**Appeal by Wulff Asset Management**

**APP/N1025/W/23/3319160**

**Land North-West of 1 to 12 Twelve Houses, Sowbrook Lane, Stanton by Dale**

**OPENING POINTS ON BEHALF OF THE APPELLANT**

**INTRODUCTION**

1. The Appellant seeks outline planning permission for up to 196 new homes in circumstances where the housing land supply position in Erewash is dire. Under the current Core Strategy (“ECS”), there is an accumulated shortfall of 1,410 homes from the beginning of the plan period. Perhaps more crucially in the midst of a national housing crisis, there is a substantial shortfall in the provision of affordable homes: a deficit of 227 against the ‘policy on’ ECS figure, and an undersupply of 4,039 homes again actual affordable need. These are not simply numbers on a balance sheet but represent young people unable to get on the housing ladder through lack of supply or families living in overcrowded or unsuitable accommodation to name but a few groups whose needs have gone unmet.
2. The Council’s apparent response to this parlous state of affairs has been to commission a review of the ECS, the ECSR. Apparently the ECSR will ensure that housing needs will be addressed in a timely manner. But they won’t. The Examining Inspector has identified some flaws in the ECSR and the Examination does not look as though it will progress any time soon. Crucially, in order to meet the Borough’s housing needs EBC proposes to release land in the Green Belt to deliver around 2,350 houses. It is a well-established tenet of planning policy that Green Belt land should only be released in exceptional circumstances, a reflection of the policy protection that it enjoys. The Appeal Site is ‘white land’, undesignated for any particular purpose and not subject to any site-specific protective policy. Despite the obvious policy preference for non-Green Belt sites the Council has decided to throw the planning book at the Appeal Scheme. As the Appellant’s evidence will demonstrate, the Council’s reasons for refusal do not bear scrutiny.
3. It should be noted that the 10no reasons for refusal have now been reduced substantially. RfRs 2, 3, 4 and 6 have now been addressed. RfR7 (effect on the listed Twelve Houses) has also been overcome in light of the Council’s concession that the public benefits of the Appeal Scheme outweigh the less than substantial harm to those designated assets. Additionally, Derbyshire County Council (“DCC”) as local highway authority are satisfied that the Appeal Site is sufficiently accessible to local services and facilities by sustainable modes of transport[[1]](#footnote-1).

**Policy Context**

1. There are two routes to the grant of planning permission:
   1. The Appellant’s primary position is that the Appeal Scheme complies with the development plan as a whole. As such, there is a statutory presumption in favour of planning permission[[2]](#footnote-2) and a policy presumption to grant permission ‘without delay’[[3]](#footnote-3); alternatively
   2. Given that the heritage RfR is now overcome and in light of the housing land supply position (2.65 years) and the failure of the ECS, it is common ground that the tilted planning balance would apply if there is conflict with the development plan.

**Benefits**

1. Whichever of the ‘gateways’ set out above is applicable, the Appeal Scheme will bring with it a package of compelling benefits. We make no apologies for highlighting these benefits at the outset. By their very nature, Public Inquiries tend to focus on the allegedly negative aspects of development such that the benefits (especially those which are common ground) get less attention.
2. In this case, the benefits include:
   1. Helping to address the Council’s significant five year housing land supply shortfall – significant positive weight;
   2. Providing much needed affordable housing - significant positive weight
   3. Improving public transport opportunities – significant positive weight
   4. Improving footpath connections in the locality – moderate positive weight
   5. Formalising pedestrian links through the Appeal Site and delivering part of the proposed Local Cycle Network - significant positive weight
   6. The provision of public open space – moderate positive weight
   7. Enhancing biodiversity net gain - limited positive weight
   8. Economic benefits associated with the construction of the scheme and residents using local shops, services and facilities - significant positive weight
   9. The development of a non-Green Belt site in an Authority that seeks to place significant reliance on Green Belt release to meet its housing needs.
3. The Council already accepts – quite rightly - that these benefits overcome harm to designated heritage assets, which should be given ‘great weight’. Consequently, the key question is whether the Council’s claims of adverse effects are justified and, if so, whether they significantly and demonstrably outweigh these benefits.

**Sustainability of Location (Issue 1)**

1. Although ‘sustainability’ is capable of bearing a range of different meanings, the Council’s focus has been on the Appeal Site’s accessibility to services and facilities by sustainable modes of transport.
2. In this regard we recognise that accessibility – especially on foot and bicycle – has both a quantitative and qualitative element.
3. In quantitative terms, the Appeal Site is within a reasonable walking and cycling distance to a wide range of services and facilities, mainly in Kirk Hallam. The Table in the Highways SoCG with EBC[[4]](#footnote-4) demonstrates this point very clearly indeed.
4. The Council’s evidence implicitly accepts that the distances to local facilities are unlikely to represent a disincentive to non-car modes of travel because it focuses almost entirely on the quality of the pedestrian and cycle links to Kirk Hallam and Ilkeston. Any qualitative assessment should be made in light of the changes to both pedestrian and cycling infrastructure that could be secured through the Appeal Scheme[[5]](#footnote-5). These measures will deliver qualitative improvements, thereby providing opportunities to promote walking and cycling, which is a key national policy test[[6]](#footnote-6).
5. Once these improvements are borne in mind, it will become clear that the journey to Kirk Hallam on foot can be made entirely on footways, will be lit by streetlights and – for the overwhelming majority of its length – will be overlooked. The cycling route to both Kirk Hallam and Ilkeston will be an attractive alternative to the private car for some. Another key policy test is whether the Appeal Site will offer a “genuine choice of transport mode”[[7]](#footnote-7). It would be an unreasonable counsel of perfection to expect that *everyone* will walk or cycle to school or to the shops. That is not the policy test. The relevant policy test is met in that both the location of the Appeal Site and the quality of the pedestrian and cycling infrastructure provide both a genuine choice of travel modes and will act to promote cycling and walking.
6. Whilst walking and cycling are important sustainable modes of transport, they are not the only ones. The Appeal Scheme will further encourage a range of sustainable modes of travel by producing and monitoring a Travel Plan, by supporting existing bus services and providing bus stops and by providing electric vehicle charging points, noting that “Sustainable Transport Modes” includes “ultra low and zero emission vehicles, car sharing and public transport”[[8]](#footnote-8).
7. There are no grounds on which to conclude that the Appeal Site is an unsustainable location for development.

**Effect on Character and Appearance of the Area (Inspector Issue 2)**

1. We recognise that this issue will turn on the Inspector’s expert assessment, informed by the evidence presented at the Inquiry. As such, in Opening we wish only to highlight the following points:
   1. The Appeal Site has no landscape designation. Although it is a greenfield site, it is ordinary.
   2. As with *any* greenfield site, its development for housing will result in adverse effects. However, in a local authority unable to meet their needs through brownfield sites and heavily constrained by Green Belt, it is a most obvious candidate for development;
   3. In any event, it is common ground that any landscape or visual effects will be localised given the site’s level of self-containment. That is perhaps why the Council’s landscape witness considers the Derbyshire Landscape Character Assessment (“DLCA”) to be irrelevant; the effects of Appeal Scheme simply do not extend sufficiently widely to have an effect on the Landscape Character Type (“LCT”) within which the Appeal Site falls;
   4. The Appeal Site is already heavily influenced by residential, industrial and commercial development. These influences will soon be magnified tenfold by the completion of a 24m high warehouse as part of the Stanton Regeneration Site to the east. It is truly an urban edge location, a point that seems to have eluded the Council;
   5. The illustrative layout demonstrates how the Appeal Scheme will be landscape-led, with planted buffers to filter views, Green Infrastructure to provide connectivity within and without the Site, new tree planting and the retention and enhancement of hedgerows.
2. We would also invite the Inspector to reject any suggestion that the Appeal Site forms part of a landscape ‘gap’ or ‘buffer’. Such a conclusion would not be supported by any policy within the adopted Development Plan, nor by any reasonable assessment of the role played by the Site.
3. Overall, the Appeal Scheme recognises the intrinsic character and beauty of the countryside[[9]](#footnote-9) and conserves landscape character in a way that is consistent with ECS Policy 10.

**Prematurity (Issues 4, 5 and 6)**

1. By way of introduction, it is instructive to understand why EBC have proposed the ECSR:

“*The primary justification for carrying out a review of the Local Plan has therefore been the failure of housing related policies (specifically Policy 2: Spatial Strategy) and resultant failure in the supply of new homes coming forward within the Borough to meet LHN*.”[[10]](#footnote-10)

1. This is candid but startling admission and one that places added emphasis on the need to grant planning permission for new homes now, not when (or if) the ECSR is adopted.
2. The policy position on prematurity is very clear: withholding planning permission on the grounds of prematurity is rarely justified. In this Borough, although the ECSR has been submitted for Examination, there are currently no hearings scheduled. More importantly, representors have identified some fundamental flaws in the draft plan and the Examining Inspector has raised concerns – including in relation to the Duty to Cooperate (“DtC”)[[11]](#footnote-11). If the Council is unable to satisfy the Inspector that the DtC is met, that will be fatal to the ECSR. There is currently no certainty whatsoever as to when the ECSR will be adopted (if ever), what form its final policies will take or which sites will be allocated. Only minimal weight can be attached to the emerging policies. Consequently, even if it is concluded that the Appeal Scheme runs contrary to the emerging policies named in the RfRs, this will not be sufficient to justify the refusal of planning permission.
3. §49 NPPF posits two tests, neither of which are satisfied here. There is absolutely no reason why the ECSR should be derailed by granting permission for the Appeal Scheme. It would not form a substantial part of the Council’s housing land supply or undermine the spatial strategy. In any event, the ECSR relies on delivering some 2,450 dwellings on unallocated (*i.e.* unidentified) sites. It is entirely a matter for the Council if it wishes to rip up the ECSR should this appeal be successful but it would be exceptionally short sighted. Although the ECSR has been submitted for Examination, it is not at ‘an advanced stage’[[12]](#footnote-12) given the very considerable objections and concerns identified by the Examining Inspector.
4. RfRs 8, 9 and 10 are makeweights and should be rejected.
5. For all of the above reasons, and those presented in the evidence, we anticipate in due course being able to invite the Inspector to allow the appeal and grant planning permission subject to necessary conditions and planning obligations.

9th August 2023

***JONATHAN EASTON KC***

KINGS CHAMBERS

MANCHESTER-LEEDS-BIRMINGHAM

COUNSEL FOR THE APPELLANT

1. See CD L5. [↑](#footnote-ref-1)
2. S.38(6) Planning and Compulsory Purchase Act 2004. [↑](#footnote-ref-2)
3. §11(c) NPPF. [↑](#footnote-ref-3)
4. CD L2, p.6. [↑](#footnote-ref-4)
5. See CDL2 §2.2.2 – 2.2.7. [↑](#footnote-ref-5)
6. §104(b) NPPF [↑](#footnote-ref-6)
7. §105 NPPF [↑](#footnote-ref-7)
8. See NPPF Glossary. [↑](#footnote-ref-8)
9. §174(b) NPPF. [↑](#footnote-ref-9)
10. CD B9, p.1. [↑](#footnote-ref-10)
11. See CD B8 §5 – 7 in particular. [↑](#footnote-ref-11)
12. §49(b) NPPF. [↑](#footnote-ref-12)