



**SOUTH DOWNS NATIONAL PARK AUTHORITY**

**TOWN AND COUNTRY PLANNING ACT 1990**

**SECTION 78 PLANNING APPEAL**

Local Planning Authority Reference:

SDNP/21/04848/FUL

Appeal Reference:

APP/Y9507/W/23/3314274

**REBUTTAL PROOF OF EVIDENCE (PLANNING)**

**May 2023**

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**SDNPA DEVELOPMENT MANAGEMENT LEAD**

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## **I. Introduction**

- 1.1 I have prepared this rebuttal proof of evidence in response to a number of points made by Mr Murray-Cox in his evidence on planning matters on behalf of the Appellants. This rebuttal should be read in conjunction with my main proof of evidence submitted on 21<sup>st</sup> April 2023.
- 1.2 I do not seek to address all individual areas of disagreement, or difference of judgment, and I have not seen anything in Mr Murray-Cox's evidence to cause me to change my views on the issues I address in my proof. The fact that I do not rebut every point with which I disagree should not be taken as my acceptance of those points, as I have structured my response below on overarching and certain specific issues.

## **2. Planning Rebuttal**

### NPPF paragraph 58 and the weight to be given to viability by the decision maker

- 2.1 Mr Murray-Cox acknowledges NPPF paragraph 58 at his paragraph 3.23 and the weight to be given to viability is a matter for the decision maker at his paragraph 6.8. However, there is no analysis as to how NPPF paragraph 58 applies to the main issue of what would be an acceptable level of affordable housing.
- 2.2 I consider that not addressing paragraph 58 is an omission, given it has been agreed that the South Downs Local Plan (SDLP) (2019) is up to date and the weight to be given to viability needs to have regard to all the circumstances of the case.
- 2.3 Apart from supporting Mr Spilsbury's evidence on viability, no exceptional circumstances have been satisfactorily demonstrated to justify that significant weight should be given to viability, within the context of NPPF paragraph 58, policy SD28(2), and the National Park policy and Statutory Duty context.
- 2.4 This is also in contrast to paragraph 7.63 of the SDLP which outlines that new housing should be focussed on affordable housing requirements and ...*"Insufficient affordable housing provision which runs contrary to Policy SD28 will be a significant factor weighing against approval, irrespective of an viability barriers."*

- 2.5 At paragraph 4.23 of Mr Murray-Cox's evidence, it is contended that 8 affordable dwellings should attract significant beneficial weight, however, this does not justify that significant weight should be given to viability in contrast to an up to date Local Plan and evidence base and the National Park context.

#### The National Park context

- 2.6 Paragraph 4.16 of Mr Murray-Cox's proof states that he has not seen any evidence which suggests that delivering 50% affordable housing is essential to achieving the objectives of the Circular 2010, the Statutory Duty, and the PMP.
- 2.7 The objectives of the legal framework and guidance expect the SDNPA to seek to maximise affordable housing. It is the role of the Development Plan to set out the viable position of achieving this within new residential development. The Development Plan was formulated on the expectation that the site should deliver 50% affordable housing. I also understand that it is common ground that there is significant unmet need for affordable housing and there is also clear evidence of a rising affordability gap in the National Park. If there is conflict with policy SD28 then it follows that the proposals also conflict with those objectives, as I consider to be the case.

#### The Relevance of the Partnership Management Plan (PMP) 2020-2025

- 2.8 Paragraph 3.4 Mr Murray-Cox's proof states that the PMP is not referred to in reason for refusal I. Whilst it is not explicitly referenced, it is a material planning consideration for the Inspector in regard to the context of planning decisions within the National Park and affordable housing.

#### The relevance of the previous pre-application advice and planning application

- 2.9 At paragraph 2.5 of Mr Murray-Cox's proof it is stated that the pre-application advice and the previous application proposals are irrelevant to the Inspector's consideration of the Appeal.
- 2.10 In my view, the pre-application advice is relevant in the overall considerations for determining the weight to be given to viability, on the basis that the advice clearly set

out the adopted and emerging affordable housing policy requirements to take account of prior to the submission of a planning application.

- 2.11 Paragraph 2.7 of Mr Murray-Cox's proof also contends that the pre-application advice does not set out any special or unusual circumstances as to why the policy expectations should be achieved, irrespective of viability.
- 2.12 In my view, he has set out this argument the wrong way round. The adopted and emerging affordable housing policy set out the requirements and the onus is on applicants to demonstrate exceptional circumstances regarding why the policy requirements cannot be achieved. There are not any special or unusual exceptional circumstances regarding the redevelopment of the site, which has been consistently considered through the Local Plan process as a deliverable residential allocation.
- 2.13 Paragraph 2.9 of Mr Murray-Cox's proof states that during the previous application the Applicant considered the viability carefully. However, a policy compliant scheme was proposed at the outset of the application. I would expect that the viability of the scheme and policy requirements were considered at the time of the option agreement, where a minimum price to be paid was agreed, prior to the submission of the application.
- 2.14 Furthermore, paragraph 7.64 of the SDLP supporting text is relevant to considering the planning history of the site and the weight to be given to viability. It outlines that the SDNPA expects *"that land purchase/sale negotiations have ensured due diligence, and have fully taken into account the whole cost of development, including all adopted and emerging development plan policies (my emphasis), CIL, and any abnormal costs reasonably identifiable ahead of development, as a prerequisite for development potential. Affordable housing provision and other planning obligations should therefore result in reduced residential land values which reflect these factors."*
- 2.15 I do not agree with Mr Murray-Cox that the pre-application advice and the previous planning application are irrelevant. Rather, they are elements of the planning history of the site and its history (including the Local Plan process) should be considered within the range of factors for determining the weight to be given to viability, as outlined in my proof.

The scope within policy SD28 to consider viability

- 2.16 In response to paragraph 4.12 of Mr Murray-Cox's proof, I do agree that policy SD28 allows for consideration of viability, but where it can be robustly demonstrated as an exception to the delivery of a policy compliant scheme. Policy SD28 also includes such flexibility in order to be consistent with the NPPF. Also, the BNP Paribas Report (2017) (Core Document CD5.2) which underpinned policy SD28 does not outline that all 17 typologies are viable in all circumstances, hence a degree of flexibility was appropriate to include in the policy in this respect.
- 2.17 Reference is also made by Mr Murray-Cox in paragraph 4.12 to an appeal decision within the National Park concerning 57 dwellings and new commercial development at Eastmead Industrial Estate, Lavant, where the viability of providing policy compliant affordable housing was a main issue of that appeal.
- 2.18 I would accept that the 50% requirement is not an absolute requirement. However, the discussion of policy SD28 in that appeal decision reflects, in my view, an over simplification of the policy considerations in policy SD28, which only permits a lower provision as an exception and subject to viability.
- 2.19 Paragraph 4.18 of Mr Murray-Cox's proof outlines that the proposals are not unrestricted housing and that the proposals are on an allocated site, within the prescribed range of dwellings and in a context where the SDLP allows for consideration to be given to viability.
- 2.20 The proposals are on an allocated site and within the range of dwellings expected. The reasoning behind allocating sites was to seek to deliver affordable housing where it is needed and that the larger allocations play an important role in this given the 50% requirement.
- 2.21 Whilst policy SD28 includes some flexibility, the proposals have not deviated from the other requirements in the allocation policy SD71, they accord with other SDLP policies in regard to the broader planning matters and in these respects it is difficult to justify that there are then exceptional circumstances to 'unlock' the flexibility within the policy, particularly in the context of an up to date Local Plan which, under NPPF paragraph 58, its contributions should be assumed to be viable.

2.22 At paragraph 4.19 of Mr Murray-Cox's proof, it is contended that the allocation policy does not cite a requirement of 50% affordable housing. I am not sure what point my Mr Murray-Cox is trying to make here. Policy SD28 outlines the strategic approach of the SDLP to affordable housing requirements within the National Park. There is no indication that policy SD71 anticipated a different approach to affordable housing within this allocation and every indication that the expectations of policy SD28 should be understood as applying to it.

#### Affordable housing tenure

2.23 Paragraph 4.2 of Mr Murray-Cox's proof outlines that the SDNPA's case sets out a broader concern than the number of affordable dwellings with the issue of the tenure of affordable housing not having been addressed in reason for refusal 1.

2.24 In my view, tenure is a relevant consideration because a quantum of 50% affordable housing has not been proposed. As a result of not achieving a sufficient number of affordable dwellings, criterion (2) of policy SD28 applies whereby priority will be given to maximising numbers of units over other policy requirements– i.e tenure.

2.25 This approach is further outlined in the supporting paragraph 7.65 where a 'cascade' of providing for affordable housing is outlined, where viability is a justified barrier to delivery. The policy approach of policy SD28 is, therefore, relevant and it is relied upon by the Appellants, as explained in paragraph 4.11 of Mr Murray-Cox's proof and within the evidence of Mr Spilsbury.

### **3. Conclusion**

3.1 I have limited my rebuttal to points where I consider that further written evidence may assist the Inspector in understanding issues and differences between the parties. The areas highlighted above are relevant considerations in the determination of the weight to be given to viability by the decision maker and in viability considerations.

3.2 I maintain that the appeal proposals do not accord with policy SD28 and the material considerations outlined in my proof and the detailed evidence presented by Mr Castle.

- 3.3 Regarding reason for refusal 2, the draft S106 Legal Agreement is at an advanced stage and this will be submitted to the Inspector by 11<sup>th</sup> May.
- 3.4 The evidence in this rebuttal is true and has been prepared and is given in accordance with the guidance of my professional institution. I can confirm that the opinions expressed are my own and are formed from professional judgement based on my knowledge and good practice.