

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL UNDER SECTION 78

Final Comments prepared for Mr & Mrs Morley against the refusal of application 24/00872/OUT by Hinckley & Bosworth Borough Council for outline planning permission for the erection of a single self-build dwelling (all matters reserved except for access) land south west of Sibson Road, Sheepy Parva, Leicestershire, CV9 3RE (Easting 433254 Northing 301328).

Application 24/00872/OUT was received by the LPA 16th September 2024 and refused by notice dated 11th November 2024.

May 2025 Ref:3361154

Simon Cheshire BA(Hons) DipTP MRTPI

1. The starting point for the determination of any proposal remains the Development Plan, and Section 38(6) of the Planning and Compulsory Purchase Act 2004 confirms this statutory requirement and the NPPF (2024) reiterates the approach where planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions and where planning applications conflict with an up-to-date plan, development permission should not usually be granted unless other material considerations indicate otherwise.

2. On the 8th April 2025, the Planning Inspectorate informed the LPA via email the appeal related to the development of up to 95 dwellings, together with associated access, open space and landscaping at Land East of The Common, Barwell, LE9 8BR (PINS Ref: 3348387) could be taken into account regarding the determination of the current appeal, as the conclusions of the Inspector raised significant material considerations regarding all adopted policies contained within the HBBC 2009 Core Strategy and associated documents as below:

"PINS Reference: APP/K2420/W/25/3361154

LPA Reference: 24/00872/OUT

Site Address: Land SW Sibson Road, Sheepy Parva, Atherstone

Good afternoon,

I write to you with reference to the above appeal, in light of the correspondence below.

The Inspectorate would not normally accept any further submission of evidence at this juncture. However, the decision referred to was published after the appeal was submitted, so, on this occasion, we are willing to accept and admit this additional evidence to the appeal on the basis your Council will be afforded to comment on it.

Therefore, you may wish to address this matter in your statement.

Could I also politely request you add this decision with the accompanying emailed context to the published documents for the appeal so that interested parties may also consider and comment by the deadline.

Kind regards,

Rachel Martin"

3. At paragraphs 12 and 41 of The Common appeal decision the Inspector states:

"The lack of five-year supply, the continuing delay with previously identified sites coming forward and the uncertainty over the timescale of examination and adoption of the emerging local plan are factors to which substantial weight needs to be given. Consequently the Core Strategy adopted in 2009 has to be regarded as out-of-date as the development strategy put forward has not been achieved. This reduces the weight that can be given to Core Strategy policies which restrict development including on sites in a Green Wedge."

And

"On the main issues I have found that the principle of development in this area of countryside conflicts with SAMD policy DM4 but this only carries limited weight because of

the Council's HLS position. The proposal would cause some moderate harm to the rural landscape character of the area and to a limited geographical area but it would not result in a significant adverse effect which is the test set out in criteria (i) of Policy DM4 and criteria (a) of Policy DM10."

4. As raised in the Grounds of Appeal, on the 30th July 2024, the Deputy Prime Minister wrote to all local authority Leaders and Chief Executives in England stating:

"Underpinning plan making – at the strategic and local level – must be suitably ambitious housing targets. That is why we have confirmed today that we intend to restore the standard method as the required approach for assessing housing needs and planning for homes, and reverse the wider changes made to the NPPF in December 2023 that were detrimental to housing supply.

But simply going back to the previous position is not enough, because it failed to deliver enough homes. So, we are also consulting on a new standard method to ensure local plans are ambitious enough to support the Government's commitment to build 1.5 million new homes over the next five years. The new method sees a distribution that will drive growth in every corner of the country."

5. Although the Inspectorate allowed the LPA the opportunity comment on conclusions of the Inspector in relation to The Common appeal decision that was issued on the 13th March 2025, no substantive reference is contained in the LPA Statement. This is despite the significant material consideration that the 2009 Core Strategy had failed and all policies associated with it were out of date, wholly reiterating the words of the Deputy Prime minister who said, "simply going back to the previous position is not enough, because it failed to deliver enough homes."

6. Instead of fully recognising and accepting the current policy position, paragraph 2.13 of the LPA statement attempts to justify the reason of refusal by stating:

"Upon reviewing the latest permissions during the current base period, to date, there have been permissions (some pending Legal Agreements) for 7 self-build dwellings across three separate permissions – 23/01229/OUT (5 CSB dwellings), 24/00286/OUT (1 CSB dwelling – pending Legal Agreement), and 24/01155/FUL (1 CSB dwelling – pending Legal Agreement). The Council therefore confirms that whilst formal monitoring is yet to take place, the current shortfall will have been met and, is likely to have been surpassed before the end of the current base period."

7. On this matter the Right to Build Task Force Custom and Self-Build Planning Guidance PG3.3: NPPF and Right to Build legislation – Delivering appropriate permissions (January 2024 – Version 3) states:

"Where there are no policies and/or LPAs are not meeting their duty in relation to provision of CSB plots, the fact of an application delivering CSB plots should be given significant weight in the planning balance. Where there are no planning harms, it is possible that meeting the LPA's statutory duties will be sufficient to indicate an approval, even in the case of a minor departure in relation to a local policy.(My emphasis)

However, notwithstanding the above, where a council cannot demonstrate that plots are being secured there is an increased risk of approval by appeal and this should be considered in the context of the approach taken in terms of planning for sites and granting permissions. Availability of CSB plots should be a factor in the determination of the application and given significant weight in the planning balance."(My emphasis)

8. Using the application numbers supplied and cited by the LPA above, they are claiming halfway through Base Period 10, they have covered the shortfall rolled over from Base Period 9. Interestingly, 5 of the self-build plots relate to application 23/01229/OUT that is in fact those allowed on appeal as part of The Common appeal decision (13th March 2025) and this is the only reference that is made by the LPA to the significant material considerations weighed in The Common appeal decision. These 5 plots however should be discounted from the current Base Period 10 figures for the same reason given by Inspector Ian Radcliffe in relation to the Sutton in the Elms appeal decision included in Appendix 1 of the Grounds of appeal, where he concluded at paragraphs 28 & 29

“The current position, as of 30 October 2022, is that since the introduction of the Act 3 plots have been provided to meet the demand for 48 plots. This leaves an unmet demand for 45 plots. This is a considerable shortfall. It was agreed by the parties at the hearing that with permission having been granted for the Lutterworth East Strategic Development Area (SDA) that an additional 15 plots will be provided. However, as the Council’s appeal statement notes, these plots are not yet available and so cannot be included.(my emphasis)

It is anticipated that permission may well be granted in 2023 for the Scraftoft SDA which in time will provide 10 self-build plots. Considerably more plots though than those provided by the SDAs will be needed to address the burgeoning demand. Next year with the inclusion of register entries from 2019 – 2020 demand will almost double and in the following two years demand will continue to increase by significant amounts.”

9. Following the same logic, the 5 plots associated with The Common appeal are not yet available so cannot be included to cover the existing shortfall from Base Period 9. Application 24/00286/OUT was submitted to the LPA on the 25 March 2024 by myself acting as the agent for a single self-build dwelling, which is again located outside a current settlement boundary and has an officer recommendation of approval following the submission of the associated UU to the LPA legal department on the 14th April 2025.

10. Application 24/1155/FUL was submitted by Marrons on behalf of Mr Godden is also for a single self-build proposal outside a current settlement boundary and again is recommended for approval subject to the submission of a valid UU. The documents supporting application 24/01155/FUL are listed in the public domain via the LPA Public Access website and permission was sought from Mr Paul Wakefield who provided his legal opinion to Marrons that these documents can be considered in the determination of the current appeal, given the LPA have cited the proposal within their statement and is relying on it as a material consideration.

11. For ease of reference, the legal opinion of Paul Wakefield and the updated HBBC self-build assessment supporting application 24/01155/FUL are included in Appendix 1 & 2. When combined with the conclusions of the Inspector regarding The Common appeal, it is clear the 2009 Core Strategy has failed, and the LPA are unable to demonstrate a robust Self-build Housing Register. Regarding the emerging Local Plan for 2020-2041, the LPA acknowledge between 15,000 and 20,000 new homes will need to be built within the Borough during this period, the vast majority of which will be built outside existing settlement boundaries. As raised within the Grounds of Appeal, the emerging Local Plan continues to identify Sheepy Magna as a ‘Rural Village’ where there will be **“A presumption of a minimum of 50 dwellings in each rural village to help maintain services in those settlements.”** On this matter the LPA agree the settlement boundary of Sheepy Magna is currently very tightly drawn and certainly would not allow an additional 50 dwellings to be accommodated, meaning the existing settlement boundary will need to be re-drawn at some point in the future and this may also include extending the current settlement boundary to incorporate Sheepy Parva and the appeal site.

12. Furthermore, the SPNP notes there is urgent need for more bungalows to become available within the Parish to materially address the problem of under occupancy by older residents who remain living former family homes. The appellant is already a resident of the village and has raised his two children to the point they now wish to vacate their current bungalow and build a new property for their own specific family needs and remain in the village close to their existing friends and family.

13. On this basis the Inspector is invited to walk from the appellants home address of Alba on Mill Lane Sheepy Parva, CV9 3RL to the appeal site during the site visit and then down to the primary school which is basically the heart of the twin villages of Sheepy Magna and Sheepy Parva. Whilst doing so the comments of the Conservation Officer can also be fully considered who states:

“A small section of front boundary hedgerow would need to be removed to provide a suitable vehicular access to the site. In my opinion the minor loss only of a typical and historic landscape feature would result in a negligible visual change within the setting of the two listed buildings and will not affect how their respective significance is appreciated or understood. The access for the proposed development will therefore not cause harm to the significance of any designated heritage assets, so consequently the proposal accords with Policies DM11 and DM12 of the Site Allocations and Development Management Policies DPD, section 16 of the NPPF and the statutory duty of Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990.”

14. From this perspective and in terms of the SPNP and the requirement accommodate a minimum of 50 additional dwellings up to 2041 in Sheepy Magna / Sheepy Parva, The Right to Build Task Force states:

“Balancing desire to manage settlements, neighbourhood and infrastructure with statutory requirements to support self/custom build housing can be done. A single dwelling or small minor development, brought forward by/for local residents is the type of small-scale organic growth which was historically a cornerstone of English housing. (My emphasis) Approving proposals for minor development of a few modest homes outside but proximate to a settlement, or supporting family homes in urban backland or gardens, are unlikely to jeopardise strategic spatial strategy or strategic policies.”

15. On this basis the aim of any Neighbourhood Plan should be to support existing residents and not to constrain or penalise them when a policy compliant application is submitted for determination as in the case with the current appeal. The express aim of the 2015 Act and Section 123 of the Act that amends section 2A of the Self-build and Custom Housebuilding Act 2015, is to ensure that only land permissioned explicitly for self-build and custom housebuilding will qualify towards a relevant authority's statutory duty to meet demand for self-build and custom housebuilding in the authority's area.

16. This appeal is accompanied by a valid UU and will be the first genuine self-build plot to appear on the LPA self-build register in Base Period 10 if the appeal is allowed. With only 6 months remaining before the end of Base Period 10, the evidence produced in this appeal which is corroborated the by the Marrons self-build assessments of January 2023 and August 2024, clearly demonstrate other current and significant material considerations indicate the reason of refusal is simply overstated. Via the reserved matters the LPA can ensure such a single self-build dwelling can be readily assimilated into the existing street scene and would cause very limited harm to the character of the area given the equally limited geographical area in which it is located, and would therefore, not result in a significant adverse effect which is the test set out in criteria (i) of Policy DM4 and criteria (a) of Policy DM10, as per paragraph 8.63 of the delegated report below:

“No details of the design of the development have been submitted at this stage. Nevertheless, it is considered that the scheme can be designed to prevent any significant harm to the residential amenity of neighbouring dwellings or the future occupants of the scheme at the Reserved Matters stage in accordance with the Good Design Guide, Policy S8 of the Neighbourhood Plan, and Policy DM10 of the SADMP.”

17. Based on the material considerations raised above, the LPA have failed to provide cogent and compelling reasons to substantiate the reason of refusal in terms of the principle of development. Paragraph 8.80 of the delegated report states it *“is acknowledged that the Council has a shortfall in the supply of custom and self-build developments of 6 or fewer dwellings from base period 9, with 21 or fewer permissions now required within Base Period 10 31st October 2024 to 30th October 2025.”* The actual reality is, the LPA have not issued a single self-build permission accompanied by a valid UU since the beginning of Base Periods 9 or 10 and will need to issue a minimum of 20 self-build plots in the next 6 months. This means the LPA have only approved on average one or two single self-build plots per annum since the HBBC Self Build Register was originally compiled.

18. When viewed from the perspective of The Common appeal decision (13th March 2025) and the implications this now has on all planning decisions issued by the LPA, it is considered the LPA has not provided a cogent or compelling reason of refusal, but rather overstates a reason of refusal that cannot be reasonably substantiated when subject to detailed scrutiny. The specific material considerations of this appeal clearly demonstrate the appeal proposal is situated within the twin villages of Sheepy Parva and is within walking distance to all of the shared amenities and facilities of Sheepy Magna and is therefore equally sustainable in this respect. The limited harm identified by the LPA is significantly outweighed by the other material considerations related to this proposal and it is respectfully suggested the appeal can be allowed on this basis.