

Statement of Case

Land north of Wilderness Lane, Great Barr

Wain Estates (Land) Limited

March 2024

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Client Name
Wain Estates (Land) Limited

Our reference
HIMQ3001

March 2024

1. Introduction

1.1 This Statement of Case ('SoC') has been prepared by Turley on behalf of Wain Estates (Land) Limited ('the appellant') to support an appeal against Sandwell Council's refusal of planning application (**DC/23/68822**) for residential development on land north of Wilderness Lane, Great Barr, see **Appendix 1** for a Site Location Plan.

1.2 The description of development on the decision notice is as follows:

"Proposed 150 dwellings, a countryside park and associated works (outline application for access only".

1.3 This was changed from the description proposed in the application form, which was as follows:

"Outline planning application (with the exception of access) for the development of up to 150 new dwellings (including 40% affordable housing), a countryside park and associated works."

1.4 The outline planning application was submitted to Sandwell Council ('the council') on 3rd November 2023 and subsequently validated on 16th November 2023. Pre application engagement was undertaken with the council, via the formal pre-application process; and local residents by means of an online webinar, as detailed in the supporting Statement of Community Engagement which was submitted with the original application.

1.5 The determination deadline was 15th February 2024; however, a decision was issued on 17th January 2024. There was limited engagement from the Council during the application process. We reserve the right to submit a costs case in this respect.

1.6 The council refused the application for the following two reasons:

"1. 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 this 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.

2. 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 SINC."

Statement of Case

1.7 This statement outlines the case that the appellant intends to put forward at a public inquiry relating to SMBC's refusal of planning permission.

- 1.8 A draft Statement of Common Ground ('SoCG') is also submitted by the appellant. The appellant reserves the right to add to the matters contained in this statement and to the list of documents set out.
- 1.9 This statement should be read alongside the separate supporting statements which were submitted with the application. Taken together, these documents support the case made by the appellant.
- 1.10 The appellant will progress discussions with SMBC on the SoCG as the Local Planning Authority ('LPA') defending the appeal. A full list of all the application documents is contained within the draft SoCG for reference and is included with the appellant's appeal submission.

The Main Issues

- 1.11 The appellant considers that the main issues for this appeal relate to the following:
- (1) Extent of the proposals' impacts on the Green Belt openness and purposes.
 - (2) Extent of the proposals' impacts on character and appearance of the area.
 - (3) Extent of the proposals' impacts on the SINC.
- 1.12 (5) Whether the benefits of the scheme clearly outweigh any harms, including harms to the Green Belt. If the benefits clearly outweigh the harm, then the same test set out in both policy SAD EOS 2 of the Site Allocations and Delivery DPD and paragraph 153 of the NPPF is passed, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended). Although not referred to in the decision notice and not subject to objections from the relevant statutory consultees, there remains a number of technical matters that need further resolution, including:
- The scale of Sandwell's housing shortfall
 - Heritage
 - Highways
 - Air quality
- 1.13 The appellant intends to seek agreement on these matters via the SoCG, however if this is not forthcoming, we reserve the right to call witnesses on these matters.

Appeal Procedure

- 1.14 The appellant considers that an inquiry represents the most appropriate procedure for this appeal given the complexity of the matters which evidence is to be presented on. We provide justification for this below in the context of the Planning Inspectorate's 'Planning Appeals: Procedural Guide (2015)' and particularly the content of Annexe K.

Is there a clearly explained need for the evidence to be tested through formal questioning by an advocate?

- (i) Cross-examination of the Council and the detailed presentation of evidence is necessary in terms of their assessment of the proposals' Green Belt impacts, the resultant harm, and very special circumstances.
- (ii) Cross-examination of the Council and the detailed presentation of evidence is also necessary in respect to the weight afforded to the SINC designation and any impact the proposals will have.
- (iii) Cross-examination of the Council and the detailed presentation of evidence is also necessary in respect to the delivery of market and affordable housing given the absence of a four year housing land supply, and ultimately the overall planning balance exercise.

Are the issues complex?

- (iv) The appellant considers that any identification of material harm associated with Green Belt, landscape and visual harm, and ecology to be complex. Exploration of the Council's housing land supply position will also be a complex matter, as will the subsequent undertaking of the planning balance. It will therefore require detailed cross examination to explore what weight should be applied to any harm or impacts, when balanced against the benefits of the appeal proposals and their level of accordance with the development plan.

Has the appeal generated substantial local interest to warrant an inquiry as opposed to dealing with the case by a hearing?

- (v) The proposal has generated significant local interest for a site of this nature, as reflected in summary of representations received to the application contained in the officer's report. A hearing would not provide an appropriate forum to fully test these responses.
- (vi) It is anticipated that a number of local residents will wish to take part in the appeal process and an inquiry will provide the most appropriate forum for the consideration of their representations.

Timescales

- 1.15 Six days should be set aside for the inquiry.

Witnesses

- 1.16 The appellant reserves the right to call expert evidence in respect to the following:

- Planning balance
- Landscape, Visual and Green Belt
- Ecology

- Housing land supply
- Affordable Housing
- Heritage
- Air Quality
- Highways

1.17 A notification letter and form were submitted to the council and the Planning Inspectorate (PINS) on Thursday 14th March 2024, as evidenced at **Appendix 2**.

2. Appellant's Case

- 2.1 A description of the appeal site and surroundings and the proposals are provided in the Statement of Common Ground ('SoCG') and Planning Statement submitted with the original application.
- 2.2 The relevant planning policy context for the site is set out in the SoCG.
- 2.3 The appellant's case is set out in further detail below.

The Development Plan

- 2.4 In this case the development plan comprises the adopted Black Country Core Strategy (2011) (BCCS) and the Sandwell Site Allocations and Delivery DPD (2012). The BCCS is out of date, by virtue that it was adopted before the NPPF was published.
- 2.5 The Sandwell Site Allocations and Delivery DPD covers the plan period up to 2021, it is therefore time expired and out of date.
- 2.6 Whilst the development plan is out of date, there remain relevant policies contained within in, which we will consider as part of our appeal evidence and give the necessary weight to it.
- 2.7 One such policy is SAD EOS2 – Green Belt, which repeats the test contained within paragraph 153 of the NPPF – in that development will not be permitted within the Green Belt, except in very special circumstances, where the harm of the development is clearly outweighed by other considerations. The appellant will provide evidence to demonstrate that the proposals' benefits clearly outweigh any harms, including harms to the Green Belt, for which it is recognised that substantial weight must be attributed. Therefore, very special circumstances exist, in accordance with the Development Plan, as per policy SAD EOS2 and paragraph 153 of the NPPF, in line with section 38(6) of the Planning and Compulsory Purchase Act 2004.

Other Material Considerations

Impacts on the provision of Market and affordable Homes

- 2.8 There is a compelling and recognised need for significant additional market and affordable housing in Sandwell.
- 2.9 The development plan comprises the BCCS and the Sandwell Site Allocations and Delivery Development Plan, adopted in 2011 and 2012, respectively. Both plans are over five years old, so the Council's housing land supply position should be tested against their local need.
- 2.10 SMBC has recognised this position within their most recent Strategic Housing Land Availability Assessment (SHLAA) (December 2023), which provides data demonstrating the supply position is 1.56 years. Although it may be the case that the Council only has to demonstrate a four year housing land supply as per NPPF paragraph 77, the Council's supply position is still woefully below this.

2.11 The appellant will present evidence that confirms the Council has a shortfall in supply and that the shortfall is serious and significant. Turley will present evidence to demonstrate that the supply deficit is greater than set out by the Council, that shortfalls will persist for many years and that shortfalls in overall housing delivery are likely to be seen at the end of the plan period. Therefore, the provision of new homes as a result of the appeal proposal are seen as a substantial benefit and should be attributed very substantial weight.

2.12 Given the Council's significant under delivery of affordable housing since 2006, the appellant's evidence will demonstrate that the provision of affordable housing in excess of the policy requirement is a benefit that should, given the Council's significant under delivery of affordable housing, should be afforded very substantial weight.

Extent of Green Belt Impacts

2.13 As with any new build development within the Green Belt, the appeal proposals represent inappropriate development amounting to harm, of which substantial weight should be attributed, in line with paragraph 153 of the NPPF. However, the appellant's evidence will demonstrate that this harm is limited and will be outweighed by the substantial benefits the development will deliver.

2.14 A site specific assessment has been undertaken in relation to the contributions it makes towards the Green Belt, compared to the council's assessment contained within the Council's LUC Green Belt Review (September 2019), this was based on the site forming part of a much wider parcel of land (REF: B81).

2.15 In terms of the impact on "openness" in the Green Belt, both the spatial and visual impacts have been considered within the assessment. The assessment on 'spatial openness' demonstrates that due to the proposed location and density of built form, the appeal proposals would have a limiting effect. The assessment of 'visual openness' concludes the due to the surrounding built form and intervening vegetation, the appeal proposal would have a very limited effect. It is accepted that the 'spatial openness' effects are more impactful than the 'visual openness' effects given that, the appeal proposal will not retain the site as being free from built form, as with any proposal for new development within a Green Belt location.

2.16 When assessed against the purposes of the Green Belt, the results of this assessment conclude that, the appeal scheme would have a very limited effect on checking the unrestricted sprawl of large built-up areas, and of safeguarding the countryside from encroachment. It would not lead to any merging of neighbouring towns and makes no contribution to the criterion of preserving the setting and special character of historic towns and is neutral when considering assisting in urban regeneration through the encouragement of using brownfield land – this is a semi-rural greenfield site.

2.17 The appellant will therefore provide evidence that demonstrates the Council is misinterpreting the site's contribution to the Green Belt. The evidence will demonstrate that the area of the site proposed for development will have a limited impact on the openness of the Green Belt and that substantial benefits for allowing the proposals in this location, including the delivery of market housing and provision of affordable housing in excess of the policy requirement.

- 2.18 Overall, despite the limited impacts identified, the weight to be attributed to Green Belt harm in this instance is substantial, as with any new built development scheme within the Green Belt, as required by paragraph 153 of the NPPF.

Extent of impacts on the character and appearance of the area

- 2.19 Although not referred to in the decision notice, the officer's delegated report refers to conflict with NPPF paragraph 135(c) in terms of impact on local character and landscape setting. No description of the impact is provided in the report; however, the Council's policy response alleges the proposals will "...harm the rural quality of the landscape and erode historic field patterns and the network of mature hedgerows through the introduction of vehicular routes".
- 2.20 The appellant will demonstrate that the proposals harm in terms of landscape and visual impact will be limited, as a result of the loss of open countryside. As the appeal proposal represents only a small portion of the site being developed for residential development, impacts on the character and appearance of the area would be localised and to some degree can be balanced by the opening up of the wider site for public accessibility. It is also inevitable that some greenfield land will be lost in order to meet the Council's housing needs.
- 2.21 In summary, the weight to be attributed to landscape and visual harm as a result of the appeal proposals is limited.

Extent of impacts to heritage assets

- 2.22 The appellant will demonstrate that the proposals will not result in harm to any designated heritage asset. Whilst there would be very limited impacts on non-designated assets, the significance of these assets would remain. Overall, there would only be very limited harm to non-designated heritage assets, which we attribute limited weight to in the planning balance.

Extent of Impacts on the SINC

- 2.23 The proposals will result in the loss of a limited area of the Peak House Farm SINC – but the lack of management of the grassland within the SINC has caused it to degrade since 2020 – harming the conservation value of the site.
- 2.24 The minor loss of grassland habitats in the eastern area of the site will be mitigated through the provision of grassland enhancements, the creation of new hedgerows and diversification of habitats in the central and western areas of the site. Additional mitigation provided within the scheme will include the provision of a low-level lighting scheme to avoid light spill onto the areas of green infrastructure surrounding the development. This will avoid and mitigate any potential effects of the proposals.
- 2.25 In terms of habitat and linear features the proposals demonstrate a significant net gain 37.07 habitat units (+18.26%) and 4.85 hedgerow units (+10.35%) can be achieved through development of the site. This is a significant net gain which is a substantial benefit of the proposals and should be attributed substantial weight.
- 2.26 The appellant will demonstrate that overall, there will be some limited harm in terms of development within a SINC, however the proposals have been designed to mitigate this, the retained areas of the SINC will be subject to long term positive management which

will restore and enhance the quality of the retained grassland. The proposals would provide long term benefits to the conservation status of the retained SINC. As such moderate weight is attributed to the harm to the SINC.

Other technical matters

- 2.27 Although not subject to objections, a number of technical matters (including air quality and highways) require further agreement with the Council. The appellant will seek to agree these matters through the SoCG as none of the outstanding issues are significant, however, if necessary, the appellant will provide evidence to demonstrate there are no technical constraints to the delivery of the site.

Summary

- 2.28 Overall, it will be demonstrated that the appeal proposals' benefits clearly outweigh its harms, amounting to very special circumstances and therefore passing the same test established by both policy SAD EOS2 and at paragraph 153 of the NPPF. The proposals accord with the development plan, supported by other material considerations, in line with section 38(6) of the Planning and Compulsory Purchase Act (2004). The appellant therefore concludes that the reasons for refusal given by Sandwell Metropolitan Borough Council are not justified, and a robust case will be made to ensure that their position is comprehensively presented to the Inspector in the Proofs of Evidence at inquiry.

3. Conclusion

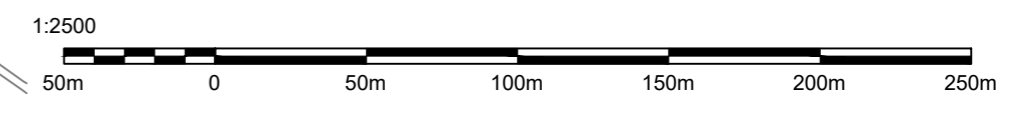
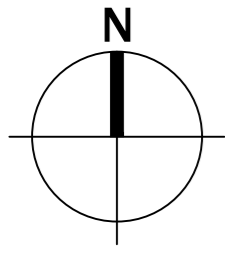
- 3.1 The appeal will refer to Section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that applications for planning permission shall be made in accordance with the development plan unless material considerations indicate otherwise.

Planning Balance

- 3.2 The appellant will demonstrate through evidence that:
1. Whilst the proposals represent limited harm to the Green Belt, any such harm is to be attributed substantial weight, in line with paragraph 153 of the NPPF, such harm must be weighed against the benefits of the appeal scheme.
 2. There would be limited harm arising from the loss of greenfield land and the proposals' landscape and visual impact, though these impacts will be localised and well contained. This is attributed limited weight.
 3. Whilst there will be some minor ecological harm as a result of the loss of a proportion of the Peak House Farm SINC, the minor loss of grassland habitats in the eastern area of the site where development is proposed will be mitigated through the provision of grassland enhancements, the creation of new hedgerows and diversification of habitats in the central and western areas of the site. Long term management will be secured via the s106 and will offer enhanced benefits in terms of the conservation value of the site. This is attributed moderate weight.
 4. There would be no harm to any designated heritage asset. There would be some very limited harm to non-designated assets, this is attributed limited weight.
 6. These harms would be clearly outweighed by the benefits of the appeal proposal, even when substantial weight is attributed to any harm arising to the Green Belt and are set out below:
- 3.3 The provision of housing in an area with a 1.56 year housing land supply, this is very substantially below the minimum four year housing land supply requirement and is a historically recognised problem. With no clear strategy for significantly boosting housing supply, this benefit should be attributed very substantial weight in favour of the proposals.
- 3.4 The provision of housing in an area with a 47% score on the HDT, which is very substantially below the 95% requirement for no action to be taken, this benefit should be attributed very substantial weight in favour of the proposals.
- 3.5 The provision of a significantly higher percentage of affordable housing (40%) than policy requirements (25%) is a benefit which should be afforded very substantial weight. This is in the context that the Council has delivered a net loss of 454 affordable homes since 2006 – the start of the BCCS plan period. Again, there is no clear strategy to how the supply of affordable housing will be boosted in the borough. This is to be attributed very substantial weight.

- 3.6 The retention of the majority of the site as open space and a countryside park, which is currently inaccessible to the public. This is to be attributed substantial weight.
- 3.7 The proposals are located in a highly sustainable and accessible location, maximising existing infrastructure, services and facilities. The site is located on a high frequency bus route to Birmingham, Walsall and Cannock. This is to be attributed significant weight.
- 3.8 The proposals will achieve a 18.26% biodiversity net gain, substantially higher than the 10% requirement. This is to be attributed substantial weight.
- 3.9 There are no technical constraints to the delivery of the site, including highways, air quality, noise, ground conditions, and flood risk and drainage. This is attributed significant weight.
- 3.10 The Proposals will secure the long-term management of the site as a SINC. This is to be attributed moderate weight.
- 3.11 The proposals will deliver other benefits, including job creation during construction, and increased disposable income in the area from new residents. This is to be attributed moderate weight.
- 3.12 Overall, despite the substantial weight to be attributed to Green Belt harm, the appeal scheme's benefits clearly outweigh its harms and therefore the same test set out in both policy SAD EOS2 and paragraph 153 of the NPPF is passed and accordingly very special circumstances exist, resulting in accordance with the development plan, as set out in paragraph 38(6) of the Planning and Compulsory Purchase Act (2004).
- 3.13 The appellant therefore concludes that the reasons for refusal given by Sandwell Metropolitan Borough Council are not justified, and a robust case will be made to ensure that their position is comprehensively presented to the Inspector in the Proofs of Evidence at inquiry.

Appendix 1: Site Location Plan



D	11/23	Scale Bar Amended	DF
C	11/23	Scale Bar Added	DF
B	07/23	Red Line Amended	DF
A	06/23	Red Line Amended	DF

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Project Name:
**BIRMINGHAM ROAD
GREAT BARR**

Drawing Title:
LOCATION PLAN

Date:	20/06/23	Drawn:	DMF	Scale:	1:2500@A2
Job No:	30	Dwg No:	100	Revision:	D

Appendix 2: Notification of intent to submit an appeal

14 March 2024

Delivered by email

William Stevens
Development Management
Sandwell Council,
Sandwell Council House,
Freeth Street,
Oldbury,
B69 3DB

Ref: HIMQ3001

Dear William,

WILDERNESS PARK – LAND NORTH OF WILDERNESS LANE, GREAT BARR– PRE-NOTIFICATION OF INTENTION TO APPEAL

We write on behalf of Wain Estates (Land) Limited in respect to the outline planning application (with the exception of access) (DC/23/68822) for land north of Wilderness Lane which is for the following description of development:

“Proposed 150 dwellings, a countryside park and associated works (Outline application for access only).”

The application was validated on 16th November 2023 and accordingly the determination deadline was 15th February 2024. The decision was issued on 17th January 2024. It included the following reasons for refusal:

1. 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 this 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.

2. 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 SIN.

We write to inform Sandwell Council of the intention of Wain Estates (Land) Limited to appeal against the decision to refuse the above application.

Following the Rosewell Review the Planning Inspectorate has now introduced the requirement to notify a local planning authority not less than ten working days in advance of the submission of an appeal. Please therefore accept this letter and the accompanying form as notification of our attention to appeal against

9 Colmore Row
Birmingham
B3 2BJ

T 0121 233 0902 turley.co.uk

the refusal of the application not less than ten working days from the date of this letter (i.e. 28th March 2024).

We will be seeking for the appeal to be determined via an 8-10 day inquiry given there are issues which will need to be explored in detail.

Yours sincerely,

Emily Penkett
Senior Planner
emily.penkett@turley.co.uk

Cc. The Planning Inspectorate

Enc. Appeal pre-notification form

**TOWN AND COUNTRY PLANNING ACT 1990
APPEAL UNDER SECTION 78**

Notification of intention to submit an appeal

Under the provisions of Recommendation 3 of the Rosewell Review into inquiry appeals, this notification is to give the Local Planning Authority and Planning Inspectorate not less than 10 working days' notice of an intention to submit a planning appeal where the appellant will request the inquiry procedure.

Complete the following:

The appeal will be against: Sandwell Council

For: refusal

Appellant(s) name: Wain Estates (Land) Limited

Site address: Land North of Wilderness Lane, Great Barr

Description of development: Proposed 150 dwellings, a countryside park and associated works (Outline application for access only).

Planning application number: DC/23/68822

Likely submission date of appeal: 25th March 2024

Proposed duration of inquiry in days: 8-10

Next steps:

1. Complete the above fields
2. Save this document
3. Attach to an email and send to the Local Planning Authority and also the Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk)
4. Submit your appeal via the [Appeals Casework Portal](#) not less than 10 working days after sending this notification.

Turley Office
9 Colmore Row
Birmingham
B3 2BJ

T 0121 233 0902

Turley