SWINDON BOROUGH COUNCIL

Inlands Farm, The Marsh, Wanborough, Swindon

Planning Appeal by

Wasdell Properties Ltd.

OPENING SUBMISSIONS ON BEHALF OF THE COUNCIL

Paul Stinchcombe QC

1. Ours is a Plan-led system. Sections 70(2) and 79(4) of the Town and Country Planning Act 1990 (CDD-1), read together with section 38(6) of the Planning and Compulsory Purchase Act 2004 (CDD-2), require planning applications and appeals to be determined in accordance with the Development Plan unless material considerations indicate otherwise. This Appeal Proposal, however, fails to accord not just with many policies of the Development Plan but, on Mr Lawson's own evidence, with the Development Plan taken as a whole (Lawson's Summary Proof, paragraph 13; Main Proof, paragraph 11.122). And Mr Lawson takes that view even though certain matters have successfully been resolved through the submission of additional information;

and even though Mr Lawson has, as we shall come on to, understated the policy breaches in signal regards.

2. Put shortly, and over the two phases of this proposed development, the Appellant is seeking permission for an enormous, initial, industrial building (173.7m long, 164.3m wide and 14.5m high[1]) to host the Appellant's proposed relocation (Phase One), followed (perhaps) by a Science Park, a further 32,281m^2 of Class B1b development and 16,400m^2 of Class B1c development (Phase Two), all on land which is in the open countryside, beyond any settlement boundary, and unallocated for any development of this sort or scale by the extant Local Plan (the Swindon Borough Local Plan 2026, adopted on 26th March 2015 (CDF-1)).

3. As such, this Appeal Proposal runs counter to the entire strategy of the Plan which, as Mr Snook and Mr Dewart will make clear, is to meet Swindon's development needs by concentrating development primarily at Swindon (Policy SD2) and at certain strategic allocations such as for the New Eastern Villages (NEV). Mr Lawson agrees that Policy SD2, and hence the Local Plan's "Sustainable Development Strategy", is breached (Lawson, paragraph 11.15).

4. But more than this, the Appellant is proposing this giant development on land which is positively protected from such development by a location-specific "Non-Coalescence" Development Plan Policy (Policy NC3), with which this Appeal Proposal also fails to comply. Once again, Mr Lawson concedes that Policy NC3 is breached (Lawson paragraph 11.112), even though he wrongly trivialises this conflict as "minor" (Lawson paragraph 11.117).

5. Moreover, this would all be developed in the setting of designated and non-designated heritage assets, including the Upper Wanborough Conservation Area (UWCA), the Parish Church of St Andrew (Grade I), and Disney Cottage and White House (both

[1] Above finished floor level.

Grade II), to all of which Mr Brookes concedes that a harmful impact to their significance and setting will be occasioned (Brookes, paragraph 10, Table 1.2).

6. Even leaving aside, for the moment, the additional harmful impacts which Ms Mee has identified to the significance of other heritage assets, of itself Mr Brookes' concession directly engages[2] not just Policy EN10 of the Local Plan, but:

   a. The entreaty, at paragraph 193 of the NPPF, that when considering the impact of a proposed development on the significance of a designated heritage asset, "great weight should be given to the asset's conservation"; and

   b. The statutory duty established by section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Listed Buildings Act) to pay "special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

7. It is, accordingly, to be noted that it was held as follows by Mr Justice Lindblom (as he then was) in ***R (Forge Field Society) and Ors. V Sevenoaks District Council*** [2014] EWHC 1895 (Admin), at [48]-[49]:

   "48. …When an authority finds that a proposed development would harm the setting of a listed building or the character or appearance of a conservation area, it must give that harm considerable importance and weight.

   49. … [A] finding of harm to the setting of a listed building or to a conservation area gives rise to a strong presumption against planning permission being granted."

8. Despite the clear message from both the NPPF and the case law, however, Mr Lawson, through the trickery of undertaking two balancing exercises with regards to heritage

[2] In addition, whilst section 72 of the Listed Buildings Act, and the mirror duty to the above with regard to Conservation Areas, is not directly relevant to this appeal because the Appeal Site is outside the UWCA, as made clear by Mr Justice Ouseley in ***Safe Rottingdean Ltd v Brighton and Hove City Council*** [2019] EWHC 2632 (Admin) at [88], the harm to the setting of that Conservation Area would nonetheless be a material consideration.

and public benefits, contrives to reduce the required "great weight" to just "moderate weight" in the final planning balance (Lawson, paragraph 11.157). That, we respectfully suggest, is wrong in principle and in law.

9. However, the unsuitability of this site for this development does not stop there because the Appeal Site which would host this huge development is also adjacent to, and in the setting of, the North Wessex Downs Area of Outstanding Natural Beauty (AONB) which is protected by not just Policy EN5 of the Local Plan but, like heritage assets, both legislation and national planning policy as well. In particular:

   a. Section 85 of the Countryside and Rights of Way Act 2000 (the CROW Act) (CDD4)[3] identifies the need to have regard to the purpose of conserving and enhancing the natural beauty of an AONB when considering any proposal which might affect it; and

   b. Paragraphs 170 and 172 of the National Planning Policy Framework (NPPF), make clear the importance contributing to, and enhancing, the natural and local environment, and especially with regard to "valued landscapes" and AONBs:

      "170. Planning policies and decisions should contribute to and enhance the natural and local environment by: a) protecting and enhancing valued landscapes (in a manner commensurate with their statutory status or identified quality in the development plan); b) recognising the intrinsic character and beauty of the countryside…"

      "172. Great weight should be given to conserving and enhancing landscape and scenic beauty in … Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues ..."

10. You will, of course, get most assistance on issues regarding landscape from your site views, not any words spoken by an advocate. However, two preliminary comments do fall to be made:

[3] Subsection (1) of which states that: "In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty."

a. First, the Appellant's Landscape and Visual Impact Assessment (LVIA) itself concludes that there will be harm to visual amenity at every assessment location in Year 1, and at every assessment location at Year 15 where the scheme is visible (Table 7.15 on page 7.58). This level of harm in the setting of the AONB is simply unacceptable.

b. Second, so far as the protection to be afforded to "valued landscapes" by paragraph 170(a) of the NPPF is concerned, Ms Ede is incorrect insofar as she suggests that, to qualify as a "valued landscape", the site itself must possess "demonstrable physical attributes" that take it out of the ordinary in landscape terms (Ede, paragraphs 3.37 and 3.69). There is no such general principle as the cases to which Mr Potterton refers in his Rebuttal Proof make clear[4].

11. And if all of that was not enough (that is to say, being contrary both to the strategy of the Local Plan and the Plan as a whole, being in breach of the Policy of Non-Coalescence, causing harm to the significance of several designated heritage assets, and harm, also, to the setting of an AONB), the Appellant has managed to find a site which also hosts a Roman farmstead which it proposes to preserve not under pasture but a car park, with all the additional risks attendant to that.

12. And I addition to all of the above harms, there are other outstanding matters that may or may not be successfully resolved, relating to:

a. Highways[5];

[4] ***Stroud DC v SSCLG and Gladman*** [2015] EWHC 488 (Admin) ("the Stroud case"); ***CEG Land Promotions II Ltd V SSHCLG*** [2018] EWHC 1799 (Admin) ("the CEG case"); and ***R (Steven Hewitt) (acting on behalf of Save our Valleys Group) v Oldham BC and Russell Homes (UK) Ltd*** [2020] EWHC 3405 (Admin) ("the Save our Valleys case).

[5] Reason for Refusal 9 on the Outline Application.

b. Infrastructure[6];

c. The Environment Agency's (EA's) ongoing concerns regarding wastewater[7];

d. The realignment of the canal[8];

e. Whether Wasdell's proposed used of the Appeal Site actually falls within the Use Classes for which application has been[9]; and

f. The fact that planning permissions run with the land and are not personal to the Appellant.

13. So far as the first two of these outstanding matters are concerned, we can sensibly wait to see what progress can be made. As for the first, that is to be considered in the second session of this Inquiry; and as for the second, the draft Section 106 Agreement/Obligation is still in preparation. However, the third, fourth and fifth concerns do call for some comment from the Council at this early stage of the Inquiry.

14. So far as the third outstanding issue is concerned, as matters currently stand no evidence has been provided by the Appellant to demonstrate that the proposed increase in wastewater would not result in pollution of the water environment and further deterioration in Water Framework Directive status of the River Ray. In these regards, it is for the Appellant (not Thames Water) to demonstrate that there would be no significant impacts in water quality as a result of the proposed development. If they cannot do so before the Inquiry closes, in the Council's submission permission must

[6] Reason for Refusal 8 on the Full Application.
[7] Reason for Refusal 7 on the Full Application and Reason for Refusal 8 on the Outline Application.
[8] Reason for Refusal 6 on both the Full and Outline Applications.
[9] Reason for Refusal 5 on the Full Application and Reason for Refusal 7 on the Outline Application.

be refused; otherwise, a harmful building might be erected in this sensitive location which is ultimately incapable of generating the economic benefits relied on[10].

15. So far as the fourth outstanding issue is concerned, the Council currently understands that the new alignment has been agreed as feasible by the Wilts and Berks Canal Trust (WBCT). However, that does not necessarily resolve matters:

    a. First, the Council also understand that the realignment would be more expensive and, unless there are contributions towards the additional costs, there remains a problem in any event;

    b. Second, the new canal alignment appears to be where the attenuation ponds/swales were on the previous masterplan and the Lead Local Flood Authority have suggested that they would expect the Appellant to submit a revised Flood Risk Assessment and Design Statement as there is not enough information to assess whether the altered layout would not increase flood risk elsewhere; and

    c. Third, there are therefore concerns that if the revised alignment were to be approved, the agreed drainage strategy could not be implemented - which brings into question whether the development is capable of being implemented in this form.

16. And so far as the fifth outstanding issue is concerned, permission is sought on appeal for just Use Class B1b and Class B1c. However, the information submitted with the Appeal application appears to suggest that the Appellant's entire storage and distribution service would be taking place at the proposed development, which in turn

[10] The EA take the view that it is unreasonable for to impose a Grampian condition preventing the commencement of development until Appellant has demonstrated that there would be no significant impacts in water quality because, in advance of a water quality assessment being undertaken, there is no evidence that a feasible solution exists if any harm is identified in that assessment.

suggests that significant Use Class B8 storage and distribution operations would be taking place, a use which does not fall within the uses for which application has been made[11]. If, having heard the evidence, you share that concern then certain consequences follow, even accepting that a planning condition could be attached to any grant of planning permission restricting the proposed development to the Use Classes for which application has been made:

a. First, unless the Appeal Proposal is amended to allow for a Class B8 Use (and no application has been made to amend), the Appellant would not be able to occupy as proposed, in which case their case for economic benefits may fall at the first hurdle; and

b. Second, given ***Wheatcroft*** considerations, it may very well be too late for the Appeal application to be lawfully amended in any event, as there could be unknown environmental impacts which have not been assessed or consulted upon.

17. Given all of this, there are a whole host of reasons that already[12] compel refusal unless a quite exceptional case of "other material considerations" could be fully evidenced to justify developing this proposed development on this particular site.

18. That case has not, however, been made.

19. Mr Simmonds does not dispute in this regard that there would be a positive economic impact if the development materialised in the form envisaged. However, even leaving aside the concerns regarding the EA objection, the canal, and the Use Classes, there are

[11] The South Swindon Protection Group's Statement of Case (SSPG raise similar concerns, identifying that around 66% of the Phase 1 building would be for storage and warehousing and that the size, shape and layout of the Phase 1 building is more akin to a Class B8 use.
[12] And there could, potentially be more – related to waste water, the canal and Use Classes.

real problems regarding the Appellant's case on economic benefits regarding both of the proposed phases of development.

20. So far as Phase One is concerned:

a. No evidenced case has properly been made to explain why the Appellant needs to relocate to a single site to grow and prosper;

b. Still less has any evidenced case properly been made to explain why the Appellant needs to relocate to this particular site in order to grow and prosper – there are other sites available in Swindon:

c. Indeed, there is no evidence at all that the Appellant needs to operate from Swindon rather than anywhere else.

21. As for the first of the points made immediately above, Mr Amos's evidence demonstrates the success of the Wasdell Group whilst working from separate locations within Swindon as well as their other sites in England and Ireland (Amos, paragraph 5.19). There is no evidenced reason why that success cannot continue from multiple sites.

22. As for the second, you will hear from Mr Dewart that there are other, more appropriate industrial places in Swindon to which the Appellant could relocate (whether on a single site or multiple sites) and therefore grow as ambitiously as planned. That means that this is a "net zero sum" in economic game theory terms – the same economic benefits could be obtained locally in any event, only without the environmental harms of building in the setting of heritage assets, next to the AONB, and on a Roman farmstead.

23. As for the third, Mr Lawson himself acknowledges that the Appellant could relocate elsewhere (Lawson, paragraph 6.6), and the Chairman of the Appellant is on the record

as contemplating relocation to Basingstoke. Whilst this would clearly have a significantly negative local economic impact, it undermines completely the Appellant's argument that it can only grow and prosper if relocated onto the Appeal Site.

24. And in addition, of course, planning permissions run with the land unless made personal by condition or the Appellant signs a Section 106 Obligation to relevant effect. Nothing of the kind is being asked for or offered here[13], in which case there is no guarantee that Wasdell will even occupy the site so as to generate the benefits, personal to them and their ambitions for further growth, that they assert and upon which they rely.

25. And as for Phase Two, that is an entirely speculative proposal, as Mr Lawson readily acknowledges (Lawson, paragraph 6.11) and there is absolutely no evidence that any prospective tenants have signed up or will sign up. The furthest to which the Appellant's evidence extends (Lupson, Appendix E) is a handful of letters from prospective occupiers (out of 280 partner businesses – Lupson, Appendix G) and most of those only say they "could" be interested.

26. Four points follow:

    a. First, the handful of half-interested letters appended to Mr Lupson's evidence is a long way from evidence of "need" for a Science Park and cannot conceivably justify a proposal in breach of the Local Plan read as a whole;

    b. Second, the absence of any evidenced need makes Phase Two inherently incompatible with the objective of sustainable development described in paragraph 7 of the NPPF - a speculative proposal cannot properly be said to be meeting "the needs of the present" if no demand yet exists, or to satisfy the

[13] Snooks, paragraph 8.13; letter from Appellant's agent, dated 24th April 2020, page 1 (CDA-14).

NPPF description of sustainable development when its environmental harms are certain but its prospective economic prospective benefits so speculative and risky;

c. Third, given that the Science Park is so speculative, little (if any) weight can be given to the prospective benefits of that part of the Appeal Proposals – those benefits may very well never come about; and

d. Fourth, there is very little evidence to support the assertion that Wasdell are even a suitable company to anchor such a speculative Science Park proposal, and even if there were such evidence, the point made above regarding planning permissions running with the land applies here also.

27. But the case against Phase Two is even stronger than that:

a. As with Phase One, Mr Dewart will explain that there are, in any event, other sites on which its prospective (possible) tenants could also be accommodated in Swindon without trespassing into the countryside, onto an area of non-coalescence and into the setting of designated heritage assets and the AONB. This part of the Appeal Proposal is, therefore, yet another net zero sum in local economic terms.

b. Indeed, Appellant could locate its Science Park Proposal in Newcastle upon Tyne, from which it already operates, and generate even more economic and social benefit in accordance with the Government's "levelling up agenda". Whilst Mr Amos quotes extensively from *ONS via Nomis* to indicate the economic need for more jobs in Swindon, comparison with Newcastle upon Tyne indicates that there is both greater need and potential in the latter (Simmonds Rebuttal, paragraph 5.08).

28. The section 38(6) planning balance is, therefore, massively one-sided. On the harm side:

a. The Appeal Proposal would be a major departure from the adopted Local Plan and contrary to the Local Plan taken as a whole;

b. It would also cause harm to the significance of heritage assets, which is to be given (additionally) "great" weight;

c. It would also harm both a valued landscape and the setting of the AONB, the latter of which has the highest status of protection in relation to landscape issues; and

d. It would also fail properly to preserve an archaeological asset, a buried Roman farmstead.

29. However, there is no proven need for any of these harms to be occasioned. The same benefits, speculative or real, could be generated elsewhere and in the right place - on available industrial land, whether in Swindon or beyond.

30. And that means that I will in due course respectfully request that this appeal be dismissed.

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