

APPEAL BY TAYLOR WIMPEY (UK) LTD

**LAND NORTH OF BARKBY ROAD
SYSTON**

APP/X2410/W/23/3325902

**CLOSING SUBMISSIONS ON BEHALF OF
CHARNWOOD BOROUGH COUNCIL**

Introduction

1. At the close of the Inquiry, Charnwood Borough Council (“the Council”) remains in agreement that this appeal for a development of 195 market and affordable dwellings, open space, landscaping, drainage and play space should be allowed, subject to the conditions and obligations discussed in the Roundtable sessions.
2. There is no objection to the proposal from any technical consultee, including the Local Highway Authority (“LHA”), Lead Local Flood Authority (“LLFA”), and the Council’s environmental health team.
3. While not currently an allocated site under the extant development plan, the site is proposed as an allocation, HA3, in the emerging draft Local Plan 2021-37 under emerging policy DS3.¹ The latest round of consultation in respect of the emerging Local Plan concluded on 8th November 2023, and an update from the Inspectors on next steps is expected in the near future.²
4. In Closing, the Council will summarise the position on highways matters, briefly address the remaining points of difference between the parties on conditions and obligations, and finally turn to the planning balance.

¹ The emerging Local Plan is at CD 7.01.

² Mr Ward at the Inquiry Roundtable.

Highways

5. It is clear that contributions towards transport improvements within Syston are necessary and appropriate in this case.³ The LHA's final request and justification for contributions was provided on 4th October 2023.⁴ The total contribution requested is £263,991. The detailed breakdown was provided in our Opening Submissions.

6. There are two main elements of the contribution. The first is a proportional part (for the group of allocations HA1, HA2, and HA3) of the £430,510 costed improvement schemes at the Fosse Way / High Street and Goodes Lane junctions.⁵ As Mr Tucker explained to the Inquiry, the LHA does not consider it necessary to require improvements at the High Street / Melton Road / Barkby Road junction, because the development is predicted to increase the queue by only four vehicles on the High Street arm in the PM peak only.⁶ The second main element is a proportional part (for the group HA2 and HA3) toward public transport improvement costs of £450,000.⁷ There is also the money for a traffic regulation order ("TRO").

7. Proportional contributions are necessary, because without them the draft allocations HA1, HA2, and HA3 as a cluster of sites would result in severe cumulative impacts on the local highway network.⁸ The Council is therefore satisfied that the sums requested are compliant with reg. 122 of the CIL Regulations, as set out in the CIL Compliance Statement.⁹

8. The parties agree that the proposed access arrangements would be safe and suitable for the development proposed in respect of this appeal.¹⁰ Looking to the future, provision has also

³ CD9.08 Updated SOCG at §9.15. Mr Tucker and Mr Ward in the Roundtable.

⁴ CD9.06.

⁵ This cost derives from the Appellant's transport submission dated 28th June 2023 Appendix 3 CD2.18.

⁶ CD3.26 at p.4.

⁷ 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).

⁸ 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. Council's CIL Statement CD9.07 at §2.3, §2.9, §2.10.

⁹ See Mr Ward's Proof at §2.6. Council's CIL Statement CD9.07.

¹⁰ Final Statement of Common Ground at §6.10.

been made for dedicating land to the LHA as part of a Unilateral Undertaking, which is to be found at CD9.13 with a plan of the safeguarded land at CD9.14, to enable future enhancement of the proposed site access' priority junction into a roundabout when emerging allocation HA1 to the south is developed.¹¹ The Council considers this to be important to ensure the good planning of the area.

9. Finally, a Construction Traffic Management Plan (“CTMP”) condition is proposed to deal with traffic during the initial construction period, a concern raised by local residents at the Inquiry.
10. In all, in light of the final responses of the LHA and the agreed mitigation to be provided, the Council concludes that the highways impacts can be adequately addressed, and that the proposal complies with the relevant transport and infrastructure policies in the adopted development plan and in the NPPF.

Conditions and Obligations

11. Conditions are largely agreed between the parties, but some small points of difference remain.
 - a. First, while a degree of flexibility is required, the Council considers that it is important at this stage to secure the principles contained within the Concept Masterplan, which have been established on the basis of a series of expert reports and reviewed by the Council’s technical consultees.¹²
 - b. Secondly, as to the “Hillside” condition, the Council is concerned that this somewhat puts the cart before the horse by effectively confirming that a revised access would not impact the rest of the site, when no application or design has been put forward yet.
12. The obligations are also largely agreed. At this stage, we await the further consultation response from the Integrated Care Board (“ICB”) following the Appellant’s submission of a recent appeal decision suggesting that no NHS contribution is required. The Council will

¹¹ A drawing of the potential future roundabout access can be found at CD 2.15 page 12.

¹² As explained by Mr Ward and Ms Garbutt at the Roundtable. The Concept Masterplan is at CD8.03.

many any further representations necessary once that further consultation response has been received.

Planning Balance

13. Turning finally to the planning balance. Applying 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal should be determined in accordance with the statutory development plan, unless material considerations indicate otherwise.
14. The development plan here comprises the Borough of Charnwood Local Plan, adopted 12th January 2004 (“the Local Plan”), the Charnwood Local Plan Core Strategy adopted 9th November 2015 (“the Core Strategy”), and the Minerals and Waste Local Plan 2019 (“the Minerals Plan”).
15. As was discussed at the Inquiry Roundtable, there is agreed conflict with the adopted statutory development plan in two regards. First, the appeal site lies outside the development limits of Syston and so conflicts with saved policies CT/1, CT/2 and ST/2 the Local Plan.¹³ Secondly, since the application has been brought forward within a Mineral Safeguarding Area without a Minerals Assessment, the proposal conflicts with Policy M11 of the Minerals Plan.
16. However, material considerations indicate that permission should nonetheless be granted.¹⁴
17. First, the Council cannot, at present, demonstrate a 5-year housing land supply (“5YHLS”).¹⁵ The supply is currently 4.27 years, which equates to a shortfall of 1,161 homes over the five-year period.¹⁶ 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

¹³ CD5.01.

¹⁴ Mr Ward’s Proof at §8.8.

¹⁵ See §9.10 of the Committee Report CD4.01, Updated Statement of Common Ground CD9.08 at §§9.2-9.3.

¹⁶ Agreed by Mr Ward and Ms Clarke at the Inquiry Roundtable.

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.¹⁷

18. Secondly, the appeal site is proposed as an allocation, HA3, in the emerging draft Local Plan under policies DS1 and DS3, located between two other proposed allocations, HA1 to the south of Barkby Road and HA2 to the north of the appeal site.¹⁸ Based upon the lack of objections to the HA3 allocation as part of the emerging Local Plan examination process, Mr Ward considers it is highly likely that the appeal site will become an adopted housing allocation during the first quarter of 2024.¹⁹ It is agreed that there are no unresolved objections before the Local Plan Inspectors in terms of the principle of this allocation.²⁰ While Mr Ward affords the allocation limited weight in light of the outstanding objections to the overarching policy DS3, in light of these considerations relating to the principle of housing on this site, Ms Clarke at the Inquiry upgraded her weighting to moderate.
19. Furthermore, the site allocation process took into account sustainability matters and “*considered the prevention of unnecessary mineral sterilisation*”.²¹ On that basis, the Minerals Planning Authority does not object to this proposal. As soon as the emerging Local Plan is made, the site would meet the exception for an allocated site, such that there would no longer be conflict with M11. As Ms Clarke explained, at this stage the conflict is therefore only a “technical” conflict based on timing.²² Both Mr Ward and Mr Clarke agreed that the conflict with M11 can therefore only be afforded limited weight.
20. Turning then to the benefits and adverse impacts, and how they weigh in the planning balance. The benefits of the scheme as summarised by the planning witnesses at the Inquiry Roundtable include:
- a. The provision of a policy compliant 30% **affordable** housing. On the basis of the need figures presented, Mr Ward considers this should be afforded significant weight.

¹⁷ Mr Ward’s Proof at §8.4 and in the Inquiry Roundtable. Ms Clarke agrees – Inquiry Roundtable.

¹⁸ See CD7.01 allocations on p.37.

¹⁹ Mr Ward’s Proof at §8.8 and at Inquiry Roundtable.

²⁰ Ms Clarke and Mr Ward at Inquiry Roundtable.

²¹ See Mineral Planning Authority consultation response at CD3.01.

²² Ms Clarke at the Inquiry Roundtable.

- b. The provision of **market** housing. Again, in light of the acknowledged 5YHLS deficit, Mr Ward considers this should be afforded significant weight.
- c. The **sustainable** location. Given this site has been allocated in the emerging Plan and there would be access by sustainable modes, Mr Ward considers this should be afforded significant weight.
- d. In terms of **economic** benefits, construction phase employment should be afforded moderate weight, having regard to its relatively short-term impact.²³ Mr Ward explained that while the Appellant has sought to put further positive weight on the eventual payment of Council Tax by future residents, any monies raised in Syston could be spent in other parts of the Borough and on matters unrelated to housing – as such, he gives this no more than very limited weight.²⁴
- e. Finally, the parties also considered **environmental benefits**. The Council’s current policies simply require provision a biodiversity net gain (“BNG”), not stipulating any particular percentage.²⁵ The proposal here is for 10% BNG, secured by condition. The development would also provide 30% of the land area as publicly accessible open space, including green spaces available to existing and not just future residents, creating a benefit to the wider community. Together, these environmental benefits attract significant positive weight.²⁶

21. The Council considers that the only material adverse impacts to weigh in the planning balance that cannot be satisfactorily mitigated are those to landscape, with the harm on this front agreed to be minor to moderate.²⁷ Some landscape harm is inevitable with any greenfield housing development, but in light of the level of harm and the mitigation proposed, there is no associated development plan conflict in this case.²⁸

22. As to neutral matters, there are no objections from technical consultees, including on matters such as flood risk, biodiversity, and environmental health.²⁹ While there would be inevitable impacts on ecology, they can be mitigated, including through the provision of

²³ Mr Ward at the Roundtable.

²⁴ Mr Ward at the Roundtable.

²⁵ Mr Ward at the Roundtable. See CS13 of the Core Strategy CD5.03.

²⁶ Mr Ward at the Roundtable.

²⁷ Updated Statement of Common Ground CD9.08 at §9.25. Mr Ward at the Roundtable.

²⁸ Agreed Mr Ward and Ms Clarke at the Inquiry Roundtable – see policy CS11.

²⁹ See summary of consultation responses at §8.1 of the Committee Report CD4.01.

the 10% BNG.³⁰ Mr Ward also considers the highways impacts to be neutral: what Mr Tucker considers to be “benefits” are in reality mitigation of harms the scheme brings about, so do not attract positive weight in the balance.³¹

23. In terms of archaeology, the final report from York Archaeology explains that the requisite mitigation can be dealt with by condition, and as Mr Ward explained, the Council is content with the approach recommended in light of previous consultation responses from the Council’s in-house expert.³²

24. In conclusion, there are no adverse impacts that could not be mitigated by planning conditions and obligations that would, applying §11d of the NPPF, significantly and demonstrably outweigh the benefits, which of course include but are not limited to provision of much needed affordable and market housing.³³

25. Accordingly, the Inspector is invited to grant permission, subject to appropriate conditions and obligations.

15th November 2023

ODETTE CHALABY

No5 Chambers

³⁰ As Mr Ward explained at the Inquiry Roundtable. The relevant technical notes are at CD1.07 and CD2.03. An updated note is provided as an Appendix to Ms Clarke’s Proof.

³¹ Mr Ward at the Inquiry Roundtable.

³² See the Summary on p.5 of CD 2.20. The consultation response from the Council’s expert archaeologist is at CD3.25. Mr Ward explained they left the Council before being able to respond to the final report, but that in light of the earlier responses and the limited changes between the interim and final reports the Council is satisfied with conditions.

³³ Mr Ward’s Proof at §8.13.