

LAND NORTH OF COTE ROAD, ASTON, BAMPTON

LPA ref: 22/00986/FUL

PINS ref: APP/D3125/W/23/3317512

CLOSING SUBMISSIONS

On behalf of Aston, Cote, Shifford and Chimney Parish Council

Introduction

1. The Appellant seeks planning permission for a residential development involving 40 affordable homes on a field which adjoins the built up area of the village of Aston (“the Site”).
2. It is a striking feature of this appeal that, despite Aston being classified as a village within the settlement hierarchy, and thus suitable only for limited development, it has already been the location of a significant (relative to its size) amount of new housing since the start of the plan period. This has had a harmful, urbanising effect on the eastern part of the village, put increased strain on the already woefully inadequate existing infrastructure, and failed to result in any increase in the services and facilities available to residents (existing and new).
3. That recent development is the essential context to the view of the Parish Council, members of the Lowlands Planning Committee, and the many local residents who have objected to the scheme both in writing and through their attendance at the inquiry, that this is not a sustainable location for further development. As such the appeal should be refused.
4. These closing submissions set out the Parish Council’s case by reference to: (1) landscape and heritage impacts; (2) flood risk and drainage; (3) transport; (4) compliance with the development plan; and (5) other material considerations.

(1) Landscape and heritage impacts

5. The Parish Council supports the LPA’s case and evidence in respect of these two interrelated main issues. It has also sought to supplement that case through evidence of local lived experience and by emphasising the cumulative effects of the appeal proposals when considered alongside other recent development in the village. It is submitted on behalf of the Parish Council that the effect of such development has been to enhance, rather than reduce, both the landscape and heritage significance of the appeal site.



2021 OS Map¹ (left) & Aerial Photograph 2021-2022² (right)

6. As can be seen from the above images, and as the Inspector will appreciate on his site visit, the Site is adjoined on three sides by open space: the village allotments and a field to the west, open fields to the north and the public open space of the adjacent Marsh Furlong development to the east. It provides an essential, and final, connection between the village’s historic core and the associated open countryside to the north-east.
7. Accordingly, in addition to the visual impacts that will arise to views of the site (and beyond) from the PROW to the north and the public open space to the east, the development will result in a harmful “closing off” of the agrarian setting to the village. For that reason, the Parish Council supports Mr Wood’s conclusions on behalf of the LPA as to the extent of

¹ Mr Bourn’s fig.9.

² From Mr Wood’s Appendix 1a.

landscape and heritage harm that will arise from the scheme and the weight which ought to be accorded thereto in the overall planning balance.

8. That evidence has demonstrated a breach of:

8.1. The general principles in Policy OS2 that development should “Be of a proportionate and appropriate scale to its context having regard to the potential cumulative impact of development in the locality”; “Form a logical complement to the existing scale and pattern of development”; and “As far as is reasonably possible protect or enhance the local landscape and the setting of the settlement”. Contrary to what is said by the Appellant, it is not the Parish Council’s case that the landscape harm arising from the proposal would arise from development on any open field. Rather, it is harm which arises as a result of the particular significance which the appeal site has taken on, in view of the other development which has taken place around it. As Mr La Forte explained, the appeal scheme cannot be considered a “logical extension” to Marsh Furlong in circumstances where: (1) it doubles the size of the existing development; and (2) demonstrably projects into open countryside.

8.2. Policy EH2 which requires new development to “conserve and, where possible enhance the intrinsic character, quality and distinctive natural and man-made features of the local landscape”. The Parish Council adopts Mr Wood’s position that there would be significant adverse landscape and visual effects arising from the proposals contrary to this policy. However, even on the Appellant’s case, there would be some harm to the landscape in breach of this policy.

8.3. Policies EH9, EH10 and EH11. Reading these policies together, the agreed heritage harm which will arise from the proposals requires “clear and convincing justification”. In this context, Mr Bourn accepted that the appeal site is now the only remaining link between the Aston Conservation and the wider agricultural setting to the north-east of the village. This supports Mr Wood’s position (adopted by the Parish Council) that the development will cause harm to the CA that is at the higher end of the LTSH scale. The Parish Council supports WODC’s case that such harm is not outweighed by the public benefits of the proposal and as such there is conflict with this policy.

(2) Flooding and drainage

Flood risk and the FRA

9. Beginning with flood risk, Mr Bennett accepted that this was a serious issue, the importance of which is recognised in both local and national policy. Such policies require development to demonstrate that they will not increase the risk of flooding on site or elsewhere which, he accepted, needs to be done through appropriately robust evidence. Yet, in this case, the Appellant has produced a flood risk assessment which it is now acknowledged should have been more robust. Fundamentally, that FRA incomprehensibly failed to recognise that the site is in fact at risk of both surface and groundwater flooding.
10. Mr Bennett, not being the author of the FRA, was unable to explain these omissions in the assessment. Instead, he sought to reduce the significance of these failures, for example, describing “a small amount of low risk flooding along the boundary of the Appeal Site and extending south in Foxwood Close”. It is submitted that the flooding shown in the photographs appended to Mrs Smith’s evidence cannot reasonably be described in that way.



Photos of flooding on 31st January 2021³

³ Mrs Smith’s Appendix 2, photos 14 & 15.

11. Mr Bennett sought to argue that this surface water flooding occurred on the lowest point of the site, where the attenuation swale is proposed, such that the development will result in betterment. Ms Dinnen similarly gave evidence that the scheme had been designed such that the swale was located at the lowest part of the site. However, the proposed site plan [CD A15] confirms that the swale will be located in the north-eastern corner of the Site, not the southern boundary.
12. As for the risk of groundwater flooding, despite being identified in a previous FRA prepared by the same company in respect of the 2016 application for the same site,⁴ and being evident on publicly available flood mapping,⁵ this was also ignored by the submitted FRA. As a result, no investigations were carried out in respect of groundwater until the “Phase II Site Appraisal” carried out in November 2022. Contrary to the recommendations in the 2016 FRA, that appraisal comprised a one-off assessment of groundwater levels, without any monitoring over different rainfall scenarios.⁶
13. Accordingly, Mrs Smith’s evidence was that the FRA has failed to recognise and investigate the risk of flooding that was identified in the 2016 application and, consequently, there can be no certainty that the proposed flood risk strategies will be successful in avoiding the risk of flooding either on site or elsewhere. If her evidence on this point is accepted, it would represent a breach of Policy OS3, which mandates “minimising the risk of flooding” and EH7, which requires that “all sources of flooding” be adequately addressed.

Drainage

14. Turning to foul water drainage, Mrs Smith has shown, in particular through her video evidence, the very unpleasant consequences of the inadequate sewage infrastructure in the village. Despite these very obvious issues, the lived experience of Aston residents has been of Thames Water promising to investigate and make necessary upgrades to allow new development to come forward, but never actually carrying out any works. The result has been more homes connecting to an already overstretched, historic sewer system and more frequent sewage outflows into the street, including outside Mr La Forte’s home.
15. The view of residents is shared by District Councillor Maynard, whose evidence was that the condition proposed by Thames Water in respect of this scheme is inconsistent with the

⁴ Appendix 3 to Mrs Smith’s supplemental proof.

⁵ Appendix E to Mr Bennett’s Technical Note.

⁶ See Mrs Smith’s supplemental proof, para 14.

position they had previously agreed with the District Council.⁷ He urged that permission only be granted on the condition that, prior to occupancy: (1) network capacity is established between Marsh Furlong and the Bull Street Pumping Station, between Bull Street PS and Bampton Road PS, and between Bampton Road PS and Bampton STW; and (2) the capacity of the Bampton Road STW be increased to at least 37.7l/s.

16. The Parish Council recognises that the planning system cannot regulate Thames Water's activities, and that under the Water Industry Act, TW is obliged to allow the Appellant to connect to the public sewer system. However, it urges the Inspector, if he grants permission, to make the condition concerning foul water drainage as precise and enforceable as possible, to ensure that no further development comes forward without these essential upgrade works taking place.

(3) Transport

17. The Transport Planning Associates Technical Note appended to Mr La Forte's proof detailed four concerns in relation to transport matters:
 - 17.1. Development impact;
 - 17.2. Parking provision (cycle and car);
 - 17.3. Sustainability; and
 - 17.4. The CTMP.
18. The first is a short point arising from the Appellant's use of the TRICS database analysis from the 2016 application at the site and from the application for the Marsh Furlong development. That data was used despite comments from OCC that it was "unrealistic and underestimated the number of journeys" likely to be generated by the scheme.⁸ Mrs Spencer's answer to this was that affordable housing schemes generally generate a lower trip rate, such that if the analysis were run again, it would result in a lower figure. She accepted, however, that there was no specific evidence to support that comment before the inquiry. In any event, this flawed approach raises concerns over the quality of the evidence accepted by OCC as highway authority and put before this inquiry.

⁷ ID05.

⁸ CD K3.

19. The second point concerns the updated parking standards adopted by OCC since the application was made. The Appellant accepts that the Inspector needs to determine the appeal on the basis of the policies in force at the time he reaches his decision. They also accept that the scheme is not compliant with the standards currently in force due to an overprovision of car parking spaces and under provision of cycle parking spaces. This represents a breach of Local Plan Policy T4. While the Appellant asserts that this breach can be addressed by condition, as noted during the Conditions RTS, this would require an amendment to the current site layout in relation to car parking, and finding space for over 100 new cycle parking spaces with the potential for consequent design impacts.

20. The third point is critical to the Parish Council's case that the scheme does not comply with the local and national policy imperatives to minimise the need to travel by private car. Whatever the Appellant's assertions to the contrary, the clear evidence of those who live in Aston, including Mr La Forte, is that this is a village with limited services, facilities and opportunities for walking, cycling and public transport:
 - 20.1. The village has a community run shop, open for limited hours; a pub, a church, a village hall and a pottery shop with café for tourists. Mr La Forte's evidence was that services in the village have been in steady decline over recent years, despite new residents moving into the recent housing developments.

 - 20.2. The only public transport option is a 2-hourly bus service on Monday-Saturday that does not run in the evenings. OCC expressly recognised that "the existing public transport services available to potential residents is limited".⁹ They therefore required the Appellant to make a s106 contribution which it was said would be put towards "improved daytime frequency", "an evening service" and "a Sunday service". The TPA Technical Note questions the ability of the financial contribution proposed to have any meaningful impact on the frequency of the bus service. Further, in response to questions from the Inspector at the s106 RTS, OCC's representative – Ms Coats – stated that the contribution would simply be added to a pool used to maintain existing service levels, thus not being put towards improvements at all. Given OCC's view that improvements to the service were required to "help make the service a more realistic and attractive option for new residents" and "help make the development consistent with the objectives of the

⁹ CD K3.

NPPF, particularly paragraphs 110 and 112”, this change of stance is concerning. Indeed, Ms Coats has since confirmed, by email dated 23rd June 2023, that the Appellant’s contribution “would be used to maintain the current level of service” and there “is currently no prospect of the service level increasing”, in direct contradiction of their earlier response.

- 20.3. As for walking and cycling, the Inspector will be able to reach his own view on the accessibility and attractiveness of these forms of transport given the facilities in the village and on the surrounding roads.
21. In sum, Mr La Forte’s evidence, supported by the TPA Technical note, is that residents of the proposed scheme will be reliant on private cars for their day-to-day travel and, accordingly, the proposals are in breach of Local Plan Policies T1 and T3.
22. The fourth point, relating to the submitted CTMP [CD A35], is of very significant concern to the Parish Council and to the residents of Marsh Furlong who have expressed their views both in writing and orally at the inquiry. Whatever the swept path analyses might show in theory, the reality on the ground is going to be serious disturbance of the residents of Marsh Furlong going about their day-to-day lives. The evidence detailed in the TPA Technical Note is that the submitted CTMP fails to consider how to avoid conflict between construction traffic and the residents of Marsh Furlong, suggesting a lack of concern for the impacts on them. The author of the Technical Note, ultimately concludes that the proposed routing of construction traffic is unsafe.¹⁰
23. To address this concern, the Parish Council has proposed a Grampian condition which could be imposed, were permission to be granted, providing for an alternative construction access route, avoiding Marsh Furlong.

(4) Accordance with the development plan

24. Under s.38(6) of the Planning and Compulsory Purchase Act 2004 and s.70(2) of the TCPA 1990, the starting point for consideration of the appeal is the adopted development plan. The Inspector will therefore need to begin by reaching a view as to whether the proposals accord with that plan taken as a whole. In this regard, Ms Dinnen agreed a number of points in relation to the proper approach:

¹⁰ Para 6.15 of the TPA TN at Appendix 1 to Mr La Forte’s Proof.

- 24.1. Consistency with the DP is something which falls to be assessed as a first stage before the decision-maker looks at other material considerations.
 - 24.2. Despite the wording of Policy OS1, which incorporates the presumption in favour of sustainable development from the NPPF, it is not the case that, because WODC cannot demonstrate a 5YHLS, one can simply disregard the other policies in the DP.
 - 24.3. Where relevant “strategic” policies are breached, it will be difficult to conclude that the proposals are in accordance with the plan as a whole.
 - 24.4. Relevant strategic policies in this case include OS1, OS2, H1 and H2.
25. The Parish Council submits that it is readily apparent that the scheme fails to comply with Policies OS2 and H2, which must in any event be read together. That is because the proposals, seen in the context of other development in the village in the plan period, cannot sensibly be considered to be “limited development which respects the village character”, as required by Policy OS2. Further, the proposals would conflict with a number of the general principles set out in Policy OS2. For the reasons set out above the proposed development would not:
- 25.1. Be of a proportionate and appropriate scale to its context having regard to the potential cumulative impact of development in the locality;
 - 25.2. Form a logical complement to the existing scale and pattern of development and/or the character of the area;
 - 25.3. Be compatible with adjoining uses and not have a harmful impact on the amenity of existing occupants;
 - 25.4. As far as is reasonably possible protect or enhance the local landscape and the setting of the settlement/s;
 - 25.5. Not involve the loss of an area of open space or any other feature that makes an important contribution to the character or appearance of the area;
 - 25.6. Be provided with safe and convenient pedestrian access to supporting services and facilities;

- 25.7. Not be at risk of flooding or likely to increase the risk of flooding elsewhere;
- 25.8. Conserve and enhance the natural, historic and built environment;
- 25.9. Be supported by all necessary infrastructure.
26. Development in breach of the general principles in Policy OS2, is automatically inconsistent with the distribution of housing permitted under Policy H2. However, the Parish Council contends that there is a further breach of Policy H2, in that “clear and convincing evidence” has not been demonstrated that it is necessary for the proposals to come forward on undeveloped land adjoining the built up area in order to meet identified housing needs. It is the Parish Council’s case that in the context of Policy H2, “identified housing needs” should be interpreted as “identified local housing needs” at a village level. That interpretation is supported by Policy CA5 which states that the focus on new housing in the Carterton sub-area, outside of Carterton itself, “will be limited to meeting local community and business needs”.
27. These breaches of Policies OS2 and H2 alone are sufficient to demonstrate a failure to accord with the Development Plan as a whole.
28. However, and as detailed above, a number of other Development Plan policies would also be breached by the proposals: OS3, OS4, T1, T3, T4, EH2, EH7, EH9, EH10 and EH11.
29. Those additional breaches further support a conclusion that the proposals are not in accordance with the Development Plan. Such a conclusion is open to the Inspector despite the housing land supply position and the incorporation of the presumption in favour of sustainable development into Policy OS1. Indeed, that was the approach taken by the Ducklington appeal Inspector who was considering similar issues in the context of this same development plan.¹¹ The Parish Council considers that this is the only sensible conclusion available in this case.

(5) Other Material Considerations: The NPPF and the shortfall in 5YHLS

30. It is common ground that the NPPF is an important “other material consideration” which is, at least in principle, capable of justifying a decision which is not in accordance with the development plan. Of particular relevance in this case, it is also common ground that the

¹¹ CD I2.

Council does not have a 5YHLS, with the result that para 11 of the NPPF is engaged through footnote. However, that does not mean that permission must be granted. In particular (and as observed in opening):

- 30.1. Even under the tilted balance, the NPPF does not displace the development plan: the conflict with development policies remains relevant;
- 30.2. The presumption is disapplied where specified policies in the NPPF provide a clear reason for refusal;
- 30.3. The presumption is disapplied where the adverse effects significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

31. It is the Parish Council's case that all three of these considerations are material here.

a) Relationship between the NPPF and the development plan

32. Notwithstanding the indication in paras 11(d)(i) and (ii) of the NPPF that the tilted balance is to be carried out by reference to the policies in the NPPF, it is legally impossible for the NPPF to oust the statutory status of the development plan.¹² Para 219 of the NPPF advises that due weight should be given to policies, according to their degree of consistency with the Framework. Even within the tilted balance, therefore, a decision-maker is entitled to have regard to the development plan, and to attach weight to its policies.¹³

33. Applying those principles to the present case:

- 33.1. It is common ground that the Council will not be able to meet its housing needs on land within the existing settlement boundaries. However, that does not result in an inevitable breach of Policy H2, read together with OS2, such that these policies can only be given limited weight. To the contrary, these policies allow for development outside of settlement boundaries in appropriate circumstances, namely, where identified housing need cannot be met elsewhere (the "convincing evidence" requirement in Policy H2), and where it will not result in undue planning harm (the "general principles" of Policy OS2).

¹² See [CD I24] *Suffolk Coastal District Council v. Hopkins Homes Ltd* [2017] UKSC 37 @ para 14

¹³

33.2. In other words, WODC’s inability to meet its housing needs on land within the existing boundaries is not a new situation which has arisen since the drafting of the plan and which should reduce the weight attributable to any breach of these strategic policies. Accordingly, these policies are consistent with the NPPF’s requirement to “provide a clear strategy for bringing sufficient land forward, and at a sufficient rate, to address objectively assessed needs over the plan period, in line with the presumption in favour of sustainable development”.¹⁴ They do not simply seek to distribute set housing numbers to particular locations, but instead establish a general “sustainability hierarchy” which ought to be followed regardless of the HLS position.

33.3. The other policies which the Parish Council allege are breached are also consistent with the following sections of the NPPF:

33.3.1. OS3 (prudent use of natural resources) – para 8(c), 105, 124, 159-161.

33.3.2. OS4 (high quality design) – para 126, 127 and 130.

33.3.3. T1 (sustainable transport), T3 (public transport, walking and cycling) and T4 (parking provision) – paras 104-109.

33.3.4. EH2 (landscape character) – para 174.

33.3.5. EH7 (flood risk) – paras 159-161.

33.3.6. EH9, EH10 and EH11 (heritage assets) – when read together – paras 199, 200 and 202.

34. The weight which the Inspector attributes to any identified conflict with these policies should be determined accordingly.

(b) Disapplication of the tilted balance under para 11(d)(i)

35. As set out above, the Parish Council endorses WODC’s position that the para 202 heritage balance in the NPPF is not passed in this case. Accordingly, policies which protect areas or

¹⁴ Para 23.

assets of particular importance – in this instance heritage policies – provide a clear reason for refusal and the tilted balance is disapplied.

(c) Disapplication of the tilted balance under para 11(d)(ii)

36. Even if the Inspector does not consider heritage to provide a clear reason for refusal, it is still necessary to place all of the harm which the appeal scheme will cause onto the scales and consider whether that harm significantly and demonstrably outweighs the benefits. In the Parish Council's submission, when that exercise is carried out, the outcome clearly supports refusal.
37. The Parish Council fully acknowledges the benefit that the scheme would deliver in terms of affordable housing. However, that acknowledgement comes with the following caveats:
- 37.1. Aston has already made a significant contribution to affordable housing needs relative to its size and status in the settlement hierarchy.¹⁵
- 37.2. The contribution which the proposal will make towards district-wide affordable housing need is very limited – 1.3%.¹⁶
- 37.3. The size of affordable homes needed at district level is 65% one and two-bed versus 35% three and four-bed. That position is more acute at a village-level where the need is for 88% one and two-bed homes.¹⁷ The Appellant is proposing 50% one and two-bed homes. In circumstances where such need is having to be met on greenfield sites, policy imperatives to make efficient use of land, dictate that provision ought to be tailored to the particular local need.¹⁸ Instead, the Appellant is choosing to over-provide certain types of housing at the expense of others.
38. The Parish Council's case is that these factors must reduce the weight that can be given to the affordable housing that would be provided by this scheme in this location.
39. As for the other benefits:
- 39.1. The economic benefits pointed to by Ms Dinnen are largely short term benefits arising during the construction phase. The longer term economic benefits arising

¹⁵ Mr Roberts' fig. 4.4 shows 33 affordable housing completions since 2020.

¹⁶ Based on 40 units against the 3,121 people on the housing register.

¹⁷ Per CD K6.

¹⁸ E.g. NPPF, [124].

from the occupiers from the development, being persons on the district's waiting list for affordable housing, are likely to predominantly represent a shift from people spending money in one part of the district to another, rather than a net benefit of the scheme. Those benefits are unlikely to be enjoyed locally in Aston, given the limited facilities and services available. They have not done so following other recent development.

39.2. In cross-examination of Mr La Forte, Mr Cannock KC put the point that those moving into the new dwellings are likely to be moving from less energy efficient homes. While this is true and, consequently, the provision of more energy efficient homes is likely to represent a benefit to the future occupiers, Mr La Forte's point about the energy efficiency of a field, versus a housing development still stands.

39.3. The Parish Council accepts the Appellant's biodiversity net gain assessment shows an 11.63% net gain which surpasses current policy requirements and should be given some weight in the balance.

40. As the Parish Council's witnesses, and other local residents, have been at pains to point out, the harms that would be generated by the proposed development do not exist in isolation. They have to be viewed in the context of recent development in Aston and the pressures that this has put on the village. In that context, the harms to be outweighed by the benefits of the scheme are not negligible and do, in the Parish's view, significantly and demonstrably outweigh the collective benefits.

Conclusion

41. For all these reasons, I would ask you to uphold the unanimous decision of the Planning Committee, to dismiss the appeal and refuse permission for the scheme.

KIMBERLEY ZIYA
LANDMARK CHAMBERS

27th June 2023