

**APPEAL UNDER  
SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990**

**PLANNING APPLICATION BY  
RICHBOROUGH ESTATES LTD**

**OUTLINE PLANNING APPLICATION**

**RESIDENTIAL DEVELOPMENT UP TO 63 DWELLINGS WITH ASSOCIATED  
ACCESS, LANDSCAPING, OPEN SPACE AND DRAINAGE  
INFRASTRUCTURE**

**AT LAND AT STATION ROAD,  
MARKET BOSWORTH,  
LEICESTERSHIRE, CV13 0PE**

**Application Reference 20/01021/OUT  
PINS Reference APP/K2420/W/21/3279808**

**Inquiry Opening: 8 December 2021**

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**OPENING SUBMISSIONS OF  
THE COUNCIL**

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**1) INTRODUCTION**

- 1.1. On 8 June 2021, the Council's Planning Committee refused permission for the Appeal Scheme for the following reason:<sup>1</sup>

*1. The development, due to its location in the open countryside, would be harmful to the character and appearance of the area and diminish the enjoyment users derive from the area especially in relation to important view 1 and vista 11 as identified in the Market Bosworth Neighbourhood Plan. The development would therefore have a significant adverse effect on the intrinsic value, beauty and open character of the countryside which should be safeguarded first and foremost from unsustainable development and on important views and vistas. The development is therefore contrary to policy DM4 Safeguarding the Countryside and Settlement Separation of the Site Allocations and Development Management Policies DPD July 2016 and Policies CE3 Important Views and Vistas and CE5 Landscape of the wider Parish of the Market Bosworth Neighbourhood Plan 2014 and this harm would significantly and demonstrably outweigh the benefits when considered against the Framework as a whole.*

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<sup>1</sup> CD5.05

1.2. These opening submissions consider the following issues in outline, in accordance with the Inspector's Post-CMC Note (paragraph 8) (3 November 2021):

- Section 38(6) of the Planning and Compulsory Purchase Act 2004 and the Development Plan
- Main Issue 1: Character and Appearance
- Main Issue 2: Benefits and Adverse Impacts
- Planning Balance, including the Presumption in Favour of Sustainable Development

## **2) SECTION 38(6) OF THE PLANNING AND COMPULSORY PURCHASE ACT 2004 AND THE DEVELOPMENT PLAN**

2.1. The fundamental starting point is 38(6) of the Planning and Compulsory Act 2004. The Appeal Proposal is not in accordance with the development plan. This arises in two ways:

2.2. First, the proposal is located outside the settlement boundaries designated in the development plan, and is thus contrary to Policy DM4 of the Site Allocations and Development Management Policies DPD ("SADPD")<sup>2</sup> and Policy CE5 of the Market Bosworth Neighbourhood Plan ("MBNDP"),<sup>3</sup> as well as Policies 7<sup>4</sup> and 11<sup>5</sup> of the Hinckley and Bosworth Borough Core Strategy ("CS").

2.3. Second, the proposal will give rise to harm in landscape and visual terms, contrary to Policy DM4(i) SADPD and Policies CE3 and CE5 of the MBNDP. This conflict is agreed by the Appellant's Planning Witness, even if the extent of the conflict and the weight to be accorded to it are in dispute.<sup>6</sup>

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<sup>2</sup> CD6.03, p161 - Residential development of this type and scale does not fall within (a)-(e)

<sup>3</sup> CD6.07, p35 - Residential development of this type and scale does not fall within (a)-(d)

<sup>4</sup> CD6.01, p41

<sup>5</sup> CD6.01, p48

<sup>6</sup> Mr Pycroft, PoE, p39, [5.36] and p40, [5.41]

- 2.4. It therefore falls to be assessed whether there are material considerations which indicate that permission should be granted, notwithstanding that conflict with the development plan as a whole.

### **3) MAIN ISSUE 1: CHARACTER AND APPEARANCE**

- 3.1. The Reason for Refusal identified harm in respect of landscape character and visual impact terms, giving rise to conflict with Policies DM4, CE3 and CE5.
- 3.2. The Council's case is set out in the Proof of Evidence of Mr Wakefield,<sup>7</sup> as further considered by Mr Weekes.<sup>8</sup> The Matters in Dispute are set out in the Landscape SoCG.<sup>9</sup> The differences are now focussed in number, but are nonetheless individually substantial. For present purposes, they can be summarised briefly.
- 3.3. The Appeal Site is an important part of the setting of the village at its western entrance. The Neighbourhood Plan recognised its specific qualities and designated site-specific protection through Policy CE3 and Important View 1 and Vista 11. Notwithstanding the Appellant's claims for landscaping and open space, the Site will be fundamentally altered by the development.
- 3.4. In landscape character terms, the Council's evidence explains why the Appeal Scheme will give rise to Moderate/Major Adverse Effects at the Site level at Year 15.<sup>10</sup> Whilst the impact on the LCA C - Bosworth Parklands will only be Minor Adverse, there will still be a permanent detrimental impact to the rural setting of the settlement in this location.

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<sup>7</sup> Mr Wakefield PoE

<sup>8</sup> Mr Weekes PoE

<sup>9</sup> Landscape SoCG, p5 and see also Mr Berry PoE, Section 2 p15, [2.50]

<sup>10</sup> Mr Wakefield PoE, p31, [6.32] and p32, [6.35]

- 3.5. In visual effects terms, the Council considers that Transient users of Station Road, specifically pedestrian and recreational users, and residential properties around the Site, will both experience Major Adverse Effects at Year 15.<sup>11</sup>
- 3.6. Vista 11 will effectively be lost as a result of the development, reduced to a very narrow view.<sup>12</sup> This impact will not be mitigated by the Appellant's proposals. In particular, the Appellant's proposal to replace this with a new Vista 11 will not compensate for this loss. All this is readily visible on the Appellant's original visualisations.<sup>13</sup>
- 3.7. View 1 is a continuous view along Station Road towards the wooded hilltop at settlement edge. The Appeal Site contributes to that view, particularly through its openness. Development of the Appeal Site will significantly alter the view. The Appellant has now provided four visualisations which demonstrate the full extent of the impact. Again, this impact will not be mitigated by the Appellant's proposals, for example, landscaping and 5-17m setback. Again there will be a significant adverse effect.<sup>14</sup>
- 3.8. For these summary reasons, the Council considers that the proposal will give rise to significant adverse harm in respect of landscape and visual effects, which will not be capable of mitigation, in conflict with Policy DM4, CE3 and CE5.
- 3.9. The Council has carefully considered the weight to be accorded conflict with Policy DM4, CE3 and CE5, having regard to the consistency of those policies with the Framework. In line with Inspector's earlier Appeal Decisions, it considers that all three Policies are consistent with Framework and the conflict with them should be accorded full weight.

#### **4) MAIN ISSUE 2: BENEFITS AND ADVERSE EFFECTS**

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<sup>11</sup> Mr Wakefield PoE, Summary p42, [7.61]

<sup>12</sup> Mr Wakefield PoE, p37, [7.30]

<sup>13</sup> CD2.06

<sup>14</sup> Mr Wakefield PoE, p36, [7.22]

- 4.1. There is substantial agreement as to the categorisation and the weighing of the benefits in this case, as set out in the Proof of Mr Weekes.
- 4.2. The parties agree that the economic and environmental benefits of the proposal are to be accorded moderate weight. The contribution to public open space is a matter to be accorded significant weight.
- 4.3. The sole area of disagreement relates to the specific adjective to attached to housing benefits (the contribution that the proposal would make to the supply of market and affordable housing), in circumstances where it is agreed that the current housing land supply figure is below 5 years, specifically 4.45 years.
- 4.4. The Appellant seeks “very significant” weight. The Council considers that this should “significant” weight, in line with a number of earlier Appeal Decisions.
- 4.5. The countervailing adverse effects are set out under Main Issue 1 above: the significant adverse effects that will arise in landscape and visual effects terms and the conflict with the relevant policies in the development plan.
- 4.6. The latter issue is an important point. The Neighbourhood Plan is only six years old. It was a front-runner plan and involved considerable effort by local people. The Examiner found Policies CE3 and CE5 had a clear rationale, in seeking to protect the character of the settlement and preventing the urbanisation of the area in this location.<sup>15</sup> The direct conflict with such policies should be accorded significant weight, consistent with *Gladman v SSHCLG* [2021] EWCA Civ 104.

## **5) PLANNING BALANCE, INCLUDING THE PRESUMPTION IN FAVOUR OF SUSTAINABLE DEVELOPMENT**

- 5.1. The Council’s Reason for Refusal acknowledged and applied the presumption in favour of sustainable development.

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<sup>15</sup> CD6.16

- 5.2. The Committee identified that the harms identified under Main Issue 1, significantly and demonstrably outweigh the benefits identified under Main Issue 2.
- 5.3. For all these reasons, the Council will in due course submit, the appeal should be dismissed.

**JAMES CORBET BURCHER**  
**No5 Chambers**

**8 December 2021**