

IN THE MATTER OF:

**TOWN AND COUNTRY PLANNING ACT 1990 – Section 78
PLANNING AND COMPULSORY PURCHASE ACT 2004
AND AN APPEAL BY**

**Lioncourt Strategic Land Limited
Land At (Os 8666 5944) Dilmore Lane Fernhill Heath
Residential development for up to 130 dwellings (Use Class
C3), including vehicular access from Dilmore Lane, pedestrian
and cycle links, public open space, car parking, drainage,
landscaping and other associated infrastructure. All matters
reserved except for access.**

LPA Reference: W/23/01323/OUT

PINS Reference: APP/H1840/W/24/3346731

OPENING SUBMISSIONS ON BEHALF OF THE APPELLANT

1. This appeal concerns an application by Lioncourt Strategic Land Ltd ('the Appellant') to construct residential development (of up to 130 dwellings), public access, open space, parking, landscaping and associated drainage and development infrastructure on land at Dilmore Lane, Fernhill Heath ('the site'). The proposal is in outline, with all matters reserved save for access.
2. It is the Appellant's case that this application should have been granted by the Council. None of the statutory consultees objected to the proposals, and it was recommended for approval by the professional officers of this Council in a clear and comprehensive Report to Committee ('RTC').

3. Despite this strong recommendation for approval, the members of this Council decided to refuse the application, citing two reasons for refusal ('RFR'). The second RFR cites absence of a signed s.106 legal agreement, but this was a purely procedural reason because a s.106 was always going to be forthcoming, and this document is now agreed between the parties. This RFR has fallen away.
4. The first RFR raises three objections. The second and third of these allege harm arising from the loss of best and most versatile agricultural ('BMVAL') and adverse impact on a listed heritage asset (Tappenhill Farmhouse). However, following the lodging of this appeal the Council has accepted and now agrees that these harms are not sufficient to refuse planning permission. The dispute at this Inquiry focuses solely around its first objection, namely that the proposal lies outside of the settlement boundary (a breach of Policy SWDP2) and that it would fail to preserve and enhance the open countryside and character of the area (in breach of Policy SWDP25).
5. The Appellant submits that this outstanding objection should not detain this inquiry for long.
6. The Appellant's case in opening can be put very briefly: this is an LPA that can demonstrate only a 2.78 year supply of housing, the development plan ('DP') is out of date, its emerging plan is far from being adopted and can be given only limited weight, and if the Govt. goes ahead with its planned changes to the planning system the housing needs in this district will almost double.
7. None of this is contentious, it is all agreed and accepted by the Council, and the legal and planning policy consequence of this set of facts are also agreed. These are that the settlement boundary policy, which forms the mainstay of the Council's objection, is out of date, and that Policy SWDP1 is engaged. This is a policy which mirrors the NPPF's presumption in favour of sustainable development, and requires that planning permission be granted unless the adverse impacts of the proposal significantly and demonstrably

outweigh its benefits.

8. Time and time again both planning inspectors and the Secretary of State have confirmed that in such circumstances settlement boundaries should be given limited weight in decision-making, because their continued enforcement undermines the Govt.s central objective of delivering the housing that this country so desperately needs. In this case the matter is even clearer because, as we shall explain in more detail in the evidence and in closing submissions, the DP itself, when read and applied as whole, permits development outside settlement boundaries in circumstances where the Council cannot demonstrate a 5YHLS. There is therefore no breach of the DP arising from the location of this development outside of the settlement boundary.
9. That leaves only one aspect of disagreement, which is whether this proposal fails to preserve and enhance the open countryside character of this site. The Appellant accepts that there will be change to the site and its immediate environs, but that is inevitably the case when a greenfield site is developed for what is a significant quantity of much needed housing and affordable housing. It is the Appellant's case that Policy SWDP 25 in fact complied with, because this proposal causes no unacceptable harm the character of the area.
10. However, even if it were concluded that there is breach of this one policy, this does not equate to a breach of the DP as a whole. Policy SWDP1 requires the striking of planning balance, and that balance that starts with a very strong presumption in favour of granting planning permission.
11. The Appellant submits that it is not reasonable to conclude that the level of harm in this case, which is the minimal and unavoidable harm that arises from developing any greenfield site, significantly and demonstrably outweighs all of the benefits. The benefit of addressing what is on any measure a significant and substantial shortfall in HLS is, on its own, a benefit that attracts significant and substantial weight and outweighs the harm identified by the Council.

12. For all of these reasons this is a development that accords with the DP, and should be granted without delay, as per Govt. policy at NPPF para.11(c).

13. For all of these reasons we will in due course be asking that this appeal be allowed and planning permission be granted.

Satnam Choongh
Number 5 Chambers

22 October 2024