

SECTION 78 OF THE TOWN & COUNTRY PLANNING ACT 1990
AN APPEAL IN RESPECT OF LAND NORTH OF BROWNS LANE, TAMWORTH
AGAINST THE DECISION BY TAMWORTH BOROUGH COUNCIL &
LICHFIELD DISTRICT COUNCIL

BEFORE: Inspector Mr Andrew McGlone BSc, MCD, MRTPI

APPEAL REFERENCES: APP/K3415/W/24/3340089 (Appeal A) and
APP/Z3445/W/243340094 (Appeal B)

APPELLANT'S OPENING STATEMENT

INTRODUCTION & CONTEXT

1. This appeal relates to a unique opportunity to realise a fully affordable scheme (100%) in a location that would benefit two different local authority areas. The description of development for the proposals states,

“Outline application for up to 210 dwellings, public open space, landscaping, sustainable urban drainage, access, and associated infrastructure. (All matters reserved except access).

2. The appeal site straddles the administrative boundaries of Tamworth Borough Council (“**TBC**”) and Lichfield District Council. This is why we have two separate appeals cojoined to address the reasons for refusal. Lichfield District Council (“**LDC**”) refused the proposal for two reasons; **(1)** in principle objection contrary to the development plan and spatial strategy; and **(2)** the proposed development’s impact on the village of Wigginton’s Conservation Area, by impacting specifically its setting.

3. The western area of the site represents a significant open space, seeking to maintain physical and visual separation between the proposed part of the development (within the red line boundary) and Wigginton. This represents over half of the site with only the eastern side of the site being proposed for development.
4. In so far as TBC's position is concerned, the sole reason for refusal relates specifically around the access to the site, which is in TBC. For present purposes, TBC accept that if the proposal is granted consent, they do not object to the site's access.¹

Timetable

5. There is a timetable within which it may be possible to complete the inquiry within 5-6 days (with closings and conditions possibly done remotely). For this to be achievable, time estimates must be respected. That no new evidence is produced by any party, including unseen technical information from interested parties.
6. The Appellant's view is that, in principle, the issues in this case are not complicated. It is anticipated that once these issues crystallise at the start, many of the differences will narrow and the evidence will be able to be taken more efficiently.

Plans and Permission Sought

7. The Appellant and the Council have been negotiating conditions for this proposal. These have been agreed in the final agreed SocG, with feedback already received from the Inspector. The plans on which the Inspector is being invited to determine the appeal are contained therein.²

¹ CD 5.5 at Section 6

² CD 5.6 at Appendix 2

Section 106

8. At the time of writing, the draft S106 agreement is advanced and a draft has been shared with the Inspector. The parties continue to discuss the details as the inquiry opens.

MAIN ISSUES

9. The main issues have been identified in the Inspector's post CMC note at paragraph 13. There are no objections to the way in which the Inspector has set out these issues, save to re-iterate that it remains the view of the Appellant that character and appearance issues do not deserve a main issue elevation, and in any event relate to a narrower issue of the physical and visual separation to Wigginton. Nevertheless, we seek to address it all. The openings will seek to follow that framework as set out below.

CONSIDERABLE COMMON GROUND

10. Major development such as this one are often hampered by technical constraints. None are present in this case. To this end, the following can be taken as agreed.³
- i. The site is sustainably **located** in relation to the local community and facilities.⁴
 - ii. There are no concerns around **ecology** related matters, subject to the planning conditions to be agreed by the main parties;⁵
 - iii. No **designated landscape** involved⁶, and not *within* a Conservation Area. The site does not include any listed buildings within it ⁷;
 - iv. No **highways** concerns both in terms of traffic generation and safety. No objection from local and national highways to the proposal;⁸

³ See main Planning Statement of Common Ground at Section 6

⁴ Paragraph 6.5 of the Planning Statement of Common Ground

⁵ See paragraphs 6.16-6.18 of the Planning Statement of Common Ground

⁶ See paragraphs 6.22-6.23 of the Planning Statement of Common Ground

⁷ Paragraphs 6.12-6.15 of Planning Statement of Common Ground

⁸ Paragraphs 6.2-6.4 of the Planning Statement of Common Ground

- v. **Residential amenity** is not a concern between the main parties;
 - vi. No issues raised around **air quality** in the area⁹;
 - vii. On the matter of **design** related matters, whilst still in outline, the proposal offers more detail than is usual. The evidence of Mr. Carr is uncontested;
 - viii. There are no objections around the issues of **flooding and drainage**¹⁰;
11. Importantly, there are no outstanding objections from any statutory consultee. All other technical matters are agreed to be acceptable and/or addressed via a condition. Whilst most appeals are dominated by the few remaining differences between main parties, it is a testament to a pragmatic approach and swift changes when appropriate that have allowed for the scheme to look the way that it is before this inquiry. This should be given due weight. Crucially, we must keep this in mind when at an inquiry the tendency can sometimes be to give undue attention to the harms of a proposal instead of understanding the wider picture and all the benefits at stake.
12. Turning to the main issues.

Main Issue (a): Whether the proposal would accord with the spatial strategy in the development plan, with regard to its location and the proposed quantum of housing

13. It is settled law that being in conflict with some policies in the Development Plan does not mean that you're in conflict with the DP as a whole.¹¹ It is hardly possible to find a single development that is entirely in accordance with every policy of a DP. To this end, it is a matter of judgement to assess (a) the extent of any conflict and (b) what weight ought to be ascribed to any conflict identified. In Lichfield **Core Policy 1**

⁹ Paragraphs 6.8-6.10 of the Planning Statement of Common Ground

¹⁰ Paragraphs 6.22-6.23 of the Planning Statement of Common Ground

¹¹ **CD 8.1.1: Cornwall Council v Corbett [2020] EWCA Civ 508**

explicitly anticipates a minimum of 10,030 dwellings for a twenty year period (2008-2029). It is very clear that these should be directed to sustainable locations at existing urban areas.¹²

14. Tamworth is identified in the Settlement Hierarchy as a ‘Neighbouring Town’, within the third tier, alongside Rugeley. The site can be interpreted as being within the ‘Broad Development Location’ to the North of Tamworth.¹³ Approximately 10% of the overall minimum housing requirement is said to be focused here, at least half of which (500) is to address meeting needs arising within Tamworth Borough.¹⁴
15. **Core Policy 3** is another policy which the RFR mentions as being offended, relating to sustainable development. LDC do not specify how or which specifically in either the RFR, and the Council’s Statement of Case. The basis on which it is now pursued in Mr. Daly’s Proof will require careful examination as part of the inquiry. Nonetheless, they have all been addressed each in turn in the POE of Mr Ward.
16. **Core Policy 6** is another policy whose application is disputed by the main parties. It is a policy dealing with housing delivery, and notably describes the 10,030 figure as ‘at least’ echoing the minimum expected. But more broadly, there is a fundamental difference between the parties as to where the site is located. The Council appears to think it ought to be treated as part of the “remaining rural areas”, and the Appellant is clear that this site is captured within the area of ‘North of Tamworth’.

¹² See Table 4.1 and Key Diagram Map 4.1 to understand the Settlement Hierarchy

¹³ See Table 4.1 and the Key Diagram Map at 4.1 and also Figure 1 of BW POE

¹⁴ See page 27 of the LDLP Strategy 2015, footnote (xv) and also page 51 of the Strategy

17. Pursuant to **CP6**, there is also a difference between the parties on the question of whether the plan's strategy of apportionment is undermined by this development. It is common ground that, along with the allocations, this appeal proposal further adds to the original apportionment (resulting in 1,375 homes). The following will be shown.
18. **First**, these numbers were always a minimum and this proposal seeks to offer a unique opportunity to provide more affordable homes than many of these allocations combined.
19. **Second**, there are many other areas within the District that have exceeded their range during the plan period, and it has not been suggested that the strategy has been undermined in any way.¹⁵ For Tamworth, this development only represents a 1.63% increase in its share of committed growth, and this increase actually balances out the distribution of housing provision under the plan as a whole.
20. **Third**, any likely distortion will not happen before the end of the plan period of 2029, but rather will be addressed by a subsequent plan.
21. **Finally**, notwithstanding what might be described by lay people as esoteric debates about spatial strategy, distribution of development and plan periods, what matters here is there is a sustainable location where much needed affordable homes is being offered, and if consented can be delivered quickly by one of the largest Registered Provider's in the area.. LDC's inability to appreciate this bigger picture is at the heart of this inquiry.

¹⁵ See Table 1 of POE by Mr. Ben Ward: See the 44% increase to the Rural Areas allocations, and Rugeley in particular accommodating 26% beyond its original apportionment

22. It is right to acknowledge, though, at the outset, that this is not an allocated site. And that the location proposed for development lies beyond any existing built up area, although it is immediately adjacent to the settlement of Tamworth. It does not follow automatically that there is conflict with the DP as a whole. On this site, we are seeking consent in what is considered to be a ‘Broad Development Location’ (“**BDL**”), where Arkall Farm was consented *before* it was officially allocated.¹⁶
23. Other policies specific to areas of dispute (i.e. built and historic environment, affordable housing) are to be addressed in their specific comments below.

Main Issue (b) the effect of the proposed development on the character and appearance of the area, with regards to spatial and visual separation of Wigginton

24. Whilst this is a main issue for the inquiry, there is no specific reason for refusal which seeks to give expression to this matter. Indeed, neither LDC nor TBC seek to present any formal evidence on this issue via a specific expert. Nevertheless, the rationale for why this matter was elevated to a main issue makes sense in circumstances where there is overlap in relation to heritage and conservation matters pertaining to Wigginton. In particular the issues of views in and out of the Conservation Area, and any perceived impact on the spatial and visual separation of Wigginton.
25. On this issue, **James W. Atkin** BSc (Hons) Dip LM CMLI will be presenting evidence on behalf of the Appellant. His evidence will rely on the original LVIA work submitted with the scheme, and the subsequent proof of evidence to be presented at the inquiry. In short, given the layout, design and approach adopted, the visual and spatial

¹⁶ **CD 8.1.2.** See paragraphs 10.2.5, 10.2.6 and 10.2.8 of the Inspector’s Decision Letter

separation of Wigginton and Tamworth will be maintained. The Inspector will be able to experience this on site.

26. It is noteworthy that the LDC report to committee didn't attempt to address this issue in any specific detail, instead opting to look at it in generic terms in its assessment within the committee report.¹⁷

Main Issue (c) Whether the proposal would preserve or enhance the character or appearance of the Wigginton Conservation Area

27. The difference between the main parties on this issue is quite limited. It is common ground that there will be changes to the wider setting context of the Wigginton Conservation Area (“WCA”). It is common ground the changes to the setting of the WCA must be assessed against what will happen to the heritage significance of this particular asset. And it is further common ground that the harm is within the ‘less than substantial’ scale of the spectrum.¹⁸

28. The only residual difference is where in the scale of ‘less than substantial’ does one place the harm arising to the WCA. The Appellant’s view is quite clear, this harm should be firmly placed at the lower end of the spectrum.

29. On this important issue of any impact on heritage matters, the Inspector will have the benefit of the evidence from **Gail Stoten BA (Hons) MCifA FSA.**

¹⁷ CD 2.5, paragraph 3.9

¹⁸ See Section 2 of the Heritage Statement of Common Ground

30. We can do no better than quote her overall concluding summary.

*“Overall, there will be some reduction in the historic illustrative interest that the site contributes to the heritage significance of the Conservation Area. When this is considered in the context of the significance of the asset largely being contained in the buildings and spaces within the designation area; **that the more open setting to the east and west will not be affected; that the legibility of the village as a discrete settlement will remain; and that views south from within the Conservation Area on Main Road will be little changed, the proposed development is considered to result in less than substantial harm at the lower end of the spectrum.**”* (emphasis added).

31. This evidence is commended to the inquiry.

Main Issue (d) – The need for, and provision of affordable housing in Lichfield and Tamworth, including the mix and tenure

32. There is a significant amount of common ground around this issue as a starting point.¹⁹ The need in LDC and TBC for new affordable homes is agreed and sets the parameters within which this evidence is being heard: a **combined figure of 390 per annum** over the course of a 20 year period (2016-2036).²⁰
33. When this need is judged against the actual delivery of affordable homes, the figures speak for themselves. In TBC, there is a total shortfall of **-1,017**, amounting to an annual shortfall of **-145 dwellings**.²¹ In LDC, there is total shortfall of **-535**, amounting to an annual shortfall of **-76**. Together, this amounts to a significant and persistent shortfall

¹⁹ See Affordable Housing ScG dated May 2024

²⁰ As assessed by HEDNA 2020, see paragraph 3.0 onwards of AH ScG

²¹ Appendix 4 of the AH ScG

that's currently going unmet in TBC and LDC of **-1,552**. In annual terms, the scheme before the inquiry seeks to delivery of 220 dwellings, which is not going to even make a noticeable dent on these shortfall figures.

34. LDC is in complete denial as to what it will take to remove this significant backlog. This will have to be tested at the inquiry. Similarly, looking into the future, LDC appears to be overly optimistic that sites will come forward, that they will deliver over the plan period such that it will get closer to their identified need. This is unrealistic.
35. The housing crisis, and particularly the lack of affordable homes, often sit alongside the rarely discussed issue of affordability. It is therefore welcome common ground that housing is becoming less affordable across LDC and TBC, in a context of an acute national housing crisis.²²
36. There is no doubt that there is a need going unmet in two administrative areas. This is a scheme that seeks to meet those needs, now. A scheme that seeks to exceed significantly the local policy asks is clearly at a premium here. Why the Council resists purely on matters of technical local plan breaches around the principle of development remains a mystery. We will no doubt find out during the inquiry.
37. The evidence of **Mr. James Stacey BA (Hons) Dip TP MRTPI** is commended to the inquiry.

²² See 9.7-9.8 of the AH ScG

Main Issue (e) Whether the proposal would make adequate provision for affordable housing, education, healthcare, public open space, off-site highway works and travel plan monitoring

38. This main issue is no longer at large. The Appellant, LDC and TBC have now agreed these issues in the draft S106 obligation circulated.

Other Considerations

39. Beyond the specific areas identified by the Inspector, there will be an array of other considerations to which significant weight ought to be attached.

40. On matters of **Design**, the Inspector has the benefit of unchallenged evidence on the part of Mike Carr. Whilst detail is for Reserved Matters, it is compelling evidence establishing design principles that are sympathetic to the character of the surrounding area, ensuring that the legible gap between Wigginton and Tamworth, and of course mindful of the character of the historic village as well as its conservation area.

41. The Appellant has partnered with a well-established Registered Provider of affordable housing (of all tenures) in this part of the District and nearby. **Platform Housing Group** is one of the largest housing associations in the Midlands who own and manage in the region of 50,000 affordable homes across the UK. As part of the Design evidence, they have provided a full statement setting out the vision for the site.²³ A significant amount of detail provided around the indicative masterplan, and strategy for place making and community building. None of this evidence is challenged at this inquiry. This evidence ought to be given **significant weight**.

²³ POE Mike Carr, UD01 (Pdf page 30/62)

42. The Inspector has asked for evidence to be presented on **highways** background to matters, and for Mr. Frisby to answer questions. To this end, the starting point is the common ground that there are no highways concerns between the main parties. The extensive process since the original application, and iterations that have taken place since, all culminating in the Staffordshire County Council's response dated 13 January 2022 in which they confirmed no objections subject to conditions.²⁴

PLANNING BALANCE

43. The starting point of any assessment is Section 38(6) of the Planning Compulsory Purchase Act 2004: that a planning application will be determined in accordance with the DP unless material considerations indicate otherwise. To this end, there is the exercise of assessing the harms against the benefits in order to reach a balanced conclusion. This balance, the Appellant shall contend, will come down in favour of granting consent, without the need to apply the *tilted balance*.

44. One of the unique features of these proposals relates to onsite green provision which is 7.48hectares, equating to **58% of the total site area** being retained as **open space** creating opportunities for new habitats and nature. This is an increase of **21% to the original strategy**.²⁵ This large amount of open space enables the provision of a relatively low-density development appropriate mindful of the proximity to Wigginton.

45. There will be **significant environmental benefits** which would be delivered. The site wide CO2 emission reductions of greater than 31% over Part L Building Regulations standards through a combination of fabric efficiency measures and the utilisation of

²⁴ CD 4.5

²⁵ CD 7.5, Appendix UD01, Design Statement by Thrive, page 7

renewable energy. Further, the proposals seek to achieve a **20%** net gain Biodiversity, which is 10% more than the minimum required by national policy and PPG guidance. This is also in the context of the statutory metric not being engaged given the application was submitted before it came into force. Although this level of gain does match Lichfield's SPD ask, there is no reason to believe it would survive any future Local Plan.

46. To this end, this is a benefit that above and beyond the ordinary expected. To that end, **significant weight** ought to be attached to this benefit.
47. On the **design front**, the Appellant has sought to offer more information than is necessary at the outline stage. As set out in Mr Carr's evidence above, this iterative design is a positive response to this context in line with national policy.²⁶
48. One hopes that by the end of the inquiry some clarity shall emerge. In the meantime, it would be extremely useful to remind the inquiry of the overwhelming benefits at stake and which are currently being held up.
 - a) Meeting an acute and immediate shortfall for affordable housing, **substantial weight**
 - b) Delivering 210 affordable dwellings above and beyond policy, **substantial weight**
 - c) Significant environmental benefits; **significant weight**
 - d) Net Zero CO2 emissions development, no gas development; **moderate weight**
 - e) High quality design led response to Wigginton, the Conservation Area and the wider local area; **significant weight**
 - f) Net Biodiversity gain above and beyond national policy, **Substantial weight**

²⁶ NPPF 139 invites that 'significant weight' be given to high quality design

g) The economic benefits of employment and local community spending, as encouraged by NPPF 85, *significant weight*.²⁷

49. The following significant amount of benefits can be attribute **moderate weight**;
- i. Improvements to the P_{RoW} and better connectivity;
 - ii. Highways improvements and SuDS;
 - iii. Enhancement to open space and play provision;
 - iv. Significant financial contribution to education provision;
 - v. Financial contribution towards increasing the capacity of the GP surgery;
 - vi. Generating significant additional Council Tax Revenues from new households generated from the development.
50. The benefits of this proposal are overwhelming. In the context of a ‘flat balance’, there are no harms alleged that **significantly** and **demonstrably** outweigh the benefits of these proposals. In this instance, just as the Appellant’s witness **Ben Ward MRTPI** will do, the NPPF recommends that any proposal which accords with the development plan as a whole should be granted consent *without delay*. Even if there a conflict with the Development Plan is found, when read as a whole, there are weighty and varied material considerations that mean a decision should be made other than in accordance with it.

²⁷ See 3.14-3.18 of POE by BW

CONSEQUENCES OF DISMISSAL

51. The consequences of dismissing this appeal must also be considered. This site is highly unconstrained and sustainable. In addition to Tamworth's administrative boundary, much of Lichfield District is constrained by Green Belt, including much of the land around most of its sustainable settlements.²⁸ Nevertheless, this specific site allows for the unique opportunity to provide a 100% affordable proposal, to be built and maintained by a highly successful Registered Provider, seeking to meet the needs of two separate local authority areas.
52. The consequences of failing to deliver sufficient opportunity and choice of housing options for the varied households in need, now, is set out by Mr Stacey in his evidence. Those are not repeated.
53. Further to this, there are no technical constraints and no statutory consultee objecting to these proposals. This should be carried in favour of the development.
54. The Council's concerns amount to a technical breach of principle in relation to CP1, and as to CP6, what we are seeking to do here is neither unique, nor consequential when it comes to understanding the wider distribution of housing in the District. On landscape and heritage, these are residual qualitative judgements that are not significant. In short, there are no fundamental show stoppers.

²⁸ Refer to Map 4.1

55. To not allow such a scheme to proceed here, it is highly likely that pressure will be placed on other more constrained areas in the future. The Council is unable to point the Inspector to a single scheme that seeks to provide this much affordable homes in one go. Even allocated sites do not seek to do this. This is a genuinely unique opportunity that is at a premium.

CONCLUSION

56. We will seek to persuade you, Sir, that this is a compelling case that ought to lead to consent to be forthcoming.

57. For all the aforementioned reasons, and for the reasons to be heard at the inquiry, this is a proposal that should not have been refused consent. We commend our case to this inquiry. The Inspector is respectfully invited to allow this appeal.

HASHI MOHAMED

Landmark Chambers

180 Fleet Street

London

1 July 2024