IN THE MATTER OF:

**SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990**

**and**

**AN APPEAL BY WULFF ASSET MANAGEMENT LTD AGAINT THE REFUSAL BY EREWASH BOROUGH COUNCIL OF OUTLINE PLANNING PERMISSION FOR UP TO 196 DWELLINGS (ALL MATTERS RESERVED SAVE FOR ACCESS) AT LAND NORTH WEST OF 1-12 TWELVE HOUSES, SOWBROOK LANE, STANTON BY DALE, DERBYSHIRE DE7 4QX**

PINS Ref: APP/N1025/W/23/3319160

LPA Ref: ERE/0722/0038

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**OPENING SUBMISSIONS ON BEHALF OF THE LOCAL PLANNING AUTHORITY**   
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. It is the LPA’s case that this appeal should be dismissed for 5 reasons.
2. First, the site is in the wrong place. We say this for two reasons:  
   1. The location is remote from services, where the options for walking and cycling are not attractive and unlikely to be utilized by most of the proposed residents. Residents will be reliant on their cars, contrary to both local (CS Policy 14) and national planning policies (NPPF Chapter 9) which seek to locate development in locations where people have a realistic option of travelling by non-car modes.
   2. The site is not connected to any existing town, village or settlement. The DP requires development to be within or adjoining the Ilkeston Urban Area (‘IUA’). The site is self-evidently not ‘in’ the IUA, and nor does it adjoin the IUA. It is several fields removed from Kirk Hall (‘KH’), and it does not adjoin Ilkeston. If approved, it will become a self-contained enclave of housing, divorced from KH by fields and divorced from Ilkeston by a combination of a canal, the Nutbrook Trail (‘NT’), fields (directly to the north) and a very large industrial area (to the north-east). The new residents will not form a community with either KH or Ilkeston. It represents obvious bad planning simply by reference to basic planning common-sense, but if an express Policy basis is required it can be found in CS Policy 10 which requires developments to ‘enhance local identity’.
3. Second, the development of the fields in question will be visually harmful. The new estate will be visible from the roads to the south and east, and from the canal-side walkway and the NT to the north. What is currently pleasant open fields, which form part of a patchwork of such fields, will be replaced by free-floating new built development. It will appear discordant, unconnected as it will be from any existing settlement, and will lead to the loss of a large part what little countryside remains to the south of Ilkeston and west of KH.
4. Third, the Council has expended a lot of time and resources to draft and consult upon a new development Plan (the Core Strategy Review – ‘CSR’). The plan has been submitted for examination, and we are waiting for the examination to commence. The proposal if granted would undermine the plan-making process by pre-empting decisions about the location of housing, a decision that is central to the emerging plan. It is the ardent wish of the residents of this Borough, as expressed through their elected representatives who have voted to submit the CSR for examination, that Ilkeston should remain separate from KH in this location. The CSR proposes that this area, including the appeal site, should be designated as Green Belt (‘GB’), and should also form part of a Strategic Green Infrastructure Corridor (‘SGIC’). The merits of this approach will be tested at the plan-examination. However, if this appeal is allowed the Appellant, who has objected to the plan and takes a very different view about where housing needs should be met, will get its own way without these strategic issues being discussed as part of the plan-making process. Not only will this undermine the plan-led system, but it will also delay adoption of the new plan and prolong a situation in which the council cannot demonstrate a 5 YHLS.
5. The fourth and fifth reasons are connected: in short it is the LPA’s case that this proposal is contrary to the CSR. It is self-evidently contrary to the emerging policy that seeks to allocate this land as GB, and we say that it is also incompatible with the emerging SGIC policy. We accept that these policies are yet to be tested, and therefore the weight that can be attached to them is limited. Nonetheless, they do attract weight and their breach is another negative element of this proposal.
6. The LPA accepts that its adopted plan is out of date, and that it cannot demonstrate a 5YHLS. Accordingly, the above harms have to significantly and demonstrably outweigh the benefits if permission is to be refused. It is our case that they do indeed significantly and demonstrably outweigh the benefits. The policies of the DP that require developments to be sustainably located continue to get full weight because they are clearly consistent with the NPPF. Undermining the plan-making process is a harm to which considerable importance should be attached, given the Govt.’s commitment to a plan-led system. The emerging policies are not inconsistent with the NPPF, whilst accepting that they are in draft and thus the weight given to their breach is limited. Added to all of these harms is the harm to heritage assets, which is agreed to be factor of considerable weight and importance.
7. In short, whilst the LPA accepts the ‘titled balance’ is engaged, it is our case that this proposal fails to pass that balancing exercise and we will be asking for this appeal to be dismissed.

**Satnam Choongh**

Number 5 Chambers

9 August 2023