

IN THE MATTER OF:

**AN APPEAL BY ST. MODWEN HOMES UNDER S.78 OF THE TOWN AND COUNTRY PLANNING ACT 1990 AGAINST THE REFUSAL BY RUGBY BOROUGH COUNCIL TO GRANT PLANNING 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.**

**LPA Reference: R24/0111**

**PINS Reference: APP/E3715/W/25/3373251**

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## **OPENING SUBMISSIONS ON BEHALF OF THE APPELLANT**

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### Introduction

1. This is an appeal by St. Modwen Homes against the refusal of Rugby Borough Council to grant planning permission for a detailed scheme for the redevelopment of a former football pitch and tennis courts to provide 115 houses, accesses, landscaping and associated parking and drainage. This former use was associated with an adjacent employment facility, but the site is now derelict and this proposal includes plans to demolish the existing pavilion on site and all other remaining structures and enclosures associated with the historic employment use.
2. Planning permission was refused for 6 reasons, but the Council now accepts that its objections relating to the sequential test (RFR 1), safe and suitable access (RFR 3) and impact on transport network (RFR 4) have been resolved and it no longer seeks to defend those RsFR. That leaves 3 RsFR (RFR 1, 5 and 6), which the post-CMC Note

(para.9) summarises as follows:

- a. whether the proposal would lead to the unacceptable loss of sports and recreational buildings and land;
  - b. the effect of the proposal on the character and appearance of the area, with particular reference to protected trees and urban design;
3. As always, there are other considerations (5YHLS, conditions and obligations), but these are not of great relevance to the outcome because the key elements in respect of these other matters are agreed.
  4. The purpose of this opening is to outline the Appellant's case on the two main substantive issues identified above, and address some of the miscellaneous matters falling under 'other considerations'.

Will There be Unacceptable Loss of Sports and Recreational Buildings?

5. This proposal will not lead to the loss of sports and recreational buildings. The RFR cites NPPF para.104, but this relates only to existing facilities. The facilities of relevance in this case no longer exist. The use ceased some 23 years ago, the pitch is now derelict, dangerous and overgrown. Its function now is as a natural attenuation pond. The Council accepts that it is not practicable for this pitch to be reinstated. The pavilion on site is similarly in a dangerous condition, and a magnet for anti-social behaviour. The police have asked for it to be demolished, and the LPA accepts that it will be demolished regardless of the outcome of this inquiry.
6. Having regard to the proper interpretation of NPPF para.104, these facilities do not exist and thus the policy is not engaged. To the extent the RFR is based on breach of national policy, it is misconceived.
7. The relevant DP policy (HS4(C)) should if possible be read in a manner that makes it consistent with national policy. One way of doing this is to read its reference to such

facilities as a reference to those that actually exist. Read in this way, the policy is not engaged for the same reasons that NPPF para. 104 is not engaged.

8. If the policy cannot reasonably bear this meaning (and it is arguable that it cannot because it expressly captures, *inter alia*, facilities that were 'last in sporting or recreational use' (i.e regardless of whether they exist now)), the policy is fundamentally inconsistent with national policy. The weight to DP policies is dependent on their consistency with the NPPF (NPPF para. 232). In light of the degree of inconsistency breach of this policy should be accorded no (at the very most) very limited weight in the planning balance.

#### Effect on Character and Appearance of the Area

9. The Council raises detailed points about the acceptability of the urban design, and the proposed loss of 28 trees on the site, 18 of which are subject of a TPO.
10. The Appellant has provided a detailed explanation and justification of the design, including loss of trees, most latterly through the evidence Mr Carr. A detailed response to the Council's points will be made in the roundtable session, but at this stage the Appellant restricts itself to making some overarching observations which we say provides the proper context for considering the Council's stance as regards design and tree loss.
11. This is a derelict site located in the heart of the urban area, and at least a third of the site constitutes PDL. The Council accepts that it should be redeveloped, and attaches significant positive weight to the benefits that its redevelopment will deliver. In its current state it is an eyesore – its effect on the character and appearance of the area is wholly negative. That is the baseline as regards the character and appearance of the area. It is simply not plausible to argue that the scheme which is brought forward, which will deliver modern housing complying with all relevant amenity standards, much needed POS, landscaping and 2:1 tree planting, will have an adverse impact on the character and appearance of the area; that the character and

appearance of the area will be worse after redevelopment.

12. That is not, and should not be seen as, an argument to the effect that the policy requirements (both local and national) that require good design do not apply to sites such as the appeal site. It is the Appellant's case that the scheme before this inquiry represents good design, and complies with relevant policies. The reason that we draw attention to the baseline is because it underscores the real world consequences of the 'do nothing' scenario.
13. Furthermore, it is necessary to make efficient use of land and, most critically, to bring forward a scheme that is viable. That requires the Appellant to deliver a certain quantum of housing. At 115 dwellings, the scheme is not viable, but the Appellant is willing to proceed with it (taking a lower developer's return than that accepted in Govt. guidance as being a reasonable return). As part of its negotiations with the Council, it has already reduced the quantum from its original proposal, which was for 134 dwellings. It is all very well to say a greater number of trees should be retained, or a greater number of trees replanted, and that there should be no, or less, loss of Green Infrastructure, but if the Council is going to say this, it should also explain how it is possible to do this without reducing the quantum even further. There is no point in seeking permission for a scheme that no developer will deliver because it makes a loss, or drops the developer's return so low that no developer wants to waste its time developing the site.

#### Other considerations

14. The above point is also relevant when having regard to the other considerations in this case. Chief amongst these is that there is agreement between the parties that the Council cannot demonstrate a 5YHLS as required by Govt. policy. This is a minimum requirement, and even on the Council's case there is a significant shortfall (the supply stands at 4.1yrs on the Council's case). It is the Appellant's case that the supply is much more critical than that (standing at only 2.0 years). This will be explored further in the roundtable session on HLS, but for purposes of these opening remarks what matters is that the parties are agreed that the decision in this

case needs to be made by reference to the tilted balance set out in NPPF para.11(d)(ii).

15. This is important, because it requires that permission be granted unless the adverse impacts of the proposal 'significantly and demonstrably' outweigh the benefits. So it is not enough to point to adverse impacts, or even adverse impacts which outweigh the benefits. The adverse impacts must be such that they 'significantly and demonstrably' outweigh the benefits.
16. It is necessary to bear this in mind when having regard to all of the harms relied upon by the Council to say this test, heavily skewed in favour of the grant of permission, is not met. However, it is particularly important to bear in mind when it comes to considering its case regarding urban design and loss of trees. Such matters are not binary – urban design is about making compromises having regard to all factors, including in particular making efficient use of land within an urban area and delivering a viable scheme. It is not persuasive to argue, as the Council does, that the harm arising from its criticisms of the design (even if they had merit, which is not accepted) are so significant and demonstrable that they outweigh the benefits of bringing forward much needed housing on a site that has been derelict for almost 25 years, and which will on likelihood remain in this state if these proposals are rejected.
17. Finally, the council argues that there will be harms arising from unmitigated impacts on infrastructure. This ignores two very material considerations.
18. Firstly, the DP (and national policy) allows such contributions to be waived if it can be shown that development would become unviable if those contributions were levied. Here, the Council accepts that the scheme is already unviable. Imposing even more financial burdens upon it would simply mean that the site would remain as it is (back to the 'do nothing' scenario). It follows that the inability to make such contributions does not place the proposals in breach of the DP, and it is wrong in principle to count this as a harm of the proposals.

19. Secondly, it ignore the very substantial contributions this scheme will make to infrastructure provision through the CIL payment.

Conclusion

20. For all the above reasons, we will in due course ask the Inspector to allow this appeal and grant planning permission for these proposals.

**SATNAM CHOONGH**  
**No5 Barristers Chambers**  
**20<sup>th</sup> January 2026**