

TOWN AND COUNTRY PLANNING ACT 1990
LAND AT DINTING VALE, DINTING, GLOSSOP, DERBYSHIRE
APPEAL BY WAIN HOMES (NORTHWEST) LIMITED

OPENING ON BEHALF OF THE APPELLANT

Introduction

1. The Appellant is seeking full planning permission for a development of the following description:

“Proposed residential development comprising 92 dwellings including areas of public open space, landscaping and associated works.”

Appeal Site and Surroundings

2. The Appeal Site (“AS”) lies approximately 1 km to the west of Glossop town centre. It is located to the south of Dinting Vale (A57). The Appeal Site is approximately 4.7 ha and, as will be discussed later, is part of a larger 6.3 ha greenfield site allocated for residential development for approximately 130 dwellings. The northern section of the AS is overgrown with trees and shrubs. The topography of this part of the AS slopes with levels falling northwards towards the A57.

3. The southern portion of the AS is generally open grassland where the levels slope from west to east. Trees on this part of the AS are generally located around the periphery. This area was last used for horse-grazing.
4. To the north and west of the AS are existing residential dwellings. The Dinting C of E Primary School and Holy Trinity Church are located on the north side of Dinting Vale north-east of the proposed access point to serve the development.

Planning Application and Determination

5. The Appellant signed a Planning Performance Agreement with the LPA on 2nd November 2022 following pre-application discussions on the scheme. The planning application was validated the following day and given planning application reference number HPK/2022/0456.
6. The planning application was supported by a number of detailed reports. These included a Planning Statement¹, an Air Quality Report and Technical Note², an LVIA³, an Ecological Assessment⁴, a Tree Survey⁵, a Transport Assessment⁶ and a Viability Assessment and Addendum⁷.
7. During the course of the consideration of the application, constructive engagement was undertaken between the Appellant and its consultancy team, the LPA professional officers, their independent consultants and the statutory consultees. This resulted in a number of amendments to the proposal including a reduction in the number of dwellings initially proposed from 100 to 92 as in the current description of development.

¹ CD 1.3.

² CD 2.10 and CD 2.35.

³ CD 2.34.

⁴ CD 1.28.

⁵ CD 1.31.

⁶ CD 1.16.

⁷ CD 1.6 and CD 2.19.

8. The planning application was reported to the Council's Development Control Committee on 23rd October 2023 with a recommendation that planning permission be granted⁸.
9. Members voted to refuse the application contrary to that recommendation and the Decision Notice was issued on 27th November 2023⁹.
10. In summary, the RfR stated as follows:
 - (1) The potential for air pollution in the area to be increased;
 - (2) Unacceptable impact on road safety because of the position of the proposed highway access from the A57;
 - (3) Failure to achieve a policy-compliant level of affordable housing and failure to mitigate the substantial tree loss and loss of biodiversity on the site;
 - (4) Risk to the safety of users of the existing right of way and the prospect of a "rat-run".
11. An appeal against the refusal was submitted. A further meeting was held on 22nd April 2024 by the Council's Development Control Committee some five months after issuing the decision notice. At that meeting the Committee resolved not to pursue a defence in relation to RfR 1, 2 and 4 and provide no evidence in relation to those RfRs at this Inquiry. The position has been confirmed by the LPA in its Statement of Case ("SoC")¹⁰ stating that the three Reasons for Refusal:

"... are not contested and are duly withdrawn by the Council."
12. That position of the LPA was further confirmed at the Case Management Conference on 10th May 2024.

⁸ CD 3.1.

⁹ CD 3.4.

¹⁰ Paragraph 1.2.

13. RfR 3 contained, in part, an element relating to the biodiversity impact of the proposal. By email dated 7th May 2024 it is agreed that RfR 3 relating to biodiversity is no longer in dispute as the Council is satisfied that the Appellant is proposing full mitigation. The Council's position on this issue was also further confirmed at the Case Management Conference.
14. As a consequence, the remaining element of RfR 3 was the failure to achieve a policy-compliant level of affordable housing and mitigation for tree loss.
15. The Council's SoC stated that it did not dispute the details of the Viability Assessment submitted with the application, but then added:

"It is considered that were the full site allocation taken up, then there is no evidence as to whether viability would have been improved so as to provide enough financial headroom to mitigate identified biodiversity harms and affordable housing."

16. The Appellant did not and does not consider it is required or necessary to address viability on an allocation wide basis but in its evidence for the inquiry addressed that issue¹¹. The most up-to-date position is derived from an email dated 11th June 2024 from the LPA to the Planning Inspectorate. The Council has confirmed that having considered the Appellant's proofs of evidence (that included a Viability Assessment of the whole allocation¹²) and taking advice from Viability Consultants, the Council has concluded that the appeal: "*cannot be resisted*"¹³.

Main Issues

17. Whilst the LPA has withdrawn its case against the proposal, the Appellant recognises that many local residents and objectors to the scheme had adopted the substance of the RfR as their own case against the development proposal.

¹¹ PoE of Richard Heathcote

¹² Rebuttal PoE of Richard Heathcote.

¹³ Final SoCG, para.1.6.

18. As a consequence, to address the issues, the Appellant proposes to call seven witnesses dealing with the following topics: Highways and Highway Safety¹⁴, Civil Engineering/Access¹⁵, Air Quality¹⁶, Arboriculture¹⁷, Ecology¹⁸, Viability¹⁹ and Planning Policy and Balance²⁰.

Development Plan

19. NPPF sets out that the planning system should be “*genuinely plan-led*” and “*include a framework for meeting housing need and addressing other economic, social and environmental priorities.*”²¹

20. The AS was allocated in the adopted Local Plan for residential development along with a further area of land owned by the Council.

21. The Council in the course of the preparation of the Local Plan had promoted the development of the site and it was expressly considered by Inspector Michael Moore in the course of his Report of the Examination in Public of the proposals contained within the Local Plan. He found that with the addition of a requirement for a wildlife survey as part of Policy DS4:

*“The site is sound.”*²²

22. The Local Plan was adopted in April 2016 and the total of 6.3 ha allocation was the subject of Policy DS4²³. The allocation is an acknowledgement that the principle of residential development is acceptable.

¹⁴ David Roberts.

¹⁵ Richard Nicholas.

¹⁶ Elizabeth Whittall.

¹⁷ Iain Tavendale.

¹⁸ Rachael Kerr.

¹⁹ Richard Heathcote.

²⁰ Marc Hourigan.

²¹ Paragraph 15 NPPF.

²² Paragraph 187 of CD 6.1.

²³ CD 4.4.

23. The statutory provision contained at Section 38(6) of the 2004 Act applies such that a decision-maker is required to determine the application in accordance with the provisions of the Statutory Development Plan unless material considerations indicate otherwise.
24. The Council reviewed the Local Plan in June 2022²⁴ and concluded that some elements of the Plan were out-of-date. Importantly, Policy DS4 that relates to the allocation of the AS was *not* deemed to be out-of-date. The requirements of Policy H4, that relates to Affordable Housing and Viability testing, also remain relevant for the appeal proposal.
25. The status of the AS as an allocation residential development - in light of the Plan-led system - is of fundamental importance in the determination of any appeal. In determining that the application ought to be refused, Members of the Development Control Committee appear to the Appellant to have been resiling from the fact that the allocation was recognition that the principle of residential development had already been established.
26. Nevertheless, the Appellant proposes to address a number of concerns as expressed in the original RfR that have been adopted by objectors, by local residents and others to the scheme.

Highway Safety/Access

27. Access to the Appeal Site is proposed from the A57 in accordance with the site's allocation under Policy DS4. This recognised that the provision of the access would involve a significant engineering operation having regard to the existing levels.
28. The issue to address is whether there would be an unacceptable impact on highway safety²⁵. In this regard, the principal objection relates to the proximity of the access

²⁴ CD 4.12.

²⁵ Paragraph 115 NPPF.

to the school which, according to the objectors, creates an unacceptable risk to highway safety.

29. The Appellant's TA and Technical Note address the concerns relating to the proximity of the access noting that the same could be accessed safely and satisfactorily from the A57. The Highway Authority do not raise any objections to the location of the proposed access²⁶.

Air Quality

30. The concern in relation to Air Quality is that as a result of increased levels of traffic in the vicinity of an AQMA there is potential for increased air pollution and concerns about the impact on the health of people in the area and in particular children. In this context, Policy EQ10 and policies at Paragraphs 109 and 192 of NPPF are relevant.
31. The planning application was accompanied by a TA, an Air Quality Assessment, a Travel Plan, an Energy and Sustainability Statement and proposals for EV charging and cycle storage. The Council's own EHO did not object to the proposals and did not dispute that the effect of the development on air quality was "*negligible*".
32. The Appellant has put forward a package of measures in order to address AQ issues. The evidence will demonstrate that the development would not harm human health and there would be no conflict with policies of the Local Plan or NPPF.

Biodiversity

33. The Appellant through the Planning Obligation intends to secure the full suite of biodiversity mitigation measures that are required. As a consequence, there will be no conflict with Policy DS4 as any harm will be appropriately and fully mitigated.

²⁶ Paragraph 7.10.4 of the Officer's Report, CD 3.1.

34. The Appellant has continued its discussions with the Derbyshire Wildlife Trust to secure the BNG strategy & 30 year management plan; BNG assessment and the costings for the bespoke compensation package at Chinley (plus 30 years of management).
35. Notwithstanding the fact that the application is not subject of the Environment Act 2021, the scheme would deliver approximately 11% BNG. In this regard, the BNG calculation makes no account for the replacement trees being planted by the Council by the off-site contribution of over £72,000 plus a further approximately £20,000 for maintenance.

Arboriculture

36. The allocation of the site under Policy DS4 with a requirement for an access from the A57 inevitably necessitated the removal of a significant number of trees.
37. The Appellant's evidence references Policy EQ9 of the Local Plan and NPPF in relation to trees. It is apparent that part of the rationale for the 2:1 replacement was because many newly planted trees do not survive. That is contrary to the expectation of the Appellant's evidence that expects a success rate of in excess of 90% and that any failures would be replaced in accordance with any conditions imposed on any grant of planning permission. A robust and reasonable replacement planting scheme has been proposed and is readily capable of being achieved.

Affordable Housing/Viability

38. The Local Plan anticipates a contribution of 30% of the housing would be affordable. The vehicle for securing affordable housing is Policy H4 of the Local Plan. The policy, consistent with NPPF and Planning Guidance, is qualified to the extent that where it is demonstrated by an applicant/appellant that there are viability issues a reduced provision is permissible.

39. The planning application was accompanied by a Viability Assessment and revised to reflect the reduction in housing number (Viability Addendum). That was independently assessed on behalf of the Council by consultants: Bruton Knowles. They concluded that £793,000 was available for planning obligation contributions. That was not agreed by the Appellant's own Viability Consultants, but in the hope of moving the application forward and achieving approval at the local level that sum was accepted by the Appellant. The Appellant is not proposing to make any contributions towards affordable housing provision.
40. It will be recalled that the Council in its SoC had raised the issue of making a viability appraisal for the whole of the allocation within the LP covering some 6.3 ha. That was undertaken in the evidence that has been submitted to this appeal. That additional assessment demonstrates that in accordance with policy guidance there is not a requirement for the provision of or a financial contribution for affordable housing.

"Rat-running"

41. The issue on this point is that Members were informed that the protection of the residential users of Adderley Place from the appeal proposal residents using it as a "rat-run" could be secured by a condition. Members did not accept that advice and RfR4 reflected the position of Members on that issue.
42. To respond the Appellant devised the Adderley Place Vehicle Discouragement Scheme. The Scheme clearly demonstrates that the advice given to Members that the matter could be dealt with by condition was obviously correct. The Scheme is appended to the SoCG that then states at paragraph 16.2 that subject to agreed conditions:

"... the Council does not intend to submit any further evidence in relation to this reason for refusal and the RfR is withdrawn."

Planning Balance

43. The Appellant's case is that the site is allocated and the Statutory Development Plan is up-to-date. As such, Paragraph 11(c) of NPPF is engaged and the development proposal should be approved:

"... without delay ..."

44. The Appellant does not consider that there are "*other material considerations*" that should indicate the determination of the appeal application other than by approval.

45. Indeed, the Appellant in looking to other material considerations is able to identify that the material considerations are positive in the planning balance. These matters include:

- (a) The delivery of 92 dwellings in accordance with a Plan-led proposal;
- (b) Timely delivery and a mechanism to secure access to the balance of the allocation that lies within the Council's ownership;
- (c) Delivery of a high-quality housing development with a range of house types that will be attractive to a broad section of the community;
- (d) Energy efficient homes built to exceed current Building Regulations standards;
- (e) Delivery of a policy (and now statutory) requirement for BNG. In addition, there will be off-site tree planting secured through the planning obligation that will provide biodiversity benefits in excess of the 11%;
- (f) Economic benefits associated with the construction phase of the development and additional expenditure supporting local shops, services and facilities once occupied;
- (g) The site is located in close proximity to shops and services promoting sustainable means of travel;

- (h) A Travel Plan to encourage sustainable modes of transport is proposed and provision is made within the layout to encourage cycling and walking;
- (i) There will be an aboricultural benefit associated with the active management of retained trees on the site together with new tree planting as proposed.

Conclusion

- 46. The Appellant considers that there is a compelling case for planning permission in this case associated with its allocation within an up-to-date Local Plan and the material benefits that it will deliver.
- 47. The Inspector will be therefore invited to allow the appeal.

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