

HINCKLEY AND BOSWORTH BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990



**Hinckley & Bosworth
Borough Council**

STATEMENT ON BEHALF OF THE LOCAL PLANNING AUTHORITY

PLANNING APPEAL BY AR CARTWRIGHT LTD

**AGAINST THE REFUSAL OF PLANNING APPLICATION FOR A PROPOSED
DEVELOPMENT OF 7 DWELLINGS – THE CONVERSION OF THE EXISTING BUILDING
INTO 2 DWELLINGS AND 5 NEW BUILD PROPERTIES**

AT:

ODDFELLOWS ARMS, 25 MAIN STREET, HIGHAM ON THE HILL

LOCAL PLANNING AUTHORITY REFERENCE: 24/00229/FUL

PLANNING INSPECTORATE REFERENCE: APP/K2420/W/24/3357570

MAY 2025

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1. INTRODUCTION

- 1.1. This Statement sets out the Council's case in relation to the refusal of planning application 24/00229/FUL for a proposed development of seven dwellings – the conversion of the Oddfellows Arms public house to two dwellings and the provision of five newbuild dwellings within the curtilage of the pub on the car park. The application was refused under delegated powers
- 1.2. The Statement is to be read in conjunction with the previously submitted Officer Report and the Statement of Common Ground (SoCG) that is currently being agreed between the Council and the appellant's agent Cerda Planning Ltd.
- 1.3. This Statement is written by the case officer Tim Hartley, Team Leader at the Council. I have been a Team Leader at the Council since June 2022 and was also the case officer for the appellant's most recent previous application on the wider site, 22/00124/FUL, which was for nine dwellings on the land to the rear of the appeal site with access being taken through the pub car park. I have over 30 years' experience within development management having worked in both private and public sectors. I hold a degree in Town Planning and am a member of the Royal Town Planning Institute.

2. APPEAL SITE AND PROPOSAL

- 2.1. A full description of the appeal and site and of the proposal is set out within the Officer Report and also within the SoCG and so is not repeated here.

3. SITE HISTORY

- 3.1 The relevant site history is set out in detail within the Officer Report and so is not repeated here. In addition the reasons for refusal of application 24/00229/FUL are set out in full in the SoCG and so are not repeated here.

4. LOCAL AND NATIONAL POLICY CONTEXT

- 4.1 Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 provide that planning decisions must be made in accordance with the development plan unless there are material considerations to indicate otherwise. Statutory duties relating to proposals affecting conservation areas are contained in the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 4.2 The relevant statutory provision relating to development within conservation areas is contained in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. This states that, in the exercise of planning functions, *“with respect to any buildings or other land in a conservation area... special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”* The site lies within the Higham on the Hill Conservation Area and the pub is identified as a significant local building within the Higham on the Hill Conservation Area Appraisal (HCAA). The pub is a non-designated heritage asset.
- 4.3 The Development Plan, insofar as it is relevant to this appeal, comprises Hinckley and Bosworth Core Strategy (2009), Hinckley and Bosworth Borough Council Site Allocations and Development Management Policies Development Plan Document (2016) (SADMP).
- 4.4 Development plan policies and planning guidance considered to be of relevance to the determination of the appeal are also set out in the Statement of Common Ground.
- 4.5 The National Planning Policy Framework (NPPF) was revised in December 2024 following the refusal of the application. The alterations do not impact on the appeal proposals apart from the situation regarding the Council’s five-year housing land supply and this is addressed in the SoCG and in this Statement below.
- 4.6 The NPPF is of key relevance to the determination of this appeal and those paragraphs of greatest relevance are detailed below in the case for the LPA and in the following section that comments on the appellant’s case.
- 4.7 The following Historic England publications provide relevant guidance: Historic Environment Good Practice Advice in Planning Note 2 (GPA2): Managing Significance in Decision-Taking in the Historic Environment (2015) and Historic Environment Good Practice Advice in Planning Note 3 (GPA3): The Setting of Heritage Assets (2017). The documents are attached as Appendices 1 and 2.

- 4.8 GPA2 forms part of a suite of good practice advice documents that supersede earlier guidance. It reiterates earlier guidance that the assessment of the significance of heritage assets is an essential part of the planning process. I have had regard to this advice in preparing this proof of evidence.
- 4.9 GPA3 provides a framework for the assessment of proposed changes to the setting of a heritage asset. It provides advice that provides clarity and detail to the understanding of the concept of setting of a heritage asset.
- 4.10 GPA3 advises at paragraph 8 that, *“While setting can be mapped in the context of an individual application or proposal, it does not have a fixed boundary and cannot be definitively and permanently described for all time as a spatially bounded area or as lying within a set distance of a heritage asset because what comprises a heritage asset’s setting may change as the asset and its surroundings evolve.”*
- 4.11 In seeking to evaluate the likely impact that the revised appeal proposals would have on the significance of the Higham on the Hill Conservation Area and its setting regard has been had to the Historic England guidance on setting contained in GPA3.

5. RELEVANT APPEAL DECISIONS

- 5.1 The LPA is mindful that each case must be determined on its own merits and that therefore comparisons with other appeal decisions are seldom of assistance. There are therefore three appeals, within the Borough, that address the issue of weight in the planning balance that are considered relevant to this appeal. It is important to point out that in the last three years the Council has received no appeal decisions relating to minor residential development (fewer than 10 dwellings) where significant weight has been given to the provision of dwellings to meet the lack of five-year housing land supply. The three decisions below are examples only and there are older decisions that repeat the consistent conclusion that despite the lack of a five-year supply of housing land the provision of fewer than 10 dwellings attract moderate weight in the planning balance.
- 5.2 There has been one decision, which is also detailed below, where considerable weight was given to the sum of the planning benefits.

Appeal on Land North of 258 Ashby Road, Hinckley APP/K2420/W/22/3307030

- 5.3 This appeal related to the provision of up to five dwellings and at paragraph 24 the decision letter states that in total the benefits associated with the proposal could only be afforded moderate weight due to the modest scale of the development. The decision is attached as Appendix 3

Appeal at Chapel Lane, Witherley APP/K2420/W/23/3320919

- 5.4 This allowed appeal related to the construction of five dwellings and at paragraph 50 it is stated that given the 4.89 years of supply, which was considered a modest

shortfall, the provision of housing attracted limited weight in the proposal's favour. The decision is attached as Appendix 4.

Appeal on Land at Bagworth Road, Nailstone APP/K2420/W/23/3317284

- 5.5 This dismissed appeal related to the provision of up to nine dwellings and at paragraph 17 it was considered that the benefits of the proposal attracted moderate weight. The decision is attached as Appendix 5.

Appeal on Land at The Coppice, Burbage APP/K2420/W/21/3297466

- 5.6 This dismissed appeal related to the provision of eight dwellings dwelling and at paragraph 33 it is stated that the benefits of the proposal in terms of housing delivery attracted considerable weight. The appeal is attached as Appendix 6.
- 5.7 The key conclusions to be drawn from the appeal decisions referenced above, that are of particular relevance to the current appeal, are that the Inspectors in none of these decisions found that significant weight should be given to the provision of the dwellings despite in most of the instances the Council not being able to demonstrate a five-year housing land supply. The one exception to the standard finding of moderate weight in favour of the proposals was where the Inspector considered that the benefit attracted considerable weight, which still falls below the level of significant weight which is claimed by the appellant in this instance.
- 5.8 It is acknowledged that following the publication of the NPPF in December 2024, which revised the standard method for calculating the local housing need assessment, the Council is no longer able to demonstrate a five-year supply, it having previously, for a short time, been calculated at 5.6 years for the monitoring year 2023/24. Prior to that the supply has been 4.89 years for the year 2022/23 and for the year before that the supply had been 4.76 years. The most recent position is that at the appeal at land east of The Common, Barwell, where, in the absence of the latest figures for the monitoring year 2024/25, a supply of 3.55 years could be demonstrated. It is considered that once the figure for the year 2024/25 is published, which is currently expected by the end of May 2025, an updated SoCG can be agreed.

6 THE CASE FOR THE LOCAL PLANNING AUTHORITY

- 6.1 The planning application was refused for four reasons and the Council's reasoning for that decision is set out fully in the Officer Report that forms a key background paper. This statement seeks to avoid repetition as far as possible while at the same time setting out the Council's case for why the appeal should not succeed.
- 6.2 It is important to point out that the LPA is supported in its stance on the proposals by a significant proportion of the local community. The Inspector has already been supplied with the 75 representations from 58 separate addresses that were submitted at application stage objecting to the proposals. In addition, objections were received from CAMRA, Historic England, the local MP and the village community group Save

The Oddfellows Pub (STOP) / Higham Community Benefit Society Ltd. Only two letters of support were received.

Reason for Refusal 1 – Heritage Matters

- 6.3 The first reason for refusal can be broken down into several parts as follows:
- That the loss of the pub had an adverse impact on the heritage significance of the building
 - That the introduction of the new build dwellings would have a harmful impact on the Higham on the Hill Conservation Area and its setting
 - That the combined effect resulted in less than substantial harm to significance of the designated heritage asset that was not outweighed by the public benefits of the scheme
- 6.4 Paragraph 212 of the NPPF sets out that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm. The appellant accepts at paragraph 6.26 of their Hearing Statement that the proposals result in less than substantial harm to the character and appearance and therefore significance of the Higham on the Hill Conservation Area.
- 6.5 Policy DM11 of the SADMP states that the Council will protect, conserve and enhance the historic environment and Policy DM12 states that all development proposals affecting heritage assets and their setting will be expected to secure their continued protection or enhancement and contribute to the distinctiveness of their location.
- 6.6 The Higham on the Hill Conservation Area Appraisal (HCAA) states that to maintain the distinctive character and appearance of the Conservation Area it will be necessary, amongst other things, to:
- Retain buildings of local interest;
 - Ensure that new developments contribute positively to the character and appearance of the Conservation Area in terms of siting, scale, design and materials; and
 - Ensure that views out into the countryside are protected
- 6.7 The HCAA identifies that the prevailing image of Higham is that of an agricultural settlement. It was built on a ridge as a linear settlement and the HCAA map identifies the location of key views and vistas within, to and from the Conservation Area. These views and vistas link the village to its rural surroundings. There are also footpaths in the vicinity of the site that provide further vantage points from where the pubs close relationship to the surrounding countryside can be readily appreciated. The northern boundary of the appeal site borders the designated countryside.

- 6.8 The key elements of the Conservation Area that contribute positively towards its special character and appearance, and hence significance are derived from a number of elements that include:
- The linear settlement pattern which is of historic interest in illustrating the development of the village from the medieval period onwards;
 - The positive contribution that the many non-designated heritage assets (identified as significant local buildings within the HCAA and of which the Oddfellows Arms is one) within the Conservation area boundary make to the historic and architectural interest of the area
 - The importance of key spaces, including green spaces of which the green directly in front of the Oddfellows arms is one, all of which contribute to the historic interest of the area, allowing for its mixed domestic and agricultural character and the character of the streetscape of main street to be appreciated
 - The wider rural landscape which is visible from parts of the Conservation area and is illustrative of the agricultural origins and setting of the village
- 6.9 The HCAA identifies that the Oddfellows Arms is a significant local building within the Conservation Area. It is located in a prominent location close to one of the main entrances into the village from the south. It is built in a vernacular style and even with its unsympathetic extensions is recognised as a significant building within the Conservation Area that makes a positive contribution to the significance of the Conservation Area.
- 6.10 The NPPF breaks significance down into four constituent areas of interest: archaeological, historic, architectural, and artistic and states that significance derives not only from a heritage assets physical presence, but also from its setting.
- 6.11 Historic England's Conservation Principles, Policies and Guidance provides a complementary approach to the assessment of significance, identifying a range of heritage values that contribute to a site's significance, these include evidential, historic, aesthetic, communal values. These can be outlined as follows (extracts from Conservation Principles, Historic England 2008):
- *Evidential value derives from the potential of a place to yield evidence about past human activity... Physical remains of past human activity are the primary source of evidence about the substance and evolution of places, and of the people and cultures that made them. These remains are part of a record of the past that begins with traces of early humans and continues to be created and destroyed. Their evidential value is proportionate to their potential to contribute to people's understanding of the past... The ability to understand and interpret the evidence tends to be diminished in proportion to the extent of its removal or replacement.*
 - *Historical value derives from the ways in which past people, events and aspects of life can be connected through a place to the present. It tends to be illustrative or associative... Illustrative value has the power to aid interpretation of the past through making connections with, and providing insights into, past communities*

and their activities through shared experience of a place. The illustrative value of places tends to be greater if they incorporate the first, or only surviving, example of an innovation of consequence, whether related to design, technology or social organisation.

- *Aesthetic value derives from the ways in which people draw sensory and intellectual stimulation from a place. Aesthetic values can be the result of the conscious design of a place, including artistic endeavour. Equally, they can be the seemingly fortuitous outcome of the way in which a place has evolved and been used over time...Some aesthetic values are not substantially the product of formal design, but develop more or less fortuitously over time, as the result of a succession of responses within a particular cultural framework. They include, for example, the seemingly organic form of an urban or rural landscape.*
- *Communal value derives from the meanings of a place for the people who relate to it, or for whom it figures in their collective experience or memory. Social value is associated with places that people perceive as a source of identity, distinctiveness, social interaction and coherence... They may have fulfilled a community function that has generated a deeper attachment or shaped some aspect of community behaviour or attitudes.*

- 6.12 It is the Council's case that harm is caused in two key ways. The first of these is the loss of the public house has a significant adverse effect on the building as a non-designated heritage asset and the Conservation Area through the loss of evidential value, the loss of historic value, the loss of aesthetic value and the loss of communal value. The pub is a focal point within the village both physically in that it clearly is seen as a pub and viewed within the Conservation Area as the last remaining pub within the village. As the last remaining public house, it has considerable evidential value as a place of human activity associated with those elements that contribute towards pubs being recognised as key community facilities and places that represent a focal point for a rural community and that form a key component of the character of a rural settlement.
- 6.13 The loss of historic value derives from the use of the building as a pub since at least the late 19th century. The loss of aesthetic value results from the building no longer appearing as a distinctive community facility within the Conservation Area. It is the aesthetic value of the building that in part benefits from the removal of the unsympathetic extensions but even this aesthetic value is, when taken as a whole, diminished by the loss of identification as a public house.
- 6.14 It is the loss of communal value that is considered by the LPA to represent the greatest harm. The loss of the last public house in the village represents a key loss of communal value for a great many residents of the village. The building holds great social value to the local community and is seen as something that makes the village a village and not just a group of residential buildings. The LPA is confident that representations made by members of the local community will more adequately express the keen loss of social and communal value that would be lost were the appeal to succeed. It is clear though that the communal and social value that attaches to the Oddfellows Arms as a source of social interaction and cohesion is a significant part of the heritage value and therefore the significance of the building as a non-

designated heritage asset and the significance of the Conservation Area as a designated heritage asset that would be significantly harmed if the building was to be converted to dwellings.

- 6.15 The second key way in which harm is caused to the designated heritage asset is through the development of the five new build dwellings. The curtilage of the building makes a positive contribution to its heritage significance by illustrating the historic function of the building, providing a physical separation from neighbouring plots and creating a sense of openness around the building. Main Street is the historic thoroughfare through the village that the public house was designed to front onto and attract passing trade so is therefore a positive element of the building's setting. The historic settlement core was the community that the public house historically served and also contributes to the significance of the building by being part of its setting. The northern boundary of the site also marks the change from built up area to countryside and marks the boundary of the Conservation Area. There is a direct relationship between the community facility and the countryside. There is also a direct relationship between the countryside and the community facility and the Conservation Area from the public footpath T49 that runs alongside the eastern boundary of the paddock to the rear of the site and from which a positive appreciation of the historic and architectural interest of the building can be obtained.
- 6.16 The siting of the new build dwellings has an adverse effect on the character and appearance and therefore significance of the Conservation Area as they fail to maintain the openness around the public house. The clear views out to the countryside to the northwest both from the pub car park and from Main Street would be lost as a result of the two-storey built form and from the boundary treatment necessary to afford privacy to rear gardens. The layout of plots 4 to 7 would fail to reflect the traditional urban grain of the Conservation Area due to their uncharacteristic siting within the Conservation Area and their resulting erosion of the existing open character and appearance of the area. The clear connections between the site and the countryside would be lost and the ability to appreciate the rural setting of the Conservation Area would be significantly reduced thereby resulting in an adverse impact on its significance.
- 6.17 The HCAA draws particular attention to the loss of the vista and view on either side of the public house which are identified within the HCAA as needing protection. The failure to recognise the importance of these views is a particular failing of the proposals.
- 6.18 The benefits to the building and to the Conservation Area through the removal of the unsympathetic extensions are recognised. It is the case of the LPA though that they are significantly outweighed by the heritage harms and that despite the positive and neutral aspects to the proposal the permanent change of the use of the building results in the loss of the longstanding community interest and value of the building, thus having an adverse impact upon its historic interest and significantly reducing the positive contribution this makes to the significance of the Conservation Area.

- 6.19 As required by paragraph 215 of the NPPF the heritage harm must be weighed against the benefits of the proposal, including, where appropriate securing its optimum viable use. The LPA rejects the appellants assertions regarding viability given the longstanding interest of the local community in acquiring the site and as a local community being able to call on voluntary resources and fundraising that would not be applicable to a commercial entity.
- 6.20 Planning Practice Guidance sets out that heritage benefits can include matters such as:
- Sustaining or enhancing the significance of a heritage asset and the contribution of its setting;
 - Reducing or removing risks to a heritage asset; or
 - Securing the optimum viable use of a heritage asset in support of its long term conservation
- 6.21 It is the case of the LPA that the works, taken as a whole, have an adverse impact on the significance of the Conservation Area and on its setting. With regret, it is noted that the appellant promotes the view that the continued decline in the condition of the pub is a reason for allowing the proposals. At paragraph 6.57 of their Hearing Statement reference is made to the condition of the property having deteriorated, making it crucial to bring the building back to a viable state. At paragraph 6.61 the appellant states that the building requires significant and immediate works undertaken to preserve and restore its condition. The same paragraph goes on to state that preservation and restoration of the building should be at the forefront of any planning decision for the site and that in order that the building does not fall into a further state of disrepair it would be prudent for a permission for an alternative use to be granted at the earliest opportunity. The appellant is clearly signalling that the deterioration of the condition of the building is a reason for allowing the appeal. The LPA points out in response that paragraph 209 of the NPPF states that where there is evidence of deliberate neglect of a heritage asset the deteriorated state of the heritage asset should not be taken into account in any decision.
- 6.22 Given that there is a community group willing and able to take on responsibility for the building and bring it back into use as a community facility, the LPA does not consider that there are heritage benefits in the form of a reduction or removal of risks to a heritage asset or that the proposals would secure the optimum value of the heritage asset.
- 6.23 It is noted that paragraph 210 of the NPPF states that in determining applications, local planning authorities should take account of the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality.
- 6.24 The non-heritage benefits are considered to be the provision of seven market dwellings, the economic benefits during the construction phase and then the economic benefits resulting from future residents, and the social benefits arising from

new residents. As is set out below, it is the view of the LPA that the non-heritage benefits are afforded moderate weight in support of the proposals. Taken as a whole the heritage benefits are cancelled out by the heritage harms. Paragraph 212 of the NPPF requires that great weight should be given to the heritage asset's conservation and therefore great, or very significant weight, is given to the harm caused to the significance of the Higham on the Hill Conservation Area.

- 6.25 No clear and convincing justification for the harm that has been identified has been provided by the appellant and the harm in this instance clearly outweighs the benefits. Consequently, the policies set out in the Framework provide a clear reason for refusing the proposed development. In addition, the proposal is in clear conflict with Policies DM11 and DM12 of the SADMP.

Reason for Refusal 2 – Loss of a Community Facility

- 6.26 Policy 12 of the Core Strategy states that the loss of local shops and facilities will be resisted unless it is demonstrated that the business or facilities can no longer operate in a viable manner. It also states that initiatives to establish local stores and facilities will be supported. Paragraph 8.1 of the SADMP states that rural villages, such as Higham on the Hill, are the focus of limited development to ensure existing services are supported and community cohesion is maintained. As set out in the SoCG the village no longer benefits from having a shop.
- 6.27 Policy DM25 of the SADMP states that the Council will resist the loss of community facilities, including ancillary areas. The policy states:

“The loss of community facilities will only be appropriate where it can be demonstrated that:

- (a) An equivalent range of replacement facilities will be provided in an appropriate location within a reasonable distance of the local community; or*
- (b) There is a surplus of the facility type within the immediate locality exceeding the needs of the community; or*
- (c) The loss of a small portion of the site would result in wider community benefits on the remainder of the site.*

Where replacement facilities will not be provided or a surplus cannot be demonstrated and the scheme would not result in wider community benefits on the remainder of the site, the loss of a community facility would only be considered acceptable where it can be demonstrated that:

- (d) The facility has been proactively marketed for a community use for a reasonable period of time at a reasonable marketed rate as supported and demonstrated through a documented formal marketing strategy.*
- (e) It has been offered to the local community for them to take ownership of the facility.”*

- 6.28 The NPPF is also a key material consideration with regard to the loss of the community facility. Importantly, paragraph 3 states that the Framework should be read as a whole (including its footnotes and annexes). Paragraph 83 of the NPPF states that to promote sustainable development, housing should be located where it will enhance or maintain the vitality of rural communities. It is the case of the LPA that approving residential development in this instance would have a detrimental effect on the vitality of the village through the permanent loss of its last public house
- 6.29 Paragraph 88(d) of the NPPF states that to support a prosperous rural economy, decisions should enable the retention and development of accessible local services and community facilities such as public houses. This paragraph clearly provides further support for the Council's case.
- 6.30 Paragraph 98 of the NPPF states that to provide the services the community needs, decisions should: plan positively for the use of community facilities such as public houses to enhance the sustainability of communities and residential environments; guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day to day needs, and ensure that established facilities are able to develop and modernise and are retained for the benefit of the community. This paragraph clearly provides further support for the Council's case.
- 6.31 The 'Save The Oddfellows Pub' group (STOP) are a group of local residents that represents the local community, and they have submitted lengthy objections to the proposed development, as they did to the previous applications, and it is understood the group has made detailed representations to the Inspector. Had the appeal been dealt with via Inquiry they would, along with the Parish Council, have sought Rule 6 party status. The group is long established and has succeeded in securing multiple funding sources. It is considered that the STOP group has shown that it is a local community group that is willing, keen and able to take on ownership of the facility and purchase it from the appellant for a fair price.
- 6.32 The section below details why the LPA rejects the appellants belief that the pub, as it no longer functions, is not a community asset and so those arguments are not repeated here. It is the Council's case that the Policy 12 of the Core Strategy and Policy DM25 of the SADMP result in the proposed development being unacceptable in principle due to the degree of conflict with the requirements of these policies. In addition, the policies are fully consistent with and supported by the requirements of the NPPF and allowing the appeal would conflict with the economic and social objectives of the planning system and would represent unsustainable development.

Reason for Refusal 3 – Character and Appearance

- 6.33 This reason for refusal is closely related to the first reason for refusal and so the Council's case set out above applies in very much the same way to this third reason for refusal and is not repeated here. The key policy is Policy DM10 of the SADMP of which parts c), d) and e) seeks to ensure that development complements or enhances the character of the surrounding area with regard to scale, layout, density, mass,

design, materials and architectural features and the use and application of building materials respects the materials of existing, adjoining/neighbouring buildings and the area generally and incorporates a high standard of landscaping.

- 6.34 The Council's Good Design Guide (GDG) sets out that Higham is an early medieval agricultural village set on a ridge overlooking rolling farmland. As the village has expanded the GDG points out that the village has lost its intrinsic historic character in places as a result of modern development.
- 6.35 It is considered that for the reasons explained above in relation to the first reason for refusal, the proposed development fails the requirement set out in Policy DM10 that development is required to complement or enhance the character of the surrounding area with regard to scale, layout, density and mass.
- 6.36 In hindsight it is considered that reasons for refusal one and three could and should have been amalgamated to form a single reason for refusal.

Reason for Refusal 4 – Residential Amenity

- 6.37 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.
- 6.38 The Good Design Guide SPD outlines on page 34 that the way buildings relate to each other – their orientation and separation distance – must provide and protect acceptable levels of amenity. Separation distances are shown on a diagram on page 35 which states that a separation distance of 14 metres is required between a principal habitable room window and a blank side gable of a two storey property. Page 34 states that the distances shown on the diagram are the minimum standard required but that every application is assessed on its own merits depending on the individual characteristics of the area. The guide, on page 34 also states that the separation should ideally not be less than 14 metres and that an exception to this rule is in an urban location where it may be acceptable to have a reduced distance where issues of amenity are dealt with by good design. The National Design Guide also promotes a healthy, comfortable and safe internal and external environment.
- 6.39 Paragraph 135 of the NPPF states that decisions should ensure that developments 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.
- 6.40 Paragraph 139 of the NPPF states development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance.

- 6.41 With regard to the amenity of future residents, whilst the layout is such that all dwellings would be provided with sufficient sized gardens, in terms of interface distances, the ground floor window and patio door in the rear extension to Plot 1 in the pub building, and which are the main living space's only openings face the black two-storey side elevation of Plot 7 at a distance of just 11 metres. This falls significantly below the minimum ideal standard set out in the Council's Good Design Guide. It is noted that the Guide provides no justification for a reduction in this 14-metre distance given that the site does not lie within an urban environment.
- 6.42 It is the Council's case that, as set out above, paragraph 139 of the NPPF states development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance. Both the rear extension to Plot 1 and Plot 7 are new-build elements. No justification has been put forward for why a relationship that falls so far below the guidance set out in the Council's Good Design Guide is warranted. The proposed therefore fails to provide the future occupiers with a satisfactory outlook from their main living space as it would be dominated by the blank two storey side elevation of the dwelling on Plot 7. This is contrary to both the requirements of paragraph 135 of the Framework and the advice set out on page 44 of the Council's Good Design Guide.

7 COMMENTS ON THE APPELLANT'S CASE

- 7.1 The LPA disagrees with the statement made by the appellant at 2.2 of their Hearing Statement dated March 2025 that the site lies in an urban location. The site lies within a rural village as set out within Policy 12 of the Core Strategy and borders the countryside on its northern boundary. It is also noted that paragraph 3.19 of Appendix 4 of the appellant's own Hearing Statement also sets out that the public house lies within "a rural, agricultural village".
- 7.2 At 2.6 of their Statement refers to built developments that are adjacent to and opposite the site being primarily residential. They are in fact entirely residential following the conversion of the villages only shop to residential use (23/00310/P3CMA).
- 7.3 The LPA disagrees with the appellant's statement made at paragraph 6.10 that paragraph 11d of the NPPF directs that permission be granted. This crucially misses the point that 11d clearly only requires that where the application of policies in the Framework that protect areas or assets of particular importance don't provide a strong reason for refusing the development or where the adverse impacts of allowing development are not significantly and demonstrably outweighed by the benefits, when assessed against the Framework policies 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.
- 7.4 Paragraph 6.12 of the appellant's Hearing Statement sets out that before making an assessment against the reasons for refusal, it is appropriate to consider the status of the policies to be applied. The Statement then solely considers the draft Local Plan.

At no point has the LPA ever suggested that draft Local Plan policies should carry any weight in the application or the appeal process relating to this proposed development. Paragraph 232 of the NPPF states that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them, according to their degree of consistency with the Framework and the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given. For clarity the LPA considers that its development plan policies that are of relevance to the determination of this appeal are entirely consistent with the policies of the Framework.

Reason for Refusal 1 – Heritage Matters

- 7.5 The LPA disagrees with the assertion made at paragraph 6.18 that the heritage value of the building is in any appropriate way preserved or enhanced by restoring the original intended residential use of the building. Given that the conversion took place in the late 19 century, this assertion by the appellant demonstrates a significant failure to acknowledge that the significance of the building lies in its longstanding use as a public house. It is noted that paragraph 4.20 of Appendix 4 of the appellant's own Hearing Statement confirms that, *"The change from public house back into residential use would result in some loss of heritage value"*. The appellant's genuine opinion that the return to residential use is a heritage benefit is therefore seriously questioned.
- 7.6 Similarly, the LPA disagrees with the assertion made in the same paragraph that the car parking associated with the public house is unsightly. This ignores the Conservation Area Appraisal and its associated map which describe the vista and view on either side of the public house which are to be protected. It also ignores the fact that successful public houses usually have their own car parking areas, especially so in rural locations.
- 7.7 The LPA disagrees with the appellant's characterisation of residential use being the buildings optimum viable use. Firstly, it is noted that at paragraph 6.19 of their Statement the appellant refers to 'a' viable optimal use. The test set out at paragraph 215 of the NPPF is securing 'its' optimum viable use, not 'an' optimum viable use. The LPA strongly disagrees that the optimum viable use of the building is residential use and considers that it is clear that in the particular circumstances where a local community group is actively seeking to take the building on as a public house and community hub, that the optimum viable use is not as residential use.
- 7.8 The LPA disagrees with the appellant's assertion made at paragraph 6.22 that the scheme has been thoughtfully designed to preserve the character and appearance of the Conservation Area and its setting. The scheme ignores the protection of the vista and view that the HCAA states are important to be protected.
- 7.9 The LPA disagrees with the characterisation made at paragraph 6.23 that in the setting of the pub building the proposals are modest – the effect of the development is to remove all trace of the historic use of the building as a pub and to surround it with five dwellings that ignores the requirement to protect the view and vista from either side of the pub and that in one instance are so close that they do not accord

with the Council's guidance on separation distances.

- 7.10 The LPA does not agree with the appellant at paragraph 6.24 of their Hearing Statement that there is any importance to the fact that Policy DM10 of the SADMP states that development “*complements or enhances ...*” A correct understanding of the wording of the policy is that a development can both complement and enhance but that it is not a requirement to do both. The appellant demonstrates a failure of understanding on this point and the LPA would argue that the appellant shows a failure to understand a number of key matters in their Hearing Statement.
- 7.11 In summary, the LPA fundamentally disagrees with the view of the appellant that the benefits of the proposal significantly outweigh the harm caused by the proposals. The harm to the significance, character and appearance of the Conservation Area would not be minimal as is asserted at paragraph 6.26 of the appellant's Hearing Statement.
- 7.12 The appellant accepts that the proposal results in less than substantial harm but, contrary to paragraph 6.28 of the appellants Hearing Statement the LPA disagrees that the heritage benefits result in the proposal being compliant with Policy DM11 of the SADMP or with the NPPF.

Reason for Refusal 2 – Loss of a Community Asset

- 7.13 Turning to the second reason for refusal relating to the loss of the community asset, the LPA strongly disagrees with the appellant's assertion made at paragraphs 6.40 and 6.41 of their Hearing Statement that the permanent loss of the pub is entirely justified as there are other pubs in the surrounding area, with the closest being 1.8 miles from the site. The appellant ignores that Policy DM25 of the SADMP refers to there being a surplus within the immediate locality exceeding the needs of the community. The words ‘**immediate locality**’ must sensibly mean within the village of Higham on the Hill. Other public houses being at least 1.8 miles away is clearly not what any reasonable person would understand as being within the immediate locality. Furthermore, as the Oddfellows Arms was the last remaining pub in the village it cannot reasonably be understood to exceed the needs of the community. A pub that is 1.8 miles away along unlit lanes without pavements cannot by any reasonable interpretation be considered to meet the needs of residents of Higham. The LPA considers the failure to understand the meaning of immediate locality is a key flaw in the appellant's case.
- 7.14 The LPA disagrees with the appellant at paragraph 6.43 of their Hearing Statement that there is any lack of clarity in the wording of Policy DM25. Parts d) and e) of the policy clearly allows for the loss of a community facility where both parts d) and e) are satisfied.
- 7.15 The LPA disagrees with the appellant's Hearing Statement with regard to what it states regarding part e) of Policy DM25. It is important to note that at no point does the appellant confirm that the pub has been offered to the local community. While there have been talks, phone calls, meetings and email exchanges, the LPA does not consider that at any point the appellant has been genuinely willing to sell the pub

to the local community. The local community will put forward their own representations on this appeal, but the LPA has now been dealing with this site for several years and during that time has had dealings with both the appellant and the local community. Both cannot be right regarding part e) of Policy DM25 and the view of the LPA is that it disagrees with the appellant on this issue. The appellant corroborates the LPA's understanding on this issue at paragraph 6.56 where they confirm that the site is not currently for sale. The planning history corroborates the LPA's understanding on this issue which shows a determined effort to seek residential use on the wider site.

- 7.16 The LPA strongly disagrees with the appellant at paragraph 6.58 that the property is no longer classified as being in community use. The local community has sought to acquire the building and to re-open it as a community facility for many years. The last use of the building was as a pub and community facility. The logic of the appellant's argument is that as soon as a pub closes it cannot be described as a community facility. This line of argument clearly does not make sense.
- 7.17 The LPA refutes the impression given at paragraph 6.61 that it is somehow the fault of the LPA that the condition of the building continues to decline. The appellant is the owner of the building and the state of disrepair that has occurred since they acquired ownership is entirely their responsibility.
- 7.18 The LPA disagrees that the appellant has worked tirelessly to try and reach a compromise on the sale of the site as stated at paragraph 6.63. The weight of evidence suggests that instead the appellant has been focussed on achieving planning permission for residential development of the wider site.
- 7.19 The LPA disagrees with the conclusions that the appellant reaches at 6.65 and 6.66 of their Hearing Statement that the future use of the building is unviable or unrealistic. The appellant ignores any element of voluntary work or community fundraising that the local community might reasonably expect to have available to them, that renders viable something that a solely commercial entity such as the appellant would not countenance on grounds of its costs.
- 7.20 The LPA therefore disagrees with the appellant's assertion made at paragraph 6.68 that the proposal complies with Policy DM25 of the SADMP.

Reason for Refusal 3 – Character and Appearance

- 7.21 The third reason for refusal relates to the character of the area and so is closely related to the first reason for refusal. The LPA disagrees with the appellant that the proposal would, when taken as a whole, complement or enhance the character of the site and surrounding area. The views through the site to the surrounding countryside are significantly reduced.
- 7.22 The LPA disagrees with the appellant's statement made at paragraph 6.75 of the Hearing Statement that the public house will be retained as the focal point for the site. This misses the significant point that the existing focal point in the village of the village

pub would be lost by converting the building to a pair of dwellings. The point is that while the building structure would be retained the important focal point of it being the village pub would be lost.

- 7.23 The LPA disagrees with the appellant's statement at paragraph 6.76 of their Statement that the car park to the rear of the site makes no meaningful contribution to the character and appearance of the area. The pub stands as a focal building detached and separated from its neighbours. From the street there are view across the car park to the countryside and these views to and this connection with the countryside is far greater when experienced from within the car park. As such these views will have been appreciated by all of the many customers who will have used the car park and the grassed area of beer garden. It is the view of the LPA that the proposals, taken as a whole, are to the significant detriment to the character and appearance of the area, contrary to the requirements of Policy DM10 of the SADMP and the requirements of the NPPF.

Reason for Refusal 4 – Residential Amenity

- 7.24 Turning finally to the fourth reason for refusal relating to the amenity of future occupiers of plot 1, the LPA disagrees that the 11-metre distance from the only windows to the main habitable room at ground floor level in plot 1 provides any future occupiers of this dwelling with an acceptable level of amenity. Page 34 of the Council's Good Design Guide sets out that the 14-metre distance is a minimum standard. This element of that dwelling is a new-build extension and so the LPA strongly disagrees with the view of the appellant made at 6.85 of their Hearing Statement that the scheme has been designed to ensure that there would be no adverse impact upon future residents. It is noted that the appellant refers only to front to back distances in that paragraph and ignores the cack to two storey side gable that is the clear concern of the LPA.

Interested Parties Representations

- 7.25 The LPA strongly disagrees with the appellants response to the third-party comments with regard to interested parties' representations on the topic of the asset of community value. The proposal clearly does not respect the community asset. There has been no meaningful engagement by the appellant with the local community. The LPA disagrees that the appellant being provided with a business plan or with evidence of secured funds is of any relevance to whether or not the building could be sold to the local community at a fair price which could have easily been arrived at through an independent valuation process.
- 7.26 The LPA disagrees that the proposal has been carefully designed to maintain the villages rural character and identity or to preserve the cultural significance of Higham. It is clearly the case that the scheme removes the close connection with the pub and the surrounding countryside. The loss of the last remaining pub in the village has a clear significant detrimental effect on the character and cultural identity of the village.
- 7.27 The LPA does not consider that the closure of other services in the village necessarily

demonstrates a decline in their use or that they were not viable. For example, it is understood that the village shop closed during Covid 19 due to the death of the proprietor. There is also a clear difference between the closure of the Fox Inn and the closure of the Oddfellows Arms as the last remaining pub in the village. The reasons for the closure can never be known with 100% certainty and it is possible, for example, that commercial gain played a greater part than lack of viability.

Planning Balance

- 7.28 The LPA strongly disagrees with the statements made at paragraphs 6.91 and 6.92 of the Hearing Statement that the proposals respond positively to the NPPF or align with the Development Plan for the reasons that are set out above. It is laughable for the appellant to suggest that the proposals demonstrate sensitivity to the local context.
- 7.29 It is noted that the appellant fails in this section of their Hearing Statement to mention the heritage harm that Appendix 4 of the Hearing Statement acknowledges and that is also acknowledged at paragraph 6.26 of their own Hearing Statement. This is harm that the NPPF requires must be given great weight in accordance with paragraph 212 of the Framework. The LPA disagrees that the heritage benefits outweigh the heritage harm.
- 7.30 The LPA disagrees with the appellant's weighing of the planning balance in paragraphs 6.101 to 6.105 and this is explained below.
- 7.31 Finally the LPA disagrees with the conclusions that the appellant reaches in section 7 of their Hearing Statement.

8 PLANNING BALANCE AND CONCLUSIONS

- 8.1 The LPA considers that as required by paragraph 212 of the Framework the great weight that is given to the heritage harm that is caused by the development outweighs the public benefits of the proposal and therefore provides a clear reason for refusing the proposed development. It is considered that the planning balance in this case is the normal balance set out at paragraph 2 of the Framework as opposed to the tilted in which case the so-called tilted balance required by paragraph 11 d) ii of the Framework would not apply.
- 8.2 The LPA acknowledges that the planning balance has shifted since the determination of the planning application in that the LPA can no longer demonstrate a 5-year supply of housing land. If it was considered therefore that there were no longer clear reasons for refusing the application, then the tilted balance as set out at paragraph 11 d) ii of the NPPF would be engaged due to the Council's current inability to demonstrate a five-year housing land supply.
- 8.3 The most important policies for the determining of this appeal are agreed in the SoCG.

- 8.4 The reasons for refusal are addressed in turn.
- 8.5 The appellant accepts at paragraph 6.26 and Appendix 4 that the proposals will cause some harm to the significance of the Conservation Area through changes in setting. The Appellant also accepts that this harm will be less than substantial but considers it to be at the lower end of that scale. The LPA notes that there is no requirement to place the degree of harm on a spectrum and it can introduce an unnecessary degree of complexity to the judgement. (*Shimbles v City of Bradford MBC* [2018], EWHC 195 (Admin), 08 February 2018 and Inspector Sturgess at paragraph 43 of the decision letter of appeal APP/K2420/W/23/3317090, 17 August 2023). This appeal decision is attached as Appendix 7.
- 8.6 The proposal conflicts with Policy DM11 of the SADMP, which seeks to protect, conserve and enhance the historic environment throughout the borough, and Policy DM12 which seeks to ensure that the significance of a conservation area is preserved and enhanced. It is considered that the Appellant underplays the level of harm and that it lies somewhere between minor and moderate. It is considered that **very significant weight** should be given to the harm caused the Higham on the Hill Conservation Area and its setting.
- 8.7 It is considered that **significant weight** should be given to the permanent loss of a key community facility contrary to the requirements of Policy 12 of the Core Strategy, Policy DM25 of the SADMP and the requirements of the paragraphs 88 and 98 of the NPPF.
- 8.8 It is considered that the detrimental impacts on the character and appearance of the area and the conflict with Policy DM10 of the SADMP can be afforded **significant weight**.
- 8.9 The proposal results in the occupiers of plot 1 of the proposed development being provided with an outlook from the only windows in the main living space that falls significantly short of what is expressed as a minimum standard in the Council's Good Design Guide Supplementary Planning Document. It is considered that this is also contrary to the requirements of paragraph 135 of the NPPF, and that **significant weight** should be given to this matter.

Benefits Arising from the Development

- 8.10 There are clear social benefits arising from the provision of market housing for which there is a need. The application is for just seven dwellings though and so the contribution to the housing supply is not significant and therefore it is considered that this is a benefit to which **moderate weight** should be given. This weighting is entirely consistent with the paragraph 24 of the appeal decisions which are attached at Appendices 3 and 5 and is greater than the weighting afforded to the appeal decision attached at Appendix 4.
- 8.11 The benefits to the non-designated heritage asset through the removal of the more recent unsympathetic extensions that therefore results in benefits to the significance

of the Conservation Area and to the character and appearance of the area are more than cancelled out by the respective harms that the other aspects of the proposal cause. Given that, taken as a whole, there are heritage harms and significant detrimental effect on the character and appearance of the site and surrounding area these benefits are considered to attract **very limited weight**.

- 8.12 The social benefit that results from the modest increase in the population of the local community and any environmental benefit through the efficient use of previously developed land are significantly outweighed by the permanent loss of the village's last remaining public house and therefore attract **no weight**.
- 8.13 Economic benefits would arise from the scheme through jobs and spend during the construction phase and through economic activity of any future population. This benefit is considered to carry **moderate weight**. This is again consistent with the appeal decision reference above at paragraph 8.17.

Overall Balance

- 8.14 Paragraph 8 of the NPPF states that there are three overarching objectives to achieving sustainable development and that these are interdependent and need to be pursued in mutually supportive ways so that opportunities can be taken to secure net gains across each of the different objectives.
- 8.15 The local community has eloquently expressed its opposition to the proposals and demonstrates the strength of feeling on this issue and that development of the appeal site would fail to meet the environmental and social objectives of sustainable development.
- 8.16 Assessed against the presumption of sustainable development set out in the Development Plan and in the NPPF when balancing the social, environmental and economic aspects of the development, the proposal is not considered to promote sustainable development. The sum total of the benefits that arise from the proposals attract moderate weight only and ranged against this are the costs to environmental and social objectives that are significant and that therefore attract significant weight in the planning balance. As set out above, it remains the view of the LPA that there are heritage harms that provide a clear reason for refusal of the proposed development. If the Inspector does not agree with the LPA on this matter, it is the clear view of the LPA that weighing the totality of harm and benefits into account in the planning balance, the adverse impacts of the appeal scheme would significantly and demonstrably outweigh its benefits. As such, the development is not considered to represent a sustainable form of development. The appeal should therefore be dismissed.

9 Appendices

Appendix 1 – Historic England's Historic Environment Good Practice Advice in Planning Note 2 (GPA2): Managing Significance in Decision-Taking in the Historic Environment (2015)

Appendix 2 – Historic England’s Historic Environment Good Practice Advice in Planning Note 3 (GPA3): The Setting of Heritage Assets (2017)

Appendix 3 - Appeal on Land North of 258 Ashby Road, Hinckley
APP/K2420/W/22/3307030

Appendix 4 - Appeal at Chapel Lane, Witherley APP/K2420/W/23/3320919

Appendix 5 - Appeal on Land at Bagworth Road, Nailstone
APP/K2420/W/23/3317284

Appendix 6 - Appeal on Land at The Coppice, Burbage APP/K2420/W/21/3297466