

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

CLOSING ON BEHALF OF THE APPELLANT

Introduction

1. The Opening that was provided at the start of the Inquiry on behalf of the Appellant is adopted without further repetition.

Main Issues

2. Following the withdrawal of the LPA's case, the Public Inquiry has appropriately proceeded to address the issues arising from the RfR in the Decision Notice as local residents and objectors have adopted these matters as their own case against the development proposals.

Highway Safety

3. There were two aspects in relation to the subject matter:
 - (i) The safety of the access; and,
 - (ii) The effect of "rat-running" at Adderley Place/Simmondley.

- (i) Access

4. The evidence of DR established that a number of matters were agreed with the HA:
 - Base traffic flows for the busiest hours in 2021;
 - 2022 traffic speed survey;
 - Accident survey (noting the absence of accidents);
 - The sustainable location of the site.
5. In short, between the Appellants, LPA and the HA there are no issues in terms of safety or capacity of the highway network. At the busiest time of the day, the development traffic would average one vehicle every two minutes in the morning and evening peak hour.
6. Consideration has also been given to any impact of the Mottram Bypass. The effect will be that peak hour journey times between Glossop and the M67 will benefit from a considerable journey time saving and the effect of this will increase traffic in the study area on the same roads. However, any increase in traffic will be more than offset by the improvements to journey times¹.

Position of Access

7. Policy DS4 of the LP² notes that substantial access improvements onto the A57 will be required. The access to serve the site was specifically considered by the Examining Inspector³. The evidence of DR establishes⁴ that the Appellant has slightly extended the development shown on the Proposals Map to achieve DCC standards⁵. Indeed, the visibility splays are more generous than would be required. DR points out that the development will provide a splay in accordance with MfS (2.4m x 43m) in circumstances where the speed survey data would have permitted a reduction in the extent of the splay required.

¹ DR PoE 3.3, 6/14.

² CD 4.4 paragraph 6.32.

³ CD 6.1, para.187.

⁴ DR PoE 4.37/4.

⁵ 5.5m carriageway, junction radii 6m and determined visibility splays.

8. A principal concern of many local residents is the proximity of the school to the access. This was also dealt with in the evidence of DR.
 9. Firstly, the proximity of houses and schools is a locational sustainability advantage or benefit. Secondly, whilst congestion typically occurs at any schools at drop-off or end of school day, it will only be typically 20 minutes. Thirdly, the junction has been demonstrated to the HA to meet all safety and capacity considerations. The Officer's Report to Planning Committee dealt with this in some detail and concluded that the proposals were acceptable⁶.
- (ii) "Rat-Run"
10. Members of the Planning Committee were informed that this particular issue could be dealt with by a condition⁷.
 11. Following the refusal, the Appellants devised a scheme that would have been brought forward in order to discharge the condition. Appendix 1 to the evidence of DR meets the required dual objective of allowing existing residents at Adderley Place to access their properties to and from Simmondley Lane and also prevent vehicles from the development being able to turn into and out of the eastern section of Adderley Place.
 12. The scheme is a clear enough demonstration that what Members were informed was correct; namely, that the matter could be dealt with by a condition.

Access

13. RN addressed this issue in evidence⁸. This specifically addresses the access gradient. The access to serve the allocation was to be from the A57. Inspector Moore in the Report of Examination⁹ had stated:

"The issue was creating a new access to the site from the A57 and the additional traffic. The evidence does not indicate that these matters are insurmountable ..."

⁶ CD 3.1, para.7.10 et seq and especially 7.10.4 and 7.10.7.

⁷ CD 3.1, para.7.12.3, 46/85.

⁸ RN PoE is Appendix 2 to the evidence of DR.

⁹ CD 6.1, para.187.

14. As such, the principle of residential development and the access to serve that development is established as being from the A57 as shown on the Proposals Map.
15. RN then points out that if a 1:20 gradient from the A57 was to be provided, it would be too low to meet the existing vehicular access and below the private gas main (where cover needs to be maintained at 1.2m)¹⁰. In addition, the 1:20 gradient would require a large retaining structure and a greater impact on the trees at the location of the junction.
16. The solution provided is for a gradient of 1:30 for 10m from the A57 junction and a 1:10 gradient over 156m. Importantly, no access is to be taken over this length.
17. It was pointed out in documentation provided to the HA that there were recent precedents of this gradient having been approved, including for adoption¹¹.
18. It is the evidence of RN that this is the best that can be realistically achieved consistent with allocation in the Local Plan¹².
19. In terms of accessibility for pedestrians/cyclist this is the subject matter of a Technical Note provided to the HA¹³. A circuitous route could be provided for pedestrians/cyclists, but would produce an unacceptable impact on the tree cover at the northern part of the site¹⁴. The gradient provided to serve the site would be 5% - 10%. The position has to be contextualised in the context of Glossop. There are many footways off the A57 that exceed the guidance figure of 2.5% that function well. In addition, the site users have the benefit of the public footpath connection of the site to Simmondley Lane which is readily available. There would be a further benefit associated with the provision of the facility proposed in this appeal as the access would be lit. In addressing the needs of future users three level seating areas are to be provided.

Air Quality

¹⁰ RN PoE 2.5 and 2.6, 9/13.

¹¹ CD 2.11, Linglongs Road, Whalley Bridge – 10/239.

¹² RN PoE, para.2.12, 10/13.

¹³ CD 2.79.

¹⁴ RN PoE 13/13.

20. This was the subject of the evidence of EW. After the original AQ report was submitted, the LPA asked for the effect of the A57 Mottram Bypass be assessed. The additional report is CD 2.10. The Appellant was thereafter requested to provide the assessment methodology that was then supplied to the LPA¹⁵.
21. The OR dealt with the issue comprehensively¹⁶.
22. It will be seen from the Update for the meeting of 22nd April 2024¹⁷ that this shows, very clearly, that the EHO conscientiously assessed the proposal. The analysis of the Appellant and accepted by the EHO was that the effect of the emissions on existing human receptors including those within the AQMA was predicted to be “*not significant*” and be below the relevant AQO at all locations.
23. A concern was that whilst the LP was adopted in 2016 the AQMA was declared more recently in 2019. However, it will have been noted that a review of the Local Plan policies had concluded that policies were not regarded as up-to-date but Policy DS4 remained unaltered.
24. The AQA on behalf of the Appellant complied with the Environmental Protection UK Guidance¹⁸ and the approach had been agreed with the LPA. The pollutants considered were NO₂ and PM₁₀ and PM_{2.5}. The assessment demonstrated that the predicted annual mean concentrations would be below Government prescribed objectives with the development fully occupied. EW explained that the objectives are health-based benchmarks that included the young, those with respiratory conditions and the elderly¹⁹. Based on the magnitude of change in the concentrations, they are properly described as “*negligible*” at all receptor locations - including that at Dinting Primary School.
25. CD 2.10 demonstrated that the appeal proposals had been considered with and without the Mottram Bypass.
26. Furthermore, there is an element of conservatism as the assessment was based on 111 residential units and not the 92 which is the subject matter of the appeal.

¹⁵ CD 2.35.

¹⁶ CD 3.1, para.7.15.2, 48/85.

¹⁷ CD 6.14.

¹⁸ EW PoE 4.7, 8/15.

¹⁹ EW PoE 4.10, 8/15.

27. The measured pollutant levels post-declaration of the AQMA are shown in Table 1²⁰. These demonstrate that in the last three years the readings are all below the threshold of 40 µg/m³ for NO₂.
28. The measurements here are consistent with DEFRA data²¹ that shows pollutant concentrations falling. The position can be concluded that when the development is completed and fully occupied the levels within the AQMA will be well below the Government benchmark. Specifically, this is seen from Table 1 of the evidence of DW. Diffusion Tube HP21 is located at the Primary School. It showed exceedances in 2017/18 but at levels now well below 40 µg/m³.
29. It should be noted that the computer modelling is robust. It is a detailed model used throughout the industry that emulates the effect of traffic including reduced vehicle speeds at congestion, variation of traffic throughout the day and increased traffic in the opening year of development.
30. Further mitigation measures are proposed although, strictly speaking, these would not meet the tests of necessity in view of the evidence provided. The assessment shows the impact on receptors is not significant, but nevertheless the Appellants are proposing mitigation to improve the take-up of non-polluting transport modes including the Travel Plan and a contribution of £150 per dwelling to enable real time monitoring of pollutants.

Arboriculture

31. As previously set out, the allocation DS4 in the Local Plan requires access from the A57. In considering this issue it was inevitably the case that both the LPA as promoters of the Local Plan (and its allocations contributing to meeting housing need) and the Examining Inspector would have been aware of the presence of trees on the AS and the Council owned site adjoining it.
32. During the consideration of the application, the Tree Officer of the LPA made a TPO in respect of the site²². This was the subject matter of some trenchant objections on behalf of the

²⁰ EW PoE 10/15.

²¹ EW PoE 4.19, 11/15.

²² CD 6.11.

Appellant²³. It was considered that the TPO did not follow Government guidance, it did not address how the amenity value was assessed (taking account of visibility, impact and the wider impact) and included a number of trees of low quality²⁴. It would seem that little progress has been made towards confirming the TPO since the initial making of it and receipt of the Appellant's objections. IT in his evidence²⁵ notes that the Order also covers the upper sections of the site where no tree material exists resulting in the Order being "*misleading*".

33. Whilst the quality of trees and their presence are undoubtedly material considerations – whether or not protected by a TPO - the wider arboricultural issues have not been grappled with on behalf of the LPA.
34. The application was accompanied by an Arboricultural Impact Assessment²⁶ that addressed tree canopy rather than individual trees. The total area loss is very nearly 1 ha²⁷. The proposed development would result in tree replacement at a rate of 101% by canopy area after being years²⁸. That was the provision on-site. The rationale for the 2:1 replacement ratio was the expectation of failure of the replacement trees. IT in his Rebuttal evidence²⁹ would expect a success rate in excess of 90% and with the requirement for replacement via condition the success rate would be even greater.
35. The upshot of the recommendation to Planning Committee was that approval should be granted. This was in the context of Policy EQ9 and that what was proposed was a 1:1 replacement planting on site and a contribution of £72,400 (and £19,840 for maintenance) for offsite provision. It will be recalled that Policy EQ9³⁰ is qualified to the extent that application of it is "*where appropriate*" and "*where possible*". It is not expressed in absolute terms.

Ecology

36. There was a biodiversity element embedded within RfR3 which was dealt with in the evidence RK. Policy EQ5 of the LP was intended to prevent direct or indirect subsequent harm to

²³ CD 6.11.

²⁴ This was specifically referenced by TEP on behalf of the Appellant in CD 6.11.

²⁵ IT PoE 7.5, 5/8.

²⁶ CD 2.65.

²⁷ CD 2.65, para.4.8, 23/42.

²⁸ CD 2.65, para.4.18, 24/42.

²⁹ IT Reb PoE para.3.2.

³⁰ CD 4.7.

biodiversity conservation interests unless demonstrated that appropriate conservation and mitigation measures are provided to ensure as a minimum no net loss³¹.

37. A comprehensive baseline of environmental data was collected and submitted as part of the proposal³². A BNG strategy was provided at Appendix 2 of the Appellant's SoC.

38. The evidence demonstrates that there will be an enhancement to biodiversity conservation interests. This is agreed with the Environmental Consultants on behalf of the LPA: Derbyshire Wildlife Trust. The measures include:

- Retention of a 30 m strip along the western boundary to buffer the woodland edge;
- Relaxed mowing schedule;
- Inclusion of specific flora that favour the large garden bumblebee and other invertebrates;
- Three SUDs;
- Phase vegetation clearance and pre-works inspections;
- The provision of bat and bird box layout to support species, the tawny owl, starling, house martin and bats;
- The production of a sensitive lighting strategy together with bat-friendly planting to retain foraging habitat.

39. A key consideration was the direct loss to the grassland mosaic including that to two priority habitats. The bespoke compensation by way of translocation of the grassland habitat to an off-site receptor site was identified at Chinley. The Chinley site is within the administrative area of the LPA.

40. Specific fauna has been the subject matter of some discussion at the Public Inquiry.

³¹ CD 4.5.

³² RK PoE 3.1.2, 8/13.

41. In terms of badgers, this is the subject matter of a bespoke survey³³. This establishes that there are no badger setts present on the AS, although there is evidence of badger activity.
42. In terms of deer, whilst not a protected species, there is nothing in the proposal that would materially impact upon them.
43. In terms of the garden bumble bee the survey found one present on site. The mitigation provides planting that favour large garden bumble bees and other invertebrates³⁴.

Biodiversity Net Gain

44. In the context of BNG, the appeal proposals are not subject to the mandatory requirement under the Environment Act 2021. The policy framework consistent with Policy EQ5 of the LP requires there to be as a minimum “*no net loss*”.
45. In the event, the appeal proposals achieve a BNG of 11%. This is achieved by the on and off-site provision and the securing of 18.04 credits through a habitat bank to satisfy BNG Trading Rules. There would also be a 447% increase in hedgerow units and 16% increase in watercourse units.
46. In addition, the BNG calculations take no account for the replacement trees being planted by the Council by the off-site contribution of £72,400 for planting (plus £19,840 for maintenance) that will have further biodiversity benefits for the local area.
47. It will be noted that the conclusion by RK is that by implementing the proposed landscape design, BNG strategy, a 30-year management plan and pre-construction inspections, the impacts upon faunal features are avoided or suitably mitigated consistent with statutory and policy requirements³⁵.

Viability

48. The issue of viability only becomes relevant in the context of the “*failure*” to provide a policy-compliant level of Affordable Housing or CIL contributions.

³³ CD 1.39.

³⁴ RK PoE 3.1.1 (third bullet point) 9/13

³⁵ RK PoE 5.1.3, 12/13.

49. The original VA was updated to analyse the situation in respect of the appeal proposal consisting of 92 houses³⁶. The LPA sought the expertise of outside Consultants, Bruton Knowles (and QSs Townsend & Renaudon). Their advice to the Council³⁷ concluded that there would be a surplus available for Section 106 contributions of £773,000. Whilst that was a matter not agreed by RH, the Appellants were minded to agree that with a view to making progress with the local determination of the appeal application³⁸.
50. It will have been noted that at no time did the Consultants on behalf of the LPA regard the viability submission as unacceptable or inappropriate; and in particular at no point did they seek a viability appraisal of the total allocation in the LP be assessed. The issue that arose in the context of the current appeal was that at the LPA's SoC the argument was that the viability assessment ought to have included the land owned by the Council with a view to establishing that the additional houses could make a contribution to AH provision.
51. Some reliance was placed upon the 2014 Local Plan Viability Test Report³⁹. Whilst that was recognised to be "*fit for purpose*" for the purposes of an LP examination, it simply suffered from a number of particular problems:
- (a) It was a product of its time. It was pre-Brexit, Covid, Ukraine War, BNG and the up-to-date circumstances surrounding the financial and building construction market; and,
 - (b) A VA to support a planning application draws on the particulars and detail of the planning permission sought and is able to deal with considerable detail that is then available such as the house types, build costs, interest rates, topography, comparable sales evidence, etc.
52. Notwithstanding the considerable concerns over the utility of such an exercise and the ability to do so compliant with PPG, that was done in the evidence of RH. The evidence that was presented to address the LPA viability case derived from the SoC and presented the "*best evidence*" available of the likely viability of the whole of the allocation DS4⁴⁰.

³⁶ CD 2.19.

³⁷ CD 6.24.

³⁸ RH PoE 3.6, 6/16.

³⁹ CD 6.12.

⁴⁰ RH PoE 3.24, 9/18.

53. That evidence was considered by the LPA and the same Viability Consultants retained to assess the earlier VA. INQ4⁴¹ acknowledges that the Viability Consultants retained by the LPA did not seek to qualify or criticise the exercise conducted by RH with the conclusion that the viability of the whole of the allocation DS4 could not be regarded as providing opportunities to make contributions to AH or other CIL contributions.

Planning/Planning Balance

54. MH addresses this comprehensively in his evidence. The Plan-led approach in national policy and legislation gives a special status to the allocation of the site for residential purposes in an adopted Local Plan. That establishes the principle of development on this case. The application of Section 38(6) of the 2004 Act inevitably means that a determination in accordance with the provisions of the Statutory Development Plan requires the approval of the application “*unless material considerations indicate otherwise*”.
55. Full weight should be given to the Local Plan. As indicated earlier, there was a review in 2022 that concluded, whilst some policies were not entirely consistent with up-to-date versions of NPPF, no criticism was levelled the allocation of DS4.
56. In this particular case a full suite of documentation in support of the application had been provided and subject to quite rigorous examination by the LPA professional officers, statutory consultees and their outside consultants. The conclusion was a very clear recommendation to approve the proposal to Members of the Planning Committee⁴².
57. Whilst it is recognised that Members of the Planning Committee are not obliged to adopt the recommendations contained in the Committee Report, they must nevertheless determine the application on an appropriate evidential basis consistent with the statutory duty placed upon them.
58. Those issues that are material to the determination of the application have been fully ventilated and examined during the course of this Public Inquiry.

⁴¹ LPA Opening.

⁴² CD 3.1.

59. The effects of the proposed development are positive and any identified harm is fully mitigated and addressed.
60. It is submitted that having regard to the fact that the site is allocated and appropriate issues have been addressed in the course of the application, Paragraph 11(c) of NPPF is engaged and that the development proposal should be approved: “... *without delay* ...”.
61. In addressing other material considerations, they add to the grant of planning permission rather than “*indicating otherwise*”.
- (a) Delivery of 92 market dwellings in accordance with a Plan-led proposal;
 - (b) Delivery of a high-quality housing development with a range of house types that will be attractive to a broad section of the community;
 - (c) Delivery of a sustainably located housing development that also provides energy efficient homes built to exceed current Building Regulations standards. A Travel Plan will encourage the uptake of sustainable modes of transport and the layout has been designed to encourage cycling and walking;
 - (d) Securing access to that part of the allocation in the Council’s ownership;
 - (e) Delivery of a policy and the statutory level of BNG. There will also be significant off-site tree planting secured through the planning obligation that will provide biodiversity benefits in excess of 11%;
 - (f) Economic benefits associated with the construction phase of the development and additional expenditure supporting local shops, services and facilities once occupied;
 - (g) There will be an aboricultural benefit associated with the active management of retained trees on the site together with new tree planting as proposed off-site.

Conclusion

62. The Inspector is invited to allow the appeal.

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