



Appeal by Bellway Homes  
Land off Ashland Road West, Sutton-in-  
Ashfield, Nottingham

Appeal Ref: APP/W3005/W/21/3274818

Proof of Evidence of Bob Woollard on behalf of  
Ashfield District Council

Date of Inquiry: 21<sup>st</sup> September 2021

## 1.0 Introduction

1.1 I am Bob Woollard. I have an honours degree in Geography from the University of Manchester, an MA in Environmental Planning from the University of Nottingham and I have been a member of the Royal Town Planning Institute since 1998.

1.2 I have over 20 years' working experience in town and country planning involving a variety of development projects, both in the public and private sectors. For the past 16 years I have worked as a planning consultant on numerous planning matters throughout the Midlands, the Southeast and East of England. I have been a Director at Planning and Design Group (UK) Limited (P&DG) since November 2013.

1.3 I appear at this Inquiry on behalf of Ashfield District Council ('the Council') in respect of the appeal, the subject of this Inquiry.

1.4 The appeal relates to planning application V/2020/0184 for:

*"Outline planning application (with all matters reserved except access) for a residential development of up to 300 dwellings with associated infrastructure and landscaping."*

1.5 The application was refused on 23 March 2021 for the following reason:

*"The development would result in a significant adverse impact on the character and appearance of the area and surrounding landscape, particularly through the urbanising affects adjacent to Brierley Forest Park. The loss of greenfield and associated habitats would also result in significant and irreversible harmful impacts to biodiversity. In addition, the density of the development is considered to be too high and out of keeping with the surrounding area. Accordingly, the proposal would be contrary to Policies ST1 (a, b and e), ST2 – ST4 and EV2. There would also be conflict with Part 15 of the National Planning Policy Framework: 'Conserving and enhancing the natural environment'. It is considered that these harms would significantly and demonstrably outweigh the benefits of the development."*

1.6 Key matters raised by the development are shown in the Case Management Conference meeting note from the Planning Inspector dated 17/07/21.

1.7 The main issues in the note are:

- The effect of the proposed development on the character and appearance of the area and surrounding landscape.

- The effect of the proposed development on the biodiversity relating to the site.
- Whether or not the proposed development would represent an acceptable density.

## **2.0 Declaration**

- 2.1 The evidence which I have prepared and which I present at this Inquiry is true and has been prepared and is given in accordance with the guidance of my professional institution, the Royal Town Planning Institute, I confirm that the opinions are my true and professional opinions.

### **3.0 Scope of Evidence**

- 3.1 My evidence focuses on the impacts of the proposed development upon planning matters. It addresses the following main issues in respect of planning matters:
1. The weight to be applied to relevant planning policies.
  2. The effect of the proposed development on the character and appearance of the area and surrounding landscape.
  3. Whether or not the proposed development would represent an acceptable density.
  4. The overall planning balance taking into account the benefits of the appeal scheme.
- 3.2 My evidence does not cover technical matters relating specifically to ecological impact (to be dealt with by Andrew Baker, Managing Director, Baker Consultants).

## **4.0 The Appeal Site and Surrounding Area**

4.1 The appeal site description is set out within the Statement of Common Ground.

## 5.0 Evidence

5.1 Paragraph 11 of the National Planning Policy Framework (NPPF) states that:

*“Plans and decisions should apply a presumption in favour of sustainable development...”*

*For decision-taking this means:*

*c) approving development proposals that accord with an up-to-date development plan without delay; or*

*d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>8</sup>, granting permission unless:*

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>7</sup>; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”*

5.2 The relevant application of paragraph 11(d)(ii) has become known as ‘the tilted balance’.

5.3 Footnote ‘8’ of Paragraph 11 states:

*“This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.”*

5.4 It is acknowledged that the Council cannot currently demonstrate a 5-year housing land supply therefore footnote ‘7’ of Paragraph 11 is triggered.

5.5 As was recently confirmed by the Court of Appeal in Gladman vs SCLG [2021] EWCA Civ 104 however, even where the tilted balance is triggered, this neither automatically determines a planning application nor allows for the primacy of the development plan

to be circumvented and disregarded. There is still a requirement to carry out a full 'balancing exercise' of the adverse impacts and benefits of a proposal, and this will include (where relevant) consideration of a proposal's compliance and/or conflict with Development Plan policies. Whether and how policies of the development plan are taken into account in the application of the tilted balance is a matter for the decision-maker's planning judgment in the circumstances of the case in issue (see Gladman at [61]). A copy of this decision can be found in **Appendix 1** of this Proof of Evidence.

- 5.6 The adopted Development Plan for Ashfield District Council comprises the Ashfield Local Plan Review 2002 ('the Plan'). The NPPF requires a Development Plan to be updated every five years and it is acknowledged above that the Council cannot demonstrate a five-year housing land supply. These two points, in and of themselves, do not render all policies in a Plan as out of date.
- 5.7 While the Plan pre-dates the current version of the NPPF July 2021 (the Framework), Paragraph 219 states that due weight should be given, according to the policies degree of consistency with the Framework (see above).
- 5.8 I consider that the Development Plan policies most relevant to the determination of the application / appeal (the 'DM' policies as identified in the Reasons for Refusal) are not out of date when compared to the NPPF (due to the extent of their consistency) and should be given moderate weight. I consider the policies now.

### **Strategic Policies**

#### **Policy ST1**

- 5.9 Policy ST1 states:

"POLICY ST1 DEVELOPMENT WILL BE PERMITTED WHERE:-

- a) IT WILL NOT CONFLICT WITH OTHER POLICIES IN THIS LOCAL PLAN,
- b) IT WILL NOT ADVERSELY AFFECT THE CHARACTER, QUALITY, AMENITY OR SAFETY OF THE ENVIRONMENT,
- c) IT WILL NOT ADVERSELY AFFECT HIGHWAY SAFETY, OR THE CAPACITY OF THE TRANSPORT SYSTEM,
- d) IT WILL NOT PREJUDICE THE COMPREHENSIVE DEVELOPMENT OF AN AREA,
- e) IT WILL NOT CONFLICT WITH AN ADJOINING OR NEARBY LAND USE."

**(Criteria specified in Reason for Refusal is underlined above)**



5.10 With respect to criterion 'a' above, I make reference to the other policies in the Plan which were identified in the Reasons for Refusal below.

5.11 The reference to criteria 'b' and 'e' in the Reasons for Refusal relate to impacts on ecology and the wider Brierley Forest Park.

5.12 A separate proof on Ecology has been prepared by Andrew Baker of Baker Consultants. It raises several issues with the proposals including (but not limited to):

- Biodiversity metric calculations indicate a loss of 23.69 habitat units and a gain of 0.55 hedgerow units. The Appellant has provided no detail as to how off-site compensation will be delivered and whether it will be sufficient to compensate for the loss of habitat units. Until such evidence is provided, the proposed development fails to comply with the requirement to demonstrate a measurable net gain for biodiversity (NPPF para 174d).
- The Appellant has not demonstrated how the mitigation hierarchy has been applied and how ecological impacts have been avoided or mitigated and then 'as a last resort', compensated as required by paragraph 180a of the NPPF.
- The Appellant has not demonstrated how the neighbouring Brierley Forest Park and its features of nature conservation interest will be protected.
- Despite reassurances in 2020, the arable field has not been cultivated in 2021 and has become more suitable for reptiles. Consequently, the risk of harm to reptiles has increased.
- Potential impacts on Great Crested Newts have not been fully investigated to the appropriate level.
- Badger activity has been identified on site. There is a risk of an adverse impact on the badgers because the impacts of development cannot be fully determined without a more thorough and widespread investigation of badger activity within and beyond the Appellant's site.
- The impact on nesting and over-wintering birds has not been sufficiently investigated. The appellant has not provided a satisfactory explanation as to why this important survey was not carried out.

5.13 The lack of on-site mitigation is of particular concern. Paragraph 180 states that:

*"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;*" (my emphasis)

- 5.14 A letter received from FPCR Environment and Design Ltd dated 20th August 2020 can be found at **Appendix 2** of this Proof. The letter is also referred to in the Ecology Proof. The letter shows that the Biodiversity Impact Assessment (BFI), even with landscaping factored in, finds that there will be a net loss of -11.10 biodiversity units and a net gain of 0.55 linear units through the proposal. The letter then seems to suggest that as the Council cannot demonstrate a 5-year housing land supply, the delivery of housing is more important than mitigating this loss on site and that compensation off site is more appropriate.
- 5.15 It is the view of the Ecology witness that the harm caused by the loss of biodiversity units is "significant", as referred to in Paragraph 180 NPPF, meaning that the mitigation hierarchy identified in that paragraph needs to be considered.
- 5.16 When Paragraph 180 refers to development not being able to be located on an alternative site, it is referring to development which by its very nature or use must be built in a specific location to serve that purpose (such as to mitigate an existing environmental problem). I am not of the view that housing 'must' be located on the appeal site (i.e., that housing need cannot be met on any other site, only this one).
- 5.17 I am also of the opinion that we are not in a 'last resort' (this is strong wording for the NPPF) situation where significant harm can only be compensated for offsite. In my experience, with the specific nature of the site and the housing proposal that is being put forward, I do not see any compelling reason for not providing on site mitigation. For example, it would be quite simple for the Appellant to reduce the number of houses to enable on-site mitigation to be provided.
- 5.18 Other Strategic policies within the Plan identified in the Reasons for Refusal include:

"POLICY ST2 DEVELOPMENT WILL BE CONCENTRATED WITHIN THE MAIN URBAN AREAS OF HUCKNALL, KIRKBY-IN-ASHFIELD AND SUTTON-IN-ASHFIELD AS SHOWN ON THE PROPOSALS MAP.

POLICY ST3 LIMITED DEVELOPMENT WILL BE PERMITTED WITHIN THE NAMED SETTLEMENTS OF JACKSDALE, SELSTON, UNDERWOOD, BESTWOOD, BRINSLEY AND NEW ANNESLEY AS SHOWN ON THE PROPOSALS MAP."

POLICY ST4 OUTSIDE THE MAIN URBAN AREAS AND NAMED SETTLEMENTS PERMISSION WILL ONLY BE GIVEN FOR:-

- a) SITES ALLOCATED FOR DEVELOPMENT,
- b) DEVELOPMENT APPROPRIATE TO THE GREEN BELT OR THE COUNTRYSIDE AS SET OUT IN POLICIES EV1 AND EV2."

5.19 These policies seek to steer development towards the most sustainable locations in the district. The appellant's 'Statement of Case' states at paragraph 6.48 that:

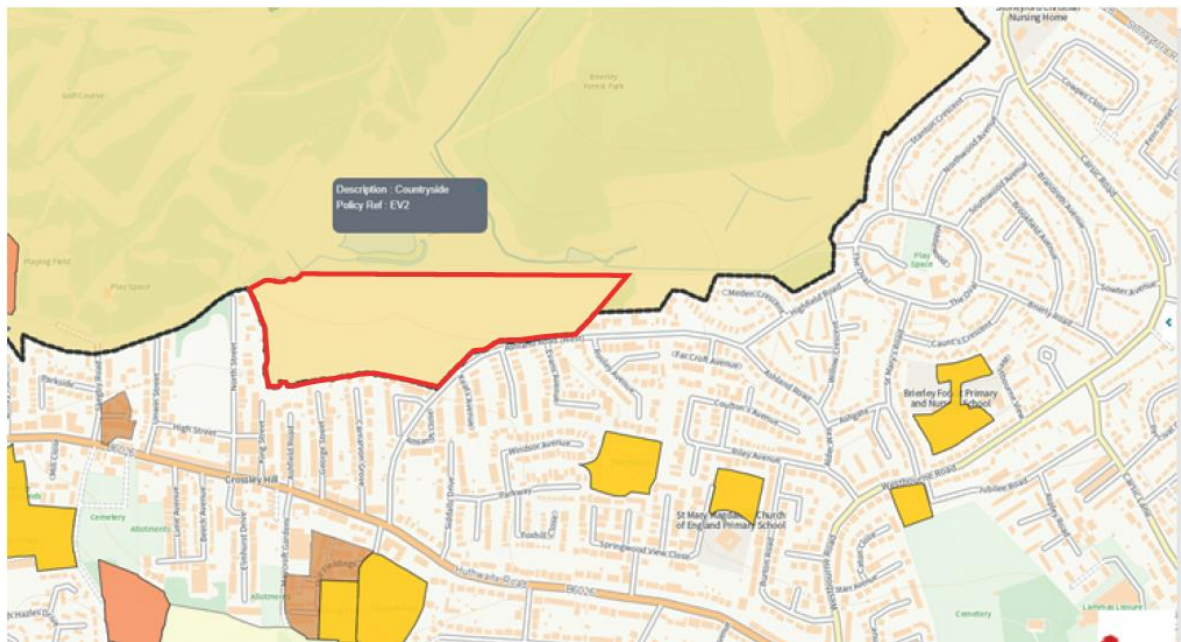
*"In this case, the Development Plan consists of the Ashfield Local Plan Review, adopted in November 2002 and intended to guide development in the District up to 2011. It is not disputed that the proposals, which are for major residential development at a site identified as countryside, do not accord with the Ashfield Local Plan, specifically Policies ST2 – ST4 and EV2 which define the site as countryside."*

5.20 It continues at paragraph 6.49 that:

*"However, the Local Plan is clearly out of date with regards to the matters of housing land supply because it is time expired and settlement boundaries were drawn to reflect a housing need for the period up to 2011."*

5.21 Firstly, this seems to suggest that the settlement boundaries were drawn up purely based on accommodating the level of housing required, not the importance of areas left out of the boundary and therefore not considered part of the settlement's urban area. A Local Authority will not simply draw development boundaries based on housing targets. Housing targets are generally seen as a minimum and not a ceiling to development. Therefore, development boundaries are drawn to be reflective of the nature or importance of an area that is left outside of the boundary.

5.22 Shown below is the appeal site (edged in red) added to the Council's Local Plan policies map. It shows the site designated as 'Countryside' (Policy EV2 see below). The character of the area has not changed significantly since this designation so there is nothing to suggest that this is now an incorrect or inappropriate description of the land use.



Local Plan 'Policies Map'

- 5.23 It is acknowledged that policies ST2 – ST4 above are more restrictive than the NPPF which perhaps has a more balanced approach to rural development (Paragraphs 78 and 79 which support rural housing to a certain extent). That said, the NPPF’s requirement for sustainable development does steer development proposals towards areas which have the highest levels of services and facilities (e.g., Paragraph 187 – *“Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs)”*).
- 5.24 When this is considered in conjunction with other parts of the NPPF (for example, Paragraph 174 which seeks to protect the character and beauty of the countryside—see below), it becomes clear that these policies can be considered in-line with the policy thrust of the NPPF and therefore should still be given moderate weight in the consideration of the application and this appeal. The appeal site was and still is ‘Countryside’ (its character has not changed) so policies ST2 to ST4 which protect these areas from development are in-line with the NPPF and the proposal is contrary to these still relevant Development Plan policies.

### Impacts on Landscape Character and Appearance

- 5.25 Policy EV2 states that:

“IN THE COUNTRYSIDE PERMISSION WILL ONLY BE GIVEN FOR APPROPRIATE DEVELOPMENT. DEVELOPMENT MUST BE LOCATED AND DESIGNED SO AS NOT TO

ADVERSELY AFFECT THE CHARACTER OF THE COUNTRYSIDE, IN PARTICULAR ITS OPENNESS.

APPROPRIATE DEVELOPMENT COMPRISES:

- a) RURAL USES, INCLUDING AGRICULTURE, FORESTRY, MINERAL EXTRACTION AND WASTE DISPOSAL TO RECLAIM MINERAL WORKINGS,
- b) OUTDOOR SPORT, OUTDOOR RECREATIONAL AND TOURISM USES,
- c) CEMETERIES AND UTILITY INSTALLATIONS REQUIRING A RURAL LOCATION,
- d) NEW BUILDINGS WHICH ARE ESSENTIAL FOR USES APPROPRIATE TO THE COUNTRYSIDE AND THE NEED FOR THE PROPOSED LOCATION HAS BEEN ESTABLISHED,
- e) RE-USE OF EXISTING BUILDINGS,
- f) REPLACEMENT, ALTERATION OR EXTENSION OF EXISTING BUILDINGS WHERE THE RESULTANT FORM, BULK AND GENERAL DESIGN IS IN KEEPING WITH THE BUILDING, WHERE RETAINED, AND ITS SURROUNDINGS,
- g) INFILL DEVELOPMENT WHICH DOES NOT HAVE AN ADVERSE EFFECT ON THE SCALE AND CHARACTER OF THE AREA,
- h) WITHIN THE VILLAGES OF FACKLEY AND TEVERSAL, DEVELOPMENT WHICH DOES NOT HAVE AN ADVERSE EFFECT ON THE CHARACTER OF THE VILLAGE."

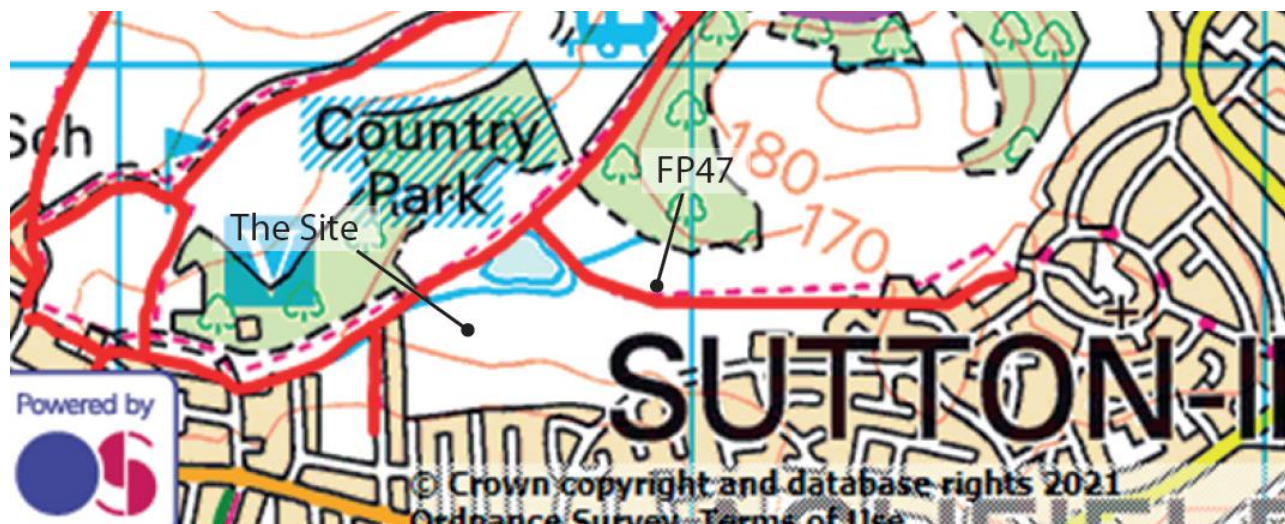
5.26 I believe this policy to be in-line with Paragraph 174 (formally Paragraph 170) of the NPPF which requires that planning decisions:

*"contribute to and enhance the natural and local environment by...recognising the intrinsic character and beauty of the countryside".*

5.27 As such, weight should be given to this policy in determining the application and appeal. The appeal proposal, in my view, conflicts with Policy EV2 (I note the Appellant also accepts this point at paragraph 6.14 of its Statement of Case). This is not because the proposal does not constitute "appropriate development" (this aspect of policy EV2 I consider to be out of date) but, because it will adversely affect the character of the countryside, in particular its openness.

5.28 Although the site does not form part of any formally designated 'valued landscape' in terms of Paragraph 174(a) of the NPPF, it is clearly of local importance and value to those in the local community who appreciate the benefits of open views across it. The last 18 months (with the Covid 19 pandemic) have shown the importance of having a sense of space in the places in which people live and work and the mental health benefits that this brings.

5.29 Whilst there are no public footpaths across the site itself, there is a footpath (FP47) which runs across the northern extent of the site. This is shown on the plan below. People using this footpath will experience the openness and tranquillity of the proposal site and the associated mental health benefits. This sense of isolation and freedom will disappear if it is developed.



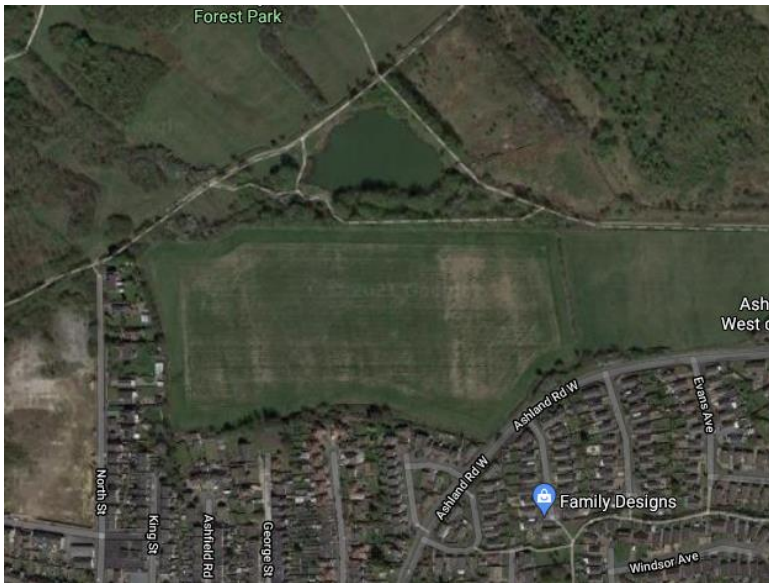
The coloured lines that have been superimposed on this map show rights of way (using the data released by local authorities).

The following colours have been used for the coloured lines:

- solid red line: footpath;
- solid fuchsia line: bridleway;
- solid green line: restricted byway;
- solid blue line: byway open to all traffic.

Source: [Maps, KML and GPX showing rights of way \(rowmaps.com\)](https://rowmaps.com/)

5.30 Open space provided as part of a development will not have the same effect as experiencing the calmness of a wide-open space. Whilst views south of the footpath arguably have an urban backdrop (behind the site) and it may be expected that this would reduce any feeling of openness, isolation and tranquillity. In my view, any such urban backdrop does not impact the sense of space and openness. In any event, as shown below, a lot of the urban fringe has planting on its edge which hides a lot of the built development.



Aerial photograph of Site: Google Maps

- 5.31 Similar issues were identified and considered in a recent planning appeal decision for Bassetlaw Council where the Inspector dismissed an appeal for 170 dwellings (ref: APP/A3010/W/20/3265803 – a copy of the decision can be found at **Appendix 3** of this Statement).
- 5.32 There, it was argued that although the landscape had not been formally designated as a 'valued landscape' in NPPF terms, it was nonetheless of local value. The Inspector, in his decision, stated at Paragraph 73 that:

*"The appeal site has no formal designation as a 'valued landscape' in terms of Paragraph 170 of the Framework. However, the site does contribute to, and forms part of, a locally valued landscape by residents and the local community. The 'valued landscape' in this context relates to its local amenity value, its character, how it is experienced by local people and its contribution to that experience. As such, although not part of a formally designated 'valued landscape', its value to local people should not be automatically diminished or limited as a result."*

- 5.33 The Inspector reached the following conclusion on the development's impact on character and appearance (to reiterate this related to a landscape which was not formally designated as a 'valued landscape' in NPPF terms or protected / designated as an AONB etc...):

*"...the visual impact of the scheme, particularly when viewed in its surroundings, would significantly harm the character and appearance of the landscape."*

5.34 The Town and Country Planning (Development Management Procedure) (England) Order 2015 states:

*33.—(1) A local planning authority must, in determining an application for planning permission, take into account any representations made .....*

5.35 This makes it clear that the Council is bound to consider local representations when determining a planning application. Representations made by local people during the appeal application's consultation identified very real concerns in relation to the landscape impacts of the proposal. The Inspector will of course have access to these representations, but as a snapshot, comments included:

*'This is picturesque green belt land with loads of wildlife which should not be disturbed.'*

*'Never has it been more important to protect our last remaining green spaces not just for now but for future generations to come.'*

*'Once again money is being put before people and the environment which we are repeatedly being told to protect. The land is a hay meadow which is an important source of food for wildlife...'*

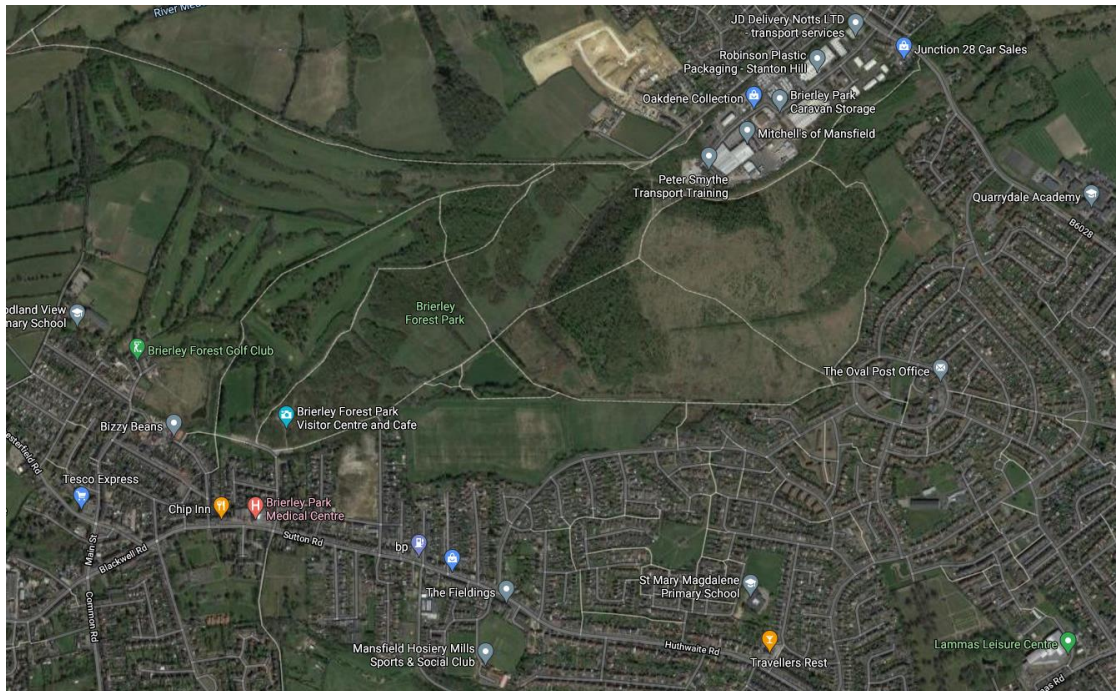
*'This particular site greenfield site is a unique case, in that it adjoins and, in my opinion forms part of the beautiful Brierly Forest Park'*

*'The land off Ashfield Road west is a haven for wildlife and enhances the award winning Brierley Forest Park, surely having so many houses so close will have an enormous effect not only on the wildlife but also the surrounding areas.'*

5.36 These examples present a very clear picture from the representations made on the sense of harm to local landscape and character through the loss of open countryside (which is clearly valued locally). There is a local body of people who have expressed a clear appreciation for the landscape qualities and open space. The representations undoubtedly portray a sense of loss and harm associated with the proposed development's impact on character and appearance, and this is a material consideration in the overall planning balance. A local perception to loss of locally cherished landscape is not easily ascribed a value in a Landscape Visual Impact Assessment (LVIA). The feeling of local value / loss can only be understood through the careful consideration of representations made to the Council by local people.



5.37 I would also emphasise that Brierley Forest Park and its character is also valued by residents and the Council.



Aerial photograph of site – source: Google Maps



Submitted Illustrative Masterplan (Rev G)

- 5.38 Shown above, is the site as it is now – open and defending the southeast corner of the park from urban impacts such as noise, light pollution, and litter. Also shown above is the Illustrative Masterplan of the proposed scheme put before the Planning Committee. The Masterplan clearly shows how this buffer would be eroded through the proposal and that a hard urban edge would be brought right up to the boundary of Brierley Forest Park, bringing with it the attendant impacts of urban activity: noise, light, increased footfall etc.<sup>1</sup> Despite the edge of settlement location, no attempt is made to affect a more sensitive transition between the urban edge and the wider countryside.
- 5.39 As explained below, while a buffer is advised in the Officer’s Report to mitigate impacts on the park, the Appellant is against any on-site mitigation (see letter at **Appendix 2** of this proof). This undoubtedly contributed to the Committee’s concerns over impacts on the park.
- 5.40 Considering the local importance of Brierley Forest Park, there is a clear imperative to resist harmful impacts. Looking at the plan (which is all the Planning Committee had to base its decision on) and the aerial photograph above, the potential harmful effects of the proposal are clear. When this is combined with the Appellant’s resistance to on-site mitigation and local concern, there is a strong incentive to protect one of the area’s most valued and cherished environmental assets through the determination of the application. With the level of information and detail provided, and knowing the importance of the asset potentially affected, I have come to the same conclusion as the Planning Committee. The Ecology Proof shows refusal be the correct decision and there are issues with the proposal which cannot be rectified through conditions.

### Density

- 5.41 The Officer Report put before Planning Committee stated (on p. 34) that the submitted Masterplan sets out indicative development parcels of c.8.49 ha, resulting in a density of 34 dwellings per hectare. In the same report this was considered a “*medium density*” which is “*relatively consistent with the surrounding development, which ranges from anywhere between 20 and 37 dwellings per hectare.*” (p. 35). As the density is at the higher of the surrounding densities, I would suggest that the proposed density is ‘medium to high’. In addition, I would say that density is not a ‘one size fits all’ measurement. Location and context are very important. I discuss this further below.
- 5.42 The Officer Report goes on to explain that:

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<sup>1</sup> For more details on the ecological impacts of this please see the proof of Mr Baker.

*“Brierley Forest Park LNR/LWS, a statutory site of local conservation importance, is located directly adjacent to the northern boundary. The ecological report identifies that an increase in formal visitor pressure is expected to result in a localised minor impact on the woodland. However, the independent ecologist notes that such anthropogenic disturbances would be significant and recommends that the number of accesses is reduced to two points. It is also recommended that a buffer area consisting of densely packed native species scrub such as blackthorn is planted, along with signage and bins. These would need to be shown on a detailed application.”*

5.43 The report also states that:

*“The proposals will be carefully examined, at detailed application stage, to ensure a high quality development is achieved. A condition is recommended for the submission of a Design Code at reserved matters stage. Additionally, an informative note has also been recommended advising the applicant of the Councils standards, and that an independent design assessment of a future reserved matters scheme should be provided.”*

5.44 In these situations, I have a high level of sympathy for the Planning Committee. As explained above, Brierley Forest Park is an important asset to the Council and residents alike. Any proposal which could have a negative impact on this vital local resource, needs to be considered very carefully. In this respect, I again believe that the Planning Committee’s decision to refuse the application on this basis was entirely rational and I agree with the ultimate reason for refusal.

5.45 I believe that with the plans and information before it, the Planning Committee could not be completely confident that there would not be significant harm to the park through the proposal (and the same situation applies now). The indicative plan is by its very nature an indication of what the reserved matters scheme will present. It cannot be dismissed as a vague illustration of a notional site. It formed a part of the submission, and the Council were entitled to give weight to it.

5.46 If this application was allowed, the Planning Committee would have given approval to 300 houses on a site, hard up to one of its most prized environmental assets without knowing the full impact. Without knowing the extent of the required buffer, it was impossible for the Planning Committee to know that the final density would not have significant adverse impacts.

5.47 As stated above, although we know that the Appellant does not support on-site mitigation, with the proposal already yielding a medium density (which at 34 dph is at the higher end considering the site’s edge of settlement location and sensitive

neighbours and noting the national average density being 31 dph<sup>2</sup>), I estimate that if a minimum 15m buffer is added along the northern extent of the site (this is shown indicatively on the plan below) the developable area would be approximately 8.40ha amounting to 36 dph which is very close to the highest surrounding density. I would say that this is too high for an edge of settlement, transitional location.



Plan showing location of indicative buffer

5.48 The Government’s ‘Building Better, Building Beautiful Commission’ published its ‘Creating Space for Beauty - The Interim Report of the Building Better, Building Beautiful Commission’ in July 2019<sup>2</sup>. The report identifies *‘too much of what we build is the wrong development in the wrong place, either drive-to cul-de-sacs (on greenfield sites) or overly dense ‘small flats in big blocks’ (on brownfield sites)’* and highlights the importance of a ‘gentle density’ (a variety of densities in appropriate locations) in successful placemaking. On page 77 it states:

***“Policy Proposition 16: create mixed use ‘gentle density’ with centres and edge.***

*Efficient land use is important in delivering on a broad range of policy objectives. Mixed use and gentle density settlement patterns around real centres which benefit from the advantages of density (such as more neighbourliness, more walkable lifestyle*

<sup>2</sup> [Living with beauty: report of the Building Better, Building Beautiful Commission \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/818116/living-with-beauty-report-of-the-building-better-building-beautiful-commission.pdf)

*patterns) and from some of the advantages of lower density (more personal space, more greenery, cleaner air) are very often the best ways to deliver beautiful development and secure community consent, whilst also developing in more sustainable land use patterns and building local economies. This is typically associated with higher wellbeing, more neighbourliness, higher values, greater ability to support affordable housing and less reliance on cars. The planning system should strongly encourage mixed-use and 'gentle density.' The impact of roads, poor public transport and parking on place needs review."*

- 5.49 It recognises that density is not simply a calculation of dwellings per hectare but something that is achieved at street level, *'in which homes are more closely placed in the townscape than at present, but without negating the environmental benefits of lower emissions, frequent small-scale greenery and pleasant views across streets patrolled by sunlight.'* The submitted Masterplan gives no confidence that such an environment is envisaged in this sensitive transitional location.
- 5.50 All of the issues above are also covered by overarching policy ST1 (criterion a, b, and e,) which does not support development which conflicts with other policies in the Local Plan (a), adversely affects the character, quality, amenity or safety of the environment (b) or conflicts with an adjoining or nearby land use (e) for example Brierley Forest Park.

### **Ecology**

- 5.51 As already explained, a separate Ecology Proof for the appeal has been prepared by Baker Consultants and I am relying on their considerable experience to highlight the ecology issues with the proposal. The main points of that Proof are detailed above in paragraph 5.12 above but in summary, the Proof identifies serious issues with the robustness of the ecological information submitted with the application and significant gaps in the survey work. These issues cannot be simply addressed through condition (e.g., harm to badgers and birds) and will undoubtedly result in significant adverse impacts.

### **The Overall Planning Balance**

- 5.52 Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 together require that planning applications should be determined in accordance with the statutory Development Plan unless material considerations indicate otherwise.

5.53 The Gladman Appeal Decision (please see Appeal Decision at **Appendix 1 of this Proof**) confirms the primacy of the Development Plan in the consideration of appeals.

5.54 I have set out above how policies in the Development Plan carry moderate weight in the consideration of this appeal due to their conformity with the NPPF. In Summary this is:

- Policy ST1 (criterion a, b, and c) - seeks development which does not conflict with other policies in the Local Plan, will not adversely affect the character, quality amenity or safety of the environment or conflict with an adjoining or nearby land use – In-line with Paragraphs 174 and 180 of the NPPF.
- Policies ST2 to ST4 - restrictive of development outside the main urban areas and named settlements – In-line with Paragraphs 174 and 182 of the NPPF.
- Policy EV2 - has some consistency with the NPPF’s requirement to recognise the intrinsic beauty and character of the countryside, however, it is highly restrictive of development in the countryside – In-line with Paragraph 174 (which requires that planning decisions: *“contribute to and enhance the natural and local environment by...recognising the intrinsic character and beauty of the countryside”*).

5.55 Based on the above, my first point in ‘The Overall Planning Balance’ is that the proposal is not fully in accordance with the Development Plan, as it conflicts with policies ST1-ST4 and EV2 which should be afforded moderate weight due to their level of consistency with the NPPF.

5.56 As stated above, it is accepted that the Tilted Balance in Paragraph 11 of the NPPF applies to this appeal. Accordingly, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

5.57 The tables below show the material considerations that should go into the overall planning balance and the weighting that I believe should be applied to these:

Positive Impacts	Weighting
Delivery of housing (including affordable).	Significant – It is acknowledged that the proposal will deliver housing when the Council cannot currently demonstrate a 5-year housing land supply.

Localised economic benefit through employment.	Modest – There would be employment opportunities through the proposal, but these would be temporary during the construction phase of the development. Residential expenditure from 300 houses can also be considered modest as it will depend on other economic circumstances (employment / state of general economy etc)
Section 106 Deliverables	Neutral - Infrastructure etc delivered through a Section 106 agreement will be used to mitigate the impacts of the development.

<b>Adverse Impacts</b>	<b>Weighting</b>
Nonconformity with the Development Plan	Moderate.
The effect of the development proposed on the landscape character of the surrounding area.	Significant – Based on local consultation responses to the planning application (which the Council is legally bound to consider) the proposal would impact on the local community’s general health and wellbeing and enjoyment of an existing open space. When this is combined with the potential impacts on an important local environmental asset like Brierley Forest Park the impacts become significant.
The effect on ecology.	Significant – The submitted Ecology Proof sets out a number of major concerns with the proposal in ecological terms. These include: <ul style="list-style-type: none"> <li>• Biodiversity metric calculations indicate a loss of 23.69 habitat units and a gain of 0.55 hedgerow units. The Appellant has provided no detail as to how off-site compensation will be delivered and whether it will be sufficient to compensate for the loss of habitat units. Until such evidence is provided, the proposed development fails to comply with the requirement to demonstrate a measurable net gain for biodiversity (NPPF para 174d).</li> </ul>

	<ul style="list-style-type: none"> <li>• The Appellant has not demonstrated how the mitigation hierarchy has been applied and how ecological impacts have been avoided or mitigated and then 'as a last resort', compensated as required by paragraph 180a of the NPPF.</li> <li>• The Appellant has not demonstrated how the neighbouring Brierley Forest Park and its features of nature conservation interest will be protected.</li> <li>• Despite reassurances in 2020, the arable field has not been cultivated in 2021 and has become more suitable for reptiles. Consequently, the risk of harm to reptiles has increased.</li> <li>• Potential impacts on Great Crested Newts have not been fully investigated to the appropriate level.</li> <li>• Badger activity has been identified on site. There is a risk of an adverse impact on the badgers because the impacts of development cannot be fully determined without a more thorough and widespread investigation of badger activity within and beyond the Appellant's site.</li> <li>• The impact on nesting and over-wintering birds has not been sufficiently investigated. The appellant has not provided a satisfactory explanation as to why this important survey was not carried out.</li> </ul> <p>When these are combined, the overall adverse impact is significant.</p>
Density	<p>Moderate (or Significant if buffer is added) – The proposed density of 34 dph is at the higher end of the surrounding density (currently 20 – 37) which would have a moderate negative impact on the surrounding character (including Brierley Forest Park). If a minimal 15m buffer is added to the northern extent of the site,</p>



	a density of 36 dph would be created making the prospect of 'building beautiful' on a transitional edge of settlement location unlikely. In this case the impact would be significant.
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**Conclusion**

- 5.58 In consideration of the above I believe the Council has acted reasonably and responsibly in concluding that the collective, negative impacts of the development in this case, outweigh the positive impact of market / affordable housing delivery and short-term employment during the proposal's construction. The collective negative impacts of the proposal (ecological, landscape and density) significantly and demonstrably outweigh the benefits. The decision to refuse the application, in my opinion, was the correct one (based on the levels of harm identified above).
- 5.59 It is my view that issues such as a sense of loss of openness and other related landscape impacts on local value cannot simply be addressed through conditions. Once a beloved open space has been developed, the intrinsic nature of the site has been lost forever – this cannot be mitigated as the openness has been filled with development.
- 5.60 Moreover, certainty in matters such as ecological impacts need to be addressed at the time of making the planning decision. The Council would have been remiss if it gave consent without full confidence that there would not be any problems in these areas in the future. Based on the above, I believe that the Council could not have benefited from that full confidence. With the gaps in information as identified above and in the Ecology Proof, I would have come to the same conclusions (and remain of that view in light of the information supporting this appeal).
- 5.61 I consider therefore, that the proposal is not fully in accordance with the Development Plan and that in terms of the 'tilted balance' test, (paragraph 11(d)(ii) of the NPPF), the adverse impacts of allowing the application will significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. As such, I respectfully request that the Inspector dismisses this appeal.

# Appendix 1: Court of Appeal in Gladman vs SSCLG [2021] Decision

## Appendix 2: Letter from FPCR Environment and Design Ltd

# Appendix 3: APP/A3010/W/20/3265803 Decision



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