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**Planning Appeal
Decision
APP/P0119/W/23/3323
836 Sodbury Road,
Wickwar: The Tilted
Balance: paragraph
11(d)(ii) of the NPPF in
practice**

17 January 2024



Meet the speakers



Suzanne Ornsby KC



Claire Nevin



Liz Fitzgerald, Barker Parry



Agenda

1. External Planning Consultant's Input
2. Leading Counsel's Input
3. Junior Counsel's Input
4. Q&A

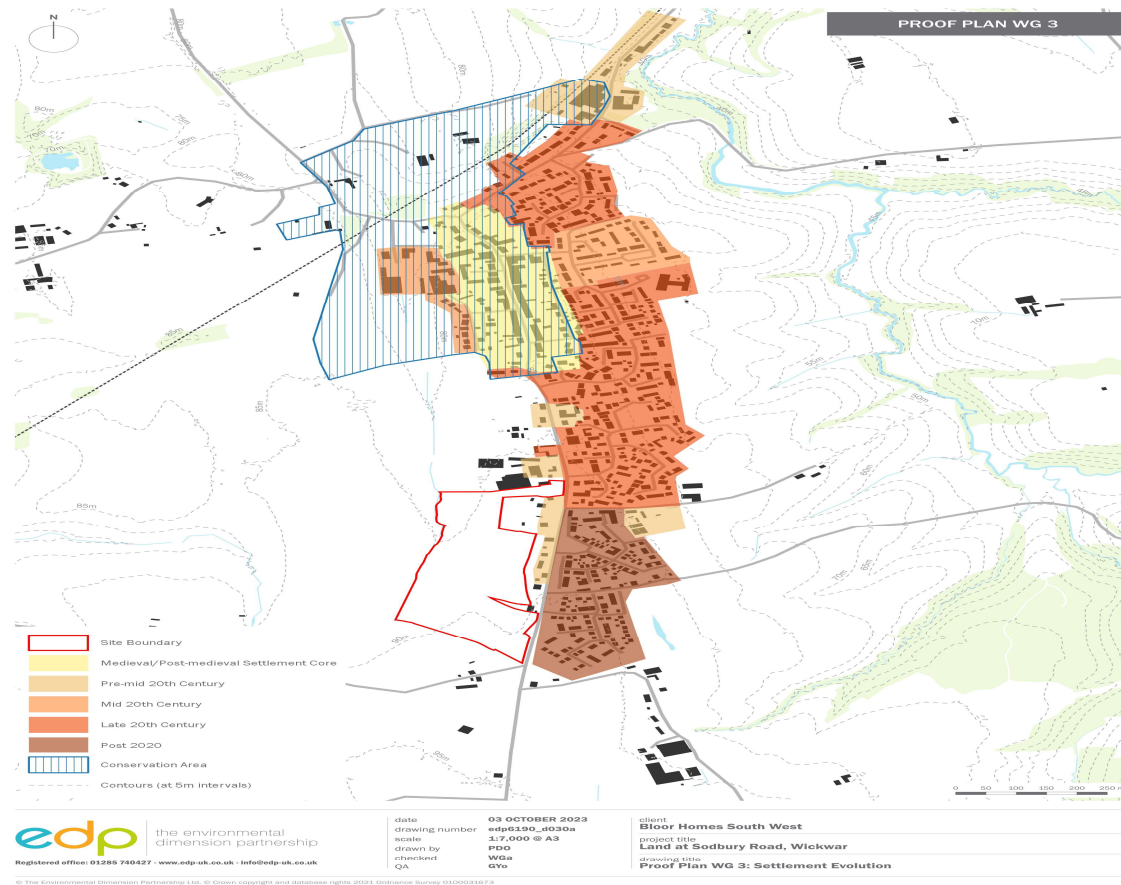


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The Appeal Proposal

Outline application with all matters save access reserved – 180 dwellings all plans illustrative (Framework Master Plan and Landscape Strategy – various iterations)









External Planning Consultant's Input

Summary of Two Putative Reasons for Refusal

- The adverse impacts of the proposal regarding heritage harm, increased reliance on car borne transport, landscape harm, conflict with the Spatial Strategy, loss of agricultural land and recreational pressure on the SSSI significantly and demonstrably outweigh the benefits of the proposal. Therefore, applying paragraph 11(d)(ii) of the NPPF, permission should be refused;
- The proposal fails to provide and/or secure adequate provision for necessary on-site and off-site infrastructure including affordable housing, public transport, off-site highway works, travel plan measures, education contributions and associated transport, Public Open Space, community infrastructure, a retail unit and self-build/custom build homes.



CIL Compliance

Limitation on use of planning obligations

122.—(1) This regulation applies where a relevant determination is made which results in planning permission being granted for development.

(2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

Reg 122 of The Community Infrastructure Levy Regulations 2010





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KEY

- Site Boundary (7.89 ha/19.51 ac)
- Residential Development (4.08 ha/10.08 ac)
- Area reserved for potential shop extents (0.15 ha/0.37 ac)
- Open Space including informal Recreational and Natural & semi-natural urban green space (3.46 ha/8.55 ac)
- Allotments (0.09 ha/0.22 ac)
- Provision for Children and Young People LAP & LEAP (0.11 ha/0.28 ac)
- PROW (public rights of way)
- Primary Roads
- Areas of boundary to be bolstered with additional Planting
- Existing Hedgerow
- Existing Trees
- Proposed Pumping Station
- 1 Proposed Access Points
- 2 Proposed dLAP (local area of play)
- 3 Proposed dLEAP (local equipped area of play)
- 4 Proposed attenuation basin
- 5 Proposed swale
- 6 Proposed Rain Garden
- 7 Opportunity to provide new PROW link
- 8 Opportunity for views to Holy Trinity Church
- 9 Allotments



Leading Counsel's Input

Starting Point

- Tilted balance
- Member overturn
- Significant advantage
- Issues to address
 - Car borne
 - Landscape
 - Heritage



The CMC

- No justification as to why no five-year supply
- Schedule agreed re five-year supply
- Remember where evidential burden lies in sites disputing
- 1300 less than claimed as against 164 Inspector considered should be deducted



Stick rather than twist

- Why dispute five-year supply – already agreed tilted balance engaged and housing attracted significant weight – what purpose did it serve?
- Why dispute what affordable housing need was and weight attached to it? Already agreed significant. What purpose did it serve?
- Why not agree £2.5m contribution? Eventually lost on this point that had significant impact on appeal
- Why adopt a different weighting system without making that clear to the LPA? What purpose did it serve?



Junior Counsel's Input

Pre-Inquiry

- After exchange of proof and rebuttals, prepared briefing notes on the main points of contention between the parties on each topic
- Ideas for cross-examination, identifying strengths and weaknesses
- Following the Inspector's indication that he was minded not to hear oral evidence on affordable housing, I researched the PINS procedural guidance on planning appeals and prepared a speaking note for leading counsel on why the affordable housing evidence required testing through oral evidence
- Drafted the opening submissions



Junior Counsel's Input continued ...

During the Inquiry

- Kept an almost verbatim note – important for XX and essential for closings
- Prepared a note for leading counsel on the history of funding for the bus service i.e. who decided to cease funding and when this decision was taken
- Prepared a research note for leading counsel on the powers and duties of local authorities to secure public transport services under Section 63(1)(a) of the Transport Act 1985
- Assisted with drafting a note for the Inspector clarifying the LPA's position on the proposed bus contributions in the light of Regulation 122 of the CIL Regulations
- Reviewed and discussed the heritage evidence with our heritage witness. Prepared a draft cross-examination on heritage for leading counsel
- Drafted closing statement (50 pages!)



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Questions?



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