consideration within this planning application.
- 8.32. Section 2A of the Self-Build and Custom Housebuilding Act (as amended by the Housing and Planning Act 2016), and associated secondary legislation, places a duty on local planning authorities to have regard to the Self-Build and Custom Housebuilding Register when making decisions on relevant planning applications. The legislation places a duty on local planning authorities to provide permission to suitable development for enough suitable serviced plots of land to meet the demand for self-build and custom housebuilding in their area.
- 8.33. As of 31 January 2024 the Levelling Up and Regeneration Act (2023) tightened up the definitions regarding what can be considered appropriate supply for self and custom housebuilding. The Act now requires local authorities to only count planning permissions as part of self-build supply if they are specifically for self-build

development. Therefore any self-build dwelling will need to be secured by legal agreement.

- 8.34. The level of demand is established by reference to the number of entries added to the local planning authority's register during a base period. At the end of each base period, a local planning authority has three years in which to approve an equivalent number of plots of land, which are suitable for self-build and custom housebuilding, as there are entries on the register for that base period. There is no duty though to grant permission that specifically meets the requirements expressed by those on the register.
- 8.35. If secured by a Unilateral Undertaking, the development would contribute to the current unmet demand for six self-build or custom build housing plots within the Borough and the cumulative need for permissions by the end of the current base period (31 October 2024 to 30 October 2025).
- 8.36. Whilst the LPA are not currently meeting their statutory duty to permit a sufficient number of self-build and custom-build dwellings, the application proposals would only deliver up to three additional dwellings. As such the benefits of this contribution in addressing the limited current shortfall in the Council's provision is considered to attract moderate to significant weight in the determination of this application.

Impact on the Character and Appearance of the Area

- 8.37. Section 12 of the NPPF confirms that good design is a key aspect of sustainable development, and the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.
- 8.38. Policy DM4 of the adopted SADMP states that development in the countryside will be considered sustainable where it does not have a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside; and it does not undermine the physical and perceived separation and open character between settlements; and it does not create or exacerbate ribbon development. The site is located within open countryside, outside of the settlement boundary and is therefore considered against this policy.
- 8.39. Point c) of Policy DM10 of the SADMP states that developments will be permitted where they complement or enhance the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features.
- 8.40. The Council's Landscape Character Assessment states that the site falls within Landscape Character Area D: Newbold and Desford Rolling Farmland. Key characteristics of this landscape include "clustered villages of varying size centred on crossroads", "tree cover is limited", large to medium sized field pattern defined by single species hawthorn hedgerows", open views where hedgerows have been removed, giving the impression of a large scale landscape".
- 8.41. Key sensitivities and values noted in the Assessment include: "the rural settlement pattern of compact and nucleated agricultural settlements connected by a network of lanes and minor roads is largely unspoiled. The rural landscape and sense of tranquillity is sensitive to change from further development"; "long distance and panoramic views from the elevated land in the north creates a high scenic quality and adds to the visual amenity" and "the areas which provide a rural setting to the settlements are sensitive to changes as a result of new development, as well as

views from the wider landscape to church spires.” Four of the landscape strategies outlined in the Assessment include “conserve historic field patterns where possible”, “conserve the relatively small-scale villages and ensure any new development contributes positively to the character and built vernacular”, conserve Mallory Park and its predominantly rural setting” and “conserve and enhance the long, panoramic views from higher ground of uncluttered skylines and church spires”.

- 8.42. As set out above the application is supported by a Landscape Report which considers the likely effect of the proposal on the character and appearance of the local landscape setting. At paragraph 3.14 the report states that views of the application site beyond the immediate edge of the settlement are limited to glimpses between buildings and that to the east there are few public receptor groups with views limited to a short section of Peckleton Road.
- 8.43. The LPA disagrees with these findings of the Landscape Report. The location plan at page 19 of the Report makes it clear that views of the site further to the east along Peckleton Road have not been assessed or taken into account. It is also considered that the Landscape Report fails to take account of the likely change to the site frontage that would be required to address the highway works necessary to provide adequate and safe pedestrian and vehicular access to the site.
- 8.44. The failure to demonstrate adequate and safe access to the site was one of the two reasons for refusal of the previous application on the site and the current application avoids having to address this issue by simply removing access from consideration.
- 8.45. The approach to Kirkby Mallory along Barwell Lane is entirely rural. The lane is bounded by grass verges and comparatively high hedges. There are glimpses of the existing buildings that front the lane, particularly when the native species hedges are not in leaf, due to the orientation of the road. The village sign with the 30mph limit sign beyond are accompanied by white road marking warning drivers to slow but the entire site frontage is devoid of kerbs or hardstanding and even the access into the site which was once hardsurfaced is now mostly grassed over. On the opposite side of the road there is just a kerb to the highway beyond which is a grass verge and mature hedging. As the lane curves to the north the village is only revealed gradually with the presence of the existing pavement on the east side of the lane, the driveways and the gable of the small village shop that is at the back of the footway at the junction of Barwell Lane with Church Road.
- 8.46. The LPA considers that there are significant and extensive medium to long distance views of the site from Peckleton Lane to the east, particularly once the highway begins to drop and the village is clearly laid out on the horizon. New development on the site would be clearly viewable and prominent as an extension to the existing built development limits. As the submitted application documents point out, there is currently no physical boundary to the eastern boundary of the site which forms part of the larger field.
- 8.47. Officers consider that the submitted Landscape Report significantly underestimates the impacts of the proposal. It is material to note that the area is not a ‘valued landscape’ for NPPF purposes. Indeed there are no landscape or environmental designations or sensitivities of note for the site and its immediate surroundings.
- 8.48. For the reasons set out officers consider that the Landscape Report submitted in support of the application significantly underestimates the effects that the proposal would have on the character and appearance of the site and surrounding area. The proposal results in a significant, detrimental, and irreversible, urbanising and

domesticating effect on the intrinsic value, beauty, open character and landscape character of the countryside and the surrounding area.

- 8.49. The application is considered to have major adverse effects on the landscape that continue into the long term, and the proposed development results in a significant detrimental effect on the character and appearance of the site and surrounding area. These effects are considered contrary to Policies DM4 and DM10 of the SADMP and the requirements of sections 2, 12 and 15 of the NPPF. These adverse effects are significant and weigh significantly against the application.

Impact upon Residential Amenity

- 8.50. Policy DM10 (a) and (b) of the SADMP states development will be permitted provided that it would not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings, including matters of lighting and noise and that the amenity of occupiers would not be adversely affected by activities within the vicinity of the site.
- 8.51. The Good Design Guide SPD outlines that development will need to provide high quality internal amenity space as this is critical to the quality of life of residents. The guide states that new developments should meet minimum standards of garden sizes and separation distances between dwellings. The National Design Guide also promotes a healthy, comfortable and safe internal and external environment.
- 8.52. Paragraph 135 of the NPPF states that decisions should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
- 8.53. It is considered that the scheme, subject to the detailed matters to come forward at Reserved Matters stage, could be designed such to have a suitable relationship with nearby residential units.
- 8.54. Additional information with respect to contamination and a Construction Environmental Management Plan could be appropriately sought via condition.
- 8.55. Concerns raised by the neighbours to the scheme are noted, but it is considered that the use of conditions, together with the Council's continued role in assessing detailed plans at Reserved Matters stage, would ensure that sufficient scrutiny and control would be retained to ensure all concerns are appropriately addressed.
- 8.56. It is considered that the proposed development could be designed such to be acceptable in amenity terms and in compliance with Policy DM10 a and b of the SADMP, the Good Design Guide SPD and the requirements of the NPPF.

Impact upon Highway Safety

- 8.57. Policy DM17 of the SADMP supports development that makes best use of public transport, provides safe walking and cycling access to facilities, does not have an adverse impact upon highway safety. All proposals for new development and changes of use should reflect the highway design standards that are set out in the most up to date guidance adopted by the relevant highway authority (currently this is the Leicestershire Highway Design Guide (LHDG)).

- 8.58. Paragraph 115 of the NPPF states that it should be ensured that safe and suitable access to the site can be achieved for all users Paragraph 116 of the NPPF outlines that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 8.59. The applicant has removed access details from the application so that detailed access matters are now addressed at reserved matters stage. The concerns of the LPA regarding the effect that provision of safe and suitable access would have on the character and appearance of the site and surrounding countryside are set out above
- 8.60. As a result though of removing access from those matters to be addressed under this application the Local Highway Authority no longer requires additional information to be submitted at this stage and on that basis the LHA no longer object to the proposal.
- 8.61. Highway concerns have been raised by local residents and by the Parish Council. The applicant would be required to address any concerns that the LHA has regarding highway safety as expressed previously on application 22/01181/OUT but at this outline stage, as access is not a matter for which approval is sought, there are no grounds for refusal of the application on highway grounds.

Flood Risk and Drainage

- 8.62. Policy DM7 of the SADMP seeks to prevent development from resulting in adverse impacts on flooding by ensuring that development does not create or exacerbate flooding.
- 8.63. Paragraph 172 of the NPPF states that when determining planning applications local planning authorities should ensure that flood risk is not increased elsewhere.
- 8.64. The site lies within Flood Zone 1 on the Environment Agency Flood Maps for Planning. The Flood Maps indicate a small risk of surface water flooding to the immediate west of the application site.
- 8.65. The HBBC Drainage Officer has no objections subject to a condition to secure a surface water drainage scheme being submitted and approved prior to any development taking place. Subject to the suggested condition, it is considered that the proposed development would satisfy Policy DM7 of the SADMP and the NPPF.

Ecology and Biodiversity

- 8.66. Policy DM6 of the SADMP states that development proposals must demonstrate how they conserve and enhance features of nature conservation and geological value including long term future management. Paragraph 187 of the NPPF states that planning decisions should minimise impacts on and provide net gains for biodiversity.
- 8.67. The ecology information submitted with the application is that submitted with the previous application 22/01181/OUT which is dated August 2021. It concludes that the site is of low ecological value, that no protected species were identified as using the site and that the proposed development will not affect the biodiversity of the site or surrounding area. The County Ecologist has stated that they have no further comments to make than those made on the previous application which were that a

Biodiversity Net Gain should be achievable given the extent of land ownership and that the existing boundary hedges needed protecting. A condition was recommended regarding an ecological enhancement strategy.

- 8.68. It is considered that the provision of a biodiversity net gain and appropriate protection of existing habitats and wildlife could be secured via condition. Subject to the condition requirements this application is considered acceptable with respect to ecology and biodiversity matters and complies with Policy DM6 of the SADMP.

Conclusions and Planning Balance

- 8.69. 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.
- 8.70. The Council cannot demonstrate a 5-year housing land supply and the housing policies in the adopted Core Strategy and the housing policies of the adopted SADMP are considered to be out of date as they focused on delivery of a lower housing requirement than is now required. It is necessary therefore to consider that the 'tilted' balance in paragraph 11(d) of the NPPF applies and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- 8.71. The provision of up to seven dwellings is considered to be a benefit of the proposal to which limited to moderate weight in favour of the scheme is attached. While no signed Unilateral Undertaking has been submitted which would secure that up to three of the proposed dwellings would be self-build dwellings it is considered that such an undertaking could readily be supplied. It is also acknowledged that the applicant has expressed no unwillingness to enter into such a legal agreement. The application has been assessed on the basis that three of the dwellings are self-build homes. As set out above the provision of three self-build plots is a moderate to significant benefit of the scheme.
- 8.72. The Council considers that the proposal is offered no support by Policy DM4 of the SADMP. As such the application does not accord with development plan policy and is unacceptable in principle. These policies are considered to be broadly consistent with the overall aims of the NPPF and that significant weight should be attached to the fact that the proposal is contrary to the development plan and would undermine the plan led approach endorsed by the Framework.
- 8.73. The proposed development has a harmful effect on the character and appearance of the countryside. It would be contrary to Policy DM4 of the SADMP which seeks to protect the intrinsic character and beauty of the countryside from unsustainable development. The development would also be contrary to the environmental protection aims of the NPPF. This matter attracts significant weight.
- 8.74. The application site is in an unsustainable location that benefits from no public transport, no primary or secondary school and no shop that stocks anything beyond a very limited range of goods, and where the future occupiers of the scheme would be dependent on private motorised transport to meet their day-to-day needs. As a result of this unsustainable location, the development causes significant environmental harm and fails to promote high levels of sustainability, which is

contrary to, and in conflict with, Policies DM4 and DM17 of the SADMP as well as Paragraph 139 and Section 9 and the overarching environmental objectives of the NPPF. This harm attracts significant weight in the planning balance.

- 8.75. Other benefits of the scheme include the economic and social benefits through the construction of dwellings and from subsequent activities of future residents in the local area. These benefits are considered to attract limited weight.
- 8.76. Consequently, even taking into account the housing land supply position, the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF when taken as a whole. The proposal would not therefore represent sustainable development.

9. Equality implications

- 9.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-

A public authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 9.2 Officers have taken this into account and given due regard to this statutory duty in the consideration of this application.

- 9.3 There are no known equality implications arising directly from this development.

- 9.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Recommendation

- 10.1 **That the application be Refused** for the reasons set out below:

1. The development represents unjustified residential development in an unsustainable location that fails to promote sustainable transport. The future occupants of the scheme would be dependent on private motorised transport to meet their day-to-day needs, and this results in significant environmental harm. As a result the proposal is contrary to, and in conflict with, the requirements of Policies DM4 and DM17 of the Site Allocations and Development Management Policies Development Plan Document (2016), and Paragraphs 8, 139, and 187, and Sections 9 and 15 of the National Planning Policy Framework (2024).

2. The application site lies outside of the defined settlement boundary of Kirkby Mallory and so lies within the countryside. The development of up to seven dwellings on the site would result in a significant, detrimental, irreversible, urbanising and domesticating effect on the intrinsic value, beauty, open character and landscape character of the countryside. This harm significantly and demonstrably outweighs the benefits of the development. The proposal is contrary to and in conflict with Policies DM4 and DM10 of the Site Allocations and Development Management Policies Development Document (2016) and Paragraphs 139 and 187, and Sections 2, 9, 11, 12 and 15 of the National Planning Policy Framework (2024).