

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 CLOSING STATEMENT

INTRODUCTION & SUMMARY

1. Following two weeks' worth of detailed evidence, matters have further narrowed. There is even more clarity that consent ought to be forthcoming. It is possible to summarise the position in the following way.
 - i. The Council's **in-principle objection** based on pure numbers in the North of Tamworth (under CP1) crumbled. It has been accepted that a further 210, in the context of the Arkall Farm scheme's delivery faltering, does not amount to saturation.¹ It is accepted that CP1 is not offended. The basis on which CP3 and CP6 are said to be offended (as explained below) did not stand up to scrutiny;
 - ii. The proposals will maintain a **clear separation** from Wigginton, with the Western parcel to remain totally free from development. The topography and future detailed landscaping will assist with this endeavour. The Arkall Farm development breaches any imaginary dividing line by going further north on the

¹ XX Daly

other side of the railway line – beyond the rough boundaries of the BDL. Arkall Farm would be even more visible from a distance (in glimpses) by virtue of topography than this development will be from Wigginton.

- iii. In landscape and heritage terms it was clearly shown that the legibility of Wigginton from Tamworth is not threatened in any way. The Council's case appears to be all about looking at the site from an ariel image only.² An odd approach when seeking to understand this from a planning development and placemaking perspective which ought to be understood spatially in its fullest context;
- iv. Ms Stoten gave compelling evidence on **heritage**. She had done the work that Mr. Roper-Presdee failed to do. Her conclusions on the scale of *less than substantial* is underpinned by a robust assessment, and should be preferred;
- v. The question of **need** is perhaps the easiest to determine. It is accepted that there is a significant shortfall to date that will never be met by 2029, even with this development. The housing register provides a partial picture and hides thousands of others in need across two districts. The affordability crisis is only worsening. The range of people eligible to live in this development is diverse, not just restricted to those to the lowest incomes or the housing register. Consequently, with this overly narrow and inappropriate focus on need, the Council and their Counsel clearly misread the NPPF when suggesting that the development will not result in a '*mixed and balanced community*'. The reliance on the design guide and cursory PPG sections is desperately incoherent;

² This explains by P R-S continuously referred to the image in Mr. Carr's evidence

- vi. The Appellant’s case on **design** remains unchallenged. Any purported lack of accordance with the national design guide or the PPG on healthy communities is subsequently without any evidence of harm and is unfounded. In fact it’s a poor attempt to make a very bad point stick. Not a single criticism has been made about **Platform** and their record. There are no residual concerns around **highways**, despite the poor last minute ditched attempt from Barwood.

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

2. It is worth repeating that 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.³ It is hardly possible to find a single development that is entirely in accordance with every policy of a DP. We invite the Inspector to apply his judgement in the following way.

North of Tamworth

3. 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.⁴ 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.⁵ This figure has always been expressed as a *minimum* with material considerations to be applied carefully.

³ **CD 8.1.1: Cornwall Council v Corbett [2020] EWCA Civ 508**

⁴ See Table 4.1 and the Key Diagram Map at 4.1 and also Figure 1 of BW POE

⁵ See page 27 of the LDLP Strategy 2015, footnote (xv) and also page 51 of the Strategy

4. Mr Daly struggled to understand the position conceptually on a number of occasions. Nevertheless, he accepted the following clear propositions:
- i. The first **RFR** explicitly assesses the proposal against the numbers specifically allocated towards the North of Tamworth, both in percentage terms (10%), as well as what this means against the two allocations (NTV1 and NTV2). The fact that Rural 1 policy is cited does not contradict this;
 - ii. The **Officer Report** may well mention Rural Policy 1, and the fact that the site currently lies in the open countryside (one key mention). But it is obvious that the report's critical assessment relates to the North of Tamworth, its specific numbers and how this development will exceed the same;⁶
 - iii. The **Council's Statement of Case**, again, on any rational view is doing what the RFR and OR did – namely assess the scheme against North of Tamworth⁷;
 - iv. In the main Statement of Common Ground policy Rural 1 is not listed as one of the 'most important policies' for the determination of this appeal;⁸
 - v. Mr Daly's POE is consistent with the aforementioned approach.
5. Mr Daly's explanation that this is because it was assessed against North of Tamworth, and 'fell outside it' to become a Rural 1 site does not make sense. Plainly, that's not how the policies in the DP expects its application. It is not how the OR report reads, it is not the position that's taken in the SoC and it is plainly not how the Council's case is put. It would appear that Mr Daly has simply made this up out of his own volition.

⁶ See, 8.21, 11.5-11.18, culminating in 11.21 by way of examples

⁷ See paragraph 7.2

⁸ CD 5.4, page 9, paragraph 5.3

6. The rational approach is that once you've situated the site within the settlement hierarchy at Tamworth⁹, as explained by BW, you follow through by understanding the role and function of Tamworth within the spatial strategy (i.e. in the BDL, 1,000 minimum, the plan period etc). PD accepted we plainly fit into Tamworth. It then falls on an assessor to consider whether the development goes on to accord with the spatial strategy as a whole. This is how one understands the committee report the Council's SoC, with the determining issue being the numbers. Again, PD accepted this.
7. **Sir, the site is geographically in the North of Tamworth in a sustainable location. It should be judged as unallocated, abutting two allocated sites sitting within the BDL area against which the numbers offered as part of this appeal should be understood. The basis on which it is acceptable and appropriate is addressed further below. It is really that straightforward. To suggest otherwise makes no sense at all. To accept that it is in 'Other Rural' or within the "remaining rural areas" would be to misread the spatial strategy completely.**

The Development Plan

8. The LDC Plan is getting closer to the end of its plan period (2008-2029). It had identified very early on, as confirmed on adoption (2015), that the lack of affordable housing within all areas of the District was a weakness.¹⁰ It is also common ground that **CPI** always set a target of 10,030 as a *minimum* distributed across the District, some of which is expected to meet the needs of Tamworth (like in the North). The approximate apportionment to the BDL is, contrary to PD's assertions, flexible and subject to a judgment of each proposal coming forward in that area.¹¹ It is not meant to be an exact

⁹ Table 4.1

¹⁰ Paragraph 2.27, PDF page 18

¹¹ Table 4.1

figure beyond which one must not exceed. Indeed in many instances such an apportionment has been exceeded, overall such exceedances have not skewed (and will not be skewed by) the overall spatial strategy. In accordance with this strategy, growth will be located at the most accessible and sustainable locations.¹²

9. **CP1** anticipates the need to release Green Belt land in order to meet local community needs.¹³ Plainly this includes those on the housing register and those who are part of the community and not fully captured by a limited register. The plan clearly states that the more affordable housing provided, the more this contributes to local residents, who with a sense of pride in the District, will remain local.¹⁴ This also makes sense because LDC is largely constrained by GB, notably the fringes of most of the higher order settlements, including most of Lichfield.¹⁵ This means that specific locations outside of the GB that are sustainable and able to accommodate housing need are limited. Tamworth is one such place.
10. A key challenge in the plan identified spoke to the simple reality that the need was never going to be met via the cross-subsidy with market housing, as viability for those sites would be a concern.¹⁶ And in mentioning ‘new and innovative’ ways to meet this need, PD accepted fully affordable schemes could be one such way.
11. PD accepted that CP1 is not offended in pure numbers. Given that’s precisely what this policy is about, it is baffling in what other ways it could be offended. If the numbers proposed do not represent ‘saturation’ and can be absorbed, what is left?

¹² See Map 4.1 of the Local Plan

¹³ See PDF page 28 and also supporting text paragraph 4.15

¹⁴ See paragraph 4.12, PDF 31

¹⁵ See Map 4.1 of the Local Plan

¹⁶ See paragraph 4.14

12. If there is no saturation, then there is no skewing of the spatial strategy, and there is no offending CP1. This must follow logically.
13. The next policy relates to **CP3**. The Council's SoC does not explain precisely which elements are the issue between us. At the end of the inquiry, we are still unsure of the position taken by PD in relation to this policy. The following is, though, clear.
 - i. This is a policy about delivering sustainable development. This is a proposal on a site that's in a sustainable location, accessible to all the services and facilities expected in this particular location; PD does not dispute this;
 - ii. The policy itself is quite wide ranging, it relates to all manner of developments, involving matters from carbon emissions to environmental impacts. When it is read as a whole, it is not offended;
 - iii. In so far as the **third bullet** point is concerned, to be blunt, PD has read it and clearly not understood it. The reference to promoting social cohesion and inclusion is purely about reducing inequalities – by seeking to provide people with better jobs, affordable housing and a range of services and facilities, mindful of the needs of urban and rural communities. It is precisely what this development is seeking to achieve;
 - iv. PD remarkably seeks to suggest that by providing *more* social housing, the development is a threat to social cohesion. This is absurd, it is not evidence based and crucially would, if accepted, mean that fully affordable schemes of whatever scale around the country shouldn't come forward;

- v. Contrary to the suggestions, there is no ‘pressure’ on existing infrastructure. Indeed the agreed position between the parties is that it is common ground that this proposal will be acceptable in these terms. For PD to have maintained this position still is unreasonable;
- vi. To keep suggesting that the development is a solo ‘peninsula’, completely ignoring its full context, is similarly odd. That is not how the site reads in planning terms and on the ground;
- vii. Nowhere in law, policy and guidance does the Council find support that if there is no market housing, there is an imbalance in the community. Again, to accept this proposition would be a first;
- viii. Both PD and his Counsel¹⁷ appear to have clearly misread the NPPF in its reference to ‘mixed and balanced communities’¹⁸. This relates to developments (and specifically policies) that seek to offer payments in lieu and/or off-site contributions. This is completely irrelevant to our proposals because all of the affordable homes are to be provided *on-site*;
- ix. As a starting point, this development on its own does not sit divorced from its wider context. The fact that there will be such a diverse community (in need, income, family sizes, demographics etc) demonstrates that it will be quite the mix. This will also be consistent with the spatial strategy of the LDC Local

¹⁷ See paragraph 22 of the Council’s Opening:

“Instead in fact, this creates further harm given the result would be an un-integrated peninsular of affordable housing which is the anti-thesis of the priority of national policy to create mixed and sustainable communities where affordable housing should be indistinguishable and well-integrated into wider communities.”

¹⁸ The only place it is mentioned is NPPF 64

Plan.¹⁹ The idea that because there is no market housing available it follows that there will not be a balance is preposterous;²⁰

- x. Households who earn up to £80,000 will be eligible to apply for this development, that's a couple earning more than the national average each. This is why the bizarre suggestion that *both* doctors and nurses not being able to live in this development means the community won't be mixed or balanced. Most junior doctors would be lucky to earn anything near £80,000pa. Such is the acute housing crisis that we find ourselves in that people earning more than the national average, in skilled employment, are locked out of the housing market.
 - xi. As to marginalisation, there are many languishing on waiting lists and temporary accommodation who desperately need a home, what about them? That's a form of ongoing marginalisation that PD is comfortable maintaining;
 - i. If this development were to proceed, in this location, the design approach and the record of the Registered Provider, there will be nothing distinguishable about this community that could be said to lead to any form of marginalisation. JS set out how Platform can assist its tenants in integration into the wider community. Platform provide much more than a basic home.
14. On the specific policy relating to **North Tamworth**, the BDL is specifically and purposefully broad and flexible. The figure of 1,000 is explicitly stated as 'around 1,000 homes' in order to meet the need. It would be totally folly and inflexible to have done otherwise and to accept PD's assertions would fly in the face of this. We are told that

¹⁹ See paragraph 8.8 of the Local Plan

²⁰ To this end the social objective of the NPPF will clearly be fulfilled

the spatial strategy recognises that not all locally derived housing needs can be met within its Borough boundary.²¹ Paragraph 1 of the Policy explicitly identifies the needs that would arise from Policies H1 and H2, namely the affordable housing needed. Which is exactly what we are seeking to achieve through this development. The supporting text states that this will ‘dependent on the delivery of necessary infrastructure’.²² This is precisely what we are doing, and there are no issues around this at this appeal. Again, on an ordinary reading of the policy, we are fully compliant.

15. The Council’s case invites the Inspector’s analysis to start at **CP6** as a way to set out its own theory of where the site sits in the hierarchy and how the policies work. It’s creative of PR-S to try, but it is ultimately wrong. For all the reasons set out above and as heard in the inquiry, this is plainly wrong. BW’s analysis and approach is to be preferred to that of PD.

Can the North of Tamworth ‘take anymore’?

16. PD repeatedly told the inquiry that the North of Tamworth was ‘full’ and could not take any more development. This again is such a bizarre claim, made without any evidence. It can be briefly refuted in the following cogent ways;

- i. The site is remarkably unconstrained and fully able to absorb these proposals in this location with great ease;

²¹ **CD: 3.1.1** Allocations Document, PDF 116-117

²² 15.3

- ii. It is common ground that in every conceivable technical sense, this part of Tamworth can take more, and certainly can take another 210 homes. There is no pressure on highways, on schools or any other infrastructure issue;²³
- iii. We know that this site is sustainable in terms of access to services and facilities;²⁴
- iv. PD explicitly accepted that 1,375 homes in this location, and for the sake of ease we assumed 50% of it was affordable, 375 more overall than the ‘*minimum*’ is acceptable and does not amount to a ‘saturation’²⁵;
- v. He accepted that there was no explicit policy to say ‘stop’ after a certain number, but an implicit acceptance that there was a floor;
- vi. The LDC DP accepted from the beginning that it could not meet its AH needs into the future²⁶;
- vii. We know that Arkall Farm is yet to deliver 700, with no clear evidence of how and when this will come forward. Unlike the remaining 700 dwellings at Arkall Farm, we know that the appeal proposal will be built and managed by Platform, an experienced developer and operator of affordable homes. Further, even by the end of the plan period, which is less than 5 years away, it is likely to be 160 or so units short²⁷ against Tamworth’s minimum housing apportionment;

²³ See main statement of common ground at paragraph 6.27

²⁴ See main statement of common ground at paragraph 6.4

²⁵ This point also assumes Arkall Farm and North of Browns Lane will both ensure full 40% delivery

²⁶ See paragraph 4.14

²⁷ See HLS figures for Arkall Farm – and again, this assumes there are no delays and all the highways mitigation is delivered as planned and not delayed

17. In short, far from being unable to take more, this part of Tamworth *needs* more to come forward sooner. The plan *expects* the '*minimum*' to be breached, with no cap. There are no technical reasons to stop more coming forward, still less a fully affordable proposal seeking to meet an accepted shortfall. **Mr Daly is wrong on policy interpretation and expectation, he is wrong on numbers, he is wrong on the capacity of the infrastructure, and he is ultimately wrong on what this all means for the North of Tamworth fast approaching the end of the plan period. Above all, he's wrong about the urgency of meeting the urgent needs of people, today.**
18. **Core Policy 6** is another policy misinterpreted and misunderstood by PD. All that it does is to give expression to the distribution of new homes.²⁸ According to PD it caps the figure of 1,000 despite the policy not stating so, and despite what we know that (a) CP1 has set a minimum (b) that minimum was already going to be exceeded (by 165) by the time that the allocations document was published and (c) this proposal adding to that number (1,375) is accepted as not skewing the strategy as a whole, nor placing any pressure on the North of Tamworth as a whole.²⁹
19. Both GH and PD accepted that the addition of 210 dwellings to this location only represents an increase of 1.63%, as per the evidence of BW, in committed growth. This is not out of keeping with what's happening in similar settlements and would accord with the broad pattern and distribution of housing growth within the District as a whole.³⁰

²⁸ See Table 8.1

²⁹ See in particular paragraph 8.4 on PDF 54

³⁰ 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

20. **Policy H2** is a complete red herring from the Council. Indeed it is not even mentioned in the RFR and DN. In so far as he understood the point, PD accepted that this was a permissive policy to support rural exception schemes. This proposal has never sought to suggest it was a small scheme that fits that description, still less a rural exception site. But he also accepted that this policy did not act as a policy that prohibits affordable housing *need* being addressed at other scales. Which is precisely what we are seeking to deliver to two Districts.

Rural Setting

21. PD's case that this is a site in the 'open countryside' representing a different part of the settlement hierarchy is similarly confused and confusing. This is not a proposal that seeks to be consented adjacent to Wigginton. It is located on the edge and abuts the second largest town (by population) in the County of Staffordshire. It abuts and closely adjoins two major housing schemes (Arkall Farm and North of Browns Lane). It represents an extension of Tamworth, and Tamworth is not a rural settlement. Even taken at its highest point, the context of the site does not allow for a rational interpretation that it reads as being a Policy Rural 1 area.

Conclusion

22. **In sum**, the proposal before the inquiry sits in the BDL and is physically and functionally related to Tamworth, not just geographically, but spatially in the way one understands the LD Spatial Strategy. It sits there in policy terms in how a decision-maker applies the relevant policies, and the Inspector will be in good company with everyone who has assessed this scheme, including PD notwithstanding what he has sought to persuade the inquiry. In the words of BW, we are clearly in Tamworth and that's how we should be treated.

23. **Finally**, it is perhaps noteworthy that once BW was able to answer the points clearly and convincingly, the Councils' questioning was left with the pleading that BW engage with hypotheticals that are completely divorced from the reality of how the spatial strategy should be first interpreted and then ultimately applied. Similarly, distracting questions about why this scheme is now pursued as 100% affordable are irrelevant. What is in front of the Inspector is not a 'fall-back' position but a principal position. This scheme stands and falls on what is in front of the Inspector now.

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. At the end of this inquiry, the landscape and character evidence remains uncontested. Mr Daly is neither suitably qualified to assist the inquiry on this issue, nor has he attempted to grapple with it in any serious way. There is no written evidence or discernible analysis that demonstrates the points being pursued, or the assertions being repeated (from the SoC through to PD's POE).
25. The persistent reference to the aerial images in MC's POE to demonstrate points around coalescence, too, speaks to the Council's completely one dimensional approach to the 'plan view', without properly grappling with the reality on the ground, how the development would read spatially. All culminating in a complete failure to apply sound planning judgement. At the end of this inquiry, there remains no issue in relation to the impact of this development in the classic 'landscape and character sense'. That should be carried in favour of the development.³¹ It also must be read alongside the policies around spatial strategy, and material considerations generally.

³¹ **CD 2.5, paragraph 3.9:** It remains 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

Coalescence

26. This issue remains an odd one as pursued by the Council. In so far as it relates to landscape and character terms, there is no case to answer at this inquiry. Instead, the inquiry has been forced to entertain an incredibly bizarre argument, based around whether the fact that there is no '*physical*' coalescence would mean there can still be *coalescence*. This is just a straw man argument and no doubt obvious as such.
27. To be clear, to establish coalescence, two settlements *do not* need to be touching. That would be absurd, and that's not our case. Mr. Atkin's evidence demonstrates quite clearly that no physical coalescence would occur, but that is not the end of the story. Mr Ryley-Smith struggled with the next part, which is that the *lack* of any experience or occasion of visual coalescence from the surrounding landscape, on the ground, in real life, not some hypothetical birds eye view, would mean that there would be no perception of coalescence either. Considering these two elements together, understanding the discrete nature of the settlements, and applying one's judgment will yield the result of whether there is coalescence or not. To this end, it makes no sense to suggest that merely by building closer to Wiggington, you're coalescing.
28. In so far as **Policy WHC1** represents a serious policy breach, there is nothing to the point. This is a policy that relates to all three of the NP areas, and their relationship with Tamworth. There is nothing particularly unique about that the relationship between Wiggington and Tamworth that makes coalescence especially risky at this particular location. Here we have plenty of evidence demonstrating that the distinctiveness of Tamworth, as defined, will not be adversely affected. There will not be *coalescence*, no matter the attempts to invent a different definition of a well understood term.

29. In relation to any coalescence as to **heritage and the WCA**, there is no evidence presented on this by the Council. PD is not a heritage expert either, and RP acknowledges in fact that it will not occur, and accepted in XX that there is no current coalescence or indeed ‘coalescing’.³² In terms of change of views *from* the CA, looking at GS Plate 18, there is little visible change that will occur. It is acknowledged that development will be visible from Syerscote Lane, beyond the Conservation Area – intervening agricultural land would remain, and the view already currently has a backdrop of housing. **It is common ground that the key views identified in the WCAA are not impacted at all.**

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

30. It is right to say that the difference between the parties is down to where in the ‘less than substantial’ scale the experts fall. But there are two fundamental factors that play into this that mean the Inspector cannot attach similar weight to the respective witnesses. To this end, the following is worth noting.

- i. The assessment of the **whole setting** must be properly understood before one can properly appreciate which part of the setting is being impacted by the development. Mr RP whilst agreeing with this principle has nevertheless failed to undertake such an assessment. This has consequences;

³² Paragraph 1.8 and 8.10 of Mr. RP POE

- ii. A full assessment must appreciate the 360 degrees around the WCA, first considering the key views important to it (as a baseline)³³ and then to assess any further views that may be important to the fuller context. Views looking *back to* the WCA must similarly be properly appreciated, before applied elsewhere.³⁴ Mr RP's evidence is distinctly lacking in approach and ultimate assessment;
- iii. The lack of pictures is significant. It either shows a laziness in work, or a failure to properly undertake work to a high standard that would be comparable to that of GS. We do not know what RP was seeing when he was making judgements, still less how one might compare those with the judgements made by GS. It is a clever attempt to stitch together hollow words with pictures in the WCAA, in the hope that we give the Council's case the benefit of the doubt;
- iv. An example of this is the lack of proper understanding of the panoramic view from the Old Crown Inn, and the footpath south of Comberford Lane³⁵;
- v. The site is screened from the dynamic view along Main Road.³⁶ The approach along the footpath does not *directly* lead into the CA, but to Syerscote Lane, then over to a continuation of the footpath, bypassing the village;
- vi. Taking all of the above into account, the site does have some limited illustrative value as to the agricultural character of the settlement, and its open character does allow the legibility of the village as a discrete settlement.

³³ As GS pointed out this is a way of 'sense checking' the WCA before looking at further views

³⁴ See CD 3.1.9, see 1.3 and PDF 28

³⁵ See GS POE Plates 4 and 5

³⁶ See GS POE Plate 10

31. The western area of the site will remain undeveloped, and as GS explained, it would be possible to deliver the land use in a way that minimises changes, and ensures that the character of the field remains of agricultural nature. RP agreed that this was possible to achieve as a matter of principle. Landscape remains a reserved matter and the Council does not challenge the Appellant's approach to design.
32. No matter the debate about ridges and furrows, the field currently has grassland character with well-trodden footpaths.³⁷ The intention is to ensure little alteration by the proposed development, to allow it to retain a meadow/pasture character, with informal pathways. Hedges and boundaries are to be largely retained, ensuring consistency with the field pattern noted in the WCAA. The access will take up a small part of the southern area, and be largely screened by planting.
33. On any rational view there will be appreciable set back of built form – some 325m to the south east of the Wiggington Conservation Area.
34. There is an odd reliance on a heritage assessment not before the inquiry, as quoted in the NP to support a preposterous proposition. Namely that some 500m ought to be maintained as a form of separation amounting to 'guidance'.³⁸ I can do no better than Ms Stoten's reply that to treat this sentence as 'guidance' is '*ridiculously facile*.'

³⁷ See GS POE Plates 16 and 17

³⁸ CD 3.1.2 – NP, paragraph 5.23, PDF page 4

35. **In sum**, there is some reduction in illustrative value. These changes must be considered in the context of the following key components:

- i. The significance of the asset is largely being contained in the buildings and spaces within the designation;³⁹
- ii. That the more open setting to the east and west of the CA will not be affected;
- iii. The views south from within the CA on Main Road will be little changed;
- iv. The village will remain legibly discrete as a settlement;
- v. That views from the dynamic view on Main Road are largely screened;
- vi. That views on the dynamic view on the footpath will remain through open space that will be little changed, and are not direct approach to the WCA.

36. For all these reasons, and the evidence presented at the inquiry, the approach taken by GS should be preferred. Her conclusions are clear and comprehensive, resulting in '*less than substantial*' at the lower end of the scale.

³⁹ See 1.3 of the WCAA

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

37. Despite the significant common ground, as a starting point,⁴⁰ the Council sought to muddy the waters by seeking to rely on unrealistic future supply, whilst conveniently ignoring a persistent historical shortfall. The Council would rather re-define the period within which to count the delivery, rather than confront the reality of an ongoing unmet need, now. 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).⁴¹ This is the critical starting point for this inquiry as far as the Appellant is concerned.
38. When this need is judged against the actual delivery of affordable homes, for both local authorities whose needs this development seeks to meet, it remains common ground that the current unmet need in TBC and LDC is **-1,552**. In annual terms, the scheme before the inquiry seeks to delivery of 210 dwellings, which is not going to even make a noticeable dent on these shortfall figures. Just over half (54%) of the annual need in a single year.
39. In the XX of JS, the Council sought to introduce an odd straw man argument around meeting the requirement set in the LDC DP adopted in 2015 – ignoring Tamworth. The answers are pretty clear and they are worth re-stating. **First**, the 2,000 figure over a plan period dates back to a market picture of 2012, as adopted in 2015. Given the heavy caveats around viability, it is not possible to call this figure a ‘requirement’. It is more

⁴⁰ See Affordable Housing ScG dated May 2024

⁴¹ As assessed by HEDNA 2020, see paragraph 3.0 onwards of AH ScG

an illustrative expectation around delivery, subject to an unknown and unquantifiable impact from future viability. The plan itself acknowledges that this was in the context of *maximum possible*, with the pressures of viability in the background, and no real prospect of meeting the same.⁴²

40. **Second**, this approach seeks to judge a failing plan when it comes to delivery of AH, by ignoring the past, and convincing the Inspector that the future picture looks rosy (next 5 years). Only the description of '*ridiculously facile*' fits by way of a response. To call this a 'short-term approach' is simplistic. There is a reason why the NPPF specifically asserts that the need should be met within the next 5 years, a period that conveniently aligns with the end of the plan period in this case. This is to address the need as quickly as possible. Not forgetting, in this case, it is the real people in need that the scheme will be addressing sooner rather than later.
41. **Third**, the needs of people from two different local authorities, many of whom are hidden from the register, continue to go unmet. No amount of re-writing history will address this in the short term, and this is plainly obvious for all to see. The Sedgefield re-balancing numbers, as set out by Mr Stacey, shows the true scale of the problem.
42. **Fourth**, the Right to Buy argument, and whether such properties continue to meet a need in the District after five years is similarly a complete distraction. The point here is simple; they have not been replaced in the way expected, it is extremely rare that they come back into acquisition, as acknowledged by GH, who had not witnessed any in her extensive career to date and by Mr Stacey that said any such acquisitions from previously sold RTB sales would be captured in the annual additions he applied when

⁴² 8.16 when read properly does not set an expected minimum or maximum of AH provision.

considering the net position⁴³ and ultimately this argument seeks to pit those able to raise funds to own one day, against those still languishing in insecurity. The appellants net position on past delivery should be preferred, as the true level of affordable housing delivery.

43. **Fifth**, the fact that the HEDNA is a lower figure again is a bizarre argument to rely upon – particularly in the context of the ‘policy off’ argument. This is blind to the fact that there has never been a ‘policy on’ position in the LP, just a mere expectation. This approach ignores the bigger picture, the agreed position that this proposal seeks to meet a combined need of **390 per annum**. So even taken at its highest, LDC seeks to make the case for themselves only, and it is left to the Appellant to make the case for Tamworth’s needs – the other half of the picture.
44. Whilst a calculator was needed to illustrate LDC’s case, it still doesn’t add up. The position by the end of the inquiry remains as follows (as agreed with GH).
- i. The unmet need for both of these authorities remains significant and growing;
 - ii. The housing register only captures one type of need⁴⁴, there is a broader spectrum of need with many others unaccounted for, and could potentially be in the thousands;
 - iii. There is no evidence that this development will ever be under-occupied or unoccupied should it be built;
 - iv. No evidence to demonstrate that those in need would not be prepared to travel in order to ensure that their needs are met locally;

⁴³ AH SOCG records no acquisitions in Lichfield.

⁴⁴ In terms of the need it does capture, there are some 975 people between Tamworth and Lichfield

- v. Acceptance that if consented, there is no reason to think that those in need wouldn't bid for it as is the case in Arkall Farm for example. Crucially, an increase in opportunity and choice will necessarily be followed by an increase in preference;
- vi. There are no discernible disbenefits for providing *more* affordable housing;
- vii. It is plainly possible to consider mixed tenure affordable housing schemes as representing 'mixed communities' – and no evidence to the contrary;
- viii. The 50/50 nominations agreement between LDC and TBC means less risk for the Councils, and more likely to lead to the occupation of the homes;
- ix. Accepted that Platform have a strong track record and well-practiced in managing homes, meaning less risk also for the Councils;
- x. Agreement that the Council's 2028 and 2038 future⁴⁵ anticipates the delivery of *more* affordable homes, not fewer;
- xi. GH was unable to say whether there was another 100% AH scheme in the pipeline either in LDC or TBC;
- xii. PD was unable to point to a single national or local policy that suggested there was a sequential test for affordable housing.

45. The tenure mix and the nominations agreement (in the S106) between the Appellant and LDC / TBC has been agreed. There is no dispute that eligible people will be able to apply and / or bid on properties once this development is complete.

⁴⁵ CD 6.2.6, Lichfield 2050, page 5-7

46. Mr Stacey's evidence demonstrates that the level of unmet need, both current and in the future is growing, and is **substantial**. Whether you consider past delivery on a **net** or **gross** basis, the record is poor for both LDC and TBC, as contained in the Statement of Common Ground.⁴⁶
47. On the shortfall in AH delivery against the 2020 HEDNA, in **Lichfield** 35% of needs are not being met.⁴⁷ In **Tamworth**, 85% of needs is going unmet.⁴⁸
48. On **addressing the shortfall**, the Council prays in aid of an unrealistic picture and pace of delivery. Indeed in Arkall Farm we know, for example, that there is currently 700 units of the 1,000 allocation missing with no real programme for delivery. It was accepted by GH that there is little prospect of the backlog being cleared in the next 5 years. Mr Stacey agrees. In order to seriously do this, the annual need would need to grow significantly only making it more unrealistic for the Councils to meet the same.⁴⁹
49. The picture on **affordability indicators** is similarly bleak. These are not repeated but are set out in Section 8 of the Statement of Common ground on AH.
50. **Platform as a Registered Provider** ready to deliver the scheme, their track record and the willingness of their Executive Director should all carry significant weight in the balance.⁵⁰ Platform have also confirmed that they have access to grant funding through their relationship with Homes England. LDC have also confirmed that their involvement makes the site and the proposals less risky for them.

⁴⁶ See Section 4

⁴⁷ SoCG paragraph 5.1, page 3 and Appendix 3

⁴⁸ SoCG paragraph 5.3, page 3 and Appendix 4

⁴⁹ See AH SoCG paragraphs 6.3.3 and 6.5-6.6

⁵⁰ See JS POE at Appendix 2, page 3

51. The **RTB debate** is sterile and a distraction. Once these properties are lost from Council ownership, they are gone. To pretend otherwise would be to deny the scale of the challenge and what's required to meet need as soon as possible. The appellants net position represents the true level of affordable housing, to ignore this is shamefully disingenuous to those households denied access to the RTB home that has been lost due to its removal from available letting stock. Any other interpretation is plainly wrong.
52. The **consequences** of what it means for people in real need now is not disputed, as set out in the evidence of Mr Stacey.⁵¹ GH was asked by the Inspector if she disputed the position, she said that she didn't.
53. **In summary**, there is a clear and pressing need that will not be met. The benefits are considerable and the 210 AH will help meet that acute need. The site can be delivered quickly by a RP, with the timing on bringing forward RMs reduced from the standard 3 years to 2 in the conditions. The funding is available to deliver. As the evidence of BW has shown, there is a strong willingness to deliver as soon as practicable.

Other Considerations

54. Beyond the specific areas identified by the Inspector, there will be an array of other considerations to which significant weight ought to be attached.
55. On matters of **Design**, the Inspector has the benefit of unchallenged evidence on the part of Mike Carr. That was the case at the start of the inquiry, and it remains so today. There is compelling evidence establishing design principles that are sympathetic to the character of the surrounding area, which shall ensure that the legible gap between

⁵¹ See Appendix 3 of JS POE

Wigginton and Tamworth is maintained. This was confirmed by Mr. Atkins when he gave evidence and this evidence remains unchallenged. The same evidence is complimented by the heritage evidence given by GS. In so far as it is worth rebutting, in design terms the proposals demonstrate this development will not distinguishable or be read as an ‘affordable’ scheme in so far as one is able to understand what that means, although one has to just guess what is in the minds of PD and Counsel for the Council.

56. The proposal will deliver a minimum of **20% biodiversity net gain**. It would appear from the line of questioning of BW, the Council do not understand the point here. The Council’s Biodiversity SPD which requires a 20% net gain is substantively out of date, as it was not prepared with the information which the PPG now indicates is necessary when seeking a net gain over the statutory amount of 10%. This is a fact.
57. The proposal is not subject to the statutory amount, either. Again, this is not disputed. As such, its provision of 20% BNG against a requirement to only provide **a** net (like 1%) gain represents a substantial benefit. To simply assert that it is a ‘nice to have’ would be misleading and contrary to national policy and legislation.
58. 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. Again, this too remains unchallenged at the end of the inquiry.
59. There are some compelling proposals relating to onsite green provision: namely 7.48 hectares, 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.⁵² This large amount of open space enables the provision of a relatively low-density development appropriate mindful of the proximity to Wigginton. There will be **significant environmental benefits** which would be delivered.

60. 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 renewable energy.

Highways⁵³

61. The Inspector has asked for evidence to be presented on **highways** background to matters, and Mr. Frisby answered these questions. There was uncontested evidence that could be summarised in the following way. Staffordshire County Council's ("SCC") position, as confirmed in the **Form X (ii)** dated 13 January 2022, which is that there are no objections subject to conditions.⁵⁴ It was confirmed that the level of development proposed as part of this appeal was considered '*acceptable as it would be the point after which the Land north of Ashby Road development would be required to provide further mitigation along the Upper Gungate corridor, if required. Currently no confirmed mitigation schemes proposed post built-out of 300 dwellings.*'
62. Out of an abundance of caution, as part of this appeal, further testing was undertaken as part of the evidence presented by Mr. Frisby. To this end, the capacity results detailed in **Table 4.2**, as explained to the Inspector, reflect the agreed network conditions from

⁵² CD 7.5, Appendix UD01, Design Statement by Thrive, page 7

⁵³ **Degree of Saturation: DoS:** The Degree of Saturation (DoS %) is the proportion of how saturated a lane is compared to its capacity.

Mean Max Queue (MMQ): The Mean Max Queue is the average value, over the modelled peak hour, of the maximum queues occurring each cycle within the model.

⁵⁴ CD 4.5

the Arkall Farm scheme (initial phase at 300 dwellings and associated Stantec mitigation) which SCC accepted. It was at this point that further M&M stages would be required to allow for Barwood to deliver additional houses in line with the agreed Conditions associated with the Arkall Farm consent. This was effectively the starting point from which the scheme before the inquiry to achieve a nil detriment and which is precisely what it did to demonstrate.

63. As for **Table 4.1** it shows that the capacity results from the sensitivity test that was undertaken in light of the S73 application (currently undetermined) which reviewed the traffic from Arkall Farm (1,000 dwellings and future year flows) alongside the traffic from the development before the inquiry, and tested within the approved SCC/JCT junction model based on Barwood's latest (2021) base flows recorded as part of their initial M&M⁵⁵ stages.
64. Finally, still within the results of **Table 4.1**, they are broadly comparable to the Arkall Farm initial phase (at 300 CD 4.5) results, which SCC accepted and which were always the starting point for mode's nil detriment approach for this appeal's scheme. Indeed, as explained by Mr. Frisby, there is in fact *betterment* (and a nil detriment position achieved) in terms of the PRC⁵⁶ (and overall 'health' of the junction) at both junctions of the Gungate (Fountains and Offadrive) in both the AM and PM peak hour periods with an increase in PRC being recorded.
65. The odd contributions made on the first day of the inquiry by Barwood does not need a response beyond what is contained in the evidence.

⁵⁵ Monitor & Manage approach

⁵⁶ **Practical Reserve Capacity (PRC)**: a measure of the overall 'health' of the junction i.e. how much additional traffic could pass through a junction before reaching capacity. It is calculated from the maximum DoS on a Lane controlled by the Controller of the junction.

PLANNING BALANCE

66. 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, pursuant to the main issues, it is possible to conclude that that there is no conflict with the DP, and in particular **CP1-CP6** addressing spatial strategy and apportionment. The increase of housing in the BDL is broadly in line with the strategy and does not skew it spatially. This is the only rational interpretation of the strategy. Once these hurdles are cleared, the Inspector is then invited to assess the proposals on their own merits.
67. There is the low level of harm to one heritage asset, leading some small conflict with **CP3 and other policies relating to heritage..** There is no evidence of coalescence identified, nor is there a credible case to answer that the proposals will not yield a community that will be mixed and balanced.
68. In the event the Inspector disagreed and found there to be conflict with the spatial strategy (which we do not accept), it is similarly possible to conclude that such conflict is limited. Further, that in these circumstances there are material considerations that indicate departure is acceptable. The justification for the departure, should it be necessary, can be read across to the benefits of the proposals judged against any harms.
69. **First**, the proposal offers 100% affordable scheme across two districts that need it. The points made above are not repeated. This is at a premium.

70. **Second**, the involvement of **Platform** means that there is increased certainty over the site coming forward rapidly, with the time for RMs having been reduced from 3 to 2 years. There will not be a need to do any marketing for the site for buyers. There is a conditional contract, subject to planning, that would transfer the land to Platform. BW's evidence of a credible time within which to deliver is clear and compelling.
71. **Third**, 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.⁵⁷ This was specifically offered to address any issues around coalescence and the impact on the WCA in so far as any views are impacted.
72. **Fourth**, the following overwhelming benefits 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*
 - g) The economic benefits of employment and local community spending, as encouraged by NPPF 85, *significant weight*.⁵⁸

⁵⁷ NPPF 139 invites that 'significant weight' be given to high quality design

⁵⁸ See 3.14-3.18 of POE by BW

73. The following significant amount of benefits can be attribute **moderate weight**;
- i. Improvements to the PRoW 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.
74. 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. The proposals plainly accord with the DP as a whole.

CONSEQUENCES OF DISMISSAL

75. The consequences of not granting consent has been discussed as part of the inquiry in different ways. There are consequences for planning and for people in need.
76. In **planning and spatial terms**, we know that the 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.⁵⁹ This was mentioned in opening, put to PD and discussed as at the inquiry. It is a patently obvious point to alert the inquiry to, and the fact that BW expanded this point is not a fair criticism. Nevertheless, this specific site allows for the unique opportunity to provide a 100% affordable proposal, in line with the broad spatial strategy, to be built and maintained by a highly successful Registered Provider, seeking to meet the needs of two separate local authority areas.

⁵⁹ Refer to Map 4.1

77. It does not take a genius to connect the dots, that from the start you had a spatial strategy that has always relied on a cross-subsidy of affordable housing, and that strategy was always doomed to fail, and it has failed. And that if the need is to be met, it will inevitably lead to pressures on other constrained sites, designated spaces and this includes unsustainable locations. All of which this site does not have to worry about.
78. There is the consequence for **people** who are languishing on two separate council waiting lists. The period of waiting may well vary for each individual and each authority, but the impact is no less for either. The register similarly only captures a fraction of those people, as discussed above, and so the range and amount of people whose lives are blighted is considerable – in the thousands as accepted by Ms. Hill.
79. If a 100% affordable scheme, in a sustainable location, that’s broadly consistent with its specific location identified for growth, is denied purely on a bizarre reading of the spatial strategy, then this would be quite tragic. All of this is lost on the Council.

CONCLUSION

80. For all the above reasons and those heard at the inquiry, the Inspector is invited to allow the appeal, in order that those needs can be met as soon as possible.

HASHI MOHAMED

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9 July 2024