

Date: 24 August 2009

**To: All Members of the Planning Committee**

Mr R Mayne (Chairman)	Mr WJ Crooks	Mr K Nichols
Mr DW Inman (Vice-Chairman)	Mrs A Hall	Mr LJP O'Shea
Mrs M Aldridge	Mr P Hall	Mr BE Sutton
Mr JG Bannister	Mr CG Joyce	Mr R Ward
Mr CW Boothby	Dr JR Moore	Ms BM Witherford
Mr JC Bown	Mr K Morrell	

Copy to all other Members of the Council

(other recipients for information)

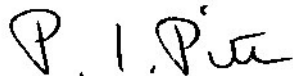
Dear Councillor

There will be a meeting of the **PLANNING COMMITTEE** in the Council Chamber, Council Offices, Hinckley on **TUESDAY, 1 SEPTEMBER 2009** at **6.30pm**, and your attendance is required.

The agenda for the meeting is set out overleaf.

**There will be a pre-meeting at 6.00pm in the Members' Room (Annexe) to inform Members of any late items.**

Yours sincerely



Pat Pitt (Mrs)  
Corporate Governance Officer

**PLANNING COMMITTEE**  
**1 SEPTEMBER 2009**  
**A G E N D A**

1. APOLOGIES AND SUBSTITUTIONS

RESOLVED

2. MINUTES

To confirm the minutes of the meeting held on 4 August 2009 attached marked 'P16'.

3. ADDITIONAL URGENT BUSINESS BY REASON OF SPECIAL CIRCUMSTANCES

To be advised of any additional items of business which the Chairman decides by reason of special circumstances shall be taken as matters of urgency at this meeting.

4. DECLARATIONS OF INTEREST

To receive verbally from members any disclosures which they are required to make in accordance with the Council's code of conduct or in pursuance of Section 106 of the Local Government Finance Act 1992. **This is in addition to the need for such disclosure to be also given when the relevant matter is reached on the Agenda.**

5. QUESTIONS AND PETITIONS

To hear any questions and to receive any petitions in accordance with Council Procedure Rules 10 and 11.

6. DECISIONS DELEGATED AT PREVIOUS MEETING

Director of Community and Planning Services to report on any decisions delegated at the previous meeting which had now been issued.

RESOLVED

7. TOWN & COUNTRY PLANNING ACT 1990 - APPLICATIONS TO BE DETERMINED

Schedule of planning applications attached marked 'P17' (pages 1 – 24).

RESOLVED

8. THE BOROUGH OF HINCKLEY AND BOSWORTH (LAND AT 5 BACK LANE, MARKET BOSWORTH) TREE PRESERVATION ORDER 2009

Report of the Deputy Chief Executive attached marked 'P18' (pages 25 - 38).

RESOLVED

9. APPEALS LODGED AND DETERMINED

Report of the Director of Community and Planning Services attached marked 'P19' (pages 39 – 45).

RESOLVED 10. APPEALS PROGRESS

Report of the Director of Community and Planning Services attached marked 'P20' (pages 46 – 48).

RESOLVED 11. ANY OTHER ITEMS OF BUSINESS WHICH THE CHAIRMAN DECIDES HAVE TO BE DEALT WITH AS MATTERS OF URGENCY

RESOLVED 12. MATTERS FROM WHICH THE PUBLIC MAY BE EXCLUDED

To consider the passing of a resolution under Section 100A(4) of the Local Government Act 1972, excluding the public from the undermentioned items of business on the grounds that they involve the likely disclosure of exempt information as defined in the paragraphs of Part I of Schedule 12A of the Act as indicated alongside each item.

RESOLVED 13. DEED OF VARIATION

Report of the Director of Community and Planning Services attached marked 'P21' (pages 49 – 52). Exempt in accordance with paragraphs 3 and 10.

RESOLVED 14. PLANNING ENFORCEMENT ACTION

Report of the Director of Community and Planning Services attached marked 'P22' (pages 53 – 67). Exempt in accordance with paragraphs 2 and 10.

**NOTE: AGENDA ITEMS AGAINST WHICH THE WORD "RESOLVED" APPEARS ARE MATTERS WHICH ARE DELEGATED TO THE COMMITTEE FOR A DECISION. OTHER MATTERS ON THIS AGENDA WILL BE THE SUBJECT OF RECOMMENDATIONS TO COUNCIL.**

**HINCKLEY AND BOSWORTH BOROUGH COUNCIL**

**PLANNING COMMITTEE**

**4 AUGUST 2009 AT 6.30 PM**

**PRESENT:** MR R MAYNE - CHAIRMAN  
MR DW INMAN - VICE-CHAIRMAN

Mrs M Aldridge, Mr JG Bannister, Mr JC Bown, Mr MB Cartwright, Mr WJ Crooks, Mrs A Hall, Mr P Hall, Mr CG Joyce, Dr JR Moore, Mr K Nichols, Mr O O'Shea, Mr BE Sutton and Mr R Ward.

In accordance with Council Procedure Rule 4.4 Mr PR Batty, Mr DC Bill and Mr KWP Lynch also attended the meeting.

Officers in attendance: Mrs T Darke, Ms T Miller, Miss R Owen, Mr TM Prowse and Mr M Rice.

125 **APOLOGIES AND SUBSTITUTIONS**

Apologies for absence were submitted on behalf of Mr CW Boothby, Mr K Morrell and Ms B Witherford and the substitution of Mr Cartwright for Mr Boothby authorised in accordance with Council Procedure Rule 4.3.

126 **MINUTES (P12)**

On the motion of Mr Bown, seconded by Mr Crooks, it was

**RESOLVED** – the minutes of the meeting held on 7 July 2009 be confirmed and signed by the Chairman.

127 **DECLARATIONS OF INTEREST**

No interests were declared at this stage.

128 **DECISIONS DELEGATED AT PREVIOUS MEETING**

The Director of Community and Planning Services reported on the following decisions which had been delegated at the previous meeting:

(a) 09/00141/DEEM: Conditions had not yet been complied with so the application had not yet been referred to the Secretary of State;

(b) 09/00321/FUL: Approval had been issued;

(c) 09/00368/FUL: Approval had been issued.

Mr Batty arrived at 6.32pm.

129 TOWN AND COUNTRY PLANNING ACT 1990 - APPLICATIONS TO BE DETERMINED (P13)

The Committee considered a schedule of planning applications, together with a list of late items, and the recommendations of the Director of Community and Planning Services.

- (a) 09/00340/CONDIT – Removal of Condition 21 of Planning Permission 05/00615/FUL to allow occupation without carrying out improvements to Dodwells Roundabout attached to Planning Permission 99/00048/OUT, Land Adjacent to 391 Coventry Road, Hinckley – Crest Nicholson Midlands Ltd

and

- (b) 09/00343/CONDIT – Removal of Condition 13 of Planning Permission 07/01150/FUL to allow occupation without carrying out improvements attached to Planning Permission 99/00048/OUT, Land Adjacent to 391 Coventry Road, Hinckley – Crest Nicholson Midlands Ltd

Applications 09/00340/CONDIT and 09/00343/CONDIT were taken together.

It was moved by Mr O’Shea, seconded by Mrs Aldridge and

RESOLVED – the applications be refused for the reasons stated in the officer’s report and late items.

Messrs Bill and Lynch left the meeting at this juncture.

- (c) 09/00385/CONDIT – Variation of conditions nos 5 and 15 of Planning Permission 07/00648/FUL relating to parking facilities, 12 Mansion Street, Hinckley – Mrs S Robinson

It was moved by Mr Bannister, seconded by Mrs Aldridge and

RESOLVED – the application be approved subject to the conditions contained in the officer’s report.

- (d) 09/00421/TEMP – Temporary Occupational Dwelling, Stanmaur Farm, Breach Lane, Earl Shilton – Mr C Klenk

It was noted that this application had been withdrawn.

- (e) 09/00431/FUL – Erection of a garage, 7 Leicester Road, Hinckley – Mrs R Wright

On the motion of Mr Crooks, seconded by Mr Bannister, it was

RESOLVED – the application be approved subject to the conditions contained in the officer’s report.

- (f) 09/00441/COU – Change of use to a coffee shop (mixed A1/A3 use), 25 Castle Street, Hinckley – Costa Coffee

It was moved by Mr O'Shea, seconded by Mrs Aldridge and

RESOLVED – the application be approved subject to the conditions contained within the officer's report.

- (g) 09/00455/OUT – Erection of two dwellings with creation of access and parking, extension and alterations to existing dwelling and garage, 69 Main Street, Carlton – Mr David Hancock

It was moved by Mr Bannister, seconded by Mr Crooks and

RESOLVED – the application be approved subject to the conditions contained within the officer's report and late items.

- (h) 09/00493/DEEM – Erection of dwelling, Land Adj 50 Forest Rise, Groby – Hinckley & Bosworth Borough Council

Notwithstanding the officer's recommendation to approve the application, some Members felt that the site was at a busy crossroads and was an important piece of open space. It was moved by Mr Cartwright and seconded by Dr Moore that the application be refused on grounds of highway safety and loss of open space. Mrs Hall, seconded by Mr Hall, proposed that the motion be amended to refusal on grounds of loss of open space.

After receiving advice, Mr Cartwright, with the agreement of Dr Moore, withdrew his motion. Mrs Hall, seconded by Mr Hall, again proposed that the application be refused on grounds of loss of open space. The Director of Community & Planning Services requested that voting on this motion be recorded. The vote was recorded as follows:

Mrs Aldridge, Mr Cartwright, Mrs Hall, Dr Moore, Mr O'Shea, Mr Sutton and Mrs Ward voted FOR the motion (7);

Mr Mayne, Mr Inman, Mr Bannister, Mr Bown, Mr Crooks, Mr Hall, Mr Joyce and Mr Nichols voted AGAINST the motion (8).

The motion was declared LOST.

It was moved by Mr Inman, seconded by Mr Bannister and

RESOLVED – the application be permitted subject to the conditions contained in the officer's report.

- (i) 09/00494/FUL – Extension and alterations to dwelling, 35 Springfield Road, Hinckley – Mr & Mrs Paul Witham

It was moved by Mr Sutton, seconded by Mr Crooks and

RESOLVED – the application be approved subject to the conditions contained in the officer’s report and late items.

Mr Batty left the meeting at 8.11pm.

130 APPEALS LODGED AND DETERMINED (P14)

A summary was submitted of appeals lodged and determined since the last meeting. It was moved by Mr Crooks, seconded by Mr Bannister and

RESOLVED – the report be noted.

131 APPEALS – PROGRESS (P15)

A schedule was submitted indicating the stages that various appeals against planning decisions had reached. It was moved by Mr Nichols, seconded by Mr Crooks and

RESOLVED – the report be noted.

(The meeting closed at 8.15pm)

**PLANNING COMMITTEE AGENDA - 1 September 2009 - NUMERIC INDEX**

<b>REF. NO.</b>	<b>APPLICANT</b>	<b>SITE</b>	<b>ITEM</b>	<b>PAGE</b>
09/00592/C	Mr Zeeshan Aslam	Land South Of Lindley Wood Fenn Lanes Fenny Drayton	01	01
09/00311/FUL	Mr N Smart	King William IV 35 Station Road Market Bosworth	02	04
09/00483/FUL	Mr David Crane	Hill Farm Bagworth Road Barlestone	03	10
09/00506/FUL	Mr Byron Pountney	Land Rear Of 333 And 335 Rugby Road Burbage	04	14



**REPORT P17**

**PLANNING COMMITTEE**

**1 September 2009**

**RECOMMENDATIONS OF DIRECTOR OF COMMUNITY AND PLANNING  
SERVICES**

**ON APPLICATIONS FOR DETERMINATION BY**

**THE PLANNING COMMITTEE**

**BACKGROUND PAPERS**

**Background papers used in the preparation of these reports are filed in the relevant application files, unless otherwise stated**

**Item:** 01  
**Reference:** 09/00592/C  
**Applicant:** Mr Zeeshan Aslam  
**Location:** Land South Of Lindley Wood Fenn Lanes Fenny Drayton  
Leicestershire  
**Proposal:** CREATION OF COMPOSTING SITE (COUNTY COUNCIL NUMBER  
2009/C103/04).

**Introduction:-**

This application is a County Matter whereby Leicestershire County Council is the determining planning authority. The Borough Council is a consultee and the County Council requests the observations of the Borough Council on the application.

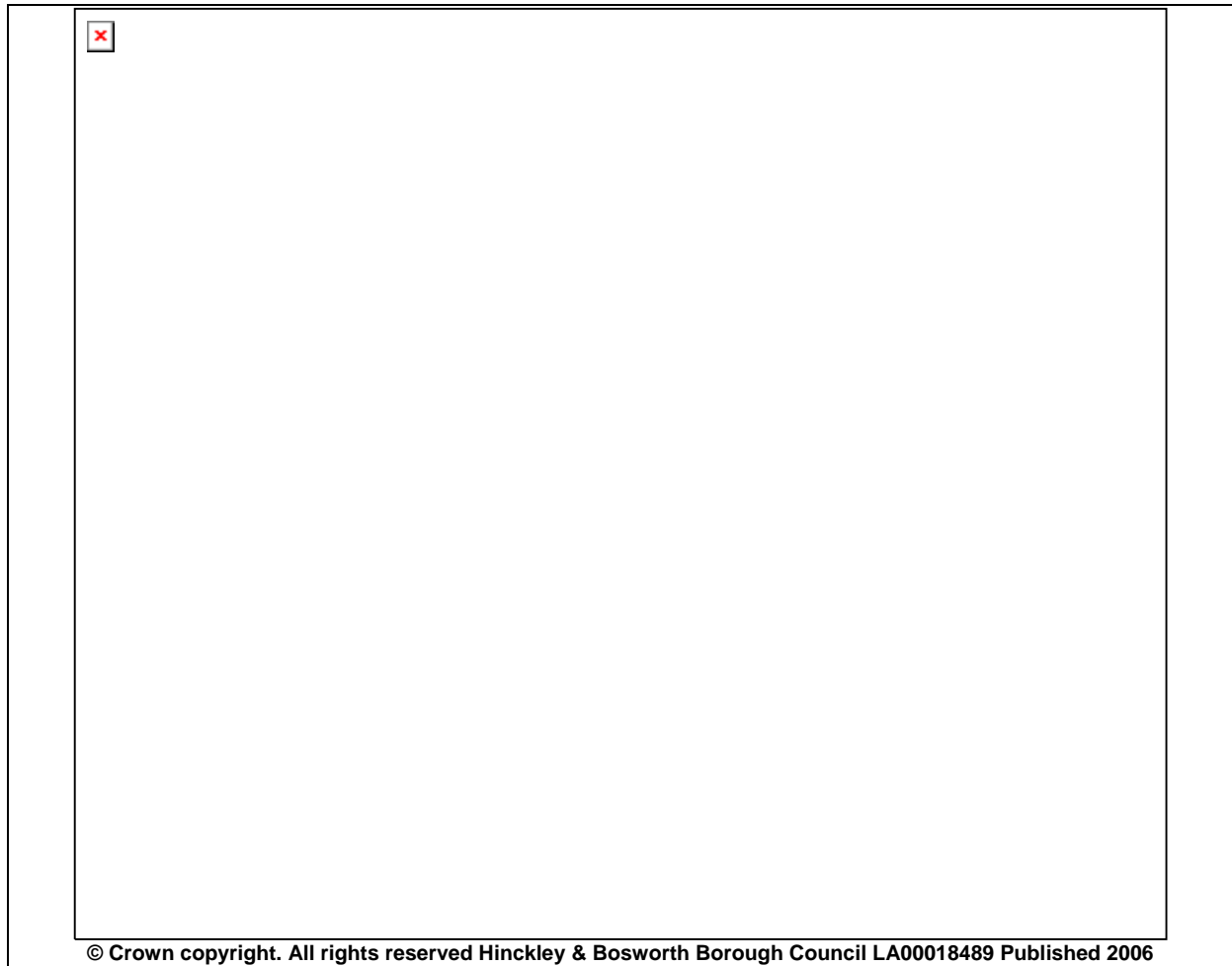
The application proposes the creation of an outdoor windrow composting facility on a brownfield site to the west of the Motor Industry Research Association (MIRA) proving ground accessed of Fenn Lane, Fenny Drayton. The site was previously used as an electrical supply facility for RAF Nuneaton (now MIRA) and comprises broken concrete hard standings, a derelict building and a series of perimeter bunds.

A windrow composting site is a facility for the natural composting of organic waste material. The application specifies that the typical waste to be accepted for treatment at the proposed composting facility includes all wood waste, MDF, chipboard and off-cuts, green waste from civic amenity sites, waste pallets and packaging, clay slurries, horticultural waste, and other mineral waste.

The application is accompanied by a Composting Statement, Ecological Appraisal, Flood Risk Assessment, Noise Survey and a Management Plan.

**History:-**

08/00899/C Creation of Composting Site (County Matter) Refused



**Consultations:-**

All consultations on this application are carried out by the County Council.

**Policy:-**

Central Government Guidance

PPS1 Delivering Sustainable Development, sets the Government's target for sustainable development and sees the planning system being at the forefront in terms of its position to guide and deliver the right development in the right location in a sustainable manner. The reuse of previously developed (brownfield) land for new development is seen as a priority over the unnecessary use of undeveloped greenfield land.

PPS7 Sustainable Development in Rural Areas, sets out the Government's position on development in rural areas. This guidance recognises the pressures facing the rural economy and seeks to encourage sustainable rural diversification without harming the character of the countryside.

PPS10 Planning for Sustainable Waste Management, sets out the Government's policy objectives on waste, with the overarching intention to protect human health and the environment by producing less waste and using it as a resource wherever possible.

### Development Plan Policy

Policy BE1 considers the design and siting of the development, in terms of the effect on the character of the area, amenities of neighbours and highway safety.

Policy NE5 seeks to protect the countryside for its own sake and allows development of this type where it is important to the local economy cannot be provided within or adjacent to an existing settlement and only where the policies specific criteria are met fully.

Policy T5 requires all new development to achieve the relevant highway standards and vehicle requirements contained with the County Councils design guidance Highways, Transport and Development.

### **Appraisal:-**

The main considerations with regard to this application are the principle of the development, the impact on highway safety, ecology, pollution and the impact on nearby residential properties.

### The Principle of Development

Whilst countryside policy seeks to ensure only appropriate use for agriculture or recreation are provided within the countryside, it must be considered that this site is previously developed (brownfield site) and consideration must be given to the appropriate reuse of this site over utilising other areas of undeveloped countryside. Furthermore, a use such as this is not likely to be effective or acceptable in terms of amenity and highway safety in more built-up urban areas.

On balance and given the sustainable nature of the use for recycling organic material, the site is considered a suitable option in terms of the principle. The development of the site would satisfy the overarching national guidance for the redevelopment of previously developed land and the nature of the use is such that it lends itself to a rural location over an urban one.

### Highway Safety

The County Council as the determining planning authority will formally consult the Highway Authority on this proposal; however at the time of writing this report the Borough Council is not aware of the Highway Authority's response.

The site is accessed via a partially unmade road leading to Fenn Lane and then to the A444 on the outskirts of Fenny Drayton, connecting to the principal highway network at the A5. Whilst this access to the highway network is generally good in this location, the increase in the number of vehicles using the network is likely to cause some concern to the safe operation of the highway system. The true understanding of the increased vehicle movement will be evaluated by the Highway Authority. The unmade nature of sections of the access route would benefit from upgrading to provide a suitable surface for the size and weight of vehicles accessing the site.

### Ecology

The accompanying ecological appraisal does not identify the presence of any protected species within the curtilage of the site and therefore there is no ecological interest at the site.

## Pollution

The Head of Community Services (Pollution) has provided a comprehensive response to the County Council, however further details have been requested before a final opinion on the pollution matters can be provided. Further comments will be reported as a late item.

## Impact on Residential Properties

Rowden Cottage is the nearest residential property to the application site and is approximately 200 metres from the site. The acceptable separation distance between such a use and a residential property is not defined and is likely to be dependent on the prevailing wind direction and the exact working arrangements at the site. Any consideration in relation to odour and air borne pollution from the site is being assessed by the Head of Community Services (Pollution) and will be reported as a late item.

## Conclusion

Notwithstanding the highway safety and pollution issues for which the formal observations of the relevant consultees are not known. The site, being previously developed land satisfies the general principles of Government guidance for the sustainable use of land. By way of the site being previously developed and the nature of the proposed use, the proposal is considered to satisfy the requirements of PPS10 and Policy NE5 of the local plan.

**RECOMMENDATION :- That the Leicestershire County Council be advised that Hinckley & Bosworth Borough Council has the following comments to make:-**

### **Summary of Reasons for Recommendation and Relevant Development Plan Policies :**

- 1 There is no objection to the principle of the proposal, subject to no adverse comments being received by the Highway Authority and Head of Community Services (Pollution).

**Contact Officer:-** James Hicks Ext 5762

**Item:** 02

**Reference:** 09/00311/FUL

**Applicant:** Mr N Smart

**Location:** King William IV 35 Station Road Market Bosworth Nuneaton  
Leicestershire

**Proposal:** CONVERSION OF PUBLIC HOUSE INTO FIVE APARTMENTS AND  
ASSOCIATED CAR PARKING

### **Introduction:-**

This application proposes the conversion of the former public house to 2 no. 2 bedroom flats and 3 no. 3 bedroom flats with associated parking and amenity space. The application is a resubmission following an earlier application allowed on appeal which was never implemented.

The site occupies a prominent position at the junction of Southfield Way, Warwick Lane and Station Road within the Market Bosworth Conservation Area adjacent to an existing food takeaway shop. The existing building occupies a slightly elevated position above the pavement level and is of an attractive tile hung gabled design. The building is of red brick, with brown clay tiles to the roof. This site is adjacent to a Grade II listed building, no.11 Warwick Lane, and on the opposite street corner is a dentist. To the north is the Dixie Grammar School.

The proposal seeks to retain the existing building entirely and proposes a sympathetically designed 2 ½ storey extension to the northeast elevation.

The application is accompanied by a design and access statement which details the design context of the existing building and site and explains that the proposed conversion and extension reflects the existing context and preserves the character of the conservation area. A protected species survey is also provided which concludes that there are no protected species within the building or the site.

**History:-**

05/01123/FUL	Conversion to Seven Apartments and Car Parking	Refused Appeal Allowed	14.03.2006 28.04.2006
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## **Consultations:-**

No objection has been received from:-

Director of Community Services (Ecology)  
Head of Community Services (Land Drainage)  
The Environment Agency.

No objection subject to conditions received from the Director of Highways, Transportation and Waste Management (Highways).

At the time of writing the report comments have not been received from:-

Parish Council  
Head of Community Services (Pollution)  
Head of Corporate and Scrutiny Services (Green Spaces)  
Press Notice  
Site Notice  
Neighbours.

## **Policy:-**

Planning Policy Statement 1: Delivering Sustainable Development (PPS1) refers to the delivery of sustainable development through the planning system. It advises that planning policies should protect and enhance the environment, promote high quality design and reinforce local distinctiveness.

Planning Policy Statement 3: Housing (PPS3) encourages the use of previously developed (brown field land) for residential development.

### Local Plan Policy

Policy BE1 considers the design and siting of the development, in terms of the effect on the character of the area, amenities of neighbours and highway safety.

Policy T5 seeks to ensure that all developments accord with Leicestershire County Council's current highway guidance, to ensure a satisfactory arrangement is achieved in terms of highway safety.

Policy NE12 seeks to ensure that all new development takes account of its surrounding landscape and makes provision for further landscaping where appropriate.

Policy NE14 seeks to ensure that all new development takes account of foul sewage and surface water.

Policy REC3 seeks to ensure that all new developments make satisfactory provision for outdoor play space for children, either through on or off site provision or a commuted sum toward the development and maintenance of existing facilities.

The Council's Supplementary Planning Document on Play and Open Space provides further guidance on open space provisions for development.

The Council's Supplementary Planning Guidance on New Residential Development provides a series of design standards to ensure that a high quality residential development is achieved.

## **Appraisal:-**

The main considerations with regard to this application are the loss of the public house and the principle of development, the impact on the conservation area and the adjacent listed building, layout and impact on neighbours and the parking and impact on the highway.

### The Loss of the Public House and the Principle of Development

The previous appeal at this site established the principle of the loss of the public house. Whilst the Council sought to retain the public house as a valued local facility, the Inspector considered that there was no clear evidence that it provided a vital role in sustaining the community and allowed the appeal on this basis. As the proposal remains similar to the original application, in so far as being for the conversion of the building for dwellings, the Inspector's decision is a material consideration in the determination of this application. As adopted planning policy remains unaltered since the time of the appeal and that no further evidence is available, the issue concerning the loss of the public house has been addressed.

The density of the proposal equates to 60 dwellings per hectare which is in line with the general guidance set out in PPS3 and is therefore considered acceptable.

### The Impact on the Conversion Area and the Adjacent Listed Building

The conversion of the building and side extension remain unaltered from the earlier scheme, which was subject to discussion in the previous appeal. The Inspector considered that the extension was in keeping with the existing building and would preserve the character of the conservation area. The Inspector confirmed that the extension would be subordinate to the main building and its character would not be adversely affected. Due to its position on the site, the extension does not have any impact on the setting of the adjacent listed building.

The conversion of the public house, by way of the building being retained, does not create any issue in respect of the adjacent listed building.

### Layout and Impact on Neighbours

Whilst the number of units proposed as part of the conversion has been reduced from 7 to 5, the overall design and layout remains principally unaltered from the earlier approved scheme. There are no primary windows to habitable rooms within the rear elevation of the building or proposed extension and therefore the proposal is not considered to result in any detriment to the amenities of the occupiers of adjacent properties.

### Parking and Impact on the Highway

The parking and access arrangements remain unaltered from the previous scheme. The proposed arrangements are for a single vehicular access to Southfield Way and 10 parking spaces in the area of the existing public house car park, adjacent to no.11 Warwick Lane. The sites existing tarmac frontage to Southfield Way and Station Road is to be removed and landscaped to create a dense soft landscaping area to enhance the character of the Conservation Area. It is considered that this landscaping area will bring a significant benefit to the appearance of this prominent site.

The Director of Highways, Transportation and Waste Management (Highways) has suggested a series of planning conditions to suitably control the highway aspects of the development. The same conditions were requested on the previous application but were not considered appropriate by the Inspector at appeal and therefore the earlier permission did



not include extensive highway conditions. Accordingly, it is unreasonable to impose them on this revised scheme. Only the Inspector's highway conditions are proposed.

### Other Matters

In line with Policy REC3 of the adopted Local Plan the site is located within 400 metres of local open spaces at The Parish Field and Weston Drive, and developer contributions are sought in respect of the ongoing maintenance of these facilities, inline with the guidance of the Supplementary Planning Document on Play and Open Space and the requirements of policy REC3. As the scheme result in a net gain of 4 dwellings (one existing residential flat above the public house) a total figure of £5,003.00 is required.

The proposal falls below the thresholds for the provision of affordable housing in Market Bosworth and whilst the earlier scheme was for additional units which would exceed the current threshold, the scheme being considered now calculates to 80 dwellings per hectare and retains the character of the existing building and is therefore considered acceptable. Accordingly, it is not appropriate to request an increase in density to secure affordable housing.

The submitted protected species survey confirms that there are no protected species within the building and therefore there is no ecological interest that requires attention or mitigation.

### Conclusion

The proposal, whilst being for the conversion to a lesser number of flats than the previously approved scheme allowed at appeal, proposes a sympathetic conversion of this important building within the Conservation Area. The scheme is considered acceptable in terms of density, design and does not result in any impact upon the amenities experienced by others.

### **RECOMMENDATION :- Permit subject to the following conditions :-**

#### **Summary of Reasons for Recommendation and Relevant Development Plan Policies :**

**Having regard to the pattern of existing development in the area, representations received and relevant provisions of the development plan, as summarised below, it is considered that subject to compliance with the conditions attached to this permission, the proposed development would be in accordance with the development plan and would not be to the detriment of highway safety and residential amenity or the character and appearance of the Conservation Area or the setting of the adjacent Listed building.**

Hinckley & Bosworth Borough Council Local Plan (2001) :- BE1, T5, NE12, NE14, REC3

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2 The materials to be used on the external elevations of the proposed extension and alteration shall match the corresponding materials of the existing building unless previously agreed in writing with the Local Planning Authority.
- 3 Before the development hereby permitted is first occupied, drainage will be provided within the site such that surface water does not drain to public highway and thereafter shall be so maintained.

- 4 No development shall take place until full details of both soft and hard landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. The details shall include proposed finished levels and contours, means of enclosure, hard surfacing materials, planting plans, written specifications, schedules of plants noting species, plant sizes and proposed numbers/densities, where appropriate and an implementation programme.
- 5 The approved hard and soft landscaping scheme shall be carried out in accordance with the approved details. The soft landscaping scheme shall be maintained for a period of five years from the date of planting. During this period any trees or shrubs which die or are damaged, removed, or seriously diseased shall be replaced by trees or shrubs of a similar size and species to those originally planted at which time shall be specified in writing by the Local Planning Authority.
- 6 The existing vehicular access serving the site shall be closed permanently within one week of the new access being brought into use and the pavement and kerb be reinstated to the satisfaction of the Highway Authority.

**Reasons:-**

- 1 To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 To ensure that the development has a satisfactory external appearance to accord with policy BE1 of the adopted Hinckley & Bosworth Local Plan.
- 3 To ensure satisfactory provisions are made for the drainage of the site to accord with Policy BE1 of the adopted Hinckley and Bosworth Local Plan.
- 4 & 5 To enhance the appearance of the development to accord with policy BE1 of the adopted Hinckley & Bosworth Local Plan.
- 6 In the interests of highway safety and to accord with the requirement of Policy T5 of the Adopted Hinckley and Bosworth Local Plan.

**Notes to Applicant:-**

- 1 Bats, nesting birds, great crested newts and certain other species are protected by law. If any such species are discovered before or during the works the works must be suspended and the local office of Natural England contacted for advice.
- 2 This permission does not grant approval under the Building Act 1984 and the Building Regulations 2000 (as amended) for which a separate application may be required. You are advised to contact the Building Control Section.
- 3 As from 6th April 2008 this Authority are charging for the discharge of conditions in accordance with revised fee regulations which came into force on that date. Application forms to discharge conditions and further information can be found on the planning portal web site [www.planningportal.gov.uk](http://www.planningportal.gov.uk).
4. All works within the limits of the Highway with regard to the access shall be carried out to the satisfaction of the Southern Area Manager (0116 3052202).
- 5 List of plans used in the determination of this application:- 5456.01, 02, 03 and 04.

**Contact Officer:-** James Hicks Ext 5762

**Item:** 03

**Reference:** 09/00483/FUL

**Applicant:** Mr David Crane

**Location:** Hill Farm Bagworth Road Barlestone Nuneaton Leicestershire

**Proposal:** ERECTION OF AGRICULTURAL BUILDING TO HOUSE DAIRY CATTLE

**Introduction:-**

This application proposes the erection of an agricultural building of 36.6 metres long by 13.7 metres wide with a pitched roof to a ridge height of 5.1 metres. The building is proposed to be sited to the northeast of the existing farm buildings to allow for access to the countryside and the existing farm yard area.

Hill Farm is a 200 hectare dairy farm and the building proposed is to provide additional 502 sq metres of covered space for dairy cattle. The farm and the proposal are located in the countryside away from other dwellings.

There is a public footpath north of the farm that runs in an east-west direction, however the route of this footpath is unaffected by the proposal.

**History:-**

06/00486/GDO	Erection of Agricultural Barn	Permitted Development (GDO)	31.05.2006
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## **Consultations:-**

No objection has been received from:-

Director of Highways, Transportation and Waste Management (Highways)  
Barlestone Parish Council  
Head of Community Services (Land Drainage)  
Head of Community Services (Pollution).

At the time of writing the report no response has been received from The Ramblers Association.

A site notice was posted.

## **Policy:-**

### Central Government Guidance

Planning Policy Statement 7: Sustainable Development in Rural Areas sets out the Government's planning policies for rural areas and seeks to raise the quality of life and the environment in such areas and promote more sustainable patterns of development. Paragraph 1 requires decisions on development proposals to provide effective protection and enhancement of the environment whilst maintaining economic growth and employment. All development in rural areas should be well designed, in keeping and scale with its location and sensitive to the character of the countryside. Paragraph 5 requires planning authorities to support a wide range of economic activity in rural areas to facilitate healthy and diverse economic activity. Paragraph 27 supports proposals that enable farmers to be competitive, sustainable and environmentally friendly; adapt to new and changing markets and broaden their operations to 'add value' to their primary produce.

### Local Plan Policy

The site is outside the settlement boundary and within the countryside as defined by the Hinckley and Bosworth Local Plan.

Policy BE1 seeks to ensure a high standard of design in order to secure attractive development and to safeguard and enhance the existing environment. Development should complement or enhance the character of the surrounding area and incorporate landscaping to a high standard.

Policy NE5 states that the countryside will be protected for its own sake. However, planning permission will be granted for built and other forms of development provided the proposal is important to the local economy and cannot be provided within or adjacent to an existing settlement. The development would only be acceptable where it does not have an adverse impact on the appearance or character of the landscape; is of a scale and character in keeping with existing buildings and general surroundings; is effectively screened and would not generate traffic likely to exceed the capacity of the highway network or impair road safety.

Policy NE12 states proposals for development should take account of existing landscape features and make provision for further landscaping where appropriate. When existing landscaping features can not be retained the scheme should replace or reinstate the nature conservation value of features to be lost.

## Supplementary Planning Guidance

The Council's Supplementary Planning Guidance (SPG) on the 'Design of Farm Buildings' provides guidance on the design, siting and landscaping of new agricultural buildings to ensure development is of a sympathetic design which respects its surroundings.

### **Appraisal:-**

The main considerations with regard to this application are the principle of the development, the siting, scale and design of the proposed building, accessibility, its impact on the character of the landscape and impact on neighbours.

### Principle of Development

The proposed structure is required in connection with a working farm with the proposal being needed to accommodate dairy cattle. This will aid the future success of the farm and help ensure continued employment on site and would therefore contribute towards the local economy. The principle of an agricultural structure is therefore acceptable in this countryside location.

### Siting, Scale and Design

The proposed building will be located north east of the existing farmyard in close proximity to existing agricultural buildings forming a tight cluster of farm buildings. The location of the building and distance from adjacent agricultural buildings will provide adequate room for pedestrian and vehicle movement. Therefore the proposal has an acceptable layout for this site.

The proposed building is purpose designed for modern agricultural practice and therefore whilst being a large building it is appropriate to the scale of the agricultural holding and the intended agricultural use.

The building is of conventional portal frame design and is similar in appearance to those existing buildings on site and those at neighbouring farms. The building elevations are proposed to be concrete sections at floor level rising to timber "Yorkshire boarding" above. These materials are generally acceptable for farm buildings and satisfy the requirements of the adopted Supplementary Planning Guidance on New Agricultural Buildings.

### Accessibility

Vehicular access is currently provided to the main farm entrance from Bagworth Road and access to the proposed building will be via the same route. The existing concrete and hard standing farmyard areas provide adequate space for the parking, turning and manoeuvring of agricultural vehicles.

### Landscape

Hill Farm is located between the villages of Barlestone and Bagworth. The proposed building would be seen when viewed from the higher ground to the north and east and also from the public footpaths that run close to the farm, however by way of its position clustered with the existing farm buildings and being of a similar design and form, the building would not appear an incongruous or an alien feature within the rural landscape.

### Impact on neighbours

The nearest residential property is located 380 metres to the south-west and therefore, by virtue of the distance, the nature of the building's agricultural use and its position on the north east side of the farm complex, is not considered to result in any detriment to residential amenity.

### Conclusion

The proposed building is considered an acceptable form of development that does not result in any detriment to the character and appearance of the countryside, highway safety or residential amenity. The building is purposefully designed for agricultural and therefore is an acceptable form of development within the countryside.

RECOMMENDATION :- Permit subject to the following conditions :-

### **Summary of Reasons for Recommendation and Relevant Development Plan Policies :**

**Having regard to the pattern of existing development in the area, representations received and relevant provisions of the development plan, as summarised below, it is considered that subject to compliance with the conditions attached to this permission, the proposed development would be in accordance with the development plan and would not be to the detriment of highway safety, residential amenity or the character and appearance of the countryside.**

Hinckley & Bosworth Borough Council Local Plan (2001) :- BE1, NE5 and NE12

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2 The development shall proceed in accordance with the materials specified in the submitted planning application form unless otherwise agreed in writing by the local planning authority.

### **Reasons:-**

- 1 To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 To ensure that the development has a satisfactory external appearance to accord with policies BE1 and NE5 of the adopted Hinckley & Bosworth Local Plan.

### **Notes to Applicant:-**

- 1 Bats, nesting birds, great crested newts and certain other species are protected by law. If any such species are discovered before or during the works the works must be suspended and the local office of Natural England contacted for advice.
- 2 This permission does not grant approval under the Building Act 1984 and the Building Regulations 2000 (as amended) for which a separate application may be required. You are advised to contact the Building Control Section.

- 3 As from 6th April 2008 this Authority are charging for the discharge of conditions in accordance with revised fee regulations which came into force on that date. Application forms to discharge conditions and further information can be found on the planning portal web site [www.planningportal.gov.uk](http://www.planningportal.gov.uk).
4. All works within the limits of the Highway with regard to the access shall be carried out to the satisfaction of the Southern Area Manager (0116 3052202).
- 5 List of plans used in the determination of this application: site location plan 1:5000, block plan 1:2500 and elevation plan.
- 6 Animal waste and surface water contaminated by animal waste must not be discharged to ditches, watercourse or soakaways. Slurry, contaminated runoff including wash water and leachate from stock piled manure, must be collected in tanks or lagoons complying with the standards laid down in the 'Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991. Clean roof water should be discharged to soakaways (subject to ground strata), ditches or watercourses.

**Contact Officer:-** James Hicks Ext 5762

**Item:** 04

**Reference:** 09/00506/FUL

**Applicant:** Mr Byron Pountney

**Location:** Land Rear Of 333 And 335 Rugby Road Burbage Leicestershire

**Proposal:** ERECTION OF THREE DWELLING WITH ASSOCIATED GARAGES AND ACCESS.

**Introduction:-**

This application seeks full planning permission for the erection of three dwellings located on part of the rear gardens of 333 and 335 Rugby Road, Burbage. The proposed dwellings are individually designed, modern, two storey detached dwellings with flat roofs. Plot one is a four bedroom dwelling with an attached single storey double garage to the front, with a large expanse of glazing to the south east. Plot 2 has an 8.5 metre square footprint with an integral garage to the front elevation. It includes a mono pitch roof from the north west elevation to the centre of the property, with the ridge standing 8m above the ground floor level. Plot 3 is an 'L' shaped property and has classical proportions with a central two storey front projection. A detached garage is proposed to serve this plot. All properties are 6 metres in height with the exception of the 8 metre high mono pitch on plot 2.

The application site forms part of the rear gardens of 333 and 335 Rugby Road, both of which are dormer bungalows. Rugby Road is characterised by large properties set back behind large mature and semi mature trees. The plots have been designed individually resulting in a varied and interesting street scene, glimpsed through the vegetation. There are examples of development from every decade from the 1960's to the 1990's.

The site is surrounded by residential properties with the rear gardens of St James Close backing on to the site to the north, John's Close to the west and properties fronting Rugby

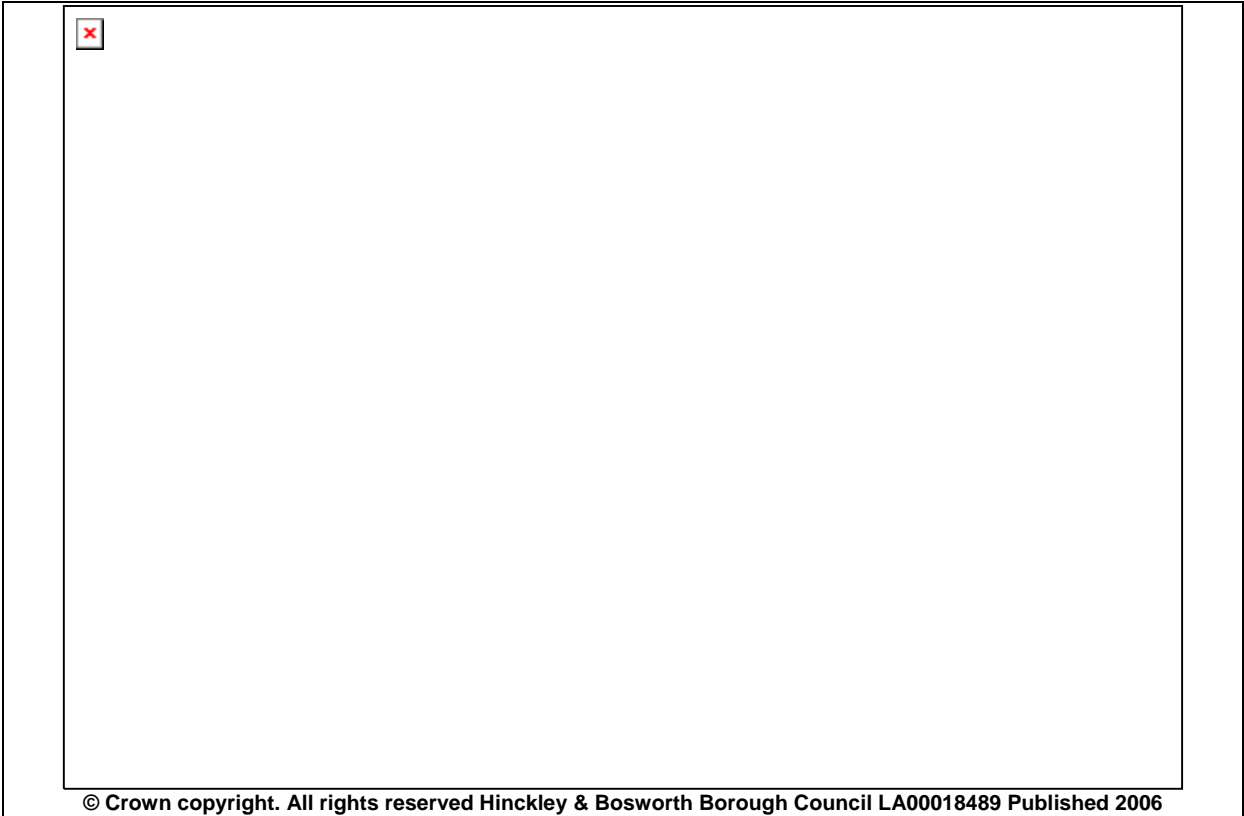
Road to the south. The site is flat apart from an artificial mound with a pond in the rear garden of 333. Mature vegetation surrounds the site with dense screening in the gardens of 3 and 4 St James's Close, 7 John's Close and 337 Rugby Road. There is less screening to the boundary of number 2 St James's Close. The existing access serving 335 Rugby Road, would be widened and extended to serve the proposed dwellings.

Amended plans and design and access statement have been received, removing the pitched roof from the detached garage and moving it away from the boundary with 3 St James's Close. The amendments also move the south elevation of the double garage to plot 1 away from the boundary with 337 Rugby Road. The amended plans also show additional landscape planting, and retention of part of the hedge to the northern boundary of the site and to north of 335 Rugby Road.

A design and access statement has been submitted in support of the application which assesses the site in terms of its physical and social context and the proximity to services, including the constraints of the site and the clients brief and how this has influenced the design. The statement analyses the Burbage Village Design Statement, identifies the policy within this adopted document and demonstrates how the development conforms. The statement also assesses the proposal against the CABI endorsed Building for Life criteria, where the development is assessed as scoring 17 out of 20.

**History:-**

333 Rugby Road 04/00046/FUL	Extensions and alterations to dwelling	Permitted	09.03.04
335 Rugby Road 03/01194/FUL	Erection of conservatory	Permitted	20.11.03





## **Consultations:-**

No objection has been received from Head of Community Services (Pollution).

No objection subject to conditions received from the Head of Community Services (Land Drainage).

Parish Council – Burbage Parish Council have objected to the proposal on the grounds that the development would result in loss of privacy, overbearing development, disturbance, increased vehicular activity, unsatisfactory design, out of keeping with the character of the area and result in tandem development.

The Borough Council's Arboricultural Consultant has recommended the removal of one of the Blue Cedars to enable the widening of the access as required and to ensure the long life of the other blue cedar. He also advises to consider the impact of the development on the health of the Ailanthus Altissima located within the garden of 337 Rugby Road.

The Borough Council's Waste Minimisation Officer has raised concern over the space at the boundary with Rugby Road to place recycling and refuse containers.

Burbage Matters have objected to the proposal as it does not comply with the Burbage Village Design Statement and results in a loss of visual amenity to neighbouring residents.

Site notice and Press notice were displayed and neighbours notified.

8 letters of objection have been received raising the following concerns:-

- a) Small estate is contrary to the village character.
- b) Development would result in overlooking and loss of privacy to neighbouring properties and gardens.
- c) Noise caused by proximity of gardens and access road to 333 and 335 Rugby Road
- d) Loss of sunlight
- e) How will rubbish be collected? The siting of so many bins and recycling containers on the highway would look unsightly.
- f) Reduce the value of the property.
- g) Design proposed is inappropriate and does not harmonise with the existing surrounding buildings.
- h) Proposal would result in an increase in traffic joining Rugby Road, to the detriment of highway safety.
- i) Proposal would result in loss of open space and vegetation.
- j) The submitted design and access statement fails to take into account the need for good layout and design.
- k) Uncharacteristic form of back land development.
- l) Important defining feature of the area is the arrangement of rear gardens which would be lost.
- m) Development fails to maintain sufficient space between the buildings comprising the character of the local area.

At the time of writing the report comments have not been received from the Director of Highways, Transportation and Waste Management (Highways).

## **Policy:-**

### Central Government Guidance

Planning Policy Statement 1 Delivering Sustainable Development (PPS1) sets out the Government's general objectives for the planning system and how it can contribute to the overall sustainable agenda. The statement discusses design and the role it can play in delivering other Government objectives, including good design and safe homes for everybody.

Planning Policy Statement 3 Housing (PPS3) sets out the Government's national planning framework to deliver its housing objectives. This discusses how and why there should be a supply of housing, where the Government wishes to see new residential developments and how housing can contribute to the sustainable agenda.

### Local Plan Policy

The site is located within the Burbage Settlement Boundary as defined by the adopted Hinckley and Bosworth Local Plan.

Policy IMP1 requires the appropriate financial contributions towards the provision of infrastructure and facilities.

Policy RES5 allows residential developments on unallocated land, providing it is within the settlement boundary and complies with other policies within the local plan, especially with regard to the design, siting and appearance.

Policy BE1 considers the design and siting of development to ensure that the proposed development safeguards or enhances the existing environment and complements the existing character, avoids the loss of open spaces, incorporates landscaping and would not adversely affect the occupiers of neighbouring properties.

Policy T5 requires that new development shall be designed in accordance with the current addition of the Leicestershire County Highways 'Highways, Transportation and Development' Document to ensure developments would not compromise highway safety.

Policy REC3 requires provision of play and open space to be provided in all residential developments either through the provision of on site facilities or an appropriate alternative.

### Supplementary Planning Guidance / Documents

Burbage Village Design Statement breaks Burbage down into different character areas and sets out the principles, design features and quality standards that should be provided within development proposals in Burbage.

The New Residential Development SPG gives further advice and guidance for new residential developments in terms of the siting and design of proposals.

The Play and Open Space Guide SPD demonstrates how relevant policies and standards will be applied to the provision of new and improved play and open space opportunities.

## **Appraisal:-**

The main considerations with regards to this application are the principle of development; the impact on the amenities of neighbouring properties, highway safety, character of the area, design and appearance, and landscaping.

### Principle of Development

The application site lies within the settlement boundary of Burbage as defined by the Hinckley and Bosworth Local Plan. Policy RES5 allows the principle of development within settlement boundaries, subject to the development complying with other policies within the documents. National Guidance seeks to utilise brownfield sites for new residential development and considers garden land to provide such opportunity. The principle of residential development on this site is therefore acceptable.

### Amenities of neighbouring properties

The New Residential Development SPG, states that windows serving habitable rooms should be 25 metres apart with 14 metres between main windows and a two storey blank elevation. This can be reduced to 12 metres in the case of a single storey extension. The application meets this guidance with the exception of the rear terrace to plot 1 which would be located 14 metres from a side window to 7 John's Close. This window serves a kitchen which has another window to the rear. It is therefore considered a secondary window serving a non-habitable room and as such is sited sufficiently far from the terrace for the proposal to not result in a significant amount of overlooking. The rear amenity space of No 7 John's Close is afforded protection from overlooking by their own garage that is located to the rear of the property. The terrace to Plot 1 has a 2 metre high wall to its southern boundary to prevent overlooking to the garden of 137 Rugby Road. The rear of plots 2 and 3 face towards the bottom half of No 7 Johns Close rear garden and therefore would not cause detriment to the amenity enjoyed by the existing occupiers. The proposal has no windows in the side elevation of Plot 3 therefore overlooking to the properties on St James Close will not occur. Plot 1 has windows in the side elevation however these face the bottom of No. 337 Rugby Road garden, an area that cannot be afforded significant protection, furthermore these windows are located opposite a large tree that is located in the garden of No 337 which provides further privacy protection. The height of the proposed dwellings has been kept low due to the modern design proposed, therefore having similar impact to that of bungalows.

It is considered that the proposal would not detrimentally affect the sunlight and daylight, or privacy currently enjoyed by the neighbouring residents.

Objections relating to noise and disturbance have been received. The Director of Community Safety has not raised objections to noise and disturbance generated by vehicles passing between the properties of 333 and 335 Rugby Road. Furthermore, the proposed arrangement is similar to other developments where significantly more properties have been constructed to the rear. It is considered that the proposal would not create significant disturbance to occupiers either side of the access to warrant a refusal of permission. Objections were received raising concern about the noise that would be created by the siting of smaller gardens closer to the rear boundary of the site. The use of the land has not changed and it is not anticipated that the use of smaller gardens would give rise to an unacceptable noise level that would significantly affect the amenities of neighbouring residents.

## Highway Safety

It is proposed to use the existing access to 335 Rugby Road for No 335 and the three proposed dwellings. The access currently used by 333 will be unaltered and continue to be used by that property.

Amended plans have been submitted that widen the access to 4.25 metres with the existing wall re-aligned to include pedestrian visibility splays. Rugby Road at the point of the access is a 30mph zone and has good visibility in both directions. It is considered that an additional three dwellings would not lead to a significant increase in traffic to cause a highway danger that would warrant a refusal of planning permission. The shared driveway is wide enough and the projected trips to and from the dwellings, are not considered significant enough to cause a conflict between pedestrian and vehicular traffic.

Comments from the Director of Highways, Transportation and Waste Management (Highways) are awaited at the time of writing this report but will be reported as a late item.

## Character

This section of Rugby Road is characterised by large dwellings set back from the edge of the highway and screened from the public space by mature vegetation. Glimpses of the existing dwellings are gained through breaks in the vegetation, either natural or as a result of driveways serving properties. Only this small section of Rugby Road is characterised by large plots, the majority of residential development with the area is characterised by detached properties on smaller plots. Properties along Rugby Road vary considerably in style and age, each plot being of individual design. John's Close and St James's Close form part of an estate of two storey and single storey dwellings, with properties set back behind driveways and smaller gardens.

It is not considered that the proposal would affect the character of the Rugby Road as there would be no significant change to the road frontage. Objections have been received that argue the subdivision of large gardens, and resultant backland development, is not in keeping with the character of this area of Burbage. Character is drawn from the visual appearance of the area, which in the case of the Rugby Road at this point, derives from the mature landscaping with development set back from the highway. The sub-division of the gardens of 333 and 335 Rugby Road to facilitate the development would not be visible from the public highway and therefore it is not possible to argue that the proposal would detrimentally affect the character of the area.

## Design and appearance

The three proposed dwellings are designed to reflect the twenty first century, and be of their time. This is reflected through the materials proposed, fenestration pattern and modern design. Within the design and access statement the applicant has drawn upon the varied streetscene along Rugby Road stating that dwellings along this road are of individual design and reflect the time in which they were constructed. The Burbage Village Design Statement supports innovative design with Policy GN1 stating that 'Proposals are not required to copy or pastiche existing design styles in an area. Innovative and contemporary designs that respect their context are encouraged'.

The dwellings each have an individual appearance but have general characteristics that tie the development together as a whole, creating a unified but unique appearance. Both Local and National Policy Guidance seeks high quality design that both complements and enhances the surrounding area. It is considered that the design of this scheme offers a modern development that adds to the characteristics of this part of Burbage it is therefore

considered that the proposals comply with Policies BE1 and RES5 of the Hinckley and Bosworth Local Plan, the New Residential Development SPG and Burbage Village Design Statement.

### Landscape

The proposed development would necessitate the removal of a number of small shrubs and ornamental trees located within the rear gardens of 333 and 335 Rugby Road. None of these are significant enough to warrant their retention. In the adjoining garden (No 337) there is an Ailanthus Altissima located close to the boundary and the internal courtyard area of plot 1 has been designed with regard given to protecting the health of the tree as much as possible. No objection to the proposal has been raised by the Borough Council's Arboricultural Consultant.

The existing access sits between 2 Blue Cedar trees, this proposal seeks to widen the access. The Borough Council's Arboriculture Consultant has recommended the removal of the weaker of the semi-mature Blue Cedar trees to ensure that the access can be accommodated without harming the health of the other tree. The gap created will be filled in time as the trees either side mature. It is not considered that the removal of this one tree would detrimentally harm the character of the streetscene to warrant a refusal of planning permission.

The application includes indicative planting to help replace some of the screening removed by the development, it also indicates the existing hedging and trees that would be retained. The site is well screened from surrounding properties, including planting within the curtilage of 2 and 3 St James Close and 7 John's Close to the boundary of the application site. Amended plans have relocated the detached double garage away from the boundary with No. 3 St James Close, to allow for planting within the application site to add to the screening of the site. As this boundary currently comprises hedging such replacement planting will assist to retain the character of the site for those properties within St James Close.

### Other issues

The site is within 400m of the open space off Featherstone Drive and therefore provision to improve and maintain this facility should be provided as part of this application; as such a contribution of £3752.40 towards play and open space is required.

Objections received on loss in value to surrounding properties, or the loss of a view are not material planning considerations.

Due to the design of the properties it is considered appropriate to remove the permitted development rights of the properties to ensure any future additions area characteristic of their modern design. A condition is recommended to this effect.

The Borough Council's Waste Minimisation Officer has commented that the driveway has insufficient width and turning space to enable a refuse truck to turn at the top. This would necessitate bins and recycling containers being taken to the Rugby Road frontage for collection, not uncommon in developments of this type. Whilst the containers on the edge of the highway would result in a cluttered streetscene, they are a temporary features brought about by modern living practices.

## Conclusion.

It is considered that the proposed development meets Government's objectives of providing additional housing on existing brownfield land. The proposal seeks to provide a modern development of its time which is a characteristic found within this part of Burbage. It has been demonstrated that the proposed development meets the Council's standards with regard to new residential developments and would not detrimentally affect the amenities of neighbouring properties. Whilst the design is considered to be of high quality and therefore acceptable the development would not be visible from Rugby Road, and therefore it cannot be argued that it would affect the character of the Rugby Road. The loss of one tree to the frontage will not only allow the widening of the access but will ensure the long term survival of trees either side and its removal would not have an adverse impact upon the character of the streetscene. The proposal is therefore considered to comply both National and Local Policy.

RECOMMENDATION :- Permit subject to the following conditions :-

### **Summary of Reasons for Recommendation and Relevant Development Plan Policies :**

**Having regard to the character and pattern of existing development in the area, representations received and relevant provisions of the development plan, as summarised below, it is considered that subject to compliance with the conditions attached to this permission, the proposed development by virtue of the scale, massing, location and siting would not have an adverse impact upon the character or appearance of the area nor the amenities or privacy of the neighbouring residents. The proposed access and parking provision on the site is considered to comply with the requirements of Leicestershire County Council 'Highways, Transportation and Development' Document and would therefore not result in a danger to users of the highway. The proposed residential development is therefore considered to be in accordance with the development plan.**

Hinckley & Bosworth Borough Council Local Plan (2001) :- IMP1, RES5, BE1, REC3, T5

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2 This permission relates to the application as revised by amended plan BP/BP/01A, BP/SP-SS/01A, BP/G1/01A, BP/SP/01, BP/PL1/01A received by the Local Planning Authority on 13.08.09.
- 3 Before any development commences, representative samples of the types and colours of materials to be used on the external elevations of the proposed dwellings shall be deposited with and approved in writing by the Local Planning Authority, and the scheme shall be implemented in accordance with those approved materials.
- 4 The development hereby permitted shall not commence before the provision and maintenance of off-site open space or facilities whether by off-site physical provision or financial contributions as required in accordance with policy REC3 of the adopted Hinckley and Bosworth Local Plan and the approved Play and Open Space Guide has been secured in such a manner as is approved in writing by the Local Planning Authority.

- 5 The car parking and any turning facilities shown within the curtilage of each dwelling shall be provided before the dwellings are first occupied and shall thereafter permanently remain available for such use unless otherwise agreed in writing by the Local Planning Authority.
- 6 Before the commencement of development the access to 335 Rugby Road shall be widened in accordance with the approved details shown on drawing number BP/BP/01A received 13.08.09, and shall be retained as such.
- 7 Before any development is commenced on the site, including site works of any description, The trees labelled T16, T20, T18 and T10 as shown within the approved tree schedule shall be securely fenced off by protective fencing on a scaffolding framework in accordance with B. S. 5837 erected in a circle round each tree at a radius from the bole of 3 metres or to coincide with the extremity of the canopy of the tree, whichever is the greater. Within the areas so fenced off, the existing ground level shall be neither raised or lowered, (except as may be approved by the Local Planning Authority as part of the development) and no materials, equipment, machinery or temporary buildings or surplus soil shall be placed or stored thereon. If any trenches for services are required in the fenced-off areas, they shall be excavated and back-filled by hand and any tree roots encountered with a diameter of 5cm or more shall be left unsevered.
- 8 No development shall take place until full details of both hard and soft landscape to the boundaries of the site have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include:
  - (i) means of enclosure
  - (ii) planting plans to any boundary treatments
  - (iv) written specifications
  - (v) schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate.
  - (vi) implementation programme.
- 9 The approved hard and soft landscaping scheme shall be carried out in accordance with the approved details. The soft landscaping scheme shall be maintained for a period of five years from the date of planting. During this period any trees or shrubs which die or are damaged, removed, or seriously diseased shall be replaced by trees or shrubs of a similar size and species to those originally planted at which time shall be specified in writing by the Local Planning Authority.
- 10 No development shall commence on site until such time as the existing and proposed ground levels of the site, and proposed finished floor levels have been submitted to and agreed in writing by the Local Planning Authority. The approved proposed ground levels and finished floor levels shall then be implemented in accordance with the approved details.
- 11 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended by (Amendment) (No.2) (England) Order 2008 (or any order revoking or re-enacting that Order with or without modification) development within Schedule 2, Part 1 Classes A, B, C and D shall not be carried out unless planning permission for such development has first been granted by the Local Planning Authority.

**Reasons:-**

- 1 To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 For the avoidance of doubt.
- 3 To ensure that the development has a satisfactory external appearance to accord with policy BE1 of the adopted Hinckley & Bosworth Local Plan.
- 4 To ensure the provision of adequate play and open space within the vicinity of the site in accordance with Policy REC3 of the adopted Hinckley and Bosworth Local Plan.
- 5 To ensure adequate off street parking and turning areas are provided to in the interest of highway safety and Policy T5 of the adopted Hinckley and Bosworth Local Plan.
- 6 In the interests of highway safety and in accordance with Policy T5 of the Hinckley and Bosworth Local Plan.
- 7 The trees are important features within the landscape and it is therefore important to protect their health during the development to preserve the character of the area in accordance with Policy BE1.
- 8 To ensure that the boundary treatments between the site and adjoining properties do not harm the amenities of those properties, in accordance with Policy BE1 of the adopted Hinckley and Bosworth Local Plan.
- 9 To ensure that the proposed landscaping is implemented to protect the amenities of the adjoining properties, in accordance with Policy BE1 of the adopted Hinckley and Bosworth Local Plan.
- 10 To safeguard amenities of neighbouring properties to accord with policy BE1 of the adopted Hinckley & Bosworth Local Plan.
- 11 In the interests of the design and appearance of the site and to protect the amenities of neighbouring residents in accordance with policy BE1 of the adopted Hinckley and Bosworth Local Plan.

**Notes to Applicant:-**

- 1 Bats, nesting birds, great crested newts and certain other species are protected by law. If any such species are discovered before or during the works the works must be suspended and the local office of Natural England contacted for advice.
- 2 This permission does not grant approval under the Building Act 1984 and the Building Regulations 2000 (as amended) for which a separate application may be required. You are advised to contact the Building Control Section.
- 3 As from 6th April 2008 this Authority are charging for the discharge of conditions in accordance with revised fee regulations which came into force on that date. Application forms to discharge conditions and further information can be found on the planning portal web site [www.planningportal.gov.uk](http://www.planningportal.gov.uk).
4. All works within the limits of the Highway with regard to the access shall be carried out to the satisfaction of the Southern Area Manager (0116 3052202).



- 5 Condition 5 of the application refers to play and open space contribution. In this instance a contribution of £1250.80 per dwelling, £3752.40 in total, is required towards the provision and maintenance of off-site play and open space.

**Contact Officer:-** Sarah Humphries Ext 5680

**PLANNING COMMITTEE – 1 SEPTEMBER 2009**

**REPORT OF THE DEPUTY CHIEF EXECUTIVE  
RE: THE BOROUGH OF HINCKLEY AND BOSWORTH (LAND AT 5 BACK LANE,  
MARKET BOSWORTH) TREE PRESERVATION ORDER 2009**

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**1. PURPOSE OF REPORT**

1.1 To consider the confirmation of the above Order.

**2. RECOMMENDATION**

2.1 That the Order be confirmed as made.

**3. BACKGROUND TO REPORT**

3.1 The Borough Council has the power to make Tree Preservation Orders under Sections 198 and 201 of the Town and Country Planning Act 1990. The above Order was made under delegated powers on 26<sup>th</sup> March 2009, copy attached to this report. The effect of the Order is to protect the tree set out in the attached schedule and plan, indicated as T1 which is a Hybrid Black Poplar (*Populus x euramericana*).

3.2 The Order came into effect when it was made. The reasons for making the Order are that the tree is in a healthy condition and is considered to enhance the visual amenity of the area.

3.3 The Council has received one letter of objection to the Order dated 4<sup>th</sup> June 2009 a copy of which is attached to this report.

3.4 The Legal Section attempted to address the objection via correspondence with the objector however the Legal Section has not had a response to its letter and so it is assumed that the objection stands as written.

3.5 The objection along with the Council's Arboriculturist's comments are below:-

*1) We see no need for a TPO as we have no intention of damaging the tree now or anytime in the future*

The purpose of the Tree Preservation Order is to acknowledge that the tree has public amenity value in the area and that the Order will protect it forever (unless the Order is varied or cancelled). The Order protects the tree from everyone not just the landowner and its neighbours. It also ensures that any works done to the tree must receive consent from the Council so that the works will be carried out in the safe and necessary manner.

*2) However if it is your intention to proceed with the order we would like prior to the order taking affect, that whoever is responsible to for the maintenance of the tree to carry out some work. We were advised by a local Arboriculturist that 20 feet should be taken from the top of the tree, and the large branch that overhangs our garden be removed also.*

The Order is already in effect and will be effective until 26th September 2009; if it is confirmed then it will be effective forever. This means that anyone wishing to carry out any works to the tree will have to make an application to the Council following the statutory procedure. The landowner is responsible for the maintenance of the tree; however, anyone can apply for consent from the Council to do works to the tree. The only time the consent of the Council is not required is if the tree is dead, dying or dangerous. The burden of proof to establish the tree is dead, dying or dangerous is on the person doing the works. The Council however would require 5 days notice prior to any works being done under this exemption.

The Council accepts that the tree has had and will require careful management and tree surgery, the Order is to help prevent unnecessary work or damage and approval will be granted by the Council for any acceptable works.

3.6 It is accordingly recommended that the Order be confirmed as it stands.

4. **FINANCIAL IMPLICATIONS (IB)**

4.1 None arising directly from this report.

5 **LEGAL IMPLICATIONS (AB)**

5.1 Contained within the body of the report

6. **CORPORATE PLAN IMPLICATIONS**

6.1 None

7. **CONSULTATION**

7.1 The relevant statutory consultees have been consulted. Those who responded are referred to in the body of the report.

8. **RISK IMPLICATIONS**

8.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

The following significant risks associated with this report / decisions were identified from this assessment:

<b>Management of significant (Net Red) Risks</b>		
<b>Risk Description</b>	<b>Mitigating actions</b>	<b>Owner</b>
If the Order is not confirmed the tree may potentially be cut down or damaged	Protect the tree by confirming the Tree Preservation Order	James Hicks

9. **RURAL IMPLICATIONS**

9.1 Tree Preservation Order affect rural and urban equally.

10. **CORPORATE IMPLICATIONS**

10.1 None

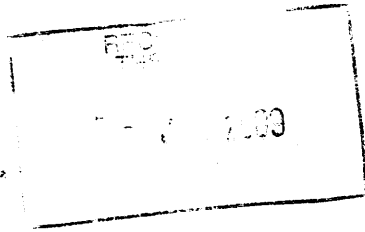
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Background papers: The Borough Council of Hinckley & Bosworth (Land at 5 Back Lane, Market Bosworth) Tree Preservation Order 2009.

Planning File Ref.  
Legal Department. File Ref. PTPO/119

Contact Officer: James Hicks, Planning Section, ext 5762

- 8 JUN 2009



~~XXXXXXXXXXXXXXXXXXXX~~  
Market Bosworth

Warwickshire  
CV13 0NE

June 4<sup>th</sup> 2009

Miss Emma Plumbley  
Legal Section  
Hinckley & Bosworth Borough / Council.

Re: The Borough Council of Hinckley & Bosworth (Land at 5 Back Lane, Market Bosworth) Tree Preservation Order 2009.

Dear Sir/Madam

We refer to your letter of the 30<sup>th</sup> April 2009 ref: EP/PTPO/119, and in particular the second paragraph and the right to make objections about the TPO proposal.

We are disappointed with the proposal listing at the time in question, and wish to record our objection to such an order being enforced.

We have lived with this particular tree for the last twenty years and have valued it as part of the natural landscape and for the protection it provides for birds and wildlife.

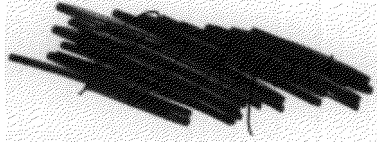
We see no need for a TPO as we have no intention of damaging the tree now or anytime in the future.

However if it is your intention to proceed with the order we would like prior to the order taking effect, that whoever is responsible for the maintenance of the tree to carry out some work. We were advised by a local arboriculturist that 20 feet should be taken from the top of the tree, and the large branch that overhangs our garden (where our little granddaughters play) be removed also.

This would keep the tree in good health and improve its propagation.

*We look forward to your positive reply in due course.*

*Yours faithfully*



R

alu

## **THE BOROUGH COUNCIL OF HINCKLEY & BOSWORTH (LAND AT 5 BACK LANE, MARKET BOSWORTH) TREE PRESERVATION ORDER 2009**

The Borough Council of Hinckley & Bosworth, in exercise of the powers conferred on them by sections 198 (201) and 203 of the Town and Country Planning Act 1990 hereby make the following Order:-

### **Citation**

1. This Order may be cited as **The Borough Council of Hinckley and Bosworth (land at 5 Back Lane, Market Bosworth) Tree Preservation Order 2009**.

### **Interpretation**

2. In this Order "the authority" means the Borough Council of Hinckley and Bosworth and unless the context otherwise requires, any reference in this Order to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990

### **Application of section 201**

3. The authority hereby direct that section 201 (provisional tree preservation orders) shall apply to this Order and, accordingly, this Order shall take effect provisionally on **26<sup>th</sup> March 2009**.

### **Prohibited acts in relation to trees**

4. Without prejudice to subsections (6) and (7) of section 198 (power to make tree preservation orders) [or subsection (3) of section 200 (orders affecting land where Forestry Commissioners interested)], and subject to article 5, no person shall:-

- (a) cut down, top, lop, uproot, wilfully damage or wilfully destroy; or
- (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of, any tree specified in Schedule 1 to this Order or comprised in a group of trees or in a woodland so specified, except with the consent of the authority and, where such consent is given subject to conditions, in accordance with those conditions.

### **Exemptions**

5. - (1) Nothing in article 4 shall prevent –
  - (a) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land of the statutory undertaker and the work is necessary –
    - (i) in the interests of the safe operation of the undertaking;
    - (ii) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or
    - (iii) to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;
  - (b) the cutting down, topping, lopping or uprooting of a tree cultivated for the production of fruit in the course of a business or trade where such work is in the interests of that business or trade;
  - (c) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit;
  - (d) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable a person to implement a planning permission (other than an outline planning permission or, without prejudice to paragraph (a) (iii), a permission granted by or under the Town and Country Planning (General Permitted Development) Order 1995) granted on an application under Part III of the Act, or deemed to have been granted (whether for the purposes of that Part or otherwise);
  - (e) the cutting down, topping, lopping or uprooting of a tree by or at the request of the Environment Agency to enable the Agency to carry out the development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;
  - (f) the cutting down, topping, lopping or uprooting of a tree by or at the request of a drainage body where that tree interferes, or is likely to interfere, with the exercise of any of the functions of that body in relation to the maintenance, improvement or construction of watercourses or of drainage works, and for this purpose "drainage body" and "drainage" have the same meanings as in the Land Drainage Act 1991; or
  - (g) without prejudice to section 198(6)(b), the felling or lopping of a tree or the cutting back of its roots by or at the request of, or in accordance with a notice served by, a licence holder under paragraph 9 of Schedule 4 to the Electricity Act 1989.

- (2) In Paragraph (1), "statutory undertaker" means any of the following:-

- a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power,
- a relevant airport operator (within the meaning of Part V of the Airports Act 1986),
- the holder of a licence under section 6 of the Electricity Act 1989,
- a public gas transporter,
- the holder of a licence under section 7 of the Telecommunications Act 1984 to whom the telecommunications code (within the meaning of that Act) is applied,
- a water or sewage undertaker,
- the Civil Aviation Authority or a body acting on behalf of that Authority
- the Post Office

**Application of provisions of the Town and Country Planning Act 1990**

6. -(1) The provisions of the Town and Country Planning Act 1990 relating to registers, applications, permissions and appeals mentioned in column (1) of Part I of Schedule 2 to this Order shall have effect, in relation to consents under this Order and applications for such consent, subject to the adaptations and modifications mentioned in column (2).
- (2) The provisions referred to in paragraph (1), as so adapted and modified, are set out in Part II of that Schedule.

**Directions as to replanting**

7. -(1) Where consent is granted under this Order for the felling in the course of forestry operations of any part of a woodland area, the authority may give to the owner of the land on which that part is situated ("the relevant land") a direction in writing specifying the manner in which and the time within which he shall replant the relevant land.
- (2) Where a direction is given under paragraph (1) and trees on the relevant land are felled (pursuant to the consent), the owner of that land shall replant it in accordance with the direction.
- (3) A direction under paragraph (1) may include requirements as to:-
- (a) species;
  - (b) number of trees per hectare;
  - (c) the preparation of the relevant land prior to the replanting; and
  - (d) the erection of fencing necessary for the protection of the newly planted trees.

**Compensation**

8. -(1) If, on a claim under this article, a person establishes that loss or damage has been caused or incurred in consequence of:-
- (a) the refusal of any consent required under this Order; or
  - (b) the grant of any such consent subject to conditions, he shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.
- (2) No claim, other than a claim made under paragraph (3), may be made under this article:-
- (a) if more than 12 months have elapsed since the date of the authority's decision or, where such a decision is the subject of an appeal to the Secretary of State, the date of the final determination of the appeal; or
  - (b) if the amount in respect of which the claim would otherwise have been made is less than £500.
- (3) Where the authority refuse consent under this Order for the felling in the course of forestry operations of any part of a woodland area, they shall not be required to pay compensation to any person other than the owner of the land; and such compensation shall be limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.
- (4) In any other case, no compensation shall be payable to a person:-
- (a) for loss of development value or other diminution in the value of the land;
  - (b) for loss or damage which, having regard to the application and the documents and particulars accompanying it, was not reasonably foreseeable when consent was refused or was granted subject to conditions;
  - (c) for loss or damage reasonably foreseeable by that person and attributable to his failure to take reasonable steps to avert the loss or damage or to mitigate its extent; or
  - (d) for costs incurred in appealing to the Secretary of State against the refusal of any consent required under this Order or the grant of any such consent subject to conditions.
- (5) Subsections (3) to (5) of section 11 (terms of compensation on refusal of licence) of the Forestry Act of 1967 shall apply to the assessment of compensation under paragraph (3) as it applies to the assessment of compensation where a felling licence is refused under section 10 (application for felling licence and decision of Commissioners thereon) of that Act as if for any reference to a felling licence there were substituted a reference to a consent required under this Order and for the reference to the Commissioners there were substituted a reference to the authority.



# Site Location Plan



Scale : 1:1000  
18760

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unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.

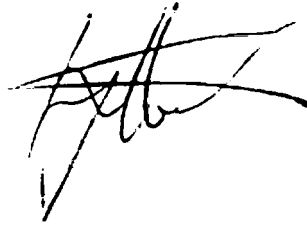
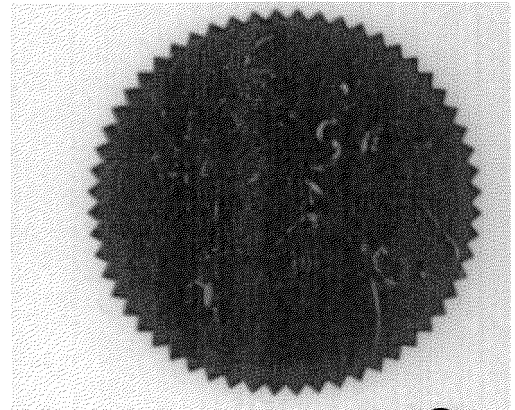
<b>Organisation</b>	Hinkley and Bosworth Borough Council
<b>Department</b>	Development Services
<b>Comments</b>	
<b>Date</b>	23 March 2009

-(6) In this article:-  
"development value" means an increase in value attributable to the prospect of development; and, in relation to any land, the development of it shall include the clearing of it; and  
"owner" has the meaning given to it by section 34 of the Forestry Act 1967.

**Dated this 26 day of March 2009**

**The Common Seal of the Borough Council of Hinckley and Bosworth  
was hereunto affixed in the presence of:-**

**Authorised Signatory**

A handwritten signature in black ink, consisting of several overlapping, stylized lines.

10760

**SCHEDULE 1**

**Article 4**

**SPECIFICATION OF TREES**

**Trees specified individually**  
(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
T.1.	1 x Hybrid Black Poplar ( <i>Populus x euramericana</i> )	5 Back Lane, Market Bosworth

**Trees specified by reference to an area**  
(within a dotted black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>

**Groups of trees**  
(within a broken line on the map)

<i>Reference on map</i>	<i>Description (including number of trees in the group)</i>	<i>Situation</i>

**Woodlands**  
(within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>

**SCHEDULE 2**  
**Article 7**

**PART I**

Provisions of the Town and Country Planning Act 1990 applied with adaptations or modifications

<i>Provision of the Town and Country Planning Act 1990</i>	<i>Adaptation or modification</i>
Section 69 (registers)	<p>(a) In subsection (1) – omit – “in such manner as may be prescribed by a development order,”, “such” in the second place where it appears, and “as may be so prescribed”; and (ii) substitute “matters relevant to tree preservation orders made by the authority” for “applications for planning permission”.</p> <p>(b) In subsection (2) – (i) after “contain” insert “, as regards each such order”; and (ii) for paragraphs (a) and (b) substitute – “(a) details of every application under the order and of the authority’s decision (if any) in relation to each such application, and (b) a statement as to the subject matter of every appeal under the order and of the date and nature of the Secretary of State’s determination of it.”.</p> <p>(c) Omit subsections (3) and (4) (as required by section 198(4)).</p>
Section 70 (determination of applications: general considerations)	<p>(a) In subsection (1) – (i) substitute – “Subject to subsections (1A) and (1B), where” for “Where”; “the authority” for “a local planning authority”; “consent under a tree preservation order” for “planning permission” where those words first appear; and “consent under the order” for “planning permission” in both of the other places where those words appear; (ii) after “think fit”, insert- “(including conditions limiting the duration of the consent or requiring the replacement of trees)”; and (iii) omit “subject to sections 91 and 91,”.</p> <p>(b) After subsection (1) insert – ” (1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area. (1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).”.</p> <p>(c) Omit subsections (2) and (3).</p>
Section 75 (effect of planning permission)	<p>(a) In subsection (1) substitute – (i) “Any” for the words “Without” to “any”; (ii) “consent under a tree preservation order” for “planning permission to develop land”; (iii) “the consent” for “the permission”; and (iv) “the land to which the order relates” for “the land”.</p> <p>(b) Omit subsections (2) and (3)</p>
Section 78 (right to appeal against planning decisions and failure to take such decisions)	<p>(a) In subsection (1) substitute – (i) “the authority” for “a local planning authority”; (ii) “consent under a tree preservation order” for “planning permission” in the first place where those words appear; (iii) “consent under such an order” for “planning permission” in the second place where those words appear;</p>

	<p>(iv) for paragraph (c) substitute –  “(c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or  (d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority.”  (b) Omit subsection (2)  (c) In subsection (3) for “served within such time and in such manner as may be prescribed by a development order.” Substitute –  “in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served-  (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority’s decision or direction or within such longer period as the Secretary of State may allow;  (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.”  (d) For subsection (4), substitute-  ” (4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3).”  (e) For subsection (5), substitute –  ” (5) for the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.”</p>
Section 79 (determination of appeals)	<p>(a) In subsections (1) and (2), substitute “the authority” for “the local planning authority”.  (b) Omit subsection (3).  (c) In subsection (4), substitute –  (i) “section 70(1), (1A) and (1B)” for “sections 70, 72(1) and (5), 73 and 73A and Part I of Schedule 5”;  (ii) “consent under a tree preservation order” for “planning permission”; and  (iii) “the authority.” for “the local planning authority and a development order may apply, with or without modifications, to such an appeal any requirements imposed by a development order by virtue of section 65 or 71.”  (d) Omit subsections (6) and (6A).  (e) In subsection (7), omit the words after “section 78”.</p>

**Provisions of the Town and Country Planning Act 1990, as adapted and modified by Part I**

The following provisions of the Town and Country Planning Act 1990, as adapted and modified by Part I of this Schedule, apply in relation to consents, and applications for consent, under this Order.

**Section 69**

- (1) Every local planning authority shall keep a register containing information with respect to matters relevant to tree preservation orders made by the authority.
- (2) The Register shall contain, as regards each such order
- (a) details of every application under the order and of the authority’s decision (if any) in relation to each such application, and
  - (b) a statement as to the subject matter of every appeal under the order and of the date and nature of the Secretary of State’s determination of it.

\*\*\*\*\*

- (5) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

### Section 70

- (1) Subject to subsections (1A) and (1B), where an application is made to the authority for consent under a tree preservation order:-
- (a) they may grant consent under the order, either unconditionally or subject to such conditions as they think fit (including conditions limiting the duration of the consent or requiring the replacement of trees); or
  - (b) they may refuse consent under the order
    - (1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area
    - (1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).

\*\*\*\*\*

### Section 75

Any grant of consent under a tree preservation order shall (except in so far as the consent otherwise provides) enure for the benefit of the land to which the order relates and of all persons for the time being interested in it.

\*\*\*\*\*

### Section 78

- (1) Where the authority:-
- (a) refuse an application for consent under a tree preservation order or grant it subject to conditions;
  - (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order or grant it subject to conditions;
  - (c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or
  - (d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority, the applicant may by notice appeal to the Secretary of State.

\*\*\*\*\*

(3) Any appeal under this section shall be made by notice in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served:-

- (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority's decision or direction or within such longer period as the Secretary of state may allow;
- (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.

(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3)

(5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.

### Section 79

- (1) On an appeal under section 78 the Secretary of State may:-
- (a) allow or dismiss the appeal, or
  - (b) reverse or vary any part of the decision of the authority (whether the appeal relates to that part of it or not),
- and may deal with the application as if it had been made to him in the first instance.
- (2) Before determining an appeal under section 78 of the Secretary of State shall, if either the appellant or the authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

\*\*\*\*\*

(4) Subject to subsection (2), the provisions of section 70(1), (1A) and (1B) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under section 78 as they apply in relation to an application for consent under a tree preservation order which falls to be determined by the authority.

(5) The decision of the Secretary of State on such an appeal shall be final.

\*\*\*\*\*

(7) Schedule 6 applies to appeals under section 78.

**PLANNING COMMITTEE – 1 SEPTEMBER 2009**

**REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES**  
**RE: APPEALS LODGED AND DETERMINED**

---

**1. PURPOSE OF REPORT**

To inform Members of appeals lodged and determined since the last report.

**2. RECOMMENDATION**

That the report be noted.

**3. BACKGROUND TO THE REPORT**

**3.1 Appeals Lodged**

3.1.1 None

**3.2 Appeals Determined**

3.2.1 Three appeals by Mr Roy Borthwick relating to the same site against the refusal of planning permission for:-

Appeal A:- Demolition of the existing conservatory and rebuild to provide a family dining/breakfast room with bar area, wc facilities and reception area together with change of use of part ground floor of dwelling to provide a tea room/dining area and kitchen (08/00627/FUL).

Appeal B:- Change of use of part of garage to provide 2 holiday chalets and manager's accommodation (08/00635/COU).

Appeal C:-Retention of buildings and use to provide staff room and shower facilities (08/00636/COU).

3.2.2 At Pinewood Lodge Holiday Village, Overton Road, Ibstock (Public Inquiry).

3.2.3 Appeal A

The Inspector considered the main issues to be impacts on the highway and road safety; the effect of the proposal on the character and appearance of the existing dwelling, the site and the open countryside; and the effect of the proposal on the living conditions of the occupiers of neighbouring dwellings by reason of additional noise.

3.2.4 Considerable time was spent exploring the operation of Appeal proposal A. There was concern that the facilities could be opened to the general public, which could result in the operation of a café/restaurant/public house. The appellant argued against this, stating that only the tea rooms would be open to non residents, in the form of walkers and cyclists. The applicant proposed



controlled access to the site. Despite this, concerns remained over vehicle movements on site; however, the applicant argued that physical constraints would limit numbers of car borne visitors. The inspector identified that the Council could exert little control over the proposed use, and concluded that given the open-ended nature of the permission being sought, there would be nothing to prevent the use developing into a café/restaurant/public house type use, which could result in significant numbers of car-borne customers.

3.2.5 In respect of highway safety, a scheme proposing improvements to the access furthest from the A447 junction was submitted by the applicant. Despite this, the inspector remained concerned over driver visibility and suggested that this would remain substandard. In addition, the inspector accepted that the proposal could result in increased vehicle movements at the junction. However it was ultimately concluded that there would be no unacceptable effects on highway safety.

3.2.6 In respect of character and appearance issues the inspector did not consider that the proposal would have an unacceptable impact on the character and appearance of the existing house or on the open countryside. However the proposed use was considered to result in increased activity levels and it was concluded that there would be an unacceptably harmful effect on the character and appearance of the site and on the open countryside.

3.2.7 With regard to noise the inspector was satisfied that, subject to conditions, the proposed structure would not have an unacceptably harmful effect on the living conditions of the occupiers of neighboring dwellings by reason of additional noise.

3.2.8 In respect of Appeal A the inspector concluded that the proposal would not have an unacceptably harmful effect on either road safety or on residential amenity, however the use was considered to have an unacceptably harmful effect on the character and appearance of the site and on the open countryside. Accordingly the appeal was dismissed.

### 3.2.9 Appeal B

The Inspector considered the main issues to be the effect on Highway Safety, on the character and appearance of the rural landscape; and on the living conditions of the occupiers of neighboring dwellings by reason of additional noise.

3.2.10 The proposal concerns the introduction of 2 additional chalets and a 2 bedroom flat. In respect of highway safety, it was concluded that, having regard to the existing access and the improvements proposed by the applicant, there would not be an unacceptably harmful effect on road safety.

3.2.11 In considering the proposals impact on the character and appearance of the area, Paragraph 17 of PPS7 Sustainable Development in Rural Areas was considered. This assesses the conversion of existing buildings and does not preclude the conversion of buildings to residential use in appropriate locations. In respect of the access to the garage, although this extends into a corner of the adjacent paddock area, it was not considered to have an unacceptably harmful effect on its surroundings.

3.2.12 This proposal was not considered to give rise to a level of noise which would be a nuisance, or have a harmful effect on the living conditions of the occupiers of neighboring dwellings.

3.2.13 In summary, in respect of Appeal B the inspector concluded that, providing the link between the occupation of the flat and the business use of the site is maintained, the proposal would not have any unacceptably harmful effect on road safety, on the character and appearance of the rural landscape or on the living conditions of occupiers of neighboring dwellings. Accordingly the appeal was allowed.

3.2.14 Appeal C

3.2.15 The Inspector considered the main issues to be the effect on the character and appearance of the rural landscape, and on residential amenity by way of additional noise.

3.2.16 The building subject of appeal C comprises a small structure attached to existing outbuildings. Due to its screening and small scale use, the proposal was not considered to have a harmful effect on the character and appearance of the rural landscape.

3.2.17 The low-key use of the proposal was not considered to give rise to unacceptable levels of noise.

3.2.18 In respect of Appeal C it was concluded that the proposal would not have a significantly harmful effect on the character and appearance of the rural landscape, or on the living conditions of the occupiers neighbouring dwellings. Accordingly the appeal was allowed.

3.2.19 Other Matters

The inspector acknowledged that certain tourism related development is acceptable in the countryside, and that this could provide additional employment, however he further noted that the acceptability of such schemes is dependant upon site specific circumstances. Accordingly in this case the inspector did not consider the benefits would outweigh the potential harm caused by certain parts of the scheme.

Conditions have been attached to Appeals B and C.

3.2.20 INSPECTORS DECISION

**SPLIT DECISION. APPEAL A IS DISMISSED AND APPEALS B AND C ARE ALLOWED**

3.2.21 COSTS DECISION

**PART AWARD OF COSTS MADE AGAINST HINCKLEY AND BOSWORTH BOROUGH COUNCIL**

- 3.2.22 An application was made for a partial award of costs in respect of expenses incurred in preparing evidence on noise matters and the noise consultant's attendance at the Inquiry. The Council raised the issue of noise on all 3 refusal notices. Paragraph B16 of Circular 03/2009 requires the local planning authority to produce evidence to show clearly why development cannot be permitted.
- 3.2.23 The inspector considered that the Council produced no clear evidence in respect of its concerns over noise, and thus failed to substantiate its reason for refusal. It was therefore considered that the Council acted unreasonably in this regard. Accordingly it was concluded that the appellant was put to unnecessary expense in having to produce the noise related evidence and in having to have the noise consultant appear at the Inquiry.
4. Appeal by Mr G Wragg against the refusal of planning permission for the conversion of Barns B and C into two residential dwellings (09/0029/FUL) at Common Farm, Barton Road, Carlton. (Public Inquiry)
- 4.1.1 The inspector considered the main issues to be whether the amount of rebuild was tantamount to the erection of a new building in the countryside and the effect this would have on the character and appearance of the area; and whether the proposal would set a precedent for similar developments.
- 4.1.2 Planning permission had previously been granted for the conversion of barns B and C into two residential dwellings. This permission has been implemented and is nearing completion, with exception to barn C. During construction, external walls of barn C were demolished and permission was sought on three occasions to rebuild the demolished sections.
- 4.1.3 It was agreed by both parties that the only point of dispute was over the amount of rebuilding required on barn C, to implement the scheme. The demolition comprised part of the brickwork sections of the High Barn (barn C).
- 4.1.4 The structural survey, which formed part of the planning application identified that the High Barn, due to its height and previous modifications would require significant structural works. However the survey concluded that if adequately secured, the long term stability of the structure would be restored.
- 4.1.5 In relation to the extent of rebuilding required, the inspector identified that this had not been established at the application stage, and no condition had been attached requiring the submission of further details in respect of this.
- 4.1.6 An updated structural report was submitted with the application subject of this appeal. This concluded that movement in the flank was severe and unsalvageable. Accordingly the wall in question was demolished.
- 4.1.7 In making his decision the inspector had regard to policy BE20, which considers the reuse and adaptation of rural buildings. He however stated that this policy fails to define what constitutes significant adaptation and rebuilding, and identified that it was against this policy that the initial application was judged; when it was evident that High Barn would require significant structural works if the conversion was to be implemented.

- 4.1.8 The Council's Supplementary Planning Guidance *Guide to Conversion of Rural Buildings* was also considered. This makes reference to the part rebuilding of brickwork or masonry, but does not identify the scale beyond which rebuilding would be unacceptable. However, this guidance does state that where demolition and rebuilding is required to ensure the structural integrity of the building, planning permission for conversion should not be forthcoming.
- 4.1.9 Further, High Barn was considered an important element in the complex of buildings and on the character of the site.
- 4.1.10 The inspector concluded that the development proposed would be consistent with PPS7, the RSS and Policies BE1 and NE5 of the Local Plan, and that the amount of rebuilding was not tantamount to the erection of a new building in the countryside, and was thus compliant with policy BE20 of the Local Plan. Accordingly the development was not considered to have a detrimental effect on the character and appearance of the countryside.
- 4.1.11 In respect of the issue of precedent, the inspector cited the case of *Poundstretcher Limited v. Secretary of State for the Environment* [1988] 3PLR 69. This established that the issue of precedent itself is not sufficient to warrant the refusal of planning permission
- 4.1.12 The inspector considered that the circumstances pertaining this appeal were unique, rendering duplication unlikely and was therefore satisfied that the development would not set a precedent.
- 4.1.13 The inspector concluded that the amount of rebuild would not be tantamount to the erection of a new building in the countryside and would not have a detrimental effect on the character or appearance of the area, nor would the development set a precedent for similar developments in the area.

#### 4.1.14 INSPECTOR'S DECISION

##### **APPEAL ALLOWED**

#### 4.1.15 COSTS DECISION

##### **PARTIAL AWARD OF COSTS MADE AGAINST HINCKLEY AND BOSWORTH BOROUGH COUNCIL**

- 4.1.16 An application for a full award of the costs was made in relation to paragraphs 7 and 8 of Annex 3 of Circular 8/93 on the grounds that the Council had acted unreasonably, and that its actions had resulted in unnecessary costs.
- 4.1.17 The inspector considered that whilst the Council demonstrated that it had considered the appeal proposals in the light of national, regional and local policy and material considerations in reaching its decision on the applications, it was demonstrated during the Inquiry that its assessment of the proposals against them had been flawed. In addition the officer's report to the Council's committee which determined the applications had incorrectly relayed the advice contained within its SPG as it had stated that where "the demolition and rebuilding of walls would be required to secure the structural integrity of

the building, planning permission will not be forthcoming ...” rather than as actually stated in the SPG “.. planning permission may not be forthcoming..”.

4.1.18 The inspector did consider that the Council had demonstrated the correct application and assessment of the proposals against Policy BE20 of the LP.

4.1.29 She identified that the Council made no reference to the second reason for refusal in its statement of case, and only a brief reference in its proof of evidence.

4.1.20 The inspector concluded that the Council did act unreasonably in terms of paragraph 7 of the Circular in citing national, regional and local policies, with the exception of Policy BE20, in the first reason for refusal, with which it later agreed, the appeal proposals were in accordance. The inspector further concluded that the Council acted unreasonably in failing to substantiate its second reason for refusal. As a result of the Council’s actions the inspector concluded that the appellant incurred unnecessary expense as a result and that a partial award of costs is justified.

## 5. **FINANCIAL IMPLICATIONS**

5.1.1 The costs awarded against the Council for the Pinewood Holiday Village and the Common Farm appeals are not known at this stage. Once the costs have been agreed they will be dealt with in accordance with Financial Procedure Rules. (AB)

## 6 **LEGAL IMPLICATIONS**

6.1.1 Legal implications are covered in the report (MR)

## 7. **CORPORATE PLAN IMPLICATIONS**

This document contributes to Strategic Aim 3 of the Corporate Plan.

- Safer and Healthier Borough.

## 8. **CONSULTATION**

None

## 9. **RISK IMPLICATIONS**

None

## 10. **RURAL IMPLICATIONS**

None

## 11. **CORPORATE IMPLICATIONS**

By submitting this report, the report author has taken the following into account:

- Community Safety implications                      None relating to this report

- |                                 |                              |
|---------------------------------|------------------------------|
| - Environmental implications    | None relating to this report |
| - ICT implications              | None relating to this report |
| - Asset Management implications | None relating to this report |
| - Human Resources implications  | None relating to this report |
| - Voluntary Sector              | None relating to this report |
- 

Background papers: Appeal Decisions

Contact Officer: Eleanor Shaw ext 5691

**PLANNING COMMITTEE - 1 SEPTEMBER 2009**

**REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES**

**RE: APPEALS PROGRESS**

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**1. PURPOSE OF REPORT**

- 1.1 To inform Members of the progress on appeals - details of which are attached.

**2. RECOMMENDATION**

- 2.1 The report be noted.

**3. FINANCIAL IMPLICATIONS**

- 3.1 None

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Background Papers:

Contact Officer: Tracy Darke, extension 5692

## PLANNING APPEAL PROGRESS REPORT

SITUATION AS AT: 21.08.09

### WR - WRITTEN REPRESENTATIONS

### IH - INFORMAL HEARING

### PI - PUBLIC INQUIRY

FILE REF	CASE OFFICER	APPLICATION NO	TYPE	APPELLANT	DEVELOPMENT	SITUATION	DATES
09/00015/PP	SH	08/01102/FUL	WR	Richard Timson	Land Rear of 60 Lychgate Lane Burbage	<i>Start Date</i> Statement of Case Comments	13.07.09 24.08.09 14.09.09
09/00014/PP	JH	09/00336/FUL	IH	Miss Joanna Squires	Land Adjacent to Lodge Farm Wood Road Nailstone	<i>Start Date</i> Comments Hearing Date	06.07.09 07.09.09 01.10.09
09/00012/PP Conjoined with 09/00011/PP	LF	09/00202/FUL	WR	Mr M Ketcher	White Gate Farm Mythe Lane Witherley	<i>Start Date</i> Final Comments	22.06.09 24.08.09
09/00011/PP	LF	08/00995/FUL	WR	Mr M Ketcher	White Gate Farm Mythe Lane Witherley	<i>Start Date</i> Final Comments	18.06.09 24.08.09
09/00013/ENF	JH	09/00159/UNBLD	PI	Mr Robert Hodgetts	Land to the north of Bagworth Road Nailstone	<i>Start Date</i> Proof of Evidence Waiting Inquiry Date	05.06.09
09/00010/COND	CH	08/00349/FUL	WR	JS Bloor	Land at Sword Drive/Stoke Road Hinckley	<i>Start Date</i> Awaiting Decision	05.06.09

**PLEASE NOTE:** ALL LOCAL INQUIRIES MUST BE ARRANGED WITH DOE THROUGH THIS OFFICE

09/00008/PP Conjoined with 09/00006/PP	LF	09/00029/FUL	PI	Graham Wragg	Common Farm Barton Road Carlton	<b>ALLOWED</b>	<b>12.08.09</b>
09/00006/PP	LF	08/00978/FUL	PI	Mr G Wragg	Common Farm Barton Road Carlton	<b>ALLOWED</b>	<b>12.08.09</b>
09/00002/PP 09/00003/PP 09/00004/PP	LF	08/00627/FUL 08/00635/COU 08/00636/COU	PI	Mr Roy Borthwick	Pinewood Lodge Holiday Village Overton Road Ibstock	<b>DISMISSED</b> <b>ALLOWED</b> <b>ALLOWED</b>	<b>13.08.09</b>



Rolling April - August 2009/10

Planning

No of Appeal Decisions	Allowed	Dismissed	Split	Withdrawn	Officer Decision			Councillor Decision		
					Allow	Spt	Dis	Allow	Spt	Dis
10	4	5	1		4	1	5			

Enforcement

No of Appeal Decisions	Allowed	Dismissed	Split	Withdrawn