

**Land at North of Rounds Gardens**

**Proof of Evidence of Lucy Davison on behalf of Rugby Borough Council (CD5.9)**



**Local Planning Authority Reference: R24/0111**

**The Planning Inspectorate Reference: APP/E3715/W/25/3373251**

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## 1. Qualifications and Experience

1.1 My name is Lucy Davison. I am a Principal Planning Officer at Rugby Borough Council and have worked at the Authority since 2017. I hold a BSc (Hons) degree in Environmental Planning and a Master of Science Degree in Spatial Regeneration from Queen's University, Belfast. I am a licentiate member of the Royal Town Planning Institute.

1.2 I have over 10 years of experience of working in town planning in local government.

In my current role the main responsibilities are:

- Dealing with highly complex and major planning applications and complex applications related to Conservation Areas and Listed Buildings
- Dealing with Environmental Statements, during the processing of applications, by providing Screening and Scoping Opinions and responding to consultations from other authorities
- Dealing with major planning appeals
- Negotiating, checking the contents of and providing advice to Legal Services regarding S.106 agreements including financial contributions.
- Day to day supervision of my team including allocation of tasks, managing workload and general advice.

1.3 I was part of the planning performance team who assessed the planning application with associated recommendation of refusal to the Local Authority Planning Committee. I have visited the appeal site and examined the relevant national planning

policy, guidance and development plan policies. I have read the application, its supporting documents, and correspondence received from third parties.

1.4 The evidence which I have prepared and provide for this appeal (in this Proof of Evidence) is true and has been prepared and is given in accordance with the guidance of my professional institution. I confirm that the opinions expressed are my true and professional opinions.

## **2. Summary**

2.1 This Proof of Evidence addresses the Council's case in respect of defending its decision to refuse planning application reference R24/0111, for the redevelopment of Land North of Rounds Gardens.

2.2 The submitted planning application sought full permission for redevelopment of the former football pitch and tennis courts associated with the adjacent employment use, including demolition of the existing pavilion and all other remaining structures and enclosures relating to the previous use of the site; and the erection of 115 dwellings, accesses, landscaping, parking, drainage features and associated works.

2.3 Planning Committee resolved on 12 March 2025 to refuse planning permission on the grounds that:

- The sequential test for flood risk had not been applied properly and therefore had not been satisfied.
- The proposed level of mitigation for the loss of the football pitch, pavilion and associated car park would not be replaced by equivalent or better provision in

terms of quantity and quality in a suitable location and thereby conflicts with Policy HS4(c).

- Lack of safe and suitable access and impact on capacity and congestion of the Transport Network
- Loss of trees
- Scheme does not provide a high quality, well-designed place.

2.4 The formal Decision Notice was issued on 19 March 2025.

2.5 Having regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the starting point for assessing development proposals is the Development Plan, which comprises the Rugby Borough Council Local Plan 2011-2031.

2.6 In accordance with the statement of case (CD5.1) it is considered that reasons for refusal one (flood risk), three (safe and suitable access) and four (transport network mitigation) would be satisfied subject to all section 106 mitigation being secured and all conditions satisfactorily agreed. These three original reasons for refusal are therefore not being defended by the Council subject to the appellant agreeing the s106 mitigation and required conditions.

2.7 The inspector's main issues and this proof of evidence therefore centre around three remaining issues.

2.8 The Appellant has failed to demonstrate an appropriate level of mitigation for the loss of the football pitch, pavilion and associated car park such that they would not be replaced by equivalent or better provision in terms of quantity and quality in a suitable location and so the proposal conflicts with Policy HS4(c).

2.9 The removal of T149-164 (high quality London Plane), which is a significant group and important site feature, would be detrimental to the character of the area. It is considered that the proposed 2:1 ratio of planting to provide mitigation for this group, along with other category A and B trees lost through the proposed development, does not adequately address the value of these trees and thereby conflicts with Policy SDC2 and the appeal scheme does not provide a high-quality, well-designed place contrary to Policies SDC1 and NE2.

2.10 The appeal proposal is contrary to the development plan considered as a whole. The statutory presumption is therefore to dismiss the appeal. Whilst there are benefits associated with the appeal proposal, these are considered insufficient material considerations to suggest a decision other than refusal based on the overall planning balance. The appeal should therefore be dismissed.

### **3. Introduction**

3.1 This Proof of Evidence addresses the Council's case in respect of defending its decision to refuse planning application reference R24/0111, for the redevelopment of Land North of Rounds Gardens.

3.2 The submitted planning application sought full permission for redevelopment of the former football pitch and tennis courts associated with the adjacent employment use, including demolition of the existing pavilion and all other remaining structures and enclosures relating to the previous use of the site; and the erection of 115 dwellings, accesses, landscaping, parking, drainage features and associated works.

3.3 Planning Committee resolved on 12 March 2025 to refuse planning permission. The formal Decision Notice was issued on 19 March 2025 and included 6 reasons for refusal. Only 3 of those reasons are being defended in this appeal which are:

- *“The mitigation proposed in relation to the football pitch, pavilion and associated car park is not considered to be detailed or the required level of mitigation needed in order to replace the lost provision ‘by equivalent or better provision in terms of quantity and quality in a suitable location’ under 104b. It is therefore considered that this proposal does not comply with Policy HS4(c) of the Local Plan (2019) or paragraph 104 of the National Planning Policy Framework (2024).*
- *The proposals include the removal of T149-164 (high quality London Plane) which is a significant group and a prominent feature within the street scene which contributes positively. This would be detrimental to the character of the area alongside the loss of a further category A tree and 12 category B trees. The proposal is therefore considered to be contrary to Policy SDC2 of the Local Plan (2019) and paragraph 136 of the National Planning Policy Framework (2024).*
- *The proposed development does not provide a high-quality well-designed place. The development would not be visually attractive or provide a good architectural response to the site in relation to built form, layout and landscaping therefore having a detrimental adverse impact on the character of the area. The application is therefore contrary to Policies SDC1 and NE2 of the Local Plan (2019), Paragraph 130 and 135 of the National Planning Policy Framework (2024) and the National Design Guide (2021).”*

3.4 This proof of evidence will set out why the Council considers that the loss of sporting provision resulting from the proposed development would not be replaced by equivalent or better provision in terms of quantity and quality in a suitable location. It will draw upon the evidence prepared by Ms Murphy in respect of the character and design of the proposal (CD5.10) and Mr Gower (CD5.11) on the loss of trees, before assessing the proposals against the planning policies within the Development Plan relevant to the determination of the appeal.

3.5 The site context and history, the details of the proposed development, and the planning policy context are all set out in the Statement of Case (CD5.1) and are not repeated here.

#### **4. [Assessment against the Development Plan](#)**

4.1 Section 70(2) of the Town and Country Planning Act, 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004, require that planning applications be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Statutory Development Plan for the area relevant to this application site comprises of the Rugby Borough Local Plan 2011-2031. (CD6.1)

4.2 The Development Plan is now more than 5 years old, and paragraph 34 of the NPPF states that policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years and should be updated as necessary. The Local Plan review is underway (Regulation 19 consultation set to be published January 2026) (CD7.6) however, the committee report (CD 5.2) set out the relevant Local Plan policies and notes any NPPF inconsistencies between them or any other material consideration which could render a policy out of date.



4.3 Paragraph 232 of the Framework states that existing policies should not be considered out-of-date simply because they were adopted prior to the publication of the framework or more than 5 years old. Due weight should be given to them according to their degree of consistency with the framework. Furthermore, it is recognised by the courts that out-of-date policies can still be given some weight, particularly when their overall strategic aims might be designed to operate on a longer time scale than a particular plan period. The relevant policies for this appeal are mostly considered to have full weight.

4.4 The Council cannot demonstrate a 5 year housing land supply. Therefore, the ‘tilted’ balance in paragraph 11(d) of the Framework is triggered. Therefore, planning permission should be granted (subject to section 38(6) of the 2004 Act) unless either limb (i) or limb (ii) is satisfied. The application of each limb is essentially a matter of planning judgment for the decision-maker. There are no footnote 7 considerations for this appeal scheme as identified following the amendments to the PPG post determination of the application by the Council.

4.5 Therefore, the ‘tilted’ balance in paragraph 11(d)ii of the Framework applies where permission should be granted unless the adverse impacts significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole (with particular regard given to policies within footnote 9 of the NPPF).

4.6 Having regard to the Inspector’s main issues included in the Post CMC Note, the following matters are addressed.

***Whether the proposal would lead to the unacceptable loss of sports and recreational buildings and land***

4.7 Policy HS4(c) of the Local Plan requires that public open space, sports and recreational buildings and land “should not be built upon unless ...”. It is therefore for the Appellants to demonstrate that an exception applies. Only one of the three exceptions listed in Policy HS4(c) needs to be demonstrated in order to comply with the policy.

4.8 Paragraphs 10.16-10.23 of the committee report (CD5.2) set out why both the tennis courts and football pitch are not surplus to requirements in order to satisfy paragraph 104a.

4.9 The main issue relates to the 2<sup>nd</sup> exception of Local Plan Policy HS4(c) and paragraph 104(b) of the Framework and whether it can be demonstrated that the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.

4.10 Paragraphs 10.7-10.12 of the committee report (CD5.2) set out the application of policy to the site. In particular, paragraph 10.9 notes that the Local Plan Policy HS4 goes further than the Framework. The Council notes that the policy is partially inconsistent with the Framework (Paragraph 104) due to stating “and/or last in sporting or recreational use”. The Council considers that Policy HS4 holds full weight. As Rugby Borough Council undertakes its local plan review and progresses to the publication of the regulation 19 consultation (January 2026) Policy W2 part E (CD7.6 - page 99) takes forward the requirement that “National policy on the protection of existing open space, sports and recreational buildings and land, including playing fields, will be applied”. Whilst the local

plan review has limited weight at the time of writing this POE the assessment as set out above accords with the new Local Plan.

4.11 The appellant submitted a Sports Mitigation Strategy (January 2024) (CD1.58) in support of the application. This sets out the areas of the site covered by the sporting uses as follows:

- Sports Pitch – 10,700.7 sqm
- Sports Pavilion – 1,247.7 sqm
- Pavillion car park – 2155.2 sqm
- Tennis Courts – 1,901.9 sqm

4.12 While the Council is content with the mitigation proposed for the Tennis Courts based on the calculations undertaken and response from consultees it is considered that the mitigation for sports pitch, sports pavilion and pavilion car park is insufficient. Additionally, the appellant has failed to carry out the further work outlined as identified within paragraph 5.16 of the submitted sports mitigation strategy (CD1.58).

4.13 In calculating what is required to replace that which is being lost by this proposal by equivalent or better provision the Council has worked with the appellant in identifying suitable locations for the replacement. In being flexible in relation to the requirements and considering all matters of the application proposals, the LPA had established monetary contributions that could be used for offsite provision rather than requesting like for like replacement in terms of quantity and quality in a suitable location based on the assessment undertaken regarding need. The main point of dispute between the parties is therefore the level of contribution required.

4.14 Paragraph 10.29 of the committee report (CD5.2) sets out the cost for one football pitch and the associated sinking fund and maintenance for a 25 year period as £627,500. How this cost was derived has been shared with the appellant (CD5.12). The cost is based on the Sport England Facility Costs 2Q 2020 and the Sport England Lifecycle Costings Natural Turf Pitches April 2012 as the evidence base of The Open Space Audit, Built Facilities and Playing Strategy 2015 which was used to support Policy HS4 within the adopted Local Plan through examination in 2019. As this evidence base supported the adopted policy it is considered reasonable to use in calculating any monetary contributions for sporting provision.

4.15 As outlined the costing provided from the Council are from evidence from 2012 and therefore in reality are likely to be higher as evidenced by the response from Sport England (CD 3.24).

4.16 In providing the financial offering to replace the sports pitch, sports pavilion and pavilion car park the appellant offered a contribution of £200,000. It is not clear how this contribution has been derived as details have not been given to the Council.

4.17 Based on the detailed costs the council calculated the appellants proposed contribution would not cover the provision and maintenance requirement to provide a viable provision elsewhere in the Rugby urban area. In addition, there is no facility for the pavilion and car park which have historically always been associated with the pitch to be re-provided elsewhere. The onus should not be on the council to facilitate this associated provision elsewhere. This would require further planning permission to be applied for at the assigned location and for any works to be granted to be completed adding an additional burden to the Council.

4.18 It is therefore considered that an equivalent or better provision in terms of quantity and quality for the football pitch, pavilion and car park is not being provided in a suitable location and that this proposal does not comply with Policy HS4(c) of the Local Plan or paragraph 104 of the NPPF.

***the effect of the proposal on the character and appearance of the area, with particular reference to protected trees and urban design***

4.19 This main issue relates to Policies SDC1, SDC2 and NE2 of the Local Plan (CD6.5, 6.6 and 6.4) and paragraphs 129, 130, 135 and 136 of the National Planning Policy Framework (NPPF)(CD6.10).

4.20 Paragraph 139 of the NPPF states that development that is not well designed should be refused. Especially where it fails to reflect local design policies and government guidance on design.

4.21 Paragraphs 12. - 12.40 of the planning committee report (CD5.2) set out the design and layout assessment. Ms Murphy's evidence (CD5.10) states the proposed development would not provide a high-quality well-designed place and Mr Gower's evidence (CD5.11) states the proposal includes removal of a significant group and prominent feature of London Plane trees which contributes positively currently to the streetscene and would be detrimental to the character to the area. While Mr Gower's objection during the application (CD3.22 and 3.23) and his proof relating to the proposal focuses on the trees subject to tree preservation orders, the planning committee report (CD5.2) Section 13 outlines the planning assessment and consideration of the overall loss and impact on the green infrastructure network.

4.22 The development therefore does not comply with Policies SDC1, SDC2, and NE2 of the Local Plan and paragraphs 130,135 and 136 of the NPPF.

***other considerations, including housing land supply***

4.23 The Council is currently unable to demonstrate a 5 year supply of housing. The Council 5 Year Housing Land Supply position is that the supply is of 4.16 years. This is as published in the 5 Year Housing Land Supply Position Statement 2025-2030 in November 2025(CD7.1).

4.24 The Council is currently reviewing its local plan and the regulation 19 consultation will be undertaken in January 2026 (CD7.6). The draft plan allocates the appeal site for residential development (circa 60 dwellings). The document to be consulted on has placemaking principles for allocated sites in the development site allocations annex (CD7.6 - page 157). This currently holds limited weight.

**5. Planning balance**

5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and S70(2) of the Town and Country Planning Act 1990 require that applications for planning permission must be made in determined in accordance with the development plan unless material considerations indicate otherwise.

5.2 The Councils statement of case (CD5.1) sets out the planning balance in relation to the proposed development.

5.3 The principle of housing on this site within a sustainable location is considered to comply with the Local Plan and NPPF subject to the detailed assessment of the loss of the sporting facilities being satisfactorily addressed and all other matters being satisfactorily addressed.

5.4 It has been evidenced that the loss of sporting facilities in relation to football provision has not been satisfactorily addressed, that the loss of trees would not be

acceptable and that high-quality design is not proposed. These harms all hold either significant or moderate weight.

5.5 In addition to the harm evidenced within paragraph 5.4 above the SOC (CD5.1) also identified significant and detrimental impacts on education, play and open space, libraries, sport provision mitigation, public rights of way and health due to the non-viability of the scheme. This holds significant weight in the balance.

5.6 Weighed against these conflicts is the Government's commitment to significantly boosting the supply of housing through the Framework. The proposal would result in the delivery of 115 houses. These additional houses have significant weight in the planning balance as they would assist in addressing the current shortfall of housing in the borough. Other identified benefits are set out within the SOC (CD5.1). The economic benefits hold significant weight, the social benefits hold moderate weight and the environmental benefits hold moderate weight.

## 6. Conclusion

6.1 The appeal proposal does not accord with the Council's development plan as a whole. The statutory presumption is that the appeal should be dismissed.

6.2 The Council and the Appellant are currently in discussions to agree a Section 106 which identifies all contributions outlined within the Council's committee report (CD5.2). If agreed this would overcome the two highways reasons for refusal – and I assume that this will be the case in my assessment of the overall planning balance.

6.3 It has been evidenced that the proposal will result in a conflict with policies in relation to loss of sports provision, design, TPO trees, and pressure on existing

infrastructure with no affordable housing provision. The weight to be given to these individual elements is outlined within this balance and the majority hold significant weight.

6.4 Weighed against the identified harm is the economic, social and environmental benefits identified which hold significant and moderate weight.

6.5 The presumption in favour of sustainable development as set out within paragraph 11d is engaged. It is considered that when the overall harm is weighed against the benefits, that the identified substantial harm, having particular regard to the policies in Footnote 9 of the Framework, outweighs the benefits. On this basis the material considerations do not indicate that this appeal should be determined other than in accordance with the development plan. The appeal should be dismissed.