Land at Broom Hill / Brislington Meadows, Broomhill Road, Brislington, Bristol

APP/Z0116/W/22/3308537

Opening Statement on behalf of the LPA

Introduction

1. The scheme before this Inquiry is one that the Council contends proposes unsustainable development on a highly sensitive allocated site. There is no issue but that the principle of some development on the site is established by the current development plan context. However, the Council considers that what is proposed is not in accordance with relevant development plan policy – including in particular the site allocation policy BSA1201.

2. There is a measure of agreement as between the Appellant and the Council on a number of contextual matters[1]. The Council has also made a St of Cg with the rule 6 party.

3. By way of context I address two matters at the outset which permeate much of the evidence.

Outline permission

4. The appeal application is an outline one but has – as is not unusual - a number of fixed elements as the proposal was made with both parameter plans and a design code which the appellant wished to form part of any permission and which defined the extent and nature of the proposal.

[1] See latest position in the as yet unsigned St o CG.

5. Indeed, on a site as sensitive as this and with several critical '*development considerations*' which allocation policy BSA1201[2] requires to be complied with and inform proposals it is important that such information is provided at this stage. Since consideration at subsequent approval stages is limited by the terms of the initial permission, it is essential that in this case an outline permission should not take the form of a blank cheque, and, correspondingly, the authority and relevant consultees must be furnished with sufficient information to enable them to form a proper judgment of what is proposed.

6. It is critical at this stage for a decision maker to understand and have established the appropriate balance between the extent of the development on site and the level of harm that would be caused to matters of obvious importance here such as important trees, hedgerows and the landscape. That is no doubt why such material was submitted as part of the application to be fixed at this stage.

7. Indeed it is important to bear in mind at the outset that the appellant was clear that the extent of loss of, for example, of '*important*' on site hedgerows (some 74% being assessed as being removed[3]) which would follow the grant of the permission was apparently absolutely necessary to deliver the allocation in the development plan.

8. The appellant in the extensive and recent evidence it presented last week now seeks to suggest that some of the important trees (which the Council contend are veteran trees

[2] CD 5.3, p.154
[3] CD1.21 – table 7

and which the appellant failed to pick up in the survey work it presented during the application stages) could in fact – if it was felt necessary - be retained at the detailed design stage. Whether that is in fact the case in light of new plans prepared and distributed for the first time a few days ago[4] misses the point. Such provision would at the very least require material amendments to parameter plans and almost certainly to the description of the development and require consideration by consultees. In truth it would require an amended proposal with less dwellings and would be entirely outwith the ambit of this inquiry to consider at this stage[5].

9. In any event, the application pursued on appeal in the form the appellant wished had clearly defined parameter plans and a design code which fix a number of important matters and give clarity on what the appellant would be entitled to do at subsequent reserved matters and detailed design stages.

The Development Plan allocation

10. The Council agrees that the site should be developed in principle given the current development plan context. However it is critical that such development is sustainable and delivered in accordance with the development plan and national policy. Most of the site is covered by development plan allocation BSA1201.

11. One of the key issues at this inquiry relates to the construction and application of that policy. On this the Council contend that the approach of the appellant is fundamentally misconceived. It has – it appears - seized on the wording '*the estimated number of*

[4] And which relevant consultees have obviously not seen or considered
[5] Further detailed submissions on this point can be made if required.

homes for this site is 300' from one part of the policy and proceeded on the basis that this means that the policy has '*priced in'* the extent of harm that it now proposes in the appeal application to - for example – trees, hedges and biodiversity.

12. The Council will explain how it considers such an approach has ignored the full wording of the policy and the context in which it sits in the development plan. As is clear when the policy is read in context and applied with common sense the '*estimate*' falls to be tested and considered at the application stage. Indeed the development plan is clear that this should be done[6] when deciding on how many dwellings should in fact be developed. The policy also requires, for example, that important trees and hedgerows should be retained in a development pursued on the site. The extent of the losses and harms proposed by the appellant are not inherent in the allocation – rather they are contrary to it.

13. This difference of approach between the parties as to the nature of the allocation underpins much of the evidence before the inquiry. For example, the design approach pursued by and described by the appellant as to what dwelling numbers are appropriate for the site has proceeded on the basis that removal of large amounts of important trees and hedgerows is '*priced in'* to the allocation. It seems likely that had such consultants been informed of the correct meaning of such policy the proposal before this inquiry would not have been pursued.

14. Whilst some degree of hedgerow and tree loss is as a matter of common sense inevitable, the Council consider that the scheme pursued by the Appellant has gone too far in removing important trees and hedges.

[6] See annex to the Site Allocations Information, CD5.3 at p i

15. The position is in fact far worse for the Appellant than even a straightforward reading of policy would suggest. It has become clear that the appellant failed to even spot – let alone correctly identify – a number of veteran trees on site. Several of which are proposed to be removed. Others will suffer deterioration. National policy[7] considers such trees to be irreplaceable habitats and is clear that development which results in either the loss or deterioration or irreplaceable habitats should be refused unless there are wholly exceptional reasons and a suitable compensation strategy exists. Neither is evident here.

16. Finally by way of context and because it is an issue raised by the rule 6 party, the Council makes clear that it considers that the SNCI designation is not carried through into the current version of the development plan[8].

17. To some extent that point is largely academic. The allocation policy expressly requires ecological work to be undertaken to inform the nature of any proposal and recognises the continuing city wide importance of the site for nature conservation. As such matters had not been considered at the allocation stage and are required to be considered by the policy at the development stage they must obviously inform the extent and nature of the proposal brought forward on site. Such matters are also not already priced in.

Putative Reasons for refusal

18. The matters in the reasons for refusal are inevitably related.

19. In terms of R f R 1 the Council consider that the scale of harm to biodiversity is significant and unacceptable in the context of national and development plan policy.

[7] NPPF paragraph 180c
[8] As explained by Mr Collins in his evidence

The Council do not agree with all the findings in the ecological assessments but in any event consider that the scale of biodiversity loss (which the appellant considers inevitable because of how they apply or construe the allocation policy) is excessive. The concerns of the Council relate to in particular the loss of important hedgerows and associated veteran trees.

20. The internal hedges (commonly referred to as H1-5) were assessed as being 'important[9]' by the appellant for reasons relating to wildlife and landscape, and by virtue of their historical and cultural significance and importance. The Council does not disagree with the overall findings of the appellant in that regard but considers that the hedges are even more important than the appellant suggests in terms of biodiversity. They also contribute to the site being a valued landscape.

21. They appear to date from around the mid 18th century. There are threatened and uncommon species in the hedgerows which the appellant has not given sufficient emphasis to or in some cases even acknowledged. The species that exist in such hedgerows that are associated with long established habitats are unlikely to easily colonise or survive in new hedges. This means that such hedges cannot be appropriately replaced by new hedgerow planting on site or elsewhere. The hedges are agreed to be Habitats of Principal Importance and so engage Policy DM19 with which there is conflict – as there is with a range of other policy.

22. Before one even gets to the issue of mitigation or biodiversity net gain, the Council considers that the proposal fails to retain important trees and hedges which support biodiversity. Plainly the site could have been developed in a way that avoided or

[9] Within the meaning of the HR 1997 – see CD 1.21c at 5.33. H6 also assessed

mitigated such loss to a much greater degree. The extent of loss and harm associated with the proposal is contrary to both the mitigation hierarchy in national Policy (NPPF paragraph 180) and the development plan. In simple terms the scale of hedgerow and tree loss proposed exceeds that which is necessary to develop the site in accordance with policy and conflicts with a range of development plan and national policy. It could have been avoided in a way that would have allowed the development of the site in a sustainable way. The proposal falls to be refused on that basis.

23. In relation to BNG and related mitigation, in the evidence of Mr Higgins he has argued that there was insufficient evidence to demonstrate the requirements of BNG and other required mitigation could be met in Victory Park and land adjacent. The Appellant has now (in the rebuttal evidence of Mr Hesketh, annex E) provided evidence that sufficient land is available in principle. In light of that evidence the Council no longer pursues the contention that BNG and other required mitigation is not feasible.

24. In relation to r f r 2 and 3 similar points arise in relation to the loss of important trees and hedgerows. The proposal involves the loss of TPO trees as well as hedges in a way which the Council will explain conflicts with policy. The level of loss is unacceptable.

25. But as set out in the evidence of Mr Forbes- Laird it has become clear that the Appellant has additionally failed to identify 12 veteran trees on site (three of which are ancient). The trees are irreplaceable habitats within the meaning of national policy. This only became clear when Mr Forbes-Laird (JFL) had been instructed in relation to the appeal

and had visited the site[10]. The appellant was required to identify important trees and the issue of veteran trees potentially being on site was specifically flagged up in pre application advice. It is highly regrettable (to say the least) that the Council has had to discover such trees.

26. Indeed, it has become clear that the Appellant considers these trees to be important. But as it was not aware of them, it follows that the design evolution – already inherently damaged through the misconceived approach to the allocation policy – was also entirely unaware of such constraints when considering the appropriate number of dwellings and in fixing the parameter plans so important to the application.

27. At the last minute the Appellant has produced a mass of new evidence[11] in an attempt to salvage some kind of position. It does no such thing. The Council contend the veteran trees will be in several cases either lost and/or suffer deterioration. Assuming the trees are veterans there is no credible evidence presented by the appellant to justify the granting of permission in this case. Section 180c NPPF is engaged[12] and requires wholly exceptional reasons and a suitable compensation strategy to exist to avoid a refusal of the appeal. Neither exist. The appeal scheme is also contrary to various development plan policies set out in evidence.

28. The concerns relating to design and landscape flow from what the Council considers to be 'excessive damage' to existing features of the site. Such matters have to be

[10] In that regard the various noises off from the appellant about a lack of particularity in R f R 3 and a failure of the committee report to identify veteran trees which the appellant had not itself identified is breath taking
[11] 'rebuttal' from Mr Popplewell and related evidence from others
[12] Even absent the veteran trees being discovered the appeal was unacceptable

considered in the context of what the development plan policy requires. The Council will contend that the significant and excessive loss of green infrastructure assets demonstrates that the proposals will not contribute to local character and distinctiveness in an acceptable way or integrate natural features so that if falls foul of a number of relevant development plan policies as set out in the reason for refusal. A number of points are developed in evidence in this regard both in relation to landscape character and urban design.

29. A suitable form of s106 has now been agreed as between the Council and the Appellant which will in principle resolve reason for refusal 5.

Other matters and Conclusion

30. The Council will contend that the appeal proposal does not accord with the development plan as a whole.

31. The Council cannot currently demonstrate a 5 year housing land supply. For the purposes of this inquiry a range of between 2.24 and 2.45 years supply has been agreed between the Council and Appellant.

32. Whilst the Council acknowledges that benefits would be secured by the proposal and has assessed relevant material considerations and their weight in evidence in an overall balance, it is clear that in the end the proposal conflicts with numerous key development plan policies and should be refused.

33. Because of the impact on veteran trees the tilted balance is not engaged and that issue alone provides a clear basis for refusing the appeal proposal. In any event even were

the proposal to be considered in the context of the tilted balance in the NPPF as a material consideration it would still fall to be refused given the extensive and unnecessary adverse impacts inherent in the proposal in a range of areas.

34. The Council will submit that the appeal should be dismissed.

Tom Cosgrove KC

Counsel for BCC January 2023