**RE: LAND TO THE SOUTH OF RINGWOOD ROAD, ALDERHOLT**

**OPENING SUBMISSIONS**

**On behalf of Dorset Council**

**25June 2024**

**Introduction**

1. These opening submissions on behalf of the local planning authority Dorset Council (“the Council”) address the Main Issues in the appeal, as identified by the Inspector,[[1]](#footnote-1) together with the other issues arising in the Reasons for Refusal, in order to provide an overview of the Council’s case.
2. There are many unresolved issues in the appeal, as the Inspector has noted. Notwithstanding the fact that the appeal site is not allocated, and notwithstanding the scale and complexity of the proposal, the Appellant opted not to take formal, paid, pre-application advice prior to the submission of the planning application, which was available to them. The Council determined the application without granting any extension of time, on the basis that this was its general policy where the pre-application process had not been followed.[[2]](#footnote-2) Despite the very many unresolved technical issues, the Appellant brought an appeal rather than re-submit its application. It attempted negotiation between the refusal and the bringing of an appeal (although at that point the Council was not seized of any application). It brought its appeal on the basis of what it understood to be an entitlement to “negotiations with the LPA on many of the matters in the reasons for refusal”.[[3]](#footnote-3) The Appellant’s evidence has sought to blame others for the predicament it is in in terms of the extent of unresolved issues, but the real cause is the course it set for itself. As the Inspector will have seen from the evidence, from correspondence and from discussions at the CMC, though the Appellant ought to have been in a position to rely on the information available as at the date it brought its appeal,[[4]](#footnote-4) it has submitted new and extensive additional analysis and information since then. Even so, numerous well-founded objections and concerns remain.
3. The appeal proposal is the wrong size, in the wrong place. It is located next to Alderholt, a relatively remote Dorset village between Salisbury and Bournemouth. Alderholt consists of just over 1,300 households[[5]](#footnote-5). The scale of the appeal proposal can be understood in that context: it would more than double the number of households in the village. The Appellant’s transport evidence says that in transport terms, Alderholt is “not sustainable”.[[6]](#footnote-6) This is reflected in its identification as “a rural service centre” (fourth tier) in the adopted settlement hierarchy, a hierarchy settled on the basis of which settlements “provide the best access to services, facilities and employment”.[[7]](#footnote-7)
4. At the time the appeal was brought in November 2023, a large scale development “option” at Alderholt had been considered in the then emerging Draft Dorset Council Local Plan (“DDCLP”). But that local plan process is not being progressed and instead a new plan is being produced, as a new style local plan.[[8]](#footnote-8) Hence Dorset is agreed not to be a “4-year” authority in housing land supply terms, and hence the agreement between the parties that “no weight” can be applied to the DDCLP.[[9]](#footnote-9) The Appellant now recognises that KS2 offers no policy support for its proposal.[[10]](#footnote-10) It follows that the strategic scale development at Alderholt proposed in the appeal application has no spatial policy support whatever. Even on its own terms, in order to claim compliance with national policy, the Appellant has had to contend that it is sufficient to make a location “as sustainable as possible”, and does not engage with its real spatial implications (per NPPF/74 and 109). This is dealt with further in relation to Main Issue 2.
5. The remainder of these submissions is structured as follows:
	1. Main Issue 1
	2. Main Issue 2
	3. Highway impacts
	4. Habitats/ecology
	5. Local centre
	6. Education

**Main issue 1: The significance of the proposal in meeting housing need, having regard to the current supply of housing land and the age of the local plan**

1. It is agreed that there is a five year housing land supply shortfall in East Dorset[[11]](#footnote-11) with a difference between the parties as to the precise extent of that shortfall (just under 3.9 years v. 3 years[[12]](#footnote-12)).The appeal proposal could potentially make a substantial contribution to the housing land supply of former East Dorset over the longer term.[[13]](#footnote-13) However, the Council has queried the likelihood of substantial housing completions in the short term.[[14]](#footnote-14)
2. As to the difference between 3 and just under 3.9 years supply, the Appellant takes issue with the Councils assessment on two bases. First, it objects to the Council capping its Local Housing Need. Second, on the supply side, it disputes the deliverability of 218 homes at How Road, New Road Parley and the Council’s windfall allowance.[[15]](#footnote-15) These narrow points will be considered via the round table session. In short: the use of a cap follows from a straightforward application of the guidance on use of the Standard Method;[[16]](#footnote-16) the 124 homes attributable to Howe Road and New Road Parley are deliverable[[17]](#footnote-17) and there has been no double counting of windfall sites. [[18]](#footnote-18)
3. The key contentious issue arising in relation to main issue 1, and RfR 4, is the fact that Appellant has failed to offer an appropriate level of affordable housing, contrary to Policy LN3 of the Christchurch and East Dorset Local Plan Part 1[[19]](#footnote-19) in that it has failed to appropriately justify a reduction from 50% to 35% on viability grounds. It is agreed that a request for an affordable housing level lower than 50% must be justified by “clear and robust evidence” subject to verification.[[20]](#footnote-20) The basis for the Appellant’s assumptions has varied and the Council has sought independent verification of them. [[21]](#footnote-21) As the Inspector will have seen, the Council has commissioned and disclosed its own Red Book valuation report.[[22]](#footnote-22) For the reasons set out by Mr Verdi, the scheme can provide well in excess of the 35% offered. Varying the assumptions so as to reflect that Red Book valuation plus a sensible range of inputs indicates that e.g. 40.6% affordable housing could be provided.[[23]](#footnote-23) Mr Verdi’s evidence is to be preferred on each of the three inputs still in dispute: professional fees, developer’s profit on market housing, and the benchmark land value.[[24]](#footnote-24)

**Main Issue 2: Whether the development would be appropriate in this location having regard to: its relationship to Alderholt and other settlements and their facilities; its connection to the highways network; its relationship to the AONB; the local plan spatial strategy; and the emerging Neighbourhood Plan.**

1. The Council refused planning permission on the basis that the proposal is for significant development contrary to the settlement hierarchy, which is intended to direct development to the most sustainable locations, as per the hierarchy established by KS2. Its objection is not only that there is imbalance in terms of the scale of development/facilities provided when compared to those contemplated for rural service centres in KS2, but that it is not “well-located” (e.g. NPPF/74) as defined locally in the adopted plan. That is what the Council understands to be the import of the Inspector’s preliminary conclusion, and with respect, that conclusion is clearly right (irrespective of whether there is a precise match in terms of the concession then made). Further, there is no merit in the contention implicit in the Appellant’s transport and planning evidence that national policy is satisfied by some measure of improvement. Instead, NPPF/109 is focused on ensuring that when significant development is proposed, its location is properly to be judged “sustainable”, rather than e.g. “more sustainable than it was”. [[25]](#footnote-25)
2. Under the general heading “transport”, but per issue 10(i): the connections to the highway network (and the impact on the highway), are addressed in the Highways Topic Paper. As requested, this does not deal with the subject of whether the development would be appropriate in this location.[[26]](#footnote-26) The list of matters in dispute remains extensive,[[27]](#footnote-27) although a new transport assessment, based on revised trip rates, was submitted in May 2024 and has had to be reviewed during the course of the appeal.[[28]](#footnote-28) Inquiry time has been budgeted so as to allow consideration of these matters. One theme underlying the differences between the parties is what must be settled now, and what can sensibly be left to a later stage. The Council’s basic position on this is that if there is an obvious problem, and no obvious solution, the matter should be dealt with now.
3. To the extent an assessment *can* be made,[[29]](#footnote-29) issues in the evidence provided by the Appellant in both the TA and TAA, and a lack of certainty about delivery of the offsite works fails to demonstrate the proposal would not have a residual cumulative impact on the highway network or unacceptable impact on highway safety.[[30]](#footnote-30)
4. Furthermore, the proposal would bring additional traffic and recreational activity into the AONB, resulting in a loss of tranquillity as set out in RfR 8.[[31]](#footnote-31) The legal obligation is to seek to further the purpose of conserving and enhancing the natural beauty of the AONB.[[32]](#footnote-32) The high levels of tranquillity within the AONB are an important element of its natural beauty.[[33]](#footnote-33) The effect of recreational activity is a more minor issue, but has not adequately been addressed.[[34]](#footnote-34)
5. In relation to the Emerging Neighbourhood Plan, the last day of consultation is today (25th June) and a further update will be provided once the consultation responses have been reviewed.

**Issue 10(ii) Whether the potential ecological impact of the scheme on protected habitats would be adequately mitigated.**

1. It is not in dispute that, absent mitigation, the proposal is likely to have an adverse impact on the integrity of the Dorset Heathlands SPA/Ramsar, Dorset Heaths SAC, New Forest SPA/SAC/Ramsar and River Avon SAC and Avon Valley Ramsar.[[35]](#footnote-35) The Council refused permission (RfR 4) because it did could not rule out an adverse effect on site integrity[[36]](#footnote-36). It is not alone in that. Natural England – a statutory consultee whose views must be given great weight[[37]](#footnote-37) – reached the same view.[[38]](#footnote-38) RfR4 was therefore entirely appropriate. On appeal the Appellant has now sought to bolster its position, submitting additional information for the HRA (“AIHRA”)(02 May 2024)[[39]](#footnote-39) and various responses to the objections made.[[40]](#footnote-40) The Appellant’s mitigation strategy is set out in Table 7.2 of the Ecology Topic Paper.
2. It appears that there may be some difference between the parties in relation to the legal requirements for an appropriate assessment. In Dr Brookbank’s rebuttal para 1.9, she extracts a part of the Court of Appeal’s decision in ***R (Boggis) v Natural England*** [2009] EWCA Civ 1061 [37] which *might* give the impression that any party indicating a risk should be assessed in an HRA must produce “*credible evidence that there [is] a real, rather than a hypothetical, risk*”. ***Boggis*** however was in a different context, where the Court of Appeal was considering a third party’s attempt in legal proceedings to impugn a completed appropriate assessment, after the grant of permission, by suggesting something else should have been considered. This is clear from [35]-[38]. The threshold for whether there is a need for an appropriate assessment is very low – colloquially “should we bother to check”[[41]](#footnote-41) – and that arises if a risk of significant effects cannot be excluded on the basis of objective information[[42]](#footnote-42) or if there is any doubt as to the absence of significant effects. Once an AA is undertaken, it cannot have omissions and must contain “complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned” [[43]](#footnote-43).
3. Against that stringent background, you will be invited to find, for the reasons set out in Mr Lang’s proof of evidence, that the Appellant has not demonstrated you can safely conclude there will be no adverse effect on the integrity of any of the sites in issue.

**Issue 10(iii)** **Whether the proposed local centre would be suitably located and adequate to serve the development, and whether its impact on other centres would be acceptable.**

1. The Council’s Alternative Local Centre (“ALC”)[[44]](#footnote-44) is better located than the Appellant’s Proposed Local Centre (“PLC”)[[45]](#footnote-45); and the justification for the PLC location seems to have come late. Both sit near to the Spine Road,[[46]](#footnote-46) both could be located close to the (currently unfixed) care/sheltered accommodation,[[47]](#footnote-47) AND both are located at bus stops.[[48]](#footnote-48) However, the ALC has shorter walking distances for large portions Alderholt (particularly the existing portion),[[49]](#footnote-49) is closer to areas of play,[[50]](#footnote-50) and is closer to the main road network that takes passing trade through the village.[[51]](#footnote-51) The current proposal therefore is not optimised to accommodate and sustain and appropriate mix of development as required by the NPPF, and as such, the Council’s RfR 3 is right.
2. In relation to retail, as it was originally submitted the application was not covered by a sequential or retail impact assessment contrary to Policy KS7 and NPPF/91-95. RfR 5 was therefore entirely correct. The RISTA *has* now been provided[[52]](#footnote-52) and assessed in the ARISTA.[[53]](#footnote-53) The Council’s case therefore, very broadly, is this:
	1. As a starting point, there is a discrepancy between how the Appellant describes the various town centre uses in its submitted documents. There is also a discrepancy in how the Appellant describes its Local Centre Proposal.[[54]](#footnote-54) Furthermore, the RITSA itself does suffer from deficiencies,[[55]](#footnote-55) including but not limited to its purported sensitivity test. Any main town centre uses that do *not* fall within what the RISTA has assessed, but which the Appellant now seeks permission for, have not been subject to a sequential or retail impact assessment. RfR5 would still stand in relation to those uses, and that is why the Council seeks a condition that any uses permitted be restricted to what has been assessed.[[56]](#footnote-56)
	2. Notwithstanding the deficiencies, subject to a suitable condition being imposed, the Council agrees the proposal would not have a significant adverse impact on the relevant existing town centres of Fordingbridge and Verwood.[[57]](#footnote-57)
	3. It is agreed the existing co-op will experience a “significant negative impact” as a result of the proposed development in the short term.[[58]](#footnote-58) Notwithstanding a positive long-term impact, this might well lead to the Co-op, Nearly New Beginnings, and/or the pub (if a new pub is permitted) closing or re-locating nearer to the PLC.[[59]](#footnote-59) That would be contrary to PC5 and KS11.[[60]](#footnote-60)

**Issue 10(iv) Whether the scheme would make appropriate provision for education**

1. There is no dispute that no contributions are required for middle school places[[61]](#footnote-61) and the Appellant does not dispute contributions will need to be made for upper school places.[[62]](#footnote-62) The Council’s concern is that although there is a requirement for additional First School places, the Appellant’s proposals are not acceptable.
2. It is agreed that the development will generate c. 164 pupils (based on the Appellant’s current indicative mix)[[63]](#footnote-63), and it is agreed that this demand, when combined with current school numbers, will generate the need for a 2FE first school[[64]](#footnote-64). That is more than St James First School – the only school within a 2 mile radius that *could* be deemed suitable to receive children from the development[[65]](#footnote-65) – can accommodate in its current form. The Appellant’s approach therefore is to offer to demolish the current first school and rebuild it, with all of the disruption that would entail.[[66]](#footnote-66) No planning application with detailed feasibility work is available but even on the basis of the high level design prepared by the Appellant it is clear there are real issues with the Appellant’s approach, and whether the new 2FE first school, or any future expansion to primary, could be fitted on the existing site.
3. It is understood that a review mechanism is contemplated, but the detail of it remains unclear. The Council is concerned about the idea that some alternative site, not identified at the time of the decision, could be relied upon to deliver part of the education provision required as a result of the appeal proposals, which seems to be what is in mind.
4. The Appellant’s approach fails to meet the needs arising from the proposed development, contrary to NPPF/99.

**Conclusion**

1. In due course, the Inspector will be invited to dismiss the appeal.

**Melissa Murphy K.C.**

**Nick Grant**

**25th June 2024**

**Landmark Chambers**

**180 Fleet Street**

**London EC4A 2HG**

1. CDC.006 CMC Summary Note [↑](#footnote-ref-1)
2. A letter of protest on the subject is at CDA.71 [↑](#footnote-ref-2)
3. CDC.003 Appellant’s Statement of Case p.7 para. 1.12-1.13. [↑](#footnote-ref-3)
4. PINS Procedural Guide Planning Appeals – England (28 May 2024) at:

“3.1.2. Making an appeal should not be used as a bargaining tactic but only as the last resort. The person making the appeal (‘the appellant’) should be confident **at the time they make their appeal that they are able to make their full case**.

12.1.1. A full statement of case contains all the details and arguments (as well as supporting documents and evidence) which a person will put forward to make their case in the appeal. **In general, appeals are determined on the same basis as the original application. Therefore, the appellant’s submissions, including the statement of case, should not normally include new evidence or additional technical data not previously seen by the LPA and interested parties at the application stage, such as biodiversity report, highways statement or landscape and visual impact assessments.”** (Emphasis added.) [↑](#footnote-ref-4)
5. Statement of Common Ground agreed 21 June 2024 (“SCG”) p.2 para. 2.1(2021 Census). [↑](#footnote-ref-5)
6. CDG.010 James Rand Proof of Evidence (“POE”) p.8 para. 2.38 [↑](#footnote-ref-6)
7. CDD.001 p.25 “The Settlement Hierarchy” para. 4.6 and KS2. [↑](#footnote-ref-7)
8. SCG p.9 para.8.19 [↑](#footnote-ref-8)
9. SCG p.9 para. 8.19 [↑](#footnote-ref-9)
10. Email of 21.6.2024 from Richard Turney KC (on behalf of the Appellant) to PINS [↑](#footnote-ref-10)
11. SCG p.7 para. 8.6 [↑](#footnote-ref-11)
12. SCG p.16 para. 9.4 [↑](#footnote-ref-12)
13. SCG p.8 para 8.12 [↑](#footnote-ref-13)
14. SCG p.16 para 9.3, Claire Lynch POE para 5.1-5.7 [↑](#footnote-ref-14)
15. CDG.021 Housing Land Supply Topic Paper section 6.1 [↑](#footnote-ref-15)
16. CDG.002 Claire Lynch POE section 4.8 first bullet [↑](#footnote-ref-16)
17. CDG.038 Claire Lynch Rebuttal Proof of Evidence (“RPOE”) section 2.9 [↑](#footnote-ref-17)
18. CDG.038 Claire Lynch RPOE 2.10-2.14 [↑](#footnote-ref-18)
19. CDD.001 p.170-171 [↑](#footnote-ref-19)
20. Policy LN3, SCG p.8 para 8.12 [↑](#footnote-ref-20)
21. Set out more fully in CDG.003 Atam Verdi POE section 5 [↑](#footnote-ref-21)
22. Appendix 1 to CDG.003 Atam Verdi RPOE [↑](#footnote-ref-22)
23. CDG.022 Affordable Housing and Viability Topic Paper para 9.1 [↑](#footnote-ref-23)
24. CDG.022 Affordable Housing and Viability Topic Paper paras. 9.2-9.4, CDG.041 Atam Verdi RPOE Sections 2 and 4 [↑](#footnote-ref-24)
25. See e.g. CDG.010 James Rand POE 2.42, cf. CDG.004 Richard Fitter POE para.3.2.9 [↑](#footnote-ref-25)
26. Highways Topic Paper para. 1.3 [↑](#footnote-ref-26)
27. Highways Topic Paper paras. 5.1 to 5.9 (an alternative approach to bus contributions has been agreed in principle, overcoming 5.10). [↑](#footnote-ref-27)
28. CDA.098, and CDG.004 Richard Fitter POE section 7: para.7.2.2 [↑](#footnote-ref-28)
29. The Appellant seeks to leave a number of issues for consideration at a later date regarding the suitability of access points. However, Art 5(3) Development Management Procedure Order 2015 requires the locations of access to be indicated even at outline stage. For vehicles these are set out on the Access and Movement Parameter Plan at CDA.009. This is, clearly, so they can be assessed for suitability (see Richard Fitter POE 3.2.14). As he outlines, the main pedestrian and cycle collector road and secondary pedestrian and cycle accesses remain unresolved (Richard Fitter POE 4.3.4, Richard Fitter RPOE 2.9). [↑](#footnote-ref-29)
30. CDG.039 Richard Fitter RPOE Sections 2.1-2.4 [↑](#footnote-ref-30)
31. CDG.005 Colm O’Kelly POE para 6.27 [↑](#footnote-ref-31)
32. S. 85(1A) Countryside and Rights of Way Act 2000 [↑](#footnote-ref-32)
33. CDG.005 Colm O’Kelly POE para 2.16 and the elements of the Cranborne Chase Partnership Plan (CDD.005) cited therein. [↑](#footnote-ref-33)
34. CDG.005 Colm O’Kelly POE para 6.28-6.35 makes clear that while it is not possible to draw conclusions, based on the Appellant’s evidence, of the impact of increased recreational activity on the AONB a very basic scoping exercise shows impacts on the large visitor attractions and footpaths are unlikely to lead to a significant impact on relative tranquillity, though the effect on smaller attractions less clear. [↑](#footnote-ref-34)
35. SCG p.14 para 8.52 [↑](#footnote-ref-35)
36. See the Council’s Appropriate Assessment at CDB.033. [↑](#footnote-ref-36)
37. ***R (Wyatt) v Fareham BC*** [2022] EWCA Civ 983,[9(4)] [↑](#footnote-ref-37)
38. CDB.021 [↑](#footnote-ref-38)
39. CDA.099 [↑](#footnote-ref-39)
40. Appellant’s Response to Case Officer regarding Proposed SANG CDA/59 and Response to Natural England Objection CDA.70 [↑](#footnote-ref-40)
41. AG Kokott in ***Sweetman v An Bord Pleanála (Case C-258/11)*** [2014] PTSR 1092 [50] [↑](#footnote-ref-41)
42. ***People Over Wind & Sweetman v Coillte Teoranta*** [2018] PTSR 1668, [34] [↑](#footnote-ref-42)
43. ***Wyatt*** [9(7)-(9)]. [↑](#footnote-ref-43)
44. See CDG.001 Ursula Fay POE Appendix A para 8.4 and Fig 7 (p. 57) for the location [↑](#footnote-ref-44)
45. Which it seeks to fix in the Land Use Parameter Plans CDA.011 [↑](#footnote-ref-45)
46. CDG.036 Local Centre and Retail Topic Paper paras 2.7, 2.12 [↑](#footnote-ref-46)
47. CDG.036 Local Centre and Retail Topic Paper paras 2.9, 2.14 [↑](#footnote-ref-47)
48. CDG.036 Local Centre and Retail Topic Paper para 2.22 [↑](#footnote-ref-48)
49. CDG.036 Local Centre and Retail Topic Paper paras 2.18-2.19 [↑](#footnote-ref-49)
50. CDG.036 Local Centre and Retail Topic Paper paras 2.10, 2.15 [↑](#footnote-ref-50)
51. CDG.036 Local Centre and Retail Topic Paper paras 2.11, 2.16 [↑](#footnote-ref-51)
52. CDA.077 [↑](#footnote-ref-52)
53. In CDG.008 Christine Reeves POE Appendix CR/1 paras 2.3-2.7 [↑](#footnote-ref-53)
54. CDG.008 Christine Reeves POE Appendix CR/4 [↑](#footnote-ref-54)
55. CDG.008 Christine Reeves POE Appendix CR/1 [↑](#footnote-ref-55)
56. CDG.036 Local Centre and Retail Topic Paper para 4.30. A similar concern arose in relation to whether office use should be permitted within the business park (CDG.008 Christine Reeves PoE para 2.14), but the Appellant now accepts this can be resolved by condition: CDG.036 Local Centre and Retail Topic Paper para 3.12. [↑](#footnote-ref-56)
57. CDG.036 Local Centre and Retail Topic Paper para 4.31-4.32 [↑](#footnote-ref-57)
58. CDG.036 Local Centre and Retail Topic Paper para 4.26 [↑](#footnote-ref-58)
59. CDG.008 Christine Reeves POE 7.3-7.12. [↑](#footnote-ref-59)
60. CDG.008 Christine Reeves POE section 7, 8 [↑](#footnote-ref-60)
61. CDG.034 Education Topic Paper para 3.2.7 [↑](#footnote-ref-61)
62. CDG.034 Education Topic Paper para 2.3, 3.2.12 [↑](#footnote-ref-62)
63. CDG.043 John Powell RPOE 2.3.1 [↑](#footnote-ref-63)
64. CDG.034 Education Topic Paper para 2.1 [↑](#footnote-ref-64)
65. CDG.034 Education Topic Paper para 3.2.6 [↑](#footnote-ref-65)
66. CDG.034 Education Topic Paper para 2.1, Education Mitigation Strategy (1 May 2024) at CDA.92 [↑](#footnote-ref-66)