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T +44 (0)161 228 6411
www.lsh.co.uk

Neil A Williams
Principal Planning Officer
Regeneration and Place Directorate
Cheshire Lines Building,
Canning Street,
Birkenhead,
Wirral
CH41 1ND

Lambert Smith Hampton
3 Hardman Street
Spinningfields
Manchester
M3 3HF

Delivered via email to:

neilwilliams@wirral.gov.uk

cc'd

The Planning Inspectorate -
mark.boulton@planninginspectorate.gov.uk

Mark Turner, Birkenhead School
MJT@birkenheadschool.co.uk

Mark Ronson, Kings Chambers
MRonson@kingschambers.com

Dear Neil

Appeal at Noctorum Field, Prenton Ref: APP/W4325/W/23/3329105 (OUT/23/00478)

On behalf of our client Birkenhead School [the Appellant], Lambert Smith Hampton [LSH] write to Wirral Council following the Planning Inspectorate's decision to allow the appeal (APP/W4325/W/23/3318758) ('Greenfield') by Greenfield Estates Trustees on land off Grange Road, West Kirkby, Wirral, CH48 4EH as published on 18th September 2023.

This Greenfield appeal related to an outline application (ref: OUT/22/01305) for 39 no. residential units with associated works on land the Wirral Council ('the Council') are seeking to designate as Local Green Space (LGS-SA6.4) pursuant to Policy WS10.6(R) through the emerging Wirral Local Plan ('WLP').

It is considered that there are distinct similarities between the allowed appeal and the appeal being progressed by the appellant, namely the Council's intent to designate the sites as Local Green Space despite significant unresolved objections from respective landowners.

The similarities between the two are in fact recognised by the Council, who issued correspondence to LSH on 21st February 2023 (as detailed within the Appeal Statement of Case) referencing their refusal of the Greenfield proposal [10th February 2023] on the grounds of prematurity given that the draft Local Plan has been submitted for examination, with the Council giving weight to the draft allocation pursuant to Paragraph 48b of the National Planning Policy Framework ('the Framework'). The Council in referencing the Greenfield appeal stated that *"the same arguments would apply to your proposed development [Noctorum Field]. On that basis I see little merit in discussing the*

mitigation when it is considered that the principle of developing on a Local Green Space is inappropriate”.

Notwithstanding that, the Council’s recognise that the ‘*in-principle*’ use of Noctorum Field for residential development is acceptable, as set out within the appeal Statement of Case.

In light of the Greenfield appeal decision, the Appellant requests that the Council remove the first reason for refusal pursuant to application OUT/23/00478, now subject to appeal (APP/W4325/W/23/3329105) which seeks outline planning permission for “*the demolition of the existing pavilion and erection of up to 33 dwellings and associated infrastructure. All matters are reserved with the exception of access*” at Noctorum Field, Noctorum Road, Noctorum, CH43 9UQ.

The Council’s first reason for refusal of the outline application was as follows:

1. The development site is designated as Local Green Space within the Submission Draft Local Plan and the proposed development is contrary to Policy WS 10.6 of that plan. The development proposed 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. Whilst the emerging local plan is not yet formally part of the development plan for the area it is at an advanced stage of the examination process. The application is therefore premature. In particular, granting permission for the development concerned would prejudice the outcome of the plan-making process by virtue of:
 - predetermining a decision about development on a locally prominent and significant site in Noctorum which would significantly affect the character and setting of the town, on a site that is not currently needed to provide for the future housing land supply of the Borough;
 - undermining the proposed designation of the application site and of other sites within the Borough which are proposed as Local Green Space all of which have been brought forward in response to community consultation on the basis of up-to-date local evidence specifically prepared to meet the requirements of paragraphs 101 to 103 of the National Planning Policy Framework.

The Planning Inspectorate in reaching a decision on the Greenfield appeal (identified that one of the main issues concerning the appeal was:

‘whether the proposal would be so significant that to grant permission would undermine the plan making process by pre-determining decisions about scale, location or phasing of new development that are central to the emerging plan, with particular regard to proposed designated local green space¹’.

The Inspector’s commentary in respect of this main issues is considered to be of direct relevance to the first reason of refusal against the appellant’s proposal. The Greenfield appeal provides sufficient reasoning for the Council to remove the reason for refusal in the context of the appeal being progressed.

¹ Paragraph 5, Appeal Decision APP/W4325/W/23/3318758

Weight to be given to policy WS10.6(R)

The Inspector in considering the weight to be given to policy WS10.6(R) concludes that 'taking all of the above factors together, **I give limited weight to proposed policy WS10.6(R) and to the identified conflict with it²**'.

In drawing this conclusion the Inspector notes that there are '*significant unresolved objections to the draft LP³*' in the form of 42 objections suggesting that draft policy WS10.6 is unsound, a consortium of 13 housebuilders objection on wider grounds of legal compliance and strategic matters, alongside the single objection from the appellant to the designation of the site as LGS. Crucially the Inspector notes that '*whilst the single objection may not be significant numerically, it is so in substance, partly evidenced by the fact that the appellants have also gone as far as to pursue this current appeal at inquiry in response to the proposed LGS.⁴*'

The Inspectors conclusion in this regard is directly applicable to the Noctorum Field appeal and the appellant's unresolved objections to the draft LGS allocation. The significance of the appellants objection is evidenced by the fact that they are seeking to pursue the appeal by way of inquiry.

The Inspector also provides commentary in relation to the consistency of the designation with the Framework and highlights that '*there are still questions to be answered as to whether the proposed LGS are all demonstrably special, amongst other things. As such, the Council's assertion that the LGS designations are sound and unlikely to change cannot be said with any great certainty at this stage. Moreover, whether the policy retains the same wording or not, my confidence in its current form is considerably reduced by the Council's concession that amendments may yet still be required to achieve the consistency with green belt policy that is required by paragraph 103 of the Framework⁵*'.

The Council's concession demonstrates that refusal on the grounds that the proposed designation of the application site and of other sites within the Borough which are proposed as Local Green Space ... on the basis of up-to-date local evidence specifically prepared to meet the requirements of paragraphs 101 to 103 of the National Planning Policy Framework is not only fundamentally flawed, but unjust and unreasonable.

The full extent of the Council's failure to apply principles of Paragraphs 101 – 103 of the Framework and the inconsistency of the proposed LGS designation with the Framework is set out within the Appellant's Regulation 19 Consultation, the Appeal Statement of Case and the Hearing Statement submitted to WLP Inspector's Matters Issues and Questions (MIQ) in respect of Matter 7, Question 10.

Therefore, it can be concluded that only limited weight is to be given to proposed Policy WS10.6(R) and to the identified conflict with it'. This conclusion is consistent with that set out within the Appellant's Statement of Case.

² Paragraph 43, Appeal Decision APP/W4325/W/23/3318758

³ Paragraph 33, Appeal Decision APP/W4325/W/23/3318758

⁴ Paragraph 33, Appeal Decision APP/W4325/W/23/3318758

⁵ Paragraph 34, Appeal Decision APP/W4325/W/23/3318758

The School therefore argue that the Councils can't legally proceed with their reasons for refusal, and this should be removed.

Prematurity

In the context of Prematurity and Paragraph 49 of the Framework, the Inspector found in reaching a decision on the Greenfield appeal that:

'In simple numerical terms, the appeal development of 39 dwellings cannot be considered to be so substantial that it would undermine the plan-making process. The appeal proposal represents a very small proportion of the total amount of new homes that the draft LP seeks to deliver, and the strategy to deliver those new homes would remain unaffected by allowing this appeal⁶'.

Again, in simple numerical terms, the Noctorum Field proposal, of 33 no. dwellings cannot be considered to be so substantial that it would undermine the plan-making process. The proposal represents an even smaller proportion of the total amount of new homes that the draft WLP seeks to deliver, therefore the strategy to deliver those new homes would remain unaffected by allowing this appeal.

The Inspector considers whether the proposal is so substantial in terms of importance to the proposed LGS designation. The Inspector notes that *'allowing the appeal would effectively only result in the removal of one LGS from the total of 48 proposed in the draft WLP'*. The proposed Grange Road designation (LGS-SA6.4) comprised of 2.73ha of land and was one of four proposed LGS designations within Settlement Area 6 – West Kirkby, Hoylake and Meols. The Inspector considered that *'the proposal would therefore have very limited impact on either the LGS designations and strategy or on the overall plan-making process; the development would not be so substantial as to undermine either'⁷.*

Whilst the Inspector notes that *'allowing this appeal would not create any binding precedent in respect of other proposed LGS'* and that *'it is a long established principle that each proposal must be decided on its own merits'* it is necessary to draw comparisons between the proposed Grange Road site and Noctorum Field in respect of the proposed LGS designation.

The Noctorum proposal would result in the removal of one more LGS designation from the total of 48 proposed. The proposed Noctorum designation (LGS-SA3.3) comprises of 2.24ha of land and is one of the 10 LGS designations proposed within Settlement Area 3 – Suburban Birkenhead.

On this basis, and when compared against the Grange Road LGS designation it can also be concluded the proposal would therefore have very limited impact on either the LGS designations and strategy or on the overall plan-making process. As such again the development would not be so substantial as to undermine either.

Overall the Inspector concludes that *'the proposal would not be so significant that to grant permission would undermine the plan making process by pre-determining decisions about scale, location or phasing of new development that are central to the emerging plan, with particular regard to proposed designated LGS. Whilst the proposal is in conflict with policy WS10.6(R), the weight to be given to the policy and to the conflict is limited⁸'.*

⁶ Paragraph 46, Appeal Decision APP/W4325/W/23/3318758

⁷ Paragraph 47, Appeal Decision APP/W4325/W/23/3318758

⁸ Paragraph 53, Appeal Decision APP/W4325/W/23/3318758

The Inspector's conclusions are considered to be of direct relevance to the first reason of refusal against the Appellant's proposal, and on this basis provides sufficient reasoning for the Council to remove the reason for refusal in the context of the appeal being progressed.

The Inspector also clearly distinguished the Greenfield appeal from the Leverhulme appeals⁹, noting that 'unlike this appeal for 39 units within the settlement, the Leverhulme appeals relate to a much larger scale of development of some 788 units on a number of green belt sites outside settlements, where the existing and proposed policy framework is different'¹⁰. The distinguishing difference is also applicable to the Noctourn Field appeal.

For the Council to retain the reason for refusal in light of the Inspector's consideration of prematurity and weight to be given to the proposed LGS designation within the WLP would be unjust and unreasonable and a cost application will be made against Wirral Council if this is not removed.

It is also necessary to note, that other recent appeal decisions¹¹ have confirmed that only limited weight is to be afforded to policies of the WLP which are referenced, as appropriate, within the Appeal Statement of Case.

The School are willing to test the Council's position in a full inquiry if required and if the first reason for refusal is not withdrawn.

Notwithstanding that, within the Council's comments on the request for Public Inquiry they note that *"this current appeal proposal was refused for only four reasons. One of those relate to the lack of a Section 106 Agreement, whilst a further reason relates to the lack of a bat survey – the appellant has recently submitted additional information in an attempt to overcome this reason prior to the appeal being submitted/assessed. Whilst the Council make no comments on the acceptability of this additional information, it suggests that this reason may be resolvable"*.

This suggest that matters three and four of the refusal are resolvable. The Appellant welcomes the Council's acknowledgement that these matters are resolvable.

Should the Council accept the findings of the Land of Grange Road Appeal Decision and remove the first reason for refusal, that would leave only the second reason (Provision of Sports Mitigation) for refusal as a main issue for the purpose of this appeal.

Yours sincerely,



Adam Buxton
Senior Planner
Planning, Regeneration, and Infrastructure

Direct Line: +44 (0)161 242 7056

Email: abuxton@lsh.co.uk

⁹ APP/W4325/W/22/3313729; APP/W4325/W/22/3313734; APP/W4325/W/22/3313737; APP/W4325/W/22/3313741; APP/W4325/W/22/3313743; APP/W4325/W/22/3313775 and APP/W4325/W/22/3313777

¹⁰ Paragraph 51, Appeal Decision APP/W4325/W/23/3318758

¹¹ Appeal Decisions APP/W4325/W/22/3299658 and APP/W4325/W/22/3312186