

TOWN AND COUNTRY PLANNING ACT 1990

APPEALS BY LEVERHULME ESTATES LIMITED

OPENING ON BEHALF OF THE WIRRAL METROPOLITAN BOROUGH COUNCIL

SITE: Land East of Glenwood Drive, Irby (Site A) PINS Ref:
APP/W4325/W/22/3313729
LPA Ref: OUT/22/00946

DEVELOPMENT: Outline Planning Application for residential development for up to 290 dwellings (Use Class C3), including 30% affordable housing and 10% self-build / custom build properties; delivery of part of the Borough's cycle super greenway; green infrastructure including sports pitches, play areas and parkland, wildlife habitats and green corridors; and off-site highway, environmental, biodiversity and accessibility enhancements (Outline application with all matters reserved except for access).

SITE: Land East of Dale View Close, North of Gills Lane, Pensby (Site B)

PINS Ref: APP/W4325/W/22/3313734

LPA Ref: OUT/22/00941

DESCRIPTION: Residential development for up to 92 dwellings (Use Class C3), including 30% affordable housing; delivery of green infrastructure including a new public open space and play area, wildlife habitats and green corridors; and off-site highway, environmental, biodiversity and accessibility enhancements (Outline application with all matters reserved except for access.)

SITE: Land East of Thorncroft Drive, North of Gills Lane, Pensby (Site C)

PINS Ref: APP/W4325/W/22/3313737

LPA Ref: OUT/22/00942

DESCRIPTION: Residential development for up to 15 dwellings (Use Class C3), including 30% affordable housing; delivery of green infrastructure including a green space, wildlife habitats and wetland; and off-site environmental, biodiversity and accessibility enhancements (Outline application with all matters reserved except for access).

SITE: Land West of Barnston Road, North of Gills Lane (Site D)

PINS Ref: APP/W4325/W/22/3313741

LPA Ref: OUT/22/00944

DESCRIPTION: Residential development for up to 153 dwellings (Use Class C3), including 30% affordable housing; delivery of green infrastructure including a new public park and play area, wildlife habitats and green corridors; and off-site highway, environmental, biodiversity and accessibility enhancements (Outline application with all matters reserved except for access).

SITE: Land at Milner Road and Barnston Road (Site E)

PINS Ref: APP/W4325/W/22/3313743

LPA Ref: OUT/22/00943

DESCRIPTION: Residential development for up to 120 dwellings (Use Class C3), including 30% affordable housing and 10% self-build/custom build properties; delivery of part of the Borough's cycle super greenway; green infrastructure including a new public park and play area, community orchard, wildlife habitats and green corridors; and off-site highway, environmental, biodiversity and accessibility enhancements (Outline application with all matters reserved except for access).

SITE: Land West of Raby Hall, Raby Road, Raby Mere (Site F)

PINS Ref: APP/W4325/W/22/3313775

LPA Ref: OUT/22/00945

DESCRIPTION: Residential development for up to 38 dwellings (Use Class C3), including 30% affordable housing; safeguarded land for the expansion of Autism Together facilities; delivery of green infrastructure including a new pocket park and play area, wildlife habitats and green corridors; and off-site environmental, biodiversity and accessibility enhancements, including an off-road pedestrian and cycle connection between the site and Blakeley Road (Outline application with all matters reserved except for access).

SITE: Land East of Raby Hall Raby Road, Raby (Site G)

PINS Ref: APP/W4325/W/22/3313777

LPA Ref: OUT/22/00947

DEVELOPMENT: Residential development for up to 80 dwellings (Use Class C) including 30% affordable housing. Delivery of green infrastructure including a new open green space and play area, wildlife habitats and green corridors and offsite environmental, biodiversity and accessibility enhancement (outline application with all matters reserved, except for access)

WITHDRAWN APPEAL - SITE: Land West of Barnston Road – SANG

PINS Ref: APP/W4325/W/22/3313726

LPA Ref: APP/22/01502

DEVELOPMENT: Creation of a Suitable Alternative Natural Greenspace (SANG) development of 22.6 hectares including boundary works and means for access and parking; biodiversity enhancements to hedgerows, meadows/grasslands, field ponds and woodlands; creation of green infrastructure and footpaths; creation of wildlife habitats; and off-site highway works.

Introduction

1. The appeals at Sites A – G are in respect of proposals for residential development which were the subject matter of outline applications to the LPA. A further appeal in relation to a proposal for a Suitable Alternative Natural Greenspace (SANG) was submitted but has been withdrawn recently. All applications were refused by the Council in its capacity as LPA.
2. Save for Site A, all of the applications were determined under delegated authority. The Site A application was determined at a meeting of the Strategic Planning Committee on 27th October 2022.

Development Plan

3. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications to be determined in accordance with the development plan unless material considerations indicate otherwise.
4. The Statutory Development Plan currently comprises:
 - the ‘saved’ policies in the Unitary Development Plan for Wirral, adopted February 2000
 - the Joint Waste Local Plan for Merseyside and Halton, adopted July 2013, along with
 - Neighbourhood Development Plans for Devonshire Park (2015) and Hoylake (2016).
5. Notwithstanding the fact that the UDP was adopted in 2000 - and well before NPPF was introduced in 2012 - the most important policies for determining the appeal applications are up-to-date in the sense that the policies are consistent with those in national policy.

6. The Council's position in relation to the UDP policies is set out in the SoCG¹ at Appendix A. Importantly, Policy GB2 of the UDP² is agreed to be not out-of-date and can be given full statutory weight.
7. An area of dispute relates to UDP Policy URN1, "*Development and Urban Regeneration*". It is the Council's case that the policy continues to be up-to-date as it follows the strategic advice in NPPF concerning making effective use of land which includes previously developed land.
8. Similarly, Policy NCO1 of the UDP deals with the "*Principles for Nature Conservation*". The policy does not fully reflect the hierarchy set out in Paragraph 175 of NPPF, but the nature conservation policies, Policies NC1, NC2, NC3, NC4 and NC5 are considered to be not out-of-date and can be given full weight.
9. The overall assessment is that the LPA considers that the most important policies in the Development Plan for determining the appeal application are up-to-date and consistent with NPPF.
10. The emerging Wirral Local Plan (2021-2037) is at an advanced stage and its policies and evidence base constitute a material consideration in the determination of the appeals. The eLP was submitted to the Secretary of State for independent examination on 26th October 2022. The independent examination has commenced. The view of the Council is that the eLP has reached a stage in its course to adoption such that the policies and the evidence base supporting them can attract significant weight in the determination of the appeals.
11. A key issue in relation to the eLP is the Spatial Strategy. The strategy was developed around a core vision within the Plan to regenerate the urban areas in and around Birkenhead and to facilitate the wider regeneration programme for the Left Bank of the River Mersey. The determination of the appropriateness of the strategy follows

¹ CD 01/2.

² CD 04/1

on from years of work supported by an extensive publicly available evidence base and Sustainability Appraisal. This had included the Green Belt Review³ and Options Appraisal⁴. The eLP recognised that amongst the key aims for designating the Green Belt in 1983 was to check the outward spread of the built-up area, direct development into existing towns and encourage their regeneration. Those objectives remain at the heart of the eLP and the Council's evidence base and detailed analysis has resulted in a strategy that has determined that the Council can meet its development needs entirely within existing urban areas and without recourse to Green Belt release.

12. Policy WS1 of the eLP⁵ sets out the development and regeneration strategy. It will provide for 13,360 new homes including provision for affordable homes on previously developed land within existing settlement areas.
13. The LPA considers that the appeal proposals for 788 dwellings on Green Belt land (and a clearly expressed ambition for significantly larger releases of Green Belt release) is diametrically opposed to the Council's eLP strategy.
14. The evidence base of the LPA in its preparation of the eLP had concluded that there was not a justification for the release of GB land to meet need with the consequence that it concluded that there were no "*exceptional circumstances*" to make provision for housing or other development on the currently designated GB land.

Main Issues

15. Following on from the CMC the main issues that were identified for the residential appeals Sites A to G are:
 - (a) Whether the cumulative effect of the developments proposed would be so significant, that to grant permission would undermine the plan-making

³ CD 04/11.

⁴ CD 04/12.

⁵ CD 04/13

process by predetermining decisions about the scale, location or phasing of new development that are central to the emerging plan.

- (b) The effect of the proposals on the openness and purposes of the Green Belt.
 - (c) The effect of the proposals on the character and appearance of the area, including the effect on the settlements of Irby and Thingwall, Barnston, Heswall, and Raby Mere.
 - (d) The effect of the proposals upon the best and most versatile agricultural land.
 - (e) Whether the proposals would support active and sustainable modes of travel.
 - (f) Whether the proposals would make suitable provision for infrastructure, and;
 - (g) Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposals.
16. The SANG Appeal has been withdrawn and is not the subject matter of any further consideration.
- (a) **Whether the cumulative effect of the developments proposed would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to the emerging plan**
17. The Leverhulme Estate has asserted that the eLP is “*fundamentally flawed*”. The subject appeals engage the principal issues against which the “*soundness*” of the eLP is currently being tested. In particular, whether Green Belt release is required or justified to meet development needs, the assessment of housing supply and protection of the countryside.

18. In the conduct of maintaining Section 78 appeals that crucially depend on a substantive challenge to the evidence base of the eLP that also has the effect of effectively excluding other stakeholders and contributors to the eLP process.
19. As noted in the evidence of ML⁶, the argument that the Appellant puts in the appeal that the Plan is “*fundamentally flawed*” tends to demonstrate that the appeal proposals are premature. The development of land in the GB would be contrary to the spatial strategy of the eLP where one of the key objectives of that strategy is promoting the regeneration of brownfield sites and urban intensification with the necessary corollary being the maintenance of GB protection. Although more recently the Appellant has begun to resile from the language of the eLP being “*fundamentally flawed*” the Appellant’s case is and has to be a root and branch challenge to the eLP for otherwise the appeals cannot succeed and, as such, falls squarely within the meaning of prematurity as expressed in the NPPF⁷.
20. The issue of prematurity was raised prior to the CMC. The evidence on this issue for the LPA is provided by DC⁸. The evidence is put in the context of NPPF advice such that the cumulative effect of the developments proposed would be so significant that to grant permission would undermine the Plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to the eLP in this case.
21. The proposed developments that are the subject matter of this appeal at 788 units has to be seen in the context of the Leverhulme Vision⁹ that the extent of the proposals overall is to develop in the Green Belt over the Plan period some 416.81 ha of land to provide 7,754 dwellings.
22. By these appeals the Leverhulme Estate is imposing an alternative spatial strategy on the LPA and is predetermining the location of housing through the appeal process.

⁶ Paragraph 4.80, CD 01/13.2.

⁷ Paragraph 49(a)

⁸ CD 01/20.

⁹ CD 02/3.

23. Consistent with Paragraph 49 of the NPPF, the eLP is at an advanced stage and the appeal proposals are of a scale, location or proposed phasing that would be so substantial and their cumulative effects would be so significant that to grant planning permission would undermine the Plan-making process.

(b) The effect of the proposals on the openness and purposes of the Green Belt

24. The Appellant concedes that the residential proposals in appeal sites A – G represent “*inappropriate development*” in the Green Belt and are by definition harmful to the GB and should not be approved save in “*very special circumstances*”.

25. The evidence of the LPA addresses overall conflict on a site-by-site basis. For the purpose of this Opening, it is the LPA’s case that the purposes of including land within the GB in preventing urban sprawl, preventing neighbouring towns merging, safeguarding countryside from encroachment and assisting urban regeneration are materially harmed in the context of the appeal proposals.

26. Paragraph 148 of NPPF requires decision-makers to ensure that “*substantial weight*” is given to any harm to the GB. It continues that VSC will not exist unless the potential harm to the GB by reason of inappropriateness and any other harm is clearly outweighed by other considerations.

27. There will undoubtedly be an impact on openness. The appeals both individually and cumulatively will have a significant impact on the existing open parts of the GB by introducing significant built form into what is presently open areas of land that are free from built development.

(c) The effect of the proposals on the character and appearance of the area, including the effect on the settlements of Irby and Thingwall, Barnston, Heswall, and Raby Mere

28. The LPA’s evidence in relation to this matter is provided by JH. JH considers that the Applicant’s LVIA’s do not appear to have taken into account the existing baseline Landscape Sensitivity Assessments that were undertaken as part of the evidence of

the eLP. This included the Wirral Landscape Sensitivity Assessment 2019¹⁰ and the draft Wirral Environmental Sensitivity Assessment 2021¹¹

29. Overall, it is considered that the analysis on behalf of Leverhulme Estates appears to underplay the landscape and visual sensitivity of the specific sites.
30. There will be an adverse effect on the character and appearance of the area. This will affect the integrity of the predominantly open and undeveloped land between settlements contrary to Policy WS5.8 of the eLP that seeks to protect the visual amenity, character, appearance and landscape setting.
31. Furthermore, the Appellant's assessment of the visual effects does not acknowledge local community receptors. The susceptibility of local communities has been treated as the equivalent to that of corresponding road users. This, in the view of the LPA, also underplays the outcome of the LVIA for local community receptors. The development proposals would effectively merge Irby with Thingwall, Pensby with Barnston Village and result in a reduction in the perceived gap between Heswall and Barnston.
32. Specifically, Site A contravenes the Landscape Sensitivity Assessment in failing to preserve rural views out from Thingwall, ensuring wooded skylines are conserved and enhanced and ensuring that the function of the area as a perceived gap is maintained.
33. Appeal Sites B, C, D and E contravene the guidance insofar as they would constitute development on prominent slopes and elevated areas¹².
34. Site E fails to preserve rural views out from and surrounding Barnston Conservation Area.
35. Sites F and G fail to respond to the sense of remoteness associated with the settlement edge of Raby Drive and Raby Hall.

¹⁰ CD 04/39.

¹¹ CD 04/60.

¹² PoE Julie Hyslop CD 01/15.2 paragraph 9.9

(d) The effect of the proposals upon the best and most versatile agricultural land

36. When the sites are assessed cumulatively there would be a loss of 30.4ha of BMV land.

37. Paragraph 174 of the NPPF advises that decisions should contribute to and enhance the local environment by:

“(b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystems services – including the economic and other benefits of the best and most versatile agricultural land ...”

38. The Appellant recognise this to be a loss and submitted an Agricultural Land Classification and Soil Resources Report¹³ with the original refused application. There is also a chapter of the ES¹⁴ dedicated to this matter (Chapter 11).

39. Mitigation is proposed in the form of a soil resource management plan at detailed design stage. It is currently unclear what is proposed but is understood the plan would seek to re-use displaced soil resources on-site in the detailed design of open spaces and green infrastructure.

40. The Appellant acknowledges there is some harm due to the proposed loss of agricultural land but considers this balanced against the overall benefits of the scheme.

41. The LPA considers the loss of agricultural land would contribute to an overall reduction in productive agricultural land and is a matter that weighs against the proposal. Appendix B to the proof of ML further addresses the issue of BMV land and the impact of its loss on food security and climate change.

42. The loss is considered to carry moderate negative weight in the planning balance.

¹³ CDS 02/27

¹⁴ CDA 02/5

(e) Whether the proposals would support active and sustainable modes of travel

43. The Council's evidence in relation to transport matters is provided by PP¹⁵.
44. In particular, the degree to which the appeal sites can be considered locationally sustainable is the subject matter of this part of the LPA's case. The Council considers that the developments essentially require use of the private motor car.
45. In respect of each of the residential appeals, consideration has been given to the access to key amenities for each site. Further analysis has then been undertaken in relation to whether the sites could be expected to utilise sustainable modes of transport to access key facilities.
46. Paragraphs 110 and 111 of NPPF require the promotion of sustainable transport modes and that it is ensured that safe and suitable access to the site can be achieved for all users.
47. It is clear on any rational analysis that the appeal site locations are less sustainable in transport terms than the housing-growth locations identified in the eLP.
48. Furthermore, the evidence indicates a lack of genuine alternatives to car travel in the appeal site locations. The developments are likely to lead to high levels of car ownership and use. In this respect, they do not qualify as sustainable locations according to NPPF in relation to whether a genuine choice of transport mode is available.
49. PP further analyses the accessibility on a site-by-site basis¹⁶.

(f) Whether the proposals would make suitable provision for infrastructure

50. Associated with the development proposals would be the requirement, if such appeals are allowed, to make appropriate contributions to the provision of

¹⁵ CD 01/16.2.

¹⁶ At Paragraph 8.3 et seq.

infrastructure. Those matters should be capable of being addressed through an appropriate Section 106 UU that complies with national advice. The following matters need to be addressed:

- (a) The provision and delivery of off-site highway improvements;
 - (b) The provision of sports facilities/pitch provision;
 - (c) The provision of an appropriate contribution to educational facilities;
 - (d) The provision and delivery of affordable housing;
 - (e) The provision and delivery of open space and play provision in accordance with policy;
 - (f) The identification of off-site ecological contributions.
 - (g) **Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposals**
51. The “*definitional harm*” by reason of inappropriateness requires to be given substantial weight in the determination of any application. To this then must be added any other harm.
52. The evidence for the LPA includes that in addition to the definitional harm will be harm as follows:
- (a) to the purposes of including land within the Green Belt;
 - (b) the proposals represent urban sprawl. They do not safeguard the countryside from encroachment and harm and are not supporting urban regeneration by encouraging the recycling of derelict and other urban land;

- (c) harm to the general character and appearance of the area. This includes substantial harm to the spatial and visual openness of the Green Belt and open land on the Wirral;
 - (d) would unacceptably impact on the Council's regeneration strategy in the UDP and the eLP;
 - (e) would undermine and be harmful to the spatial strategy of the eLP to secure comprehensive regeneration through the redevelopment of brownfield sites;
 - (f) include loss of agricultural land including BMV;
 - (g) the developments are locationally unsustainable and likely to result in the development sites having recourse to the private motor car.
53. National policy then requires that this harm be clearly outweighed to amount to VSC. The Appellant's cumulative case to demonstrate VSC puts forward the following:
- (a) following a planned and Plan-led approach;
 - (b) a contribution to Wirral's 5 year housing land supply - by the delivery of market, affordable and custom-build housing;
 - (c) economic and social benefits;
 - (d) environmental benefits with an enhancement package and long-term stewardship by Leverhulme Estates;
 - (e) BNG at 20% across the sites;
 - (f) the provision of a SANG that includes parking provision and a circular walk of 3.5 km. The SANG appeal has been withdrawn;

- (g) the long-term stewardship through the Design Charter and Locally Specific House Types;
- (h) open space provision in excess of the LPA's latest Open Space Standards; and
- (i) Walkable Neighbourhoods.

54. The LPA case in summary is as follows:

- (a) The Appellant's approach is the antithesis of a "*Plan-led approach*". To the contrary, the proposals completely undermine the Development Plan-led approach being promoted by the LPA through the eLP that is currently at examination. The LPA maintain that the NPPF standard for a conclusion that the proposals are premature is established in this case.
- (b) Irrespective of the five year housing land supply position, the provision of additional housing - both market, affordable and self-build - falls firmly into the benefits equation. Nevertheless, in the exchanged evidence the Appellant maintains that the deliverable supply is 3.45 years. The LPA in the exchanged consider that the supply is 5.49 years. If the LPA's case is correct, there is self-evidently no justification for GB release to meet housing need and, in any event, the absence of a 5YS would not, of itself, amount to VSC as this is an issue which should be considered through the eLP;
- (c) As a matter of inevitability associated with the development of in excess of 750 houses, there would be economic and social benefits arising from the investment. The provision would contribute to the local economy and therefore attract positive weight. However, this needs to be contextualised - insofar as the proposals would undermine regeneration and the deliverability of brownfield sites, those benefits need to be moderated and tempered.
- (d) The issue concerning Leverhulme Estate's long-term stewardship should not be afforded weight. Planning permission enures for the benefit of the land

and not the individual applicant. A personal planning permission would be inappropriate and is not suggested by the Appellant in any event. Furthermore, the policies associated with long-term stewardship are not the subject matter of any land use control that would be available to the LPA.

- (e) The issue concerning Biodiversity Net Gain is inextricably associated with the identification of the land and the means by which it will be delivered. In principle, the delivery of BNG at 20% would be a benefit. The suggestion, at this moment in time, relates to the use of land off-site but within the wider Leverhulme Estate. It remains unclear how this is intended to be secured and delivered.

- 55. It is considered that no weight can be given to the Leverhulme Vision and Design Charter. The applications are in outline with all matters reserved. This will be a matter to be dealt with at reserved matters stage. Insofar as the Appellants have sought to elevate the issue of Design, the current proposals are the subject matter of detailed criticism in the appendix to the rebuttal evidence of ML. This simply serves to highlight that the key consideration in this appeal is the principle of development.
- 56. The SANG appeal has now been withdrawn.
- 57. The contribution to Open Space is a recognised benefit of the schemes. The proposals meet or exceed the policy requirements of the UDP and the eLP.
- 58. The locational sustainability of the appeal sites is addressed in evidence; in short, the sites are such that sustainable forms of transport including walking and cycling are unlikely to be used to any significant extent by future residents.
- 59. Overall, the LPA recognise there are benefits that would be associated with the proposals. The weight to be attracted to these benefits must be put into context. In the context, within the wider strategy for the administrative area of the LPA, the delivery of housing would be harmful to its “*brownfield*” regeneration strategy.

Conclusion

60. The LPA will invite the Inspector to dismiss all the appeals.

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2023