

APPEAL BY RICHBOROUGH RELATING TO PROPOSED RESIDENTIAL
DEVELOPMENT OF LAND EAST OF RUGBY ROAD, CLIFTON-UPON-DUNSMORE,
RUGBY

THE APPELLANT'S CLOSING SUBMISSIONS

Introduction

1. These closing submissions follow the identification of the main issues set out prior to the inquiry, but the issue of alternative sites has been separated from the first main issue to allow the issue to be comprehensively addressed in the light of the entirety of the Appellant's case.

Whether the appeal site represents an appropriate location for housing, having particular regard to relevant provisions of the development plan, the potential availability of alternative sites, and the connectivity of the proposed development to local infrastructure

The provisions of the Development Plan

2. The only relevant component of the adopted Development Plan is the Rugby Local Plan. It has an end date of 31st March 2031, less than five years away. The Local Plan does not therefore set out to address housing requirements throughout the next five year period from

now. As the plan end date coincides with the end date of the latest five year supply period that the Council has assessed, the absence of a five year supply shows that the Local Plan cannot deliver sufficient forward supply, when using local housing need to test supply¹. The housing requirement, contained in policy DS1, although very close to the present local housing need number, is out of date as it did not use the standard method as the basis for assessing needs and for informing the plan's requirement figure. As policy DS1 contains no development management test, it is perhaps not necessary to resolve the conflict between Mr Stephens and Mr Weekes about the policy's weight.

3. Policy GP2 of the Local Plan performs two functions that are presently relevant. First, it sets up the settlement hierarchy for the Development Plan. Rugby itself is the top level in the hierarchy and then Main Rural Settlements, of which Clifton-upon-Dunsmore is one, form the second tier. Mr Weekes accepted that, in principle, Main Rural Settlements are suitable locations for some degree of growth. That is confirmed by paragraph 3.11 of the adopted Local Plan and also by the proposed allocations at the village in the emerging Local Plan. Mr Weekes also accepted in XXm that the list of facilities in the village in the Rural Sustainability Study² remains up to date. The village itself is close to Rugby, whose railway station is within 2km of the site³.
4. The second function performed by policy GP2 is to establish settlement boundaries and set up a generally permissive approach to development within the settlement boundary and a more restrictive approach outside them, in order to protect that countryside. As Mr Weekes accepted, that is a general approach to development in the countryside which does

¹ Which requires past over-supply against the Local Plan requirement to be ignored.

² CD5.43 page 15.

³ Mr Stephens proof paragraph 3.18.

not permit, let alone require, a case-specific assessment of impacts upon, for example, character and appearance and it is a policy that is not about coalescence of settlements.

5. The appeal scheme conflicts with policy GP2 because it lies in the open countryside. Mr Stephens accepts that conflict with that policy can be equated with conflict with the Development Plan taken as a whole. The Council accepts that it could not regain a 5YS whilst adhering to the terms of policy GP2, as to do so would inhibit the ability to deliver sufficient housing land. The logical consequence of that is that the policy, as a development management tool, deserves only limited weight.
6. Mr Weekes' method of expressing weight to be afforded to policies and their breach is most confusing and unhelpful. He ascribes weight to policies, but then separately addresses compliance with or breach of them not as a binary matter, but on a graduated scale. The confusion arises because a policy can be afforded, for example, moderate weight, but then he sometimes describes the breach in more serious terms, such as "very significant conflict". In XXm, it did appear as though those judgements about the degree of policy breach informed the weight he was affording to the breach of the policy. The result was that he can end up ascribing more weight to the breach of the policy than he ascribes to the policy itself. That is illogical. Mr Stephens' far more straightforward approach is to be preferred.
7. Mr Weekes' evidence included an allegation that the appeal scheme would amount to overdevelopment at Clifton-upon-Dunsmore. There are a number of things to be said about that contention:

- a. Most obviously, it is entirely unsupported by any evidence. The appeal scheme would make all of the necessary contributions to infrastructure of all kinds through the combination of the planning obligation and conditions. There is no unmet request for infrastructure improvements;
- b. If the Council thinks that the village can accommodate about 150 new homes at the three draft allocations, there can be no case for saying that the up to 160 units on the appeal site, in isolation, would be unacceptable;
- c. If the appeal scheme were to be developed in addition to the proposed allocations, there is still no evidence that any impact on any service, facility or infrastructure would be unacceptable. Primary school provision may have to be addressed, but that is a plan-making issue or an issue for proposals that are the subject of later planning applications to tackle. The education authority seeks no contribution towards mainstream primary education in this case. Education impacts cannot be a reason to withhold planning permission for the appeal scheme; and
- d. Pointing to a degree of increase in the size of a settlement, whether by reference to housing numbers, as a proportion of the existing village size or in any other way is, of itself, an empty point. Expansion is not problematic unless it creates some real harm of a type that the planning system considers relevant. Mr Weekes could point to none. There is simply no basis for identifying this as a harm at all, let alone one which deserves significant weight⁴.

⁴ See the entry in the table on page 45 of Mr Weekes' evidence.

8. The appeal scheme does not accord with the adopted Local Plan's approach in that it is located in the open countryside. But the policy that addresses that issue deserves limited weight. Clifton-upon-Dunsmore is a suitable place for growth in principle and the appeal site could be developed without causing undue harm, as the rest of these submissions sets out.

9. It is an odd feature of the Council's case that the two policies it considers to be those that are the most important ones for determining the appeal are not cited in the putative reasons for refusal. On the other hand, the policies which are cited in the putative reasons are not said to be "most important policies".

10. The appeal scheme would also conflict with the emerging Local Plan. The policies of that plan are draft, have been objected to⁵ in terms that cannot be simply set aside and have not begun to be examined. The draft allocations in the village are the subject of objections. They cannot attract sufficient weight to be influential in determining the appeal. Of course the Council considers the emerging plan to be sound. They could not have done so if that was not its view, given that section 20(2)(b) of the Planning and Compulsory Purchase Act 2004 provides that a local planning authority must not submit a draft plan for examination:

"unless ... they think the document is ready for independent examination".

11. The Local Plan Inspectors are not bound to agree. The plan might fail. It might require revision. It is almost certain to require some main modifications. The Council's estimate

⁵ See, in particular, the references in CD12.5 put to Mr Holly in XXm.

that the plan will be adopted in spring 2027 is overly optimistic. As Mr Stephens pointed out, the process of making the present adopted Local Plan took two years from submission to adoption. As one of only two Main Rural Settlements that are outside the Green Belt, Clifton-upon-Dunsmore must be a realistic potential candidate as a location for increased growth if the Local Plan examination shows that the housing requirement needs increasing and/or that some proposed plan allocations are unsound and/or that the Council's whole plan delivery trajectory is too optimistic.

12. The emerging Neighbourhood Plan redefines the village's settlement boundary, which is a matter dealt with in more detail below. Draft policy G1 of the NP seeks to restrict development outside the settlement limits of the village. The NP seeks to be in general conformity with the adopted Local Plan, not the emerging one, and a lack of 5YS would mean that the weight to be afforded to policy G1 (even ignoring its draft status) would be no more than the weight to be afforded to Local Plan GP2.

13. No putative reason for refusal raises connectivity to local infrastructure (or the village's services and facilities) as an issue. Even though the point was raised elsewhere in the Council's statement of case and in its evidence, the Council has never alleged that the appeal scheme breaches the relevant Local Plan policies HS5 and D1. That makes no sense if the Council does consider the appeal scheme defective in this respect.

14. Ms Murphy accepted that the remit of the local highway authority extends not just to matters of capacity and safety, but also includes matters relating to sustainable travel. The SoCG with the County Council⁶ makes it clear that the highway authority is happy that

⁶ CD9.3 paragraphs 2.5 to 2.7.

the appeal scheme would be appropriately accessible by sustainable modes, including walking.

15. Mr Parker's evidence addresses walking distances from the centre of the site to the village's various facilities. Whilst some of them are more than 800m from the site's centre, they are still within a convenient walking distance. There is nothing special about a distance of 800m that means people will not walk further. MfS points out⁷ in express terms that 800m is not an upper limit. Mr Parker's evidence points to the 2024 National Travel Survey saying that the average walking trip distance is 1.12km. The gradients and other qualitative aspects of the route to the village centre are not a material disincentive to walking or cycling. The appeal scheme would also bring footway improvements in the vicinity of the site.

16. The appeal site's connectivity is not dependent on access through the recreation ground. However, Ms Murphy accepted that as the appeal scheme would include additional tennis courts and parking for the recreation ground, the likelihood is that there would be a connection from the appeal scheme to the recreation ground. Whilst the Parish Council would not entertain a proposal for a made path, access through the recreation ground would be a viable route to the village centre in daylight and fine weather which many people might choose to use.

⁷ CD5.51 paragraph 4.4.1

The effect of the proposed development on the character and appearance of the area, including considerations of landscape and visual effects and settlement identity.

17. There is a broad measure of agreement between Mr Wakefield and Mr Berry in their written assessments. The extent of the difference narrowed still further as a result of Mr Wakefield's answers in XXm.

18. The appeal site is a single large arable field with few features and none worthy of specific protection. It is, as Mr Wakefield, says, "ordinary". It, and its context⁸, is of medium value. Although there is a difference in judgement about its susceptibility, that difference is of no consequence as both Mr Berry and Mr Wakefield are of the view that the appeal site and its context is of medium sensitivity overall. It is strongly influenced by existing development.

19. The appeal scheme proposes the erection of up to 160 dwellings in accordance with the submitted parameters plan. The parameters plan shows:

- a. An area of open space (which it is intended to be used as an extension to the recreation ground and to provide additional parking to serve the recreation ground);
- b. An area to be developed with housing; and
- c. A further area of open space.

⁸ As explained by Mr Wakefield in XXm.

20. The definition of the area to be developed, as shown in the parameters plan key, is expansive enough to permit that area to be used to contribute towards landscaping along the eastern site boundary.
21. The three areas within the parameters plan lie in a broadly north-west to south-east orientation, allowing the proposed housing to be kept towards the top, more level, part of the site, consistent with the village's largely hill-top location.
22. The landscape effects of the appeal scheme would be acceptable. Mr Wakefield ended up agreeing as much in XXm, as he accepted that planning permission should not be refused on landscape character grounds and he was relying upon visual impacts to make his case. This concession arose because of the exploration in XXm of the rather unclear way he put his case. He identified what Mr Berry would call levels of effect, and characterised each according to whether they were or were not "significant". That begged the question of what Mr Wakefield meant when he referred to an effect as "significant", which was not touched upon at all in his written evidence or in his XC. The appeal scheme is not EIA development and so the relevance of identifying a threshold of significance was not immediately apparent.
23. What became clear in XXm was that Mr Wakefield was using his significance threshold as an indicator of materiality of harm and nothing more. He readily accepted that significance, or materiality, was not to be equated with unacceptability. All he was doing by identifying significant effects, was flagging up an impact that needed to be taken into account in decision making. When that was explored with him in XXm, he accepted that

the result was that his character case ebbed away. That is because Mr Wakefield said, in XC, that he thought that long term character effects, ie those at Y15, were the most important. Mr Wakefield did not therefore attach much importance to the differences in judgements about construction and Y1 character effects.

24. On the site itself, the two landscape witnesses agree that character effects would be no more than moderate adverse at Y15. When the site's immediate context is taken into account, Mr Wakefield assesses the level of character effect as no more than minor even when close to the site. These are not levels of effect which indicate serious harm being caused to the character of the area. They are levels of impact that can be expected from any greenfield development, as Mr Wakefield acknowledged in XXm. It is readily understandable why Mr Wakefield ended up not pursuing a landscape character case against the appeal scheme.

25. As for visual effects, the best assessment of these can, of course, be made on the site visit. There is no merit in addressing every viewpoint in closing. Mr Wakefield's assessment of visual impact is overstated, a point illustrated by him ascribing a minor effect at VP19 which is a location from which the appeal scheme development would not be visible.

26. The point of assessing visual impact is, as Mr Berry explained in XC and Mr Wakefield accepted in XXm, is to assess impacts on people (receptors) not on geography. Chosen viewpoints are representative worst case examples of the areas in which they are located. Having two viewpoints close to each other does not mean that there is twice the impact than if one representative viewpoint is chosen.

27. That last point is of particular relevance to VP1 and VP20, which are both locations at the recreation ground. Mr Berry assesses them as both being of moderate impact at Y15. Mr Wakefield increases the level of effect for the viewpoint closer to the southern fence, which separates the recreation ground from the appeal site. The viewpoints are also in the location of Important View 9 of the draft Neighbourhood Plan. It is clear from the way that the parties have struggled to address the NP's important views and the basis for them that the Examiner was right to accept Mr Wakefield's criticisms on behalf of the Archdiocese of Birmingham, that there is a poor evidential justification for the Important Views. It is surprising, to say the least, that the entirety of the evidence base for the Important Views is one or two photographs, often poor quality, per view, with a simple caption and no analysis at all of why they are important. The Examiner was right to conclude that their effect, if applied as policy ENV7 of submission version of the NP was originally drafted, was:

“that it could be used to reject any form of development across a wide range of locations”⁹.

28. The Examiner therefore required that the policy be modified. It is fair to describe the modification that she recommended as one which waters down the strength of the development management test. It is true, as was pointed out in XXm of Mr Berry, that the policy, as proposed in the plan's referendum version as renumbered policy ENV5¹⁰, requires that development proposals “should respect” the important views. But that is not much of a development management test. What the policy actually requires is set out in the words that follow. The policy, as proposed, would not seek to prevent harm. It would

⁹ CD5.27.1 Examiner's Report, paragraph 5.3.96.

¹⁰ CD5.27, plan page 51-52.

not even prohibit significant harm. If a proposal would cause significant harm, then what the policy requires is an explanation of the scheme's benefits and the need for them. The policy does not even require the harm to be justified. It goes on to require appropriate mitigation "to address any impact". It is not, in truth, a very stringent draft policy.

29. The appeal scheme has clear benefits which are explained later in these submissions. The appeal scheme mitigates impact in that the housing development would be set at about 50m from the southern edge of the existing recreation ground, would not occupy the whole sweep of the view and landscaping, to soften and break up the development would be capable of being addressed at reserved matters. If a cone or corridor of view was thought appropriate, then there is no evidence to show that such an approach could not be successfully achieved at reserved matters stage whilst still accommodating up to 160 dwellings in accordance with the parameters plan. Further still, a clear ability to appreciate the remaining ample gap between the village and Rugby would be possible from the south western edge of the appeal scheme.

30. It is also striking to note that neither the statement produced for the inquiry by the Parish Council nor Cllr Hassell's evidence referred to Important View 9 as being something of concern to them.

31. VP17 is on Houlton Way. From parts of the length of that highway, the appeal scheme would be visible and would have a visual impact. Houses would be closer to the viewer than at present and they would be at a higher elevation, perhaps on the skyline – something that is to be expected from development in a hill top settlement. But there would be no impression of development harmfully spilling off the plateau, even though that has already

occurred along Rugby Road. Mr Berry's assessment of visual impact is to be preferred to that of Mr Wakefield.

32. The same is true of VP18 from Rugby Golf Club. That is a private facility which the public have no legal right to use. VP18 shows that housing would be at some distance, would not occupy much of the breadth of view, would not spill down the hillside, would be seen in the context of existing housing and would leave a clear actual and perceptible gap between the village and Rugby.

33. The viewpoints that are used by Mr Wakefield as proxies for residential views (VP21 and VP22) are not ones which are of particular concern. There is no right to a view, the Council does not allege amenity impacts and Mr Wakefield did not claim that the small number of properties affected could be aggregated in some way so as to make them a public interest concern of relevance to the planning system.

34. The viewpoints where Mr Wakefield does not consider that significant, ie material, effects would occur are also instructive. VP4, VP5, VP6 and VP7 are all located to the east of the appeal site. They are relevant to two aspects of Mr Wakefield's evidence:

a. Mr Wakefield expressed some concern about the lack of planting along the eastern boundary which he says could not be achieved in accordance with the parameters plan. There are three answers to that:

i. The parameters plan would allow landscaping to be located within the residential development area (see the point made above about the

definition in the key) and the illustrative masterplan shows but one way (not the “best shot”) to be accommodated up to 160 dwellings on site. There would be ample scope for an appropriate depth of landscaping. Boundary planting is locally characteristic and would not be the introduction of a locally alien feature: see the reference to planting in the summary description of the area around the appeal site in the Council’s Landscape Sensitivity Assessment of Strategic Site Options from March 2025¹¹;

- ii. Mr Wakefield seems to expect boundary planting to screen or hide development. That is not necessary. Landscaping which does not screen but which filters views, breaks up and softens development can often be entirely successful; and
- iii. Mr Wakefield’s assessment of Y15 visual impacts from these viewpoints comprises three instances of minor impact and one instance of minor/no effect. These levels of effect are not of significance/material, under Mr Wakefield’s methodology and were, in any event, reached on the basis of what Mr Wakefield thinks would be an essential lack of mitigation on the site’s eastern boundary;

- b. These viewpoints are highly relevant to assessing Mr Wakefield’s claim that the appeal scheme would actually and visibly cause coalescence or the village and

¹¹ CD5.47, document page 19, final box.

Rugby. A site visit will show that there would be no perceived, let alone actual, merger and no significant undermining of the gap between the settlements.

The effect of the appeal scheme on the morphology of the village.

35. The first issue is to decide what the village actually comprises. Both Mr Wakefield and Ms Murphy accepted that the appeal scheme must be compared to the village as it now is and not how it was at some point in the past. The historic core of the village, as can perhaps be equated with the extent of the conservation area, is not the entirety of the village. A substantial amount of later, particularly twentieth century, development has taken place, as Mr Berry explained. This is typical of the growth of most settlements over time. The historic core, as represented by the conservation area, is linear in form as the conservation area appraisal explains¹². Later development was then added around that core. But the best indication of what the local community consider the village to be is to be found in how the village is delineated in the emerging NP. The settlement boundary, as shown in its figure 2, includes the Rugby Road development within the settlement boundary. It is part of the village for the purposes of development management. That approach is simply incompatible with Mr Wakefield's and Ms Murphy's approach of treating Rugby Road and Clifton-upon-Dunsmore as two distinct entities. The Rugby Road development is plainly thought of as being part of the village.

36. As Mr Berry explained, there is nothing in the Development Plan or the Landscape Character Assessments that requires the morphology of the village to be retained, although

¹² CD5.49 page 3, second para under the heading "Introduction".

the relationship of the appeal scheme to the existing built form will obviously be relevant to landscape and visual impact. The appeal scheme would not appear out of character in relation to the village's present form to any person moving around the landscape at ground level. The effect of the appeal scheme on a plan should not be the test. There is simply nowhere from where the appeal scheme would appear as an incongruous addition to the village, still less as a "weird finger" of development that "juts out into the countryside" as Mr Wakefield's proof contends. Such an effect would not be perceived from the recreation ground, from the east or from Houlton Way or the Golf Club, or anywhere else.

The Effect of the appeal scheme on the separation of Rugby and Clifton-upon-Dunsmore.

37. There is no policy of the adopted Development Plan that applies an area of separation between the village and Rugby. The draft proposal in policy EN4 of the draft Local Plan has not been examined, let alone found sound, and is the subject of objections, including from the Appellant. The objections include a criticism that the evidence base for the policy lacks clear and precise evaluative criteria. The draft policy deserves limited weight.

38. But even were policy EN4 to be adopted in its present form, it would not stand in the way of the appeal scheme. The draft policy¹³ is in four parts. Part A identifies the proposed areas of separation. Part B would provide that development would only be permitted if it would not have a significant adverse impact on the effectiveness of the area of separation in protecting the identity and distinctiveness of settlements and preventing their coalescence. The policy would not, therefore, prevent any and all harm. Part C sets out

¹³ CD

that an adverse impact on the area of separation should be deemed to occur if development would diminish physical and visual separation, have an urbanising influence or which adversely affect settlement identity. In other words, development that does any of those things triggers the requirement to consider whether the deemed adverse impact would, on analysis, be significant. Part C is logically prior to part B as it is the provision that triggers the need to apply the test in Part B. Part D of the policy would require demonstration that the policy has been taken into account and that mitigation has been incorporated.

39. It is to be noted that nothing in the policy seeks to apply a test of there being a remaining “broad” gap between settlements with development in place.

40. The appeal scheme would not offend against policy EN4, if it is ever adopted, because the appeal scheme’s effect on the area of separation would not be significant. Development at Rugby Road, which the NP proposes placing within the settlement boundary, already comes closer to Rugby than the appeal scheme would. Development of the appeal site would not bring development closer to Rugby than it already exists in the locality. In any event, the gap which would remain between the village and Rugby would be considerable and obviously ample to be an actual and perceived gap. Mr Wakefield went so far in his evidence to claim that the appeal scheme would lead to actual and perceived merger. When asked what would be merging, he said Clifton-upon-Dunsmore with Rugby. Such a claim is irrational. There is no basis on which the two settlements could be said to actually and perceptibly merge. When tackled on this in XXm, Mr Wakefield resorted to applying a novel meaning to the word “merge” and his position mutated into one where the settlements would begin to merge. That is not what he says in his evidence and is not, in any event, a situation which would amount to a significant adverse impact on the area of

separation for the purposes of part B of the policy. The merger claim, either as written or as revised in oral evidence, is hopeless.

41. Policy NE3, in its final criterion, seeks to avoid coalescence of settlements as one aspect of one of its many criteria. For the reasons given, there would be no coalescence of Rugby and Clifton-upon-Dunsmore.

42. Ms Murphy took a different approach to Mr Wakefield. When she refers to coalescence, she refers to the coalescence of the Rugby Road development with the rest of the village. But Rugby Road is part of the village, as the Parish have decided through their conscious decision to amend the settlement boundary in the Neighbourhood Plan. A settlement cannot coalesce or merge with itself.

Alternative Sites

43. The existence of the alternative sites is not a reason to dismiss the appeal in this case.

44. First of all, putative reason for refusal 3 is not a reason for refusal at all. All it does is to contend that the existence of the alternative sites is a material consideration in decision making. There is a crucial difference between:

- a. A material considerations which a decision maker may take into account but is not obliged to take into account and so makes no legal error if it is ignored; and

- b. A material considerations which a decision maker is obliged to take into account and so makes a legal error if it is left out of account.

45. For a material consideration to fall into the second category, it must be a matter which has to be taken into account either because of a legal or policy requirement to consider it or because it is a consideration so obviously material to decision making that it would be irrational to leave it out of account: see [272] of *R (Save Stonehenge World Heritage Site Limited) v Secretary of State for Transport* [2021EWHC 2161 (Admin)]¹⁴, citing *Derbyshire Dales DC v SoSCLG* [2010] 1 P&CR19. There is no legal provision that requires alternatives to be considered in this case. Mr Weekes accepted that there was no policy provision that required it either. And Mr Richards' approach in XXm of Mr Stephens was predicated on the basis that, in this case, the Inspector had a discretion whether to consider alternative sites. The Council's position is that the alternative sites are a discretionary, not mandatory, material consideration. The Council must therefore also accept that no error would be made by not considering the alternative sites.

46. The Council's approach is of considerable importance. The Council accepts that, even if its case on the appeal scheme's harms is accepted, that there is no obligation to consider the alternative sites. In [52] of the *Langley Park School* case referenced at [273] and [274] of *Save Stonehenge*, Sullivan LJ emphasised that the starting point for considering whether alternatives were a material consideration was the harm caused by the application being considered and that whether the harm caused was such as to make alternatives a relevant matter was an issue of planning judgement, giving the example that:

¹⁴ CD7.6

“If a local planning authority considered that a proposed development would do really serious harm it would be entitled to refuse planning permission if it had not been persuaded by the applicant that there was no possibility, whether by adopting an alternative scheme, or otherwise, or avoiding or reducing that harm”.

47. Note that Sullivan LJ linked the creation of a *discretion* to consider alternatives with *really serious harm* in that example.

48. For the reasons given above, the appeal scheme would not cause conspicuous, really serious or sufficiently adverse impacts however characterised in order to make alternative proposals a weighty material consideration.

49. That is not the end of the matter. *Save Stonehenge* at [270] cites the *Mount Cook* case as authority for the proposition that where alternatives might be relevant, vague or inchoate schemes, or those which have no real possibility of coming about then they are either irrelevant or deserve little or no weight. The alternative sites are inchoate proposals and should be disregarded or afforded no material weight for the following reasons:

- a. Most obviously, the proposals are in draft. At present, the three alternative sites have the same status as the appeal site, being in the open countryside beyond settlement limits. Contrary to the Council’s case, they are not confined to the plateau hill top but have a similar relationship to it as the built portion of the appeal site would have: see the coloured contour plan on page 9 of Mr Wakefield’s appendices. There has been no detailed assessment of the character

and appearance effects of those proposals, but they would appear to conflict with draft Important Views in the NP, as discussed with Mr Wakefield in XXm;

- b. The draft allocations have objections and have not been found to be sound allocations. They may come to nothing and never be allocated; and
- c. No planning applications have been made on any of the three sites and the work towards applications is still at a fairly early stage for the two sites where there is developer or promoter interest.

50. These matters combine to show that the alternative site proposals can properly be characterised as inchoate. If planning permission were to be refused for the appeal scheme in reliance, or even part reliance, upon the alternative sites, then that would be to place reliance on proposals that may never happen.

51. In any event, the Council's approach to the alternative sites is bizarre. The existence of the alternative sites is clearly not being used as a reason for refusal. It is not even being used as a negative impact of the scheme (perhaps characterised as avoidable harm) to include in the planning balance.

52. However, XXm of Mr Weekes brought out the fact that the only account which he takes of them is to reduce the positive weight that he would otherwise ascribe to the delivery of additional market housing. That is a very odd approach to take, but it only serves to show how inconsequential a part of the Council's case the alternative sites actually are. At most,

the Council thinks that the alternative sites affect the weighting of one benefit of the scheme.

53. In the light of these matters, the Appellant invites the Inspector to disregard the alternative sites or, at best, afford them very little weight indeed in decision making.

The Planning Balance

Harms

54. The appeal scheme would cause the following harms:

- a. Harm flowing from the breach of policy GP2 of the Local Plan. For the reasons given above, this deserves limited weight;
- b. The landscape and visual harm caused by developing this greenfield site. That falls short of breaching policy NE3 of the Local Plan and there is no breach of policy SDC1. The Council does not contend that character impacts amount to a reason for refusal and, on Mr Berry's case, the visual impacts would be moderate adverse overall at worst;
- c. The appeal scheme would cause the loss of about 8Ha of best and most versatile agricultural land. The loss of such land is likely to be required for the Council to regain a 5YS, the loss is relatively minor in extent (considerably below the

20Ha threshold for consulting Natural England) and this harm deserves limited weight; and

- d. Limited weight should be attached to the loss of archaeological features which would be recorded in accordance with the proposed conditions.

Benefits

55. The appeal scheme would create significant and varied benefits:

- a. The provision of much needed market housing. The Council has no 5YS, the shortfall is agreed to be significant and the lack of 5YS has existed since standard method applied, as set out in the Council's pre-application advice letter. Mr Stephens showed how the claimed supply has fallen over the period since the standard method took hold. The Council will not regain a 5YS until it adopts a new Local Plan and its timescale for that event is optimistic. The appeal scheme could make a valuable contribution to delivery and supply over the next five years of between 70 units (Mr Holly) and 100 units (Mr Stephens). There is no reason why the site's positive contribution should be limited to the contribution it could make to the last assessed 5 year supply period with a base date over a year ago. Very significant weight should attach to this benefit;
- b. The parties agree that very significant weight should be given to the policy compliant 30% affordable housing delivery from the appeal scheme. Notably,

South West Rugby cannot viably deliver affordable housing at the present time¹⁵ and so that is not likely to be a source of the supply of such homes despite its size;

- c. The provision of tennis courts, car parking, play space, open space, green and blue infrastructure deserves significant weight. The improvements to the recreation ground are something that the draft allocations in the village would not appear able to bring about;
- d. The landscaping that could be provided as part of the scheme would not merely be mitigation but would be a net benefit through contributing to the Council's network of green and blue corridors¹⁶. Mr Stephens considers that that benefit should attract moderate weight;
- e. Biodiversity net gain of moderate positive weight can be secured on the site;
- f. The SuDS provision would create betterment for surface water flood risk and water quality as compared to the present situation for all circumstances up to a 1:100 flood, including climate change allowance. That is a benefit of moderate weight;

¹⁵ As Mr Stephens explains in his rebuttal.

¹⁶ See plan TG4 on page 13 of Mr Berry's appendices

- g. The appeal scheme would improve access to sustainable travel modes through improved pedestrian and cycle routes and increased bus frequency. This is a benefit of moderate weight;
- h. The economic benefits through direct and indirect job creation and resident spend have not been contested in numerical terms. The resident spend would be available to businesses in the village and in the wider Borough. Mr Stephens attaches significant weight to those benefits; and
- i. The appeal scheme would provide a minor benefit through improving access to the allotments.

The Outcome

56. The lack of 5YS triggers paragraph 11(d) of the NPPF. The parties agree that paragraph 11(d)(i) provides no obstacle to the granting of planning permission in this case. The tilted balance therefore applies. Paragraph 14 of the NPPF does not apply now and would not apply even if the NP is made. The argument to the contrary was always hopeless and was rightly abandoned by the Council. The appeal scheme's benefits would be many, varied and weighty. The appeal scheme causes some harm, but the harm comes nowhere close to significantly and demonstrably outweighing the benefits. Whilst the appeal scheme is in conflict with the Development Plan, there are ample material considerations that justify taking a decision otherwise than in accordance with the Development Plan.

57. The appeal scheme comprises sustainable development and the Appellant asks for the appeal to be allowed.

MARTIN CARTER KC

Counsel for the Appellant

6th May 2026

Kings Chambers

Manchester – Leeds – Birmingham.