

**Town and Country Planning Act 1990 (As Amended) – Section 78**

**Town and Country Planning (Inquiry Procedure) (England) Rule 2000**

**Appeal by Wain Estates Limited against the refusal of Sandwell Metropolitan Borough Council (as Local Planning Authority), to grant outline planning permission for 150 homes on Green Belt land (all matters reserved except access), at land adjacent to Q3 Academy, Wilderness Lane, Great Barr, Birmingham, B43 7SD.**

**STATEMENT OF CASE BY SANDWELL MBC**

**MAY 2024**

**Planning Inspectorate Ref: APP/G4620/W/24/3341688**

**Local Planning Authority Ref: DC/23/68822**

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## **Contents**

1. Introduction
2. Site and Surroundings
3. Photographs of the site
4. The Application and Planning History
5. Planning Policy
6. The Council's Case
7. The Appellant's Other Considerations
8. Planning Balance

## **Appendices**

1. Delegated Officer Report
2. Pre-application Response
3. Planning Conditions
4. Documents:

### Development Plan

1. Black Country Core Strategy
  2. Black Country Core Strategy App. 1 & 3-9
  3. Black Country Core Strategy App. 2
  4. Sandwell Site Allocations and Delivery Development Plan Document
  5. Sandwell Site Allocations and Delivery Development Plan Document Policies Map
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#### Supplementary planning documents

6. Black Country Air Quality SPD 2016
7. Building for Life SPD 2011
8. Planning Obligations SPD 2015
9. Residential Design Guide 2014

#### NPPF

10. NPPF December 2023

#### Housing land supply and delivery

11. SHLAA 2023
12. Housing Delivery Test – Action Plan 2022
13. Housing Delivery Test – Action Plan 2023

#### Emerging Development Plan

14. Regulation 18 version of the draft Sandwell Local Plan
15. Regulation 18 version of the draft policies map for the Sandwell Local Plan
16. The Sustainability Appraisal for the regulation 18 version of the draft Sandwell Local Plan
17. The Site Assessment Report for the regulation 18 version of the draft Sandwell Local Plan including Appendix D (site proformas) – Peakhouse Farm (the appeal site) is assessed under proforma 148

#### Green Belt and landscape evidence

18. Black Country Green Belt Study (LUC, September 2019)
19. Black Country Green Belt Study – appendix 2
20. Black Country Green Belt Study – appendix 3 (two files)
21. Black Country Landscape Sensitivity Assessment (LUC, September 2019)
22. Black Country Landscape Sensitivity Assessment – Sandwell parcels
23. Black Country Historic Landscape Characterisation Study (Oxford Archaeology, October 2019)

#### Open Space

24. Sandwell Green Spaces Implementation and Business Plan 22/23 – 25/26
  25. Sandwell Green Space Audit Borough Report 2019 Vol.1
  26. Sandwell Green Space Audit Borough Report 2019 Vol.2 (appendices)
  27. West Bromwich Green Space Audit Town Report 2019
  28. Walsall Open Space, Sport & Recreational Facilities Audit
-

& Assessment (February 2011)

SINC

29. Peakhouse Farm Local Sites Assessment Report  
19/11/2018
30. Birmingham and Black Country Local Sites Partnership  
Minutes 09/04/2019
31. Sandwell Cabinet Report 07/08/2019
32. Sandwell Cabinet Minutes 07/08/2019
33. Email notification of results of Local Sites Assessment  
Report to landowner's agent on 30/04/2019

Hedgerows and field system

34. Extract from Staffordshire Tithe Map 1841
35. Extract from Plan of the Lordship of Great Barr in the  
County of Stafford (1830) Birmingham Archive Ref. Jewel  
Baillie 428 - MS 20/B/12/12/1
36. Extract from Plan of the Lordship of Great Barr in the  
County of Stafford (1830) - date stamp

Planning Practice Guidance relating to Green Belt

37. Planning Practice Guidance relating to Green Belt
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## 1 Introduction

- 1.1 The proposal is for a residential development of 150 dwellings on a site in the Green Belt ('the appeal site'). The appeal relates to an outline planning application which was refused.
  - 1.2 Wain Estates Ltd ('the appellant') has appealed against the Council's decision and a public inquiry into the appeal is scheduled to open in July 2024.
  - 1.3 The planning application followed a pre-application discussion (ref: PA/23/00726) for the Proposed erection of circa 175 new homes, of which 40% are proposed as affordable housing and the creation of a substantial new countryside park in a sustainable location.
  - 1.4 Whilst it is noted in 1.5 of the appellant's Statement of Case that *there was limited engagement from the Council during the application process*, I must refer the Planning Inspectorate to the extensive pre-application discussion with the appellant which is demonstrated in **Appendix 2** of this document. It demonstrates that the Council has been clear of its position from pre-application onwards and highlighted to the appellant relevant national policy in respect of the National Planning Policy Framework (NPPF) which advises against such inappropriate development. Despite these discussions, the appellant chose to submit a planning application contrary to the Council's advice. Therefore, it should have come as no surprise to the appellant that the application was refused; especially as no demonstrable amendment to, or supporting argument for, the proposal accompanied the planning application to attempt to address the policy concerns raised at pre-application stage.
  - 1.5 All matters, excluding access, are reserved for future consideration.
  - 1.6 The reasons for refusal are:
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### **Reason one:**

*The proposal is contrary to paragraph 11(d) of the adopted National Planning Policy Framework (NPPF) in that the development is on land designated as Green Belt land, the proposal is considered inappropriate at this location and the applicant has been unable to demonstrate very special circumstances as to why this policy should be set aside. The harm resulting from the proposals would not be outweighed by other considerations. Therefore paragraph 152 of the NPPF is clear that the planning application should be refused.*

### **Reason Two:**

*The proposed development would be contrary to the interests of nature conservation as it would adversely affect the habitat of fauna and/or flora on the site which is designated as a SINIC.*

- 1.7 A copy of the Officer's Report is attached at **Appendix 1** and comprises part of the Council's case and should be read in conjunction with this statement.
  - 1.8 This is an outline application with only access to be considered at this stage. The application plans include a parameters plan and concept master plan, however these do not and cannot set the layout, scale or appearance of the proposed development as these matters remain reserved.
  - 1.9 It is common ground, as indicated in the Statement of Common Ground that the Council cannot demonstrate a four-year nor a five-year supply of deliverable housing land and as such the so-called tilted balance pursuant to paragraph 11(d) of the NPPF is engaged. Sandwell's score of 47% on the 2022 Housing Delivery Test also means that paragraph 11(d) of the NPPF is engaged.
  - 1.10 However, the site is in the Green Belt and paragraph 11(d)(i) explains that planning permission should not be granted if the application of policies in the NPPF that protect areas of particular importance, including Green Belt land, provide a clear reason for refusing the development proposed. Therefore, the tilted balance is disengaged and paragraph 152 of the NPPF is clear that inappropriate
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development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.



## 2. Site and Surroundings

2.1 The appeal site comprises land extending 27 hectares. To the north of the appeal site is the A34 (Birmingham Road), to the northeast, residential properties in Peak House Road, backing onto the site, to the south, Q3 Academy, and the west Aston University Recreation Centre which is open to the public. Surrounding the external south and west of the site is a public right of way.

2.2 Site location plan (not to scale).



2.3 The topography of the site rises from the southwest to the north of the site towards the Walsall Road and Peak House Road, where the potential new properties will be on an elevated part of the site, towering above the rest of the site.

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- 2.4 The appeal area is on the boarder of Walsall Council, and as such, Walsall Council were consulted, and their comments are included in the consultation responses previously sent to the Planning Inspectorate.
  - 2.5 The Council will describe the site which is undeveloped land and open. The site is within the Green Belt.
  - 2.6 The Council will describe the neighbouring land uses noting the rear garden boundaries of properties in Peak House Road and the side garden of a single property on Wilderness Lane. The Council will note the physical and natural boundaries separating the urban form from this protected Green Belt space.
  - 2.7 A public right of way (known as The Beacon Way) runs parallel with the site from the north to southwest of the site, linking to a right of way to the south separating the appeal site and the Q3 school.
  - 2.8 The boundaries of the appeal site are delineated by hedge planting and mature vegetation. There are gaps to the south of the site where unregulated access has been made into the site.
  - 2.9 The Council will describe the Sites of Importance for Nature Conservation (SINC) and its status, as well as the impact that the proposals would have on the integrity of the SINC.
  - 2.10 The site is currently open and there is evidence of some sort of agriculture taking place on site with hay bales dotted around the site.
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- 2.11 Beyond the site lies open countryside, to the north, Merrions Wood, to the south Red House Park, to the west Aston University Recreation Centre and open fields and woodland along Rushall Canal and beyond.
- 2.12 The Council will describe the viewpoints from which the site can be seen and describe these views contrasting the existing open rural appearance with the development of 150 dwellings.
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### 3. Photographs of the site

3.1 Physical boundary of Wilderness Lane between residential properties on the right, and Green Belt land on the left.



3.2 Current access into the site



3.3 View from the public right of way to the south of the site



3.4 View from the public footpath on the south, note the green expansion towards the blocks of flats in the distance



3.5 View from the south looking up towards the north of the site, note the significant level changes





3.6 Example of wildlife using the site



3.7 Makeshift access to the site from the south



3.8 Access to the site would mean the removal of well-established hedges



3.9 View from Walsall Road





3.10 View from Walsall Road, all this natural habitat would be lost



3.11 To the west, The Beacon Way public footpath runs parallel with the appeal site





3.12 Housing on the opposite side of the Walsall Road. Allowing this appeal would see residential areas merge



## **4.0 The application and Planning History**

- 4.1 Outline planning permission is sought for the development of the land for 150 dwellings with a new road junction, internal roads, car parking, a countryside park and other related infrastructure development.
- 4.2 An illustrative master plan has been produced to show how the site may be laid out should permission be granted and to illustrate the impact of development of this scale and character. A parameters plan accompanied the application which is subject to this appeal highlighting the differing number of floors areas of housing are likely to have.
- 4.3 The Council will describe the proposals and comment on the illustrative layout and the likely impacts of a development of this scale and number of dwellings and will contrast the proposal with the existing open condition of the appeal site.
- 4.4 The proposal includes 60 affordable units (40%), 22 units (15%) above the number of affordable units required by policy HOU3 within the Black Country Core Strategy.
- 4.5 The mix of tenures and property sizes would be determined at reserved matters stage however any approval would require the appellant to enter into a S106 agreement.
- 4.6 A new vehicular and pedestrian access is proposed along Wilderness Lane, and pedestrian access along Walsall Road, these would require permanently removing the existing hedges along large sections of the site.
- 4.7 The application generated significant neighbour objections.

### **Planning History**

- 4.8 The appeal site has no relevant planning history other than a request for a Screening Opinion (DC/23/68944) which stated that an Environmental Impact Statement was not required.
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## **5.0 Planning Policy**

5.1 The Black Country Core Strategy (BCCS) (2011) comprises of the following policies which are relevant to the refusal of the planning application:

BCCS CSP1 – the growth network

BCCS CSP2 – development outside the growth network

BCCS CSP3 – environmental infrastructure

BCCS CSP4 – place making

BCCS DEL1 – infrastructure provision

BCCS HOU1 – delivering sustainable housing growth

BCCS HOU2 – housing density, type and accessibility

BCCS HOU3 – delivering affordable housing

BCCS TRAN2 – managing transport impacts of new development

BCCS TRAN4 – creating coherent networks for cycling and walking

BCCS TRAN5 – influencing the demand for travel and travel choices

BCCS ENV1 – nature conservation

BCCS ENV2 – historic character and local distinctiveness

BCCS ENV3 – design quality

BCCS ENV5 – flood risk, SUDS and urban heat island

BCCS ENV6 – open space, sport and recreations

BCCS ENV7 – renewable energy

BCCS ENV8 – air quality

5.2 Sandwell Site Allocations and Delivery DPD (SAD) (2012) comprises of the following policies which are relevant to the refusal of the planning application:

SAD H2 – housing windfalls

SAD H3 – affordable housing

SAD TRAN3 – car parking

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SAD HE1 – listed buildings

SAD HE5 – archaeology & development proposals

SAD EOS1 – the green space hierarchy

SAD EOS2 – green belt

SAD EOS4 – community open space

SAD EOS5 – environmental infrastructure

SAD EOS9 – urban design principles

SAD DC4 – pollution control

SAD DM1 – access for disabled people

SAD DM5 – the borough's gateways

- 5.3 Sandwell MBC has adopted relevant supplementary planning document including the following which are relevant to the refusal of the planning application:

Residential Design Guide SPD (2014)

Black Country Air Quality SPD (2016)

Planning Obligations SPD (2015)

Building for Life SPD (2011)

### **National Planning Policy Framework**

- 5.4 The NPPF sets out the Government's economic, environmental and social planning policies for England. These policies articulate the Government's vision of sustainable development, which should be interpreted and applied locally to meet local aspirations. Therefore, in terms of this appeal, the Council's focus of the NPPF in particular is:

Paragraph 11 – the presumption in favour of sustainable

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development

Chapter 5 – delivering a sufficient supply of homes

Chapter 12 – achieving well-designed places

Chapter 13 – protecting green belt land

Chapter 15 – conserving and enhancing the natural environment

- 5.5 It is common ground that the Council cannot demonstrate a four-year nor a five-year supply of housing land and paragraph 11(d) of the NPPF dictates that the policies which are most important for determining the application are out of date. Sandwell's score of 48% on the 2022 Housing Delivery Test also means that paragraph 11(d) of the NPPF is engaged.
- 5.6 Paragraph 11(d)(i) and Footnote 7 provides (so far as relevant) that the tilted balance is disengaged in circumstances policies of the Framework protect assets of importance and provide a clear reason for refusing permission. Footnote 7 clarifies that:

*The policies referred to are those in this Framework (rather than those in development plans) relating to....land designated as Green Belt...*

- 5.7 As such, when considering planning applications relating to land in the Green Belt, it is necessary to determine whether the application of the Green Belt policies in the Framework provide a clear reason for refusal under paragraph 11d(i). If they do, the tilted balance in paragraph 11(d)(ii) of the Framework is disengaged.
- 5.8 Paragraph 154 of the NPPF provides that “the construction of new buildings” is “inappropriate development” in the Green Belt, unless one of the stated exceptions applies. The proposed 150 dwellings, and access road, and other developments to facilitate the proposed housing does not correspond with the stated exemptions and therefore constitutes inappropriate development.
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- 5.9 The NPPF advises that inappropriate development is, by definition, harmful to the Green Belt should not be approved except in very special circumstances (paragraph 152). Paragraph 153 states:

*When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.*

### **The emerging Sandwell Plan**

- 5.10 The Council completed consultation on a Regulation 18 (Town and Country Planning (Local Planning) (England) Regulations 2012) draft version of the emerging Sandwell Local Plan in December 2023. The draft version of the Local Plan includes a policies map and proposed allocations towards meeting housing needs.
- 5.11 The landowner of the appeal site has promoted the site extensively through the plan-making process, both to the now demised Black Country Plan and more recently to the emerging Sandwell Local Plan:
- Wain Estates (previously named HIMOR) promoted the site to the Black Country Plan scope, issues and options consultation and 'call for sites' exercise in September 2017,
  - A further 'call for sites' submission to the Black Country Plan was made in September 2020 promoting the site for 300-355 new homes and new open space,
  - Further representations were made to the Regulation 18 consultation on the Black Country Plan in October 2021 and September 2022,
  - More recently, representations and a 'call for sites' submission were made to the issues and options consultation on the Sandwell Local Plan in March 2023,
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- Representations were also made to the Regulation 18 consultation on the draft version of Sandwell Local Plan in December 2023. The most recent representations promote the site for the same development as the appeal scheme, namely 150 new homes, a countryside park and associated infrastructure.

5.12 The site was not considered suitable for allocation in the draft Black Country Plan and was not considered suitable for allocation in the Regulation 18 version of the draft Sandwell Local Plan. The preferred Spatial Strategy for the Sandwell Local Plan, endorsed by the Council's Cabinet, is 'Balanced Green Growth' which includes protecting areas of ecological value and open spaces within and beyond urban areas, and delivering as much new development on previously developed sites. The draft Local Plan does not propose to amend Green Belt boundaries. This approach is consistent with the clarification at paragraph 145 of the NPPF that "there is no requirement for Green Belt boundaries to be reviewed or changed when plans are being prepared or updated".

5.13 Notwithstanding the above, the evidence base for the Local Plan includes a Green Belt Assessment produced by LUC in September 2019. The Assessment was prepared to assist the Black Country Authorities with identifying areas of the Green Belt that could be suitable for release through the mechanism of the abandoned Black Country Plan.

5.14 The Assessment rates strategic parcels of the Black Country Green Belt as to how they contribute to the 5 purposes of the Green Belt (as understood by NPPF paragraph 143), the harm which would be caused by the removal of parcels from the Green Belt to the integrity of the remaining Green Belt, and how far the landscape character of each of the Green Belt parcels would be sensitive to development.

5.15 For the Green Belt element of the Assessment, the appeal site is wholly within parcel B81 (Wilderness Lane). The parcel includes

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further land to the south and southwest at Hill Farm Bridge and Q3 Academy. The Assessment concludes that the parcel makes the following contribution to the 5 purposes of the Green Belt:

- P1: Checking the unrestricted sprawl of large built-up areas – **Moderate**
- P2: Preventing the merging of neighbouring towns - **Strong**
- P3: Safeguarding the countryside from encroachment - **Moderate**
- P4: Preserve the setting and special character of historic towns – **Weak /no contribution**
- P5: Assist urban regeneration, by encouraging recycling of derelict and other urban land – **Strong**

5.16 The Assessment further divides the parcels into sub-parcels to reflect the boundaries of sites that were promoted for allocation in the Black Country Plan. Sub-parcel B81As1 extends to 47.75ha and incorporates the whole appeal site and land to the south (excluding the majority of Q3 Academy). The Assessment uses the scenario “release of any land to the west of Wilderness Lane” for development to conclude that its release from the Green Belt would result in a “High” harm rating. In reaching this conclusion, the Assessment recognises the “narrow settlement gap” between Walsall and Birmingham, and how the release of the sub-parcel for development would “increase isolation of Green Belt land to the southeast” at Sandwell Valley.

5.17 Officers are reviewing representations made to the Regulation 18 draft version of the Sandwell Local Plan and finalising the evidence base. It is expected that the publication version of the Local Plan will be presented to Cabinet in August/September 2024 to seek authority to undertake a Regulation 19 consultation in the Autumn and submit the Local Plan to the Secretary of State for examination in late 2024 or early 2025.

5.18 The Council considers that limited weight can be placed on the emerging Local Plan for the purposes of this appeal due to its early stage of preparation.

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## **6. The Council's Case**

6.1 The Council will present evidence under the broad topic headings that are covered in the reasons for refusal, namely:

- a) Green belt,
- b) Character,
- c) Location,
- d) Fauna and Flora,
- e) SINC

6.2 It is common ground that the proposal comprises inappropriate development in the Green Belt. In that context the Council will consider what other harm arises to the Green Belt as well as considering harm to the character and appearance of the area, harm to the countryside and harm to the SINC, as well as the sustainability of the location to support new residential development.

### **Green Belt – Inappropriate Development**

6.3 Paragraph 154 of the NPPF does not define development of 150 new dwellings, access road, service roads, street furniture, lighting, etc as an exception from the definition of inappropriate development.

6.4 The erection of buildings is normally inappropriate development unless it meets an exception in paragraph 154 of the NPPF. The Council will show that the proposed development does not comprise one of those exceptions.

6.5 It is common ground that the proposed development comprises inappropriate development. Harm by way of inappropriateness and any other Green Belt harm is harm that is attributed substantial weight.

- 6.6 Inappropriate development should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
- 6.7 Paragraph 154 of the NPPF regards the construction of new buildings as inappropriate in the Green Belt.

### **Green Belt - Openness**

- 6.8 The paragraph 142 of the NPPF identifies openness and permanence as the essential characteristics of the Green Belt with the fundamental aim of Green Belt policy to keep land permanently open and thereby prevent urban sprawl.
- 6.9 **R (Lee Valley RPA) v Epping Forest DC** [2016] EWCA Civ 404, Treacy, Underhill, Lindblom LJJ, para. 7 describes the concept of openness means the state of being free from built development; the absence of built form as opposed to the absence of visual impact.
- 6.10 The Government (revision dated 22th July 2019) planning practice guidance states:

*Assessing the impact of a proposal on the openness of the Green Belt, where it is relevant to do so, requires a judgment based on the circumstances of the case. By way of example, the courts have identified a number of matters which may need to be taken into account in making this assessment. These include, but are not limited to:*

- *openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume;*
- *the duration of the development, and its remediability – taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness; and*
- *the degree of activity likely to be generated, such as traffic generation.*

Paragraph: 001 Reference ID: 64-001-20190722  
<https://www.gov.uk/guidance/green-belt>

- 6.11 With this in mind the Council will describe the lawful baseline for the site. The appeal site comprises an area of open land with little to no activities on site (see point 2.10 above). We will also show that the site is located in a wider area of open countryside and attractive landscape.
- 6.12 The Council will show that the appeal site is open in both a spatial and visual sense.
- 6.13 Overall, the Council will demonstrate that having regard to the baseline the proposal would lead to a substantial and permanent loss of openness in both a spatial and visual context.
- 6.14 The Council will demonstrate that in addition to the substantial increase in permanent development as proposed the scheme will significantly reduce the visual perception of openness of the site and this part of the Green Belt as well as leading to significant degrees of activity across the site and impact from light and noise.

## Green Belt – Purposes

6.15 The purposes of the Green Belt are set out in NPPF at paragraph 143:

- a) *“to check the unrestricted sprawl of large built-up areas;*
- b) *to prevent neighbouring towns merging into one another;*
- c) *to assist in safeguarding the countryside from encroachment;*
- d) *to preserve the setting and special character of historic towns; and*
- e) *to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.”*

6.16 As explained in paragraphs 5.13 to 5.16 above, the Council alongside the other Black Country Authorities commissioned LUC to carry out an independent Green Belt Review to inform future plan-making. The Black Country Green Belt Study (September 2019) assesses strategic parcels of the Black Country Green Belt as to how they contribute to the 5 purposes of the Green Belt, the harm which would be caused by the removal of parcels from the Green Belt to the integrity of the remaining Green Belt, and how far the landscape character of each of the Green Belt parcels would be sensitive to development.

6.17 For the Green Belt element of the Assessment, the appeal site is wholly within parcel B81 (Wilderness Lane). The parcel includes further land to the south and southwest at Hill Farm Bridge and Q3 Academy. The Assessment concludes that the parcel makes the following contribution to the 5 purposes of the Green Belt:

P1: Checking the unrestricted sprawl of large built-up areas –  
**Moderate**

P2: Preventing the merging of neighbouring towns - **Strong**

P3: Safeguarding the countryside from encroachment - **Moderate**

P4: Preserve the setting and special character of historic towns –  
**Weak /no contribution**

P5: Assist urban regeneration, by encouraging recycling of derelict

and other urban land – **Strong**

6.18 The Assessment further divides the parcels into sub-parcels to reflect the boundaries of sites that were promoted for allocation in the Black Country Plan. Sub-parcel B81As1 extends to 47.75ha and incorporates the whole appeal site and land to the south (excluding the majority of Q3 Academy). The Assessment uses the scenario “release of any land to the west of Wilderness Lane” for development to conclude that its release from the Green Belt would result in a “High” harm rating. In reaching this conclusion, the Assessment recognises the “narrow settlement gap” between Walsall and Birmingham, and how the release of the sub-parcel for development would “increase isolation of Green Belt land to the southeast” at Sandwell Valley.

6.19 The Council will show that the proposed 150 dwellings and incidental development such as access roads will further narrow the settlement gap between Walsall and Birmingham and increase the isolation of Green Belt land to the southeast at Sandwell Valley within the heart of the West Midlands conurbation.

6.20 The permanence of the West Midlands Green Belt is a strong driver in assisting urban regeneration by encouraging recycling of derelict and other urban land. Its permanence continues to direct the borough’s £3 billion of regeneration pipeline projects onto previously developed land.

6.21 There is therefore conflict with paragraph 143(b) and 143(e) of the NPPF and the harm by way of narrowing the settlement gap and undermining urban regeneration is substantial and carries substantial weight against the proposed development.

### **Other Harm – Countryside and Character Harm**

6.22 The development will be noticeable and result in the introduction of development on a greenfield site. The site is located within views that exhibit elements of the existing settlement edge that sits locally but will extend northwest.

- 6.23 The proposed development would harm and not improve or conserve the local landscape character.
- 6.24 The proposals will not recognise the intrinsic character and beauty of the countryside.
- 6.25 Recognition of the character and beauty of the countryside necessarily imparts a degree of protection, and the development of an estate of 150 dwellings and creation of new access would fail to recognise the character and beauty of the appeal site and wider countryside of which it forms part.
- 6.26 This failure to respect context, deliver high quality design and have proper regard to setting and the character of the area together with the loss of existing attractive arable landscape would also conflict with policies paragraph 135(c) of the NPPF which requires that planning decisions ensure that development is sympathetic to local character, including its landscape setting.
- 6.27 Alongside the Green Belt Study, LUC was appointed to complete a Black Country Landscape Sensitivity Assessment (September 2019). The Assessment includes the appeal site wholly within parcel BL25. The 78.7ha parcel also includes Q3 Academy, a stretch of the M6 to the west of junction 7 and Red House Park.
- 6.28 The Assessment concludes that the area has a moderate landscape sensitivity relating to residential development as it retains rural quality, including historic field patterns, ecological value due to the extent of priority habitats and an intact network of mature hedgerows. The proposals would harm the rural quality of the landscape and erode historic field patterns and the network of mature hedgerows through the introduction of vehicular routes.
- 6.29 The Black Country authorities commissioned Oxford Archaeology to prepare a Historic Landscape Characterisation Study in October 2019 to inform the preparation of the Black Country Plan. The Study forms part of the evidence base for the emerging Sandwell Local Plan.

6.30 The Study concludes that the appeal site is within an Area of High Historic Landscape Value (ref. AHHLV 25). It contains a well-preserved example of a pre-enclosure field system and there is evidence of ridge and furrow as cropmarks. The Study notes that there have been prehistoric finds in the area, that there are a number of field boundaries link to the moated site to the south, and a number of hedgerows are recorded as ancient hedgerows. The proposal would not make a positive contribution to local character and the identified harm would lead to conflict with 135 b) and 135 c) of the NPPF.

6.31 Overall, in terms of the harm to the character and appearance occasioned by the development of the site for 150 dwellings the degree of harm would be permanent, substantial and irreversible and attracts moderate weight in the planning balance.

### **Other Harm – SINC**

6.32 The designation of SINC is appropriate taking into account the history of the site and the variety of species which are found within it.

6.33 The development develops on 17% of the land, however, this does include the development close to one area of standing water. While this standing water has not been surveyed due to the impenetrable bramble scrub, it has been noted that it is surrounded by semi-mature hawthorn and a mature ash tree. The development of the land surrounding this water would have an undetermined effect on this habitat.

6.34 The proposed development would take away a large proportion of improved grassland and scrub from the land which would take away from the foraging of protected species which use the site.

- 6.35 While the development has proposed its plan to maintain the majority of the mature hedgerows within the site, which is the most prominent feature of the SINC, the introduction of human development would impact the site's ecology in a way which would be detrimental to the overall ecological value of the site.
- 6.36 Therefore, the Council will demonstrate the proposed development would have a negative impact on the SINC.

### **Other Harm, - Sustainable Transport**

- 6.37 The appeal site is located adjacent to the main A34 to the north. Whilst there is a bus service near the north of the site, and a some local amenities, it is accepted that a lot of private motor movements would need to be taken to access day to day services, therefore increasing vehicle movements on the road.
- 6.38 The Council will describe the location of facilities to meet the needs of future residents if the appeal site were permitted and how access to those facilities can be achieved. In particular, the Council will describe the suitability and attractiveness of cycle routes to facilities outside the settlement and the availability and frequency of public transport from the appeal site.
- ~~6.39 The failure to satisfactorily demonstrate that the site has satisfactory access to sustainable modes of transport comprises harm to which additional weight applies.~~

### **Conclusion on Harm**

- 6.40 Given the overall package of harm to the Green Belt the loss of the network of historic field pattern to a residential housing estate comprises a substantial level of harm and carry substantial adverse



weight at the very upper end of such weight. The harm by way of narrowing the settlement gap and undermining urban regeneration is substantial and carries substantial weight against the proposed development and as such the proposal conflicts with the purposes of including land in the Green Belt.

6.41 As to any other harm that is “non-Green Belt” harm, the proposals would not recognise the intrinsic character and beauty of the countryside and would harm the landscape character and would fail to improve, or enhance, or conserve the existing landscape character.

6.42 Overall, in terms of the harm to the character and appearance occasioned by the development of the site for 150 dwellings the harm would be permanent, substantial and irreversible, which is an adverse factor carrying significant weight.

6.43 The harm to the removal of the SINC is irreplaceable and will have a significant negative impact on the flora and fauna of the site.

### **Other issues**

6.44 It is agreed between the parties that a section 106 obligation can address the securing of affordable housing.

## **7 The Appellant's Considerations**

7.1 The Council will assess the other considerations relied on by the Appellant and consider whether they are capable of clearly outweighing the harm identified. We will comment on whether certain matters relied on by the Appellant comprise benefits of this scheme.

7.2 The Appellant relies on a number of factors which can be summarised as:

- The provision of housing in an area of housing need,
- Affordable Housing provision, and
- The creation of a countryside park

7.3 The Council will analyse each matter and attribute weight recognising the housing need position in Sandwell and the need for affordable housing.

7.4 It is common ground that the provision of market and affordable housing carry very substantial weight in the planning balance, however what is not agreed is combined with the limited number of properties provided (a small number in comparison to the Council's shortfall), is whether that weight is significant enough to overcome harm to the Green Belt by reason of inappropriateness and any other harm. The Council will prove that the harm caused to the Green Belt causes more significant harm than the provision of a small number of residential units.

7.5 The Council will show that the creation of a country park is development, and that it also has the potential to cause further harm to the Green Belt, for example increase in litter, traffic congestion, footpath erosion from overuse and conflict with other land users.

## **8 Planning Balance**

- 8.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.2 By reason of the local plan policy conflict identified above, the proposed development does not accord with the development plan taken as a whole.
- 8.3 The NPPF is a material consideration in the determination of these appeals. Under paragraph 11(d), the policies most important for the determination of the appeals are deemed to be out of date by reason of the Housing Delivery Test result and housing land supply shortfall. This requires the decision-maker to consider whether the application of policies in the Framework provide a clear reason for refusing the proposal. One of the key sets of policies in the Framework are the policies protecting Green Belt land.
- 8.4 The proposed development constitutes “inappropriate development” in the Green Belt. This is, by definition, harmful, and should not be approved except in “very special circumstances”. Substantial weight must be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is “clearly outweighed” by other considerations.
- 8.5 The other Green Belt harm by loss of openness and harm to the purposes of the Green Belt leads to substantial harm and must carry substantial weight.
- 8.6 Added to this is “any other harm” arising from the other matters considered above.
- 8.7 The weight of factors against the grant of permission presents a high hurdle for the Appellant to demonstrate that these harms, taken together, are “clearly outweighed” by other considerations

such that “very special circumstances” exist. This high bar is illustrated in an appeal decision **APP/ B1930/W/19/3235642** wherein the Inspector notes:

*“The determination of whether very special circumstances exist is a matter of planning judgement based on a consideration of all relevant matters. However, very special circumstances cannot exist unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations. Consequently, for the appeal to succeed, the overall balance would have to favour the appellants case, not just marginally, but decisively.”*

- 8.8 Overall, notwithstanding the benefits of the scheme taken together, the Council will show that they do not “clearly outweigh” the harms and demonstrate “very special circumstances” to justify inappropriate development in the Green Belt for the purposes of paragraph 154 of the Framework.
- 8.9 As such, the application of the Green Belt policy provides a “clear reason for refusing” the development proposal under NPPF paragraph 11(d)(i).
- 8.10 The proposed development conflicts with the most important development plan policies, and as such conflicts with the development plan taken as a whole. In addition, the policies of the Framework provide clear reasons to refuse permission, and material considerations would not justify the grant of permission. The Council will invite the Inspector to dismiss the appeal.