

Project No: 33313549600

Project: Hither Green Lane

Date: 1st August 2023

To: Paul Lester

From: Kathryn Ventham

Subject: Hither Green Lane – planning application

Dear Paul,

Further to recent email exchanges in respect of the abovementioned site, we respond on a number of items as follows:

Open Space Assessment

1. Thank you for providing a copy of the latest Open Space Assessment published this month. We summarise our view on this below, however as previously discussed, it does support our previous conclusions in this regard.
 - The site is located within the Abbey Ward boundary.
 - Section 3 provides an overview of the supply of open space across the Borough, its type, accessibility and distribution.
 - Within Section 3, Figure 2 of the Open Space Study shows all open spaces in Redditch Borough by typology, with the boundary colour denoting accessibility.
 - On Figure 2, the application site is shown as an ‘outdoor sports facility’ with a red boundary - which denotes limited accessibility.
 - Section 3.3 provides an overview of unrestricted open space (so excludes the site) and table 11 demonstrates the variation between wards in terms of supply:

Ward	Population	Area (Ha)	Hectares per 1,000 population
Matchborough	6,054	90.38	14.93
Abbey	6,620	91.02	13.75
Winyates	8,184	102.73	12.55
West	5,823	61.82	10.62
Central	6,844	64.68	9.45
Astwood Bank & Feckenham	6,029	56.25	9.33
Headless Cross & Oakenshaw	8,295	71.77	8.65
Borough-wide average	85,261	732.18	8.59
Lodge Park	5,591	43.04	7.70
Batchley & Brockhill	8,783	51.66	5.88
Greenlands	9,329	45.51	4.88
Crabbs Cross	5,647	23.05	4.08
Church Hill	8,062	30.26	3.75

Table 11 Unrestricted Open Space – Current Ha / 1,000 population by Ward

2. Abbey ward contains the second largest supply of unrestricted open space, with only Matchborough having a higher no. of hectares per 1,000 population. Abbey ward also contains higher hectares per 1,000 population than the overall average for Redditch Borough. Paragraph 3.3.14 advises that one of the main reasons for this is due to the Arrow Valley Park.
3. Therefore, the main difference from the previous Open Space Study is that an initial distinguishment is made between the open spaces with 'limited accessibility' and those that which have 'unrestricted' access. The open spaces with 'limited accessibility' have then been excluded from the supply calculations in section 3 of the report.
4. Importantly (as demonstrated by Figure 9) the application site is now excluded from the supply of Outdoor Sports Facilities and the reasoning for this is set out at 5.3.4:

“Golf courses and golf driving ranges where these are privately owned have been excluded for Local Standards relating to Outdoor Sports Provision since they have ‘limited’ accessibility (see 5.3.5 below).”

5. The study therefore demonstrates that, even without the golf course, Abbey ward has one of the highest provisions of open space across Redditch Borough. The fact that the site has also been excluded from the supply also further illustrates our previous arguments that the site is currently of limited open space value due to the lack of public access and therefore the proposed development will provide a benefit in that there will be areas of 'unrestricted' POS for use by future occupiers as well as the wider public. Furthermore, it is now clear that the use of part of the site for residential use will have no impact on the supply of outdoor space.

5 Year Housing Land Supply

6. We comment on the Council's latest published housing land supply position (1st April to 31st March 2028). Firstly, it is important to note that the Local Housing Need (LHN) has been calculated using the Standard Method (which is of particular relevance in the following section when we consider the application of the tilted balance).
 7. The Council's position is 9.83 years supply. Whilst the Council have not published sufficient information with the Housing Land Supply report to enable a detailed assessment to be undertaken – we note that sites listed within Table 9 should not be included in the absence of any evidence as a matter of principle as per the definition of deliverable in the NPPF / PPG and the many appeal decisions which confirm this. In which case, the Council's starting position should actually be 7.88 years.
 8. The bulk of the Council's supply is made up of the delivery of Brockhill East and Foxlydiate however the Council has failed to provide any detail to substantiate the delivery rates / timescales. To quote Inspector Harold Stephens (APP/W3520/W/18/3194926)
- 69. *The up-dated PPG on Housing and economic land availability assessment sets out guidance on what constitutes 'deliverable sites' and covers the evidence that a site with outline planning permission is expected to have in support of its inclusion in the supply. The PPG places great weight on the adequacy and sufficiency of consultation with those responsible for delivering dwellings. It is noteworthy that in this case, the Council has failed to adequately demonstrate it has done so. An assessment of the Council's AMR against the updated***

PPG reveals that the AMR falls substantially short of producing the evidence that a LPA is expected to produce.

70. Furthermore, the Council has had to provide additional information to demonstrate that sites are deliverable as and when it has surfaced throughout the weeks and months following the publication of the AMR in an attempt at retrospective justification. It is wholly inadequate to have a land supply based upon assertion and then seek to justify the guesswork after the AMR has been published.

9. This is wholly applicable to RBC's AMR – there is a total absence of any data to justify the conclusions reached.
10. In the event therefore that the supply from these two sources are deducted from supply; then the Council's starting position would reduce to only 589 dwellings and 3.54 years supply.

Planning Assessment

11. Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the Act") states that:

"If regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise".

12. In the event that the Council conclude that there is a conflict with the Development Plan (which we dispute), firstly it is important to remember that in assessing compliance with the Development Plan, it is necessary to account of the case of *Cornwall Council v Corbett* [2020] EWC Civ 508 and the Court of Appeal findings which confirmed the Council's approach of identifying a policy conflict (in that case a conflict in respect of the harm to an Area of Great Landscape Value) but concluding that there was compliance with the Development Plan as a whole. The Court of Appeal noted that Local Plan policies can pull in different directions and that the weight to be given to policies and to determine compliance with the Development Plan as a whole, is a matter of planning judgement. It is our view, that this clearly confirms that the compliance with the Development Plan does not mean compliance with every policy therein, and that a failure to comply with a policy within the Development Plan does not automatically mean that the proposals are not in accordance with the Development Plan.

13. It is also necessary to have regard to paragraph 11 of the NPPF where it is stated that:

- d) ***where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, granting permission unless:***
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁷; or***
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.***

14. There are no examples within footnote 7 of the NPPF which would apply to this site, and which

would otherwise disapply the presumption. It therefore falls to determine whether the policies which are most important for the determination of the application are out of date; and thus whether the tilted balance applies regardless of the Council's housing land supply position.

15. There are two circumstances when policies can be deemed out of date. The first being when the Council cannot demonstrate a 5 year supply of housing.
16. The second is that the policy is out of date as it has been overtaken by things which have taken place since the plan was adopted. In this regard, in 2020, the Court of Appeal held that the analysis of the meaning of 'out of date' in the former NPPF 2012 by Lindblom applied in the same way to the 2020 NPPF in that policies are out -of- date (for purposes other than those that relate to Footnote 8 of para 11(d) of the NPPF) if they have been: "...overtaken by things that have happened since the plan was adopted, either on the ground or through a change in national policy, or for some other reason, so that they are now out-of-date".
17. With regard to this application, the current housing requirement as set out in the ALP is out of date and the Council themselves accept this, as referenced above, as the Council have moved from the ALP target to the LHN figure.
18. In dealing with the operation of the 'most important policies, we then turn to the judgement of Wavendon Properties Ltd and SoS for Housing Communities and Local Government and Milton Keynes Council [2019] EWHC 1524 Admin. Paragraph 56 of the judgement sets out the approach to be taken in requiring decision-takers to consider individually whether policies could be out-of-date (which I have undertaken above), and form an overall view as to whether the 'basket' of policies are out of date as part of a planning judgement.
19. The most important policies for determining this application, when taken in the round, should clearly be considered out of date. We say this in the context of the housing policies; settlement boundaries and now open space designations (based on the latest open space document) – which go to the heart of the principle of the acceptability of the development, being out of date.
20. Therefore the tilted balance applies regardless of the Council's housing land supply position and it falls to demonstrate that any identified harm significantly and demonstrably outweighs the benefits.
21. In the context of there being a national housing crisis (for both market and affordable housing), the provision of housing should be afforded very substantial weight in the planning balance. Whilst there is inevitably some harm with the development of a greenfield site, the LVIA confirms the landscape effects of the proposed development would be localised and concentrated on the site itself however landscapes outside of the site would be only relatively minor and neutral effects.
22. With regard to visual effects – higher and moderate visual effects would be localised and focused on areas close to the application site. Major / moderate effects would occur for walkers on the permissive footpath, but all other visual effects would be moderate or less.
23. Otherwise there is no objection from any statutory consultees and importantly there would be no loss of outdoor open space (as identified in the Council's updated open space assessment) and no loss of golfing facilities as an 18-hole course would remain and the Applicants have committed to condition in this regard.

Summary

24. As set out in the submitted Planning Statement, the application is in accordance with the Development Plan and therefore should be “approved without delay” as per paragraph 11 of the NPPF. However in the event that the Council identify some conflict with the Development Plan, we consider that there are ‘other material considerations’ which dictate a decision other than one which is in accordance with the Development Plan (namely the national housing crisis and the retention of existing golf facilities in a more efficient and playable layout); and for the same reason, we also consider that the benefits of the development clearly and demonstrably outweigh the harm. It is therefore our view that all routes point to the grant of a planning permission.

Kathryn Ventham
Planning Director

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