TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (LOCAL PLANNING) (ENGLAND) REGULATIONS 2012

KETTERING BOROUGH COUNCIL
THE KETTERING SITE SPECIFIC PART 2 LOCAL PLAN EXAMINATION

Further submissions in respect of objections to Policy BRA2

ID Ref 31 Comment 52 and 53
1 Introduction

1.1 We act for the respondent, User ID 31. Our Client has already submitted objections (ref 52 and 53) to the identification of the site known as ‘Top Orchard’ as a site for new housing. The site is specifically referred to in policy BRA2.

1.2 Our representations now will seek to clarify and distil the objections raised by our client, but will in addition raise another matter that requires scrutiny and careful consideration which raises issues of probity and transparency and possible questions of apparent bias.

2 History

2.1 We do not propose here to delve into the detailed planning history, the representations by the Council and our client have adequately set out the factual situation. However, we must point out that this policy history of this site reveals a complete change of mind on behalf of the Council and it is that which raises the probity issues referred to above.

2.2 We first refer to the 2012 Rural Masterplanning Report prepared by or on behalf of the Council. From the Village Evaluation (p28 onwards) it must be clear that Braybrooke is an attractive village with a character worth preserving; the whole village is covered by a conservation area, there are 8 Listed Buildings and two Scheduled Ancient Monuments. However, its amenities are few, just a public house and a school are identified. Para 13.8 makes it clear that this report was instrumental in the creation of this Plan.

2.3 As part of this Report, Top Orchard, designated site RA/128 in the Council Strategic Housing Land Availability Assessment, what was set out in the SHLAA was repeated:

This site performs poorly in terms of accessibility. The site forms part of the green corridor which runs through the village this green corridor is an important part of the village’s special character. The impact of developing this space in its entirety would have an unacceptable impact on the conservation area and on the character of the settlement. Development of the site is also likely to have a negative impact on The Rectory which is a grade II listed building. There are major constraints to the provision of water and sewage infrastructure which would be difficult to overcome. Parts of the site are also located in flood zones 2 and 3.

We must acknowledge that that SHLAA goes on to say:

…there may be potential for a smaller part at the southern element of the site to be developed provided that the impact on the Listed Building
can be suitably mitigated. This element of the site is less sensitive, well screened from the surrounding landscape and is currently overgrown / underutilised. A small scale development of this part of the site may be acceptable.

However, in the plan now before you, none of these obvious constraints are dealt with. There is nothing to suggest that work has been done to overcome them. Nothing else has changed.

3 Need to identify the site

3.1 The Housing Land Supply Background Paper (October 2019) that has guided the production of this version of the plan identifies a housing land supply of 6.74 years, comfortably in excess of the NPPF requirement of a 5 year housing land supply. This excludes any windfall.

3.2 In the Plan itself, there is an allocation of 257 units for the Rural Areas of which Braybrooke forms part. But within that is a ‘windfall’ allowance of 108. This site is specifically allocated for a maximum of 3 units. It is our submission that even if one merely looks at the Rural Areas, 3 units is neither here nor there and is well within any margin of error. In our experience, the identification of ‘windfall’ is usually based on past experience and is often a long way short of what historically has been achieved.

3.3 It has to be concluded that there is no imperative to identify this site. Whilst speculation, it may well be that through re-development, subdivision and reasonable intensification during the life of the Plan Braybrooke will contribute what this allocation seeks to achieve through ‘natural’ growth.

3.4 It should be added that no-where in the Plan is there any imperative for any particular settlement to contribute a particular number or percentage of the Rural Areas requirement, so it is not as if Braybrooke would be ‘ducking’ it’s responsibilities.

3.5 On a local level, no need for this development is identified (para 13.33 SSP2). Therefore, the site’s contribution to meeting rural housing needs, already marginal at best, is not backed by any local need at all.

4 Character

4.1 Braybrooke is identified as a Category A village and the emphasis is on protecting the environment and recognising that there are limited opportunities for additional development (para 13.11), expected to be on small scale infill sites (13.12). ‘Infill’ in this context is not defined but is usually looked on as a gap in an otherwise built up frontage. This site does not meet that definition.
4.2 The site itself is outside the developed confines of the village. The Plan itself identifies the site's characteristics and value. Clearly, the site has many aspects that are counter-indicative of development; the setting of a listed building, a valuable protected tree, and possible ecological issues.

5 Conflicts within the policy

5.1 Firstly, paragraphs a. to d. set out significant constraints, leading to paragraph e. which is more of a conclusion as a result of these constraints.

5.2 However, at f. the site has to “Provide safe vehicular, cycle and pedestrian access from Griffin Road”. At the moment, the only available access is from the north between 14 and 18 (The Swan PH) Griffin Road. This means that the only currently available access would cut through the part of the site that paragraphs a. to d. (and therefore e.) seek to protect. It would have to be an extensive access, not just a private drive, which would allow it to be used by service and emergency vehicles. It will need a safe connection to Griffin Road, already acknowledged to have traffic issues with on-street parking. It is difficult to envisage how such an extensive engineering operation could be achieved without conflict with paragraphs b. to d. even if it can avoid the protected tree.

5.3 Frankly, the obvious way into the site is via Latymer Drive. Why this is not flagged even as a possible alternative, is a mystery. If ownership has dictated this, we believe that to be poor planning.

5.4 One of the consequences of such a contrived access is that it would load any development of the site with infrastructure costs. This will inevitably mean that any developer will need to build substantial dwellings in order to obtain viability.

5.5 Paragraph g. states that any development must:

*Have particular regard to the layout and scale, height, design and massing of buildings and landscaping, in order to minimise impact on amenity of neighbouring residential properties on Griffin Road and Latymer Close*

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1 SIC; typo in Plan
It has to be noted that the properties at the end of Latymer Drive are both bungalows.

Given our submissions about viability, we believe that this can only be achieved, if it can be achieved at all, by locating the proposed development further north than anticipated.

5.6 Paragraphs h., i. and k. simply add to the viability issues.

6 Community Involvement

6.1 We do not wish to repeat what has already been said in objections, but clearly the identification of this site is far from popular locally. Local authorities do sometimes have to make hard choices about the location of development and are often bound to meet opposition, but we see no imperative here that should mean that other factors should outweigh that.

7 Probity and openness

7.1 We now must address a difficult issue.

7.2 This site is owned jointly by four people:

The last of these, [redacted], is a District Councillor. The other owners are [redacted].
7.3 Now we acknowledge that Cllr [redacted] has declared his ownership of this land in the Register of Member’s Interests (See over) but mere registration is not in a case like this enough.

7.4 In the light of the above, it must be clear that whether this site, which is supposed to be for a maximum of only three houses, is or is not included in the Plan is really of little consequence for the overall soundness of this Plan.

7.5 However, for the land owners the advantages are enormous. This land, at the moment, has no real prospect of accommodating any development; it is outside the currently identified village confines so there are significant
planning restraints. Identifying the site as this Plan seeks to do removes those constraints.

7.6 Even with the other physical and environmental constraints, the value of this land, if the Plan is adopted as it stands, increases exponentially, apparently to the considerable benefit of a Member of the planning authority. If there were more ‘going’ for this site, if the authority were struggling to identify sufficient land to comply with NPPF para 73, if there were significant local support for this proposal or if there was a clearly identified local need that could only realistically be met here then these submissions would hold no water at all. But as it is, they must raise a probity issue.

7.7 Whilst obviously a difficult issue, the Examiner must nevertheless grapple with this. Even without any direct evidence of improper involvement, one cannot escape the consequences of adopting this proposal. Of itself it cannot lead to a recommendation to exclude this land, but with other substantial objections set out above the Examiner may well consider it a safer course to give weight to these objections.

8 Conclusions

8.1 The Plan is not sound as it identifies a site in BRA2 that is of questionable viability, and potentially harmful to the setting of a listed building, harmful to amenity by way of loss of a green space, harmful to ecological interests and generally of little value in terms of housing supply, either district wide or locally.

8.2 The designation in BRA2 should therefore be removed from the plan to achieve soundness.

Setfords Solicitors
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