IN THE MATTER OF:

**SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990**

**and**

**AN APPEAL BY WULFF ASSET MANAGEMENT LTD AGAINT THE REFUSAL BY EREWASH BOROUGH COUNCIL OF OUTLINE PLANNING PERMISSION FOR UP TO 196 DWELLINGS (ALL MATTERS RESERVED SAVE FOR ACCESS) AT LAND NORTH WEST OF 1-12 TWELVE HOUSES, SOWBROOK LANE, STANTON BY DALE, DERBYSHIRE DE7 4QX**

PINS Ref: APP/N1025/W/23/3319160

LPA Ref: ERE/0722/0038

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**CLOSING SUBMISSIONS ON BEHALF OF THE LOCAL PLANNING AUTHORITY**   
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1. The starting point, as always, is to ask whether the proposal accords with the Development Plan (‘DP’).
2. If it accords with the DP, it should be granted permission. It is no part of the LPA’s case that permission should be refused based on material considerations, including the policies set out in NPPF paragraphs 48 and 49, if the inspector is satisfied that the proposal accords with the DP (Reddish XX).
3. If the proposal does not accord with the DP, it is agreed that material considerations require the merits of the proposal to be assessed by reference to the tilted balance set out at NPPF11(d)(ii).   
     
   Assessment Against the DP
4. As I put to Mr Hughes in XX, it is difficult if not impossible to justify a self-enclosed enclave of housing, devoid of any supporting services and facilities, simply free-floating in the countryside, unconnected to any settlement. If such an approach was an acceptable way to meet the country’s undoubtedly pressing housing needs, those needs would not have become pressing in the first place. As a country, we could have simply allowed agricultural fields, unconnected to any settlement, to be developed for housing.
5. If Sir you accept the proposition that we should not allow substantial housing estates to simply spring up in the countryside, with no supporting services and facilities, and which are not physically connected to an existing town or village, the central question for this Inquiry becomes this: does this proposal fit that description of unacceptable development?
6. In our submission, this proposal fits that description perfectly. It is precisely what Mr Grundy says it is: isolated, not forming part of a settlement and/or an existing neighbourhood, where the residents would not form part of any existing community (JG, Location PoE, paras. 6.2 to 6.4); ‘stand-alone’ (JG Visual PoE para. 4.1).
7. No lengthy submissions are required to substantiate that claim. It is substantiated graphically by the plan produced by Mr Hughes at Vol.2 p.63. We are confident that your site visit Sir will serve to further underscore our submission in this respect. The site as experienced on the ground is no different to what one would expect having seen it in plan form. It is several fields removed from Kirk Hallam (‘KH’), and is not being put forward as an extension to that settlement (Hughes XX). Indeed, the Appellant ran the argument that a clear defensible boundary would remain between KH and development on the appeal site.
8. That leaves the question of whether the residential development would form part of Ilkeston, and function as a neighbourhood of that settlement. The Appellant says the appeal site would ‘adjoin’ the Stanton Regeneration Site (‘SRS’), that SRS is an ‘integral part of’ the Ilkeston Urban Area (IUA), and therefore the appeal site would adjoin the IUA. We will return very shortly to the flaws in this beguiling simple (dare we say simplistic) ‘logic’, but for present purposes let us assume that is correct.
9. Assuming it to be correct, it is not an answer to the fact (and it is a fact) that the appeal site is not connected with Ilkeston, and in landscape and visual terms does not read now, and will not read when developed, as part and parcel of that settlement. It is divorced from Ilkeston by a combination of a canal, the Nutbrook Trail (‘NT’), fields (directly to the north) and an extensive industrial area (to the north-east). The development of the northern part of SRS site (i.e north of Lows Lane) for a pure employment use, comprised of very large ‘sheds’ and extensive areas of parking (Hughes Vol. 2, p.13) does not assist the Appellant’s case in this regard; it undermines it. Once developed, the northern SRS will operate as yet another large ‘wedge’ of non-residential development between the appeal site and the existing residential areas of Ilkeston. If permitted, these circa. 200 houses will ‘hang-off’ the edge of a very large industrial area, having no meaningful relationship with Ilkeston as a residential settlement. So even if the Appellant is correct in saying that this site accords with SP2 because it will adjoin the IUA, its response does not engage with the LPA’s locational criticism.
10. But the Appellant is not correct to say the proposal accords with CS Policy 2, as becomes clear if one reads the CS holistically and in its proper context:  
    1. First, as Mr Hawley accepted (in XX and at PoE para. 2.53) the CS does not define the IUA either in its text or in the Key Diagram. The Key Diagram uses the phrase ‘settlement area’; not IUA. There is no basis for equating one with the other. All land that is developed or formerly developed is shaded yellow.
    2. Second, the CS was looking to the future – it sets out what the LPA wanted to see delivered. What it wanted to see delivered was a policy of urban concentration and regeneration. That was the context within which the SRS was allocated to become an integral part of Ilkeston. That vision was going to be realized through a mixed use development – a ‘Sustainable New Community’ that was to be ‘linked to Ilkeston’ (see CS 2.4.5 and 2.51(ii)) and Policy 20 and para. 3.21.2 and 3.21.4).
    3. Third, that vision has not been realized, and with the development of the land north of Lows Lane for purely employment uses it will not now be realized. What has actually happened ‘on the ground’ is that the existing large industrial area to the north of the canal and Nutbrook Trail has been extended further south by ‘bolting on’ another very large area of industrial uses. The area that the ECS is proposing as a self-contained new settlement is to be located to the south of Lows Lane (see CD B3, SP1(3)(d)).
11. In this context, to argue that the SRS north of Lows Lane forms part of the IUA, and anything that adjoins it passes the test of ‘adjoining the IUA’, is to take a simplistic, tick-box approach to planning. It rips the CS out of its context, and ignores what has happened on the ground in actual fact. What this proposal as permitted will adjoin is a very large industrial estate. Further, for the Appellant to seek to rely on the emerging South Stanton allocation is contradictory, given that (a) it says the proposals in the ECS should get minimum weight; (b) if ECS is found sound the appeal site will be in the GB (i.e you cannot ‘cherry-pick’ from the ECS); (c) this proposal will not read as part and parcel of South Stanton because it is designed as an inward looking, self-contained housing estate; and (d) it is being put forward at this Inquiry by the Appellant as part of Ilkeston and not as part of a different, as yet to be designed or delivered, new self-contained settlement.
12. Standing back and looking at the matter more broadly, to permit this application also involves having to subscribe to the Appellant’s view that greenfield development on a site that has no relationship with the residential area of Ilkeston falls within the category of 'urban concentration and regeneration’, which at its heart was what the CS was all about.
13. Breach of CS Policy 2 is not cited as a RFR, and therefore even if the Appellant is in accord with it, it is not an answer to RsFR1 and 5, which rely on CS Policies 10 and 14, and LP Policy H12.
14. This proposal breaches CS Policy 10(1)(a) and (b) – it cannot make a positive contribution to a sense of place because it is divorced from any existing settlement, and is too small a development and wholly lacking in shops, services or facilities to create its own sense of place (hence why the Appellant is forced to argue that it will form part of the Ilkeston). It cannot create an ‘inclusive’ environment; it cannot ‘enhance or create a distinctive sense of place where people can feel proud of their neighbourhood’, and it cannot ‘reinforce local identity’ (CS, paras. 3.11.5 and 3.11.6).
15. The LPA’s RFR5 is connected with the above analysis (namely the locational drawbacks of the site). The reason that it will have a significant impact on the visual amenities of the area is not because it is in a policy protected ‘gap’ (a straw-man set up by the Appellant), but because the housing will sit in an area which clearly forms part of a patchwork of undeveloped agricultural fields which currently read as open countryside sitting to the south of Ilkeston and east of KH, helping to keep these two distinct parts of the IUA separate. Those leaving Ilkeston and travelling south, those leaving KH and travelling to the east, those walking along the canal path and the Nutbrook Trail, view these fields as undeveloped countryside lying outside of the settlements of KH and Ilkeston. It is one thing to extend an existing settlement into adjoining countryside to meet housing needs, but it is another completely to place housing in the countryside several fields removed from that settlement. Such development will undoubtedly be perceived negatively, detracting as it will from the visual amenities of the area. To say that the views of it will be ‘highly localised’ is to miss the point. The real questions are:  
    1. Will the houses be visible as a large residential estate lying to the south and south east of the existing residential areas of the settlement from numerous vantage points? The answer is ‘yes’ – see SoCG para. 2.4(9).
    2. Is it acceptable to have free-floating residential development in the countryside visible from a settlement edge, and not forming part of that settlement or any other settlement? The answer is clearly ‘no’.
16. Turning next to accessibility and CS Policy 14, Mr Hawley suggested (RE) that accordance with CS Policy 2 inevitably means accordance with SP14, but that is incorrect. Even if a site does adjoin the IUA in policy terms, it does not automatically mean it is sufficiently accessible – its accessibility must be demonstrated and/or achieved through improvements to accessibility (see for example the SRS – described as an ‘integral part’ of Ilkeston, but the CS made its acceptability for development contingent upon improvements in accessibility). CS Policy 14(2) provides that ‘Development sites should be readily accessible by walking, cycling and public transport, but where accessibility deficiencies exist these will need to be fully addressed’. So there is no presumption that compliance with CS Policy 2 (assuming there is such compliance) equals compliance with CS Policy 14.
17. You Sir will have a note of the points relied upon by Mr Grundy in chief to support his opinion that this site is insufficiently accessible to meet the requirements of Policy 14 and the NPPF, as well as the points I put to Mr Andrews in XX when I took him on the various routes to Ilkeston and to KH and pointed up the deficiencies in the various non-car modes of accessibility. You will also see those routes on your site visit. So we restrict ourselves to a few points by way of summary only:   
    1. Few will be tempted by the walk or cycle to Ilkeston, given both journey length and the inherently unattractive nature of the journey. We flag up in particular the obstacle of Ilkeston Road, the traverse across the woodland and the uninviting prospect of wondering through a very large industrial area to reach the modest prize of the residential outskirts of Ilkeston. The bus provides an option during the day for those who do not wish to carry anything of any substance back, but is not an option for leisure trips in the evenings or Sundays.
    2. There is no bus service from the site to KH. Cycling will be for the most seasoned and brave only. It is not a particularly wide road, it is winding, with patches of poor forward visibility. It is frequented by a significant number of larger vehicles, and even cars will be unable to overtake a cyclist unless the oncoming lane is clear. Few will volunteer to be in the saddle with an impatient motorist sitting on their shoulder. That leaves walking. The footpath once improved is likely to acceptable, but the distance will not be acceptable to the vast majority. A few may choose to walk, and even they will not choose to walk on every occasion. The return journey is in excess of even the 2km that policy tells us those who already walk are likely to walk. A journey is defined in the guidance as a one-way trip; that same guidance tells us a 2km journey is not an unreasonable distance. How the Appellant infers from this that two one-way trips amounting to 4km is a reasonable journey is difficult to fathom. It is all a far-cry from the 800m walkable neighbourhoods that the Govt. now aspires to in its latest advice.
18. The Appellant was keen to emphasise that the test in the NPPF is ‘genuine choice of transport modes’, and whilst this is accurate it should not be taken to mean that a site meets the policy test simply because it is possible for some people to undertake the journey in question. The objective of the policy is to reduce reliance on the private car, and that will not happen unless the ‘choice’ in question is one that a significant number of people are likely in reality to make. That cannot be said of the appeal site and the choice it offers.
19. The other curious aspect of the Appellant’s case is that it now argues that the improvements it has agreed with the HA in order to give some people a fighting chance of cycling or walking to Ilkeston are in fact unnecessary. This is curious because this is the settlement which they say this estate will become part of, and yet they now say that very few people are likely to use the shops and services in Ilkeston because KH is so much easier to access. The fact is that even with the improvements they offered to the HA the site is not accessible to Ilkeston.
20. Just as importantly, it wrong for an Appellant to agree improvements with the HA in return for the latter withdrawing its reasons for refusal, run the appeal and then argue at the end that the improvements are not necessary and should be struck out. If this was the tack it wanted to take, it should have informed the HA so that it could have provided witnesses to explain why the improvements are in fact necessary.
21. Finally, it would now appear that a critical part of the link (the footpath through the woodland) may never be delivered. There nothing before this Inquiry to show that anyone can be forced to provide it, or if they are going to provide it, when it will be provided.
22. We make this one final point about accessibility, but it should not be seen as in any way detracting from our submission that the proposal is in breach of CS Policy 14 and the sustainability policies in the NPPF. Even if one were to accept that the facilities at KH are within a reasonable walking distance for the majority of residents, that still would not in our submission justify granting permission for housing that is unconnected with and will not form part of any existing residential settlement. Making a site accessible in a tick-box fashion (e.g placing it 2km outside of a settlement in the countryside with a useable footpath) cannot make a site sustainable if it is otherwise in the wrong place (i.e there are aspects of sustainability which go beyond and are more important than accessibility *per se*).
23. By way of interim summary therefore, the proposals are in conflict with the DP, and seriously harmful to good planning. They should be refused unless material considerations indicate otherwise.   
      
    Tilted Balance
24. This section must be read on the basis that you Sir have found in favour of the Council on the first question of whether the site is in conflict with the DP (because otherwise there would be no need to move on from NPPF para.11(c) to para. 11(d)(ii)).
25. We begin this assessment by putting to one side the harms arising by virtue of impact on the designated asset (12 Houses), the conflict with the ECS and the harm by reason of prematurity.
26. In our submission, the benefits of this proposal, even according them the weight that Mr Hawley accords them, is insufficient to pass the test in the tilted balance. In making this submission we do not underestimate the importance of providing housing and affordable housing, especially in a district in which the shortfall in housing land supply is significant. However, arguments based on lack of 5YHLS cannot be allowed to justify patently bad planning. Placing significant chunks of housing in the countryside, without any supporting services or infrastructure, outside of and unconnected to existing settlements where such development will clearly detract visibly from the countryside and suffer from poor non-car accessibility is not the answer to our housing crisis. As we said at the outset, if it were the answer, there would be no housing shortfall – sites fitting that description are all around us, but few have the audacity to take them all the way to appeal. The DP policies which rule out such development are wholly consistent with policies in the NPPF, and continue to attract full weight in the tilted balance (Hawley XX).
27. So the answer to the Appellant’s tilted balance argument and the reliance on housing need is, in short, ‘see above’.
28. But if more were needed, the ‘more’ as far as the benefits is concerned is this:   
    1. The weight to be accorded to housing (including AH) must be reduced to moderate if one accepts that housing in the wrong place should get less beneficial weight than housing in the right place. It should also be moderated because there is a plan-led solution on the horizon to meeting the housing needs of this district (unlike those districts which have no up to date plan, no 5YHLS and have been unable to progress a plan to submission stage). If the plan is adopted within the next 18 months, that is the duration for which the 5YHLS shortfall will persist (upon adoption sufficient of the allocations should move into the deliverable component of the 5YHLS calculation). The weight must also be moderated because although the site if granted permission is likely to make a contribution to the 5YHLS, sites that come through the ECS will not be far behind because unlike the appeal site, many of the ECS are already in the hands of house-builders who have already committed considerable resources to working up planning applications for those sites (Mr Grundy in XX).
    2. This is not a proposal that delivers meaningful benefits over and above the delivery of housing and AH. The other benefits are limited to moderate at best. They are primarily benefits necessitated by and of relevance to the new development. Few will want to use the cycle link across the site for the same reason that few will cycle north out of the appeal site given the unattractiveness of making the connection to the cycle network to the north. The improved footpath along Sowbrook lane is not going to be used by people in KH to walk to and back from the SRS because it is simply too far. If the existing No.14 was being used by sufficient existing residents the operator would already have thought it worthwhile to increase the frequency during the peak periods.
29. There is also ‘more’ as regards the disbenefits:   
    1. The heritage harm must be added to the above policy harms, and given considerable weight and importance.
    2. The proposal is contrary to the ECS, in particular as regards the draft policy that places this site and the surrounding land into the GB. We do not deny that there are ‘significant’ unresolved objections to the ECS, but there is nothing in para.48 to say that all three criteria are tests to be met before any weight can be attached to emerging policies. Criterion 48(b) is one criterion to which regard must be had, alongside the other two criteria. The plan is at an advanced stage – once submitted the outcomes are binary (either it will be found sound or it will not). To ask it to get to some other indeterminate stage between being submitted and found sound before it can be considered to be ‘advanced’ makes little sense. Criterion 48(c) is met – there is nothing inconsistent with the NPPF about an authority seeking to protect land outside of its settlements through a GB designation. Whether that approach is justified by reference to the exceptional circumstances test is not a matter that is capable of being determined through a s.78 Inquiry. Whatever weight is attached to the conflict with the ECS (moderate to substantial as per Mr Reddish or very limited as per Mr Hawley), one thing is undeniable – it is yet another negative or adverse impact to be weighed against the proposal.
    3. Granting the proposal will clearly prejudge one of the central disputes that fall to resolved as part of the upcoming ECS examination process, namely whether the Council is right to say that the most sustainable strategy is to protect the land that separates KH from Ilkeston and meet housing needs by releasing sustainable GB sites on the edge of other sustainable settlements, or whether the Appellant is right to say that separation between KH and Ilkeston is unimportant and the land should be sacrificed so as to minimize GB releases. It is impossible to see how permission can be granted for this proposal without reaching a concluded view on this dispute, a dispute which is better resolved through the plan-examination. This means that para.49(a) is engaged, and as explained above (and particularly so by reference to para. 50 when considering prematurity) the plan is now at an advanced stage. The officers and elected members of this District have taken a position on this matter and have submitted their position via the plan to independent inspectors. The Council is entitled to have its day in (the correct) court, namely the plan examination.
    4. Granting planning permission runs the real risk of delaying plan adoption and thereby delaying housing delivery in much greater numbers than can possibly be delivered by this proposal (which is modest in comparison to both the need and the amount of housing land the plan will release upon adoption). It would be political naivety for anyone to believe that the residents of this area and their elected representatives will not want to revisit the plan strategy if a hole is punched into the very land that the ECS says should be designated as GB, and the housing need used to justify GB releases is reduced. The arguments about scale (200 house versus windfall requirement) is a complete red-herring – the ECS is put forward and will be examined on the basis that the land earmarked for GB can be protected and there will remain sufficient windfall capacity to deliver the quantum of windfall delivery assumed in the submitted plan.
30. In summary, the adverse impacts of this proposal significantly and demonstrably outweigh the benefits, and thus there are no material considerations to justify a decision otherwise than in accordance with the DP.   
      
    Conclusion
31. For all of the above reasons the Inspector is respectfully requested to refuse planning permission and dismiss this appeal.

**Satnam Choongh**

Number 5 Chambers

16 August 2023