

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

THE APPELLANT'S OPENING STATEMENT

1. As a result of the recent Rounds Gardens appeal, the Council accepts that its deliverable housing land supply stands at 3.4 years. That sets the important context for decision making in this case. The Council has been without sufficient forward land supply since the Local Plan turned five years old in July 2024. There is no prospect of that position being swiftly reversed.
2. The consequence of the lack of deliverable supply is that paragraph 11(d) of the NPPF applies in this case. It is common ground that no policies set out in footnote 7 of the NPPF provide a strong reason for refusing permission, so that paragraph 11(d)(i) is not an impediment to the success of the appeal. This is therefore a case that turns upon the tilted balance.
3. The Secretary of State's policy in paragraph 11(d)(ii) of the NPPF makes it plain that the Secretary of State is not looking for planning applications to be perfect schemes. He expects that some harm will occur. It is only if the harm reaches the high hurdle required by the tilted balance that permission should be refused.

4. In this case, the alleged harms come nowhere close to meeting the stringent test in the NPPF.

5. The appeal site is an unremarkable single arable field lacking any significant landscape features. Mr Wakefield rightly calls it “ordinary”. The proposed development would cause landscape and visual harm, as would any development of a greenfield site. Messrs Berry and Wakefield are not, in truth, very far apart in the judgements they express on the landscape character effects of the appeal scheme, or in their judgments about the landscape’s value and susceptibility. Indeed, Mr Wakefield’s judgments on those matters are hard to reconcile with the claims made for the importance of the appeal site and its immediate surroundings in providing separation between Clifton-upon-Dunsmore and Rugby.

6. Those character impacts, whether at Year 1 or Year 15 are relatively modest for a scheme of the size proposed. The visual impacts of the appeal scheme would also be acceptable, including upon the “important view” identified in the emerging Neighbourhood Plan and subject to its modified draft policy EN5¹. In the detail of its evidence on both character and appearance, the Council seems to have lost sight of the fact that this is an outline application with only the means of access into the site not reserved for future consideration. The evidence shows that it is perfectly possible to acceptably accommodate up to 160 dwellings on this site as a matter of principle. Indeed, the parameters plan shows that a large proportion of the site could be put to use for open space and green and blue infrastructure whilst accommodating up to 160 dwellings on the appeal site.

¹ Formerly EN7

7. The Council's case on the impact of the appeal scheme upon the morphology of the village is overplayed. We are not planning for the interests of those in aircraft with a plan-view of the area, but for ground-borne observers. For those people, the development of the appeal site would relate well to the village (as properly defined) and would not be some kind of "weird finger" as Mr Wakefield would have us believe. There would still be plentiful actual and perceived separation between Clifton-upon-Dunsmore and Rugby with the appeal scheme in place.

8. The Council's case on putative reasons for refusal 1 and 2 proceeds on the false premise of what Clifton-upon-Dunsmore comprises, treating the development along Rugby Road as something other than part of the village.

9. The Council takes a point on the accessibility of the site to the services and facilities in the village. It is not immediately clear which pRfR this point falls within, but the appeal scheme is accessible to the village's facilities on foot and cycle and other destinations are also accessible via sustainable modes, assuming that all movement is via the access on Newall Close. There is no requirement for access through the recreation ground to be achieved for the appeal scheme to be acceptable.

10. Putative reason for refusal 3 is most odd. It does not appear to be a reason for refusing planning permission at all, only going so far as to say that the three proposed allocations in the village are material considerations. If, contrary to the Appellant's case, the appeal scheme is unacceptable on its own terms, then pRfR3 is unnecessary. If the appeal scheme is, as the Appellant contends, acceptable on its own merits, then there is no reason to refuse

planning permission because other as, or even more, acceptable alternative sites exist. It is not clear that pRfR3 actually adds anything.

11. There are other problems with pRfR3. It is not clear what is “exceptional” about this case to allow the issue of alternatives to become a material consideration. Usually, the question of alternatives is material in cases where large developments are being considered and where there is limited scope for multiple developments of that type – motorway service area “beauty parade” inquiries are an obvious example. This is an ordinary, medium scale housing scheme.
12. Further, the alternative sites are only draft proposals. They are subject to objections. No Inspector has even begun to consider whether they are “sound” proposals. The case made for them being obviously better in landscape and visual terms is incorrect, as we will explore in the evidence. The important point is that, as of now, those sites have the same development plan status as the appeal site. They are all sites in the countryside beyond the village’s settlement limits.
13. Putative RfR4 is also not a separate reason for refusal, but a statement of how the Council sees the overall planning balance panning out.
14. For some unfathomable reason Mr Weekes has gone back on what is said in the Council’s Statement of Case and now claims that paragraph 14 of the NPPF will be engaged if and when the Neighbourhood Plan is made. He’s wrong. The requirements of paragraph 14(b) of the NPPF would not be met even when the plan was made and that paragraph would not apply.

15. The appeal scheme would bring many and varied social, economic and environmental benefits to set against the limited harm it would cause. The appeal scheme's harms would come nowhere close to significantly and demonstrably outweighing its benefits.
16. The appeal scheme is much needed sustainable development which ought to be allowed to proceed in the public interest in order to assist with the Council's lack of forward land supply.
17. There are plainly a lot of more detailed points to make in support of the appeal scheme and in undermining the Council's case. They will be explored in the evidence.
18. The Appellant will be asking for the appeal to be allowed.

MARTIN CARTER KC

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28th April 2026

Kings Chambers

Manchester – Leeds – Birmingham.