



**KenParke**  
PLANNING CONSULTANTS

Anniversary House, 23 Abbott Road, Bournemouth, BH9 1EU  
Tel: (01202) 538800 Fax: (01202) 538808  
E-mail: info@kppcltd.co.uk  
www.kenparkeplanning.com



**STATEMENT OF JUSTIFICATION MADE IN RESPECT OF ANNEXE K  
OF THE PROCEDURAL GUIDE FOR PLANNING APPEALS (ENGLAND)**

BY

***Cicero Estates***

AGAINST THE DECISION OF

***Dorset Council***

TO

**Refuse to Grant Planning Permission**

FOR

***Development of Land Comprising the Erection of 72 No. Dwellinghouses with Associated  
Access and Public Highway Improvements, Open Space and New Community Facilities***

AT

***Land North of Crown Road, Marnhull DT10 1HW***

PREPARED BY

**ADAM BENNETT BA(HONS)**

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## 1.0 Introduction

- 1.1 The following statement sets out the Appellant's justification for why the appeal should be dealt with by way of Public Inquiry procedure. The details below are provided in response to the criteria set out within Annexe K of the Procedural Guide to Planning Appeals (England) (2021).
- 1.2 The description of the development and Council's reasons for refusing to grant planning permission are set out at *Sections 1 and 2* of the Appellant's Statement of Case in respect of Grounds of Appeal.
- 1.3 Copies of the Decision Notice, and all relevant documentation which were submitted to the Council by the Appellant are submitted with this appeal. In accordance with the duty to co-operate, negotiations and discussions took place between the Council and Appellant during the course of the determination process; all relevant correspondence will be provided to for the Inspector's attention.
- 1.4 Whilst documentary evidence is to be provided it is necessary for the evidence of both parties to be clearly explained and to be questioned and tested by an Advocate and the Inspector.
- 1.5 In accordance with the Council's reasons for refusing to grant planning permission; the issues pertinent to the determination of this appeal are:
- (1) Whether the Council can demonstrate a 5-year housing land supply and whether its policies for the delivery of housing are out of date as a result of persistent under delivery with respect to its housing needs.
  - (2) Whether the Council has critically under delivered with respect to its affordable housing needs.
  - (3) Whether the application site is sustainably located, and the proposals would represent sustainable development;
  - (4) Whether the development will result in harm to landscape character to a degree which cannot be mitigated;

- (5) Whether the development will result in harm to designated heritage assets which is not outweighed when considered in the heritage balance;
- (6) Whether the development will result in harm to protected species and ecological interest in a manner that cannot appropriately be mitigated or compensated for;
- (7) The requirement for a s106 legal agreement and whether the contributions sought are justified; and,
- (8) Whether the impacts of the development significantly and demonstrably outweigh the public benefits of the development so as to displace the presumption in favour of sustainable development when considered in the frame of the tilted balance.

1.6 Within the context of the above, the principal evidence of the two parties which requires questioning is:

1. The weight to be attributed to the Council's policies for the supply of housing in the planning balance and whether the tilted balance advocated by Paragraph 11 of the Framework applies, having regard for:
  - a. Whether the Council can demonstrate a 5-year housing land supply;
  - b. Whether the Council has shown persistent under delivery of housing; and,
  - c. Whether the Council has critically under delivered on its affordable housing requirements, in part as a result of the shortfall in housing delivery.
2. Whether the appeal site is a sustainable location for housing development, having regard for:
  - a. The suitability of Marnhull settlement to accommodate development and its position within the Council's settlement hierarchy;
  - b. The accessibility of services and facilities from the site;
  - c. The availability and frequency of public transport opportunities and sustainable transport options; and,
  - d. The enhancements which would be delivered by the proposed development.

3. The impacts of the proposed development upon local landscape character, and whether these are capable of being mitigated such that there will not be unacceptable landscape harm, having regard for:
  - e. The baseline character and importance of the local landscape;
  - f. The sensitivity of the landscape to change;
  - g. The magnitude of impact which would result from the proposed development; and,
  - h. The landscape enhancements proposed and whether this would mitigate the impacts of the development.
4. The impacts of the proposed development upon designated heritage assets within the vicinity of the site, including the Conservation Area, and whether the development will result in harm which cannot be outweighed by the public benefits of the development considered in the heritage balance, having regard for:
  - a. Assessment and understanding of the significance of the heritage assets that may be affected by the development;
  - b. The relationship between and degree to which the appeal site contributes towards the significance of the heritage assets;
  - c. Consideration of the level of harm which would be caused to the designated heritage assets, having regard for their significance and the specific impacts of the development upon that significance;
  - d. The weighting of the impacts and public benefits in the heritage balance.
5. Whether or not when considering all of the public benefits and impacts of the development within the planning balance, having regard for application of the tilted balance, the impacts of the development significantly and demonstrably outweigh the public benefits of the development so as to displace the presumption in favour of sustainable development and whether thus planning permission should have been granted.

## **2.0 Appeal Procedure**

- 2.1 The Appellant requests that the appeal be dealt with by way of Public Inquiry in order to allow the Appellant through an advocate to formally question and

test the evidence submitted. The Inspector's judgement in this appeal will be cast over the opposing interpretation of the two parties relating to the impacts of the development having regard the application and interpretation of the policies of the Local Development Plan and Framework. In accordance with Annexe K of the Planning Inspectorate Procedural Guide (July 2018), the procedure which provides the appropriate forum for testing and examination of the evidence by way of questioning by an advocate and the Inspector is by way of Public Inquiry. The Appellant has fully justified their request for the Public Inquiry Procedure within the ensuing paragraphs.

- 2.2 The Appellant will wish to interrogate the Council's housing land supply and both its overall housing and specific affordable housing delivery. This will require the preparation and giving of highly technical data which will need to be questioned and interrogated. The Appellant will be seeking to demonstrate that the council has critically under delivered on its housing needs and its policies for the delivery of housing are out of date and should be attributed very limited weight in the planning balance. The Applicant will be seeking to call professional witnesses on this matter.
  
- 2.3 The issues relating to the impacts of the development upon landscape character and heritage assets are complex and rely upon the professional opinions of experts in their field who will need to justify their positions having regard for their detailed and technical evidence. It is essential that these professional opinions can be interrogated so that the parties can explain their reasoning and justify their position with the ability to cross examine the evidence.
  
- 2.4 The Council has not adopted the Community Infrastructure Levy (CIL) and thus continues to rely upon individual financial contributions, to be secured by way of s106 legal agreement, being secured to ensure that the infrastructure requirements of a development can be appropriately delivered. The contributions sought by the Council must be expressly justified in accordance with the direction of the PPG and Framework. The contributions sought will need to be examined and whether they meet the tests defined by National Policy formally questioned.

- 2.5 The case relies on the correct interpretation of, and assessment of the weight to be applied to, the policies of the Local Development Plan and Framework, having regard for the judgements of the courts on such matters.
- 2.6 Any evidence or statements which the Council submit in relation to the application of the Development Plan and Framework, its process of assessment of the impacts of the development and its weighing of the issues in the planning balance, will need to be tested by way of questioning by an advocate and for the Appellant to have the right to cross-examine the evidence.
- 2.7 The evidence of the Appellant will be complex and of a detailed nature. It is likely that the Council's evidence will also be of a complex and detailed nature. The evidence of both parties will need to be questioned and appropriately tested and will be presented by a series of professional witnesses to deal individually with each technical matter disputed. The Appellant has instructed Counsel during the course of proceedings having regard for the complex nature of the matters disputed and on the basis that technical submissions of the parties will need to be discussed and questioned. The parties will wish for their professional witnesses to present their cases supported by an advocate.
- 2.8 As cited; the Planning Inspectorate will be well aware of the criteria for determining the appropriate procedure for planning appeals as set out in Annexe K to the Procedural Guide – Planning Appeal (England) (July 2018). The questioning and cross examination of the complex evidence and the application and interpretation of the policies of the Local Development Plan and Framework is essential to the determination of this appeal; having regard for the matters contested.
- 2.9 The Council has not adopted a reasonable or justified approach in considering the Appellant's evidence. The Council has offered no clear evidence in order to justify its assumptions and dispute the Appellant's position; the Council has also demonstrated inconsistency in its approach. The Council's technical submissions as to why the Appellant's technical submissions should not be followed needs to be tested by way of questioning. The Appellant will be putting

forwards a detailed and robust case and will as a matter of necessity be challenging and seeking justification for the Council's position.

- 2.10 It is inevitable that questioning by way of advocates and the Inspector will be required in order to enable the evidence to be appropriately tested and thus justifies the need for a formal event and in this case the Public Inquiry Procedure. It is only through direct questioning that flaws in the approach of the consideration of the technical evidence and impacts of the development will be exposed.
- 2.11 The application attracted a significant level of public interest, with a disproportionate number of public comments received in respect of the application, compared with a typical application considered by the Council. The nature of the application for housing led development is locally contentious and there will be a significant public desire to participate in the appeal proceeding.
- 2.12 In summary of the above, the matters contested in this appeal and the need for testing of the evidence manifestly fail to meet the determining criteria for the Written Representations procedure. It is clear when applying the criteria against an accurate description of the issues at hand that the appropriate procedure for this appeal is a Public Inquiry.