

**APPELLANT'S
STATEMENT OF CASE**

**TOWN AND COUNTRY
PLANNING ACT 1990
SECTION 78
DEVELOPMENT MANAGEMENT
PROCEDURE ORDER 2010
(AS AMENDED 2013)**

**APPEAL BY
HALLAM LAND MANAGEMENT
LTD**

**LAND OFF
LOWER PACKINGTON ROAD
ASHBY-DE-LA-ZOUCH LE65 1TS**

Local Planning Authority:
North West Leicestershire
District Council

Application Reference: 13/00694
Appeal Reference: TBA
Appellant's Reference: S.6500

April 2014



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1.0 INTRODUCTION

Preamble

- 1.1 This Statement of Case accompanies an appeal by Hallam Land Management Ltd (HLM) against the refusal by North West Leicestershire District Council (NWLDC) to grant planning permission for residential development of up to 70 dwellings (Use Class C3), together with Green Infrastructure and a new vehicular access on land off Lower Packington Road, Ashby-de-la-Zouch, Leicestershire LE65 1TS. It is prepared in accordance with Annex J of the Planning Inspectorate Procedural Guide, Planning Appeals – England dated 1 April 2014.
- 1.2 The Appellant considers that this appeal should be conducted by means of a Public Inquiry and a Statement of Reasons in support of that view is included as one of their appeal submission documents. This Statement of Case is prepared upon the assumption that the Public Inquiry procedure will be adopted.
- 1.3 In accordance with the relevant procedure a draft Statement of Common Ground (SoCG) has been prepared by the Appellant and was submitted to NWLDC for their comments on 10 March 2014. Discussions with regard to the content of this document are ongoing, but a preliminary draft, including any amendments suggested by NWLDC that have been accepted by the Appellant at this stage, is included as one of the appeal submission documents. References in this Statement to the SoCG are to that draft document. Any matters that are included within the SoCG (Draft) but are omitted from the final version of the SoCG because they are not agreed between the parties, will still form part of the Appellant's case.

Details of Application

- 1.4 The application was for outline planning permission with all matters apart from the point of access reserved for subsequent approval. It was dated 16 August 2013. Details of the application plans and supporting documentation are set out at Paragraphs 3.7 – 3.8 of the SoCG (Draft) and copies are provided as part of the appeal documentation. The Appellant relies on the contents of these documents in support of their case. It is stressed that, with the exception of the site access, all other details, including layout, are illustrative and do not form part of the application for which approval is sought at this stage.
- 1.5 A Screening Opinion was issued by NWLDC on 5 September 2013 confirming that the proposed development is not EIA development.

Officer's Report

- 1.6 The application was reported to the NWLDC Planning Committee on 7 January 2014. A copy of the Development Control Report is appended to the SoCG (Draft). The recommendation of the Report is that the application should be permitted, subject to S106 Obligations and conditions. The Appellant's case

will rely extensively upon this Report, which sets out the views of the Council's professional Officers and gives expert advice to Council Members on how the application should have been determined.

Reasons for Refusal

1.7 The application was refused by a Notice dated 7 January 2014. Two reasons for refusal were given:-

“1 Paragraph 14 of the National Planning Policy Framework (NPPF) sets out the presumption in favour of sustainable development; Paragraph 7 defines sustainable development (and including its environmental dimension) and also provides that the planning system needs to provide an environmental role, including in respect of minimising pollution and mitigating and adapting to climate change, and moving to a low carbon economy. The site is in a location remote from services and public transport and occupiers of the development would be likely to be reliant on use of the private car for accessing goods and services, not providing for a sustainable form of development compatible with a move towards a low carbon economy, and contrary to the policies and intentions of the NPPF.

2. The site is located beyond the existing built up area of Ashby de la Zouch and the proposed scheme would result in development being located beyond the existing established extent of the town and would fail to reflect the existing pattern of development in this part of the town.”

1.8 It is noted that there is no reference to any specific policy of the Development Plan within the reasons given. Paragraph 31(1)(b) of the Town and Country Planning (Development Management Procedure) Order 2010 and Paragraph 22(1)(c) of the Town and Country Planning (General Development Procedure) Order 1995 state that, where a Local Planning Authority (LPA) refuse planning permission, the Notice shall state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the Development Plan which are relevant to the decision. The Appellant's case has therefore been prepared on the basis that the proposal is agreed to be in conformity with the policies of the Development Plan which are relevant to the decision.

Grounds of Appeal

1.9 The grounds of appeal respond to the wording of the reasons for refusal which, in the light of a favourable recommendation from Officers, represent the only explanation available to the Appellant as to why Members resolved to refuse planning consent.

1.10 The Grounds of appeal are:-

1. In the opinion of the Appellant the town of Ashby-de-la Zouch is a sustainable settlement that is well provided with a wide range of services and is suited to accommodating new housing provision. It is the second largest settlement in the District and it is appropriate that

a significant proportion of the District's housing requirement should be directed to the town.

2. The appeal site is located on the southern edge of the Town and is accessible to local facilities, including the Town Centre, by walking, cycling and public transport. The Appellant therefore firmly disagrees with the Council's assertion that this would not be a sustainable location for new housing. The development proposed will contribute effectively to the three dimensions of sustainable development set out in Paragraph 7 of the National Planning Policy Framework.
3. It is Government policy to boost significantly the supply of housing and to meet the full objectively assessed needs for market and affordable housing in the housing market area. There is insufficient scope for new housing sites to be found within the existing built-up area of Ashby-de-la-Zouch. Some new housing development beyond the existing established extent of the town is therefore inevitable and has been accepted in other locations. The Council's second reason for refusal is therefore not soundly based.
4. The reasons for refusal do not identify any conflict with the policies of the Statutory Development Plan and, to the extent that its policies are up-to-date and command weight, these development proposals accord with the Development Plan and should be approved without delay.
5. To the extent that the relevant policies of the Development Plan are out of date, there are no adverse impacts associated with the proposed development that would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole. Planning permission should therefore be granted in accordance with Paragraph 14 of the Framework.

Issues

1.11 The issues in this appeal are set out at Paragraph 3.18 of the SoCG (Draft) and are:-

1. Whether the site is in a sustainable location that can achieve the objectives of minimising pollution, mitigating and adapting to climate change and moving to a low carbon economy.
2. The impact of the proposed development upon the character and pattern of development in this part of the town of Ashby.

Witness and Scope of Evidence

1.12 The Appellant will be represented by a Barrister who will call two witnesses:-

1. Mr. D Cheetham, BA (Hons), MSc, FCILT, MCIHT
2. Mr. C M Hough, BSc, Est Man, FRICS

1.13 Mr. Cheetham will provide evidence upon the sustainability of the location of the site in terms of its accessibility to local services and the opportunities available to future residents of the development to access local services and facilities by means other than the private car.

1.14 Mr. Hough will present planning evidence covering the Development Plan and other material planning considerations including an assessment of the need for housing in the area and a calculation of the five-year housing land supply. His evidence will also carry out an overall assessment of any adverse impacts and planning benefits of the proposed development to produce an overall planning balance.

1.15 The evidence of both witnesses will also address any relevant matters within their respective fields of expertise that are raised by interested persons.

1.16 The Appellant reserves the right to call further witnesses to deal with specific points raised by the Council or the interested parties, of which the Appellant is currently unaware and that do not fall within the expertise of their two proposed witnesses.

2.0 STATEMENT OF COMMON GROUND

2.1 The SoCG (draft) that is submitted with this appeal includes details relating to the:-

Description of the Site

Description of the Area

Planning History

Development Plan

Supplementary Planning Guidance

Matters agreed

Matters not agreed

S106 Obligation

Conditions

2.2 The Appellant will rely upon this background framework as an evidence base for their case. The contents of the SoCG (Draft) to the extent that these are not subsequently agreed to be varied, will be relied upon by the Appellant irrespective of whether the relevant points are subsequently agreed by the Council or not.

3.0 PLANNING POLICY

The Development Plan

- 3.1 The Statutory Development Plan comprises the "saved policies" of the North West Leicestershire Local Plan adopted in 2002 with subsequent alterations adopted in 2004 and 2005. The Local Plan covers the period April 1991 – March 2006.
- 3.2 The application site is outside the Limits to Development as defined in the adopted North West Leicestershire Local Plan.
- 3.3 The relevant saved policies of the Local Plan are set out at Paragraph 4.3 of the SoCG (Draft). None of these policies are advanced by the Council in support of their reasons for refusal.
- 3.4 Paragraph 215 of the Framework provides policy guidance as to the weight that can be given to policies in existing Local Plans. Due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework (the closer the policies in the Plan to the policies in the Framework, the greater the weight that may be given).
- 3.5 North West Leicestershire Local Plan (adopted August 2002) is now considerably out of date. Local Plan Policies S1 (Overall Strategy), S3 (Countryside) and H4/1 (Housing Land Release) are residual, generic policies within the context of the suite of housing policies which ran to 2006. They are now out of date in their own terms and in any event must be read alongside the presumption in favour of sustainable development arising due to the agreed absence of a 5-year supply of housing land (SoCG [Draft] Paragraph 6.16).
- 3.6 Settlement policies relevant to housing are out of date to the extent that they operate to restrict housing and are only revived by consistency with the Framework. For this reason the Limits to Development in NWLDC area are out of date and should be given little, if any, weight to the extent that they restrict the expansion of settlements that is necessary to meet current housing requirements.
- 3.7 Local Plan policies S1, S3 and H4/1 therefore should command no material weight to the extent that they seek to restrict housing policies that accord with Government Policy in the Framework to boost significantly the supply of housing and to meet the full objectively assessed needs for market and affordable housing in the housing market area. The restrictive nature of these policies would also run contrary to Paragraph 49 of the Framework which states that housing applications should be considered in the context of the presumption in favour of sustainable development. This reflects the importance that the Government places upon the delivery of new housing.
- 3.8 There is full compliance with the remainder of the Local Plan saved policies. Accordingly it can be concluded that this proposal accords with the policies of the Local Plan to that extent that they are relevant, up-to-date and consistent with the policies of the Framework taken as a whole.

Emerging Local Plan

3.9 The position in relation to the emerging Local Plan is set out at Paragraphs 4.6 – 4.10 of the SoCG (Draft). The Submission Version of the Core Strategy has been withdrawn and it should have no material impact upon the outcome of this appeal except to the extent that the continued delay in the provision of an up-to-date Local Plan increases the necessity for housing sites to be released through development management decisions, such as this, if housing needs in NWLDC area are to be met, in accordance with Government Policy set out in the Framework.

NPPF

3.10 The Appellant will consider the degree of compliance of these development proposals with the policies of the Framework. The SoCG (Draft) identifies that it is agreed that there is substantial compliance. The reasons for refusal allege there to be only one specific conflict, namely that the environmental dimension of sustainable development is not fulfilled because of the alleged lack of alternatives to the use of the private car. The Appellant's evidence challenges this assertion and will demonstrate that this is a sustainable location for new housing with good accessibility to a wide range of local services by walking, cycling or public transport. Furthermore, the S106 Obligation will contribute to the funding of an improvement in the local bus service that will bring benefits to both existing and future residents, thereby enhancing the sustainability of this locality.

3.11 The benefits arising from this proposal will be demonstrated including:-

- the provision of housing to meet objectively assessed housing need and to reduce the five-year housing land supply shortfall;
- the provision of affordable housing to contribute to meeting local housing needs and improving the prospects for local people who are currently inadequately housed;
- contributions to the local and national economy from construction and increased spending by new residents;
- improved local bus services;
- extensive new Green Infrastructure and children's play facilities
- new National Forest tree planting;
- enhanced biodiversity.

- 3.12 The Appellant's case will be that any adverse impact arising from this development is limited to the loss of Greenfield land on the appeal site itself , but that such a loss is inevitable if the need for housing is to be met. Beyond this the proposed housing will be in character with the adjoining residential areas in this part of the Town and there will be no material adverse impact beyond the site itself. The new built environment will be high quality and will be compliant with the relevant Core Planning principles set out in Paragraph 17 of the Framework and other relevant policies of the Framework.
- 3.13 It will therefore be submitted that any adverse impacts will not outweigh the benefits and planning consent should be granted in accordance with Paragraph 14 of the Framework.

4.0 RESPONSE TO REASONS FOR REFUSAL

- 4.1 The Appellant will produce evidence to demonstrate that residents of the new housing will not be reliant on the use of the private car for most journeys because the site location is not remote from services and public transport. Maps will be produced to show the locations of local facilities and the routes to access them, with associated isochrones by walking and cycling. The routes will also be analysed for practicality, safety and convenience. Existing bus services will be detailed in terms of frequency and travel time.
- 4.2 Mitigation will be provided in the form of enhancements to existing bus services.
- 4.3 Comparisons will be made with other housing sites on the periphery of Ashby which have been judged to be sustainable locations and it is considered that the Council's decision in this case is inconsistent with the findings in relation to other sites.
- 4.4 With regard to the second reason for refusal the new housing will inevitably change the existing pattern of development in this part of the town, but the Appellant does not understand why this should be regarded as unacceptable, any more than other urban extensions. The Appellant's evidence will explore the local impact of the new housing and it is the Appellant's case that the development will be consistent with the residential character and settlement pattern of the adjoining urban area. At this stage the Appellant does not understand the Council's objection because the reason for refusal is too generalised and unclear. Much of the Appellant's evidence on this point will therefore have to be by way of rebuttal.
- 4.5 Ashby is a good location for market housing and demand levels are high. There is also a local need for affordable housing. This is, therefore, a location where, unlike some other parts of the District, new housing provision is viable, deliverable and able to support the provision of a full quantum of affordable housing.
- 4.6 The Appellant will submit evidence as to the objectively assessed need for housing based on the 2011 census and recent Government population and household projections. These will be calculated using the Chelmer model and the background evidence, including a range of outputs and supporting figures is attached to this Statement. The five-year housing land supply as at 31 March 2013, the most recent date at which housing completion information is available, will be calculated using a 20% buffer and the Sedgefield approach. The Appellant's evidence will also consider the supply of specific deliverable housing sites as at 31 March 2013 in order to assess the adequacy of the housing land supply. It is agreed between the parties that there is a shortfall in the housing land supply (SoCG [Draft]) Paragraph 6.16, but the Appellant's evidence will demonstrate that the shortfall is larger than is currently admitted by NWLDC and consequently should command even greater weight in the overall balance of planning advantage, which weighs heavily in favour of the grant of planning permission in this case.

5.0 RESPONSE TO INTERESTED PARTIES

5.1 At this stage the Appellant has not been provided with the full set of responses from interested parties – these will accompany the Council’s Questionnaire and others will be submitted to the Planning Inspectorate, once the appeal is lodged. The ability of the Appellant to respond to the case for interested parties is therefore limited. The Appellant accordingly reserves their position to respond in full by way of rebuttal in due course.

5.2 Taken from the Development Control Report the list of issues raised by interested parties that are not reflected in the Council’s reasons for refusal include :-

- the previous appeal decision;
- highways - safety and congestion;
- landscape;
- noise;
- flood risk;
- foul drainage;
- impact on River Mease SAC;
- precedent;
- sequential approach - brownfield;
- ecology;
- coalescence;
- community engagement.

The Appellant’s assessment of these matters is already substantially provided by the expert reports and assessments that were submitted with the applications. The Appellant’s case will rely on these reports together with the consultation responses from the relevant statutory consultees raising no objections. Professional evidence assessing the weight to be given to each of these additional issues will be submitted.

5.3 The Appellant’s case will be that, to the extent that they are material planning considerations, these issues do not give rise to adverse impacts that individually or collectively justify the refusal of consent in this case.

6.0 SUGGESTED CONDITIONS

6.1 Suggested conditions are set out in the SoCG (Draft), Section 9.

7.0 S106 OBLIGATION

7.1 The Heads of Terms agreed between the main parties are set out in the SoCG (Draft) Section 8

8.0 SUPPORTING DOCUMENTATION

8.1 List of Documents to be referred to in the evidence of the Appellant:-

1. North West Leicestershire Local Plan (2002) Saved Policies
2. Correspondence with Inspector appointed to conduct an Examination into the , now withdrawn, N W Leicestershire Submission Core Strategy
3. National Planning Policy Framework
4. National Planning Practice Guidance
5. Development Management documentation relating to:-
 - the previous appeal
 - Moira Road
 - Moneyhill Road
 - Holywell Spring Farm
6. NWLDC Annual Monitoring Report 2012/13
7. Objectively Assessed Housing Need Outputs
8. Transport Assessment dated March 2014

Court Judgements

9. Colman Judgement [2013] EWHC 1138 (Admin)
10. Cotswold Judgement [2013] EWHC 3719 (Admin)
11. East Northants Judgement [2013] EWHC 473 (Admin)
12. Hunston Judgement [2013] EWHC 2678 (Admin)
13. Hunston Court of Appeal [2013] EWCA 1610
14. Stratford on Avon vs SoS & Bloor Homes/HLM (Shottery Judgement) [2013] EWHC 2074 (Admin)
15. Tesco vs Dundee Judgement
16. Tewkesbury Judgement [2013] EWHC 286 (Admin)
17. Wainhomes Judgement [2013] EWHC 597 (Admin)
18. South Northamptonshire vs SoS & Barwood Homes [2014] EWHC 570 (Admin)
19. South Northamptonshire vs SoS & Barwood Homes [2014] EWHC 573 (Admin)
20. Bloor Homes vs SoS & Hinckley & Bosworth [2014] EWHC 754 (Admin)
21. Zurich Assurance Ltd vs Winchester & South Downs [2014] EWHC 758 (Admin)

Appeal Decisions

22. Andover Appeal Decision (APP/X3025/A/10/2140962)
23. Ashby-de-la-Zouch Appeal Decision (APP/G2435/A/13/2192131)

24. Barford Road, Banbury Appeal Decision
(APP/C3105/A/13/2189896)
25. Bishops Cleave Planning Appeal (APP/G1630/A/11/2146206)
26. Bishops Cleave Planning Appeal (APP/G1630/A/11/2148635)
27. Bloxham Road, Banbury Appeal Decision (APP/C3105/A/12/2178521)
28. Bourton-on-the-water Appeal Decision (APP/F1610/A/13/2196383)
29. Bude Appeal Decision (APP/D0840/A/09/2115945)
30. Chapel-en-le-Frith Appeal Decision (APP/H1033/A/11/2159038)
31. Honeybourne Appeal Decision (APP/H1840/A/12/2171339)
32. Hook Norton Appeal Decision (APP//C3105/A/12/2184094)
33. Kidlington Appeal Decision (APP/C3105/A/13/2192506)
34. Markfield Appeal Decision (APP/K2420/A/12/2180699)
35. Milton Road, Bloxham Appeal Decision (APP/C3105/A/12/2189191)
36. Morton in Marsh Appeal Decision (APP/F1610/A/10/2130320)
37. Offenham Appeal Decision (APP/H1840/A/13/2203924)
38. Rushwick Appeal Decision (APP/J1860/A/12/2187934)
39. Sandbach Appeal Decision (APP/R0660/A/13/2189733)
40. Sapcote Appeal Decision (APP/T2405/A/11/2164413)
41. Shotton Appeal Decision (APP/J3720/A/11/2163206)
42. Tenbury Wells Appeal Decision (APP/J1860/A/13/2194904)
43. Tetbury Appeal Decision (APP/F1610/A/11/2165778)
44. Torquay Appeal Decision (APP/X1165/A/11/2165846)
45. Winchcombe, Gloucestershire Decision (APP/G1630/A/12/2183317)
46. Wotton Bassett Appeal Decision (APP/Y3940/A/10/2141906)
47. Moat House Farm, Solihull Appeal Decision
(APP/Q4625/A/11/2157515)
48. Land east of Fleetwood Road, Wesham (APP/M2325/A/12/2186415)

Highways

49. The 6 C's Design Guide – adopted by 6 Local Authorities including Leicestershire County Council
50. Manual for Streets – Department for Transport (DfT) & Department of Communities and Local Government (DCLG)
51. Manual for Streets 2 – Chartered Institution of Highways & Transportation (CIHT)
52. Guidance on Transport Assessment – DfT & DCLG
53. Guidelines for Providing for Journeys on Foot – CIHT
54. Planning for Public Transport in Developments (1999) – CIHT