Introduction

1. The Appellant proposes up to 170 homes (comprising up to 114 market homes and 56 affordable homes) and a Neighbourhood Green\(^1\) and Country Park at the land east of Memorial Hall (“the Appeal Site”). The proposal is a hybrid, comprising of a detailed planning application for 23 homes, and an outline planning application for the remaining development.

2. The new homes are proposed to be built on the central and south-east parts of the Appeal Site, with the remaining 10 ha to the west and north of the Appeal Site provided as Neighbourhood Green (3 ha) and Country Park (7 ha), which will provide either formal or informal recreation and ecological and biodiversity enhancements. The legal agreement allows choices to be made as to how these open spaces will be laid out, equipped, managed and owned; and will provide for a sum of £900,000 to design, build out, and maintain these spaces.

3. I have emphasised that the Appeal Proposal comprises the residential development and Neighbourhood Green and Country Park because it is important not to lose sight of this when the overall benefits of this mixed-use proposal come to be considered.

4. When this application came to be considered by the Planning Officers for the Council, these Officers, rightly, recommended that permission be granted.\(^2\) It was concluded by Officers that even though the proposal was contrary to the development plan (which is not the Appellant’s case at this appeal) and even though there was a five-year housing land supply (which again is not the Appellant’s case at this appeal), the benefits of the proposal were “significant” and “overriding”. Notably this is an Officer Report that the Council’s planning witness for this appeal, Mr Judson, assisted in

---

\(^1\) Also referred to as the Neighbourhood Park and Central Green in the evidence.

\(^2\) The Officer’s Report is at CD 3.1.
writing. Additionally, it is noteworthy that at application stage over 70 letters of support for the development were received in neighbour representations.

5. The reason that planning permission was not granted at application stage is because Members disagreed with the recommendation of their Officers.

6. The main issues in this appeal are as follows:

(1) The effect of the proposal on the landscape character and appearance of the area, including on identified public viewpoints;

(2) The effect of the proposal on the setting of the Grade I Listed Church of St Andrew and St Peter;

(3) Whether a five-year housing land supply can be demonstrated;

(4) The effect of the proposal on the identified strategy for growth for the district; and

(5) Whether any adverse effects, including conflict with the development plan considered as a whole, would be outweighed by other material considerations.

7. In this opening statement, I will outline the substance of the Appellant’s case in relation to these main issues.

**(1) Landscape character and appearance**

8. Mr Chard will explain that overall the long term effects on landscape character and appearance will be minimal and that the Appeal Proposal will substantially improve the level of public amenity provision in the area, together with habitat enhancements and contributions to the network of green infrastructure. Mr Chard’s view is consistent with the judgments of multiple Officers at application stage.

9. The Design Officer at the Broads Authority agreed with the LVIA and found that “*[t]he large area of open space reserved for recreation and formal play is considered a positive aspect of the proposal with the potential to preserve and enhance this strong landscape feature*”,² the Council’s Design Officer found that the proposed layout

---

³ Paragraph 1.4 of Mr Judson’s Proof of Evidence.

⁴ Officer Report at CD 3.1.

⁵ See also the Written Note by Mr Meurer.

⁶ CD 3.1, paragraph 4.4.
fulfilled “the aim of keeping vistas open through the site, provides open shared spaces and routes through the site” and the Council’s Conservation Officer on Arboriculture and Landscape also raised no objections.

10. Further, Officers explained that the loss of any private views from enjoyed by existing residents was “not a material consideration” and concluded overall that “the site is not designated for its landscape value and the development would not result in a visually intrusive urban extension being contained by residential development to three sides. Important landscape features can be retained and protected from development and an appropriate layout can be secured at reserved matters. The development would not result in visual coalescence with Blofield and Officers therefore consider that the landscape impact of the development would not be sufficiently harmful to justify refusal.”

11. The Appeal Proposal is clearly in compliance with the requirements in policy to have regard to landscape considerations, promote good design and maximise the creation of green infrastructure (Policies 1 and 2 of the JCS and Policies GC4, EN1, EN2 and EN3 of the DM DPD). It is also plainly in compliance with Policy 3 of the BNP, which does not prohibit development on the Appeal Site per se, but rather requires that “key features of the view can continue to be enjoyed”, which they will be.

12. Moreover, even if there is a breach of the landscape related policies relied upon by the Council, it is well established that the development plan must be read as a whole. The wording of these landscape related policies does not justify a finding of conflict with the development plan as a whole.

---

7 CD 3.1, paragraph 4.8.
8 CD 3.1, paragraph 5.72.
9 CD 3.1, paragraph 5.68.
10 CD 3.1, paragraph 5.73.
11 Joint Core Strategy.
13 Brundall Neighbourhood Plan.
(2) Setting of the Grade I Listed Church of St Andrew and St Peter

13. Ms Burton will show that the change that the Appeal Proposal will make to the setting of the listed Church of St Andrew and St Peter, will not cause harm to the significance of the Church. These judgments are consistent with that of the Council’s Conservation Officer at the application stage whose professional judgment was that “(g)iven the open-nature that will be retained across much of the site, it is considered that although there will be some change to the setting of the church this will not be harmful, although it will still be important that the perimeter of the areas of housing is well-designed to integrate the development into the landscape successfully.” There is no conflict here with the heritage policies relied upon by the Council (Policy 1 of the JCS and Policy 3 of the BNP).

14. In fact, the area of disagreement between Ms Burton and Mr Bennett for the Council appears to be extremely narrow. Mr Bennett says that the impact will be at the lower end of the ‘less than substantial’ spectrum of harm in any event, and he agrees that the newly accessible viewpoints of the Church that will be created by the Appeal Proposal will be a heritage benefit. Even on the Council’s highest case, this minimal harm is undoubtedly outweighed by the public benefits of the Appeal Proposal.

(3) Five-year housing land supply

15. The Greater Norwich Authorities (which includes this Council, together with Norwich City Council and South Norfolk District Council) cannot demonstrate a five-year supply of deliverable housing. The housing requirement within the JCS is more than five-years old, and it is common ground that the relevant housing requirement set under the standard method is 2,125 dwellings per year across the joint authorities (or 10,627 dwellings over the five-year period).

16. This shortfall of housing land supply will be addressed by Mr Taylor on behalf of the Appellant. It will be shown that the Council’s approach to their supply is overly-optimistic and unrealistic; in particular in relation to a number of large sites the

---

14 CD 3.1, para 4.7.
15 Paragraph 6.3 of Mr Bennett’s Proof.
16 Rounded down from 2,125.4.
Council has failed to show the required “clear evidence” and the Council’s approach to windfall allowance is not credible.

17. Upon receipt of Mr Taylor’s evidence, Mr Harris has already reduced the Council’s position from 5.89 years to 5.40 years (Mr Harris’ attempt to now introduce additional sites to increase supply to 5.60 years is not compliant with the correct approach to assessing deliverability). Mr Taylor will show that the correct position is that the joint authorities cannot demonstrate a five-year supply, with the degree of shortfall being significant. This engages the tilted balance in favour of granting consent.

(4) Effect of the proposal on the identified strategy for growth for the district

18. Granting permission for the Appeal Proposal will not cause any material harm to the strategy for growth in the district, and the fact that the Appeal Site lies just outside of but adjacent to the settlement limits of Brundall is not a legitimate reason alone to refuse consent. This is because the settlement limits, and the planned housing requirement they were drawn to accommodate, are now out of date. There are three independent reasons for this.

19. First, as already discussed, the Greater Norwich Authorities cannot demonstrate a five-year supply of deliverable housing against the housing requirement set under the standard method, and therefore these policies are out of date.

20. Second, the housing requirement planned for in the JCS of 2,046 dwellings per year is now rendered no longer fit for purpose.¹⁷ Quite simply, this is because the agreed position is that the housing requirement now is significantly more at 2,125 dwellings per year. Importantly, this means that the settlement limits and the restrictive policies in the SA DPD¹⁸ and the DM DPD which were established to accommodate this lower housing requirement are now out of date. The delivery of a sufficient supply of homes is a fundamental objective of national policy, and it cannot be achieved through adherence to the settlement limits and restrictive policies currently in the development plan.

¹⁷ Policy 4 of the Joint Core Strategy planned for 36,820 homes between 2008 and 2026 (i.e. 2,046 per year)
¹⁸ Site Allocations Development Plan Document, CD 4.2.
21. Third, Mr Meakins explains in his evidence that the settlement limits, including those drawn around Brundall and the Appeal Site, date back to the now revoked 1999 Structure Plan and 2006 Local Plan. This has led to the Council having to repeatedly grant planning permission for housing outside these settlement limits.\(^{19}\) The fact that some of these sites may have technically become part of the settlement after having been granted permission is of no relevance in this context; this does not change the crucial fact that in order to try to deliver sufficient housing the Council has had to rely on sites outside its settlement limits.

22. It is beyond doubt that the planned housing requirement and settlement limits are out of date and no longer fit for purpose, and at the very least reduced weight must be given to these. Importantly, policy GC1 of the DM DPD precisely makes provision for circumstances such as this; GC1 tells us that where relevant policies are out of date (as they are here) then permission should be granted unless the impacts significantly and demonstrably outweigh the benefits. By virtue of GC1 the ‘tilted balance’ is essentially written into and is part of the development plan. In no way do the impacts (if any) significantly and demonstrably outweigh the overwhelming benefits of the Appeal Proposal; indeed, the impacts do not come close to outweighing the benefits even on a flat balance.

23. As was found by the Inspector in the Racecourse Plantations appeal,\(^ {20}\) policy GC1 is a “policy of the development plan” for the purposes of policy GC2, which permits new development outside settlement limits where it does not result in “significant” adverse impact and where it “accords with a specific allocation and/or policy of the development plan”. The Appeal Proposal does not cause any significant adverse impact and it accords with a policy of the development plan, namely GC1.

24. In any event, fundamentally, policy GC2 seeks to focus residential development in locations which are well-linked and well-related to existing development, services, facilities and employment opportunities. The Appeal Site meets this objective. It is in a highly sustainable location, being situated in Brundall which is a “Key Service Centre”

\(^{19}\) See Table 1 of Mr Meakins’ Proof of Evidence at page 22.

within the settlement hierarchy and a preferred location for new development, and it is within the Norwich Policy Area which is identified as the “focus for major growth and development”\textsuperscript{21}. The Appeal Site is well located to local facilities and services (such local services either have adequate capacity or contributions can be made to mitigate impact) and it is well located to sustainable transport options; it is no part of the Council’s case to suggest otherwise. As such, granting permission for the Appeal Proposal will obviously not cause any harm to the spatial strategy.

25. In relation to policy BRU3 of the SA DPD, although the Appeal Proposal will not provide the 4.9 ha of open space geographically on the site allocated in BRU3, it will deliver quantitively more formal and informal recreational open space across the entire site, with the 3 ha Neighbourhood Green and 7 ha Country Park, together with the payment of £900,000 to lay out and maintain the space. This aspect of the proposal has received the support of Sport England. As was rightly explained by the Council Officer at application stage, the Appeal Proposal “delivers the recreation space that would not otherwise come forward”\textsuperscript{22}. This is also precisely the approach that the Council took to granting permission for the development at the Land at Yarmouth Road, on the site allocated for recreation open space in policy BRU2.\textsuperscript{23} This overprovision of open space complies with policies CSU1 and RL1 of the DM DPD and Policies 2 and 4 of the BNP; and is consistent with the underlying purpose of policy BRU3.

(5) Whether any adverse effects, including conflict with the development plan considered as a whole, would be outweighed by other material considerations.

26. It is well established that the development plan must be read as a whole. On the basis of the above, the Appeal Proposal does accord with the development plan as a whole. Even if there is any limited policy conflict, when one takes on board the various other policies in the development plan that the Appeal Proposal is consistent with, the appropriate overall judgment is that the determination in accordance with the development plan would be to allow rather than to dismiss the appeal.

\textsuperscript{21} Policy 4 of the JCS.
\textsuperscript{22} Officer Report at CD 3.1, paragraph 5.119.
\textsuperscript{23} Officer Report at CD 6.19.
27. Should a different conclusion be reached, then material considerations, namely the significant benefits of the Appeal Proposal, would indicate otherwise such that the appeal should be allowed nonetheless.

28. As demonstrated above, the points alleged by the Council based on the decision of Members, do not amount to any unacceptable harmful impacts. Even if any harm is found, this is at most limited. In relation to the additional alleged harms raised by the Parish Council and members of the public, none of these amount to any material harm, and these run contrary to the findings of the Council Officers, Members, numerous statutory consultees and the Appellant’s expert consultants. In relation to highways in particular, Mr Roberts will explain that there is no highways harm, and that there will actually be a benefit due to the improvements that will be made to the Cucumber Lane Roundabout.

29. None of the alleged adverse impacts outweigh the overwhelming and significant benefits of the Appeal Proposal on either a tilted24 or a flat balance. The benefits include:

- the provision of up to 170 new homes (whether or not there is a housing land supply shortfall);
- including provision of up to 56 affordable homes, which is more than policy requires;
- the provision of the Neighbourhood Green, in the context of Brundall which is in need of recreational open space;
- the provision of the Country Park, which as well as providing open space, will also deliver habitat enhancement and support the delivery of green infrastructure in accordance with the East Broadland Green Infrastructure Project Plan;
- the sum of £900,000 to design, build out, and maintain these spaces;
- development in a sustainable location, which is well related to public transport and local facilities;
- highways improvements at the Cucumber Lane Roundabout;

---

24 Paragraph 11(d) of the NPPF and policy GC1 of the DM DPD.
• circa 187 direct and indirect jobs;
• increased spending within Brundall to benefit existing businesses; and
• circa £0.3m of New Homes Bonus and circa £1.5m of Community Infrastructure Levy payments.

**Overall conclusion**

30. On this basis, the Appellant’s case is that the appeal should obviously be allowed and planning permission granted.

    Anjoli Foster

    Landmark Chambers

    29 September 2020