

AN APPEAL BY BONINGALE DEVELOPMENTS LIMITED RELATING TO
PROPOSED RESIDENTIAL DEVELOPMENT OF LAND AT TILSTOCK ROAD,
TILSTOCK

OPENING STATEMENT OF THE APPELLANT

1. The Appellant will show that the appeal scheme is a well located and designed scheme that would have acceptable (in many cases benign) impacts and is a scheme which ought to be allowed to proceed. The Council's opposition to it deploys contentions which are inconsistent with Tilstock's treatment in the Development Plan, internally inconsistent and sometimes simply incoherent.
2. Various issues in the putative reasons for refusal, notable all ecologically related concerns, have been resolved. This opening deals with what remains of the Council's case.
3. A useful starting point is to consider the Council's deliverable housing land supply. The agreed base date for assessment is 1st April 2024. The Council accepts that it does not have a 5 year supply of deliverable housing land. The Council's figure is that its supply stands at 4.48 years and the Appellant contends that the supply is as low as 3.56 years. The main differences between the parties are:
 - a. A difference in the way of calculating local housing need that relates to the age of the data to be used. In accordance with the PPG, the Appellant has used the

latest available data. This issue creates a relatively modest difference in the five year requirement: the Council says it is 9,970 dwellings and the Appellant says it is 10,125 dwellings (both figures exclude the 5% buffer);

b. The remaining differences relate to the supply side of the calculation. The disputes relate to sites mainly within category (b) of the NPPF's definition of a "deliverable" site where the onus is clearly on the Council to demonstrate deliverability. There are some category (a) sites where the Appellant contends that it can discharge the burden of showing that the site is not deliverable at all, or that it will not deliver the numbers claimed. The disputed sites fall into the following groups:

- i. Sites which had been proposed for allocation in the now withdrawn emerging Local Plan (17 sites totalling 1,169 units);
- ii. Sites allocated for the development in the adopted Development Plan (5 sites totalling 392 units);
- iii. Sites with planning permission (3 sites totalling 165 units in issue);
- iv. One site of 34 units in the Council's Strategic Land Availability Assessment; and
- v. Affordable housing sites (2 sites totalling 32 units).

4. Overall, the Appellant contends that the Council's claimed supply of 9,378 units is far from robust and that 1,792 units should be deducted from it, giving a deliverable supply of 7,586 homes. After accounting for the requirement difference, that leads to a supply of 3.56 years or a shortfall of 3,045 homes against the five year requirement.
5. The lack of a 5 year supply means that reduced weight should be given to the fact that the appeal site lies beyond the settlement limits of Tilstock as adherence to settlement limits in the Development Plan would inhibit the Council's ability to deliver sufficient housing. The Council has, as Ms Wilson shows, routinely granted planning permission for schemes beyond settlement limits to get to the position it is now in, where it still does not have a sufficient forward supply. The settlement limits were also only designed to deliver the Core Strategy requirement and which had a plan period end date of next March, a little over 5 months away. In any event, the Core Strategy derived its housing requirement from a long-revoked Regional Spatial Strategy in a national policy climate which is now three iterations out of date so far as housing requirement is concerned¹.
6. The appeal scheme would represent well-designed development. Mr Pullan's evidence explains the design principles employed and which have guided the scheme's development. He will show how it represents good design both within its own boundaries and also in relation to its surroundings, including the existing built form of the village. The Council's concerns lack merit and reality. No more detail need be given in opening and the matter is best explored in the round table session.

¹ Since the CS was formulated, examined and adopted we have had the concepts of Objectively Assessed Need in the 2012 NPPF and then two versions of Local Housing Need calculated using the standard method in the NPPF and PPG.

7. The character and appearance effects of the appeal scheme would be entirely acceptable.

There is no character and appearance based putative RfR and Mr Thomas' evidence on the issue is thin to say the least and does little more than pointing out that houses on a greenfield site will bring character change and a degree of visual impact. Mr Furber's evidence shows that the appeal scheme's landscape and visual impacts would be relatively modest and acceptable. Again, no more detail needs to be spelt out in opening and the issue can be left to the round table session.

8. The local highway authority was extremely dilatory in providing comments on the application such that the Appellant was left with no realistic option but to appeal for non-determination if the matter was to progress. When the comments were made for the first time with the Council's hearing statement² they included safety issues and complaints about the lack of survey and other information. Those concerns were met by the submission of further work and they do not now form part of the Council's case. Indeed, the Council does not take any point related to the safety or capacity impacts of the appeal scheme. What is left is a series of points allegedly about sustainability and design/maintenance.

9. As for sustainability, the Council's argument runs counter to the role of Tilstock in the Development Plan. Indeed, the Council's Statement of Case contained the confusing line of argument that whilst Tilstock is a sustainable settlement, the site is not. That contention might make sense if the site was remote from Tilstock's facilities, but it is not. The point appears to be that residents of the scheme would be dependent on car travel to access most types of facility. That is not correct, as we will show, but if it were, it would mean that

² As the appeal was then to be determined by the hearing mode.

Tilstock is not a sustainable location for any material level of growth, which is apparently not the Council's position. Miss Meer and Ms Wilson understandably express confusion about what the Council's stance actually is.

10. The evidence will show that residents of the appeal scheme would have a genuine choice of sustainable travel modes to access the rest of Tilstock and higher order settlements, particularly Whitchurch. Miss Meer even shows that commuting to Manchester for a 9 to 5 job via a cycle ride to Whitchurch railway station is a feasible proposition.
11. The Council's points about the internal layout of the scheme and its sustainability seem largely to rest on a complete misunderstanding of the meaning of the concept of putting pedestrians and cyclists first. Mr Mead seems to advocate a world where no pedestrian has to be aware of vehicular traffic or made any allowance ever for vehicular traffic's presence – even the weekly³ bin lorry. Such an approach is hopelessly unrealistic.
12. The appeal scheme is shown as grade 3 land on the ALC mapping. Assuming it is all BMV, that is a harm of limited weight when the nature of Shropshire and the prevalence of grades 1, 2 and 3 land are considered. The Council made clear at the CMC that the loss of potential BMV land was not its biggest point. That must be right, as it forms part of the overall RfR that recites the planning balance and the loss of BMV land was never raised as a putative RfR in its own right.
13. On the Council's own case there is an unmet need for housing in Shropshire. The Appellant will show that that District-wide need is greater than the Council accepts and that there is

³ Or whatever the frequency of bin collections in Shropshire actually is.

clear evidence of a need specific to Tilstock and its environs. The appeal scheme would deliver affordable housing at a rate 50% above the policy requirement. It would bring BNG and economic benefits, together with others.

14. The Council accepts that the housing land supply position triggers paragraph 11(d) of the NPPF and that no footnote 7 policies are engaged such that paragraph 11(d)(i) does not stand in the way of permission being granted. The parties agree that this is a paragraph 11(d)(ii) “tilted balance” case. Overall, the Appellant will show through the evidence that the adverse effects of the appeal scheme come nowhere close to significantly and demonstrably outweighing its many and varied benefits. The application therefore represents sustainable development which should be allowed to proceed in the public interest.

15. The Appellant will be asking for the appeal to be allowed.

MARTIN CARTER

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Kings Chambers

Manchester – Leeds – Birmingham