

17 December 2015  
**Delivered by email**

Forward Planning  
Swindon Borough Council  
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Dear Sirs,

## **WROUGHTON NEIGHBOURHOOD PLAN 2014-2026 – CONSULTATION – DECEMBER 2015**

This representation has been prepared by Turley on behalf of Ainscough Strategic Land (ASL), specifically in relation to its interests at Berkeley Farm, Wroughton. It sets out our client's response to the Wroughton Neighbourhood Plan (WNP) (October 2015) Consultation.

ASL has previously made representations to the Draft WNP consultation in September 2014 and more recently on the Draft Strategic Environmental Assessment in October 2015. We now make further submissions in light of the published WNP (October 2015) which is the subject of a six week consultation by the Borough Council until 17 December 2015.

This submission reiterates and expands on ASL's previous main concerns in respect of the WNP. This includes reference to many of the concerns raised during the recent Public Inquiry (APP ref: APP/U3935/W/15/30355660) relating to the planning application (LPA ref: S/OUT/14/1005) at Berkeley Farm, Wroughton which Swindon Borough Council Officers, representatives of the Wroughton Parish Council and representatives of the Neighbourhood Plan Working Group were participants at. The Public Inquiry commenced on 23 November and closed on 27 November 2015.

Our concerns can be summarised as follows:

1. The recent Strategic Environmental Assessment (SEA) has been produced retrospectively to the development of the Draft WNP. As such, the evidence gathered in the Draft SEA does not inform the choices in the Draft WNP objectively and does not properly consider reasonable alternatives to current policies in the Plan. The specific environmental effects of DP2 have also been incorrectly considered.
2. That site DP2 has been incorrectly referred to as a 'brownfield site' throughout the various stages of the WNP production. This has misrepresented the acknowledged nature of the site and has inevitably skewed consultation responses; undermining the credibility of the exercise.

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3. The WNP is directly contrary to the provisions of Policy RA2 of the Swindon Local Plan and, therefore, does not meet the requirements of paragraph 184 of the National Planning Policy Framework (NPPF).
4. The current housing allocations in the WNP (DP1 to DP7) will not deliver the required minimum of 150 new homes at Wroughton by 2026.
5. There are concerns about the suitability and deliverability of draft allocation site DP2 given its previous use as a waste disposal tip.

Our concerns are also supported by the legal submissions by David Manley QC of Kings Chambers which are appended to these representations.

We deal with each of these concerns in more detail below.

## ***1. The Methodology of the Strategic Environmental Assessment (SEA)***

We have previously made representations setting out our concerns about the SEA on 7 October 2015. Whilst the concerns set out in that representation remain, we again summarise those concerns as the issues raised have not led to any further changes to the SEA or the resultant content of the WNP. We also and expand on some elements given the identification of recent information that demonstrates that the environmental effects of housing allocation site DP2 have been incorrectly assessed.

Of primary concern, the SEA that has been produced retrospectively to the Neighbourhood Plan. It is considered that the SEA's methodology and content has not been developed objectively, particularly with regards to how the environmental effects of existing draft neighbourhood plan policies and proposed allocated sites have been considered. The SEA has also assessed the plan on a 'whole plan' basis so individual policies are not tested appropriately against the SEA objectives.

As outlined in the Planning Policy Guidance (March 2012) at Paragraph 038, the SEA should predict and evaluate the effects of the preferred approach and reasonable alternatives and should clearly identify the significant positive and negative effects of each alternative, outlining the reasons for rejection. The SEA confirms that alternative policy options were not generated as part of the plan's development (see SEA paragraph 3.3) and have not, therefore, been tested as part of the SEA. Indeed, the evidence base for the SEA appears to be lacking as a whole and, therefore, is not a robust assessment and contrary to the NPPG and EU SEA Directive 2001/42/EC. Despite raising these concerns previously, no changes to the SEA have been progressed and, as a result, the draft WNP remains unaltered - indeed the SEA has led to zero changes to the WNP pre or post consultation on its scope and content.

Further to the Public Inquiry into our client's recent planning application (LPA ref: S/OUT/14/1005) at Berkeley Farm, Wroughton, we also have further concerns about how the specific environmental effects of draft housing allocation site DP2 have been assessed. It was confirmed at the Public Inquiry that, as a result of planning permission ref. 15940 for 'Reformation by tipping' (decision notice attached to this representation), the site has been remediated. Condition 4 of the permission states that:

*"Upon the completion of tipping operations the whole of the area shall be covered with a minimum of 0.3 m (12") of top soil sufficient to sustain plant growth."*

The reason given on the decision notice was:

*“In order to ensure that the land is restored to agricultural use.”*

As was confirmed at the Public Inquiry, the National Planning Policy Framework (in the Glossary on page 55) confirms that previously developed land excludes:

*“land that has been developed for mineral extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures”.*

It is confirmed by the condition placed on the decision noticed referred to above, that such provision for restoration was made through development control procedures and, as such, the DP2 site must be classified as a greenfield site.

It is clear from the SEA that this is not the approach that the Neighbourhood Plan SEA (and other Neighbourhood Plan documents to which we refer to later in this representation) considered the DP2 site. This is clearly highlighted by the following sections of the SEA:

- Paragraph 4.7 states that *“The Neighbourhood Plan could lead to: very positive effects in respect of efficient use of land and prioritising the development of previously used land. It could bring back into use for housing, land which was previous used for landfill.”*
- In Appendix 2 under the Strategic Environment Assessment objective *“Use land and existing buildings efficiently and prioritise development on previously developed land”*, the commentary states that *“Proposal DP2 is on land which has previously been used as a brickworks and for landfill. This proposal will bring about the proper remediation of this land, in accordance with Swindon's Contaminated Land Strategy so that it can be used for development in favour of greenfield sites.”* (our underline)
- In Appendix 2 under the Strategic Environment Assessment objective *“Conserve and enhance rural and urban landscapes.”* The commentary states that *“Wroughton's Neighbourhood Plan encourages the development on previously developed sites rather than greenfield land.”*

As a result of the above, the SEA incorrectly assesses the potential environmental effects of the DP2 site against a number of SEA objectives. This, as well as, are other concerns about the SEA methodology and outcomes set out above, also fails to meet the basic conditions for a Neighbourhood Plan set out in paragraph 8(2) of Schedule 4b to the Town and Country Planning Act 1990 as applied to Neighbourhood Plans by section 38A of the Planning and Compulsory Purchase Act 2004, in respect of meeting EU obligations. Our concerns about the legal soundness of SEA is further confirmed in the legal submissions provided with this representation.

This incorrect assessment of the DP2 site is a common theme running through the entire suite of Neighbourhood Plan documents. This is highlighted in more detail below.

## **2. The Consideration of Draft Allocation Site DP2 as a Previously Developed Land**

As highlighted above, DP2 is not a previously developed site as provision was made for restoration of the site through development control procedures. As such, the DP2 site is a greenfield site and should have been considered as such by the Neighbourhood Plan. This has not been the case.

Aside from the SEA discussed above, the DP2 site has consistently been referred to as previously developed land throughout the production of the Neighbourhood Plan. This, in our view, has been extremely misleading and has no doubt unfairly influenced local residents' reaction and response to the draft allocation of the site in the emerging plan. For example:

- Paragraph 3.5 of the September 2014 Draft NP states that *“Through the plan preparation process it has been possible to identify sufficient brownfield or mainly brownfield sites within the settlement boundary to meet Wroughton's housing needs through the life of this plan.”* - given that the majority of the 200 homes identified in the NP were proposed to come forward on the DP2 site (a greenfield site), this statement is inaccurate and highly misleading on the allocation options identified.
- On Page 3, the plan states that *“These policies aim to contribute to sustainable development by: “Protecting greenfield sites and maximising the reuse of brownfield land”* – again, this statement is inaccurate and it misleads the public to consider that the draft allocations pursued will re-use brownfield land.
- Draft Policy DP2 itself states that *“This is a mainly brownfield site which is considered to be suitable for a maximum of 120 homes.”* – the policy itself incorrectly classifies the site as a brownfield site.
- Paragraph 9.3 confirms that *“The community favoured development on brownfield sites and wanted sites with good walking and cycling links. Many comments were made about each of the sites included in the consultation.”* – this statement confirms our concern that local Wroughton residents have been misled and clearly believe the DP2 site to be a brownfield site which has influenced responses to its draft allocation for development.

Overall, it is clear that the emerging Neighbourhood Plan has inaccurately presented the DP2 site as a brownfield site with statement being made that this accords with the objective of protecting greenfield sites and has undoubtedly impacted on the public's perception of and responses to the draft DP2 allocation.

## **3. Compliance with the Swindon Local Plan**

Paragraph 184 of the NPPF requires Neighbourhood Plans to be in general conformity with the strategic policies of the Local Plan. In our view, the existing WNP does not meet this requirement and is contrary to the clear policy expectation, set out in Local Plan Policy RA2, of not supporting development to the north of Wroughton.

Policy RA2 of the Swindon Local Plan 2026 (SLP) requires Wroughton to retain its independent identity from Swindon by maintaining a separation with Wichelstowe. In the supporting text to Policy RA2 at paragraph 5.127, the Local Plan states that *“Wroughton is almost adjacent to Swindon and any extension to the north would bring about coalescence”* (our underline).

Draft allocation DP2 is located to the north of Wroughton, and the majority of the site is located outside the settlement boundary. It is the one option within Wroughton that the will have the greatest impact on

coalescence and is clearly contrary to Policy RA2 and, therefore, does not meet the requirements of paragraph 184 of the NPPF. In this respect, it again fails to meet the basic conditions for a Neighbourhood Plan.

#### **4. Requirement to Deliver a Minimum of 150 Homes**

Policy SD2 of the Swindon Local Plan requires a minimum of 150 new homes to be delivered at Wroughton. We are concerned that the current housing allocations (DP1 to DP7 will not meet this minimum requirement). Paragraph 3.8 of the Neighbourhood Plan itself confirms that *“Whilst a number of brownfield sites which are suitable for housing development have been identified within this plan, it is recognised that not all of these will come forward for development during the life of the plan.”* This is particularly highlighted by draft housing sites DP3 and DP7.

Draft Policy DP3 allocates the Infant School site on Wharf Road for approximately 25 dwellings. However, the policy confirms that this site can only be brought forward if the Infant School is relocated elsewhere. There is no identified site for such relocation, therefore we consider that this site not to be suitable, available or deliverable. This allocated for 25 new homes should be removed from the overall quantum of development identified in the Plan.

Draft Policy DP7 allocates land to the east of Ridgeway School for approximately 34 dwellings. The draft policy also confirms that this site may be required for any future development of a school campus and the NP confirms that this would be preferred. The policy also confirms that, should the site come forward for housing development then the sports and leisure land which would be lost and must be provided elsewhere. The site is also designated as open space on the Local Plan proposals which further highlights the need for replacement facilities of equality quality and quantum to be re-provided elsewhere. Finally, this site may be reliant on access from site DP2, and we highlight our concerns about the deliverability of site DP2 later in this representation. Given the reason set out above, we do not consider this site to be suitable, available or deliverable. This site is allocated for 34 new homes and should be removed from the overall quantum of development identified in the Plan.

At the Public Inquiry the representative of the Parish Council confirmed that they were 'conditional' allocations and as a result there is uncertainty if any housing would be delivered in the Plan period, if ever.

Notwithstanding our concerns about the suitability and deliverability of site DP2 set out later in this representation, we note that the site is identified for a development for 120 homes. However, the actual planning application submitted by Hill Homes Ltd (planning application ref. S/15/1750) is for 104. As such, this is a reduction on the NP allocation of 16 units.

Taking all of the above into consideration, this leads to an overall reduction of 75 units which, in turn, reduces the overall quantum of housing development identified in the Neighbourhood Plan to only 125, substantially below the minimum requirement set out in the Local Plan. There is a need to identify further housing sites to not only meet the Local Plan minimum, but exceed it.

The need to identify sufficient housing was emphasised at the recent Berkeley farm Public Inquiry where the Borough Council accepted that it could not demonstrate a five year supply of housing sites. Whilst we acknowledge that the WNP is unable to address the overall Borough wide deficiencies alone, it is nevertheless imperative that it meets (and exceeds) the minimum housing requirement identified for Wroughton on specific sites that are genuinely deliverable in the plan period.

## 5. **The Suitability and Deliverability of Draft Allocation DP2**

There remains a significant question mark over the suitability and deliverability of development at the site known as DP2 to the north of Wroughton. The site comprises former Victorian brickworks, which was subsequently used as a tip for many decades, prior to being 'capped' and returned to its current agricultural (greenfield) use.

Whilst Hill Homes UK has now submitted a planning application for the site, we remain concerned that there is insufficient evidence available to be able to satisfactorily conclude that remediation of the site can be suitably and viably progressed to enable residential development to take place.

Hills Homes UK, who have an interest in site DP2, were granted Rule 6 Party Status at the recent Public Inquiry for Berkeley Farm. Mr Stephen Young of Pro-Vision Projects (acting for Hill Homes UK) provided ASL with a geo-environmental note (September 2015) prepared by Hydrock for the DP2 site (attached to this representation). We summarise its findings below.

The Note confirms that part of the site contains what is described as 'domestic type' waste of the order of 10 metres thick; another part contains builders' waste over domestic type waste of the order of 6 to 9 metres thick; and a further part contains builders' waste of the order of 7 metres thick. The waste included is confirmed to vary and includes:

*"soil, clay, rock, rubble, railway ash, brick and concrete lumps, concrete fence posts, metal (pipe, sheet, wire and other artefacts), plastic (bags, sheet, containers, crates, bottles and other artefacts), timber, tree stumps, textiles (carpet and cloth), a little glass and ceramic and fibrous insulation. No obvious asbestos was seen, but there were a few, small potential asbestos concrete products and asbestos insulation tile products. Given the age of the waste such materials must be anticipated to be in building and demolition waste."*

The Note confirms that the geo environmental report 2011 noted that the raw landfill leachate exceeded environmental quality standards (EQS) for a number of substances, mostly metals, and the water in the Wroughton Ditch exceeded two of the EQS. The note confirms that no further work has been undertaken with respect to leachate by Hydrock.

With respect to plant life, the report highlights that high zinc concentrations were present in one sample of the builders' waste and two samples of the domestic waste, but to be precautionary it should be anticipated elsewhere in the waste. It confirms that detriment to plant life is hard to quantify and that advice should be sought from a landscape architect if particular deep-rooted species are being considered. Given the WNP Plan's desire under the draft Policy DP2 allocation for "soft landscaping to the north to protect the views into Wroughton from the north", one would clearly expect such planting to be required.

The Note highlights that existing capping soils could be re-used, but if this is to take place it will be important to carefully segregate them from the waste below and to test stockpiles before use. Consideration should be given to importing clean cover materials in domestic gardens. It also confirms that, ideally, potable water supply pipes should be laid within the imported clean cover, but, if this is not feasible, then barrier pipe should be contemplated.

In terms of future foundations, the 2015 Note confirms that standard strip footings are not suitable. It highlights that one of two foundation types will have to be adopted - either penetrating to below the waste using piled foundations, or by using raft foundations. The note confirms that:

*“Neither of these options is without complications and so detailed engineering design will require due consideration to provide the most cost-effective solution.”*

That Note highlights a number of important geo-environmental and contamination issues that will need to be addressed and confirms that standard foundations will not be possible. Any remediation and use of non-standard foundations will inevitably add additional cost to any future development on the site and does raise doubt about the site’s suitability and viability for a residential development. It will be for the applicant of that site to address these concerns during the course of the determination of its recently submitted planning application (LPA ref: S/OUT/1750).

Without such evidence, the extent of environment effects from the development of this site cannot be fully understood and this is a significant flaw of the Plan and SEA. Furthermore, there is considerable doubt as to whether the DP2 site will ever come forward for development, and in the absence of such evidence it is impossible to assess whether the site can deliver other benefits identified in the SEA, such as 30% affordable housing and other S106 contributions.

Given the importance of this application (in housing numbers terms) to the delivery of housing at Wroughton, it is essential that any issues regarding suitability and deliverability are fully addressed before an allocation on this site is confirmed.

## **Conclusion**

It is clear from the foregoing that there are significant deficiencies with the draft Wroughton Neighbourhood Plan, both in terms of its content and to the process by which the Plan has evolved. As a result, it is our view that the Plan fails to meet basic conditions for a Neighbourhood Plan to be progressed to a referendum and must be considered unsound in its current form.

Yours sincerely



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