SIX:56

ADVICE

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1. I am asked to advise the South Warrington Parish Councils Local Plan Working Group ('SWP') in relation to prematurity and the application for outline planning permission at land to the west of junction 20 of the M6 motorway and junction 9 of the M56 motorway and to the south of Grappenhall Lane and Cliff Lane, Grappenhall, Warrington ('Six:56').

Facts

2. On 15 May 2019 Langtree ('the Developer') submitted an outline application ('the Proposal') to Warrington Council ('the Council') for:

> *"Construction of up to 287,909m2 (gross internal) of employment floor space (Use Class B8 and ancillary B1(a) offices), demolition of existing agricultural outbuildings and associated servicing and infrastructure, including car parking and vehicle and pedestrian circulation, alteration of existing access road into the site including works to the M6 junction 20 dumbbell roundabout and realignment of the existing A50 junction, noise mitigation, earthworks to create development platforms and bunds, landscaping including buffers, creation of drainage features, electrical substation, pumping station and ecological works".*

3. All the 98ha of Six:56 sits within the Green Belt – with 92 ha sitting within the boundaries of Warrington Borough Council.

4. The Council's Officers recommended the Proposal be approved by the Development Management Committee on 10 March 2022. The Proposal was called in by the Secretary of State for determination on 22 November 2022. The Inquiry is due to take place in May 2023.

5. The Warrington Updated Proposed Submission Version Local Plan ('the Emerging Plan') was submitted for Examination in Public on 22nd April 2022.

6. The Emerging Local Plan – as submitted – sought to provide 316 ha of employment land (Policy DEV4). This included releasing 137 ha of land from the Green Belt and allocating it for employment in an area labelled the 'South-East Warrington Employment Area' ('SEWEA').

7. Six:56 forms the majority of the SEWEA.

8. The Emerging Plan hearings were held between 6 September and 6 October 2022. There were significant objections to the general level of employment land provision, and the specific allocation of the SEWEA – in particular the lack of exceptional circumstances to justify the release of 137 ha of Green Belt land.

9. On 16 December 2022 the Examining Inspectors issued their post hearing Letter ('the Letter'). The Examining Inspectors concluded that the Emerging Plan was not sound as submitted and would require main modifications.

10. The Examining Inspectors found that for the Emerging Plan to be justified the employment land requirement would have to be reduced from 316 ha to 168 ha (para 17 of the Letter). This could be met – and exceeded – by committed supply and the allocation of 101 ha at the Fiddlers Ferry Brownfield Site (Policy MD3).

11. The Examining Inspectors dealt in detail with the ramifications of their findings on SEWEA between paragraphs 22 – 30 of the Letter. It is worth reading the findings in full, but the headline points were that the Emerging Plan would not be sound with the inclusion of the SEWEA:

> *24. A key element of the Council's case is that there is an employment land requirement of 316.26ha and that this can't be met without altering the Green Belt and allocating land for development. However, we have concluded that the requirement of 316.26ha is not justified and it should be reduced to 168ha. We have also concluded that the supply of employment land provided by existing commitments and the proposed Fiddlers Ferry Main Development Area would be sufficient to meet this reduced requirement. There is also the potential for additional supply to come from the larger consented site in St Helens. There is no strategic need in quantitative*

terms to alter the Green Belt and allocate land for employment development at the SEWEA or in Warrington as a whole.

…..

27. The site for the proposed SEWEA is located immediately to the east of the Appleton Thorn Trading Estate, Barleycastle Trading Estate and Stretton Green Distribution Park which are inset within (excluded from) the Green Belt. However, it is separated from the urban area of Warrington by significant areas of open countryside which are also within the Green Belt. In terms of the purposes of the Green Belt, the primary role of the site in its current form is to assist in safeguarding the countryside from encroachment. The site is bounded to the south by the M56, the east by the M6 and the north by the B5356 and so the allocation could create strong, permanent Green Belt boundaries. Nonetheless, the scale and extent of the site and the development proposed on it would involve a substantial incursion into largely undeveloped and open countryside. It would represent significant encroachment into the countryside.

……

30. To conclude on this issue, there is no strategic need for the SEWEA allocation in terms of the need for employment land or the range and type of employment land that would be available. It would result in a significant encroachment into the countryside, undermining one of the purposes of the Green Belt and would cause severe harm to the openness of the Green Belt. It would also have a significant adverse effect on the character and appearance of the area. Whilst there would be economic benefits as a result of the allocation, these do not outweigh the above concerns. Exceptional circumstances to alter the Green Belt in this case do not exist. In order for the Local Plan to be justified and consistent with national policy the proposed SEWEA and Policy MD6 should be deleted therefore.

12. On 3 February 2023 the Examining Inspectors provided an outline of the main modifications required to make the Emerging Plan sound.

13. On 15 March 2023 the Council formally published a Schedule of Proposed Main Modifications. The Schedule included the reduction of employment land to 168ha and the deletion of the SEWEA.

14. A consultation period is running on the Main Modifications until 26 April 2023. After the consultation period, any representations made will be passed onto the Examining

Inspectors before the publication of their Final Report. There is no reference to the Examination in Public being re-opened.

15. The Council's Officers noted – after citing relevant NPPF policy on prematurity - in a 1 February 2023 Officer Report that:

> *1.28 In the original report, it was concluded that the application was not premature because criterion b) did not apply as the emerging Plan had not been submitted so could not be said to be at an advanced stage. This was consistent with the first sentence of paragraph 50 (above). Following the submission of the emerging Local Plan for examination in April 2022, it is acknowledged that the Plan is now at an advanced stage and criterion b) therefore applies.*

Policy and Law

16. Paragraphs 49 and 50 of the NPPF deal with the issue of prematurity:

> *49. However, in the context of the Framework – and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both:*
>
> > *a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and*
> >
> > *b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.*
>
> *50. Refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination; or – in the case of a neighbourhood plan – before the end of the local planning authority publicity period on the draft plan. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the outcome of the plan-making process.*

17. This closely follows wording which was included in a previous March 2014 version of the PPG.

18. Prematurity is capable, as a matter of law, of being a material consideration (**Arlington Securities Limited v The Secretary of State For the Environment v Crawley Borough Council** 1989 WL 651254).

19. The question of prematurity was considered by Patterson J in **Truro City Council v Cornwall City Council** [2013] EWHC 2525 (Admin) who held:

> *"It is quite impossible to divorce the issue of prematurity from the local plan process: after all, the impugned decision is premature to what? The essence of a successful claim of prematurity is that the development proposed predetermines and pre-empts a decision which ought to be taken in the Development Plan process by reason of its scale, location and/or nature or that there is a real risk that it might do so."*

20. While **Truro** predates even the March 2014 PPG (it instead referred to paragraph 17 of 'The Planning System: General Principles') such an approach was endorsed by Holgate J in relation to the March 14 PPG in **Veolia ES (UK) Ltd v Secretary of State for Communities and Local Government** [2015] EWHC 91 (Admin) (see para [49)) due to the similarity of the advice.

21. As the NPPF closely mirrors the revoked March 14 PPG, **Truro** is still applicable.

Advice

22. I am asked to advise on whether the SWP would have a basis for running a prematurity argument at the Inquiry.

23. Before doing so, it is important to recognise that there are two ways in which prematurity could be relevant to the determination of a planning application.

24. The first is that it could form a freestanding justification for the immediate refusal of a scheme. This occurs if the tests set out in paragraph 49 and 50 of the NPPF are met. If these tests are met, then a decisionmaker is entitled by national policy to refuse the

application – in effect it is a knockout blow. This is in a similar manner to the ability to refuse a development solely on highway grounds under paragraph 111.

25. While it is a matter of planning judgment for Mr Groves – who as expert planning consultant is advising and representing SWP at the Inquiry – it is hard to see how a finding that a development was premature so as to justify refusal could then be outweighed by the benefits of the scheme.

26. The effect of 49 and 50 ('immediate refusal') is reflected in the fact that the policy is drafted so that this will only be open to a decisionmaker in limited circumstances ('*unlikely to justify refusal of planning permission other than in the limited circumstances where both…..'* and '*Refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination….'*).

27. But equally if those circumstances are met then there is a strong wider policy justification for immediate refusal. As set out at paragraph 15 of the NPPF '*The planning system should be genuinely plan-led'* – and if an application would undermine and conflict with an advanced emerging plan then this would be fundamentally inconsistent with the plan led planning system.

28. The first way prematurity could be relevant is therefore providing justification for immediate refusal of an application solely on prematurity grounds.

29. However, it is important not to conclude that therefore – if a decisionmaker determines it is not appropriate to refuse solely on prematurity grounds – prematurity is irrelevant. It is not 'all or nothing'.

30. Instead, the second way prematurity could be relevant is as a material consideration which still must carry weight in the overall planning balance (per **Arlington**). This could be particularly relevant where there is a need for the decisionmaker to carry out an all-encompassing balancing exercise such as determining whether the benefits clearly outweigh the harms so as to establish very special circumstances under 148 of the NPPF.

31. Turning to the specifics of this case I would advise that the SWP have a strong case for arguing that the Proposal can be refused on prematurity grounds alone.

32. Paragraph 49 gives two criteria which should be met:

> *a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and*
>
> *b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.*

33. In relation to 49 b) the Emerging Plan is at a very advanced stage. Not only has it been submitted for examination – a trigger referenced at para 50 – but the examination has occurred, and the Inspector's provisional findings been published and Main Modifications proposed.

34. By the time of the Inquiry the consultation period will have ended, and the Council will only be waiting on the Final Report from the Examining Inspectors. The Emerging Plan is therefore almost as close as you can get adoption but still have a prematurity argument.

35. I appreciate that the Final Report has not yet been published – with the period between that and adoption being the most advanced stage where a prematurity argument could theoretically be run – but given the clear and reasoned findings of the Letter this is less relevant.

36. Therefore 49 b) is met – and the strength of the argument enhanced by the very advanced stage of the Emerging Plan. I note that the Council agree that 49 b) would now be met.

37. In relation to 49 a) this is primarily a matter of planning judgment for Mr Groves. But I can note that the Proposal would deliver the vast majority of the rejected SEWEA. The SEWEA was rejected because its inclusion made the Emerging Plan un-sound by over-delivering employment land in a way which was unjustified, unsustainable, and would release Green Belt where there were no exceptional circumstances.

38. If the Proposal were granted permission, then this could be seen as the SEWEA being delivered through the backdoor contrary to the express findings of the Examining Inspectors. The ramifications for the Emerging Plan would be significant as it would undermine and imperil the delivery and need for the allocated Fiddler's Ferry Brownfield Site.

39. Warrington would be left with an over-provision of employment land at the cost to its undeveloped Green Belt – a situation which the Examining Inspectors expressly found to be unsound and are avoiding through Main Modifications which have now been proposed by the Council.

40. Returning to the approach of Patterson J in **Truro** the Proposal does worse than simply '*pre-determine and pre-empt a decision which ought to be taken in the development plan process'*. It directly conflicts with a decision already made in the development plan process to exclude employment development at this Green Belt site. If that does not undermine the plan-making process, then it is hard to envisage what could. On that basis there would be a very strong argument that the Proposal should be refused solely on prematurity grounds.

41. Even if it were not – although I struggle to see how this conclusion could be reached – then prematurity would still be a material consideration in determining whether VSC exist. As to the matter of weight – that would be for Mr Groves.

Conclusion

42. There would be a very strong argument that the Proposal ought to be refused solely on prematurity grounds.

43. I advise accordingly.

PIERS RILEY-SMITH
23rd MARCH 2023
KINGS CHAMBERS
MANCHESTER, LEEDS, AND BIRMINGHAM