
RE: LAND WEST OF MILL LANE

LPA CLOSING SUBMISSIONS

1. There are two key issues:
 - The effect of the proposed development with regard to safeguarded land? (Issue 1); and
 - The effect of the development on the character and appearance of the area? (Issue 2).

Housing land supply also falls to be considered and I will briefly come to that in due course.

Issue 1

2. The Appellants acknowledge, as they must, that running an access road through the safeguarded land to the immediate north of the appeal site is a breach of LPA.05(3). Plainly the road does not fall within either LPA.05(3)(a) or (b). In my submission, the proposal also offends LPA.05(4) in that it limits the development of the safeguarded land. In my submission, “limit” in this context means “in some way constrain”. By running the appeal site access along the foot of the railway embankment for circa 270 metres, granting this appeal would predetermine the principal access route across the safeguarded land ahead of any full Master Plan exercise which would be expected to

look at a range of options in order to achieve an optimum outcome in design terms. It does not appear that what we have before us was the Appellants' own initial view of an options solution because their original 99 unit scheme proposed a different access solution, namely an access through the middle of the Safeguarded land, It has been suggested that such an outcome is achievable but no evidence is before us to demonstrate as much. Instead all we have is a sub standard arrangement whereby access is fed from a peripheral route contrary to good practice.

3. The Appellants' answer to all of this is to argue, quite legitimately, that the positive benefits of the scheme outweigh any harm both by reference to the breach of LPA.05 and, by necessary implication, any harm to visual amenity (some harm is conceded by the Appellants in the LVIA with reference to VP.1-6 with VP.2 and 3 impacts acknowledged as being "moderate adverse" and VP.4,5, and 6 acknowledged to be minor moderate adverse..
4. Those benefits are primarily said to be the provision of housing and the provision of housing in an accessible location (these issues are all given significant weight). You will form your own view of the weight to be attached to the provision of housing and I do not trouble you with submissions on that point. The Appellants' claim of significant weight in respect of accessibility is, however, in our view, misguided.
5. The access route is circa 270 m long with a railway embankment on one side and the open field, namely the safeguarded land, on the other side. Landscaping will to a degree enclose and objectively only underscore any sense of vulnerability. It is not overlooked and it is not a self-evidently safe space. It is trite policy that safety is at the heart of good residential design and this proposal has a poor relationship with that objective. The Appellants' own DAS extols the virtue of the safety of routes within the site. It is silent upon the safety of the access road. Why was this side stepped? Its obvious shortcomings mean that it will not encourage people - particularly the more vulnerable residents - to walk to facilities. Lighting in its-self will not negate the apprehension of users, Whatever the housing land supply position is, and whatever the "direction of travel" is by reference to the need for more housing (the likely impact of the revised Standard Method in increasing the requirement is fully acknowledged

by the LPA), poor design is not acceptable and no policy suggests that it is. The need for housing is not a blank cheque for Appellants.

Isolation/Visual Impact

6. The LPA's clear position is that the proposal will look isolated.
7. The Appellants' LVIA concluded, as I have noted, some level of visual harm: VP1 Minor Adverse, VP2 and 3 Modest Adverse and VP4, 5 and 6 Minor Moderate. You will form your own view of these conclusions, but in respect of VP2 and 3 you will recall that the value of those views is classed as "moderate". The receptors are users of a footpath running through a designated open space which is agreed to be attractive and be possessed of a measure of tranquillity. The footpaths in this area are well used and Mr Folland did not doubt the value of the area to users.. Is that classification of moderate fair? Again, it is a question you will need to ask yourself.
8. As is apparent from the Reasons for Refusal, the LPA's concern is primarily targeted at how, in townscape/design terms, the proposal will be perceived. In the LPA's firm view it will appear odd and isolated. The access road will be seen - particularly from VP5 and 6 as a long linear access running through open land while the proposed housing will fail to integrate with existing development due to the fact of the open land to its north and west. Mr Folland at his Paragraph 4.11(1)-(15) seeks to rebut this. (It is not really addressed in detail in the LVIA which is not surprising as its preparation predated the refusal).
9. We do not find Mr Folland's responses convincing. Running through much of what he says is the claim that regardless of whether the development would adjoin the settlement to the north (Wayfarers Drive), there is development to the west (Warwick Avenue) and east (Cholmley Drive) together with the railway line and school. He seeks to suggest at Paragraph 4.11(1) that this development is "adjacent" to the site. He also prays in aid the future development on 7HA. This response ignores some key matters:

- The Warwick Avenue development is behind a linear group of mature trees. It cannot be said to be adjacent to the site. Views of the Avenue are filtered now and will be much more filtered in summer. The proposed housing's visual relationship, in our view, will primarily be with the trees and not the housing.
- The Cholmley Drive development again is the opposite side of the railway and spatially well removed from the proposed housing. Again, it is not adjacent to the site. The same points as per Warwick Avenue arise. Moreover, the school cannot be seen from VP6 which will be a key elevated view once the new access is in. Insofar as the railway line is concerned, that is not perceived as an urban feature - railway lines run through all manner of landscapes.

10. Mr Folland, in his evidence, emphasises that it is perception on the ground that is important. We agree. Applying that approach, it takes little to understand that this development will appear isolated and odd.

Housing Land Supply

11. It is not the intention in closing to address each site in dispute in detail. You have interrogated the position on each. Instead, I only wish to make a few points in respect of the general approach to supply because, in our view, the Appellants set the bar too high for satisfying the requirement of "deliverable":

(1) A site need not fall within the examples of the categories given in the NPPF definition (a) and/or (b) to be considered as a potentially deliverable site. Those are examples. The list is not a "closed list". In reality, the only issue is whether any given site is available now, offers a suitable location now and can be delivered within five years of any given base date. Clear evidence in those regards is needed. All of the disputed sites are available now and it is not suggested any are not in suitable locations.

(2) The answer to the question in any given case will depend upon making an interpretation based in the best evidence reasonably available at any given

point in time and making reasonable judgments. Little can be gained from other appeal decisions. Each will have turned on its own particular facts and generalised statements about deliverability will have been made in the context of those facts. There are no hard and fast rules.

(3) Issues such as:

- The size of the development and its complexity;
- The degree of progress made in preparing an application;
- The existence of a PPA;
- The complexity or otherwise of any outstanding conditions requiring discharge;
- The track record of the developer in the area vis-à-vis delivery;
- The existence of funding or otherwise to incentivise timely delivery;
- The market attractiveness of a site etc.

All are material considerations to be weighed in the particular context of a given case. There is a world of difference between the need to discharge, for example, reasonably straightforward conditions on a modestly sized and attractive site and a need to discharge complex conditions requiring statutory consultee buy-in on a large site which has no particular market attraction. In the former, it may well be perfectly reasonable to conclude that on a balance of probabilities the site will be built out in five years (or in the present case four years and four months). In the latter, such a conclusion might well be objectively considered as being no more than an exercise in optimism.

In the present case, the LPA has sought to only put forward such sites as it believes can pass the test of deliverability. No doubt in practice you will

conclude that they may not have got it right in each and every case, but we invite you to conclude that in most cases they have and therefore that a five year housing land supply exists. Most of the sites are fairly small; some have pps; others are often the subject of pre apps and those due to be marketed are without constraints.

12. I said in Opening that on the basis of the LPA having a 5 years housing land supply this was a classic Section 38(6) case. However, even if you are against us and find that the tilted balance is engaged, the harms identified clearly rebut the presumption in favour of development for the reasons stated. You are respectfully requested to reject the appeal.

D E MANLEY KC

4th December 2024

RE:

LAND WEST OF MILL LANE

APPELLANT'S CLOSING SUBMISSIONS
