

APPEAL BY:

Marrons Planning on behalf of Summix BLT Developments Ltd.

Land North Of Browns Lane

CLOSING SUBMISSIONS ON BEHALF OF COUNCIL

1. In Opening the Council set out the outline of their case according to the five main issues identified by the Inspector. In closing the Council will adopt the same approach. However, the order will be altered to reflect the way in which the appeal has developed over the inquiry and the issues should be considered.
2. The starting point is to consider whether the development accords with the spatial strategy in the development plan.

Whether the proposal would accord with the spatial strategy in the development plan, with regard to its location and the proposed quantum of housing.

3. This proposal would run directly contrary to the spatial strategy at the heart of Lichfield's development plan.
4. The first step is to identify – in policy terms – where the Site sits. There are two potential candidates: in the Broad Development Location 'North of Tamworth' or in the Rural area. The reason for this is that geographically the Site partially falls within the dotted line of the BDL but for the most part falls outside of it.
5. In this context the Council's approach – as set out by Patrick Daly ('PD') – is to examine if the proposal accords with the policy designation of North of Tamworth. If it does not, then it falls outside of it and sits within the Rural area.

6. To understand what falls within the BDL it is critical to read two policies together. The first is 'Policy: North of Tamworth' in the Lichfield Local Plan Strategy ('LPS'). This identifies a broad development location in which to deliver approximately 1000 dwellings to the North of Tamworth. As Mr Ward ('BW') accepted it is the Allocations Plan which then delivers the strategic policy objectives in the LPS. Therefore, it is the Allocations Plan which delivers the North of Tamworth Policy – although BW contended it attempted but failed to do so.
7. While the LPS contains Map 15.1 which identifies by way of a dotted line a broad area, as agreed by BW, it is conceptual and purposefully broad. It is not drawn to precise boundaries. The reason for this is clear from the paragraph 15.7 of the supporting text – the LPS is only the first half of relevant policy, with the detail being delivered by the Local Plan Allocations ('the LPA').
8. The LPA sets out at Policy NT1: North of Tamworth Housing Land Allocations the precise boundaries of the two sites that would deliver the approximate 1000 houses in the BDL envisaged by the LPS. This was Land at Arkall Farm (NT1) and Land North of Browns Lane (NT2). It is important context that these Sites had both already been consented and were being delivered when the LPA was adopted. The reason for their inclusion was to make clear where the approximate 1000 homes within the BDL were to be delivered. While BW resisted this interpretation, he was at a loss to explain why else the LPA would do so. That is telling.
9. Together the 'North of Tamworth' policies are clear – the development plan envisaged a scheme of approx 1000 homes in the BDL and delivered it in two allocations. There is no further scope or provision in the policy for bringing forward further housing development in slivers of land within that broad conceptual area, but which has not been allocated.
10. BW failed to identify any drafting of the North of Tamworth policy which expressly supports the Appellant's argument that there is scope for further non-allocated development coming forward – beyond arguing that minimum should be read into the reference in policy to 'approximately' 1000 homes. As BW agreed as a matter of

definition minimum and approximate are different concepts. The former includes no maximum, the latter inherently concerns a range (i.e a minimum and a maximum).

11. The Appellant's approach would be to subvert the purpose of the policy. It is not to cram as many homes as possible into every bit of the BDL. But to deliver around 1000 homes through allocations in a controlled way – and that purpose has been achieved.
12. The Appellant cannot derive any support from the North of Tamworth policies and so clearly falls outside of them.
13. This, in policy terms, means that the relevant policies are those that relate to the rural areas.
14. In that context the LPS is clear as to what development they want brought forward. The Site is outside of any Strategic Development Allocation, outside of any Broad Development Location and outside of any key rural settlements.
15. A consistent theme across spatial policy – CP1¹, CP6², and H2³ - is that in these rural locations small residential development should only be brought forward as Rural Exception Sites or supporting local community need as provided through allocations. The Appellant has not attempted to fall into any of these permitted types of development. This is also the case with the similar policy requirements set out in Policy

¹ Page 25 of CD3.1.1: *Smaller villages will accommodate housing to meet local needs, mainly within identified village boundaries, unless supported as a rural exception site. Allocations of sites for new rural housing will be considered through the Local Plan Allocations document or through a community led plan where this is in broad conformity with the Local Plan.*

² Page 51 of CD3.1.1 *In the remaining rural areas, only the following residential development will be permitted:*

- *infill development within defined village settlement boundaries (set out in the Local Plan Allocations document);*
- *affordable housing delivered through Rural Exceptions (see Policy H2);*
- *changes of use and conversion schemes;*
- *small scale development supported by local communities, identified through the Local Plan Allocations document or community led plans;*
- *agricultural, forestry and other occupational workers dwellings.*

³ Page 56 of CD3.1.1 *Outside of Lichfield and Burntwood, housing development, in addition of those allocated within the Local Plan, will be supported on small rural exception sites, where affordable homes can be delivered to meet the needs of local people from within the SHMA sub-area where there is no conflict with other Local Plan policies and the following criteria are met.....*

Rural 1 – which was expressly cited in the first RfR⁴. A nail in the coffin for the Appellant’s argument that the Council treated this Site as being within the BDL in policy terms.

16. The Appellant’s main wider arguments against this seems to be – despite BW resistance - one of geography, submitting that regardless of what policy says, geographically this is not a rural site but an extension of Tamworth.
17. The Council cannot deny that geographical reality – and PD did not try to – but such a simplistic argument entirely misses the point. This inquiry should be concerned with policy and not geography. We are in a plan led system and the Council have carefully planned for where – and in what scale – they want Tamworth to grow in their district. This is the purpose of the North of Tamworth policy – which has delivered a sustainable urban expansion to Tamworth.
18. To then develop beyond those controlled boundaries entirely undermines that plan led process. The same argument could then be applied across the entire urban edge of Tamworth (or any other urban/settlement boundary) to say that geographically the strip of land should be considered part of the settlement and so have in-principle acceptability for urban expansion. It is not how the planning system works.
19. The correct starting point is to consider, in policy terms, where this Site is. It is in the rural area. The development plan then sets out development that will be supported in the rural area. It is smaller scale development to meet local needs – of which this is not one (and there has been no attempt to show it could be).
20. In those terms it is clear that there is conflict with CP1, CP6 and H2 in terms of looking solely at breaches of the spatial strategy. As those are the most important policies for determining the application, and they are policies which are central to the development plan, then – as PD set out – it renders the proposal contrary to the development plan as

⁴ CD2.1

a whole. In fact, BW accepted that if the Site is outside of the BDL then it would conflict with Policy CP1 and CP6 and be contrary to the development plan as a whole⁵.

21. The Appellant had two other arguments to attempt to avoid the clear conflict with the development plan.
22. The first was to focus on the mathematical numbers to argue that numerically the scale of 210 homes would not disrupt or undermine the spatial strategy.
23. However, as PD set out, it is not a numbers game. The fact that this development would only lead to a 1.64% rise in the housing distributed to North of Tamworth (assuming for a moment this Site is in the North of Tamworth which it is not) does not tell us anything useful.
24. It fails to recognise that there is a difference in scale between the North of Tamworth BDL area, and the other areas considered. It fails to recognise that the spatial strategy – whose role is to distribute development across the district in a sustainable way by identifying areas and direct proportionate levels of homes to those areas – expressly provided for approximately 1000 homes to be delivered in this area. That approximate number (which has an inherent floor and ceiling) was then identified by the LPA which ensured that 1165 homes would be delivered.
25. To push those figures even further – especially where the LPA has already over-delivered to ensure their housing targets are met through allocating 15% more housing than envisaged⁶ - would be to stretch an already over-delivering plan beyond what it was envisaged to do. This was the justifiable concern of PD.
26. The second argument was then to assert that because the BDL homes would not all be delivered before 2029 then this left a gap in the market which could be filled by the appeal scheme. This is an unusual argument which relies on two significant assumptions. The first is that the Arkall Farm development will not deliver by 2029,

⁵ BW XX

⁶ CD3.1.2 – para 5.38

the second is that this Appeal proposal would fully deliver before 2029. No party can say this for certain (especially given the need for off-site highway works to deliver the appeal proposal for example), and that uncertainty immediately undermines the argument.

27. But there is a wider more fundamental point – it is fatally short sighted. Even if both assumptions were borne out and so the 2029 target (which is approximate) was met due to the appeal proposal – that is then rendered academic when Arkall Farm goes on the next year to continue to deliver homes and push housing levels beyond what was envisaged in the Plan. It is critically important to bear in mind that the Appellant – and BW eventually confirmed - has never submitted that Arkall Farm will not deliver, they have just made assertions about the timeframe for delivery.
28. The result would be, in the medium term, an over-delivery of houses despite the plan working.
29. Neither argument justifies what the Appellant is seeking to do here – which is to bring forward development contrary to the development plan.
30. The Appellant may argue that there is nothing wrong with over-delivery and that the housing numbers in this plan are expressed as a minimum. But that fails to recognise that this is a local authority, and a development plan, that is effectively delivering housing. This is shown by the ‘strong’⁷ housing land supply position of 9.5 years⁸.
31. The benefit that having an effective plan, which is delivering sufficient housing (Affordable Housing will be dealt with below), is that the local authority should retain the control to make decisions in line with that development plan and direct development in sustainable levels to sustainable locations.
32. This is why the Council would submit this scheme is – before turning specific harms that arise from the location – contrary to the spatial strategy of the development plan,

⁷ PD XiC

⁸ Which BW accepted was ‘healthy’.

and so contrary to the development plan as a whole, and so the Appellant must identify weighty material considerations that justify departing from it per s.38 (6).

33. Before turning to those material considerations, it is important to address the other two harms that arise.

The effect of the proposed development on the character and appearance of the area, with regards to spatial and visual separation of Wigginton;

34. The geographical location of the Site is relevant for considering the detrimental effect that it will have on Wigginton.

35. As Mr Atkin ('JA') accepted⁹ Wigginton is currently surrounded by undeveloped agricultural fields. Tamworth has a clear strong edge almost uniformly set back from Wigginton (likely reflecting local authority boundaries), and the historic railway line forms a clear dividing feature physically. This creates – again JA accepted – a clearly defined gap of agricultural fields between Wigginton, Tamworth and the railway line.

36. It was undeniable – and again JA accepted – that the appeal scheme would bring housing into that clearly defined gap. In this context it is also of note that Gail Stoten ('GS') accepted that from a heritage point of view the fields to the south of Wigginton play an important role in maintaining the character of Wigginton as a rural village. This is clear given it is the southern fields that protect Wigginton from the biggest threat and pressure – the urban edge of Tamworth.

37. On the basis of those agreed – and the Council would say uncontroversial points – it is hard to understand why the Appellant maintains that there is no adverse effect on the clear dividing gap which plays such a central role of Wigginton's character.

38. The proposal is a significant incursion into the gap and brings development closer to the village as a whole. While JA in his proof attempted to rely upon the fact that the

⁹ All XX

minimum 108m gap was maintained, it was established in XX that such an argument was a red herring. The appeal proposal would begin to wrap development around Wigginton, and so while that narrow gap (where the tip of the modern part of Wigginton gets close to Tamworth) is not shortened, it is the case that housing development is brought closer to the eastern side of Wigginton and within 500m of the Conservation Area.

39. JA attempt to avoid this physical encroachment being considered to be coalescence was to argue that it was a binary matter: either Wigginton has or has not merged with Tamworth. If it has not merged, then there is no coalescence.
40. However, that point cannot be right – even before we turn to policy. Such an approach would allow for development to slowly but surely encroach on Wigginton and entirely detract from that clear gap; despite the settlements never fully merging. The concern – as PD and Mr Roper-Pressdee (‘SRP’) put it – must be one of preventing the process of coalescence/coalescing. Equally, as GS put it, it can be said to be a question of when the ‘tipping point’ is reached whereby the legibility of the settlement is diminished.
41. In that context while there has not been the physical merging of the two settlements, the significant incursion of housing development beyond the strongly defined boundary of Tamworth and into the clear undeveloped divided gap of fields around Wigginton would undeniably be harmful physical coalescence which will detract from the legibility and character of Wigginton.
42. This is a concern that is strongly established in the Wigginton, Hopwas & Comberford Neighbourhood Plan (CD3.1.3). There policies W1 and WHC1 make clear that no coalescence should occur and the clear distinction between Wigginton and Tamworth should be maintained. In the context of the Appellant’s arguments about the ‘binary’ nature of physical coalescence it is of note that these policies were development in light of the North of Tamworth BDL and the concern that this would cause coalescence (see paragraphs 5.2, 5.22 – 5.23). Such a concern would not make sense if coalescence could only be caused by physical merging.

43. Instead, the clear purpose of the Neighbourhood Plan was to control and limit the growth of urban development to the north of Tamworth. This was something that the ‘pizza slice’ of the North of Browns Lane strategic allocation achieved, along with Arkall Farm which was on the other side of the railway line. But this appeal proposal would breach and trigger the concerns lying behind the neighbourhood plan.
44. JA did accept that even if there was no physical coalescence you could have visual coalescence where the perception of merging was achieved. This will be a matter of judgment for the Inspector but, as set out by PD, there are two ways in which there will be visual as well as physical coalescence. The first is through the perceivable encroachment of housing coming significant further forward from the existing perceivable line of housing.
45. The second is through that fact that the red line boundary of the Site will connect Tamworth with Wigginton. While indicatively housing is placed in the eastern parcel, and public open space in the western – this does not prevent the coalescence occurring. Despite the Appellant’s best efforts to maintain that the western parcel would retain an ‘agricultural’ feel, the nature of it as semi-formal managed and maintained open space will prevent this, and as its use by the public will further erode that agricultural feel over time.
46. There is a perceivable difference between walking along the current footpath through an agricultural field on the way to Wigginton, compared to walking down a tree lined avenue with maintained mown wildflower meadows and additional footpaths¹⁰ adjoining a clearly perceivable housing estate (along with the activity, light and accompanying sounds). All of this will give the western field an urban feel and there will no longer be that sense of leaving Tamworth, and traversing over agricultural fields to reach the rural village of Wigginton.
47. Therefore, there will both be a detrimental adverse effect on the distinction between Wigginton and Tamworth, and this proposal will lead to the coalescence of the two settlements. This will be in breach of policies W1 and WHC1 as well as CP3 of the

¹⁰ All illustrated on CD1.1.7 – which it is accepted is just illustrative.

LPS. Further conflict with the development plan beyond the proposal being contrary to the spatial strategy. BW did not dispute when given the opportunity, if there is a breach of these policies, PD categorising of significant weight to this.

Whether the proposal would preserve or enhance the character or appearance of the Wigginton Conservation Area

48. It is accepted between the parties that there is less than substantial harm caused to the setting of the CA, that this harm must be given great weight, and is a material consideration. The only difference between the two experts is whether the harm sits at the low or moderate end of the spectrum.
49. While the Appellant's approach was to, at points, attack the integrity of the Council's expert, that is not the approach that the Council takes. Both SRP and GS – between whom there is significant agreement – have taken an appropriate approach to considering the issue and have reached different judgments as they are entirely entitled to do.
50. The attack on SRP in reality boiled down to an attack on his drafting – not expanding his section on the impact on the wider CA – and his decision not to include photographs but to rely on existing ones. At the very least it was welcomed that GS accepted that the latter criticism was one of presentation rather than methodology.
51. However, in truth there was more heat than there was light from the XX of SRP. Critically SRP concern did not arise from the impact on key views from the CA (which is what he was attacked on) but instead came from the conjoined adverse impact on the views and experience of a walker following the historic footpath from Tamworth to Wigginton.
52. The re-development of agricultural fields which have a long historical agricultural association (first through historic mapping, and then evidenced by ridge and furrow – all within the parish boundary of Wigginton) would undermine and harm the 'strong relationship between the village and surrounding field pattern' which is recognised in

the Wigginton Conservation Area Appraisal and Management Plan (CD3.1.9) as being part of the significance of the CA.

53. SRP was credible and justified in considering this to cause moderate rather than low 'less than substantial harm'.
54. It is of note that GS accepted that her analysis of the heritage harm was done on the basis of there being no coalescence and the legibility of the setting to the village remaining. It must follow that if, as is set out in the section above, the Inspector were to find that there was coalescence which undermined the legibility of the rural village setting then this would increase the harm above where GS put in. To put it in GS terms if the 'tipping point' is reached and the legibility is detracted then this must increase the 'less than substantial' harm.
55. In that light, the Council would submit – given there is clear coalescence – that in fact there is little difference between the two heritage experts – the harm should be viewed as moderate.
56. It is accepted by the Appellant that such harm should be given great weight, and would mean the development is also in conflict with CP14 and BE1.
57. At this stage there is therefore considerable conflict with the development plan. Not only is the proposal contrary to the spatial strategy but is also in breach of the coalescence and heritage policies of the plan. The material consideration to justify such a significant departure must be overwhelmingly weighty – and this bring us onto the key material consideration upon which the Appellant relies upon: Affordable Housing.

The need for, and provision of affordable housing in Lichfield and Tamworth, including the mix and tenure;

58. It is telling that the appeal proposal was never originally for 100% AH. From submission in 2018 until October 2023 the intention was for it to be a policy compliant 40% AH scheme. It was only when the Appellant recognised the uphill battle that the scheme faced that they amended the scheme last minute to be 100% AH – this aptly

described as a ‘hail Mary’ pass by PD. While BW claimed ignorance, at the same time he disputed PD’s account. The two are inconsistent and the reason for it is that BW did not want to accept the damaging contextual point.

59. This context reflects the fact that the 100% AH provision of the scheme is the main – and the Council would say sole – benefit and justification for departing from the development plan. This is why the Appellant places the weight at ‘very substantial’ all predicated on the fact that both Lichfield and Tamworth do have an objective need for AH.
60. But such an argument fails to recognise the wider context of AH in the local plan and in delivery terms.
61. The starting point is that the planning system works by local authorities identifying a need and then setting a requirement in their local plan to meet. This policy ‘off/on’ distinction is set out in national policy, well known and was recognised and accepted by James Stacey (‘JS’).
62. Both Lichfield and Tamworth’s development plans expressly recognised that it was not practical to meet their full objectively assessed need as set out in the 2012 Southern Staffordshire Housing Needs Study¹¹ and instead set out an appropriate and sustainable requirement.
63. For Lichfield this was to deliver 2,000 AH by 2029¹² through the 40% minimum target on qualifying sites equating to 100 a year. For Tamworth it was to deliver 1000 by 2031 at a rate of 40 a year¹³.
64. JS accepted that these were the relevant requirement figures (and answered questions on that basis). However BW tried to row back on this in relation to Lichfield – but he had to accept that the 40% minimum target was in the policy box and sought to split

¹¹ See 8.15 on pdf 57 of CD3.1.1 for Lichfield, and para 5.21 on pdf 98 of CD3.2.1 for Tamworth

¹² See 8.16 on pdf 57 of CD3.1.1.

¹³ See Policy HG4 in CD3.2.1

hairs by suggesting a target which the supporting text¹⁴ makes clear is based on an analysis of viability and need, is not a requirement. But that begs the question what it would be? It must be the policy requirement set in the context of the need it was not practical to meet. The rest of paragraph 8.16 then makes clear that this policy requirement would equate to a target of 2000 AH by 2029.

65. On the agreed figures JS accepted that both authorities would meet that requirement if you look at their ‘gross’ figures¹⁵ (with a year to spare). The reference to ‘gross’ is because JS’s original approach was to also examine the figures ‘net’ of right to buy. This is where he excluded from the supply any right to buy properties that had been initially sold to the occupant.
66. However, such a simplistic statistical approach did not stand up to scrutiny (which did not occur in the Birmingham Appeal decision¹⁶ cited to support JS argument). The theory is that once a RtB property is sold then it is no longer affordable. But that – to use JS expression – fails to recognise that this is the end point of the staircase out of affordable need, not the start.
67. At the start, when the property is first sold to the occupant at a significant discount, JS eventually accepted that it would continue to be meeting an affordable need and would still be an affordable home. Yes, when it was sold on it would not be, but if that sale was within the first ten years, then it would have to be offered back to the social landlord – and of course there would be one less affordable need given the occupier had presumably sold their property for full market value and reached the top of the staircase.
68. The point is – reinforced by the fact that this approach is not set out anywhere in policy or guidance – is that JS approach is far too simplistic to assist in what is a complex situation. It overly punishes local authorities by removing from their supply a property which – when first sold – is still an affordable home meeting an affordable housing need. There is no basis for what the Council characterise as a statistical sleight of hand to reduce the supply of AH in a local authority area.

¹⁴ Para 8.16 to Policy H2 in CD3.1.1

¹⁵ JS XX

¹⁶ CD8.2.1

69. The Inspector is invited to have regard to the gross and not the ‘net’ figures – although even on the ‘net’ figures Lichfield was meeting their requirement if their supply figures were used¹⁷. This touches upon another pinch of salt that must be given to the Appellant’s supply figures – they draw on the 15- or 17-year average delivery which the Council will set out below is unreliable.
70. The critical point is that both development plans are delivering sufficient housing to meet their plan requirements which were found sound and in line with national policy.
71. Yes, they are not currently meeting their need, and the Council has never suggested that the provision of AH is not a benefit carrying weight, but where you have a conflict with the development plan, and that development plan is delivering its AH requirement, it is a stark submission to make that ‘need’ (which the plans never planned to fully meet) justifies developing in such clear breach of the spatial strategy and wider plan.
72. Such an approach – given JS evidence that he has only known one local authority to fully meet its need – would be to give developer’s carte blanche to bring forward AH development wherever they liked in breach of the plan until the need was met. However admirable an aim it is to meet AH need, such an approach would be contrary to national policy and the sound local policy that is created in accordance with it.
73. The Appellant’s argument does essentially boil down to AH need justifies developing here. But such an approach does not properly engage with either the local or national policy framework through which development is brought forward.
74. There are then further points which – as set out by PD – reduce the weight to be given to AH as a material consideration.
75. Despite the above the Council have not ignored their need, and have sought to increase their delivery of AH. JS looked at the longer-term average of delivery over 15 (Lichfield) or 17-year period (Tamworth).

¹⁷ JS XX

76. However, as he accepted in XX, such an approach smooths out and ignores the significant increase in delivery in both Tamworth and Lichfield following the adoption of current development plans.
77. This has led to development in recent years far exceeding the longer period averages presented by JS and he accepted that numerically Lichfield were getting close to or over their HEDNA requirement in 2019, 2022, 2023 and 2024¹⁸ and Tamworth were getting close in 19/20 and 20/21 for theirs and far over their 40 a year requirement¹⁹.
78. It would be wrong to paint either local authority as not delivering AH. Both plans are demonstrable doing so.
79. They are also doing so in this location – with the North of Tamworth allocations delivering 441 AH in the area. Despite the Appellant’s disregard for it, it is relevant that they have not demonstrated a local need for AH that they would be meeting. This is a clear focus of policy (see H2) where development is being brought forward in this location – and the Appellant’s focus on a district wide level ignores this. The Inspector does have the indication from the Council’s waiting list evidence of one source of need in the ward, surrounding wards and wider SHMA sub area: none would justify an additional 210 AH.
80. Finally, there is then the fact that the Appellant’s proposal is for 100% placed in one location as a ‘peninsular’ sitting outward of Tamworth – which is a cul de sac accessed by only one vehicular access and with no through-roads. It is telling that in defence of this point BW referenced the existing PROW that would, post development, not run through the housing and would not bring users into the estate.
81. There is – in both local and national policy – an objective to create mixed and balanced communities²⁰. This is expressly set out as a relevant AH objective by its reference at

¹⁸ See Gemma Hill Appendix 1 figures

¹⁹ See Gemma Hill Appendix 1 figures.

²⁰ BW accepted this as a general proposition.

paragraph 64 of the NPPF, and PD's view is that it falls as part of the wider social objective of sustainable development.

82. The need to have inclusive communities that promote social inclusion is then raised in the PPG on Healthy Communities²¹ and reinforced by the National Design Guide²². The requirement to have mixed communities of both affordable and general housing is then set out at Policy H2 of the LPS.
83. Drawing all those policy strands together it is clear that local and national policy wants mixed and balanced communities which promote social inclusion by having a range and variety of house types and tenures including a mix of general and affordable housing. To use JS example, policy wants doctors and nurses to be living in the same communities.
84. Fundamentally putting this amount of AH jutting out of Tamworth in a peninsular will not be in line with that policy objective. It is a danger reflected in the fact that local policy seeks only to bring forward 'small' 100% AH schemes²³. Contrary to the suggestion of the Appellant that does not mean that all 100% AH schemes are contrary to this objective – as set out by PD in Re-Ex scale and location will be relevant to the point. But this scheme, in this location, at this scale, does not align with that objective.
85. It is also not the case – if the serious allegation is maintained in closing – that the Council are stigmatising those who live in affordable housing by their resistance to the scheme. As the above concern illustrates, the Council's view is exactly the opposite. It is certainly not the case, for example, that if this scheme were for general housing the Council would not object. Any housing here – given all the conflict set out above – is not acceptable in planning terms.
86. To be clear none of the above removes the fact that the provision of AH is a benefit. But it does reduce it down from the 'very substantial' the Appellant gives it, to the moderate PD gives it. It also does mean that AH – regardless of the weight given –

²¹ CD3.3.6

²² See for example paragraphs 109, 115, and 119 at CD3.3.3 (page 34 onwards).

²³ See paragraph 8.19 of LPS (CD3.1.1) which supports policy H2.

cannot be a sufficient material consideration to justify departing from the development plan.

87. This relates both to the benefit of the provision of AH, and the benefits associated with the delivery of it in association with the Platform Housing Group.

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

88. These matters have been adequately addressed in a s.106 Agreement of which a final draft has now been provided to the Inspector.

Conclusion and Planning Balance

89. The Appellant has also put forward as a weighty material consideration the provision of BNG. However, the ‘substantial’ weight given to it by BW is based on a misapplication of the PPG.

90. The Council’s local plan policy NR3 requires a “net gain for biodiversity”. The SPD – as BW accepted it was legally entitled to do – then expands on that policy to explain the level of BNG required. It is set out at 6.33 as a minimum of 20%. Therefore, as BW accepted, the Appellant is only providing the minimum BNG required by local policy.

91. The argument that said local policy is rendered out of date is a simple misreading of the PPG (CD3.3.2). The paragraph BW expressly cites is the paragraph that relates to plan making which is not occurring here. It ignores the specific paragraph (Para 20) which deals with this exact point, and sets out that when the statutory BNG does not apply then local requirements of at least 10% will continue to be a material consideration. There is no suggestion in the PPG that it is out of date.

92. The provision of the minimum local policy requirement of BNG cannot be said to be a weighty material consideration.

93. Overall, this proposal is bringing forward development in spite of the development plan. It is looking to limpet onto a policy area which has already overdelivered the

housing envisaged in the LPS through the controlled manner of the LPA. It juts development out into the rural area into an existing clear divide around Wigginton causing harm to the character and appearance of the rural village, and harming the setting of the CA. It is entirely contrary to the development plan – both spatially and in terms of the particular policies concerning coalescence and heritage.

94. In such circumstances, especially where the development plan is effectively delivering both general and affordable housing to meet the plan requirements, the Appellant must point to a remarkably weighty material consideration for justifying an approach which is so contrary to the plan-lead system we are in. AH is undeniably a benefit – but it is not such a weighty benefit to justify this development. The 100% hail Mary pass has not worked – and the appeal proposal should be refused permission.

95. On that basis the Inspector is respectfully requested to dismiss the appeal.

PIERS RILEY-SMITH

KINGS CHAMBERS

10 July 2024