

IN THE MATTER OF

**PATSHULL ROAD,
ALBRIGHTON
SHROPSHIRE**

OPINION

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Introduction

1. In this matter I am instructed by Devello Legal on behalf Boningale Homes (hereinafter “the Client”) in respect of a planning application for 800 new homes, land for a new secondary, GP surgery, care home and retail unit (hereinafter “the Application”) on the southern edge of Albrighton in Shropshire (hereinafter “the Site”).
2. The local planning authority for the area is Shropshire Council (hereinafter “the Council”).
3. The Application was validated by the Council on 8 July 2024. It is presently before the Council for determination. The Client and the Council have agreed an extension of time for the determination of the application until 10 January 2025. Extension of time on major application such as this are very usual and almost always necessary.
4. Discussions, dialogue and negotiation with statutory consultees such as the local highway authority continue. Again, this is normal.
5. The Council has received various objections from local people in various formats. One of which is a letter from Nicola Gooch, a partner at the solicitors firm Irwin Mitchell (hereinafter “the letter”). The letter is dated 28 August 2024.

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6. Since the letter raises matters of law, I have been asked to address its content.
7. The first section of the letter addresses “Relevant planning policy”. As is usual with such solicitor’s letters, there is the normal threat from residents of a **“judicial review of the Council’s decision.”** It would be rare to see a letter of this kind that does not make that fairly standard threat. Intelligently however, the letter does not suggest a judicial review claim would be issued in this case. The letter makes plain that such action would only be taken **“[i]f a decision is made on the Application and there is a justiciable error”**. That is, of course, a truism. It therefore holds little significance for officers or members at this stage.

8. It is also right to record that the overwhelming majority of judicial review challenges fail. I have seen some evidence in the past to suggest that the level of failed judicial reviews in planning matters is in the region of 95%. The Judges in the High Court use their very significant intellectual abilities to dismiss claims on the basis that most errors are not unlawful, and even for those that are, the errors are unlikely to change the end result of the decision.
9. The same section of the letter refers to the adopted Development Plan (hereinafter "DP"). The main strategic policies are contained in a Core Strategy adopted in February 2011. Not only is that 13 years ago, it is also prior to the publication of even the first version of the NPPF, which took place in March 2012. The Development Plan is painfully out-of-date.
10. The present version of the NPPF makes clear that the housing requirement in a local plan is automatically out-of-date after 5 years, unless reviewed by the LPA and found to be up-to-date. Those reviews are subject to no independent scrutiny so not worth the paper they are written on. In this case, the fact that the housing requirement in the adopted DP is out-of-date is evidenced by the fact that the Council has been progressing a new emerging Local Plan Review (eLPR).
11. The letter refers to the fact that the Site is not allocated in the eLPR. But the eLPR is about to be found unsound. Added to which the eLPR is predicated on only 1,400 homes a year, whereas the housing requirement for Shropshire will almost certainly rise to over 2,000 homes a year in 3 weeks time. It was totally inadequate in terms of planning for the housing needs of the area. Added to which, the Council will not have a 5 year housing land supply, so housing land supply policies will be automatically out of date in any event. Past housing delivery results will not overcome this problem.
12. The letter then focusses on harm to the Green Belt. Green Belt is a well-recognised constraint on development. But it is overcome if the harm by reason of inappropriateness and any other harm is outweighed by the benefits of the proposal. This is the very special circumstance test (hereinafter "VSC"). There are numerous examples of housing proposals where inspectors found that VSC exist. I have been

involved in many of them. A recent example is 1,400 on Green Belt land at Tring in Hertfordshire. The site was entirely greenfield and surrounded on three sides by AONB (National Landscape). But the delivery of new housing, affordable housing, a primary school, land for a secondary school, open space and sports pitches was recommended for approval by the planning Inspector. The Secretary of State dismissed the appeal. But that was Michael Gove and he was largely opposed to new housing delivery in Conservative controlled areas.

13. It is important to record the wider context here. The new Labour Government takes a very different view of new housing building. The new Labour Government also made a very firm commitment to deliver 1.5 million new homes over the duration of the present Parliament: an average of 300,000 dwellings a year, albeit it is expressed as a whole Parliament figure. The 300,000 dwellings a year figure is something which Conservatives have claimed they would achieve. But they failed in spectacular fashion. Labour Ministers are firmly committed to widening home ownership. The Conservative Government abandoned this ambition and removed it's commitment to home ownership from the NPPF in 2018.
14. The letter refers to case law surrounding the weighting of benefits in the context of a Green Belt case: Vistry Homes v Secretary of State Levelling-Up, Housing and Communities and St Albans City DC [2024] EWHC 2088 (Admin). The ratio of that case offers the wholly unsurprising conclusion that weighing benefits and weighing them against Green Belt harm is all a matter of planning judgment. Clients win Green Belt cases when they are advised and persuaded to deliver an appropriate set of benefits which their advisors judge are necessary to outweigh the Green Belt and other harms.
15. The letter then considers the issue of heritage impact. I visit a lot of major greenfield housing sites each year and heritage assets are nearly always present in the area, given there are over ½ million listed buildings in this country, thousands of Scheduled Ancient Monuments and archaeological sites, hundreds of conservation areas and numerous other designated assets.

16. I have visited this Site and the extent of heritage assets around this Site is really limited. I do not foresee heritage as being a problem of any kind. My only experience of the conservation officers in Shropshire relates to an appeal on a greenfield site on at Ludlow for Richborough Estates. The site was in the open countryside on the edge of the town and the proposed housing development completely surrounded a listed farmhouse on three sides. Contrary to the Council's position, the Inspector (and expert in heritage matters) found there was no harm at all to the significance of the heritage asset. The point being that heritage harm is often completely overplayed as an issue by LPAs, and that was certainly my experience in that case. Added to which the NPPF allows for heritage harm to be judged acceptable if it is outweighed by the public benefits of a scheme. The Client's proposal at Albrighton is full of public benefits.
17. The letter refers to loss of high-quality agricultural land. Self-evidently that is perfectly normal for greenfield development and it is to be noted that in terms of its significance, this constraint has now been reduced to a footnote in the NPPF.
18. Highways is also raised as a concern. I have seen all the highway evidence submitted in this case and the responses from the highway authority. I think those representing the residents are being wildly optimistic if they think highways is a legitimate constraint in this case. Of course, resident action groups often do raise highway concerns because local residents dislike the idea of new traffic in their area. But if they do so without justification, then residents are at risk of an application for costs on the grounds of unreasonable behaviour. Finding a highway consultant who will support objections which are not justified, which is often what happens, does not protect residents from a finding of unreasonable behaviour.
19. There is then a concern about lack of local infrastructure. This is very common and local people often confuse the difficulty we all now suffer in getting a GP appointment or getting children into a favoured local school with legitimate constraints on new housing development. GP surgeries can usually be expanded, as can schools. In this proposal, the Client is actually providing land for a GP surgery and a secondary school. None of these things provide justification for stopping the new housing development the country needs.

20. There are complaints about the provision of a local retail facility. Such a facility is perfectly normal for a development of this scale: the size and use of retail units can be restricted by condition.
21. Lastly, biodiversity considerations are raised. These are now addressed by BNG net gain. This can be provided either on-site or off-site and in a rural county like Shropshire it will be easily achievable.
22. In conclusion, whilst the residents solicitor's letter raised various concerns, there is nothing here which suggests the Council would be making an unlawful decision if it granted planning permission in this case. If the application is refused, then the Appellant will appeal and the strength of the resident's arguments can be tested in cross-examination. As can the strength of the Council's housing land supply position, its outstanding affordable housing requirements and the size of its housing waiting list, all of which are the reason why this proposal is being brought forward.
23. I trust that I have dealt with all the matters concerning my instructing solicitors, but needless to say if there are any other matters arising please do not hesitate to contact me, upon the telephone if necessary.

27 November 2024

CHRISTOPHER YOUNG KC
No5 Chambers
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Christopher Young KC