



Appeal Decision

Inquiry held on 12 to 15, and 19 December 2023, and January 2024

Site visit made on 15 December 2023

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th July 2024

Appeal Ref: APP/C1950/W/23/3327269

B&Q, Swallowfields, Welwyn Garden City AL7 1JD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Thrive Homes against the decision of Welwyn Hatfield Council.
 - The application Ref is 6/2021/1277/OUTLINE.
 - The development proposed is redevelopment of the site to provide 151 dwellings.
-

Decision

1. The appeal is allowed and planning permission is granted for redevelopment of the site to provide 151 dwellings at B&Q, Swallowfields, Welwyn Garden City, AL7 1JD in accordance with the terms of the application, Ref 6/2021/1277/OUTLINE, subject to the conditions in the attached Schedule.

Preliminary Matters

2. The planning application was submitted in outline with all matters reserved except for access. I have had regard to the application drawings, but have treated each element as being indicative, apart from the details of the access, when considering the likely impact regarding the matters set out in the main issues below. I have also omitted superfluous information from the banner heading that does not form part of the description of development.
3. The proposed development was refused for three reasons. The Statement of Common Ground between the Council and appellant (SoCG) refers to the Flood Risk Statement and Surface Management Report (Revision A, dated August 2021). It states that, subject to planning conditions, this addresses the Council's second reason for refusal on the Decision Notice (DN) regarding flood risk to the site and elsewhere.
4. The appeal is also accompanied by a signed Section 106 legal agreement (S106) between the appellant, Council and Hertfordshire County Council. During the Inquiry, the councils confirmed it meets the obligations referred to in the third reason for refusal on the DN. However, in considering the benefits of the proposal, I address if the S106 satisfies the requirements of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (the Regulations) and the development plan.
5. Hence, only the first reason for refusal on the DN regarding the loss of employment land and its requirement to meet future needs remains to be considered, along with the other issues raised during the Inquiry, as set out in the main issues below.

6. Appeal decisions must be based on the policies from the development plan prevailing at the time of determination. In the case of this appeal, the policies from the Welwyn Hatfield District Plan (2005) referred to on the DN have been superseded by those from the Welwyn Hatfield Borough Council Local Plan 2016-2036 (the LP), adopted on 12 October 2023. The SoCG, and a further statement between the Welwyn Garden City Society (the Society), which is the Rule 6 Party (R6P), and the appellant (R6PSoCG), both set out the policies of the LP relevant to the appeal.
7. During the Inquiry, the National Planning Policy Framework (the Framework) was revised. The main parties had the opportunity to comment upon the relevance of its revised content. The Council and appellant agreed a further SoCG to cover the changes made. I have had regard to this in my decision.
8. In attributing weight to compliance of policies of the LP with the Framework, the stated benefits, and any harms of the appeal scheme, I have had regard to the spectrum of weighting set out in the SoCGs. This rises from no weight, very limited, limited, moderate, significant, very significant, substantial, very substantial, to full weight.

Main Issues

9. The main issues are:

- whether the site is a suitable location for the proposal, having regard to the current retail use and its location within an Employment Area, including the effect of the loss of the use on the local community; and
- the effect of the proposal on the character and appearance of the area, including to the significance of the Norton Building, as a non-designated heritage asset.

Reasons

Whether Suitable Location

10. The appeal site is situated within the Welwyn Garden City Employment Area (EA1). Under LP Policy SADM10, this is designated for uses falling within Use Classes E(g), B2 and B8. Several other associated uses listed in the policy are also considered acceptable in such areas¹, and these are dealt with separately.
11. Policy SADM10 is worded in a positive manner, but expressly states planning permission will be granted where development (including changes of use) is for the use classes permitted at each employment area. Policy SP8 of the LP is similarly worded to protect the supply of land for industrial, office and warehousing uses against changes of use for other purposes. SADM10 goes on to set out how this should be interpreted, as it seeks to protect against the loss of land from Class B employment uses to another use or uses in such areas.
12. The existing B&Q store within the site is described in the Officer Report as a retail warehouse, and detailed in the LP evidence base² as an A1 comparisons goods retailer. Moreover, during cross-examination, B&Q's representative confirmed there is no requirement for membership to use the store, but they have a trade card option. Also in cross-examination, the Council's Employment

¹ Motor vehicle sales / showrooms, car hire businesses, petrol filling stations and retail warehouse clubs.

² CD4.13 (Welwyn Hatfield Local Plan Site Selection Background Paper 2019 – Part 2), pages 19-20.

and Housing Witness accepted retail warehouse clubs are distinct and Policy SADM10 does not refer to any retail development.

13. Hence, the B&Q store does not qualify as a retail warehouse club, but a retail use. Both it and Dom's Snacks are therefore not uses expected in EA1 and their use and occupation prevent use of the land for Class B uses. The residential development of the site would also not fall within the permitted uses identified for EA1 by LP Policy SADM10 and would prohibit future use of the land for an employment use.
14. Although I have read Policies SADM10 and SP8 in light of one another, I have not conflated them or sought to transpose wording or interpretations from one to the other. The protection of land is separate from the tests for marketing and there is no ambiguity regarding SADM10's expectations for marketing of land or premises that do not fall in Class B uses. There is no such requirement for employment generating uses in the wider sense, and for retail warehouse clubs, and other associated uses referred to in the policy, as these amount to something wholly different. Accordingly, for the purposes of SADM10, it is not necessary to demonstrate that the existing retail use is no longer required to meet future employment land needs, or that there is a lack of demand for its land or premises.
15. The evidence base for the LP states *the Retail and Town Centre Needs Assessment Update (2016) identifies a need for new retail floorspace and the loss of this site would result in a shortfall that would need to be re-provided elsewhere*³. However, the supporting text to LP Policy SP5 explains that the site falls outside of the retail hierarchy⁴. The appellant's Planning Witness explained in cross-examination the site is the lowest order from a sequential assessment perspective. Therefore, despite its size rendering it potentially suitable for other retailers⁵, there is no protection for the loss of retail units in such locations, it is not situated in a Neighbourhood or Village Centre, where LP Policy SADM4 seeks to ensure the loss of retailing does not harm their vitality and viability.
16. On my site visit I took in the Wickes store and other units at Bessemer Park⁶; the B&M Home Store with Garden Centre at Oldings Corner Retail Park, Hatfield; and the B&Q at St Albans. I have also had regard to produce on offer in the Town Centre, such as soft furnishings, and the sale of seasonal gardening products at supermarkets. While I did not generally find the range of produce on offer in the stated stores to be superior to B&Q's, there is a reasonable range of alternatives available locally to all patrons of the store, albeit not under one roof. In terms of the specific impact to the availability of garden centre items, acceptable provision would remain for patrons in the locality. There is also a reasonable proposition that people may choose to buy plants with care and attention from a dedicated garden centre⁷.
17. Nevertheless, despite there being no affirmative evidence on the extent of any impact on retailing in the Borough, the appellant's Planning Witness accepts⁸ there could be some additional expenditure outside the Borough. This may include trips to St Albans to its B&Q or Homebase or to the B&Q at Stevenage,

³ CD4.12 (Welwyn Hatfield Local Plan Site Selection Background Paper 2019 – Part 1)), paragraph 10.18.

⁴ CD4.01, paragraph 8.2.

⁵ CD9.03, page 8, Proof of Evidence of the R6P's Office and Industrial Need Witness.

⁶ Tile Giant, Dulux Decorator Centre, City Plumbing Supplies and Benchmarx Kitchens and Joinery.

⁷ Made by the appellant's Planning Witness in cross-examination.

⁸ CD7.01, Proof of Evidence

which do not benefit from the same accessibility available to the appeal site. However, the evidence before me does not conclusively demonstrate the consequence of the loss of the store would be a greater extent of travel or that it would result in congestion on the Borough's roads. The length of journeys made is likely to be governed by, amongst other things, the products required and the starting point of a journey, including place of residence. It is therefore equally plausible that different shopping patterns could ensue in the Borough, including linked trips if patrons of the B&Q store continue to shop in the town, particularly for DIY produce and the types of gardening goods stocked. Moreover, the appellant has also referred to further choice in the market nearby at Screwfix, Tool Station, Travis Perkins, and Welwyn DIY Ltd.

18. LP Policy SP2 cautiously approaches new retail floorspace given the growth of online shopping, but allocates new floorspace adjacent to the Howard Centre⁹. In cross-examination B&Q's representative confirmed no search request had been made for alternative sites in the city. The former Marks and Spencer (M&S) store in the Howard Centre had not been visited, and no details were sought to assess its suitability. He was also not able to comment on the allocated site as he was no longer present at the Inquiry. In cross-examination, the Council's Employment and Housing Witness did not preclude either site from such use but confirmed other sites for B&Q had not been assessed, as it is currently trading.
19. The former M&S store is split over two floors, so its use would demonstrate flexibility in consideration of the sequential site assessment for a new B&Q store. Moreover, its stores at New Malden, Norwood, Stevenage, and Sutton all operate in this way. Nonetheless, in cross-examination, B&Q's representative confirmed it would not favour the store based on the customer experience, including movement of bulky goods; and the availability of parking and an external sales area. Indeed, in his cross-examination, the appellant's Planning Witness accepted B&Q would likely lose its outdoor garden centre if it located there. Furthermore, while the R6P's Office and Industrial Need witness accepted in cross-examination that the rental level for the store was not agreed in the agent's particulars, it is likely to exceed that at the existing store. On this basis, the former M&S store is unlikely to constitute a suitable replacement for B&Q.
20. Notwithstanding the above, there is insufficient evidence before me to confirm whether a suitable alternative site could be provided for a B&Q store in the city, or whether it would need to locate outside the city or Borough. Nevertheless, despite the strong support to keep the B&Q store, including through a petition, given the existing supply of alternative sources of produce within the market, the loss of the specific retail use provided by B&Q would not be harmful to the local community.
21. The final bullet point of LP Policy SP8 refers to recognition of the important role played by other employment generating uses, including retail, in providing employment and contributing to the local economy. I accept the interpretation¹⁰ of this aspect of the policy by the appellant's Planning Witness that it is not a requirement to formally accord with anything. However, B&Q and Dom's Snacks provide at least 40 Fulltime Equivalent jobs (FTE). I also have no reason to doubt the R6P's Economic and Employment Witness'

⁹ CD4.01, Figure 9, page 138.

¹⁰ Appellant's Planning Witness, Examination in Chief.

evidence that the Peartree Central Ward is a dense highly residential area that is high on Hertfordshire's deprivation index, a key facet being employment. The representative of B&Q was not able to confirm whether its staff could relocate or be redeployed and there was limited evidence from others of the extent of people employed from the Ward. Nevertheless, the jobs provided by the two businesses could be lost through the proposal.

22. The site is within the same designated employment area as that opposite at 73 Bridge Road East¹¹. That appeal was determined against the superseded development plan, which required demonstration in relation to all land and buildings no longer being required to meet future employment requirements and business and community needs. This differs from the approach in the current LP, so the two schemes are not comparable.

Conclusion on the First Main Issue

23. The proposal would not result in a loss of land from Class B uses to another use or uses within EA1, as the existing use is not one of the uses referred to in policy SADM10. I am also mindful there is no protection to the loss of the retailing use from the site and I have found that this would be unlikely to have a harmful effect on the local community in terms of reduced retail choice.
24. Nonetheless, being for residential development, the proposal would not fall within the uses permitted in EA1 and, as such, would not be a suitable location for the proposal in conflict with LP Policies SP8 and SADM10, which would bring it into conflict with the LP's Borough-wide strategic objectives. The proposal would also conflict with the aims of the Framework to build a strong and competitive economy. However, given the nature of the existing use within the site, the harm that would be caused through conflict with these policies would be of no more than moderate significance.

Character and Appearance

25. The site is located within an area with a mixture of uses, including residential, but the prevalent uses are industrial and commercial. The buildings within EA1 are of a varied scale and architecture, and arranged in an inconsistent manner, with some close to the road and others sat behind areas of parking. To either side of Bridge Road East, close to the site, the buildings are generally near to the road frontage behind areas of planting and / or grass verges, albeit entrances to buildings addressing the road are uncommon. This creates a clear and distinct character and appearance, particularly to the frontage of Bridge Road East within the site's surroundings.
26. The scale and appearance of the B&Q store shares characteristics of other nearby buildings and its service yard and outdoor garden sales area is next to Swallowfields. However, it is positioned some distance back of Bridge Road East behind the open expanse of the hardstanding incorporating its parking and Dom's Snacks. This significantly reduces the enclosure of the road, which detracts from the character and appearance of the site and its surroundings.
27. I am mindful the layout and appearance of the building(s) and landscaping within the site would be the subject of Reserved Matters, but the indicative layout of the proposal, and the other documents submitted in support of it, demonstrate it is possible for the buildings to be positioned closer to the road

¹¹ Appeal Reference: APP/C1950/W/21/3284525.

frontage within a site containing more planting. This would compare more favourably with other buildings nearby. Furthermore, the indicative scale of buildings would be similar to the Norton Building adjacent and smaller than that allowed on appeal opposite at 73 Bridge Road East. It would also be similar to other modern buildings constructed east of the town centre, so would not, of itself, be an outlier in terms of its relationship with older established residential areas that have expanded as the Garden City has grown, or undermine the principles that informed its conception and development.

28. The appellant's *Heritage Statement*¹² refers to the Norton Building, which is understood to have been constructed in the 1930s and was associated with the Norton Grinding Wheel Company. Its significance lies in its historic function and architectural detailing, as a large factory building. It is set back of Bridge Road East, and is surrounded by other buildings, including B&Q, which abuts most of the parking and service area east of the building. However, the scale of the building means it is highly prominent within its surroundings, including from across the B&Q car park. The site therefore provides the ability to experience the building in this context, so forms part of its setting and contributes to its significance. The indicative details for the appeal scheme demonstrate that it would still be possible to experience the building within its surroundings and it could be designed to be complementary to it in scale and appearance. Moreover, the indicative spacing between buildings within the site could provide greater visibility of the building from Swallowfields. The proposal would therefore be unlikely to have a detrimental effect on its setting and, thereby, its significance as a non-designated heritage asset.
29. While the Council's Planning witness stated it does not always secure design of high quality, it is within its remit to insist on it for the development of the site, through adherence to the principles outlined in LP Policy SP9. Hence, there is insufficient substantive evidence before me to demonstrate that the proposal would be harmful to the character or appearance of the site or its surroundings. It would accord with the design principles outlined in LP Policy SP9 and the heritage aims of the Framework.

Other Matters

30. The proposal has attracted a significant number of objections from the local community and beyond, including through petitions, but the extent of concern is not harm of itself. Similarly, while the Framework stresses the benefits of early engagement, the absence or limited nature of consultation with communities is not a reason to dismiss the appeal. However, I have addressed the points of objection below.

Traffic and Parking, Climate Change and Air Quality, and Cycle Route Provision

31. The appellant's *Transport Assessment*¹³ does not indicate that the magnitude of vehicle trips associated with the proposal would be likely to result in a severe cumulative impact on the road network relating to highway safety or its operational performance and levels of congestion. There would also be parking provided within the development so there is no indication that it would need to overspill into the surrounding area. Furthermore, the evidence before me

¹² CD1.05.

¹³ CD1.06.

indicates the site is served by regular bus services and it is possible to walk and cycle to nearby shops, services, and facilities, including the railway station.

32. An unintended consequence of the proposal could be travel of patrons of B&Q to other stores situated outside of the Borough. However, as I explained above, this is not a certainty due to other provision available within the Borough. Accordingly, the evidence before me does not provide sufficient confidence there would be harmful implications to climate change, particularly through journeys made by private motorised transport to similar stores elsewhere.
33. The appellant's *Air Quality Assessment*¹⁴ identifies that it would not present a constraint to the proposal either through its construction or operational phases. Furthermore, despite concerns raised to the existing provision of safe cycle routes to serve the development, it is possible to cycle to the site and the proposed contribution towards offsite sustainable transport measures would be used to provide upgrades in accordance with the *Welwyn Hatfield Local Cycling and Walking Infrastructure Plan*¹⁵. Hence, the proposal would promote and actively encourage other methods of transport, and cycle storage and electric vehicle charging points can be incorporated into the development and secured at Reserved Matters stage.

Infrastructure Provision

34. Concerns have been raised that local infrastructure, including health services and schools, would be unable to accommodate the development. However, there is no compelling argument that it would directly affect the capacity or efficacy of local infrastructure, including drainage. I also note the availability of infrastructure is a challenge nationally. Resisting the development on the grounds of the capacity of local infrastructure would not therefore be justified, particularly as the proposal would contribute to infrastructure through the obligations contained within the S106.

Living Conditions

35. The indicative drawings and the appellant's *Design Statement*¹⁶ suggest there would be a mix of private and communal spaces provided through balconies, gardens, a play space, and terraces, including to parts of the roofs of buildings. This provides sufficient assurance that it should be possible to design a high-quality residential environment. It should also be possible for the design of the proposal to safeguard against noise from external sources to ensure that existing and future operations of neighbouring businesses would not be constrained by the proposal, including future uses. Furthermore, despite the inclusion of contributions to ensure occupants would have access to cycle infrastructure and health services, it is not the responsibility of the developer to meet Public Health requirements to provide support for occupants to live healthily. Hence, the proposal would accord with the aims for living conditions within proposals, as required by LP Policy SADM11.

¹⁴ CD1.09.

¹⁵ CD14.10.

¹⁶ CD1.03.

Ecology

36. The appellant's *Preliminary Ecological Appraisal*¹⁷ did not find evidence or potential for protected species, other than nesting birds. There is no substantive evidence before me that would lead me to doubt the conclusions or the suitability of the proposal to secure a Landscape and Ecological Management Plan (LEMP) by condition.

Fear of Precedent

37. The R6P's Office and Industrial Need, and Economic and Employment Witnesses both referred to the potential for a successful appeal to set a precedent for alterations to the terms of leases, including rent increases, or eviction of businesses in EA1 in favour of residential uses. This primarily stems from the affect to land values and the implication of housing shortfalls. Although other landowners may choose to take such a course of action, the R6P's Office and Industrial Need Witness accepted in cross-examination this was just a fear and that arbitrations exist for rent review. While B&Q may not be in this position, he also accepted he had no evidence of the lease arrangements of the businesses referred to in his evidence¹⁸, including their length. Hence, there is insufficient evidence before me to demonstrate the circumstances of this case would be the same or so closely related to those of any other sites that the loss of further buildings and land to residential use would be an inevitable consequence of the outcome of this appeal, as set out in the *Collis Radio Judgment*¹⁹. Rather, this would be more appropriately described as a fear or generalised concern as outlined in the *Swindon Borough Council Judgment*²⁰.

Costs of the Inquiry

38. While the main and other interested parties taking part in the Inquiry will inevitably have incurred some costs doing so, the appellant has engaged a statutory right to appeal. I am therefore not able to afford this any weight against the appeal scheme. This includes any implication for the delivery of other services in the Borough, as it was for the Council to determine how best it ought to meet its obligation to hold the event and defend its position.

Appellant's Intentions

39. There is also no evidence to suggest the appellant's intentions toward the eviction of B&Q in favour of the proposal are driven by financial gain. Moreover, at the Inquiry I heard the appellant is a not-for-profit Affordable Housing provider that acquires and develops such homes, and profit from private rentals was reinvested in this aim. I did not hear any evidence to dispute this. Hence, this would not amount to justification to dismiss the appeal or reduce the weight afforded to the benefits of the proposal.

¹⁷ CD1.08.

¹⁸ CD9.03, Annex A, Proof of Evidence.

¹⁹ *Collis Radio v Secretary of State for the Environment* (1975) 29 P. & C.R. 390.

²⁰ *Swindon Borough Council v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 1627 (Admin).

Planning Balance

40. The Housing SoCG²¹ outlines that the Council is only able to demonstrate no more than 3.4 years of deliverable housing land supply. Hence, the policies most important for determining the appeal must be out-of-date, for the purposes of the Framework. Planning permission should therefore 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 whole. In doing so, I have had regard to the Sefton Judgment²².

Housing

41. The approach taken in the LP towards previous under delivery of housing in the Borough is clear and provides greater certainty as to how this could be addressed through the plan period. This is set out in the LP and Housing SoCG, so does not bear repeating here. It is also a marked improvement upon the position before Inspectors in other recent appeals prior to the adoption of the LP²³. However, the shortfall in the supply of housing remains significant and the evidence before me has immediately instilled some doubt, at least in the short term, over whether housing delivery is likely to be accelerated enough in the early part of the plan period for the Council to address previous under delivery.
42. The proposal could add to the number of approved flats that have not yet been delivered through other schemes nearby²⁴. However, the appellant's Planning Witness confirmed they are in receipt of grant funding from Homes England through to 2026, for the specific purpose of delivering affordable homes on sites such as that before me. The appellant is therefore incentivised to bring the development forward and has committed to begin construction onsite in 2025, with completion in an estimated 30-month build programme²⁵. The timeframe remaining on B&Q's lease, to October 2024, is therefore not a significant constraint to the development coming to fruition.
43. The proposal would therefore assist the Council in improving its supply of housing, particularly in the early part of the plan period, and add to the mix of homes in Welwyn Hatfield. Due to the significant shortfall in housing supply, I afford this benefit substantial weight.
44. The evidence base for the LP²⁶ explains that allocation of the site for housing was not pursued due to its conflict with employment policies already found sound by the Inspector in the Examination²⁷. Nevertheless, it identifies the accessibility credentials of the site referred to above. I afford this benefit limited weight.
45. While there are no doubt other sites that could be brought forward for residential development, I have already stated the challenges affecting the Council in delivering housing. Furthermore, the SoCG outlines that the proposal represents a windfall development that would comply with LP Policy SADM1,

²¹ CD7.07.

²² CD11.4 Sefton MBC v SSHCLG and Doherty [2021]EWHC 1082 (Admin).

²³ Appeal References: APP/B1930/W/20/3265925 (Roundhouse Farm, Land off Bullens Green Lane, Colney Heath, CD10.02), APP/C1950/W/22/3294860 (Bio Park, Broadwater Road, Welwyn Garden City, CD10.03), APP/C1950/W/21/3284525 (73 Bridge Road East, Welwyn Garden City, CD10.01), APP/C1950/W/22/3307844 (Land to the North of Bradmore Way, Bradmore Way, The Brookmans Estate, Brookmans Park, CD10.19).

²⁴ Including at BioPark, 73 Bridge Road East, and the former site of Shredded Wheat.

²⁵ Letter by Mrs Alix Green, Executive Director of Investment and Growth, Thrive Homes. CD7.03 (Appendix JS9).

²⁶ CD4.12 and CD4.13 (Welwyn Hatfield Local Plan Site Selection Background Paper 2019 – Parts 1 and 2).

²⁷ CD4.15, paragraph 9.

subject to the S106. The Council's Planning Witness also accepted in cross-examination that the proposal would comply with LP Policy SP7, and my consideration of the matters relevant to the appeal do not lead me to an alternate conclusion.

46. The site is within EA1 and occupied by an active retail use. Hence, in such circumstances, it would not be reasonable to identify the use of previously developed land for housing as a benefit of the scheme. Protection of the Green Belt from further development would also constitute an absence of harm.

Affordable Housing

47. The Housing SoCG states the *Welwyn Hatfield Strategic Housing Market Assessment Update 2017* identifies annual affordable housing need for the Borough of 818 affordable homes per annum over the period 2015-2020 and then 602 per annum thereafter until 2032. However, the delivery of affordable housing in the Borough has been glaringly slow, with only 470 constructed between 2015 and 2023. The net figure of affordable homes built, following Right to Buy, is 59 dwellings per annum, which equates to 15 percent of all homes built. Hence, there is a shortfall of 5,426 homes over the period or 678 each year, and only eight percent of needs met. The Council is therefore falling significantly short of meeting its assessed need, with its residents facing long waiting times for properties²⁸ of over a year for 1-bed, 2-bed, and 3-bed properties, and nearly two years for homes with four or more bedrooms. The Housing SoCG also refers to significant competition in bidding for properties that become available in the Ward.
48. As such, the outlook is very bleak for the significant number of households on the Housing Register²⁹. To add to this, the Housing SoCG demonstrates there are considerable affordability problems with house prices and rent levels in the Borough, which are increasing. It is impossible to ignore the reality that, together with the under delivery of homes, these will be certain to have significantly harmful consequences for the lives of the households affected. The persistent under delivery of affordable housing in the Borough and the unmet need for these homes therefore represent acute problems.
49. The appeal scheme would be wholly for affordable housing, with a tenure split of 36 homes for Affordable Rent, 23 for Social Rent and 92 for Shared Ownership. Despite concerns expressed by the R6P as to the extent of homes for Social Rent, and by interested parties to the type and size of homes, the housing would all meet the definition in Annex 2 of the Framework. Furthermore, the proposal would deliver a considerable number of affordable homes, which are a scarce resource in the Borough. This would help to meet identified need for shared ownership homes in the Borough, particularly in Welwyn Garden City³⁰, and target identified needs for one to three-bedroom homes. The provision of these homes and their governance by the appellant, as a Registered Provider, would be secured through the S106, so I afford very substantial weight to this benefit.

²⁸ Based on Affordable Housing Data provided to the appellants by the Council, as of 31 March 2023 (CD7.07).

²⁹ 2939, as of 31 March 2023 (CD7.07).

³⁰ As of 27 March 2023, of the 741 households seeking a Shared Ownership home in Welwyn Hatfield, 505 were for within Welwyn Garden City (CD7.07).

Other Benefits Secured by the S106 Legal Agreement

50. Scheme-specific contributions in Welwyn Garden City or areas serving the development derived from the final mix of homes within the site to the Council are included in the S106 towards the cost of: improvements and woodland planting of public open space; waste and recycling facilities for the development; reconfiguration and/or expansion of medical practices; indoor sports facilities; and a series of improvements, refurbishment or maintenance of various identified sports pitches and facilities.
51. Contributions derived from the final mix of homes within the site would also be payable to the County Council towards the cost of and / or provision in Welwyn Garden City or elsewhere serving the development: a new primary school and provision of childcare for working parents of children at the same; expanding secondary education provision; new Severe Learning Difficulty special school places; a new young people's centre; expansion of Welwyn Garden City fire station; additional provision at the Welwyn Garden City Library; a new recycling centre and the new Eastern (waste) Transfer Station. The County Council would also receive £105,750 toward the cost of various South Central Hertfordshire Growth and Transport Plan packages and the schemes in the Welwyn Hatfield Local Cycling and Walking Infrastructure Plan; and for £6000 to evaluate and support the administering of a Travel Plan for the development.
52. The S106 includes a schedule to secure a Travel Plan containing, amongst other things, a written plan, and Resident Travel Pack to encourage sustainable travel, which would be provided for occupants of all the dwellings. Furthermore, the S106 would control the delivery of a sustainable urban drainage strategy and open space, including play space, and makes provision for their transfer and management by a dedicated company to provide long term security. It would also contain a management strategy for car parking within the site.
53. The provisions outlined in the S106, and those relating to affordable housing, are supported by LP Policy SP13 and the Council's Developer Contributions Guidance SPD (2008). They also meet all the tests set out in the Regulations and Framework paragraph 57. Moreover, they are directly related to the development because they would provide infrastructure through it, including that impacted by additional development. The contributions are also reasonable in scale and kind, as they are informed by the latest evidence regarding what would be required to provide mitigation. Nevertheless, excluding affordable housing, as the remaining obligations can only mitigate against the proposal, I afford them limited weight as benefits associated with it.

Economic Benefits

54. The proposal would be subject to the application of the New Homes Bonus, which would generate income for the Council. There would be short-term employment associated with the direct and indirect employment from construction and associated industries. The economic activity of future occupants would also be likely to support local businesses. The employment generated and spend of future occupants would constitute benefits in social and economic terms and, given the magnitude of the proposal, they are afforded moderate weight.

55. However, the appellant's Planning Witness accepted in cross-examination that the proposal would lead to the loss of at least 40 FTE jobs at B&Q and Dom's Snacks. The evidence before me, including from B&Q does not provide any certainty the jobs that could be lost through the eviction of B&Q and Dom's Snacks would affect people residing locally, including in the Ward. However, the jobs could support numerous households and the economy of the Borough. The appellant's Planning Witness also accepted in cross-examination additional Council tax receipts would be offset through use of services; and the loss of business rates would also be a negative factor balanced against this. Accordingly, I agree with the position adopted by the appellant's Planning Witness, that the overall position regarding the economic benefits associated with the proposal is negative in favour of the harm generated.

Environmental Benefits

56. The Framework is supportive of measurable attempts to secure biodiversity net gain and LP Policy SADM16 requires this is at least ten percent. However, the Council's Planning Witness accepted neither set out how it should be approached. Despite the absence of a fully worked-up scheme in conjunction with the proposal, the indicative details in the appellants' *Biodiversity Net Gain Assessment*³¹ show net gain through habitat and hedgerows, of 55 percent. This would be more than the requirement and would not materialise without the proposal. While the proposed measures would be limited in their scope and extent, a LEMP would be required to procure the final details. For example, this could include provision for swift boxes, as suggested by Hertfordshire and Middlesex Wildlife Trust. Hence, it should be possible to achieve gains through the proposal, so I afford this environmental benefit moderate weight.
57. The enclosure that could be provided by the proposal to the road and presence of additional landscaping may both amount to environmental benefits within its immediate context, but the final design is subject to agreement, so I am only able to afford this benefit very limited weight. Similarly, the absence of harm to the landscape would not constitute an environmental benefit.
58. The proposal would therefore result in very substantial and substantial benefits being accrued through affordable housing and the contribution to the supply of housing respectively. There would also be some moderate environmental benefits and a range of benefits of limited weight related to contributions that would be made to infrastructure through the S106 and the site's accessibility.
59. In terms of harm, despite reference to the LP policies being out-of-date above, the LP was recently adopted and the aims of Policies SP8 and SADM10 are consistent with those of the Framework to build a strong and competitive economy. Hence, I afford full weight to the moderate harm that would result through conflict with these policies. Given the conflict with SP8, SADM10 and the borough-wide strategic objectives, the appellant's Planning Witness accepted in cross-examination that the proposal would be contrary to the development plan, as a whole, notwithstanding that no conflict was found with LP Policies SADM1, SADM4, SADM16, SP7, SP9, and SP13.

³¹ CD2.04.

60. Marketing is not a requirement relevant to consideration of the existing use within the site, but the site's development would forfeit potential future employment use of the land. It would therefore not otherwise be contradictory to consider whether the need for employment land could affect the weight to afford conflict with the development plan. However, considering the aforementioned harms and the stated benefits, in this case, it would not have served any beneficial purpose to do so, as it would not have had a meaningful impact on the outcome of this balance.
61. The Framework is silent on whether existing retail or employment uses should make way for housing or meeting the need for housing should come at the expense of employment needs. However, the Government's objective is to significantly boost the supply of homes, including affordable housing, and the Council's strategy for the delivery of homes has not been meeting its requirements for the Borough. Accordingly, for the above reasons, the adverse impacts of granting permission would not significantly and demonstrably outweigh the stated benefits of the proposal, when assessed against the policies in the Framework taken as a whole.

Conditions

62. I have imposed standard conditions relating to the submission and timing of Reserved Matters and the commencement of development. It is necessary to require compliance with the submitted plans, but only in relation to the access. Moreover, the arrangements and pedestrian improvements proposed in the Transport Assessment³², are relevant to the development to ensure safe and suitable access. It is also necessary to secure their implementation.
63. Conditions are necessary to ensure the details submitted prior to or in conjunction with Reserved Matters include: a scheme for the disposal of surface water, to ensure the proposal does not lead to flood risk on or offsite (as well as scheme for its verification); schemes for protecting the living conditions of occupiers of the development from noise emanating from neighbouring uses and transport; and a scheme to secure delivery of accessible housing.
64. Pre-commencement conditions are also necessary to: secure a construction method statement, in the interests of the living conditions of nearby residential occupiers; address the risks and mitigate against land contamination, including that previously unsuspected, including in the interests of human health and ecological systems; secure a LEMP and its delivery and maintenance, in the interests of biodiversity and the visual amenity of the area; and to secure safe access and manoeuvrability of fire appliances, refuse vehicles, and other vehicles alongside pedestrians.
65. Several conditions are also reasonable to ensure that piling and foundation works do not lead to water quality failures from contaminants and turbidity generation; water infrastructure provision is made for the local fire service to discharge its statutory firefighting duties; to ensure the scheme meets the optional Building Regulations to restrict daily water consumption in the interests of securing a sustainable development.

³² CD 1.06.

Conclusion

66. The proposed development would conflict with the development plan but material considerations indicate that a decision should be made other than in accordance with it. For the reasons given above the appeal, should be allowed.

Paul Thompson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Peter Goatley	King's Counsel (No5 Chambers), instructed by Ed Barnes (Thrive Homes)
He called:	
Roland Bolton	Affordable Housing (DLP Consultants), BSc(Hons) MRTPI
Darren Oakley	Housing Land Supply (RPS), BA(Hons) MA MRTPI
Mark Powney	Office, Industrial and Logistics (Director, Savills), BA(Hons), MRTPI
Jonathan Weekes	Planning (Aitchison Rafferty), BSc(Hons) MA MRTPI

FOR THE LOCAL PLANNING AUTHORITY:

Josef Cannon	Counsel (Cornerstone), instructed by the solicitor of the Council
He called:	
Halah Al-Zamel	S106 Agreement and Conditions (Trowers)
David Elmore	Planning, BSc, MSc
Matthew Olive	Office and Industrial Need (Associate Director, Aspinall Verdi), BSc MSc MRICS RICS Registered Valuer
Matthew Pyecroft	Employment and Housing, BA (Hons) MIED and AssocRTPI
Matthew Wilson	Planning Policy (Planning Policy and Implementation Manager), BA(Hons) MSc MRTPI

FOR THE COUNTY COUNCIL:

Ben Bowles	Planning
------------	----------

FOR THE RULE 6 PARTY:

William Walton	Advocate, instructed by Welwyn Garden City Society, BA MSc DipEnvLaw LLM CPE BVC MJIL MRTPI and Barrister (Non-Practising)
He called:	
David Doughty	Chair of Welwyn Garden City Society
Peter Ellis	Office and Industrial Need (Member of Welwyn Garden City Society and Together for Welwyn Garden City), retired from financial services
Russ Platt	Economic and Employment (Ward Councillor and Chair of Mirage Residents Association).
Clive Wilson	Planning (Member of Welwyn Garden City Society), MRICS (retired)

INTERESTED PARTIES:

Nat Chapman	On behalf of Member of Parliament for Welwyn Hatfield, Grant Shapps
Malcolm Cowan	On behalf of Together for Welwyn Garden City
Dominic Lawrence	Owner of Dom's Snacks
Kingsley Mack	Head of Assets and Estates, B&Q Limited
Asher Ross	JLL Planning and Development for Anglodene (owners of the former Norton House), BSc(Hons) MA MRTPI
Dylan Booth	Campaign Organiser on behalf of Andrew Lewin, Labour Party Parliamentary Candidate for Welwyn Hatfield at the next General Election

INQUIRY DOCUMENTS

- Agreed Planning Conditions Signed 15 January 2024;
- B&Q Swallowfields CIL Compliance Statement and NHS Consultation Response (dated 19 December 2023);
- Collis Radio Ltd. And Another v. Secretary of State for the Environment and Another (January 1975) 29 P. & C.R. 390;
- Copy of Broadwater Area Developments 2023 v3 Draft with WHBC Comments;
- Cycle Infrastructure Design (Local Transport Note 1/20, July 2020);
- Section 106 Agreements dated 18 December 2023 and 16 January 2024;
- Statement of Common Ground between the Council and appellant (regarding revisions to the NPPF);

- Swindon Borough Council v. Secretary of State for Levelling Up, Housing and Communities and Danescourt (PCDF IV Swindon) LLP [2023] EWHC 1627 Admin;
- Transcripts of Statements made by Malcolm Cowan, Dominic Lawrence and Kingsley Mack, and on behalf of Anglodene, Andrew Lewin, and Grant Shapps.

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called, the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: drawing no: A3_000 (Location Plan) & ZA951_PL-SK-200 Rev P04 (Proposed Access Arrangements & Pedestrian Improvements). Prior to first occupation of the development, the vehicular access shall be provided and thereafter retained at the position shown on the approved plan drawing number ZA951_PL-SK-200 Rev P04.
- 4) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 5) Prior to or in conjunction with the first application for approval of reserved matters for the development hereby permitted, details of a scheme for the disposing of surface water by a means of sustainable drainage system incorporating source control measures and restricted to the predevelopment runoff rates for the corresponding critical storm shall be submitted to and approved in writing by the local planning authority. The submitted details shall:
 - a) Provide information about the design storm period and intensity, the method employed to delay and control the surface water discharge from the site via a proposed sustainable drainage system and the measures taken to prevent pollution of the receiving surface waters. The updated information shall include the use of FEH 2022 rainfall data and utilise a CV value of 1 to ensure the attenuation is sized sufficiently for the critical design storm. This shall also include the following information:
 - Demonstrates that the proposed discharge rate will not exceed the predevelopment discharge rates for the corresponding critical storms;
 - Demonstrates that the proposed surface water drainage system will not surcharge in the 100% AEP (1 in 1 year) critical storm duration, flood in the 3.33% AEP (1 in 30 year) plus climate change critical

storm duration or the 1% AEP (1 in 100 year) critical storm duration; and

- Demonstrates that any flooding that occurs when taking into account climate change for the 1% AEP (1 in 100 year) critical storm event in accordance with NPPF will not leave the site uncontrolled via overland flow routes; and

- b) Demonstrate that surface water is to be intercepted and disposed of separately so that it does not discharge onto the highway carriageway.

The scheme shall be implemented in accordance with the approved details prior to first use of the development.

- 6) Prior to or in conjunction with the first application for approval of reserved matters for the development hereby permitted, a scheme to mitigate the noise from nearby commercial activities, deliveries, plant and equipment, and operations must be submitted to and approved in writing by the local planning authority. The scheme must include:
- a) Assessment for noise from commercial operations must be in accordance with BS4142: 2014+A1:2019;
 - b) Indoor ambient noise levels in living rooms and bedrooms from commercial noise sources must be 10dB below the standards within BS 8233:2014 (Living rooms daytime – 25dB and bedrooms at night – 20dB) and L_{Amax} levels must not to exceed 40dB internally with windows closed. Internal noise levels with habitable windows open must also be considered;
 - c) A noise modelling plan showing façade noise levels at habitable rooms (living rooms and bedrooms) from commercial operations; and
 - d) Consideration to 'agent of change' in the National Planning Policy Framework.

The development must be carried out in accordance with the approved scheme.

- 7) Prior to or in conjunction with the first application for approval of reserved matters for the development hereby permitted, a scheme to mitigate noise from transport sources must be submitted to and approved in writing by the Local Planning Authority. The scheme must demonstrate that:
- a) Indoor ambient noise levels in living rooms and bedrooms meet the standards within BS 8233:2014. Internal L_{Amax} levels should not exceed 45dB more than ten times a night in bedrooms (Where opening windows raises the internal noise levels above those within BS8233, other methods of ventilation/attenuation will be required, and details of the ventilation system must be provided to ensure that overheating will not occur); and
 - b) Outdoor communal amenity space complies with the 55dB WHO Community Noise Guideline Level, if outdoor amenity areas cannot comply, then it must be shown through testing that a suitable place is available within a 5-minute walk from the development that complies with the amenity noise level.

The development must be carried out in accordance with the approved scheme.

- 8) Prior to or in conjunction with the first application for approval of reserved matters for the development hereby permitted, a scheme setting out the arrangements for the delivery of accessible housing must be submitted to and approved in writing by the local planning authority in accordance with the following requirements:
- a) A schedule of units, together with appropriate plans and drawings, must be submitted to and be approved by the local planning authority setting out details of the number, layout, and location of all units that will comply with Part M4(2) of the Building Regulations. At least 20% of all new dwellings must meet Building Regulations Part M4(2) standards for 'accessible and adaptable dwellings; and
 - b) All units specified as M4(2) in the agreed schedule and plans must be implemented in accordance with that approval and in compliance with the corresponding part of the Building Regulations in that regard.

The person carrying out the building work must inform the Building Control body which requirements apply and written verification of the completion of all dwellings in accordance with part (a) above will be supplied to the local planning authority within 30 days of their practical completion.

- 9) No development shall commence until a Construction Management Plan (or Construction Method Statement) has been submitted to and approved in writing by the Local Planning Authority. Thereafter the construction of the development shall be carried out in accordance with the approved Plan/Statement. The Plan or Statement must include details of:
- a) Construction vehicle numbers, type, routeing;
 - b) Access arrangements to the site;
 - c) Traffic management requirements;
 - d) Construction and storage compounds (including areas designated for car parking, loading /unloading and turning areas);
 - e) Siting and details of wheel washing facilities;
 - f) Cleaning of site entrances, site tracks and the adjacent public highway;
 - g) Timing of construction activities (including delivery times and removal of waste) and to avoid school pick up/drop off times;
 - h) Provision of sufficient on-site parking prior to commencement of construction activities;
 - i) Post construction restoration/reinstatement of the working areas and temporary access to the public highway;
 - j) Where works cannot be contained wholly within the site a plan should be submitted showing the site;
 - k) Layout on the highway including extent of hoarding, pedestrian routes and remaining road width for vehicle movements;.
 - l) Any required interim and temporary drainage measures (this information shall provide full details of who will be responsible for maintaining such temporary systems and demonstrate how the site will be drained to ensure there is no increase in the off-site flows, nor any pollution, debris and sediment to any receiving watercourse or sewer system); and

- m) Construction phase surface water management plan for the site (to ensure the integrity of the permeant SuDS drainage features and prevent any silt or debris from leaving the site through the drainage system).
- 10) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
- a) a survey of the extent, scale and nature of contamination; and
 - b) the potential risks to human health; property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes; adjoining land; ground waters and surface waters; ecological systems; and archaeological sites and ancient monuments.
- 11) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out [and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority] before the development [or relevant phase of development] is occupied.
- 12) Should the approved development require piled foundations, no piling shall take place in connection with the development until a Piling Method Statement (PMS) and Foundation Works Risk Assessment (FWRA) have been submitted to and approved in writing by the Local Planning Authority. The PMS must include:
- a) The total depth and type of piling to be undertaken;
 - b) The piling methodology;
 - c) Measures to prevent and minimise the potential for mobilising contaminants; and
 - d) The programme for works.

The FWRA should include risk-based analysis of the following pollution scenarios:

- e) Creation of preferential pathways, through the low permeability layer (aquitard), to allow potential contamination of the underlying aquifer;

- f) Creation of preferential pathways, through the low permeability layer (aquitard), to allow upward migration of contamination to the overlying aquifer;
- g) The driving of solid contaminants into an aquifer during pile driving; and
- h) Contamination of groundwater by concrete, cement paste or grout

(The risk assessment will cover the site-specific scenario/condition (mentioned above), potential pollution considerations, risk assessment, potential risk, mitigation measures and residual risk level)

In the event the FWRA indicates an unacceptable risk of the creation of a bromate pathway through the clay aquitard layer to the upper gravels, details of an alternative solution that does not require piling through the clay aquitard layer must be submitted and approved by the local planning authority prior to foundation works.

The development must be carried out in accordance with the approved details.

- 13) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development [or relevant phase of development] is resumed or continued.
- 14) No development shall commence (excluding demolition works) until the following details (in the form of scaled plans no greater than 1:500) have been submitted to and approved in writing by the Local Planning Authority:
- a) A Fire Appliance is able to access all parts of the proposed development as per the standards set out in para 6.7.2 & 6.7.3 of Manual of Streets;
 - b) A refuse collection vehicle of minimum dimensions L:11.375m, W:2.550m must be able to enter the site, access bin stores within maximum refuse carry distance specified by the Local Planning Authority or within 25m of any bin storage area, whichever is the lesser distance;
 - c) Provide detailed drawings of pedestrian routes through the site that fall on desire lines and designed in-line with the DfT's Inclusive Mobility Guide;
 - d) Provide detailed drawings of proposed carriageways which demonstrate two vehicles can pass simultaneously; and
 - e) Provide adequate space for vehicles to turn on site and exit without requiring excessive reversing manoeuvres.

The development must be carried out in accordance with the approved details.

- 15) No development shall commence (excluding demolition works), until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The LEMP must include the following:
- a) A Habitat Management and Monitoring Plan detailing the specific prescriptions as to how the target habitats and condition in accordance with the submitted Biodiversity Net Gain Assessment (by Tim Moya Associates, October 2023) will be achieved and maintained for a period of 30 years; and
 - b) The body or organisation responsible for implementation of the Plan and monitoring and remedial measures of the Plan.

The LEMP must be implemented in accordance with the approved details and the programme as approved and the measures must be maintained and retained thereafter.

- 16) (Part A) Notwithstanding the details indicated on the submitted drawings no on-site works above slab level shall commence until a detailed scheme for the off-site highway improvement works as indicated on drawing number (ZA951_PL-SK-200 Rev P04) have been submitted to and approved in writing by the local planning authority.

(Part B) Prior to the first occupation of the development, the off-site highway improvement works referred to in Part A of this condition shall be completed in accordance with the approved details.

- 17) No development above ground level (excluding demolition works) shall take place until a scheme for the provision of fire hydrants, necessary for firefighting purposes at the site, has been submitted to and approved in writing by the local planning authority. The development must not be occupied until the scheme has been implemented in accordance with the approved details.
- 18) No development above ground level (excluding demolition works) shall take place until details demonstrating how all the dwellings will achieve an estimated water consumption of no more than 110 litres/person/day have been submitted to and approved in writing by the local planning authority. The development must be carried out in accordance with the approved details.
- 19) Prior to first occupation of the development, a detailed verification report, (appended with substantiating evidence demonstrating the approved construction details and specifications have been implemented in accordance with the surface water drainage scheme and flow path conveyance and mitigation features), must be submitted to and approved in writing by the local planning authority. The verification report shall include a complete set of "as built" drawings plus photographs of excavations (including soil profiles / horizons), any installation of any surface water drainage structures and control mechanisms.

- 20) Prior to first occupation of the development, vehicular, pedestrian, and cycle access to and egress from the adjoining highway shall be limited to the accesses shown on drawing number (ZA951_PL-SK-200 Rev P04) only. Any other accesses or egresses shall be permanently closed, and the footway / highway verge shall be reinstated in accordance with a detailed scheme to be submitted and approved by the local planning authority, concurrently with the bringing into use of the new access.

END OF SCHEDULE