Dear Nigel,

**LAND EAST OF THE MEMORIAL HALL, BRUNDALL (APP REF: 20171386)**

**SUBMISSION OF AMENDED PLANS AND DOCUMENTS**

Thank you for your email of 7 August 2018, and our conversations since then. To respond formally to the points you have raised, I set out the following, below, and enclose a number of replacement documents as set out in the Appendices.

This letter should be read in conjunction with the application and supporting information plus:

- My letter of 20 April 2018; and

**VIABILITY**

As you know, the application meets and exceeds policy requirements. Therefore, there is no requirement to undertake a financial viability assessment. If permission were to be granted then we accept that the requirements will be secured by way of S106 or condition. Therefore, if provision is not made then the scheme cannot progress and if it did then enforcement action could be taken.

We do not accept the suggestion that it is for the applicant to prove the scheme is viable when the applicant is meeting policy requirements and not disputing these. The recent publication of the NPPF (2018) refers to the situation where a viability assessment is needed at para 59. It says: “Where up to date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable.” In other words there is no requirement to prove this.

To be helpful we provided you with some (confidential) information previously but we are not intending to prepare a viability assessment for planning purposes since there is no need, it will unnecessarily delay matters, this is an outline application and so the exact form of the scheme is yet to be determined beyond phase 1, and is an unnecessary applicant cost. We understand that the Council has instructed its own viability expert. We consider they are able to undertake their own viability using standardised inputs to establish, to the extent the LPA chooses it wants this, that the scheme is financially viable. We, as the promoters of the application are comfortable that it is. Therefore, we will not be providing any further viability information than that already provided for the reasons set out above.
C2 LAND USE

The approach to the application is to seek outline planning permission for the majority of the site and seek full permission for phase 1 (see amended description in Appendix 1). Subsequent reserved matter applications outside of phase 1 will be required to comply with the Development Parameters that would be approved as part of the permission (see amended Development Parameters and DAS in Appendices 2 and 3). The idea being to provide flexibility to the market in terms of the composition of the scheme and its layout beyond phase 1, whilst providing certainty around the amount of flexibility so that the eventual scheme brought forward under reserved matters can be controlled. Therefore, the inclusion of Class C2 (for elderly extra care accommodation) was intended to provide flexibility so that should there be a demand for this use then it would be possible for the reserved matters applicant to bring this forward as part of the site layout.

However, it appears that the flexibility sort (as described above) is inhibiting the understanding and processing of the application and so we formally amend the Development Parameters and Description of Development to remove reference to Class C2. Therefore, the application will be for 170 Class C3 dwellings, plus the open space etc. Attached, as Appendix 1, is a modified Description of Development and as Appendix 2 amended Development Parameters, and as Appendix 3 an amended DAS.

AFFORDABLE HOUSING

Following the removal of the Class C2 use from the application (set out above), we agree the affordable housing provision will be 33%, which equates to 56 dwellings. As you will appreciate, since the application is a hybrid, with Phase 1 applied for in full, the Phase 1 scheme already includes 8 affordable homes in specific dwellings on the applied for Phase 1 layout. Taking the Phase 1 provision of affordable housing away from the total affordable housing requirement leaves 49 affordable homes to be provided. In summary, the scheme is for as follows:

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<tr>
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<th>Market</th>
<th>Affordable</th>
<th>Total</th>
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<tbody>
<tr>
<td>Full application</td>
<td>16</td>
<td>8</td>
<td>24</td>
</tr>
<tr>
<td>Outline application</td>
<td>98</td>
<td>48</td>
<td>146</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>114</strong></td>
<td><strong>56</strong></td>
<td><strong>170</strong></td>
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As a result of the proposed changes to the application proposals (confirmed via this letter), we have, as you suggest, provided an updated full offer letter and S106 Heads of Terms to replace the existing one so we remove any confusion. This is contained in Appendix 4.

EMERGENCY ACCESS

As you know, the original intention was to work with the Parish Council and for the open space to be transferred to them. It was also the Parish’s preference for emergency access to be routed via Meadow View over their land and so we included this option within the application proposals. Unfortunately, the Parish no longer wish to support the scheme and be involved in it, even if it secures approval. Whilst we think this is not in the interests of the Brundall community, should permission be secured, it is the Parish’s position and so we have to respect this and propose alternatives. Therefore, in respect of emergency access, we will formally amend the application material, including the Development Parameters and DAS, to remove reference to the option for the emergency access to be routed via Meadow View and over land owned by the Parish. The emergency access will, as a consequence, be via a connection to Links Avenue (public highway), as shown on the Parameter Plans. The amended application submission to achieve this is included in Appendices 2 and 3.
OWNERSHIP OF COUNTRY PARK AND VILLAGE GREEN

As noted above, it is disappointing that the Parish has chosen not to want to be involved in the project or receive the community open spaces, should permission be granted. Whilst we understand the Parish may oppose the residential scheme, we have offered to transfer the land to the Parish should permission be granted. However, the Parish has turned this down, despite their own desire to see part of the site come forward for recreation in their own Neighbourhood Plan and in the Local Plan.

As we have discussed with BDC officers, we therefore see it in the community interest to ensure the community amenity space is vested into public ownership and so we have proposed transferring the assets to BDC in our S106 Head of Terms. Then it would be for BDC and Brundall Parish to determine the arrangements moving forward. However, as you point out, the Council has yet to determine if it wishes to accept the transfer, facilities, and maintenance and so we cannot assume this to be the outcome. Since we understand the Council is not going to reach a decision before the application is determined, we accept that the responsibility for the delivery and maintenance of the land and facilities will be on the landowner, most likely through the establishment of a Management Company, and this needs to be legally captured in the S106 Agreement. As a consequence, we include, in Appendix 4, amendments to the S106 Heads of Terms offer to reflect the above.

The Country Park and Village Green will therefore be the on-going responsibility of the landowner. Should it wish to offer these to the Parish, District or other third party into the future then it will be for the landowner to decide and the recipients to accept or otherwise. Again, it is a shame that the community, via the Parish or the Council, has chosen not to want to be part of the development, should permission be granted, but, as applicants, we have made the offers, expended considerable time in discussing this, but have to accept that the community, represented by the Parish and District, do not want to engage.

OBLIGATION TRIGGERS

As you note in your email, and as a consequence of our continuing discussions culminating in this letter, we have amended the S106 Heads, as attached in Appendix 4, and the consequential changes to trigger points for the delivery of open space etc.

CHILDREN’S EQUIPPED PLAY SPACE

As you note and we accept, we have amended the S106 Heads and offer letter to reflect that the Play Space will be provided within the residential community proposed by the Development Parameters (see Appendices 2 and 4).

OVER WIND

You say that the recent Court of Justice of the European Union ruling in April 2018 on the “Over Wind” case means that mitigation built into the Habitat Regulations Assessment of an SPA cannot be taken into account in determining if an application will have an unacceptable impact on the SPA at the screening stage. Therefore, the HRA already undertaken by the Council in respect of the application site, which found it would not have an unacceptable impact on the SPA, cannot now be relied upon.

Therefore, because of the wording of paragraph 11 (di) of the Framework, the application site cannot benefit from the presumption in favour of sustainable development because it will not apply where:
"...the application of policies in this Framework [in this case paras 175 and 176] that protect areas or assets of particular importance [in our case an SPA] provides a clear reason for refusing the development proposed...."

You seem to suggest because you cannot take into account the conclusions of your own HRA on the SPA, that you cannot therefore conclude that the application proposal will not have an unacceptable impact on the SPA.

You may now know that the first UK High Court ruling on how to interpret this European position has now been given in the “Langton” (September 2018) case. The UK law courts, based on this first ruling, seem to be taking a more practical and pragmatic position and seems to conclude that the literal interpretation of Over Wind should not be taken verbatim. We therefore consider that your suggestion that paragraph 11 of the NPPF does not apply in the instance of the application scheme to be at the very least open to debate and likely to now be misplaced. If you intend to treat para 11 of the NPPF as not applying because of the Over Wind case then we suggest the LPA needs to secure its own legal opinion, particularly if this is the basis on which a refusal of this planning application might be progressed, as it may be open to further legal challenge.

5 YEAR HOUSING SUPPLY

As noted in our letter of 20 April 2018, we understand that the LPA considers it to have a 5-year housing land supply and therefore there is no requirement to necessarily approve schemes on non-allocated sites. We do not necessarily agree that the LPA has a 5 year housing land supply, and we refer the LPA to the recent appeal decision at Woolpit, Suffolk (ref: app/W3520/W/18/3194926, attached as Appendix 5) where the approach to calculating 5 year housing land supply is set out specifically commenting on the level of evidence LPAs need to show in order to rely on schemes within their 5 year calculations (paras 63-73).

We draw your attention specifically to paragraph 65 which says:

"The NPPF2018 provides specific guidance in relation to the calculation of the five years supply but specifically with regard to qualifying sites, the Glossary definition of “Deliverable” in Appendix 2 goes further than its predecessor....Sites with outline permission, or those sites that have been allocated, should only be considered deliverable where there is clear evidence that housing completions will begin on sites within 5 years. The onus is on the LPA to provide that clear evidence for outline planning permissions and allocated sites”.

Then the Inspector goes on to say at paragraph 70:

"...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."

The Inspector also notes at paragraph 77:

"I agree it would be a time-consuming exercise for the Appellant to review 561 planning permissions. This is an exercise which the Council should have done before it produced its AMR."

The Inspector concluded that he thought the Council, in the appeal case had 3.4 years housing supply compared to the Council’s assertion of 5.39 years.
We would draw your attention to paragraph 39 (page 23) of the JCS for Broadland, Norwich and South Norfolk: AMR 2016-17, April 2018, which states:

"Sources of Supply

There is no prescribed approach to the sources of supply that can be included within the assessment of housing land supply. The Greater Norwich assessment includes sites with planning permission, sites where there is council resolution to grant planning permission and sites that have been allocated in adopted Local Plans."

We comment that an assessment of each site is not provided in the AMR.

Therefore, in pulling all the above together, we do not consider the LPA to have robustly demonstrated it has a 5-year housing land supply and one that would be found to be the case at appeal. Officers may wish to review the robustness of its AMR in light of the above. Officers will no doubt take the above into account in coming to a view about whether the application should be recommended for approval or refusal. If a refusal is recommended based only upon the fact the authority can demonstrate a 5 year housing land supply and the site is therefore not needed, then Officers will also no doubt explain that should appeal progress on this, or other sites, where refusal has been based on demonstration of a 5 year housing land supply, then the outcome at appeal may well be uncertain and costs may well be awarded, given the Council had prior knowledge of recent appeal decisions.

If the LPA maintain their position on housing supply then we point out that the site, whilst not allocated, is, in our view, acceptable in all other respects and represents an intrinsically very sustainable location for development and will deliver clear material benefits to the community in open space provision that exceeds the expectations of both the Local Plan and Neighbourhood Plan. We point out that recent appeal decisions (ref: APP/H1840/W/15/3008340 (Appendix 6); APP/W1525/W/15/3121603 (Appendix 7); and APP/A0665/W/15/3140241 (Appendix 8)) which confirm that even if there is a 5 year housing land supply this does not stop planning permission from being granted for beneficial proposals either locally or via appeal, where the site is not allocated and lies outside a settlement boundary. This is further discussed below.

MAKING EFFECTIVE USE OF LAND

Whilst planning applications should be determined in accordance with the Development Plan, Paragraph 38 of the NPPF (2018) says that LPAs should approach decisions in a positive and creative way, and should seek to approve applications for sustainable development where possible. Just because the LPA considers there is no 5-year housing need justification to support the planning application, there are no other reasons why the planning application should be refused, since in all respects other than not being allocated for development, it is acceptable. There is nothing to stop the Council, in this instance, from deciding that the site benefits are such that despite it not being allocated for development it is in the community interest to approve the planning application.

Section 11 of the NPPF (2018) require decisions to make effective use of land in meeting needs, whilst safeguarding and improving the environment. The NPPF (para 118) encourages decisions to deliver multiple benefits including through mixed use and taking opportunities to achieve net environmental gains, such as new habitat creation or improve public access to the countryside. The application proposals achieve this through the inclusion of a significant new country park that connects with the village and with other open spaces.

CONCLUSIONS
It is considered that this application is acceptable in all respects other than it is not on a site allocated for development in the present Local Plan. If it were then planning permission is likely to have been granted since the scheme meets and exceeds in many ways policy requirements. When the application was submitted it was in the context of the council accepting it did not have a 5 year housing land supply and so a site not allocated for development should be approved unless it was not a sustainable proposition. This site and the application proposal is clearly an intrinsically sustainable proposition and there are no technical objections for refusing it. Despite the fact that the LPA now considers itself to have a 5 year housing land supply, which we do not agree with, and so technically the LPA may consider that it does not need to permit the scheme on an non-allocated site, we consider that the benefits of the proposal are such that the scheme should be approved irrespective of the 5 year housing land supply position.

With this letter we now consider the application negotiations have progressed as far as they can and therefore a decision is now required, whether this is by delegated powers or via planning committee.

Yours sincerely,

ALEX ADAMS

Encl: Appendices 1-8