

28th September 2020

Members of the Planning Committee
South Northamptonshire Council

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Dear Sir or Madam,

Re: Application Reference S/2020/0930/MAO - Outline Planning Application for up to 35 residential dwellings (including access, with all other matters reserved) at Land to South of Station Road, Blisworth, NN7 3DN.

We write with regard to the above Outline Planning Application that is scheduled to be considered at the 1st October 2020 Planning Committee.

We are surprised that the Officers have chosen to reference landscape impact when the Development Management Team Leader has previously stated to us that there are no landscape objections to the scheme before them. We are even more surprised that Heritage Assets has been included as a reason for refusal when concerns in this respect have not previously been expressed as an issue to us at all.

The applicant and ourselves as the planning agents for the Outline Planning Application, are concerned that the Planning Committee Report also does not provide an objective assessment of the proposals and makes a recommendation that would not enable the Members of the Planning Committee to come to an informed decision.

We, therefore, write on behalf of the applicant to highlight the serious flaws within the Planning Committee Report and we urge you to take account of and seriously consider whether the Committee Report allows the Members of the Planning Committee to come to an informed decision on this Outline Planning Application.

We would urge you to take account of the following:

Landscape

The Outline Planning Application is accompanied by a Landscape Visual Impact Assessment carried out by a Chartered Member of the Landscape Institute who has reviewed the Committee Report and the Reasons for Refusal. We share their view that *'there are only two views with moderate adverse in winter months. The Reason for Refusal is tilted towards these two views and the subtext is giving an unrepresentative bias of our findings.'*

Our Clients Landscape Consultants have also provided a further rebuttal to the comments within the Committee report which we have also submitted to your Officers and for convenience appended to this letter.

Heritage

The Outline Planning Application is accompanied by a Heritage Impact Assessment carried out by chartered heritage consultant who has reviewed the Committee Report and the Reasons for Refusal. We share their view that:

'The topography and existing development, trees and hedgerows screen the proposed development from the Conservation Areas to the west and south and ensure that the impact would be neutral to the Designated Heritage Assets to the south and west.'

'The setting and significance of the two Designated Heritage Assets located on Northampton Road will be affected by the proposed development. These are nationally important Grade II Listed Buildings, with high significance and high sensitivity. The harm to the setting and significance of these Grade II Listed Building is less than substantial as the existing hedgerows to the south and west and with enhanced planting and provide screening to minimise the impact of the development.'

We are concerned that there are fundamental flaws in the way that your Officers apply paragraph 196 of the National Planning Policy Framework. We would advise that the proper way to consider the proposals would be to consider first the impacts of the application proposals on the setting of designated heritage assets which your Conservation Officer suggests is 'less than substantial' and then the public benefits test before the other impacts of the proposals development are considered and then providing the public benefits test is met the planning balance applied.

Your Officers report does not do this, it takes account of the impacts of the proposal other than Heritage Assets and uses the conclusions of this assessment as a basis to suggest that the impact upon the setting of Heritage Assets is not outweighed by the Public Benefits. This misapplies the Framework and results in a scenario wherein the application of paragraph 196 of the Framework would almost certainly in all cases where there is other alleged harm other than to Heritage Assets would result in the Public Benefits test not been passed which is clearly not the intention of paragraph 196 or else it simply would not be necessary in such circumstances.

We would advise with regard to Heritage Assets as follows:

It is acknowledged that the setting of a Listed Building is required to be considered for any development under Section 66 of the Planning (Listed Buildings and Conservations Areas) Act 1990. Paragraph 196 of the NPPF (2019) states that: “*where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, such harm should be weighed against the public benefits of the proposal, including its optimum viable use.*” It is not obvious, but this should be read in conjunction with the corresponding paragraph 193 of the NPPF (2019). These paragraphs both state that: “*when considering the impact of a proposed development on the significance of a designated heritage asset, ‘great weight’ should be given to the asset’s conservation.*” This wording reflects the statutory duty in sections 66(1) and 72(1).

The Barnwell Manor Wind Energy Ltd v (1) East Northamptonshire DC & Others [2014] EW Civ 137 (“Barnwell Manor”) In this seminal case (Barnwell Manor), an inspector in his decision letter held that a proposal for 4 wind turbines would have a less than substantial effect on the setting of over 40 designated heritage assets, some of which were Grade I listed. The Inspector then proceeded to carry out a straightforward balancing exercise in accordance with paragraph 134 of the NPPF (at the time). He concluded that the benefits of the proposal outweighed the less than substantial harm to the setting of the heritage assets and granted planning permission. This was appealed to the Court of Appeal in February 2014, which upheld the High Court’s decision to quash the grant of planning permission. The Court of Appeal held that in enacting section 66(1), Parliament intended that the desirability of preserving the settings of listed buildings should not simply be given careful consideration but “considerable importance and weight” when carrying out the balancing exercise. This gives rise to a strong statutory presumption against granting planning permission for development which would cause harm to the settings of listed buildings. Even where the harm would be “less than substantial” the balancing exercise cannot ignore the overarching statutory duty imposed by section 66(1). The Court of Appeal found that the inspector did not give considerable importance and weight to the section 66(1) duty when carrying out his balancing exercise.

Despite the decision in Barnwell Manor case, the decision-makers in the subsequent cases;

- (i) *R (on the application of) Forge Field Society & Others v Sevenoaks DC & Interested Parties [2014] EWHC 1895 (Admin)* (“Forge Field”);
- (ii) *R (on the application of Gillian Hughes) v South Lakeland DC & Interested Parties [2014] EWHC 3979 (Admin)* (“South Lakeland”); and
- (iii) *Jane Mordue v Secretary of State for Communities and Local Government and others [2015] EWHC 539 (Admin)* (“Mordue”),

All of the above cases 'fell into the same trap' of carrying out a balancing exercise in accordance with paragraph 134 of the NPPF (2012) (after concluding the relevant proposal will lead to less than substantial harm to designated heritage assets) without demonstrably giving "considerable importance and weight" to the desirability of preserving those heritage assets. In all three cases, the High Court quashed the grant of planning permission.

In *Mordue* in particular, this case was decided on 9th March 2015, John Howell QC (sitting as a Deputy High Court Judge) stated that in his judgment the correct interpretation of paragraph 134 (NPPF, 2012) and the first part of paragraph 132 (NPPF, 2012) requires them to be read together, and that a decision-maker who does this will comply with the obligation imposed by section 66(1) of the act as interpreted by the Court of Appeal in *Barnwell Manor*. It is considered that this is also the case with regards to the latest revision of the NPPF (2019) regarding paragraphs 193, 194 and 196.

Therefore, the above cases illustrate the need to demonstrably give "considerable importance and weight" to the desirability of preserving heritage assets and to refer expressly to the advice in both the first part of paragraph 132, and 134, of the NPPF (2012) and corresponding paragraphs 193, and 196 of the NPPF (2019) in cases where less than substantial harm to heritage assets has been identified. Moreover, paragraph 194 of the NPPF (2019) states how: "*any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.*"

If therefore, less than substantial harm is caused, then the relevant policy test is found in NPPF 196 (bearing in mind the legal duties which apply by virtue of section 66(1) and section 72(1)). In *Pugh v SSCLG*, Gilbert J considered a challenge to the grant of permission on appeal for a single wind turbine. The claimant argued that the Inspector, after finding less than substantial harm to the significance of the heritage asset, could not simply apply the test in NPPF 196. This was because of what NPPF 193 says about weight. Gilbert J rejected that argument: the NPPF takes a sequential approach. The assessment of the level of harm will involve assessment of value and significance. However, once the decision-maker has lawfully decided that the level of harm is less than substantial, then the test to be applied is that in NPPF 196 (para. 50). The decision-maker had taken the sequential approach required by the NPPF, and the decision was therefore lawful.

The Heritage Statement submitted with this application provides a detailed assessment of the significance of the concerned designated heritage assets and how they may be affected by this proposal. The Statement has been carried out by a chartered heritage consultant who has helped to shape the application and provide a detailed Heritage Statement, which accompanies this application. As such, "considerable importance and weight" to the desirability of preserving the heritage assets has been undertaken.

Public benefits are defined within Paragraph: 020 Reference ID: 18a-020-20140306 of the Planning Practice Guidance as being anything that delivers economic, social or environmental progress stating that *“Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and should not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits.”*

The benefits of the application are presented within the planning balance section in the original supporting planning statement, and as above, they flow from the proposed development and are not a ‘private benefit’. The public benefits can be secured as part of this proposal via planning conditions and a legal agreement. As such, the public benefits associated with the proposed residential development would outweigh the acknowledged limited and less than substantial harm to the setting of the concerned heritage assets. Thus, it is our opinion that the proposal would accord with the Planning (Listed Buildings and Conservation Areas) Act 1990, and corresponding paragraph 196 of the NPPF (2019), as well as the local planning policies.

Conclusions

Your Officers approach to Landscape considerations and Heritage Assets in the Committee Report is therefore fundamentally flawed and open to a significant risk of a successful challenge and ultimately the quashing of the decision if members take the same approach in considering the merits of this Outline Planning Application.

If you need any further information or wish to discuss matters further, then please don’t hesitate to contact me at this office.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Joe O'Sullivan', with a long, sweeping horizontal line extending to the right.

Joe O'Sullivan
BA HONS PGDIP URP MRTPI
Head of Planning

Enc.
Landscape Rebuttal

Blisworth:

25 September 2020

Submitted Landscape and Visual Appraisal (LVA):

The aim of the Landscape and Visual Appraisal (LVA) is to assess both the potential *landscape character* and *visual amenity* effects of the Development. The assessment also takes into account a series of comprehensive landscape mitigation measures, and these are also considered material to the findings and predications set out within Tables 3 and 4 of the submitted LVA.

With *landscape character effects* (findings on page 36 of the LVA at Table 3), we concede with the Council that since it is a greenfield site, some adverse landscape effects would be inevitable. The LVA, therefore, predicts **minor adverse** effects on *landscape character* for each of the three study areas assessed. Clearly, there are no adverse effects of a moderate level within the submitted LVA and so the Council's judgement (that partly underpins their first reason for refusal), simply cannot be derived from the submitted LVA. However, in the absence of an alternative supporting assessment, this implies the submitted LVA is a probable source of the Council's judgement. Alternatively, the Council could have simply just misinterpreted the LVA. Either way, the Council's judgement on landscape harm is misleading and appears inaccurate, since there is no clear evidence base to underpin the decisions made.

Turning to *visual amenity effects*, the LVA findings on page 38 (Table 4) provides ten representative viewpoints taken at both close and mid-distant locations. Of these ten viewpoints, there are just two (VP01 and VP02) that yield **moderate adverse** effects, which are reduced to a **moderate to minor adverse** level (with landscape mitigation). Of the remaining views, this would yield **minor adverse** (VP03), **minor adverse to negligible** (VP04) and **negligible** effects (VP5A, VP5B, VP5C, VP06, VP07 and VP08). On balance, of the ten representative viewpoints provided, two would yield minor adverse effects and the six that would yield negligible effects are mostly mid-distant views, since the Site affords a very tight visual envelope. Then taking the two remaining views that would yield moderate to minor adverse effects, these are close range where the baseline situation would hardly change since the Development would be 'well' set back from the Site boundaries and would only be partially visible to the right of the view in each case. Furthermore, the Development would be almost screened by the existing hedgerow in the foreground of the view. In summary, the Council's judgement on moderate adverse effects (that underpins the reason for refusal) is weighted towards only two views (VP01 and VP02), which appears to be wholly unrepresentative and biased.

The Council's judgement on adverse visual effects also implies that the Development would be perceived as being harmful away from the Site at a distance, when this is clearly not the case in the submitted LVA. The LVA predicts there are no adverse effects from a distance, even of a minor level. As mentioned, the Site affords a very tight visual envelope and this is clearly evidenced by the Accurate Visual Representations (AVRs) which are found within Appendix C of the submitted LVA. Furthermore, these visualisations are undertaken in accordance with the Landscape Institute current best practice guidance, *Technical Guidance Note (TGN) 06/19 Visual Representation of Development Proposals*, published 17 September 2019. Either way, the Council fails to provide alternative AVRs to substantiate their judgment on wider visibility and are also absent on whether their interpretations are drawn from the LVA, which is misleading.

Planning permission confers a substantive right, a very valuable substantive right, and is therefore by its very nature is irrevocable. The Council, as decision taker, should therefore provide a clear and

consistent evidence base to substantiate any reason for refusal. In this case, on matters concerning *landscape character* and *visual amenity*, the Council's judgement is misleading with a tilted balance towards the Site's visibility, when the Site is simply hardly visible save for close-range views from Station Road and Northampton Road and the predicted effects on landscape character, in the main, give rise to only minor adverse effects. These LVA findings, therefore, give some adverse weight to the case, but not of sufficient merit to substantiate reason a reason refusal alone, since overall the effects would not give rise to a significant level of harm.

The officer in his report concludes at para 9.24 that:

It is inevitable that there will be adverse visual and landscape effects within the site itself, within its immediate surrounding context and further away from the site at a distance in common with all development where a greenfield site changes to a residential development. However, in this case the applicant's own LVIA identifies adverse effects from several receptors and from different viewpoints. The landscape and visual impacts are adverse in varying degrees and in contravention of the Local Plan policy SS2 and R1 of the Joint Core Strategy.

Reason for refusal 1 states:

The application site lies outside Blisworth, beyond its established built-up limits and outside the settlement confines for the village as designated in the adopted South Northamptonshire Local Plan (Part 2). The site, therefore, lies within open countryside. The adopted Development Plan seeks to meet identified housing needs via an urban-focused distribution of development which concentrates development primarily in the rural service centres of Brackley and Towcester, whilst limiting development in the remainder of the rural areas in order to promote sustainable growth, reduce the need to travel and to protect the intrinsic character of the countryside and rural area. In this case, the application site is detached from the village and does not integrate well with the existing built form of the village, **the site surrounds and the character of the area and would therefore result in moderate adverse landscape and visual effects.**

The development proposed would therefore conflict with the adopted Development Plan as a whole, in particular, Policies SA, S1, S3 and R1 of the adopted West Northamptonshire Joint Core Strategy 2014 and Policies SS1, SS2, and LH1 of the adopted South Northamptonshire Local Plan (Part 2). In addition, it would conflict with paragraph 170 of the National Planning Policy Framework and National Planning Guidance. The Council can demonstrate a 5-year supply of deliverable housing sites (with the appropriate buffer), such that the policies which are most important for determining any application on this site, are not out of date and the presumption under Paragraph 11(d) of the NPPF does not apply. Given the Council's evidenced housing delivery, there is no overriding need to deliver 2 homes on this site in contravention of the Development Plan. Material planning considerations sufficient to outweigh the provisions of the Development Plan in this instance have not been demonstrated.

A short response is required to the points raised above to include within the committee speech.