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**Appeal on behalf of Mr C Whitehill of CW Property Lettings Ltd against the refusal of
planning permission by
Hinckley and Bosworth Borough Council for the erection of 2 dwellings at
10 Wolsey Drive, Ratby, Leicestershire**

Planning application ref 24/00118/FUL

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1.0 INTRODUCTION

1.1 This appeal relates to the residential development of a small infill site on Wolsey Drive in Ratby, Leicestershire. The application for the erection of 2 dwellings was refused on 28 March 2024. The reason given for the refusal was,

By virtue of the scale, massing, and design of the proposed dwellings, it is considered that the proposal would fail to complement the character of the street scene and pattern of development on Wolsey Drive. The proposed development would therefore appear incongruous and out of keeping with the prevailing design of the area, resulting in unacceptable harm to the character and appearance of the area. The proposal would therefore conflict with Policy DM10 of the adopted SADMP and Paragraph 135 of the NPPF (2023).

2.0 THE SITE

2.1 The appeal site of 420 sq m fronts onto Wolsey Drive which lies within the village of Ratby, to the west of Leicester.

2.2 The site currently belongs to 98 Stamford Street which is an end of terrace 2 storey house dating from the early 20th century which backs onto the site. The site currently comprises 4 derelict single garages accessed from Wolsey Drive. It is adjoined to the north east by 10 Wolsey Drive which is a modern bungalow and to the southwest by the rear gardens of 98 and 100 Stamford Street. 100 Stamford Street is a modern 2 storey house dating from the early 1990's which sits on the corner of Wolsey Avenue. This house occupies a very constrained plot with little garden and no off-street parking. To the rear the appeal site is adjoined by the rear garden to 96 Stamford Street.

2.3 98 Stamford Street is typical of the houses on the northern half of Stamford Street which is characterised by mainly terraced houses located either at the back edge of pavement or behind small front gardens, occupying long, thin plots. There are some infill plots with more modern detached houses and a small development of modern terraced houses at Stamford Close (adjacent to 88 Stamford Street).



View of 100 Stamford Street (on the corner of Wolsey Drive) and 98 Stamford Street

2.4 There is also a modern development on the western side of Stamford Street comprising 2 storey houses set back behind a parking forecourt.



Modern infill development Stamford Street

2.5 The southern half of Stamford Street is characterised by later development and there is a more open feel to the street with larger front gardens and wider plots. There is a mix here of 2 storey houses and bungalows and there is one chalet style bungalow.

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Southern half of Stamford Street

2.6 Wolsey Drive is a short road linking Stamford Street with Whittington Drive and Charnwood. Wolsey Drive has modern bungalows to both sides of the street.



Wolsey Drive looking towards Stamford Street

2.7 Whittington Drive and Charnwood have a mix of bungalows and 2 storey houses. The character of Whittington Drive is completely different to that of Stamford Street with semi-detached, mid 20th century 2 storey private and council houses set back from the road within Reg 19

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wider plots on the eastern side, and detached bungalows, 2-storey houses and a 3-storey block of flats granted planning permission in 2009 on the western side.



Whittington Court 3 storey flats on Whittington Drive

2.8 Charnwood has more modern 2 storey houses on one side and linked bungalows on the other. These two roads, which were developed much later than Stamford Street, are much wider than Stamford Street and most properties have front gardens and off-street parking giving it a more open character.



Charnwood looking north

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2.9 As can be seen from the photographs there is a varied character of housing development across the immediate area and this reflects the different periods of development starting from the late 19th / early 20th centuries through to more modern development in the last 50 years.

2.10 Ratby is a village of circa 4100 population, situated 5 miles to the west of Leicester, on the southern edge of Charnwood Forest and is separated from adjacent settlements by open countryside which gives it distinctiveness and individuality. The village dates back to Anglo Saxon times but remained a small agricultural village until the Enclosure Act of 1770 which allowed the village to expand, followed by further expansion associated with the coming of the railway in 1832. The first hosiery factory was built on Stamford Street in 1861. A major period of expansion followed after 1945 with the building of the Charnwood Estate, a mixture of council and private housing located between Stamford Street and Markfield Road. Further development took place to the south of Markfield Road on the edge of the original Charnwood Estate during the period from 1970 to 1990. This development defines the settlement boundary for the village as defined in the Local Plan. However, in 2021 planning permission was granted for a development of 90 dwellings on a greenfield site south of Markfield Road outside the settlement boundary and this development known as Martinshaw Meadow is under construction. The adjoining land to the west of Martinshaw Meadow has also been granted outline planning permission for 75 dwellings.



Diagram 1 Land to the north west of Stamford Street outside the settlement boundary currently being developed and with outline planning permission for residential development

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3.0 PLANNING HISTORY

3.1 Outline planning permission was granted on 29th November 2021 for the demolition of the existing garages, and erection of a detached dwelling, garages and associated parking and landscaping (ref 21/00690/OUT). Details of access and layout were submitted with the application with all other matters reserved. The permission was granted subject to the standard condition that reserved matters should be submitted within 3 years. This permission is still extant. There were no restrictions placed on the height of any future development either by condition or advisory note.

3.2 In 2022 an application for full permission was submitted for the demolition of the existing garages, and erection of a detached dwelling with link attached garage together with associated landscaping, access and off-street parking. (ref 22/00035). The site layout was similar to that approved under the outline with the most notable difference being the addition of a games room behind the garage. The plans showed a 4 bedroomed dwelling with 2 floors of accommodation, the first floor accommodation being within a steeply pitched gabled roof with rooflights at the front and with a large gable and flat roofed dormer window at the rear.

Planning permission was granted on 29th November 2022.



Approved plans for dormer bungalow November 2022



Proposed South Elevation 1:100

Plans approved November 2022

4.0 PROPOSAL

4.1 The proposed development comprises 2 detached 2 storey houses sited 2.5 metres back from the pavement edge with a 1m gap between the 2 dwellings and 2.45 metres gap to both side boundaries. The layout shows 2 off-street parking spaces located to the side of each property with a block paved drive and low shrub planting to the front boundary, and a 7m deep rear garden. Internally the accommodation comprises a lounge and separate dining kitchen and ground floor wc and three first floor bedrooms. The elevations show houses with a traditional modern design constructed of red brick with a low pitched concrete tiled roof and uVPC casement windows. The elevations include a partial street scene showing the relationship between the proposed houses and the adjoining bungalow which is reproduced below.

The height to the eaves of the proposed houses is 5200 mm and to the ridge is 7875 mm. This compares to the ridge height of the bungalow at 10 Wolsey Avenue of about 6.2 m.



Street scene application for 2 houses

5.0 POLICY BACKGROUND

5.1 The Local Plan comprises the Core Strategy (2009) (CS) and the Site Allocations and Development Management Policies DPD (2016) (SADMPDPD).

5.2 Both documents are out-of-date and a Local Plan Review process is underway. The Local Development Scheme published in February 2024 identified the following targets for progressing the replacement plan – Reg 18 consultation on further draft Plan June / July 2024; Reg 19 consultation on submitted draft Plan February/March 2025; adoption February 2026. The LPA have not quoted any policies from the draft Plan and in view of its early stage of preparation none are referred to by the appellant either.

5.3 Policies 7 and 8 of the Core Strategy relate to Key Rural Centres which includes Ratby.

5.4 Key Rural Centres are defined in the CS as those villages that have populations over 1500 people, have a primary school, local shop, post office, GP, community/leisure facilities, employment and a 6 day a week bus service (hourly). Key Rural Centres that provide localised provision of facilities permit access by foot, cycle and local bus and can minimise car journeys not only for those people who are living in the Key Rural Centres, but also the rural villages and hamlets surrounding these centres.

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5.5 Policy 7 relates to all Key Rural Centres but Policy 8 refers specifically to Rural Key Centres having a close relationship with Leicester. The CS states that the focus for these villages (including Ratby) will be on maintaining existing services, maintaining the separate village identities of these settlements and improving the linkages between these villages and Leicester. In relation to new housing, Policy 8 states that the Council will,

Allocate land for the development of a minimum of 75 new homes. Developers will be expected to demonstrate that the number, type and mix of housing proposed will meet the needs of Ratby, taking into account the latest Housing Market Assessment and local housing needs surveys where they exist in line with Policy 15 and Policy 16. (Note Policy 15 Affordable Housing and Policy 16 (Density, mix and design) are not applicable to this site because of its small size).

5.6 The SADMPDPD does not make any site allocations for housing in Ratby. The Plan stated that the CS allocation of 75 houses had been met and therefore there was no need for further sites to be allocated. The plan below is taken from the SADMPDPD and shows the western part of the village including Wolsey Drive, and the settlement boundary for the village. Nevertheless, in spite of no sites being allocated in the Plan, planning permission has been granted on greenfield land outside the settlement boundary since the adoption of the plan (see diagram 1 above). When recommending that planning permission be granted in February 2023 for the latter of the 2 schemes the Planning Committee justified the approval of the outline application for 75 dwellings thus,

Section 38(6) of the Planning and Compulsory Purchase Act 2004 and S70(2) of the Town and Country Planning Act 1990 require that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. 8.80. Using the standard method as outlined by MHCLG, Hinckley and Bosworth Borough is able to demonstrate 4.89 years of deliverable housing at 1st April 2022.

Therefore, the Council does not have a 5 year housing land supply. Under these circumstances, the NPPF sets out, in paragraph 11d) that, for decision makers: “where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date (8), granting permission unless: i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”. Footnote 8 in the NPPF states that the

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application of this approach “includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years”. Therefore, currently the ‘tilted’ balance in paragraph 11(d) of the NPPF applies and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. 8.84. The proposal conflicts with Policy DM4 as the application lies adjacent to but outside the settlement boundary of Ratby and is therefore within open countryside. The site does not fall under any of the categories identified in Policy DM4 as sustainable development. However, the purpose of Policy DM4 is to protect the open character and landscape character of the countryside and where the tilted balance is applicable planning permission should be granted unless adverse impacts would significantly and demonstrably outweigh the benefits of the scheme.

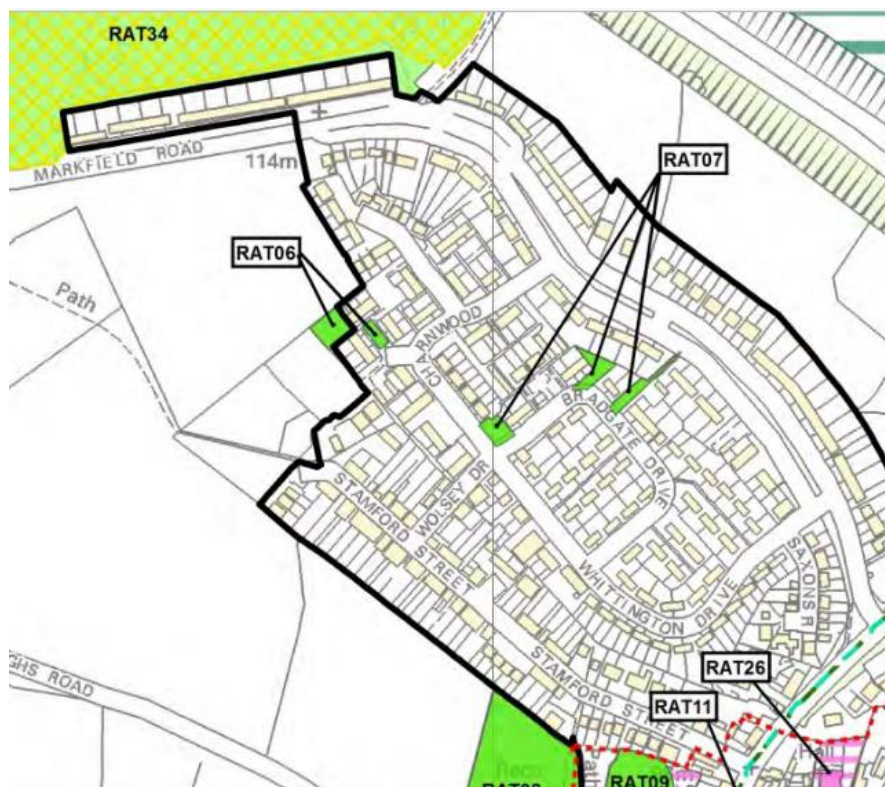


Diagram 2 extract from the SADMPDPD showing the settlement boundary

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5.7 The appeal site lies within the settlement boundary and therefore represents a sustainable form of development which is in accordance with both the CS and the SADMPDPD.

5.8 The delegated report for the appeal site refers to a number of SADMPDPD policies, however the only policy quoted in the reason for refusal is Policy DM10 which is reproduced in full below.

DM10 Development and Design

Developments will be permitted providing that the following requirements are met:

- a) 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, air quality (including odour), noise, vibration and visual intrusion;*
- b) The amenity of occupiers of the proposed development would not be adversely affected by activities in the vicinity of the site;*
- c) It complements or enhances the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features;*
- d) The use and application of building materials respects the materials of existing, adjoining/neighbouring buildings and the local area generally;*
- e) It incorporates a high standard of landscaping where this would add to the quality of the design and siting;*
- f) It maximises opportunities for the conservation of energy and resources through design, layout, orientation and construction in line with Core Strategy Policy 24;*
- g) Where parking is to be provided charging points for electric or low emission vehicles are included where feasible;*
- h) An appropriate Sustainable Drainage Scheme is submitted to and approved by the relevant Authority. Schemes should incorporate wildlife areas, ponds, swales and permeable paving where appropriate;*
- i) It maximises natural surveillance and incorporates the principles of Secured by Design and has considered the incorporation of fire safety measures.*

In exceptional circumstances where outstanding, innovative design is demonstrated (particularly where high levels of sustainability are an integral feature), applications will be considered favourably, even where this may result in some limited conflict with the above criteria.

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5.9 This policy is supplemented by advice in the Good Design Guide SPD 2020 which contains both generic advice for the whole district and specific policies relating to the individual settlements.

5.10 Whilst the Design Guide is intended to apply to all new residential development whether this be greenfield, brownfield or infill development, much of the advice relating to urban structure is not relevant to an infill site of this small size. However certain elements of the Guide are relevant including

- a) Enclosure of streets and spaces plays a critical role in creating well defined and distinctive places. When chosen appropriately for its context, enclosure provides comfort and shelter. Streets and spaces lacking this quality can create inhospitable environments that deter usage. Enclosure ratios provide a useful tool to consider how different streets can deliver entirely different characters, through varying their width and the height of enclosing buildings. e.g Strong street enclosure- 1:1.5-1:3
- b) Private amenity space should be provided with a minimum length to rear gardens of 7m and should ideally provide 60 sq m of garden for a 2 bed roomed house and 80 sqm for a 3 bed roomed house.
- c) Infill development plots should be of a similar size and shape to the site's wider context and should allow sufficient space between buildings. Houses should have a similar footprint, plot position and layout and not impact on the prevailing grain. New buildings should be of a similar scale, massing and roof form to the wider context allowing the development to sit comfortably within the street scene. The development should respect building lines where possible.

5.11 There are no specific design policies relating to new development in Ratby other than in relation to the historic core. Wolsey Drive does not lie within the historic core.

5.12 An earlier design guide for Ratby was adopted as SPD in 2011 and describes the character of the village by zone and by street.

5.13 Stamford Street is summarised as follows :

Mainly a late Victorian/Edwardian development. However, there have been a small number of late 20th Century infills. Stamford Close comprises a mixture of terrace and semi-detached houses on the site of the former Wolsey Hosiery factory which closed in 1981. Despite being brick-built, the design of the houses does not replicate any of the features of the neighbouring Victorian houses and instead attempts more rustic design with small gables over one of the bedrooms. The Working Men's Club closed in c.1990 and has been replaced by four blocks of semi-detached houses. The very generous parking area at the front is separated from the footpath by a low brick wall which has a plaque marking the site of the former Working Men's Club (1898)

5.14 Whittington Drive and Charnwood are described thus

Development of council and private housing took place between 1945 and c.1970. They are a mixture of semi-detached bungalows and terrace houses, again with generous

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gardens, bordered by fencing or hedges. The earliest buildings have brick chimneys on pitched roofs, hipped at the end of each terrace, whilst the last to be built have low angled pitched roofs, without chimneys. On leaving the village, the private detached houses and bungalows on this side have individual designs with large gardens.

5.15 Wolsey Drive is described only as a road giving access to the Charnwood Estate.

5.16 The SPD includes some design guidelines for the different Zones. Guidance in respect of Upper Stamford Street focuses on the qualities of the original Victorian housing and the need for alterations and extensions to be sympathetic to the character and detailing of these properties but does not offer guidance on infill development. In relation to the Charnwood Estate i.e Whittington Drive and Charnwood it states,

The modest scale of the two storey houses and bungalows on the Charnwood Estate should not be overshadowed by large three storey blocks as has, unfortunately, happened in the recent past.

6.0 RESPONSE TO REASONS FOR REFUSAL

6.1 The reason given for the refusal of planning permission was that by virtue of the scale, massing, and design of the proposed dwellings, the proposal would fail to complement the character of the street scene and pattern of development on Wolsey Drive. The proposed development would therefore appear incongruous and out of keeping with the prevailing design of the area, resulting in unacceptable harm to the character and appearance of the area.

6.2 Whilst it is accepted that the existing development on Wolsey Drive comprises detached, semi-detached and terraced bungalows, this street forms part of a wider context which comprises not only bungalows but two storey houses of all types and ages, and a three-storey block of flats. The contribution that Wolsey Drive makes to the character of the wider area can at best be described as neutral. There is a strong building line and a uniformity in terms of the layout, scale, and design of the development but this is not necessarily a positive attribute and Wolsey Drive can best be summed as a rather characterless road leading from Stamford Street to the Charnwood Estate.



Bungalows on Wolsey Drive opposite the appeal site

6.3 The 2001 outline planning application did not include the submission of details of scale, but the planning permission does not set any parameters for the scale of the development. If the LPA were concerned about the acceptability of a 2-storey development as opposed to a single storey development then they could have requested further details at outline stage, or indicated that only a single storey development would be considered acceptable.

6.4 The subsequent application in 2022 for full planning permission is for a two-storey dwelling albeit that the first floor is within the roof space. The height of the approved dwelling to the ridge is 6.6 metres and the delegated report for this application indicates that the LPA had negotiated a 200 mm reduction in the height and the omission of a 2-storey gabled porch to the front elevation which was felt to be incongruous. However, the footprint of the approved house is larger than that of any other property in Wolsey Drive and the LPA appear to be only focussed on height when they are considering the scale of the proposed building. Whilst the approved building may be only 600 mm higher than the adjoining bungalow, it is a much larger building in scale when considered in 3 dimensions. The roof of the approved house would be a much more dominant feature within the street than that of the bungalows and in the appellant's view would appear more incongruous than the two detached houses proposed under this application, particularly as dormer bungalows are not part of the character of the area.

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6.5 Paragraph 8.14 of the delegated report for the application which is the subject of this appeal says that *“officers engaged with the agent and attempted to find design solutions which could overcome the aforementioned issues with design, scale and conflict with DM10. One option was to maintain a similar development footprint but reduce the height of the dwellings to form two semi-detached dormer bungalow styles, which could also resolve the parking space width issue. However, this was not pursued by the applicant”*.

6.6 The appellant did not wish to pursue this suggestion because (a) he does not feel that this is an efficient use of the land and (b) there is very little precedent for this form of development in the immediate area (there is one dormer bungalow on Stamford Street amidst a group of bungalows and 2 storey houses).

6.7 The appeal site lies between a bungalow at 10 Wolsey Drive and 2 storey houses on Stamford Street. When viewed from the junction of Wolsey Drive and Whittington Drive the new houses will be seen against a background of the 2 storey houses on Stamford Street and will therefore not appear incongruous in the street scene. The proposed houses will be no taller than the houses on Stamford Street and will have a low-pitched roof which will be more in keeping with the streetscene than the steeper pitched roof of a dormer bungalow.

6.8 The proposed layout which includes a 2.45 m driveway to either side of the development will leave a breathing space between the bungalow at 10 Wolsey Drive and the closest house so that the house will not appear unduly dominant and overbearing when viewed from the bungalow.

6.9 There is nothing intrinsically wrong in design terms in having bungalows and two storey houses in the same street, and, as evidenced by both Stamford Street and Whittington Drive / Charnwood, this is actually characteristic of this part of the village. It is therefore incorrect to say, as the LPA have done, that the proposal “would be incongruous and out of keeping with the prevailing design of the area”.

6.10 In refusing planning permission, the LPA have not cited detrimental impact on the amenities of adjoining properties as a reason for refusal. The delegated report refers to one objection on loss of privacy having been received but it does not identify which property raised these concerns. The appellant considers that the eye-to-eye distances between the windows of habitable rooms is sufficient to provide adequate levels of privacy. There would be a distance of 16.5 metres between habitable windows at the front of the proposed houses and the bungalows opposite on Wolsey Drive which is greater than has been approved on

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some of the infill plots on Stamford Street and is not untypical in older residential areas. The only first floor windows proposed in the side elevations are to en-suite bathrooms which will be obscurely glazed. The rear elevation will look over the rear garden of 96 Stamford Street but there is a distance of 7m from the rear elevation to the rear boundary which accords with the minimum distance set out in the LPA's Good Design Guide. The rear gardens are slightly below the standard set out in the Guide at 70 sq m compared to the required 80 sq m for a 3 bedroomed houses, but the LPA has not identified this as an area of concern. Nor has the LPA cited impact on sunlight or daylight to adjoining properties as a reason for refusal.

6.11 The highway authority (Leicestershire CC) in their consultation response requested additional information regarding access visibility splays and revised parking arrangements with dimensions of 3.4m width x 5.5m length, but the appellant was not given the opportunity to respond to this during the life of the application and it is not cited by the LPA as a reason for refusal. Visibility splays for pedestrians of 2m x 2m are shown on the submitted plans.

7.0 SUMMARY AND CONCLUSION

7.1 The LPA accepts that the housing policies in the development plan are out of date as they focus on delivery of a lower housing requirement than required by the up-to-date figure and the Council is unable to demonstrate a 5-year housing land supply when using the standard method set out by MHCLG. Therefore, the application should be determined against Paragraph 11(d) of the National Planning Policy Framework whereby permission should be granted unless adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole and the tilted balance of Paragraph 11d of the NPPF is therefore engaged.

7.2 The delegated report confirms that on the basis of the latest published figures the LPA only has 4.89 years of housing supply. The latest published housing delivery figures also indicate that only 86% of the required housing supply was delivered during the period April 2021 – March 2022. The LPA was therefore required to produce a Housing Action Plan which was published in July 2022.

7.3 As a consequence of this, the LPA have, since 2021, granted planning permission for 165 dwellings on land outside the Ratby settlement boundary contrary to Local Plan policy.

7.4 The LPA accepts that the principle of development of the site for residential purposes is established by the outline approval 21/00690/OUT which is still extant.

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7.5 The LPA's only reason for refusal is that the development is for 2 storey houses as opposed to single storey or dormer bungalows.

7.6 The National Planning Policy Framework states in para 135c) that decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, whilst not preventing appropriate innovation or change (such as increased densities). The NPPF also states in para 124 that decisions should give substantial weight to the value of using brownfield sites and promote and support the development of under-utilised land. Furthermore para 124 also says that decisions should support opportunities to use the airspace above existing residential and commercial premises for new homes, including allowing upward extensions where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene. To this end the Government has introduced permitted development rights that would allow existing bungalows to add an additional floor. Whilst the site is adjoined on one side by a bungalow and there are bungalows opposite, it is also adjoined on the other side by 2 storey houses and as demonstrated above the character of the area is that of an established residential area with both single storey and two storey dwellings. Unlike the 3-storey block of flats granted planning permission on Whittington Drive which looks out of keeping and incongruous in the street scene, a 2-storey development on the appeal site would reflect the character of the area and blend in with the street scene.

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