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25 January 2024

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Sent Via Email

Dear Gen,

Application Reference: PL/2021/03749 – Land at Glenmore Farm, Westbury

Email: info@lva.co.uk

We write in response to the notification dated 18 January 2024 that the outline planning application for residential development (up to 145 dwellings) at Glenmore Farm, Westbury (Application Reference: PL/2021/03749), which currently benefits from a resolution to grant planning permission, is to be remitted back to Wiltshire Council's Strategic Planning Committee for re-determination on 7th February 2024, this time with an Officer recommendation for refusal.

We understand that this is solely as a result of the publication of the revised National Planning Policy Framework (NPPF, 19th December 2023), and the assumption by the Council that as a direct result of progress of the Local Plan Review, beyond Regulation 19 stage, that the Council need now only demonstrate a 4-year land supply in accordance with Paragraph 226 of the NPPF.

By consequence the Council considers that paragraph 11d) and the tilted balance is no longer engaged and therefore the harms resulting from the aforementioned planning application in the Council's opinion outweigh the benefits. Such a conclusion is the opposite to that of both Officer's and Councillors when reaching the positive resolution in November 2023.

We understand that in all other respects, there have been no other changes to the consideration of the application. Accordingly, we assume therefore that there has been no change to the range of benefits identified within the November 2023 committee report. We assume further that the only additional harm arising is solely related to the fact that in the Council's opinion that the weight given to the conflict with spatial policies is greater than it was in November 2023.

It is the case that Wiltshire Council has since early 2020 been unable to demonstrate a Five-Year Housing Land Supply and prepared Briefing Notes for Members in both June 2020 and April 2022 that advised Members that a key plank of seeking to address the continued supply shortfall would be to:

“Positively consider speculative applications where there are no major policy obstacles material to the decision other than a site being outside settlement boundaries or unallocated.”

Fundamentally therefore the Council recognised that the Plan strategy and therefore settlement boundaries were failing. By consequence the Council should consider favourably sites beyond defined settlement boundaries. We understand that the Briefing Notes to Members have not been withdrawn.

It is the case, based on the November 2023 Strategic Planning Committee, that the Glenmore Farm site falls exactly within the category of Sites that Members were being advised to consider favourably. Yet simply because the Council now considers it need only demonstrate a 4-year land

supply it no longer needs to consider favourably such applications because they are the wrong side of a settlement boundary which is fundamentally failing to deliver sufficient housing.

We disagree with such an approach because it remains the case that the current Plan Strategy continues to fail, is likely to result in a deficient land supply position by the end of the plan period (2026), and that by the Council's own evidence the Council will only return a positive land supply position at the point of adoption of the new Local Plan.

Housing Land Supply

It is our position that the Council is interpreting the wording of Paragraph 226 incorrectly. We read this to require an assessment for a 4-year land supply over 4 years as opposed to the Council's interpretation that the test is demonstrate only 4 years over a 5-year assessment window. We are aware of other authorities, such as Charnwood Borough Council in Leicestershire, who are considering their position at Planning Committee as we have interpreted Paragraph 226. Housing Land Supply Statements recently released by Bracknell Forest Council and St Albans also calculate their supply on this basis. We are aware that there are Planning Barristers and legal opinion who also support our interpretation, regardless as to whether that may or may not have been the Government's intention.

We find it somewhat surprising that the Council has obtained a legal opinion on this topic and is unwilling to share it but will rely on that to rush schemes back to Planning Committee where it plainly might be the case that clarification will be provided such that the Council's assessment is incorrect and therefore either applications will be reported back to the committee again or that the Council will have to concede matters at appeal with the clear potential in our view that the Council may have to defend applications for costs for unreasonable behaviour.

The Council defer to their latest Housing Land Supply Statement, dated May 2023, which sets out that the authority can demonstrate a supply of 4.6 years (including a 5% buffer) which is set over a five-year period of 2022/2023 – 2027/2028.

We feel that Wiltshire's use of the 2022/2023 delivery figures as a base date is not appropriate considering we are now in 2024. In the absence of an updated Statement, it would be reasonable and pragmatic to use 2023/2024 as a starting point. When reviewing the figures from 2023/2024 onwards over a four-year assessment period/timeframe, the Council can only demonstrate a supply of 3.7 years (without a buffer applied).

In the absence of any clarification from Central Government, we either consider the requirements of Paragraph 77 need to be taken literally (four-year supply calculated over a four-year assessment period/timeframe), or that the redetermination of the application is delayed until a time that further clarity has been provided.

In the event the Council's interpretation of Paragraph 226 is correct and the four-year land supply figure is taken over five-year period, we still dispute that four years worth of housing (4.60 as per the council's most recent Housing Land Supply Statement published May 2023) can be demonstrated. We intend to submit detailed evidence shortly to support this view but for now provide the following headline comments:

- It is our current position that the Council's land supply position sits around 3.8 years against a five-year housing land supply requirement (2023-2028), even without a 5% buffer. Our position is based on the following factors:
 - Insufficient permissions have been granted in the base period April 2022 – 2023 to maintain a rolling 4/5YHLS;
 - The Council have incorporated very high delivery rates on sites with only one outlet, this also does not account for the slowdown in market which the industry is

- currently experiencing, with developers over the last 1-2 years almost halving their outputs; and
- Sites have not come forward as anticipated due to issues with services and utilities, RM applications stalling which indicates difficulties with negotiating contracts with landowners, inclusion of sites with outline permission that have been in the system for over 3 years with no signs of agreement, and assuming two/three outlets will be delivering on site when there is limited evidence of this.

Notwithstanding all of the above, we also consider that a decision on the application should also be approached by considering whether the material considerations in favour of the proposal outweigh the conflict with the development plan (flat balance). No other harm is alleged, and this is noted in the Report for Strategic Planning Committee which states in the Conclusion section the following (red text our emphasis):

II. Conclusion (The Planning Balance)

At the heart of the NPPF there is a presumption in favour of sustainable development, this requiring local planning authorities to approve development proposals that accord with the development plan without delay; and where there are no relevant development plan policies, or the policies which are most important for determining applications are out-of-date, permission should be granted in any event.

The Council cannot currently demonstrate a 5-year supply of deliverable housing land; at the time of preparing this report the current supply figure as set out in the latest Housing Land Supply Statement is 4.6 years (and accepted to be 4.59 as per the Holt appeal). With this recognition the strategic policies of the Core Strategy must be considered out of date, and so the tilted balance flowing from paragraph 11d)ii of the National Planning Policy Framework (NPPF) is engaged. When the tilted balance is engaged, the NPPF indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF taken as a whole.

Whilst the proposed development lies outside of Westbury's settlement boundary and so conflicts with the strategic level policy requirements (CP1 & CP2), this report shows that there are no adverse impacts arising from the proposal on the wider landscape, archaeology, drainage, ecology, highways, and/or amenity. There are, however, benefits which include additional market and affordable housing; the development would also contribute to the housing choice and mix in the local area. Additionally, it would help provide economic benefits by providing work for construction professionals, increase economic activity within Westbury and make contributions to off-site infrastructure through S106 contributions and CIL.

As already set out, there are no adverse impacts that would significantly and demonstrably outweigh the benefits that this particular development in this location on the edge of a sustainable settlement would bring. The proposal would relate well to the spatial form of Westbury using existing road infrastructure and would offer accessible walking and/or cycling routes into the town and its services and facilities. The application site would also make s106 contributions to the bus service and pre-school.

Fundamentally the site would make an important contribution to the current identified housing need in Wiltshire without causing other demonstrable harm.

The benefits

Provision of entry level AH / housing to address 5YRHLS shortfall –

Given the lack of a 5yr HLS within the county, the widely acknowledged nationwide housing crisis, the further shortage of affordable housing both locally and nationally, and the provision of up to 145 dwellings with 40% to be delivered as

affordable, it is considered that significant weight should be given to this benefit. The development would make a very important contribution to the Council's housing land supply and this point should attract substantial positive weight.

Expenditure on construction and investment in the area / creation of construction jobs – Some positive weight should also be attributed to this benefit, providing a boost to the economy through the provision of all associated construction jobs with a development of this scale. After all, the construction industry has been highlighted by the government as one of the key areas for growth post pandemic and more generally. A limited, yet still positive, amount of weight can also be attributed to the economic expenditure from future occupants of the development within the local economy.

Financial contributions towards off site infrastructure –

Whilst these contributions are required to make the development acceptable in planning terms, some of the contributions would be of benefit to the local population and, without the development would be unlikely to happen.

The 'harms'

As noted above, any harm identified would need to be both significant and demonstrable in order to justify refusing the planning application. In this case, after various amendments and improvements throughout the life of the application, it is concluded that there would be no significant or demonstrable harm arising from this development that cannot otherwise be mitigated through the detailed design process at REM stage, the use of appropriately worded planning conditions, and/or via s106 contributions/obligations.

Neutral

It is noted that lack of identified harm against policies of the WCS is not a benefit of the scheme but would be a neutral aspect of it. The lack of technical objections raised to the development and its conformity with the development plan are therefore neutral points on the balance.

Conclusion

No significant or demonstrable harm has been identified that would outweigh the benefits (in the case of the provision of market and affordable housing, significant benefits) that this development would accrue. In the absence of any identified planning harm, it is therefore recommended that this application be approved subject to the conditions listed below and the satisfactory completion of a s106 legal agreement containing the contributions identified in this report.

It is our stance that significant weight should be attributed towards the provision of new open market and affordable housing, large areas of Public Open Space and Green Infrastructure, a new safe pedestrian and cycle link to West Wilts Trading Estate, improvement in Biodiversity through Biodiversity Net Gain, and significant S106 contributions which total in excess of £700,000 and are detailed below:

- Leisure (off-site sports provision): £34,220
- Education: £297,874
- Refuse and Recycling: £13,195
- Air Quality: £66,650
- Ecology (Trowbridge Bat Mitigation Strategy): £112,754.90
- Ecology (Picket and Clanger SSSI): £29,547.27
- Evening Bus service: £150,000

Housing Need

The provision of housing is a key aim of national planning policy. It has been clear over the past few years that the Council has fallen behind in delivering housing across Core Strategy and Site Allocation DPD allocated sites (hence the five-year housing land supply shortfall which has been in place since 2020).

It is the case that Wiltshire is almost at the end of the current Plan period however there continues to be and will always be the need to deliver more housing. This is true of both market and affordable housing. We know that this proposal would deliver up to 145 homes with an associated policy compliant affordable housing provision of 58 homes. A meaningful contribution. Such a contribution becomes all the more stark when consideration is given to the Council's latest evidence on such topics which is set out in the Wiltshire Local Housing Needs Assessment Update: Volume II (February 2023). At paragraph 4.18, the analysis **"concluded that 4,063 households are currently living in unsuitable housing and are unable to afford their own housing"**.

Further of those households, 1,762 currently occupy affordable housing that does not meet the current householder's needs, mainly due to overcrowding. In addition, it concludes that over the proposed 18-year plan period affordable housing need would comprise 30,010 households, equivalent of an average of 1,667 per annum.

It is our view that the Council in seeking to take a series of applications back to committee, where they have already resolved to grant planning permission, is counter intuitive and without rational thought and is done solely for political merit.

The parties that loose out in such situations are not those who already benefit from home ownership, but those in acute affordable need, who don't often have a voice at committee meetings, and those people that the Council's own evidence have concluded are living in unsuitable housing. Yet all of this is put aside because the Council considers it can reward itself for continuing to fail to deliver enough housing.

In our view, a shortfall in five- or four-year housing land supply isn't deemed necessary to grant permission, and that the material considerations, plenty of which are associated with this application, should warrant approval.

Westbury LVA LLP