

**FOXDEN WAY, GREAT BOURTON**

**RE: WILTSHIRE COUNCIL V SECRETARY OF STATE**

**FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT**

---

**NOTE ADVISING**

---

1. I have previously advised Fernhill Estates in respect to land west of Foxden Way, Great Bourton ('the Site') – my previous opinion being dated 12 March 2021.
2. Fernhill Estates submitted an application for planning permission in respect to the Site to Cherwell District Council ('the Council'), on the basis of the Site being an entry-level exception site. At the request of the local authority, this has been amended to a First Homes site in accordance with the Planning Practice Guidance and the Government's Written Ministerial Statement of 24<sup>th</sup> May 2021 on this matter which confirmed that First Homes were to replace entry-level exception sites.
3. In effect, first homes are the policy equivalent of entry-level exception sites – hence why the Council have asked for this change.
4. Entry level exception sites have recently been the subject of a High Court judgment in *Wiltshire Council v Secretary of State for Housing, Communities and Local Government* [2022] EWHC 36 (Admin). The purpose of this note is to explain the legal principles that can be derived from this judgment.
5. The judgment followed from an Inspector's decision<sup>1</sup>, dated 27 May 2021, wherein Inspector Page granted planning permission on appeal for up to 10

---

<sup>1</sup> Appeal Reference: APP/Y3940/W/3249284

entry-level affordable dwellings in relation to land south of Broad Town Primary School, Wiltshire. I acted for the Appellant in that appeal.

6. The Council brought a legal challenge<sup>2</sup> in respect to the Inspector's decision. On 14 January 2022, the High Court handed down judgment in this matter. In short, the Court dismissed the challenge. This is the first judgment that addresses paragraph 71 of the NPPF.
7. In giving his judgment, HHJ Jarman QC acknowledged that entry-level exception sites will meet the following criteria:
  - i. be adjacent (so not in) existing settlements;
  - ii. be on land that is not allocated for housing; and
  - iii. will almost always, if not always, not be in accordance with the development plan.
8. This can be seen from paragraph [26] of the judgment:

*I deal now with each of the grounds in turn. A number of points are, in my judgment, immediately obvious from a reading of NPPF 71. The first is that local planning authorities should support the development of sites suitable for first time buyers or tenants. The second is that such sites are exceptional and should be adjacent (so not in) existing settlements . The third is that such sites should be on land which is not already allocated for housing. In my judgment, this means that such development will almost always, if not always, not be in accordance with the development plan, one of the functions of which is to identify and allocate sites suitable for housing.*

9. Further, HHJ Jarman QC acknowledged that harm to the landscape would be likely in respect to entry-level exception sites and that paragraph 71 of the NPPF envisaged this (paragraph [36] of the judgment):

---

<sup>2</sup> Pursuant to section 288 of the Town and Country Planning Act 1990

*In my judgment, NPPF 71 clearly envisages that by supporting entry level exception sites, harm to the landscape would be likely, at the least. That is shown by providing that sites should be adjacent to existing settlements and on land not already allocated for housing. It is also shown by the need to emphasise that sites should not be permitted in National Parks, AONB or Green Belt. That is so even when other NPPF policies protecting the countryside are considered. That does not mean that landscape harm should not be weighed in the balance. Reading the decision letter fairly as a whole, and the inspector in paragraph 17 expressly refers to his reasoning later in the letter, in my judgment it is clear that that is precisely what he did. He did not regard compliance with NPPF 71 as trumping, or even impacting upon, such consideration.*

10. In my view, given that first homes are meant to be the policy equivalent of entry-level exception homes, it follows that the above judgment would apply equally to first homes.

11. It necessarily follows that in respect to Fernhill Estates' application, a degree of landscape harm and any in-principle conflict with the development plan do not, as a matter of law, act as a bar to the grant of planning permission.

**I advise accordingly.**

10 February 2022

