

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL UNDER SECTION 78

Grounds of Appeal prepared for Mr And Mrs Pratt against the refusal of application 25/00081/FUL by Hinckley & Bosworth Borough Council for the change of use of agricultural land to domestic garden land adjacent Paddock View, Twycross Road, Sheepy Magna, CV9 3RT.

Application 25/00081/FUL was received by the LPA 4th February 2025 and refused by notice dated 21st March 2025.

June 2025

Simon Cheshire BA(Hons) DipTP MRTPI

Material Considerations & principle of development

1. The starting point for the determination of any proposal remains the Development Plan, and Section 38(6) of the Planning and Compulsory Purchase Act 2004 confirms this statutory requirement and the NPPF (2024) reiterates the approach where planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

2. The delegated officer report states the below at the relevant paragraphs:

“8.24 Although it is appreciated that there are limited views of the application site, this is not considered to be sufficient to justify the significant adverse impacts of the domestication and detrimental change in character of the countryside. In addition, the visual prominence of the change of use has been heightened through the site’s new field gate access onto Twycross Road.

8.27 The scheme does not include the provision of any built form and therefore the proposal is not considered to result in any significant adverse impacts to residential amenity in the immediate vicinity of the site in accordance with Policy DM10 of the SADMP.

8.39 The development is considered to sever an area of agricultural land that positively contributes to the rural setting of the surrounding area from its wider arable field. The proposed conversion of this site into residential garden land therefore represents the encroachment of urbanising and domestic features into the designated countryside. These impacts are considered to result in significant harm to the rural character of the surrounding area, the Sheepy Magna and Surroundings LSA, the Sence Lowlands LCA, and the intrinsic value, beauty, open character, and landscape character of the designated countryside.

8.40 By virtue of these factors, the proposal is contrary to, and in conflict with, Policy S8 of the SPNP and Policy DM4 of the SADMP, and Chapters 12 and 15 of the NPPF. This harm attracts significant weight in the planning balance.”(my emphasis)

3. The decision notice was issued on the 21st March 2025, and the policies the LPA relied upon were contained within 2009 Core Strategy and the Site Allocations and Development Management Policies Development Plan Document (SADMP) (2016). Since the NPPF was updated on 12th December 2024, all housing policies and settlement boundaries were out of date as the LPA were unable to demonstrate a 5YHLS meaning the ‘tilted’ balance as per Paragraph 11(d) was engaged.

4. Local Plan policy should follow the approach of the presumption in favour of sustainable development where such development should be approved without delay. On this basis the Government is committed to ensuring the planning system supports all sustainable development.

5. 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.”

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.”

6. 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 current appeal. In addition, the Emerging Local Plan for 2020-41 has been consulted upon at Regulation 18 draft stage, with the consultation period ending in September 2024. The latest Local Development Scheme (LDS) outlines further public consultation on the submission Draft Plan (Regulation 19) in 2025. At this stage given its early stage of preparation, the Emerging Local Plan is attributed no weight when determining this appeal.

7. It is particularly noteworthy that although the appeal refusal was issued on the 21st March 2025, there is absolutely no reference to The Common Barwell appeal that was issued on the 13th March 2025, that confirmed the spatial objectives contained in the 2009 Core Strategy had ultimately failed and all policies contained within it and the associated related documents were out of date.

8. This omission is further compounded by the associated planning history included with the delegated report in relation the Appendices below:

Appendix 2 12 Rodney Gardens Appeal (3317828) 13th October 2023.

Appendix 3 14 Rodney Gardens 24/00655/FUL Approval 6th September 2024.

Appendix 4 Holly Tree Cottage 24/00902/FUL Approval 11th November 2024.

9. The allowed appeal related to 12 Rodney Gardens was issued on the 13th October 2023 and was cited in the applications at 14 Rodney Gardens approved on the 6th September 2024, that was followed by 4 Holly Tree Cottage on the 11th November 2024. In allowing the 12 Rodney Gardens appeal the Inspector opined at paragraph 9 of the decision letter:

“I note the Council’s concern regarding the potential for the siting of domestic paraphernalia, such as furniture, play equipment, hard surfacing or ponds in connection with the use of the land as garden, which would be more difficult to control. Nonetheless, in the event that this does occur, any such paraphernalia would be likely to be small scale and would not be permanent fixtures.

Furthermore, permitted development rights for any incidental building, or enclosure, swimming, or other pool as well as walls, fences and other means of enclosure can be controlled by planning condition. Subject to a suitably worded

condition removing such rights the development would not give rise to any tangible harm to the visual qualities or open character of the rural area.”

10. 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. On this basis it is important to consider the reasons for refusal carefully to ensure consistency in decision making and that all relevant material considerations are weighed in the planning balance. In this particular instance, a very significant material consideration in the form of The Common appeal decision was not referenced within the delegated report which effectively rendered the policies cited in the reason of refusal having very limited weight.

11. The assumption appears to be that because the appeal proposal was to the side of Paddock View it was far more highly visible from the public domain and therefore could not gain the similar support given to 14 Rodney Gardens or 4 Holly Tree Cottage as a result. This matter was addressed within the appeal Planning Statement at paragraphs 3 & 4

“The proposed site would be visible only in localised views from Nos. 1 and 2 Cotton Fell, approximately 40 meters away. There would be no undue privacy issues or impact on the adjoining agricultural land separated by a new post and rail fence along the new boundary.

The size and layout of the proposed garden reflect the line of development of No. 1 Cotton Fell. The site is enclosed by hedgerows, which provide containment and reduce the visual impact of the change of use on the surrounding countryside.”

12. The delegated report appears to agree with the above assessment where it would only be the occupants of No 1 & 2 Cotton Fell who could gain limited views into the site:

“8.27 The scheme does not include the provision of any built form and therefore the proposal is not considered to result in any significant adverse impacts to residential amenity in the immediate vicinity of the site in accordance with Policy DM10 of the SADMP.”

13. The enclosed nature of the appeal site is clearly demonstrated by the photos (image0.jpeg to image4.jpeg) submitted in support of the proposal that shows the existing mature boundary hedging that is highly effective in limiting public views into the site.

Conclusion

14. By not accounting for the significant material considerations raised by the Inspector in the case of The Common appeal decision in relation to the failure of the 2009 Core Strategy to achieve its stated overarching spatial objectives, the LPA has by extension, failed to adequately provide cogent and compelling reasons to substantiate the reason of refusal or to clearly demonstrate the claimed significant harm, when the cited policies were greatly reduced in weight as from the 13th March 2025, and the associated planning history of the adjacent properties.

15. On this basis it is considered the appeal proposal can be respectfully allowed, as the proposal would in fact only cause negligible if any harm to the semi-rural landscape character of the area, as it is limited to a very minor and small geographical area, therefore it would not result in a significant adverse effect in relation to Policies DM4 and DM10 or Policy S8 of the Sheepy Parish Neighbourhood Plan (2022). Naturally the appellant will respond accordingly where appropriate, once the LPA statement is received via the Final Comments stage.

