Appeal Final Comments

Town and Country Planning Act 1990

Project:	The construction of 12 dwellings, including 5 affordable housing units, and associated infrastructure
Client:	Mr Andrew Bailey
Site Address:	Land west of Kington Lane, Stanton St. Quinton, Wiltshire
Issue and Revision Record:	Version 3 (01/07/2024)
Local Authority:	Wiltshire Council
Highways Authority	Wiltshire Council
Appeal Ref:	APP/Y3940/W/24/3340609
MDP Reference:	ABFC01

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MDP are instructed by Mr Bailey. It has worked on matters associated with the Appeal Site since 2022 and has most recently been instructed to assist in the preparation and submission of this appeal following the refusal of a planning application in respect of development at the Appeal Site.

MDP is familiar with the nature and character of the Appeal site and the background to the development and was instructed to submit these Final Comments for the current appeal, which is proceeding via the written representations procedure. The evidence given is true, given in good faith and represents professional opinions as to the merits of the development the subject of this appeal.

1. Introduction

1.1 This appeal is made on behalf of Mr Bailey in relation to development at land west of Kington Lane, Stanton St. Quinton.

1.2 The planning application was submitted on 14 June 2023. It was given the LPA reference PL/2023/04815 and sought permission for the construction of 12 dwellings, including 5 affordable housing units, and associated infrastructure.

1.3 The development was refused on 21 September 2023 for the following reasons:

1. *The proposed development, by reason of its location outside of any defined settlement boundary within the open countryside, would be contrary to the settlement, delivery and community area strategies of the Wiltshire Core Strategy. The proposed development is deemed to be unsustainable as it would conflict with the Council's plan-led approach to sustainable development and is unacceptable in principle.*

The presumption in favour of sustainable development has been applied to the assessment of the proposal; however, it is considered that the adverse impacts of granting outline planning permission would significantly and demonstrably outweigh the benefits, when assessed against the National Planning Policy Framework and policies in the local development plan as a whole. Therefore, the proposal would not constitute sustainable development and would conflict with the principle aim of the National Planning Policy Framework which is to be genuinely plan-led.

The proposal fails to accord with Core Policies 1 'Settlement Strategy', 2 'Delivery Strategy', 10 'Spatial Strategy for the Chippenham Community Area' of the adopted Wiltshire Core Strategy (Jan 2015); Saved Policy H4 of the NWLP (June 2006); and Sections 2 'Achieving sustainable development', 4 'Decision-making', 5 'Delivering a sufficient supply of homes', and 9 'Promoting sustainable transport' of the National Planning Policy Framework (Sept 2023).

2. *The proposed development, by reason of its location in the open countryside, will result in a permanent change in the character and use of the site and immediate area that fails to integrate effectively into its surroundings. The development would harm the visual appearance and prevailing rural character in this edge of settlement context. It is not considered that the massing of the proposal would integrate effectively into the immediate setting and would have a harmful impact upon local landscape character. The proposal fails to comply with Core Policies 51 (ii and iii) and 57*

(i, ii, iii & vi) of the Wiltshire Core Strategy (Jan 2015) and paragraph 130 of the National Planning Policy Framework (Sept 2023

***3.** It has not been demonstrated that the proposed development would deliver a high quality design which would respect the character and size of the site, reinforce local distinctiveness and deliver an appropriate development which relates effectively to the immediate setting and wider area. It has not been demonstrated that the proposed maximum quantum of development would deliver a well-designed development, contrary to Core Policy 57 of the Wiltshire Core Strategy (Jan 2015), paragraphs 92, 126, 130, 131, 132 and 134 of the National Planning Policy Framework (Sept 2023) and National Design Guide (2019).*

***4.** Insufficient information has been provided to demonstrate how the development proposals will sufficiently protect, enhance and deliver net gains for biodiversity features in accordance with Core Policy 50 and paragraph 174 of the National Planning Policy Framework (Sept 2023).*

1.4 This Statement provides final comments in response to the Council's Statement of Case (SoC) dated 17th June 2024.

2. Final Comments

Housing Supply

2.1 The Council questions the engagement of paragraph 11 of the Framework as a consequence of its housing land supply shortfall. It states that it is a 'paragraph 77 authority' since the emerging Local Plan has reached an advanced stage (Regulation 19), the Council must now only demonstrate a 4 year supply of deliverable housing land.

2.2 Paragraph 77 of the Framework states that, outside of the criteria applicable under paragraph 76 of the Framework, local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide either a minimum of five years' worth of housing, or a minimum of four years' worth of housing if the provisions in paragraph 226 apply.

2.3 Paragraph 226 of the Framework states that "***from the date of publication of this revision of the Framework**, for decision-making purposes only, certain local planning authorities will only be required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of four years' worth of housing…"*. **(MDP emphasis).**

2.4 Consequently, it is not unreasonable to consider that the requirement to meet a 4 year housing land supply is not applicable to applications made *prior* to the publication of the Framework (19 December 2023). This is reinforced given that such transitional arrangements exist in relation to paragraph 76 of the Framework. Had Government intended *all* applications to be held to a lower housing threshold, then there would be no need for transition arrangements to be set out.

2.6 The planning application that is the subject of this appeal was made on 14 June 2023. It was therefore made before the latest publication of the Framework. It follows that one could consider that paragraph 76 of the Framework is not applicable to this development insofar as it provides that a 4 year housing land supply can sometimes be relevant.

2.7 In this instance, it could therefore be found that the Council must demonstrate a 5-year supply of deliverable housing land. It is not meeting this target. As such, the presumption at paragraph 11 of the Framework is engaged and important housing policies in relation to the determination of this appeal are out-of-date.

2.8 In any event, the appellant considers this matter wholly academic. What is evident is that the Council has a poor track record of delivering the requisite number of homes whatever its target, and is now relying on a technical change to the Framework to justify delivering fewer homes, not more. This runs entirely contrary to the Framework's ambitions at paragraph 60 of boosting the supply of homes and the only parties who suffer in this transparent chicanery are those on housing waiting lists, self build registers or those trying to buy smaller family homes.

2.9 Even if the presumption at paragraph 11 of the Framework is not engaged, the requirement for housing land represents minimum not maximum housing target. This site is unconstrained. The settlement accommodates a good level of service provision, including public transport facilities and a school. It also has not been expanded for over 25 years. Three successive local plans have failed to bring forward the right policy circumstances for growth in over a quarter of a century. This can, and needs, to end. The appellant has dealt with all of the issues raised by the previous Inspector and has reduced the quantum of housing further to attempt to placate the Council.

2.10 There is therefore a real risk in this instance that previous poor quality decisions have sterilised a perfectly acceptable site, to the detriment of the medium and long-term viability of the settlement and its attendant school and other services which are running well-under capacity as demonstrated by the LEA statistics. Given the level of evidence provided by the appellant, it considers that there is

sufficient justification in order to depart from the previous appeal decision regardless of the Council's housing land supply target. This is simply a suitable site for new homes.

2.10 Concerningly, the Council appear, through the ratcheting-up of its language, to have been galvanised by a poor quality decision last year. It seems to consider that this revised scheme, with a reduction of 30% fewer new homes, is now somehow more harmful than that previously submitted and appear even more belligerent in its resistance to the development of the site.

2.11 This is nothing short of a smokescreen intended to aggravate the delivery of new homes. The fact that the LPA have persuaded other Inspectors to prey party to their own agenda of resisting the delivery of necessary homes is not a matter for either the LPA nor the Inspectorate to be proud of. Good planning decisions should promote investment (unless genuinely unacceptable) and deliver growth; not stymy it.

Other Matters

Upheld Complaint

2.12 For clarity, contrary to the Council's claims, the previous complaint was justified. The Inspectorate's internal records will confirm this.

Judicial Review

2.13 The appellant did consider a judicial review of the previous appeal decision given it was confirmed by PINS that its own internal process is to pass a quashed case to a different Inspector to reassess. However, rather than subsume the substantial legal fees (the least costly fee proposals were £35,000 + VAT), a complaint to PINS was made and faith was placed in the Planning Inspectorate to apply its judgement to this revised scheme. The absence of a highly costly judicial review, which would have cost the same as all activity associated with this and the previous dismissed appeal was not and is not a concession that the appellant considers that it was not flawed in terms of its reasoning. This line of argument is often advanced by LPA officers who simply have little awareness or regard for the cost of planning/legal activity.

Ecology

2.14 An updated Preliminary Ecological Appraisal (PEA) has been submitted. This confirms that nothing has changed on site in relation to wildlife compared to the previous submission. The site has low

biodiversity value and no bat roosts would be lost. Any harm to a protected species could be suitably mitigated as outlined at Section 4.5 to the updated PEA.

2.15 Turning to biodiversity net gain (BNG), this current submission was made prior to the 10% BNG requirement in the Environment Act. Nevertheless, only around 40% of the site would be developed. The updated PEA shows how a significant amount of BNG could therefore be achieved on-site. Moreover, additional BNG could be provided off-site (if necessary), as evidenced by the fee proposal provided that relates to BNG credits.

2.16 Consequently, the Inspector can be satisfied that requisite BNG could be provided as a result of this proposal. This could simply be secured by means of a planning condition requiring evidence of off-site credits being secured to the satisfaction of LPA ecologists.

Terminology

2.17 We do not want to engage in 'tit-for-tat' arguments with the Council. However, for clarity, the term 'principle' is placed in inverted commas as it often quite an ambiguous term. In this instance, reference to the 'principle' of development relates to the suitability of the site for housing. This is in terms of the objectives of the Council's spatial housing policies which seeks to place dwellings in accessible locations where there is not a reliance on private vehicles to get around.

3. Conclusion

3.1 The tone of the Council's evidence as a whole, particularly its SoC, is entirely hostile to the development of this site. There was no attempt to engage with the appellant during determination (during either this or the previous application). Neither was there any real consideration of its evidence. Indeed, a Unilateral Undertaking was provided to the Council for comment in June 2023 and no feedback has been received.

3.2 Given the experience the appellant has had with this Council, regarding development (including affordable units) on what is quite frankly a low quality site on the edge of a settlement with both a school and bus stops, it is not surprising to find that the Council is stuttering in terms of housing delivery. The Council does not see the connection between its apparent celebration and advocation of only having to deliver 4 years worth of housing land and the stagnation of housing supply and the vitality of settlements such as this.

3.3 The appellant considers that it has done all it can to promote housing on a site that would cause no material planning harm other than the possible academic contravention of the Council's spatial

housing strategy and some localised, inevitable, harm to the character of the field. If this unremarkable site, on the edge of a village not meaningfully changed this century, is not suitable for housing, the appellant is left questioning 'where is?'.

End of closing comments

July 2024