STATUTORY PLANNING APPEAL PURSUANT TO SECTIONS 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990

AGAINST SANDWELL METROPOLITAN BOROUGH COUNCIL

APPEAL BY WAIN ESTATES (LAND) LIMITED

LAND NORTH OF WILDERNESS LANE, GREAT BARR

Inquiry opening 9 July 2024

APPEAL REFERENCE: APP/G4620/W/24/3341688

LPA APPEAL REFERENCE: DC/24/68822

APPELLANT'S CLOSING SUBMISSIONS

Abbreviations used below

NPPF	National Planning Policy Framework
PCPA	Planning and Compulsory Purchase Act 2004
PoE	Proof of Evidence
PPG	Planning Practice Guidance
SoCG	Statement of Common Ground
GB	Green Belt
VSC	Very Special Circumstances
AH	Affordable Housing
HDT	Housing Delivery Test
WA-S	Mr William Anderson-Stevens

Introduction

1. Sir, these opening submissions address the main issues, in accordance with your post case management conference note.

(a) The effect of the development on the openness of and purposes of including land within the Green Belt

2. It was common ground that the countryside park element of the Site would, if assessed alone, be 'appropriate' development in the GB by virtue of paragraph 155(e) of the NPPF, which allows for material changes of use of land (such as changes of use for outdoor sport or **recreation**, or for cemeteries and burial grounds). Mr WA-S acknowledged that the countryside park would not offend against the GB purposes or openness as, subject to the detailed design, there would inevitably be a way it could come forward that would be compatible with the GB. Indeed, it would render paragraph including 155(e) of the NPPF redundant if that was not the case. The precise form that the countryside park takes is within the gift of the Council to control at the reserved matters stage and through the terms of the s.106 agreement that relate to the countryside park.

3. Thus, given the countryside park will inhabit a minimum of 23.09ha of the Appeal Site, in light of the terms of the s.106 agreement, it means that it would only be the part of the Site where built form is proposed that would cause harm to the GB – ie. 15% of the Appeal Site.

Openness

4. As regards the 15% where development would be provided, this would inevitably cause harm to the spatial and visual openness of the GB. Indeed, it was common ground that one cannot provide 150 homes in the GB without causing such harm. The fact that this harm is inevitable does not mean that it should be taken for granted. Indeed, it is still attributed substantial weight, in line with paragraph 152 of the NPPF. But rather, given the Council accept that there are no other alternatives to developing outside the appeal site that they

are aware of, it follows that this is a degree of harm that is inevitable with the Council improving their housing supply position.

Purpose 143(a)

5. The Appellant acknowledges conflict with this purpose to a moderate/low degree, whereas the Council find a moderate degree of harm.

6. The extent to which this purpose is compromised is overstated by the Council. The Appellant has kept development to the edges of the appeal site and contained within existing field structures, in the areas most affected by the urban influence – adjacent to existing built form. Ms Bolger indicated that she simply adopts the conclusion within the Black Country Green Belt Study in her evidence. However, this study assumed that operational development would be provided across the Appeal Site, as opposed to only 15% of it being developed. Thus, Mr Holliday's reduction of harm from this study is entirely justified in this respect.

7. Moreover, the Council suggest that the harm is greater, given that the development proposal might give rise to a precedence, whereby further applications come forthwith to extend beyond the built form across the Appeal Site.

8. But this point lacks any credibility. The rest of the sight will be secured as a countryside park through the s.106 agreement. This could only be credibly varied with the agreement of the Council. Indeed, within the first 5 years of entering a s.106 agreement, it can only legally be altered with the agreement of the Council[1]. Thereafter, there is a right of appeal to any decision of the Council on this, but any appeal can only succeed if it can be demonstrated that the countryside park obligation, 'no longer serves a useful purpose'[2]. It is

[1] Per s.106A(3) of the Town and Country Planning Act 1990
[2] Per s.106A(6)(b) of the Town and Country Planning Act 1990

trite law that this is an extremely onerous test to overcome and in these circumstances, it cannot be sensibly suggested that in the future the obligation securing the site as a countryside park would not serve any purpose. Therefore, it cannot be sensibly suggested that the s.106 agreement can be assumed to be varied to allow for further development coming forward across the appeal site. In any event, that would be a determination at a future point in time and has no bearing on the development proposal here. The point lacks credibility and explains why the Council have overstated the extent to which this purpose will be harmed.

Purpose 143(b)

9. The Appellant contends that there will be no harm to this purpose in the GB. Ms Bolger rightly accepted that when assessing the impact on this purpose, it is correct that one assesses the extent to which this purpose would be compromised 'on the ground' – ie. from a visual perspective on the ground.

10. To this end, Ms Bolger highlighted two points where this purpose would be compromised – her Figure 22 from Yew Tree Lane and along Wilderness Lane. As regards her Figure 22, there was a spec of 'red' from this viewpoint where housing might be perceived in the distance in her view. The Appellant contends that this does not credibly suggest that anyone would consider they were looking towards Wallsall. Indeed, behind this development one is still looking at Great Barr – ie. the housing estate that sits behind the Appeal Site. The views along Wilderness Lane would similarly be unaffected. Anyone traversing along this route would be aware they are in Great Barr, not Wallsall – which is over 5km from the Appeal Site. Indeed, as Ms Bolger accepted, along all of Wilderness Lane there is already having housing on the other side of the road to the Appeal Site, meaning people moving along Wilderness Lane already have an experience of built form with no misunderstanding that they are in Great Barr, such that they would not regard there to be any merging with Walsall owing to housing being provided at the Appeal Site. Thus, from

these limited viewpoints, there would no sense of neighbouring towns merging.

Purpose 143(c)

11. The Appellant accepts conflict with this purpose. Mr Holliday's position was that there will be harm to the land where built form is provided, but there will be a low/negligible perception of this harm to the wider area.

Purpose 143(e)

12. The Council sought at one stage to claim that this purpose introduces a sequential test into national policy. However, it was sensibly conceded by WA-S that this was not the case. Indeed, there is no case law, appeal decision, guidance or otherwise that supports this, nor does it align with the natural language of paragraph 143(e) of the NPPF.

13. In order for this purpose to offended, it would need to be demonstrated that developing the appeal site would, in some way, inhibit or discourage urban regeneration. There is no evidence that this would be the case. Indeed, in the Colney Heath decision, the inspector was satisfied that in the absence of any evidence, this purpose would not be offended:[3]

> *The harm alleged here is limited to WHBC where the Council contend that the proposal would not assist in respect of this fifth purpose of the Green Belt. I am aware that the emerging plan proposes a number of urban regeneration sites, some of which already have planning permission. However,* ***I have no substantive evidence to suggest that the development at this site would disincentivise the urban regeneration of sites elsewhere****. Given the scale of development proposed to be located within the WHBC boundary I do not consider that the proposals would be likely to adversely impact on the*

[3] CD 4.8 para 27

regeneration of urban redevelopment sites elsewhere. There would as a result be no conflict with this purpose. Again, this is a neutral factor which weighs neither in favour nor against the appeal proposals

14. Moreover, WA-S conceded that the Council were not aware of any other derelict or other urban land that was available for development. Thus, it is not the case that there is some other land that could be developed and allowing the appeal would discourage that from occurring – as there is no evidence of other available land.

15. The Council made reference to the fact that the Black Country Green Belt Study referred to the appeal site as making a strong contribution to this purpose. However, the Green Belt Study determined that literally every site across the whole of the Black Country made the exact same contribution to this purpose. Thus, it was a uniform finding and hardly compelling. Moreover, the authors of the study might have assumed that there were other derelict and other urban land that is available, but the Council have conceded that this is not the case. Thus, there can be no sensible conflict with this purpose.

(b) The effect of the development on the character and appearance of the area

16. It is common ground that the Site is not a valued landscape, in terms of paragraph 180(a) of the NPPF. It must also be borne in mind that the GB designation does not bestow any inherent landscape value to the Site. Indeed, the GB is a spatial designation, as opposed to a landscape designation.

17. It is also common ground that the Council do not resist the scheme based on any perceived impact on the historic environment. Further, it is common ground that the development proposal will cause harm to the character and appearance of the area. Indeed, this is inherent with developing a greenfield site for housing – as Ms Bolger accepts.

18. However, the parties disagree in respect to the extent of the harm. Ultimately that will largely be a matter settled through your site visit Sir. The Appellant contends that the effects upon the site and its immediate context would be moderate adverse, with the potential for this to become moderate/minor adverse in the long term as green infrastructure matures. There would be some visual effects, which would be mainly limited to changes to views immediately surrounding the site, such as users of Wilderness Lane, Peak House Road and Birmingham Road, as well as views from the paths including the Beacon Way. But the extent of these impacts and the area of impact would be limited and localised. Realistically, the development of any greenfield site will almost inevitably involve adverse impacts to the site itself with some degree of harm in the immediate vicinity of the Site.

19. The Appellant does not deny that this amounts to harm that weighs against the proposal, but the extent of that harm ought not to be overstated, particularly in the context that the Site is not subject to any landscape designation, nor is it a valued landscape.

20. Some local residents complained of impacts from their properties. However, as Ms Bolger accepted, views from private properties are not relevant to the assessment save for in respect to residential amenity, in terms of overlooking and overshadowing. However, this is a matter for reserved matters and it is common ground that there would be no issue with accommodating this.[4]

21. Whilst Ms Bolger sought to identify a greater degree of harm, this was owing to her understating of the benefits of the proposal in her proof. Indeed, she sought to deny the benefits of the countryside park, which during the inquiry she reluctantly accepted was a benefit of the proposal. She also did not address that providing an alternative to the unattractive route along Beacon Way was a benefit.

[4] Landscape SoCG para 4.20

22. Ms Bolger had sought to make a criticism of the LVA in terms of transparency as a possible justification for her difference in opinion, but she abandoned this point when it became apparent she had not considered the appendices to the LVA which contained the analysis she said was lacking.

23. Ultimately, these matters largely fall for professional judgments based on what the landscape witnesses could see out on Site.

(c) The effect of the development on Peak House Farm SINC

24. Happily it has become common ground between the Council and Appellant that the development proposal will have a net benefit on the Peak House Farm SINC. Indeed, subject to the conditions and s.106 agreement, the Council accepted that the second reason for refusal falls away.

25. A SINC is neither a statutory, legal nor national designation. Rather, it is a designation that is made absent any consultation, based on a walkover survey by the Wildlife Trust. In this instance, the designation was made in 2018.

26. There is no objective criteria for determining what constitutes a SINC, as confirmed by the guidance.[5] But in this instance, it was considered that the Site justified the designation owing to the ecological value associated with hedgerow and grassland across the Appeal Site.[6]

27. At the time of the designation, the Wildlife Trust considered that there were 3 parcels of land that constituted semi-improved neutral grassland. This was based on visual observations, as opposed to any formalised surveys.

28. Subsequent formalised surveys[7] have demonstrated that the grassland across the site has deteriorated since the designation, such that there are now no fields that qualify as semi-improved neutral grassland (or 'neutral grassland

[5] CD 6.3 paragraphs 2.6 – 2.7
[6] Ecology SoCG para 2.8
[7] CD 7.9 from 2020 and CD 7.8 from 2023 and CD 6.47 from May 2024

(modified)' to use the more modern vernacular). Indeed, the 'best' field (being Field F3), saw a decline from 15.4 species per square meter in 2020[8] (i.e. still qualifying as semi-improved neutral grassland) down to 9.8 in 2023[9] (below the threshold of 10 species per square meter as a minimum). As Mr Austin accepted, this constitutes a significant decline. Indeed, it takes this field from semi-improved neutral grassland down to species poor neutral grassland (ie. the grassland has lost its ecological significance).

29. Thus, the ecological significance of the Site in terms of grassland has deteriorated and, absent the development proposal, it is agreed that the grassland will only continue to deteriorate.

30. This outcome is unsurprising, given that at the time of the designation, the Wildlife Trust acknowledged the need for active conservation management across the Site.[10] This has not occurred. But again, this is unsurprising, as there is no requirement to undertake any such management. The inspector acknowledged as such in the Tiptree appeal decision:[11]

> *93. However, it does not appear that any environmental body has provided support and advice to the site owners following designation, and as a result there has been no appropriate management of the site. There is no statutory obligation on the landowner to manage the site, and the site has not been the subject of any agricultural incentive scheme. In light of these points I have been mindful of Mr Goodman's uncontested evidence that, without management, the scrub will become dominant within 5–10 years leading to the total loss of the orchids and grassland.*

31. No criticisms can be made towards any party for the lack of management, given no body gave any advice as to what specific management would be

[8] Per Ecology Solutions' survey
[9] Per FPRC's survey
[10] CD 6.2 p.9
[11] CD 4.11 para 93

required. But, in any event, any such management would be done voluntarily and at cost. Moreover, not only would this be a voluntary expense for the landowner, but it would be entirely counter-intuitive, as it would actually decrease the value of the Site as a potential development site in the future. As Mr Austin rightly accepted, in the real world no landowner would do this.

32. The same points are true in respect to hedgerow. The surveys demonstrate that the hedgerows have also deteriorated absent any active conservation management. Moreover, it is common ground that the development proposal would only result in a loss of 168m of hedgerow (ie. 3.71% of the total hedgerow), whereas it would create an opportunity to create 360m of new hedgerow, as well as provide for active management of the retained hedgerow. Indeed, the Council do not dispute that the development proposal could provide for a 10.81% increase in hedgerow units[12], subject to conditions and the s.106 agreement – which secures a management plan to be agreed.

33. It is now common ground that there would be no impact upon protected species.[13] There is also no evidence to suggest that there is any notable ecological interest in respect to protected species or invertebrate from any of the 4 surveys that have been conducted. But, in any event, Mr Austin ultimately accepted that the countryside park would provide an improvement for any species in any event.

34. The surveys recorded bluebells. However, their ecological significance is only relevant insofar as they are indicative of the presence of ancient woodland. But there is no suggestion of any impact or loss of ancient woodland through the development proposal. Moreover, the Ecology Solutions survey only recorded a minimal presence of bluebells in any event, with the survey noting that, 'the hedgerows on this site are nearly all of moderate woody species

[12] Goodman PoE Appendix 1 p.11
[13] Ecology SoCG para 2.17

diversity; however very few supported vernal herb species (such as bluebell Hyacinthodies non-scripta or dog's mercury Mercuarialis perennis).'[14]

35. The Council referred to an emerging approach. However, this formed the evidence base for the Black Country Plan that was never examined and has been abandoned. No weight can, therefore, be attached to this. But in any event, it is entirely consistent with this strategy to provide net ecological improvements to the Appeal Site.

36. The ultimate point here is that the Site has previously been identified as possessing ecological significance, but this requires active management. Absent this, the Site has and will continue to deteriorate. The development proposal offers the only credible opportunity for this to occur. Thus, rather than having any adverse impacts on the SINC, the development proposal will ultimately enhance and restore the ecological interest across the Site such that this constitutes a substantial benefit of the proposal.

37. This approach to this informal designation is entirely consistent with the decisions in Tiptree and Purton Road, Swinton[15], where the loss of part of a county wildlife site was justified owing to the net ecological benefits overall.

38. Further, the Appellant has also committed to a condition to achieve 20% net gain in habitat units, as agreed by the Council.

39. There is no policy protection afforded to SINCs. Indeed, the Council's development plan does not seek to prohibit the development of a SINC. Rather, as Mr WA-S accepted, if the development proposal will ultimately improve the SINC, as it is agreed is the case here, there would be compliance with policies CPS3[16] and ENV1[17] of the development plan.

[14] CD 7.9 paragraph 5 under the Summary on digital page 103
[15] CD 4.6
[16] CD 2.1 p.46
[17] CD 2.1 p.67

40. Accordingly, the common position is that there is compliance with the development plan in this respect and the SINC designation highlights that the weight to be afforded to ecological improvements ought to be substantial.

(d) Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it

41. It is recognised that the scheme amounts to inappropriate development in the GB and thus VSC need to be demonstrated. There are multiple unusual factors which lead to the conclusion that VSC is made out here.

Backdrop to the development plan

42. Before exploring the benefits of the scheme, these need to be seen in the context of a development plan that is significantly out of date and incapable of accommodating the Council's housing needs.

43. The Part 1 plan was examined and published prior to the publication of the NPPF in March 2012. Whilst the Part 2 plan was examined against the NPPF, it was only intended to accommodate the housing growth and strategy envisaged within the Part 1 plan – as opposed to revisiting these points. Thus, the strategy of the development plan was not intended to ever reflect the NPPF's ambition to significantly boost the supply of housing – per paragraph 60 of the NPPF.

44. The NPPF, when it was first introduced, provided a radical change in national policy. Indeed, this has been explicitly recognised by the Courts.[18] But the development plan does not reflect this.

45. The development plan's housing requirement was explicitly intended to reflect the capacity within the Council for further growth[19] – as opposed to

[18] CD 4.15 Solihull judgment paragraph 16
[19] CD 2.2 bullet point IX p.6

seeking to reflect need, as is required by the NPPF – per paragraphs 23 and 35a. Moreover, the Part 2 plan was explicitly not intended to identify enough sites to accommodate this requirement[20]. This demonstrates that the development plan is entirely out of kilter with the NPPF. Further, development plans need to be reviewed every 5 years (see NPPF paragraph 33). This has not occurred, given the last relevant development plan document was adopted in December 2012.

46. Thus, when the plan was adopted some 12 years ago,[21] there were insufficient housing sites to meet a housing requirement, which did not even reflect the housing need at the time. In the interim, the Council's available housing stock has only continued to decrease, such that the Council now accept that there are no reasonably available alternative sites to the appeal site to accommodate this level of growth.

47. There was an attempt in re-examination to backpedal on this point by suggesting the emerging plan is hoping to deliver housing. Firstly, the point was fairly and unequivocally conceded by Mr WA-S that there are no reasonably alternative available sites. Any attempt to backpedal on this should be rightly ignored as tactical evidence. Secondly, the emerging plan can be afforded no weight – which the parties agree. Thirdly, we have no evidence as to where this alleged reservoir of sites the emerging plan seeks to rely on is meant to be or, more critically, whether any of those sites are available <u>now</u>. Fourthly, the emerging plan even recognises that there are very few vacant and unused open spaces across the Council's jurisdiction.[22] Indeed, the Council's SHLAA only identifies one area of open space in the supply for 13 homes.[23]

[20] CD 2.6 para 15 p.6
[21] Part 2 plan was adopted December 2022
[22] CD 3.1 p.43 para 2.21
[23] Brook Road Open Space, Wolverhampton Road, Oldbury (site ref: 6667)

48. Thus, this is a highly constrained urban authority with no proper availability to cater for its needs, in the context of a development plan strategy that is significantly out of date.

Market Housing

49. It is common ground that the Council's housing supply is at 1.4 years, against a 4 year requirement.[24] One could simply conclude that this housing supply is poor, however, that would be understating the extent of the Council's problems. Indeed, the following points need to be recognised:

i. the Council's shortfall amounts to 4,833 homes against a 4 year requirement or 6,693 against a 5 year requirement – on the Council's own figures;
ii. the Council have had a persistent housing shortfall since at least 2017;
iii. based on the Council's own housing trajectory, the Council will continue to have a housing shortfall for every 5 years between 2024 and 2041; and
iv. the Council's emerging plan is only intended to deliver approximately a third of the overall housing need – leaving unmet needs at 18,606 households or 63% of the borough's total needs.

50. Accordingly, the housing shortfall is substantial, persistent and there is no end in sight.

51. To put the need of 18,606 homes into context – this amounts to the need to create a moderately sized town, such as Braintree (Essex), Urmston (Greater Manchester), Newbury (Berkshire), Leighton Buzzard (Bedfordshire), Trowbridge (Wiltshire) – all of which would provide for a commensurate amount of housing/population.

[24] SoCG para 5.4

52. Further, the housing shortfall demonstrates the failure of the development plan strategy, given that:

i. the Council's own trajectory for the plan period to 2026 suggests that the needs of nearly 8,000 households will not be met;
ii. 43% of sites that were allocated in the Council's Site Allocations DPD are now confirmed as not being developable – again making it clear that the development plan strategy has not worked and confirming the paucity of available sites; and
iii. the Council have delivered 16,128 fewer homes than it expected[25] – making it beyond doubt that the assumptions underpinning the plan strategy have been proven to be incorrect.

53. Moreover, this is in the context that the plan was examined before the NPPF was first published in March 2012. It is based on an artificially lower housing requirement and it never reflected the intention of significantly boosting the supply of housing.

54. The Council have sought to present false confidence to you in suggesting that their current predicaments will be overcome in the near future. None of their arguments withstand scrutiny.

55. The Council seek to rely on their emerging plan providing a solution. However, the parties agree that no weight can be afforded to this emerging plan.[26] Indeed, this is in the context that the last attempt to produce a development plan (i.e. the Black Country Core Strategy 2016/2017) was abandoned prior to even advancing to submission in October 2022.[27] Moreover, the emerging plan itself is nearly 18,000 homes short of actual need and so, even if progressed, is not going to provide the necessary number of homes.

[25] When comparing the delivery against the anticipated trajectory in the site allocations DPD
[26] Addendum SoCG para 4
[27] SoCG para 2.18

Accordingly, it is no answer to the housing problems to rely on a solution that can carry no weight.

56. The Council suggest South Staffordshire might be able to accommodate further growth. But there is no agreement (draft or otherwise) with neighbouring authorities, so plainly no weight can be given to this. Moreover, the emerging plan says:[28]

> *3.16 Sandwell has worked openly and constructively with neighbouring authorities to help provide as much certainty as possible about how and where its full housing and employment land needs will be delivered. The current position is set out in the Draft Plan Statement of Consultation and will be elaborated on in more detail at Publication stage.*
>
> *3.17 Sandwell recognises that this approach may only address a small proportion of the housing and employment shortfall, as it is beyond the legal powers of the Council to establish the limits of sustainable development in neighbouring authorities. If a shortfall remains over and above existing and anticipated contributions, Sandwell will undertake further work as appropriate to identify how the shortfall can be addressed.*

57. Thus, even the Council recognise that neighbouring authorities provide no solution to their housing delivery issues.

58. The Council seek to argue that their action plan will remedy housing. However, there are numerous problems with this. Firstly, the Council have had a series of action plans for several years that have all been materially the same and yet their housing delivery has continued to deteriorate, despite these action plans – which rather underscores that these action plans have been ineffective.

[28] CD 3.1 para 3.17

59. The Council claimed during the inquiry that their 2023 HDT action plan[29] will achieve something different to previous action plans. But there are a few problems with this.

i. This 2023 action plan has not been endorsed by members and thus no weight can be given to it.

ii. The 'action' that is said to be new in this action plan is the reference to agree a 'Place Based Strategy'. However, there is no detail that sits behind this. Moreover, no agreement has been reached in respect to this and it remains entirely unclear how this would facilitate the delivery of additional housing. Thus, there is nothing tangible at all in respect to this action that can be afforded weight.

iii. Even the Council's own trajectory of housing delivery (if it is to be believed) for the next 3 years only shows a modest increase in housing delivery, rather than any step change.

60. The Council also suggest that their strategy for overcoming their housing shortfall is to 'build up and denser'. But this is simply rhetoric. There is no strategy in place for this. There is no evidence relating to the capacity for or suitability of this strategy. Moreover, the Council could have been deploying this strategy for the last 14 years if it is to be believed to be a legitimate mechanism for delivering more housing. In reality, this is a tagline with no substance behind it.

61. The benefits of delivering market and affordable housing are further enforced by the fact that it is common ground that the scheme would make a material contribution to the Council's 4 year housing land supply.[30] Indeed, paragraph 70 of the NPPF recognises that, 'small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly.' Thus, this is the sort of Site that can

[29] CD 6.26
[30] SoCG para 5.7

meaningfully help to address the Council's housing delivery issues. This is particularly the case, given that the Appellant has agreed to shorter timescales in respect to the submission of reserved matters (18 months), in order to expedite the Site coming forward.

62. The Council suggested that this contribution would be a drop in the ocean compared to their housing shortfall. But that point is perverse. This suggests that as the Council's shortfall increases (and thus 150 houses becomes a smaller percentage of their shortfall), the benefits of housing delivery decrease. Put another way: the worse the problem, the less attractive the solution becomes.

Affordable Housing

63. Over the last 12 years, the Council have seen a shortfall of 3,107 AH accumulate. Between 2006 – 2023, the Council have added on average just 18 AH per annum. This is in the context that there has been rising demand, with the most recent assessment[31] suggesting the Council need to deliver 343 AH per annum. The consequence of this poor delivery of AH is that there are now a staggering 16,356 households on the Council's housing register, as of 31 March 2024. These are real people in need of housing now, who have no solution to their growing housing needs. This need for AH also needs to be seen in the context that the Appellant is offering 40% AH, which is 15% above the policy requirement.

64. The Council sought to challenge, for the first time at the inquiry, that where a house is purchased under the Right-to-Buy scheme, this should not count as a deduction from the quantum of affordable housing. There are a few problems with this.

[31] The 2021 SHMA – CD 6.5

i. A house purchased under the Right-to-Buy scheme cannot be classified as an affordable home by virtue of statute or guidance – which the Council accept. Thus, on any view, the house was formerly AH, it is then converted to being non-AH through the Right to Buy scheme, meaning it can no longer be relet or used to accommodate a household in need. Thus, on any view it is not an AH, meaning it amounts to a loss of an AH.

ii. This position contradicts the Council's SHMA,[32] which acknowledges that, *'If there is loss of affordable stock through Right-to-Buy this will also need to be replaced'*.

iii. There is no evidence to say that households are being occupied indefinitely after the Right-to-Buy scheme or being passed down through generations. The Council suggest that houses sold through the Right-to-Buy scheme remain with the original occupier, albeit they provide no evidence (whatsoever) to back up this claim.

iv. Mr Roberts points to evidence that 40% of flats sold under the Right-to-Buy scheme since the 1980s have ended up in the hands of private landlords, who have let the homes out to private tenants at higher rates.[33]

65. The Council also invite you Sir to only afford weight to 15% of AH and ignore the 25% of AH that is policy compliant.

66. In the appeal pertinent to the west of Langton Road, Norton,[34] the inspector acknowledged as follows:

[32] CD 6.5 para 5.24
[33] Mr Roberts' PoE paragraph 6.15
[34] CD 4.3 para 72

On the other hand, in the light of the Council's track record, the proposals' full compliance with policy on the supply of affordable housing would be beneficial. Some might say that if all it is doing is complying with policy, it should not be counted as a benefit but the policy is designed to produce a benefit, not ward off a harm and so, in my view, compliance with policy is beneficial and full compliance as here, when others have only achieved partial compliance, would be a considerable benefit.

67. The Council's case that meeting the policy requirement of AH should not be afforded additional weight over and above the delivery of market housing is, as far as we are all aware, an unprecedented point in appeal decisions. Indeed, neither party can point you to an appeal decision where an inspector has endorsed such a proposition. The Council sought to do so by directing you to the Radlett appeal decision (handed in on day one), but in fact the opposite is true: paragraph 60 of that decision the inspector afforded substantial weight to the delivery of market housing; paragraph 65 the inspector afforded *very* substantial weight to the delivery of AH.

68. Paragraphs 154(f) and (g) provide mechanisms to deliver affordable housing in the GB. However, neither could facilitate AH delivery in this borough in any event. Indeed, paragraph 154(f) of the NPPF allows for AH to be delivered under policies in the development plan. But there are no relevant AH policies in the development plan to allow for this. Similarly, paragraph 154(g) allows for the partial or complete redevelopment of previously developed land in the GB for AH, but again there is no PDL in the GB that any party is aware of. Thus, these policies cannot contribute to the delivery of AH for this authority. It follows that, AH delivery in the GB will necessarily amount to inappropriate development in this authority.

69. Accordingly, there is no good reason not to afford the delivery of AH very substantial weight.

<u>Economic Benefits</u>

70. The Appellant suggests that significant weight ought to be afforded to the economic benefits of the proposal. The Appellant has provided a breakdown of those economic benefits,[35] which Mr WA-S agreed.

Ecological Benefits

71. Mr WA-S agreed that substantial weight ought to be afforded to the ecological benefits of securing 20% BNG. Indeed, this aligns with the Secretary of State's decision in the Land off Pump Lane appeal.[36] This is secured by way of condition.

72. As Mr Goodman indicated, it is uncommon to secure such a high BNG score. Indeed, this flows from the fact that 23.09ha of land is being included as a countryside park. Again, it is rare to have such a large tract of land associated with a housing scheme for 150 units.

Accessibility

73. There is no dispute that the Site has ready access to services and facilities. Indeed, both parties regard this to be a benefit of the scheme. But, given the Site's exceptional, high frequency and high quality transport links adjacent to the Site boundary, significant weight ought to be afforded to the accessibility of the Site.

Landscape Benefits

74. Mr WA-S acknowledged that the development proposal would attract landscape enhancements.[37] Further, Ms Bolger acknowledged that the countryside park could easily become a valued landscape and access to it would be a benefit in landscape terms. Thus, the development proposal would have the ability to provide a valued landscape, where currently one is not found. This is especially significant in the context that there are no other

[35] Paragraph 4.120 of Mr Armfield's PoE
[36] CD 4.10 para 12.204 of the inspector's report, confirmed by para 35 of the Secretary of State's decision
[37] His proof paragraph 4.5

valued landscapes that have been identified within the vicinity of the Appeal Site, or even further afar.

The Countryside Park

75. The Council accept that the access provided to the countryside park will be a significant benefit (per WA-S's evidence). The Council suggest that there is no shortage of open space. However, this is on the basis of the Council's existing population, rather than accounting for the growth that must occur in respect to meeting the Council's housing shortfall. In any event, there is no harm associated with an over-provision of accessible open space.

Alternatives

76. The Council accepted that there are no reasonably alternative available sites to the Appeal Site to accommodate this level of growth. There is no requirement to demonstrate this in national policy in these circumstances, but it rather underscores the desperate need to develop the Appeal Site now.

77. The Council have intimated through questioning that the benefits to the countryside park in ecological terms and access could be achieved absent the 150 homes. But this point is frankly fanciful.

78. When one considers the amount of blood that has historically been shed across this continent and country over land, it is unfathomable to think that landowners would credibly simply give up significant parcels of their land to the community absent any incentive to do so.

79. There is no commercial incentive in providing active conservation management across the Site. Indeed, it devalues the site. Further, there is no benefit to providing public access to the Site to the landowner. Indeed, Ms Bolger, Mr Austin and WA-S all accepted that there could be no credible suggestion that the land would simply be gifted to the community absent any incentive. Further, whilst there was a discussion of grants, it still follows that

even if funding could be secured (for which we have no evidence), there would still be no reason for the landowner to do so. Any such grant would only cover the maintenance, it would not provide a profit to the landowner to incentivize them to gift their land to the community.

80. Balanced against these benefits are:

i. substantial weight to the GB harm in terms of being inappropriate development, harming the openness of the GB and the purposes of the GB;
ii. limited weight to the landscape and visual impacts;
iii. limited weight to conflict with relevant policies in the development plan; and
iv. agreed limited weight to the harm to a non-designated heritage asset.[38]

Overall

81. The Appellant contends that in the circumstances, the benefits do clearly outweigh the harms and thus there are VSC to allow for inappropriate development in the GB. Consequently, the appeal proposal conforms with the development plan as a whole. Indeed, WA-S ultimately accepted that as policy SAD EOS2[39] reflects the VSC policy test in the NPPF, if there is a finding of VSC, ultimately overall there would be compliance with the development plan as a whole.

82. There was some suggestion by the Council that a finding of VSC requires a consideration as to whether each benefit itself amounts to VSC. That is the wrong approach. The question is whether all the circumstances, having regard to the benefits and harms, amounts to VSC. This is trite law. Moreover, there is no requirement that the benefits need to be rare in order for VSC to apply

[38] Addendum SoCG paragraph 6
[39] CD 2.5 p.34

as confirmed in ***R (Wildie) v Wakefield Metropolitan BC*** [2013] EWHC 2769 (Admin), wherein Stephen Morris KC held as follows on this point (at para 29):

> *Thus, in considering whether to allow development in the Green Belt, the decision maker must consider, first , the "definitional" harm arising from the inappropriate development as well as such further harm to the Green Belt as is identified as being caused by the development in that case, and then secondly consider countervailing benefits said to be served by the development; and then consider whether those benefits clearly outweigh the harm so as to amount to very special circumstances. Secondly , in order to qualify as "very special", circumstances do not have to be other than "commonplace" i.e. they do not have to be rarely occurring. Thirdly , the test is not one of whether the harm to the Green Belt (definitional or specific) is "significant or unacceptable", either of itself or following the balancing exercise.*

83. In the alternative, the Appellant says that there are material considerations that indicate that permission ought to be granted, namely that the tilted balance within the NPPF points in favour of the grant of permission.

Other Matters

84. There were a raft of objections from third parties advanced in respect to a suite of issues, such as air quality and highways. Respectfully, notwithstanding the sincerely held and respectfully advanced objections from local third parties, these objections were unsubstantiated and anecdotal in nature. No proper evidence has been presented to contradict the lack of objections from statutory consultees in respect to these issues and/or the technical reports submitted by the Appellant at the application stage.

85. Similarly, in respect to the loss of best and most versatile agricultural land:

i. there is no evidence before the inquiry of BMV across the Site;

ii. the Site is not used for food production so there could be no loss in any practical terms;

iii. the 'loss' of the Site (ie. through built development) is substantially below the 20ha threshold for consultation with Natural England as 'significant' loss of agricultural land;

iv. the Council never required an agricultural land classification report.

Summary

86. In summary Sir, the Appellant respectfully invites you to allow the appeal, subject to appropriate conditions and the s.106 agreement. It is recognised that VSC is a high hurdle, however, the Appellant says this is made out in the context of:

i. an authority with a 1.4 year housing supply, with a significantly out of date development plan, a persistent housing crisis and no strategy to rectify the situation;

ii. the opportunity to restore and enhance a deteriorating SINC to provide positive ecological benefits that are agreed to be substantial;

iii. the opportunity to provide a 23.09ha countryside park, which will be accessible to the public and can form a new valued landscape for residents to enjoy, in the context that there are no nearby valued landscapes;

iv. an excess of AH provision over and above the policy requirement at 40% in the context of a separate significant AH need;

v. agreed economic and accessibility benefits;

vi. the harms beyond the GB harm being contained to limited harm to a non-designated heritage asset and harm in landscape and visual terms, which could reasonably be expected with the development of any greenfield site.

87. Taken together, these are very special circumstances that justify a positive decision in the circumstances.

Killian Garvey

Kings Chambers

17 July 2024