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Your Ref 25/01766/OP
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Dear Mr Howard

APPLICATION REF. 25/01766/OP (THE “APPLICATION”)

PROPOSED DEVELOPMENT OF UP TO 30 DWELLINGS (THE “PROPOSED DEVELOPMENT”) AT COWARDS LANE, CODICOTE (THE “SITE”)

1. Introduction

- a. We act for Hawridge Strategic Land Limited (the “Applicant”) in respect of the Application.
- b. The Applicant is concerned about the current approach that North Herts Council (the “LPA”) has taken while considering the Application and Proposed Development, in particular its current approach to the interpretation and application of planning policies and consideration of other material considerations. We are concerned that the LPA’s approach in some instances may, in fact, be unlawful.

2. Background

- a. The Site is agreed between the Applicant and LPA to be a Grey Belt site under the NPPF.
- b. The LPA cannot demonstrate a 5-year housing land supply (“5YHLS”).
- c. The LPA has stated that:
 - i. no weight is to be given to the provision of biodiversity net gain (“BNG”) because it is to be provided off-site;
 - ii. the provision of housing is of limited benefit on a district-wide scale because the quantum of dwellings is “modest” in that context and in the context of “paragraph 77 of the NPPF”;

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- iii. development of the Site, part of which is a LWS, means there is an in-principle objection to the Proposed Development and the Application is not in compliance with paragraph 193 of the NPPF;
 - iv. there is “limited detail submitted to identify how the harm to the [Local Wildlife Site] would be compensated” which is a “significant concern”;
 - v. a draft Local Nature Recovery Strategy (“LNRS”) designates the Site as an Area of Particular Importance for Biodiversity, so it would be “inappropriate” to allow development of the Site; and
 - vi. the LPA is “mindful of paragraph 159 of the NPPF in relation to the land identified for nature recovery within LNRS” and that the Proposed Development may be in “conflict” with it once published, alongside an acknowledgement however that it “would be difficult to sustain that position now” because the document is in draft.
- d. The LPA has stated that its position is therefore that the alleged harms of the Application significantly and demonstrably outweigh its benefits and, therefore, that planning permission should be refused.

3. Legal Background

- a. It is well-established law that the application of planning policy, and the weighing of benefits and harms of a planning application, is a matter of planning judgment not legal construction (*Thurston Parish Council v Mid Suffolk DC* [2022] EWCA Civ 1417). The Applicant does not dispute this.
- b. However, the interpretation or *meaning* of such policy, which must be understood correctly before it can be applied, is a matter of *law* (*Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13).
- c. There are also well-established parameters which apply to a local planning authority’s consideration of a planning application, as follows:
 - i. In exercising any statutory duty, e.g. including consideration and determination of planning applications, the Supreme Court held in *Bank Mellat v Her Majesty’s Treasury (No 2)* [2013] UKSC 38 [35] that “the duty of fairness governing the exercise of a statutory power is a limitation of the decision-maker which is implied”.
 - ii. In its approach to considering the Application, as for all local authorities, the LPA is bound by the duty to act reasonably and rationally in accordance with *Wednesbury* principles.

4. Biodiversity Net Gain

- a. It is our view that it is plainly wrong for the LPA to give no weight, or neutral weight, to the provision of BNG just because it is to be provided off-site.
- b. Paragraph 2(3) of Schedule 7A of the Town and Country Planning Act 1990 (the “TCPA”) requires a minimum of 10% BNG to be provided as part of developments. The TCPA and associated regulations made under it in respect of BNG allow for the provision of off-site BNG. They do not provide that less weight should be given to such provision.
- c. Further, the Planning Practice Guidance (“PPG”) on BNG¹ is clear throughout that BNG can be provided offsite. There is nothing in the PPG which ascribes any lesser weight that should be given to offsite BNG provision compared to onsite provision. Indeed, a report by

¹ <https://www.gov.uk/guidance/biodiversity-net-gain>



Cornerstone Barristers, Strutt & Parker, Bellway Homes, Rural Solutions and Environment Bank (August 2025) considered the comparative value of onsite versus offsite BNG for nature restoration,² finding that there is growing evidence that onsite delivery provides far lower biodiversity benefits than offsite provision and that “when tested against the various criteria of the Global Biodiversity Framework and the Convention on Biological Diversity, it is highly unlikely that on-site BNG will make any significant contribution to enhancing and protecting biodiversity. By contrast, off-site BNG sites offer far greater opportunities for making a meaningful uplift to biodiversity”. Arguably, therefore, greater weight should be being given to the Proposed Development’s BNG provision.

- d. As stated above, while it is for the LPA’s judgment how much weight to give to any particular benefit or harm of a proposed development, that judgment and discretion is subject to the overriding *Wednesbury* test of reasonableness and irrationality. To give no positive weight to the provision of offsite BNG provision would clearly be unreasonable and irrational, and therefore potentially unlawful.

5. Provision of Housing

- a. The fair position of the Applicant is that very substantial weight should be given to the up to 30 new homes to be provided as part of the Proposed Development given the LPA’s lack of 5YHLS and the national housing shortage – every home that can be delivered is vitally important in this context.
- b. As above, in law, it is the LPA’s judgment as to the weight it considers appropriate to give to the provision of housing as part of the Proposed Development. However, in diminishing the weight to be given to the Proposed Development’s new homes, the LPA has cited paragraph 77 of the NPPF.
- c. On any objective basis, paragraph 77 of the NPPF relates to “plan-making” / site allocating and not “decision-taking” on planning applications and is therefore an irrelevant consideration when considering the Planning Application and the weight to be given to the new homes provided in the Proposed Development. The LPA would arguably commit an error in law should it reduce the weight to be given to these new homes by reference to paragraph 77 of the NPPF.

6. Local Wildlife Site

- a. The LPA through its ecology officer has stated that it has an in-principle objection to the Proposed Development and the Application is not in compliance with paragraph 193 of the NPPF because of harm to the LWS (despite the Applicant proposing to make offsite compensatory provision).
- b. This is clearly a misinterpretation of paragraph 193 of the NPPF, which provides that planning permission should be refused “if significant harm to biodiversity resulting from a development cannot be avoided...adequately mitigated, or...compensated for” i.e. it explicitly allows for offsite compensation to be provided for any harm, in which case planning permission does not need to be refused and paragraph 193 should be considered “complied with”.
- c. Should the LPA refuse the Planning Application on the basis that it considers that the Proposed Development does not comply with paragraph 193 of the NPPF, then that would be arguably wrong in law.

² <https://rural.struttandparker.com/article/new-report-highlights-value-of-off-site-biodiversity-net-gain/>



- d. The Applicant does acknowledge that the LPA has stated it has a significant concern over the limited detail that the Applicant has provided to identify how harm to the LWS would be compensated. Therefore, we understand that the Applicant has submitted further details of the potential off-site LWS compensation, including name of the provider and site details, which should give comfort to the LPA on such points.³
- e. Paragraph 39 of the NPPF requires local planning authorities to approach decisions on proposed development in a positive and creative way, and to work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Therefore, the LPA should work with the Applicant positively in respect of the securing of the provision of this offsite compensation in order to overcome its current concerns.
- f. Finally, we enclose with this letter appeal decision ref. 3329947 which addresses at paragraphs 77 to 84 similar points to those relevant here. In particular, we note that despite the local planning authority's planning witness attributing significant harm arising to ecology because of "loss of the Local Wildlife Site habitat, conflict with the Biodiversity Gain Hierarchy and lack of certainty regarding the off-site net gain proposed...and conflict with [paragraph 186⁴ of] the Framework",⁵ the Inspector found at paragraph 84 there was no conflict with the Framework, i.e. paragraph 186/193 was complied with through the provision of offsite measures, and that the biodiversity net gain was secured by the section 106 agreement (as it of course can be in the case of the Proposed Development). The Inspector therefore concluded that loss of part of the local wildlife site should weigh neutrally in the overall balance and not as a harm.

7. Local Nature Recovery Strategy

- a. We find it difficult to reconcile the LPA's various statements on the consideration of the Application in the context of the draft LNRS.
- b. On the one hand, it has stated that it would be inappropriate to allow the Proposed Development because of the LNRS and that it is "mindful of paragraph 159 of the NPPF in relation to the land identified for nature recovery within LNRS" and that the Proposed Development may be in "conflict" with it once published; on the other hand it acknowledges that it "would be difficult to sustain that position now" because the document is in draft.
- c. The meaning and effect of the NPPF are clear:
 - i. Paragraph 159 provides that "where land has been identified as having particular potential for habitat creation or nature recovery within Local Nature Recovery Strategies, proposals should contribute towards these outcomes".
 - ii. The LNRS here has not been published. Therefore, there is no LNRS which applies to the Site.
 - iii. Once the LNRS has been published, there will be a LNRS which applies to the Site. However, in that circumstance, paragraph 159 is not specific to the particular application site under consideration nor specific as to the way in which any such contribution should be made. Instead, it states "Where land has been identified as having particular potential for habitat creation or nature recovery within Local Nature Recovery Strategies, proposals should contribute towards these outcomes"⁶ – this

³ This would also serve as the offsite BNG.

⁴ Which has become paragraph 193 in the current version of the NPPF.

⁵ See paragraph 83 of the decision

⁶ e.g. it doesn't say "where the *development site* has been identified", it states "land" in general



could, of course, therefore include off-site land identified within the LNRS and it would be open to the Applicant to contribute to such outcomes offsite.

- d. In addition, we enclose with this letter appeal decision ref. 3364304 and highlight paragraphs 72 and 73 of the decision, which demonstrate the clear principle that where a site has been identified in a local nature recovery strategy it can still be developed / redeveloped, contrary to the position that the LPA appears to be taking in respect of the Proposed Development.

Should the Applicant be forced to appeal a refusal of planning permission issued on the basis of the above matters, including the areas of potential unlawfulness and irrationality, the Applicant reserves its right to bring these matters and this letter to the attention of the Inspector, including in support of a costs application.

In light of the above, the Applicant hopes the LPA would be willing to work with the Applicant constructively on a refreshed and correctly balanced approach to the consideration of the benefits and harms of the Proposed Development, and dialogue with it to bring the consideration of the Proposed Development and Application to a mutually acceptable position whereby planning permission can be granted.

Yours sincerely

Iain Gilbey

Partner

for Pinsent Masons LLP

This letter is sent electronically and so is unsigned

Enc. Appeal decision ref. 3329947
 Appeal decision ref. 3364304