

APPEAL BY HG GROUP

BIOPARK, BROADWATER ROAD, WELWYN GARDEN CITY, HERTFORDSHIRE

PINS REF: APP/C1950/W/22/3294860

APPEARANCES FOR WELWYN HATFIELD BOROUGH COUNCIL

**Mr Meyric Lewis** and **Mr Mark O'Brien O'Reilly**, of counsel, instructed by the Solicitor to the Council, will call:

**Ms Mette Mc Larney** BSc, BArch (Hons), RIBA, Director of Bluepencil Designs Ltd

**Mr Mike Spurgeon** BSc (Hons), MSc, MRTPI, Associate Planning Consultant, Phase 2 Planning

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OPENING SUBMISSIONS ON BEHALF OF THE LOCAL PLANNING AUTHORITY

Introduction

1. These opening submissions on behalf of the Local Planning Authority, Welwyn Hatfield Borough Council (“the Council”), will briefly address two of the three main issues identified by the Inspector at the Case Management Conference, in order to provide an overview of the Council’s case.<sup>1</sup> The submissions are organised in accordance with the list of issues identified by the Inspector (although as appears below the highways issue is overtaken by events as set out in the recent Statement of Common Ground prepared by Messrs Powers and Marshall).
2. The evidence on behalf of the Council will be given by two professional witnesses, each has provided a proof of evidence:
  - (a) Mr Mike Spurgeon (housing mix and the planning balance); and
  - (b) Ms Mette McLarney (design).
3. The Council acknowledges at the outset that the appeal scheme was recommended for approval by officers. At their meeting on 9 September 2021 Members of the Council’s Development Management Committee nevertheless determined, as they were entitled to do, that the appeal proposal was unacceptable.<sup>2</sup> Members concluded that greater weight should be afforded to the harm arising from the appeal scheme, particularly where those harms resulted in conflict with planning policy, and that the benefits of granting planning permission would not outweigh the adverse impacts. Their decision is now endorsed by the independent professional opinions of Mr Spurgeon and Ms McLarney.

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<sup>1</sup> Case Management Conference Summary Note, 20 May 2022, [7].

<sup>2</sup> See Appendix 3 to the Council’s Statement of Case: Minutes of Development Management Committee.

4. The Council concluded that the appeal scheme was unacceptable for three reasons<sup>3</sup>. The two remaining grounds on the basis of which the Council will contest this appeal are that:
  - (1) The proposed housing tenures and mix (including affordable housing) fail to meet the objectively assessed need for housing in the Borough and would not contribute to creating a sustainable, inclusive and mixed community, contrary to policy SP7 of the emerging local plan.
  - (2) The form, height, bulk, scale and massing of the appeal scheme does not achieve high quality design. It does not respect or relate to the character and context of the local area and fails to maintain, enhance or improve the character of the existing area. It is therefore contrary to Policies D1 and D2 of the District Plan, the Broadwater Road West SPD, paragraphs 130 and 134 of the NPPF and policy SP 9 of the emerging local plan.

(1) Whether the development would provide suitable housing in terms of tenure and mix

5. Policy SP7 of the emerging local plan requires that provision is ‘made for a range of housing to support the needs and requirements of different households’.<sup>4</sup> The most recent draft of policy SP7 requires that proposals for ‘10 or more new dwellings should demonstrate how the mix of tenure, type and size of housing proposed on sites has had regard to the council’s latest evidence of housing need and market demand and contribute towards meeting the varied needs of different households’.<sup>5</sup> Despite being a draft policy, it is consistent with the NPPF and is therefore entitled to be accorded weight.<sup>6</sup>
6. The Appellant has failed to demonstrate that regard has been had to the latest evidence of housing need.<sup>7</sup> The Council’s latest evidence of housing need is the Welwyn Hatfield Technical OAN Paper (June 2019).<sup>8</sup> That paper notes that ‘greatest proportion of households will require three bedrooms’.<sup>9</sup> It also says that ‘three quarters of households will require houses, with the residual requiring flats’.<sup>10</sup>

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<sup>3</sup> See Appendix 1 to the Council’s Statement of Case: Decision Notice Ref: 6/2020/3420/MAJ (16 September 2021).

<sup>4</sup> B.2 WHBC Submission Draft Local Plan (2016), p. 66.

<sup>5</sup> B.3 WHBC Draft Local Plan Proposed Submission Document (Main Modifications) (2021), p. 24.

<sup>6</sup> Mr Spurgeon POE, p. 7 [4.4].

<sup>7</sup> Mr Spurgeon POE, p. 7 [4.2].

<sup>8</sup> Appendix 5 to the Council’s Statement of Case: WHBC Technical OAN Paper.

<sup>9</sup> WHBC Technical OAN Paper, p. 23 [6.21].

<sup>10</sup> WHBC Technical OAN Paper, p. 23 [6.22].

7. The implied mix indicates that there is a greater need for larger dwellings, i.e. three bedroom or four bedroom plus dwellings, in contrast with the need for one and two bedroom dwellings within the Borough.<sup>11</sup> The Implied Size of Housing Required Methodology Note (June 2022) strongly supports that analysis.<sup>12</sup>
8. The proposed mix, however, of units within the appeal scheme is heavily weighted towards one and two bedroom flats. The proposed mix also provides 3% of the proposed dwellings as houses and 97% as flats.
9. As Mr Spurgeon's evidence demonstrates, the proposed mix of dwellings is not in accordance with the latest evidence of housing need and represents a significant departure from the implied mix of dwelling sizes. The appeal proposal bears no relation to the estimated need for housing in the Borough and is inconsistent with draft policy SP7.
10. As set out in Mr Spurgeon's evidence, the absence of an appropriate mix of dwelling sizes and types will exacerbate the anticipated shortfall of larger homes.<sup>13</sup> This is where the need is the most acute and where the shortfall in supply is most significant.<sup>14</sup> There is already an overrepresentation of one and two bedroom dwellings in the housing trajectory and the appeal scheme will further contribute to that over-concentration.<sup>15</sup>
11. The appeal scheme, by failing to provide an appropriate mix of development in accordance with draft policy SP7, will fail to contribute towards the creation of mixed, sustainable and inclusive communities.
12. The appeal scheme also fails to meet the varied needs of different households. There will be a significant shortfall in the proportion of dwellings suitable for families, and in particular those with children.<sup>16</sup>

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<sup>11</sup> WHBC Technical OAN Paper, p. 23 [6.21].

<sup>12</sup> G.5 Implied Size of Housing Required – Methodology Note.

<sup>13</sup> Mr Spurgeon POE, p. 2 [iii].

<sup>14</sup> Mr Spurgeon POE, p. 9 [4.15].

<sup>15</sup> Mr Spurgeon POE, p. 10 [4.21].

<sup>16</sup> Mr Spurgeon POE, p. 11 [4.26] – [4.27].

13. As Mr Spurgeon makes clear, even less regard has been had to the provision of homes suitable for older people, as the appeal proposal, which is on a Strategic Development Site, makes no provision for housing specifically designed for older people.<sup>17</sup> This results in a marked conflict with draft policy SP7. It also fails to contribute towards the creation of mixed, sustainable and inclusive communities.

(2) The effect on the character and appearance of the area.

14. The emphasis which has been placed in recent years on the importance of achieving the highest quality of design is of critical importance in this appeal. As the then Secretary of State said in his letter to the Planning Inspectorate on 2 August 2021, Inspectors should be ‘alive’ to the changes which had been made to the NPPF requiring the delivery of beautiful places to live and work<sup>18</sup>.

15. Saved policy D1 requires the standard of design in all new development to be of a high quality.<sup>19</sup> Saved policy D2 requires that all new development respect and relate to the character and context of the area and development proposals should, at the very least, maintain, and where possible, enhance or improve the character of the existing area.<sup>20</sup>

16. Draft policy SP9 of the emerging local plan requires proposals ‘to deliver a high quality design that fosters a positive sense of place’ and to respond to character and context whilst respecting neighbouring buildings and the surrounding context in terms of height, mass and scale.<sup>21</sup>

17. The Broadwater Road West SPD (2008), which contains guiding principles for the design of development within this area, remains a material consideration in the determination of this appeal.<sup>22</sup> It contains specific guidance relating to form, bulk, height, scale and massing.<sup>23</sup> Even making allowances for its age, the proposed density of the appeal scheme far exceeds the density guidance in the SPD.<sup>24</sup>

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<sup>17</sup> Mr Spurgeon POE, p. 11 [4.28].

<sup>18</sup> G.9

<sup>19</sup> B.1a WHBC Local Plan – District Wide Policies, p. 77.

<sup>20</sup> B.1a WHBC Local Plan – District Wide Policies, p. 79.

<sup>21</sup> B.2 WHBC Submission Draft Local Plan (2016), p. 81.

<sup>22</sup> B.4 Broadwater Road West Supplementary Planning Document 2008.

<sup>23</sup> B.4 Broadwater Road West Supplementary Planning Document 2008, pp. 47-49.

<sup>24</sup> Ms McLarney POE, [4.3].

18. As Ms McLarney's evidence shows, the proposed footprint of the appeal scheme exceeds that of the existing building whilst the proposed outline exceeds its height, scale, mass and bulk.<sup>25</sup>
19. It is clear that if consented, this appeal proposal will result in a development with an overbearing mass which does not reflect the Garden City aesthetic.<sup>26</sup>
20. It will be a prominent feature in the townscape which will be visible from a large range of vantage points, meaning that it will impact not only upon the immediate character and setting of the appeal site but also upon the wider area of Welwyn Garden City.
21. The appeal site is within an area where the prevailing built form is 2 to 4 storeys, yet the appeal scheme proposes residential buildings of 4 to 9 storeys.<sup>27</sup> Ms McLarney's evidence is that the appeal proposal will therefore fail to relate well to its context, resulting in an uncomfortable juxtaposition of the proposed built form with the existing built form.<sup>28</sup>
22. It is noteworthy that the Broadwater Road West SPD says that buildings here should generally not be more than 5 storeys in height.<sup>29</sup>
23. As Ms McLarney's evidence demonstrates, the appeal proposal does not represent a high quality of design due to its excessive form, scale, bulk, height and massing as well as its relationship to adjoining land and buildings.<sup>30</sup> It fails to respect or relate to the character and context of the local area and if consented, will fail to maintain, enhance or improve the character of the area.<sup>31</sup>
24. This would result in direct conflict with policies D1 and D2 as well as with the Broadwater Road West SPD. The NPPF also requires that development is of a high quality and to be sympathetic to local character.

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<sup>25</sup> Ms McLarney POE, [4.3] – [4.4].

<sup>26</sup> Ms McLarney POE, [4.7].

<sup>27</sup> Ms McLarney POE, [5.1].

<sup>28</sup> Ms McLarney POE, [5.1].

<sup>29</sup> B.4 Broadwater Road West Supplementary Planning Document 2008, p. 49.

<sup>30</sup> Ms McLarney POE, [5.1].

<sup>31</sup> Ms McLarney POE, [5.1].

25. Simply put, the appeal proposal far exceeds what would be appropriate in this context. The area is a key gateway site within an internationally recognised Garden City, and it is imperative that particular regard is had to the need to ensure that any proposal relates well to this unique setting and that development is of a high quality whilst also being appropriate to its context.
26. The appeal proposal will result in a greater amount of built form being present at the appeal site than is currently the case. Ms Mc Larney's evidence demonstrates that the appeal scheme will have a very different relationship with its surroundings than the existing building which it will replace. The result would be a development which is inconsistent with the objective of maintaining and enhancing the character of Welwyn Garden City through the use of high quality design.

#### Planning balance/ Five year supply

27. It is agreed by the Council and the Appellant that the Council cannot demonstrate a five year housing land supply. They agree that the shortfall is on the range of between 1.65 and 2.46 years. Whatever the precise figure is, the shortfall is not insubstantial.
28. Given the existence of the shortfall, para. 11(d) of the NPPF is engaged. The Council of course recognises that there would be certain benefits from the implementation of the appeal proposal. But their position is nevertheless that the adverse impacts of the appeal proposal would "significantly and demonstrably" outweigh the benefits of granting planning permission, when assessed against the policies in the NPPF taken as a whole. The appeal proposals do not therefore represent sustainable development and, accordingly, planning permission should not be granted for them.

#### Conclusion

29. The Council's objections are reflected in the strength of local feeling against this appeal proposal expressed in the many third-party representations. The appeal proposal does not represent a positive addition to Welwyn Garden City.

30. In the light of all the foregoing, the Inspector will, in due course, be respectfully requested to dismiss the appeal.

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