HINCKLEY AND BOSWORTH BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL UNDER SECTION 73

Hinckley & Bosworth Borough Council

APPEAL BY MR DAVID THOMPSON AGAINST THE REFUSAL OF OUTLINE PLANNING PERMISSION FOR THE ERECTION OF A BUNGALOW AT 15 BARLESTONE DRIVE, HINCKLEY.

HBBC REFERENCE: 11/00347/OUT

THE PLANNING INSPECTORATE REFERENCE: APP/K2420/A/11/2167103/NWF

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1.0 Section 1: Introduction

1.1 This statement is to be read in conjunction with the previously submitted Appeal Questionnaire papers, in full support of the decision of Hinckley and Bosworth Borough Council to refuse outline planning permission for the erection of a bungalow at 15 Barlestone Drive, Hinckley.

2.0 Section 2: Site Description and Proposal

2.1 This is an outline planning application for 1 no. bungalow of 2 bed configuration with the garden curtilage of 15 Barlestone Drive. Access was the only matter for determination at this stage, with all other matters being reserved for approval at a later date.

2.2 Vehicular access to the new dwelling is proposed from Weston Close, to the eastern corner of the site, off Roston Drive.

2.3 Whilst not formally seeking approval for layout at this stage, the application was accompanied by an indicative layout plan which shows the dwelling with an approximate width of 7.5 metres and minimum and maximum length of 9.5 and 11.5 metres, respectively, and a maximum height of 4.5 metres.

2.4 The principle issue in this appeal is the un-characteristic form of development and its impact upon the character and appearance of the area. There are also two further issues; the lack of any definitive sustainable design measures within the proposed development and the failure to address the increase in pressure placed on the play and open space facilities of the local area.

3.0 Section 3: Site History

3.1 No relevant planning history.

4.0 Section 4: Government Guidance

4.1 Planning Policy Statement 1: 'Delivering Sustainable Development' refers to the delivery of sustainable development through the planning system. It advises that planning policies should protect and enhance the environment, promote high quality design and reinforce local distinctiveness.

4.2 Planning Policy Statement 3: ‘Housing’ sets out the national planning policy framework for delivering the Government’s housing objectives. This document states at paragraph 12 that good design is fundamental to the development of high quality new housing. Paragraph 13 reflecting guidance in PPS1 states that good design should contribute positively towards making places better for people. Design which is inappropriate in its context, or which fails to improve the character and quality of an area and the way it functions, should not be accepted. Paragraph 16 lists matters to be considered when assessing design quality; this includes assessing the extent to which the proposed development is well integrated with and compliments, the neighbouring buildings and the local area more generally in terms of scale, density, layout and access.

4.3 The Community Infrastructure Levy (CIL) Regulations 2010, Part 11, Regulation 122 provides a statutory duty in respect of planning obligations and requires them to be necessary, directly related and fairly and reasonably related in scale and kind to the development proposed. The Regulation does

not replace Circular 05/2005 but gives it a statutory foothold in planning legislation.

4.4 Government Circular 05/2005: Sets out the Secretary of State's policy on Planning Obligations, and should be given significant weight in decision making and developer contributions.

4.5 The National Planning Policy Framework (Draft). The draft National Planning Policy Framework was published for consultation on 25 July 2011. The Government's intention is to reduce the current 1,000 pages of national planning into a `clearer, simpler, more coherent framework, easier to understand and easier to put into practice'. The Inspector in a recent inquiry considered that although the draft was a material consideration he gave it little weight because it is a consultation and subject to change. This approach was accepted by the Secretary of State in a letter of 24 October 2011, in his consideration of the inspector's report. The current national policies therefore continue to apply with significant weight.

5.0 Section 5: The Development Plan Policies

5.1 The Development Plan policies referred to for the purposes of the application were:

5.2 Hinckley and Bosworth Borough Council Local Development Framework: Core Strategy (adopted December 2009);

5.3 Policy 1: 'Development in Hinckley' of the Local Development Framework Core Strategy seeks to diversify the existing housing stock in the town centre to cater for a range of house types and sizes and to address the existing deficiencies in the quantity, quality and accessibility of green space and play provision in Hinckley.

5.4 Policy 19: 'Green Space and Play Provision' of the Local Development Framework Core Strategy seeks to ensure that all residents have access to sufficient, high quality and accessible green spaces and play areas.

5.5 Policy 24: 'Sustainable Design and Technology' of the Local Development Framework Core Strategy seeks to ensure that all new homes in Hinckley, Burbage, Barwell and Earl Shilton will be constructed to a minimum of Code Level 3 of the Code for Sustainable Homes.

5.6 Hinckley and Bosworth Local Plan (adopted February 2001) with all policies referred to within the Local Plan have been 'saved';

5.7 Saved Policy IMP1: 'Contributions Towards the Provision of Infrastructure and Facilities' of the adopted Hinckley and Bosworth Plan requires contributions towards the provision of infrastructure and facilities to serve the development commensurate with the scale and nature of the development proposed.

5.8 Saved Policy RES5: 'Residential Proposals on Unallocated Sites' of the adopted Hinckley and Bosworth Plan states that residential proposals on such sites will be granted planning permission if they lie within the boundaries of a settlement area and the siting, design and layout does not conflict with the relevant plan policies.

5.9 Saved Policy BE1: 'Design and Siting of Development' of the adopted Hinckley and Bosworth Local Plan 'seeks to ensure a high standard of design in order to secure attractive development and to safeguard and enhance the existing environment. Development should complement or enhance the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features. Development should ensure adequate highway visibility for road users and adequate provision for on and off street parking for residents and visitors together with turning facilities and should not adversely affect the occupiers of neighbouring properties.

5.10 Saved Policy REC3: 'New Residential Development - Outdoor Play Space for Children' of the adopted Hinckley and Bosworth Plan requires the appropriate level of open space to be provided within development sites or, alternatively, a financial contribution to be negotiated towards the provision of new recreation facilities within the vicinity of the site or towards the improvement of existing facilities in the area.

5.11 Hinckley and Bosworth Borough Council Supplementary Planning Guidance (SPG): 'New Residential Development' provides a series of standards that new residential development should achieve in respect of density, design, layout, space between buildings and highways and parking.

5.12 Hinckley and Bosworth Borough Council Supplementary Planning Document (SPD): 'Play and Open Space' provides a framework for the provision of play and open space and financial contributions to support the requirements of Policy REC3.

5.13 Hinckley and Bosworth Borough Council Supplementary Planning Document (SPD): 'Sustainable Design' aims to support and encourage developers and applicants in delivering homes in line with national best practice guidance primarily the Code for Sustainable Homes for housing and delivery of sustainable development through the planning system.

5.14 Copies of the relevant policies and guidance with explanatory text were submitted previously with the Appeal Questionnaire.

6.0 Section 6: The Case for the Local Planning Authority

6.1 On the basis of the reasons set out below, the Council asserts that the planning permission should be refused.

6.2 <u>Reason for Refusal 1: Impact Upon Character</u>

6.3 In the opinion of the Local Planning Authority, the proposal constitutes an uncharacteristic form of development of this former residential garden site. The development of the site fails to respect the established character of the surrounding area and would therefore not complement or enhance the surrounding area. Therefore, the development would be contrary to Policies BE1 and RES5 of the adopted Hinckley and Bosworth Local Plan, the Council's Supplementary Planning Guidance on New Residential Development and the guidance contained within Planning Policy Statement 3: Housing

6.4 The area immediately to the south (Roston Drive) and west of the site (Barlestone Drive) is characterised by dwellings set predominantly close to the road frontages. Whilst the dwelling's that immediately adjoin to the east of the

site (Weston Close) do not front the road frontage, they are characterised by dwellings that front the footpath. The current pattern and grain of the development in the immediate locality is development on road frontages.

6.5 It is considered that the siting of the development neither reflects the siting of the host dwelling, nor the siting of the surrounding residential dwellings. Accordingly, the application dwelling by virtue of it's siting is an exception to the pattern of development in the locality. Therefore the scheme would result in development that is clearly not characteristic of the surrounding area.

6.6 The area is also characterised by dwellings with large rear amenity spaces. The dwelling's immediately adjoining the site to the north has a 13 metres length garden, adjoining gardens to the south have 12 metre length gardens, adjoining gardens to the east have 10 metre length gardens, whilst the host dwelling has a garden length of 15 metres.

6.7 The application property proposes a rear amenity space of 4 metres in length. The Council's SPG on New Residential Development states that rear garden should normally be a minimum of 12.5 metres in depth, however that the minimum garden depth may be reduced if the necessary minimum garden area, which is 60 square metres for 2 bedroomed properties can be provided. The application dwelling can only provide 40 square metres to the rear.

6.8 It is considered that resultant of the layout and footprint of the dwelling results in a scheme which does not provide sufficient amenity space, both contrary to the Council's SPG on New Residential Development but also therefore results in an inadequate garden space that is not characteristic of the surrounding area. Inability to provide sufficient garden space leads to believe that the scheme overdevelops this plot of land.

6.9 As discussed above, the principle of residential development on this site (by virtue of the siting of this development) in an area that is predominantly frontage development, it is considered that the proposal is out of character and would not complement or enhance the character of the area. Furthermore, the proposed layout of the dwelling is considered to result in a scheme which inappropriately overdevelops the site.

6.10 Overall it is considered that the accumulative impact as a result of the schemes contrived siting and footprint will result in a pattern of development that overdevelops the site, has a detrimental impact upon the character of the site and therefore fails to respect, complement of enhance the established character of the surrounding area. It is on this basis that the Council respectfully requests that the appeal should be dismissed.

6.11 <u>Reason for Refusal 2: Play and Open Space</u>

6.12 In the opinion of the Local Planning Authority, the lack of any definitive measures to address the increase in pressure placed on the play and open space facilities of the local area by the proposed development would not accord with Government Guidance Circular 5/05, Policies REC3 and IMP1 of the adopted Hinckley and Bosworth Local Plan, and the Supplementary Planning Document on Play and Open Space.

6.13 In line with the overarching guidance contained within Planning Policy Guidance Note 17 and Planning Policy Statement 3, open space has an

important role to play in meeting a broad range of recreational needs of different sectors of the community. Outdoor playing space is one element of open space which has a value above and beyond its use for sport, active recreation and play.

6.14 The Council seeks to make provision for a full range of recreational opportunities for all members of the community and expanding existing facilities and providing for new facilities in appropriate locations. Any provision should be located where it has the least impact on the environment and where it is readily accessible to all sections of the community to which that facility is intended to serve.

6.15 Saved Policy REC3 of the Adopted Hinckley and Bosworth Local Plan requires applications for new residential development to provide informal children's play space, and the Adopted Supplementary Planning Document: Play and Open Space suggest that where on site provision cannot be delivered that a developer contribution can be sought. In this case no on site provision is being proposed and therefore a developer contribution towards the pressure the development will place upon an area of local open space will be required to ensure compliance with Policy REC3 of the Adopted Hinckley and Bosworth Local Plan.

6.16 The application site is within 400 metres of Clifton Way (local open space); Clarendon Park recreation ground and Brosdale Drive recreation ground. It is the Council's intention that a contribution be sought to enhance and maintain existing open spaces, in accordance with the objectives of the Green Space Strategy (2005-2010) and the Quantity/Accessibility Audits of Provision (2007) which identifies Hinckley having a deficiency of both equipped play space and outdoor sports and awarded Clifton Way a quality score of 54% and Brosdale Drive a quality score of 52%.

6.17 To ensure compliance with Policy REC3, in accordance with the requirements of the Supplementary Planning Guidance: Play and Open Space, the value of the contribution requested is £1250.80; (£817.80 for the provision and £433.00 for the maintenance). The contribution has been calculated in accordance with the Play and Open Space SPD.

6.18 The provision of any developer contribution must be considered alongside the guidance contained within Circular 05/05 and more recently in the Community Infrastructure Levy Regulations 2010 (CIL). CIL confirms that where developer contributions are requested they need to be necessary, directly related and fairly and reasonably related in scale and kind to the development proposed.

6.19 The size of the two bedroomed detached dwelling would appeal to family occupiers and given the proximity of the application site to these open spaces it is considered that the future occupiers would use the facility, thereby increasing wear and tear and requiring more equipment.

6.20 The play and open space contribution requested in respect of the proposal is considered necessary to make the development acceptable (to secure compliance with the development plan and national planning guidance), to be directly related to the nature of the proposal and is reasonably related in scale and kind to the development.

6.21 Should the development be found acceptable and the appeal be allowed, the Council respectfully requests that play and open space provision be secured via a Unilateral Undertaking.

6.22 Reason for Refusal 3: Code for Sustainable Homes

6.23 In the opinion of the Local Planning Authority the applicant has failed to demonstrate that the proposed development would be built to Code Level 3 of the Code for Sustainable Homes. It is therefore considered contrary to Planning Policy 1, Delivering Sustainable Development, Policy 24 of the adopted Hinckley and Bosworth Local Development Framework Core Strategy, supported by the Borough Council's Supplementary Planning Document on Sustainable Design.

6.24 In line with the overarching guidance contained within Planning Policy Guidance Statement 1 (and Planning Policy Statement 3), sustainable development has an important role to play in meeting climate change and resource efficiency initiatives.

6.25 The Council through the adoption of the Local Development Framework Core Strategy is committed to promoting and securing sustainable development in accordance with the overarching intentions of PPS1 and PPS3.

6.26 Spatial Objective 12 within the Local Development Framework Core Strategy seeks to minimise the impact of climate change by promoting the prudent use of resource through sustainable patterns of development, investment in green infrastructure, minimising the use of resources and energy, increasing reuse and recycling of natural resources, increasing the use of renewable energy technologies and minimising pollution, including greenhouse gas emissions.

6.27 In support of Spatial Objective 12, Policy 24 of the Core Strategy, requires the dwellings proposed on this site in Hinckley, would need to be constructed to a minimum of Code Level 3 of the Code for Sustainable Homes.

6.28 No sustainable design or technology measures were submitted to demonstrate that the proposal would comply with the criteria of Policy 24 of the adopted Core Strategy and as such there was considered a distinct lack of definitive sustainable design measures within the proposed development and therefore the development was in direct conflict with the provisions and requirements of the development plan.

6.29 Should the development be found acceptable and the appeal be allowed, the Council respectfully requests that a suitably worded condition be attached to ensure the dwellings are delivered to Code for Sustainable Homes Level 3, as required by Policy 24 of the adopted Core Strategy.

7.0 Section 7: Comments on Appellant's Grounds of Appeal

7.1 Reason for Refusal 1: Case of the Appellant:

7.2 The appellant considers that the proposed dwelling is not uncharacteristic and that the character of the surrounding area would be respected. The appellant refers to the subdivision of the side and rear garden of number 15 to create two plots of more similar sizes to those in the immediate vicinity, and would therefore improve the existing character of the area by removing what is considered to be an uncharacteristic layout at present. The appellant acknowledges that the dwelling would be provided with a rear garden area of approximately 50 square metres, 10 square metres below the guidance in the SPG but that the side and front amenity areas should also be calculated, which would therefore provide well in excess the requirement of the square metres of amenity space as set out in the Council's SPG. The appellant also refers to the fact that SPG states that the overall size of the garden should be in proportion with the type of dwelling and the general character of the area. The appellant contends that the dwelling would be more suitable for elderly occupants, which would not require regular use of the garden and that a undertaking will secure an agreed financial contribution towards off-site play and open space. In addition, the appellant believes that this application is in an indicative form and as such the detailed design, layout and siting of the dwelling would be considered at the reserved matters stage in order to improve the amount of rear amenity space.

7.3 In the opinion of the Local Planning Authority the Council's SPG on New Residential Development states "The overall size of the garden should be in proportion with the type of dwelling and the general character of the area. This may require greater than minimum standard in some areas" The Local Planning Authority refers to, and agrees with the appellant that the SPG states that the overall size of the garden should be in proportion with the type of dwelling and the general character of the area, and it is on this basis that the Local Authority contends that the application be refused, as the garden size is not in proportion with the general character of the area. The SPG also states within this same sentence that this may require greater than minimum standards, but not less.

7.4 In the opinion of the Local Planning Authority the Council's SPG on New Residential Development states that the "in applying these standards the Local Authority will also consider the amount of space provided as front and side gardens". The Local Planning Authority, however believes that the front of the site should not be included in these calculations in this case, as the indicative layout plans show that the front of the site would be required for the provision of two car parking spaces and a turning area.

7.5 In the opinion of the Local Planning Authority there is no guarantee that the future occupants would not be a family and the financial contribution towards off-site play and open space provision is entirely a separate matter.

7.6 In the opinion of the Local Planning Authority, notwithstanding the specific requirements within the SPG, this application is refused on a character argument. The area is characterised by dwellings with large rear amenity spaces with the dwelling's immediately adjoining the site to the north has a 13 metres length garden, adjoining gardens to the south have 12 metre length gardens and adjoining gardens to the east have 10 metre length gardens. The application dwelling proposes a rear amenity space of 4 metres and as such provides a garden size which is uncharacteristic of the surrounding area.

7.7 Reason for Refusal 2: Case of the Appellant:

7.8 The appellant states that this appeal is accompanied by a draft Unilateral Undertaking to secure the provision of a suitable financial contribution for off-site play and open space in accordance with the SPD. The appellant states that this reason for refusal has been wholly rectified by their intention to submit a signed Unilateral Undertaking prior to the determination of the Appeal.

7.9 The Local Planning Authority argues that in the absence of a signed Unilateral Undertaking, there is no commitment that formalises the provision of either on or off site play and open space and the development is therefore un-acceptable and at odds with the requirements of Saved Policies REC3 and IMP1 of the adopted Hinckley and Bosworth Local Plan, and the Supplementary Planning Document on Play and Open Space.

7.10 Reason for Refusal 3: Case of the Appellant:

7.11 The appellant states that the issue of sustainable design is relevant to this appeal as the Code/BREEAM level to be met will be set at the time of determination of detailed planning permission or reserved matters, unless other legislation/guidance requires a higher level at the time of construction. Therefore the appellant believes that this reason for refusal is unfounded and unreasonable.

7.12 In the opinion of the Local Planning Authority, an appropriately worded condition should be imposed in accordance with policy 24 of the adopted Core Strategy. As such it is likely that there is a general agreement on this matter with the appellant, however it is appropriate to consider and control this matter when establishing the principle of development. Accordingly, the Local Planning Authority remains firmly of the opinion that the matter is for consideration in the determination of this application and in the absence of justified submission, the appeal should fail on this ground as it does not accord with the requirements of Policy 24.

7.13 Others matters raised by the appellant:

7.14 The appellant refers to the Borough having a lack of Five Year Housing Land Supply and that this permission for a market dwelling in a sustainable location in the sub-regional area of Hinckley should be looked upon favourably.

7.15 At the time of writing the report the Council had a land supply of 3 years and 7 months equating to a shortfall of 477 dwellings in Hinckley and it was acknowledged that this should be given weight in the determination of the application. PPS3 states that in determining applications where local authorities do not have an update to date five year housing land supply the development still has to be in line with planning for housing objectives, reflecting the need and demand for housing in, and the spatial vision for, the area which also does not undermine wider policy objectives. In the opinion of the Local Planning Authority the spatial vision for the area is defined through the policies within the Local Plan, in this case Policies RES5 and BE1. Policy RES5 states that planning permission will only be granted for new residential development if the site lies within the settlement boundary and the siting, design and layout of the proposal does not conflict with the relevant plan policies. The site in the settlement boundary and therefore there is a presumption in favour of development subject to the development being in accordance with the other

plan policies and therefore fell to be considered against Policy BE1. Policy BE1 seeks to ensure development complements or enhances the character of the surrounding area. It is on this basis that the application was assessed when considering whether the criteria in paragraph 69 of PPS3 was met and in this case it was considered contrary to Policy BE1.

7.16 Each application is considered on a case by case basis and on each application's own merits and as such the lack of five year housing land supply may provide an overriding justification in some cases. In this case, the Local Planning Authority considered that the identified harm to the character of the area and the relatively small number of dwellings (1.no) that was to be provided as a result of the development did not constitute an overriding justification in favour of the development to outweighing the lack of 5 year land supply.

7.17 The appellant refers to the distance between neighbouring properties and that there is suitable screening to the south of the appeal site that would allow for this requirement to be relaxed. The application was not refused on impact upon residential amenity and is in agreement with the appellant on this matter.

8.0 Section 8: Conclusions & Conditions

8.1 With regard to the information contained in this statement and that submitted with the Appeal Questionnaire, Hinckley and Bosworth Borough Council respectfully requests that the appeal be dismissed. However, if the Inspector is minded not to do so, the Local Planning Authority requests the inclusion of the following conditions:-

8.2 Application for the approval of reserved matters shall be made within three years from the date of this permission and the development shall be begun not later than two years from the date of approval of the last of the reserved matters to be approved. *REASON: To comply with the requirements of Section 92 of the Town & Country Planning Act 1990 (as amended).*

8.3 Approval of the following details (hereinafter called "reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced:

i) The layout of the site including the way in which buildings, routes and open spaces are provided and the relationship of these buildings and spaces outside the development;
ii) The scale of the building proposed in relation to its surroundings;
ii) The appearance of the development including the aspects of a building or place that determine the visual impression it makes;
iii) The landscaping of the site including treatment of private and public space to enhance or protect the site's amenity through hard and soft measures.

The development shall be implemented in accordance with the approved details. *REASON: To comply with the requirements of Section 92 of the Town & Country Planning Act 1990 (as amended).*

8.4 The reserved matters application shall include the following information for the prior approval by the Local Planning Authority.

i) The external building materials;
ii) Details of boundary treatments;

iii) Details of the provision, layout and surfacing of the access, driveways, turning and parking spaces;
v) The floor levels of the proposed dwelling in relation to the existing ground level and the finished levels of the site.

The development shall be implemented in accordance with the approved details. *REASON: This is a planning permission in outline only and the information required is necessary for the consideration of the ultimate detailed proposal.*

8.5 The development hereby permitted shall not be carried out otherwise than in complete accordance with the following details: Site Location Plan (Scale 1:1250); Block Plan (Scale 1:500); Block Plan (showing parking) (1:500); Property to the rear of 15, Barlestone Drive access via Weston Close, Hinckley Drawing No. 7/0014 received by the Local Planning Authority on 24 May 2011. *REASON: For the avoidance of doubt and in the interests of proper planning.*

8.6 No development shall commence unless and until a Code for Sustainable Homes Design Stage Assessment, carried out by a qualified code assessor, demonstrating that the dwelling hereby approved can be constructed to a minimum of Code Level 3 has been provided to the Local Planning Authority. In addition, prior to the first occupation of the dwelling hereby approved, a final certificate demonstrating that the dwelling has been constructed to a minimum of Code Level 3 shall be provided to the Local Planning Authority. *REASON: In the interests of sustainable development to accord with Policy 24 of the adopted Hinckley and Bosworth Local Development Framework Core Strategy.*

8.7 Prior to the first occupation of the dwelling, hereby approved a scheme that makes provision for waste and recycling storage across the site shall first be submitted to and approved in writing to the Local Planning authority. The details should address accessibility to storage facilities for residents/collection crews, and adequate collection point space at the adopted highway boundary. *REASON: In the interests of visual amenity, to accord with Policy BE1 of the adopted Hinckley and Bosworth Local Plan.*

Appendix A: Aerial Image

15 Barlestone Drive



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0 5 10 20 30 40 Meters