



**DLA Piper UK LLP**  
Victoria Square House  
Victoria Square  
Birmingham  
B2 4DL  
United Kingdom  
**DX** 13022 Birmingham 1  
**T** +441212813840  
**F** +44 (0) 121 262 5794  
**W** www.dlapiper.com

J U'Dell, Esq  
Mendip District Council  
Cannards Grave Road  
Shepton Mallet  
BA4 5BT

**Your reference**

2020/1686/OTS

**Our reference**

TPA/TPA  
UKM/105706585.2

5 October 2020

**By Email Only:** *consultations@mendip.gov.uk*

Dear Sirs

**PLANNING APPLICATION REFERENCE 2020/1686/OTS**

Land At 380089 153739 The Mead Rode Frome Somerset ("**Site**")

Application for Outline Planning Permission with some matters reserved (access considered) for the erection of up to 29 dwellings with associated access and landscaping works. ("**Development**")

We act for Rode Parish Council (our "**Client**"). This letter sets out our Client's representations in respect of the aforementioned planning application. For the reasons set out below, our Client considers that the Application should be refused on the ground of prematurity or, in the alternative, that determination of the Application should be deferred pending the outcome of the scheduled supplementary hearings in the Local Plan Part 2 ("**LPP2**") examination.

The Application should also be refused due to conflict with the adopted spatial strategy, unacceptable development in open countryside and the absence of sufficient information to demonstrate that the adverse impact on heritage assets is outweighed by public benefits.

Applicant's case on principle of the Development

The Applicant's case on the principle of the Development is set out at paragraphs 5.2 through 5.8 of the submitted 'Planning Statement'. This identifies the key importance of the adopted spatial strategy in the Mendip District Local Plan 2006-2029 Part 1: Strategy and Policies ("**LPP1**").

In particular, at paragraph 5.7 the applicant accepts that the Development of the Site would conflict with LPP1 policies CP1 and CP2 which set out the planned spatial strategy for housing, both in Rode and the district generally.

In these circumstances, section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that the determination of this Application must be made in accordance with the adopted policies unless material considerations indicate otherwise. This means that the starting point – by law – for the determination of this Application is that the Development does not comply with the development plan and must be refused.

The material considerations put forward in the Applicant's Planning Statement for deviating from this starting point may be summarised thusly:

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**UK switchboard**  
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- i. The local planning authority can no longer demonstrate a five year housing land supply, rendering LPP1 policies CP1 and CP2 out of date such that the 'tilted balance' in NPPF n.11(d) is engaged; and
- ii. The Site has been the subject of a draft allocation for housing as part of Main Modifications currently under consideration as part of the LPP2 examination.

This, it is said, is sufficient to deviate from the conclusion that the Development of the Site for housing would be contrary to the spatial strategy in LPP1 policies CP1 and CP2 and, accordingly, should be refused.

Our Client submits that the Applicant's case in this regard is fundamentally flawed as discussed below.

#### Prematurity

As a preliminary issue, our Client notes that paragraphs 4.7 through 4.12 and 5.7 of the Applicant's Planning Statement seek to make much of the Site's draft allocation for housing under the proposed Main Modifications to LPP2.

Our Client submits that this draft allocation should be given little or no weight in the planning balance. It is ultimately still in draft and there is no guarantee that it will be proceeded with. In particular, our Client notes that there are significant unresolved objections not only to this specific draft allocation, but also to the methodology adopted to identify the draft allocations across the board. In these circumstances, NPPF n.48(b) makes clear that this aspect of the emerging LPP2 should be given considerably less weight in the planning balance.

Moreover, these questions are all to be subject to supplementary hearings as part of the LPP2 examination. There remain open questions as to whether any of the draft allocations are in fact required under the LPP1 strategy and, if so, whether the 'area of search' is properly confined to the northeast of the district or should be addressing district-wide needs in the principal market towns and on already identified strategic sites.

Approval of the proposed Development before these matters are resolved would – in cumulation with the housing development that has already come forward in Rode – undermine the plan-making process by predetermining these key decisions as to whether allocations for new development are needed at all and, if so, where these should be and how potential sites should be 'ranked' in accordance with the spatial distribution strategy in LPP1 policy CP1.

These questions are of central importance to the emerging LPP2 which, for completeness, is also at a very advance stage of preparation without yet being formally adopted as part of the development plan. In these circumstances, NPPF n.49 is clearly engaged and the application should also be refused on the basis of prematurity.

In the alternative, it would not be appropriate to determine the application until these central questions have been resolved as part of the LPP2 examination process, following which the draft allocation for this Site may well be withdrawn altogether. The local planning authority is accordingly invited to defer determination of the

application until after the supplementary examination hearings have taken place and the examining Inspector has reported.

To the extent that additional allocations may be required in order to address the shortfall in housing land supply, the local planning authority has already committed to an early comprehensive review of both LPP1 and LPP2. Our Client submits that this is the appropriate avenue by which these strategic issues should fall to be considered, rather than piecemeal developments being permitted through speculative applications such as the present one.

#### Adopted spatial strategy

As set out above, the development plan for Rode includes LPP1 which was adopted in December 2014, and the saved policies of the Mendip District Local Plan (2002) ("MDLP"). This is supplemented by the Rode Neighbourhood Plan which was made in 2017.

Policy CP1 of the LPP1 sets out the spatial strategy for the district. This indicates that the majority of development will be directed towards the five principal settlements of Frome, Glastonbury, Shepton Mallet, Street and Wells. It continues that in the rural parts of the district new development that is tailored to meet local needs will be provided in *inter alia* Primary Villages, including Rode, but in the open countryside development will be strictly controlled, but may exceptionally be permitted in line with policy CP4.

Policy CP4 indicates that rural settlements and the wider rural area will be sustained in a number of ways. This includes planned provision for housing within the Primary Villages (including Rode) having regard to identified constraints and at a scale commensurate with the existing housing stock in line with policies CP1 and CP2. At this time there is no such planned provision within any adopted part of the development plan that would support the proposed Development of general housing.

Moreover, the explanatory text for policy CP1 makes clear that until reviewed in LPP2 the development limits set out in the MDLP for the various settlements will continue to apply. Accordingly, the Site lies outwith the development limits of Rode and, for policy purposes, is in the open countryside. This means that policy CP4.1 (quoted at paragraph 4.5 of the Planning Statement) does not apply to this proposed Development because it is not development "*within*" a Primary Village.

The proposed Development does not fall within any of the other permitted heads set out in policy CP4 and, accordingly, does not fall within the permitted exceptions to the spatial strategy provided for in policies CP1 and CP2.

With respect to that strategy, policy CP2 of the LPP1 sets out the provision of a minimum number of dwellings in line with a table, which includes 1,780 homes in the rural areas. It allows for allocations of land for housing outwith development limits "*through the Site Allocations process*" (i.e. LPP2) in line with the principle of proportionate growth guided by the explanatory text, informed views of the local community, and the contribution of development since 2006 towards identified requirements in each place, development with planning consent and capacity within the development limits.

The explanatory text indicates that two broad principles should be applied in distributing new rural development:

- a. that new development should be located in villages with certain key services, including the best available public transport services; and
- b. levels of new development in each place should be appropriate to that place's existing scale and have regard to environmental constraints.

The explanatory text states that village housing requirements are based on a proportionate growth of 15% of the existing housing stock, with a 2006 baseline, across the Primary and Secondary Villages. Following this approach the explanatory text gives a village requirement for Rode at 65 dwellings for the LPP1 plan period (2006 – 2029).

For the avoidance of doubt, our Client acknowledges that this is a target and not an absolute cap, but it is nevertheless the adopted development plan spatial strategy to secure proportionate development at the same level across the rural villages based on a considered planning judgement.

#### Spatial distribution strategy remains up-to-date

The foregoing demonstrates that the LPP1 spatial strategy consists of two main elements:

- i. **Quantum** of new housing development (policy CP2); and
- ii. **Distribution** of that new development throughout the district (policy CP1).

The Applicant makes much of the question of whether the local planning authority can demonstrate a five year housing land supply and puts forward the proposition – at paragraphs 5.4 and 5.8 of the Planning Statement – that the absence of same means the tilted balance in NPPF n.11(d) applies. This approach is legally flawed because it does not address the full criteria that must be satisfied in order to engage this NPPF provision.

This point was recently addressed by the High Court in Paul Newman New Homes Ltd v Secretary of State for Housing Communities and Local Government [2019] EWHC 2367 (Admin). The court held that n.11(d) should not be interpreted as if it were the different language of nn.14 and 49 of the previous NPPF: the difference in language must have been intentional. The 2019 NPPF must be considered on its own and construed without reference to previous versions.

Applying the principle in Wavendon Properties Ltd v Secretary of State for Housing, Communities and Local Government [2019] EWHC 1524 (Admin), the court held that the first task is to identify the 'basket' of policies from the development plan which constitute those most important for determining the application. The second task is to decide whether that 'basket', viewed overall, is out of date. The fact that one or more policies in the basket might themselves be out of date is relevant to, but not necessarily determinative of, that question. There is no requirement that the up-to-date basket of the most important policies should itself also constitute a body of policies sufficient for the determination of the acceptability of the application in principle.

Applying this in the present case, the only reason advanced by the Applicant for LPP1 policies to be considered out of date (so as to engage the tilted balance) is the absence of a five year housing land supply.

However, any shortfall in housing land availability or delivery relates to the planned **quantum** of housing in the district set out in policy CP2. It does not relate to or affect the soundness of the separate question of how that housing is to be **distributed** as provided for in policy CP1. Our Client submits that the spatial distribution strategy remains appropriate, sustainable, sound and up-to-date notwithstanding the question of whether a five year housing land supply can be demonstrated.

#### Tilted balance not engaged in any event

Even if both policy CP1 and CP2 were to be considered out of date, there does not appear to be any suggestion by the Applicant that any of the other policies listed as having greatest relevance – and therefore importance – in paragraphs 4.4 through 4.6 of its own Planning Statement are to be considered out of date. This means that, viewing that basket of most important policies as a whole, the vast majority remain up-to-date and the overall basket likewise remains up-to-date.

Consequently, the tilted balance in NPPF n.11(d) is not engaged in this case.

In these circumstances, the starting point for decision-making remains whether the proposed Development is consistent with the adopted development plan, including the vital spatial strategy for distribution of new housing set out in LPP1 policies CP1 and CP4. Whilst Rode is designated as a Primary Village, the available facilities are not of the same order as the designated main towns to which the majority of new housing development is to be directed. Under the plan-led system the approach is that there should be proportionate growth at the same level across all Primary and Secondary villages rather than concentrations at only a few.

According to the most recent housing completions monitoring figures, as at 1 April 2020, 81 dwellings have been completed or consented in Rode since 2006 . Consequently, the application should be considered against this background of completed and planned provision being delivered in Rode whereas many other settlements have not achieved their targets. If the Application is permitted, the Development would increase this to approximately 110 dwellings which is significantly more than the 65 dwellings identified as a target for the whole of the plan period to 2029, despite less than three-fifths of the plan period having elapsed.

Whilst the Applicant has cited the lack of a five year housing land supply, it is important to note that this relates to strategic housing needs across the district taken as a whole. It does not indicate any particular local need for new housing in Rode. To the extent that additional housing development must be brought forward to meet this strategic shortfall, policies CP1 and CP2 make clear that this will be directed to the principal market towns and identified strategic sites which are the most sustainable locations with the greatest access to employment opportunities and community facilities.

As set out in the made Rode Neighbourhood Plan, the identified need in Rode is for a very limited quantity of new senior housing for which there is a demonstrated justification and broad community consensus. Whilst our Client would be supportive

of appropriate proposals that seek to address this in accordance with the development plan, the present Application is not such a proposal. The Applicant has provided no evidence to demonstrate that there is any local need to justify the proposed provision of new general housing on the Site and, as such, the proposed Development is not "*tailored to meet local needs*" as required by policy CP1.

As the Site is located outwith the development limits of Rode and in the open countryside, the Development is contrary to policies CP1, CP2 and CP4. It would also increase the exceedance of the 15% guideline figure in LPP1. While it is clear that the housing number set out in LPP1 is a minimum, to increase the number further would lead to Rode growing at a disproportionate rate out of step with the overall spatial distribution strategy of the development plan. This conflict with the spatial strategy of the adopted plan should, of itself, be given significant weight in the planning balance and justifies refusal of the application. It is not outweighed by any other relevant material considerations.

#### Adverse impact on setting of heritage assets

LPP1 policy DP3.1 provides that applications must demonstrate an understanding of the significance of the heritage assets and their settings. Where a development would harm the significance of the assets or their setting the applicant must also demonstrate the overriding public benefits which would outweigh that damage.

The Site lies in the vicinity of numerous designated heritage assets and forms part of their setting. These are described in the Applicant's submitted 'Historic Environment Desk-Based Assessment' ("**Assessment**"). The findings of the Assessment are summarised at paragraph 5.10 of the Planning Statement which establishes that there would be less than substantial harm to the setting of the designated assets that requires mitigation.

The Assessment expands on this overall conclusion by examining, amongst other things, the impact of the Development on the setting of the Grade II\* listed Merfield House, Merfield Lodge (a non-designated heritage asset) and the Rode Conservation Area. Paragraph 6.2.4 of the Assessment provides that the Development has a residual potential for harm, but that this "*has been ameliorated by the proposed layout and design, which incorporates thoughtful and considered spacing and setback, additional planting and continuation of a 'village'-scale density akin to the neighbouring modern development*".

However, the Application is in outline with details submitted only in respect of access. Scale, layout and appearance are all reserved matters which means that only limited weight can be placed on the indicative plans submitted with the Application in order to conclude that the identified adverse impact on the setting of the heritage assets will – as opposed to might – be mitigated. Consequently, there is a lacuna in the Assessment whereby no evidence has been presented to demonstrate that the residual harm to the heritage assets is outweighed by demonstrable public benefits. The Assessment is for this reason flawed and means that the requirements of policy DP3 have not been satisfied. Planning permission should be refused on this basis.

There is also a more fundamental gap in the Assessment which means that the Application has failed to demonstrate a proper understanding of the significance of the

wider heritage setting of these assets. Whilst the Assessment – quite properly – considers the significance of each asset and its setting individually and assesses the potential impact of the Development on them, it does not consider how the overlapping settings of the heritage assets interact – this interaction itself forms a vital aspect of the settings and is a necessary part of understanding each asset's heritage significance in its historic, social and landscape context.

In the present case, the Site forms part of the wider setting of Merfield House, but also the immediate setting of Merfield Lodge and the Rode Conservation Area. The Assessment takes no account of this combined heritage significance. The key point is that the Site forms a crucial part of the transition from the built-up area within the village's settlement limits to the open countryside beyond. The open-ness of the Site and the absence of built development is an essential feature in understanding how these important heritage assets together display the historic development of the village and the mansion-house. The function performed by the Site in separating the identified assets – with a mixture of open fields and naturalistic park – is of high importance in understanding and appreciating the historically important, symbiotic relationship between the mansion-house, its 'estate' village and the wider rural hinterland.

The Assessment does not consider the cumulative significance of these overlapping settings at all and, consequently, should be given no more than limited weight. The Application does not comply with policy DP3 as a result and, accordingly, should be refused on this basis.

If you require any further information then please contact us using the details at the head of this letter.

Yours faithfully

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