

# **TOWN AND COUNTRY PLANNING ACT 1990**

## **SECTION 78 APPEAL**

### **Local Planning Authority Statement of Case**

Site address: Land West Of Workhouse Lane Burbage Leicestershire

Description: Residential development up to 40 dwellings, public open space and associated Infrastructure  
(Outline - access only)

APPEAL REFERENCE: APP/K2420/W/22/3311038

PLANNING APPLICATION REFERENCE: 20/01012/OUT

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## **1 INTRODUCTION**

**1.1** This Statement of Case has been prepared on behalf of Hinckley and Bosworth Borough Council ("the LPA"), by Alpine Planning Ltd, and relates to the refusal of planning permission for residential development up to 40 dwellings, public open space and associated Infrastructure (Outline - access only). ("the proposal") at Land West of Workhouse Lane Burbage Leicestershire ("the site").

**1.2** The application was validated by the LPA and designated reference number 20/01012/OUT. The application was accompanied by the standard detailed plans, documents, application forms and ownership certificates. Once validated, the normal statutory consultations were carried out by the LPA.

**1.3** As set out within the Case Officer's delegated report, consultation responses were received from a number of consultees. All statutory consultees were satisfied with the submitted details, with the exception of the Highways Authority and the Parish Council, who objected to the scheme.

**1.4** The LPA wrote to neighbouring properties and erected a site notice. 19 letters of objection were received from the public raising the following concerns:

- Increased traffic
- Unsuitable access road
- Insufficient capacity in local schools
- Insufficient capacity in local GP surgeries
- Too much development
- Noise impact
- Contrary to Burbage Neighbourhood Plan
- Out of character
- Air quality/pollution
- Lack of transparency relating to future developments to the west
- Loss of countryside
- Impact on play area
- Removal of native trees and woodland

**1.5** On the 15th of August 2022, the application was refused under Delegated Authority for the following reasons:

1. *The applicant has failed to demonstrate the principle of a safe and suitable access route can be achieved to the site between the junction of Workhouse Lane and Britannia Street and the proposed site access, contrary to the requirements of Policies 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 infrastructure to mitigate against the impact of the additional development on 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.*

**1.6** This Appeal Statement is set out as follows: -

- The Appeal Site and its Surroundings
- The Appeal Proposal
- Planning Policy Context
- Planning History
- Case for the Appellant
- Summary and Conclusions

## **2 THE APPEAL SITE AND SURROUNDINGS**

- 2.1** The application site comprises a single agricultural field adjacent to the built-up area of Burbage. It sits to the southern east of that settlement and would be accessed via Workhouse Lane.
- 2.2** The site is broadly rectangular in shape, and devoid of any noticeable features, though a small cluster of trees can be found in the northern part of the site.
- 2.3** The site is adjoined by residential development, and so the prevailing character is semi-rural or developed countryside. The site is within close proximity to Junction 1 of the M69, and a short drive from Hinckley railway station. There are a number of amenities within walking distance in Burbage, including a post office, schools, public houses and shops.
- 2.4** The application site is located within flood zone 1. It is not within a Conservation Area, nor does it contain any Listed Buildings. There are no other designations on the site that would be material to decision-making.

## **3 THE APPEAL PROPOSAL**

- 3.1** The application seeks outline permission for the erection of up to 40 dwellings, open space and associated infrastructure, with all matters reserved except for access.
- 3.2** The council has worked proactively with the applicant to overcome various issues during the planning process, as is demonstrated by the number of amended plans submitted.
- 3.3** The applicant had previously engaged the Council in pre-application discussions, which concluded that the scheme was contrary to Policy DM4 of the SADMP but advised that should all matters be resolved through the application process, it was possible that a view would be taken in light of the Council's 5 Year Housing Land Supply, and the 'Tilted Balance' that is engaged as a result. These matters will all be addressed in full in the following sections.

## **4 PLANNING POLICY CONTEXT**

- 4.1** Planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise under Section 38(6) of the 2004 Act. This is reinforced within the National Planning Policy Framework 2021.
- 4.2** Therefore, consideration has to be given to the adopted development plan and supplementary planning guidance and also to emerging local development plan documents and supplementary planning documents. All relevant documents are set out below in order of national and local levels.

### **National Planning Policy Framework 2021**

- 4.3** The Government published a revised National Planning Policy Framework (NPPF) in July 2021. As per the previous iterations, this document sets out the Government's planning policies for England and how these are expected to be applied. It provides a framework within which local people and local planning authorities can produce their own distinctive local and Neighbourhood Plans, which reflect the needs and priorities of their communities. Given the age of the adopted Development Plan documents, where there are discrepancies between it and the new NPPF it is appropriate to consider only the NPPF.
- 4.4** At the heart of the Framework is a presumption in favour of sustainable development – Local Planning Authorities should approve proposals that accord with an up-to- date Development Plan and, alongside saved local plan policies and to which the relevant Strategic Policies will align, it too

seeks to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings, as well as taking account of the character of different areas.

### **The Development Plan**

- 4.5** The Development Plan in this instance comprises the Core Strategy (2009), the Site Allocations and Development Management Policies DPD (2016) and a number of Neighbourhood Plans and Supplementary Planning Documents. The relevant policies therein are as follows:

#### Core Strategy (2009)

- Policy 4: Development in Burbage
- Policy 5: Transport Infrastructure in the sub regional centre
- Policy 15: Affordable Housing
- Policy 16: Housing Density, Mix and Design
- Policy 19: Green Space and Play Provision
- Policy 20: Green Infrastructure
- Policy 24: Sustainable Design and Technology

#### Site Allocations and Development Management Policies DPD (2016)

- Policy DM1: Presumption in Favour of Sustainable Development
- Policy DM3: Infrastructure and Delivery
- Policy DM4: Safeguarding the Countryside and Settlement Separation
- Policy DM6: Enhancement of Biodiversity and Geological Interest
- Policy DM7: Preventing Pollution and Flooding
- Policy DM10: Development and Design
- Policy DM11: Protecting and Enhancing the Historic Environment
- Policy DM13: Preserving the Borough's Archaeology
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards

#### Supplementary Planning Documents

- Leicestershire Highway Design Guide
- Landscape Character Assessment (2017)
- Landscape Sensitivity Assessment (2017)
- Open Space and Recreation Study (2016)
- Housing Needs Study (2019)
- Affordable Housing SPD (2011)
- Leicestershire Minerals and Waste Local Plan
- Good Design Guide (2020)

### **Status of the Development Plan**

- 4.6** The Council can identify a 4.89 year housing land supply as its published position as of 31 March 2022. This has been revised through a recent planning inquiry (APP/K2420/W/22/3301735) to be 4.76 years supply. As per paragraph 11 of the NPPF, it is accepted that the tilted balance is engaged as a result of this shortfall. However, this shortfall is not 'significant' and the weight attributed to it should be tempered accordingly.
- 4.7** The Council's Core Strategy housing figures are derived from out-dated Regional Spatial Strategy housing figures. These figures do not accord with the NPPF, which requires housing to be delivered in accordance with the latest Objectively Assessed Needs (OAN) figures. On this basis, Policy 4 of the Core Strategy is considered out-of-date.

- 4.8** Whilst Policy DM17 ('Highways and Transportation') is also considered to be out-of-date having been based on the out-dated Regional Spatial Strategy housing figures, significant weight can still be afforded to it as it accords with the NPPF. This has been confirmed through a number of appeals appended to this Statement.
- 4.9** Paul Newman New Homes Ltd v SSHCLG [2019] EWHC 2367 makes clear that simply because one policy is out-of-date this does not mean the Development Plan as a whole is out-of-date. A decision-taker must consider the basket of most important policies for the determination of the application or appeal. However, in this case paragraph 11 of the Framework is considered to be engaged on the basis of the Housing Land Supply shortfall.
- 4.10** Burbage as a settlement has delivered housing notably in excess of its target, as set out in the Core Strategy. As a Borough, the housing shortfall identified below the five year land supply position is not severe. However, the delivery of housing to the Hinckley Urban Area as a whole is below expected delivery levels. The weight to be afforded to the provision of market housing is therefore considered to be significant.
- 4.11** The Borough has also identified sufficient affordable housing to exceed the target set out in the Core Strategy. However, there is still a recognised need for 323 affordable dwellings for Burbage. The delivery of affordable housing is therefore considered to carry significant weight.

## **5 RELEVANT PLANNING HISTORY**

- 5.1** The planning history of the site and surroundings is not relevant to this appeal, which is based on specific grounds.

## **6 CASE FOR THE LPA**

- 6.1** This case will demonstrate that the application has not provided sufficient information to demonstrate that it would not have a negative impact on the surrounding highway network – and in particular the junction of Workhouse Lane and Britannia Street and the site access. This is contrary to Policies DM17 of the SADMP and the NPPF.

### **Reasons for Refusal 1**

- 1.** *The applicant has failed to demonstrate the principle of a safe and suitable access route can be achieved to the site between the junction of Workhouse Lane and Britannia Street and the proposed site access, contrary to the requirements of Policies DM17 of the SADMP and paragraph 108 of the National Planning Policy Framework.*
- 6.2** The applicant undertook lengthy dialogue with the Highways Authority and provided amended plans, additional traffic assessment information, and a proposal for offsite highways improvement works to mitigate against the impacts of the proposal.
- 6.3** An impasse was reached and the Highways Authority hold an objection to the scheme:
- "The Local Highway Authority advice is that the residual cumulative impacts of the development are severe in accordance with the National Planning Policy Framework (2021) and the Local Planning Authority is advised to consider refusal on transport/highway grounds for the reasons outlined in this report.*

1. *The Applicant has failed to demonstrate the principle of a safe and suitable access route can be achieved to the site between the junction of Workhouse Lane and Britannia Street and the proposed site access, contrary to paragraph 108 of the National Planning Policy Framework.*

*Advice to Local Planning Authority*

*Following the observations submitted by the Local Highway Authority dated 15 July 2021, the Applicant has submitted a Technical Note dated 21 July 2021 which states the LHA need to provide more clear evidence on their grounds for objection given the previous Technical Notes and a Stage 1 Road Safety Audit which have been submitted.*

*The LHA advised refusal of the application within its observations submitted to the Local Planning Authority on 18 December 2020, 15 February 2021 and 15 July 2021. The latter two responses referred to the comments submitted on 18 December 2020.*

*The LHA have re-visited the site on 16 February 2022 and maintain that carriageway widths on Workhouse Lane between the Britannia Road Road and Frezenberg Close junction are below the 5.5m required within Part 3, Table DG1 of the Leicestershire Highway Design Guide. Carriageway widths between the Britannia Close junction and the existing build-out on Workhouse Lane narrow to approximately 4.2m, creating a pinch point where vehicles exiting Britannia Road could come in to conflict with vehicles turning right towards Britannia Road or continuing northbound along Workhouse Lane. In addition, the tight junction radii and restricted visibility due to third party land/planting mean drivers would need to pull out some way in to Workhouse Lane in order to see oncoming traffic when turning left.*

*The LHA consider the additional development traffic could exacerbate the situation which would be to the detriment of highway safety and free flowing traffic. Drivers may also be tempted to pull up half on to the footway and continue to drive half on the footway/ carriageway in order to allow other vehicles to pass which would be to the detriment of pedestrian safety. During the site visit there did not appear to be scope to undertake widening in the area without third party land.*

*Therefore the LHA maintain its ongoing reason for refusal, originally advised on 18 December 2020."*

- 6.4** It is worth also noting that Burbage Parish Council also objected to the scheme on highways grounds:

*"Burbage Parish Council resolved to object the application for access and the principle of development on this site. Workhouse Lane is a singletrack road with very narrow footpaths and an increase in traffic movements would pose a danger to all road users and pedestrians alike, with no scope to widen the road and footways sufficiently and is therefore inadequate for access for development. Furthermore, member questioned the validity of the traffic assessments as being out of date, with factual inaccuracies. The right turn on exiting Workhouse Lane towards the direction off Lutterworth Road is a dangerous junction with no visibility and an extremely narrow footpath and would pose further danger to road users and pedestrians alike."*

- 6.5** The above information was provided with the application, either within the submitted plans or the Planning Statement and additional comments on staffing. As such the case officer should have been in a position to ascertain whether the scheme met the criteria therein; as it clearly does.

## **Reason for Refusal 2**

2. *The applicant has failed to agree a S.106 Agreement with the Council to ensure that the scheme makes suitable contributions to infrastructure to mitigate against the impact of the additional development on 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.*

**6.6** Policy DM3 of the adopted SADMP requires development to contribute towards the provision and maintenance of necessary infrastructure to mitigate the impact of additional development on community services and facilities. Policy 19 of the Core Strategy identifies standards for play and open space within the borough. Developments should accord with the policy and provide acceptable open space within the development, or if that is not possible contribute towards the provision and maintenance of open space off site. The Open Space and Recreation Study 2016 updates these standards and also identifies the costs for off-site and on-site contributions.

**6.7** The request for any planning obligations (infrastructure contributions) must be considered alongside the requirement contained within the Community Infrastructure Levy Regulations 2010 (CIL). The CIL Regulations and paragraph 57 of the NPPF state that planning obligations must only be sought where they meet all of the following tests:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development

**6.8** The contributions sought are detailed below:

- AH – 20% (75% social or affordable rented and 25% intermediate tenure/shared ownership). Consultation response was issued prior to Government launching the Starter Homes initiative, which will require 25% of the AH units to be Starter Homes, and the remaining 75% to be split as per the Housing Officer's requirements
- Healthcare (£20,252.50)

**6.9** All of the above contributions are considered to meet the tests for planning obligations, and were the proposals to be considered acceptable, form part of the S.106 legal agreement to be formulated. As the application was to be refused, no work has been undertaken on this legal agreement, and the lack of it therefore formed a separate reason for refusal.

**6.10** It is noted within the Appellants' Statement of Case that they will provide a S.106 Agreement in accordance the LPA's requested planning obligations. This has not been provided to date, but appears to be a suitable means of overcoming this reason for refusal should such a document be provided.

## **Other Relevant Matters**

**6.11** The Officers Report includes a full appraisal of the application, with appropriate consideration of all other matters not addressed within this Statement of Case. It is submitted alongside this Statement to enable a full account of the LPA's consideration of the application.



- 6.12** The Highways Authority has also prepared a Statement of Case., which will go into further detail about the concerns that they have raised.

**7 SUMMARY AND CONCLUSION**

- 7.1** For the reasons set out above, it is the LPA's case that the application has failed to demonstrate that it accords with the Development Plan, for the reasons set out above, and articulated within the accompany Officers Report and Decision Notice.
- 7.2** As this is the case, the appellant respectfully asks that the Inspector dismisses the Appeal, and that planning permission is refused for the development proposed.
- 7.3** Should the Inspector find otherwise a list of proposed Conditions is attached.