



## Proof of Evidence of Ben Pycroft BA (Hons), Dip TP, MRTPI

Outline application for up to 63 dwellings, with associated access, landscaping, open space and drainage infrastructure (all matters reserved other than access) –  
Land At Station Road, Market Bosworth, Leicestershire,  
CV13 0PE

for Richborough Estates and Messrs Vero

Emery Planning project number: 21-367

PINS ref: APP/K2420/W/21/3279808

LPA ref: 20/01021/OUT



Project : 21-367  
Site address : Land At Station Road,  
Market Bosworth,  
Leicestershire, CV13 0PE  
Client : Richborough Estates and  
Messrs Vero  
Date : 09 November 2021  
Author : Ben Pycroft

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## 1. Introduction

- 1.1 This Proof of Evidence has been prepared on behalf of Richborough Estates and Messrs Vero (the Appellants) in support of their appeal against the decision of Hinckley and Bosworth Borough Council to refuse to grant outline planning permission for up to 63 no. dwellings, with associated access, landscaping, open space and drainage infrastructure (all matters reserved other than access) (LPA ref: 20/01021/OUT, PINS ref: APP/K2420/W/21/3279808).
- 1.2 My proof of evidence addresses the planning matters relevant to the appeal. It should be read alongside the proof of evidence of Mr Berry in relation to landscape.

### Qualifications

- 1.3 I am Benjamin Michael Pycroft. I have a B.A. (Hons) and postgraduate diploma in Town Planning from the University of Newcastle-upon-Tyne and am a member of the Royal Town Planning Institute. I am a Director of Emery Planning, based in Macclesfield, Cheshire.
- 1.4 I am familiar with the site and the details of the case. I understand my duty to the inquiry and have complied, and will continue to comply, with that duty. I confirm that this evidence identifies all facts which I regard as being relevant to the opinion that I have expressed and that the Inquiry's attention has been drawn to any matter which would affect the validity of that opinion. I believe that the facts stated within this proof are true and that the opinions expressed are correct and comprise my true professional opinions which are expressed irrespective of by whom I am instructed.
- 1.5 I provide a separate summary to this proof of evidence and set of appendices. I also refer to several core documents and the Planning Statement of Common Ground (SoCG) and the Housing Supply and Delivery SoCG.

### Structure of evidence

- 1.6 This proof of evidence is structured under following chapters:
2. The site and its surroundings
  3. The appeal proposal
  4. Planning policy context
  5. The Inspector's main issue 1

6. The Inspector's main issue 2
7. Conclusions and planning balance

## 2. The site and its surroundings

### Site description and location

- 2.1 A description of the appeal site and its surroundings is set out in paragraphs 2.1.1 to 2.1.7 of the Planning SoCG. In summary, the appeal site is 4.2 ha in area. It is bound to the north by the Kyngs Golf and Country Club, to the east by the existing residential properties which front on to Station Road, to the south by Station Road and beyond the road existing residential properties and the Station Road industrial estate and to the west by agricultural land and Wharf Farm and then beyond this is the Battlefield heritage railway line and existing residential development. The site generally slopes from west to east and is in agricultural use.
- 2.2 As set out in sections 5.7 and 5.8 of the Planning SoCG, the appeal site is locationally sustainable in principle in transport and accessibility terms. The range of local facilities and services within walking and cycling distance of the appeal site are set out in paragraph 5.8.2 of the Planning SoCG.
- 2.3 Market Bosworth is a town with a population of around 2,100 people<sup>1</sup>. The town includes a doctors' surgery, dentist, veterinary practice, police and fire stations, a library, parish hall, shops an industrial area, sports facilities, a nursery school, playschool, primary school, secondary school and a fee paying school<sup>2</sup>.
- 2.4 The Core Strategy explains that 3 main types of settlements have been identified in the rural area: Key Rural Centres, Rural Villages and Rural Hamlets<sup>3</sup>. Market Bosworth is identified as one of 9 Key Rural Centres, which are defined in the Glossary to the Core Strategy<sup>4</sup> as:

*"those villages that have populations over 1,500 people, have a primary school, local shop, post office, GP, community/leisure facilities, employment and a 6 day a week bus service (hourly). Key Rural Centres that provide localised provision of facilities permit access by foot, bike and local bus and can minimise car journeys not only for those people who are living in the Key Rural Centres, but also the rural villages and hamlets surrounding these centres."*

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<sup>1</sup> CD6.07 – Market Bosworth Neighbourhood Plan, p. 11, paragraph 4.1a

<sup>2</sup> CD6.07 – Market Bosworth Neighbourhood Plan, p.12, paragraphs 4.2a-4.2c

<sup>3</sup> CD6.01 – Hinckley and Bosworth Core Strategy, p.40, paragraph 4.30

<sup>4</sup> CD6.01 – Hinckley and Bosworth Core Strategy, p.96

2.5 Paragraph 4.33 (p.40) of the Core Strategy explains that the Key Rural Centres will be the Council's focus for improvements to employment, services, facilities and public transport provision. It then states:

*"The vision for these centres is that they will become, where they are not already, the focal points for their surrounding rural communities, places where residents can fulfil their daily needs without having to travel long distances into urban areas. In particular, the linkages between these Key Rural Centres and their Rural Villages and Hamlets will be improved through investment in the green infrastructure and cycle network to enable people to walk and cycle easily to their nearest Key Rural Centre."*

2.6 After the 4 main urban areas of Hinckley, Burbage, Barwell and Earl Shilton, the Key Rural Centres are the highest tier of settlement followed by the Rural Villages. The Rural Villages have more limited services and are less sustainable than the Key Rural Centres as car travel will be required in most cases to access employment and services<sup>5</sup>. The 7 Rural Villages include Congerstone (approximately 3.2 miles) to the north west, Sheepy Magna (approximately 5.5 miles) to the west and Twycross (approximately 5.6 miles) to the north west of Market Bosworth.

2.7 Below the Rural Villages are the Rural Hamlets, which have limited, if any, services and rely on Key Rural Centres or surrounding urban areas for schooling, employment and the provision of goods and services<sup>6</sup>. The 16 Rural Hamlets include Cadeby (approximately 2 miles) to the south east, Carlton (approximately 2.3 miles) to the north, Sutton Cheney (approximately 3.6 miles) to the south and Sibson (approximately 4 miles) to the south west of Market Bosworth.

## **Planning history**

2.8 A description of the relevant planning history is set out in paragraphs 2.2.1 to 2.2.4 of the Planning SoCG. In summary, the appeal site was subject to two previous applications by Charles Church in 2013 and 2014.

2.9 The 2013 application (LPA ref: 13/00520/FUL) was for 65 no. dwellings and was recommended for approval subject to conditions and a S106 agreement on 4<sup>th</sup> February 2014. The 2013 application was considered in the context of the Council being able to demonstrate a five year housing land

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<sup>5</sup> CD6.01 – Hinckley and Bosworth Core Strategy, p.51, paragraphs 4.43 and 4.44

<sup>6</sup> CD6.01 – Hinckley and Bosworth Core Strategy, p.54, paragraphs 4.45

supply<sup>7</sup>. However, the minimum residual housing requirement in Market Bosworth had not been met<sup>8</sup>. In terms of the impact on the open countryside, the officers' report explained that due to the close proximity of development to the site, it is not a "traditional, 'typical' and open countryside location" and that the proposed residential development would occupy a natural infill to the north of Station Road<sup>9</sup>. Members of the Planning Committee voted against the decision and refused the application for three reasons in relation to the claimed harm to the intrinsic character and beauty of the open countryside, the restriction of growth of existing businesses due to the proximity of the site to a noisy industrial use and prematurity to the then emerging SADMP document and MBNP<sup>10</sup>. Whilst an appeal was made, it was withdrawn in August 2014 because a resolution to grant permission had been made on the resubmitted (i.e. 2014) application.

2.10 The 2014 application (LPA ref: 14/00674/FUL) was for 64 no. dwellings and was again recommended for approval by officers on 19<sup>th</sup> August 2014. The application was considered in the context of the absence of a five year housing land supply<sup>11</sup>, the presumption in favour of sustainable development and the fact that the housing requirement for Market Bosworth had not been met<sup>12</sup>. In terms of the impact on the character and appearance of the countryside, the officers again explained that due to the close proximity of development to the site, it is not a "traditional, 'typical' and open countryside location" and that the proposed residential development would occupy a natural infill to the north of Station Road<sup>13</sup>. The committee report also stated:

*"on balance whilst it is accepted that the proposal would compromise a view and vista that is of value to the local community, the loss of this view is not considered to be significantly harmful in environmental terms to detract from the overall social and economic sustainable benefits of the scheme."*

2.11 In August 2014, members resolved to grant permission subject to conditions, the completion of a planning obligation and the Secretary of State not wishing to call the application in for his own determination. However, the application was re-reported to committee on 3<sup>rd</sup> March 2015 before

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<sup>7</sup> CD8.01 – 2013 Charles Church Application Documents, pages 13 and 14

<sup>8</sup> CD8.01 – 2013 Charles Church Application Documents, page 15

<sup>9</sup> CD8.01 – 2013 Charles Church Application Documents, pages 19 and 20

<sup>10</sup> CD8.01 – 2013 Charles Church Application Documents, pages 41 and 42

<sup>11</sup> CD8.02 – 2014 Charles Church Application Documents, page 9

<sup>12</sup> CD8.02 – 2014 Charles Church Application Documents, page 26

<sup>13</sup> CD8.02 – 2014 Charles Church Application Documents, page 15

the planning obligation had been signed and decision issued where it was recommended it be refused because of a change in the Council's housing land supply position and the (then emerging) Neighbourhood Plan<sup>14</sup>. In terms of the impact on the character and appearance of the countryside and vistas, the committee report again explained that due to the close proximity of development to the site, it is not a "traditional, 'typical' and open countryside location" and that the proposed residential development would occupy a natural infill to the north of Station Road<sup>15</sup>. The report stated:

*"On balance whilst it is accepted that the proposal would compromise a view and vista that is of value to the local community, the loss of this view is not considered to be significantly harmful in environmental terms to detract from the overall social and economic sustainable benefits the scheme would bring in terms of delivering housing. However, the proposal would result in a degree of conflict with Policy CE3 of the emerging Market Bosworth Neighbourhood Plan. This policy should now be afforded substantial weight given the status of the NDP. It is concluded that the scheme would compromise an important vista that is of value to the local community leading to harm and further conflict with the emerging NDP, detrimental to the aspirations of the community."*

2.12 Members voted to refuse planning permission for the following reason:

*"The development proposed would be premature in respect of the emerging Market Bosworth Neighbourhood Plan and would conflict with Policy BD2 which allocates an alternative site and Policy CE3 which seeks to safeguard important vistas. This would result in a significant and demonstrable harm by undermining the community's aspirations for growth through the neighbourhood planning process. The proposal would therefore be contrary to the emerging Market Bosworth Neighbourhood Plan, Policy 11 of the Hinckley & Bosworth Core Strategy 2009, Policies NE5 and RES5 of the Hinckley & Bosworth 2001 and the overarching intentions of the National Planning Policy Framework."*

2.13 It is of note that the alternative site referred to in the RfR of the 2014 application is the land south of Station Road. This site will now not be delivered within the plan period of the Core Strategy and Neighbourhood Plan. It is also of note that at the time the 2014 application was reconsidered and refused, the Neighbourhood Plan Examiner's report had not been received and therefore policy CE3 of the had not been amended to include the word "significantly".

2.14 The above demonstrates that along with the appeal application, applications for residential development have been taken to committee on four occasions. Officers have recommended

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<sup>14</sup> 2014 Charles Church Application Documents, page 43

<sup>15</sup> 2014 Charles Church Application Documents, page 44

approving planning permission for residential development at the site on three occasions, and this has twice been overturned by members, but members have also resolved to grant planning permission once before. The only time officers recommended refusing planning permission was when the Council claimed that a five year housing land supply could be demonstrated. My proof of evidence explains that the Council cannot demonstrate a deliverable five year housing land supply and the one allocation in the Neighbourhood Plan (at land to the south of Station Road) is not expected to deliver any dwellings in the plan period to 2026.

### **Adjoining site to the north**

2.15 The site to the north of the appeal site is occupied by the Kyngs Golf and Country Club. Whilst the golf club is currently closed, it is in the process of being refurbished and will reopen with a new clubhouse and holiday accommodation. The relevant planning history of this site is set out below:

#### **19/01437/FUL – Kyngs Golf and Country Club Station Road Market Bosworth**

2.16 The permission granted on 5<sup>th</sup> February 2020 is for:

*“Erection of a multi-purpose golf clubhouse(D2), formation of new car parking areas and access roads and the erection of 6 golf holiday homes (C1) and all associated ancillary works and landscaping”*

2.17 The proposed location of the car park, clubhouse and holiday homes are to the north of the appeal site as shown on the approved site layout plan appended at BP1.

2.18 Paragraph 8.25 of the committee report for the application<sup>16</sup> states:

*“The proposed buildings would be situated within Vista 11 as identifies within the Market Bosworth Neighbourhood Plan. Vista 11 is identified as being important due to the extensive views of north west Leicestershire. It would also be possible to achieve views of the proposed development from footpath S70 as it enters from the east of the site. The Inspector when considering appeal ref: APP/K2420/W/18/3229633, had regard to the proposed built form and its relationship in the wider context of Station Road. The Inspector in his consideration of the appeal identified that although the proposed clubhouse and lodge would be prominent in the landscape, from Station Road due to the presence of the hedgerows and distances from Station Road, its presence would not be unexpected, and its relationship with the countryside apparent. The Inspector also noted that although the proposed clubhouse and the courtyard of holiday lets would be situated within a stretch of largely open land along Station Road, the surroundings offer indication of the application sites*

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<sup>16</sup> Appendix BP2

*proximity to Market Bosworth, with continuous development present surrounding the site, with a mix of housing and industrial uses present, which provide an urbanising influence. Therefore despite its openness, it is contained. The Inspector therefore concluded that in terms of the proposed clubhouse and courtyard holidays lets the development would result in localised impact on the landscape, however in combination of the scale, siting and wider context the proposed buildings were not considered by the Inspector to result in harm to the landscape character of the area, nor detract from the identified vista 11 of the MBNP. Given the undulating nature of the site, it would be considered necessary to impose a levels condition to ensure that the proposed development would not result in an unduly prominence."*

- 2.19 This permission is relevant because the consented Kyngs Golf and Country Club development to the north of the site would mean the appeal site becomes fully integrated with the extents of development at the edge of Market Bosworth. This is addressed further in Mr Berry's proof of evidence.

### 3. The appeal proposal

3.1 As set out in paragraph 3.1.1 of the Planning SoCG, the Appellants seek outline planning permission with all matters reserved save for the means of access, for a residential development comprising:

- Up to 63 dwellings which would include a mix of dwelling types and sizes to meet a range of householder needs;
- 40% affordable housing;
- Vehicular access onto Station Road;
- Retained access to Kyngs Golf and Country Club; and
- Extensive new public open space including a Locally Equipped Area of Play (LEAP) and Trim Trail, together with surface water attenuation.

#### The appeal application

3.2 The proposed development was the subject of a formal pre-application consultation with the Council with advice received from Leicestershire County Council (LCC) Highways, LCC Ecology, the Council's S106 monitoring officer, the Council's waste services and the Council's Environmental Health Officer. The proposed viewpoints were agreed with the Council at the pre-application stage<sup>17</sup>. A pre-application meeting took place on 8<sup>th</sup> September 2020.

3.3 The appeal application was submitted on 24<sup>th</sup> September 2020. It was supported by a comprehensive suite of technical reports in accordance with the Council's planning application validation requirements (CD1.01 – CD1.23). It was validated on 12<sup>th</sup> October 2020 and given the reference: 20/01021/OUT. During the consideration of the application, the submission documents were supplemented by various document (CD2.01 – CD2.10) provided at the post-submission stage in response to matters raised by either statutory consultees or Officers. These post-submission documents specifically addressed comments made in relation to landscape by the Council and its consultants and by third parties as I discuss below.

3.4 Landscape matters were considered in detail at the application stage. Important views and vistas, as identified in the Market Bosworth Neighbourhood Plan (MBNP) were fully considered, to the satisfaction of Officers, who sought independent advice from an external landscape

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<sup>17</sup> Landscape SoCG – paragraph 3.1v

consultant (LUC – provided at CD4.14 and CD4.16). Technical representations to the submitted Landscape and Visual Impact Assessment (CD1.11) by third parties were also addressed by the Appellant (CD2.09) and the Illustrative Masterplan updated during the determination stage (CD2.06) accordingly. These points are also addressed by Mr Berry in his evidence.

- 3.5 No objection to the appeal application was made by the following statutory consultees: HBBC Planning Policy, HBBC Drainage, HBBC Environmental Health (Pollution), HBBC Street Scene Services, HBBC Conservation Officer, HBBC Waste Services, Leicestershire Police, Severn Trent Water Ltd, LCC Archaeology, LCC Ecology, LCC Highways and LCC Flood.
- 3.6 The response from HBBC Planning Policy is dated 26<sup>th</sup> November 2020<sup>18</sup> and explains that at that time the Council claimed it could demonstrate a five year housing land supply. Notwithstanding this, the officer concludes that there are no policy objections to the principle of residential development on the site because there are no adverse impacts in approving the proposal which significantly and demonstrably outweigh the benefits. The response explains that the housing policies within the MBNP are out of date and goes on to explain that policy CE3 should only be given moderate weight for the reasons, which I discuss below.
- 3.7 The appeal application was presented to a meeting of the Council's Planning Committee on 25<sup>th</sup> May 2021 where it was recommended it be approved as set out in the Report of the Planning Manager to the committee for the appeal application and the update to committee (CD5.02 and CD5.03). The Report of the Council's Planning Manager to the committee (CD5.02) explains the following:

The tilted balance

- 3.8 The tilted balance is engaged due to the absence of a five year supply of housing land (paragraphs 8.7, 8.19, 9.1 and 11.2). Paragraph 8.6 sets out that the Council can only demonstrate a 4.23 year supply. However, the tilted balance is engaged irrespective of the five year housing land supply because of the age of the plan and the out of date evidence it relies on. Paragraph 8.7 of the report of the Planning Manager states:

*“Notwithstanding the above, the housing policies are considered to be out-of-date and therefore paragraph 11(d) of the NPPF is triggered and permission should be granted unless adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the*

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<sup>18</sup> CD4.20 – HBBC Planning Policy comments on the appeal application (26.11.20)

Framework taken as a whole. This is a material consideration to weigh in the context of the statutory requirement to determine applications and appeals in accordance with the Development Plan unless considerations indicate otherwise. The tilted balance of Paragraph 11d) of the NPPF is engaged, irrespective of the housing land supply figure, which is a product of the age of the plan and the out-of-date evidence base it relies upon. The Core Strategy plans for a minimum requirement of 9,000 dwellings over a 20 year period between 2006-2026, this equates to 450 dwellings per annum. This figure was derived from the East Midlands Regional Plan and was considered the 'end point' for housing need requirements for that period. The Site Allocations and Development Management Policies DPD is also based upon these requirements in terms of the allocations it makes and the settlement boundaries it fixes. The Standard Methodology set by government currently identifies a requirement for Hinckley and Bosworth Borough Council of 450 dwellings per annum. Whilst the figure is the same as the Core Strategy requirement, it is the 'starting point' for the need; the 'end point' has not yet been assessed and the allocations to meet it / the new settlement boundaries will not be confirmed until the publication of the new Local Plan. The new Local Plan period will cover 2020-2039."

- 3.9 Paragraph 8.9 of the report of the Planning Manager also explains that the MBNP housing figure is based on the Borough Council's housing policies within the Core Strategy which are out of date.

Consistency of the policies with the Framework and weight given to them

- 3.10 Notwithstanding the points set out in paragraph 8.7 above, the Planning Manager states at paragraph 8.8 that the policies in the SADMP and Core Strategy are consistent with the Framework and later that these policies are attributed significant weight.
- 3.11 In accordance with the planning policy officer's comments, the Planning Manager only gives policy CE3 of the MBNP "moderate weight" for the reasons set out in paragraph 9.3 as follows:

*"The proposal also causes harm to key characteristics of Vista 11 identified within the MBNP leaving only a narrow view of the open countryside to the north in conflict with Policy CE3 of the MBNP which seeks to resist new development which has a significant adverse impact on any important view or vista. Policy CE3 is given moderate weight when measured against consistency with the Framework. They advise that in terms of the conformity of Policy CE3 against the revised NPPF, it is recommended that moderate weight is given to the policy. A similar policy was recently examined as part of the Examination into the Burbage NDP. In this case the Examiner's report introduced a wording amendment so that the policy included the following wording "which cannot be mitigated will not be supported." This wording was inserted to ensure the NDP allowed for sustainable development which is a NDP Basic Condition. An assessment on how the impact of the development can mitigate any potential negative impact on the views and vistas should therefore be made rather than*

*a blanket approach to resist. The mitigation measures proposed will be assessed below.*" (emphasis added)

### Conflict with policies

3.12 The report of the Planning Manager states in several places that the proposal is outside of the settlement boundary of Market Bosworth and within the open countryside and contrary to policies 7 and 11 of the Core Strategy and policy DM4 of the SADMP. Paragraph 9.2 states:

*"The proposal would be in conflict with Core Strategy Policy 7 and 11 and Policy DM4 of the SADMP. These policies are consistent with the Framework and are afforded significant weight. The proposal would extend built development beyond the settlement boundary of Market Bosworth and it is considered that the proposal would result in a moderate degree of harm to the character and appearance of the area at Year 1 Occupation which would conflict with Policy DM4 of the SADMP and Policy CE5 of the MBNP."*

3.13 In terms of policy DM4, paragraph 8.13 of the report of the Planning Manager states that because the proposal does not fall under any of the categories identified within policy DM4 as sustainable, there is a clear conflict between the proposed development and the policy. However, the report does not assess the weight to be given to this conflict within the context of policy DM4 being out of date due to the absence of a five year housing land supply and because the most important policies are out of date. The report also does not explain that the Council has clearly applied the policy flexibly by allowing schemes on greenfield land outside of settlement boundaries to provide a housing land supply. Indeed had the Council not taken this approach elsewhere then its housing land supply would be even worse than it is<sup>19</sup>.

3.14 In relation to policy CE3, paragraph 8.49 of the report of the Planning Manager states:

*"The proposal would also impact on Vista 11 leaving only a narrow view of the open countryside to the north in conflict with Policy CE3 of the MBNP which seeks to resist new development which has a significant adverse impact on any important view or vista"*

3.15 However, the report of the Planning Manager does not conclude there would be a significant adverse impact on the vista once mitigation has been factored in and therefore the report does not consider the level of conflict with policy CE3 within this context. As above, the Planning

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<sup>19</sup> Please refer to table 4.2 below

Manager only gives moderate weight to policy CE3 for the reasons set out in the planning policy officer's comments (CD4.20) and paragraph 9.3 of the report to committee.

- 3.16 In terms of policy CE5, the report of the Planning Manager states that the location of the site in the open countryside is contrary to policy CE5 (paragraph 8.19) but elsewhere states that the proposed development would contribute to the local economy (paragraphs 8.15 and 9.7) and effective mitigation to minimise the harm to the landscape have been provided (paragraphs 8.50 and 8.51), which accords with policy CE5.

#### Landscape impact

- 3.17 The conclusions of the Planning Manager on landscape impact are set out in detail in Mr Berry's proof of evidence. However, paragraph 8.49 of the report to committee states that the proposed development would result in a moderate degree of harm to the character and appearance of the area at year 1 occupation which would conflict with policy DM4 of the SADMP. Paragraph 9.10 of the report to committee states:

*"It has been concluded that the proposal would have major adverse landscape effects on the application site at construction phase, however, this impact would be temporary and would reduce to moderate adverse effects at year one occupation. The proposal would have moderate adverse visual effects on recreational users of footpath S70/1, users of Kyngs Golf and Country Club (future receptor) and transient users of Station Road at construction. However, there would be major adverse visual effects on residents to the south at construction which would lessen to residual moderate visual effects on these residents at Year 15 occupation. This would in turn impact on the fine and valued views from Vista 11. Whilst there is conflict with the strategic policies of the Development Plan only moderate localised landscape harm has been identified at Year 15 construction. A new Vista 11 would also be provided within the site with elevated views across North West Leicestershire. It is thus considered on balance that this level of harm does not significantly and demonstrably outweigh the identified benefits of the scheme when assessed against the Framework as a whole. Therefore, the presumption in favour of sustainable development does apply in this case and material considerations outweigh the conflict with some elements of the development plan."*

#### Benefits

- 3.18 In terms of benefits, the Planning Manager states at paragraph 9.5:

*"whilst there is an allocated housing site along Station Road which has yet to be developed and planning permissions have been granted for additional dwellings in the MBNP area, the additional houses and affordable houses*

*proposed in this planning application would have significant weight in the planning balance in delivering housing in the Market Bosworth area”*

- 3.19 The report of the Planning Manager identifies economic benefits associated with the construction of the scheme and the support provided to local services by residents of the proposed development (paragraphs 9.7 and 9.8). The report also identifies a benefit of the provision of Public Open Space (POS, paragraph 9.8) and the landscaping within it as well as the benefit of biodiversity associated with the new planting within the site (paragraph 9.9).

#### Other matters

- 3.20 At paragraph 9.4 of the report, the Planning Manager states that the proposal would result in the loss of some grade 2 agricultural land, but this is small in size and would remain free from development. Therefore, the Planning Manager gives moderate weight to the loss of this land.
- 3.21 At paragraph 11.7, the Planning Manager states that subject to conditions the proposal would not have any significant adverse impacts on the historic environment, noise, residential amenity, vehicular or pedestrian safety, ecology, archaeology, drainage and land contamination. It is considered that the proposed development is in accordance with Policies DM6, DM7, DM10, DM11, DM13, DM17 and DM18 of the SADMP (2016) (paragraph 11.7).

#### Planning balance and conclusions

- 3.22 On balance, the Planning Manager states that the level of harm does not significantly and demonstrably outweigh the identified benefits of the scheme when assessed against the Framework as a whole. Therefore, the presumption in favour of sustainable development does apply in this case and material considerations outweigh the conflict with some elements of the development plan (paragraph 11.6).
- 3.23 Members voted against the recommendation of their officers and refused to grant outline planning permission. The decision notice was issued on 8<sup>th</sup> June 2021 (CD5.05) and sets out one Reason for Refusal (RfR), which is repeated below for ease of reference:

*“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".*

## 4. Planning policy context

4.1 Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework ("the Framework") is a material consideration.

### National planning policy and guidance

4.2 The National Planning Policy Framework (the Framework) and the Planning Practice Guidance set out the Government's planning policies, and how they are expected to be applied.

### Development Plan Context

#### Adopted Planning Policy

4.3 As set out in paragraph 4.1.1 of the Planning SoCG, the relevant components of the development plan are:

- the Hinckley and Bosworth Core Strategy Development Plan Document (adopted December 2009). The Core Strategy covers the period 2006 to 2026, and was prepared in accordance with previous national planning policy, which has been replaced by the Framework. Whilst the Core Strategy was adopted almost 12 years ago within a different national planning policy context, it has not been reviewed;
- the Hinckley and Bosworth Site Allocations and Development Management Policies Development Plan Document (SADMP, adopted July 2016). The SADMP is intended to identify sufficient sites to deliver the development requirements established in the Core Strategy, which are now out of date. It also sets out general development management policies for the determination of individual planning applications; and
- the Market Bosworth Neighbourhood Plan (made September 2015). It covers the period 2014 to 2026. A minor modification was made in March 2021 to insert a footnote at the end of the first sentence of paragraph 6.2c to state: "*The Market Bosworth Housing Needs Assessment July 2020 provides a more recent assessment of housing need in Market Bosworth*".

4.4 As set out in paragraphs 5.2.7 and 5.2.8 (p.13) of the Planning SoCG, it is agreed that the most important policies for the determination of the appeal comprise the following policies:

#### Core Strategy Policy 7: Key Rural Centres

4.5 Paragraph 4.29 (p.40) of the Core Strategy states:

*"The focus of most new development will be in and around the Hinckley sub regional centre as this is where there is a concentration of services, where accessibility can be maximised and modal choice made available. However, the needs of rural settlements must also be taken into account to ensure they remain vibrant, mixed communities" (emphasis added)*

- 4.6 As I have set out in section 2 of my proof of evidence, Key Rural Centres are the highest tier of settlement in the rural area ahead of Rural Villages and Rural Hamlets. Paragraph 4.31 (P.40) of the Core Strategy states:

*"Key Rural Centres are those villages that have populations over 1500 people, have a primary school, local shop, post office, GP, community/leisure facilities, employment and a 6 day a week bus service (hourly). Key Rural Centres that provide localised provision of facilities permit access by foot, cycle and local bus and can minimise car journeys not only for those people who are living in the Key Rural Centres, but also the rural villages and hamlets surrounding these centres."*

- 4.7 Market Bosworth is then identified as one of 9 Key Rural Centres. Policy 7 of the Core Strategy: Key Rural Centres explains that to support the Key Rural Centres and ensure they can provide key services to their rural hinterland, the Council will (amongst other things):

*"Support housing development within settlement boundaries that provides a mix of housing types and tenures as detailed in Policy 15 and Policy 16".*

- 4.8 Below the Key Rural Centres, the Core Strategy then splits the rural settlements into villages and hamlets, based on the level of services they contain. Paragraph 3.27 (p.13) of the Core Strategy Inspector's Report (CD6.02) explains that the strategy generally reflects the guidance set out on the former PPS7. It states:

*"The strategy generally reflects the guidance set down in Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7) in that, away from urban areas, most new development is focussed in or near to local service centres. The CS also provides for some limited development in, or next to, other rural settlements, in order to meet local business and community needs and to maintain the vitality of communities. The national guidance is particularly supportive of provision for employment and community services in rural areas. PPS7 also advises that local authorities should make sufficient land available within or adjoining villages to meet the needs of local people, and that approach is also reflected in the Council's proposed strategy."*

- 4.9 The approach is also reflected in the housing allocation in the rural areas as 745 (84%) of the 885 dwellings allocated in the Rural Area in the Core Strategy are in the 9 Key Rural Centres (including

100 dwellings in Market Bosworth) and 140 dwellings are in the 7 Rural Villages (please refer to table 4.1 below).

- 4.10 Core Strategy Policy 7 is not referred to in the RfR. It is out of date because firstly the Council cannot demonstrate a five year housing land supply and secondly because it seeks to support housing development within the settlement boundaries of Key Rural Centres based on a housing requirement figure, which is out of date as I discuss in relation to policy 11 of the Core Strategy below. This position has been recognised at appeal (e.g. Wykin Lane appeal decision – CD7.01 – paragraph 79, which is set out below).

**Policy 11: Key Rural Centres Stand Alone**

- 4.11 Paragraph 4.41 (p.47) of the Core Strategy explains that Key Rural Centres Stand Alone are those settlements outside the National Forest and away from the edge of Leicester that provide services to their rural hinterlands. Market Bosworth is identified as one of 4 villages included in this classification.
- 4.12 Policy 11 states that to support the local services in Market Bosworth and maintain rural population levels the Council will (amongst other things):

*“Allocate land for the development of a minimum of 100 new homes. Developers will be required to demonstrate that the number, type and mix of housing proposed will meet the needs of Market Bosworth, taking into account the latest Housing Market Assessment and local housing needs surveys where they exist in line with Policy 15 and Policy 16.”*

- 4.13 The minimum housing requirement of 100 dwellings in Market Bosworth is from the date the Core Strategy was adopted until the end of the plan period in 2026. Out of the 9 Key Rural Centres, Market Bosworth has the second highest housing requirement (behind Groby, Desford and Newbold Verdon whose housing requirement is 110 dwellings each). This is shown in the following table:

**Table 4.1 – Housing requirements for Key Rural Centres and Rural Villages**

<b>Key Rural Centre</b>	<b>Housing requirement set out in the Core Strategy</b>
Groby	110
Desford	110
Newbold Verdon	110
Market Bosworth	100
Markfield	80
Ratby	75
Bagworth and Thornton	60
Stoke Golding	60
Barlestone	40
<b>Subtotal</b>	<b>745</b>
<b>Rural Village</b>	
Higham on the Hill	40
Stanton Under Barton	30
Sheepy Magna	20
Nailstone	20
Twycross	20
Congerstone	10
Witherley	0
<b>Subtotal</b>	<b>140</b>
<b>Total</b>	<b>885</b>

- 4.14 All the housing figures in the Core Strategy are out of date. Paragraph 4.2 (p.22) of the Core Strategy explains that the East Midlands Regional Plan requires 9,000 homes to be built in Hinckley and Bosworth between 2006 and 2026. This equates to an average of 450 dwellings per annum over the plan period. This was based on an out of date evidence base which does not reflect the Government's objective of significantly boosting housing supply, or the Government's method for calculating local housing need and then setting a housing requirement. The East Midlands Regional Plan was formally revoked in July 2010.
- 4.15 The report of the Planning Manager to committee for the appeal application (CD5.02) recognises that the housing requirement figures are out of date. Paragraph 9.1 of the committee report states:

*“The Council cannot demonstrate a 5 year housing land supply and the housing policies in the adopted Core Strategy, the adopted SADMP and the MBNP are considered to be out of date as they focussed on delivery of a lower housing requirement than now required. Therefore, the ‘tilted’ balance in paragraph 11(d) of the NPPF applies where the permission should be granted unless*

*adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole”*

4.16 This has also been set out in recent appeal decisions. For example, paragraph 76 of the Wykin Lane appeal decision (CD7.01) states:

*“The lack of a 5 year supply of deliverable housing sites alone triggers the tilted balance in paragraph 11(d). The Council and appellant accept that the balance is also triggered due to most important policies being out of date. However, the parties differ in terms of which policies qualify as most important, the reasons for some of these policies being out of date, and the weight to be given to the policies and any conflict with them.”*

4.17 Paragraph 79 of the Wykin Lane appeal decision (CD7.01) states:

*“The CS housing requirement figures are derived from the now revoked East Midlands Regional Spatial Strategy which set a target of 450dpa. The Council accepts that the two policies are out of date due to more up to date assessment of housing requirement via the government's Standard Methodology (SM). While the latest SM data reveals a local housing need of 450dpa, the Council acknowledges that this figure is a starting point for assessing the housing requirement rather than the end point as exists in the CS. Thus, it is recognised that CS Policies 7 and 11 are out of date”*

#### **SADMP Policy DM1: Presumption in Favour of Sustainable Development**

4.18 Paragraph 11.3 of the SADMP is within the section: “How to use the development management policies”. It states:

*“The statutory status of the Development Plan means that it is the starting point for decision making and this has not changed with the adoption of the National Planning Policy Framework. For this reason, every attempt has been made to ensure that these Development Management Policies, along with the Core Strategy and other documents in the Local Plan 2006-26, will be the first port of call when assessing planning applications. It is however acknowledged that, over time, there will be changes in National Policy which may identify an area where this document is silent or could render sections of these policies out of date. In cases such as these, the Borough Council will pay particular regard to Policy DM1: Presumption in Favour of Sustainable Development in their decision making.” (emphasis added)*

4.19 This is relevant because a change in national policy has rendered the housing policies in the adopted Core Strategy, the adopted SADMP and the MBNP out of date. The tilted balance to the presumption in favour of sustainable development therefore applies because of this and because the Council cannot demonstrate a deliverable five year supply of housing land,

4.20 Policy DM1 of the SADMP then states:

*“Planning applications that accord with the policies in the Local Plan (and, where relevant, with policies in neighbourhood plans) 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 Borough Council will grant permission unless material considerations indicate otherwise, taking into account whether:*

*a) Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or*

*b) Specific policies in that Framework indicate that development should be restricted.”*

4.21 Paragraph 12.3 (p.153) of the SADMP in the supporting text states:

*“The Core Strategy sets out the spatial strategy for the borough and identifies where each of the settlements in the borough fit in the settlement hierarchy. The strategy identifies that the majority of development in the borough will be accommodated in and around the Hinckley urban area. The Core Strategy distributed a proportion of development to each settlement dependent on its relative sustainability with the Urban Area considered to be the most sustainable location for development. The sustainability of settlements in the rural area is commensurate with the range of services and facilities in the settlement with Key Rural Centres generally having the widest range of facilities and Rural Hamlets containing the least.”*

**SADMP Policy DM4: Safeguarding the Countryside and Settlement Separation**

4.22 Policy DM4 is referred to in the RfR. The first part of the policy states:

*“To protect its intrinsic value, beauty, open character and landscape character, the countryside will first and foremost be safeguarded from unsustainable development.”*

4.23 The policy then states:

*“Development in the countryside will be considered sustainable where:*

*a) It is for outdoor sport or recreation purposes (including ancillary buildings) and it can be demonstrated that the proposed scheme cannot be provided within or adjacent to settlement boundaries; or*

*b) The proposal involves the change of use, re-use or extension of existing buildings which lead to the enhancement of the immediate setting; or*

*c) It significantly contributes to economic growth, job creation and/or diversification of rural businesses; or*

*d) It relates to the provision of stand-alone renewable energy developments in line with Policy DM2: Renewable Energy and Low Carbon Development; or*

*e) It relates to the provision of accommodation for a rural worker in line with Policy DM5 - Enabling Rural Worker Accommodation.*

*and:*

*i) It does not have a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside; and*

*ii) It does not undermine the physical and perceived separation and open character between settlements; and*

*iii) It does not create or exacerbate ribbon development;*

*iv) If within a Green Wedge, it protects its role and function in line with Core Strategy Policies 6 and 9; and*

*v) If within the National Forest, it contributes to the delivery of the National Forest Strategy in line with Core Strategy Policy 21"*

4.24 The supporting text to the policy at paragraph 13.2 (p.162) states:

*"Given the borough's predominantly rural nature, the countryside in Hinckley and Bosworth is hugely important to the character and identity of the area. All efforts will be made to protect the intrinsic value, beauty and open character of the countryside. Therefore beyond the defined settlement boundaries development will be restricted to proposals which fulfil the criteria of this policy, with the exception of the Green Wedge. Proposals within the Green Wedge would be required to demonstrate how they conform to Policy 6 or 9 of the Core Strategy. The Spatial Strategy promoted through the Core Strategy makes clear that the borough's urban areas are the focus for the largest volume of new development as the most sustainable locations for additional growth and development. Key Rural Centres are rural service centres which provide facilities for service provision and community focus and are therefore the focus of limited growth to help sustain these services and ensure the future sustainability of the settlements"*

4.25 As with policies 7 and 11 of the Core Strategy, policy DM4 is out of date because the Council cannot demonstrate a five year housing land supply and in any event because the housing policies in the Core Strategy, the SADMP and the MBNP are out of date as they focussed on the delivery of an out of date housing requirement set by the now revoked Regional Strategy.

4.26 Limited weight should be given to the policy insofar as it seeks to prevent development beyond settlement boundaries. This is because the settlement boundaries were determined by an out of date housing requirement and because if the policy were a blanket restriction applied rigorously then no open market housing would be allowed beyond settlement boundaries and this would frustrate the ability of the Council to address the shortfall in the five year housing land supply.

4.27 Indeed, It is relevant that the Council has regularly applied policy DM4 flexibly and allowed a breach of the policy by approving residential schemes beyond settlement boundaries (including in Key Rural Centres). The following table shows that this has been the case in 10 of the large sites included in the Council's deliverable five year housing land supply as shown in the following table:

**Table 4.2 – Housing schemes in the supply on sites outside the settlement boundaries**

Site	Settlement	Application ref:	Dwellings approved	Dwellings in the 5YHLS <sup>20</sup>
Land Opposite Bosworth College, Leicester Road	Desford	19/01416/REM	80	76
Land east of Peckleton Lane <sup>21</sup>	Desford	20/00347/REM	80	80
Westfield Farm, Keats Lane	Earl Shilton	19/01442/REM	350	235
Land south of Lindley Wood, Fenn Lanes	Fenny Drayton	19/00462/REM	11	11
Pinewood Drive	Markfield	19/01013/FUL	10	10
Land south of Bosworth Lane	Newbold Vernon	20/00143/FUL	116	116
Springfield Riding School, Groby Road	Ratby	20/00711/REM	168	168
Barons Park Farm, Desford Lane	Desford (Kirby Muxloe)	15/01221/HYB	14	14
Crabtree Farm, Hinckley Road <sup>22</sup>	Barwell	18/00279/OUT	25	25
Land East of Roseway	Stoke Golding	20/00779/OUT	65	65
Land south of Markfield Road	Ratby	20/00462/FUL	90	78
Land Off London Road	Markfield	20/01283/FUL	282	120
			<b>1,291</b>	<b>998</b>

4.28 The wording of policy DM4 does not accord with the wording of paragraph 174b) of the Framework as it states that it seeks to “protect” rather than “recognise” the intrinsic character

<sup>20</sup> Before the appropriate lapse rate has been applied

<sup>21</sup> Approved at appeal

<sup>22</sup> Approved at appeal

and beauty of the countryside. However, the policy would meet the aims and objectives of the Framework by allowing sustainable development where the landscape harm is not significant and recognising the intrinsic character and beauty of the countryside. This point has been considered in the following appeals.

- 4.29 Paragraph 84 of the Wykin Lane appeal decision (CD7.01) explains that policy DM4 is out of date but that the decision maker should consider how much weight is given to the conflict of the policy based on the effects of the development on the countryside. It states:

*“To the extent that SADMP Policy DM4 seeks to implement the CS through its approach to the countryside and settlement boundaries, it is also out of date. In terms of weight, the emphasis of the policy is to promote sustainable development in the countryside and protect it from unsustainable proposals. In that regard, there is broad compliance with the NPPF including paragraph 170(b) and so the policy can be afforded significant weight. Market housing schemes such as this appeal are automatically in conflict with the policy as they do not fall within the exceptions in (a) to (e). Nevertheless, it is for the decision maker to consider how much weight to give to the conflict based on the effect of the development on the countryside. In this instance, I have found that the negative effects would be no greater than moderate. Therefore, I attribute no more than moderate weight to the conflict with Policy DM4”.*

- 4.30 Paragraph 18 of the Peckleton Lane appeal decision (CD7.05) and paragraph 26 of the Crabtree Farm appeal decision (CD7.06) both state:

*“There was some discussion as to whether Policy DM4 is consistent with the Framework, inasmuch as it sets out at the start that it seeks to protect the intrinsic character, beauty, open character and landscape character of the countryside. However, it is clear that it is protection from unsustainable development that is sought, rather than a blanket protection of all countryside. In that regard, I find no conflict with the Framework, which sets out a presumption in favour of sustainable development. However, the matter of whether a development can be considered sustainable or not is a product of the overall planning balance, a matter to which I return later.”*

- 4.31 With reference to the planning balance, the SADMP should be read as a whole, and this policy should be read alongside policy DM1, which explains that there is a presumption in favour of sustainable development. As above, policy DM1 states that where relevant policies (such as DM4) are out of date, the Borough Council will grant permission unless material considerations indicate otherwise, taking into account whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate that

development should be restricted. In other words, sustainable development should be permitted if the test set out in policy DM1 is met.

### **MBNP Policy CE3: Important Views and Vistas**

4.32 Policy CE3 of the MBNP is referred to in the RfR. It states:

*“Development that harms important views into or vistas out of Market Bosworth will be resisted. The location and direction of these views and vistas are indicated on the Views and Vistas map and described in Section 6.1p*

*New development will not be supported if it has a significantly adverse impact on an important view or vista”*

4.33 Importantly, the word “significantly” in the second paragraph of the policy was introduced following the Examiner’s recommendation. Paragraph 47 of the Examiner’s Report (CD6.16) states:

*“Policy CE3 would preclude any development that would have an adverse impact on these views, however slight, and this would be inconsistent with the presumption in favour of sustainable development. Where development would have a significant adverse impact it could rightly be regarded as unsustainable as it would fail to protect local distinctiveness, but it would be wrong to preclude development where the harm was slight and there were other benefits in terms of sustainability. I have therefore recommended a small change to reflect this.”*

4.34 The RfR refers to view 1 and vista 11. View 1 is described as follows:

*“Approaching Market Bosworth from the west along the B585 the predominant focus of this view is a wooded area at the top of the hill. Either side of the road are expansive views mainly of open countryside over the hedged roadside. As the hill rises up to the canal and railway bridges, Bosworth Marina and the canal side residential development can be seen surrounded by fields and wooded areas. The view continues on past the grassed fields and grazing pasture fronting the Kyngs Golf and Country Club on the left, to a wooded area at the top of the hill. This view is important because it shows how close the countryside is to the built form of the village and the fact that the settlement sits on an open wooded hilltop”*

4.35 Vista 11 is described as follows:

*“Standing on Station Road pavement at the junction with Godsons Hill the vista starts with housing on the west side enclosed by trees, turning northwards to mature trees and wooded areas stretching across the golf course the land undulates with fields and woods to the horizon. Turning east across grazing land*

*which rises up to woods with a couple of dwellings on the edge to the right. This vista is important because it gives extensive views of north west Leicestershire”*

4.36 Paragraph 45 of the Examiner’s Report (CD6.16) states:

*“I have also given particular attention to the vista looking north from Station Road, identified as number 11 on the Proposals Map. This is the only view or vista identified in Policy CE3 that would be directly affected by one of the two areas considered for residential development, though vista 10 borders the proposed allocation in policy BD2. This suggests that it is important to evaluate the balance between the need for new residential or mixed use development and the value which the community attach to that view. The need for housing development is considered in detail in relation to Policy BD2. I have concluded in the consideration of that policy that there is no need in terms of compliance with the strategic policies of the Core Strategy for the land north of Station Road to be allocated and therefore the inclusion of viewpoint 11 in Policy CE3 is compliant with the basic conditions”.*

4.37 This is relevant because the allocation at BD02 (i.e. land south of Station Road) is no longer expected to deliver any dwellings within the Core Strategy and Neighbourhood Plan periods to 2026. This clearly a different context to that set out in the Examiner’s report.

4.38 It is also relevant to note that the Council’s planning policy officer and Planning Manager only give “moderate weight” to policy CE3 when measured against consistency with the Framework for the reason set out in paragraph 9.3 of the report to committee (CD5.02), which I referred to in section 3 of my proof of evidence above.

4.39 Despite this, paragraph 6.3 of the Council’s Statement of Case for the appeal (received 22<sup>nd</sup> September 2021) states that the Council will show that this policy should be afforded “full weight” in the determination of this appeal. This is surprising because the day after the Council’s statement of case was submitted (i.e. on 23<sup>rd</sup> September 2021), the Council’s policy officer provided their comments in relation to Ainscough Strategic Land’s planning application at land south of the Stables Wharf Farm, Station Road, Market Bosworth (LPA ref: 21/00970/OUT) to the west of the appeal site<sup>23</sup> and again stated that the policy should only be given moderate weight. The comments state:

*“In terms of the conformity of CE3 against the revised NPPF caution should be taken in relation to its weight and it is recommended moderate weight is given. A similar policy to CE3 was included within the Burbage Submission Version DPD (Policy 10) and the Examiner’s Report introduced a wording amendment so*

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<sup>23</sup> Appendix BP3

*that the policy included the following 'which cannot be mitigated, will not be supported'. This was inserted to ensure the NDP allowed for sustainable development which is a NDP Basic Condition and which is why it is recommended that the case officer should also look at how the impact of the development can mitigate any potential negative impact on the views and vistas rather than a blanket approach to resist.' (emphasis added)*

#### **Policy CE5: Landscape of the wider Parish**

4.40 Policy CE5 of the MBNP is referred to in the RfR. It states:

*"In the open countryside outside the settlement boundary, new development will only be permitted:*

- a. where it contributes to the local economy or*
- b. for the re-use or extension of an existing building or*
- c. for sport or recreation or*
- d. For new dwellings in the circumstances identified in paragraph 55 of the Framework.*

*In all cases development will only be permitted where it does not cause harm to the landscape or biodiversity of the countryside that cannot be effectively mitigated"*

4.41 It is relevant that the wording in the policy reflects that recommended by the Examiner. The wording of this policy in the submission version of the MBNP stated:

*"In the open countryside outside the settlement boundary, built or other development will only be permitted where there is no adverse effect on the appearance or character of the landscape. Provision may be made for the re-use and adaptation of existing buildings and for limited small scale development for employment and leisure uses providing any adverse effects on the landscape can be mitigated."*

4.42 However, it was changed for the reasons set out in paragraphs 50 and 51 of the Examiner's report, which state:

*"50. The first part of this policy aims to protect the countryside outside the settlement boundary from development that would harm the landscape. The implication of the policy is that development that would not harm the landscape would be acceptable, with no qualifications regarding the type of development. This raises several areas of tension with both development plan policy and the Framework. Saved policy NE5 of the Local Plan 2001 restricts development in the countryside to certain types of development, relating to the local economy, the reuse of existing buildings and sport and recreation as*

*well as requiring development to avoid harm to the character and appearance of the countryside. The Framework in paragraph 28 seeks to support economic growth in the countryside but paragraph 55 emphasises the importance of residential development being in sustainable locations and aims to avoid isolated homes in the countryside except in special circumstances which it defines. It also seeks to prevent harm to biodiversity as well as the landscape in paragraph 109.*

*51. The second part of the policy is ambiguously worded as it is not clear whether the phrase "for employment and leisure uses" applies just to "limited small scale development" or to "the re-use and adaptation of existing buildings" as well. If the latter is the case it would by implication exclude residential or other uses in association with "the re-use and adaptation of existing buildings". The policy does not refer specifically to residential development in the countryside. I suggest the following modifications to overcome these issues and ensure that the policy is compliant with the basic conditions."*

4.43 The other policies of the development plan, which are of relevance are set out in appendix BP4.

### **Emerging Planning Policy**

4.44 The Council has commenced work on a Local Plan Review to cover the period 2020 to 2036. Consultation at Issues and Options took place in January and February 2018, a consultation on new directions for growth took place in January and February 2019 and consultation on a regulation 18 draft Local Plan took place between June and August 2021. The latest Local Development Scheme (LDS, July 2020) provides the following timescales:

- Consultation on draft Local Plan – March-April 2021;
- Submission to Secretary of State – September 2021;
- Examination hearing sessions (estimated) – January 2022; and
- Programmed date for adoption – October 2022.

4.45 As can be seen from the above, the timescales have slipped considerably as consultation on the regulation 19 draft Local Plan has not taken place and consequently the plan has not been submitted to the Secretary of State. This is within the context of the Core Strategy being almost 12 years old and not having been reviewed.

4.46 As set out in paragraph 5.3.5 of the Planning SoCG, as the emerging Local Plan remains at an early stage, is subject to unresolved objections – including from the Appellant (appendix BP14) – and has not yet been formally submitted to the Secretary of State for examination, it is agreed

that the emerging Local Plan can only be afforded limited weight. Nevertheless, the regulation 18 draft Local Plan, sets out a draft housing requirement of 9,280 dwellings over the period 2020 to 2039 (i.e. 444 dwellings per annum based on the standard method for calculating local housing need plus 10%).

- 4.47 This figure is subject to change and may increase to meet some of Leicester's unmet need as I set explain in appendix BP5 and set out in the SoCG between the Leicestershire authorities at appendix BP13 and as set out in the representations made on behalf of the Appellant in appendix BP14.
- 4.48 Whilst Table 2 of the regulation 18 draft Local Plan (p.23) states that the committed supply in Market Bosworth at April 2020 is 89 dwellings, this figure has since been updated by the information included in the RLAMS and the Housing Supply and Delivery SoCG. These documents confirm that there have been -2 net dwellings completed in Market Bosworth since the Core Strategy was adopted and identify 27 dwellings at Ambion Court and 9 dwellings on 5 small sites as commitments.
- 4.49 The Bosworth Vision Planning Group has stated that it intends to undertake a review of the MBNP but no further details are known at present. The report of the Planning Manager on the application (CD5.02) notes that the MBNP review is "*...at the very early stages and a revised document has not been consulted upon or the type of review to be undertaken agreed*". The review of the MBNP therefore carries no weight.

## **Other material considerations**

4.50 I also refer to the following evidence base and policy documents in my proof of evidence:

- The Housing Needs Assessment (CD6.23);
- The Open Space and Recreation Study (CD6.24);
- The Residential Land Availability Monitoring Statement 2020-21 (CD6.25); and
- The Rural Areas Site Selection Justification Paper (CD6.26).

4.51 I refer to the following appeal and applications decisions in Hinckley and Bosworth as summarised in BP6:

- 3265143 – Land east of Lutterworth Road, Burbage (CD7.04);

- 3265133 – Land to the south of Cunnery Close, Barlestone (CD7.03);
- 3262295 – Land at Wykin Lane, Stoke Golding, Nuneaton (CD7.01);
- 3260227 – Land off Sketchley Lane, Burbage, Hinckley, Leicestershire (CD7.02);
- 3235401 – Peckleton Lane, Desford (CD7.05);
- 3222850 – Land at Crabtree Farm, Hinckley Road, Barwell (CD7.06);
- 20/00779/OUT – Land east of Roseway, Stoke Golding (appendix BP7);
- 20/00462/FUL – Land South of Markfield Road, Ratby (appendix BP8); and
- 20/01283/FUL – Land off London Road, Markfield (appendix BP9).

## 5. The Inspector's Main Issue 1

### **The effect of the appeal proposal on the character and appearance of the area, with particular regard to 'view 1', 'vista 11' and public footpath S70/1**

5.1 In this section of my proof of evidence, I address the Inspector's main issue 1 with reference to Mr Berry's conclusions and within this context assess the conflict with the development plan policies and weight to be given to any conflict with those policies.

### **The effect of the proposal on the character and appearance of the area**

5.2 Section 3 of Mr Berry's proof of evidence addresses the following:

- The impact of the proposed development in relation to the intrinsic value, beauty, open character and landscape character of the countryside; and
- The impact of the proposed development in relation to views and the appearance of the local area.

5.3 In terms of the impact of the proposed development in relation to the intrinsic value, beauty, open character and landscape character of the countryside, Mr Berry explains that the appeal site is not covered by any statutory or non-statutory designations for landscape character or quality. Mr Berry explains that the appeal site is located within Landscape Character Area "LCA C – Bosworth Parkland" and then addresses the key sensitivities and values of the character area and the relevance of these to the appeal site and explains how the appeal scheme has responded positively to the landscape strategies set out in the Landscape Character Assessment. Mr Berry explains that in his opinion, the landscape-led approach undertaken represents the ability to respond positively to the objectives of the Landscape Character Assessment and successfully, recognising maintaining and conserving the intrinsic landscape and visual character of the area.

5.4 Mr Berry explains that it is agreed that the proposed development would not result in a change to the understanding and documented characteristics of the wider Bosworth Parkland LCA, and the only dispute is in relation to the predicted operational effect upon the LCA at year 15. Mr Berry concludes that in his opinion (and that of LUC) is that the effects upon the LCA at year 15 would become negligible and the effects arising would be very limited and localised.

- 5.5 In terms of the appeal site itself, Mr Berry explains that there will be an evident change to the site itself as an area of greenfield land at the settlement fringe would be lost to residential development. However, having considered all of the predicted changes, the operational effects at year 1 are judged by Mr Berry to be 'moderate adverse' and this reduces to 'minor adverse' in year 15 as the proposed development assimilates into the landscape as the mitigation and enhancement measures mature.
- 5.6 In relation to the impact of the proposed development in relation to views and the appearance of the local area, Mr Berry concludes that:
- The level of effect upon users of Station Road at year 1 and year 15 is judged to be minor adverse; and
  - The level of effect on local residents at year 1 and 15 is judged to be moderate adverse.
- 5.7 In terms of the impact on local residents, Mr Berry explains that the effects are localised and commonplace in relation to new development on the edge of settlements but in this case a very limited number of properties would be affected. Overall, Mr Berry concludes that whilst some visual change will arise in the immediate proximity of the site, it would not represent an uncharacteristic and highly prominent component within the landscape. From distant views, Mr Berry concludes that the proposed development would be barely discernible, appearing as a characteristic narrow band of development at the settlement fringe and seen as a very small component of a much wider panorama, which in his view does not represent significant harm.

## **View 1**

- 5.8 In his proof of evidence, Mr Berry describes View 1, explains the material prepared on behalf of the Appellant to assist in reaching a judgement about the likely impact of the proposed development on View 1 and describes the mitigation proposed of setting the development away from Station Road behind an area of public open space and boundary hedgerow. Mr Berry then explains that the report of the Planning Manager to committee and the advice of the Council's appointed experts (LUC) were satisfied that the wooded backdrop to the existing view would largely be preserved and the occupation phase effects on views available to transient users of Station Road as being minor adverse is reasonable. Mr Berry concludes that development would be visible and cause some visual intrusion at close proximity but is not considered incongruous and visually uncharacteristic given the settlement edge location. Mr Berry also states that the

harm arising is also extremely localised, the receptors experiencing change at the immediate settlement edge and, against the backdrop of the consented Kyngs Golf and Country Club development. In summary, Mr Berry concludes that the harm caused to View 1 would not be significant.

## **Vista 11**

5.9 As with View 1, Mr Berry's evidence describes Vista 11, explains the material prepared on behalf of the Appellant to assist in reaching a judgement about the likely impact of the proposed development on Vista 11 and describes the mitigation proposed in relation to avoiding development on the upper slopes towards the eastern part of the site and retaining and enhancing this as public open space, restricting the height of the properties to 5.5m and introducing a new Vista. Mr Berry explains that following the submission of the additional visual material, the Council's appointed experts (LUC) raised a final and single concern in relation to Vista 11 in relation to the restriction to and loss of extensive views of north west Leicestershire. However, Mr Berry explains that these comments related to a specific location (photomontage viewpoint 02) and did not consider the creation of a new vista opportunity, which was visualized at a later stage following discussion with the Council. This was accepted by the Planning Manager in the report to committee.

5.10 Mr Berry concludes that in his opinion and consistent with the findings of the LVIA and LVIA Addendum, the proposed development would result in a moderate adverse effect in relation to Vista 11. Mr Berry concludes that in his opinion the moderate adverse operational effects predicted in relation to Vista 11 are not significant. Through the mitigation proposed, Mr Berry states that proposed development has reduced the extent of harm that will arise. That harm will also be highly localised and whilst the extensive views will alter in-part, Mr Berry states that the overall consideration also needs to factor in the beneficial provision of a new vista in a comparable and elevated location in close proximity to Vista 11.

## **Public footpath S70/1**

5.11 With reference to the Landscape SoCG, Mr Berry explains that it is agreed that at year 15 there would be a negligible effect upon users of the Leicestershire Round long-distance public footpath and, minor adverse effects upon the users of public footpath No. S70/1 and the users of Kyngs Golf and Country Club to the north of the Appeal Site.

## **Conflict with the development plan and the weight to be given to any conflict with those policies**

5.12 From the outset, it should be noted that the most important policies for the determination of this appeal are out of date. The following policies are referred to in the RfR:

- SADMP Policy DM4 (Safeguarding the Countryside and Settlement Separation);
- MBNP Policy CE3 (Important Views and Vistas); and
- MBNP Policy CE5 (Landscape of the wider Parish).

5.13 In addition, Core Strategy Policies 7 and 11 and SADMP DM1 are policies which are the most important for the determination of the appeal. I have described these policies in section 4 of my proof of evidence and explained how the Planning Manager considered these policies in the report to committee in section 3 of my proof of evidence.

### **Core Strategy Policy 7: Key Rural Centres**

5.14 Core Strategy Policy 7: Key Rural Centres supports housing development within settlement boundaries. As the proposed development is beyond the settlement boundary, there is some conflict with this policy. However, the settlement boundary of Market Bosworth was established in relation to a housing requirement which is derived from the revoked East Midlands Regional Spatial Strategy and is out of date. The local housing need using the standard method proposes a starting position of 444 dwellings rather than an end point which will be established through the emerging Local Plan. Therefore, policy 7 is out of date.

5.15 The Council recognises that Core Strategy Policy 7 is out of date and applies flexibility to the spatial strategy and settlement boundaries even when there is a five year housing land supply and / or the specific minimum housing requirement for the Key Rural Centre has been exceeded. Examples are listed in table 4.2 above<sup>24</sup>. Recent examples include:

20/00462/FUL – Land South of Markfield Road, Ratby<sup>25</sup>

5.16 On 4<sup>th</sup> May 2021, the Council approved full planning permission for 90 no. dwellings at this site beyond the settlement boundary for the Key Rural Centre of Ratby despite the Council claiming

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<sup>24</sup> For example at land opposite Bosworth College, Desford (80 dwellings), Pinewood Drive, Markfield (10 dwellings), land south of Bosworth Lane, Newbold Verdon (116 dwellings) and Springfield Riding School, Ratby (168 dwellings)

<sup>25</sup> Appendices BP6 and BP8

it could demonstrate a five year housing land supply and despite the minimum housing requirement of 75 no. dwellings for Ratby having already been met. In doing so, the Council applied the tilted balance because the housing policies in the Core Strategy and SADMP are out of date.

20/00779/OUT – Land east of Roseway, Stoke Golding<sup>26</sup>

5.17 On 23<sup>rd</sup> June 2021, the Council approved outline planning permission for up to 65 no. dwellings at this site beyond the existing settlement boundary for the Key Rural Centre of Stoke Golding despite the Council claiming it could demonstrate a five year housing land supply and despite the minimum housing requirement for Stoke Golding having already been met. In doing so, the Council applied the tilted balance because the housing policies in the Core Strategy and SADMP are out of date.

20/01283/FUL – Land off London Road, Markfield<sup>27</sup>

5.18 On 30<sup>th</sup> September 2021, the Council approved a full planning application for 283 no. dwellings at this site beyond the settlement boundary of the Key Rural Centre of Markfield within the context of the absence of a five year housing land supply. The tilted balance was also applied because the housing policies in the Core Strategy and SADMP are out of date.

5.19 Within this context, I only give limited weight to the conflict the proposed development would have with Core Strategy Policy 7 insofar as it supports housing development within the settlement boundary of Market Bosworth. It is of note that this policy is not referred to in the RfR.

**Core Strategy Policy 11: Key Rural Centres Stand Alone**

5.20 Core Strategy Policy 11: Key Rural Centres Stand Alone sets out a minimum housing requirement of 100 dwellings for Market Bosworth by 2026.

5.21 For the reasons set out above, all the housing requirements in the development plan are out of date and therefore the housing requirement in Market Bosworth set out in this policy is out of date. Nevertheless, the difference in Market Bosworth compared to the other cases in other Key Rural Centres described above (and appeal decisions at Wykin Lane in Stoke Golding CD7.01 and

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<sup>26</sup> Appendices BP6 and BP7

<sup>27</sup> Appendices BP6 and BP9

Peckleton Lane in Desford CD7.05) is that there is an agreed shortfall in Market Bosworth of 78 dwellings to meet even the out of date minimum 100 dwelling housing requirement by 2026.

5.22 Whilst land has been allocated at land south of Station Road, as I discuss in section 6 of my proof of evidence, this site is not deliverable and not expected to deliver any dwellings to meet the requirement to 2026. Therefore, because the appeal site could deliver dwellings in the plan period to 2026 to assist in ensuring that the minimum housing requirement for Market Bosworth would be met, the proposed development does not conflict with this policy, which is not referred to in the RfR.

#### **SADMP Policy DM4: Safeguarding the Countryside and Settlement Separation**

5.23 Policy DM4 is referred to in the RfR. The policy states:

*“To protect its intrinsic value, beauty, open character and landscape character, the countryside will first and foremost be safeguarded from unsustainable development.”*

5.24 The policy then sets out the development which is considered “sustainable” in the countryside in criteria a) to e). As residential development is not included in this list, there is therefore some conflict with this policy.

5.25 However, as I have set out in section 4 of my proof of evidence, policy DM4 is out of date because the Council cannot demonstrate a five year housing land supply and in any event because the housing policies in the Core Strategy, the SADMP and the MBNP are out of date as they focussed on the delivery of an out of date housing requirement set by the now revoked Regional Strategy.

5.26 I give limited weight to policy DM4 insofar as it proposes a blanket restriction on residential development beyond settlement boundaries. This is because the settlement boundaries were determined by an out of date housing requirement which does not reflect the Government's aim to significantly boost housing supply and because if the policy were a blanket restriction applied rigorously then no residential development would be allowed beyond settlement boundaries and this would frustrate the ability of the Council to address the shortfall in the five year housing land supply and meet its housing needs generally in the absence of an up to date development plan.

5.27 I also give limited weight to policy DM4 in relation to its blanket approach to residential development beyond the settlement boundaries because the Council has clearly applied the policy flexibly in allowing residential development beyond settlement boundaries across the

Borough (including in Key Rural Centres). The examples listed in table 4.2 above demonstrate that the policy is regularly breached and is no longer applied consistently by the Council to the extent that almost 1,300 homes (1,291) have been approved on sites outside the settlement boundaries.

5.28 I do give weight to the policy insofar as it is broadly in accordance with the Framework in terms of allowing sustainable development where the landscape harm is not significant and recognising the intrinsic character and beauty of the countryside. As I explain in section 4 of my proof of evidence, this point has been considered in several appeals.

5.29 However, within this context I give limited weight to the conflict the proposed development has with the policy. This is because Mr Berry's evidence concludes that whilst there would be some harm arising from the proposed development, this would not be significant and would be limited and highly localised. Therefore there would be overall compliance with the Framework to respect the character and appearance.

5.30 Section 4 of Mr Berry's evidence concludes that the proposed development would not have a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside in accordance with criterion i) of policy DM4. Mr Berry's evidence also explains the proposed development would not undermine the physical and perceived separation and open character between settlements (criterion ii), it would not create or exacerbate ribbon development (criterion iii), it is not in a Green Wedge (criterion iv) and it is not within the National Forest (criterion v).

5.31 The Council and Inspectors have approved development contrary to policy DM4 in such circumstances as I summarise below:

- 20/00779/OUT – Land east of Roseway, Stoke Golding – some minor harm to the landscape character of the immediate area was found (paragraphs 8.124 and 8.132 of BP7);
- 20/00462/FUL – Land south of Markfield Road, Ratby – a moderate impact on the landscape character of the area and moderate impact on the wider landscape character was found (paragraph 10.2 of BP8);
- 20/01283/FUL – Land off London Road, Markfield – a moderate localised harm and limited impact on the character of the wider area was found (paragraph 11.9 of BP9);
- 3265143 – Land east of Lutterworth Road, Burbage – moderate weight was given to the modest adverse impact on the character and appearance of the countryside and the

conflict with policy DM4 of the SADMP and policy 11 of the Burbage Neighbourhood Plan (paragraph 36, p.7 of CD7.04);

- 3262295 – Land at Wykin Lane, Stoke Golding – moderate weight was given to the conflict with policy DM4 as the negative effects of the development on the countryside would be no more than moderate (paragraph 84 of CD7.01); and
- 3235401 – Peckleton Lane, Desford – the adverse impacts of the development upon landscape character was tempered to a limited localised level (paragraphs 44 and 52 of CD7.05).

5.32 This approach is consistent with the SADMP when read as a whole. Policy DM4 should be read alongside policy DM1, which explains that there is a presumption in favour of “sustainable development”. Policy DM1 states that where relevant policies (i.e. such as DM4) are out of date, the Borough Council will grant permission unless material considerations indicate otherwise, taking into account whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate that development should be restricted. In other words, development can be permitted in the countryside if the test set out in policy DM1 is met.

### **MBNP Policy CE3: Important Views and Vistas**

5.33 Policy CE3 of the MBNP states that development that harms important views into or vistas out of Market Bosworth will be resisted and new development will not be supported if it has a “significantly adverse” impact on an important view or vista.

5.34 As I have set out in section 4 of my proof of evidence, the word “significantly” in the second paragraph of the policy was introduced following the Examiner’s recommendation so that it would be consistent with the presumption in favour of sustainable development.

5.35 As I have set out in sections 3 and 4 of my proof of evidence, the Council’s planning policy officer and Planning Manager only give moderate weight to policy CE3 when measured against consistency with the revised Framework. This is because a similarly worded policy to CE3 was examined as part of the examination into the Burbage Neighbourhood Plan and in that case the Examiner introduced wording to state “*which cannot be mitigated will not be supported*” to ensure that the Burbage Neighbourhood Plan allowed for sustainable development, which is a basic condition. As policy CE3 does not include this wording, it should be given moderate weight and any conflict with the policy should be seen in this context.

- 5.36 There is some conflict with this policy in that there would be some harm to view 1 and vista 11. However, I only give limited weight to the conflict with the policy because Mr Berry's proof of evidence confirms that the proposed development would not have a significantly adverse impact on view 1 or vista 11.
- 5.37 Further, I also give limited weight to the conflict with policy CE3 because of the reason why vista 11 was accepted by the Examiner. As I have set out in section 4 of my proof of evidence, it is important to note that at the time the MBNP was examined, the Examiner evaluated the balance between the need for new residential or mixed use development and the value which the community attached to vista 11. Paragraph 45 of the MBNP examiner's report states:

*"I have also given particular attention to the vista looking north from Station Road, identified as number 11 on the Proposals Map. This is the only view or vista identified in Policy CE3 that would be directly affected by one of the two areas considered for residential development, though vista 10 borders the proposed allocation in policy BD2. This suggests that it is important to evaluate the balance between the need for new residential or mixed use development and the value which the community attach to that view. The need for housing development is considered in detail in relation to Policy BD2. I have concluded in the consideration of that policy that there is no need in terms of compliance with the strategic policies of the Core Strategy for the land north of Station Road to be allocated and therefore the inclusion of viewpoint 11 in Policy CE3 is compliant with the basic conditions."*

- 5.38 This is relevant because the Examiner had concluded that the land to the south of Station Road should be allocated and this would meet the housing needs of Market Bosworth to 2026. However, as I explain in section 6 of my proof of evidence, the site to the south of Station Road is not deliverable and no longer included in the Council's housing trajectory to 2026, which is a different context to that at the time the MBNP was examined.

#### **MBNP Policy CE5: Landscape of the wider Parish**

- 5.39 Policy CE5 of the MBNP states that new development in the open countryside outside the settlement boundary will only be permitted where it contributes to the local economy, is for the reuse or extension of an existing building, is for sport or recreation or for new dwellings in the circumstances identified in paragraph 55 of the now archived 2012 Framework. The policy also states:

*"In all cases development will only be permitted where it does not cause harm to the landscape or biodiversity of the countryside that cannot be effectively mitigated"*

5.40 The objective of the policy is to conserve and enhance the distinctive landscape outside the settlement boundary.

5.41 To the extent that the policy relies on settlement boundaries which have been set with regard to an out of date housing requirement, this policy is out of date. There would be some conflict with the policy in that new residential development is not specifically listed as a type of development which will be permitted by this policy. However, I give limited weight to this conflict because:

- the new residents of the scheme would contribute to the local economy in accordance with exception a) of this policy;
- a blanket application of this policy would prevent sustainable residential development coming forward beyond settlement boundaries which would prevent the Council from meeting its housing needs; and
- Mr Berry's proof of evidence confirms that the development does not cause harm to the landscape of the countryside that cannot be effectively mitigated in accordance with this policy.

### **Summary**

5.42 In summary, I have found that there would be some conflict with CS policy 7, SADMP policy DM4 and MBNP policies CE3 and CE5. However, I give limited weight to the conflict with those policies for the reasons set out above.

5.43 Material considerations indicate that planning permission should be granted as I now discuss in sections 6 and 7 of my proof of evidence.

## 6. The Inspector's Main Issue 2

### **The benefits arising from the appeal proposal and the weight that should be attributed to them in the planning balance**

6.1 In this section of my proof of evidence, I set out the benefits arising from the appeal proposal and the weight that should be attributed to them in the planning balance.

#### **Open market housing**

6.2 The appeal proposal would deliver up to 63 dwellings including 38 open market homes. I consider that this is a benefit which should be afforded very significant weight in the planning balance for the following reasons:

#### **Reason 1 – To help address the shortfall in the five year housing land supply**

6.3 The Council's latest RLAMS states that it can demonstrate a 4.46 year supply at 1<sup>st</sup> April 2021. The Housing Delivery and Supply SoCG confirms that the following matters are agreed in terms of the calculation of the Council's five year housing land supply:

- A base date of 31<sup>st</sup> March 2021 and a five year period of 1<sup>st</sup> April 2021 to 31<sup>st</sup> March 2026;
- The adopted housing requirement is more than five years old and therefore in accordance with paragraph 74 of the Framework, the five year housing land supply should be measured against the local housing need using the standard method of 444 dwellings per annum;
- As the five year housing land supply should be measured against the local housing need, there is no requirement to specifically address under-delivery separately as this has been factored in through the standard method calculation;
- Based on the published results for the HDT, a 5% buffer should be applied, meaning that the total five year supply to be demonstrated is 2,330 dwellings; and
- A "deliverable" supply of 2,075 dwellings.

6.4 The position is summarised in the following table, which also shows the supply against the local housing need and a 20% buffer should the 2021 HDT results show a result of less than 85% as I discuss below.

**Table 6.1 – Hinckley and Bosworth’s Five Year Housing Land Supply at 1<sup>st</sup> April 2021**

	<b>Requirement</b>	<b>5% Buffer</b>	<b>20% Buffer</b>
A	Annual Local Housing Need figure	444	444
B	Five year requirement	2,220	2,220
C	5% or 20% buffer (5% or 20% of B)	111	444
D	Total supply to be demonstrated (B + C)	2,331	2,664
E	Annual requirement plus buffer (D / 5 years)	466.2	532.8
	<b>Supply</b>		
F	Five year supply 1 <sup>st</sup> April 2021 to 31 <sup>st</sup> March 2026	2,075	2,075
G	Supply in years (F / E)	<b>4.45</b>	<b>3.89</b>
H	Shortfall in the 5YHLS plus buffer (D – F)	<b>-256</b>	<b>-589</b>

6.5 The requirement to demonstrate a five year housing land supply is a minimum requirement. The failure to demonstrate even the minimum requirement results in the application of the tilted balance to the presumption in favour of sustainable development as set out in paragraph 11d) of the Framework. Within this context, it is of note that the Council has been unable to demonstrate a deliverable five year housing land supply for the last 3 monitoring years. The position at 31<sup>st</sup> March 2019 was that the Council could only demonstrate a deliverable supply of 4.15 years.

6.6 The Council's position at 31<sup>st</sup> March 2020 concluded that the Council could demonstrate a deliverable housing land supply of 2,445 dwellings, which against its local housing need and a 5% buffer equated to 5.15 years. However, this was considered at two public inquiries in March and April 2021 into the following appeals:

- APP/K2420/W/20/3260227 – a public inquiry into Barwood Development Securities Ltd's appeal against the decision of the Council to refuse to grant outline planning permission for a mixed use development including up to 140 homes at land off Sketchley Lane, Burbage took place in March 2021. I prepared and presented the evidence in relation to five year housing land supply on behalf of the Appellant in that case. The decision notice was issued on 7<sup>th</sup> May 2021. Whilst the appeal was dismissed, Inspector John Woolcock concluded that the deliverable supply was 2,075 dwellings, which equates to 4.39 years – a shortfall of 288 dwellings (paragraph 33, p.8 of CD7.02); and
- APP/K2420/W/20/3262295 – Land at Wykin Lane, Stoke Golding, Nuneaton – a public inquiry into Davidsons Developments Ltd's appeal against the decision of the Council to refuse to grant outline planning permission for up to 55 dwellings at land at Wykin Lane, Stoke Golding, Nuneaton took place in April 2021. The decision notice was issued on 21<sup>st</sup> May 2021. In allowing the appeal, Inspector Tom Gilbert-Wooldridge concluded

that the deliverable supply was 4.6 years – a shortfall of 185 dwellings (paragraph 59, p.12 of CD7.01).

- 6.7 Following those appeal decisions, the Council accepted that it could not demonstrate a deliverable five year housing land supply at 31<sup>st</sup> March 2020. This was the position at the time the appeal application was determined.
- 6.8 As above, the latest position at 31<sup>st</sup> March 2021 is that the Council still cannot demonstrate a deliverable five year housing land supply.
- 6.9 The size of the shortfall is also a material consideration. The 256 dwelling shortfall represents 256 real households whose housing needs are not being met over the next five years. It equates to over half a year of housing need using the standard method. The shortfall is significant.
- 6.10 New residential development would therefore assist in meeting the shortfall. As set out in paragraphs 5.6.1 and 5.6.2 of the Planning SoCG, it is agreed that there are no technical or legal reasons why if the appeal is allowed the proposed development could not be delivered in a timely manner. It is agreed that a condition requiring the submission of an application for reserved matters would be made within 18 months rather than 3 years and that if the appeal is allowed the proposed development could be delivered in full by 31<sup>st</sup> March 2026.
- 6.11 The Inspectors in the six appeal decisions I refer to in appendix BP6 my proof of evidence all gave “significant” or “substantial” weight to the delivery of open market housing within the context of a similar shortfall in the five year housing land supply as I summarise in the table below:

**Table 6.2 – Weight given by Inspectors to the benefit of new housing**

	<b>Lutterworth Road</b>	<b>Cunnery Close</b>	<b>Wykin Lane</b>	<b>Sketchley Lane</b>	<b>Peckleton Lane</b>	<b>Crabtree Farm</b>
Supply in years and	4.44	4.39	4.6	4.39	4.15	4.15
Shortfall in 5YHLS	263	288	185	288	407	407
Weight	Significant	Significant	Significant	Substantial	Significant	Significant
Paragraph(s)	33	90	87-88	38	47	7

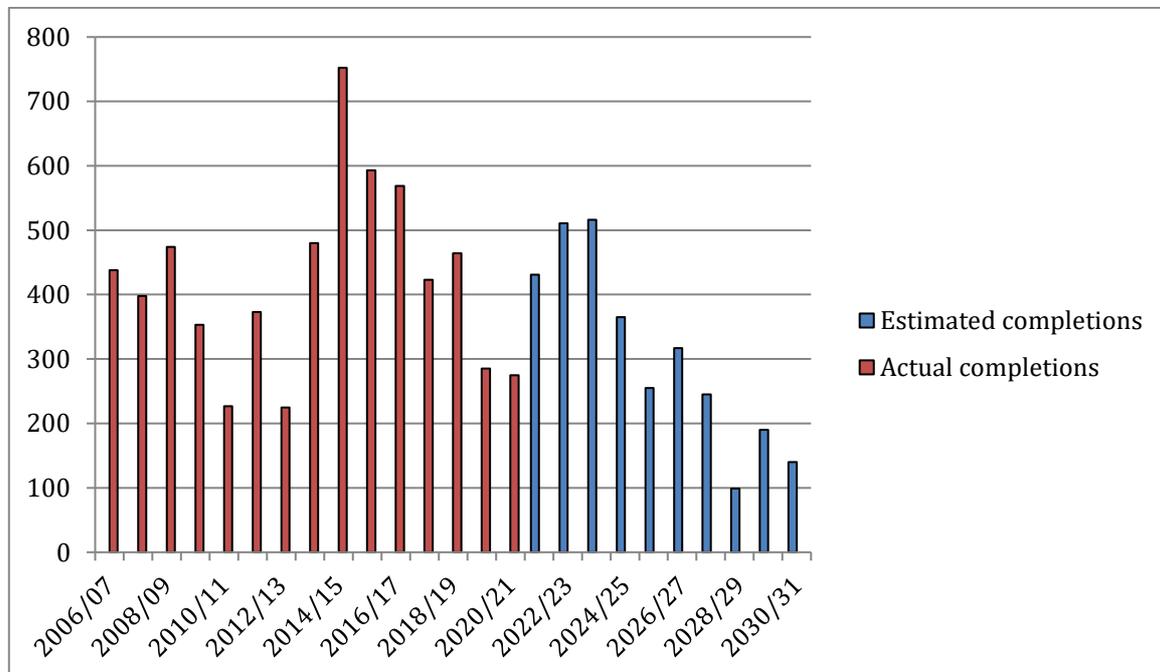
6.12 It is also relevant that the Council attributed very significant weight when determining the application at Land off London Road, Markfield (LPA ref: 20/01283/FUL) in the absence of a five year housing land supply (paragraph 11.4 of appendix BP9).

**Reason 2 – to assist the Council in being able to demonstrate a five year housing land supply in the future**

6.13 The housing trajectory set out in the RLAMS does not indicate that the five year housing land supply will improve at 1<sup>st</sup> April 2022. Indeed, appendix 13 of the RLAMS demonstrates that the 431 dwelling completions which are projected to be delivered in 2021/22 (i.e. year 1) will only be replaced by 317 dwellings which are projected to be delivered in 2026/27 (i.e. year 6). Therefore, the five year housing land supply at 1<sup>st</sup> April 2022 is expected to decrease by 114 dwellings (i.e. 431 – 317 = 114). Based on the trajectory in the RLAMS, the shortfall at 1<sup>st</sup> April 2022 is therefore projected to increase to 368 dwellings (i.e. 254 + 114 = 368) even with a 5% buffer.

6.14 Indeed, the housing trajectory set out in the RLAMS shows that housing supply is expected to decrease beyond the current five year period. For ease of reference, the housing trajectory set out in appendix 13 of the RLAMS is shown in the following chart:

**Chart 6.1 – Housing delivery and trajectory in Hinckley and Bosworth**



6.15 As can be seen in the chart above, the housing completions are projected to be significantly below the local housing need using the standard method of 444 dwellings p.a. both within and beyond the current five year period.

6.16 Residential development should be approved now in order to assist the Council to demonstrate a five year housing land supply in the future.

**Reason 3 – to help address the shortfall in the current plan period housing requirement**

6.17 The Core Strategy sets out a minimum housing requirement of 9,000 dwellings over the period 2006 to 2026. This was based on the requirement set out in the now revoked East Midlands Regional Spatial Strategy. The requirement is out of date. However, it remains the latest adopted housing requirement in the development plan.

6.18 Historic performance in Hinckley and Bosworth has been poor over the entirety of the Core Strategy plan period to date.

6.19 As set out in paragraph 2.3 of the Housing Supply and Delivery SoCG, 6,262 dwellings were delivered between 2006 and 2021. For completeness, I provide how this has been calculated in the table below:

**Table 6.3 – Housing completions in Hinckley and Bosworth over the Core Strategy period**

Year	Core Strategy requirement	Completions	Oversupply / shortfall	Cumulative
2006/07	450	438	-12	-12
2007/08	450	398	-52	-64
2008/09	450	474	24	-40
2009/10	450	353	-97	-137
2010/11	450	227	-223	-360
2011/12	450	373	-77	-437
2012/13	450	225	-225	-662
2013/14	450	480	30	-632
2014/15	450	752	302	-330
2015/16	450	593	143	-187
2016/17	450	569	119	-68
2017/18	450	423	-27	-95
2018/19	450	424	-26	-121
2019/20	450	285	-165	-286
2020/21	450	248	-202	-488
<b>Total</b>	<b>6,750</b>	<b>6,262</b>	<b>-488</b>	

6.20 The 6,262 dwelling figure is agreed. However, the reasons why the completions for 2018/19 and 2020/21 differ from those set out in table 1 (p.8) of the RLAMS are because:

- Firstly, 40 dwellings should be removed from the 464 dwellings completed in 2018/19 to reflect the fact that Hornsey Rise Care Home was demolished in that year. The Care Home had 72 bedrooms and therefore using the ratio of 1.83 means that 40 dwellings should be removed from the completions for 2018/19; and
- Secondly, 19 dwellings should be removed from the 267 dwellings completed in 2019/20 to reflect the fact that Ambion Court in Market Bosworth was demolished in that year. Ambion Court had 26 bedsits, which equated to 14 dwellings using the ratio of 1.83 and 5 apartments. Therefore, 19 dwellings should be removed from the completions for 2018/19.

6.21 This is important because it could affect the 2021 Housing Delivery Test result as I discuss below.

6.22 The 488 shortfall to date against the plan period requirement is significant. It represents over one year of the Core Strategy housing requirement (of 450). As shown in the table above, the Council has failed to deliver the minimum annual housing requirement in most (10) of the 15 years of the plan period. One of the main reasons housing completions have been below the adopted housing requirement is because the two Sustainable Urban Extensions at Barwell (2,500 no. dwellings) and Earl Shilton (2,000 no. dwellings) have not delivered any dwellings. The housing trajectory set out in appendix 2 of the Core Strategy (p.93) shows that the Sustainable Urban Extensions were expected to start delivering dwellings from 2012/13 onwards and would have delivered 2,240 dwellings by 2021. The position is summarised in the following table:

**Table 6.4 – Housing delivery of the SUEs compared to the trajectory in the Core Strategy**

	2012/ 2013	2013/ 2014	2014/ 2015	2015/ 2016	2016/ 2017	2017/ 2018	2018/ 2019	2019/ 2020	2020/ 2021	Total
<b>CS Trajectory</b>	80	80	160	160	160	400	400	400	400	2,240
<b>Actual</b>	0	0	0	0	0	0	0	0	0	0

6.23 The very large sites have therefore not delivered. Within this context, it is of note that the appeal is on a medium sized site, which could be delivered quickly. Indeed, paragraph 69 of the Framework states that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built out quickly. The Appellant has a good track record of facilitating the delivery of sites and as set out in section 5.6 of the Planning

SoCG, it is agreed that the site could be delivered in a timely manner to assist the Council in terms of its five year housing land supply.

- 6.24 Referring back to table 6.3, it is clear that the Housing Delivery Test (HDT) action plan has not led to an increase in delivery; the shortfall has increased since the HDT was introduced in 2018. Furthermore, the emerging Local Plan is some time from adoption as consultation on a draft (regulation 19) Local Plan has not yet taken place.
- 6.25 The housing requirement set out in the Core Strategy between 2006 and 2026 will not be met. As set out in table 6.3 above, 6,262 dwellings were delivered between 2006 and 2021, meaning that to meet the minimum housing requirement set out in the Core Strategy, 2,738 dwellings would need to be delivered over the next five years.
- 6.26 The trajectory set out in appendix 13 of the RLAMS shows that only 2,078 dwellings are expected to be delivered over the remainder of the plan period 2021-26. Therefore, there is a shortfall against the housing requirement set out in the adopted development plan of 660 dwellings (i.e.  $9,000 - 6,262 - 2,078 = 660$ ). This is agreed in paragraph 2.5 of the Housing Supply and Delivery SoCG.
- 6.27 Again, one of the reasons why the trajectory set out in appendix 13 of the RLAMS shows that the adopted housing requirement will not be met by 2026 is because the two very large SUEs are not expected to deliver any dwellings in the current plan period. In addition, the allocation at land to the south of Station Road, Market Bosworth (LPA ref: MKBOS02, 100 dwellings) is not expected to deliver any dwellings in the current plan period as I discuss below.

#### **Reason 4 – to help ensure that the minimum housing requirement for Market Bosworth is met**

##### The requirement set out in Core Strategy Policy 11

- 6.28 Policy 11 of the Core Strategy: “Key Rural Centres Stand Alone” states that to support the local services in Market Bosworth and maintain rural population levels the Council will (amongst other things):

*“Allocate land for the development of a minimum of 100 new homes. Developers will be required to demonstrate that the number, type and mix of housing proposed will meet the needs of Market Bosworth, taking into account the latest Housing Market Assessment and local housing needs surveys where they exist in line with Policy 15 and Policy 16”.*

6.29 Paragraph 7.12 of the SADMP then states:

*“the residual, minimum requirement for Market Bosworth as of 1 September 2014 is 43 dwellings. Further information on residential commitments can be found in the Site Allocations Justification Paper”.*

6.30 As explained in paragraph 2.8 of the Housing Supply and Delivery SoCG, the Rural Areas Site Selection Justification Paper (December 2014, CD6.26) explains how the residual requirement of 43 dwellings at 1<sup>st</sup> September 2014 was calculated. The residual requirement at 31<sup>st</sup> March 2021 is 78 dwellings, which is agreed in paragraph 2.12 of the Housing Supply and Delivery SoCG and is calculated as follows:

- The housing requirement of 100 dwellings was from the date the Core Strategy was adopted;
- To this should be added 11 dwellings on 4 sites where permission had expired and 1 dwelling on 1 site which was considered non-developable in the SHLAA Review 2013 as explained in the Rural Areas Site Selection Justification Paper (December 2014, CD6.26);
- From this should be added a further 2 dwellings to reflect the fact that there have been -2 net dwellings delivered in Market Bosworth since the Core Strategy was adopted and 31<sup>st</sup> March 2021 as set out in appendix 1 of the Housing Supply and Delivery SoCG; and
- From this should then be removed the 27 dwellings which are under construction at Ambion Court and 9 dwellings on 5 small sites in Market Bosworth that are set out in appendix 10 of the RLAMS (paragraphs 2.10 and 2.11 of the Housing Supply and Delivery SoCG).

6.31 The minimum housing requirement set out in Core Strategy Policy 11 is out of date because it relates to the overall housing requirement, which is out of date. Nevertheless, it has not been met to date by completions and commitments. This differs from the cases I describe in appendix BP6 where the minimum housing requirement in other Key Rural Centres (e.g. Stoke Golding and Desford) had already been met.

The housing need figure set out in the Market Bosworth Housing Need Assessment (HNA)

6.32 The Market Bosworth Housing Need Assessment (HNA) was prepared by AECOM for Market Bosworth Parish Council to provide an interim Housing Needs Figure (HNF) in advance of HBBC providing Market Bosworth with a housing requirement figure as part of the emerging Local Plan in accordance with paragraphs 66 and 67 of the Framework. It is referred to in paragraphs 8.10 and 9.5 of the committee report for the appeal application (CD5.02).

- 6.33 The HNA essentially applies the proportion of the Hinckley and Bosworth population who live in Market Bosworth (2%) to the local housing need for Hinckley and Bosworth calculated by the standard method (452) to give a figure of 9 dwellings per annum or 108 dwellings over the Neighbourhood Plan period 2014 to 2026. From this, the HNA then takes the 16 net completions which took place in Market Bosworth between 2014 and 2020 and claims that the residual need of 92 dwellings (i.e.  $108 - 16 \text{ completions} = 92$ ) would nearly be met by outstanding dwelling commitments of 88 dwellings. I make the following comments.
- 6.34 Firstly, the Housing Need Figure set out in the HNA is not a housing requirement. This will be provided by HBBC through the emerging Local Plan, which is to cover the period 2020 to 2039. The figure in the AECOM report is not supported by national policy or guidance.
- 6.35 Secondly, even were the housing need in Market Bosworth be 108 dwellings between 2014 and 2026, this will not be met by completions and commitments.
- 6.36 As set out in appendix 1 of the Housing Supply and Delivery SoCG, there have been -7 completions in Market Bosworth since 2014. As set out in paragraphs 2.10 and 2.11 of the Housing Supply and Delivery SoCG, the only sites identified in the RLAMS which are expected to deliver any dwellings in Market Bosworth by 2026 are:
- 27 dwellings at Ambion Court; and
  - 9 dwellings on 5 small sites identified in appendix 10 of the RLAMS.
- 6.37 Therefore, 79 dwellings are required to meet the HNF identified in the AECOM report (i.e.  $108 + 7 - 27 - 9 = 79$ ).

#### Land south of Station Road, Market Bosworth

- 6.38 For the avoidance of doubt, the land to the south of Station Road is no longer expected to deliver in the Core Strategy or Neighbourhood Plan period to 2026. This site is allocated under policy SA5 of the SADMP (p. 76) for:
- “A mixed use allocation including a community facility, B1, B2 and B8 employment provision, open space and a minimum of 100 dwellings”.*
- 6.39 It is also allocated under policy BD2 of the MBNP (p.40): “Site allocation south of Station Road and Heath Road” as follows:

*“An area of 7.5 hectares as shown on the Proposals Map is allocated for mixed use development. The development shall provide:*

- 1. Between 0.5 hectare to 1 hectare of additional B1, B2 or B8 employment land;*
- 2. A minimum of 55 dwellings with overall housing density, mix and design in line with Core Strategy 16;*
- 3. An area of open space*

*The inclusion of a community facility within the development will also be encouraged.”*

6.40 At the time of the SADMP and MBNP examinations, it was clear that the allocation was expected to have been developed by the end of the plan period in 2026. Indeed, Appendix 7 of the SADMP sets out the housing trajectory at October 2015. The trajectory for MKBOS02, land south of Station Road and Heath Road, Market Bosworth was that the site would start delivering homes in 2015/16 and would be completed by 2019/20:

**Table 6.5 – Housing trajectory in the SADMP for land south of Station Road**

<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19</b>	<b>2019/20</b>	<b>Total</b>
0	0	30	35	35	100

6.41 The comments state: *“Developer has confirmed they are looking for 100 dwellings on the site with this proposed trajectory”.*

6.42 Paragraph 59 of the MBNP Examiner’s Report states:

*“The total area of the site proposed in policy BE2 is 7.5 hectares. Allowing for both industrial use and open space within this area, it is evident that it is capable of accommodating substantially more than 55 dwellings and could probably allow for 100 dwellings. In order to comply with the development plan policy and the presumption in favour of sustainable development 55 dwellings should be regarded as a minimum rather than a maximum. There is therefore no reason to conclude that, taken with the Sedgemere site the requirement for a minimum of 100 dwellings over the life of the Core Strategy cannot be met.”*

6.43 However, this is no longer the case. Despite having been allocated for over 6 years a planning application has not been made. Whilst in previous versions of the RLAMS, the Council claimed that the site should be considered deliverable, Inspectors have concluded that this site does not meet the definition of deliverable. Paragraph 57 of the Wykin lane appeal decision states:

*“Land south of Station Road and Heath Road, Market Bosworth. This site is allocated in both the SADMP and the Market Bosworth Neighbourhood Plan. A masterplan is due to be adopted in June 2021 and the Council contends that access issues are capable of being resolved. However, I have little information on progress towards the submission of a planning application. While this is partly due to commercial sensitivities, this does not justify the lack of clear evidence regarding the deliverability of 100 dwellings within the 5 year period. Therefore, this figure and the site as a whole should be deleted from the Council's 5 year housing supply.”*

6.44 Paragraph 31 of the Sketchley lane appeal decision (CD7.02) states:

*“For the land south of Station Road and Heath Road long-standing interest in development of this site, part of which HBBC own, is not sufficient evidence to include the site for 100 dwellings within the five-year housing land supply”.*

6.45 The Council now agrees that this site is not deliverable. Indeed, the trajectory set out in appendix 4 of the RLAMS (CD6.25) now shows that the site MKBOS02 is not expected to deliver any dwellings until 2027/28 and will not be complete until 2028/29. The comments state:

*“This site is within the 'Made' Neighbourhood Development Plan for Market Bosworth and the Council is working with the landowner and developers to achieve a well designed development. The access to the site is controlled by HBBC and the Council will be disposing on this element to facilitate the access. A masterplan has been published and can be found on the Council's website as an SPD”*

6.46 This is relevant because at the time the SADMP and MBNP were examined, no other sites were considered necessary in Market Bosworth to assist the Council in meeting the minimum housing requirement of 100 dwellings. Indeed, paragraph 70 of the Examiner's Report for the MBNP states:

*“I have had regard to the representations of the owners of the land north of Station Road and Persimmon Homes who represented them at the hearing, which make the case for the development of their site either instead of or in addition to the proposed site. However, I am satisfied that the allocation of the site south of Station Road would contribute to sustainable development as well as having public support. I am also satisfied that with this allocation the Plan makes sufficient provision to comply with the strategic policies of the Core Strategy and I have not identified any other conflict with the basic conditions. There is therefore no necessity to recommend a modification to add the site north of Station Road.”*

6.47 It is no longer the case that the site to the south of Station Road is deliverable and / or expected to deliver dwellings within the plan period.

6.48 Finally, it is of note that at the time the land south of Station Road was allocated, there was a residual requirement of 43 dwellings. However, the land south of Station Road was allocated in the SADMP for 100 dwellings and on that basis the minimum housing requirement of 100 dwellings for Market Bosworth was expected to have been exceeded by 43 dwellings.

Land at Sedgemere, Station Road, Market Bosworth

6.49 This site has planning permission for 57 dwellings, which is extant (LPA ref: 12/00597/FUL). More recently, a resolution to grant planning permission subject to the signing of a S106 agreement was made by the Planning Committee on 19<sup>th</sup> October 2021 for 73 dwellings at the site (LPA ref: 21/00379/FUL). However, the site is not considered to be deliverable in the RLAMS. Nor is it included in the housing trajectory to 2026.

6.50 Appendix 4 of the RLAMS (CD6.25) shows the site will start delivering dwellings in 2026/27. The comments note that the Council was aware of the application for 73 no. dwellings but explain why the site has not been included in the five year housing land supply:

*“Land ownership issues for ransom strip resolved and highway works agreed. Owl Homes is developer on board and has undertaken pre-application discussion with the Council. Revised scheme submitted as a full application (21/00379/FUL) for 73 dwellings. Site clearance has been undertaken to provide access. Application will be reported to committee once viability issues have been resolved. Site is considered deliverable however evidence cannot determine when it will be delivered currently therefore not included within first 5 years”*

6.51 Noting that there is no evidence in the RLAMS to demonstrate this, even if 73 dwellings at the Sedgemere site were delivered in full in the plan period, the minimum 100 dwelling requirement set out in the Core Strategy would not be achieved and nor would the 108 dwelling housing need figure set out in the AECOM report.

6.52 It should also be noted that the housing requirement for Market Bosworth is a minimum figure based on an out of date housing requirement. This issue was considered in the Wykin Lane appeal decision in relation to Stoke Golding's minimum housing requirement where housing completions and commitments had already exceeded Stoke Golding's housing requirement, which is a different situation to that in Market Bosworth. Paragraph 72 of the appeal decision states:

*“Concerns have been expressed that allowing this appeal would undermine the SGNP by overproviding housing on greenfield sites and would result in the removal of the Mulberry Farm site. However, the housing requirement figure in*

*the SGNP is expressed as a minimum of 57 dwellings. It is based on minimum numbers derived from the CS which are dated and under review as part of the emerging new Local Plan. Therefore, there is no reason in principle why the Mulberry Farm site could not remain in the SGNP and come forward as a housing scheme. The SGNP makes allowance for windfall housing proposals and contains a range of policies to guide various types of development."*

6.53 Paragraph 88 of the appeal decision states:

*"Stoke Golding has exceeded the minimum housing requirement by more than 3 times the amount set out in CS Policy 11 while the Roseway development alone would exceed the minimum figure set out in the submission SGNP. However, these figures are minimums and are based on CS figures which are acknowledged to be out of date. Taking the above into account, I consider significant weight can be afforded to the provision of market housing to address the shortfall."*

6.54 In addition, as I have set out above, the SADMP expected the minimum housing requirement for Market Bosworth to be exceeded by 43 dwellings.

#### **Reason 5 – to assist the Council in meeting the housing delivery test**

6.55 The definition of the Housing Delivery Test (HDT) is provided in the Glossary to the Framework on page 67 as follows:

*"Housing Delivery Test: Measures net additional dwellings provided in a local authority area against the homes required, using national statistics and local authority data. The Secretary of State will publish the Housing Delivery Test results for each local authority in England every November"*

6.56 The HDT is measured as a percentage each year. The following implications apply where delivery falls below specific thresholds.

6.57 Firstly, as explained in footnote 8 of the Framework, the tilted balance to the presumption in favour of sustainable development set out in paragraph 11(d) of the Framework applies where the HDT indicates that the delivery of housing was "substantially below" (less than 75% of) the housing requirement over the previous three years.

6.58 Secondly, paragraph 74 and footnote 41 of the Framework explain that where the HDT result is below 85%, the 20% buffer will apply for purposes of calculating the five year housing land supply.

- 6.59 Thirdly, Paragraph 76 of the Framework explains that where the HDT result is below 95%, the local planning authority should prepare an action plan to assess the causes of under delivery and identify actions to increase delivery in future years.
- 6.60 The HDT Measurement Rule Book (July 2018) explains that HDT is calculated as a percentage of net homes delivered against the “number of homes required”. However, it then explains that where the latest adopted housing requirement figure is more than five years old (as is the case in Hinckley and Bosworth), “the number of homes required” means the annual local housing need figure. The transitional arrangements set out in paragraph 21 of the HDT Measurement Rule Book then explain that for the financial years 2015/16, 2016/17 and 2017/18, the minimum annual local housing need figure is replaced by household projections.
- 6.61 The HDT results for 2020 were published on 19<sup>th</sup> January 2021. The Government reduced the housing requirement for 2019/20 by one twelfth to consider the impact the Covid-19 pandemic and associated lockdown and social distancing arrangements had on build rates in that year. The 2020 result for Hinckley and Bosworth is summarised in the table below:

**Table 6.6 – Summary of the 2020 Housing Delivery Test Result for Hinckley and Bosworth**

	2017-18	2018-19	2019-20	Total
Number of homes required	391	468	418	1,277
Number of homes delivered	423	464	285	1,172
HDT measurement				<b>92%</b>

- 6.62 As can be seen from the table above, Hinckley and Bosworth delivered 1,172 new homes over the three year period 2017-20 against a “requirement” based on household projections for 2017/18, the local housing need figure of 468 dwellings in 2018/19 and 11/12ths of the local housing need in 2019/20. This results in a HDT measurement of 92% and means that the Council has failed to meet the Housing Delivery Test. In accordance with paragraph 76 of the Framework the Council must prepare an action plan to assess the causes of under delivery and identify actions to increase delivery in future years. Paragraph 68-052 of the PPG<sup>28</sup> states:

*“To ensure the document is as useful as possible, local planning authorities will need to publish an action plan within 6 months of publication of the Housing Delivery Test measurement.”*

<sup>28</sup> Paragraph: 052 Reference ID: 68-052-20190722: “When can the action plan be published?”

6.63 There is a clear relationship between housing land supply and delivery. If insufficient supply has been identified, then delivery will fall and there will be a failure to meet the HDT. If the HDT result falls to below 95%, as is the case here, then an action plan is required to “*assess the causes of under delivery and identify actions to increase delivery in future years*”. Paragraph 68-051 of the PPG provides some examples of the actions local planning authorities consider as part of the action plan.

6.64 The Council's latest HDT Action Plan recognises that part of the reason why delivery has been below the requirement is because the two large Sustainable Urban Extensions (SUEs) have not delivered any dwellings. Paragraph 3.8.2 of the HDT Action Plan states:

*“Whilst the two SUEs have contributed to the lack of delivery in the borough, the Council has been proactive in encouraging further development in sustainable locations across the borough to ensure the Borough was meeting its housing needs by revisiting its SHLAA. These sites include (status as of April 2021):*

- *Westfield Farm, Heath Lane, Earl Shilton (350 homes) – 58 dwellings have been delivered as of April 2021;*
- *Land opposite Bosworth College, Desford (80 dwellings) – 4 dwellings have been delivered;*
- *Land South of Markfield Road, Ratby (90 dwellings) – site has a resolution to grant*
- *Land off London Road, Markfield (282 dwellings) – site has a resolution to grant”*

6.65 These sites are set out in table 4.2 above as some of the examples where the Council has approved development contrary to SADMP policy DM4.

6.66 It is of note that the Council's HDT result has worsened each year:

- 2018 HDT result = 141%;
- 2019 HDT result = 119%; and
- 2020 HDT result = 92%.

6.67 Indeed, whilst the 2021 HDT result will not be published until November 2021, I expect the 2021 HDT result will be lower than the 2020 HDT result. This is because the RLAMS explains that only 267 dwellings were delivered in 2020/21. However, from this should be removed the 19 dwellings

demolished at Ambion Court in Market Bosworth. Therefore, only 248 no. dwellings were delivered in 2020/21. The housing delivery in 2018/19 should also be reduced by 40 dwellings to take into account the demolition of the care home at Hornsey Rise.

6.68 On the requirement side in a written ministerial statement the housing minister (Mr Pincher MP) has explained that a four-month adjustment to the housing requirement figures for 2020/21 will be made to consider the impact the Covid-19 pandemic and associated lockdown and social distancing arrangements had on build rates in that year. Therefore, the potential 2021 HDT result can be calculated as set out in the following table:

**Table 6.7 – Potential 2021 Housing Delivery Test Result for Hinckley and Bosworth**

	2018-19	2019-20	2020-21	Total
Number of homes required	468	418	301 <sup>29</sup>	1,187
Number of homes delivered	424	285	248	957
HDT measurement				<b>81%</b>

6.69 Therefore, it is likely that the Council will fail the 2021 HDT and will need to again prepare an action plan. If the result is below 85% as indicated in the table above, then there will have been “significant under delivery of housing over the previous three years” and the buffer to the five year housing land supply calculation should be increased to 20% in accordance with paragraph 74 of the Framework.

**Reason 6 – to assist the Council in meeting its minimum future housing need**

6.70 As set out in paragraph 5.3.5 of the Planning SoCG, as the emerging Local Plan remains at an early stage, is subject to unresolved objections and has not yet been formally submitted to the Secretary of State for examination, it is agreed that the emerging Local Plan can only be afforded limited weight. Nevertheless, the regulation 18 draft Local Plan, which was consulted on between June and August 2021 sets out draft housing requirement of 9,280 dwellings over the period 2020 to 2039 (i.e. 444 dwellings per annum based on the standard method for calculating local housing need plus 10%). This figure is subject to objection and change and may increase to meet some of Leicester’s unmet need as I set out in appendix BP5. However, new housing would assist the Council in meeting the minimum future housing need over the plan period of the emerging Local Plan to 2039.

<sup>29</sup> The local housing need in 2020/21 was 452 dwellings. 8/12ths of this figure is 301

### Reason 7 – to support local services

6.71 Policy 11 of the Core Strategy states that “to support local services” in Market Bosworth, the Council will (amongst other things) allocate land for the development of a minimum of 100 dwellings in the plan period. However, as I have identified above there is a shortfall of housing in Market Bosworth in the plan period and therefore local services are not being supported from new housing as the minimum housing requirement has not been met.

### Affordable housing

6.72 The proposed development would deliver 25 affordable homes (i.e. 40%). This is a significant benefit which should be afforded very significant weight in the planning balance for the following reasons:

#### Reason 1 – To assist in meeting the minimum requirement set out in Core Strategy Policy 15

6.73 Policy 15 of the Core Strategy: “Affordable Housing” explains that a minimum of 2,090 affordable homes will be provided in the Borough from 2006 to 2026.

6.74 As set out in the following table, 1,390 (gross) affordable homes have been provided between 2006 and 2021.

**Table 6.8 – Gross Affordable Homes provided in Hinckley and Bosworth**

Year	Core Strategy requirement (annualised)	Gross A/H Completions	Oversupply / shortfall	Cumulative
2006/07	105	80	-25	-25
2007/08	105	44	-61	-85
2008/09	105	89	-16	-101
2009/10	105	107	3	-98
2010/11	105	5	-100	-198
2011/12	105	134	30	-168
2012/13	105	17	-88	-256
2013/14	105	103	-2	-257
2014/15	105	154	50	-208
2015/16	105	97	-8	-215
2016/17	105	141	37	-179
2017/18	105	102	-3	-181
2018/19	105	99	-6	-187
2019/20	105	116	12	-175
2020/21	105	102	-3	-178
<b>Total</b>	<b>1,568</b>	<b>1,390</b>	<b>-178</b>	
<b>Average</b>	<b>105</b>	<b>93</b>		

- 6.75 The table above shows that the average gross completions of affordable housing completions has been 93, which is below the annualised requirement of 105 affordable homes set out in Core Strategy Policy 15.
- 6.76 This means that 700 affordable homes would need to be completed in the next five years for the minimum target set out in CS Policy 15 to be met.
- 6.77 As set out in appendix 2 of the Housing Supply and Delivery SoCG, the Council's supply to the end of the plan period only identifies 663 affordable homes to be completed. This results in a shortfall even against the minimum target set out in Core Strategy Policy 15 of 37 affordable homes (i.e.  $2,090 - 1,390 - 663 = 37$ ). It is of note that this is different to the position presented at previous appeals when the minimum requirement set out in policy 15 was expected to be exceeded by 50 affordable homes. For example, Paragraph 89 of the Wykin Lane appeal decision states:

*"As for affordable housing, CS Policy 15 requires 2,090 homes to be delivered over the 20 year plan period. While annualised targets are not used by the CS, this averages out at around 105 per year. So far, an average of 92 affordable homes per year have been delivered although the Council provides evidence not challenged by the appellant that it is on course to exceed the CS target by over 50 homes by 2026. Nevertheless, recent research carried out to inform the emerging Local Plan reveals a need of 271 homes per year while there are a significant number of people on the Council's housing register. The need is greater in urban locations like Hinckley, but it can be met in any part of the borough. The development would deliver 40% affordable housing in accordance with CS Policy 15. This would equate to 22 homes if 55 are built in total. In light of the above, this represents a significant benefit"*

## **Reason 2 - To assist in addressing the actual housing need**

- 6.78 Notwithstanding the above, policy 15 of the Core Strategy is out of date insofar as it is based on affordable housing figures that have since been updated. The Housing Need Study (CD6.23) has identified a need of 271 net affordable homes per annum – a total of 4,900 affordable homes over the 18-year period 2018-36.
- 6.79 Table 8 of the RLAMS confirms that only 317 gross affordable homes were completed over the period 2018 to 2021. Therefore, there is already a shortfall of 496 affordable homes over the period 2018-21.

6.80 Appendix 14 of the RLAMS then sets out the remaining affordable housing commitments at 1<sup>st</sup> April 2021, with 723 affordable homes not started and 98 affordable homes under construction. This means 821 affordable homes in total. However, there is some double counting as I set out in the table below.

**Table 6.9 – Adjustments needed to appendix 14 of the RLAMS**

Location	Total A/H	A/H not started	A/H under construction	Comments	Adjustment
Land opposite Bosworth College, Desford	32	32	15	The site has planning permission for 80 dwellings including 32 (40%) affordable dwellings. However, the RLAMS incorrectly includes 32 as not started and 15 as under construction.	-15
Westfield Farm, Keats Lane, Earl Shilton	66	66	18	The site has planning permission for 322 dwellings of which 66 are affordable (20%), not 84. The site is under construction. The RLAMS confirms that 58 dwellings were complete by 31/03/21 and that 15 of these were affordable. This only leaves 51.	-18 -15
Ambion Court, Southfield Way, Market Bosworth	23	0	23	The permission is a replacement of existing affordable homes and therefore a net increase of 8 affordable homes	-15
				<b>Total</b>	<b>-63</b>

6.81 On this basis, the RLAMS only identifies a pipeline of 758 affordable homes (i.e. 821 – 63 = 758).

6.82 Against the affordable housing need identified in the Housing Needs Study 2019, there is a significant shortfall of 3,825 affordable homes in Hinckley and Bosworth (4,900 – 317 – 758 = 3,825).

**Reason 3 – to assist the delivery of affordable housing in Market Bosworth**

6.83 The Housing Need Study (CD6.23) identifies a net need of 16 affordable homes in Market Bosworth from 2018 to 2036. There have been no affordable homes delivered in Market Bosworth between

2018 and 2021. Therefore, there is already a shortfall of 48 affordable homes in Market Bosworth at 31<sup>st</sup> March 2021 (i.e.  $16 \times 3 = 48$ ).

6.84 As set out in appendix 2 of the Housing Supply and Delivery SoCG, only 8 affordable homes are to be delivered in Market Bosworth by 2026 (at Ambion Court). Therefore by 2026, there is expected to be a shortfall in affordable housing in Market Bosworth of 120 (i.e.  $16 \times 8 = 128 - 8 = 120$ ).

6.85 I also note that in its response in relation to an application made by Gladman in relation to the proposed residential development of 90 no. dwellings at land south of Market Bosworth Cemetery, Shenton Lane (LPA ref: 21/00966/OUT), the Council's Affordable Housing Officer set out the number of households on the housing register with a need for housing in Market Bosworth<sup>30</sup>:

*"Market Bosworth is a key rural centre and information on the demand for Market Bosworth on 24.9.21, following a requirement for all applicants for rented housing to reapply to the housing register in late 2019, shows the following need for both general applicants and those who have a local connection to Market Bosworth":*

**Table 6.10 – Affordable housing demand in Market Bosworth from the housing register**

Property size	General register	Local connection
1 bed	89	12
2 beds	52	8
3 beds	21	1
4 or more beds	9	1
<b>Total</b>	<b>171</b>	<b>22</b>

## Public Open Space

6.86 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 (CD6.24) updates the standards and also identifies the costs for off-site and on-site contributions.

<sup>30</sup> Appendix BP10

6.87 As set out in paragraph 5.14.1 of the Planning SoCG, based on the Parameters Plan, a minimum of 2.16 ha of public open space would be provided within the proposed development. This equates to more than 50% of the total appeal site. The open space would include:

- 500 sq m of Equipped Children's Play Space & Trim Trail against a requirement of 226.8 sq m;
- 1,058 sq m of Casual / Informal Play Spaces against a requirement of 1,058 sq m; and
- 20,042 sq m of accessibility natural green space against a requirement of 2,520 sq m.

6.88 The proposed public open space is a benefit of the proposed development. I give significant weight to this benefit because there is only a marginal surplus of amenity areas and children's play areas in Market Bosworth as is confirmed in chapter 16 of the Open Space and Recreation Study 2016 (CD6.24) and in the planning policy officer's response for the appeal application (CD4.20).

### **Economic benefits**

6.89 As set out in paragraph 5.12.1 of the Planning SoCG, the proposed development would assist in meeting the economic objective as during the build programme, construction related jobs and indirect jobs would be created. This would benefit local contractors and suppliers. The proposed development would help contribute to ensuring the Borough has a stable workforce in terms of ability and age.

6.90 Once occupied, the residents of the scheme would spend money in Market Bosworth and other settlements in Hinckley and Bosworth. The proposed development would therefore generate significant spending in the Borough, which would help create full time jobs in the local retail and leisure sectors.

6.91 As set out above, Core Strategy policy 11 states that "to support local services" in Market Bosworth, the Council will (amongst other things) allocate land for the development of a minimum of 100 dwellings in the plan period. However, as there is a shortfall of housing in Market Bosworth in the plan period, local services are not being supported from new housing as the minimum housing requirement has not been met. In addition, MBNP policy CE5 states that development will be permitted where it supports local services.

6.92 On this basis, moderate weight should be afforded to the economic benefits.

## Environmental benefits

6.93 The environmental benefits of the appeal proposal would be:

- additional planting through the landscaping to be provided in the open space; and
- an overall biodiversity net gain of +16.74%. This incorporates the retention of existing woodland habitat, enhancement of grassland species with species rich seeding and careful management, as well as the creation of ponds. helping to create an attractive environment with clear biodiversity benefits.

6.94 These benefits carry moderate weight.

## Other matters

### Heritage

6.95 Paragraph 4 of the Inspector's CMC note states:

*"The Inspector confirmed that the evidence submitted so far provided details that, in conjunction with her site visit, should enable her to discharge her statutory heritage duties. It was agreed that the appellant would include a short statement in their submission regarding heritage matters and make their heritage witness available in case the Inspector wished to pose any questions. The Inspector anticipates that any questions could be dealt with immediately after all of the landscape evidence has been heard and will make contingency provision in the programme accordingly. It is requested that the appellant confirms any dates that witness is unavailable as soon as possible."*

6.96 As requested, a short statement regarding heritage matters has been prepared by RPS and is appended to my proof of evidence at appendix BP11.

### Comments made by third parties

6.97 I set out my comments on those representations made by third parties at appendix BP12.

## 7. Conclusions and planning balance

- 7.1 This appeal proposes residential development on a medium sized site in a Key Rural Centre – the highest tier of settlement in the rural area – within the context of a shortfall in the Council's five year supply of housing.
- 7.2 The appeal proposals should be decided in accordance with the development plan unless material considerations indicate otherwise. The Council cannot demonstrate a deliverable five year housing land supply and in addition, the housing policies in the adopted Core Strategy, the adopted SADMP and the MBNP are out of date.
- 7.3 Policy DM1 of the SADMP explains that where relevant policies are out of date, planning permission should be granted unless material considerations indicate otherwise, taking into account whether:
- a. Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or
  - b. Specific policies in that Framework indicate that development should be restricted.
- 7.4 This broadly reflects the tilted balance to the presumption in favour of sustainable development as set out in paragraph 11(d) of the Framework, which again is triggered because the most important policies for the determination of the appeal are out of date and by footnote 8 of the Framework due to the absence of a five year housing land supply.
- 7.5 None of the specific policies set out in footnote 7 of the Framework apply in this case and therefore criterion b) of policy DM1 and paragraph 11d)i. of the Framework do not apply.
- 7.6 In terms of criterion a) of policy DM1 and paragraph 11d)ii. of the Framework, Mr Berry has identified that there would be some adverse impacts but these are not significant and are highly localised and there is overall compliance with the Framework in terms of respecting character and appearance. Whilst some grade 2 agricultural land would be lost, this is small in size, would remain free from development and therefore the loss of this land carries limited weight.
- 7.7 There would be some conflict with Core Strategy policy 7, SADMP policy DM4 and MBNP policy CE5 insofar as they seek to restrict residential development beyond the existing settlement

boundaries. However, I give limited weight to the conflict with the blanket restriction set by these policies because they are based on settlement boundaries which reflect an out of date housing requirement, the Council cannot demonstrate a five year housing land supply and the Council has applied Core Strategy policy 7 and policy DM4 flexibly to assist in meeting its housing needs.

7.8 I do give weight to these policies insofar as they would allow sustainable development where the landscape harm is not significant. However, I give limited weight to the conflict the proposed development has with these policies in this regard because Mr Berry's evidence concludes that the harm arising as a result of the proposed development would not be significant and highly localised.

7.9 There would be some conflict with MBNP policy CE3 as it states that development that harms important views into or vistas out of Market Bosworth will be resisted. However, I give limited weight to the conflict with this policy because Mr Berry's proof of evidence confirms the proposed development would not have a significantly adverse impact on view 1 or vista 11.

7.10 Weighing in favour of the proposed development would be a range of tangible benefits as I have discussed in section 6 of my proof of evidence above:

- The proposed development would deliver market housing in a sustainable location (as above the Key Rural Centres are the highest tier of settlement in the rural area), in a borough where the Council cannot demonstrate a five year housing land supply. The Council has failed to meet the Housing Delivery Test to the extent that an action plan should be produced and there is a shortfall in the plan-led adopted housing requirement of 660 dwellings and a shortfall in the plan-led adopted housing requirement for Market Bosworth of 78 dwellings. New residential development should therefore be afforded **very significant weight**.
- The proposals would also deliver a policy compliant level of affordable housing in an authority with very significant levels of unmet need. It would contribute to addressing the needs of more than 3,800 households in Hinckley and Bosworth who are in urgent need of an affordable home and those in Market Bosworth. This should be afforded **very significant weight**.

- The delivery of 2.16ha of public open space, including an equipped area of play and trim trail in an area with only a marginal surplus of amenity areas and play areas should be afforded **significant weight**.
- The associated economic benefits of the proposed development (construction phase and long-term impacts) should be afforded **moderate weight**.
- The environmental improvements in relation to new planting and biodiversity gain should be afforded **moderate weight**.

7.11 In relation to other matters set out in section 5 of the Planning SoCG, such as highways, trees, noise, archaeology and heritage, air quality, flood risk and drainage, ground conditions, education and public health, I consider that the proposed development has been demonstrated to be acceptable, in accordance with the development plan and the Framework. The matters should be afforded neutral weight.

7.12 In conclusion, the harm does not significantly and demonstrably outweigh the benefits and therefore in accordance with the development plan as a whole and the Framework, planning permission should be granted as set out in SADMP policy DM1 and paragraph 11d) of the Framework. I therefore respectfully invite the Inspector to allow the appeal.

## 8. Appendices

BP1 – Approved site layout for Kyngs Golf and Country Club

BP2 – Committee report for the development at Kyngs Golf and Country Club

BP3 – Comments from planning policy on the application by Ainscough Strategic Land

BP4 – Other relevant policies of the development plan

BP5 – Note on Leicester's unmet need

BP6 – List of appeals and other decisions in HBBC I refer to

BP7 – Committee report for land at Roseway, Stoke Golding

BP8 – Committee report for land at Markfield Road, Ratby

BP9 – Committee report for land at London Road, Markfield

BP10 – Comments from the housing officer on the application by Gladman

BP11 – Note from RPS in relation to heritage

BP12 – Comments on points made by third parties

BP13 – SoCG between the Leicestershire authorities in relation to Leicester's unmet need

BP14 – Representations on behalf of Richborough Estates to HBBC's Regulation 18 Plan