

HINCKLEY AND BOSWORTH BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990



**Hinckley & Bosworth
Borough Council**

WRITTEN STATEMENT ON BEHALF OF THE LOCAL PLANNING AUTHORITY

PLANNING APPEAL BY MRS PAULINE TAYLOR

**AGAINST THE REFUSAL OF PLANNING PERMISSION FOR THE ERECTION OF
A DETACHED DWELLING, FORMATION OF ACCESS FROM PIPE LANE AND
ASSOCIATED WORKS**

AT

**LAND NORTH OF PIPE LANE, ORTON ON THE HILL,
LEICESTERSHIRE, CV9 3NF**

HINCKLEY AND BOSWORTH BOROUGH COUNCIL REFERENCE

24/00270/OUT

THE PLANNING INSPECTORATE REFERENCE

APP/K2420/W/25/3364849

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1. INTRODUCTION

- 1.1. This statement is to be read in conjunction with the previously submitted Appeal Questionnaire papers, in full support of the decision of Hinckley and Bosworth Borough Council to refuse planning permission for the provision of a detached dwelling, formation of an access onto Pipe Lane, and associated works at the Land north of Pipe Lane, Orton on the Hill, Leicestershire.

2. DESCRIPTION OF THE APPEAL SITE AND THE PROPOSAL

- 2.1. A full description of the appeal site and the appeal proposal are set out within Sections 2 and 3 of the Delegated Officer Report and so is not repeated here.
- 2.2. In summary, the appeal proposal is for a detached, three-bedroom 107sqm dwelling and associated access onto Pipe Lane. The appeal site comprises a paddock and a Category 'A' tree that are located on an elevated area of land to the north of Pipe Lane within the identified settlement boundary of Orton on the Hill and its associated Conservation Area. There is a Protected View in front of 4 Pipe Lane that faces west along Pipe Lane and includes views of the site's southern boundary. A further Protected View faces into the appeal site towards the important Tree.

3. SITE HISTORY

- 3.1 The relevant site history for this appeal is set out in detail at Section 4 of the Delegated Officer Report and so is not repeated here.

4. NATIONAL POLICIES

- 4.1 National Planning Policy Framework (NPPF) (2024).

It is noted that the NPPF was revised after the determination of the planning application in December 2024.

- 4.2 National Planning Practice Guidance (PPG).

- 4.3 National Design Guide (NDG) (2019).

5. LOCAL POLICIES

- 5.1 The Development Plan policies referred to for the purposes of the application were:

- 5.2 Core Strategy (2009):

- Policy 13: Rural Hamlets
- Policy 14: Rural Areas: Transport

- 5.3 Site Allocations and Development Management Policies Development Plan Document (SADMP) (2016):

- Policy DM1: Presumption in Favour of Sustainable Development
- 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
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards

5.4 Other Relevant Guidance:

- Good Design Guide (GDG) (2020)
- Leicestershire Highways Design Guide (LHDG) (2024)
- Orton on the Hill Conservation Area Appraisal (OHCA) (2009)
- Technical Housing Standards – Nationally Described Space Standards (2015)

It is noted that the LHDG was revised after the determination of the planning application in December 2024.

6. THE CASE FOR THE LOCAL PLANNING AUTHORITY

6.1 The planning application was refused on 01 November 2024 under delegated powers for the following reasons:

1. By reason of the proposals siting, scale, layout, degree of excavation and contrived design, the proposed dwelling results in an incongruous development that has permanent and significant adverse impacts to the rural character of the application site, to the character of the street scene of Pipe Lane, and to the character and significance of the Orton on the Hill Conservation Area. This harm significantly and demonstrably outweighs the potential benefits associated with the provision of one dwelling in these site-specific circumstances. Therefore, the development is contrary to, and in conflict with, Policies DM10, DM11, and DM12 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), Policy 13 of the adopted Core Strategy (2009), and Sections 12 and 16 and the overarching ambitions of the National Planning Policy Framework (December 2023).
2. The proposal fails to provide a high level of amenity for the future occupants of the scheme and therefore causes harm to the residential amenity of the future occupants of the scheme, which is contrary to, and in conflict with Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), Paragraph 135 of the National Planning Policy Framework (December 2023), and the Good Design Guide (2020).

Determination of the Appeal Proposal

6.2 Since the determination of the refused planning application 24/00270/FUL, the National Planning Policy Framework has been revised.

- 6.3 The Council's Planning Policy Team are currently reviewing the latest revisions to the NPPF within the 2024 version of the document and its implications for the Council's Five-Year Housing Land Supply. A revised position will be published by the end of June 2025 once the monitoring for the 2024/25 year has been completed. It is however likely that, with the revised need figure of 682 dwellings (649dpa + 5% buffer as per Paragraphs 62 and 78(a) of the NPPF), that the Council will be unable to demonstrate a five-year supply of land for housing once the revised position is published.
- 6.4 Although the appeal proposal would contribute to the Borough's likely shortfall in supply of land for housing, the development only consists of one additional dwelling to this supply. As a result, the social and economic benefits associated with this contribution to the supply of land for housing should only attract limited weight in the planning balance in these site-specific circumstances. The Appellant, who is professionally advised, has not sought to refute this weighting.
- 6.5 Paragraph 3.8 of the Appellant's Statement confirms that this appeal proposal is not for a self-build or custom-build development and therefore the benefits associated with this, and the Council's assessment of this matter within the Delegated Officer Report, are not applicable to the determination of this appeal.
- 6.6 As confirmed at Paragraph 8.8 of the Delegated Officer Report, the age of the relevant housing policies within the adopted Core Strategy means that they are out of date. Therefore, the 'tilted' balance in Paragraph 11(d) of the NPPF is triggered for the determination of this appeal. However, as highlighted by Paragraph 8.3 of the Delegated Report, in accordance with Paragraph 225 (now 232) of the NPPF, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the NPPF. Due weight should be given to existing policies according to their degree of consistency with the NPPF.
- 6.7 Given the above, whilst it is likely that the Council is no longer be able to demonstrate a five-year supply of land for housing, the 'tilted' planning balance is still engaged and therefore the process for the determination of the appeal proposal has not changed since the determination of planning application 24/00270/FUL.
- 6.8 For decision-taking, Paragraph 11(d) of the NPPF requires planning permission to be granted unless:
- i. The application of policies in this Framework that protect areas or assets of particular importance provides a strong 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.

- 6.9 Footnote 7 of the NPPF confirms that areas and assets of particular importance includes, but is not limited to, designated heritage assets (and other heritage assets of archaeological interest referred to in Footnote 75 of the NPPF), such as the Orton on the Hill Conservation Area.
- 6.10 Footnote 9 of the NPPF confirms that these key policies include Paragraphs 66 and 84 of Chapter 5 (Delivering a Sufficiently Supply of Homes), 91 of Chapter 7 (Ensuring the Vitality of Town Centres), 110 and 115 of Chapter 9 (Promoting Sustainable Transport), 129 of Chapter 11 (Making Effective Use of Land), and 135, and 139 of Chapter 12 (Achieving Well-Designed Places).
- 6.11 It is noted that only Key Policy Paragraphs 115, 129, 135, and 139 of the NPPF are applicable in these site-specific circumstances.

Impact upon the Character of the Surrounding Area and the Historic Environment

- 6.12 Key Policy Paragraph 129(d) of the NPPF states that planning decisions should support development that makes an effective use of land, taking into account the desirability of maintaining and area's prevailing character and setting (including residential gardens), or of promoting regeneration and change.
- 6.13 Chapter 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.
- 6.14 Key Policy Paragraph 135(a) and (c) of the NPPF confirm that planning decisions should ensure that developments:
- (a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development; and
 - (c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change.
- 6.15 These Key Policy Paragraphs are supported by Policy DM10(c) of the SADMP, which 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.
- 6.16 Guidance Point C1 of the NDG confirms that well-designed new development should respond positively to the features of the site itself and the surrounding context beyond including the existing built development and landscape character, amongst others.

- 6.17 Guidance Point I2 of the NDG advised that well-designed places should contribute to local distinctiveness and Guidance Point I3 of the NDG highlights that design decisions at all levels and scales should help to create a memorable sense of place.
- 6.18 Paragraph 137 of the NPPF states that applicants, where applicable, should provide sufficient information to demonstrate how their proposals will meet the design expectations set out in local and national policy.
- 6.19 Furthermore, Paragraph 213 of the NPPF highlights that:
- “Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.”*
- 6.20 The first reason that the Local Planning Authority refused the planning application 24/00270/FUL was due to the scheme’s significant harm to the character of the surrounding area and the historic environment. It is noted that the Appellant has sought to solely rely on their originally submitted Heritage Impact Assessment to justify their proposal within this appeal against this reason for refusal, which was reviewed by the Local Planning Authority during the processing of planning application 24/00270/FUL. In addition, neither the Appellant’s Statement, nor their Heritage Impact Assessment refer to the requirements of Paragraph 213 of the NPPF.
- 6.21 Therefore, in spite of the requirements of Paragraphs 137 and 213 of the NPPF, the Appellant has failed to provide any further information to demonstrate how their proposal meets design expectations as set out in local and national policy and has not provided any response to the Council’s assessment of their development within the Delegated Report for the refused application.
- 6.22 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on the local planning authority when determining applications for development which affects a listed building or its setting to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural and historic interest which it possesses.
- 6.23 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
- 6.24 It is noted that the Appellant’s Statement fails to refer to the statutory duties of Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 6.25 Paragraphs 5.11 of the Appellant’s Statement asserts that:
- “Conservation is the management of change – not the fossilisation of the existing situation.”*

- 6.26 This specious statement oversimplifies the requirements of conservation and attempts to diminish the importance of the statutory duties of Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and the requirements of National Planning Policy.
- 6.27 Paragraph 202 of the NPPF confirms that heritage assets are:
- “An irreplaceable resource and should be conserved in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of existing and future generations.”*
- 6.28 In determining applications, Paragraph 212 of the NPPF requires that great weight be given to the conservation of designated assets and the more important the asset, the greater the weight should be. It is noted that the Appellant’s Statement does not refer to this requirement of National Policy.
- 6.29 Paragraph 220 of the NPPF confirms that the loss of a building or other element which makes a positive contribution to the significance of the Conservation Area should be treated either as substantial harm under Paragraph 214 or less than substantial harm under Paragraph 215, as appropriate, taking into account the relative significance of the elements affected and its contribution to the significance of the Conservation Area as a whole.
- 6.30 Given the above, there is a clear intention to preserve and enhance the historic environment within National Planning Policy.
- 6.31 This is supported by Policies DM11 and DM12 of the SADMP, which seek to protect and enhance the historic environment and heritage assets. Policy DM11 of the SADMP requires all developments proposals which have a potential to affect a heritage asset or its setting to demonstrate:
- (a) An understanding of the significance of the heritage asset and its setting; and
 - (b) The impact of the proposal on the significance of the asset and its setting, including measures to minimise or avoid these impacts; and
 - (c) How the benefits of the proposal will outweigh any harm caused; and
 - (d) Any impacts on archaeology in line with Policy DM13 of the SADMP.
- 6.32 Policy DM12 of the SADMP confirms that all developments affecting heritage assets and their setting will only be permitted where it is demonstrated that the proposals are compatible with their significance and their setting. Assets identified on the Locally Important Heritage Asset List should be retained and enhanced wherever possible.
- 6.33 Policy 13 of the adopted Core Strategy states that the Council will require new development to respect the character and appearance of the relevant Conservation

Area by incorporating locally distinctive features of the Conservation Area into the development.

Clarity on the Local Planning Authority's First Reason for Refusal

- 6.34 Paragraph 5.3 of the Appellant's Statement suggests that the Council has 'conflated' its assessment of the design of the scheme with the proposal's impact on the Orton on the Hill Conservation Area.
- 6.35 To justify this, the Appellant has highlighted that the Council's Conservation Officer has suggested that a heritage benefit could be demonstrated through the appearance of the dwelling. This fails to read the Conservation Officer's comments as a whole.
- 6.36 For the avoidance of doubt, the Council has not suggested at any point during the determination of planning application 24/00270/FUL, within the reasons for refusal of that application, nor during this appeal process, that the converted farm building design concept, nor its proposed finishes or basic architectural detailing contributed to the development's significant harm to the character and significance of the Orton on the Hill Conservation Area.
- 6.37 Although the simplistic architectural design of the building could represent a minor benefit of the development, this does not suggest that the rest of the scheme is acceptable, such as its siting, scale, and the degree of proposed excavation works, which are all considered to contribute to the development's wholly incongruous and contrived character.
- 6.38 Paragraph 5.4 of the Appellant's Statement once again refers to the Council's Conservation Officer's assessment of the appeal proposal's impact on nearby Listed Buildings. However, it is again noted that the Council has not sought to suggest at any point during the determination of planning application 24/00270/FUL, nor during this appeal process, that the impact of the development on nearby Listed Buildings forms part of the reasons for refusal of 24/00270/FUL. On the contrary, Paragraph 8.31 of the Delegated Officer Report confirms that the scale of the development is considered to have a neutral presence within the setting of the Listed Lower Farmhouse. Given the above, the Local Planning Authority questions whether the Appellant has understood the first reason for refusal of 24/00270/FUL.
- 6.39 For example, whilst the Appellant's Statement refers to the Council's Conservation Officer's assessment of the development, the Appellant fails to acknowledge that the Council's Conservation Officer considered the development to cause less than substantial level of harm to the character, appearance, and thus significance, of the Orton on the Hill Conservation Area.
- 6.40 Instead, the Appellant's Statement then refers to the status of the appeal site as a Potential Development Area within the Orton on the Hill Conservation Area. Paragraphs 5.9 and 5.10 of the Appellant's Statement have sought to utilise this

classification to argue that *“The character of this part of the Conservation Area and Pipe Lane will change over time.”*

- 6.41 These paragraphs disregard the Council's assessment of the principle of the scheme within the Delegated Officer Report. For the avoidance of doubt, Paragraph 8.7 of the Delegated Officer Report confirms that the principle of a dwelling in this location is acceptable in principle. However, Paragraph 8.6 of the Delegated Officer Report highlights that:

“As the area has not been comprehensively redeveloped as a whole, any development within the application site, as a remnant of this area, is now subjected to the constraints of these dwellings as well as the existing group of historic buildings.”

- 6.42 Therefore, although the development is, *“Surrounded by dwellinghouses,”* as suggested at Paragraph 5.12 of the Appellant's Statement and the principle of a dwelling in this location is acceptable in principle, this is not sufficient justification to demonstrate the acceptability of this development, which by virtue of its siting, scale and degree of required excavation works, is wholly contrived and incongruous to the character and significance of the surrounding area and the designated heritage asset Orton on the Hill Conservation Area.

- 6.43 Given the above, the Council strongly refute that it has conflated its assessment of the development proposal. This accusation clearly demonstrates that the Appellant has failed to engage with, or have any regard to, the Council's assessment of the appeal proposal during the determination of 24/00270/FUL. This can be seen by the fact that the Appellant has misguided themselves by referring to the principle of the scheme and its impact on adjacent Listed Buildings. The Local Planning Authority therefore questions again whether the Appellant has truly understood the first reason for refusal of 24/00270/FUL.

The Appeal Proposal's Impact on the Character of the Surrounding Area and the Historic Environment

- 6.44 The Appellant's Heritage Impact Assessment (HIA) concludes that the appeal proposal shall not result in any harm to the significance of any heritage assets. This assessment is based on the assertion that it results in a, *“Relatively small change within Pipe Lane,”* and that, *“No key views, vistas, silhouettes, skylines or landmarks will be affected.”*
- 6.45 Firstly, the HIA fails to acknowledge that there is a Protected View that looks directly into the appeal site from Pipe Lane. Secondly, the Council strongly refute that the provision of a 14.8m wide and 5.8m high dwelling results in a, *“Small,”* change to the character of the area.
- 6.46 It is noted with concern that neither the Appellant's Statement, nor the HIA make reference to the site's positive contribution to the character of the area and its significance of the Orton on the Hill Conservation as an area of open green space.

- 6.47 As highlighted by Paragraph 5.12 of the Appellant's Statement, The Green and Pipe Lane Character Area is characterised within the Orton on the Hill Conservation Area Appraisal (OTHCAA) as:

"A relatively unplanned organic pattern of buildings which are separated from each other by distance, green spaces, and continuous hedges."

- 6.48 The OTHCAA then confirms that:

"It is important to the character of the Conservation Area that the large green spaces between these groups of buildings are retained."

- 6.49 Notably, the appeal site is a large green space between groups of buildings and therefore the site positively contributes to the character and thus significance of this Character Area within the wider Conservation Area.

- 6.50 Given the above, and in light of the requirements of Paragraph 220 of the NPPF, the Appellant has significantly underplayed the positive contribution of the appeal site to the rural character and appearance of the Orton on the Hill Conservation as well as the development's significant and detrimental impact to the character and significance of the designated heritage asset.

- 6.51 The OHCAA then confirms that in the Main Street Character Area of the Conservation Area:

"Spaces between farms, particularly along Main Street have been infilled with new dwellings to the detriment of the traditional character of the settlement. Main Street has been particularly badly affected because of the modern unsympathetic nature of this development."

- 6.52 Unlike The Green and Pipe Lane Character Area, the OHCAA does not characterise the Main Street Character Area as featuring green spaces and continuous hedges. Therefore, given the extent of the detrimental impact of infill development within the Main Street Character Area, it is clear that such development in an open green space, such as the appeal site, in The Green and Pipe Lane Character Area would have a significantly higher level of permanent and damaging impacts upon the character and appearance, and thus significance, of the Conservation Area than in the Main Street Character Area.

- 6.53 In light of the above, the development represents the infilling of a large green space between buildings that currently makes a positive contribution to the character and thus significance of the Conservation Area. The proposed development is considered to result in significant harm to the character, appearance, and significance of the surrounding area and the designated heritage asset. The Appellant has not sought to justify their appeal proposal in light of this harm.

- 6.54 Therefore, contrary to the assertions at Paragraph 5.13 of the Appellant's Statement, the proposed dwelling and its associated works would be significantly visually discordant with the character of the area.
- 6.55 This significantly detrimental impact is exacerbated by the extensive excavation works and associated high retaining walls that are required in order to prevent any adverse impacts on the significance of nearby Listed Buildings, which vary between 0.8m and 2.2m in height. These considerable urbanising works are highly visually prominent from Pipe Lane and are wholly incongruous within the relatively unplanned and organic pattern of development, by which the site and the surrounding area are characterised. In addition, given that such extensive works are required to achieve an '*appropriate*' design for the scheme, this demonstrates that the development is wholly contrived and does not represent good design.
- 6.56 The contrived design of the development is also evident due to the siting of the proposal, which, due to its size and in order to prevent any harm to the protected tree is positioned at the southern boundary of the site. This siting greatly increases the visual prominence, and thus the significantly harmful impact of the development on the rural character of the area and the significance of the Conservation Area.
- 6.57 Notably, the Appellant has not sought to refute the Local Planning Authority's position on the contrived nature of the development and has failed, or been unable, to justify why their development, and its associated extensive works do not cause significant harm to the Conservation Area.
- 6.58 Furthermore, despite referring to the comments of the Council's Conversation Officer, the Appellant has failed to note or address the Conservation Officer's concerns that the proposed new access onto Pipe Lane erodes the rural character of the surrounding area. The adverse impact of these works is exacerbated by the associated removal of existing vegetation and provision of hard landscaping, which have a significantly harmful permanent and urbanising impact on the character of the area.
- 6.59 As confirmed at Paragraph 8.5 of the Delegated Officer Report, whilst details of a hard and soft landscaping scheme can be secured via planning condition, this is not considered to overcome the significant harmful urbanising effects of the new access upon this section of the site and the Conservation Area.

Summary

- 6.60 To summarise, there is a clear intention to preserve and enhance the historic environment within the heart of the definition of sustainable development and within wider National Planning Policy and Legislation, and within the Development Plan.
- 6.61 By virtue of the proposal's siting, scale, layout, degree of excavation and contrived design, the proposed dwelling results in an incongruous development that has permanent and significant adverse impacts on the rural character of the appeal site, on the character of the street scene of Pipe Lane, and on the character and

significance of the Orton on the Hill Conservation Area. Therefore, the development is contrary to, and in conflict with, Policies DM10, DM11, and DM12 of the adopted Site Allocations and Development Management Policies Development Plan Document, Policy 13 of the adopted Core Strategy, and Sections 12 and 16 of the National Planning Policy Framework, including Key Policy Paragraphs 129 and 135. As a result, the proposal is not well designed and in accordance with Key Policy Paragraph 139, it is recommended that the appeal proposal should be dismissed.

- 6.62 Given the above, the application of policies within the NPPF that protect areas of particular importance provide a strong reason for refusing the proposed development. Therefore, the 'tilted' balance required by Paragraph 11(d)(ii) of the NPPF is disengaged and the appeal proposal should be determined in accordance with the 'normal' balance as set out at Paragraph 2 of the NPPF. This is in accordance with Paragraph 80 of the Appeal Decision at the Land north of Shenton Lane, Market Bosworth (c.f. Appendix A).

Impact upon Residential Amenity

- 6.63 Key Policy Paragraph 135(f) of the NPPF requires planning policies and decisions to ensure that developments create places that are safe, inclusive, and accessible, which promote health and well-being, and a high standard of amenity for existing and future users.
- 6.64 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.
- 6.65 Paragraph 14.2 of the SADMP confirms that new development should be located and designed in such a way that the amenity of both existing residents and occupiers is fully considered when assessing planning applications. The amenity of future occupiers of any proposed development is also in an important design consideration to avoid any future conflicts over incompatible uses.
- 6.66 The Good Design Guide requires the way buildings to relate to each other, and their orientation and separation distances, to provide and protect acceptable levels of amenity. The Good Design Guide recommends that a principal window to a habitable room should ideally be no less than 8m from the blank side of a single storey neighbouring property, rising to 14m for a two-storey property.
- 6.67 Notwithstanding this, these separation distances are the minimum standards that are required, and every application will be assessed on its own merits depending on the individual characteristics of the site such as orientation, ground levels, window positions, garden size, and shape.
- 6.68 Paragraph 5.18 of the Appellant's Statement suggests that the policy test for Policy DM10 of the SADMP for protecting residential amenity is to determine whether a

development proposal results in an, *“Unacceptable adverse impact,”* in terms of visual amenity. The Local Planning Authority refute this statement.

- 6.69 The policy tests within National and Local Planning Policy are detailed above and it is noted that the phrase ‘unacceptable’ is not included within the policy wording of Policy DM10 of the SADMP, nor Key Policy Paragraph 135 of the NPPF. On the contrary, the aim of National Policy is to create, *“A high standard of amenity for existing and future users.”*
- 6.70 In its attempt to minimise any harm to the significance of any nearby Listed Buildings, and the Protected Tree within the site, the development has been forced to extensively excavate the existing ground levels and constrained to the south-eastern corner of the site. As a result, the design of the proposal is contrived and fails to provide a sufficiently high level of amenity for the future occupants of the scheme, which results in significant harm to the future occupiers of the scheme.
- 6.71 Paragraphs 8.71 and 8.72 of the Delegated Officer Report confirm that this harm is due to the scheme’s failure to provide a high level of visual amenity and a sufficient amount of light to the 11m long kitchen-living-dining room.
- 6.72 The kitchen-living-dining room is one of the most important rooms within this proposed development because it accommodates three key habitable room uses. This room is also the only habitable room that is not a bedroom within the development proposal. Therefore, it is crucial that the kitchen-living dining room is provided with a high standard of residential amenity.
- 6.73 The kitchen area of this room is served by a 2.6m wide three-bay patio door and a 0.5m wide window, which look directly onto the proposed retaining wall.
- 6.74 The Appellant’s defence to this second reason for refusal is to highlight that an occupant will, *“Be able to see over the top of the retaining wall,”* (Paragraph 5.19) and will, *“Overlook a large private courtyard terrace,”* (Paragraph 5.21).
- 6.75 The Local Planning Authority refute this justification. The Appellant cannot suggest with any sincerity that the fact that a future occupier can see over the top of a retaining wall demonstrates that the appeal proposal complies with National and Local Planning Policy that seeks to protect the residential amenity of future users of development. Moreover, the Council do not consider these statements to be accurate.
- 6.76 The ‘large’ private courtyard is 17sqm in size and has a depth of 6.4m at its deepest, which reduces to just 0.7m. This is not a private courtyard that can be described in any sense as ‘large’ in size. The separation distance between the window on this western elevation and the retaining wall is just 1.5m.
- 6.77 Whilst Paragraph 5.20 of the Appellant’s Statement relies on the visualisation of the street scene within Appendix 9 of their Statement to justify their proposal, it is noted that the submitted visualisation does not accurately detail the ground levels of the

scheme, the wider site, or Pipe Lane. As such it is meaningless as a tool to usefully assess the levels of amenity that will be provided for any future occupiers.

- 6.78 The proposed ground level for the patio area is 97.5m AOD whereas the existing ground levels, as per the Topographical Survey, are between 99m and 99.5m AOD, and continue to rise to the north of the site. This represents a minimum height difference, and a resultant retaining wall height of, between 2m and 2.5m. The LPA is concerned to note that the Appellant has removed the existing ground levels from the Proposed Site Plan.
- 6.79 By virtue of the height of the retaining wall, and the distance between the retaining wall and the proposed fenestration, the development, as a matter of fact, does not provide a high level of visual amenity. These factors also reduce the provision of natural light to these principal windows. Therefore, the development results in significant harm to the residential amenity of the future occupiers of the scheme.
- 6.80 It is appreciated that three skylights are proposed within this section of the development. However, the provision of these small skylights does not address the scheme's failure to provide a high standard of visual amenity for the future occupiers of the development.
- 6.81 There are two additional windows to the south of the kitchen-living-dining area that are on the eastern and southern elevations respectively. According to the Proposed Site Plan, the eastern elevation of the property is only 1.5m from the eastern boundary of the site.
- 6.82 Whilst the provision of three 0.3sqm skylights within the kitchen area and the 1.8m wide window within the living area of this room would provide some additional natural light, these windows face eastwards onto existing trees and vegetation that are not within the ownership of the Appellant. It is noted that the existing vegetation to the east of the site is not included within the red line boundary within Site Location Plan 0202.
- 6.83 Although the Appellant may not accept that views of vegetation equate to a poor outlook, the Appellant has failed to provide any justification to demonstrate how a principal window serving the living area of the development proposal shall provide a high level of visual amenity and natural light when it is 1.5m from a shared boundary and overshadowed by well-established trees and vegetation that are not within the Appellant's ownership. Furthermore, vegetation can be removed, and the adjacent owner can erect a wall or fence that is 2m in height along this boundary without planning permission, which would heighten the current proposed harm to the residential amenity for the future occupiers of the scheme.
- 6.84 In light of the issues with the window in the south-eastern corner of the kitchen-living-dining area, the remaining 0.5m wide window on the southern elevation of the property cannot provide sufficient natural light or visual amenity on its own for this important habitable room that serves three different habitable uses.

- 6.85 Ultimately, the kitchen-living-dining area is 11m in length and is the only habitable room within the development that is not a bedroom. Therefore, this is a very important aspect of the development in relation to the residential amenity of the future occupiers of the scheme. No windows are proposed within the dining area of this room, and only two windows are proposed at either end of this important long habitable room, one of which is a patio door, alongside three small skylights. The Council has identified that three of the four windows and the skylights do not provide a high level of visual amenity, nor natural light to this important habitable room.
- 6.86 As a result of these combined issues, and due to the contrived siting of the scheme, the future occupiers of the scheme are not provided with a high standard of visual amenity or natural light provision within the only habitable room that is not a bedroom. This considered to cause significant harm to the residential amenity of the future occupants of the scheme, which is contrary to, and in conflict with Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document, Key Policy Paragraph 135 of the National Planning Policy Framework, and the Good Design Guide. Therefore, the proposal is not well designed and in accordance with Key Policy Paragraph 139, it is recommended that the appeal proposal should be dismissed.

7. CONCLUSION

- 7.1 To summarise, Section 38 (6) of the Planning and Compensation Act 2004 and Section 70 (2) of the Town and Country Planning Act 1990 indicates that planning permission should be granted for development proposals that accord with the Development Plan unless material considerations indicate otherwise.
- 7.2 It is acknowledged that the Development Plan was adopted prior to the publication of the latest NPPF. However, as a result of the strong consistency with the wording of the NPPF, due weight should be given to the policies within the Development Plan, such as Policies DM10, DM11, and DM12 of the SADMP, in accordance with Paragraph 232 of the NPPF.
- 7.3 Since the determination of the refused planning application 24/00270/FUL, amendments have been made to the National Planning Policy Framework and the Local Planning Authority's position on its supplies of land for housing has changed. However, the benefits of providing one additional dwelling to the Council's supply of land for housing should only attract limited weight in the planning balance. The Appellant has not sought to refute this weighting.
- 7.4 The Appellant has failed to have appropriate regard to the statutory requirements of National Legislation for preserving and enhancing heritage assets and has failed to consider the great weight that must be given to the conservation of designated heritage assets within National Planning Policy.
- 7.5 As a result, and by virtue of the proposal's siting, scale, layout, degree of excavation and contrived design, the proposed dwelling results in an incongruous

development that has significant permanent and significant adverse impacts to the rural character of the appeal site, to the character of the street scene of Pipe Lane, and to the character and significance of the Orton on the Hill Conservation Area.

- 7.6 Furthermore, the proposal not only fails to provide a high level of amenity for the future occupants of the scheme but instead provides a clearly inadequate level of amenity for future occupiers and therefore causes significant harm to the residential amenity of the future occupants of the scheme.
- 7.7 Given the above, the application of policies within the NPPF that protect areas of particular importance provide a strong reason for refusing the proposed development. Therefore, the 'tilted' balance required by Paragraph 11(d)(ii) of the NPPF is disengaged and the appeal proposal should be determined in accordance with the 'normal' balance as set out at Paragraph 2 of the NPPF.
- 7.8 In accordance with Paragraph 212 of the NPPF, irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm, great weight should be given to the asset's conservation, and the more important the asset, the greater the weight should be.
- 7.9 Paragraph 215 of the NPPF and Policies DM11 and DM12 of the SADMP require this less than substantial harm to the significance of the designated heritage assets to be weighed against the public benefits of the proposal.
- 7.10 Ultimately, it is considered that the significant permanent and considerable detrimental impacts of the development to the character and appearance, and thus significance, of a designated heritage asset, and to the residential amenity of the future occupiers of the scheme significantly and demonstrably outweigh the potential benefits associated with the provision of one dwelling within this appeal site in these site-specific circumstances.
- 7.11 Therefore, the development proposal is contrary to, and in conflict with, Policies DM10, DM11, and DM12 of the Site Allocations and Development Management Policies Development Plan Document Policy 13 of the Core Strategy, Chapters 2, 12, and 16 of the NPPF, including Key Policy Paragraphs 129, 135, and 139, the National Design Guide, and the statutory duty of Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. In accordance with Paragraph 2 and Key Policy Paragraph 139 of the NPPF, it is therefore recommended that the appeal proposal is dismissed.
- 7.12 There are no other material considerations to indicate that the proposal should be determined other than in accordance with the adopted Development Plan in this case. With regard to the information contained in this statement and that submitted with the Appeal Questionnaire, Hinckley and Bosworth Borough Council respectfully requests that the appeal be dismissed. However, if the Inspector is minded not to do so, the Local Planning Authority requests the inclusion of the following conditions suggested below.

8. CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details received by the Local Planning Authority as follows:

- Proposed Plans and Elevations 0503-08 (submitted: 09.10.2024)
- Proposed Site Plan & Parking Plan 0504-09 (submitted: 09.10.2024)
- Site Location Plan 0202 (submitted: 22.03.2024)
- Topographical Survey (submitted: 22.03.2024)
- Tree Protection Plan (Rev A) (submitted: 09.10.2024)

Reason: To ensure a satisfactory form of development in accordance with Policies DM1, DM10, DM11, and DM12 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

3. Prior to the commencement of the development hereby permitted, biodiversity enhancement scheme has been submitted to, and approved in writing by, the Local Planning Authority. Enhancements shall include (but is not limited to) a native planting scheme, at least one woodcrete/integrated bat box, one woodcrete/integrated bird box, the make/model and their locations. Any enhancement measures need to be shown on all relevant submitted plans. All works are to proceed strictly in accordance with the approved scheme.

Reason: In order to demonstrate measurable biodiversity net gains in accordance with Chapter 15 of the National Planning Policy Framework (2024) and to protect the protected wildlife species and their habitats that are known to exist on site to accord with Policy DM6 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

4. No development above foundation level shall commence on site until representative sample of the types and colours of materials to be used on the external elevations of the structures hereby permitted have been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall be implemented in accordance with those approved materials.

Reason: To ensure that the development has a satisfactory external appearance in accordance with Policies DM10, DM11, and DM12 of the

adopted Site Allocations and Development Management Policies Development Plan Document (2016).

5. No part of the development hereby permitted shall be occupied until such time as the access arrangements shown on Proposed Site Plan & Parking Plan 0504-09 (submitted: 09.10.2024) have been implemented in full.

Reason: To ensure that vehicles entering and leaving the site may pass each other clear of the highway, in a slow and controlled manner, in the interests of general highway safety and in accordance with the National Planning Policy Framework (2024).

6. The development hereby permitted shall not be occupied until such time as the parking and turning facilities have been implemented in accordance with Proposed Site Plan & Parking Plan 0504-09 (submitted: 09.10.2024). Thereafter the onsite parking (and turning) provision shall be kept available for such uses in perpetuity.

Reason: To ensure that adequate off-street parking provision is made to reduce the possibility of the proposed development leading to on-street parking problems locally (and to enable vehicles to enter and leave the site in a forward direction) in the interests of highway safety and in accordance with the National Planning Policy Framework (2024).

7. The development hereby permitted shall not be occupied until such time as the access drive (and any turning space) has been surfaced with tarmacadam, or similar hard bound material (not loose aggregate) for a distance of at least 5 metres behind the highway boundary and, once provided, shall be so maintained in perpetuity.

Reason: To reduce the possibility of deleterious material being deposited in the highway (loose stones etc.) in the interests of highway safety and in accordance with the National Planning Policy Framework (2024).

8. No part of the development hereby permitted shall be first used, until a scheme for the provision of waste and recycling storage and collection areas across the site shall be submitted to, and be approved in writing by, the Local Planning Authority. The scheme shall address accessibility to storage facilities and confirm adequate space is provided at the highway boundary to store and service wheeled containers. The development shall be implemented in accordance with the approved scheme prior to first occupation.

Reason: To support the policies within the Wheeled Bin and Container Policy (updated March 2018) and to ensure that there is adequate provision of waste and recycling storage so that the amenity of the occupants of the proposed development are not adversely affected in accordance with Hinckley and Bosworth Borough Council's Wheeled Bin and Contained Policy (updated March 2018), Policy DM10 of the adopted Site Allocations and Development

Management Policies Development Plan Document (2016) and Section 46 of the Environmental Protection Act 1990.

9. The development shall be carried out in strict accordance with the research objectives, programme of archaeological work, reporting, and archive preparation and deposition as detailed within Sections 4 to 14 (inclusive) of the Written Scheme of Investigation (WSI) (submitted: 07.06.2024).

Reason: To ensure satisfactory archaeological investigation, recording, dissemination, and archiving in accordance with Policy DM13 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), and Chapter 16 of the National Planning Policy Framework (2024).

10. Notwithstanding the provisions of Classes A, AA, B, C, D, and E of Part 1 of Schedule 2 of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no enlargement, improvement or other alteration to the dwelling shall be carried out unless planning permission for such development has been granted by the Local Planning Authority.

Reason: To protect the character of the surrounding area and to safeguard the privacy and amenity of neighbouring dwellings from potential overlooking in accordance with Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

11. Notwithstanding the provisions of Part 2 of Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) no vehicular access gates, barriers, bollards, chains or other such obstructions shall be erected within a distance of 5 metres of the highway boundary, nor shall any be erected within a distance of 5 metres of the highway boundary unless hung to open away from the highway.

Reason: To enable a vehicle to stand clear of the highway in order to protect the free and safe passage of traffic including pedestrians in the public highway in accordance with the National Planning Policy Framework (2024).

9. APPENDICES

- 9.1 (See separate documents)

- 9.2 **Appendix A** (Appeal Decision: Land north of Shenton Lane, Market Bosworth)
(APP/K2420/W/23/3317090)