APPEAL BY
CREST NICHOLSON OPERATIONS LTD

AGAINST THE REFUSAL
BY HINCKLEY AND BOSWORTH BOROUGH COUNCIL
OF AN APPLICATION FOR RESIDENTIAL DEVELOPMENT
FOR 84 DWELLINGS INCLUDING PROVISION OF
OPEN SPACE, NEW ACCESS ARRANGEMENTS
AND OTHER ASSOCIATED WORKS

AT THE GREYHOUND STADIUM, NUTTS LANE,
HINCKLEY

PROOF OF EVIDENCE

Prepared by:

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Appeal Ref: APP/K2420/A/09/2118652/NWF

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1. PERSONAL BACKGROUND AND INTRODUCTION

1.1 My name is Anthony Charles Bateman. I hold a Bachelor of Arts with Honours Degree in Town and Country Planning from the Victoria University of Manchester. I am a Member of the Royal Institution of Chartered Surveyors, within the Planning and Development Division; a Member of the Royal Town Planning Institute; a Member of the Chartered Institute of Management and also a Member of the Institute of Directors. I am currently a partner of Pegasus Planning Group.

1.2 Up until October 2003 I was employed by RPS as an Operational Director and had direct responsibility for the Company's Midlands Office. In this position, which I held for over seven years, part of which was as a Partner of Chapman Warren, I advised and still do advise a variety of different companies and organisations, including a number of the country's major developers.

1.3 For eleven years I worked for one of the country's major house building and property developers in the position of Chief Planner, being responsible for the management of the Planning Department of the Company. I was also a Member of the Senior Management Team giving detailed advice on development appraisal and investment decisions. In addition I was a member of the national planning committee of the House Builders Federation. Prior to this I worked for six years for a national firm of Chartered Surveyors and Planning Consultants, within the Town Planning and Development Department and engaged in all aspects of town planning.

1.4 This evidence is written on behalf of Crest Nicholson Operations Ltd. For the purposes of the rest of this evidence Crest Nicholson Operations Ltd constitute the appellants. This Proof of Evidence relates to land at the former Greyhound Stadium, Nutts Lane, Hinckley.

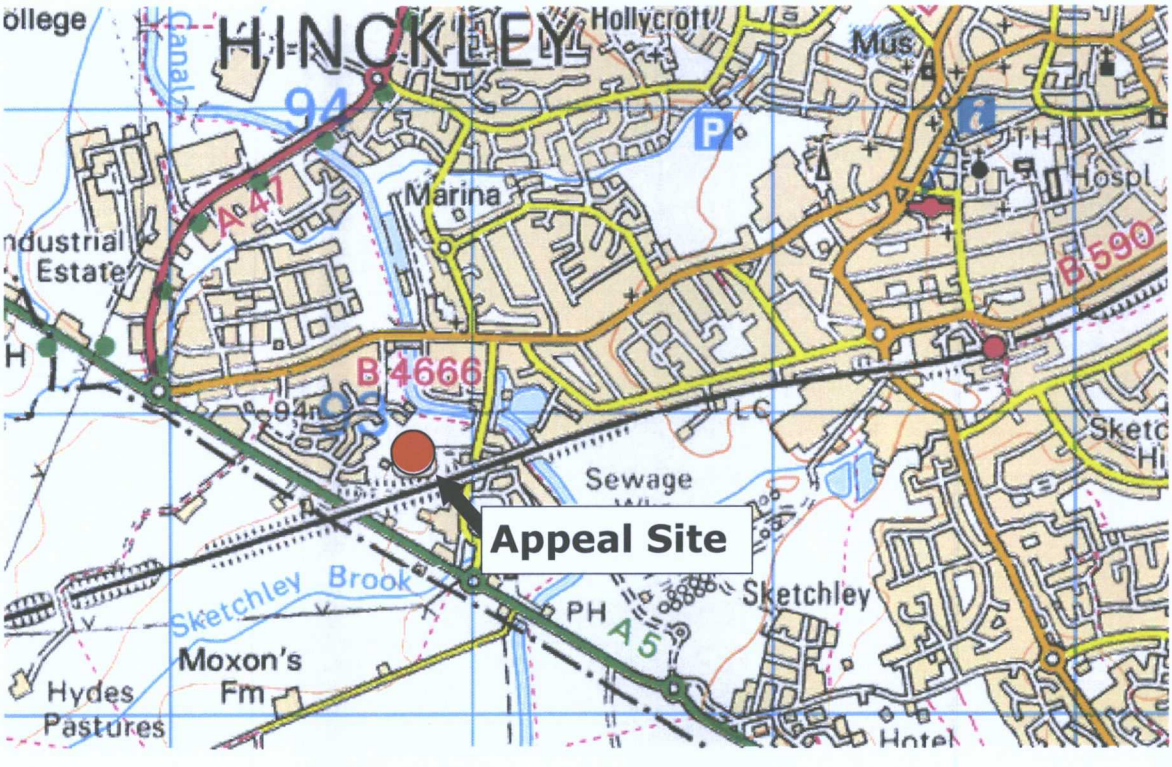
1.5 The evidence contained within this proof of evidence which relates to this appeal is true and given in accordance with the guidance of my professional institutions. I confirm that the opinions expressed are my true and professional opinions.

2. SITE DESCRIPTION

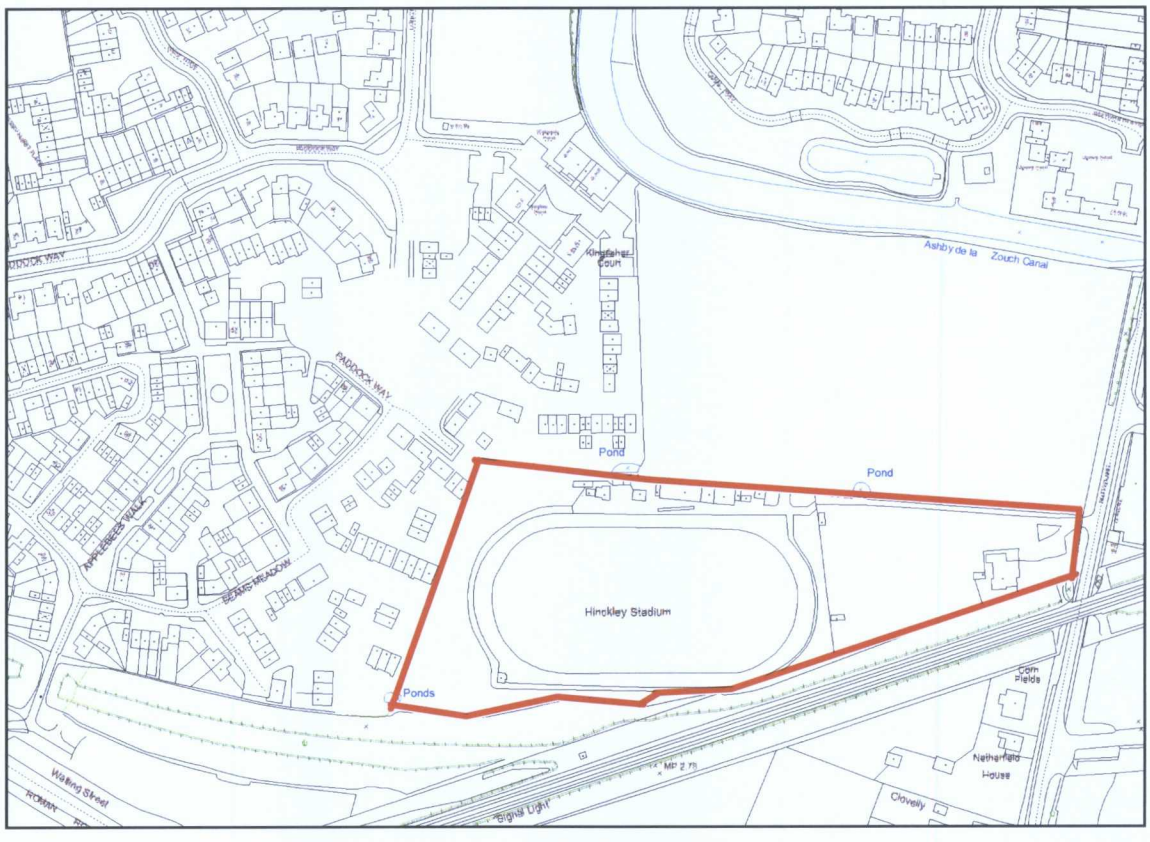
2.1 The site is located within the urban area of Hinckley and comprises previously developed land with a site area of approximately 2.61 hectares with an existing access onto Nutts Lane. A plan identifying the location of the appeal site is contained within the Plans Document (**Plan 1**).

2.2 The application site is now a vacant site but it was previously occupied by the former Hinckley Greyhound Stadium, which was an unlicensed independent facility. It forms a parcel of land at the South Eastern corner of recent residential development (Waterside Park) undertaken by the Appellants. Access will be from this residential development.

2.3 The southern boundary of the site is clearly identified by the adjacent railway line and its associated embankment, which contains a range of self seeded vegetation including maturing trees.



2.4 The eastern boundary of the site is to Nutt's Lane. The existing access to the site is contained along this frontage. The rest of the boundary being hedgerow. The road leads southwards toward a roundabout junction with the A5 highway. To the north, Nutt's Lane crosses the Ashby de la Zouch canal, through traffic lights and onto Coventry Road (B4666) beyond.



2.5 As noted above, part of the northern and western boundary is to existing residential development that has been constructed by the appellants. The remainder of the northern boundary is to an existing field, which has been previously promoted for residential development by Taylor Woodrow. The boundary to these sides is marked by existing hedgerows and by a close boarded fence adjacent to the new residential development.

2.6 Beyond the application site to the west the residential development comprises a mix of house types and tenures that would be continued into the appeal site itself. The residential area provides the opportunity for a vehicular and pedestrian access to be achieved.

2.7 The application site itself is self contained. The eastern part of the site currently forms an un-surfaced car park and is adjoined by a now demolished detached bungalow and its residential curtilage toward the southern boundary of the site. Beyond the car park and dwelling towards the western boundary were the disused greyhound track and associated buildings. On the car park there has previously been a firm operating a cable stripping business, but again this use has ceased.

2.8 A series of old and to some extent dilapidated buildings, of an indifferent design and materials formed the viewing terraces and overlooked the race track itself. These buildings were

complimented by a range of hardstandings and storage areas. The buildings have more recently been demolished.

2.9 The racetrack itself was enclosed by a length of 1 metre fencing which ran the full internal and external perimeters of the track. Internal to the race track is an area of uneven, but grassed open ground. Land adjacent to the western boundary, beyond the perimeter of the race track comprises a grassed open area.



2.10 In terms of the wider area, the appeal site is situated a short distance away from local facilities including shops, schools and community facilities whilst Hinckley Town Centre is approximately 2 km from the site where there is a large concentration of town centre services and facilities (see **Plan 2**).

2.11 In addition, there are regular bus services close to the site. The pubic transport routes and facilities area set out on **Plan 2**.

2.12 It is clear that the site relates well to existing facilities and is a location that offers benefits for a proposed residential development in achieving sustainable development objectives. Indeed this has also been a conclusion reached previously in respect of the adjoining development.

3. BACKGROUND TO THE APPEAL

3.1 There have been two planning applications on the site which are relevant in respect of the appeal site, this being the current appeal application and a previous application submitted in June 2006 which I consider below. It is though relevant to consider the history of this part of Hinckley since it has a bearing upon the current status of the appeal site.

Local Plan Inspector's Report

3.2 Firstly it is relevant to note that both the site and land to the west of the site was originally promoted for residential development through the now adopted Local Plan. The site was recommended for allocation by the Inspector within his report (**Appendix 1**), but this was not supported by the council. The Inspector's report is however of importance in respect of a number of comments that he made relating to the site and surrounding area.

3.3 There were two sites promoted, in essence the Crest Homes land between the Coventry Road and the A5 and the Greyhound Stadium land. Firstly the Inspector noted that in the event of a shortfall of housing land the council considered that this area could be considered for residential development (paragraph 2.3.390).

3.4 The Inspector notes at paragraph 2.3.396 that in summary the council's evidence is that the site should remain countryside until there is a case in respect of strategic housing need. At paragraphs 2.3.399 and 400 the Inspector stated:

> **"Although the objection site is open and is shown within countryside in the Deposit Plan, it is part of a triangle of under used land around which there is scattered development...[the railway embankment] provides a strong physical separation, which together with the physical severance occasioned by the line of the A5, supports the view that although by definition the objection site is open and effectively unused at the present time, the line of the route of the A5 effectively divides and separates the pattern of settlement from the open countryside to the south. This can be seen on the ground and also in the Local Plan.**
>
> **Built development on three sides of the objection site is envisaged by the Deposit Plan and it will not be *open* countryside even if the Council's evidence suggests it is at the present time. Although not strictly a 'brownfields' site, its allocation for residential and recreational use, would be preferable to taking 'green fields' in the open countryside. If the case for residential development is also justified by reference to housing supply requirements, it follows that the settlement boundary would need to be redrawn accordingly....."**

3.5 The Inspector also noted the policy constraints operating in other parts of the outer fringes of Hinckley and considered that the release of this site would not be at the expense of other

allocations. At paragraph 2.3.406 he notes that the site should be considered together with sites on the other side of Ashby Canal and the adjacent Hinckley Stadium. He particularly noted that:

> **"..... The Stadium site is underused; the Stadium itself is ramshackle in appearance and appears to lack all but the most basic facilities. The future use of this site as a stadium is inappropriate and is likely to be a source of nuisance to people living nearby....."**

3.6 The views of the inspector at that time still remain an important consideration at this time, particularly now there is residential development around the Stadium and it is now closed. Apart from the Council's rejection of the Inspector's view that this site was needed for housing at that time, there was no other impediment to its development.

Waterside Park Appeal

3.7 A subsequent appeal on land to the west of the Stadium was allowed by the Secretary of State for residential development in May 2000 (**Appendix 2**). The Inspector in his report to the Secretary of State regarding the appeal was clear in stating that the proposal would be contrary to the provisions of the development plan being development in the countryside (paragraph 86).

3.8 The appeal considered land supply issues and the inspector concluded that there was a need for land to be made available, additional to that allocated in the emerging Local Plan (paragraph 91). The Inspector then places great weight on the fact that the Local Plan Inspector chose to allocate the site and the high score achieved in the sustainability matrix. (paragraph 92).

3.9 In paragraph 93 the Inspector considered the nature of the site as "countryside". He notes this is a simple acknowledgement that it lies beyond the designated development limit of Hinckley, that it is urban fringe, maintains a degree of rural character and is an open area with some limited recreational potential. He goes on to state:

> **"....However, it is viewed from most publicly accessible locations within the context of existing urban development, which it directly adjoins to the north and west, and the unsightly greyhound stadium to the south-east. This urban setting and sense of enclosure would be further emphasised in the future by housing for which permission exists to the east of the Ashby canal. It is visually and physically separated from open land to the south and south east by railway embankments and the A5 Trunk Road. It cannot be regarded as "open" countryside, and its development as proposed would have little or no impact on the character or appearance of the rural area beyond.**
>
> **I conclude that the site displays a range of both urban and rural characteristics, visually, physically and functionally, but it is principally in an urban setting....."**

3.10 The Inspector considered that in the context of the countryside policy, which seeks to protect the countryside for its own sake, the residual rural character would be lost but that this would be outweighed by the provision of open space and recreational facilities of substantially greater community value than is presently afforded by the land.

3.11 This development as built has inevitably significantly eroded any rural character that the Greyhound stadium possessed. This "unsightly" use is now in an urban environment rather than a rural environment.

Paddock Way Appeal

3.12 A further appeal of relevance to this appeal related to a site off Paddock Way, which is the access into Waterside Park from the north, and forms the access route into the current appeal site (**Appendix 3**). The appeal (APP/K2420/A/04/1170891) was dismissed on 19 January 2006.

3.13 The site, like the Greyhound Stadium, fell within "countryside", as defined in the Local Plan, being outside of the built up area boundary. The appeal considered whether the site should be regarded as countryside for planning purposes and the effect of the proposal on the character and appearance of the area. There was no considered need to address housing land issues in order to grant development on the site. The Inspector also considered prematurity and determined the proposal would not be premature to the LDF.

3.14 In respect of the issues the Inspector found there were reasons to dismiss the appeal in respect of impact on the character and appearance of the surrounding area, but of relevance to this appeal she considered that the site should not now be considered on the basis of its designation as countryside. This is dealt with within paragraphs 9 to 11 of the decision letter.

3.15 The inspector notes that the site is protected by Policy NE5 since it is outside of the boundaries of the urban area as defined on the proposals map of the local plan. The Inspector notes though that due to the Waterside Park development the site is no longer contiguous with any land that could be described as countryside and does not fall within the definition of countryside set out in Strategy Policy 8 of the Structure Plan. The council also acknowledged that the site does not contribute to the purpose of Policy NE5, to protect the countryside. The Inspector concluded that:

> **"....Nevertheless in view of the development of Waterside Park, I consider that the appeal site cannot any longer be regarded as forming part of the countryside and that it is now effectively part of the Hinckley urban area. It follows that there would be no planning benefit in seeking to protect it on the basis of its current designation in the Local Plan. Consequently, local plan policies NE5 and RES5 do not provide a clear guide for the appeal proposal....."**

3.16 Again, a similar conclusion could be reached in respect of this appeal. The appeal site cannot be regarded any longer as forming part of the countryside and it is now effectively part of the Hinckley urban area.

Application 06/00638/FUL

3.17 The previous application relating to this site was submitted by Crest Nicholson (Midlands) Ltd on the 7th June 2006. This was a full application for the erection of 89 dwellings, provision of public open space and associated works. The application layout drawing is enclosed within the Plans document as **Plan 3**.

3.18 As part of the development it was proposed that of the total number of dwellings 18 would be provided as affordable homes. This constituted over 20% of the total number of dwellings. In respect of open space the proposals would entail the provision of 0.47 hectares of public open space.

3.19 The application was reported to the meeting of the Planning Committee on the 5th December 2006 with a recommendation of refusal. The application was refused for ten reasons.

3.20 The decision notice is dated 7th December 2006 and is enclosed as **Appendix 4**. The application was subsequently appealed. This appeal was subsequently withdrawn.

Application 09/00660/FUL

3.21 This application, to which this appeal relates, was originally submitted on 27 August 2008. The application, which was a full application for the erection of 84 dwellings, complete with associated open space and infrastructure, was accompanied by a number of plans, as detailed in section 3 of the Statement of Common Ground, together with a planning statement, design and access statement, acoustics report, ecological assessment, economic viability assessment, transport assessment, travel plan, flood risk assessment, geo environmental assessment, and tree survey.

3.22 Following discussions with the Authority the plans and documents submitted were revised. Again the schedule in section 3 of the Statement of Common Ground sets out the additional information supplied to the Authority, together with a list of the relevant plans that were considered by the committee and are now relevant to this appeal.

3.23 The application was considered at Planning Committee on the 24 November 2009. The report recommended that the Director of Community and Planning Services should be granted powers

to grant the application, subject to the signing of a section 106 agreement and the provision of amendments to the travel plan and layout to meet concerns of the Highway Authority.

3.24 The committee however determined to refuse the application for the following three reasons

> **1. The applicant has failed to demonstrate that the proposal will not lead to an unacceptable, significant increase in traffic on Coventry Road towards its junction with the A5 Watling Street and the A47 Dodwells road leading to additional disadvantage to road users and potential road safety hazards.**
>
> **2. The applicant has failed to demonstrate that adequate improvement works for the benefit of pedestrians and cyclists will be carried out to Nutts lane, Hinckley in the interests of highway safety and the sustainability of the development. The proposed development is therefore contrary to government guidance contained in Planning Policy Guidance 13: Transport; policies IMP1 and T5 of the adopted Hinckley and Bosworth Local Plan and guidance contained in Leicestershire County Council document 'Highways Transportation and Development'**
>
> **3. In the opinion of the local planning Authority the road layout and design does not comply with the requirements contained in Leicestershire County Council document 'Highways Transportation and Development and as a result fails to provide for the safe and free movement of all highway users through the development. The proposal is therefore contrary to government guidance contained in Planning Policy Guidance 13: Transport; policies BE1 and T5 of the adopted Hinckley and Bosworth Local Plan and guidance contained in Leicestershire County Council document 'Highways Transportation and Development'**

3.25 This refusal (**Appendix 5**) dated 1 December 2009 was appealed on 9 December 2009.

3.26 Subsequently within the Local Authorities Rule 6 Statement of Case, The Authority noted in paragraph 2.6 that it no longer relied upon the third reason for refusal. More recently the Authority have accepted that the second reason for refusal will no longer be pursued.

3.27 This evidence considers the issues raised by the reason for refusals set out above and the case in favour of granting planning permission on this site.

4. PLANNING POLICY BACKGROUND

4.1 Before considering the provisions of the Development Plan, I would draw attention to some matters of National Planning Policy and National Guidance that are relevant to this appeal.

National Planning Policy and Guidance

4.2 The references that follow are from planning policy that will be familiar. The references set out draw attention to those particular paragraphs which have relevance to the appeal proposals.

Planning Policy Statement 1: Delivering Sustainable Development

4.3 PPS1 sets out in the first few paragraphs the Government's Objectives for the Planning System. Paragraph 12 sets out the importance of pre application discussions. Paragraph 13 sets out the key principles which seeks amongst other things policies which encourage patterns of development which reduce the need to travel and the need for a high quality of design.

4.4 In respect of delivering sustainable development paragraph 27 sets down the general approach to be adopted in preparing development plans. This includes promoting urban regeneration; bringing forward sufficient land for housing; improved access to jobs and services; managing urban growth to make fullest possible use of public transport; focusing development in existing centres; and, promoting the more efficient use of land through higher density. Paragraph 28 notes that planning decisions should be made in accordance with the development plan unless other considerations indicate otherwise.

4.5 Paragraphs 33 to 39 set out considerations in respect of design. They note that visual appearance and architecture are clearly factors but in addition design should:

- Address the connections between people and places by considering the needs of people to access jobs and key services;
- Be integrated into the existing urban form and the natural and built environments;
- Be an integral part of the processes for ensuring successful, safe and inclusive villages, towns and cities;
- Create an environment where everyone can access and benefit from the full range of opportunities available to members of society and,

- Consider the direct and indirect impacts on the natural environment.

4.6 Paragraph 36 notes that key objectives should ensure developments:

- Are sustainable, durable and adaptable and make efficient and prudent use of resources
- Optimise the potential of the site to accommodate development, create and sustain an appropriate mix of uses and support local facilities and transport networks;
- Respond to local context and create or reinforce local distinctiveness
- Create safe and accessible environments where crime and disorder or fear of crime does not undermine quality of life or community cohesion;
- Address the needs of all in society and are accessible, usable and easy to understand by them; and
- Are visually attractive as a result of good architecture and appropriate landscaping.

4.7 Within a separate companion document, published at the same time as PPS1 are the general principles of the Planning System. It sets out the hierarchical structure of guidance and plans. It also sets out advice to be considered in the determination of planning applications.

4.8 I demonstrate below that the appeal proposal is in general accordance with the guidance set out in PPS1. The proposal is situated in a sustainable location and provides for the effective use of previously developed land and which results in a high quality of design. In addition there is a need to release land to meet future housing requirements in Hinckley.

Planning Policy Statement: Planning and Climate Change – Supplement to PPS1

4.9 This document, published in December 2007, sets out how planning should contribute to reducing emissions and stabilising climate change and take into account unavoidable consequences. In terms of decision making principles, the PPS, in paragraph 11, requires planning authorities:

> **"....in considering planning applications before Regional Spatial Strategies (RSSs) and Development Plan Documents (DPDs) can be updated to reflect this PPS, planning authorities should have regard to this PPS as a material consideration which may supersede the policies in the development plan.....".**

4.10 Paragraph 20 of the PPS requires planning authorities to "expect a proportion of new development to be secured from decentralised and renewable or low-carbon energy sources".

4.11 With regard to determining planning applications Paragraph 38 notes that planning authorities should ensure that proposed development is consistent with the policies in this PPS. Where proposals are inconsistent then consideration needs to be given to how proposals could be amended to make them acceptable or if permission should be refused. Paragraph 42 goes on to list criteria for designing environmental performance. Planning authorities should expect new development to (amongst other things):

- take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption, including maximising cooling and avoiding solar gain in the summer; and overall, be planned so as to minimise carbon dioxide emissions through giving careful consideration to how all aspects of development form, together with proposed density and mix of development, support opportunities for decentralised and renewable or low carbon energy supply;

- deliver a high quality local environment;

- provide public and private open space as appropriate so that is offers accessible choice of shade and shelter, recognising the opportunities for flood storage, wildlife and people provided by multifunctional greenspaces;

- give priority to the use of sustainable urban drainage systems, paying attention to the potential contribution to be gained to water harvesting from impermeable surfaces and encourage layouts that accommodate waste water recycling;

- provide for sustainable waste management; and

- create and secure opportunities for sustainable transport in line with PPG 13 including through;

  - the preparation and submission of travel plans;
  - providing for safe walking and cycling; and
  - an appropriate approach to the provision and management of car parking.

Planning Policy Statement 3 - Housing

4.12 The guidance emphasises the Government's objective to ensure everyone has the opportunity of living in a decent home, the need to have a wide choice of homes, the provision of high quality housing, the need to improve affordability and to create sustainable communities.

4.13 In the background to the document paragraph 7 notes the need for LPA's to assesses and demonstrate the extent to which plans fulfil the requirement to identify and maintain a rolling five year supply of deliverable land for housing, particularly in connection with making planning decisions.

4.14 In respect of design paragraphs 12 to 18 deal with achieving good quality housing which contributes to the creation of sustainable, mixed communities. Paragraph 14 relates to creating places, streets and spaces which meet the needs of people and are attractive, inclusive, have their own distinctive character and which maintain and improve character. In addition designs and layout which make efficient use of land and resources are encouraged. Paragraph 16 sets out the criteria for assessing design quality.

4.15 Paragraphs 20 to 24 relate to achieving a good mix of housing within developments. Paragraph 20 sets out that the key characteristics of a mixed community requires a variety of households in terms of tenure and price and a mix of households such as families with children, single person households and older people. Providing for children is a key element and the need for family housing is emphasised in paragraph 21. Paragraph 24 reinforces that for smaller sites Local authorities should have regard to the proportion of households that require market or affordable housing and the existing mix in the locality.

4.16 In respect of assessing the appropriate level of housing paragraphs 32 to 35 are of relevance. It is noted that the level should be determined taking a strategic, evidence based approach taking account of aspects such as need, demand, household projections etc. The RSS is to set out the overall level of housing provision, illustrated in a housing delivery trajectory for a sufficient period to enable LPA's to plan for housing for a period of at least 15 years. This is to be distributed amongst constituent housing market and LPA areas (paragraph 34).

4.17 The RSS is to set out the approach to coordinating housing provision across the region. This may involve managing the release of land both within and across housing market areas.

4.18 In respect of locations paragraph 37 is clear that the RSS should identify broad strategic locations for new housing developments so that need and demand can reflect sustainable development principles. Where need and demand are high a range of options are to be explored including growth areas, major urban extensions etc.

4.19 In identifying land a variety of aspects should be considered (paragraph 38) including the contribution to be made to cutting carbon emissions.

4.20 Paragraphs 40 to 44 deal with the effective use of land, this continues the view that LPA's should continue to make effective use of land by reusing land that has been previously developed, but in

so doing there is a need to consider sustainability issues as some sites will not necessarily be suitable for housing.

4.21 Paragraphs 45 to 50 deal with the efficient use of land. In terms of density this is to have regard to a number of aspects set out at paragraph 46 including the desirability of maintaining the character of particular residential areas or environments and the desirability of achieving high quality, well designed housing. Paragraph 47 sets out that 30 dwellings per hectare should be used as a national indicative minimum until local density policies are in place and that densities below 30 dph will need to be justified, having regard to paragraph 46. The density of existing areas is discussed at paragraph 50, this sets out that existing density should not dictate that of new housing by stifling change or requiring replication of existing style or form and acknowledges that imaginative design and layout of new development can lead to a more efficient use of land without compromising the quality of the local environment.

4.22 In terms of parking paragraph 51 sets out that residential parking policies should take account of expected levels of car ownership, the importance of promoting good design and the need to use land efficiently.

4.23 Paragraph 52 considers the need to deliver a flexible responsive supply of land. LPA's are to implement strategies to ensure that sufficient suitable land is available.

4.24 DD's are to identify broad locations and sites that will enable the continuous delivery of housing for at least 15 years from the date of adoption, taking account of the level of provision set out in RSS. Where the RSS is being reviewed there is a need to have regard to the level of housing proposed in the emerging RSS.

4.25 LPA's are to identify specific **deliverable** sites to deliver housing in the first five years (paragraph 54). The site needs to be **available** now, it needs to be **suitable** and it needs to be **achievable**.

4.26 In addition LPA's need to identify a further supply of specific deliverable sites for years 6 to 10 and where possible for years 11 to 15. If not possible for 11 to 15 then broad locations for growth should be identified. Strategic sites critical to delivery need to be identified. A housing trajectory is also required.

4.27 Paragraphs 56 and 57 give further advice about developable sites and notes the need for a continuous five year supply of deliverable sites.

4.28 In determining how much land is required LPA's should not include sites for which they have granted permission unless they can demonstrate the sites are deliverable and developable at the point envisaged. Allowances for windfall should not be included in the first 10 years of supply

unless the LPA can demonstrate robust evidence to show circumstances that prevent sites being identified (paragraphs 58 and 59).

4.29 In order to ensure a flexible responsive supply of land LPA's are to monitor the supply of deliverable sites on an annual basis.

4.30 LPA's are to have an implementation strategy (paragraphs 62 to 67). If actual performance is outside of the acceptable ranges (within 10-20 per cent) or at risk of not being met in the future for housing or PDL trajectories appropriate action will need to be taken. Paragraph 71 points out that where the LPA cannot demonstrate an up to date five year supply of deliverable sites they should consider favourably planning applications for housing having regard to policies in PPS3. In addition applications should not be refused solely on the grounds of prematurity.

4.31 The appeal proposals are in accordance with the advice contained in this document.

Planning Policy Guidance 13 – Transport

4.32 PPG13 was published in March 2001, it adds to the advice in PPS1 and PPS3. The Guidance states, at Paragraph 3, that land use planning has a key role in delivering the Government's integrated transport strategy by shaping the pattern of development and influencing the location, scale, density, design and mix of land uses. In addition, it is noted that planning can help to reduce the need to travel, reduce the length of journeys and make it safer and easier for people to access jobs, shopping, leisure facilities and services by public transport, walking and cycling.

4.33 In order to achieve these objectives, Paragraph 6 highlights that Local Authorities should actively manage the pattern of urban growth to make the fullest use of public transport, whilst using parking policies to promote sustainable transport choices and reduce reliance on the car for work and other sources.

4.34 The development of the appeal site would be sustainable and would accord with the provisions of PPG13 in that the site would be well related to the services and facilities within the surrounding area.

Circular 05/05 Planning Obligations

4.35 The purpose of this circular is to provide revised guidance on the use of planning obligations under section 106 of the Town and Country Planning Act 1990. Section 106 introduced the concept of planning obligations, which comprises of both planning agreements and unilateral

undertakings. Paragraph A4 sets out that Section 106 (2) provides that a planning obligation may:

i. be unconditional or subject to conditions;
ii. impose any restrictions or requirement for an in definite or specific period;
iii. provide for payments of money to be made, either of a specific amount or by reference to a formula, and require periodical payments to be paid indefinitely or for a specific period.

4.36 Annex B outlines the broad principles of planning obligations. Planning obligations are private agreements negotiated, between local planning authorities and developers, intended to make acceptable development that would otherwise be acceptable in planning terms. For example, a planning obligation might be used to prescribe the nature of a development, to compensate for loss or damage created by a development or to mitigate a development's impact. Planning obligations should only be sought when they meet all of the following tests. A planning obligation must be:

i. relevant to planning;
ii. necessary to make the proposed development acceptable in planning terms;
iii. directly related to the proposed development;
iv. fairly and reasonably related in scale and kind to the proposed development; and
v. reasonable in all other respects.

By Design – Urban Design in the Planning System; Towards Better Practice.

4.37 Building upon the existing guidance is a Government publication, "*By Design*". This document stresses the importance of good design and states that it is fundamental to achieving sustainable development. The guidance examines various aspects of design and sets out the design principles that new development should be aiming to achieve. The appeal proposals accord with the design principles set out in this document.

4.38 In particular the document incorporates a number of prompts to thinking about design, but points out on Page 18 that:

> **"In any real situation, some of these prompts will conflict and some will benefit some people more than others. Good design results from consideration being given to a wide range of concerns and the creative resolution of potential conflicts."**

4.39 In considering the development of the site the appellants have fully taken those different elements into account and have actively sought to arrive at a scheme which is a good design for the site as a whole. They have therefore adopted the ethos of "*By Design*". Extracts of By Design are contained as **Appendix 6**.

Better Places to Live by Design

4.40 In September 2001, this document was produced by the DTLR. The document takes the principles of *By Design* and focuses on the attributes that underlie well-designed, successful residential environments. Relevant extracts are contained in **Appendix 7.** The document does not set out policy but is set out as a helpful document to those designing new developments in the light of meeting requirements such as making the best use of available urban land. Whilst it was issued as a companion guide to PPG3 it still remains extant advice.

4.41 On page 16 the document notes that the successful integration of new housing with its surrounding context is a key design objective. The site itself and its immediate surroundings informs a whole range of subsequent design decisions. With sustainable development a broader approach is required with greater emphasis on linkages between new houses and locals facilities, public transport network and walking and cycling routes.

4.42 In particular on page 17 it is stated that having established a site's broad setting in terms of its relationship to a city, town or village centre, a good starting point is to examine the area within 10 minutes (about 800m) walking distance of the site. This can help to identify the range of facilities which residents may access comfortably on foot, as well as opportunities to reach more distant facilities by public transport.

4.43 The document also sets out that the attributes of successful housing are:

Movement	***A movement which is safe, direct and attractive to all users***
Mix	***A rich mix of housing opportunities***
Community	***A sense of neighbourhood and community ownership***
Structure	***A coherent structure of buildings, spaces, landscape and routes for movement***
Layout	***Street layout and design which is appropriate to use and context***
Place	***Attractive and clearly defined public and private spaces***
Amenity	***Pleasant gardens and private amenity space***
Parking	***Convenient but unobtrusive car parking***
Safety	***A safe and secure environment***
Space	***well planned homes, which provide space and functionality***
Adaptability	***Housing which is robust and adaptable to changing requirements***
Maintenance	***An environment which can be well maintained over the long- term***
Sustainability	***Housing designed to minimise resource consumption***
Detail	***Well considered detailing of buildings and spaces***

4.44 The surrounding context and all of the attributes set out above were considered by the urban designers in arriving at the design solution set out on the illustrative master plan and described within the Design and Access Statement.

Demonstrating a 5 Year Supply of Deliverable Sites

4.45 In the context of the policy contained in PPS3, the Department for Communities and Local Government has produced an advice note to assist in understanding how a 5 year supply of deliverable sites will be demonstrated. This is contained within **Appendix 8**.

4.46 Paragraph 5 sets out how housing requirements should be identified and notes that the figures in the Development Plan should be used, but where those figures are not available the best available estimate should be utilised. This may include having regard to evidence underpinning housing provision policies in the emerging Regional Spatial Strategy, projecting forward current development plan figures or drawing on other relevant and up to date information.

4.47 Advice is also given about which sites should contribute to the supply. Allocated sites or sites with permission should be able to be considered deliverable in the terms of paragraph 54 of PPS3. To be deliverable sites need to be available now, be suitable and be achievable – there must be a reasonable prospect that housing will be delivered on the site within five years. In connection with this latter point current housing market conditions will be relevant.

4.48 Unallocated sites are not to be included if they are not likely to make a significant contribution until permission is granted.

4.49 A variety of actions are proposed where a five year supply cannot be demonstrated, these include granting planning applications. Where a five year supply can be demonstrated, other material considerations should be considered and it is noted that in areas with significant demand the 5 year provision figures should not be regarded as a ceiling which cannot be exceeded.

Homes for the Future: more affordable, more sustainable

4.50 This Green Paper was produced by the Government in July 2007 and is of importance in setting out the challenges that exist in respect of meeting future supply of housing land. Relevant extracts are contained in **Appendix 9**.

4.51 The document sets out the need for more new homes to be provided to meet household projections and the Government has set a new housing target to be achieved by 2016. There is

also a need to bring forward more affordable housing. Paragraph 15 refers to the 2004 projections and the growth in households which underlines the need to build more homes for this and future generations.

4.52 The Planning White Paper (Planning for a Sustainable Future, published in May 2007) made clear that increasing the supply of housing is a key outcome for planning (see chapter 2, paragraph 1). Paragraph 6 goes onto note that existing RSS's are likely to fall short of meeting expectations and the Government wants RSS to be flexible to respond to changing demand.

The Development Plan

4.53 The Development Plan that relates to the appeal site is formed by RPG11, Regional Planning Guidance for the West Midlands (The Regional Spatial Strategy - RSS), the Warwickshire Structure Plan and the adopted Rugby Borough Local Plan. Also of relevance is the work on the review of the Local Development Framework and the Submitted Phase 2 Review of the RSS.

a) Regional Spatial Strategy for the East Midlands

4.54 The latest version of the Regional Spatial Strategy (RSS) was published in March 2009. The document is part of the development plan, it is the most recent adopted element, and is at the top of the hierarchal structure relating to development plans. Relevant extracts are to be found in **Appendix 10.**

4.55 Policy 2 promotes better design and addresses issues such as design-led approaches which take account of local, natural and historic character, minimising energy use, functional design, efficient use of land, access to local facilities by non-car modes, highways and parking, design which reduces crime or the fear of crime, and green infrastructure and biodiversity. The design ethos for the appeal proposals is set out in full the Design and Access Statement which accompanied the application and ensures that the proposals accord with this policy.

4.56 Policy 3 deals with the distribution of new development and directs development towards urban areas with Hinckley defined as a Sub-Regional Centre (SRC). In respect of the Three Cities Sub-Area, within which the appeal site is located, the development strategy is to first concentrate development in Derby, Leicester and Nottingham and then the eight SRCs. In following this strategy down to the local level of Hinckley and Bosworth the main focus for development will be Hinckley itself followed by other settlements which meet the requirements of Policy 3.

4.57 The Regional target for use of previously-developed land and vacant and under-used buildings is 60%. In line with this Policy 3 states that priority should be given to making the best use of

previously-developed land and vacant/under-used buildings. This leads to the conclusion that not only is Hinckley the main focus for development in the Borough but it is previously-developed sites and vacant and under-used buildings at Hinckley which should be prioritised. As the October 2008 SHLAA and also the Statement of Common Ground (section 4) notes the application site is a vacant previously-developed site.

4.58 Further consideration is given to the Three Cities Sub-Area in Policy 12. This indicates that outside Derby, Leicester and Nottingham residential development should be located within and adjoining settlements and in scale with the size of those settlements. Therefore not only are previously-developed sites at Hinckley a priority but development should take place on land both within and adjoining the town. The Policy makes no distinction between these types of land nor does it refer to existing settlement boundaries.

4.59 In respect of the strategic context for the Leicester and Leicestershire HMA (which includes Hinckley and Bosworth) the emerging RSS in paragraph 3.1.6 supports the strengthening of Leicester as a Principal Urban Area (PUA), the strengthening of the SRCs including Hinckley, and meeting affordable housing in a way that promotes a more sustainable pattern of development.

4.60 Policy 13a sets out the housing requirement for the Borough between 2006 and 2026. The requirement is for 9,000 dwellings with an annual requirement of 450 dwellings up to 2026. These figures are not ceilings as they are minima, thus the Borough Council needs to provide at least these each year.

4.61 Within the Three Cities-Regional Strategy, Policy Three Cities SRS3 sets out that of the 450 dwellings per annum to be provided, these should be located mainly at Hinckley, including sustainable urban extensions as necessary.

4.62 The development of the appeal proposals accord with the policies in the RSS.

(b) Hinckley and Bosworth Local Plan

4.63 The Hinckley and Bosworth Local Plan was adopted in February 2001 and covers the period to 2006. This is the period of the previous structure plan to the one considered above. In September 2007 the Secretary of State determined that a number of policies within the plan should not be saved. Relevant extracts from the plan are contained at **Appendix 11**. In addition with the adoption of the Core Strategy in December 2009 other polices became superseded (see Appendix 3 of the Core Strategy **Appendix 12**).

4.64 With regard to housing there were no policies setting out housing requirements and the appropriate policy is that within the RSS and Core Strategy Policy 1.

4.65 Policy RES3 seeks to ensure the provision of affordable housing on unallocated sites over 25 or more dwellings. The Council will negotiate with the developer related to the need for affordable housing in the area. This policy has been superseded by Core Strategy Policy 15.

4.66 Policy RES5 sets out the criteria that must be satisfied to obtain permission for the residential development of an unallocated site. This relates to the need for the site to be within the boundaries of the urban area and the need for siting, design and layout not to conflict with relevant plan policies. The appeal proposals are on land which falls outside of the urban area boundary as identified in the adopted plan, however this has to be considered in the light of locational policies in the more recent RSS which requires development both within and adjoining the urban area..

4.67 The application site is allocated within the plan as a recreational facility and the proposals map notes that Policy REC1 and Policy NE5 are relevant. Policy REC1 deals with the retention of recreational land and buildings and states that:

> **"Planning permission for alternative uses will not granted for the development of land and buildings currently used for recreation and open space unless any one of the following criteria is met:**
>
> **a) The developer provides an equivalent range of replacement facilities in an appropriate location serving the local community;**
>
> **b) The developer provides adequate proof that there is a surplus of recreational land and/or facilities beyond the needs of the local community;**
>
> **c) The development of a small part of larger site for recreational use would result in the enhancement of facilities on the remainder of the site."**

4.68 The appeal site was previously used as a private unlicensed greyhound racing facility that has now closed. It was not available for public recreational use and is not currently in use. This policy is therefore not now relevant to this appeal.

4.69 In respect of other recreational policies Policy REC2 seeks to negotiate with developers to provide for 0.4 hectares of open space for formal recreation provision for each 100 dwellings. Between 20 and 100 dwellings pro rate provision will be sought or the authority will seek to negotiate a financial contribution towards facilities in the vicinity of the site.

4.70 Policy REC3 seeks to provide 0.1 ha of informal children's play space per 20 dwellings and gives advice on location etc.

4.71 As noted above the appeal site is located beyond the development limits for the urban area of Hinckley as shown on the proposals map. Policy NE5 seeks to protect the countryside for its own sake and only allows development in a restricted number of circumstances. The appeal proposals need to be considered in the light of the RSS policy which requires housing and development to be both within and on the edge of the urban area.

4.72 Policy BE1 identifies the standards of design that will be expected to ensure high quality development. These criteria include the enhancement of the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features. Also, that a scheme incorporate landscaping to a high standard where this would add to the quality of the design and setting. Proposals should also provide a common link between the proposed buildings, spaces and landscape features and the character of the local area.

4.73 Policy T5 deals with highway design and vehicle parking standards and IMP1 seeks the need for conditions or a legal agreement in respect of meeting the provision of infrastructure and facilities.

(c) Emerging Hinckley and Bosworth LDF

Core Strategy DPD

4.74 The Council published its Submission Core Strategy in October 2008 with consultation taking place between 31 October through to December 2008. A schedule of proposed changes to the Core Strategy was subsequently published with consultation running until 3 April 2009. The Core Strategy was submitted to the Secretary of State, with the Examination in Public (EiP) taking place between 19-29th May 2009. The document was adopted in December 2009 relevant extracts are contained in **Appendix 12**.

4.75 Following the EiP further consideration was given to Policy 15 of the Core Strategy which deals with affordable housing. The Borough Council re-consulted on Policy 15 with consultation lasting until 14 September 2009. The Inspector then in October 2009 held a specific session on Policy 15: Affordable Housing. In re-visiting this Policy 15 on Affordable Housing the Council took into account more recent evidence to suggest a lower proportion of affordable housing provision would be a more appropriate requirement as part of new residential developments within the urban area of Hinckley specifying a figure of 20% provision on sites of 0.5 hectares or 15 dwellings and acknowledging that current market conditions should be given special consideration when determining individual applications.

4.76 The Core Strategy in Policy 1 sets out that the housing distribution strategy is to accommodate a minimum of 1120 new dwellings at Hinckley. Other policies also provide for a sustainable urban extension of 2000 dwellings and a minimum of 10 dwellings within Earl Shilton (Policy 2), a minimum of 45 dwellings within Barwell (Policy 3) with a 2500 unit urban extension, and a minimum of 295 new homes at Burbage (Policy 4). This is to help meet a requirement of some 5,046 dwellings needed to achieve the figure of 9,000 dwellings to 2026 (Table 1).

4.77 When assessing the potential for urban extensions to the Hinckley SRC a number of areas were identified by the Council. The appeal site fell within Area 3, and whilst the site would not form part of an urban extension because of its already urban location, the Council's Directions for Growth document (September 2007) did suggest that minor amendments to the settlement boundary may be appropriate in the area.

4.78 Policy 5 sets out the transport interventions proposed to support additional development in and around Hinckley. This includes improvements to the A47/A5 'The Long Shoot' junction to provide for additional public transport priority measures. It is understood that there is no scheme yet identified.

4.79 Policy 16 deals with housing density, mix and design. This requires a mix of housing on sites and also seeks a density of some 40 dwellings per hectare adjoining Hinckley unless site characteristics indicate a lower density may be acceptable.

4.80 Policy 19 deals with green space and play provision dealing with quantity and accessibility issues.

4.81 Lastly in respect of climate change, Policy 24 deals with code level requirements, seeking Code level 3 to 2013 for residential development.

4.82 The appeal proposals accord with policies in this document.

Site Allocations and Generic Development Control Policies DPD

4.83 The Site Allocations and Generic Development Control Policies DPD Consultation Draft - Preferred Options Report was published on 9 February 2009 with consultation running until 6 April 2009 (**Appendix 13**). When adopted this DPD will allocate land to deliver housing and other major development needs to meet the requirements of the Core Strategy.

4.84 Section three of the Preferred Options Report identifies various 'preferred sites' within the urban area, which the Council consider could come forward to meet RSS housing requirements. It is notable that the former Greyhound Stadium is identified as a proposed allocation for residential

use (Site HIN04 - see page 26). The Draft Site Allocations also recognises that the Preferred Option is to maximize housing on previously developed sites. The appeal proposals accord with this emerging document.

4.85 Appendix 2 of the document gives information on site selection and justification and on page 87 refers to the Greyhound Stadium. Reference is made to the need to improve Nutts Lane for access. There is though no mention of any constraint relating to traffic movements onto Coventry Road.

Strategic Housing Land Availability Assessment

4.86 The Strategic Housing Land Availability Assessment (SHLAA), which forms part of the evidence base of the LDF, was published in October 2008. The document states that there are 958 deliverable and developable dwellings which will come forward within the next 5 years. The appeal site has been identified as being 'suitable', 'available' and 'achievable'. The SHLAA suggests it will come forward post-2013. Relevant extracts are at **Appendix 14**.

4.87 The methodology paper that underpins the preparation of this SHLAA was published by all Authorities in the Leicester and Leicestershire Housing Market Area (**Appendix 15**). The introduction to this document notes that the assessment of each site will include an assessment of deliverability, constraints on the delivery of sites and recommendations on how these constraints should be overcome. Within Stage 5 (Carrying out of the Survey) the document notes that physical constraints will be recorded and technical issues such as highways will be discussed with the relevant agency / department.

Other Documents

Affordable Housing SPD (2008)

4.88 The affordable housing SPD was published by the Authority in 2008. It gives helpful information relating to the policy framework, the definition of affordable housing, the affordable housing requirement, site suitability, negotiations, planning obligations and the delivery of affordable housing. The SPD is at **Appendix 16**.

4.89 The SPD introduces a target of 40% affordable housing units on sites in urban areas of 15 or more dwellings or 0.5 hectares. The document seeks the tenure split to be 75% social rented and 25% shared ownership. The affordable mix will be determined by both specific local need and the nature of the development.

4.90 The publication of a recent Affordable Housing Viability Assessment (May 2009) for Hinckley and Bosworth however questioned the viability of the affordable housing requirements set within the SPD. This report suggested that the target of 40% affordable housing across the Borough required by the SPD was unrealistic and instead considered differential targets for different parts of the borough reflecting the spread of market values as more appropriate. The recommendation for Hinckley West, which was considered a weaker market area, is for a maximum of 25% affordable housing provision.

4.91 The Council revisited their stance on affordable housing within Policy 15 of the Core Strategy DPD which takes into account the findings of the Three Dragon Viability Assessment, and uses as a starting point 20% affordable housing provision on sites over 0.5 hectares/15 dwellings within the Hinckley urban area.

Play and Open Space SPD (2008)

4.92 This SPD follows the open space requirements of Local Plan policies REC2 and REC3. As noted in policy there is a need to provide 0.002 hectares of informal public open space per dwelling. The SPD requires this to be broken down as 0.0005 hectares per dwelling of equipped play space and 0.0015 hectares of informal open space. In addition the local equipped area should be a minimum of 0.04 hectares.

4.93 The SPD also includes details of the financial contributions. In terms of maintenance periods the SPD splits this between 10 and 20 years depending on whether the use will be by local residents or the wider community. The SPG is to be found at **Appendix 17**. There is no objection to the development in respect of open space provision.

Section 106 Strategy on Developers Contributions SPG (2003)

4.94 The *Section 106 Strategy on Developers Contributions SPG* was approved by planning committee in 2003 (**Appendix 18**). The SPG sets out what the Council will seek in relation to the provision of financial contributions and appropriate services to ensure an open, consistent and reasonable approach to meeting infrastructure requirements arising from new developments.

4.95 Where a financial contribution is sought through a planning obligation the amount will vary on a case by case basis. The SPG also sets out the timing of any payments through the Section 106 procedure.

4.96 Appendix C of the SPG identifies the level of contribution that would be expected (either financial or on site).

Sustainable Design SPD (2008)

4.97 The aim of this SPD (**Appendix 19**) is to provide further guidance to Local Plan Policy BE1. There is no objection by the Authority in respect of design.

New Residential Development SPG

4.98 The *New Residential Development SPG* was adopted in spring 2000 (**Appendix 20**). The main aim of this guidance is to ensure that new developments are well integrated into their surroundings, offer a good standard of security and amenity to future residents, protect the amenity of existing occupiers and are locally distinctive in their appearance.

4.99 The SPG identifies that higher densities may be expected where it meets the needs of single person households or at locations within or adjoining town centres and directly accessible to good public transport services.

4.100 The design and layout of new development should also seek to ensure the careful integration of new buildings with the existing site features and landscaping. Space between buildings and rear garden standards are also set out.

5. PRINCIPAL ISSUES

5.1 Having set down the planning policy background that affects the appeal site, the remainder of this statement considers the principal issues that are apparent in respect of the development proposal. It is considered that these are:

1. Does the appeal proposal accord with the policies of the development plan and national policy guidance;

2. Dealing with housing supply issues:

   (i) Is there a five year supply of housing land?

   (ii) Is there a need to release this site to help meet housing land requirements and what impact would the release of the site have on future housing provision?

   (iii) Is there any impact on the need to release in respect of affordable housing provision?

3. Is the layout acceptable in design and highway terms.

4. Are the contributions required by the Authority reasonable in scale and kind to the proposed development.

5. Are there any other material considerations that are relevant.

5.2 This proof of evidence addresses these issues.

6. ISSUE 1: THE DEVELOPMENT PLAN

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states;

> **"If regard is to be had to the to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".**

6.2 The Development Plan in respect of the appeal proposal consists of the East Midlands Regional Spatial Strategy (RSS), the Hinckley and Bosworth Local Plan (RLP) and The Hinckley and Bosworth Core Strategy (HBCS). A full description on relevant policies contained within the Development Plan is set out in Section 4 above and it is not my intention to repeat them within this section. It is however necessary to analyse the extent which the appeal proposal is in accordance with the provisions of Section 38(6). This is particularly in light of the reason for refusal, which states that the development is contrary to provisions of Policies IMP1, BE1, T5 and T11 the HBLP.

6.3 In respect of the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004, it is necessary to bear in mind the High Court decision *R v Rochdale Metropolitan Borough Council ex parte Milne [2000].* Mr Justice Sullivan in considering this case specifically looked at the question of accordance with the development plan as a whole. A proposal does not have to accord with each and every policy within:

> **"...In the light of that decision (*City of Edinburgh Council v The Secretary of Sate for Scotland [1997]*) I regard as untenable the proposition that if there is a breach of any one policy in the development plan the proposed development cannot be said to be 'in accordance with the plan'. Given the numerous conflicting interests that development plans seek to reconcile: the needs for more housing, more employment, more leisure and recreational facilities, for improved transport facilities, the protection of listed buildings and attractive landscapes etc., it would be difficult to find any project of any significance that was wholly in accord with every relevant policy in the development plan. Numerous applications would have to be referred to the Secretary of State as a departure from the Development Plan because one or a few minor policies were infringed, even though the proposal accords with the Development Plan considered as a whole. It does not have to accord with each and every policy therein"**

6.4 It is in the light of this test put forward by Mr Justice Sullivan that the appeal proposals need to be considered. The proposal is considered to accord with the development plan taken as a whole, allowing for the fact that Development Plan policies often seek to achieve competing objectives. In respect of the appeal proposals it will be demonstrated below that they are not out of accord with the policies discussed and contained within the Development Plan taken as a whole.

(a) Regional Spatial Strategy for the East Midlands

6.5 The East Midlands Plan was published in March 2009. It is relevant to note that the reasons for refusal do not allege any conflict with the policies contained within this plan.

6.6 The appeal site forms part of the urban area of Hinckley. The RSS defines Hinckley as a sub-regional centre where development is to be concentrated (Policy 3). In addition priority is to be given to making best use of previously developed land. The appeal site therefore lies in a location where housing development is to be concentrated and where best use can be made of a previously developed site. The appeal site is acknowledged as previously developed within the October 2008 SHLAA.

6.7 Policy 12, which deals with the Three Cities Sub-area, acknowledges that residential development should be located within and adjoining settlements such as Hinckley. Policy 13a sets out the housing requirement of 9,000 dwellings 2006 to 2026 (450 per annum). The main location for growth is Hinckley and it is acknowledged that urban extensions will be required (Policy SRS3). The principle of providing development in this location is therefore clear in strategic terms. My evidence goes onto set out that there is a shortfall in the five years supply of housing land, that this site has been identified by the Authority as suitable for housing and there is a need to release the site now.

6.8 The appeal proposals accord with the policies in the East Midlands Plan.

(b) Hinckley and Bosworth Local Plan

6.9 The Hinckley and Bosworth Local Plan (**Appendix 11**) was adopted some 9 years ago and relates to a period which expired in 2006. The housing provision figures referred in the plan are no longer relevant and reference needs to be had to the adopted RSS and the adopted Core Strategy.

6.10 Other policies in the plan inevitably are impacted upon by both the fact the RSS strategy for locating development and also because of physical changes. There is a need to accommodate more housing which requires land to be released both within and on the edge of Hinckley. This is clear from the RSS and the Core Strategy. Any of the development beyond the built up area therefore will be beyond existing built up area boundaries and be within land currently considered to be countryside.

6.11 PPS3 is clear that prematurity is not a reason to refuse permission in itself, therefore there can be no argument that there is a need to wait until sites beyond the boundary are identified in the

Site Allocations DPD. In order to meet housing requirements, therefore, land which is currently countryside will need to be released. This is not in accordance with the saved policies of the local plan and policy NE5 in particular, but the housing requirement numbers in the development plan (the RSS and Core Strategy) outweigh this policy. To the extent that Policy BE1 is relevant to this point then the same conclusion can also be reached on this policy.

6.12 The reasons for refusal refer to a number of polices from the Hinckley and Bosworth Local Plan. It is relevant to note that the reasons for refusal do not consider the principle of residential development on this site is objectionable in principle. Indeed the Statement of Common Ground in section 7 is clear that the principle of residential development on this site is fully accepted.

6.13 The site is covered by policies REC1 and NE5. REC1 dealt with areas currently used for recreational purposes. The site is no longer used for recreational purposes, the previous use as an unlicensed greyhound stadium having ceased. The policy therefore no longer applies.

6.14 Policy NE5 relates to the protection of countryside. The RSS, though, acknowledges the need to provide housing both within and adjacent to Hinckley and this policy, together with the fact that the Authority have acknowledged in their SHLAA that the site is suitable for housing and that the Core Strategy requires the provision of a minimum of 1120 dwellings in Hinckley, is the reason why the Authority do not object to the development of this site in principle. It is also relevant in this respect to note, as I set out later, that there is less than a five year supply of housing land available and there is a need to develop this site now.

6.15 The policy seeks to protect the countryside for its own sake. The explanatory paragraphs note that in paragraph 5.6.2 new house building in the open countryside will be strictly controlled. To all intents and purposes the appeal site now forms part of the urban area and does not in any way contribute to the countryside around Hinckley. This view accords with the views expressed by previous Inspectors in the vicinity of the site. There is therefore no adverse impact on the countryside by the development of this site. It does not, therefore, contribute to the purpose of policy NE5 which is to protect the countryside.

6.16 Given the remote nature of the site from the existing countryside, being separated by the railway line on an embankment to the south, it is also argued that the development of the site would not have an adverse effect on the character and appearance of the landscape.

6.17 Indeed it is relevant to note that the views of the planning officer in the report to committee support this point. On page 6 dealing with Policy NE5 the report notes:

> **".....the site is a previously used 'brownfield' site and since adoption of the local plan, the area to the west has been developed for residential purposes. The site therefore lies adjacent to the current built form of Hinckley. In addition the southern boundary of the site is clearly defined by the adjacent railway line and its associated embankment with mature landscaping and provides both visual and physical separation from the countryside beyond. Under these circumstances it is difficult to sustain an objection based on the impact of the development on the character or appearance of the countryside "**

6.18 Policy RES 5 deals with the criteria to be satisfied in order to allow residential development of unallocated sites. Firstly, reference is made to the need for sites to be within the boundaries of an urban area. As acknowledged, the appeal site lies outside of the boundary of Hinckley, but this policy has to be seen in the light of the more recent adopted RSS policy which allows for development both within and adjacent to Hinckley and the need for additional houses as set out in the Core Strategy. This element therefore is no longer material. Notwithstanding this point, however, previous considerations of this site (by the Local Plan inspector and also previous appeals on adjacent land) have shown that the site clearly now forms part of the urban area.

6.19 The second part of the policy deals with aspects such as siting and design. Full consultation with the Authority has taken place in respect of these issues and the proposals amended accordingly and there is no objection to the development on the basis of this policy.

6.20 The first policy referred to in the reasons for refusal is policy IMP1. This policy deals with implementation and seeks the need for conditions or a legal agreement in respect of meeting the provision of infrastructure and facilities. As will be shown later in the evidence the appeal proposals provide all necessary infrastructure and facilities that are reasonably related in scale and kind to the proposed development. Specific reference is made to improvements to Nutts Lane. As is shown elsewhere within the evidence this is not required in order to make the development acceptable. The appeal proposals have made proper provision to meet requirements through the S106 agreement and the proposals are in accordance with policy IMP1. This is clearly shown within the additional report to committee which appraises the various developer contributions and concludes:

> **".....the level of contributions is considered to be acceptable in this case and at this time.."**

6.21 Policy T5 is also referred to in respect of Nutts Lane. Policy T5 deals with highway design and vehicle parking standards. This policy refers back to highway design requirements set out in the County Council's document *"Highway Requirements for Development"*. A detailed consideration

of this aspect is contained in the highway evidence but in summary the proposals do not require significant additional works to be carried out to Nutts Lane as set out in the second reason for refusal, neither do they create an unacceptable increase in traffic on Coventry Road as alleged by the first reason for refusal, nor do the proposals result in a layout and design that fails to provide for the safe and free movement of highway users through the development as now agreed by the Authority. They are therefore in accordance with Policy T5.

6.22 The first reason for refusal also refers to Policy T11, which requires a Traffic Impact Assessment to be provided if there will be a significant increase which would have a detrimental impact on traffic flows. A Transportation Assessment was provided with the application which clearly shows that the impact of the development on Coventry Road is acceptable. There is no reason to refuse permission on the basis of this policy. This is dealt with in more detail in the highways evidence.

6.23 Lastly in the third reason for refusal reference is made to concerns regarding the design of the proposed development and reference is made to the development not being in accordance with polices BE1 and T5. The Authority no longer rely on this reason. I have though dealt with Policy T5 above.

6.24 Policy BE1 deals with siting and design of development. It sets out a number of criteria to ensure that a high standard of design is provided for. The appeal proposals accord with this policy and the recommendation of approval from the professional officers supports this contention.

6.25 Notwithstanding this point, if small changes are required to the layout the County have clearly set out that this can be done by the provision of a condition on the permission and would not therefore require permission to be refused. Indeed a further plan has been provided which makes small amendments to meet the concerns of the highway authority and this plan has been submitted with this evidence.

6.26 In conclusion it is considered that the appeal proposals are in accordance with the policies of the Local Plan and there is no reason to refuse permission in respect of policies set out in the plan.

(c) Hinckley and Bosworth LDF

6.27 The Core Strategy has now been adopted. This Core Strategy (**Appendix 12**) envisages, in Policy 1, the provision of a minimum of 1120 dwellings in Hinckley to 2026. The appeal proposals provide houses to meet this adopted policy requirement, as I consider below in the context of the draft Site Allocations DPD and the Strategic Housing land Availability Assessment (SHLAA).

6.28 In respect of Transportation Infrastructure, this section of the Core Strategy does not identify any constraining issues with the Coventry Road in respect of the deliverability of the 1120 dwellings. Policy 5 only refers to improvements to the A47/A5 'The Long Shoot' junction to provide for additional public transport priority measures. In respect of these improvements no scheme has been identified as yet. Any contributions to such a scheme, once identified, would have to be necessary and reasonably related in scale and kind to any proposed development.

6.29 Of course if there was a constraining issue in respect of Coventry Road this would have been identified as part of the credible evidence base for the Core Strategy. It was not so identified. In addition as I set out below the Site Allocations DPD and the SHLAA considered the appeal site in more detail and also did not identify a constraining issue in respect of Coventry Road.

6.30 The Draft Site Allocations DPD (**Appendix 13**) identifies the Greyhound Stadium as an acceptable site for residential development (HIN 04). The site selection and justification information contained in Appendix 2 refers to a number of points concerning the site, including the need to consider improvements to Nutts Lane to provide for access. This is not the only draft allocated site in this area, there are also sites HIN 1, 2, 3, 5 and 6 all of which carry a similar point about access, and all of which to some extent will also have an impact onto Coventry Road. All sites contribute towards the overall 1120 figure, of which 739 remain to be allocated. A total of 236 dwellings are envisaged from all of these sites. This represents 32% of the total remaining requirement.

6.31 The SHLAA (**Appendix 14**) which forms part of the evidence base of the LDF, also identified the acceptability of the Greyhound Stadium site and the assessment sheet is clear that in respect of accessibility there are no known constraints and in respect of access there is a note about access being from Nutts Lane or Waterside Park. The background methodology paper (**Appendix 15**), as I note above in paragraph 4.82) is clear that advice on these matters was obtained from the highways authority. There is no constraint identified relating to the Coventry Road. The assessment sheet also sets out an envisaged time scale of 2013 to 2018.

6.32 In overall terms therefore the evidence base to the LDF set out above has never identified traffic movements onto the Coventry Road to be a constraint. If it had of been then it would have been identified in the Core Strategy in respect of Policy 5. The current views of the highway authority are therefore clearly at odds with the views, proposals and policies contained within the LDF document, where there has never been any identified issue with access onto Coventry Road.

6.33 Further the trajectory to the Core Strategy includes sites from the SHLAA which are projected to come forward in the period from 2011. From the assessment sheet it would appear that this includes the appeal site in the period 2013 to 2018. The highway authority stance therefore

which amounts to a bar to development would equally apply to the other sites I set out above. This would affect some 32% of overall requirements in Hinckley, the sub regional centre identified in the RSS, which would be effectively prevented from being developed, putting at risk the achievement of the Core Strategy housing proposals.

6.34 Lastly, I would refer to the Policy response to the most recent application submitted in respect of this site. This is contained at **Appendix 23**. The views of the Forward Plans team, dated 11th January 2012, acknowledged the lack of a five year supply of housing and the fact that the proposals accord with Policies 1 and 5 of the adopted Core Strategy. The document also refers to the SHLAA and the fact that the site is suitable, available and achievable and as a result developable. Reference is made to the draft allocations document and the number of dwellings proposed is considered to be in conformity. The recommendation is that the proposals should be looked upon positively.

6.35 The Policy response notes concerns about prematurity. This of course has to be considered in the light of government policy contained in PPS3 and in particular paragraphs 69 and 73 which refers back to circumstances where there is not a five year supply of housing and also to the fact that Authorities should not refuse applications purely on the grounds of prematurity. In the current case it is clear taking account this policy advice that permission should be granted.

7. ISSUE 2: HOUSING LAND AVAILABILITY

7.1 In considering housing land provision requirements for the future in Hinckley and current housing supply information in the light of requirements set out in Government guidance and in particular PPS3, the view of the appellants is that there is a significant problem with housing land supply in respect of meeting requirements in the RSS. Indeed the Authority in the report to committee are also clear that there is not a current five year supply available and this is therefore a significant material consideration which overcomes any objection in principle from policy NE5.

The Housing Supply Requirement

7.2 The appropriate figures in considering housing supply are those contained within the adopted RSS. Policy 13A sets out an overall housing requirement for Hinckley and Bosworth over the period 2006 to 2026 of 9,000 dwellings. This equates to an annual provision of 450 dwellings.

7.3 Table 1 below considers the draft RSS requirement for Rugby (2006 to 2026) and sets out the five year requirement relating to Rugby Borough.

Table 1: RSS 2006 to 2026 for Hinckley and Bosworth

Hinckley and Bosworth Housing Requirement (Net)	31st March 2009 Dwellings	30th Sept 2009 Dwellings
Annual requirement 2006 to 2026	450	450
Total Requirement 2006 to 2026	9,000	9,000
Less completions to date	1,310	1,527
Residual requirement 2009 to 2026	7,690	7,473
Annual requirement (7,690 divided by 17 or 16.5 years)	452	453
5 year requirement	2,262	2,267

(c) Five Year Supply of Housing Land

7.4 Before considering the mathematical calculation relating to housing supply, it is relevant to note that the Government is particularly concerned to ensure that there is a real supply of housing to meet local needs, both in terms of general housing and also in terms of affordable housing. It is for this reason that they responded to the Barker Report with the consultation document entitled *Planning for Housing Provision* in July 2005, and published the new PPS3. The absence of a continuing supply of housing land has significant consequences in relation to people finding

homes and is in direct opposition to the thrust of PPS3, which is that everyone should have the opportunity of a decent home. Housing land supply, therefore, is not just related to a mathematical calculation, it is about ensuring that land comes forward early enough to meet real needs.

7.5 The 2005 Barker Report underlined the importance of reducing the volatility in the housing market, the need to enhance the flexibility of the housing market and the need to remove barriers to delivering the housing needed in our communities and to ensure the planning system is not a brake on an adequate and continuing supply of housing land in sustainable locations. This was endorsed within the July 2005 consultation paper *Planning for Housing Provision,* and indeed the policy set out in PPS3 relating to delivering a flexible supply of housing land (paragraphs 52 to 57).

7.6 Housing policy as set out in PPS 3 seeks to ensure that there is a flexible supply of housing land available (paragraphs 52 to 61), the objective being to ensure that the planning system delivers a flexible, responsive supply of land. Planning authorities have to have a strategy to ensure that sufficient suitable land is available to meet their housing requirements.

7.7 The LDD produced is to show how continuous delivery of a 15 year supply of housing from the date of adoption will come forward. In considering this element regard is to be had to emerging RSS figures. In particular Authorities are to identify deliverable sites to deliver housing in the first five years. Not only that, Authorities also have to ensure that there is a continuous five year supply available. In addition to the first five years there is also a need to identify sites for years 6-10 and where possible for years 11-15. A housing trajectory needs to be provided for the plan period.

7.8 In considering a five year supply of housing, sites are to be **available, suitable and achievable.** In addition, in determining how much land is required, sites should not be included where permission has not been granted, unless it can be demonstrated that the sites are developable and likely to contribute to housing in the time frame. Allowances for windfalls should not be included for the first ten years of land supply unless Authorities can show that there are local circumstances that prevent sites being identified. In respect of this latter point there are no such local circumstances in Hinckley and therefore no allowance for windfall should be made, particularly given that the emerging RSS refers to the need for the provision of land both within and adjacent to the urban area.

7.9 The advice note relating to Demonstrating a 5 year Supply of Deliverable Sites (**Appendix 8**) gives more information on sites being available, suitable and achievable and this advice has been taken into account in calculating the five year supply of deliverable sites. Of particular importance is the need for there to be a reasonable prospect that housing will be delivered on these sites.

7.10 Table 2 looks at the Borough situation at 31 March 2009 and 30 September 2009. The latter is the date utilised by the Local Authority in their calculations.

Table 2: Hinckley and Bosworth Borough Five year Supply of land at 31st March 2009 and 30th Sept 2009.

	RSS 2006-2026 450 p.a. 31st March 2009	RSS 2006-2026 450 p.a. 30th Sept 2009
Requirement	9,000	9,000
Dwellings Completed to 2009	1,310	1,527
Residual	7,690	7,473
Annual Requirement	452	453
SUPPLY		
Large sites		
Under construction	263	
Permissions	1,181	1,351
Less 10%	118	135
	1,063	1,216
Small sites		
Under Construction	52	
Small Sites (Utilising a rate of 72 per annum max	308	
	360	360
Urban Sites no permission	263	312
Total supply	1,949	1,888
Years supply	**4.3**	**4.17**
Shortfall in supply	**311**	**377**

Note: At 31st March permissions built to 2014 =1444 – 263 u/c

7.11 In respect of the detail relating to the figures in the above table, it is firstly important to note that account has been taken of the advice produced by DCLG in respect of Demonstrating a 5 year supply of deliverable sites.

7.12 I have dealt with the requirement part of the table in my evidence set out above. In respect of the supply side of the table it includes those dwellings under construction and those permissions which are expected to be built within the next five years. In coming to this total the level of dwellings on sites with permission which have not been started have been discounted by 10% to reflect that that it is unlikely all will be built in the five year period for a variety of reasons.

7.13 PPS3 requires sites to be deliverable and achievable. Sites with permission can easily move from one period into another due to market and other constraints (such as ownership, difficulty with access, problems with land conditions etc.). Sites may have gained permission purely as a valuation exercise with no intention of being built, particularly small sites. In addition, in an adverse market there can be redesigns on sites to improve their viability. This is particularly the case at present, where there is, for example, little market for apartments and redesigns are taking place to provide different forms of housing in response to the market. Such redesigns with larger housing types with gardens will reduce density. The appellants consider therefore it is reasonable to allow for a 10% discount on sites with permission. (This approach is supported by *"Housing Land Availability"* DOE, Planning and Research Programme Paper, Roger Tym and Partners, 1995 and has also been adopted albeit at different percentages in other authorities).

7.14 There is no allowance made for windfall sites in accordance with policy guidance in PPS 3, but it is envisaged that the small sites with permission, not under construction will be developed at a rate of 72 per annum over the five year period. This is a figure Hinckley have used in order to forecast likely completions on small sites in their calculations.

7.15 Provision has been made in both tables for developable sites within settlement boundaries without planning permission and the figures are those utilised by the Local Authority in their calculations. As with the large sites with permission there can be many things which will effect when sites will be built. It is not possible today to know with any degree of certainty the events that will inevitably affect production, particularly the economic circumstances. Certainly given the current economic conditions and future projections it is likely that there will be an impact.

7.16 Table 2 above shows that across the Borough as a whole at 31st March 2009 there was a **4.3** years supply with a shortfall of **311** dwellings. This level of housing supply decreases to a figure of **4.17** years supply and a shortfall of **377** dwellings when the supply is considered at 30th September 2009. This indicates a declining situation, perhaps to be expected given current economic conditions.

7.17 The table, in respect of the net figures for the submitted RSS, will also need to take account of likely demolitions over the five year period. The figure for demolitions is taken from the forecast demolitions in the submitted RSS of 26 per annum (Table 2, page 77). Thus if demolitions were to be included a further 130 dwellings over the five year period will also need to be provided to account for these forecast demolitions. This would increase the shortfall still further and reduce the years supply accordingly.

7.18 The figures utilised by the Local Authority at 30th September 2009 show a shortfall of **277** dwellings which they consider is a **4.4** years supply. This difference is due to the discount allowance adopted by the appellants.

7.19 In summary it is clear, therefore, that the Authority fails to be able to show the necessary five year supply of available land in the Borough. In such circumstances sites should be brought forward to help redress the situation.

Required Course of Action

7.20 PPS3 is clear on the need to rectify the above situation in respect of divergence from trajectories. A management action is required.

7.21 The policy is also clear on what should happen where there is less than a five year supply of housing land available. Paragraph 71 states:

> **"Where Local Planning Authorities cannot demonstrate an up-to-date five year supply of deliverable sites, for example where Local Development Documents have not been reviewed to take into account policies in this PPS or there is less than five years supply of deliverable sites, they should consider favourably planning applications for housing, having regard to the policies in this PPS including the considerations in paragraph 69"**

7.22 Paragraph 69 relates to aspects that applications submitted should have regard to. These are aspects covered in the main planning evidence. The clear situation in Hinckley is that based on the most up to date information, a five year supply cannot be demonstrated. On this basis, provided that the appeal proposal meets other requirements, then planning permission should be granted.

7.23 Even if there were to be a five year supply available the DCLG advice is that in areas with significant demand and need for housing, which would I suggest be applicable to this area, particularly given the demand in respect of affordable housing, which I go on to consider in detail below, that Local Planning Authorities should not necessarily treat the five year provision figures as a ceiling which cannot be exceeded, and permission should still be granted in my view.

7.24 The appeal site is a site that was considered by the Local Authority within the SHLAA published in October 2008. The SHLAA determined that the site was brownfield land that was developable in the period 2013 to 2014. It was also considered that the site was suitable, available and achievable. At a density of 40 dph it was considered that some 64 dwellings could be built on the site. On the basis of the acceptability of the site for development, the fact it is a brownfield site

and that there is a shortfall of housing land supply, it is clear that this is a site which should be granted planning permission now.

Affordable Housing

7.25 In considering the provision and availability of housing land, as well as looking at the general supply situation it is also relevant to consider the supply of affordable housing within the Borough. The provision of affordable housing can be a material consideration in respect of any application.

7.26 In considering this point it is relevant to go back to the requirements set out in Policy 15 of the Core Strategy, which requires a minimum of 2090 affordable homes to be provided 2006 to 2026. This equates to a figure of 104.5 dwellings per annum. Since 2006 there have been 213 completions of affordable houses an average of 71 dwellings per annum. This is 32% below the required minimum provision per annum.

7.27 There is therefore, a significant under provision of affordable housing against the established need figure and an urgent need to provide affordable housing in Hinckley. The appeal site is proposing that a number of affordable houses will be provided. Given the continuing shortfall in affordable housing provision in the town, the provision of this affordable housing is a clear material consideration that mitigates in favour of the site being granted planning permission. This was also the view of the Inspector at the June 2008 appeal in Long Lawford, Rugby (**Appendix 21**) where he stated in paragraph 27 that:

> **"I consider that this harm (*from the appeal proposals*) would be outweighed by the contributions to the supply of affordable housing identified in the Council's Housing Needs Survey and to the step-change in housing delivery encouraged by PPS3. For these reasons..... I conclude that there are material considerations which have more weight than the development plan in this case, and that I should allow the appeal."**

7.28 A similar viewpoint was also put by the Secretary of State in respect of the South Derbyshire appeals in paragraph 16 where she considered the provision of affordable housing was a "weighty material consideration" (**Appendix 22**).

7.29 PPS3 also sets out in paragraph 76 the need for Authorities to report on progress against housing targets and to set out what actions are to be taken where actual performance does not reflect the

housing target. This is particularly pertinent to the affordable housing situation which clearly falls short of the targets and requires action to be taken to rectify the situation.

Summary

7.30 In summary in respect of the housing situation within the District I have established above the following points. Firstly the site, being an acceptable previously developed site which now forms in physical terms part of the urban area, can be granted permission irrespective of the housing supply issue . This would be in accordance with meeting housing requirements set out in the RSS and the Core Strategy and the fact that the SHLAA has identified the acceptability of this site for development. Notwithstanding this point housing supply has been considered.

7.31 In respect of the RSS there is agreement between the appellant and the Authority that there is currently not a five year supply of housing available. This gives an added presumption in favour of granting permission for housing on this site.

7.32 In addition there is a lack of affordable housing coming forward to meet identified requirements. In these circumstances the provision of additional affordable units on the appeal site also represents a material consideration in favour of a grant of permission.

8. ISSUE 3: IS THE LAYOUT ACCEPTABLE?

8.1 The third reason for refusal considers there are problems with the layout and design and that it does not comply with highway requirements and as a result fails to provide for the safe and free movement of all highway users through the development. This is now no longer put forward by the Authority as a reason for refusal.

8.2 The development provides for a density of some 34.5 dwellings per hectare including the open space areas and 38.7 d.p.h., excluding the public open space area. It accords with the advice in PPS3 to exceed 30 d.p.h. It also accords with the way the Authority calculates density as part of the Core Strategy policy 16. The comments on the application from the policy section of the Authority are clear that on sites over 2 hectares the Authority utilise a figure of 62.5% of the total area to identify residential capacity, which the Authority put at 64 dwellings on this site. The layout therefore makes best use of land in accordance with government policy in PPS3.

8.3 The various discussions have led to a number of changes to the layout that was considered by the committee and the planning officer in the additional report to committee was clear that:

> **".....The amendments have improved the scheme from an urban design perspective and have improved security and surveillance and are considered to be acceptable."**

8.4 The view of Leicestershire in respect of the layout in their response to the Authority was to raise concerns predominantly to the shared surface areas. This response notes that the Authority may wish to deal with this aspect by way of condition. It is clear therefore, in respect of layout considerations that the application could have been approved subject to a condition in respect of matters referred to by the Highway Authority.

8.5 Circular 03/2009 which deals with costs awards in appeals, in paragraph B25, states that wherever practicable the Authority will be expected to show that they have considered the possibility of imposing relevant planning conditions to allow development to proceed. Conditions should be considered before refusing planning permission. Where conditions could deal with a planning ground utilised in a refusal of permission then the Authority risks an award of costs where it is clear that suitable conditions would have enabled the development to go ahead. Indeed paragraph B29 sets out that this is one of the specific examples where costs are likely to be awarded. The third reason for refusal of permission, therefore, in the light of this, clearly represented unreasonable behaviour because the issue clearly could have been dealt with by condition.

8.6 In addition it is also clear that the issues could also have been dealt with by deferring the consideration of the application and by the provision of additional information. Again this relates back to the advice of the planning officers in the report to committee. There was no reason not to accept the officers advice in this respect and the committee clearly acted in an unreasonable manner for refusing the application on this basis.

9. ISSUE 4: LEGAL AGREEMENT REQUIREMENTS

9.1 Accompanying this appeal is a legal agreement that provides for a variety of financial and other contributions that are considered necessary in order for the development to take place. These are considered to meet the tests set down in Circular 5/05. A planning obligation must be:

- relevant to planning;
- necessary to make the proposed development acceptable in planning terms;
- directly related to the proposed development;
- fairly and reasonably related in scale and kind to the proposed development; and
- reasonable in all other respects.

9.2 The elements provided for within the legal agreement are:

- **Affordable Housing** – 15.5% (13 units) will be provided on site.
- **Transportation** - The provision of £60,413 to help provide for the promotion of public transport in the form of bus shelters, travel packs and bus passes. £8,400 in respect of pedestrian/ cycling improvements.
- **Public Open Space** – A contribution of £48,411 to the provision and maintenance of offsite formal space. Maintenance contributions of £60,141 and £29,468 in respect of the provision of a LEAP and informal open space respectively.
- **Education, Libraries and Civic Amenity** – A total contribution of £366,706 has been agreed.
- **Police –** A contribution of £50,904 has been agreed.

9.3 As part of the application a viability assessment was submitted to set out why the level of contributions is the maximum that can be provided.

Affordable Housing

9.4 In respect of affordable housing, the policy requirement in the Core Strategy Policy 15 seeks the provision of 20% affordable housing on schemes of more than 15 dwellings in Hinckley. This figure is acknowledged to be a starting point and will be negotiated on a site by site basis taking into account a number of matters including viability. As part of the consideration of this

application the appellants submitted a viability assessment and proposed the provision of a 15.5% level of affordable housing (13 units). Given the viability assessment, together with the need for affordable housing and the five year supply problem, this was accepted by the officers as reasonable and indeed does not form part of any reason for refusal.

9.5 The viability assessment is important because it took account of all other section 106 requirements which are set out above. Any suggestion that further contributions should be made would inevitably impact on the viability of development on this site and would either mean the development would not take place or would mean a reduction in other contributions, such as that relating to affordable housing.

Transportation

9.6 The reasons for refusal make reference in the second reason for refusal (now no longer pursued by the highway authority) for the need for adequate improvement works for the benefit of pedestrians and cyclists to be carried out to Nutts Lane. The concern of the County was that there was not sufficient commitment to works to encourage cycling and walking for short journeys. The Highways Authority seek improvement works to Nutts Lane for pedestrians and cyclists, including crossing the Ashby canal and improvements to the Hinckley Area Cycling Network Plan.

9.7 The appeal proposals make provision for a financial contribution towards improving pedestrian/ cycling facilities.

9.8 The application recommendation was for the application to be granted subject to the execution of an agreement under S106 relating, to amongst other things to highway improvements. The view off the officers was that this matter could be dealt with without refusing permission. Given the views of the professional officers it was clearly unreasonable for the members then to refuse planning permission for the proposed development. In accordance with paragraph B27 of the costs circular the appellant is being asked to address a reason for refusal which could have been overcome by other means.

9.9 Notwithstanding this point, the appellant considers that the extent of improvement works suggested by the County Council were not reasonably related in scale and kind to the proposed development, given the offer to make a contribution towards improvement works to benefit pedestrians and cyclists, and given the very real viability difficulties in respect of the appeal proposals. It has now been agreed that subject to some improvement works, identified in the highways evidence, and to be undertaken before the occupation of the 25th dwelling, that there is now no objection to the appeal proposals in respect of the Nutts Lane issue.

9.10 In summary, pedestrians and cyclists can already utilise Nutts Lane and the appeal proposals ensure that they can continue to use this route by the provision of a footpath/ cycle link from the site onto Nutts Lane. Nutts Lane has pedestrian walkways both to the north and the south. This will encourage the use of this route both towards the existing employment locations to the south and to the north towards the town centre.

9.11 It is acknowledged that the bridge over the canal is narrow but the replacement of this bridge with a new bridge, or the provision of a new pedestrian / cycleway bridge would be completely out of scale with a development of only 84 dwellings, particularly given the cost of other contributions made.

9.12 In addition it is considered that any further contributions than that proposed would not be necessary to make the proposed development acceptable in planning terms nor would it be directly related to the proposed development.

9.13 In respect of the first point, the proposed development obtains access from the existing development to the west. There will be no vehicular traffic movement onto Nutts lane from the development. There is a proposed pedestrian and cycleway access point, it is though not envisaged that this will produce any significant flows of either pedestrians or cyclists onto Nutts Lane.

9.14 A further relevant consideration is that in addition pedestrians and cyclists also have an alternative access to the site, together with the proposed vehicular access point. This allows for movement up to Coventry Road, through the existing estate along Paddock Way. This incorporates specific provision for cyclists along cycle lanes over much of the distance to Coventry Road alongside the carriageway. Existing and adequate provision therefore already exists for pedestrians and cyclists from the site to Coventry Road which would encourage use. Additional provision over and above that offered is therefore not necessary to make the proposed development acceptable in planning terms.

9.15 Given the small amount of pedestrian and cyclist traffic that is likely to be produced onto Nutts Lane any request for improvements to this Lane, given the level of existing traffic, is not directly related in scale to the proposed development because it goes far beyond endeavouring to deal with the small increase in pedestrians and cyclists.

9.16 There is therefore no reason for any further contributions to be made to improve Nutts Lane as a result of this development.

10. ISSUE 5: OTHER MATERIAL CONSIDERATIONS

10.1 The last area for consideration relates to the first reason for refusal and it relates to whether there is an unacceptable increase in traffic on Coventry Road as a result of this development. This is an issue that has been addressed by the transport consultants and is dealt with in detail in the transportation evidence.

10.2 As the evidence shows there would not be a material impact on the Coventry Road and Dodwells Roundabout and this reason for refusal cannot be substantiated. In addition, it is relevant to note that the Core Strategy does not identify any difficulties with new development traffic entering onto Coventry Road to meet the 1120 dwelling requirement and there is nothing in the SHLAA nor the draft Site Allocations DPD which sets out that there is any constraint in respect of this issue in respect of either the appeal site or adjacent sites coming forward for development

10.3 Objectors to the proposals raise a number of further concerns. These are particularly related to:

- The site being countryside
- Access and highway concerns
- Noise and disruption of construction vehicles
- Overlooking /loss of privacy
- Drainage issues
- Open Space issues
- Noise from railway and industrial units

10.4 Most of these have been considered within the evidence set out above or within the highway evidence; however, the issues which objectors refer to which are not covered in detail above are considered below.

Noise and Disturbance

10.5 With regard to the potential to noise and disturbance from construction vehicles, it is accepted that whilst this is only for a comparatively short period it is necessary to ensure that restrictions are outlined to ensure that such noise and disturbance that is produced is kept to a minimum.

10.6 It is suggested that a normal working hours condition should therefore be applied in order to help safeguard neighbours amenities.

Overlooking / Loss of Privacy

10.7 With regard to loss of privacy, concerns and overlooking the appeal proposals have taken full account of neighbouring properties and the development provides acceptable distances and space standards. Again there is no objection to this by the Authority who have considered the layout in significant detail.

Drainage

10.8 Drainage has been considered in respect of this site and the local Authority is satisfied that there are no overriding objections to the development in respect of this issue.

10.9 It is not considered that there are any material considerations that would indicate that permission should not be forthcoming on this site.

11. SUMMARY AND CONCLUSION

11.1 This evidence has considered the reasons for refusal put forward by Hinckley and Bosworth in refusing the appeal application. Since refusing the application the Authority have confirmed that they no longer rely on two of the reasons (2 and 3) put forward and indeed it is understood that they are also proposing to withdraw from the first reason for refusal.

11.2 In respect of national guidance PPS3 sets out information in respect of the need to ensure a flexible responsive supply of land. In considering the supply of land sites have to be deliverable, available, suitable and achievable. Specific deliverable sites have to be shown for the first 5 years of Plan Period together with a further 5 years and where possible for Years 11 to 15.

11.3 Advice is given within PPS3 in relation to the treatment of sites to determine how much land is required and it is clear that windfalls should not be included within the first 10 years of supply. Where a Local Planning Authority cannot demonstrate an up to date 5 year supply of deliverable sites it should consider favourably planning applications for housing having regard to other policies in PPS3. This policy is supplemented by the DCLG advice note "Demonstrating a 5 Year Supply of Deliverable Sites".

11.4 The key concern of housing delivery in respect of land supply was also set out within the Green Paper "Homes for the Future".

The Development Plan

11.5 In respect of the Development Plan **The East Midlands RSS** requires the provision of 9,000 dwellings to 2026. Hinckley is considered to be a main location for growth and it is acknowledged urban extensions will be required.

11.6 The **Hinckley and Bosworth Local Plan** housing provision figures are no longer relevant. Other polices have to be seen in the light of the more recent policies in the RSS and the adopted Core Strategy. Policy REC1 is no longer relevant because the site is not used for recreational purposes. Policy NE5 which relates to protection of countryside is applicable to the site, but in the light of the need to release land outside of Hinckley to meet housing requirements in the development plan and the acknowledgement of the SHLAA that the site is suitable for development, together with the shortfall in five year supply of housing, are important material considerations. In addition it is relevant to note that the development of the site will not have an adverse impact on the countryside.

11.7 With regard to other policies the development accords with policy RES 5 and make proper provision for infrastructure and facilities in accordance with IMP1. In respect of transport, an

acceptable Transport Assessment was submitted, the development does not require significant additional improvements to Nutts Lane, does not result in unacceptable increase in traffic onto Coventry Road, nor does the layout and design fail to provide for the safe and free movement of highway users through the development. The proposals accord with T5 and T11. Lastly in respect of design the proposals accords with policy BE1.

11.8 In respect of the **Hinckley and Bosworth LDF,** the **Core Strategy** requires the provision of a minimum of 1120 dwellings to 2026. The Core Strategy does not identify traffic entering Coventry Road as a constraining issue. The highways authority did not raise concerns regarding the Coventry Road in respect of the **SHLAA**, which identifies the site as suitable for development. The **Draft Site Allocations DPD** also identifies the site for development, again with no concerns regarding traffic entering the Coventry Road.

11.9 In the light of the above the view of the highway authority regarding traffic onto Coventry Road effectively would prevent the development not only of the appeal site but also of a significant number of other sites allocated in the Draft Site Allocations Document.

Supply of Housing Land

11.10 In considering the five year supply of housing land utilising the existing RSS figures which gives a requirement of 9,000 dwellings 2006 to 2026. Across the Borough as a whole at 31st March 2009 there was a **4.3** years supply with a shortfall of **311** dwellings. This level of housing supply decreases to a figure of **4.17** years supply and a shortfall of **377** dwellings when the supply is considered at 30th September 2009. This indicates a declining situation, perhaps to be expected given current economic conditions.

11.11 The Authority agree that they cannot demonstrate a five year supply of housing land, although the figures are slightly different to mine.

11.12 The Authority, therefore, based on the most up to date information, fails to be able to show the necessary 5 year supply of available land. PPS3 is clear on the need to rectify a situation where there a 5 year supply cannot be provided. In such circumstances Local Authorities should consider favourably planning applications for housing having regard to policies in PPS3

Affordable Housing

11.13 There is an existing need to provide for affordable housing within the district. To date completions have been significantly well below those needed to meet overall requirements. The appeal proposals will provide a small but important element of affordable housing. This is a clear

material consideration that mitigates in favour of the release of the appeal site, irrespective of the 5 year supply of housing land.

Layout Considerations

11.14 The third reason for refusal, which was subsequently withdrawn by the Authority, related back to concerns expressed by the highways authority over some elements of the layout. The planning officers did not have any design objections to the layout and the highways authority maintained that their concerns could be dealt with by condition. There was and is therefore no reason to refuse permission for the proposed development in respect of layout considerations.

Legal Agreement Requirements

11.15 The appeal proposals make full provision for those elements that are reasonably related to the proposed development. Concern was expressed about the need for further contributions to be made to improve Nutts Lane. The appeal proposals include a financial improvement in respect of improvements to footpaths / cycleways. It was agreed that improvements which encompassed the provision of a small length of footpath and some ancillary elements would be acceptable. The Authority subsequently determined they would not rely on this reason for refusal. This was a matter that could easily have been dealt with without refusing permission for the development. There was and is therefore no reason to refuse permission for the proposed development in respect of legal agreement considerations

Other Material Considerations

11.16 An important material consideration in respect of this appeal relates to five year supply issues and the evidence has shown that thee is a shortfall in the five year supply of housing. On this basis given the lack of any other objections by the Authority to the development of this site there are no other material considerations, from the viewpoint of the Authority, that would indicate that permission should not be granted. Consideration has been given to objections raised by others and again it is not considered that there are any issues that have been raised by local residents that create material considerations that would indicate that permission should not be forthcoming on this site

Conclusion

11.17 It is considered that there is a clear difficulty in terms of housing supply within Hinckley. This is evident through a lack of 5 year supply of housing land based on the most up to date

information. This evidence also highlights that there is a significant under provision of affordable housing and a very urgent need to provide affordable housing. There is a need therefore to release additional sites in order to rectify this situation and to provide for necessary affordable housing. The appeal site is considered by the Authority to be suitable for housing. On this basis it is submitted that this appeal should be allowed.