



# Statement of Case

Oddfellows Arms, 25 Main Street, Higham  
on the Hill, Nuneaton, Leicestershire

Appeal on behalf of A R Cartwright Ltd

Application Ref:24/00229/FUL

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Document Reference:

24,317

Version 1

Date of Issue:

December 2024

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## 1. Introduction

- 1.1 This Statement of case is submitted by Cerda Planning on behalf of A R Cartwright Ltd ("the Appellant") in relation to Hinckley and Bosworth Borough Council ("the Council") pursuant to Section 78 (2) of the Town and Country Planning Act 1990 in respect of full planning application 24/00229/FUL ("the application").
- 1.2 The application sought permission to for the development of 7 dwellings including the conversion of the existing building into 2 dwellings and 5 new build properties.
- 1.3 The application was submitted to the Local Planning Authority on 11 March 2024, validated on 13 March 2024 with a statutory determination date of 08 May 2024. Amended plans were submitted for consideration on 15 April 2024. The appeal application was refused by Delegated powers on 26 September 2024.
- 1.4 The appeal application was refused for four reasons, as follows:
  1. The change of use of the remaining original building from a public house to residential use will result in the permanent loss of the longstanding community interest and value of the building, thus removing the positive contribution this makes to its historic interest and having an adverse impact upon its local heritage significance. Furthermore, the introduction of significant new built form onto the site within the Higham on the Hill Conservation Area would not reflect the traditional urban grain of the conservation area and would be uncharacteristic and would erode the existing open character and appearance of the area. Additionally, the proposal would have a significantly detrimental urbanising effect on important views and vistas that would reduce the ability to appreciate the rural setting of the Higham on the Hill Conservation Area. For these reasons the proposal has adverse impacts upon the significance of this designated asset and this significant but less than substantial harm is not outweighed by the identified public benefits of the scheme. The proposal is therefore contrary to Policies DM11 and DM12 of the SADMP, section 16 of the National Planning Policy Framework (Dec 2023) and the statutory duty of Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990.

2. The proposal would result in the permanent loss of a key community facility contrary to the requirements of Policy 12 of the Core Strategy and Policy DM25 of the Site Allocations and Development Management Policies Development Plan Document (2016).
  3. By virtue of its scale and massing the proposal for the additional five new dwellings would result in an incongruous form of development that would be prominent in views from public vantage points and would detract significantly from the character and appearance of the application site and the area, contrary to Policy DM10 of the Site Allocations and Development Management Policies Development Plan Document (2016) and the National Planning Policy Framework (Dec 2023).
  4. The application fails to provide the occupiers of the dwelling on plot 1 with an adequate level of amenity as required by paragraph 135f) of the National Planning Policy Framework and the Council's Good Design Guide (2020).
- 1.5 The Appeal has been prepared having regard to the online Planning Inspectorate (PINS) 'Procedural Guide: Planning Appeals – England' (updated 17 September 2024). Part 12.2, paragraph 12.2.3, directs the Appellant to 'respond to the reasons for refusal set out in the Local Planning Authority's decision notice focusing on areas of difference'. The reasons for refusal set out above are discussed in detail in Section 6 of this Statement of Case (SoC).
- 1.6 During the course of the application, in response to consultation responses received and further feedback from officers, supplementary information was provided. Additional information included a Dusk Emergence Survey for Bats and Archaeological Heritage Assessment and an amended block plan. Those amendments and supplementary information were duly accepted by the Council and reconsulted upon. The Appellant invites determination of the appeal upon that basis.

## 2. The Site and Surrounding Area

- 2.1 In accordance with the procedural guidance, a draft Statement of Common Ground (SoCG) has been prepared and is submitted alongside this Appeal. The SoCG includes a full description of the site and surrounding area as proposed to be agreed with the Council. Further description and contextual analysis of the site and surroundings can also be found in the documents submitted in support of the Appeal, including the Planning Statement, Design and Access Statement and Officer Report.
- 2.2 The application site has an area of 0.29 hectares and comprises the former Oddfellows Arms Public House and its hard-surfaced parking area at the rear. The site lies within the administrative boundary of Hinckley and Bosworth Borough Council.
- 2.3 The former Oddfellows Arms Public House is a three-storey building fronting Main Street, featuring a series of flat roof extensions to its north and west. The site is currently accessible via two entrances, one to the east and one to the west of the 'Oddfellows'.
- 2.4 The public house, including its car park, is registered as an Asset of Community Value (ACV).
- 2.5 To the north of the site lies a grassland area, previously used as a beer garden, and beyond that, a paddock (also owned by the applicant) extending to the rear boundaries of properties on Hilary Bevins Close. This paddock is surrounded by a vegetated boundary and contains a pond. To the west of the paddock is the 'King George V Playing Field', with pastoral fields further northeast.
- 2.6 Due to its central village location, built developments, primarily residential, are situated both adjacent to and opposite the site.
- 2.7 The site is located within the Higham on the Hill Conservation Area and is within the defined settlement boundary. The pub is identified as a significant local building within the Conservation Area Appraisal. The pub is considered to be a non-designated heritage asset.

### 3. The Appeal Proposal

3.1 The appeal application was submitted on 11 March 2024. The originally submitted documents were as follows:

- Site Plan 22/85 55
- Proposed Floor Plans and Elevations Hartshill semi 22/85 54
- Proposed Floor Plans and Elevations Hartshill semi 22/85 54b
- Proposed Floor Plans and Elevations Kenilworth 22/85 53
- Proposed Floor Plans and Elevations Belvoir 22/85 52
- Block Plan 22/85 50b
- Proposed Pub Conversion 22/85 51
- Street Scene 22/85 56
- Transport Statement (ref: ADC2302-RP-D-v2)
- Building Conditions Survey (August 2019)
- Preliminary Bat Roost Assessment (ref: GE0624)
- Landscape Plan 22/85 50b
- Tree Survey (February 2024)
- Planning Statement (ref: p-19-1632)
- Design and Access Statement (February 2024)
- Foul and Storm Water Drainage Strategy (ref: 81712-03 Rev E)

3.2 Following feedback from the Council and consultees received during the statutory consultation period, comments were reviewed, and a number of fairly minor changes were undertaken to the originally submitted appeal application.

3.3 On 13 March 2024, the following plan was submitted to the Council:

- Site Location Plan 22/85 57

3.4 This plan was updated to show other land in the appellants ownership edged in blue.

3.5 On 02 April 2024, the following survey was submitted to the Council:

- Archaeological Heritage Assessment (March 2024)

- 3.6 On 15 April 2024, the following amended drawing was submitted to the Council:
- Block Plan 22 85 50 Rev D
- 3.7 This plan was updated as the original plan submitted did not show the legal access way to the recreation ground. The plan was updated to show this. The Parish has a right in perpetuity, to access the recreation ground. This is for pedestrians, maintenance vehicles and emergency vehicles.
- 3.8 On 05 August 2024, the following survey was submitted to the Council:
- Dusk Emergence Survey for Bats (July 2024)
- 3.9 This survey was submitted to the Council following the receipt of comments of the Senior Planning Ecologist, who requested a bat survey report, detailing the findings of an evening emergence survey, along with any mitigation to be provided.
- 3.10 The plans that were for approval at the point the Council determined the application were:
- Site Plan 22/85 55a (submitted: 15.04.2024)
  - Access to Recreation Ground (submitted: 15.04.2024)
  - Block Plan 22/85 50d (submitted: 15.04.2024)
  - Site Location Plan 22/85 57 (submitted: 13.03.2024)
  - Proposed Pub Conversion 22/85 51 (submitted: 11.03.2024)
  - Proposed Floor Plans and Elevations Belvoir 22/85 55a (submitted: 11.03.2024)
  - Proposed Floor Plans and Elevations Kenilworth 22/85 53 (submitted: 11.03.2024)
  - Proposed Floor Plans and Elevations Belvoir 22/85 52 (submitted: 11.03.2024)
  - Proposed Floor Plans and Elevations Hartshill semi 22/85 54b (submitted: 11.03.2024)
  - Street Scene 22/85 56 (submitted: 11.03.2024)

## 4. Relevant Planning History

- 4.1 There are five relevant planning applications in respect of the appeal site.
- 4.2 **22/00124/FUL** – Full application for the residential development of nine dwellings with associated access, parking and landscaping. Refused December 2023. This application was designed following advice from the Council. The application excluded the pub and its car park and was refused on five grounds detrimental effect on heritage assets, countryside location and detrimental effect on the site and surrounding area, scale and massing and detrimental effect on public views, detrimental effect on biodiversity and insufficient information regarding trees.
- 4.3 **20/01065/HYB** - Hybrid application consisting of full permission for the part demolition/part conversion of former public house to a dwelling house and construction of five dwellings with access and outline permission for the erection of up to 20 dwellings and associated infrastructure. Withdrawn November 2021.
- 4.4 **20/00153/FUL** - Demolition of the former Oddfellows Arms public house the erection of eight dwellings and associated infrastructure. Withdrawn April 2020. The Oddfellows Arms was to be demolished and rebuilt like for like but moving it further to the boundary with no. 27 Main Street, Higham on the Hill. During the course of the application exception was taken to the potential loss of the public house, the application was subsequently withdrawn
- 4.5 **15/00381/COU** - Change of use of land from agricultural to equestrian (re-submitted application). Approved June 2016
- 4.6 **14/00367/OUT**- Erection of 10 dwellings (outline - access and layout). Refused October 2014. The application was refused on the grounds that it exceeded the allocated housing requirement for Higham and that it would cause harm to the rural setting of the village and to the setting of the Conservation Area

## 5. Planning Policy Context

- 5.1 The planning policies and guidance most relevant to this appeal will be outlined in the Statement of Common Ground (SoCG). It is expected that the main planning policy issues will be agreed upon with the Council prior to the opening of the Inquiry.
- 5.2 The Statutory Development Plan is the starting point when determining this Appeal. Section 38(6) of the Planning & Compulsory Purchase Act 2004 sets this out that unless material considerations indicate otherwise, applications must be made in accordance with the statutory development plan.

### ***The Development Plan***

- 5.3 In accordance with Section 38(6) the development plan is formed of:
- The Core Strategy (2009);
  - Site Allocations and Development Management Policies DPD (2016).
- 5.4 The following policies that the Council have referenced in their reasons for refusal are as follows:

#### Core Strategy (2009)

- 5.5 **Policy 12: Rural Villages** seeks to support existing service in rural villages and will do so through supporting housing development within settlement boundaries that provides a mix of housing types and tenures; and the policy will resist the loss of local shops and facilities in rural villages unless it can be demonstrated that the business or facility can no longer operate in a viable manner.

#### Site Allocations and Development Management Policies DPD (2016)

- 5.6 **Policy DM10: Development and Design** has regard to a number of requirements (a-i) so as to ensure that development would not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings; that the amenity of occupiers of the proposed development would not be adversely affected by

activities in the vicinity of the site; and it complements or enhances the character of the surrounding area.

5.7 **Policy DM11: Protecting and Enhancing the Historic Environment** seeks to protect, conserve and enhance the historic environment throughout the borough.

5.8 **Policy DM12: Heritage Assets** requires all development proposals affecting heritage assets and their setting to secure their continued protection or enhancement, contribute to the distinctiveness of the areas in which they are located and contribute to the wider vibrancy of the borough.

5.9 **Policy DM25: Community Facilities** seeks to resist the loss of community facilities, unless it can be demonstrated that is a surplus of the facility type within the immediate locality exceeding the needs of the community. The policy adds that the loss of a community facility that the facility has been proactively marketed for a community use for a reasonable period of time at a reasonable marketed rate and it has been offered to the local community for them to take ownership of the facility.

5.10 Other relevant policies which are considered relevant to the appeal proposals but not referred to in the decision notice are also summarised below.

- Policy 14: Rural Areas: Transport
- Policy 15: Affordable Housing
- Policy 16: Housing Density, Mix and Design
- Policy 17: Rural Needs
- Policy 19: Green Space and Play Provision

5.11 Site Allocations and Development Management Policies DPD (2016)

- Policy DM1: Presumption in Favour of Sustainable Development
- Policy DM3: Infrastructure and Delivery
- Policy DM4: Safeguarding the Countryside and Settlement Separation
- Policy DM6: Enhancement of Biodiversity and Geological Interest
- Policy DM7: Preventing Pollution and Flooding
- Policy DM9: Safeguarding natural and semi-natural open spaces
- Policy DM13: Preserving the Borough's Archaeology
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards

### ***Other Material Considerations***

5.12 Material planning policy and planning guidance considerations include:

- Good Design Guide (2020)
- Landscape Character Assessment (2017)
- Leicestershire Highway Design Guide
- Higham on the Hill Conservation Area Appraisal and Map (2009)

5.13 The Good Design Guide (2020) is specifically referred to within the Reasons for Refusal.

#### ***The emerging Hinckley and Bosworth Local Plan***

5.14 The Council is currently working on a new Local Plan for the Borough which will set out land allocations and planning policies for the period 2020 to 2041. The previous Local Development Scheme (LDS), approved at Full Council on 13 December 2022, has now been superseded.

5.15 An updated LDS was published on 08 February 2024. The updated LDS revises the timetable for production of the emerging Local Plan and establishes key milestones for public consultations. It is expected that a new "Regulation 19" plan will be consulted on early next year and adoption will be in 2026.

## 6. The Appellants Case

- 6.1 As set out above, this appeal is against Hinkley and Bosworth Borough Councils refusal to grant planning permission.
- 6.2 The Appellant will present evidence showing that, regardless of whether the Development Plan is current, the development aligns with the statutory Development Plan, and is supported by key material considerations which should be afforded very significant weight. Even if the Inspector finds that the proposals are not in accordance with the Development Plan, there are clear material considerations that justify granting planning permission.
- 6.3 The key issues are considered likely to be:
- i. Principle of Development and Loss of a Community Facility
  - ii. Heritage and Conservation
  - iii. Scale and Mass
  - iv. Amenity
  - v. Housing land supply
- 6.4 The Appellant's case as to why this Appeal should be allowed and planning permission granted are set out below in relation to each reason for refusal under the corresponding headings.

### ***Issue i) – Principle of Development and Loss of a Community Facility***

- 6.5 When considering the principle of development, the Appellant will demonstrate that given the sites location within the settlement boundary (with the exception of the rear most boundary of plot 4) that the principle is acceptable and that there is no conflict with the development plan.
- 6.6 The central issue arising from reason for refusal two is the permanent loss of a key community facility. This implies that the proposal would remove an essential service or gathering place for the local community. This concern is also echoed in reason for refusal one.

- 6.7 Policy DM25 seeks to safeguard against the loss of community facilities. This policy states that the loss of a community facility would only be acceptable where the facility has been marketed for a community use for a reasonable period of time at a reasonable market rate as supported through a formal marketing strategy and it has been offered to the local community for them to take ownership of the facility.
- 6.8 Marketing of the property began in September 2018 as confirmed in the marketing report prepared by Everarad Cole. The premises were marketed with a guide rent of £35,000 per annum, offering a leasehold interest and approaches were made to known pub, restaurant, leisure and commercial retail operators, and distributions of sales particulars to leisure operators and commercial retailers. The property was also subject to widespread 'e-marketing' by being advertised on ten media outlets and 'The Morning Advertiser'.
- 6.9 In late October 2018 the marketing strategy was amended to incorporate the potential to acquire the freehold, and new separate sales particulars produced to reflect this, and marketing continued on a dual basis, offering both freehold and leasehold options.
- 6.10 The various promotions and advertising generated 38 enquires for use as a public house, with 15 viewings conducted and only two parties interested in continuing the licensed use.
- 6.11 In 2018, an offer for the freehold was received and accepted in November. However, following the nomination of the pub as an Asset of Community Value (ACV) by the Parish Council in October 2018, the buyer's concerns and anxiety about the purchase led them to withdraw their offer.
- 6.12 There have been numerous discussions with the local group STOP (Save The Oddies Pub) since December 2019. The Appellant has actively engaged with the group over the past five years, but no tangible progress has been made in reinstating the property into a viable community use, nor has there been a satisfactory conclusion on its purchase. Throughout this period, the condition of the property has deteriorated.
- 6.13 The Appellant will demonstrate that reasonable steps to market the property in its current use in accordance with Policy DM25 have been taken.

- 6.14 A report provided by Fleurets provided an economic viability assessment of a purchaser of the property if in the open market for sale, reintroducing and thereafter sustaining the use of the property as a public house. The Appellant will demonstrate that reintroducing and maintaining a public house at the Oddfellows would not be a financially viable or prudent venture.

***Issue ii) – Heritage and Conservation***

- 6.15 The central issue arising from reason for refusal one is the perceived negative impact on the local community and heritage significance. The refusal hinges on the adverse impacts on community value, heritage, and the character of the Conservation Area, which are not considered by the Local Planning Authority to be offset by public benefits.
- 6.16 The Appellant will demonstrate that the proposed development has been designed sympathetically to preserve the character and appearance of the Conservation Area, and its setting, in accordance with National, Regional and Local legislation, policy and guidance.
- 6.17 Evidence will be presented to detail the effects of the proposal on the significance, character, and appearance of the Higham Conservation Area, focusing specifically on the general character and appearance of the area. Heritage Witnesses will provide this evidence.
- 6.18 The evidence will demonstrate that:
- Considering the current character of the Site, any harm to the significance, character, and appearance of the Conservation Area would be minimal and fall at the lower end of the scale of 'less than substantial';
  - The public benefits of the proposal clearly outweigh any identified low level of harm to the significance, character, and appearance of the Conservation Area;
  - There would be no harm to the significance of any other heritage assets due to changes in their setting.
- 6.19 The development would significantly enhance the building which is a non-designated heritage asset and its setting, as well as the wider Conservation Area. This includes the removal of the rear car parking area and unsightly modern extensions, along with the

introduction of sensitively designed residential properties and landscaping/boundary improvements.

***Issue iii – Scale and Mass***

- 6.20 Reason for refusal one and three relate to the effects of the layout, scale and massing of the proposed development which negatively impact:
- Higham on the Hill Conservation Area;
  - The existing open character and appearance of the area; and
  - The resultant urbanising effect on important views and vistas, diminishing the ability to appreciate the rural setting of the Higham on the Hill Conservation Area.
- 6.21 Whilst the appeal scheme will undoubtedly bring changes, these changes are not harmful or detrimental to the local character and context. Instead, the appeal scheme would enhance and positively contribute to the local character by replacing poor-quality extensions and developing buildings of high-quality design that seamlessly integrate into their surroundings.
- 6.22 The car park to the rear of the site makes no meaningful contribution to the sites special interest or the character and appearance of the Conservation Area. Modern dwellings are apparent to the rear of the site. The scale and appearance of the proposed dwellings would replicate the properties nearby. Plot 3 would infill the existing gap in the street scene, continuing the established building line.
- 6.23 This appeal scheme represents the right form of development, in the right location, as such, it is the Appellants position as set in evidence that the proposals accord with Local Plan policies and the National Planning Policy Framework.

***Issue iv – Amenity***

- 6.24 Reason for refusal four relates to the application failing to provide an adequate level of amenity to plot 1.
- 6.25 The Appellant will demonstrate that the residential development is appropriate for its location and sufficient amenity space is provided.

- 6.26 The scale, siting and orientation of the proposed buildings are such that no material harm would result to the living conditions of future occupiers.

***Issue v - Housing land supply***

- 6.27 The Core Strategy became 5 years old in December 2014.
- 6.28 The Council's latest housing trajectory and position statement claim that as of 01 April 2023, the Council could demonstrate only a 5.6 year housing land supply against the local housing need.
- 6.29 However, the Council's most recent agreed position, as set out in the Appellants statement of common ground, in respect of appeal APP/K2420/W/23/3332401 (25 March 2024), is that the Council indicated that they could demonstrate a 4.89-year housing land supply (Appendix 2).
- 6.30 This figure was also reflected in appeal APP/K2420/W/23/3330774 (28 February 2024) (Appendix 3).
- 6.31 The Appellant will seek to agree the housing land supply position through a Statement of Common Ground. Should an agreed position not be reached, the Appellant reserves the right to call a witness to give evidence on the housing land supply position.

**Summary**

- 6.32 Robust evidence has already been submitted through the application to demonstrate the proposed development can be supported, as the scheme delivers public benefits which clearly outweigh the harm caused (with harm being on the lower level of less than substantial harm in any case).

## 7. Planning Balance

- 7.1 It is considered demonstrated that the appeal proposals accord with the Development Plan as a whole. The proposals would deliver a high-quality development that is appropriate for this highly accessible location. The proposals are consistent with the character of the area, would deliver significant public benefits, and would deliver a justified provision of affordable housing. In light of this, the appeal proposals should be approved without delay.
- 7.2 Notwithstanding the above, the Council are failing the housing delivery test. As a result, the titled balance is engaged and there is a presumption in favour of sustainable development as set out at Paragraph 11d) of the NPPF.
- 7.3 Paragraph 8 of the NPPF sets out that achieving sustainable development means that the planning system has three overarching objectives which are interdependent and need to be pursued in mutually supportive ways. The proposed development would meet the three objectives in the following ways:
- 7.4 **Economic objective**: The proposed development will help build a strong and competitive economy by providing residential dwellings in a location that encourages the use of existing amenities, facilities, and services. The engagement of contractors and suppliers will create and sustain jobs indirectly. Additionally, the development will boost local economic activity through increased spending by new residents and generate additional property tax revenue for local governments, which can be used to enhance public services and infrastructure.
- 7.5 **Social objective**: The proposed development will significantly and valuably contribute to the Council's housing land supply and the delivery of homes in a highly accessible location. The new homes will cater to different demographics, offering various housing options. The design proposals adhere to established principles of place making and urban design which are fundamental in creating good places to live. Subject to planning permission being granted, the Site is available, and housing could be delivered within five-years to assist with the Council's housing land supply.

- 7.6 **Environmental objective:** The Site is Previously Developed Land; the proposal will enhance the built environment through site regeneration and ecological improvements will result in a net gain in ecology and biodiversity. The proposed development would improve the environment of Higham on the Hill by delivering a high-quality scheme on a vacant site. The development will complement the character of the surrounding area by providing high-quality homes within a sustainable, carefully designed scheme. There will be no harm to heritage assets. Improved surface water drainage, accounting for climate change, could reduce the risk of surface water flooding in the area.
- 7.7 In light of the above, it should be considered that there would be no adverse effects that would significantly and demonstrably outweigh the benefits when assessed against the policies of The Framework taken as a whole.
- 7.8 It is respectfully request that the appeal is allowed and planning permission granted.

## **APPENDIX 1 – SUGGESTED LIST OF PLANNING CONDITIONS**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

- Site Plan 22/85 55a
- Access to Recreation Ground
- Block Plan 22/85 50d
- Site Location Plan 22/85 57
- Proposed Pub Conversion 22/85 51
- Proposed Floor Plans and Elevations Belvoir 22/85 55a
- Proposed Floor Plans and Elevations Kenilworth 22/85 53
- Proposed Floor Plans and Elevations Belvoir 22/85 52
- Proposed Floor Plans and Elevations Hartshill semi 22/85 54b
- Street Scene 22/85 56

Reason: To ensure a satisfactory form of development in accordance with Policies DM1 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

3. Before the development hereby approved is commenced, full details of the materials to be used in the construction of the external surfaces of the development shall be submitted to and approved in writing by the Local Planning Authority. Development shall thereafter be carried out in accordance with the approved details.

Reason: To ensure that the development has a satisfactory external appearance in accordance with Policies DM10 and DM12 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

4. Before the development hereby approved is commenced, full details of all materials to be used for hard surfaced areas within the site including roads, driveways and car parking area shall be submitted to and approved in writing by the Local Planning

Authority. Development shall thereafter be carried out in accordance with the approved details.

Reason: To ensure that the development has a satisfactory external appearance in accordance with Policies DM10 and DM12 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

5. Before the development hereby approved is commenced, including any demolition or site clearance works, a Construction Environmental Management Plan (CEMP) shall be submitted to, and approved in writing by, the Local Planning Authority. The plan shall detail how, during the site preparation and construction phase of the development, the impact on existing and proposed residential premises and the environment shall be prevented or mitigated from dust, odour, noise, smoke, light and land contamination. The plan shall detail how such controls will be monitored. The plan will provide a procedure for the investigation of complaints. The agreed details shall be implemented throughout the course of the development.

Reason: To protect the amenity of the occupiers of neighbouring dwellings in accordance with Policies DM7 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

6. Before the development hereby approved is first occupied, the access to the site shall be constructed, in accordance with the details shown on the approved plans (and shall thereafter be retained as such for the life of the development).

Reason: In the interests of highway safety and in accordance with Policy DM17 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

7. Before the development hereby approved is first occupied, visibility splays shall be provided, in accordance with details to be first submitted and approved in writing by the Local Planning Authority. The visibility splays shall thereafter be retained and kept free of all obstructions to visibility over a height of 600mm above the adjacent carriageway level for the life of the development.

Reason: In the interests of highway safety and in accordance with Policy DM17 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

8. Before the development hereby approved is commenced, details of the surface treatment of all roads, paths, vehicular accesses and manoeuvring areas and all other hard surfaced areas within the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details before the development is first occupied and thereafter be retained as such for the life of the development.  
Reason: In the interests of highway safety and in accordance with Policy DM17 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).
9. The development hereby approved shall be carried out in strict accordance with the methods of working, which are detailed in the “Updating Preliminary Bat Roost Assessment” (Griffin Ecology Ltd). The measures shall be implemented prior to commencement and shall thereafter be retained for the life of the development.  
Reason: In order to protect the protected wildlife species and their habitats that are known to exist on site in accordance with Policy DM6 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).
10. Notwithstanding the submitted details, before above ground works commence a scheme for biodiversity enhancement, such as the incorporation of permanent bat roosting feature(s), hedgehog homes and nesting opportunities for birds, shall be submitted to and agreed in writing with the Local Planning Authority. The approved details thereafter shall be implemented, retained and maintained for their designed purpose in accordance with the approved scheme.  
Reason: In order to enhance protected wildlife species and their habitats that are known to exist on site in accordance with Policy DM6 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).
11. Before the development hereby approved is commenced, full details of the proposed surface water drainage system for the development shall be submitted to and approved in writing by the Local Planning Authority. The details shall include how surface water will be prevented from draining onto the public highway. The surface water drainage system shall be implemented in accordance with the approved details prior to occupation of the development.

Reason: To prevent flooding by ensuring the satisfactory storage and disposal of surface water from the site to accord with Policy DM7 of the Site Allocations and Development Management Policies Development Plan Document (2016).

12. Before the development hereby approved is commenced, a detailed landscape and planting scheme shall be submitted to and approved in writing by the Local Planning Authority. The approved landscape and planting scheme shall thereafter be implemented within eight months of the development being brought into use.

Reason: To enhance the appearance of the development and to ensure that the works are carried out in a reasonable period of time to accord with Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

13. Before the development hereby approved is commenced, details of the height, type and position of all site and plot boundary walls, retaining walls, fences and other means of enclosure to be erected on the site shall be submitted to and approved in writing by the Local Planning Authority. Development shall thereafter be undertaken in accordance with the approved details before the development is first occupied.

Reason: To ensure that the development has a satisfactory external appearance in accordance with Policies DM10 and DM12 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

14. Before the development hereby approved is commenced (including demolition), a programme of Historic Building Recording of the Oddfellows Arms in line with the requirements of Leicestershire County Council Planning Archaeology shall be submitted for the written approval of the Local Planning Authority.

Reason: To preserve the special interest of the building in accordance with Policies DM11 and DM12 of the Site Allocations and Development Management Policies Development Plan Document (2016).

15. Before the development hereby approved is commenced a revised schedule of works specifying appropriate conservation-led renovations to the Oddfellows Arms building (external only) with a suitable trigger point to ensure the works are completed shall be submitted for the written approval of the Local Planning Authority.

Reason: To preserve the special interest of the building in accordance with Policies DM11 and DM12 of the Site Allocations and Development Management Policies Development Plan Document (2016).

## **APPENDIX 2 – Appeal Decision Notice (APP/K2420/W/23/3332401)**



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## Appeal Decision

Inquiry held on 5 – 6 March 2024

Site visits made on 4 and 6 March 2024

**by Alison Partington BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25<sup>th</sup> March 2024**

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**Appeal Ref: APP/K2420/W/23/3332401**

**Land adjacent to Lockey Farm, Hunts Lane, Desford, Leicestershire, LE9 9LJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
  - The appeal is made by Jelson Ltd against the decision of Hinckley and Bosworth Borough Council.
  - The application Ref 23/00061/OUT, dated 13 January 2023, was refused by notice dated 4 September 2023.
  - The development proposed is residential development of up to 100 dwellings including provision of public open space, associated infrastructure, all matters reserved except for access.
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### Decision

1. The appeal is allowed and outline planning permission is granted for residential development of up to 100 dwellings including provision of public open space and associated infrastructure at land adjacent to Lockey Farm, Desford, Leicestershire, LE9 9LJ in accordance with the terms of the application, Ref 23/00061/OUT, subject to the conditions set out in the Annex A.

### Procedural Matters

2. The application was submitted in outline with all matters reserved for future consideration except for access. I have determined the appeal on this basis, treating the plan which shows a potential site layout as illustrative. However, the reference in the description of development to what matters are reserved is superfluous and so I have omitted this from my formal decision.
3. The application had a single reason for refusal which referred to the impact of the proposal on both highway safety and highway capacity. However, the Council confirmed at the Case Management Conference and in the Statement of Common Ground (SoCG) that they would not be contesting the reason for refusal insofar as it relates to the residual cumulative impact on the local road network. I have determined the appeal on this basis.
4. A draft agreement under Section 106 of the Town and Country Planning Act 1990 was submitted by the appellant as part of the Inquiry documentation and the agreement was discussed at the Inquiry. As agreed during this discussion the signed and executed Deed was submitted after the close of the Inquiry. I will return to the agreement later in my decision.

## **Main Issue**

5. The main issue in the appeal is the effect of the proposal on highway safety.

## **Reasons**

### *Planning Policy Context*

6. The appeal site comprises an arable field. It lies outside, but adjacent to the settlement boundary for Desford as defined in the *Site Allocations and Development Management Policies Development Plan Document (adopted July 2016)* (SADMP) and so is defined as being in the countryside.
7. Policy 7 of the *Core Strategy Development Plan Document (adopted December 2009)* (CS) supports housing developments within the boundary of Desford which it defines as a Key Rural Centre. Outside of settlement boundaries Policy DM4 of the SADMP sets out the types of development that may be acceptable in the countryside. It is not disputed that the proposal would not be for any of these. Policy H1 of the *Desford Neighbourhood Plan 2018 – 2036 (made May 2021)* (DNP) indicates that outside the settlement boundaries development will be controlled in line with local and national policies. As such, the proposal is contrary to these policies.
8. Given the uncertainties with regard to the housing requirement figure for the DNP which I will discuss further below, Policy H3 of the same allocates the site as a reserve site for housing development. The policy indicates that if by 31 December 2022 no replacement Local Plan for the Borough has been adopted, applications for housing development on the site should be determined on the evidence available at the time. It is agreed in the SoCG that the proposal complies with Policy H3 of the DNP and that compliance with this policy overrides the conflict with CS Policy 7, SADMP Policy DM4 and Policy H1 of the DNP.
9. As a result, conformity or otherwise with Policy DM17 of the SADMP which deals with highways and transportation matters is the only policy disputed by the main parties.
10. In addition, in the SoCG it is agreed that due to the age of the development plan, the changes in national policy since it was adopted, the changes in circumstances regarding development needs and requirements since it was adopted and inconsistencies between the development plan and the *National Planning Policy Framework* (the Framework) the policies which are most important in determining the appeal are out of date. As a result, it is agreed the 'tilted balance' in paragraph 11 d) of the Framework is engaged.
11. The Council are currently in the process of producing a new Local Plan (LP) for the Borough. They undertook consultation on a pre-submission version of this in February 2022. This allocates the site for housing and amends the settlement boundary to include the site. However, as set out in the recently revised Local Development Scheme, they are no longer progressing this plan as they accept the need to address unmet housing needs from Leicester City Council. It is expected that a new "Regulation 19" plan will be consulted on early next year and adoption will be in 2026. As such, no weight can be given to the LP and I consider it no further in my decision.

### *Highway safety*

12. The vehicular and pedestrian access for the proposed development would be taken from Hunts Lane. This is a single carriageway road which in the vicinity of the site frontage is currently subject to a 40mph speed limit. This changes to 30mph around 25m to the east of the site. As part of the appeal scheme, it is proposed to move the gateway feature and the reduction in speed limit approximately 140m to the west.
13. The current access to the field is a Public Right of Way and provides vehicular access to Lockey Farm and slightly further to the west of this is the vehicular access to the adjacent allotments. Directly opposite the site is a small car park for the cemetery and a bit further to the west there is a lay-by that also serves as parking for this. As a result, vehicles slowing down and turning manoeuvres are not uncommon on this stretch of road. Despite these occurring in a 40mph speed limit area, the accident data for this stretch of road shows no existing road safety issues.
14. It is proposed that the development would be served by a new simple priority junction with Hunts Lane which would replace the current farm access. The design and geometry of the proposed junction accords with the *Leicestershire Highways Design Guide* (LHDG). It is also proposed to increase the width of the existing footway on Hunts Lane to the east of the site to 2m up to the existing 2m wide pavement. As a result, the proposal would provide a safe access for pedestrians going towards Desford, including to the primary school and recreation ground/ play area on Kirby Road. As these are both within recommended walking distance of the site, the proposal is not likely to significantly increase traffic on Kirby Road.
15. Whilst the Council had raised some concern in their appeal statement regarding whether adequate visibility could be provided, at the Inquiry it was agreed that the evidence provided by the appellant in their rebuttal proof of evidence had addressed their concerns. Notwithstanding the dip in the road to the west of the site, it was agreed that adequate visibility would be provided at the proposed junction. From the evidence before me and what I saw at my site visit, I see no reason to disagree with this conclusion.
16. Whilst it was also agreed at the Inquiry that the provision of a right turn ghost lane was not necessary, the Council considered that centre line hatching should be provided so that there would be a refuge area created for vehicles turning right into the site. The carriageway would need to be widened to enable this, but there is sufficient land within the highway boundary to achieve this.
17. The LHDG does not provide any guidance as to when such refuges should be provided. Both the *Design Manual for Roads and Bridges* (DMRB) and *Manual for Streets 2* (MfS2) provide some guidance as to when a right-turn lane should be provided.
18. DMRB provides some guidance in Figure 2.3.1 as to approximately when priority junction provision should be provided on single carriageway roads. This indicates that the provision of a ghost island could be required for the proposed development. However, DMRB relates to trunk roads and so is not specifically applicable to the proposal. In addition, MfS2 highlights that junctions will “often [be] able to cater for higher levels of turning traffic without resulting in significant congestion”.

19. The appellant's capacity assessment, the findings of which are not disputed by the Council, shows that vehicles will not wait any significant length of time to turn right into the site. As a result, such movements would not cause undue delays to the free flow of traffic on Hunt's Lane. Therefore, there is no capacity-related reason to provide centre line hatching.
20. Moreover, given it is agreed adequate visibility splays can be provided for the proposed junction, there is no visibility related reason to provide central line hatching, as drivers will be able to clearly see the new junction. As highlighted above, this is already a stretch of road, where turning movements are carried out due to the other existing accesses in the area, so vehicles turning at this point would not be an altogether unexpected movement, even if the proposal would increase the frequency of such manoeuvres.
21. To this end, I note that neither the local highways authority nor the Road Safety Audit carried out for the proposal considered that centre line hatching would be necessary.
22. In addition, MfS2 indicates that the provision of centre line hatching can have the effect of increasing speeds which would not be desirable. By increasing the width of the road, it can also make it harder for pedestrians to cross. Whilst the number of pedestrians seeking to cross the road at this point may be limited, the Public Right of Way is clearly popular with dog walkers. Such users who live to the north of Hunts Lane or who have used the adjacent car park would be likely to cross the road at this point – something I observed on my site visits.
23. The swept path analysis diagrams show that large vehicles such as refuse wagons entering and exiting the site will encroach over the carriageway centreline. As the junction conforms to the LHDG for residential accesses it is clear that the highway authority accepts that this will happen in a residential setting without such movements giving rise to unacceptable safety issues. The appellant highlighted that such movements already occur at many junctions in settlements across the Borough and County without causing safety concerns. The moving of the 30mh speed limit and the gateway feature to the west of the site means the site would have a similar context to these other junctions.
24. Evidence from the appellant, which was not disputed by the Council, shows that the proposed development would not generate a significant number of HGV movements. Whilst HGVs may need to wait to enter and exit the site should other vehicles be using the junction, given the findings of the capacity assessment, any wait to do this is unlikely to be for a significant length of time.
25. Moreover, as the adjacent housing that faces towards Hunts Lane is set back some distance from it and has its own service road, I consider it is unlikely that other drivers would assume a refuse wagon that may have had to stop on the carriageway whilst waiting to enter the site had stopped to empty bins and so try and overtake it.
26. Therefore, the need for HGVs to overrun the carriageway centre line would not result in any unacceptable highway safety issue. Whilst the provision of centre line hatching may alleviate the overrunning in certain turning movements, the benefits would be limited. In any case, as I consider that such overrunning would not result in unacceptable highway safety issues, this matter does not justify the need to provide centre line hatching.

27. Overall, I consider that centre line hatching is not needed either for capacity or safety reasons, and without it the proposed development would still have a safe and suitable access for both vehicles and pedestrians.
28. All in all, I consider that the proposed development would not have an unacceptable impact on highway safety. Accordingly, there would be no conflict with Policy DM17 of the SADMP which requires proposals to demonstrate that they would not cause a significant adverse impact on highway safety. It would also accord with paragraphs 114 and 115 of the Framework which require developments to achieve a safe and suitable access for all users and not cause an unacceptable impact on highway safety.

### **Other Matters**

#### *Need for housing*

29. Local residents indicated that Desford had already provided sufficient housing particularly in relation to the 'requirement' for 163 new houses in the DNP. However, the examiner of the DNP did not consider that the figure of 163 was a requirement figure that satisfied what at the time was paragraphs 65 and 66 of the Framework (now paragraphs 67 and 68) and that the matter of housing requirement for the village should be left to be determined in the LP.
30. It was to address the uncertainties in the housing requirement figure for the village that the Examiner considered that reserve sites for housing should be included in the DNP. Whilst not housing allocations, the Examiner assessed the appeal site and another site and concluded they would be appropriate for housing development.
31. As set out above, Policy H3 of the DNP indicates that if by 31 December 2022 no replacement Local Plan for the Borough has been adopted, applications for housing development on the site should be determined on the evidence available at the time. There is nothing in the policy that indicates the development of the site should only take place if there is a specific need for new housing in Desford. Nor that their development should only take place after the DNP has been reviewed.
32. As a result, I consider that the figure of 163 in the DNP does not represent a requirement figure for Desford and the development of the site and the contribution it would make to housing delivery should not be judged against whether this figure has already been exceeded or not, but "on the evidence available at the time".
33. Whilst I appreciate that local residents may prefer that development took place on the eastern side of the village, the Examiner for the DNP assessed this site as being suitable for housing development.

#### *Housing Land Supply*

34. The Council indicated that they could demonstrate a 4.89 year housing land supply. In the light of paragraph 226 of the Framework and the position with the LP it was discussed at the Inquiry whether a 4 or 5 year housing land supply needed to be demonstrated. As the Council were not proceeding with the LP that has been subject to pre-submission consultation, they considered that the provisions of paragraph 226 did not apply and so they needed to be

able to demonstrate a 5 year supply. This was the position adopted in the recent appeal decision<sup>1</sup> I was referred to in Ratby.

35. However, as set out above, irrespective of this the main parties agree that the tilted balance of paragraph 11 d) of the Framework is engaged. As such, I have considered this no further in my decision.
36. It was argued by local residents that if the tilted balance is engaged then the provisions of paragraph 14 should be applied. Nevertheless, for reasons set out in this decision I consider that the proposal would not conflict with the DNP, nor does the DNP have an identified housing requirement in line with paragraphs 14b, 67 and 68 of the Framework. As a consequence, this paragraph is not engaged in this case.

#### *Other highway and accessibility issues*

37. In line with its designation as a Key Rural Centre, Desford has a good range of services and facilities to meet the day to day needs of residents, the majority of which are within walking and/or cycling distance of the appeal site. Bus stops, which provide an hourly service to Leicester and Market Bosworth are also located near the site on Hunts Lane. I am therefore satisfied that future residents would not be solely reliant on the private car to meet their everyday needs.
38. It has been suggested that the proposal would exacerbate existing congestion within Desford. However, the highway authority has considered the modelling work undertaken by the appellant and is satisfied that the highway network within the village would continue to operate within capacity. Whilst there is limited parking available at many of the services in the village, the development is within easy walking distance of many of these and so it would not necessarily exacerbate any existing parking issues.
39. It is proposed that the existing Public Right of Way and right of access to Lockey Farm will be retained on their current alignment. The illustrative layout shows a green corridor along this edge of the site which would ensure it remained an attractive route.

#### *Local Infrastructure*

40. It has been suggested that local facilities such as doctors and schools are already full. As set out below a planning obligation has been provided which provides a financial contribution related to the additional educational and healthcare demands the development would create.

#### *Character and appearance / Landscape impact*

41. The application was accompanied by a Landscape and Visual Appraisal (LVA), the methodology and conclusions of which are accepted by the Council. The proposal would result in the loss of an agricultural field and clearly the proposed development would alter the character of the site. However, the LVA concludes that due to the topography and vegetation in the area, the effects will be localised to the site and its immediate context. Although the landscaping and layout of the site are to be finalised at reserved matters, extensive green infrastructure is proposed as part of the development. As a consequence, it is

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<sup>1</sup> Appeal reference APP/K2420/W/23/3330774

concluded that the landscape effects would be minor/adverse at completion, reducing to minor/negligible over time. From my own observations I see no reason to disagree with this conclusion

42. Given the distance that would remain between the edge of the site and Newbold Vernon to the west I am satisfied that the development would not have any detrimental impact on the separate identity of these two villages. The development would be seen in the context of the existing modern housing development on the western edge of the village, and so I consider it would not be detrimental to the rural character of the village. In addition, the wider agricultural setting of the village would be retained.
43. CS Policy 16 requires residential development in or adjoining Key Rural Centres to achieve a density of at least 30 dwellings per hectare. Should the development be for 100 houses, it would achieve a density of 35 dwellings per hectare and so it would accord with this policy. Furthermore, the illustrative layout shows this level of housing can be achieved whilst still providing extensive green infrastructure on the site. As a result, the site would not appear over-developed.

### *Ecology*

44. The proposal was accompanied by an Ecological Appraisal that assessed the nature conservation interest of the site. This concluded that the development would not have an unacceptable impact on ecology. It is largely proposed to retain and strengthen existing trees and hedgerows around the site. In addition, it was confirmed at the Inquiry that the proposal would achieve biodiversity net gain. In the absence of any substantive evidence to the contrary I see no reason to conclude differently.

### *Living Conditions*

45. The layout and design of the scheme are not to be determined at this stage. Therefore, it is at the reserved matters stage that issues affecting the living conditions of adjacent residents such as privacy and noise would be considered. Nonetheless, the illustrative plan shows that adequate separation distances could be provided between existing and proposed houses. I consider that a scheme could be designed that would not cause any unacceptable impact on the living conditions of existing residents. Furthermore, I see no reason why the proposal would cause an increase in anti-social behaviour.
46. In common with any development there would be some disruption caused during the construction phase. However, this would be temporary, and conditions can be used to control matters such as construction hours and dust and so minimise any disruption.
47. The location of the site opposite the cemetery would not be inappropriate, either for future occupiers or for users of the cemetery. The situation would be no different than in the historic core of the village where housing surrounds the church and its graveyard.

### *Flooding*

48. The site lies in Flood Zone 1 and the accompanying Flood Risk Assessment concluded that the overall flood risk to the site was low and that the development would not result in an increase in flood risk elsewhere. In the

absence of any substantive evidence to the contrary, I consider the proposal would not have any adverse impact on flooding.

### **Planning Obligation**

49. A signed and completed Section 106 agreement has been submitted. This secures the provision of 40% affordable housing as well as the type and occupancy of the units. It also makes provision for financial contributions to increase the capacity of: the nearest household waste recycling site; early years, primary, secondary and special education and disabilities education facilities at the nearest schools; at Desford Medical Centre; and at Desford library. These would reflect the extra demand the development would create for these services.
50. The obligation also secures the provision of various forms of open space either on the site or by way of financial contribution for the improvement or enhancement of existing facilities in Desford for those elements that cannot be provided on site. The long-term management and maintenance of the open space is also provided for in the obligation.
51. A number of highway related financial contributions are also secured in the obligation. These are: for the provision of Travel Packs and bus passes for each dwelling; to enable the monitoring of the Travel Plan; to fund the Traffic Regulation Order needed to move the speed limit on Hunts Lane; and towards improvements at Desford Crossroads.
52. The Borough Council and the County Council have both provided a detailed CIL Compliance Statements that set out how the section 106 agreement would meet the relevant tests contained in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and in paragraph 57 of the Framework.
53. Desford Crossroads is located some distance to the south-east of Desford on the A47. The appellant's evidence shows that the impact of the development on the 2028 background + committed development flows at this junction would be an additional 15 movements in each of the AM and PM peak. This represents a 0.005% increase in traffic movements. Neither the methodology nor the results of this work have been disputed by the highway authority.
54. Although this level of increase in traffic movements would not ordinarily require a capacity assessment to be undertaken, the appellant has done one. This shows that the junction is already operating over capacity, but that the impact of the development on the practical reserve capacity of the junction and the mean maximum queue would be negligible and well within the normal daily variations in traffic flow. Thus, whilst a scheme to improve this junction may be needed to address capacity issues, the proposal would not exacerbate these issues and so it is not reasonable to require it to contribute towards it.
55. Given this I consider that the contribution towards the improvement of this junction is not fairly related in scale and kind, nor is it necessary, and so does not pass the tests in the regulations and Framework set out above.
56. Other than this contribution, I am satisfied that all of the other obligations in the section 106 agreement are necessary, directly related to the development and fairly related in scale and kind. As such, they accord with the statutory tests.

## **Planning Balance and Conclusion**

57. The proposed development is located in the countryside, outside of the settlement boundary. It would not be for any of the forms of development either national or local policies consider acceptable in the countryside. As a result, it would be contrary to CS Policy 7, SADMP Policy DM4 and Policy H1 of the DNP. However, I consider that the conflict with these policies is over-ridden by its conformity to Policy H3 of the DNP.
58. I have also found that the proposal would accord with SADMP Policy DM17 in respect of highway safety. Therefore, I consider that the proposed development would accord with the development plan and there are no other reasons which justify refusal of the proposal. Consequently, I conclude that the appeal should be allowed.

## **Conditions**

59. The Council and the appellant agreed a set of conditions that were discussed at the Inquiry. I have considered these in the light of paragraph 56 of the Framework and have revised a number of them as discussed at the Inquiry.
60. In addition to the standard implementation and reserved matters conditions (conditions 1 and 2), to provide certainty it is necessary to define the plans with which the scheme should accord (condition 3). Condition 4 is necessary in the interests of the character and appearance of the area and biodiversity. To safeguard the protected trees as well as in the interests of visual amenity condition 5 is needed. In the interests of safeguarding biodiversity conditions 16, 17, 21 and 23 are required.
61. In the interest of promoting sustainable travel condition 6 is required and for highway safety reasons conditions 8 and 9 are required. Condition 7 is required to ensure any matters of archaeological interest are found and recorded. Conditions 10 and 11 are necessary to safeguard the development from contaminated land. To ensure the site is satisfactorily drained both during the construction phase and afterwards conditions 13, 14 and 15 are imposed.
62. Conditions 12, 19 and 20 are necessary to ensure satisfactory living conditions for existing and/or future occupiers. Condition 18 is imposed to ensure the development is provided with high quality and reliable communication infrastructure.
63. Condition 22 is required to ensure healthy lifestyle features are built into the design of the development. The appellant and Council suggested slightly different wording for this condition. As acknowledged in the Building for a Healthy Life toolkit, for various reasons it may not always be possible to achieve a 'green light' for every consideration, so I consider the wording suggested by the appellant is the most appropriate.

*Alison Partington*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Rebecca Clutten Counsel instructed by Mr C Alsbury

She called:

Mr Rob Holland BA(Hons) MCIHT  
Mr Craig Alsbury BA(Hons) BTP  
MRTPI  
Ms Emily Hill MRTPI\*

Associate Director, Tetra Tech  
Principal and Head of Planning and  
EIA Team, Avison Young  
Associate Director, Avison Young

### FOR THE LOCAL PLANNING AUTHORITY:

Hugh Richards Counsel instructed by the Borough Solicitor, Hinckley and Bosworth  
Borough Council

He called:

Mr Simon Pratt BEng(Hons) MCIHT  
Mr Tim Hartley MRTPI\*

Director SCP Transport Planning  
Team Leader, Development  
Management, Hinckley and  
Bosworth Borough Council  
Transport Planner Leicestershire  
County Council  
Transport Planner Leicestershire  
County Council

Mr Daniel Putnam\*

Mr Ben Dutton\*

\* In respect of the round table discussion on conditions and the planning obligation only.

### INTERESTED PARTIES:

Mr Bernard Grimshaw  
Mr Colin Crane

Local Resident  
Local Resident

## INQUIRY DOCUMENTS

INQ1 Opening statement by Appellant  
INQ2 Opening statement by Council  
INQ3 Statement by Mr B Grimshaw  
INQ4 Appeal Decision APP/K2420/W/23/3330774 – Land at Desford Lane,  
Ratby  
INQ5 Closing Statement by Council  
INQ6 Closing Statement by Appellant

## CORE DOCUMENTS

Can be accessed using the following link:

[About the inquiry | Public inquiry - Land adjacent to Lockley Farm, Hunts Lane, Desford | Hinckley & Bosworth Borough Council \(hinckley-bosworth.gov.uk\)](https://www.hinckley-bosworth.gov.uk/about-the-inquiry)

## **Annex A**

### **Conditions**

- 1) No development hereby permitted shall take place until details of the layout, scale, appearance, landscaping, and access other than the access into the site shown on drawing PRJ01-TTE-00-ZZ-DR-O-0001 Rev PO3 (hereinafter called "the reserved matters") have been submitted in writing to, and approved in writing by, the local planning authority. The development shall be implemented in accordance with the approved reserved matters.
- 2) Application for approval of reserved matters shall be made to the local planning authority not later than two years from the date of this permission and the development hereby permitted shall take place not later than 18 months from the date of approval of the last of the reserved matters to be approved.
- 3) The development hereby permitted shall be carried out in full accordance with the following approved plans:
  - Site Location Plan – Drg No. 09129-FPCR-XX-XX-DR-A-0001
  - Proposed Site Access Junction and Visibility Splays Drg No. PRJ01-TTE-00-ZZ-DR-O-0001 Rev PO3
- 4) In accordance with the details in Paragraph 5.3 (Landscape and GI Infrastructure (GI) Proposals) of the Landscape and Visual Appraisal (dated November 2022), a landscape buffer (which may incorporate the retained PROW / farm access track) at a minimum width of 15m shall be created on the western boundary of the site.
- 5) The development hereby permitted shall be carried out in full accordance with the Tree Retention Plan (9129-T-02 Rev C) at page 18 and the recommendations at Section 7 of the Arboricultural Assessment (dated November 2022). During the construction period, none of the trees or hedges indicated to be retained within this Tree Retention Plan shall be cut down, uprooted, or destroyed, nor shall they be topped or lopped other than in accordance with the approved plans, without the written approval of the local planning authority. If any of the trees or hedges to be retained are removed, uprooted, destroyed, or dies during the construction period, a replacement shall be planted at the same place during the first planting season following the completion of the development. The size and species of the tree or hedge shall be agreed in writing by the local planning authority prior to its planting.
- 6) The Travel Plan management, marketing, promotion, and monitoring measures included within the Tetra Tech Framework Travel Plan (reference: A114475 Revision 2) (dated December 2022), shall be implemented in full, from the first occupation of the development.
- 7) No development hereby permitted shall take place until the necessary programme of archaeological work has been completed. The programme will commence with an initial phase of trial trenching to inform a final archaeological mitigation scheme. Each stage will be completed in accordance with a Written Scheme of Investigation (WSI), which has been submitted in writing to, and approved in writing by, the local planning authority. For land that is included within the WSI, no development shall take place other than in accordance with the agreed

WSI, which shall include the statement of significance and research objectives, and:

- The programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works.
  - The programme for post-investigation assessment and subsequent analysis, publication & dissemination, and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.
- 8) No development hereby permitted shall take place on the site until such time as a construction traffic management plan, including as a minimum, details of the routing of construction traffic, details of traffic management including measures to enable vehicles to enter and exit the site in forward gear, wheel cleansing facilities, vehicle parking facilities, any proposed external lighting and a timetable for their provision, has been submitted in writing to, and approved in writing by, the local planning authority. The construction of the development shall thereafter be carried out in accordance with the approved details and timetable.
- 9) No dwelling hereby permitted shall be occupied until such time as the access arrangements and the off-site works (footway improvements) shown on Tetra Tech, drawing number PRJ01-TTE-00-ZZ-DR-O-0001 Revision P03, have been implemented in full.
- 10) No development hereby permitted shall take place until a scheme for the investigation of any potential land contamination on the site has been submitted in writing to, and agreed in writing by, the local planning authority, which shall include details of how any contamination shall be dealt with. The approved scheme shall be implemented in accordance with the agreed details, and any remediation works so approved shall be carried out prior to any dwelling being occupied.
- 11) If during development contamination not previously identified is found to be present at the site, no further development shall take place until an addendum to the scheme for the investigation of all potential land contamination is submitted in writing to, and approved in writing by, the local planning authority, which shall include details of how the unsuspected contamination shall be dealt with. Any remediation works so approved shall be carried out prior to any dwelling being occupied.
- 12) No development hereby permitted shall take place until a Construction Environmental Management Plan (CEMP) has been submitted in writing to, and agreed in writing by, the local planning authority. The plan shall detail how, during the site preparation and construction phase of the development, the impact on existing and proposed residential premises and the environment shall be prevented or mitigated from dust, odour, noise, smoke, light, and land contamination. The plan shall detail how such controls will be monitored. The plan will provide a procedure for the investigation of complaints. The agreed details shall be implemented throughout the construction phase of the development.
- 13) No development hereby permitted shall take place until a scheme to provide a sustainable surface water drainage system has been submitted in writing to, and approved in writing by, the local planning authority. The

scheme shall subsequently be implemented in accordance with the approved details prior to any dwelling being occupied and shall be retained as such thereafter.

- 14) No development hereby permitted shall take place until such time as details in relation to the management of surface water on site during construction of the development has been submitted in writing to, and approved in writing by, the local planning authority. Details should demonstrate how surface water will be managed on site to prevent an increase in flood risk during the various construction stages of development from initial site works through to completion. This shall include temporary attenuation, additional treatment, controls, maintenance, and protection. Details regarding the protection of any proposed infiltration areas should also be provided. The details shall be implemented before any development hereby permitted takes place and the development shall be managed and maintained in accordance with these approved details for the duration of the construction period.
- 15) No dwelling hereby permitted shall be occupied until details in relation to the long-term maintenance of the surface water drainage system (SuDS) within the development have been submitted to, and approved in writing by, the local planning authority. Details of the SuDS Maintenance Plan should include responsibilities and schedules for routine maintenance, remedial actions, and monitoring of the separate elements of the system, and should also include procedures that must be implemented in the event of pollution incidents within the site. The surface water drainage system shall then be maintained in accordance with these approved details in perpetuity.
- 16) No development hereby permitted shall take place (including ground works or vegetation clearance) until a Landscape and Ecological Management Plan (LEMP) has been submitted in writing to, and approved in writing by, the local planning authority. The LEMP shall include the following details:
  - a) Description and evaluation of the features to be created/managed;
  - b) Aims and objectives of management and long-term management;
  - c) Appropriate management options for achieving aims and objectives;
  - d) Prescriptions for management actions and responsibilities;
  - e) Work schedules for all landscape areas, other than small privately owned domestic gardens;
  - f) Species/seed mixes to be planted/sown; and
  - g) Ongoing monitoring and remedial measures.

The LEMP shall be carried out in accordance with the approved details.

- 17) No development hereby permitted shall take place until a Reasonable Avoidance Measures Method Statement (RAMMS) has been submitted to, and approved in writing by, the local planning authority. The RAMMS should include details including the proposed mitigation measures during the construction and post construction phases of the development that ensures that there is no impact upon the terrestrial newt, reptile, or badger populations. The development shall be carried out in accordance with the approved details and in respect of the post construction measures thereafter retained in perpetuity.

- 18) The development hereby permitted must provide electronic communications infrastructure to serve the development, including full fibre broadband connections. Prior to the installation of any electronic communications infrastructure, details of the infrastructure must first be submitted to, and approved in writing by, the local planning authority. The development shall be implemented in accordance with the approved details, and the infrastructure for each dwelling must be fully available prior to its occupation.
- 19) Site preparation and construction shall be limited to the following hours:
  - Monday to Friday: 07:30 to 18:00
  - Saturday: 09:00 to 14:00
  - No working on Sundays and Bank Holidays.
- 20) No dwelling hereby permitted shall be occupied until such time as a scheme that makes adequate provision for the storage and collection of waste and recycling containers across the site, has been submitted to, and approved in writing by, the local planning authority. The details should address accessibility to storage facilities and confirm adequate space is provided at the adopted highway boundary to store and collect wheeled containers. The approved scheme for the provision of storage and collection areas for waste and recycling containers for each dwelling, shall then be provided prior to the occupation of that dwelling and for any waste storage in communal areas shall be retained in perpetuity.
- 21) No development hereby permitted shall take place (including ground works or vegetation clearance) until a Biodiversity Net Gain Plan (the Plan) has been submitted in writing to, and approved in writing by, the local planning authority. The Plan shall provide for the achievement of a net gain on the reported baseline habitat loss. The Plan shall include the following details:
  - a) a description of existing habitats on and off site;
  - b) baseline habitat data used to inform the metric;
  - c) a description of, and plans showing, planned habitat creation/enhancement, including species;
  - d) a timetable for the implementation of habitat creation/enhancement;
  - e) a habitat management and monitoring plan including a timetable for management routines and reviews, and a strategy for any remedial measures, if and when required; and
  - f) a mechanism for securing the implementation of the biodiversity off-setting (if required) and its maintenance/management for a period of 30 years in accordance with details approved in the Plan.

The Plan shall be supported by up to-date Biodiversity Net Gain metric calculations for both the application site and the site for off-setting (if required) using DEFRA metric 4.0. The Plan shall be implemented in accordance with the approved details and shall be retained as such thereafter.

- 22) Each application for the approval of Reserved Matters shall include a Building for a Healthy Life Assessment which describes how the considerations in Building for a Healthy Life that are relevant to the matters for which approval is being sought have been addressed through the design process and how the proposed development responds to each of those considerations.

- 23) Prior to the installation of any external lighting to serve the development, a lighting scheme shall be submitted in writing to, and approved in writing by, the local planning authority. This information shall include a layout plan with beam orientation, and a schedule of equipment proposed in the design (luminaire type, mounting height, aiming angles, and luminaire profiles). The lighting scheme shall ensure there shall be no more than 1 lux of light spill onto bat foraging corridors. The lighting shall be installed, maintained, and operated in accordance with the approved details and retained as such thereafter.

## **APPENDIX 3 – Appeal Decision Notice (APP/K2420/W/23/3330774)**



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## Appeal Decision

Inquiry held on 13-16 February 2024

Site visit made on 15 February 2024

**by Guy Davies BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 28<sup>th</sup> February 2024**

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### **Appeal Ref: APP/K2420/W/23/3330774**

#### **Land off Desford Lane, Ratby, Leicestershire LE6 0HF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Gladman Developments Ltd and Bletsoe against the decision of Hinckley and Bosworth Borough Council.
  - The application Ref 21/01295/OUT, dated 15 October 2021, was refused by notice dated 1 September 2023.
  - The development proposed is described as an outline planning application for the erection of up to 225 dwellings (including 40% affordable housing) with public open space, landscaping and sustainable drainage system (SuDS) and a vehicular access point. All matters reserved except for means of access.
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### **Decision**

1. The appeal is allowed and outline planning permission is granted for the erection of up to 225 dwellings (including 40% affordable housing) with public open space, landscaping and sustainable drainage system (SuDS) and a vehicular access point on land off Desford Lane, Ratby, Leicestershire LE6 0HF in accordance with the terms of the application Ref 21/01295/OUT, dated 15 October 2021, and subject to the 26 conditions in the attached schedule.

### **Preliminary Matters**

2. The description used on the application form and as set out in the banner heading above includes some wording that is superfluous because it is not a description of development. I have omitted it in the description used in my decision. It does not change the substance of the proposal.
3. The proposal is made in outline with all detailed matters reserved for later consideration other than for access. Access relates to the proposed vehicular access to Desford Lane and associated highway works. It does not extend to the internal road layout within the site as shown on the development framework plan, which is for illustrative purposes only.
4. A legal undertaking has been submitted which secures a number of planning obligations. I consider the undertaking later in my reasoning. The Council is satisfied that a combination of these obligations and conditions overcomes its concerns around the impact of the development on public facilities and services. Consequently, that reason for refusal no longer needs to be considered as a main issue in the appeal.
5. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023. The main parties were able to respond to

those changes in preparing their evidence and at the inquiry. I have taken the revised Framework into account in reaching my decision.

6. A draft version of the Hinckley and Bosworth Local Plan 2020-2039 was published for consultation in 2022. I address the weight I give to the plan in more detail in the planning balance.

### **Main Issues**

7. The main issues are the effect of the proposed development on:
  - The spatial strategy of the development plan, in relation to the location of new development
  - The landscape
  - Accessibility to services and facilities
  - The settings of the grade II\* listed Church of St Philip and St James, and of the Ratby Conservation Area.
8. It is also necessary to consider the benefits of the proposal, and the consequences of a lack of housing land supply. I do this as part of the planning balance.

### **Reasons**

#### *Spatial strategy*

9. The spatial strategy as set out in the Core Strategy Development Plan Document 2009 (the Core Strategy) is to focus development in and around Hinckley, with a lesser amount of development planned for the rural area to ensure that smaller settlements remain vibrant, mixed communities. To that end, Policies 7 and 8 of the Core Strategy support housing development within the settlement boundary of Ratby, which is identified as a Key Rural Centre. Outside the settlement boundary, only limited forms of development are supported, as listed in Policy DM4 of the Site Allocations and Development Management Policies Development Plan Document 2016 (the Development Management Plan).
10. The appeal site lies outside the settlement boundary of Ratby as defined on the Settlement Inset Plan and the proposed development does not fall within any of the categories of development supported by Policy DM4. The proposed development would therefore be at odds with the spatial strategy of the development plan and conflict with Policy DM4.
11. The housing target in the Core Strategy is derived from the former East Midlands Regional Plan, now withdrawn. That housing target has been superseded by a nationally derived housing target calculated using a different methodology, and the need to co-operate with neighbouring planning authorities to address unmet housing demand, which results in a higher housing target. It follows that the development plan no longer reflects current housing need and fails to support the Government's objective of significantly boosting the supply of homes. The policies relating to the provision of housing are therefore out-of-date.

12. I conclude that, in so far as the spatial strategy as set out in the development plan is relevant, residential development on the appeal site would run counter to it and would therefore conflict with Policy DM4 of the Allocations Plan. However, that policy conflict only attracts limited weight because the policies which quantify and distribute housing growth in the development plan are out-of-date.

### *Landscape*

13. In landscape terms the site forms part of an area<sup>1</sup> characterised by gently rolling landform rising to the north, clustered villages of varying sizes, predominantly arable farmland with areas of industry and recreational facilities near to the village fringes, limited tree cover, large to medium sized field patterns surrounded by hedgerows and linear woodland copses, and a good network of footpaths linking settlements. Electricity pylons and wind turbines are often prominent vertical features in the open landscape.
14. The site reflects these landscape characteristics by forming the larger part of what is currently an arable field surrounded by hedges, those to the north and south supplemented by hedgerow trees. It slopes down to the south and east, with its highest point being the proposed access point to Desford Lane. The village of Ratby sits on a hill to the east. To the south a shallow valley separates the site from the neighbouring village of Kirby Muxlowe. Land to the west is designated as part of the National Forest, although adjacent to the appeal site it is farmed land in arable and pastoral use rather than woodland.
15. Although the land surrounding these villages is predominantly agricultural in nature, commercial uses are interspersed within the landscape. A line of pylons runs up the valley. There was general agreement in the evidence presented on landscape that the site and surrounding area has a medium to medium-high sensitivity to change. Although not a 'valued' landscape in the sense used in paragraph 180b) of the Framework, I recognise it as having its own intrinsic character and beauty.
16. Residential development on the site would introduce domestic scale buildings together with roads, vehicles and lighting. The development as well as the activities associated with it would suburbanise the site and would inevitably harm its agricultural character and appearance and the contribution it makes to the landscape. Although residential buildings would not front Desford Lane, the development would still be readily seen from it and the public footpath that runs along the western boundary of the site, and in views across the valley from the south. Some landscape mitigation could be provided, with up to half of the site potentially being available. However, even after such planting had become established, the houses and associated activities would still be visible because of the proximity of the footpath and the sloping nature of the site.
17. The highway works to Desford Lane would also have a material impact on its character and appearance. Although well trafficked, at present the lane provides a largely rural approach to Ratby. In my view the built-up entry to the village does not become apparent until one gets near the new medical centre. The proposed highway works would suburbanise the lane by straightening and widening parts of it, introducing new hard surfacing and lighting, and reducing

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<sup>1</sup> Hinckley and Bosworth Borough Landscape Character Assessment 2017 – LCA D: Newbold and Desford Rolling Farmland

the amount of soft verge. The hedgerow along the site frontage would also have to be removed but is proposed to be replanted behind the access sight line.

18. The development would be separated from the existing built-up edge of Ratby by the playing fields of Ratby Sports Club to the north and small meadows either side of Little Rothley Brook to the east. I was presented with differing views as to how this separation would be perceived in landscape terms. Other than for the hedged and treed boundary to Desford Lane, the playing fields do not in my view contribute to the wider landscape because they do not reflect its characteristic features. They provide an open and green space adjacent to the built-up area but are formal in appearance with terraces to accommodate the playing pitches.
19. The meadows however provide a more obvious break between the site and the western edge of the village. In views from the west and southwest, development on the site would be seen against the backdrop of existing housing in Ratby, but from the south and southeast it would be apparent that the development was on a separate hillside to that occupied by the existing village and that there was a green wedge separating it from existing housing.
20. Balanced against that sense of separation from Ratby is the presence of commercial operations in the immediate vicinity of the appeal site, the most evident being that of the stoneworks and to a lesser extent a caravan storage use on the opposite side of Rothley Brook. Development on the site would be seen as occupying land between these commercial operations and Ratby, rather than intruding out into open countryside. Sufficient countryside would remain between Ratby and Kirby Muxlowe to maintain a separation between the villages.
21. Taking all of these factors together it is my view that the development would have a harmful impact on the landscape by introducing built development on agricultural land that is characteristic of the landscape and forms part of its intrinsic character and beauty. While the proposal would be perceived as spreading development beyond the hilltop setting of Ratby and separated to an extent from its existing built-up edge, that perception would be moderated by the presence of the nearby commercial operations such that the harm would be contained to the local area. Planting would help to mitigate that harm to an extent. However, given the visibility of the site there would remain moderate adverse harm to the landscape in the long term.
22. The Council's reason for refusal relating to landscape harm refers to Policies 6 and 7 of the Core Strategy. Neither of these policies are relevant to impact on the landscape as the former relates to a green wedge designation and the latter relates to development within key rural centres, neither of which the site falls within. Reference is also made to Policies DM1 and DM10 of the Development Management Plan. Policy DM1 relates to the presumption in favour of sustainable development (paragraph 11 of the Framework), which I address later. Policy DM10 is aimed primarily at detailed design, which is relevant for the reserved matters but not the outline stage.
23. That leaves Policy DM4 of the Development Management Plan. Its purpose is to safeguard the countryside and maintain separation between settlements. It does that by protecting the intrinsic value, beauty, open character and landscape character of the countryside from unsustainable development. The

appellants argue that the detailed criteria i) to v) are only relevant where development falls within the categories of development considered sustainable in the countryside as set out in criteria a) to e). Given the joining preposition 'and' between these lists of criteria in the policy, that interpretation must be right. However, that does not prevent the first sentence of the policy from being relevant to unsustainable forms of development in the countryside.

24. I conclude that the development would conflict with Policy DM4, not only because it is not included in any of the categories of development considered sustainable in the countryside, but also because it would cause moderate adverse harm to the value, beauty and character of the countryside, albeit that harm would be contained to the local area and would not result in the merging of villages. It would also conflict with paragraph 180b) of the Framework which recognises the intrinsic character and beauty of the countryside, with the implied degree of protection that recognition affords.

#### *Accessibility to services and facilities*

25. Ratby is identified in the Core Strategy as a Key Rural Centre because it contains a primary school, local shop, post office, medical surgery, community and leisure facilities, employment opportunities and a 6 day a week bus service. These services and facilities are recognised in the Core Strategy as making it a place where residents can fulfil their daily needs without having to travel long distances into urban areas. A need identified in Policy 8 of the Core Strategy to improve medical facilities in Ratby has recently been secured through completion of the new medical centre on Desford Lane.
26. At present the site is not well connected to the services and facilities in Ratby. Desford Lane has no footways and is unlit for most of its length, and there is no other direct access across Little Rothley Brook to the village. The proposed highway works would therefore be critical in securing accessibility to the village as well as wider afield by means other than the private motor car.
27. With the proposed highway works, walking distances to the services and facilities in the village may be longer than is desirable but nevertheless most would be within what are acceptable or preferable maximum distances for pedestrians without a mobility impairment<sup>2</sup>. The proposed bus stops would be within a desirable walking distance. Average walking distances to facilities in the centre of the village would be comparable to those from dwellings in its northern and southern parts, including recent residential development off Markfield Road.
28. Because the proposal is made in outline with layout reserved for later consideration, the measurement of distances has been taken from a central point in the site, meaning that some occupants would have to walk further and some less than that calculated<sup>3</sup>. Given the somewhat subjective nature of what may be considered desirable, acceptable or the maximum preferable walking distances, I consider that does not invalidate the findings detailed above.
29. The quality of the walking route is also important in encouraging future occupants to walk or cycle rather than take the car for short journeys. In that regard the separate shared footway/cycleway with street lighting and the new pedestrian crossing would provide a safe route into the village for both

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<sup>2</sup> Institution of Highways & Transportation: guidelines for providing for journeys on foot 2000, table 3.2

<sup>3</sup> Accessibility statement of common ground, table 2.1

pedestrians and cyclists. The provision of new bus stops with a central refuge to aid crossing the lane would also provide convenient and safe facilities for bus passengers.

30. The proposed works would have some shortcomings, in that there would be a pinch point where the shared path crosses Little Rothley Brook, and neither the path nor the bus stops would be under passive surveillance<sup>4</sup>. The single point of access to the site and the single shared path into the village are also less than ideal, in that there would be no choice of routes unlike other parts of the village where there is greater permeability. However, none of these would seriously undermine the quality of the proposed highway facilities or significantly reduce their attractiveness to future users in accessing services and facilities in the village, or wider afield, including employment opportunities.
31. I conclude that, notwithstanding the shortcomings, accessibility to services and facilities sufficient to meet daily needs would be available to occupants of the proposed development by a range of travel modes other than the private motor car. Accessibility further afield to higher order services, facilities and employment opportunities would also be available by bus or bicycle. The proposal would therefore accord with Policy DM17 of the Development Management Plan, which seeks to minimise the need to travel and promotes sustainable forms of transport in new developments.

### *Heritage*

32. There are two heritage assets which the development has the potential to affect. These are the grade II\* Church of St Philip and St James<sup>5</sup>, and the Ratby Conservation Area. Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 require special regard to be had to preserving the architectural and historic interest of the church, and to preserve or enhance the character or appearance of the conservation area, respectively.
33. The significance of the church lies in its historic fabric, the earliest parts of which date from the 13<sup>th</sup> century, and also its setting in a prominent position on top of a hill in the centre of the village. Its immediate setting is defined by the churchyard, with its wider setting being established by the village (in particular the more historic parts of it) and beyond that to the surrounding countryside.
34. The significance of the conservation area lies in the historic buildings and road layout which make up the earliest part of the village, grouped around the church, along Main Street and the upper part of Station Road. The buildings reflect the change from a predominantly agrarian village to one that accommodated a mix of agricultural and early manufacturing uses within the historic core. The setting around the conservation area is now largely occupied by more modern development although playing fields abut it to the south and west, and views of surrounding countryside can be gained from the higher ground within it.
35. Neither of these heritage assets would be directly impacted by the proposed development, which would be separated from them by some distance. Views of the appeal site can be obtained from the church, and vice versa, although those views are filtered through the hedge and trees along the northern

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<sup>4</sup> Leicestershire Highway Design Guide 2022, part 3

<sup>5</sup> List entry number 1074093

boundary of the site. The illustrative development framework plan shows that it may be possible to retain some views of the church from the appeal site through site layout design, although that would be for the reserved matter stage and is not determinative of my conclusions on heritage matters.

36. Little of the appeal site can be seen from the conservation area, other than from the area immediately around the church. Desford Lane does form an approach to the conservation area, although only its easternmost end is identified as a view to be protected<sup>6</sup>, which is beyond the part of the lane that would be altered by the proposed highway works.
37. The loss of part of the countryside that can be seen from the church and that part of the conservation area that immediately surrounds it would have a minor adverse effect on their settings, in that it would lessen the historic relationship between the church and village and its agricultural hinterland. However, historically the church has always been surrounded by buildings rather than being reliant on an isolated, countryside setting. The same applies to the conservation area where its significance and special interest lies not only in its agrarian links but also to buildings associated with early forms of manufacture, none of which were reliant on agriculture.
38. Consequently, the limited impact to the wider settings of the church and conservation area identified above would amount to less than substantial harm to their significance. That impact would be towards the lower end of the range of such harm.
39. In such circumstances, paragraph 208 of the Framework says that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. It is common ground between the witnesses for both of the main parties that the public benefits arising from the provision of additional housing, including a proportion of affordable housing, would outweigh the less than substantial harm to the significance of both the church and the conservation area.
40. Irrespective of the level of harm caused, paragraph 205 of the Framework requires that great weight be afforded to a heritage asset's conservation. Having taken into account that great weight, and the statutory protection afforded to designated heritage assets, I am of the view that the public benefits of the development would easily outweigh the very limited harm caused to the significance of both the church and conservation area. Consequently, I conclude that the development would not conflict with Policies DM11 and DM12 of the Development Management Plan, which seek to protect the historic environment taking account of any benefits that might flow from development proposals.

## **Other Matters**

41. The development would give rise to the loss of a small amount of best and most versatile agricultural land. The loss of agricultural land does not form a reason for refusal on the Council's decision notice although it is a matter raised in evidence. I was informed that almost all agricultural land in the borough falls within this category and therefore any housing development is likely to result in

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<sup>6</sup> Ratby Conservation Area Appraisal, 2014

such a loss. Given that to be the case, I consider that the loss of this relatively small parcel of land for agriculture would not cause any material difference to food production because such a loss is inevitable if the borough is to meet its housing requirements.

42. I heard evidence from interested parties that Ratby has expanded rapidly in recent decades and that has put strain on local facilities, in particular the primary school and increased traffic on the roads, as well as fears about the ability of the village to accommodate the rate of change in social terms.
43. While I understand the concerns expressed on these issues, it is a matter for service providers to respond to new development by providing improvements or additional capacity where necessary, rather than existing capacity being seen as a limiting factor on development, unless such improvements or additional capacity are not possible. In this case, no objection to the scheme has been raised by service providers, including the County Council in its roles as Highway Authority and Education Authority. A range of legal obligations and conditions agreed to by the appellants would also secure contributions towards the provision of education and highway improvements, as well as other services such as the library and maintenance of open space.
44. Social change is a more subjective matter. I appreciate that more housing will make the village a busier place with potentially a greater variety of people, and that some residents may regret the change from what was a smaller and perhaps more intimate scale of village in the past. However, more residents do also bring advantages, such as more participants in village sports clubs, and using local shops and businesses ensuring that they remain and thrive. Development of new housing, whether at Ratby or elsewhere in the borough, is necessary to meet demand and therefore change to the existing population is inevitable. I do not consider that change to be intrinsically harmful.
45. I was told that there have recently been instances of flooding in the local area. While that may be the case, so far as the proposed development is concerned there is a requirement that it incorporate a sustainable drainage system to avoid increasing surface water run-off from the site. It would not therefore worsen the current problems.
46. The issue of noise disturbance from the stoneworks has been raised. I do not consider that is of sufficient concern to prevent residential development taking place on the site, but I have imposed a condition requiring the potential for such noise disturbance to be assessed in more detail and for suitable mitigation to be incorporated in the layout and design of houses on the site if necessary.
47. There would be some temporary disruption during the construction period. However, that is common to almost all development and does not amount to a reason for dismissing the appeal. Conditions are imposed that would help minimise any disruption that might occur.

### **Planning Balance**

48. I have found that the proposed development would conflict with Policy DM4 of the Development Management Plan because the site lies outside the settlement boundary of Ratby and does not fall within any of the categories of development considered appropriate in the countryside. However, that conflict

- only carries limited weight because the spatial strategy of the development plan is out-of-date.
49. I have also found that the proposed development would conflict with Policy DM4 and paragraph 180b) of the Framework in that it would cause harm to the landscape. I give that harm moderate weight.
50. For accessibility by means other than the private motor car, I have concluded that while there are some shortcomings to what is proposed, when taken in the round accessibility to services and facilities in Ratby would be acceptable. I have also concluded that while there would be less than substantial harm to heritage assets, that harm would be very limited and is outweighed by the public benefit of providing housing to meet demand. Both of these issues are of neutral weight in my decision.
51. Balanced against that conflict with Policy DM4 and the Framework, the proposal would result in a number of benefits. The principal benefits, already mentioned in connection with heritage assets, are the provision of new market and affordable housing. Those homes would help meet demand for housing, which both parties recognise is not being adequately met in the borough at the current time. I give both those benefits significant weight.
52. There would be economic benefits both in the short term during the construction period and afterwards through the spending power of future occupants to the local economy. There would also be a net gain in biodiversity. I give these benefits limited weight.
53. Open space and play equipment would be provided on site, as would contributions towards a range of off-site services and facilities such as education and the library service. While these facilities or improvements to services would be available to the general public, they are primarily intended to meet demand and serve the needs of future occupants. I therefore give them only limited beneficial weight.
54. The proposed development would have its own sustainable drainage system that would attenuate surface water run-off from the site such that it would be no greater than the existing greenfield run-off rate. I am satisfied that such a system would not worsen localised flooding that interested parties told me about at the inquiry. However, without having further details of the storage capacity of the system I am unable to say whether it would improve on the current situation. I therefore give this matter neutral weight.
55. In terms of housing land supply, it is necessary to consider the recent changes in national policy contained in the revised Framework. The Council is required to identify and update annually a supply of deliverable sites by virtue of paragraph 77, because it does not meet the criteria in paragraph 76. That requirement is for 5 years' worth of housing land, unless the provisions of paragraph 226 apply, in which case it is 4 year's worth. Paragraph 226 applies where an authority has an emerging local plan which has reached the Regulation 18 or 19 stage<sup>7</sup> and includes both a policies map and proposed housing allocations. This provision is time limited to 2 years (ending December 2025).

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<sup>7</sup> Town and Country Planning (Local Planning) (England) Regulations 2012

56. In this case, the Council does have an emerging plan that has reached the Regulation 19 stage, and which does have a policies map showing housing allocations, albeit that map is incomplete because it does not show the geographical expression of other policies in the plan. However, the plan has not progressed to examination, and the Council has recently published a revised local development scheme<sup>8</sup> which indicates that it intends to consider an alternative development strategy, extend the plan period to 2041 and carry out new Regulation 18 and 19 consultations before submission for examination by June 2025, with adoption expected in early 2026.
57. Although the present Regulation 19 plan has not been formally withdrawn, it is apparent that there is no intention to progress it in its current form. The purpose of the revised requirement in the Framework is to recognise those authorities which are progressing with plan making. Since the current Regulation 19 plan has stalled, and a revised version is not envisaged to be adopted for at least two years, I consider that the provisions of paragraph 226 do not apply in this case. That position is accepted by both main parties, including the Council, which is not seeking to rely on the provisions of paragraph 226.
58. In terms of housing land supply, the most recent published figure shows 4.89 years' supply available<sup>9</sup>. This includes a 5% buffer, which is no longer needed. However, I was offered no updated housing land supply calculation, and the position of the Council remains that it is unable to demonstrate a 5-year housing land supply. In such circumstances, for proposals involving the provision of housing, footnote 8 of the Framework deems the policies most important for determining the proposal to be out-of-date.
59. Where those policies are out-of-date, paragraph 11d) of the Framework says that planning permission should be granted unless specific policies in the Framework provide a clear reason for refusal, or any adverse impacts of the development would significantly and demonstrably outweigh the benefits.
60. In this case there are no specific policies in the Framework that provide a clear reason for refusal. Harm to designated heritage assets is capable of being such a specific policy, but here it is agreed that the limited harm caused to the church and conservation area is outweighed by public benefits and therefore does not amount to a clear reason for refusal.
61. I have identified some adverse impacts arising from the proposal, both in terms of the conflict with the spatial strategy of the plan, and its impact on the landscape. However, those only carry limited or moderate weight. When compared to the range of benefits that would flow from the proposal, I conclude that the harm does not significantly and demonstrably outweigh the benefits. Accordingly, it follows that the Framework supports planning permission being granted. That is an important material consideration that carries significant weight.

### **Legal undertaking**

62. The proposal is accompanied by a legal undertaking that secures a range of planning obligations. These include the provision of 40% affordable housing

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<sup>8</sup> Hinckley & Bosworth Borough Council Local Development Scheme 2020-2025, February 2024

<sup>9</sup> Hinckley & Bosworth Borough Council Residential Land Availability Monitoring Statement 1 April 2021 – 31 March 2022

with agreed tenures, travel packs including bus passes, and financial contributions towards a traffic regulation order, education, health care, a civic amenity site, the library, improvement of a highway junction as part of the Coalville Transport Strategy, maintenance of on-site and off-site open space, and monitoring.

63. Having regard to the compliance statement submitted by the Council and the discussion that took place at the inquiry, I am satisfied that these obligations meet the requirements of Regulation 122 of the Community Infrastructure Regulations 2010 in that they are necessary, directly related to the development and fairly and reasonably related in scale and kind. No objection to them was raised by the appellants. I have placed weight on them in meeting policy requirements in the development plan and the additional demands the development would place on infrastructure and public services. The proposed highway improvements, which are critical in securing adequate accessibility to the site, are secured through Grampian conditions, which I consider below.

### **Conditions**

64. I have considered the draft conditions against the tests in paragraph 56 of the Framework. I have imposed those which I consider meet the tests, subject to rewording and simplification in the interests of clarity, consistency and enforceability. They have also been reordered in accordance with the advice in the Planning Practice Guidance. The appellants confirmed their agreement to the inclusion of pre-commencement conditions at the inquiry pursuant to section 100ZA of the Town and Country Planning Act 1990.
65. Condition 1 is necessary to require submission of the reserved matters, and conditions 2 and 3 set time limits for their submission and the start of development. I have separated these for clarity. Condition 4 listing the approved drawings is needed for certainty.
66. Condition 5 is necessary to ensure any matters of archaeological interest are found and recorded.
67. Conditions 6, 14 and 15 are necessary to find and remediate any contamination that might exist on the site.
68. Condition 7 is required to control and mitigate any adverse effects during the construction period, including construction traffic. I have combined suggested conditions into one and simplified the requirements in the interests of clarity.
69. Conditions 8, 9 and 16 are necessary to ensure appropriate surface water drainage both during construction and long term. I have combined suggested conditions to include the surface water drainage system being designed to also avoid water draining onto the public highway.
70. Condition 10 is necessary to enable further consideration to be given to the position and design of the proposed pedestrian crossing to the north of the site in the vicinity of the health centre.
71. Conditions 11, 12, 13 and 24 are necessary to secure biodiversity net gain and ensure that the impact on wildlife is minimised.
72. Conditions 17, 18, 19 and 20 are necessary to ensure that the proposed on and off-site highway works are implemented and thereafter maintained. Condition

- 21 requires a travel plan to be approved to encourage future occupants to use means of transport other than the motor car.
73. Condition 22 is necessary to support good quality, up-to-date communications.
74. Condition 23 is necessary to minimise noise disturbance to future occupants and condition 25 is necessary to ensure healthy lifestyle features are incorporated into the detailed layout and design of the development.
75. Condition 26 is necessary to control the times of construction activities in the interests of neighbouring occupants.
76. I have not imposed a condition referring to the development framework plan, as that is submitted for illustrative purposes only. I have not imposed conditions relating to retention of hedges, replacement of damaged planting, ground levels and bin storage as these are more appropriately considered as part of the reserved matters details. I have also not imposed a condition restricting permitted development rights for domestic gates and other means of enclosure as there is no clear justification to do so. To impose such a condition would conflict with paragraph 54 of the Framework.

### **Conclusion**

77. I conclude that the development would conflict with Policy DM4 of the Development Management Plan, and would therefore conflict with the development plan when taken as a whole. However, there are important material considerations, in particular the 'tilted' balance arising from the Framework that indicates that planning permission should be granted, and the benefits of providing housing in an area where that need is not currently being met. These material considerations outweigh the conflict with the development plan.
78. Consequently, I conclude that the appeal should be allowed.

*Guy Davies*

INSPECTOR

## Appearances

### For the appellants:

|                                    |                                            |
|------------------------------------|--------------------------------------------|
| Martin Carter                      | Counsel                                    |
| Silke Gruner BHons LA CMLI         | Director (Landscape), Icen Projects        |
| Rosey Meara MA (Hons) PGCert MCIfA | Associate Consultant, CSA Environmental    |
| Ben Jackson BEng (Hons) MSc MCIHT  | Director, Ashley Helme Associates Ltd      |
| Peter Dutton BA (Hons) MCD MRTPI   | Planning Manager, Gladman Developments Ltd |

### For the Council:

|                                   |                                                                         |
|-----------------------------------|-------------------------------------------------------------------------|
| Hugh Richards                     | Counsel                                                                 |
| Simon Neesam BA (Hons) DipLA CMLI | Director, The Landscape Partnership Ltd                                 |
| Andrew Gray MSc MRTPI MSc MIED    | Associate Director, Aitchison Raffety                                   |
| Tim Hartley BA (Hons) MRTPI       | Team Leader Development Management, Hinckley & Bosworth Borough Council |

### Interested parties:

|                     |                                                             |
|---------------------|-------------------------------------------------------------|
| Cllr Ozzy O'Shea JP | Grobby & Ratby Division and Ratby, Bagworth & Thornton Ward |
| Cllr Chris Boothby  | Ratby, Bagworth & Thornton Ward                             |
| Dr Andrew Simmonds  | Local resident                                              |
| Stephen Boud        | Local resident                                              |
| Graham Stanley      | Local resident                                              |

## Documents

Documents relating to the inquiry can be found at: [About the inquiry | Public inquiry: land off Desford Lane, Ratby | Hinckley & Bosworth Borough Council \(hinckley-bosworth.gov.uk\)](https://hinckley-bosworth.gov.uk/about-the-inquiry/public-inquiry-land-off-desford-lane-ratby)

Documents received during or after the inquiry are as follows:

1. Copy of draft legal undertaking
2. Draft conditions
3. High Court judgement: Monkhill Ltd v SSHCLG [2019] EWHC 1993 (Admin)
4. Appeal Court judgement: Monkhill Ltd v SSHCLG [2021] EWCA Civ 74
5. Plan of cycling route to Leicester
6. High Court judgement: Bramley Solar Farm Residents' Group v SSLUHC and others [2023] EWHC 2842 (Admin)
7. Opening statement on behalf of the appellants
8. List of appearances for the appellants
9. Opening statement on behalf of the Council
10. Speaking notes for Dr Andrew Simmonds
11. Revised local development scheme 2020-2025 dated February 2024
12. Minute 231 of Council meeting 13 December 2022 relating to revision of local development scheme 2020 to 2025 dated October 2022
13. CIL compliance statement by Council
14. Leader of the Council's position statement at Council meeting 6 September 2022 including reference to local plan
15. Regulation 19 draft plan
16. Policies map published with Regulation 19 draft plan
17. Inset map for Ratby published with Regulation 19 draft plan
18. Closing submissions on behalf of the Council
19. Closing submissions on behalf of the appellants
20. Speaking notes for Graham Stanley
21. Copy of completed legal undertaking.

**Schedule of 26 conditions:**

1. No development shall commence until details of layout, scale, appearance, landscaping and internal access (hereafter called the reserved matters) have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved reserved matters.
2. Application for approval of the reserved matters shall be made within 3 years of the date of this permission.
3. The development hereby permitted shall begin not later than 3 years from the date of this permission or not later than 2 years from the date of the approval of the last of the reserved matters to be approved, whichever is later.
4. Other than as may be approved in condition 10, the development hereby permitted shall be carried out in accordance with the following plans:  
Site location plan – CAS/5249/108 Rev B  
Proposed access strategy – 1726/16 Rev E  
Proposed access arrangements 1726/15 Rev H  
Proposed toucan crossing – 1726/19 Rev C
5. No development shall commence until a scheme of archaeological investigation has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the nomination of a competent person or organisation to undertake the approved scheme, and a programme of site investigation, recording and publication of post-investigation analysis. The scheme of archaeological investigation shall be carried out in accordance with the approved programme.
6. No development shall commence until a scheme for the investigation and mitigation of any contamination at the site has been submitted to and approved in writing by the Local Planning Authority. The scheme of investigation and mitigation shall be implemented in accordance with the approved details prior to occupation of the development.
7. Prior to the commencement of development a construction environmental management plan shall be submitted to and approved in writing by the Local Planning Authority. The plan shall detail how, during site preparation and construction, the impact on neighbouring properties and the environment shall be minimised or mitigated from dust, odour, noise, smoke, light or other sources of pollution. The plan shall also detail how construction traffic will be managed including routing of construction traffic, wheel cleaning and parking. The plan shall detail how such controls will be monitored and shall include a procedure for the investigation of and response to complaints. The construction environmental management plan shall be implemented in accordance with the approved details.
8. Prior to the commencement of development details of a surface water drainage system shall be submitted to and approved in writing by the Local Planning Authority. The details shall include how surface water will be prevented from draining onto the public highway. The surface water

drainage system shall be implemented in accordance with the approved details prior to occupation of the development.

9. Prior to the commencement of development a system for the management of surface water drainage during site preparation and construction shall be submitted to and approved in writing by the Local Planning Authority. The system for the management of surface water drainage shall be implemented in accordance with the approved details, and maintained in working order throughout site preparation and construction.
10. Notwithstanding plan 1726/19 Rev C in condition 4 (approved plans), prior to commencement of development a scheme for a pedestrian crossing north of the site on Desford Lane in the vicinity of the health centre shall be submitted to and approved in writing by the Local Planning Authority. The approved pedestrian crossing shall be installed prior to occupation of the development.
11. Prior to the commencement of development a biodiversity net gain plan ensuring a net gain in biodiversity of at least 10% shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include details of baseline habitat data, habitat creation and/or enhancement, a timetable for implementation, a habitat management and monitoring plan with measures for remediation if required, and if necessary details of biodiversity off-setting and its long-term management and monitoring. The plan shall be implemented in accordance with the approved details.
12. Prior to occupation of the development, a landscape and ecological management plan, including long term objectives, management responsibilities and maintenance schedules for all landscape areas other than privately owned domestic gardens shall be submitted to and approved in writing by the Local Planning Authority. The landscape and ecological management plan shall be carried out in accordance with the approved details.
13. Prior to occupation of the development, details of external lighting shall be submitted to and approved in writing by the Local Planning Authority. The details shall include a layout plan with beam orientation and the design and location of the lighting equipment demonstrating how external lighting will minimise harm to protected species and their habitats. The external lighting shall be installed and operated in accordance with the approved details.
14. If during development contamination not previously identified is found to be present at the site, no further development shall take place until an addendum to the scheme for the investigation and mitigation of contamination at the site has been submitted to and approved in writing by the Local Planning Authority detailing how the contamination is to be remediated. The remediation works approved shall be carried out prior to the occupation of the development.
15. Within 3 months of the completion of any mitigation or remediation works approved pursuant to conditions 6 and 14, a verification report shall be submitted and approved in writing by the Local Planning Authority. The verification report shall be written by a suitably qualified person or

organisation and shall include details of the mitigation or remediation works, post-remedial sampling, disposal of waste and quality assurance certificate(s) to demonstrate that the mitigation or remediation works have been carried out in accordance with the scheme of investigation and mitigation approved pursuant to conditions 6 and 14.

16. Prior to occupation of the development a plan for the long-term maintenance of the surface water drainage system approved pursuant to condition 8 shall be submitted to and approved in writing by the Local Planning Authority. The maintenance plan shall include responsibilities and schedules for routine maintenance, monitoring and remedial action if required of the drainage system, and procedures to be implemented in the event of pollution of surface water on the site. The surface water drainage system shall be maintained in accordance with the approved maintenance plan.
17. Prior to occupation of the development the access arrangements shown on approved plan 1726/15 Rev H shall be implemented in full.
18. Prior to occupation of the development the offsite highway works detailed on approved plan 1726/16 Rev E including the shared use footway/cycleway along Desford Lane, realignment of part of Desford Lane, bus laybys, pedestrian refuge and gateway feature but excluding the pedestrian crossing north of the site on Desford Lane in the vicinity of the health centre, shall be implemented in full.
19. Prior to occupation of the development vehicular visibility splays of 2.4m x 120m to the right of the site access and 2.4m x 118m to the left of the site access shall be provided. The visibility splays shall thereafter be maintained free from obstruction above a height of 0.6m measured from the level of the adjacent footway, verge or carriageway.
20. Prior to occupation of the development vehicular visibility splays to existing accesses 1, 2 and 3 as detailed on Jackson drawing 2112 Rev D shall be provided. The visibility splays shall thereafter be maintained free from obstruction above a height of 0.6m measured from the level of the adjacent footway, verge or carriageway.
21. Prior to occupation of the development a travel plan shall be submitted to and approved in writing by the Local Planning Authority. The travel plan shall be implemented in accordance with the approved details.
22. Prior to occupation of the development a full fibre broadband connection shall be made available and ready for use for each dwelling.
23. Layout and appearance reserved matters shall include a noise investigation and mitigation strategy detailing how occupants of dwellings on the site will be protected from adverse noise effects arising from the adjacent Stonecroft works. The development shall be implemented in accordance with the approved noise investigation and mitigation strategy prior to occupation of the development.
24. Layout and landscaping reserved matters shall include details of how the recommendations of the SCA Ecological Impact Assessment CSA/5249/05,

dated September 2021, have been incorporated. The details so incorporated shall be implemented in accordance with approved layout and landscaping plans.

25. Any reserved matters application shall include a Building for a Healthy Life Assessment which shall demonstrate how the development accords with best practice requirements set out in the Building for a Healthy Life document.
26. Site preparation and construction shall be limited to the following hours:  
Monday – Friday: 07:30 – 18:30  
Saturday: 08:00 – 13:00  
There shall be no site preparation or construction on Sundays, bank or public holidays.

**\*\*\* End of conditions\*\*\***