

COWARDS LANE, CODICOTE

OPINION

Introduction

1. I am asked to advise Hawridge Strategic Land Limited in relation to its outline planning application to North Hertfordshire (“**the Council**”) under reference 25/01766/OP for the following development:

“Outline application with means of access for residential development of up to 30 dwellings (including affordable housing); following demolition of all existing structures; associated landscaping, drainage, car parking; infrastructure and all ancillary and enabling works (all matters reserved except means of access) [at] Land On The South Side Of, Cowards Lane, Codicote, Hertfordshire”

2. The site is to the south of Codicote:



3. The indicative masterplan for the scheme is as follows:



4. The report to the Council’s planning committee from the case officer (“**the OR**”) has recommended that permission be refused for 2 reasons (“**the RfRs**”):

1. The applicant has not demonstrated that alternative, less harmful sites were considered, and the proposal cannot avoid harm to the Local Wildlife Site. The suggested possible off-site mitigation measures are insufficient to offset the damage caused to the LWS or compensate loss of habitat. The proposed development would result in the loss of a large part of a designated Local Wildlife Site (LWS) which has been identified as having particular potential for habitat creation and nature recovery in the published Hertfordshire Local Nature Recovery Strategy (LNRS), which would result in significant and unmitigated harm to biodiversity contrary to North Hertfordshire Local Plan Policy NE4, Codicote Neighbourhood Plan Policy COD17 and Paragraphs 159 and 193a of the National Planning Policy Framework.
2. In the absence of a Section 106 Legal Agreement or similar legal mechanism, the proposed development fails to mitigate its impact on local infrastructure and services. This lack of mitigation is contrary to the aims of North Hertfordshire Local Plan Policy SP7 and paragraphs 56 and 58 and 59 of the National Planning Policy Framework. This is also necessary to meet the Golden Rules set out at paragraph 156 of the NPPF.

5. As I explain below, my view is that:

- (i) The analysis in the OR is unsound. Should permission be refused for the reasons suggested in the OR, that decision will be vulnerable on appeal.
- (ii) In particular, RfR2 will fall away e.g. in the event of either a local resolution to approve or an appeal.
- (iii) RfR1 is predicated on a number of key errors.
- (iv) First, it rests on an “*in principle*” objection to development in a local wildlife site (“**LWS**”) which is not supported in guidance, policy or law.
- (v) Second, it misunderstands the mitigation hierarchy.
- (vi) Third, it misunderstands the Local Nature Recovery Strategy for Hertfordshire (“**LNRS**”).
- (vii) Overall, the analysis that underpins RFR1 is fundamentally misconceived.
- (viii) In addition to all the above, the OR fails to give the significant weight in favour of granting planning permission required by §158 NPPF – a clear error.

Agreed matters

6. Before turning to those errors, I note that the OR accepts (correctly, in my view) that:
- (i) The site meets the NPPF’s definition of “*grey belt*”.
 - (ii) There are no “*strong*” reasons for refusal in relation to any of the policies of protection listed at footnote 7 of the NPPF – including no strong reasons in relation to ecology or biodiversity.
 - (iii) Development on the site would **not** fundamentally undermine the purposes of North Herts’ wider green belt.
 - (iv) There is a demonstrable unmet need for the scheme.
 - (v) The site is sustainably located, e.g. close to the High Street and public transport links.
 - (vi) The site accords with §155(d) and 156 NPPF, i.e. the requirement to accord with the “*golden rules*”.
 - (vii) In consequence, the scheme is **not** inappropriate development in the green belt.
 - (viii) In consequence, the application falls to be determined under the so-called “tilted balance” under §11(d)(ii) NPPF, i.e. permission should be granted unless any adverse effects both **significantly** and **demonstrably** outweigh the scheme’s benefits.

Key errors in the OR

7. Striking the §11(d)(ii) balance is a matter of planning judgment, not law.
8. But the approach to it in the OR rests on a number of important errors. Which mean that, should members adopt the approach recommended in the OR, the decision will be vulnerable to being set aside on appeal.

(i) “In principle” objection

9. The OR repeatedly asserts an “*in principle*” objection on the basis that the site falls into an LWS.
10. That approach is totally **unsupported** in guidance, policy or law. It is professionally inappropriate for the Council’s Ecologist to have given that advice in the first place.
11. That is because, as above, the acceptability of this scheme in principle turns on the operation of the balance at §11(d)(ii) NPPF, and neither the Council’s Ecologist nor the HMWT are in a position to assess that balance.

(ii) The mitigation hierarchy

12. §193(a) NPPF says that:
 193. When determining planning applications, local planning authorities should apply the following principles:
 - a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;
13. There is a dispute on the evidence over whether or not harm can be “avoided”. There is agreement that impacts on biodiversity cannot entirely be mitigated on site.

14. But turning to compensation, the OR advises that conditions and planning obligations cannot secure compensation, and so §193(a) is failed (see §4.3.46).
15. That is **wrong**.
16. Conditions and/or planning obligations are **regularly** accepted by planning inspectors and the Secretary of State to secure off-site compensation details to be agreed post-consent.
17. There is nothing in law, guidance or policy that requires any different approach when assessing an LWS.

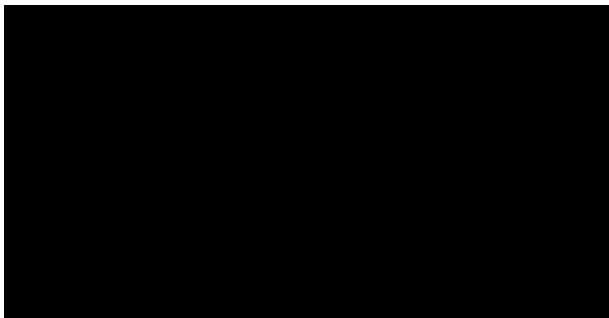
(iii) The LNRS

18. The OR suggests (see e.g §4.3.42) that the site's inclusion in the LNRS is relevant to the acceptability of the principle of development on the site.
19. That is **wrong**.
20. The LNRS does not create any planning designations. It does not require e.g. that sites identified in an LNRS cannot be granted planning permission.
21. The LNRS does something different. It identifies opportunities, e.g. for nature recovery. Many of those opportunities will be taken up outside the planning system.
22. §159 NPPF does not require land identified in an LNRS to be e.g. kept open and undeveloped. It requires something different, i.e. that proposals “*contribute towards [the] outcomes*” which the LNRS seeks to achieve.
23. That can be done in many different ways. One way it can be done is for a scheme to achieve BNG on land off-site which is itself identified as an opportunity area by the LNRS (as is proposed here).

24. In addition to all the above, the OR fails to give the significant weight in favour of granting planning permission required by §158 NPPF – a clear error.

Conclusions

25. My view is that the analysis in the OR is unsound. And should permission be refused for the reasons suggested in the OR, that decision will be vulnerable on appeal.
26. Those instructing me should not hesitate to contact me in chambers with any questions arising out of this advice.



ZACK SIMONS K.C.

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11th DECEMBER 2025