

APPEAL BY TAYLOR WIMPEY UK LTD RE:

LAND NORTH OF BARKBY ROAD

APP/X2419/W/23/3325902

APPELLANT'S CLOSING SUBMISSIONS

1. The appellant's opening submissions set out the background, refer to much of the key evidence in this case and address the tilted balance and emerging plan. They should be read alongside this closing. These closing submissions address certain key matters discussed at the hearing.

Adopted development plan compliance and weight

2. It is acknowledged that there are some policy breaches in this case: the proposal conflicts with CT/1, CT/2 and ST/2 because it is outside the defined settlement boundary and within the countryside under the saved policies of the local plan. It is agreed that these policies are out of date and their breach should therefore carry minimal weight.¹ Your colleague at the recent appeal at Queniborough reached the same conclusion in relation to CT/1 and ST/2, CT/2 being irrelevant in that case because of the site's location.²
3. There is also a breach of policy M11 of the Minerals Local Plan. This matter was addressed in opening. Mr. Ward confirmed that the minerals planning authority did not consider there to be any threat to the mineral resource from housing on this site, and that upon adoption of the emerging local plan the exception under M11 for site allocations would apply. Added assurance is given by the Preliminary Minerals Assessment submitted with the application,³ which confirms that viable minerals deposits at this location are unlikely. This is based on consideration of the likely deposits on the site and in the local area, as well as the suitability of the location: given the proximity of housing, it is difficult to see how the site could be suitable for viable mineral extraction.⁴
4. Consideration of the above policies should not detract from the high degree of compliance with numerous other policies of the adopted plan. There is compliance with:

¹ Clarke paras 5.4-5.11.

² CD11.01, DL/59-61.

³ Contained within CD1.20, internal p38, section 8.6.

⁴ CD1.20, 8.6.3.

- a. CS1:⁵ this sets a minimum level of housing supply for the area overall (“at least 13,940 new homes”), and does the same for Syston and other Service Centres under that adopted plan (“at least 3,000 new homes” at these locations). In locational terms it supports development “within and adjoining” these settlements. Since the site meets housing need and is adjoining Syston, it complies with this policy. Like the inspector in the Queniborough appeal⁶, the appellant agrees that this policy is out of date given the lack of five-year supply and the change in housing need.⁷ However, since it accords with the framework, Ms Clarke judges that the policy can be accorded significant weight.⁸ In any event, the provision of housing is judged by her, rightly, to be a matter of substantial weight.⁹
- b. CS2:¹⁰ this is a policy on high quality design. The proposal is in outline and therefore design matters will be for detailed approval. It is clear that high quality design can be achieved. The concept masterplan demonstrates the framework for the layout, open spaces, landscaping, and access. It has been informed by the landscape context and the relationship with the existing urban area. The reserved matters will be assessed against CS2 and other plan policies. For the same reasons the development also complies with policy EV1 of the emerging Plan.¹¹
- c. CS3:¹² this concerns housing need, and specifically affordable housing, mix and type. It is agreed with the Council that the development will meet this policy. It provides a policy compliant level of affordable housing. The appellant considers that compliance with this policy should carry substantial weight.¹³
- d. CS11:¹⁴ this concerns landscape and countryside. The appellant considers that the limited landscape and visual harm coupled with the proposed landscaping will result in overall compliance with this policy.¹⁵ The proposal will result in change, but it will not harm the character and appearance of the area. Your fellow inspector at the Queniborough appeal

⁵ CD5.03, pdf p31ff; Clarke paras 5.14-5.19, 5.25.

⁶ CD11.01

⁷ Clarke para 5.26.

⁸ CD5.03., 5.27.

⁹ Clarke day 1.

¹⁰ Ibid pdf p35.

¹¹ Clarke paras 5.41-5.45.

¹² CD5.03, pdf p39.

¹³ Clarke para 5.35.

¹⁴ CD5.03, pdf p69.

¹⁵ Clarke paras 5.46-5.50.

also found that the proposal there complied with CS11, despite that site falling within an Area of Local Separation.¹⁶ In the present case, by contrast, housing adjoining the settlement boundary is supported in principle by CS1 (see above).

- e. CS13:¹⁷ this concerns biodiversity and geodiversity, and supports development that protects, enhances, restores or re-creates biodiversity. There have been several ecological assessments of the site, and it is agreed that there is no adverse impact on any protected ecological interests. The site's capacity to deliver at least 10% BDNG will provide a demonstrable benefit in accordance with upcoming national requirements and emerging plan policy.¹⁸
- f. CS14:¹⁹ this concerns heritage. There are no adverse impacts on heritage assets. The archaeological issue has been addressed through the additional site investigations and the further pre-commencement investigations required by condition. In the very unlikely event that artefacts or remains are found which must be preserved in situ, Mr. Ward confirmed that these could be accommodated through the reserved matters approval. That said, there is no suggestion in the archaeological final report or anywhere else in the evidence that remains of such significance are expected or likely to be found.²⁰
- g. CS15:²¹ this concerns open spaces, sports and recreation. The concept masterplan indicates an exceedance of open space over standards, excluding the flood attenuation.²²
- h. CS17²³ and CD18:²⁴ these concern sustainable travel and the road network. This matter has been discussed at length during the inquiry. The site is sustainably located in relation to the facilities in Syston, it benefits from good accessibility by cycle and on foot, and the development will contribute towards transport improvements which will have benefits, and

¹⁶ CD11.01, conclusion at DL/25.

¹⁷ CD5.03, pdf p75.

¹⁸ Clarke paras 5.51-5.55.

¹⁹ CD5.03, pdf p77.

²⁰ Clarke paras 5.56-5.60.

²¹ CD5.03, pdf p79.

²² Note that CD1.05 (planning statement), para 6.43 gives figures of 2.4ha illustrated on the masterplan compared to 1.35ha required by policy. However, although there is still an exceedance over policy, the 2.4ha is now less given the amendment of the red line and the land safeguarded for access.

²³ CD5.03, pdf p86.

²⁴ Ibid, pdf p89.

not simply mitigate the (cumulative) effects of the development.²⁵ The appellant considers that compliance with these policies should carry significant weight.²⁶

i. Other: see also CS16, CS24 and TR/18, discussed in the appellant's evidence.²⁷

5. Overall there is significant compliance with the development plan.

Third parties

6. The merits of a proposal must be determined on the basis of evidence, applying the correct policy tests and sensible planning judgments.

Traffic matters

7. Traffic impacts have been the main cause of scrutiny by the county council and hence the LPA, and have been addressed thoroughly by the appellant through Mr. Tucker in the TA and various DTA notes. As he said, the assessment went through a "lengthy process". Four matters are worth emphasizing in closing. First, the appellant has embraced the opportunity to offer contributions towards cumulative impacts despite its formal position in the TA and statement of case that the development itself does not warrant any mitigation. That conclusion is based on modelling that is agreed between the main parties and highway authority. The appellant has not turned away from doing what it reasonably can to address concerns. Secondly, the assessments have been robust, since the modelling was based on c.1750 new homes whereas the emerging plan in fact allocates 1584.²⁸ Thirdly, as Mr. Tucker pointed out, the contributions will help fund improvements that will also provide wider benefits²⁹, and not merely the mitigation of cumulative impacts. For example, if the 100 bus service is improved it will be an improvement for existing residents too. The evidence from Mr. Murray showed clearly why the service would benefit from increased frequency and patronage. Fourthly, the assessment of traffic impacts is a notoriously technical matter and as I have said the technical matters are agreed between the experts after close scrutiny. There is no tenable highway objections to the development.

²⁵ Mr. Tucker's oral evidence on day 1.

²⁶ Clarke paras 5.36-5.40.

²⁷ Clarke paras 5.63-5.69.

²⁸ 195 (appeal site) + 251 (HA2) + 1300 (TEMPRO modelling uplift) = 1746 new homes assumed; emerging plan allocations HA1-HA1 total 1584 new homes.

²⁹ Albeit he modestly accorded these "limited weight": day 1 evidence.

Ground contamination

8. Mrs. Hubbard's representations and comments concerning arsenic and other pollutants was based on the GRM assessment work which does not relate to this site, but to the neighbouring HA2 site controlled by Jelson. The RSK assessment³⁰ which was submitted with the planning application for this site, and relates to this appeal proposal, has taken into account the position on the neighbouring site. Specifically, it acknowledges the evidence of a historic brick works and infilling of clay pits next door. The report is thorough. It contains a desk study which looked at the history³¹ of the site and surroundings from maps, internet research and aerial photography³²; it took soil samples which were analysed for contaminants³³; monitored for gas³⁴; it modelled plausible pathways from potential contaminants to receptors;³⁵ and it assessed risk applying accepted industry standards. It specifically assessed the risk of contamination of food from home grown produce and found that risk to be low.³⁶ It should be remembered that the site is used as an agricultural field growing crops. There was no evidence of made ground on the site.³⁷ The Council's environmental health team issued three consultation responses,³⁸ the first of which expressly considers the RSK report. Conditions have been imposed to secure the required mitigation.

Biodiversity, ecology, species protection

9. There have been five ecological surveys of the site since 2012, including the 2023 update referred to in the appellant's evidence.³⁹ The recent update confirms the findings of the 2021 survey that accompanied the application. The assessment has taken into account bats, wild birds, badgers and other wildlife. The update confirms that the baseline remains largely unchanged.⁴⁰ At no point has any survey identified the site as being of any nature conservation significance and there are no ecological designations of any kind impacted by the development. As mentioned in opening, the opportunity here is for biodiversity net gain, and this opportunity will be secured by the planning conditions.

³⁰ CD1.20 – phase 1 and 2 Geo Environmental Site Assessment.

³¹ A summary of the site and surrounding history is found at internal p13 of the report.

³² CD1.20, internal pp8-10.

³³ CD1.20, internal pp23-24.

³⁴ CD1.20, internal p24

³⁵ CD1.20, internal p15ff.

³⁶ CD1.20, internal p16, 4.1.3; p40, section 9.1.

³⁷ CD1.20, internal p10.

³⁸ CD3.02, 3.12 and 3.24.

³⁹ EDP Note of October 2023, appendix to Ms Clarke's evidence. Para 2.1 notes the surveys of 2012, 2014, 2018 and 2021.

⁴⁰ Clarke appendix, para 4.1.

10. Mrs. Hubbard paid a dis-service to the assessment when she referred to impacts on badgers being mentioned in a single sentence. In fact, badgers are referred to and considered in numerous places in the assessment⁴¹. The assessment found no evidence of badgers on site, but recommended, as a precaution, a pre-commencement update of the survey.⁴² The 2023 update also recorded no badgers or signs of badger use, and points out that setts are protected by law in any event.⁴³ The Council's biodiversity consultation response raised no objection subject to conditions being imposed.⁴⁴ The treatment of bats is similarly careful: the trees with potential for bat roosts are being retained, and features to encourage bats such as bat boxes and raised bat tiles are included in the proposed measures.⁴⁵

Flood risk

11. Flood risk was comprehensively assessed in the application material. In addition, the County Council as lead local flood authority issued two consultation responses. The first⁴⁶ requested further information, which was provided. The second, longer response, confirms the adequacy of the material submitted, refers to revised modelling submitted by the appellant and its independent checking (twice), raises no objection, and sets out the detailed conditions for any approval.⁴⁷ Appropriate conditions are proposed.

Planning balance

12. There is compliance with many development plan policies in this case, and non-compliance with a few, most of which are out of date or – in the case of the minerals policy – overtaken by the emerging plan. The tilted balance requires harm to outweigh benefits “significantly and demonstrably”. The harm in this case is minimal. The benefits are, overall, substantial⁴⁸: the delivery of much needed market and affordable housing in a sustainable location; highway improvements; significant areas of open space; biodiversity gain including new and enhanced hedgerows; support for the future shared access with the HA1 allocation through safeguarding land and economic benefits through construction and the increased household expenditure to support local businesses and services. No specific or material conflict with NPPF policy is identified whereas

⁴¹ CD1.07, paras S9, table EDP2.2, paras 3.40-3.42, 3.52, 4.2, 4.35-4.39, 5.3.

⁴² CD1.07, 4.35-4.39.

⁴³ Clarke appendix, paras 3.13-3.14.

⁴⁴ CD3.19.

⁴⁵ CD1.07, paras 4.28-4.33.

⁴⁶ CD3.06.

⁴⁷ CD3.14.

⁴⁸ See Clarke section 9 and responses on day 1.

substantial compliance with up to date development plan policy that is consistent with the Framework adds development plan support to the approach required by s38(6) and (through consistency with the Framework policies) significant weight to a favourable tilted balance. The result would be the approval of permission on a draft allocation in the emerging plan, whose adoption is anticipated in March 2024.

13. Accordingly, for all the reasons referred to at the inquiry and in the evidence, we respectfully ask that the appeal be allowed⁴⁹, and permission granted subject to such conditions and the performance of any planning obligations that you consider necessary.

JAMES PEREIRA KC

FTB

15 November 2023

⁴⁹ After allowing additional time for the opportunity to respond to the ICB-NHS representations and three weeks for the s106 obligations to be finalized.