Norton Parish Council

Response to Tewkesbury Borough Council re 24/00086/OUT

Outline application for residential development for up to 42 dwellings will all matters reserved apart from access on part of Part Parcel 4670 Tewkesbury Road, Norton, Gloucester, Gloucestershire

Summary

Norton Parish Council welcomes the opportunity to comment on this application, and to reiterate its frustration that landowners are currently able to exploit the planning system for their own benefit, with local communities forced to pick up the long-term costs of developments that fail to apply any true planning considerations. The concept of the "tilted balance" is readily grasped by applicants as a means to avoid true scrutiny of a proposal. Applicants seem to believe that "titled balance" is a magic bullet which removes all constraints and material considerations, and that by quoting the term consent will inevitably follow, irrespective of the merits of the site or the proposal.

This proposal is no exception, with insufficient evidence to demonstrate the site is a suitable location for residential development, that it is sustainable, that the development will be designed appropriately and with appropriate infrastructure, that no harm will arise that cannot be mitigated, or that it will provide appropriate living conditions for future residents. None of these important considerations are addressed through the very generic planning statement submitted with this application, a promotion that lacks any true evidence of appropriateness, or demonstration of compliance with the NPPF taken as a whole.

It is reasonable for any member of our local community viewing this proposal to ask why anyone would believe this is a suitable place to house 42 families, where the most basic of needs will require a journey by car? The applicant provides no indication of how this site can be made sustainable or how to meet the Government's aim of reducing the dependency on use of the private car.

The transport assessment rolls out standards for walking distances and suggests that because footways are available along the main road this will encourage walking, but has no evidence to indicate this opportunity will be taken up readily by future residents. Experience within the local community suggests this will not be the case. Examination of table 3.1 of the transport assessment indicates that it provides no evidence of a potential switch from car to walking or cycling for basic needs. The list of services within a 24 minute (one-way) walking trip is extremely limited and, by way of example, is it reasonable to expect a person to undertake a 48 minute fast walk round trip to buy a loaf of bread? It simply will not happen. Even the 5 minute claimed walk to school is optimistic as no account has been taken of the school's characteristic, capacity or ability to serve this site. If parents within major urban

areas drive their children short distances to school, why is a remote countryside location going to start a new trend?

The Design and Access statement (interestingly produced by landscape architects) focusses on the visibility of the development in the wider landscape. Visibility is a consideration, but it is less important in this planning decision than the accessibility and sustainability of this proposed development. The site is in open countryside (despite the efforts of the planning statement to suggest otherwise) where there is a presumption against inappropriate development, and for good reason. No evidence is provided by the applicant to suggest that presumption should be overturned. Beyond an illustrative layout that offers no assessment of development form and its appropriateness; there is no true assessment of the design or it's accessibility, or any response to material considerations. For an outline that seeks approval for access, there is an expectation of a detailed and audited access design as a minimum.

Despite the box-ticking approach of the submission to suggest the proposal is appropriate, which we submit is far from complete, (see pages 11 and 12 of our response) the proposal clearly lacks any evidence to demonstrate this is a suitable site for any significant volume of residential development. It must be refused. If the applicant disagrees, they have the opportunity to appeal and to provide appropriate evidence to the contrary. Had such evidence been available, undoubtedly that would have been presented in support of this application.

Detailed objections

The local community is disappointed to see yet another speculative housing development promoted in the open countryside justified by unproven claims of the lack of harm or sustainability.

The community acknowledges the need for new homes, but these should be developed in appropriate locations with ample access to services and infrastructure. We should not support developments presented at the whim of an applicant that seeks to exploit the stretched resources of local authorities by presenting schemes that at face value appear to offer a plausible planning case; consequently, discouraging refusals that would be appealed and increase the workloads of already overstretched officers.

The "tilted balance argument", now so often relied upon by promoters of inappropriate development does not "trump all" planning considerations as many wish to believe. The NPPF is very clear that the starting point for any decision making is the Development Plan and that statutory status is not changed by the sustainability of a proposal or any "tilted-balance". The applicant acknowledges this fact, and lists many Development Plan policies applicable to the site, but fails to then demonstrate compliance with either the Development Plan, or the NPPF.

Instead, the applicant's approach is to suggest that (paragraph 6.2 of the planning statement) "*there would be some conflict with the Council's housing policies*" but goes on to suggest that this can be set aside because of the previous planning

permission granted in December 2020 and the current lack of a five-year housing land supply.

This over-simplistic interpretation of the planning situation at this site, offered as justification for this development, fails to demonstrate the development on this site of 42 units as being appropriate. The applicant's principal justification is the existence of a permission for infill development. However we submit there is a significant difference between an infill development (specifically defined and responding to specific site characteristics) and a development in depth. The applicant is required in the promotion of this development and where it is acknowledged to be in conflict with Development Plan policy, to demonstrate that any adverse impacts (including policy conflict) is significantly and demonstrably outweighed by the inherent benefits of additional housing. With reference to the Development Plan and the NPPF, the applicant has failed to meet that requirement.

While the existence of an extant planning permission must be taken as fact (the intent of the applicant to implement has always been in question) the planning authority is duty bound to consider if the specific characteristics of the approved scheme are readily transferable to the new proposal. The applicant has not provided that evidence and it is appropriate for the planning authority to approach this application from first principles, applying first the policies of the Development Plan and NPPF, and then considering if any material consideration exists to suggest the presumption against development in the open countryside of the form and quantum proposed is to be set aside.

We submit the existence of a permission for infill development does not justify an in depth development. The implications of the latter in terms of impacts on planning consideration is significantly different. Many of the "benefits' extolled by the applicant are transferable to any site and are not so special or unique that they justify approval. They do not represent benefits that demonstrably outweigh the in-principle harm.

It is only the matter of the extant permission that offers the applicant any opportunity to suggest this site might be suitable for a higher scale of development, but the reasoning offered is flawed. A site suitable for infill is not necessarily suitable for in-depth development, and absence of a five-year housing land supply does not make any development acceptable. The applicant fails to assess the harm of the development or any mitigation.

We note what an Inspector said when determining an application for infill at this site, but do not agree with the reasoning offered. We believe that the conclusions reached are not sound and another Inspector would not necessarily agree. Planning considerations have moved on significantly since 2020 and this new application offers an opportunity to revisit the principles on which that Inspector reached a conclusion. It is the duty of the planning authority to do so, and not to be swayed without question into accepting the applicant's claims that an infill development justifies the scale of development now proposed. The proposal must be considered afresh on its individual merits against the Development Plan and the NPPF. In doing so, we submit that the application fails to demonstrate the absence of Development

Plan/NPPF considerations that stand against the development, or that the benefits are so great as to outweigh such harm.

Precedent

The application relies heavily upon the precedent of extant permissions for residential development on part of the site ((22/01083/FUL and 22/00106/PIP) which, the applicant argues, has established the principle of development on the site. However, the extant permissions are for a total of 12 dwellings. This new application is for up to 42 dwellings, an increase of 30 dwellings, with no justification for the significant increase. Just because consent has previously been given for a low density, modest development of a small number of dwellings, this does not by implication mean that any proposal (of a different character) is equally appropriate.

A precedent is an earlier action taken as an example or guide to be considered in subsequent similar circumstances. To be a binding precedent therefore there must be a level of similarity between the approved and proposed developments, which in this specific case there is not. The materiality of the previous approval is therefore brought into question and this the applicant fails to either acknowledge or address. It is reasonable to assume that the Inspector at the appeal on which the applicant relies, considered the appropriateness of the development then proposed - not the development that is now being promoted.

Case law is clear that where circumstances are the same it is difficult to refuse planning permission, but here (and the applicant does not dispute this) circumstances are clearly changed. Therefore, to gain benefit from any precedent the applicant must demonstrate conclusively there is significant similarity between the two developments. That is clearly not the case and the precedent therefore cannot be binding.

Importantly, when previous permissions at this site were considered, the cumulative effect of any precedent was not addressed, but it is appropriate to do so now. This significant proposal should also be viewed cumulatively with the other developments that have recently been granted permission in the area, and consideration should be given to local infrastructure and whether it can adequately cope with such a significant proportional increase in residents to the south of the village.

Principle of development

The Parish Council is well aware of the difficulties faced by the planning authority in resisting inappropriate development, when the Government appears keen to support any housing proposal purporting to be sustainable, in areas lacking an appropriate housing land supply.

Decisions appear to be made on exact mathematical calculations rather than a true examination of material planning considerations, and this opportunity to “cash in” appears to have been seized upon by the applicant, as it has for other promoters in the area. Little effort is offered in the formulation and provision of sufficient evidence to demonstrate the proposal has any degree of appropriateness.

The proposal does not accord with Policy RES3 of the Tewkesbury Borough Local Plan which limits new housing outside settlement boundaries. It does not comply with SD10 which limits residential development on other sites (i.e. not allocated or within existing built up areas) because it is not infilling within an existing built up area, and it does not comply with the policies set out in the Neighbourhood Plan.

The applicant relies heavily upon the "tilted balance" principle as set out in the NPPF where "permission should be granted unless the adverse impacts significantly and demonstrably outweigh the benefits" (paragraph 11.d)ii. of the NPPF). This approach is taken because the local authority cannot demonstrate a five-year housing land supply.

While the lack of a five-year housing land supply attracts a significant weight in appropriate circumstances, there is no reference in Government legislation or guidance to suggest it "trumps all". The presumption in favour set out at NPPF paragraph 11 requires all proposals to be considered against

- a sustainable pattern of development across a Borough,
- a pattern of development that meets the needs of an area,
- aligning growth with infrastructure,
- improve the environment and mitigate climate change, and
- make effective use of land in urban areas.

The application provides evidence that housing need will be satisfied appropriately through the proposal. The balance is accepted as a material planning consideration, but of itself, it does not justify, as the applicant implies, any site as being acceptable for development. It does not remove the applicant's responsibility for demonstrating the site's suitability for development as required by the NPPF, or its sustainability. The NPPF must be applied as a whole, not selectively as presented by the applicant.

Norton Parish Council argues that this application should be refused for the following reasons:

Development in the countryside and landscape impact

The site is outside the defined settlement boundary of Norton. The proposals will further extend ribbon development along the A38, south of Norton, creating a built-up corridor between the village and Twigworth. There has already been some erosion of the gap between the two villages which, as already stated, is contrary to the polices set out in the Local Plan and the Neighbourhood Plan. This proposal, which is for a considerably higher density development than that already consented, will change irrevocably the nature of this section of the A38 so that it effectively becomes a continuous belt of development between Norton village and Twigworth.

The comments of an Inspector at an earlier appeal in respect of infill development are noted, but we question if it is correct in planning terms to perpetuate ribbon development in depth along the A38. Consequently, we believe the assumptions reached by the Inspector are challengeable.

This proposal therefore significantly alters the local landscape. The primary view of the site will be from the A38, and its development will have an urbanising effect that would not have been so significant with the fewer dwellings already consented.

Importantly, the site will also be viewed from the network of Public Rights of Way in the area, particularly the path to the west of the site where the land is low lying and there are open views of the site. This will significantly change the character and atmosphere of this recreational path. The development will also be visible from the south of Norton village, and from Sandhurst/Norton Hill to the north west.

The proposal does not adequately address the issue of landscape impact, development in the countryside and the inevitable change in the character of the village that such a large development will precipitate. The relative tranquillity of the area will be irrevocably altered and it will have the characteristics of urban fringe rather than rural countryside between two villages.

Development not sustainable

The proposal lacks any evidence of compliance with the requirement for sustainable development set out in the NPPF. The scheme does not fulfil the social or economic requirements of sustainable development, and is largely silent on environmental impacts. Generally, justification is shallow, unproven and parochial, extending little beyond site boundaries or applicant opinion.

The planning authority is presented with a “tick box” of the factors, assumptions and interpretations upon which the applicant relies to gain approval. Policy compliance is limited to technical matters of access, flooding and the absence of any designation. There is no evidence that the site is a suitable location in which to live and similarly that the assumptions and conclusions reached are substantive. Presented as a “fait accompli” with no detail, there is no opportunity for constructive input by the local community.

In terms of location and access to services, the applicant considers that the proposed development is in a sustainable location. However it is the Parish Council’s view that the site is quite isolated. The site is within a 4 minute walk of a bus stop. However, bus services in the area are limited and there is no commitment to improving this state of affairs. The site is also within a 5 minute walk of the local primary school. However, the walk to school would be along the existing pathway next to the A38, which despite it being set back from the main carriageway, will not be a particularly pleasant walking environment and may not be suitable for young children. In addition, the school is currently at capacity, so it is doubtful in the short term whether new residents would be able to attend in any case.

The nearest small supermarket is a 23 minute walk away, and therefore it is likely that the majority of new residents will drive there, or further afield, for their weekly shop and to access other services such as doctors, pharmacies, hairdressers and so forth. This will not benefit the local community in Norton, as their businesses will be overlooked in favour of somewhere easily accessible by car.

Although paragraph 109 of the NPPF acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, it also states that significant development should be focussed on locations that either are, or can be made, sustainable, by limiting the need to travel and offering a genuine choice of transport modes.

At a recent appeal decision at Chalfont St Peter, Buckinghamshire, the Inspector dismissed an appeal stating that "even if a site is in a rural location and there are high levels of car ownership, these considerations do not justify development in a location where private car (sic) would primarily be used to access services, facilities and public transport" (paragraph 15, APP/X0415/W/23/3316907). Therefore, it is not appropriate to argue that this site is in a sustainable location. The addition of dwellings in this location will increase the number of car-based journeys, without providing adequate alternatives, and the development will remain isolated from the rest of the village.

Sustainable development should also encompass sustainable design and construction. There is scant reference to sustainable design in the supporting documentation, instead it is argued that this is to be agreed at the Reserved Matters stage. However, targets and intentions must be included at the outline stage so that the proposals can be adequately judged, rather than simply listing possible measures that could be considered at a later date (see page 19 of the Design and Access Statement).

The drainage strategy refers to sustainable drainage systems, and how this can assist with achieving biodiversity net gain, however it does not adequately address the potential for pluvial flooding which is a significant concern in the locality.

The biodiversity report sets out the importance of retaining vegetation of note, mitigation measures to protect and retain priority habitats and protected species, and plans to enhance biodiversity.

However, there is currently an enforcement enquiry in progress associated with the extant permission for 7 dwellings on the same site. The enquiry relates to a potential breach of condition 4 of the planning permission, which requires measures to protect trees/hedgerows on and adjacent to the site to be agreed and installed prior to demolition, site clearance, materials delivery or erection of site buildings. If enforcement action is required, this is particularly worrying, not only because of the potential loss of vegetation and impact on protected species, but also because it does not engender any confidence in the applicant's commitment to enhancing biodiversity and sustainability.

Lack of supporting infrastructure

The village must play its part in meeting housing need, but lacks true facilities for every day, sustainable living. The proposal does not add to infrastructure provision. Simple reference to a bus service, a local school, village hall and pub to claim a sustainable location is meaningless without evidence of their sustainability, and their existing and proposed use. There is a bus service, but this offers only a limited alternative to the private car and is no substitute for the private car for essential movements.

There are no shops in the parish, consequently residents will need to rely on private cars for many of their requirements, including shopping for food and other necessities and accessing services such as a doctor's surgery. The Parish Council therefore contends that, as set out above, the limited services and facilities available are insufficient to make Norton a sustainable settlement.

Norton has a primary school which is heavily over-subscribed, and serves a wide catchment area. (The school has a published capacity of 124 pupils, with currently 153 pupils on roll.) With priority given to siblings of existing pupils at each intake, it is very difficult for new village families to gain entry. Should the proposed housing be built, it is highly probable that children of primary school age will have to be taken to other schools outside the village, despite their parents' reasonable expectations.

This acute situation of over-subscription would not be solved by simply requiring the applicant to provide education contributions for a school elsewhere, because this would risk the closure of the existing school and generate further unnecessary car journeys. It will not only result in the loss of a vital infrastructure element, but it also threatens the financial viability of Norton's village hall, which relies heavily on income from the school's use of the hall in term time. Several village clubs and societies depend on the village hall for their existence, including Norton Rugby Club, which uses the hall's changing rooms.

Consequently, the new development could contribute directly to the demise of the important infrastructure elements on which the applicant relies to justify sustainability.

Increased flood risk without appropriate mitigation

The area suffered significantly from flooding in 2007 and remains at risk from surface water and fluvial flooding from the River Severn. The loss of pasture land, which is so important in this area, allowing infiltration of surface water, will increase the risk of flooding. Our concern is mirrored by the response from the flood authority to the application, which also identifies an issue with surface water flooding.

The proposals do not provide any details of how surface water flooding will affect the proposed dwellings, and how this will be mitigated against. The area is described as being in Flood Zone 1 which is at low risk of flooding. However, the pluvial flood map clearly shows the risk of flooding, particularly on the southern boundary of the site.

Furthermore, it is a well-established principle that increasing impermeable surface areas will increase run off and put pressure on the drainage system elsewhere, sometimes leading to localised flooding. The local community is extremely concerned that additional development will result in additional surface water flooding, with community spaces such as the school and village hall at increased risk from pluvial flooding. The local sewerage system is already at capacity and local evidence is able to demonstrate flooding close to the site and consequential infiltration of the local sewage network, that can only be exacerbated by run offs from the development and no consequential improvement.

Lack of detail regarding transport implications and access arrangement

The Parish Council is concerned that additional vehicular movements associated with this development will significantly increase the risk of road accidents. There are well-documented concerns about the speed of traffic and the number of accidents on this section of the A38. The Highway Authority supports proposals in principle, but only in relation to its effect on the strategic road network, specifically the A40, and not local roads.

The section of the A38 close to the site is known locally as an accident black spot. While the Transport Statement provides details of two significant accidents close to the proposed development in the last five years, there is also good evidence of an increasing number of less-serious accidents (many involving injuries that required an ambulance) on this section of the A38. The impact of this development, (together with all the other recently consented proposals in the area) on the local road network needs to be rigorously assessed.

Together with local residents, the Parish Council is concerned that access for 42 dwellings off this fast-flowing road (which has a 50mph speed limit at this point) will result in further accidents. There is no detail in the application which explains or justifies how the site would be safe for the volume of traffic likely to be generated.

Additionally, more information is required regarding the site access itself. The applicant seeks planning consent in outline only, with all matters to be reserved apart from access. However the application does not contain any information regarding the access point, whether the existing entrance to Walnut Gardens is to be utilised or a new one constructed. There are no appropriate drawings that show the geometry of the junction and the visibility splays, and there is no assessment of the access and its relationship with nearby junctions and access points off the A38.

In particular, there is no assessment of whether the existing junction at Walnut Gardens can accommodate the increase in traffic that will result from the intensification of housing numbers on site. It is impossible to adequately judge these proposals because this key information has been omitted.

The planning authority needs to request that this crucial information is submitted at the earliest opportunity so that the applicant’s proposals can be robustly and properly assessed.

No justification for the increase in housing numbers

The rationale behind the significant increase in housing numbers has not been explained, and it is left to us to assume that this is a proposal which is intent on maximising development potential at the expense of creating a sensitively designed and appropriate neighbourhood.

As already mentioned, there have been a number of recent consents in the area, and the Parish Council questions whether there has been an assessment of these. The application does not provide any rationale behind the increase in housing to be delivered on site, and why this is appropriate given the existing consents that have already been tested through the planning process.

Lack of detail regarding design and layout

The applicant's provision of an "illustrative landscape masterplan" is meaningless and unmanageable and the drawing adds little to the development's justification. The drawing serves to demonstrate that the proposal is based solely on an area calculation for maximum capacity, as evidenced by the significant increase in housing numbers compared with extant permissions on the site. The layout appears cramped and lacking coherence, with multiple dead ends, and the housing numbers seem very high, particularly considering that there are only five dwellings at Walnut Tree Farm immediately to the north. There is no commentary on the types of homes that will be provided, apart from a commitment to 17 (40%) affordable dwellings, which is in line with accepted policy.

More information regarding the basis on which affordable housing provision has been calculated is required to adequately assess this proposal.

The illustrative landscape masterplan should be replaced with an enforceable "parameters plan," (or a formal, evidenced masterplan) which can be conditioned to ensure future compliance. The plan should demonstrate how all material considerations have been addressed, how requirements of the NPPF are met, and how the new housing will contribute positively to the community. If approved and suitably conditioned (there would be no need to specify unit numbers) the community and planning authority will have confidence that the development will be delivered as proposed and accepted. Failure to secure such a plan suitably conditioned, will provide the planning authority with little future control.

Paragraph 140 of the NPPF must be applied, requiring at this outline stage sufficient plans and information to provide clarity of the development and its implementation, and to offer a level of confidence. This material must be conditioned to avoid future planning breaches and unacceptable changes for reason of "viability".

In addition to the above concerns, the Parish Council makes the following observations:

- a minimum of consideration and mitigation has been applied, with all matters that truly determine the site's suitability for development left for later consideration. This is unacceptable.
- the applicant's assurances the development will be suitable, sustainable and of high quality are unconvincing and lack detail on key elements.
- the bio-diversity net gain offered could be achieved without this development.
- the lack of integration of this proposal with the community cannot be understated. There is no design evidence that demonstrates the development can contribute positively to the enhancement of the village.
- the proposal fills one of the few open areas remaining within the ribbon of development along the A38 from Gloucester.
- this site does not exhibit any special character or need that requires it to be brought forward for development with haste. It should be considered in combination with other land in a coordinated spatial strategy.
- any short-term economic and employment gain claimed from construction activity is transferable to any other green field site.

Material considerations applicable to this site are such, that even if the "tilted balance" carries significant weight, they set very clear parameters to an acceptable development. These parameters and how they are to be addressed, must be agreed before any permission in outline is considered.

The Parish Council understands the opportunity offered to the applicant by the current planning policy position, but this does not excuse the need to ensure the development is both appropriate to the location and sustainable. Driven by the desire to maximise housing numbers, with limited and unproven planning justification clearly retrofitted, this proposal is currently neither appropriate nor sustainable. The applicant relies on the engagement of the "tilted balance", and precedent set by extant permissions, at the expense of all other considerations. The complete lack of detail doesn't provide any confidence that the development of the site can be managed and delivered to ensure it is sound in all respects, and will add positively and cohesively to the locality and the community.

The benefit of a significant level of new housing, over and above what has already been consented, in an unsustainable location, is not proven demonstrably to outweigh the inherent harm.

Norton Parish Council therefore opposes this application.

The Parish Council further contends that the applicant should be required to demonstrate through the provision of evidence that:

- the site is sustainable and appropriate for housing,

- the development will meet the requirements of the Development Plan, local and national planning policies[1], including the Borough's spatial strategy,
- the proposal responds to a demonstrable need that cannot reasonably be provided at any other site;
- affordable housing is required in the village and it is a location suitable for meeting affordable need,
- the development will be delivered within a reasonable timescale responding to the need claimed;
- the development will meet local social, economic and environmental considerations and provide an appropriate mix of housing types for the local community;
- the development will not be isolated but integrate with the host community by providing beautiful, well-designed linkages, quality and useable public shared space, social interaction and healthy life-styles,
- the development will not place undue stress on existing local infrastructure, including drainage;
- the proposal will not have a detrimental impact on local character or the countryside,
- the development makes adequate and legally secured provision for related matters that will be delivered locally and quickly where the development has adverse impact,
- the development will be of a scale and form commensurate with its location and ensure it delivers benefits of beauty and placemaking;
- the proposal represents a true balance of planning circumstance, with the benefit of the site's development outweighing the inherent harm of a proposal which runs against adopted policy,
- the applicant has engaged with the local community and responded positively to its concerns,

These important considerations cannot be left for later consideration: after the principle of development is agreed. The principle of development on this site can only be determined following proper consideration of evidence submitted in response to the above points.

Selina Bostock
Clerk to the Council
2 April 2024

[1] Including the NPPF December 2023 and The Tewkesbury Borough Interim Housing Position Statement November 2023.