

**STATUTORY PLANNING APPEAL PURSUANT TO SECTIONS 78 OF THE TOWN AND  
COUNTRY PLANNING ACT 1990  
AGAINST SANDWELL METROPOLITAN BOROUGH COUNCIL**

**APPEAL BY WAIN ESTATES (LAND) LIMITED**

**LAND NORTH OF WILDERNESS LANE, GREAT BARR**

**Inquiry opening 9 July 2024**

**APPEAL REFERENCE: APP/G4620/W/24/3341688**

**LPA APPEAL REFERENCE: DC/24/68822**

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**APPELLANT'S OPENING SUBMISSIONS**

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**Abbreviations used below**

NPPF	National Planning Policy Framework
PCPA	Planning and Compulsory Purchase Act 2004
PoE	Proof of Evidence
PPG	Planning Practice Guidance
SoCG	Statement of Common Ground
GB	Green Belt
VSC	Very Special Circumstances
AH	Affordable Housing

***Introduction***

1. Sir, these opening submissions address the main issues, in accordance with your post case management conference note.

***(a) The effect of the development on the openness of and purposes of including land within the Green Belt***

2. The Appellant accepts that the development proposal would cause harm to the openness of the GB. However, the extent of that impact would be low. This is particularly in the context that only 15% of the Appeal Site would be developed. The overwhelming majority of the Site would form a countryside park, however, the parties are some way apart on the impacts associated with this countryside park.
3. The Appellant contends that the countryside park, in and of itself, would be appropriate development in the GB. Indeed, paragraph 155(e) of the NPPF allows for material changes of use of land (such as changes of use for outdoor sport or **recreation**, or for cemeteries and burial grounds). Undoubtedly the countryside park would be a change to a recreation ground. Paragraph 155 also requires that the countryside park would preserve its openness and not conflict with the purposes of including land within it.
4. It must be remembered here that the scheme is in outline. Thus, the precise form that the countryside park takes is within the gift of the Council to control at the reserved matters stage. Thus, it cannot be assumed that the countryside park has 'urban' features that would harm the openness of the GB. That will be a matter determined at the reserved matters stage. Indeed, the Council's resistance to the countryside park, when viewed objectively, would essentially mean that paragraph 155(e) could never be satisfied in respect to any greenfield site. A material change of use to recreation areas, cemeteries and burial grounds will, on the Council's case, seemingly always cause harm to the GB when the site is an open greenfield. Plainly this would serve to undermine and distort the meaning of paragraph 155(e).

5. Thus, the Appellant contends that the overwhelming majority of the Site would provide GB compensation and provide a significant benefit of the scheme. In the alternative, even if you take a different view on whether the countryside park Sir would be appropriate development if it came forward by itself, ultimately it is difficult to conceive how affording public access to 23.09ha of land for recreational purposes in such an accessible location does not amount to a benefit that warrants significant weight, especially having regard to the social and environmental roles of sustainability.
6. As regards the 15% where development would be provided, this would naturally cause harm to the spatial and visual openness of the GB, albeit the extent of which is significantly overstated by the Council. But, it is acknowledged that substantial weight ought to be afforded to this harm in light of paragraph 153 of the NPPF.
7. The Council contend that the proposal conflicts with purposes (a), (b), (c) and (e) of paragraph 142 of the NPPF. The Appellant contends that only purpose (a) and (c) are offended, albeit to a lower extent than the Council. In respect to purpose (b), there will be no merging of Walsall and Birmingham through the development proposal and thus the Council contend that the Council are misconceived in this respect. As regards purpose (e), the Council do not provide any proper evidence on this. On the Council's case, purpose (e) would be conflicted with for any development proposal in the GB (anywhere nationally).

***(b) The effect of the development on the character and appearance of the area***

8. It is common ground that the Site is not a valued landscape, in terms of paragraph 180(a) of the NPPF. It must also be borne in mind that the GB designation does not bestow any inherent landscape value to the Site. Indeed, the GB is a spatial designation, as opposed to a landscape designation.

9. It is also common ground that the Council do not resist the scheme based on any perceived impact on the historic environment. Further, it is common ground that the development proposal will cause harm to the character and appearance of the area. Indeed, this is inherent with developing a greenfield site for housing.
  
10. However, the parties disagree in respect to the extent of the harm. Ultimately that will largely be a matter settled through your site visit Sir. The Appellant contends that the effects upon the site and its immediate context would be moderate adverse, with the potential for this to become moderate/minor adverse in the long term as green infrastructure matures. There would be some visual effects, which would be mainly limited to changes to views from the properties that border the site, such as along Wilderness Lane, Peak House Road and Birmingham Road, and for users of these routes, as well as views from the paths including the Beacon Way. But the extent of these impacts and the area of impact would be limited and localised. The Appellant does not deny that this amounts to harm that weighs against the proposal, but the extent of that harm ought not to be overstated, particularly in the context that the Site is not subject to any landscape designation, nor is it a valued landscape.

***(c) The effect of the development on Peak House Farm SINC***

11. Part of the Appeal Site has been designated as a SINC. This is not a statutory designation and has no legal protection<sup>1</sup>. Rather, it is a policy protection.
  
12. The Council's contention seems to simply be that the Site enjoys this designation and thus developing any part of it is inherently harmful.

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<sup>1</sup> Per SoCG para 5.41

13. However, the Council fail to engage with the point that since the designation was made in 2019, the Site has seen a continual decline in its ecological value, particularly in terms of grassland and hedgerow. The Council have given no indication that they dispute the various surveys which prove this and thus it is assumed that there is no contest over the point that this decline since 2019 has occurred.
14. It is unsurprising that this decline has occurred, given that the Site is not subject to any management regime – which is to be expected of agricultural land such as this. However, through the development proposal, there is an opportunity to secure a management regime, to actually improve the ecological value across the Site. Thus, whilst the area or quantum of land within the SINC will decrease, insofar as built form will occupy some of it, the overall quality of the SINC will increase, particularly in relation to grassland and hedgerow, through this management.
15. This approach to this informal designation is entirely consistent with the decision in Purton Road, Swinton, where the loss of part of a county wildlife site was justified owing to the ecological benefits overall. Ultimately, the designation suggests that there is some value in ecology and landscape terms in respect to the Site in the Council’s view. But, critically, this value is diminishing and, without intervention, this will only continue. Thus, the development proposal offers the opportunity to restore and manage the SINC, rather than it representing a harmful impact.
16. Further, the Appellant has also committed to a condition to achieve 20% net gain in habitat units and 10% in hedgerow units via a condition. These ecological benefits collectively ought to be given substantial weight, as opposed to being characterised as harmful impacts to the SINC overall.

***(d) Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it***

17. It is recognised that the scheme amounts to inappropriate development in the GB and thus VSC need to be demonstrated. There are multiple unusual factors which lead to the conclusion that VSC is made out here.
  
18. It is common ground that the Council's housing supply is at 1.4 years, against a 4 year requirement.<sup>2</sup> One could simply conclude that the housing situation is poor, however, that would be understating the extent of the Council's problems. Indeed, the following points need to be recognised:
  - i. the Council's shortfall amounts to 6,693 homes – on the Council's own figures;
  - ii. the Council have had a persistent housing shortfall since at least 2017;
  - iii. based on the Council's own housing trajectory, the Council will continue to have a housing shortfall for every 5 years between 2024 and 2041; and
  - iv. the Council's emerging plan is only intended to deliver approximately a third of the overall housing need – leaving unmet needs at 18,606 households or 63% of the borough's total needs.
  
19. Accordingly, the housing shortfall is substantial, persistent and there is no end in sight.
  
20. Further, the housing shortfall demonstrates the failure of the development plan strategy, given that:
  - i. the Council's own trajectory for the plan period to 2026 suggests that the needs of nearly 8,000 households will not be met;
  - ii. 43% of sites that were allocated in the Council's Site Allocations DPD are now confirmed as not being developable – again making it clear that the development plan strategy has not worked; and

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<sup>2</sup> SoCG para 5.4

- iii. the Council have delivered 16,128 fewer homes than it expected<sup>3</sup> – making it beyond doubt that the assumptions underpinning the plan strategy have been proven to be incorrect.
21. Moreover, this is in the context that the plan was examined before the NPPF was first published in March 2012. It is based on an artificially lower housing requirement and it never reflected the intention of significantly boosting the supply of housing.
22. Thus, there is a need to deliver substantially more housing, in the context of a development plan that is substantially out of date. The Appellant contends that to restore a housing supply, this will inevitably involve developing in the GB, with there being no credible alternatives to this.
23. It is common ground that the scheme would make a material contribution to the Council's 4 year housing land supply.<sup>4</sup> Indeed, paragraph 70 of the NPPF recognises that, 'small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly.' Thus, this is the sort of Site that can meaningfully address the Council's housing delivery issues. This is particularly the case, given that the Appellant has agreed to shorter timescales in respect to the submission of reserved matters (18 months), in order to expedite the Site coming forward.
24. Further, this is to say nothing about the dire state of affordable housing provision across the Council. Over the last 12 years, the Council have seen a shortfall of 3,107 AH accumulate. Between 2006 – 2023, the Council have added on average just 18 AH per annum. This is in the context that there has been rising demand, with the most recent assessment<sup>5</sup> suggesting the Council need to deliver 343 AH per annum. The consequence of this poor delivery of

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<sup>3</sup> When comparing the delivery against the anticipated trajectory in the site allocations DPD

<sup>4</sup> SoCG para 5.7

<sup>5</sup> The 2021 SHMA – CD 6.5

AH is that there are now a staggering 16,356 households on the Council's housing register, as of 31 March 2024. These are real people in need of housing now, who have no solution to their growing housing needs. This need for AH also needs to be seen in the context that the Appellant is offering 40% AH, which is 15% above the policy requirement.

25. The Appellant also suggests that significant weight ought to be afforded to the economic benefits of the proposal. The Appellant has provided a breakdown of those economic benefits,<sup>6</sup> which the Council do not present any competing figures for.
26. As stated, the development proposal will secure ecological benefits and prevent the onward decline of the SINC through a management regime, both of which ought to be afforded significant weight.
27. Moreover, 85% of the appeal site will be a countryside park, which will essentially provide an accessible area of open space for the public, which is a significant benefit, especially in light of the fact that the Site is not lawfully open to the public presently and given the Site's accessibility. As regards accessibility, there is no dispute that the Site has ready access to services and facilities. But, given the Site's exceptional, high frequency and high quality transport links adjacent to the Site boundary, significant weight ought to be afforded to the accessibility of the Site.
28. Balanced against these benefits are:
  - i. substantial weight to the GB harm in terms of being inappropriate development, harming the openness of the GB and the purposes of the GB;
  - ii. limited weight to the landscape and visual impacts;

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<sup>6</sup> Paragraph 4.120 of Mr Armfield's PoE



- iii. limited weight to conflict with relevant policies in the development plan; and
  - iv. limited weight to the harm to a non-designated heritage asset.
29. The Appellant contends that in the circumstances, the benefits do clearly outweigh the harms and thus there are VSC to allow for inappropriate development in the GB. Consequently, the appeal proposal conforms with the development plan as a whole or, in the alternative, there are material considerations that indicate that permission ought to be granted, namely that the tilted balance within the NPPF points in favour of the grant of permission.
30. In summary Sir, the Appellant will respectfully invite you to allow the appeal at the conclusion of the inquiry, subject to appropriate conditions and the s.106 agreement.

***Killian Garvey***

**Kings Chambers**

9 July 2024

