

Barnsley MBC Local Planning Authority Statement of Case for  
APP/R4408/W/21/3277106 (2020/1180)

1. The statement below should be read in conjunction with the BMBC Officer Report for 2020/1180, Wildscapes Appraisal of the appellant's (Weddle and Baker) submissions (July 2021) as well as Professor Ian Rotherham's Proof of Evidence submission (August 2021). The aforementioned should be considered relative to the submission by the appellant of Urbana's Statement of Case (SoC) on behalf of Mr & Mrs Taylor (June 2021) as well as the PEA by Weddle Landscape Design (February 2020) alongside the Technical Note and Defra 2.0 Biodiversity Net Gain Assessment conducted by Baker Consultants (June 2021).
2. This statement is intended as a brief review of the LPA's updated position on the appealed application (2020/1180) following the submission of the Technical Note and Defra 2.0 Biodiversity Net Gain Assessment conducted by Baker Consultants on behalf of the appellant and their agent and the subsequent independent analyses conducted by both Wildscapes and Professor Rotherham requested by the LPA. The statement is not intended to review the contents of the Officer Report in greater detail, but it will respond to points of contention raised in Mr and Mrs Taylor's SoC and the revised position of the RfR.
3. In respect of point 4.4 within the appellant's SoC, the eight week decision deadline for the application was the 15<sup>th</sup> December 2020 and the application was decided on the 15<sup>th</sup> December 2020. Though information was outstanding on the application, this is not a pre-requisite to making a decision within the timeframes available to the LPA and no extension of time had been sought by the agent of the application despite the impending deadline. There is also no requirement to notify applicants or their agent's of an impending decision within the Town and Country Planning Act or any part of the Planning Practice Guidance (Para 019 – Ref ID – 21b-019-20190315). Given that the previous application for a similar development was refused permission (2020/0210) and that little new information had been provided with the subsequent application (despite the obvious need for submission of a BNG within the NPPF), the decision of the LPA should not have come as a surprise to the agent for 2020/1180. Indeed it should be highlighted to the Inspector that Baker Consultant's information had not been submitted at any time under application 2020/1180 and has only been provided at the appeal stage.
4. Paragraph 7.1.4 of the SoC states the following:

*With regard to the national and local policy included above, it is the view of the Appellant that the proposed development submitted to the LPA, in combination with the details submitted as part of this appeal, meets the criteria to approve the outline application. Specifically, the proposals include measures and proposals to offset the loss of trees as proposed through a combination of on-site enhancements and off-site contributions, of which further details are provided in this state*
5. The above, particularly the second sentence, has been disproven within both Wildscapes Appraisal and Professor Rotherham's Review in that evidence submitted by the applicant which reviews the Ancient Semi Natural Woodland (ASNW) characteristics of Bank End Road Escarpment is inconclusive given the need for further studies that could categorically determine the status of the woodland; notably those relating to soils, fungi, bryophytes, lichens, invertebrates or archaeology.

6. Indeed the LPA have themselves gone away to seek independent advice on this matter following the submission of Baker Consultant's Biodiversity Net Gain Defra 2.0 Metric (BNG) and their supporting technical note. The conclusions drawn by both the Wildscapes Report and that of Professor Rotherham on Baker's reports and the wider issues of the site itself is that, though it cannot be conclusively arrived at that the site is ASNW, the evidence is weighted heavily in favour of the site being ASNW. Such a designation infers that the site has irreplaceable biodiversity which a BNG Defra 2.0 metric is unsuitable to review and offset thereby rendering the exercise of Baker Consultants null and void. Importantly Professor Rotherham's review of the submission and status of the woodland concludes that the site is Planted Ancient Woodland which is equivocal to Ancient Semi-Natural Woodland (Paras 9.1 to 9.5). This information was not available under the original assessment, though it was the anticipated understanding of the LPA's Biodiversity Officer. In light of this new information, it is understood that Reason For Refusal 2 is partially invalid as a BNG has subsequently been provided by the appellant. However the principle of this reason for refusal is still determined to be valid as the LPA stand by the overall thrust of RfR 2 in that the application would undoubtedly harm the biodiversity of the site contrary to LP Policy BIO1 as the site is highly likely to be irreplaceable biodiversity habitat.
7. Notwithstanding the above, the conclusions drawn by both Wildscapes and Professor Rotherham significantly reinforce the conclusions of the LPA set out within the Reasons for Refusal, most specifically under RfR 1 and 3. Indeed the findings of both independent reports from Wildscapes and Professor Rotherham indicate that the LPA have reached a sound decision in respect of the site's designation and biodiversity value and they also agree with the LPA's decision to refuse permission in that it accords with National and Local Planning Policies and Guidance. Consequently the LPA would respectfully request that both of these reports should be afforded significant weight by the Inspector when making their decision.
8. In respect of the submission of the BNG by the appellant and the supporting note, it is the view of the LPA that this should be afforded limited weight given its unsuitability to offset an irreplaceable habitat while it only serves, as highlighted by Wildscapes, to create further questions as to how the woodland would be effectively managed and improved given the lack of information in respect of the condition criteria for achieving the standard of 'fairly good' set out in the PEA.
9. In respect of the SoC evaluation of RfR 4 in paragraphs 7.2.2 and 7.2.3, the claims made by the appellant's agent in respect of the outline nature of the proposal and the impact of visual amenity not being quantifiable at this preliminary application stage is confused. The Officer Report makes clear reference to the removal of trees delineated within the red and blue line boundaries where the obvious impact upon the visual amenity of the street would be affected irrespective of the design of the development itself. This is an important distinction which the agent has missed as the visual amenity aspect of the outline proposal is separate from the reserved matter of 'appearance' of the development itself. It is the view of the LPA that the visual amenity of the Greenspace would be negatively affected to the detriment of the wider streetscene and an RfR based on visual amenity is relevant because the outline proposal seeks to remove trees within that Greenspace. Indeed RfR 4 is therefore not a refusal based on the 'appearance' of the development itself, which is a reserved matter, but on the impact of the development on the existing landscape character and appearance of the trees within it which are themselves a high value local asset protected by a TPO.

10. In respect of the 'innovative design approach' (cited in SoC 7.2.3) required for the proposal to offset harm to the amenity of the area visually, there are questions about the viability of the proposal if it needs to have a complicated design requiring separate expertise to be brought in to achieve the suggested approach. The LPA would query whether there would be any significant financial reward for management of the woodland as such a management plan (which outlines the costs attributed from the anticipated development of 2no. dwellinghouses) is yet to be disclosed in any format and undoubtedly a more 'innovative' design approach would leave any residual financial reward for the woodland significantly depleted than a standard bricks and mortar development.
11. The LPA can demonstrate a Five Year Housing Land Supply of allocated sites that have been subject to close scrutiny under Examination in Public and found to be sound by a Planning Inspector on behalf of the Secretary of State. The proposed site is a non-allocated windfall site that is unsuitable and inappropriate for development, hence the utilisation of LP Policy H4 as a Reason for Refusal. Indeed the limited public benefit of 2no. dwellinghouses when residential land supply is sufficient does not overcome the loss of an irreplaceable habitat. Indeed it would be highly likely that irrespective of the status of the woodland or the housing land supply, that a development of such limited benefit would overcome the loss of unprotected mature trees. Given that the woodland is both protected by TPO, is a high value Greenspace and has significant evidence supporting its ASNW status, a decision to approve planning permission for 2020/1180 would have been perverse.



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12. To conclude, it is the view of the LPA that significant weight should be apportioned to the findings of the reports submitted by both Wildscapes, Professor Rotherham and Baker Consultants. Taken as a whole, these reports highlight the importance of the site as a relict Ancient Woodland that requires protection from development. The LPA are cognisant of the benefits to the remaining woodland, had the development been approved, however, as set out by Wildscapes, there are multiple alternative strategies with which to improve the quality of the Greenspace without requiring an invasive development to generate income and investigations into these approaches has not been intimated to the LPA by the appellant or their agent. Fundamentally the scheme is harmful to biodiversity, the value of the Greenspace designation, the visual amenity of the area and generally contrary to National and Local Planning Policies set out within the Reasons for Refusal. It is not considered appropriate for a development of this size to be sited in this location and the fact that the site is not and never has been allocated for housing is testament to this. The LPA are cognisant that the technical information pertaining to the site has moved on since the original decision through the submission of Baker Consultant's BNG and Technical Note which partially alter the validity of RfR 2. Nevertheless, the LPA are satisfied that all of the RfR supporting refusal of planning permission remain pertinent, sound and logical in respect to the evidence that was available at the time of the decision and remain as such under the submission of further supporting information at the appeal stage.