

Patshull Road, Albrighton, Inquiry

APPELLANT'S OPENING SUBMISSIONS

1. These opening submissions will outline the key elements of the Appellant's case that the appeal should be allowed and outline planning permission¹ should be granted for the proposed mixed use development comprising (up to) 800 homes, a care home², a secondary school and a local centre.

Section 38(6) the development plan

2. The Council contends that the proposed development would not accord with policies **CS1** "Strategic Approach", **CS3** "The Market Towns and Other Key Centres", **CS5** "Countryside and Green Belt" and **CS6** "Sustainable Design and Development Principles" in the Core Strategy³ (2011) as well as policies **MD1** "Scale and Distribution of Development", **MD3** "Delivery of Housing Development", **MD6** "Green Belt", **MD7a** "Managing Housing Development in the Countryside" and **S1** "Albrighton Area" in the Site Allocations and Management of Development Plan (2015).⁴
3. To the extent that these are development management policies, they are – to use the language of **paragraph 2** of **Annex A** of the NPPF – "materially inconsistent with national decision-making policies in [the] Framework" and so "should be given very limited weight."
4. In which case, logically any lack of accordance with these development plan policies should also be given very limited weight.

Section 38(6) material considerations

5. To quote **paragraph 1** of the NPPF, it "is a material consideration of critical importance."
6. The appeal site is in the Green Belt.

¹ And detailed consent for the proposed access.

² Up to 80 "units"

³ CD 2-27

⁴ CD 2-03

7. The *first way* in which the Appellant makes its case is via reliance on the Grey Belt policies in the Framework by virtue of which the proposed development is not inappropriate in the Green Belt. The key steps are:
- a) **GB7 [1]** explains that amongst other categories, Grey Belt development “should not be regarded as harmful to the Green Belt or be required to demonstrate very special circumstances.”
 - b) **GB7 [1] g** sets out the four requirements which need to be satisfied in order to be not inappropriate development relying on the Grey Belt provisions.
 - c) The first of these (**GB7 [1] g. i.**) is in two parts, the *first* of which is that “The development would utilise grey belt land”. The Glossary in **Annex B** defines “Grey belt” as “land that ... does not strongly contribute to purposes (a), (b) or (d) in policy GB2. **Annex E** sets out “Considerations for informing these judgments.” The Council accept that the site does not make a strong contribution to purpose B (which is to prevent neighbouring towns merging into one another) or to purpose D (which is to preserve the setting and special character of historic towns). The issue between the Appellant and the Council is whether the site makes a strong contribution to purpose A “to check the unrestricted sprawl of large built-up areas”. Applying the considerations set out in **paragraph 3** of **Annex E**, the Appellant says that the site does not do so because: [1] Albrighton is a village and therefore by definition is not to be considered a large built up area; even were it correct to categorise Albrighton as a town, it would not necessarily follow from this that Albrighton is a “large built up area”; purposes B and D explicitly refer to “towns”, had it been the case that a “large built up area” simply means a town, then so too would purpose A have referred to towns. Or [2] because the site has “physical feature(s) in reasonable proximity that could restrict and contain development” namely the A464 Holyhead Road, as well as Cross Road and Newhouse Lane. The wording of **Annex E** is simple and straightforward; there is no need to gloss it or overcomplicate it, or introduce restrictions on the readily understandable terms it uses in this regard. The *second part* of **GB7 [1] g. i.** is that the development “would not fundamentally undermine the purposes (taken

together) of the remaining Green Belt across the area of the plan". The Council agrees with the Appellant that it would not.

- d) The second requirement of **GB7 [1] g** is **ii.** that "There is an evidenced unmet need for the type of development proposed." The Council agrees with the Appellant that this requirement is satisfied as there is – to quote **FN41** - a lack of a five year supply of deliverable housing sites. The extent of the shortfall is not agreed but that does not matter for the sake of this point. There is also a need for the proposed care home. The Appellant considers that there is a need for the proposed secondary school, but in any event, the school and the local centre are part of the **[TR3]** "vision for the site" to achieve an inherently more sustainable development.
- e) The third requirement, found in **GB7 [1] g iii.** is that "The development would be in a sustainable location, with particular reference to policy TR3 ..." In turn, **TR3 [1] a.** refers to present *and prospective* sustainability – "*locations that are sustainable (or which can be made so, taking into account planned improvements, including any provided as part of the development itself).*" **TR3 [1] e.** has a pragmatic approach to "*rural areas*" in which "*opportunities to improve walking, wheeling, cycling and public transport and enhance the connectivity of an area should be taken where they exist and can be supported by the development proposed.*" That is precisely the approach taken by the appeal proposals, leading to an outcome in which in accordance with **TR3 [1] a.** the location *and the mixed-use composition of the proposals which include a secondary school and a local centre* together with the improvements put forward as part of the proposals would limit the need to travel by private car, and would "*offer a genuine choice of transport modes for residents and users ...*" It is important not to misconstrue the requirement to offer *a genuine choice* as if it were a requirement to demonstrate that most people would choose not to drive. The policy is, if you will, one of bringing the horse to water, rather than forcing the horse to drink. It is also important to remember that the specific cross-reference to **TR3** in **GB7 [1] g iii.** is in the context of grey belt, which being a sub-set of the Green Belt will necessarily predominantly be in

rural areas. (After all, purpose C of the Green Belt concerns safeguarding *the countryside*.)

- f) The fourth requirement applies to proposals like the appeal scheme which involve the provision of housing and is set out in **GB7 [1] g iv.** which requires compliance with “the Golden Rules” found in **GB8**. These concern affordable housing; necessary improvements to infrastructure and the provision of publicly accessible green space. We are told by **GB8 [2]** that “*substantial weight should be given to the importance of complying with the Golden Rules*”. It is interesting that this is the only requirement in Grey Belt cases of which this is said. The Council agrees with the Appellant that (with suitably drafted planning conditions and planning obligations) the Golden Rules are met.
8. What happens next is that one moves to NPPF **S5 [5]** by virtue of which the appeal is to be allowed “*unless the benefits of doing so would be substantially outweighed by any adverse effects, when assessed against the policies in this Framework, and applying paragraph 2 of this policy*”.
9. To take the last part of this first, **S5 [2]** refers to “*situations where the development proposal would fail to comply with one of the [NDMPs] which state that development proposals should be refused in specific circumstances.*” There are fifteen of these⁵ most of which are irrelevant to the appeal proposals. With regards the very few which are potentially relevant – e.g. TR6 [4] concerning “severe adverse impact on the transport network or an unacceptable impact on highway safety” – the Council does not contend that the appeal proposals would fail to comply with them.
10. Turning then to the new formulation of the tilted balance in cases like this where development is proposed “outside settlements” (**S5 [5]**) some of the benefits are (if you will) pre-weighted by the NPPF:
- the market and affordable homes, and the care home, are to be given “substantial weight” (**HO7 [1]**);
 - the secondary school (as “public service infrastructure” see **Annex B**) is to be given “substantial weight”⁶ (**HC4 [1]a.**);

⁵ DM4 [2]; TC3[4]; M5[1]; M5[2]; L3[4]; DP3[3]; TR6[4]; HC5[1]; F6[1a]; F7[2]; N2[2]; N4[2]; N6[1]a; N6[2] and HE6[5].

⁶ This would apply also to any healthcare facility as part of the local centre.

- the “community facilities” (which in the definition in Annex B include play and recreation facilities) are to be given “substantial weight” (**HC4 [1] a.**)
11. Whereas the only adverse effect which is treated in a similar manner is the, in this case, less than substantial heritage harm which **HE6 [3]** tells us, like “any harm to a designated heritage asset” is “a matter of considerable importance and weight” albeit as far as the Appellant is concerned, applying **HE6 [4]** outweighed by the substantial public benefits of the appeal proposals not least the market and affordable homes.
 12. The other adverse effects, in particular concerning landscape and the loss of best and most versatile agricultural land are simply things to be “considered” (**N2 [1] a**) and to “take into account” (**N2 [1] b**) respectively. Neither of them, or indeed any other adverse effects of the proposed development, are given any elevated status in the NPPF.
 13. Drawing these points together one would think it obvious that the benefits of allowing the appeal would not be “substantially outweighed” by the adverse effects of doing so, in which case the appeal should be allowed.
 14. The *second way* in which the Appellant makes its case only arises if the Appellant’s “grey belt” case is not accepted, in which eventuality the Appellant contends that there are “very special circumstances” under **GB6 [1]** to allow the appeal.
 15. The “Golden Rules” apply equally to VSC cases. They are met here.
 16. Interestingly there is no equivalent *requirement* to **GB7 [1] g. iii.** (that the development would be in a sustainable location) in VSC cases, albeit the Appellant contends that in any event **TR3** is met.
 17. The points made above (in paragraphs 10, 11 and 12) concerning the way in which the Framework treats certain benefits and adverse effects are equally relevant here, but of course in a “VSC” case one is to give “substantial weight” to the harm to the Green Belt, and the tilt in **GB6 [1]** is such that in order to allow the appeal, as the Appellant considers is the case here, the various harms would have to be “*clearly outweighed*” by “other considerations” namely the various benefits of the appeal proposals – a number of which are to be given “substantial weight” as explained above.

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15th September 2026

