

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL UNDER SECTION 78

Grounds of Appeal prepared for Mr & Mrs Warner against the refusal of application 24/00322/OUT by Hinckley & Bosworth Borough Council for the erection of single storey self-build/custom-build dwelling (Resubmission of 23/00923/FUL) The White House, Bosworth Road, Wellsborough, Nuneaton Leicestershire, CV13 6PB.

Application 24/00322/FUL was received by the LPA 3rd April 2024 and refused by notice dated 18th December 2024.

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Material Considerations

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. The NPPF is a material consideration in planning decisions and where planning applications conflict with an up-to-date plan, development permission should not usually be granted unless other material considerations indicate otherwise.

2. 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.

3. On the 30th July 2024, the Deputy Prime Minister wrote to all local authority Leaders and Chief Executives in England stating:

“Underpinning plan making – at the strategic and local level – must be suitably ambitious housing targets. That is why we have confirmed today that we intend to restore the standard method as the required approach for assessing housing needs and planning for homes, and reverse the wider changes made to the NPPF in December 2023 that were detrimental to housing supply.

But simply going back to the previous position is not enough, because it failed to deliver enough homes. So, we are also consulting on a new standard method to ensure local plans are ambitious enough to support the Government’s commitment to build 1.5 million new homes over the next five years. The new method sees a distribution that will drive growth in every corner of the country.”

4. 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.”

5. 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.

6. Appendix 2 contains a legal opinion and a HBBC Self-build Register assessment by Marrons related to application 24/01155/FUL that remains pending at the time of writing for a proposed Self Build Dwellinghouse, Upper Grange Farm, 1A Ratby Lane, Markfield, Leicestershire, LE67 9RJ. The legal opinion is unequivocal that an identified shortfall carries significant weight in the planning balance of such self-build proposal and the HBBC self-build Register assessment concludes:

“The evidence presented within this Report demonstrates a clear and significant demand for self-build and custom build plots within Hinckley and Bosworth. The Proposed Development will make a contribution towards the Borough’s housing supply, meeting a local need for self-build and custom building plots, which should be afforded significant weight, particularly in the absence of any identifiable future supply of self/ custom build plots which will address needs identified from the Council’s Right to Build Register.”

7. The significant weight attached to such circumstances is clearly demonstrated in Appendix 3 that contains a legal opinion from Kings Chambers for a self-build development where the reason of refusal has parallels with reasons 1 and 2 of the current appeal where it states:

‘1. The proposal is considered contrary to Key Statements DS1, DS2 and Policies DMG2 and DMH3 of the Ribble Valley Core Strategy in that the approval would lead to the creation of new residential dwellings in the defined open countryside, located outside of a defined settlement boundary, without sufficient justification which would cause harm to the development strategy for the borough leading to the creation of an unsustainable pattern of development contrary to the core aims and objectives of the adopted Core Strategy and the NPPF presumption in favour of sustainable development’.

8. Related to the weight attributed the self-build nature of the appeal proposal, paragraph 8.41 and 8.42 of the LPA committee report state:

“As the Council have supplied more suitable permissions than demand required at the end of Base Period 7 (31 October 2021 to 30 October 2022), and more suitable permissions than the demand for the next base period, it is considered that no weight can be given to the benefits of contributing to the supply of self-build and custom build dwellings at this moment in time.”

“Even if the Council’s position was such that there was a shortfall and there was a need, the weight afforded to the provision of one self-build dwelling in such circumstances would need to be considered against the potential harm of the scheme within a planning balance. In such circumstances considerable weight may be given to the provision of a self-build dwelling but it is not considered likely that this would be such as to outweigh the harm of the scheme in accordance with Paragraph 11(d) of the NPPF.”

9. The Council is under a legal duty to provide plots for self-builders which is considered a specialist form of housing need and cannot be merely dismissed as “irrelevant” or “limited” in weight, particularly as the Kings Chambers legal opinion concluded the below:

***“18. I would note that this is in fact, arguably, a higher duty than for other forms of housing. The requirement to provide for other forms of housing is a prescription from national policy that local plans (which statute says should be followed) should provide for housing need of various kinds. That is, the duty to provide for housing need in general is the result of a duty articulated through guidance and then by the operation of s.38(6).*”**

19. Here, the duty needs no such articulation, it is clear upon the face of the 2015 Act. From that it is a freestanding duty beyond the duty under s.38(6) to follow the local plan. Section 38(6) requires the local plan be followed unless material considerations indicate otherwise. One such material consideration would be an Act of Parliament imposing a specific planning duty to provide planning permission for this specialist form of housing. The weight for a material consideration is a matter for the decision maker but the weight of a duty imposed by a primary piece of legislation from Parliament must be significant verging, I would hazard, on overwhelming.”

10. The appeal proposal is accompanied by a Unilateral Undertaking (UU) directly linked to the appellant in accordance with Section 123 of the Act that 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.

11. On this basis, legal duty comparisons can be directly made to the current appeal proposal and the final paragraph of the Kings Chambers legal opinion that is included in Appendix 3 that states:

“The adverse impacts are particularised in the reasons as development beyond a disputed development boundary and an alleged visually and morphologically anomalous development affecting the appearance and character of the area and landscape. Those adverse effects would have to outweigh significantly and demonstrably the Council comply with its legal duty under the 2015 Act to meet a specialised housing need along with the numerous benefits particularised in the planning statement that accompanied the application and the context of a local planning authority with a marginal housing land supply.”

“Under either analysis the Report is legally wrong. I advise accordingly, if I can be of any further assistance please do not hesitate to contact me”.

Relevant Planning History

12. Appendix 4 contains the key application documents related to application 23/00923/FUL that was validated on the 28th September 2023 and withdrawn on the 5th January 2024. Application 23/00923/FUL consisted of the original design concept and was withdrawn following the comments made by Tim Hartley (Team Leader) on the 10th December 2023, thereby allowing the appellant the opportunity to address the issues raised by the LPA at that particular juncture in time.

13. Using the free go application 23/00923/FUL was resubmitted under the appeal application number 24/00322/FUL on the 3rd April 2024 and the combined DAS and Planning Statement was updated accordingly. The application was presented at the 4th June Planning Committee where it was moved by Councillor Bray (Leader of the Council) and seconded by

Councillor Crooks that the application be deferred for a site visit and to urge the applicant to seek advice from Design Midlands:

“Upon being put to the vote, the motion was CARRIED and it was RESOLVED – the application be deferred for a site visit and to seek advice from Design Midlands.”

14. The Design Midlands Review took place on Tuesday 13th August 2024 and the Panel recommended further consideration be undertaken on the items listed below:

“Additional site analysis including landscape analysis, character, identifying receptors, views to the site including PRowS – how best to place a new house within the landscape;

Provision of a clear and compelling narrative for the scheme- is there a different solution for the site which better meets the clients needs and works with the site context?

Provision of an options analysis on the overall site location and the position of the building within the site. Is this the best location for a building within the site?

Provision of a Landscape Framework for the scheme to ensure a robust relationship between building and landscape;

To further explore the building forms ie. would a building which is part two storey work better on the site and meet the clients needs than the current walled garden form;

Ensure the access and drive are in keeping with the narrative including further dialogue with County Highways on repositioning the access; - Detail on the environmental approach and performance of the building; - Supporting information including the scheme in the wider context in particular of the White House”.

15. The discussions with the Design Panel were very informative and The Right to Build Task Force states a self-build home is one built to the plans or specifications of the occupant on a single plot. Following the discussions and comments made by the Panel, a thorough review was undertaken on the origins of the scheme and how it could be evolved to incorporate the suggestions listed above.

16. To meet the criteria of Paragraph 139 of the Framework, any scheme needs to demonstrate that it is *‘outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.’*

17. The purpose of the re-design post the Design Midlands Review, was to elevate the proposed accommodation through innovative design that will raise the standard of what can be achieved through so called *“retirement or later life living accommodation”* within the Borough going forward, and well above and beyond people’s expectations when the word “bungalow” is raised in everyday conversation.

18. The day of The Panel review visit can only be described as a perfect summers day and all the panel commented and agreed the setting as we sat in the garden was exceptional, and although the dwelling could be located elsewhere within the site, the walled garden theme led to the proposal remaining in the existing location. However, upon further reflection and discussion, it was felt the proposal was somewhat dislocated from the wider setting. The former design was located within the site, but not fully incorporated within it, and not ultimately benefitting from the natural attributes the site offers.

19. The new driver of the design was to re-work the entire internal layout to allow more natural light in and wider views out to the surrounding countryside, thereby creating a more harmonious connection between the property and its immediate natural surroundings. To enable this a topographic and tree survey were undertaken so the majority of the existing trees can be retained, and the walled garden theme can be more closely integrated and aligned with the existing private garden areas of The White House as demonstrated within the revised appeal images.

20. The formal front garden of the previous design was omitted and the footprint reoriented to increase the usable private amenity space to the rear with the parking area in a courtyard area that is much less visible from public vantage points.

21. The suggestion of introducing a 2-storey element raised by the Panel was discounted as the “golden thread” of the proposal is to demonstrate what can be achieved with single storey accommodation when innovative design is brought to bear. This is the overriding narrative of the scheme, it is to demonstrate people can actively choose how they live in later life and can design homes for their specific needs within the Borough and raise overall standards of all retirement accommodation of this nature.

National & Local demographic population trends and specialist housing demand

22. Research by McCarthy Stone found that 70% of over 65s would consider moving to a bungalow which equates to 8.4 million people across the UK. However, while demand is rising supply is falling and in the year 2000 9,347 bungalows were built compared with just 2,384 in 2019, this is equal to less than 1% of the new homes built in 2019/20.

23. The Market Bosworth Neighbourhood Plan Housing Needs Assessment (December 2022) states:

“Applying ONS household projections for Hinckley and Bosworth to the Market Bosworth population in 2011 suggests that population growth can be expected to be driven by the oldest households, with the 65+ age group nearly doubling to become the largest single group (at 49% of the total) while all other age bands grow at more modest rates.

In the 2021 Census Market Bosworth has a similar balance of single person to family households as is apparent at Borough and national scale. However, the NA diverges from wider averages in its larger proportion of households aged over 65 and smaller proportion of households with dependent children. While the latter group remains relatively small, it expanded by 26% since 2011. Note that the Census dataset relating to household composition is so far the only one relevant to housing that has been released for small areas.

As of the 2011 Census, more than 80% of households in the NA had at least one more bedroom than they would be expected to need, and 55% had at least two extra bedrooms. This is not surprising given the relatively large housing stock. Under-occupancy was most common among couples with no children, older households and single people. While not uncommon, this might suggest that Market Bosworth’s larger housing is not necessarily being occupied by households with the most family members, but by the people with the most wealth or by older people who have not chosen or been able to move to smaller properties.”

24. In “Too little, too late? Housing for an ageing population.” the foreword by Michael Voges Executive Director, ARCO Associated Retirement Community Operators states:

“Over the next two decades, the number of people aged over 65 in the UK is expected to increase by 41% to 18 million. While over-65s often choose to continue living in their existing homes, many wish to downsize when they reach retirement – including into age friendly accommodation that has been designed to boost independence, health and wellbeing.

At present, those who wish to take this path have little to choose from. Less than 3% of the UK’s housing stock is geared towards the retirement market, much of it built as traditional sheltered housing several decades ago. Such low provision is harmful not only for older people, but our country as a whole.

High-quality retirement housing has a crucial role to play in tackling the urgent housing, health and social care challenges facing us. At a time when many young families are struggling to get on to the housing ladder, more than half of the 15 million ‘surplus’ bedrooms lie within the homes of those over 65.”

25. This materially significant demographic trend and increasing latent demand for the specialist type of housing represented by the appeal proposal, was highlighted with the submission of the November 2024 Leicestershire Builder magazine article “Right-Sizing,” that estimates 3.8m homes could become available if those in the 65+ age bracket had a readily available incentive to downsize from an under occupied former family home.

26. Directly related to this matter the Sheepy Parish Neighbourhood Plan and the associated Parish boundary the appeal proposal is located within states:

“5.20 Using data from the 2011 Census, compared to Hinckley and Bosworth Borough, Sheepy Parish has a smaller proportion of young householders (under 35) but more households over the age of 65. Local house prices are high compared to neighbouring settlements, a high proportion of homes are detached and there are high levels of under-occupancy.

5.21 The provision of market housing units which cater for older households is a key supply gap which urgently needs to be addressed. While bungalows require more land and are therefore not attractive for developers, it is important that efforts are made within new developments to provide for older households.”(my emphasis)

27. It is telling that the associated committee report makes literally no reference to the significant material considerations cited in the sections above, and therefore appears to be contrary to Section 38(6) of the Planning and Compulsory Purchase Act 2004, where planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

28. Instead, the committee report makes reference to paragraph 84 of the Framework which was never relied upon to justify the appeal proposal, whereas paragraph 139 was, as confirmed by the Design Midlands Review dated 27th August 2024. In relation to the significant shortfalls identified by the two Marrons HBBC self-build assessments, paragraph 8.44 of the committee report states:

“Whilst the Local Planning Authority are not meeting their statutory duty to permit a sufficient number of self-build and custom house-build schemes, the current proposal would only provide one additional dwelling to this supply. As such, the benefits of this small contribution in addressing the limited current shortfall in the Council’s provision self-build and custom housebuilding developments is considered to attract moderate weight at this moment in time.”

And Reason 2 of refusal states:

“Ultimately, the benefits of the development of one dwelling do not significantly and demonstrably outweigh this harm.”

29. Before fully turning to reasons of refusal, it is worth repeating the conclusion of the Kings Chambers legal opinion on the weight given to the Act of Parliament associated with the 2015 Self Build Act:

“The adverse impacts are particularised in the reasons as development beyond a disputed development boundary and an alleged visually and morphologically anomalous development affecting the appearance and character of the area and landscape. Those adverse effects would have to outweigh significantly and demonstrably the Council comply with its legal duty under the 2015 Act to meet a specialised housing need along with the numerous benefits particularised in the planning statement that accompanied the application and the context of a local planning authority with a marginal housing land supply.”

“Under either analysis the Report is legally wrong. I advise accordingly, if I can be of any further assistance please do not hesitate to contact me”.

The Case for the appellant: Reason 1

30. The LPA is currently in the position where all housing supply policies and settlement boundaries are out of date and cannot demonstrate a robust 5YHLS or Self-Build Housing Register. Regarding the emerging Local Plan for 2020-2041, the LPA acknowledge between 15,000 and 20,000 new homes will need to be built within the Borough during this period, the vast majority of which will be built outside existing settlement boundaries.

31. The primary reason of refusal, reason 1 states:

“The development represents unjustified residential development in an unsustainable location that fails to promote sustainable transport, the best use of public transport, nor provide any safe walking and cycling access to services and facilities. The future occupants of the scheme are therefore highly likely to be dependent on private motorised transport to meet their day-to-day needs and this results in significant environmental harm.”

32. The LPA claim the dependency on the use of private motorised transport would result in “significant environmental harm”. In terms of sustainable development paragraph 116 of the Framework states:

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios.”

33. Both National and Local policy continues to support new residential development in rural areas. In terms of access to certain services such as food shopping, whilst it is acknowledged that people seeking to undertake their weekly shop at a supermarket will not be able to do so in the immediate vicinity of the site, weekly shops are less significant in terms of vehicle trips by virtue of their less frequent nature. The Framework also envisages that sustainable development is achievable in rural areas which means that the lack of a shop or supermarket in the immediate vicinity cannot of itself mean that a site is not a sustainable location for development.

34. The Framework does not set any specific criteria that must be met in order for a location to be considered sustainable and there is no provision that a particular percentage, or indeed the majority of trips, must be made by non-car means in order for the site to be considered sustainable. Instead, paragraph 83 of the Framework states:

“To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.”

35. The objective of ensuring “the fullest possible use” of sustainable transport does not mean rejecting development in rural areas on the grounds that towns and cities will always be better. Appendix 5 contains an appeal decision related to the Category 4 settlement of Newton Regis within rural North Warwickshire, for the erection of a single C3 dwelling outside but adjacent to the existing settlement boundary.

36. With the rise of working from home, EV vehicles and supermarket / Amazon home delivery services, in terms of a single private dwelling, the percentage impacts in terms of traffic are considered minimal meaning the impact of the development will have effectively ‘nil detriment’ in environmental terms. Taking these matters into consideration, the LPA and Highway Authority should apply the flexible approach advocated by the Framework in relation to new residential development in rural areas as expressed in paragraph 21 of the Newton Regis appeal decision where the Inspector noted:

“Future occupiers of the proposed development would be unlikely to rely solely on public transport. From the information before me, I did observe that there were various services and facilities in Newton Regis including a pub, church and a primary school. Nonetheless, the services and facilities are generally limited. The occupiers of the development would be likely to need to use a private vehicle for some trips and this is the least sustainable transport mode. However, the development is only for one dwelling and therefore the number of vehicle movements would be likely to be limited. I therefore afford the harm from vehicle movements limited negative weight.” (My emphasis)

37. In the circumstances of the current appeal, the appellant is retired and wishes to move to single storey accommodation that is designed to meet his specific future personal needs. In doing so this will address the current matter of the under occupancy of The White House that accommodates only two people, Mr & Mrs Warner and will allow the existing property to become available on the open market for a growing family to move up the housing ladder.

38. From this perspective the overall environmental gains significantly outweigh the alleged harm cited by the LPA, especially in relation to the similar circumstances regarding the Newton Regis appeal, where the Inspector judged *“the number of vehicle movements would be likely to be limited. I therefore afford the harm from vehicle movements limited negative weight.”*

The Case for the appellant: Reason 2

39. Paragraph 3.3. of the Committee Report states: ***“The application site comprises land that is outside of the residential curtilage of, but within the wider residential garden area associated with, The White House.”***

40. As clearly demonstrated in Appendix 1 in relation to The Common appeal decision issued on the 13th March 2025, the strategic objectives of the 2009 Core Strategy and all

linked documents has failed and all policies related to housing and settlement boundaries including Policy DM4, is currently considered to be out of date. In addition, and as confirmed by the Design Midlands Review, the proposal was assessed in relation to paragraph 139 of the Framework as the review panel agreed paragraph 84 was not applicable under the specific circumstances.

41 Paragraph 3.3 of the Committee Report confirms the appeal site forms the lawful domestic ancillary / incidental use of land associated with The White House in accordance with the well established case law **Sinclair- Lockhart's Trustees v Central Land Board (1950)** that held:

“The ground which is used for the comfortable enjoyment of a house or other building may be regarded in law within the curtilage of that house or building and thereby as an integral part of the same although it has not been marked off or enclosed in any way. It is enough that it serves the purpose of the house or building in some necessary or useful way.”

42. The Design Panel agreed the location of the proposal falls within the existing residential curtilage of the White House, however felt the previous design had not successfully integrated the proposal within the local landscape as cohesively or robustly as was possible. It is considered the revised appeal scheme and the subsequent re-design, has positively responded to the suggestions of the Panel and now enjoys a closer and more intimate relationship the existing built form and local landscape contrary to the claim made by the LPA the design represents an *“irreversible, urbanising and domesticating effect on the intrinsic value, beauty, open character, and landscape character of the countryside.”*

43. The appellant and the Design Midlands panel view is consistent with that of the case law cited above, that the appeal proposal is not located within the open countryside but rather that the appeal development is within the appellant's garden. On this basis, whilst the appeal development could be seen through gaps in the in the existing boundary hedgerows, given the distance the appeal proposal is setback from the main road and associated public vantage points, it is generally very well screened and will not appear unduly prominent or harmful to the visual amenity or character of the area. The fact that it will be viewed against the backdrop of the appellant's existing dwelling and the neighbouring properties, will also reduce the visual impact, meaning will not be read as an isolated feature within the local context.

44. Appendix 6 contains an appeal decision issued on the 4th June 2025, for the development of raised decking to the rear of a single private dwelling and a storage unit and associated works where the application was refused on the grounds:

“By virtue of the siting, scale, relative height, design and appearance it is considered that the raised decking, storage/garden room and associated works result in a visually prominent, uncharacteristic and incongruous form of development within the public realm that fails to respect, complement or enhance the rural appearance and open character of the adjoining countryside and landscape setting. The development is therefore contrary to Policies DM4 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and the overarching design principles contained within Section 12 of the National Planning Policy Framework (2024).”

45. The main issue was the effect of the proposal on the character and appearance of the area and in paragraph 7, the Inspector notes that the Council officer's report states that the appeal development is within the appellant's garden. Related to building in an existing garden **The Right to Build Task Force** states:

“Balancing desire to manage settlements, neighbourhood and infrastructure with statutory requirements to support self/custom build housing can be done. A single dwelling or small minor development, brought forward by/for local residents is the type of small-scale organic growth which was historically a cornerstone of English housing.(My emphasis) Approving proposals for minor development of a few modest homes outside but proximate to a settlement, or supporting family homes in urban backland or gardens, are unlikely to jeopardise strategic spatial strategy or strategic policies.”

46. Furthermore, given the specialist form of housing the appeal proposal represents, the committee report confirms the LPA cannot demonstrate and up to date self-build register and in this respect 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.(My emphasis)

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.”(My emphasis)

47. Based on the principles above and when viewed in the round, it is considered the appeal proposal represents a high level of sustainable development and can be supported by providing a suitable self-build windfall site, and be held as an achievable example that other “later living developments” can mirror, whilst demonstrably and positively contributing to the LPA rolling 5YHLS and mandatory self-build register.

48. In the overall policy context, the appeal scheme reflects and continues the existing residential built form and therefore represents an integrated and sustainable development that would be in accordance with paragraph 70 of the Framework that states:

“Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities should:

seek opportunities, through policies and decisions, to support small sites to come forward for community-led development for housing and self-build and custom-build housing;”

49. On this basis the committee reports fails to adequately weigh the requisite material considerations and the legal duty imposed on the LPA by Section 123 of the Act that 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. Therefore, the policies cited in reason 2 of refusal can only be given limited or moderate and certainly would not significantly outweigh the demonstrable need for

the Council to comply with its legal duty under the 2015 Act to meet the specialised housing need, the appeal proposal patently represents.

The Case for the appellant: Reason 3

50. Paragraph 6.9 of the Committee Report states:

“The County Council’s Ecology Department did not object to the development but confirmed that the best practice precautionary recommendations in relation to breeding birds, badgers, amphibians, and reptiles identified within the Preliminary Ecological Appraisal need to be adhered to. The Ecology Department advised that details of the biodiversity enhancement recommendations including the provision of bird nest boxes and bat boxes can be secured via planning condition and requested a list of the native species proposed to be planted on a soft landscaping drawing or similar.”

51. The County Council as the statutory consultee raised no objection and requested a list of the native species proposed to be planted on a soft landscaping drawing or similar. This can be readily secured by the imposition of a suitably worded standard condition, and this remains the case. On this matter the professionally compiled Arboricultural Impact Assessment concludes:

“6.1.4 As part of the Proposed Development, a new spinney is to be planted within the wider site adjoining the new access onto the road. The spinney is to be 916m² of new plantings. Additionally, as part of the Proposed Development, an avenue of trees is to be planted along the new track leading up to the new dwelling. Tree planting should incorporate a diverse mix of native and non-native species. This variety will help mitigate the risks posed by pests, diseases, and climate change, ensuring the Site’s adaptability to future conditions.

6.1.5 Given the significant planting included within the Proposed Development, the tree loss is considered to be a short-term loss in canopy cover and amenity value within the Site, however it is considered to be a mid to long-term gain and as such tree removal should not be considered a constraint to the Proposed Development.

6.1.6 As there are no aged or veteran trees proposed for removal, the principles for refusal within the NPPF would not be considered applicable.

6.1.7 The Proposed Development is in line with the Local Plan as it retains trees identified as important within the Site. Additionally, all trees proposed for removal have limited value and are not visible from the public realm.”

52. On the basis of no objection from the relevant statutory consultee the County Council, and the professional Arboricultural Impact Assessment provided by the appellant during the determination period, significant weight should be given to the case of **Shadwell Estates v Breckland DC [2013]** that states:

“a decision-maker should give the views of statutory consultees... “great” or “considerable” weight. A departure from those views requires “cogent and compelling reasons.”

53. 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.

It is considered the LPA in reaching their decision to include reason 3 of refusal have not undertaken the required professional advice need to substantiate the claim:

“the proposal results in significant adverse impacts to the residential amenity of the future occupants of the scheme due to the inadequate provision of natural light to the principal windows to habitable rooms within the proposed dwelling and to the property’s associated private outdoor amenity space.”

54. Without cogent or compelling professional advice to substantiate this reason of refusal, it can only be treated as an assumption with no evidence base. Appendix 7 contains further 3D images that includes an internal light study to clearly demonstrate the holistic approach taken to the re-design following the Design Midlands Review panel, where this specific matter was discussed and accounted for.

55. Finally, Leicestershire County Council has partnered with the Woodland Trust and Lloyds Banking Group to offer the free tree and hedgerow packs, which are designed to help renew and restore existing woodland and vegetation, as well as replacing trees which have been affected by diseases such as ash dieback.

<https://www.leicestershire.gov.uk/environment-and-planning/tree-for-every-person/apply-for-trees/trees-and-hedges-for-new-planting>

56. Each free tree pack includes 50 native tree saplings – a mix of oak, wild cherry, crab apple, field maple and hazel, as well as tree guards and stakes. The hedgerow packs are made up of 250 native trees and shrubs, including a mix of hawthorn, hazel, field maple and oaks to plant at regular intervals along the hedgerow. Each hedgerow pack is enough to create a 50m-long hedge at five plants per metre. Accordingly, the inclusion of the tree and hedge packs can be readily included in a comprehensive landscaping condition fully securing an above average BNG gain with the planting of the new spinney adjacent to the proposed site access.

Conclusion

57. During the determination of the original submission and the resubmission via the free go, the LPA were previously and continually challenged on the integrity and validity of the HBBC Self-Build Register as demonstrated by the two assessments undertaken by Marrons in January 2023 and August 2024 that are included in Appendix 2 and the supporting documents submitted with the current appeal. The contents and conclusion of the Marrons Report (January 2023) were raised over several occasions during the determination of the current appeal and the LPA have maintained the position they do not accept the Marrons findings below:

“6.10 In respect of supply, the Council has confirmed through a Freedom of Information request (Appendix 1) a total of 7 planning permissions (to Base Period 7 – October 2022). It is clear that on average 1 self / custom build planning permissions are issued annually, which compares with an average of 16 registrations to the Council’s self / custom build register per annum.

6.11 Based upon the Council’s own data it did not meet its statutory obligations in permissioning a sufficient number of plots to meet the demand in the Base Periods prior to rationalising its Right to Build Register in Summer 2021, and it continues to face significant issue in needing to permission a sufficient number of plots to meet the requirements of those on its Register.

6.12 The evidence presented within this Report demonstrates a clear and significant demand for self-build and custom build plots within Hinckley and Bosworth. The Proposed Development will make a contribution towards the Borough's housing supply, meeting a local need for self-build and custom building plots, which should be afforded significant weight, particularly in the absence of any identifiable supply of self/ custom build plots."

58. Under such circumstances, **The Right to Build Task Force** guidance is directly aimed to assist the LPA in relation to addressing an undersupply of self-build plots states the below:

"18. The basics of the statutory duties for delivering self/custom build homes are set out in the Task Force Guidance note PG3.3: National Planning Policy Framework and Right to Build legislation Delivering appropriate permissions. Local Planning Authorities have a statutory duty to consider the demand for custom and self-build (CSB) homes in plan making and decision taking. Councils are required to consider self-build in planning, housing, land disposal, and regeneration functions. This legal responsibility is set out in (s2(1)) of the Self and Custom Housebuilding Act 2015.

19. The Housing and Planning Act 2016 introduced the specific legal duty on authorities to provide at least a number of permissions for self/custom build homes based on a figure linked to the self-build register. Subsequent legislation, such as the Levelling Up and Regeneration Act (LURA) 2023 (s123) and the Biodiversity Gain Requirements regulations make it clear that there is ongoing commitment to this housebuilding sector. Significantly the LURA makes it clear that any past under-supply of permissions is rolled forward. This clarifies that simply taking people off the self-build register does not eliminate the requirement to provide at least an equivalent number of permissions.

20. While the legislation refers to the custom and self-build register as a primary consideration, councils are encouraged in policy to consider the wider strategic demand for self/custom build housing. Where there is a mismatch between the target dwelling types of those joining the register and the housing demand profile in an area, councils can help enable delivery of more size-appropriate and well-located plots through policies and actions. Attempting to meet demand through suppressing the self-build registers is not helpful in ensuring delivery." (My emphasis)

59. The LPA claim the scheme is for one self-build dwelling only and the current shortfall in the Self-Build Register is not considered to be significant, nor is it a persistent shortfall. The Marrons self-build assessments cast serious doubt over this assertion made by the LPA. Via the LPA statement, the LPA will have the opportunity to demonstrate to the Inspector there is, or never has been, any attempt to meet demand through the suppression of entries on the Register as of 31st March 2025:

https://www.hinckley-bosworth.gov.uk/info/200074/planning_and_building_control/1246/the-self-build-and-custom-housebuilding-act-2015/4

60. Based on the current HBBC Self-build Register website link above, it is considered the LPA have failed to demonstrate an up to date Self-Build Register as set out in (s2(1)) of the Self and Custom Housebuilding Act 2015, and indeed since the Act gained Royal Assent. As such, the LPA have failed to provide cogent and compelling reasons to substantiate the reasons of refusal in terms of the principle of development and the weight attributed to them. Particularly when compared with the weight of the duty imposed by a primary piece of legislation from Parliament that can only be considered be significant and overwhelming.

61. The actual reality is, the LPA have not issued a single self-build permission accompanied by a valid UU since the beginning of Base Periods 9 or 10, and will need to issue a minimum of 20 self-build plots within the next 6 months, whereas the LPA have only approved on average, one or two single self-build plots per annum since the HBBC Self Build Register was originally compiled back in 20215.

62. Particular reference needs to be made to the legal requirement to grant sufficient self-build and custom approvals and to publish and maintain an up to date, valid and robust Self-Build Register at all times, which is further compounded the official failure of the 2009 Core Strategy to meets it primary Local Plan objectives, as confirmed by The Common appeal decision cited in Appendix 1 that was issued on the 13th March 2025. On this basis the appellant will naturally respond accordingly where appropriate once the LPA Statement of Case is received, however it is respectfully requested the appeal is allowed on the basis the LPA have failed to provide cogent and compelling reasons to substantiate the reasons of refusal and indeed the overall principle, particularly given the legal duty imposed upon them by the relevant and binding provisions of the 2015 Act.