

STATEMENT OF CASE – PLANNING

Section 78 Appeal

Town and Country Planning Act 1990

Planning and Compulsory Purchase Act 2004

Localism Act 2011

Outline Planning Application for the development of up to 40 dwellings, public open space and associated infrastructure with all matters reserved for subsequent approval other than access

Land West of Workhouse Lane, Burbage

Local Planning Authority Reference: 20/01012/OUT

On Behalf Of:

Mather Jamie on behalf of the Coop

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STATEMENT OF CASE

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Land West of Workhouse Lane, Burbage

Main Contributors

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Issued By



Signature:

Print Name: Simon Hawley

Date: 7th November 2022

Approved By



Signature:

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Date: 7th November 2022

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1.0 INTRODUCTION

- 1.1 Harris Lamb Planning Consultancy (“**HLPC**”) are instructed by Mather Jamie, acting on behalf of the Coop (“**the Appellant**”), to submit a planning appeal following the decision of Hinckley and Bosworth Borough Council (“**HBBC**”) to refuse planning application reference 20/01012/OUT (“**the Application**”). The Application was submitted in outline form and proposes the development of up to 40 dwellings, public open space and associated infrastructure with all matters reserved for subsequent approval other than access (“**the Appeal Scheme**”) on land West of Workhouse Lane, Burbage (“**the Appeal Site**”). The description given to the proposed development by HBBC is:

“Residential development of up to 40 dwellings, public open space and associated infrastructure (outline – access only).”

- 1.2 This Statement of Case has been prepared in accordance with the requirement of Section 78(2) of the Town and Country Planning Act 1990 (as amended). It sets out the full case on behalf of the Appellant. As detailed in the appeal forms it is requested that the appeal is dealt with by way of a Hearing.

Background

- 1.3 The planning application was submitted to HBBC on 28 September 2020 and was validated on 19 October 2020. The planning application was determined under delegated powers on 15 August 2022. A copy of the Officer’s Delegated Report can be found at Core Document 1. Planning permission was refused. The Decision Notice (CD 2) provides two reasons for refusal:

1. ***“The applicant has failed to demonstrate the principle of a safe and sustainable access route can be achieved to the site between the junction of Workhouse Lane and Britannia Street at the proposed site access, contrary to the requirements of DM17 of the SADMP and paragraph 108 of the National Planning Policy Framework.***

2. *The applicant has failed to agree a S.106 Agreement with the Council to ensure that the scheme makes suitable contributions to the infrastructure to mitigate against the impact of the additional development in community services and facilities. The application is therefore contrary to Policy DM3 of the SADMP and Policy 19 of the Core Strategy as well as the NPPF.*

- 1.4 The Appellant will provide a S.106 Agreement in accordance with the HBBCs requested planning obligations as part of the Appeal process, as identified at paragraph 8.63 of the Delegated Officer's report. It is anticipated that this will address refusal reason 2. As such, the principal difference between the Appellant and HBBC is refusal reason 1.

Scope of the Statement of Case

- 1.5 This Statement of Case has been prepared in order to address planning related matters. It explains why it is the Appellant's view that the principle of the residential led development of the Appeal Site is acceptable. It should be read in accordance with the Statement of Case produced by Ms Melanie A'Lee, Technical Director (Transport and Engineering) RPS. Ms A'Lee's Statement of Case addresses refusal reason 1 and explains how and why a safe and suitable access route can be achieved to the site.
- 1.6 In terms of a principle of development, the Officers Delegated report advises in the Planning Balance section (paragraphs 8.65 – 8.69) that the "tilted" balance in paragraph 11(d) of the Framework is applied given that the Council cannot demonstrate a 5 year housing land supply. The Appeal Scheme does not fully comply with Policy DM4 of the SADMP, and the impact on landscape and visual amenity has been assessed and is considered to be moderate to minor. However, the provision of "much needed housing" is considered to outweigh the moderate to minor impact identified in the planning balance. The Appeal Scheme was deemed to be acceptable in principle subject to conditions and the requirement to enter into a financial obligation. However,

planning permission was refused due to the concerns expressed by the highways authority.

- 1.7 On this basis it is understood that the principle of the proposed development being acceptable on the Appeal Site is agreed between the Appellant and HBBC, and that planning permission has only been refused on highways grounds. Planning permission would have been granted if it had been agreed that the highways impact was acceptable. Whilst the delegated Officer's Report concludes that the principle of development is acceptable, the approach adopted in reaching this conclusion has a significant flaw.
- 1.8 Section 7 of the Officers Delegated report identifies the policies that have been considered by HBBC in the decision making process. There is no reference to the Burbage Neighbourhood Plan 2015 – 2026 (Core Document 8) that was "made" in May 2021. This is a significant omission.
- 1.9 Policy 1 – Settlement Boundary, of the Burbage Neighbourhood Plan advises that residential development on land "within or adjacent to the settlement boundary" as shown on figure 2, page 19 will be supported, subject to complying with other development plan policies.
- 1.10 The Appeal Site immediately adjoins the settlement boundary. As such the proposed development is in direct conformity of the provisions of this aspect of the Development Plan. It is a significant error of the Delegated Officer's Report not to have regard to this aspect of the Development Plan.

The Planning Statement of Case

- 1.11 In the remainder of this Statement, I provide a description of the Appeal Site and the surrounding area in Section 2.0, and a description of the appeal proposals in Section 3.0. In Section 4.0 I provide a summary of the development plan policies and other policy requirements relevant to the proposed development. In Section 5.0 I summarise the consultee responses received to the application and explain how they have been addressed. I then

set out the Case of the Appellant in Section 6.0, before undertaking the planning balance exercise. Conclusions are then reached in Section 7.0.

1.12 For ease of reference, and to try to remove any duplicate documents, this Statement of Case refers to relevant plans and documents using Core Document references. The current Core Documents have been submitted by the Appellant with the appeal submission. If additional Core Documents are required, the Core Document list will be updated and, if possible, agreed with HBBC through updates to the Statement of Common Ground, and the additional Core Documents provided to the Inspectorate.

1.13 The planning application was submitted with the following plans and documents. They are referred to as necessary in the SoC:

- Application Form;
- Site Location Plan;
- Illustrative Masterplan;
- Ground Investigation;
- Design and Access Statement;
- Supporting Planning Statement;
- Preliminary Ecological Appraisal;
- Air Quality Assessment;
- Statement of Community Involvement;
- Preliminary Development Tree Survey (July 2019);
- Phase I Site Appraisal (Desk Study);
- Transport Assessment;
- Mineral Resource Assessment;
- Noise Assessment;
- Geophysical Report;
- Archaeological Desk Based Assessment;
- Landscape and Visual Appraisal; and
- Flood Risk Assessment;

1.14 Plans and documents that are updated during the course of the determination of the application in response to Officer and consultee comments. The Appeal Scheme should be determined in accordance with the following plans and documents:

- Proposed Access Arrangement;
- Air Quality Assessment;
- Response LCC Highways (26th January 2021);
- Mineral Assessment;
- Technical Note Response to EHO Comments (25th February 2021);
- Archaeology Technical Note (16th February 2021);
- Technical Note Response to LCC Highways Comments (27th April 2021);
- Illustrative Masterplan; and
- Archaeological Evaluation Report;

2.0 DESCRIPTION OF THE APPEAL SITE AND SURROUNDING AREA

- 2.1 The Appeal Site comprises a broadly rectangular shaped greenfield parcel of land. It extends to approximately 2.5 hectares in size. It comprises a single agricultural field adjacent to the built up boundary of the southern edge of Burbage. The location of the Appeal Site is shown on the amended Site Location Plan 1:1250 P1672 (CD3).
- 2.2 The site is largely devoid of any noticeable features. The majority of the field is grassland. There is a cluster of trees located around a pumping station and a drainage pond associated with the development to the north towards the centre of the northern section of the site. Existing established trees and hedgerows lie along the site boundaries. The levels of site fall from Workhouse Lane down to the south east corner.
- 2.3 The land to the north east of the Appeal Site is predominantly residential in nature. The land to the south and west is predominantly in agricultural use. Britannia Park (a public park) is located to the north west.
- 2.4 The Appeal Site is a sustainable location for development. It is approximately 1.2km from Junction 1 of the M69 motorway, which runs to the south of Burbage and links the settlement directly to Leicester and Coventry. The nearest railway station is located within Hinckley which provides links to larger urban centres such as Birmingham and Leicester.
- 2.5 Burbage benefits from a range of local services and facilities including schools, a post office, places of worship, shops and public houses. These facilities are identified at figure 2.1 of the Design and Access Statement (Core Document 4). The services and facilities are well linked to the Appeal Site.
- 2.6 The Appeal Site falls within Flood Zone 1. It does not contain, nor is it located in the vicinity of any locally listed buildings. The site is not subject to any of a restrictive policy designations identified in Footnote 6 of the Framework, namely the SSSI, Green Belt, Local Green Space, AONB, National Parks or

defined heritage coasts, irreplaceable habitats, a designated heritage asset,
an area at risk of flooding or coastal change.

3.0 THE PROPOSED DEVELOPMENT

- 3.1 The Appeal Scheme is an outline planning application proposing the development of up to 40 dwellings and associated public open space and infrastructure. All matters other than access are reserved for subsequent approval. Access will be taken from Workhouse Lane in the north east corner of the site. A new pavement will be provided from the proposed point of access northwards along the western edge of Workhouse Lane connecting directly to the existing pavement further north.
- 3.2 The exact design, layout, appearance and landscaping of scheme will be determined at the Reserved Matters stage. They are not matters for consideration as part of this Appeal. However, an indicative masterplan was submitted with the application to demonstrate how the site could come forward for development (Drawing 3518-SK01 Rev C– Core Document 5).
- 3.3 Paragraph 8.45 of the Delegated Officers Reports advises that the illustrative plan *“provides a reasonable approach to the scheme that will flow through into the detailed plans submitted at the Reserved Matters stage and indicate that a suitable form of development can be brought forward in accordance with Policy DM10 of the SADMP and the Good Design Guide SPD”*.
- 3.4 The indicative masterplan shows a principal road running through the site from Workhouse Lane. The dwellings will face north and south on to this road. The properties on the northern section of the site will back on to the existing properties to the north. The only exception to this is the north west corner of the site, where the properties will back onto the existing brook. New landscaping can be introduced in and around the brook to create a green corridor.
- 3.5 The indicative masterplan identifies the southern section of the site having dwellings facing eastwards towards a private road behind the hedgerow off Workhouse Lane. This ensures that the majority of the hedgerow remains intact and the development is outward facing. Properties further into the site

will face north, towards the principal access road and south, and a private drive ensuring a back to back housing arrangement is achieved.

- 3.6 The properties on the western edge of developed section of the site face outwards towards the new area of public open space. These properties will all be served by a private drive.
- 3.7 It is expected that all parking will be provided on the plot. A mix of housing will be provided. The indicative masterplan shows a mixture of two, three and four bedroom properties. 20% of properties will be provided as affordable units in accordance with adopted policy.
- 3.8 The western edge of the site will be used as an area of public open space. Approximately 1.2 hectares of public open space will be provided. The location of the area of public open space is in part dictated by site constraints. There is an existing sewer running from north to west to the south east section of the proposed area of public open space. In addition, it is necessary for an attenuation basin to be created in this location as part of the drainage strategy.
- 3.9 Given the scale of the development it is expected that new public open space will be laid out and in an informal fashion with a looped walkway surrounding a wildflower meadow and the proposed attenuation basin.
- 3.10 New tree planting can be introduced throughout the site, this will help break up the built development and give a greener appearance to residential development parcels of the site.

4.0 PLANNING POLICY REVIEW

4.1 The starting point for a determination of the appeal is the Development Plan, which in this case comprises:

- The Hinckley and Bosworth Core Strategy 2006 – 2026 (**‘Core Strategy’**) (CD6)
- The Hinckley and Bosworth Site Allocations and Development Management Policies DPD (**‘SADMP’**) (CD7); and
- The Burbage Neighbourhood Plan 2015 – 2026 (**‘BNP’**) (CD8)

4.2 The Appeal Scheme should be determined in accordance with the policies in the Development Plan unless material considerations indicate otherwise. Material considerations in this case include the National Planning Policy Framework, the HBBC Residential Land Availability Monitoring Statement 1st April 2021 – 31st March 2022 and various SPD’s and evidence base documents produced by HBBC. Section 7 – Policy, of the Delegated Officers Report identify the Development Plan documents, and other documents that are material planning considerations relevant to the determination of the appeal. It also identifies the specific policies within the Core Strategy and SADMP that are applicable to the Appeal Scheme.

4.3 The Policy section of the Delegated Officers Report makes no reference to the BNP. Furthermore no reference is made to the emerging replacement HPPC Local Plan. Given that the emerging Local Plan is in the early stages of the preparation process it can be afforded highly limited weight in the decision making process. However, the BNP is part of the Development Plan.

4.4 Set out below is a summary of the planning policies and guidance relevant to the principle of development. The policies relevant to highways and transportation, identified in Refusal Reason 1, are addressed in Ms A’Lee’s Statement of Case on highways matters.

A) A Development Plan

1) Core Strategy

- 4.5 The Core Strategy was adopted in December 2009. It is, therefore, now close to 13 years old and predates all versions of the National Planning Policy Framework (**'Framework'**). The Core Strategy was prepared in order to provide overarching policies and guidance to control development in the period 2006 to 2026. It provides the overall vision and strategy for development in the Borough.
- 4.6 The Core Strategy was prepared to be in conformity with the provisions of the now revoked East Midlands Regional Plan (March 2009) (**'RSS'**). The housing requirement in the Core Strategy, and approach to the delivery of housing development, are, therefore, based upon the housing requirement set out in the RSS and are out of date.
- 4.7 Core Strategy Table 1 – Current Housing Supply, identifies a housing requirement of 9,000 dwellings for course of a Plan period. At the time of a preparation of Core Strategy it was established that 3,954 dwellings were committed. As a consequence, the Core Strategy makes provision for the development of a further 5,046 dwellings. In order to assist in meeting the housing requirement the Core Strategy identified two large sustainable urban extensions to the east and west of Barwell. These allocations are yet to delivered.
- 4.8 The Core Strategy housing requirement is, as a matter of fact, significantly out of date. It dates back to a former revoked RSS. That being the case, the policies in the Core Strategy that are based upon delivering the 9,000 dwelling housing requirement are also out of date. The Core Strategy must be read in this context.
- 4.9 Spatial Objective 5 – Housing for Everyone, advises that sufficient housing will be provided to meet the requirements of a RSS, in order to enable residents to have access to a suitable home which they can afford. The focus

of development will be in and around the Hinkley urban area, with more limited development in the rural areas for local needs. The Core Strategy confirms that the main urban area of a borough is made up of the four key settlements of Hinkley, Burbage, Barwell and Earl of Shilton (paragraph 4.14). This area is expected to be the focus for growth.

- 4.10 **Policy 4 – Development in Burbage**, advises that the Council will allocate land for development of a ‘minimum’ of 295 dwellings at Burbage focused primarily to the north of Burbage, adjacent to the Hinkley settlement boundary to support the Hinkley subregional centre.
- 4.11 **Policy 15 – Affordable Housing**, advises that at Hinkley, Barwell, Earl Shilton and Burbage 20% affordable housing provision will be sought on sites of 15 dwellings or more/half a hectare or more. The tenure split will be 75% socially rented and 25% intermediate. The preferred mix of affordable housing is identified by the policies supporting text.
- 4.12 **Policy 16 – Housing Density, Mix and Design**, states that the Council requires a mix of house type and tenures to be provide on all sites of 10 dwellings or more, taking into account the type of provision that is likely to be required by Core Strategy Table 3 as a starting point.
- 4.13 **Policy 19 – Green Space and Play Provision**, provides set requirements for public open space:
- Equipped children’s play area – a minimum 0.15 hectares a thousand population
 - Casual/informal space – a minimum of 0.7 hectares per thousand population
 - Outdoor sports provision – a minimum of 1.6 hectares per thousand population
 - Accessible natural green space – a minimum of 2 hectares per thousand population

- 4.14 **Policy 20 – Green Infrastructure**, advises that the implementation of the Green Infrastructure network, as outlined on the Key Diagram, is a key priority of the Council. The Appeal Site lies in the “southern zone”. The Appeal Site is not within any of the Burbage Green Infrastructure designations (Burbage Common and Woods and Burbage Allotments) identified by the policy.

2) Site Allocations and Development Management DPD

- 4.15 HBBC adopted the SADMP in July 2016. The SADMP has been prepared to be in conformity with the Core Strategy. It allocates sites for housing, employment and retail development in order to deliver the development strategy of the Core Strategy. It is based upon an out of date Plan.
- 4.16 A Policies Map accompanies the SADMP. The Appeal Site is located outside of, but adjacent to, the settlement boundary of Burbage. It is, therefore, in the ‘countryside’ for decision making purposes. The land immediately to the north of the appeal site is identified as a residential site with planning permission. This site is now built out.
- 4.17 **Policy DM1 – Presumption in favour of Sustainable Development**, advises that planning applications which are in accordance with the policies in the Local Plan will be approved without delay, unless material considerations indicate otherwise. Where there are no policies relevant to the application, or relevant policies are out of date at the time of making the decision, then the Council will grant planning permission unless material considerations indicate otherwise, taking into account whether:
- Any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits assessed against the policies in the National Planning Policy Framework taken as a whole; or
 - Specific policies in the Framework indicate that development should be restricted.

4.18 **Policy DM3 – Infrastructure and Delivery**, advises that where new infrastructure is required to serve development the developers are expected to make such provision directly or indirectly through appropriate funding mechanisms.

4.19 **Policy DM4 – Safeguarding the Countryside and Settlement Separation**, advises that the countryside will be first and foremost safeguarded from unsustainable development. Appropriate forms of development are listed in the Policy, none of which include residential development of the nature proposed. Given the Appeal Site is outside of the defined settlement boundary of Burbage, it should be treated as being within the open countryside for purposes of the application of Policy DM4.

4.20 Other relevant policies include:

- DM6 – Enhancement of Biodiversity and Geological Interest
- DM7 – Preventing Pollution and Flooding
- DM10 – Development and Design
- DM11 – Protecting and Enhancing the Historic Environment
- DM13 – Preserving the Borough's Archaeology
- DM17 – Highway and Transportation
- DM18 – Vehicle Parking Standards

4.21 As detailed in the following section of Statement of Case, all technical matters and policy requirements have been addressed and agreed with the relevant statutory consultees with the exception of highways. The majority of requirements of the design based policies are matters for consideration at reserve matters stage.

3) Burbage Neighbourhood Plan 2015 - 2026

4.22 The Burbage Neighbourhood Plan ('BNP') (CD8) was 'made' in May 2021 and now form the part of development plan for HBBC.

4.23 **Policy 1 – Settlement Boundary**, advises that residential development on land ‘within or adjacent to the settlement boundary’ as shown on Figure 2, will be supported, subject to complying with the policies of the Development Plan. The Appeal Site adjoins the settlement boundary.

4.24 The BNP Examiners Report (CD9) provides helpful guidance on the formulation of Policy 1. As originally drafted, the policy sought to restrict residential development to sites within the settlement boundary. However, at paragraph 127 the Examiner notes that the Core Strategy is ‘now out of date’ as a basis for preparing the BNP. The Examiner advises at paragraph 64 of their report that:

“I have reached an initial conclusion, that the plan’s overall spatial strategy, which is set out in Policy 1, does not meet the basic conditions, as currently worded, in that it will prevent the delivery of sustainable development and does not have regard to Secretary of State advice policy, which expects the planning system to be delivering a substantial increase in housing.”

4.25 At paragraph 66 the Examiner states:

“Taking that forward, a suggestion that I put forward at the Hearing and would seem to gain some acceptance, not just from the Borough Council and the landowners representatives, but also from the Parish Council representatives, was a possible recommendation to introduce a modification to Policy 1, which would presume in favour of development, not just inside the settlement boundary, but also on land which is adjacent to the urban edge.”

4.26 This approach was ultimately adopted and is now enshrined in Development Plan Policy. This approach needs to be considered having regard to the more restrictive approach put in place by SADMP Policy DM4. There is a degree of tension between Policy 1 of the Neighbourhood Plan and Policy DM4 of the SADMP, in that Policy 1 supports development within or adjacent to the

defined settlement boundaries, whereas Policy DM4 is resistant to residential development beyond the defined settlement boundaries. Resolution to this can be found in the Planning and Compulsory Purchase Act 2004. At section 38 (5) it is advised that:

“If to any extent a policy contained in a Development Plan for an area conflicts with another Policy in the Development Plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the Development Plan.”

- 4.27 **Policy 2 – Design and Layout**, requires residential development proposals to respect their surroundings and follow the existing pattern of development.
- 4.28 **Policy 4 – Parking**, provides parking standards for residential development. This is to be a matter for consideration at the Reserved Matters stage.
- 4.29 **Policy 6 – Ridge and Furrow Fields**, advises that sites possessing ridge and furrow fields would be treated as non designated heritage assets for purpose of decision making. As detailed in the following section of Statement of Case, heritage and archaeological issues have been addressed.
- 4.30 Figure 32 – Parks Covered by 600 Metres, identifies the location of parks within the settlement and their catchment area. The site falls within the catchment area of the local park.

B) Material Planning Considerations

4) The Framework

- 4.31 The most recent version of the Framework was published in July 2021. Paragraph 2 confirms the Framework is a material consideration in planning decisions.

- 4.32 Guidance on the application of the Framework can be found in Annex 1 – Implementation. In summary, paragraph 218 of the Framework advises that policies in the Framework are material considerations which should be taken into account from the day of publication. Due weight should be given to relevant policies in existing plans published prior to the publication of the Framework according to their degree of consistency with the Framework (paragraph 219). The closer the policies in the Plan to the policies in the Framework the greater the weight they may be given.
- 4.33 The Core Strategy was adopted prior to the publication of the Framework. As such the guidance at paragraph 219 of the Framework applies.
- 4.34 Paragraph 48 of the Framework advises that decision makers may give weight to relevant policies in the emerging Plans according to:
- The stage of preparation of the emerging Plan. The more advanced the preparation, the greater the weight that may be given;
 - The extent of which the unresolved objections to relevant policies. The less significant the unresolved objection, the greater the weight that may be given; and
 - The degree of consistency between relevant policies the emerging Plan are to the policies in the Framework. The closer the policies in the emerging Plan to the policies in the Framework, the greater the weight they may be given.

Achieving Sustainable Development

- 4.35 The Framework advises that the purpose of planning system is to facilitate sustainable development. The Framework identifies these overarching objectives to sustainable development, an economic role, a social role and an environmental role. The social role of sustainable development includes providing a supply of housing that will meet the need of future generations, including the provision of affordable housing.

4.36 Paragraph 11 of the Framework advises that for decision making (unless material considerations indicate otherwise), the presumption in favour of sustainable development means:

- Approving development proposals that accord with an up to date Development Plan without delay; or
- Where there are no relevant Development Plan Policies, or policies which are most important for determining the application are out of date, grant planning permission unless:
 - I. The application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed; or
 - II. Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

4.37 The Appeal Site is not an area or an asset of particular importance, as identified by footnote 7.

Delivering a Sufficient Supply of Homes

4.38 The Framework requires local authorities to 'significantly' boost the supply of housing (paragraph 60). In order to assist with this objective local authorities should, amongst other matter:

- Be able to demonstrate a 5 year supply of deliverable housing land, including an appropriate buffer (paragraph 74);
- Identify affordable housing needs in order to meet the needs of those who require housing (paragraph 62); and
- Encourage the provision of small and medium size sites. Paragraph 69 of the Framework explains that such sites can make an important contribution to meeting the housing

requirement and have the advantage of being able to built out quickly.

5) The Housing Delivery Test

4.39 The Housing Delivery Test is an annual measurement of housing delivery for local planning authorities. Where the Housing Delivery Test indicates that delivery has fallen below 95% of the Local Planning Authorities housing requirement over the previous three years the authority should prepare an Action Plan in line with National Planning Policy Guidance to assess the cause of the undelivery and identify actions to increase delivery in future years (Framework paragraph 76). If it is below 85% a 20% buffer is added to the Council's 5 year housing requirement in the five year housing land supply calculation.

4.40 The Housing Delivery Test results for HBBC are set out below:

- 2018 – 141%
- 2019 – 119%
- 2020 – 92%
- 2021 – 86%

4.41 There has been a persistent decline in house delivery in HBBC.

6) Residential Land Availability Study – 5 Year Housing Land Supply

4.42 HBBC's most recent Residential Land Availability Monitoring Statement 1st April 2021 – 31st March 2022 ('**RLAMS**') (CD10) confirms the Council's stated 5 year housing land supply position as of 1st April 2022. It confirms that the housing requirement should be established using the Standard Method, as the strategic housing policy in the Core Strategy is more than 5 years old. It suggests that there is a 4.89 year supply of housing land at Table 7. As a consequence paragraph 11d of the Framework is engaged.

- 4.43 It is our view that the RLAMS overestimates housing delivery. A series of 'large sites' and 'small sites' are identified that are not deliverable having regard to the requirements of deliverability identified by the Framework. However, given that it is an accepted position that HBBC do not have a 5 year housing land supply a detailed analysis of the various sources of housing land supply has not been undertaken at this time.
- 4.44 The RLAMS also provides guidance on affordable housing delivery. It confirms that the Core Strategy sets an affordable housing requirement of 2,090 dwellings during the course of a plan period (104.5dpa). During the course of a 16 years to date, a total of 1,672 affordable properties should have been provided (104.5dpa x 16 years). It is advised that 1,463 affordable properties have been completed (this is a gross rather than net figure). As such affordable housing delivery is below the annualised requirement.

7) Hinkley and Bosworth Local Plan Regulation 19 Consultation

- 4.45 HBBC undertook Regulation 19 – Pre Submission consultation, on the emerging Local Plan in February and March 2020 (CD11). A copy of the Pre Submission draft Policies Map is provided at CD12. The Appeal Site is adjacent to, and outside side of, the settlement boundary of Burbage.
- 4.46 **Policy SS02 – Development Strategy**, advises that development in the borough will take place in accordance with the Spatial Strategy. New housing development will be directed to the most sustainable locations. The majority of new homes will be located in the urban area of the borough, followed by the key rural centres and rural villages. Provision will be made for a development of a minimum of 9,124 dwellings during the course of the plan period. This includes the provision of 3,854 dwellings on sites already completed or committed or with the benefit of planning permission.
- 4.47 Part 4 of the policy advises that development in the countryside (i.e. land beyond the defined settlement boundaries) will be restricted. This policy is applicable to the Appeal Site. However, given that the emerging Local Plan

is in the early stages of the preparation process it can be afforded minimal weight in the decision making process.

5.0 CONSULTEE COMMENTS

5.1 During the course of the determination period the Applicant sought to work to address the consultee comments. As detailed in the Officers Delegated Report (CD1) no objection was received from the following consultees:

- Lead Local Flood Authority – conditions relating to surface water management
- Leicestershire County Council Minerals
- Leicestershire County Council Ecology – condition relating to hedgerow planting
- LCC Archaeology – condition relating to archaeological works
- HBBC Affordable Housing – 20% housing provision is sought. The Appellant will secure this with a planning obligation
- HBBC Environmental Services Pollution – conditions relating to noise impact assessment, construction environmental management plan and land contamination
- Leicestershire County Council Education
- NHS West Leicestershire CCG – S106 contribution of £20,252.50

5.2 LCC Highways Authority have objected to proposed development and recommended refusal of planning permission. This resulted in refusal reason in the Statement of Case of Ms A'Lee of RPS addresses this matter in detail. It is Ms A Lee's view that there are no adverse highways impacts associated with development or robust grounds for refusal of planning permission as set out in her Statement of Case.

6.0 CASE FOR THE APPELLANT

6.1 Section 38 (6) of the Planning and Purchase Act 2004 and Section 70 (2) of the Town and Country Planning Act 1990 require planning applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise. Paragraph 11 of the Framework advises that local authorities should approve development proposals that accord to an up to date Development Plan without delay. Where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, grant planning permission unless:

- I. The application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. The appeal site is not subject to any of these designations.
- II. Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

6.2 In this case the Development Plan comprises the Core Strategy 2009, the SADMP and the BNP. It is, therefore, first necessary to consider whether the development proposals are in accordance with the development plan when received as a whole. It is also necessary to consider whether the Development Plan policies are 'up to date' and whether the tilted balance is engaged.

6.3 In my analysis below I assess the Appeal Scheme in order to establish whether the principle of development should be considered acceptable in the above context. The planning application was refused on highways grounds (refusal reason 1), and due to the lack of a planning obligation (refusal reason 3). The Appellant has agreed to enter into a S.106 Agreement, in order to resolve refusal reason 2. It is, therefore, understood that is an agreed position that the principle of the residential led development of the site is accepted by HBBC, and the principal reason for refusal of planning permission is in the

highways grounds. Highways matters are addressed in Ms A'Lee's Statement of Case.

Section 38(6) Matter

- 6.4 The SADMP Policies Map identifies the Appeal Site as adjacent to, but outside of, the settlement boundary of Burbage. That being the case for purposes of the Development Plan it is treated as 'countryside' for decision making purposes. Policy DM4 – Safeguarding the Countryside and Settlement Separation, advises that the countryside will first and foremost be safeguarded from unsustainable development. Appropriate forms of development are listed in the policy, none of which include residential development of the nature proposed. There is, therefore, a conflict with this aspect of policy DM4. Policy DM4 does, however, now need to be read having regard to the policies included within the BNP.
- 6.5 The SADMP was adopted in July 2016. BNP was made in 2021. The Planning and Compulsory Purchase Act 2004 advises Section 38(5) that if to any extent there is a policy contained in the development plan for an area that conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document to become part of development plan. In this case this is the BNP. BNP Policy 1 – Settlement Boundary, advises that residential development on land 'within or adjacent to the settlement boundary' as shown on figure 2 will be supported, subject to complying with other policies in development plan. The Appeal Site joins the defined settlement boundary. As such the Appeal Scheme is in accordance with this element of policy 1, and should be considered to be Development Plan compliant, subject to it meeting the other policies within the Development Plan.
- 6.6 It is my view that the proposed development meets the relevant Development Plan policies as detailed below.

1) Core Strategy Policies

- Policy 4 – Development in Burbage. Policy 4 advises that the Council will allocate land for the development of a ‘minimum’ of 295 dwellings in Burbage. Burbage is one of the four settlements alongside Hinkley, Barwell and Earl Shilton) that form part of the main urban area where development is focused. As the housing requirement in Policy 4 is a minimum, there is no conflict with it being exceeded. In addition, the housing requirement within the Core Strategy is out of date in any event as explained in paragraph 4.5 to 4.6 of the Statement of Case.
- Policy 15 – Affordable Housing. Policy 15 requires sites in Burbage to provide 20% affordable housing. 20% affordable housing provision is proposed.
- Policy 16 – Housing Density, Policy 19 – Green Space and Play Provision, and Policy 20 – Green Infrastructure – set standards for density, open space provision and green infrastructure. The site is capable of accommodating the 40 dwellings proposed, alongside appropriate levels of open space at a density that reflects the character of the surrounding area. Detailed design matters will be addressed at the reserved matters stage.

2) Site Allocations And Development Management DPD

- Policy DM3 - Infrastructure and Delivery. In accordance with the provisions of policy DM3 on site infrastructure will be provided. A contribution of £20,252 is proposed towards health care provision in accordance with the request made by NHS West Leicestershire CCG.
- Policy DM4 – Safeguarding the Countryside and Settlement Separation, conflicts with the provisions of Policy 1 of the BNP, in that it seeks to prevent development beyond the defined settlement boundaries. Policy DM4 also requires development not to have a ‘significant adverse affect’ on the intrinsic value, beauty, open character and landscape character of the countryside. Paragraph 8.68 of the Officers Delegated Report advises that the development

will have a 'moderate to minor' impact on the landscape and visual amenity. The level of harm is, therefore, not "significant" and "adverse". In terms of the other requirements of the policy, the development will not undermine the physical or perceived separation or open character between settlements, it is not ribbon development, nor is it within a green wedge or a national forest.

- The proposed development is compatible with Policies DM6 – Enhancement of Biodiversity and Geological Interest, DM7 – Preventing Pollution and Flooding, DM10 – Development and Design, DM11 – Protecting and Enhancing of Historical Environment, DM13 – Preserving the Boroughs Archaeology. As detailed in the preceding chapter of the Statement of Case, there were no concerns expressed with regard to any of these matters by the Statutory Consultees.
- Policy DM17 – Highways and Transportation, is identified in refusal reason 1. It is suggested that a safe and suitable access cannot be created to the site. As detailed in the Statement of Case of Ms A'Lee, is the Appellant's view that there are no adverse highways impacts.

3) Burbage Neighbourhood Plan

- Policy 1 – Settlement Boundary – As detailed above, the proposed development is in conformity of requirements of Policy 1 as it is a residential scheme adjoining the settlement boundary.
- Policy 6 – Ridge and Furrow Fields – There is ridge and furrow on the Appeal Site, however, as detailed in the archaeology response in the previous chapter of the Statement of Case there are no consultee concerns on archaeology or heritage grounds.
- Policy 2 – Design and Layout, Policy 4 – Parking, provides standards that are applicable at the reserved matters stage.

6.7 It is of the Appellant's view that the Appeal Scheme is Development Plan compliant. As detailed in Ms A'Lee's Proof of Evidence the highways reason refusal cannot be substantiated. As such planning permission should have been granted by HBBC 'without delay'.

Material Planning Considerations

- 6.8 Policy DM1 – Presumption in favour of sustainable development, of the SADMP, and Paragraph 14 of the Framework, advises that where the most important policies for determining applications are out of date, planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This guidance is applicable to the Appeal Site as the housing policies in the Development Plan are out of date, and the site is not in an area or an asset of particular importance.
- 6.9 The Development Plan housing policies are out of date for two reasons. Firstly, the Core Strategy housing requirement is based upon the provisions of revoked RSS. It predates all versions of the Framework. The SADMP was prepared to being conformity with the Core Strategy and does not revisit this housing requirement. As such the policies in the plan, and its development boundaries, were formed on a now out of date housing requirement.
- 6.10 In addition, it is an accepted position that HBBC do not have a 5 year housing land supply. This is confirmed in the Delegated Officer's report (paragraph 8.67) and the RLAMS. The tilted balance is consequently engaged. It is necessary to weigh the adverse impacts against the benefits of the scheme. Planning permission should be granted unless the address impacts significantly and demonstrably outweigh the benefits.

Adverse Impacts

- 6.11 The adverse impacts of granting planning permission are minimal. As referred to above, there would be a degree of conflict with policy DM4 of the SADMP. However, this policy is rendered out of date by Policy 1 of the BNP.
- 6.12 The Appeal Scheme does propose the development of the green field site adjacent to the settlement edge. This will impact upon the landscape and

visual amenity of the area. However, as detailed in paragraph 8.68 of the Delegated Officers Report this impact is considered to be 'moderate to minor'.

Benefits

1) The Delivery of Housing

- 6.13 HBBC does not have a 5 year housing land supply. Granting planning permission will provide a further 40 dwellings to the supply of sites. This is material benefit of significant weight.

2) Delivering affordable housing.

- 6.14 20% of the proposed properties will be affordable in accordance with policy requirements (8 dwellings). CS Policy 15 advises that in order to support the provision of mixed sustainable communities a minimum of 2,090 affordable homes will be provided in the borough from 2006 to 2026, the equivalent of 104.5 DPA. This figure dates back to the adoption of the Core Strategy in 2009. There is more up to date information on the affordable housing need in HBBC. Paragraph 7.30 of the HBBC Draft Local Plan Regulation 19 Consultation Document (CDX11) advises at paragraph 7.33 that updated evidence of the need for affordable housing is set out in the Housing Need Study 2019. The study identifies a need for 271 affordable dwellings per annum.
- 6.15 Table 8 – Annual Affordable Housing Completions (1st April 2006 – 31st March 2021) of the RLAMS, presents details of the number of gross affordable housing completions between 2006/07 and 2021/22. There has been an average of 91.43 gross affordable housing completions to date. To meet the current estimate, the Council needs affordable housing provision of 271dpa. The current average rate of affordable housing delivery will need to increase by 179dpa.

- 6.16 This Appeal Scheme will contribute a further 8 affordable units to meeting the Councils overall requirement. This is a benefit of significant weight.

3) Economic Growth

- 6.17 The proposed development would result in jobs in the construction industry through the construction of the properties. It will also result in additional expenditure in local shops by residents of the development. It therefore contributes towards the economic dimensions of sustainable development.

4) The provision of public open space

- 6.18 New public open space will be provided on the site. This will be to the benefit of residents of the development, and the locality in general.
- 6.19 It is my view that the benefits of granting planning permissions significantly outweigh the adverse impacts.

7.0 CONCLUSIONS

- 7.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 and Section 70 (2) of the Town and Country Planning Act 1990 require that the appeal should be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 7.2 In this case, the Appeal Site is in a location that is development plan compliant. BNP Policy 1 – Settlement Boundary, supports residential developments within or adjacent to the settlement boundary of Burbage, subject to the development complying with other policies in development plan. The Appeal Site immediately adjoins the settlement boundary of Burbage.
- 7.3 In addition, the Development Plan policies are out of date. The Council are unable to demonstrate a 5 year housing land supply, and the Core Strategy Housing policies date back to 2009, and reflect the provisions of a now revoked RSS. Consequently the tilted balance in paragraph 11 (d) of the Framework is engaged.
- 7.4 Planning permission has been refused by HBBC on two grounds. Refusal reason 2 relates to the failure to agree a S.106 Agreement prior to the determination of the application. The Appellant does not challenge any of required contributions and will provide a compliant planning obligation as part of the appeal process.
- 7.5 Refusal reason 1 suggests that a safe and suitable access route to the site cannot be created, as a consequence there is a conflict with SADMP Policies DM17 – Highways and Transportation, and paragraph 108 of the Framework.
- 7.6 As detailed in the accompanying Statement of Case prepared by Ms A'Lee, of RPS, the proposed development is acceptable from a highways impact perspective. Refusal reason 2 cannot be substantiated. There is, therefore, no conflict with any development plan policy.

- 7.7 The proposed development provides the opportunity to deliver much needed market and affordable housing in a sustainable location. It will create jobs in the construction industry and increase footfall in local shops, services and facilities supporting their viability. It is respectfully requested that planning permission is granted.

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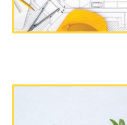
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