



Appeal Decision

Site visit made on 10 March 2026

by S Hubbard BSc(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 April 2026

Appeal Ref: 6003147

Land North of Woodlands, High Tor East, Earl Shilton LE9 7DL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Andrew Green against the decision of Hinckley and Bosworth Borough Council.
 - The application Ref is 25/00233/OUT.
 - The development proposed is described as outline planning permission (access only) for the erection of a single dwelling (C3 self-build) land north of Woodlands, High Tor East, Earl Shilton, LE9 7DL
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application is made in outline with details of access provided for consideration at this stage. All other matters are reserved for future consideration. I have taken submitted plans relating to access as forming part of the application. I have treated other plans as indicative only.
3. The description of the development on the planning application form and the appeal form differs slightly from that used by the Council on the officer report and decision notice which was 'Outline planning permission for the erection of a single (self-build) dwelling (All matters reserved except access)'. There is nothing before me to suggest that the appellant agreed to this change. As such I have determined the appeal on the basis of the description in the banner heading above.
4. The Council referred to the Hinkley and Bosworth Borough Council Open Space Assessment – September 2025 in their statement. This document is dated after the decision was issued on the planning application and is not referred to in the Council's officer report. The appellant has had the opportunity to comment on this and has done so in their final comments. Consequently, I consider that the appellant has had a fair opportunity to address this matter and therefore I have had regard to this document.
5. The appeal is supported by a unilateral undertaking which seeks to secure the proposed development as a self-build dwelling. I address this later in the decision.

Main Issues

6. The main issues relevant to this appeal are:
- i) The effect of the proposed development on the provision of open space, with regard to the provisions of the development plan and national planning policy;
 - ii) The effect of the proposed development on protected species; and
 - iii) The effect of the proposed development on the character and appearance of the area;

Reasons

Open Space

7. The site forms part of an area of allotments off High Tor East. Whilst the site is not presently cultivated it retains the appearance of an allotment plot and there is nothing to suggest it could not be cultivated in the future. Many of the surrounding plots were in active use at the time of my site visit. The site falls within an area allocated as open space in the Earl Shilton and Barwell Area Action Plan (Adopted September 2014) (AAP) under reference EAR32, known as Keats Lane Allotments.
8. Policy 25 of the AAP states that planning permission will not be granted for proposals which result in a loss of open space as identified in the most recent Open Space, Sport and Recreational Facilities Study except where, replacement of an equivalent typology is provided in an appropriate location serving the local community, it is demonstrated that there is a surplus of the same typology exceeding the needs of the local community or the development is a small part of a larger site which would result in an enhancement of recreational facilities on the remainder of the site. Policy DM8 of the Site Allocations and Development Management Development Plan Document (Adopted July 2016) (SADMP) shares the same wording. The first two criterion of these policies are similar to the first two criterion under paragraph 104 of the National Planning Policy Framework (the Framework).
9. The most recent open space study referred to by the Council is the 2025 Open Space Assessment discussed above. The assessment continues to identify the Keats Lane Allotments as open space. Whilst the document or the submitted evidence does not indicate whether the assessment has been formally adopted, there is nothing to suggest that such a document must go through a formal adoption process. I therefore take the view that this is now the latest study for the purposes of Policy 25 of the AAP and Policy DM8 of the SADMP.
10. The plans within the Open Space Assessment are not at a scale where it is possible to be certain that the appeal site falls within the boundary of the allotments. However, the boundaries of the allotments in the vicinity of the appeal site appear very similar to that on the Policies Map for the AAP. Furthermore, the site resembles an allotment plot as part of the wider allotments. This leads me to conclude that the site is subject to the requirements of Policy 25 of the AAP and Policy DM8 of the SADMP.

11. Whilst the Open Space Assessment indicates Earl Shilton has a higher level of provision of allotments at 0.36 hectares per 1000 people than the average for the Borough at 0.35 hectares per 1000 people, this does not in itself indicate that there is a local surplus of provision which exceeds the needs of the local community. No compelling, up-to-date evidence on the local needs of the community has been presented to suggest the site is surplus to requirements. The appellant refers to a previous planning permission¹ for a residential development on allotment land on High Tor East where it was concluded there was a surplus of allotment provision. However, given that decision was nearly eight years ago, this cannot be relied upon as an up to date position as there could have been changes in provision of allotments over that time and changes in the need for allotments from the local community.
12. The proposal does not include provisions for replacement allotment provision and would not result in an enhancement of the remainder of the allotments. Therefore, in the absence of evidence sufficient to demonstrate there is a surplus in provision of allotments, the proposal would be contrary to Policy 25 of the AAP and Policy DM8 of the SADMP which seek to protect open spaces from development. The proposal would also be contrary to paragraph 104 of the Framework.
13. The Council refer to the open space in their decision notice as a Local Green Space. The Framework states that Local Green Spaces can be designated through local and neighbourhood plans. Where designated, the policy requirements of the Framework in respect of Green Belts apply. Neither the AAP or the SADMP specifically state that this site is a Local Green Space. In absence of any evidence to demonstrate that the site is a Local Green Space as per paragraph 106 of the Framework, I conclude that the site is not a Local Green Space and therefore is not subject to Green Belt policy.

Protected Species

14. The site comprises a disused allotment site which relates well to the surrounding countryside and hedgerows. There are records of protected species in proximity to the site. No evidence has been provided to demonstrate that the site does not support protected species or whether the development would impact upon protected species.
15. The appellant has suggested this could be resolved through the imposition of a planning condition. The suggested condition would not be effective in this regard as it related to biodiversity enhancement rather than establishing the presence and potential impact on protected species. Regardless of this, Circular 06/2005 – Biodiversity and Geological Conservation states that it is essential that the presence or otherwise of protected species is established before planning permission is granted and only left to coverage under planning conditions in exceptional circumstances. No exceptional circumstances have been demonstrated in this case and therefore I have no reason to deviate from this advice.
16. In conclusion it has not been demonstrated that the proposed development would not adversely affect protected species. Accordingly, the proposed development

¹ 18/00701/FUL

would be contrary to Policy DM6 of the SADMP which, amongst other matters, seeks to conserve and enhance features of nature conservation. The proposal would also be in conflict with Circular 06/2005 and paragraph 193 of chapter 15 of the Framework.

Character and Appearance

17. The site sits beyond the settlement boundary of Earl Shilton as defined in the development plan and extends beyond the built-up area on High Tor East. The land around the site slopes away from the built-up area, with the site sitting lower than the adjacent dwelling. The lack of tall vegetation separating the allotments from the surrounding countryside creates long views and a sense of openness.
18. The site sits within the Earl Shilton North and Barwell West Landscape Sensitivity Area as defined in the Landscape Sensitivity Study (September 2017) (LSS) and within the Stoke Golding Rolling Farmland Landscape Character Area as defined in the Landscape Character Assessment (September 2017) (LCA). The LSS identifies that the area has a medium-high sensitivity to residential development due to the rural and relatively tranquil character and intervisibility with the wider countryside from local highpoints. The LCA identifies that the settlement edges of Earl Shilton are relatively well integrated along its northern edge.
19. The proposed development would result in a change to the character of the area from allotments to residential and would extend the built-up area beyond the footprint of the existing dwellings on High Tor East. However, the small-scale nature of the proposed development and the fact it would not extend beyond the existing grounds of the dwelling opposite, means it would not harmfully contribute to a ribboning of development and would not significantly erode the buffer provided by the allotments to the wider countryside.
20. The proposed development would not have a significant impact on the intervisibility between the wider countryside and the high point on High Tor East and given its scale would not significantly impact upon the openness of the landscape. Furthermore, there would be only limited visibility of the development from public viewpoints. Given the slope of land at the end of High Tor East, and the distance from the site there would be only limited views of the proposed development from public right of way footpath U27. Existing vegetation surrounding public right of way footpath T94 and the topography of the land means views of the proposed development would be very limited from footpath T94. Whilst the development would be more obvious from the allotments, its backdrop against the existing development along both sides of High Tor East would mean that its visual significance would be limited.
21. Accordingly, the proposed development would not harm the character and appearance of the area including the wider landscapes defined in the LSS and the LCA. However, Policy DM4 only allows certain types of development in the countryside which it considers to be sustainable in order to protect its intrinsic value, beauty, open character and landscape character. The proposed development would not fall within one of the categories listed in the policy. As such, although I have found no harm to the character and appearance of the area, the proposed development would be contrary to Policy DM4. However, the proposed development would not be contrary to Policy 2 of the Core Strategy

(Adopted December 2009), Policy DM10 of the SADMP and Policy 22 of the AAP which amongst other matters seek to protect and enhance the character and appearance of the area. Similarly, the proposed development would not be contrary to the Framework or the National Design Guide in so far as they relate to the protection of character and appearance.

Other Matters

22. The Self-Build and Custom Housebuilding Act 2015 (as amended) requires a Council to maintain a register of people seeking serviced self-build or custom housebuilding plots. It also places a duty on relevant authorities to give development permission for enough serviced plots to meet demand as evidenced by the register. Paragraph 73(b) of the Framework also supports opportunities for small sites to come forward for self-build and custom housebuilding. The appellant has also drawn my attention to excerpts from guidance issued by the Right to Build Task Force² and the weight it suggests should be given to the availability of self-build and custom housebuilding plots as well as its guidance advising that where there are no planning harms, it is possible that the statutory duty will be sufficient to indicate an approval even in the case of a minor departure from the development plan.
23. There is a shortfall in the provision of self-build and custom housebuilding plots with permission in the Borough. The Council states that the shortfall currently at the end of Base Period 10 is 17 plots. The appellant states that by the end of Base Period 11 on 30th October 2026 the Council will need to have granted permission for 27. The provision of a self-build dwelling, which is secured by the unilateral undertaking, would help address this ongoing shortfall, albeit by a modest degree. Accordingly, I attach moderate weight to this benefit.
24. The Council has confirmed it cannot demonstrate a five year supply of deliverable housing sites and estimates that at as of April 2025 there is a 3.95 year supply. In that context, the provision of an additional home, with access to services and facilities, which could potentially be built out quickly, is a benefit of the scheme. Accordingly, I attach moderate weight to this benefit. The proposed development would also provide employment and support local businesses during construction and would provide local economic benefits from spending by future occupants. However, the scale of this benefit would be negligible and therefore I afford this limited weight.
25. In addition to the nearby planning permission referred to above, the appellant has referred to a number of other planning permissions³ granted for development within the countryside around Earl Shilton. However, these are not materially comparable to the appeal scheme as they are larger developments which would have a different scale of associated benefits and which would not have resulted in a loss of open space. Accordingly, I have dealt with this appeal on its own merits.
26. The appellant made reference to two further permissions⁴ which deal with whether policies are out of date. I cover this matter below under planning balance.

² The Right to Build Task Force Custom and Self-Build Planning Guidance PG3.3: NPPF and Right to Build legislation – Delivering appropriate permissions (January 2024 – Version 3)

³, 24/00484/OUT, 23/00982/OUT, 21/00135/OUT/ 24/000496/REM

⁴ APP/K2420/W/24/3348387, 24/01155/FUL

Planning Balance and Conclusion

27. As the Council cannot demonstrate a five-year supply of deliverable housing sites, paragraph 11(d) of the Framework is therefore engaged.
28. As discussed above, I have concluded that the site is not within an area designated as a Local Green Space under paragraph 106 of the Framework. Accordingly, the application of policies in the Framework that protect areas or assets of particular importance do not provide a strong reason for refusing the development proposed.
29. Therefore, in these circumstances, the Framework states that 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 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.
30. The collective benefits discussed above, including the provision of a self-build dwelling, weigh moderately in favour of the proposal. However, the harm identified above arising from the loss of open space and from the impact on protected species, demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
31. Whilst I have not found conflict with Policy 2 of the Core Strategy, Policy DM10 of the SADMP and Policy 22 of the AAP, I have found conflict with Policy DM4, DM6 and DM8 of the SADMP and Policy 25 of the AAP. As such the proposed development is in conflict with the development plan when read as a whole.
32. In the context of the absence of a five year supply of deliverable housing sites, the conflict with Policy DM4 is afforded limited weight as it restricts the type of development proposed in the countryside in absence of harm to the character and appearance of the countryside and therefore has the potential to limit the supply of housing. I have been provided with a number of appeal decisions from the Council which attribute significant weight to the conflict with Policy DM4⁵. However, the circumstances in these appeals were different as the presumption in favour of sustainable development did not apply and there was harm found to the character and appearance of the area.
33. I give substantial weight to the conflict with Policy DM8 of SADMP and Policy 25 of the AAP, which are consistent with the Framework's policies for the protection of open space. I also give substantial weight to the conflict with Policy DM6 of the SADMP which is consistent with the Framework's policies on the protection and enhancement of biodiversity so far as it is applicable to the issue in this appeal.
34. In conclusion, the proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal should be dismissed.

S Hubbard

INSPECTOR

⁵ APP/K2420/W/25/3364808, APP/K2420/W/25/3361154