

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL UNDER SECTION 78

Cost Award 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

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1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out the starting point for decision-making which states:

“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

2. Under permitted development rights, the Appellant has erected post and rail fencing that maintains and complements the semi-rural character of the immediate locality and sowed the enclosed area with grass seed. The reason of refusal cites Policy DM10: Development and Design (SADMP) (2016) and Policy S8: Design of the Sheepy Parish Neighbourhood Plan 2018 – 2035 (SPNP), however no built form was proposed as part of the appeal submission. 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.”

3. As the enclosed area subject to the appeal is allowable under permitted developments, the exact same logic applied by the Inspector above in relation to 12 Rodney Gardens appeal decision letter, could be equally applied in the current appeal, particularly in light of the subsequent approvals issued in relation to 14 Rodney Gardens and Holly Tree Cottage.

4. Paragraph B29 of the Circular and the NPPG gives examples of circumstances which may lead to an award of costs which includes not imposing conditions on a grant of permission where conditions could have effectively overcome the objection identified, and by not doing so, causes unnecessary delay and unwarranted expense in lodging an appeal now the “free go” option is no longer available.

5. Additionally, planning authorities will be at risk of an award of costs for unsubstantiated objections where they fail to adequately assess all relevant material considerations at the time of issuing the refusal, including the policies cited within it and any relevant planning history in close proximity to the appeal site for similar proposals.

6. As included within the Grounds of Appeal, 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 and related documents were out of date, including Policies DM4 & DM10.

8. The weight for a material consideration is a matter for the decision maker, however the weight given to The Common appeal decision and given its far reaching implications for all planning decisions issued by the LPA post 13th March 2025, can only be viewed as significant verging on overwhelming, and yet there is no mention of it within the delegated report. On this basis it is considered the specific wording of the reason of refusal and policies contained within the decision notice, do not relate to all the necessary and relevant material planning considerations, therefore the LPA has patently not sufficiently substantiated the reason of refusal.

9. Paragraph B15 of the former Circular 03/2009 that is reinforced by the NPPG states that planning authorities should not prevent or delay development which should be clearly permitted having regard to the development plan, the Framework and other material considerations. This includes not imposing conditions on a grant of permission where conditions could have effectively overcome the objection identified.

10. It is considered the LPA in reaching their decision have not provided cogent or compelling reasons to substantiate the reason of refusal, and it is respectfully requested the appeal is allowed and a cost award is justified in these specific circumstances.