



**LAND OFF LECONFIELD ROAD, NANPANTAN,
LOUGHBOROUGH**

LPA ref. P/20/2199/2

PINS ref: APP/X2410/W/22/3304644

Rebuttal by

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Prepared for Charnwood Borough Council

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1 REBUTTAL

1.1 Introduction

1.1.1 Further to the submission of the Appellant's Planning Proof of Evidence (CD.4.2.4), I provide my rebuttal below which focuses on the following matters:

- 1) The planning balance;
- 2) The application of the tilted balance; and,
- 3) Other Additional Matters and Corrections.

1.1.2 The below comments are made without prejudice to the Statement of Case (CD4.3.1) and Proof of Evidence (CD.4.3.2). My Proof of Evidence focuses on the two reasons for refusal, and I have sought not to introduce any new considerations here but provide a direct response to the Appellants Proof of Evidence (CD.4.2.1).

1.2 The Planning Balance

- 1.2.1 The Appellants suggest that the proximity of Burleigh Wood is not a sufficient reason to justify the dismissal of the Appeal, particularly given the proximity of the Loughborough Science and Enterprise Park (LSEP) to the west and the allocation of HA18 to the south of Burleigh Ancient Woodland.
- 1.2.2 I would agree with the statement that the proximity to the ancient woodland alone is not a sufficient reason for refusal. However, the campus for LSEP is away from the edge of the woodland edge with sports pitches in between. The allocated land of HA18 is predominantly arable farmland which has limited ecological value.
- 1.2.3 Despite the Appellant changing the submitted ecological evidence between the Statement of Case and Proof of evidence, the development of the appeal site would result in the loss of semi-natural priority habitat (i.e. acid grassland) and removal of semi-natural woodland along the western boundary of the site would lead to the deterioration of the adjacent Burleigh Ancient Woodland. In addition, further ecological constraints have not been considered as identified in Ms Walsh's Proof of Evidence (CD.4.3.4).
- 1.2.4 As identified in my own Proof of Evidence (CD.4.3.2), the tilted balance is not engaged as Footnote 7 applies which provides a clear reason for refusal. Paragraph 180(c) confirms that development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists.
- 1.2.5 As such, I see no scenario where the tilted balance applies as consideration needs to be given the complete loss of two semi-natural habitats (acid grassland and woodland) which form supporting adjacent habitats and their removal would lead to the deterioration of ancient woodland (an irreplaceable habitat). The Appellants are only compensating for the loss of the acid grassland, and no compensation would be provided for the indirect impacts on the ancient woodland. There are other indirect impacts identified which have not been addressed, including:
- Inadequacy of proposed ancient woodland buffer;
 - Underestimation of direct impacts, including
 - Recreational impacts;
 - Impact of increased pet ownership in the woodland;
 - Air Quality Impact;
 - Noise impacts; and,
 - Hydrological impacts.

1.2.6 Planning Policy Guidance¹ makes it clear that local planning authorities need to consider both the direct and indirect impacts on ancient woodland and any compensation measures should only be considered once the existence of “wholly exceptional circumstances has been ascertained, which is not the case here.

1.2.7 Whilst there is no route to apply the tilted balance and therefore, no requirement to carry out the balancing exercise, as with my Planning Proof of Evidence, I have applied weighting to the relevant policies set out by the Appellant in their Statement of Case (CD.4.2.1) and Planning Proof of Evidence (CD.4.2.4).

¹ PPG: Paragraph: 033 Reference ID: 8-033-20190721

1.3 The Tilted Balance

- 1.3.1 The Appellant makes a number of references to the weighting afforded to Local Plan policies within the Committee Report (CD.3.1). The emerging Local Plan has progressed in that the remaining scheduled examination hearing sessions have taken place in February 2023. The policies contained within the emerging Local Plan can be afforded moderate weight.
- 1.3.2 I have covered the benefits of the appeal scheme in my Proof of Evidence, and I will not repeated here. I have sought to outline below the harms arising from the proposal which outweigh any such benefits followed by a summary.

The Principle of the Proposed Development

- 1.3.3 The Appellant claims that the SoCG (CD.4.1.1) at Paragraph 7.6 agrees that the site is not “the subject of any specific landscape or other designations or constraints which would render the residential development of the Appeal Site unacceptable in principle.” This is incorrect.
- 1.3.4 The SoCG agrees that the principle of the development when assessed against adopted Cores Strategy Policy CS1 is acceptable; a policy which directs the majority of growth towards Loughborough and Shepshed. Likewise with saved Policy ST/2 which agrees the principle of development within the Limits to Development is acceptable, although planning applications would still be considered on their individual merits against the relevant policies of the Local Plan.
- 1.3.5 It is not agreed that there are no site-specific constraints that would preclude the development of the site. The SHELAA identified the site as a possible housing site which was then excluded at Pre-Submission Draft Stage of the emerging Local Plan due to ecological constraints (CD.5.2.9)
- 1.3.6 There is a suggestion that if the detailed ecology reports had been available to inform the draft emerging Local Plan, then the site would have been allocated for housing. However, it is reasonable to suggest that the submission of detailed Ecological Impact Assessments during the production of the emerging Local Plan would have afforded the Local Planning Authority an opportunity to thoroughly review the ecological constraints of the site, however, there is no guarantee that the site would have then been allocated for housing based on the submitted information.
- 1.3.7 The Appellant claims that the site is available immediately for residential development which cannot be the case. If Outline planning permission is granted, there are a number of Reserved Matters submissions required and the possible navigation of a Public Right of Way across the site should the current application be approved by Leicestershire County Council. The

commencement of development would be delayed by some time whilst such matters are addressed.

1.3.8 The Appellant suggests that the Appeal Proposals are considered to align with the emerging Spatial Strategy for the delivery of development within the Borough, as set out in Policy DS1 of the Draft Local Plan. Whilst the Appellant has given limited weight to the emerging Local Plan, I do not agree with this statement. The Appellant cherry picks five of the twelve criteria out in emerging Policy DS1 to weigh in favour of the development and quotes criteria which are not relevant to this appeal site (i.e. Green Wedge).

1.3.9 When assessed fully against emerging Policy DS1, the development proposal does not meet nine of the twelve criteria:

- contributes towards meeting our needs for housing, employment and town centre uses within the defined Limits to Development and allocations defined in this plan;
- minimises the need to travel, particularly by private car, and prioritises public transport, walking and cycling;
- protects the intrinsic character of the Countryside;
- maintains the functions of Green Wedges and Areas of Local Separation;
- safeguards and delivers a net gain in biodiversity;
- supports the regeneration and economic success of urban areas;
- makes efficient use of land including using brownfield or underused land and buildings;
- contributes to local priorities identified in neighbourhood plans; and
- is in accordance with the policies in this plan.

1.3.10 I do not consider that the residential development of a site in this location would allow future residents to minimise the need to travel. The site is on the very edge of Loughborough town with only two bus services available on Nanpantan Road and Leconfield Road. The No.3 bus runs once an hour between 08:35 and 17:38 Monday to Friday outside of school holidays. The No.129 bus runs infrequently between 08:12 and 16:45 Monday to Friday outside of school holidays. There is no reasonable expectation that these services would replace the majority of journeys that would otherwise be done conveniently by the private vehicle.

1.3.11 The Appellant has highlighted services and facilities, a number of which are educational institutions. For example, the nearest food retail store is 1.3km walking distance northeast of the site, a journey time of approximately 15 minutes. Given the location of the site, I do not accept that the development of the site would minimise the day-to-day use of a private vehicle.

1.3.12 The emerging Local Plan shows the site to be within Open Countryside. The Appellant has stayed silent on emerging Policy C1 which controls development in such areas. It is clear that the development of open market and affordable homes in these locations is not acceptable in principle.

1.3.13 I assess the site to conflict with this emerging Local Plan policy which is given **moderate** weight against the development proposal. The emerging Local Plan is expected to be adopted by September 2023. The change in position should be balanced against adopted Policy EV/1 (Limits to Development). The principle of the proposed development is, at this time, considered acceptable and should be afforded **significant weight**.

Biodiversity Impacts

1.3.14 In the event that the tilted balance is engaged, Core Strategy CS13 remains to be considered and emerging Policy EV6 also remains relevance and is given moderate weight. These policies seek to conserve and enhance the natural environment.

1.3.15 As noted above, the loss of semi-natural habitat has an indirect impact on the adjacent Burleigh Ancient Woodland. As demonstrated by Ms Walsh, the documents submitted by the Appellant have not appropriately assessed potential indirect impacts arising from the proposed scheme in relation to the adjacent ancient woodland, as highlighted above. F

1.3.16 The Appellant's assessments and supporting information are not in accordance with Paragraph 180(c) of the NPPF, PPG 2019 (CD.6.5), Policy CS 13, Standing Advice on Ancient Woodlands (CD.5.3.1) and Ancient Woodland Assessment Guide (Appendix 2) or Natural England Standing Advice on Ancient Woodland. This is afforded **significant negative weight** in the determination of the appeal.

Landscape Impacts

1.3.17 The appeal site has a distinct landform with a characteristic of natural transition from grassland into woodland. The site is therefore considered to have a strong landscape character associated with the ancient woodland. It is naturally the case that the development would result in the loss of an open greenfield site which results in harm to the landscape character of the area.

1.3.18 As discussed within my Proof of Evidence (CD.4.3.2), with reference to Policy CS11, and NPPF Paragraph 174(b), and emerging Policies EV1 and EV4, it is considered, for the reasons above, that the site would not enhance the natural or local environment. The degree of harm on the intrinsic character and beauty of the site is considered to be permanent and significant which attracts **significant negative weight** in my assessment.

Neutral Effects

1.3.19 Whilst policies of relevance are absent from the reasons for refusal (e.g. relating to heritage and open space) it does not alter the relevance of such policies and the proposal should still be considered against these requirements.

- 1.3.20 The Committee Report (CD.3.1) acknowledge that the development has the potential to result in some degree of harm to the setting of the designated heritage asset (Page A22). Whilst there may be the potential to develop the site whilst achieving an acceptable relationship with the listed building, this remains unknown until the Reserved Matters stage where a detailed layout will be considered.
- 1.3.21 There is a duty under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have regard to the preservation of listed buildings or its setting or any features of importance. As such, for the purposes of the tilted balance exercise only, and without prejudice to my Proof of Evidence (CD.4.3.2) any impact on the nearby heritage asset at this stage is given **neutral weight**.
- 1.3.22 There are currently no known technical constraints that would preclude the development of the site. Any matters such as open space provision, flood risk, access and highways remain neutral in the balance and are **not afforded weight** at this stage and will be considered at a stage where a detailed layout for the site is available.

1.4 Tilted Balance: Summary

1.4.1 In light of the above, and without prejudice to the local planning authority’s overall planning balance, the adverse ecological and landscape impacts arising from the proposed development would demonstrably outweigh the benefits when assessed against Paragraph 11(d)(ii) of the National Planning Policy Framework.

1.4.2 The below table provides a summary of the local planning authority’s position should the tilted balance be engaged:

Significant Benefits	Moderate Benefits	Neutral	Negative Harms	Significant Negative Harms
The delivery of housing within the Limits to Development	Delivery of 30 market and affordable housing on the edge of a main settlement with no 5YHLS	The site could be satisfactorily drained	Loss of Grade 3 Agricultural Land	Significant loss in biodiversity
	Economic benefits – constriction, local spend, council tax payments and new homes bonus	Vehicular access to the site	Conflict with emerging Policy C1	Insufficient biodiversity mitigation
		Impact on residential amenity	Conflict with emerging Policy DS1	Significant landscape harms
		Impact on nearby heritage assets	Conflict with emerging Policy EV1	
		Compliance with emerging Policy EV9		