

**APPEAL BY MILLER HOMES LTD**  
**LAND WEST OF ROYAL HILL HOMES SPONDON**  
**Appeal Ref: APP/C1055/W/24/3356476**  
**LPA Ref: 23/01631/OUT**

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**APPELLANT’S OPENING STATEMENT**

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1. This Appeal concerns an outline planning application for residential development including access arrangement for up to 90 dwellings, which was refused by the Planning Committee at Derby City Council (“**the LPA**”) despite a recommendation for approval by the Planning Officer. This is a highly unusual appeal in that there is more common than uncommon ground between the parties.
2. In terms of housing need, the LPA accepts that its position is appalling:
  - a. It only has a 3.85 YHLS – a significant shortcoming against a 5YHLS requirement, such that the LPA accept that very significant weight should be applied in favour of applications that can contribute to increasing this supply<sup>1</sup>;
  - b. 2000+ dwellings in the LPA’s housing need are unaccounted for in its current Derby City Local Plan Core Strategy (2017) (“**the Core Strategy**”) based on new housing requirement figures<sup>2</sup>
  - c. There is a very significant need for affordable housing within the LPA<sup>3</sup>, demonstrated by the fact that, on 31 March 2024, there were 8000+ households on the Housing Register within the LPA in desperate need of a home (which has increased drastically since at least March 2022)<sup>4</sup>
3. In terms of landscape, the LPA accepts, amongst other things, that:

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<sup>1</sup> CD08.05 - Statement of Common Ground for Housing (“SOCG Housing”) at [1.3] and at [7.4]

<sup>2</sup> CD08.01 - Statement of Common Ground (“SOCG”) at [8.3]

<sup>3</sup> CD08.01 - SOCG at [8.13]

<sup>4</sup> CD8.05 – SOCG Housing at [1.9]

- a. The Appeal Site is not a valued landscape for the purposes of paragraph 180(a) of the NPPF nor does it lie within any formal designations of relevance to landscape and visual matters<sup>5</sup>;
  - b. The Appeal Site is well screened and enclosed from long range views by existing built form, topography and landscape features<sup>6</sup>;
  - c. The most visible part of the Appeal Site from the wider landscape is planned to be open space, with landscape planting and retention of trees and hedgerows<sup>7</sup>; and
  - d. The Proposal should not be unduly prominent in views from the Green Wedge and the wider townscape<sup>8</sup>.
4. In terms of the benefits of the scheme, the LPA accepts that, amongst others, the following are benefits<sup>9</sup>:
- a. The provision of a large number of new homes in a sustainable location forming a part of the built area of Spondon;
  - b. The provision of affordable housing where there is a very significant need for such housing;
  - c. On-site provision of BNG;
  - d. The provision of a new accessible open space through landscape planting and habitat creation;
  - e. The temporary economic benefits from construction through job creation and economic investment in infrastructure (although the Inspector will be aware, and the Appellant will assert, the substantial long-term economic benefits that arise from the operation of a large housing scheme as well).

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<sup>5</sup> CD8.01 – SOCG at [8.39]

<sup>6</sup> Ibid at [8.42]

<sup>7</sup> Ibid at [8.43]

<sup>8</sup> Ibid at [8.44]

<sup>9</sup> Ibid at [8.13]

5. Notwithstanding all of the above, the LPA object to this Proposal on the basis of a single reason for refusal – that the Appeal Site is situated within a Green Wedge and therefore is in conflict with Policy CP18 of the Core Strategy.
6. The LPA’s case is that this conflict with Policy CP18, which was adopted some 8 years ago and on an understanding that there is likely to be a need to release some greenfield land (potentially even within the allocated Green Wedges) for housing<sup>10</sup>, is such an adverse impact that it singlehandedly significantly and demonstrably outweighs all the other benefits of the Proposal.
7. Putting to one side the LPA’s own untenable position, the Appellant’s case is three-fold:
  - a. First, Policy CP18 is out of date due to the LPA’s poor housing land supply position and its conflict with the NPPF, therefore, any conflict with this policy should be afforded limited weight at best<sup>11</sup>;
  - b. Second, the Proposal would not adversely impact the strategic function of the Spondon-Chaddesden Green Wedge, nor would it lead to an unacceptable narrowing of this Green Wedge<sup>12</sup>; and
  - c. Third, overall, the benefits of the scheme significantly and demonstrably outweigh any adverse impacts on the basis of paragraph 11(d) of the NPPF<sup>13</sup>.

### **Market and Affordable Housing Need**

8. The Appellant’s evidence will show, and that too in the absence of any evidence to the contrary by the LPA, that there is a significant and unaddressed shortfall of provision in housing by the LPA, which is demonstrated by the 3.85 YHLS, the 83% HDT score and the lack of any signs, let alone actual progress, of a new local development plan to address the severe housing needs faced by the LPA<sup>14</sup>.
9. With regards to affordable housing need, the Appellant’s evidence demonstrates that there has been a chronic undersupply of affordable housing over the past decade (a shortfall of 6000+ affordable dwellings over the eleven-year period, and an average annual shortfall of 598 affordable dwellings since the adoption of the 2013 SHMA on

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<sup>10</sup> CD11.01 – Mr Lees’ Proof of Evidence (“POE”) at [4.36]

<sup>11</sup> Ibid at [10.31]

<sup>12</sup> CD11.03 – Ms Ellinsfield’s POE at [6.20] – [6.21]

<sup>13</sup> CD11.01 – Mr Lees’ POE at [10.36]

<sup>14</sup> Ibid at [5.7] and [5.11]

which the Core Strategy was designed)<sup>15</sup>. Further, the evidence shows that it will be entirely fanciful to think that this affordable housing need may be met were the LPA to continue on its current trajectory, taking into account its policies and loss of existing stock from the Right to Buy scheme<sup>16</sup>. This is demonstrated by the waiting lists for a home within the LPA, which are woeful (ranging from 14-27 months) and with 395 households in temporary accommodation on 31 March 2024 (a 103% increase from 31 March 2023) and 70% of those households being households with children<sup>17</sup>. Although these families and households may not be present at this Inquiry, the benefit to this group must be acknowledged in full for what it is and not just mentioned in passing as one of many other benefits.

### **Policy CP18**

10. The Appellant's evidence to this inquiry will demonstrate that Policy CP18 must be deemed to be out-of-date not only because of the poor housing land supply position, but also because of this policy's glaring conflict with the NPPF itself. Policy CP18 does not allow for any balancing exercise to be undertaken to determine whether a proposal should be allowed on the Green Wedge, and it simply ignores new housing schemes as being a possible proposal on a Green Wedge in any circumstances<sup>18</sup>. This approach is clearly too protectionist and in conflict with the NPPF.
11. Further, the Appellant's evidence will show that Policy CP18 was adopted on the basis of a Green Wedge Review undertaken in 2012 (some 13 years ago) and therefore is based on evidence from a snapshot in time, without taking into account the material changes in circumstances that have occurred since<sup>19</sup>. Policy CP18 and the designation of Green Wedges were intended to be kept under review (as is clear from the wording of the policy itself) via Part 2 of the Core Strategy, however, no Part 2 to the Core Strategy ever came forth in the past 8 years and it does not look to be coming forth either<sup>20</sup>. In addition, the evidence will demonstrate that Policy CP18 was adopted on the basis of a reduced housing need calculation, by the LPA relying on two

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<sup>15</sup> CD11.02 – Mr Stacey's POE at [8.17]

<sup>16</sup> Ibid Executive Summary at [xiv – xv]

<sup>17</sup> Ibid Executive Summary at [xvi]

<sup>18</sup> CD11.01 – Mr Lees' POE at [4.31], [4.32] and [4.48]

<sup>19</sup> Ibid at [4.38]

<sup>20</sup> Ibid at [4.39 - 4.40]

neighbouring authorities to make up for the shortfall, one of which has been able to provide no housing whatsoever to meet the LPA's local housing needs<sup>21</sup>.

12. The LPA seeks to rely on an appeal decision from 2016 (“**the 2016 Appeal Decision**”)<sup>22</sup> to show that Policy CP18 remains an up-to-date and relevant policy, however, the error in this reliance is evident on its face given that this was a decision from 2016 (some 9 years ago). The Appellant's evidence will further demonstrate that, in addition to the material change in both national policy and local need, the specific locational differences between the current Appeal Site and the site which formed part of the 2016 Appeal Decision render the 2016 Appeal Decision incomparable to this Appeal<sup>23</sup>.
13. From a landscape perspective, the Appellant's evidence will demonstrate that, notwithstanding a conflict with the wording of Policy CP18, the actual harm to the function and objective of Policy CP18 and the Spondon-Chaddesden Green Wedge is limited<sup>24</sup>. The only detailed landscape assessments that consider the harm are those carried out by the Appellant's expert and the LPA's own planning officer, both of which conclude that the function and character of the Green Wedge will be retained if the Proposal were to go ahead<sup>25</sup>.

### **Overall Planning Balance**

14. The Appellant's evidence will set out the numerous benefits of the Proposal including:
  - a. The social benefits from the provision of market and affordable dwellings amidst a national and local housing crisis;
  - b. The benefits associated with the provision of Amenity Green Space and Major Open Space along with new and enhanced pedestrian and cycling routes, which will benefit the wider community<sup>26</sup>;

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<sup>21</sup> Ibid at [5.6]

<sup>22</sup> Land at Acorn Way (Appeal Ref: APP/C1055/W/15/3132386) – CD6.01

<sup>23</sup> CD11.03 – Ms Ellinsfield's POE at [6.17]

<sup>24</sup> CD11.01 – Mr Lees' POE at [10.31]

<sup>25</sup> Ibid at [7.4]

<sup>26</sup> Ibid at [10.10 – 10.11]

- c. The myriad economic benefits at both the construction and operation stages of the Proposal such as from household expenditure and the creation of employment opportunities during the construction phase<sup>27</sup>;
  - d. The environmental benefits in the form of enhanced cycling and walking infrastructure prioritising sustainable transport modes and the site itself being in a sustainable location with good access to local amenities<sup>28</sup>. Not to mention, the proposed on-site BNG to be provided with a BNG equalling 11.3% for habitats, 32.25% for hedgerows and 78.09% for watercourses<sup>29</sup>.
15. Further, given that it is accepted that this case engages the tilted balance, the presumption is that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF as a whole, having particular regard to the policies in Footnote 7 of the NPPF (“**Footnote 7 Policies**”).
16. The Appellant’s evidence will show that the Proposal is compliant with all the relevant Footnote 7 Policies, namely relating to affordable housing (paragraph 66 of the NPPF)<sup>30</sup>, the sustainable location of the Proposal (paragraphs 110 and 115 of the NPPF)<sup>31</sup>, the need to make effective use of land (paragraph 129 of the NPPF)<sup>32</sup>, and good design (paragraphs 135 and 139 of the NPPF)<sup>33</sup>.
17. Therefore, considering the Proposal’s compliance with the Footnote 7 Policies and the NPPF as a whole, and taking into account the numerous benefits arising from the Proposal, the Appellant will argue that the adverse impact (in the form of conflict with a single, and that too out-of-date, local policy) comes nowhere near outweighing the benefits of the scheme and certainly not to any degree of significance.
18. For all the above reasons, the Inspector will be asked to grant permission for the Proposal.

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<sup>27</sup> Ibid at [10.13]

<sup>28</sup> Ibid at [10.15-10.16]

<sup>29</sup> Ibid at [10.26]

<sup>30</sup> Ibid at [10.9]

<sup>31</sup> Ibid at [10.15 – 10.16]

<sup>32</sup> Ibid at [10.27]

<sup>33</sup> Ibid at [10.28 – 10.29]

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