Your Ref: **24/02108/OUT**

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BY EMAIL ONLY: lynn.parker@shropshire.gov.uk

Dear Ms Parker,

LETTER OF OBJECTION – PATSHULL ROAD, ALBRIGHTON, SHROPSHIRE (THE "SITE")

I am writing on behalf of my Client, Albrighton Village Action Group, concerning planning application 24/02108/OUT and particularly in response to Marron's letter of 2 August 2024, addressing the potential impacts of the National Planning Policy Framework (NPPF) Consultation and the release of the "Building the Homes We Need" Written Ministerial Statement (WMS) on the above application. This letter seeks to address some misleading statements and omissions in the Marron's letter.

Before we turn to the content of the consultation draft NPPF itself, I wanted to set out a few principles about how the consultation and WMS fit within the decision-making process at present.

As you are aware, the English planning system is fundamentally plan led. As set out in s.38(6) of the Planning & Compulsory Purchase Act 2004, all planning applications need to be determined "in accordance with the plan unless material considerations indicate otherwise".

Whilst the currently adopted version of the NPPF, the consultation draft NPPF, and the WMS are all capable of being material considerations, the weight to be given to each of them is a matter for the decision-maker.

When determining the weight to be attributed to each of the above, you may find the following points helpful:

- Until a new version of the NPPF is formally adopted as policy, the currently adopted version remains national planning policy and the version against which the current application should be assessed.
- Marrons are correct about the potential weight to be attributed to the WMS. As the Court of Appeal stated in *R v Cala Homes (South) Limited v Secretary of State for Communities and Local Government & Anr* [2011] EWHC 97 (Admin) *"a prospective change to planning policy is capable of being a material consideration for the purposes of sections 70(2) of the 1990 Act and 38(6) of the 2004 Act. The weight to be given to any prospective change in planning policy will be a matter for*

the decision-maker's planning judgment in each particular case. In principle, the means by which it is proposed to effect a change in policy, by new legislation, by amendment under existing legislation, or by administrative action such as the publication of a new Planning Policy Statement (PPS), goes to the weight, not the materiality, of the prospective change."

- This also applies to the consultation draft NPPF. However, as those policies are subject to consultation and likely to change, the weight that can be attributed to them at present is likely to be limited.

Many of the points made in Marron's letter, particularly those related to the likely need to review green belt boundaries or accommodate significant additional housing needs, are best addressed through the local plan process – which is currently at examination. Given the proposed transitional provisions in the consultation draft, the current local plan will continue to be examined under the version of the NPPF under which it was submitted. This has been confirmed by the Planning Inspectorate in a note to the Council dated 19 August 2024 about the Local Plan Examination. Any additional site allocations required, in the event that the consultation draft NPPF has been adopted, would need to be dealt with by way of a future local plan review or as part of the next iteration of local plan production. Seeking to deal with them now, through a planning application of this size and scale, is premature.

Turning now to two specific aspects of the Marron's letter that are potentially misleading.

Approach to development of land within the Green Belt

The Marrons letter has omitted aspects of the consultation draft NPPF's approach to "Grey Belt" land, which are highly relevant. In particular to the question of whether the needs of the local population of Shropshire are best served by dealing with potential release of further land from the Green Belt now, or whether it is better to wait, and deal with additional releases through the adoption of a future local plan or as part of a future local plan review – when a revised NPPF has been adopted.

In particular, the letter omits a key requirement in paragraph 152 of the consultation draft NPPF (underlined below for emphasis):

"152. In addition to the above, housing, commercial and other development in the Green Belt should not be regarded as inappropriate where:

a. The development would utilise grey belt land in sustainable locations, the contributions set out in paragraph 155 below are provided, and the development would not fundamentally undermine the function of the Green Belt across the area of the plan as a whole; and
b. The local planning authority cannot demonstrate a five year supply of deliverable housing sites (with a buffer, if applicable, as set out in paragraph 76) or where the Housing Delivery Test indicates that the delivery of housing was below 75% of the housing requirement over the previous three years; or there is a demonstrable need for land to be released for development of local, regional or national importance.
c. Development is able to meet the planning policy requirements set out in paragraph 155."

Paragraph 155 of the consultation draft NPPF states:

"155. Where major development takes place on land which has been released from the Green Belt through plan preparation or review, or on sites in the Green Belt permitted through development management, the following contributions should be made:

a. In the case of schemes involving the provision of housing, at least 50% affordable housing [with an appropriate proportion being Social Rent], subject to viability;
b. Necessary improvements to local or national infrastructure; and
c. The provision of new, or improvements to existing, green spaces that are accessible to the public. Where residential development is involved, the objective should be for new residents to be able to access good quality green spaces within a short walk of their home, whether through onsite provision or through access to offsite spaces."

This is supported by the introduction of a new Paragraph 157 and Annex 4 – which set out the specific viability criteria that should be applied to sites brought forward through Green Belt release.

Due to the significance of the proposed Annex 4, I have appended it, in full, at the end of this letter.

It is clear, both from the WMS and the consultation draft NPPF, that any Green Belt release anticipated under the consultation draft NPPF, whether through development management or through strategic plan reviews, is intended to be accompanied by significant amounts of affordable housing – some 30% more than the above application currently proposes – and significant amounts on infrastructure provision. Crucially, applications that transact above a locally set benchmark land value, which are not able to meet these requirements are directed to be refused unless other material considerations indicate otherwise.

There is absolutely no guarantee that the application before the Council would meet these requirements – not least as it presently only offers 20% affordable housing and the Council has not been provided with any evidence of the underlying commercial arrangements, for example, the price paid by the applicant to purchase the land or the overall expected income from the development and, as such, potential viability cannot be assessed. .

In any event, any green belt release conducted before the consultation on the revised NPPF is concluded, and the revised draft takes effect, is likely to result in a lower provision of affordable housing being secured, and less infrastructure provision, than would be required under the anticipated policy regime.

Strengthening the Duty to Cooperate and Unmet Housing Needs

Marrons' commentary on the proposed amendments to the requirements to co-operate with neighbouring authorities over issues such as unmet housing need, fails to recognise that if adopted, these policy amendments (along with the requirements to review Green Belt boundaries), will apply to *all* local planning authorities in England, including the Black Country and all of its neighbouring local planning authorities – not just Shropshire.

It is far too early to tell how the impact of the changes will be felt on the ground, nor how any unmet needs would need to be distributed between authorities within a specific area. These types of issues require a great deal of consideration, both within the Council itself and with its neighbouring authorities. They are best addressed at a strategic level and, in any event, through the local plan process.

Making any decisions about potential Green Belt release, on a site-by-site basis, before the outcome of the current NPPF consultation is known, and outside of the local plan process, would be at best premature and at worst, may well undermine the Council's ability to take a more strategic approach to resolving these issues, once the proposed mechanisms for strategic planning have been put in place.

As set out above, there are material flaws in the Marron's letter of 2 August 2024 and, as such, we would suggest no weight is given to it in the decision making process unless the above points are satisfactorily addressed.

Yours sincerely

NICOLA GOOCH
Partner
For and on behalf of
IRWIN MITCHELL LLP

Contact Details

Annex 4: Viability in relation to Green Belt release

1) To determine land value for a viability assessment, a benchmark land value should be established on the basis of the existing use value (EUV) of the land, plus a reasonable and proportionate premium for the landowner. For the purposes of plan-making and decision-taking, it is considered that a benchmark land value of [xxxx] allows an appropriate premium for landowners. Local planning authorities should set benchmark land values informed by this, and by local material considerations.

2) When determining planning applications, if land released from Green Belt is transacted above the benchmark land value and cannot deliver policy-compliant development, then planning permission should not be granted, subject to other material considerations.

3) Where policy compliant development can be delivered, viability assessment should not be undertaken, irrespective of the price at which land is transacted, and higher levels of affordable housing should not be sought on the grounds of viability.

4) Where land is transacted below the benchmark land value but still cannot deliver policy compliant development, it is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. Where a viability negotiation to reduce policy delivery has been undertaken, a late-stage review should be conducted to assess whether further contributions are required.