

**IN THE MATTER OF
THE TOWN AND COUNTRY PLANNING ACT 1990**

**AND IN THE MATTER OF
7 RESIDENTIAL APPEALS BY LEVERHULME ESTATES:
PHASE ONE, SITES A-G,
ON LAND AT IRBY, PENSBY, HESWALL AND RABY MERE,
THE WIRRAL.**

**OPENING SUBMISSIONS
ON BEHALF
OF THE APPELLANT**

1. Leverhulme cares very deeply about the Wirral, and in particular, ‘central’ Wirral, its rural areas and its local communities. These seven appeals are brought in the context of sustained dereliction by Wirral Borough Council to provide for the social, economic and environmental needs of its communities; its failure, in short - over decades, now - to provide its communities with ‘sustainable development’ within the meaning of national policy.
2. The legacy of entrepreneur and philanthropist, William Hesketh Lever, 1st Viscount Leverhulme (1851-1925), Leverhulme has been part of the fabric of Wirral for over 130 years. With over 2,000 hectares of land in central Wirral, a large portfolio of agricultural, commercial, leisure and residential properties, including over 150 homes, and as custodian of some 69 Listed Buildings, the trustees of the Leverhulme Estate are able to take a generational perspective in land-use planning to achieve a long-term legacy of positive place-making and stewardship, delivering a vitally needed boost to the local economy, specifically the rural economy and the provision of much needed

housing within Wirral. This is all in the context of estate-wide delivery of social, environmental and economic benefits. They take this responsibility seriously.

3. Lord Leverhulme developed one of the most iconic parts of residential Wirral, at Port Sunlight. Formerly part of the estate and since 1999 in the care of the Port Sunlight Village Trust, it is home to some 900 listed buildings. He also further developed and beautified Thornton Hough, the village at the heart of the estate as well as the villages of Storeton, Raby and Brimstage with new estate housing and public buildings in a distinctive vernacular. Lord Leverhulme and subsequent Viscounts also managed and developed the wider agricultural estate, notably planting the distinctive ‘avenues’ which criss-cross central Wirral.
4. Figures 1 and 3 of the Leverhulme Vision¹ give a simplified view of Leverhulme’s ownership in the context of Wirral, its existing settlements and its Green Belt. In short, Leverhulme’s 2,000 ha lies predominantly between Greasby in the north and the Borough boundary in the south, and between Pensby and Heswall in the west and Bebington and Bromborough in the east. It is predominantly designated Green Belt, giving both the opportunity to identify land for new development adjacent to existing sustainable settlements, and for Green Belt and biodiversity enhancements within the wider estate that lies between them. That has given Leverhulme a unique opportunity to play its part in the beneficial development of Wirral.
5. Contrast this with the performance - over decades - of Wirral Borough Council, the local planning authority, whose task it is to manage development control in the public interest. Since the NPPF 2012, this has expressly been in order to deliver sustainable development, and in particular to accommodate much-needed housing. In the centre and west of the Borough, this supply is tightly constrained by a Green Belt designation materially unchanged from its boundaries drawn some 40 years ago.
6. Wirral’s current UDP had only one year of its own plan period to run by the time of its adoption. That was in 2000. The plan period itself was from 1986 to 2001, with assessment of development needs going back to the policy approach of the 1980s. Since 2004, the local development scheme has been published, re-published and failed to be

¹ CD 02/3

delivered at least six times. In 2017, 2018 and 2019, successive Secretaries of State have threatened to intervene in plan-making in the Wirral as a result of this dismal failure to have an up-to-date development plan.

7. As the evidence of Mr Coburn will make abundantly clear, that failure is not just one of not meeting numerical targets or government initiatives; it is a very real failure to provide for the socio-economic needs of Wirral and its communities. Real people are denied real homes; affordability worsens; population is exported rather than catered for; workforce declines; communities age; settlements ossify.
8. Indeed, with a twenty-year failure to have an up-to-date development plan, Wirral is in danger of becoming a case-study in the socio-economic consequences of not delivering housing on an almost generational scale.
9. This is profoundly contrary to the drive of national policy, enshrined in the 2012 NPPF, but reinforced in every iteration since, that sustainable development means the meeting of today's needs, without compromising the ability of future generations to meet their own needs. That requires, by definition, that today's needs must be met – for otherwise we are simply passing on the burden to those future generations, making their task more difficult.
10. The evidence shows that it did appear, momentarily (when Departmental pressure on the Council was intense) that the Council, internally at least, recognised the wisdom of releasing Green Belt to assist in the delivery of housing in the Borough. Indeed, at one stage there was engagement with Leverhulme as a significant landowner and stakeholder as to how that might best be achieved. Leverhulme undertook its own Green Belt Study², and in 2018, so did officers of WBC³. This was followed by a 'full' Green Belt Review in 2019 commissioned by the Council from Arup⁴.
11. There is a notable consistency of outcome for those review documents, namely an identification of 'less well performing' Green Belt sites which are worthy of consideration for release for much needed housing. As will be explored in the evidence

² CD 04/7

³ CD 04/11

⁴ CD 04/12

hereafter, all the sites currently at appeal are within that more poorly performing end of Green Belt parcels.

12. If WGSA are to be believed⁵, they are (at least in part) responsible for the political change of heart that caused WBC once more to close the shutters on the release of Green Belt to allow for sustainable expansion of settlements in central Wirral. That is a regrettable factor of the emerging WLP, and one which will continue to be debated in the LP examination. None-the-less, Leverhulme recognised and embraced its unique role in assisting the delivery of sustainable development, across the short, medium and longer term.
13. In April 2020, Leverhulme published ‘The Leverhulme Vision’⁶, seeking dialogue and engagement with WBC and the wider public. It takes an estate-wide approach to, as it says *‘unlock strategic transport, landscape, biodiversity and economic opportunities for the benefit of everyone in Wirral’*⁷. It draws heavily on the outcomes of the Build Better Build Beautiful Commission (now enshrined in Section 12 of the NPPF) to *‘deliver beautiful new places which are distinctively ‘Wirral’ and which deliver the right mix of house sizes to meet the identified local needs’*⁸. It proposes Green Belt enhancements in line with the NPPF and improved public access to an improved countryside. Importantly, it proposes a generational timescale, with three phases brought forward, the first to address the acute short-term need for housing and affordable housing now, the second to be promoted as allocations in the emerging local plan and the third as longer-term safeguarded land for future needs. At p.44 the Leverhulme Vision is commended to the Council as a collaborative document whereby Leverhulme looked forward to *‘working with the Council to deliver something special for Wirral.’*
14. It can only be regretted that WBC set its face against these attempts, constructively, to assist the Council in its task of delivering sustainable development. The seven applications now at appeal represent seven of eight residential-led schemes envisaged

⁵ Mr Heath’s proof at paragraph 13.

⁶ CD 02/3.

⁷ Ibid p. 6

⁸ Ibid p. 15

as Phase 1 of the Leverhulme Vision (the 8th having been delayed in its determination)⁹. Together they amount to 788 dwellings (including 238 affordable dwellings) on sites ranging from 290 dwellings at the largest, to 15 dwellings at the smallest. Although all are compatible each with the other and also with Phases 2 and 3 of the Vision, each is capable of being permitted on its own. Each site needs, therefore, to be considered on its own merits as well as cumulatively.

15. The context for these applications/appeals is an undeniably ‘out of date’ development plan, dating as it does decades before current national policy on the approach to delivering development needs, and also in the face of the failure of the Council to be able to demonstrate the required 5-year housing land supply. While the latter is in dispute, the former cannot be, and either factor is sufficient of itself to trigger para. 11(d) of the NPPF. The most important policies for the determination of the applications/appeals are out of date and should, it follows, be accorded reduced weight.

16. The seven applications were refused for essentially the same reasons¹⁰, which can be summarised as follows:

- (1) Green Belt; no very special circumstances
- (2) Landscape and visual impact
- (3) Ditto plus loss of best and most versatile agricultural land
- (4) Insufficient ecological information (BNG and European Sites)
- (5) Inaccessible location and impact on the M53
- (6) Absence of a satisfactory s.106 obligation

17. Of these a number have fallen away or narrowed.

18. The landscape(s) of which the appeal sites form a part are acknowledged to not qualify as ‘valued landscapes’ for the purposes of para. 174(a) of the NPPF¹¹. As such, it is para. 174(b) which is engaged. Further, in assessing the landscape and visual impact,

⁹ The SANG appeal mentioned in the evidence has now been withdrawn in agreement with the Council following agreement that a full payment under the WBC Interim Approach, endorsed by NE, would be sufficient mitigation for recreational impact in European Protected Sites, and consequently, Leverhulme would not need to provide its own bespoke SANG. It will not be considered further, therefore.

¹⁰ The drainage objection on site C having subsequently been dropped.

¹¹ Planning SoCG (CD 01/2.1) para. 3.24

the Council has agreed the Methodology in the Appellants' LVIA's *and* the landscape character and visual receptors¹² (quite why Mrs Hyslop has gone her own way, we will need to explore in evidence). The limited and localised nature of the landscape impact on these not 'valued landscapes' should, therefore, be readily apparent from the evidence.

19. The quantification of best and most versatile land has been agreed; the remaining dispute is the weight to be given to its utilisation for much needed housing in the planning balance.
20. The potential impact on European Protected Sites has been overcome by the agreement by Leverhulme to pay the full payment under the WBC Interim Approach to recreational mitigation, following the formal endorsement of that approach by NE in the course of the Local Plan process. Consequently, it is common ground that the Inspector will be able to conclude a favourable appropriate assessment in respect of each site under the Habitats Regulations. That part of the ecological reason for refusal has, accordingly, been withdrawn.
21. Similarly, the alleged 'absence of ecological information' narrowed itself down to the need for MEAS, the WBC ecological adviser, better to understand the BNG calculations on and off site. The information was there, but has been re-presented for ease of analysis. It is understood that there are no outstanding concerns regarding the BNG calculations (which show comfortably in excess of 10% - and often a very great deal more). No other ecological objection has been raised.
22. The impact of the proposals (individually and in combination) on the M53 are satisfactory to National Highways and WBC does not pursue that point.
23. The allegation of inaccessibility (see below) does not encompass any alleged breach of para. 111 of the NPPF on severe highways impact or unacceptable safety consequences.
24. Although slow in the coming, it is understood that the Council has now identified all its CIL-compliant contributions for social infrastructure to be secured under the s.106

¹² Planning SoCG (CD 01/2.1) para 3.23

obligations. Any outstanding matters on triggers or mechanisms can be discussed at the two s.106 sessions.

25. There is no heritage or amenity objection taken to these applications.
26. It is apparent, then, that the acceptability or otherwise of these sites will fall to the weighing of the many and manifest benefits in the scale of para. 148 of the NPPF against the Green Belt and 'other' harm to see whether 'very special circumstances' exist to allow, consistent with national policy, the release of these Green Belt sites
27. In this context, it is worth noting that the Appellant profoundly disputes the suggestion that these sites are inaccessible by sustainable modes of transport. In fact, each plugs readily into its adjacent settlement, by walking, cycling and public transport measures. The Council's approach appears not to be one of judging the schemes against applicable highways policy and guidance on accessibility for residential development, but rather to seek to compare it to schemes being promoted through the emerging Local Plan – which are not before this inquiry. A s. 78 appeal is not a 'beauty contest' with other hypothetical applications/sites; the correct test is to see whether the proposals at appeal acceptably accord with policy and guidance. The evidence shows that these will.
28. It is also worth noting ahead of exploring the matter in evidence that the Appellant simply doesn't accept that the development of these seven sites (individually or in total) poses any risk to the Council's stated desire to re-develop the brownfield regeneration sites in Birkenhead which make up very nearly the entirety of its spatial strategy in the emerging Local Plan. This goes both to the matter of impact on the generic Green Belt Purpose 5 (to encourage brownfield regeneration) and the case now mounted by the Council on the basis of 'prematurity'.
29. There seems to be a binary assumption: if Green Belt protection, urban regeneration; if any Green Belt release, no urban regeneration. But this is plainly nonsense.
30. Whatever may be said about the 'advanced' stage of the emerging LP (which is slipping further), put simply, there is absolutely *no* evidence that the 788 dwellings at appeal would alter the viability of the Birkenhead proposals (which rests entirely on enormous largely unidentified public investment – even on the Council's case). The deliverability

of c.16,300 dwellings in Birkenhead is a matter for the Local Plan; Mr Booty, for the Council, is at pains to evidence the strong likelihood of its happening given the public funding received and expected. The strength of this argument may be doubted, in its own terms, but it is not affected one way or the other by placing an entirely different model (family homes not 1-3 bed flatted development) in an entirely different location (extensions to sustainable settlements in the W and S of the Borough), assisting in remedying the Council's absence of a 5 year housing land supply and providing the mix and tenures where it is needed, and for which there is no other provision.

31. In a similar way, although Purpose 5 of the Green Belt purposes states that it is to assist in urban regeneration, the emerging Local Plan candidly and somewhat disarmingly admits that there had been a largely unchanged Green Belt in Wirral for the last 40 years, and yet Birkenhead remains undeveloped. In other words, the dogmatic protection of the Green Belt has not delivered regeneration in Birkenhead. Indeed, it is not capable of delivering it; massive public financing is what is needed to make regeneration happen in Birkenhead. That may come forward or it may not, but sustainable release of these small Green Belt parcels to assist the socio-demographics of the neglected S and W of the Borough is not a relevant factor in the availability of the public funds needed.
32. Consequently, when assessing Green Belt harm, Purpose 5 may be said to be in play, but only generically, not specifically. 'Prematurity' (even if the gate is opened to it by the stage of the Local Plan) is not an 'other' harm to be added to the negative side.
33. Para. 148 of the NPPF requires Green Belt harm and any 'other' harm to be weighed against the benefits of the proposal. Chiefly, in this will be the assisting in re-balancing the absence of supply (number, type, tenure and location) of housing, the economic and social consequences thereof and the landscape and biodiversity improvements from the schemes, both on site and as part of the Phase 1 off-site improvements.
34. These will all be explored in evidence, but it is apparent at the outset – by reference not least to the Appendix to its Statement of Case – that the Council made its decision to refuse these schemes on a false analysis, contrary to caselaw, that there had to be something 'special' about each benefit prayed in aid to show 'very special circumstances'.

35. That is simply not the case. It is the overall basket of benefits clearly outweighing the harms (Green Belt and otherwise) which constitute ‘VSC’s’. Any subsequent argument by the Council in evidence is nothing more than a rear-guard action to cover that initial (and grievous) mistake.
36. Repeated Secretary of State and inspector decisions emphasise the substantial weight to be given to the provision of housing (even if there is a 5-year supply) and affordable housing (even if it is only at policy compliant levels). These applications will in total deliver 550 market units, helping deliver the Government’s objective of boosting significantly the supply of housing, and 238 affordable units – above the policy requirement - to address the affordable housing crisis in the Borough. Provision for self/custom build (29 units on Site A and 12 units on Site E) is also accorded significant weight given the unmet need for self-build plots on the Council’s register. In addition, the NPPF requires that significant weight be given to aiding the economic wellbeing of the country. In this respect, the proposals would generate the creation of approximately 128 FTE jobs through local expenditure, supporting communities in the south and west of the Borough which have been starved of the necessary housing to support economic growth for decades. Substantial positive weight is also given to proposals which accord with Section 12 of the NPPF on place-making. Naturally, additional weight is given to ecological, landscape and public access enhancements.
37. It will be submitted in due course that these, and the other positives enumerated by Mr Handy, do indeed ‘clearly’ outweigh the harm in respect of these relatively poorly performing Green Belt sites, their limited landscape impact and their minor loss of BMV.
38. ‘Very special circumstances’, therefore, exist; para. 148 of the NPPF is satisfied; the proposals are (each of them and together) *compliant* therefore with national policy on protecting the Green Belt; there is no ‘clear reason’ under para. 11(d)(i) of the NPPF for withholding permission, and attention passes to para. 11(d)(ii).
39. There is an intriguing passage in Mr Loughran’s proof that states that even if para. 11(d)(i) is judged to be passed, he finds the ‘tilted balance’ under para. 11(d)(ii) to be against the scheme. We shall enjoy that passage of cross examination. A moment’s

reflection would reveal that if, in this case, para. 11(d)(i) has been passed, it is because under the ‘straight balance’ of para. 148, Green Belt harm *and* all other harms (ie the totality of harm) had been ‘clearly’ outweighed by the (totality) benefits. In such circumstances, where it has already been concluded that ‘all benefits’ outweigh ‘all harms’, it cannot conceivably be possible as a matter of analysis, when considering para. 11(d)(ii), to conclude under the ‘tilted balance’ that total harms *significantly outweigh* the total benefits.

40. Mr Loughran’s assertion is of a piece with the intransigent negativity levelled at these laudable proposals by the Council and those acting for it. The truth of the matter is that with very special circumstances shown (as, the Appellant says, they compellingly are), these proposals should be approved *in the public interest*.

41. Let the Council pursue its chosen spatial strategy as it wishes – doomed though it may be - through the Local Plan process. Whether that strategy is subsequently exonerated or not, these proposals are still needed and needed now.

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