

LAND SOUTH OF BLAKESLEY HILL, GREENS NORTON

Appellant's Closing Submissions

Introduction

1. We set out our closings under 6 headings:
 - (i) The Council's plan is not working;
 - (ii) There is no 5 year housing land supply;
 - (iii) The scheme complies with local and national policy on character and appearance;
 - (iv) The site is sustainably located;
 - (v) The real meaning of a "*plan-led*" system; and
 - (vi) This scheme will deliver compelling benefits.

(1) The Council's plan is not working

2. Reading this Council's evidence is like peering into a parallel dimension. We're told that housing delivery is going swimmingly, that the national policy objective of substantially boosting housing land supply is being met, and so we have the luxury of turning down sustainably located housing schemes which don't completely fit what is described as the "plan-led" strategy masterminded by the West Northamptonshire Joint Core Strategy ("**the JCS**") (more on what plan-led *really* means below).
3. A rosy picture. But it doesn't stack up. Even on the agreed numbers, it doesn't come close. The heart of the Council's planning case is that the JCS must be obeyed. But the JCS has

already been a disaster for the people of Northamptonshire – and even more so for the many who would *choose* to live and work here, if only they could. If only there were enough homes, and in particular enough *affordable* homes.

4. This isn't a question of speculation. It's a not a judgment call. It's simply a question of reviewing the plan's performance. Here we sit a decade into the 18 year period covered by the JCS (2011 – 2029). The plan's total housing target is 42,620: see policy S3. On average, that's 2,368 homes every year across the JCS area. However, after the first 9 years of housing delivery, even measured against the plan's lower "*need*" figure, the shortfall is already around 4,000¹ homes. Against the policy S3 "*delivery*" figure – which the Council (at long last) has accepted should be the basis for measuring its housing land supply under §73 NPPF – it's around 4,450 homes. Almost 2 out of 9 years' worth of homes which simply haven't happened.
5. That failure isn't marginal. It's disastrous. With real consequences for people in need now, for young people trying to get on the ladder, older people trying to downsize, for the local economy, for sustainable travel patterns, for achieving that foundational objective of our planning system at §8 NPPF "*to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations*".
6. And this Council's answer to the startling failure to deliver the JCS requirements – expressed in almost identical ways by Mr Goodall and then Mr Murphy – is that's a "West Northamptonshire" problem. We get the same idea at §23 of the Council's closings. But why that answer's not only depressing but alarming is that the spatial strategy the Council's spent so much time relying on to resist our appeal is a West Northamptonshire strategy. If

¹ See Mr Lomas, Table 3.1, p.18 – numbers have to be approximate because we're using the 2019/20 HDT delivery figures. That is because there has been no joint AMR since 2018/19.

that strategy isn't working, and if it isn't even coming *close* to working, that matters. It matters not just in Northampton. Or Daventry. It matters here. The terrible social, economic and environmental effects of the housing shortage in this area don't stop at the notional boundaries of the NRDA. The attempt to achieve growth at strategic sites around Northampton isn't working quickly enough. It hasn't delivered *nearly* enough homes for the people of what was SNDC. And in particular, we know that it isn't delivering enough *affordable* homes because of the viability challenges faced by those SUEs, e.g. the requirements to deliver strategic infrastructure.

7. We'll come in a moment to the narrower question: can this Council demonstrate a 5 year supply of housing land within the relevant area for the purpose of §73 NPPF. We say there's an easy answer to that.
8. But before we get into the detail of that debate, we ask you sir to stand back and consider the context in this part of Northamptonshire:
 - (i) The plan itself intended that it'd be replaced by 2020,² which has obviously long gone. That date was pushed back in the October 2018 LDS³ to intended submission of a new plan to the SoS by April 2021, and adoption in January 2022. Obviously, that isn't going to happen either – no new draft JCS even exists yet. We're a long way off statutory consultation, submission or examination. And not months but years away from adoption.

² CD6.01, §3.17.

³ CD6.09.

- (ii) What's the Council's current intended timetable? We have no idea. There's been no LDS since 2018,⁴ no joint AMR since 2019,⁵ and no 5yhrs statement for the NRDA since 2019.⁶
- (iii) LPP2 was adopted in SNDC last year, but that didn't review the housing requirement or housing delivery, nor did it make any housing allocations – because the LPP2 Inspector thought all of that was a job for the new JCS. Remember, the LPP2 was examined back in 2019 under the 2012 NPPF when the Council was still hoping – under the 2018 LDS – to have a new JCS submitted to the SoS for examination by now. Things have, to put it mildly, not gone according to plan.
9. So what? What does any of that matter if the Council managed to dash off what it described as a “*light touch*” policy review in the nick of time (i.e. just within 5 years of the JCS's adoption) in late 2019 which found that most of the JCS was broadly consistent with the NPPF? The problem is there's been no strategic review of the JCS housing requirement or delivery trajectory since the JCS, and we haven't one in prospect.
10. That's why we end up with the damning figures on p.41 of Mr Lomas's evidence, which show that people whose earnings fall within the lower quartile have needed somewhere between 10-12 times their income since 2015 to find a home here. Which is *way* above the levels not only for Northamptonshire as a whole, but also the East Midlands and national averages.

⁴ CD6.09.

⁵ CD6.19.

⁶ CD6.25.

11. Those ballooning affordability ratios are a symptom. They're a symptom of a chronic failure to plan to meet needs. And that problem has been made *worse*, not better, by this Council's approach of asking you to – in effect – ignore the widespread failures to deliver strategic sites around Northampton. Respect the JCS, we're told. Every time. But, sir, how many more years do we have to keep “*respecting*” it before we start to acknowledge these failures to meet its requirements? How many more thousands of homes will have to be left undelivered, how many more promises broken, how great will these ballooning shortfalls need to become before this Council finally accepts the obvious:
- (i) The plan hasn't worked;
 - (ii) Smaller, deliverable housing schemes on unallocated sites which make policy-compliant affordable contributions need to come forward now so that they can make a quick and meaningful impact on housing land supply while the larger strategic sites catch up; which means
 - (iii) It isn't a question of *whether* to allow schemes like ours on the edge of and well connected to sustainable villages like Greens Norton. The Council *needs* schemes like ours. The only question is *where*. And we return below to why this site is so well placed to play a role in meeting the Council's needs.
12. Before that, we turn to whether the Council can demonstrate a 5 year supply of housing land under §73 NPPF.

(2) There is no 5 year housing land supply

13. There's been reams of evidence on this. And at times, the evidence became complicated. But happily, the answer is simple.

14. The issue turns on one point, and only one point:

What is the Council's "*housing requirement set out in adopted strategic policies*" under §73 NPPF?

15. The cases before you are very different:

(i) On our case, the answer is 11,020 which is set out in the JCS policy S3 (the policy which the parties agree is an adopted strategic policy which provides the basis for the relevant housing requirement);

(ii) On the Council's case, the answer is 7,170. Which is not set out in any policies – strategic or not. But rather is the invention of Jon Goodall. To reach it, you have to stitch together numbers from a shopping list of different policies (some of which don't contain any housing requirement figures, some of which just reproduce number from S3, others of which aren't strategic policies at all) together with supporting text. And eventually, you can calculate a figure which is – again – not actually set out in any policies in the plan. That's Mr Goodall's case. It's ironic because the Government's intention in changing the NPPF in 2018 (including through the insertion of §73 NPPF) was to simplify and streamline the topic of 5yhls to avoid lengthy, esoteric debates at s.78 appeals exactly like this one. Alas.

16. But in the end, the biggest problem Mr Goodall's case faces is the language of §73 NPPF itself. It's a simple paragraph. It says what it means, and means what it says.

17. So what does it say? Before we turn to the detail of the figures, we set out some basic points on what §73 says.

(i) How do you identify a “housing requirement set out in adopted strategic policies”?

18. Mr Goodall kept telling you that it’s the *development plan* which prescribes the approach to housing land supply⁷. Totally wrong. Not just *arguably* wrong. That approach is *legally* wrong. We’re not talking about a question of opinion or planning judgment. It’s fundamental. He’s misunderstood the basis on which 5yhls is calculated. In their closings at §40, the Council follows this line of thinking – “*it is necessary to start with the development plan*”. No it isn’t. It is necessary to start with the NPPF.

19. The requirement to demonstrate 5yhls is set by **national policy**. That requirement is, in section 38(6) PCPA 2004-speak, a “*material consideration*” along with the other requirements in the NPPF. How you demonstrate a 5yhls is set by **national policy**. The consequences of failing to demonstrate a 5yhls are also set by **national policy**. So – to state what should’ve been obvious – it’s to **national policy** we look to answer all of these questions. Including how to determine a housing requirement.

20. Put another way: the question for you sir is **not** what housing target the drafters of the JCS (including Mr Goodall) *thought* housing delivery in SNDC *should’ve* been measured against. The question is what requirement Central Government now tells us to measure it against.

21. So what does national policy tell us about that?

22. The answer is at §73 NPPF:

⁷ See e.g. his proof at §12.5.

“Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old”.

23. 3 very simple observations about that passage which – if you accept – are the end of the story for the Council’s case:

- (i) “***Local planning authorities*** *should...*”: the obligation to demonstrate a 5yhl falls on local planning authorities – not on sub-LPA “*plan areas*” or anyone else.
- (ii) “... *five years’ worth of housing against **their** housing requirement...*”: national policy asks us to establish “their” requirement, i.e. the requirement for whoever the relevant local planning authority is. §73 doesn’t ask us for the requirement of anyone else (e.g. for a sub-LPA plan area). Which makes sense, of course, because the obligation to demonstrate a 5yhl falls on local planning authorities: see (i).
- (iii) “... *their housing requirement **set out** in adopted strategic policies...*”: whatever the correct “*requirement*” is, §73 is clear about one thing: it actually has to be **set out in an adopted strategic policy**. If a housing requirement is *not* “set out” anywhere in adopted strategic policies, we know it cannot be the right figure for our §73 requirement.

24. Once we understand those 3 basic points, the wind comes out of the Council’s sails. That’s because if you accept that the requirement we’re seeking relates to SNDC (and more on its recent unification with the West Northants authorities in a moment, but as we’ll see that doesn’t change the right answer under §73), and that we’re talking about SNDC as a whole (all of it – including the NRDA) then it’s game over even on the Council’s figures. The housing land supply stands somewhere between 2.3 – 3.1 years.⁸ And that much is all you

⁸ Table 6, P.10 of the HLS SoCG.

need to find (the courts have made clear⁹ that at a s.78 appeal like this, all that needs to be established is an approximate figure or range for the shortfall – you do not need to be “*mathematically exact*”). And remember:

- (i) Only 1 party has actually identified a housing requirement “*set out*” in a strategic policy – and it’s us. It’s the 11,020 figure set out for SNDC in policy S3. End of story. Mr Goodall’s 7,170 isn’t set out in any policies anywhere in the plan.
- (ii) Mr Goodall weaves a complicated tapestry of other policies and explanatory text together to try to derive his 7,170 but some of those policies don’t contain any housing figures *at all* (e.g. S1 and S6), and the others just reproduce numbers from S3 (e.g. S4 and R1). In fact, the position’s a lot simpler. Mr Goodall agreed that the requirement should be derived from S3. And S3 doesn’t “*set out*” a 7,170 requirement figure. It only sets out the LPA-wide requirement which we rely on. And §73 NPPF is after a requirement figure for the LPA as a whole (“*their*” requirement, i.e. that of the relevant LPA). In the end, it isn’t complicated. It’s just a question of giving simple words their obvious meanings.

25. Are we in some kind of – as Mr Flanagan put it – “*no man’s land*” because SNDC has recently become part of West Northamptonshire? No. Again, the position’s a lot simpler than the Council’s evidence tries to make it. The PPG is clear:

⁹ *Hallam Land Management Ltd v Secretary of State for Communities and Local Government* [2018] EWCA Civ 1808 at §53.

“Where a newly formed local planning authority is covered by strategic housing requirement policies adopted by predecessor authorities, these policies can continue to be used as the housing requirement for calculating the 5 year housing land supply in the areas they apply where these are less than 5 years old, or they are older but have been reviewed within the last 5 years and found not to need updating.”¹⁰

26. So the 11,020 requirement figure set by policy S3 “*can continue to be used*”. It’s that simple.
27. If you need further persuading, sir, that §73 NPPF seeks an LPA-wide housing requirement, the pointers are many and they are there to be read, e.g.:
- (i) The alternative measure for housing delivery in §73 is “*local housing need*”, and that would – the parties all agree – apply to SNDC as a whole (i.e. including the NRDA). Of course, there’s no indication in §73 NPPF or anywhere else that the unit of geography within which we measure housing land supply should depend on whether we’re using the local housing need figure or not. It shouldn’t depend. And there’s no need to read the policy in that bizarre and inconsistent way if – as above – you understand that the geography covered by the local planning authority’s requirement is expected to be same geography as that covered by local housing need calculation.
 - (ii) §73 NPPF requires 5yhls to include a buffer. However, whether a 20% buffer applies under §73(c) and footnote 39 depends on the outcome of the Housing Delivery Test. So the provisions of §73 NPPF are literally only operable on the basis that the geographical area the requirement covers is consistent with that measured by the Housing Delivery Test, i.e. SNDC as a whole.
 - (iii) The key consequence of failing the requirement of §73 NPPF – the activation of the tilted balance through footnote 7 and §11(d)(ii) NPPF. But of course that is only

¹⁰ PPG on “Housing Supply and Delivery” at §025

triggered in “*situations where **the local planning authority** cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73)*”. Again, it’s the local planning authority which counts.

28. Not only is there no express provision in the NPPF for determining 5yhls on the basis of some other non-LPA unit. It’s worse than that. As these points make clear, you can’t actually operate the provisions of national policy unless you assess 5yhls on the basis of the LPA as a whole.
29. Why doesn’t the Goodall approach work? Because the NRDA is not a local planning authority. Which means it is not required to demonstrate a 5yhls under §73 NPPF. It cannot pass or fail the HDT – which means it cannot be assessed for the appropriate buffer under §73 NPPF. It cannot be subject to the tilted balance under footnote 7 because it is not a local planning authority.
30. For the correct approach in action, see Inspector Philip Major’s decision at Rothersthorpe¹¹ from §10-§15. It’s no coincidence that Inspector Major also had the benefit of Ben Pycroft’s evidence on this issue.
31. For a useful analogue to this situation, see the recent appeal decision in Malvern Hills which Mr Pycroft addresses in his proof at pp. 26-27. Malvern Hills is covered by the South Worcestershire Development Plan (SWDP, adopted February 2016), which is similar to the WNJCS in that it covers the areas of Malvern Hills, Worcester City and Wychavon but instead of the NRDA, the SWDP includes the “Wider Worcester Area” (WWA). As Mr Pycroft explains, the Council’s attempt to claim a 5yhls on the basis of excluding the WWA has failed. And the tilted balance applies across all of Malvern Hills – including the WWA.

¹¹ CD7.04.

32. Inspector Raygen in Middleton Cheney¹² didn't take an approach which fully accords either with §73 NPPF or with Inspector Major's decision in Rothersthorpe, however:
- (i) We now know, and Mr Goodall agreed, that given concessions since that inquiry, on the basis of her approach to the requirement there was **not** a 5yhls at the time – so her findings on this topic have been superseded;
 - (ii) Her approach to the requirement got one thing right: she correctly identified that S3 was the right starting point under §73 NPPF (rejecting Mr Goodall's evidence at that time that the starting point was S6 and its explanatory text); and
 - (iii) She made clear that she didn't know what information was before Inspector Major on this issue at Rothersthorpe. Happily, sir, you do. You are in a totally different position to Inspector Raygen because you have not only the benefit of the Rothersthorpe decision letter. You also have heard the same evidence on these topics from the same witness – Mr Pycroft. So you are able to put Inspector Major's decision into context. And, we respectfully say, you're able to see why he got it right, and in what ways Inspector Raygen got it wrong.
33. In the end, Mr Goodall agreed in cross-examination that:
- (i) There's no express support in the NPPF for measuring 5yhls against plan areas;
 - (ii) The requirement to show a 5yhls in footnote 7 and §73 applies not to plan areas but to local planning authorities; and that
 - (iii) In the end, the Council's housing requirement derives from S3.

¹² CD7.06.

34. And it's there in black and white: S3 sets an overall figure for SNDC of 11,020 homes.
35. It really is that simple. No need to weave together multiple policies together with explanatory text to derive a figure which isn't actually set out in any strategic policies in the plan.
36. That question is determinative of this main issue between the parties. Regardless of your findings on supply, the Council cannot demonstrate a 5yhl under §73 NPPF.

(ii) Other housing land supply matters

37. Because the other questions under this topic cannot determine the overall outcome, we address them only briefly in closing (and the Inspector is referred to Mr Pycroft's proof and rebuttal for a fuller exposition of our case):

- (i) Annualised vs. trajectory: the Council and Mr Goodall have been arguing for a trajectory based approach for years (see e.g. the JCS Inspector at §199¹³, the Potterspurty Inspector at §64-§65¹⁴, the Middleton Cheney Inspector at §52-§53¹⁵, the 5yhl statements for Daventry, Northampton and the NRDA, along with Jon Goodall's proofs of evidence at Middleton Cheney, Paulerspury and Hartwell at appendices EPR1-3 to Mr Pycroft's rebuttal). Mr Goodall says the plan offers no basis for measuring the delivery figure against a trajectory, but that is wrong: see the "SNC (DELIVERY" trajectory at Appendix 3 of the JCS¹⁶.
- (ii) Windfalls: based on historic delivery rates (which is what §70 NPPF tells us to look at), we can expect 405 dwellings on small windfall sites over the next 5 years (i.e. 81 a year),

¹³ CD6.16.

¹⁴ CD7.01.

¹⁵ CD7.06.

¹⁶ CD6.01, p.227.

but the 2021 HLAS already includes 280 dwellings on small sites. That means the figure should be 125 dwellings (405-280).

- (iii) Supply in the NRDA: there's been no NRDA 5yhrs statement since 2019. None of these sites are under construction, none have reserved consent. For each one, the evidential burden is on the Council to produce **clear evidence** that completions will begin in 5 years. For a summary of how Inspectors and the Secretary of State have interpreted that requirement, see pp.34-40 of Mr Pycroft's proof. One thing's beyond doubt: the evidence has to be cogent, robust and go considerably beyond mere assertion. And that, to be fair, is the sort of evidence the Council has relied on for sites outside the NRDA. When it comes to the NRDA sites however, it's another story altogether.
- (iv) N4 – Northampton West SUE: there's no evidence to suggest that progress has been made towards the submission of a reserved matters application. There's no evidence between the Council and the developer confirming an anticipated start and build out rate – indeed, there's no evidence *at all* beyond Mr Goodall's assertions. And that's not nearly enough to meet the requirements of policy and the PPG.
- (v) N9A – Upton Lodge Farm: it's the same position. There's no clear evidence at all. We have now been told that Barwood Land will apparently deliver part of the site, but we don't know how much of the site, or what their build rates are said to be. We're left with no idea when the site will be marketed or sold.
- (vi) N6 – Northampton South of Brackmills: again, there's been no evidence on reserved matters, site assessment work, no written agreement with the developer confirming anticipated start or build out rates... none of it.

38. The outcome of all this shouldn't surprise us. We know, as above, that housing under-delivery in this part of the country is chronic and serious. We should expect to see that under-delivery reflected in 5yhrs calculations, and so it is: SNDC has a 2.31 year supply – a shortfall of 2,348 homes within SNDC over the next 5 years.
39. That is, of course, a very serious situation for the Council to find itself in. In policy terms, it engages footnote 7 NPPF and §11(d). The most important development plan policies for determining this appeal are deemed out of date. And permission should be granted unless any harms significantly and demonstrably outweigh the benefits. We return to the balance below.

(3) The scheme complies with local and national policy on character and appearance

40. You can, sir, get most of what you need to determine this main issue from §2.1 of the Landscape Statement of Common Ground where the main parties have agreed that:
- (i) The appeal site is not subject to any formal landscape designation and is not a valued landscape under §170 NPPF;
 - (ii) The appeal site does not represent particularly valuable characteristics of the wider landscape character area within which it is situated;
 - (iii) The appeal site is not identified in the Greens Norton Village Design Guide as Important Open Space;
 - (iv) There are no important views across or towards the appeal site identified within the Greens Norton Village Design Statement;

- (v) The Council have raised no technical concerns with the approach and methodology employed by the LVA;
- (vi) The proposed development would be located within existing field boundaries and is physically well-related to the existing village;
- (vii) Impact on the wider landscape is limited as per the LVA;
- (viii) The development does not result in the loss of any rare or unique features, with the loss of agricultural land and short sections of hedgerow for access limited in relation to the wider LCA. Mitigation includes characteristic features of the LCA;
- (ix) The appeal scheme would be well-related in visual terms to the existing village;
- (x) The visual impact of the proposed development is largely restricted to the immediate locality, without a prominence in the wider landscape significantly greater than the existing settlement edge;
- (xi) Mitigation incorporated into the scheme includes setting back development from the western and southern boundaries with areas of informal public open space that allow opportunities for new planting to soften the settlement edges;
- (xii) The proposed mitigation planting to the western boundary will provide a softer settlement edge and assist in assimilating the development into the wider landscape;
- (xiii) Bury Hill to the immediate west of the site would provide a substitute for Benham Road in terms of being a long-term defensible edge to the settlement;
- (xiv) The edge along Bury Hill could be developed in a higher-quality manner than the existing approach into the village, which is characterised by the rear boundaries of properties on Benham Road; and

(xv) The proposed development will cause only localised landscape and visual effects.

41. So most of the big points are agreed. And that isn't surprising because, as you will now have seen sir, the site is well contained visually, it's strongly related to and influenced by what is an abrupt linear settlement edge, and is clearly distinguished both topographically and by Bury Hill from the wider, undulating countryside which opens up to the west.

42. The issues of disagreement remaining are very narrow:

(i) Mr Murphy says that the site's of "*particular significance*" to the character or setting of Greens Norton (in terms of policies R1(B) and SS1(a)). But that just isn't right. The appeal site and land west of Greens Norton did not meet the criteria threshold for designation as a Special Landscape Area. Areas of Important Open Space identified by the village design guide and the Pocket Park are situated to the south of the village and are physically and visually separated from the appeal site. There are no important views identified across or towards the appeal site. Views shown within the village design guide are from rights of way south of the village looking south-westwards, away from the appeal site. There are clear elevated views across the wider, open landscape from Bury Hill, looking west and Bradden Road, looking south. The appeal site does not facilitate or form part of these views. There is no evidence at all to support the idea that this field is of any *particular* significance in landscape or visual terms to Greens Norton's character. As Mr Hughes explained, it isn't.

(ii) Mr Murphy denies that the appeal site is strongly influenced by the adjoining settlement edge. You've now visited, sir, so you will've seen that the appeal site is experienced in the context of a pretty abrupt, linear settlement edge formed by properties of Benham Road and Falcon View. Those properties form a backdrop in localised views over our site from the west. Bury Hill is a distinct point of transition between the smaller scale

fields adjacent to the settlement edge and the large fields and rolling landform of the wider landscape beyond to the west.

(iii) Mr Murphy claims the appeal site is tranquil. Again, you'll have your own view by now. But as you will've seen, sir, the influence of the built edge and signage, footway and vehicles using Blakesley Hill, and the local roads reinforce the edge of settlement context and reduce the sense of tranquillity for people walking and travelling along the roads.

43. In the end, and with respect, the Council's over-cooked it. Yes our site is now a field. With houses on, its character will change. So far, so inevitable. But what really matters is that our scheme won't compromise the perception or distinctiveness of the wider landscape character area. We can improve the settlement edge with reinforced hedgerows and new tree planting and properties fronting areas of open space set back from the boundaries. Yes there'll be changes to views, but those changes will be experienced in the context of the settlement edge and influence of existing housing, infrastructure and traffic. And we'll retain those unobstructed expansive views across the wider landscape from Bury Hill and Bradden Road which are the focus of views when walking along the lanes, and which are identified as a key characteristic of the Undulating Claylands Landscape Character Area.

44. And that's why, in the end, our scheme recognises the intrinsic character and beauty of the countryside under §170(b) NPPF and retains those key landscape characteristics identified by the Northamptonshire Current Landscape Character Assessment. If you think it necessary, sir, as we've indicated, the landscape parameters plan can be conditioned to give even more certainty on this point.

45. Of course, even on the Council's case, any impacts are only localised. In fact, as Mr Hughes explained, they'd only be limited. And our scheme offers important opportunities to

improve the quality of the built edge, providing a soft transition to the countryside and a defensible boundary at Bury Hill.

(4) The site is sustainably located

46. This statutory development plan recognises the continued need for both market and affordable homes in rural areas. Those homes are needed both to meet national policy and to ensure those areas remain sustainable.¹⁷ This is, the parties agree, not a plan which tries to impose some kind of moratorium or upper limit on new growth in those rural areas. That’s an important starting point.
47. How does Greens Norton fit into all of this? Greens Norton is one of the most sustainable villages in South Northamptonshire. It sits right at the top of the 2nd Service Tier category A villages set by LPP2 policy SS1¹⁸ (and indeed, in many respects, it’s more sustainable than the Primary Service villages including Middleton Cheney: see Mr Lomas’s Appendix 4, and proof at §3.2.56). So we know the plan expects new market and affordable homes to come forward here.
48. But there have been no housing allocations in Greens Norton since at least 1994. I asked Mr Murphy when was a site last allocated for housing in Green Norton. He had no idea. So for the last quarter century or more, the “plan-led” approach to growth in Greens Norton has added up to... no allocations at all. Of course, no allocations were proposed in LPP2. But, as above, this is a plan which expects both market and affordable housing to come forward in rural areas (and in particular in the more sustainable villages like Greens Norton). Which

¹⁷ LPP2, CD6.04 §3.1.5.

¹⁸ LPP2, CD6.04, pp.25-26.

means, as Mr Murphy agreed in cross-examination, if that expectation is going to be met, it has to be met on unallocated sites. Like us.

49. The last residential planning permission in Greens Norton of any scale was the Mill Lane consent in April 2010 for 49 homes. That was over a decade ago. Since then, the number of new affordable homes consented has been... 0. And Mr Murphy agreed there's no evidence that those 49 homes caused any harm at all to the functioning of Greens Norton as a settlement.
50. The healthy range of services and facilities on offer within Greens Norton is all agreed, and it's also agreed that those facilities are all walkable and cyclable from our site: see §2.2.2 of the planning SoCG, and Figure 3.6 of the TA.¹⁹ And, as you've now seen sir, we're only a couple of miles from Towcester which has a very wide range of facilities.
51. The TA demonstrates²⁰ that Towcester is accessible by bike. Indeed, it's a 10 min cycle. We also have a travel plan²¹ which explains the sustainability of the site in terms of walking, cycling and public transport before setting out measures to promote sustainable modes. That material was all reviewed and approved by the Highways Authority.²² Now, Mr Murphy thought that cycling to Towcester was "*unrealistic*", but – again, with respect – he has no technical evidence to support him on that, and no objection from the Highways Authority to back him up. Some will choose to cycle to Towcester. No doubt some won't. But is it a realistic alternative to car use to access a wide range of services and facilities? Certainly.

¹⁹ CD1.16, pdf page 31.

²⁰ CD1.16, p.9, §3.58.

²¹ CD1.17 sections 4-5.

²² CD4.07, CD4.09.

52. The bus service includes a daily commuter service to and from Northampton. That bus stops outside the rail station before 8am, from which there are regular trains to Milton Keynes, Coventry, Birmingham and London. There's also a return commuter service back to Greens Norton in the evening. For a rural village like Greens Norton, that really is an excellent opportunity to access major employment centres without the need to drive. Our scheme makes a £69,000 contribution to that service. The Highways Authority consider that sum can be used to “*enhance*”²³ the service to provide access to Northampton, Towcester or Silverstone. Mr Murphy thinks they're wrong about that (albeit it's agreed in the SoCG that the contribution is a benefit). With respect, you have no evidence at all to justify binning the views of the expert statutory consultee which will actually be responsible for spending the £69,000.
53. There's no alleged conflict with LPP2 policy SS2(k) (which means the Council agree that we're adequately served by public transport and are in reasonable proximity to a range of local facilities which can be reached without the need for private car journeys). There's no alleged conflict with JCS policy S10(e) (which means the Council agree we're located where services and facilities can easily be accessed by walking, cycling or public transport). Mr Murphy confirmed there is no objection on the grounds of poor connectivity. In fact, the stie's readily accessible by a variety of modes of transport. Again, residents will have a real choice about how they travel.
54. And on top of all that:
- (i) The Council doesn't say our impacts on existing village infrastructure will be unacceptable.

²³ CD4.07.

- (ii) It doesn't say Greens Norton's existing facilities would somehow be overwhelmed by our scheme.
 - (iii) There are no technical constraints (e.g. in relation to drainage, highways, flooding or anything else).
 - (iv) The site's not subject to any environmental designations – local, regional or national.
 - (v) There are no ecological concerns.
 - (vi) There's no heritage objection (at one point Mr Flanagan referred to views of the church spire – just to be clear, it's not said that we impact on any views which materially contribute to the church's significance, and that's correct because when seen in local views from Bury Hill, the spire is glimpsed beyond the houses in the foreground and set amongst the roofscape. It is not a focus in these views, and isn't visible at all when next to the site on Blakesley Hill).
 - (vii) Albeit Mr Murphy says if this scheme **and several other schemes you have next to no information about** were all granted permission, there could be some kind of cumulative harm (and the Council pushes that idea in its closings at §13), Inspector Raygen didn't accept that idea at Middleton Cheney, and nor should you.
55. In the end, Mr Murphy agreed that allowing this scheme is **consistent** with Greens Norton's function in the settlement hierarchy as a secondary service village. We agree. That demonstrates that the scheme is appropriate in scale to the village. It confirms that the site's in a suitable location. And for all Mr Murphy's *assertions* that the scheme is too big for Greens Norton, he accepted in cross-examination that:
- (i) No specific harm would arise from our scale; and

- (ii) He has no evidence on what an acceptable scale for Greens Norton might be (which means in the end that he's in no position to substantiate his assertion that our scale is too big).
56. So yes, we are adjacent to but outside the settlement boundary of Greens Norton. However, we're well related physically and visually to the settlement edge. And we're of a scale which – the Council agrees – is appropriate to Greens Norton's function in the settlement hierarchy fixed by the statutory development plan.
57. The Council agrees our mix of dwelling types and sizes is agreed to be appropriate to meet needs (R1(A)). They agree that we preserve historic buildings and areas of environmental importance (R1(C)). They agree that we protect the amenity of existing residents (R1(D)).
58. All of which is why it's unsurprising that the parties agree that the scheme accords with JCS policy R1(F), i.e. that we “*promote sustainable development that equally addresses economic, social and environmental issues*”. The Council tell us in their closings at §22 that this is a “broad” policy. We agree. Its breadth doesn't make it unimportant. On the contrary, this is a *particularly* important point of agreement, of course, because the NPPF tells us at §7 that contributing to the achievement of sustainable development is the purpose of the planning system. It's a purpose with which we accord.

(5) The real meaning of a “*plan-led*” system

59. Mr Flanagan has referred to the importance of our system being “*plan-led*”. Almost as if the plan is not only the beginning of your analysis, but also the *end* of it. That's where the Council's case goes wrong here, in the same way it went wrong at Middleton Cheney.

60. Plan led, yes. Of course. But plans don't always tell us the right answer, and the “*plan-led*” nature of the English planning system doesn't *require* them to.
61. We know that because our plan-led system is given legal expression through s.38(6) of the Planning and Compulsory Purchase Act 2004, i.e. that your “*determination must be made in accordance with the plan unless material considerations indicate otherwise*”.
62. That section requires applications to be determined in accordance with the plan unless other material considerations indicate taking a different decision.
63. For an example of this exercise in action, see the Secretary of State's decision at Nantwich. How that balance is struck is a matter for you sir. Whatever the right answer is, that answer is certainly not dictated by the development plan. A good thing too in this district because, as we have explained, this plan has failed and is still failing to deliver the homes that the people of this district need.
64. A couple of references to the law on this topic to show what a plan-led system actually *means*, because it's not what the Council is telling you:
- (i) In *Edinburgh City Council v Secretary of State for Scotland* [1997] 1 W.L.R. 1447, the House of Lords considered the effect of the Scottish equivalent to section 38(6). Lord Hope explained that:
- (a) the development plan does not have “*absolute authority*” and may be departed from: p.1450B-C.
- (b) In particular, the development plan's “*provisions may become outdated as national policies change*” and in that case:

“the decision where the balance lies between its provisions on the one hand and other material considerations on the other which favour the development, or which may provide more up-to-date guidance as to the tests which must be satisfied, will continue, as before, to be a matter for the planning authority.”

p.1450D-E

(c) So it is unhelpful to regard the presumption in favour of the development plan as either “governing” or “paramount”: p.1450F.

(d) Further, Lord Clyde held from pp.1458B – 1459A that the presumption leaves the assessment of facts and the weighing of considerations in the hand of the decision-maker, including the development plan. Lord Clyde said:

“the priority given to the development plan is not a mere mechanical preference for it. There remains a valuable element of flexibility. If there are material considerations indicating that it should not be followed then a decision contrary to its provisions can properly be given.”

(e) The House of Lords endorsed the proposition that what section 38(6) does **not** do is to tell the decision-maker what weight to accord either to the development plan or to other material considerations.

(ii) Further, Laws LJ said at §20 of *Secretary of State for Communities and Local Government v. West Berkshire District Council* [2016] 1 W.L.R. 3923 that:

“First, while the development plan is under section 38(6) is the starting-point for the decision-maker (and in that sense there is a “presumption” that it is to be followed), **it is not the law that greater weight is to be attached to it than to other considerations**: see in particular Glidewell LJ's dictum in *Loup v Secretary of State for the Environment* (1995) 71 P & CR 175, 186 cited by Lord Clyde. Secondly, policy may overtake a development plan (“outdated and superseded by more recent guidance”). Both considerations tend to show that **no systematic primacy is to be accorded to the development plan.**”

65. Mr Flanagan repeatedly raised §12 NPPF. But that paragraph just takes us back to section 38(6). It doesn't (and it couldn't) change the correct approach to the statutory balance explained in the cases above. The law says nothing whatsoever about requiring "*unusual*" circumstances before material considerations outweigh conflict with a plan. It's a straightforward and "*flat*" balance (see the cases above): the question is whether other material considerations indicate that a decision should be taken other than that which accords with the plan. There's no assumption that the plan's infallible, or should have decisive weight. The cases say quite the opposite.

(6) This scheme will deliver compelling benefits

(i) Affordable housing

66. The parties agree that the scheme's policy-compliant provision of 50% affordable homes should attract *at least* significant weight in the planning balance (Mr Lomas says *very* significant).

67. That must be right in circumstances where:

(i) Delivering a range of housing to meet the needs of people who live and work in South Northamptonshire is at the heart of the Council's strategy. But from 2016-2019, only **4** affordable homes were delivered... not just in Greens Norton, but across the entirety of the rural area of South Northamptonshire.²⁴ 4 affordable homes.

(ii) Delivery of affordable housing in rural areas has been a paltry 6.9%.

²⁴ [CD6.19], p.36, §3.65.

- (iii) Greens Norton is the 5th most popular area for re-housing within SNDC.²⁵ There is a clear, obvious and evidenced unmet demand for homes in this village. And the need isn't being met by any new housing allocations. Because there aren't any. There's no evidence of exception sites in the system to meet needs. The only way needs are going to be met is alongside schemes to deliver market homes – like ours.
- (iv) As above, since 2010 the number of affordable homes granted permission in Greens Norton is... 0.
- (v) As Inspector Raygen said at Middleton Cheney,²⁶ there's a substantial district-wide shortfall. Some households have to wait over a year for a home. These are, as she put it, "*households in need now*": §123.
- (vi) And the weight to be afforded to this benefit must only be increased further in circumstances where the Council positively accepts²⁷ that lots of schemes come forward in rural areas which are too small to generate any affordable housing requirement, and even those which do generate a requirement often reduce or eliminate it through arguments about viability.
- (vii) So when you have a sustainably located scheme like this one which meets the full 50% target with no arguments on viability... well if the Council's ever going to start **meeting** its shortfalls, **reducing** its waiting lists and **addressing** the pressing needs of its most vulnerable residents, a more positive approach from members will be required to schemes like ours.

²⁵ CD6.20, p.4.

²⁶ [DL:123] of the Waters Lane, Middleton Cheney decision [CD7.06].

²⁷ See [CD6.19], p.36, §3.65.

(ii) Market housing

68. The starting point is the Government’s objective to significantly boost housing land supply at §59 NPPF. That objective was brought into national policy by the 2012 NPPF, which the Court of Appeal recognised was a “*radical*” shift away from previous policy in that meeting housing need became “*not just a material consideration, but a consideration of particular standing.*”²⁸
69. The requirement at §73 NPPF to demonstrate a 5 year supply of housing land is a floor not a ceiling.
70. In the very large number of Secretary of State decisions post-NPPF which have considered the weight to be given to the delivery of market housing, on our case literally *all* of them – other than 1 which Mr Murphy identified, the relevance of which was dismissed by Inspector Raygen at §124 of [CD7.06] – gave *at least* significant weight to the delivery of market housing. And that is so *even when* the relevant authority could demonstrate a much healthier land supply than South Northamptonshire: see e.g the Nantwich appeal at [CD7.09] where the supply was between 5.7-6.6 years.
71. So again, with respect, the position is clear. Mr Murphy’s approach of giving only “*moderate*” weight to the delivery of market housing flies in the face of the consistent position taken by the Secretary of State. That is particularly so when, as Mr Lomas explained and the Council accepts, this scheme will be deliverable within 5 years, so would – should the appeal succeed – make a meaningful contribution to the Council’s 5 year supply. Of course, the Appellant has agreed to condition which sets an abbreviated timetable: reserved matters to be submitted within 2 years (not the 3 required by section 92 TCPA 1990) and commencement

²⁸ Gallagher Homes Ltd v Solihull MBC [2014] EWCA Civ 1610 at §8 and §16.

within 2 years after the final approval of reserved matters. If this appeal succeeds, this scheme is going to come forward, and come forward *quickly*.

72. Whatever Inspector Raygen meant by “*appreciable*” weight (e.g. at [CD7.06] §124), she self-evidently thought that the weight to be given to the delivery of market housing was enough in the Middleton Cheney appeals, taken together with the other benefits at play there, to overcome the Council’s in-principle policy objection and to justify granting permission. The same is true here.
73. Other important benefits include:
- (i) The enhancement of the bus service which, as above, help relieve the Parish Council of the burden to maintain it, and support a service which the whole community benefits from;
 - (ii) Public open space on a site with no current public access which will be of benefit not only to residents but to walkers too; and
 - (iii) A biodiversity net gain.
74. If you’re with us on the proper approach to §73 NPPF above, then the tilted balance at §11(d)(ii) applies. And the limited, localised harm in terms of the site’s character and appearance do not significantly or demonstrably outweigh those benefits (in particular, they do not outweigh the benefits of delivering both market and affordable homes in a sustainable location).
75. If you accept the Council’s position on 5yhls, then – just as in Middleton Cheney – these benefits add up to material considerations which justify departing from the plan under section 38(6) PCPA 2004.

Conclusions

76. As we all know, we're living in a national housing crisis. The Government is pulling every lever it can to seek to redress that crisis – including by prioritising the effective reuse of brownfield land. In the end, our site is on the edge of and well connected to a sustainable settlement in the Council's development hierarchy, in a district with pressing needs for market and affordable housing.
77. Yes, our scheme's on "*the wrong side of the line*". We're adjacent to but outside Greens Norton's settlement boundary. Yes, there are policies which say development isn't normally expected on our side of the line. But policies are not statutes. Planning decisions aren't made by algorithms. They require judgments, and sensible, flexible application balanced against material considerations. Particularly in circumstances where – as here – the Council's settlement boundary policies are out-of-date by virtue of footnote 7 in the NPPF.
78. In the end, the scheme's benefits are obvious. In particular, the provision of market and affordable homes in a sustainable location to meet real and urgent needs. That those benefits are obvious doesn't make them unimportant. On the contrary, given the chronic failures to meet requirements for market or affordable homes set by the JCS, delivering new homes in a sustainably location without any unacceptable environmental impacts is a profound benefit of this scheme. It should carry the balance over what is – even on the Council's case – no more than a localised landscape impact. And that is so whether this Council can demonstrate a 5yhls or not.
79. For those reasons, we ask you to allow the appeal.

ZACK SIMONS

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15th JUNE 2021