

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL UNDER SECTION 78

Final Comments prepared for Andrew Green against the refusal of application 25/00233/OUT by Hinckley & Bosworth Borough Council for outline planning permission for the erection of a single (self-build) dwelling (All matters reserved except access) land north of Woodlands, High Tor East, Earl Shilton, LE9 7DL.

Application 25/00233/OUT was received by the LPA 10th March 2025 and refused by notice dated 27th June 2025.

March 2026

1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning 1990 requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.

2. **Appendix 1** contains an appeal decision issued on the 13th March 2025 for a development of 95 homes within the Green Wedge adjacent to the settlement boundary of Barwell under PINS reference APP/K2420/W/24/3348387, Land East of The Common, Barwell, LE9 8BR.

At paragraphs 12 and 41 the Inspector states:

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 Consequently the Core Strategy adopted in 2009 has to be regarded as out-of-date as the development strategy put forward has not been achieved.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

And

“On the main issues I have found that the principle of development in this area of countryside conflicts with SAMD policy DM4 but this only carries limited weight because of the Council’s HLS position. The proposal would cause some moderate harm to the rural landscape character of the area and to a limited geographical area but it would not result in a significant adverse effect which is the test set out in criteria (i) of Policy DM4 and criteria (a) of Policy DM10.”

3. The conclusions of the Inspector and the acknowledgement the entire 2009 CS and the policies contained within it are out of date, are significant material considerations that are directly applicable to the appeal submission. In addition, the Regulation 18 draft Local Plan 2024 to 2045 consultation ran from Friday 17th October 2025 and closed on Friday 28th November 2025. The latest Local Development Scheme (LDS) outlines further public consultation on the submission Draft Plan (Regulation 19) in 2026, however given its early stage of preparation, the Emerging Local Plan is attributed no weight at the current time.

4. The current Core Strategy expires this December (2026) and as noted above, the emerging Local Plan is attributed no weight at the current time. Despite this, paragraphs 5.6 and 5.7 of the LPA Statement, maintain the position below:

“5.6 Paragraph 10 of that Appeal Decision confirms that this assessment was based on the fact that the parties agreed within the appeal that, “The Council can only demonstrate a 3.55-year supply,” of land for housing. The Supplemental Statement of Common Ground within this previous appeal (cf. Appendix A), confirmed that this position was agreed only for the purposes of that specific appeal based upon the Five-Year Housing Land Supply (5HYLS) Statement from 01 April 2023.

5.7 Therefore, the housing land supply position, and the resultant weight attached to the Council’s Development Plan Policies within this previous appeal at Appendix 1 of the Appellant’s Statement does not reflect the current five-year housing land supply position of the Council and would not be considered to be an appropriate basis to determine the current appeal on. Importantly, every planning proposal must be determined on its own merits.”

5. The LPA statement then confirms at paragraph 5.13, once again the Council can no longer demonstrate a five-year housing land supply, and the latest figures as of April 2025 are expected to demonstrate that the Council has a housing land supply of up to 3.95 years. This appears to indicate on the evidence currently available, it is likely that, with the revised need figure of 682 dwellings per annum from the Dec 2024 NPPF (649dpa + 5% buffer as per Para 78a), that the Council will be unable to demonstrate a Five-Year Housing Land Supply once the revised position is published.

6. Therefore, this appeal should be determined against Paragraph 11(d) of the Framework whereby permission should be granted unless adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

7. Key Policy Paragraph 110 of the Framework confirms that the planning system should actively manage patterns of growth in support of promoting sustainable transport. Significant development should be focused on locations which are, or can be made, sustainable through limiting the need of travel and offering a genuine choice of transport modes. On this matter, the Inspector is invited to consider the quantum of new residential development via the three major residential planning approvals included in **Appendix 7** of the Grounds of Appeal, to the north and east of the appeal site, all of which are located outside of the current settlement boundary of Earl Shilton.

8. Chapter 15 of the Framework requires planning policies and decisions to conserve and enhance the natural and local environment. Paragraph 187(b) specifically highlights that this should be achieved by, *“Recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services.”* Although there is conflict with the spatial policies of the development plan, namely Policy DM4, paragraph 11(d) of the NPPF is engaged and therefore a ‘tilted balance’ assessment must be made. When undertaking the appeal site visit, the Inspector is invited to observe the most recently developed privately owned former allotment plots, that now form 6 detached properties on either side of High Tor East.

9. In this specific context, the case of **DLA Delivery Ltd v SoS** highlights the critical need for consistency in decision making in terms of following previous decisions or to give clear reasons for reaching a different view. Policy DM10 of the SADMP seeks to ensure that new development should complement or enhance the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features. In this regard, there is the opportunity for the final built form to reflect and mirror the most recently constructed new build properties on High Tor East via the REM self-build application should the appeal be allowed.

10. As noted in the Grounds of Appeal, on the 6th August 2025, the LPA issued the delegated approval related to application 24/01155/FUL for the erection of a dwelling (self-build) with associated parking and landscaping Upper Grange Farm, 1A Ratby Lane, Markfield, Leicestershire, LE67 9RJ. For ease of reference, the application documents are included in **Appendix 2**, which includes a legal opinion and an HBBC Self-Build & Custom Housebuilding Assessment.

11. Paragraphs 8.4 and 8.5 of the delegated report associated with application 24/01155/FUL state the below:

“8.4. The Planning Policy team are currently reviewing the revised NPPF and implications for the Council’s Five-Year Housing Land Supply. A revised position will be published in the coming months once the monitoring for the 2024/25 year has been completed. It is however likely that, with the revised need figure of 682 dwellings per annum from the Dec 2024 NPPF

(649dpa + 5% buffer as per Para 78a), that the Council will be unable to demonstrate a Five-Year Housing Land Supply once the revised position is published.

8.5. Therefore, the application should be determined against Paragraph 11(d) of the Framework whereby permission should be granted unless adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.”(My emphasis)

12. And where paragraph 8.11 states:

“It is acknowledged that, through its intentions to implement the Core Strategy through its approach to the countryside and settlement boundaries, Policy DM4 is considered out-of-date. Nevertheless, the emphasis of Policy DM4 is to promote sustainable development proposals within the countryside and to safeguard it from unsustainable schemes.”

13. As such, the delegated report above issued on the 6th August 2025, confirms Policy DM4 is out of date and it should not be treated as blanket protection to resist all countryside proposals, only those that are deemed to represent unsustainable development.

14. Regarding the claimed formal LP designation of the appeal site as Local Green Space (para 6.4), the LPA Statement includes the paragraphs below:

“5.44 Whilst the Appellant has highlighted that the Delegated Report for 18/00701/FUL at land south of Woodlands, High Tor East, Earl Shilton suggests that there is a surplus of supply of allotment land within Earl Shilton, this planning application was determined nearly eight years ago. Since this time, the Council has published its latest Open Space Assessment in 2025, which does not state that Earl Shilton has a surplus of allotment land.

5.45 Although Page 72 of the Open Space Assessment states that Earl Shilton has a greater provision of allotment land in comparison to the average provision in the Borough of Hinckley and Bosworth, this does not mean that there is a surplus provision of allotment land in this location. Earl Shilton is also likely to have a higher provision of allotment land than the average provision within the Borough because it forms part of the urban and most populated location of the Borough and is one of three primary areas (including Barwell and Burbage) that support Hinckley as a sub-regional centre.”

15. Although published in September 2025, the HINCKLEY AND BOSWORTH BOROUGH COUNCIL OPEN SPACE ASSESSMENT cited above by the LPA, does not feature in the reason of refusal and does not appear to have any formal adoption status at this juncture in time. Therefore, the adopted documents remain the Earl Shilton and Barwell Area Action Plan (2014) and the Council's Open Space and Recreation Study (2016). Furthermore, page 70 of the HINCKLEY AND BOSWORTH BOROUGH COUNCIL OPEN SPACE ASSESSMENT (September 2025) gives the Keats Lane allotments the Site ID of 201 in Table 12.2, where Figure 12.1: *Open space provision mapped in Earl Shilton** on page 69, appears to show the appeal site is excluded from the Site ID 201 Allotment allocation altogether.

16. On the balance of probability, this suggests the allotment surplus identified in the determination of 18/00701/FUL remains the case today, where the 2025 Open Space Assessment Report at page 68 states:

“Compared to the current provision levels for all Hinckley and Bosworth Borough, Earl Shilton has a greater amount of provision per 1,000 population in provision for children and young people (0.06) and allotments (0.35).”

17. As demonstrated by the appeal decision related to The Common appeal as detailed in **Appendix 1**, and the Upper Grange Farm approval on the 16th August 2025 (**Appendix 2**) the LPA cannot demonstrate a robust 5YHLS or a robust and up to date self-build register. Therefore the policies which relate to the supply of housing and settlement boundaries, are considered out-of-date and the 'tilted balance' towards approval as set out in paragraph 11d of the NPPF should be applied.

18. During the Appeal site visit the Inspector will be able to fully appreciate the significantly changing character of the new built form of Earl Shilton when approaching from the north east and travelling along the A47. **Appendix 3** includes the details of an OUT & REM application for 140 residential dwellings associated with Land North Of Hill Top Farm, Hill Top, Earl Shilton via application 21/00135/OUT.

19. In relation to application 23/00982/OUT Land To The Rear Of The Cottage 34 Keats Lane Earl Shilton, Outline Planning permission for residential development of up to 10 bungalows (some matters reserved except for scale and access) (**Appendix 5**) the officer report states:

"8.30. It is to be noted that the area is not a 'valued landscape' for NPPF purposes. Indeed there are no landscape or environmental designations or sensitivities of note for the site and its immediate surroundings. The Natural England Agricultural Land Classification Maps show it as Grade 3.

8.31. It is also worth noting, as per above, that the fields surrounding the site to the west, north and east have each been granted planning permission for residential development in the last 5 years (20/00916/FUL and 21/00135/OUT). As such it is reasonable to assume that the prevailing landscape character will alter in the near future. The result of which will be that the site itself goes from being an edge of settlement location, to one very much contained within a built up area. This is a significant material consideration when assessing this site for residential development. (my emphasis.)

8.32. Subject to the recommendations within the LVIA i.e. provision of a landscape management plan, the scheme is considered to be acceptable with respect to landscape character. The scheme is not considered to have a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside; it will not undermine the physical and perceived separation and open character between settlements; and it will not create or exacerbate ribbon development. Indeed, one could reasonably describe the proposals as representing a form of infill development when taking account of the planning history/extant permissions set out above."

20. **Appendix 6** of the Grounds of Appeal contains the details of application 18/00701/FUL related to land south of Woodlands for the erection of two new dwellings where the delegated report states:

"8.2. This application is for the erection of two dwellings on land to the south of Woodlands, High Tor East.

8.3. The site is an allocated allotment site, situated within the countryside, adjacent to the settlement boundary of Earl Shilton, as defined within the Earl Shilton and Barwell AAP. Policy DM8 of the SADMP seeks to safeguard allotment land. In line with this policy, planning permission would not be granted for proposals resulting in the loss of allotment land except where a replacement of the allotment that would

be lost through this proposed development is provided in an appropriate location serving the local community; or there is a surplus of allotment land that exceeds the needs of the local community; or the development of a small part of the larger allotment site would result in the enhancement of allotment site, or on a nearby site serving the same community.

8.4. HBBC Green Spaces have identified that despite there being a shortage of allotment land throughout the borough, there is a surplus of supply within Earl Shilton. With this in mind, the loss of allotment land in this instance is considered acceptable and in accordance with Policy DM8 of the SADMP."(my emphasis)

21. In terms of the previous planning history associated with High Tor East, the LPA have already deemed it is located in a sustainable location, meaning it is intimately or closely linked with the existing services and settlement boundary of Earl Shilton. In accordance with case law and on this basis, is considered the proposal represents sustainable development and can be supported as a windfall site that demonstrably and positively contributes to the LPA rolling 5YHLS and will assist to achieve and maintain an up to date mandatory self-build register.

22. Paragraph 61 of the Framework sets out *that "it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay".*

And paragraph 63:

"Within this context of establishing need, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. These groups should include (but are not limited to) those who require affordable housing (including Social Rent); families with children; looked after children; older people (including those who require retirement housing, housing-with-care and care homes); students; people with disabilities; service families; travellers; people who rent their homes and people wishing to commission or build their own homes."

Conclusion

23. It is considered the proposal represents the sustainable development of privately owned surplus land as confirmed by the submission and acceptance by the LPA, of the binding and legally enforceable UU. As such the principle can be supported on this basis as a windfall site that will assist to achieve and maintain an up to date mandatory self-build register, where Section 123 of the Act amends section 2A of the Self-build and Custom Housebuilding Act 2015 to ensure that only land permissioned explicitly for self-build and custom housebuilding will qualify towards a relevant authority's statutory duty to meet demand for self-build and custom housebuilding in the authority's area.

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

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

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

25. The Local Planning Authority are not meeting their statutory duty to permit a sufficient number of self-build and custom house-build schemes, and the appeal proposal would contribute to this supply. By the end of October 2026 and Base Period 11, the LPA will need to approve a minimum of 27 self-build plots to address the current and significant shortfall in the Self-Build Register. The evidence provided by Marrons in **Appendix 2** of the Grounds of Appeal, demonstrates the Council has only permitted 16 plots since 2016, an average of 2 per annum, and has yet to meet its statutory obligations in permitting sufficient plots to meet numbers of its register (within a 3 year period).

26. As a result and in considering this specific case, paragraph 11 d) (ii) fully applies, as although there would be some limited harm arising from the "further changing appearance" of the appeal site, this could not be considered significant, however it would be wholly consistent with the recent residential planning history related High Tor East and the surrounding wider local area of Earl Shilton.

27. Based on the above, the adverse impacts of the appeal proposal do not significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole, particularly as the proposal is considered pass the test contained in Paragraph 11 d) (ii). Therefore, the appeal proposal does benefit from the presumption in favour of sustainable development where the proposal will contribute to reducing the current and increasing year on year shortfall of 17 self-build and custom plots within the Borough on a meaningful material basis, when correctly weighed within the planning balance.