

**APPEAL BY TAYLOR WIMPEY (UK) LTD**

**LAND NORTH OF BARKBY ROAD  
SYSTON**

**APP/X2410/W/23/3325902**

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**OPENING STATEMENT ON BEHALF OF THE COUNCIL**

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**Introduction**

1. This appeal relates to a proposal for 195 dwellings, open space, landscaping, drainage and play space on land at the south-eastern edge of Syston. All matters are reserved other than access, which is proposed from Barkby Road.<sup>1</sup>
2. The appeal site lies outside the development limits of Syston and so conflicts with saved policies CT/1, CT/2 and ST/2 of the Borough of Charnwood Local Plan, adopted 12<sup>th</sup> January 2004 (“the Local Plan”).<sup>2</sup> However, the site is proposed as an allocation (HA3) in the emerging draft Local Plan 2021-37 under policy DS3.<sup>3</sup> The site is also located between two other proposed allocations, HA1 for 960 homes to the south of Barkby Road and HA2 for 270 homes to the north of the appeal site.
3. The appeal is against the non-determination of the application by Charnwood Borough Council (“the Council”). On 17<sup>th</sup> August 2023, the same day on which the Local Highway Authority (“LHA”) provided for the first time a supportive consultation response stating that the proposal could be acceptable subject to conditions and obligations, the Council’s Plans Committee resolved that it would have refused permission for five putative reasons.<sup>4</sup>

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<sup>1</sup> The final plans for approval are at CD8.02 and CD8.03.

<sup>2</sup> CD5.01.

<sup>3</sup> See CD7.01 allocations on p.37.

<sup>4</sup> The Committee Report setting out the reasons for refusal is at CD4.01 pp. 41-42, the Committee Minutes confirming that the Committee supported all reasons other than reason for refusal 4 is at CD4.02. The Highways Authority’s 17<sup>th</sup> August response is at CD 3.26.

However, the Committee gave delegated authority to the Head of Planning and Growth to withdraw those reasons as appropriate following any changed circumstances.

4. Following an updated analysis of the planning balance by the Council in light of the new support from the LHA, on 12<sup>th</sup> September 2023 that delegated authority was exercised to withdraw all reasons for refusal.<sup>5</sup> The Council's Statement of Case confirmed the position and explained how it was reached in some detail.<sup>6</sup>
5. Accordingly, as set out in the signed updated Statement of Common Ground ("SOCG"),<sup>7</sup> both the Council and the Appellant are now in agreement that permission for this development should be granted, subject to appropriate conditions and obligations.
6. Following the Case Management Conference ("CMC"), the Inspector identified two main issues for the Inquiry:
  - a. whether the proposed transport contributions would meet the tests within the CIL Regulations and National Planning Policy Framework ("NPPF"); and
  - b. planning policy and the planning balance.
7. In Opening, the Council will address these two matters, as well as providing a final update as to the position on archaeology.

## **Highways**

8. It is common ground between all parties that a contribution towards transport improvements within Syston is appropriate in this case.<sup>8</sup>
9. The LHA's final revised request and justification for contributions was provided on 4<sup>th</sup> October 2023.<sup>9</sup> The total contribution requested is £263,991, which comprises:

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<sup>5</sup> The delegated decision by the Head of Planning is at CD4.04.

<sup>6</sup> CD9.03.

<sup>7</sup> CD9.08

<sup>8</sup> CD9.08 Updated SOCG at §9.15.

<sup>9</sup> CD9.06.

- a. £59,841 as a 13.9% part (195 out of 1,406 houses for cumulative group HA1, HA2 and HA3) of the £430,510 costed improvement schemes at the Fosse Way / High Street and Goodes Lane junctions<sup>10</sup>;
- b. £196,650 as a 43.7% part (195 out of 446 dwellings for the cumulative group HA2 and HA3) toward public transport improvement costs of £450,000;<sup>11</sup> and
- c. £7,500 towards necessary Traffic Regulation Orders.

10. In essence, the LHA explained that these contributions are justified on the basis that the draft allocations HA1, HA2, and HA3 as a cluster of sites would create severe cumulative transport impacts without proportionate mitigation from each. The LHA relies on the Appellant’s modelling work to reach those conclusions.<sup>12</sup>

11. The Council commented on those requests on 6<sup>th</sup> October 2023, in advance of exchange of Proofs of Evidence, explaining that there is a reasonable expectation that all three areas will produce housing within a few years.<sup>13</sup> The emerging Local Plan anticipates through policies INF1 and INF2 that pooled contributions will be used to mitigate the cumulative impacts of development.<sup>14</sup> Due to the cumulative impacts arising in this case, it is necessary to improve public transport and highway capacity to make the development acceptable.<sup>15</sup> As set out in Mr Ward’s Proof of Evidence, the Council is therefore satisfied that the sums requested and the justification used are compliant with reg. 122 of the CIL Regulations.<sup>16</sup>

12. Mr Tucker for the Appellant has confirmed that he considers that the public transport improvements contribution requests are CIL compliant.<sup>17</sup> As to the junction improvements, Mr Tucker has made clear that the Appellant “*agrees the approach and the Section 106*

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<sup>10</sup> This cost derives from the Appellant’s transport submission dated 28th June 2023 Appendix 3 CD2.18.

<sup>11</sup> The annual cost of £71,000 for improved frequency to the bus service serving the appeal site has been sourced from the operator of the service by the appellant, see CD2.18 at §§4.1-4.4. HA1 has been excluded from this apportionment - given its scale, and the requirement to provide a school site within the allocation, it is likely that HA1 will necessitate a different solution to public transportation, such as a redirected bus route (see Council’s CIL Statement CD9.07 at §3.3).

<sup>12</sup> Agreed traffic modelling at CD2.15 – see summary on p.8, assessed six junctions. Further traffic modelling work reported at CD2.18 – three full junctions.

<sup>13</sup> Council’s CIL Statement CD9.07 at §2.3.

<sup>14</sup> Council’s CIL Statement CD9.07 at §2.9.

<sup>15</sup> Council’s CIL Statement CD9.07 at §2.10.

<sup>16</sup> See Mr Ward’s Proof at §2.6.

<sup>17</sup> His Proof confirms this at §4.4.1.

*agreement reflects the requested contributions*".<sup>18</sup> Similarly, in her Proof Ms Clarke confirmed that the Appellant is content with the requested contributions.<sup>19</sup>

13. In addition to the financial contributions, provision has been made for safeguarding a small area of land as part of a Unilateral Undertaking to enable future enhancement of the proposed site access' priority junction into a roundabout when emerging allocation HA1 to the south of Barkby Road is developed.<sup>20</sup>
14. In light of the mitigation provided, the Council considers that the proposal complies with the relevant transport and infrastructure policies in the adopted development plan, namely policies CS17, CS18, and CS24 of the Charnwood Local Plan Core Strategy adopted 9 November 2015 ("the Core Strategy"), as well as with policies CC5, INF1, and INF2 of the emerging draft Local Plan.
15. The proposal also accords with §111 of the NPPF, which makes clear that development should only be refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

### **Archaeology**

16. Following the requested trial trench evaluation, a final report by York Archaeology was issued in October 2023.<sup>21</sup> This explains that features of Romano-British date were found on the southern field within the application site, stating that there is an area that requires mitigation in the form of excavation and recording and that this can be secured by condition.<sup>22</sup> The final report does not change the recommendations from the interim report from September 2023.<sup>23</sup>
17. The draft condition on archaeology has been drawn up with input from the Council's former in-house archaeologist (who no longer works at the Council). In all, the Council is content

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<sup>18</sup> Mr Tucker's Proof at §6.3.7.

<sup>19</sup> Ms Clarke's Proof at §7.7.

<sup>20</sup> A drawing of the potential future roundabout access can be found at CD 2.15 page 12.

<sup>21</sup> CD 2.20.

<sup>22</sup> See the Summary on p.5 of CD 2.20.

<sup>23</sup> CD2.19.

with the approach recommended in the interim and final reports and agrees with the Appellant that archaeological matters can be dealt with by condition.

### **Planning Balance**

18. As always, s.38(6) of the Planning and Compulsory Purchase Act 2004 requires that the appeal should be determined in accordance with the statutory development plan, unless material considerations indicate otherwise.

19. In this case, there is conflict with the adopted statutory development plan in two regards. First, the appeal site lies outside the settlement boundary and so conflicts with saved policies CT/1, CT/2 and ST/2 the Local Plan. Secondly, because the application has been brought forward within a Mineral Safeguarding Area without a Minerals Assessment, the proposal conflicts with Policy M11 of the Minerals and Waste Local Plan 2019 (“the Minerals Plan”).

20. However, this is a case where, in the light of the highways and transport matters having been satisfactorily resolved, material considerations now indicate that permission should nonetheless be granted. The key significant material considerations are the provisions in §11(d) of the NPPF and the emerging Local Plan.<sup>24</sup>

21. First, the Council cannot currently demonstrate a 5-year housing land supply (it was 4.27 years on 1st April 2023).<sup>25</sup> Accordingly, applying §11(d) of the NPPF, development plan policies that constrain the supply of housing cannot be afforded full weight, and permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits. On this basis, Mr Ward finds that policies CT/1, CT/2 and ST/2 are out-of-date, and insofar as they restrict the supply of housing should only be afforded limited weight in the determination of this appeal.<sup>26</sup>

22. Secondly, the appeal site is proposed as an allocation in the emerging Local Plan. Based upon the concluded hearing sessions, Mr Ward considers it is highly likely that this site will

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<sup>24</sup> Mr Ward’s Proof at §8.8.

<sup>25</sup> Page 1 of CD10.02 and §9.10 of the Committee Report CD4.01, Updated Statement of Common Ground CD9.08 at §§9.2-9.3.

<sup>26</sup> Mr Ward’s Proof at §8.4.

become an adopted housing allocation during the first quarter of 2024.<sup>27</sup> On the basis of that allocation, the Mineral Planning Authority does not object on mineral safeguarding grounds.<sup>28</sup>

23. The benefits of the scheme include the provision of affordable housing (a policy compliant 30%); the provision of market housing; construction phase employment; contributions from completed housing to the local economy in the long term; and provision of publicly accessible open space.<sup>29</sup>

24. The landscape harm is agreed to be minor to moderate.<sup>30</sup> There are no objections from technical consultees, including on matters such as flood risk, biodiversity, and environmental health.<sup>31</sup>

25. Mr Ward concludes, having regard to the assessments made by the Council's expert consultees, that there are no adverse impacts that could not be mitigated by planning conditions and obligations that would significantly and demonstrably outweigh those benefits.<sup>32</sup>

26. Accordingly, in due course, the Inspector will be invited to grant permission, subject to appropriate conditions and obligations.

**14<sup>th</sup> November 2023**

**ODETTE CHALABY**

**No5 Chambers**

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<sup>27</sup> Mr Ward's Proof at §5.5

<sup>28</sup> See Minerals Authority response at CD3.01.

<sup>29</sup> See the Committee Report CD4.01 at §§9.98-9.99.

<sup>30</sup> Updated Statement of Common Ground CD9.08 at §9.25.

<sup>31</sup> See summary of consultation responses at §8.1 of the Committee Report CD4.01.

<sup>32</sup> Mr Ward's Proof at §8.13.