

NR/140052/L0002v2



1 August 2014

By Email to: [neighbour.responses@lichfielddc.gov.uk](mailto:neighbour.responses@lichfielddc.gov.uk)

Mr J Allinson  
Planning Department  
Lichfield District Council  
Frog Lane  
Lichfield  
Staffordshire  
WS13 6YY

Dear Mr Allinson

**Representations to Application Reference 14/00516/OUTMEI  
Land north of Ashby Road, Tamworth**

I write on behalf of Mr and Mrs Wolferstan in respect of the above application, submitted on 16<sup>th</sup> May 2014 and validated by the Council on 5<sup>th</sup> June 2014. The application proposes 1,000 new houses, a new school, a leisure centre plus associated infrastructure to be constructed on a site to the north of Ashby Road, immediately adjacent to land owned by my client. This letter should be read in conjunction with my letter submitted on 3 July 2014 (Reference: NR/140052/L0001v1) in which I expressed my client's strong objection to the proposal. I have now reviewed the application and supporting Environmental Statement in full and wish to make the following points.

**Planning Policy Context**

As you are of course aware Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that in determination of any planning application, regard must to be had to the development plan, and that a decision must be made in accordance with the plan unless material considerations indicate otherwise.

**Adopted Policy**

The adopted planning policy framework in this instance comprises the Lichfield District Local Plan (adopted June 1998) and this must provide the statutory policy framework against which any application in the district is assessed.

This proposal is within open countryside as defined by the adopted Local Plan, where policy E.6 specifies that in rural areas, development will not be permitted outside the village boundaries except where the proposal accords with other policies and proposals of this Plan, and meets the policy requirements on amenity and design principles. It also requires that at

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least one of the following criteria be satisfied:

*“1. The development proposal is essential to the operation of agriculture or forestry or other uses appropriate to a rural area and cannot reasonably be located within existing settlements.*

*2. The proposal is for outdoor recreation or leisure use and associated buildings which are consistent with the essential requirements of the recreation use, or it represents the diversification of existing agricultural activity within an established agricultural unit.*

*3. The proposal involves the re-use of rural buildings in accordance with Policy D.C. 4 of the Plan”.*

It is clear that when assessed against this adopted statutory policy framework, the application proposal fails to comply. Indeed, it is telling that the applicants themselves have not made such a claim in the submission. As stated above, in such circumstances the approval of development is reliant on material considerations outweighing the adopted plan, one of which is emerging policy, which the applicants do specifically make reference to. I deal with this below.

### ***Emerging Policy***

The applicants make the assertion within the submission that this proposal for 1000 houses, school, leisure centre and associated open space and infrastructure is compliant with emerging planning policy, and that this emerging policy should be afforded weight in assessment of the proposals. We contend that this is fundamentally incorrect for a number of reasons.

Firstly, the emerging Lichfield Local Plan Strategy was subject to examination by the Planning Inspectorate in 2013 and is currently the subject of a legal challenge.

The allocation within the emerging plan, which the applicants claim to be in accordance with, is for ‘*a broad development location*’ identified as being ‘*north of Tamworth*’ and described as being capable of accommodating approximately 1,000 houses, of which it is suggested that 500 will contribute towards meeting Tamworth Borough Council’s housing requirement and 500 towards Lichfield District Council’s requirement. No site boundary is defined and no details regarding the analysis of the sites suitability for development is contained within the emerging plan. It is left for such detail to be provided in the ‘*Lichfield Local Plan: Allocation Document*’ which is currently in the very early stages of preparation.

A memorandum of understanding signed by the three neighbouring local authorities (Tamworth, Lichfield and North Warwickshire) in June 2013, established a framework for co-operation between the three authorities with regard to the delivery of a proportion of Tamworth’s future housing requirement outside of its administrative boundaries. Within this memorandum it is agreed that a broad location would be agreed for this provision, but that “*a firm allocation within Lichfield District will be identified through the Lichfield District Local Plan: Allocations Document*”. It was also agreed that the respective authorities would “*agree that the delivery of new homes within Lichfield District to meet Tamworth Borough’s needs will be informed by an Anker Valley masterplanning exercise that will inform the Tamworth Local Plan and the Lichfield District Local Plan: Allocations Document*”.

For the authority to determine an application of this scale and nature before such important details are available to guide development and have been properly consulted upon is, at best premature, and at worst, negligent. Indeed, the need for dwellings here to meet

Tamworth's requirement is itself questionable, having regard to the fact that its own Local Plan was withdrawn following significant concerns from the Planning Inspectorate regarding the soundness of its evidence base and the lack of detail regarding the deliverability of sites.

The Inspector expressed specific concerns regarding the lack of detail in the Tamworth Plan to guide the principle, timing and impact of the 1,000 homes to be built outside the Borough, including those now proposed on the application site. He went on to express concerns that the direct impact of 1,000 new homes in this location would be felt on Tamworth yet the Tamworth Local Plan provided no assessment of this, nor any detail on when, how and under what conditions the site would come forward and what infrastructure would be needed to ensure the surrounding area could cope with the impact of the development. As stated above, this was one of the reasons why the Inspector recommended that the Local Plan be withdrawn, and the Council start again in the preparation of its evidence base.

Given the location and proximity of this site to Tamworth, the impact of the development will fall predominantly on residents and businesses within Tamworth. It is essential that the proposed allocation of the site, and its potential environmental impact, is assessed robustly by Tamworth Borough Council, and the statutory consultation processes followed. In this regard, it is of grave concern that the latest version of the emerging Tamworth Local Plan, placed on deposit for public consultation from March to May 2014, only makes a brief reference to a potential scenario where land is provided in neighbouring authorities to accommodate a proportion of Tamworth's housing need. There has therefore been **no** opportunity for those most likely to be impacted by this proposal to comment upon it, and the concerns raised by the Inspector at the previous Local Plan Inquiry remain equally valid.

As such, it is evident that the emerging Local Plan and the identification of the area north of Tamworth as a potential location for development should be afforded very little weight in the determination of this planning application. The determination of the application would be premature to the emerging planning policy frameworks for both Lichfield and Tamworth, which will be required to justify the identification of the site as a potential location for development, assess its environmental impact and set out parameters and objectives for development. Until this important work has been undertaken, any grant of approval would be contrary to the development plan, premature to the proper planning of the area and open to legal challenge.

Indeed, Tamworth Borough Council has confirmed that it objects to the submitted planning application as, if approved, it will prejudice Tamworth's ability to deliver housing and meet the objectives of its Local Plan. In correspondence dated 4 July 2014 from Robert Mitchell, the Director of Communities, Planning and Partnerships at Tamworth Borough Council, he sets out the Council's clear objections to the proposal, and states that *"It is clear that this proposal would also pre-empt or prejudice the emerging Local Plan for Lichfield and that the emerging broad location which this proposal relies upon is un-sound due to the new evidence contained in the BWB report."* He goes on to reinforce the points made earlier in this letter, that the proposal would predetermine future decisions on scale, location and timing of development elsewhere in Tamworth and Lichfield. This same position has been adopted recently by Lichfield District Council in refusing an application for 750 new dwellings at land north east of Watery Lane (north of Lichfield), with the Council stating within the reasons for refusal that *"the application is premature and by reasons of its strategic scale, would undermine the Council's emerging spatial strategy"*. There has been no material change in

circumstances since the refusal of this application to justify the Council adopting a different position in the determination of the current proposal at Arkall Farm.

Having regard to the above, for the applicants to suggest that this is a policy led proposal is disingenuous. When assessed against the adopted development plan, as required by Section 38(6) of the Planning and Compulsory Purchase Act, the only legitimate decision should be one of refusal.

### **Site Specific Considerations**

Notwithstanding the above, my client has grave concerns regarding the impact of the proposed development on the immediate area. Notably, the greatest impact of this proposal would fall upon residents of Tamworth Borough, not Lichfield District, which will receive the New Homes Bonus and Section 106/Community Infrastructure Levy monies that may result from the delivery of development at this site.

I deal with each area of concern in turn below.

### **Highways**

My client shares the view of many local residents and businesses in the immediate area, that the proposed development would have an unacceptable and detrimental impact on highways safety and congestion on the network.

The Tamworth Future Development and Infrastructure Study (July 2009) raised issues regarding the identification of the application site as an appropriate location for development, stating that *“with regards to the highway impact, for this site to be developed a solution to the significant highway constraint that exists as part of the junction of the A513 and the B5493 needs to be found”*. As mentioned above the Local Plan Inspector, in his examination of the Tamworth Local Plan, also expressed concern about the ability of the local highway network to accommodate proposed growth in this location. No available adopted or emerging policy sets out how the existing infrastructure should be enhanced to accommodate the substantial increase in cars on the local highway network that would arise from this development, and other residential developments in the area.

The plans submitted are indicative only, with access reserved for future determination. In these circumstances it is impossible to robustly assess whether or not the site can indeed be accessed safely having regard to the scale of development and the potential number of vehicular movements in and out of the site. The detailed masterplanning of the site would fully explore potential means of suitable access to ensure that any development coming forward could be accommodated in highway capacity terms and accessed safely. It is deeply concerning that this application is being assessed in advance of this detailed assessment and site analysis.

### **Ecology**

Paragraph 118 of the NPPF states that in the determination of planning applications, local planning authorities should aim to *‘conserve and enhance biodiversity’*. It continues to state that *“if significant harm resulting from a development cannot be avoided (through locating an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused”*.

The Ecological Appraisal chapter of the Environmental Statement identifies several species of conservation importance at the site, including but not limited to, various species of bats, badgers, brown hares, barn owls and numerous species of breeding birds. Numerous bird species have also been recorded at the site which receive legal protection under Schedule 1 of the Wildlife and Countryside Act (1981) and/or are considered to be those that are of conservation concern, in terms of being listed as UK BAP Priority Species or Red/Amber Listed Species of Conservation Concern.

The hedgerows on the site are used by breeding birds and by navigating and foraging bats. They are therefore critically important in a local ecological context, as well as in landscaping and visual impact terms. The ponds within and immediately adjacent to the site are also considered to be of local ecological value and make important contributions to the biodiversity of the area. Watercourses also provide wildlife corridors.

It is not considered that the applicants have satisfactorily demonstrated how the loss of these features will be mitigated against. The report asserts that mitigation against harm to biodiversity and protected species can be satisfactorily accommodated within the site, but only an indicative masterplan is submitted at this stage, with an illustrative layout.

The loss of these features within the site will undoubtedly cause harm to these species. Indeed, it is acknowledged in the Ecological Appraisal that *“the loss of farmland is considered likely to displace many of the breeding birds recorded”*. It goes on to state that, even if mitigation measures are adopted, the loss of farmland to development is also likely to displace the brown hares present at the site.

It is my clients' view that the importance of the site in terms of ecological value and the contribution it makes to biodiversity of the local area has been underestimated. It has not been satisfactorily demonstrated that the harm caused can be adequately mitigated against. In this context, it is considered that the applicant has failed to demonstrate compliance with paragraphs 109 and 118 of the NPPF and that the application proposals will result in significant harm to important local biodiversity.

## **Heritage and Design**

Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard shall be paid to the desirability of preserving listed buildings or their settings, or any other features of special architectural interest. Paragraph 132 of the NPPF states that *“Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification”*. Arkall Farm is a Grade II Listed Building, and can currently be seen from Ashby Road. The indicative plans submitted with the application do not convincingly demonstrate that important views will be protected. The submission of the application in outline only, with all matters including design layout and landscaping reserved, fails to demonstrate how the character and setting of this important heritage asset will be preserved or enhanced.

Key principles of the NPPF include to *“seek high quality design”*, *“recognise the intrinsic character and beauty of the countryside”* and *“conserve heritage assets in a manner*

*appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of this and future generations.”*

It is considered that the proposed development does not accord with the NPPF, or Policy D.C.1 of the adopted Lichfield District Local Plan with regard to heritage and conservation and should therefore be refused on these grounds.

### **Landscaping and Visual Impact**

The Landscape and Visual Impact Assessment submitted in support of the application demonstrates poor attention to local research and an apparent disregard to the importance of neighbouring listed properties and designated sites. It appears to be an almost entirely desk-top based assessment resulting in a serious under representation of the significant visual impact this scheme will have on neighbouring properties, including a Grade II listed building, as well as views from the local Public Rights Of Ways and surrounding highway network.

Representations highlighting the errors and omissions within the LVIA have already been submitted by my client, a qualified landscape architect, and a copy of this letter is appended again to this representation for your ease of reference and consideration.

Having regard to the sensitive location of the site and the inevitable visual impact concerns that a development of this size and scale presents, it is concerning that this application has come forward for determination prior to the full assessment and masterplanning for the area. Again, these are considered to be legitimate grounds on which to refuse this application.

### **Flooding**

The Flood Risk Assessment (“FRA”) submitted in support of the application claims that *“there are no known records of flooding from any source within the site and the correspondence from key stakeholders has confirmed the low level of flood risk at the site from all sources.”*

However, Environment Agency guidelines require that *“it is vital that local knowledge and information is used to interpret maps”*. The submitted FRA is based on generic data and available records, but doesn’t take into account individual instances of localised flooding that are becoming more frequent in the area. My clients have experienced very high water levels in the locality following heavy rainfall in recent years, and are seriously concerned that any further development will impact upon surface water drainage in the locality and increase the likelihood of flooding in the future.

You will see from representations submitted by other local residents and businesses that experiences of flooding in this area are becoming more frequent and more severe. The FRA makes reference to the ‘east and west’ ditches at the site, which converge at Syerscote Lane. Following heavy rainfall this is often impassable, particularly where the ditches drain to a culvert under the road at Watery Gate, resulting in homes and businesses becoming completely cut off. Flood waters have risen to within 6 inches of breaching Watery Gate Cottage (which is owned by my client Mr Wolferstan) on many occasions. Any built development at the application site will result in increased volume of surface water run off

and will undoubtedly exacerbate an already vulnerable situation. This is the 'local knowledge and information' that the Environment Agency acknowledge as forming a vital component when assessing flood risk, yet it has not been taken into account in the submitted FRA.

You may be aware that the insurance market applies different tests to properties in relation to determining the insurability of properties for flood risk, and setting insurance premiums. The harm that this proposal at Arkall Farm would cause on the existing properties and businesses in the area in terms of flood risk is clearly an important material consideration in the determination of the application and an issue I would urge officers to give serious consideration to in the assessment of this proposal.

### **Conclusions**

When objectively assessed against the policies of the adopted development plan, the application proposals clearly fail to comply. In such cases, Section 38 (6) clearly states that a proposal should be refused unless material considerations indicate otherwise. This letter has demonstrated clearly why the emerging designation of the area as a location for development should not be afforded weight or regarded as a material consideration in the determination of the application.

Even if the perceived shortfall in housing land supply is taken as a material consideration and it is identified that development is necessary to deliver these new homes, such a need must always be balanced on a case by case basis against the harm that arises. In this case, the harm caused by this proposal to the surrounding area is so significant that the only legitimate decision can be one of refusal. As such, having regard to the points raised above, on behalf of my clients I respectfully request that this application be refused.

I trust the above is in order, and that any correspondence expressing the views of local residents will be given considerable weight in the consideration and determination of such a major development proposal in this sensitive location.

Yours sincerely



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