



Appeal Decision

Inquiry opened on 28 November 2023

Accompanied site visit made on 28 November 2023

by Matthew Nunn BA BPI LLB LLM BCL MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th February 2024

Appeal Ref: APP/C1950/W/23/3323564

Land rear of 19 The Avenue, Welwyn, AL6 0PW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Land Group (Welwyn) Ltd against the decision of Welwyn Hatfield Borough Council.
 - The application Ref 6/2023/0261/OUTLINE, dated 1 February 2023, was refused by notice dated 3 May 2023.
 - The development proposed is described as 'outline planning application for up to 24 dwellings with all matters reserved except for means of access'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application was made in outline with all matters apart from access reserved for subsequent determination. The Inquiry sat for 4 days from 28 November to 1 December 2023. In addition to my accompanied site visit on 28 November 2023, I undertook an unaccompanied visit to the locality.
3. I held a Case Management Conference (CMC) on 20 September 2023 to discuss the ongoing management of the Inquiry, the likely main issues, including the best method for hearing the evidence, to ensure the efficient and effective running of the Inquiry.
4. There were originally 6 reasons for refusal (RfRs). Information has been provided such that RfR 5 relating to protected species is no longer being pursued by the Council. RfR 6 relating to the absence of mitigation on local infrastructure and services is now no longer being pursued following the completion of a planning obligation dated 22 December 2023. I deal with the obligation in the body of my decision.
5. Matters relating to drainage and flood risk, highway safety and locational accessibility, and the effect on the landscape, character and appearance were dealt with by way of 'round table' discussions rather than conventional cross-examination.
6. A new National Planning Policy Framework ('The Framework') was published on 19 December 2023. Comments were sought on this document from the main parties which I have taken into account in my decision.

Main Issues

7. In the light of the above, the main issues are:
- (i) whether the development represents inappropriate development within the Green Belt;
 - (ii) the effect of the proposal on the Green Belt, including openness;
 - (iii) the effect on the character and appearance of the area, including the landscape;
 - (iv) whether there is safe and suitable access to the development for all users;
 - (v) whether the site is locationally sustainable;
 - (vi) whether drainage and flood risk are satisfactorily addressed; and
 - (vii) whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify development within the Green Belt.

Reasons

Planning Policy Context

8. The relevant legislation requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise¹. The statutory development plan now comprises the Welwyn Hatfield Local Plan (2016-2036), recently adopted on 12 October 2023 ('the Local Plan'). The planning application was, however, determined prior to the adoption of this new plan, and the RfRs refer to policies within the previous District Plan 2005, and the Emerging Local Plan, as it was then.
9. The Council has subsequently identified that it considers the most important policies from the Local Plan for determining the appeal are as follows²: Policy SP1 (Delivering Sustainable Development), Policy SADM1 (Windfall Development), Policy SP4 (Transport and Travel), Policy SP7 (Type and Mix of Housing), Policy SP9 (Place Making and High Quality Design), Policy SP13 (Infrastructure Delivery), Policy SADM14 (Flood Risk and Surface Water Management), Policy SADM16 (Ecology and Landscape), Policy SADM34 (Development in the Green Belt). Other relevant policies include Policy SADM2 (Highway Network and Safety), Policy SP3 (Settlement Strategy and Green Belt Boundaries), Policy SADM7 (Community Services and Facilities), Policy SADM11 (Amenity and Layout).

Whether inappropriate development in the Green Belt

10. The Appellant was clear at the CMC that the appeal would be advanced on the premise that the proposal constituted inappropriate development within the Green Belt, on the basis it did not fall within any of the exception

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 & Section 70(2) of the Town and Country Planning Act 1990

² Proof of Mr Myers, Paragraph 4.9

categories in Paragraph 154 of the Framework. However, the Appellant is now advancing an alternative argument that the proposal could be regarded as 'not inappropriate' development, relying on Paragraph 154(f) of the Framework: namely that the proposal comprises 'limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites)'. In support of this argument, the Appellant highlights that the scheme would deliver 11 affordable homes, 45% of the total of 24 dwellings.

11. The wording of Paragraph 154(f) specifically directs decision makers to policies in the development plan³, and in this instance, Policy SP7 of the Local Plan appears to be the most relevant policy. This Policy allows for rural exception sites in the following circumstances: to provide small scale affordable housing schemes of up to 4 new dwellings, on sites within or adjoining the borough's Green Belt villages, and adjoining those excluded villages⁴ where no sites have been allocated for housing. Importantly, the Policy also requires that it can be robustly demonstrated that the proposed development is required to help address the identified housing needs of the local community.
12. The Appellant has advanced scant written evidence to justify how the scheme benefits from this Green Belt exception, other than reproducing the text of the Framework⁵. No development plan policies are cited, let alone any dealing with limited affordable housing for local community needs. It is not explained how the proposal complies with Policy SP7 of the Local Plan. In oral evidence, the case was advanced that other parts of Policy SP7, not merely those dealing with rural exception sites, could satisfy Paragraph 154(f). But again, little evidence was adduced to substantiate the point or to explain which other aspect of Policy SP7, excluding that relating to rural exception sites, dealt with community needs for affordable housing. In fact, it appears no other aspect of SP7 is directed to community needs for affordable housing.
13. The Glossary to the Framework provides some assistance in understanding what is meant by 'local community needs' in respect of 'rural exception sites': that they are seeking 'to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection'. Therefore, 'local community needs' must mean something more than simply 'borough wide' needs, although the former would clearly be a subset of the district's needs⁶. The Appellant argued that the nominations agreement within the planning obligation would provide a mechanism by which local community needs could be met. This may be so, but that still does not deal with the fundamental underlying issue – namely how the scheme itself would meet any existing evidenced needs of the local community as directed by the Local Plan.
14. Overall, and in the absence of contrary evidence from the Appellant, I consider Policy SP7 of the Local Plan is the relevant policy assisting with interpreting Framework Paragraph 154(f). It is clear that the scheme would not comply with this policy. It is for more than 4 dwellings, it does not

³ An approach supported in APP/D0121/W/23/3315584, Paragraph 33, CD A3.4

⁴ Villages excluded from the Green Belt

⁵ Proof of Mr Hinsley, Paragraph 9.2, simply replicates Paragraph 154(f) of the Framework

⁶ A point accepted by Mr Hinsley in cross-examination

adjoin an excluded village⁷, and there is no detailed or robust evidence of an identified need of the local community in this specific locality. Accordingly, I do not consider that the scheme benefits from the exception in Paragraph 154(f).

15. It follows, therefore, that the proposal is 'inappropriate development' within the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances⁸.

Effect on the openness of the Green Belt

16. The appeal site is an irregularly shaped parcel of land to the rear of Nos 19, 21, and 23 The Avenue, accessed via a track running between Nos 17 and 19 The Avenue. The site is sloping, rising up steeply from the access road. It is mainly rough grass, and a row of large conifers bisects the site internally. Various items have been deposited within the site, including vehicles. The site is enclosed to an extent from the wider landscape by a series of trees. The land in question is not developed and no planning permission has been granted for its development or change of use. A set of recovered appeals relating to the stationing of five caravans on part of the site was dismissed by the Secretary of State in 2013, and the enforcement notices upheld⁹.
17. In terms of the surroundings, The Avenue is a residential road leading from the Great North Road (B197) to the south. This road leads to Danesbury Park Road to the north, from which leads a public footpath. The A1(M) road passes close to the appeal land to the south-east on an embankment and bridge over The Avenue. The appeal land falls within an area of designated Green Belt, between the defined settlements of (Old) Welwyn and Oaklands & Mardley Heath.
18. The Framework notes a fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that the essential characteristics of Green Belts are their openness and permanence. Caselaw has established that openness is a broad concept of policy not law; applying the policy imperative of preserving openness requires realism and common sense; the word 'openness' is open textured and a number of factors are capable of being relevant, including visual as well as physical and spatial impacts¹⁰.
19. Whilst this is an outline scheme, the submitted plans give some indication of how the site could be developed. The plans show houses, comprising a mix of terraced and semi-detached dwellings and a block of flats, of up to two storeys (although some houses have accommodation within the roof). New gardens would be created for the houses, with fencing and associated domestic paraphernalia, and the creation of a significant amount of hardstanding, including an internal road layout. All this built form, on a parcel of land that is currently undeveloped, would clearly have a significant

⁷ And in any event, housing is allocated within Oaklands and Mardley Heath in the Local Plan

⁸ Paragraph 152

⁹ APP/C1950/C/12/2171233, APP/C1950/C/12/2171238, APP/C1950/A/12/2171488, CD 33 – Appendix 3

¹⁰ R (Liverpool Open and Green Spaces Community Interest Company) v Liverpool City Council [2020] EWCA Civ 81; Hook v Secretary of State for Housing, Communities and Local Government [2020] EWCA 486; R (Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council [2020] UKSC 3

effect on the openness of this part of the Green Belt. In terms of spatial harm, this area of Green Belt and its current openness would be permanently lost to built development.

20. In terms of wider visual impacts on the Green Belt, there are currently some limited views into the site from The Avenue, although parts of it are not prominent and are hidden because of intervening vegetation and topography. That said, some vegetation including the conifers across the site are indicated to be removed to allow the housing development, thereby increasing the visibility of the site. It is likely, therefore, that there would be views of the proposed houses given their two-storey height. Furthermore, the rising gradient of the site means that the dwellings on the higher parts would be visible from the lower parts of The Avenue.
21. No computer-generated images or illustrative drawings of how the dwellings might be perceived in the wider landscape are available in this appeal. It is likely however, notwithstanding the presence of trees, there would be some visibility of the dwellings from the footpath to the west of the appeal site. This is because, to achieve the necessary quantum of development proposed, and as shown on the illustrative plans, building would extend reasonably close to the boundary abutting the countryside. Again, the effect would be accentuated because of the rising ground levels.
22. In relation to the earlier 2013 appeals, the Inspector noted that the impact on visual amenity was quite limited and could be reduced further by the imposition of conditions¹¹. Nonetheless, it was still concluded by the Secretary of State in those appeals that the caravans caused significant harm to the openness of the Green Belt and the purpose¹² of safeguarding the countryside from encroachment¹³. In this instance, the much greater extent of development proposed, namely 24 dwellings as opposed to 5 caravans, on a more sizeable area, would result in a commensurately greater degree of harm to openness and the purpose of safeguarding the countryside from encroachment than the stationing of caravans considered in the 2013 appeals.
23. The Council has argued¹⁴ that the scheme would conflict with a further purpose of the Green Belt, namely to assist in urban regeneration, by encouraging the recycling of derelict and other urban land¹⁵. This is on the basis that local planning policy seeks to channel development towards larger urban areas and away from more rural locations to assist in urban regeneration. Whilst I acknowledge this policy aim, there is little substantive evidence before the Inquiry to suggest that development of this site would disincentivise the urban regeneration of sites elsewhere.
24. To sum up, I consider the introduction of a considerable amount of built form on an undeveloped area would result in a significant loss of openness of the Green Belt causing material harm. The Framework directs substantial weight should be given to any harm to the Green Belt in the planning balance. Therefore, substantial weight must be given to the harm by reason

¹¹ Paragraph 148, CD 33 – Appendix 3

¹² Framework, Paragraph 143(c)

¹³ Paragraph 12, CD 33 – Appendix 3

¹⁴ Proof of Mr Myers, Paragraph 5.30

¹⁵ Framework, Paragraph 143(e)

of inappropriateness, the harm to openness, and the conflict with the purpose of safeguarding the countryside from encroachment¹⁶.

Effect on character and appearance, including landscape

25. The Avenue comprises a series of detached houses, of varying styles and designs, generally set on substantial plots. Most are set well back from the road, with substantial front gardens, and some properties are attractively landscaped with hedges and shrubs. The locality has a spacious and verdant feel. Although outline in form, the introduction of 24 dwellings on this site would likely result in a much more cramped and dense form of development than is found in the immediate locality. In order to deliver the quantum of development, it is likely that the dwellings would be positioned much closer together, and the overall plot sizes would be significantly smaller. This would be at odds with the prevailing spacious pattern of development in The Avenue.
26. In addition, as noted, whilst the existing conifers currently screen part of the site when viewed from The Avenue, the submitted plans show this vegetation would need to be removed to accommodate the proposal. Whilst these conifers have no intrinsic amenity value, and in some respects jar with the deciduous native species in the countryside beyond, their removal would nonetheless result in the higher density development being more visible, especially in views from The Avenue. The type of development proposed would be incongruous with the existing lower density housing nearby.
27. The site falls within the 'Danesbury Settled Slopes' Landscape Character Area (LCA)¹⁷. This LCA is characterised by 'an undulating slope with localised deep depressions and dry valleys creating an enclosed character in places' and 'sparsely settled detached properties set within large garden plots'. It notes that 'views are limited by topography and boundary vegetation' and that 'land use reflects the urban fringe location'. The Inspector in the 2013 appeal found that this landscape was 'not of particular significance or importance, even at the local level'¹⁸. However, he did observe: 'that is not to say that improvements and conservation should not be sought'¹⁹. I agree with those assessments.
28. In that earlier 2013 appeal, the Inspector found that the impact on the landscape did not of itself present a strong argument for opposing the development²⁰. All that said, and as already noted, what is now proposed is of significantly greater scale and site coverage, resulting in much greater urban intrusion into the countryside. The dwellings would likely be visible in wider views from the footpath to the west, especially those on the higher part of the site. The effect would be more marked in the winter months when deciduous trees lose their leaves. Users of the footpath within the countryside are likely to find their experience reduced by such changes to the landscape.
29. I acknowledge that the existing houses in the locality and the nearby A1(M) are urbanising influences. However, that does not justify further harmful

¹⁶ Framework 143(c)

¹⁷ CD A2.1 – Hertfordshire Landscape Character Assessment 2004 – Danesbury Settled Slopes, Area 133a

¹⁸ Paragraph 164, CD 33 – Appendix 3

¹⁹ Ibid

²⁰ Ibid

urban incursion into the landscape. Overall, I find that the scheme would intrude into the countryside and harm the character and appearance of the area. It would fail to help to conserve and enhance the borough's natural and historic landscape, and would not sit comfortably within the wider landscape, contrary to Policy SADM16 of the Local Plan. It would also be contrary to Policy SP9 which requires, amongst other things, proposals to relate well to their surroundings and local distinctiveness, including wider landscape.

Highway safety

30. The Council accepts that the proposal would not cause a severe residual cumulative impact on the road network²¹. The Council's position, supported by Hertfordshire County Council ('the County Council') as Highways Authority, is that the scheme fails to provide safe and suitable access for all users. The following factors are highlighted: the absence of a continuous footway approximately 30 metres along The Avenue; the substandard quality of the features that do exist, including the footway and the speed humps. It is highlighted that neither of these features meet the standard of a publicly maintained footway, and the status of The Avenue as a private road means there is no guarantee as to the long-term status of the existing footway provision. The gradient of the site's access is also highlighted.
31. At the Inquiry, it seemed that the key matter at issue was the lack of dedicated pedestrian footpath along The Avenue from the appeal site to the A1(M) underpass where the footpath begins, which then links with the Great North Road (B197) to the south. The Appellant refers to earlier correspondence with a representative from the Highway Authority noting 'the need to provide a footway' from the site to the A1 bridge 'to have a walking route'²². However, no such footway has been proposed as part of this scheme.
32. In my judgement, there must be some degree of flexibility to take account of local highway conditions and natural topography. Adopting an overly rigid and inflexible approach would render many sites undevelopable, which is unsatisfactory, given the need for housing. I accept that it is sub-optimal that there is no designated pedestrian pathway for a relatively short distance of 30 metres along The Avenue, before the footway starts. It is also regrettable that the Appellant appears not to have pursued this matter further. On the other hand, vehicular traffic flows are low in The Avenue, as are average speeds²³. It is not unusual for pedestrians to walk within the carriageway on lightly trafficked roads, and shared surface streets can work where traffic speeds and volumes are low. In this case, I am satisfied that, on balance, the limited stretch where there is no footway would not endanger pedestrian safety.
33. In reaching this view, I am aware of the comments of the Local Plan Inspector. The current appeal site (which forms part of OMH9)²⁴ along with a larger area adjacent to the north-west (referred to OMH6) were considered as part of the Local Plan process. The Local Plan Inspector stated that 'the

²¹ Framework, Paragraph 115

²² Proof of Mr Hinsley, Paragraph 4.7

²³ Proof of Mr Bond, Paragraphs 3.7-3.11

²⁴ OMH9 covers a larger than the appeal site

absence of footpaths for most of the distances west of the A1(M) would be a deterrent to walking'. However, this observation is probably more pertinent in respect of the larger area (OMH6) to the north of the appeal site. In this instance, there is only a limited 30 metre stretch between the appeal site and the start of the footpath.

34. The Council has briefly cited the Equality Act 2010 and highlighted that safe and suitable access for all is required not only to meet policy requirements, but also to discharge the provisions of the Equality Act. S149 of the Equality Act imposes a procedural duty on public authorities to have due regard to various matters, including the need to advance equality of opportunity between persons who share a protected characteristic and persons who do not. Importantly, caselaw has established that the legislation does not require public authorities to achieve any particular outcome, and the question of what weight, if any, should be afforded to the equality impacts is a matter for the public authority to decide. Nor does the legislation prescribe a particular procedure that public authorities must follow.
35. The Council argues that certain groups – for example, families with children in prams, those with mobility issues, and who are visually impaired - would be precluded from accessing the site, except by car. However, there is scant evidence before me to conclude that the scheme, if approved, would unduly harm or disadvantage any group with a protected characteristic. I see no sound reason why any development could not be designed to comply with the requirements of the Equality Act, and see no cogent reason why the appeal should fail on equality grounds.
36. Overall, I do not consider that the Council's objections on highway safety are sufficiently strong for the appeal to fail. Therefore, I find no fundamental conflict with Policy SP4 which seeks, amongst other things, to improve safety for all highway users; or Policy SADM2 which requires developments to be designed to allow safe and suitable means of access to and from sites for all users.

Locational Accessibility

37. There was disagreement between the parties in terms of the site's locational accessibility. On the Great North Road, near the junction of The Avenue, there are bus stops serving a range of destinations, including to St Albans, Stevenage, Hemel Hempstead, Knebworth, Welwyn Garden City, Welwyn and Hatfield. Further along the Great North Road itself to the east, there is a range of facilities, including a parade of shops comprising a convenience store, post office/newsagent, hair salon, butcher, fish and chip shop, and florist. There is also a Public House (The North Star). Schools are also available along this stretch of the Great North Road, including Oaklands Primary School and Meadowview Nursery and Pre School.
38. The parties have agreed the distance from the centre of the appeal site to these facilities²⁵: 0.6 km to the bus stops; 1.1 km to the parade of shops; 1.2 km to the Public House; and 1 km to Oaklands Primary School. The Council mentions that a walkable distance is generally considered around 10 minutes – an 800m radius²⁶. On an unaccompanied visit, I walked to all

²⁵ See ID6 for exact distances including from the furthest dwelling

²⁶ Proof of Mr Myers, Paragraph 5.60, citing 'Planning for Walking', CIHT

these facilities, and I consider they are walkable for many people. Welwyn North Railway Station is around 3.5 km to the south east of the site, which is beyond a walking distance for most. Whilst I have no doubt that any future occupants of the houses are likely to use private vehicles for certain trips, I consider sustainable options are available, including walking to local facilities.

39. I am aware the Local Plan Inspector made comments in relation to locational accessibility. He observed that 'the nearest schools are beyond a walkable distance' and observes 'although the local facilities are cyclable, they are beyond the distance that most people would walk'²⁷. Again, I interpret these comments as more relevant to the larger site to the north (OHM6). In fact, in a dismissed appeal decision from 2019 relating to proposals at 22 The Avenue, very close to this appeal site, the Inspector observed that the proposals would 'provide new homes in a location where services and employment can be easily accessed using sustainable transport'²⁸.
40. Overall, I conclude that the Council's objections in terms of locational accessibility are not sufficiently well founded for the appeal to fail. In this regard, I find no conflict with Policies SP1 or SP4 which require development to be accessible to services and facilities.

Drainage / Flood risk

41. The issue of flooding remains in dispute. The Council, following the advice of the Lead Local Flood Authority (LLFA), argues that the Appellant has failed adequately to address the existing surface water flow path across the proposed access route to the dwellings. On the basis of the current evidence submitted by the Appellant, the LLFA states that the site does not benefit from safe access and escape routes for the lifetime of the development.
42. The Appellant highlights that it is the access road rather than the houses themselves that would be at risk of flooding. Further, it is said that any surface water flooding would occur immediately after significant rainfall and recede after a short period, probably less than 30 minutes, after which access into the site would be safe. The Appellant states that, anecdotally, the area around No 17 The Avenue 'has never flooded in real life'.²⁹
43. The Framework requires that where areas are at risk of flooding, it must be demonstrated that safe access and escape routes are included where appropriate, as part of an agreed emergency plan³⁰. The Planning Practice Guidance (PPG) relating to Flooding provides further clarification, including requiring the ability of residents to safely access and exit buildings during a design flood³¹; and that safe access routes should avoid flow paths, but where this is not possible, limited depths of flooding may be acceptable, provided that the access is designed with, for example, appropriate signage to make it safe. The PPG also states that the acceptable flood depth for safe access will vary, and even low levels of flooding can pose a risk to people in situ (because of the presence of unseen hazards and contaminants in

²⁷ CD38

²⁸ APP/C1950/W/18/3202272 & 3215410, Paragraph 23

²⁹ Appellant's Closing Submissions, Paragraph 5.3

³⁰ Paragraph 173(e)

³¹ Paragraph 005 Ref ID: 7-005-20220825

floodwater, or the risk that people remaining may require medical attention)³².

44. The appellant has suggested that a Grampian condition could be imposed on any scheme requiring the submission of a Flood Risk Emergency Plan, adopting the principles of the ADEPT/EA Guidance³³, to be agreed with the Council. By contrast, and importantly, the Council highlights that the ADEPT/EA Guidance states that it will very rarely be appropriate to use a planning condition to defer the provision of an Emergency Plan to a later date, because it may show the development cannot be made safe, and therefore call into question whether the development is acceptable in principle³⁴.
45. It seems to me that certain matters do require further clarification, including the likely depth of flooding and its duration. Although the Appellant seeks to make a distinction between the danger posed to dwellings as opposed to the access track, this fails to recognise the importance of safe access routes to developments. At present, there is simply inadequate evidence available that an Emergency Plan could meet the requirements of the ADEPT/EA Guidance.
46. Notwithstanding the current technical differences, it may be possible, following full and proper dialogue between the parties, together with the submission of further appropriate information and additional modelling, to address areas of concern and devise appropriate measures that are acceptable. I agree with the Appellant that a proportionate approach is required. However, until this matter is properly resolved, it would be inappropriate to grant planning permission.

Planning Obligation

47. A planning obligation has been completed by the owners, the developer, the Council and the County Council, dated 22 December 2023. This would secure at least 45% affordable housing (a minimum of 11 dwellings) to be provided in accordance with a mix to be agreed by the Council. A series of contributions would also be payable to both the Council and County Council. Council contributions comprise: an indoor sports facilities contribution (£21,834); an outdoor sports facilities contribution (£20,147); a play facilities contribution (£7,360); a public open space contribution (£2,805) and waste /recycling contribution (£3,000); and a monitoring fee (£5,000) for the Council's costs in monitoring the obligation.
48. County Council contributions comprise: a fire and rescue service contribution (£9,134); a library contribution (£4,507); a primary school contribution (£160,312); a secondary school contribution (£204,260); a special educational needs and disabilities contribution (£29,156); a waste service recycling contribution (£2,000); and waste service transfer station contribution (£2,530); a youth contribution (£4,001); and a monitoring contribution (£340) for the County Council's costs in monitoring the obligation.

³² Paragraph 047 Ref ID: 7-047-20220825

³³ ID3 – Flood Risk Emergency Plans for new development: A guide for planners (September 2019) Association of Directors of Environment, Economy, Planning & Transport; The Environment Agency

³⁴ ID3, Page 8

49. I have no reason to believe that the formulas and charges used by the Council and County Council to calculate the provisions of the obligation are other than soundly based. The Council has provided a Community Infrastructure Levy (CIL) Compliance Statement³⁵ which sets out the methodology for calculating the contributions, why they are necessary, and how they would be spent. I am satisfied that the provisions of the obligation are necessary to make the development acceptable in planning terms, that they directly relate to the development, and fairly and reasonably relate in scale and kind to the development, thereby meeting the relevant tests in the Framework³⁶ and CIL Regulations³⁷. The obligation would also comply with Policy SP13 of the Local Plan which requires developers to contribute to infrastructure costs needed as a result of their proposals. I have taken the planning obligation into account in my deliberations.

Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify development within the Green Belt.

50. When considering any planning application, the Framework is clear that substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations³⁸.
51. On the harm side, the proposal is inappropriate development and is therefore harmful by definition. There would also be a significant loss of openness, as well as a conflict with a purpose of the Green Belt, namely safeguarding the countryside from encroachment³⁹. All this must be given substantial weight, as directed by the Framework. There would also be material harm to the character and appearance of the area, including the landscape. This harm attracts significant weight. In terms of flooding, there are technical matters that must be resolved before any scheme could be permitted. As things stand, therefore, these unresolved flooding matters must weigh significantly against the proposal.
52. This leaves for assessment 'other considerations' and whether they, collectively, clearly outweigh the harms identified such as to amount to very special circumstances necessary to justify the development.
53. The revised Framework⁴⁰ states that, where an adopted plan is less than five years old, and that plan identified at least a five year supply of sites at the time its examination concluded, it is no longer necessary to identify a five year supply of housing. Both criteria are met as the Local Plan was only adopted in October 2023, and so is less than five years old and it also identified a five year supply at the time the Local Plan Examination concluded. However, and very importantly, the transitional arrangements make clear that this only applies to planning applications made on or after

³⁵ ID12

³⁶ Paragraph 57

³⁷ Regulation 122

³⁸ Paragraph 153

³⁹ Framework 143(c)

⁴⁰ Paragraph 76

the publication date of the new Framework⁴¹. A five year housing supply is therefore still applicable in this instance.

54. Although on the recent adoption of the Local Plan, a housing supply of 5.1 years existed, the parties are now agreed that the Council can only demonstrate a supply of between 3.1 to 4.4 years⁴². This difference is because the Local Plan was examined under the 2012 Framework, and therefore subject to different policy tests. To be clear, therefore, the difference in figures is the result of two different approaches, rather than the sudden 'dropping off' of supply. That said, the Council cannot demonstrate a five year housing supply as required by the Framework.
55. The Framework seeks to support the Government's objective of significantly boosting the supply of homes⁴³. To achieve this, the Framework notes that it is important that a sufficient amount and variety of land can come forward where it is needed. The scheme would deliver 24 dwellings, including 13 market homes. I agree with the Council that the scheme cannot be said to be making a 'substantial' contribution *per se* to the overall housing shortfall, as argued by the Appellant⁴⁴. Nonetheless, the proposal would clearly make a positive contribution to the provision of market housing in the Borough. This attracts substantial weight.
56. The Council does not dispute that there is an acute need for affordable housing⁴⁵. The delivery of affordable homes has been low compared with what is required⁴⁶. The Scheme would provide 45% affordable housing equating to 11 homes, secured by a planning obligation. This exceeds the policy requirement in this location of 35%⁴⁷, providing 3 additional affordable homes over that specified by Policy SP7. I accord the provision of 11 affordable dwellings substantial weight.
57. The scheme would generate economic benefits, both short term during the construction phase, and during the lifetime of the development. It would create investment in the locality and increase spending in shops and services. The new residents of the proposed development would bring social and economic benefits including using existing local facilities. These factors, although not quantified, attract moderate weight.
58. In terms of locational accessibility, I have found the Council's objections not sufficiently well founded to cause the appeal to fail. In my view, although optimum walking distances may be exceeded, the site is reasonably accessible to a range of services and facilities. I attach moderate weight to this benefit.
59. In terms of whether the scheme provide safe and suitable access for all users, I am satisfied that, on balance, the limited stretch where there is no footway would not endanger pedestrian safety. Whilst not ideal, it is not a reason for the appeal to fail. However, this cannot weigh in favour of the appeal, and is, at best a neutral factor.

⁴¹ Footnotes 40 & 79

⁴² ID 5, Paragraph 23(c)

⁴³ Paragraph 60

⁴⁴ Mr Hinsley's Cross Examination

⁴⁵ Proof of Mr Wilson, Paragraph 5.1(i)

⁴⁶ Appellant's Closing Submissions, Paragraphs 7.2 -7.5

⁴⁷ Equating to 8 homes

60. Reliance has been placed by the Appellant on the Local Plan Examination in support of this appeal. The Appellant contends that both officers and the Local Plan Inspector supported the release of this land from the Green Belt. A joint statement has been produced by the Council and the Appellant which seeks to clarify, amongst other things, how site OMH9 was considered during the Examination⁴⁸. It appears that the Examination was long and complex, with multiple stages⁴⁹. At one stage during the Examination, it seems that Council Officers put forward a series of sites for possible allocation which included OHM9, but this was not supported by the Council and was not carried forward. The Inspector was very clear that he was not making a 'formal judgement' on OMH9⁵⁰.
61. I do not consider it especially helpful to trawl over in detail what happened during the various stages of the Local Plan Examination, especially given that the Local Plan is now adopted. Site OHM9 was considered within the context of a Local Plan Examination, where many sites were under consideration for release from the Green Belt. Although the Appellant⁵¹ says the Local Plan Inspector found the site suitable for removal from the Green Belt, it is far from clear how such a conclusion can be drawn. In fact, the Inspector refers (in relation to both OMH9 and OMH6) to access problems and various other 'barriers' and 'challenges'⁵². The fact is the Inspector concluded that the Local Plan was sound and could be adopted without the allocation of OMH9. Ultimately, I do not consider that the comments of the Local Plan Inspector can weigh either in favour or against the appeal scheme.
62. In support of its case, the Appellant seeks to rely on various allowed appeals, including at Bullens Green Lane, Colney Heath⁵³. Most of the appeals cited concern developments of different scope and, in many instances, a considerably greater quantum of market and affordable housing. In any event, it is very rare for other appeal decisions to be directly comparable, and site characteristics inevitably differ. Each scheme must be assessed on its own merits.

Planning Balance and Overall Conclusion

63. The Council has only just adopted a new Local Plan following a lengthy Examination. The matters of need for market and affordable housing were considered in depth during this process. The fact is that this site was not allocated for development within the Local Plan. Statute mandates a planned approach to development. I accept that the Council is currently unable to demonstrate a five year supply of housing, but this cannot override all other considerations.
64. Having carefully considered all the evidence, I find that 'other considerations' namely the benefits of the scheme, comprising the provision of market and affordable housing, economic and social benefits, and the reasonable accessibility to shops and services, taken together, do not clearly outweigh the definitional Green Belt harm, the harm arising from loss of openness, the

⁴⁸ ID5

⁴⁹ There were 10 stages of Hearing Sessions from September 2017 to March 2021 (Mr Wilson's Proof, Section 3)

⁵⁰ CD57, Paragraph 10 'Round up Notes'

⁵¹ Paragraph 9.12, Mr Hinsley's Proof

⁵² CD38, Stage 9 Hearings, Inspector's Observations on site discussions, Paragraph 36 onwards

⁵³ APP/B1930/W/20/3265925 & APP/C1950/W/20/3265926; see also Mr Hinsley's Proof Paragraphs 8.1-8.44

conflict with the purpose of safeguarding the countryside from encroachment, and harm arising to the character and appearance of the area, including the landscape, and the unresolved harms arising in relation to flooding. Consequently, very special circumstances do not exist, and the development is therefore not justified.

65. Where there is an absence of a five year supply of housing, the Framework requires that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole⁵⁴. However, and crucially, this so called 'tilted balance' in favour of granting permission may be 'disengaged' where specific policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development. Those relating to the Green Belt are one such category⁵⁵. In this case, I find that Green Belt policies provide a clear reason for refusing the scheme. Therefore, the 'tilted balance' is not applicable in this instance.
66. As very special circumstances have not been demonstrated, I find conflict with the Green Belt policies of the Local Plan, namely Policies SP3 and SADM24. Policy SP3 states that Green Belt boundaries will be maintained throughout the plan period and will only be reviewed as part of a Plan review. Policy SADM34 largely reflects the Framework. I also find, that because of the harm caused to the character and appearance of the area, including the landscape, the scheme would conflict with Policies SP9 and SADM16. It would also be contrary to Policy SADM14 which requires that proposals in areas at risk of flooding should be informed by, and be consistent with, national planning policy and guidance.
67. Overall, I find the scheme conflicts with the development plan as a whole. There are no material considerations to indicate that permission should be granted. Accordingly, I conclude the appeal should be dismissed.

Matthew Nunn

INSPECTOR

⁵⁴ Paragraph 11(d)(ii)

⁵⁵ Footnote 7

APPEARANCES

FOR THE APPELLANT

David Hardy	Partner, CMS Cameron Mckenna Nabarro Olswang LLP
He called	
Stephen Hinsley	Director, Stephen Hinsley Planning Ltd
Jessica Inwood	Director, Shape London Architects
Nick Bond	Director, Caneparo Associates Ltd
David Mardon	Associate of Water Environment Ltd

FOR THE COUNCIL

Ruchi Parekh	of Counsel, Cornerstone Barristers
She called	
William Myers	Principal Major Development Management officer
Matthew Wilson	Planning Policy and Implementation Manager
Katherine Waters	Technical Director, Sustainable Water Management, WSP
Senober Khan	Transport Officer, Hertfordshire County Council

INQUIRY DOCUMENTS

1. Opening submissions for the Appellant
2. Opening Submissions for the Council
3. Flood Risk Emergency Plans for New Development – Guide for Planners: ADEPT / Environment Agency, September 2019
4. Supplementary Note on Flood Hazard Ratings and Thresholds
5. Factual Statement on Welwyn Hatfield Local Plan – Consideration of OMH9
6. Highways Statement of Common Ground
7. Schedule of agreed draft conditions
8. Draft Planning Obligation
9. Closing submissions of the Council
10. Closing submissions of the Appellant
11. Agreed principles on the Public Sector Equality Duty
12. Community Infrastructure Levy Compliance Statement
13. Completed Planning Obligation dated 22 December 2023
14. Appellant's comments on the new Framework
15. Council's comments on the new Framework