

APPEAL BY AURORA PROPERTIES (UK) LTD

LAND NORTH OF BRADMORE WAY, THE BROOKMANS PARK ESTATE,

BROOKMANS PARK, HERTFORDSHIRE

Appeal Ref: APP/C1950/W/22/3307844

OPENING SUBMISSIONS

ON BEHALF OF THE APPELLANT

Introduction

1. This is an Appeal by Aurora Properties (UK) Ltd against Welwyn Hatfield Borough Council's ("WHBC") decision to refuse an application for "outline planning permission with all matters reserved except for access, for up to 125 dwellings, a care facility for up to 60 bedrooms (Use Class C2), and a scout hut (Use Class F2)"¹.
2. The Site is in the Green Belt. However, it is imperative to look at the plan-making context. Welwyn Hatfield District Plan (2005) ("WHDP")² far pre-dates any version of the NPPF. It is from another era. The development plan policies which are most important for determining the appeal are 'out of date' by virtue of footnote 8 of the NPPF.³ Accordingly, the Appellant needs to demonstrate 'very special circumstances' in order for permission to be granted (NPPF 2021, §148)
3. Time and again, this is a Site which has found to be suitable for allocation by Officers. It has been recommended for allocation in a litany of background papers informing the emerging Local Plan⁴, and was commended for inclusion by the Examining Inspector who considered the Site to be a suitable one⁵. Reports to the WHBC's Cabinet Planning

¹ Agreed description of Development at SoCG §3.1

² CD 5.01.

³ SoCG 8.7

⁴ RG PoE 6.1 – 6.32 & Rebuttal 3.1 – 3.4. Housing Site Selection Background Paper June 2016 CD6. 112; the HEELA 2019 CD 6.12; the Housing and Employment Site Selection Background Paper 2019 CD6.10

⁵ In particular, Inspector Middleton notes at paragraph 120 of his consideration of the site in EX273 (CD 6.71) "..... *From a movement perspective, this is a sustainable location for residential development.*" At paragraph 121 he states "....*The site could contribute to the five-year housing supply of housing.*" He also dismisses concerns over coalescence and notes the level of containment of the site. His comments suggest he considers its level of

and Parking Panel (“CPPP”) of 23 and 29 January 2020 recorded the Site as one of a number of sites to make up the shortfall in housing identified by the examining Inspector. That is because the Site is an inherently sustainable one – well located to the primary school, village shops, a pub, library and proximate to very significant road and rail links. Of particular note is the following from the overall conclusion of the site assessment template for the appeal site in the *Housing Site Selection Background Paper 2019*⁶ covered at RG PoE §6.17:

“... On balance, the benefits of the site are considered to outweigh any potential harm on the Green Belt. The site is considered suitable for allocation.”

4. Plan-making has failed in Welwyn Hatfield for a considerable period of time, and it continues to do so, contrary to the Framework and PPG.⁷ The “current” local plan was adopted in 2005, over 17 years ago, and sought only to meet housing need to 2011. That housing target derived from the 1994 RPG9, long since superseded by the NPPF, which introduced a radical shift in policy on meeting housing need⁸. For some 12 years now, there has been effectively no plan in place to meet housing need in WHBC with dire consequences discussed later. The adopted Local Plan is deemed out of date⁹. Moreover, progress on the replacement plan has been painfully slow as it commenced as long ago as 2005. The Appellant will demonstrate why there is little prospect of that situation changing in the near future either.

Landscape

5. Although the Council may not like to admit it, this site is plainly very well contained. It is surrounded by a combination of settlement, woodland vegetation, a railway line with a gently inward facing landform and a golf course. The landscape SoCG goes some of the way to agreeing this to be the case.

harm to the Green Belt would be lower than that of the wider parcel it was assessed as part of in the LUC stage 3 GB Study.

⁶ CD 6.10.

⁷ §33 of the Framework and the PPG Para 062 Ref ID: 61-062-20190315 (CD 8.13)

⁸ RG PoE 7.16 – 7.19.

⁹ See Main SoCG 8.7.

6. The LVIA when submitted as part of the planning application acknowledged that the main landscape effects of the proposed development would be associated with the Site itself and with a Slight Adverse Effect on the character area LCA54: Potters Bar Parkland. It is worth noting that that is at completion without mitigation/prior to establishment. Mr Browne has also agreed that there are no effects from any other Landscape Character Areas (LCAs)¹⁰. The Council's Landscape Officer found no landscape or visual grounds on which to refuse the proposed scheme¹¹ and it was only the Case Officer who inexplicably introduced a landscape and visual reason in the Committee Report.
7. The Council has failed to justify its reason for refusal on landscape and visual matters, 3 landscape professionals have all reached very similar conclusions on landscape. Whilst there may be slight differences in judgement (which is normal) it is only Mr Browne that stands out in terms of his exaggerated claims on landscape and visual issues. This isolates him from other professionals in trying to maintain this RfR.
8. The parties agree there will be a loss of grassland.¹² Indeed this is the *only* key characteristic of the character area to be altered/lost by the development, as MF recognises.¹³ Mr Browne further agrees the scheme has beneficial features,¹⁴ in §5.2.4 of his proof he acknowledges the strengthening of tree and hedgerow along the boundaries, plus the wildflower meadow, features that all represent “*a beneficial landscape effect*”.
9. The outcome of the Council's landscape case when drawing everything together in terms of landscape is that Mr Browne (like Mr Flatman's LVIA) *also* essentially concludes harm to the site itself and only Slight Adverse Effects on the character of the area LCA54: Potters Bar Parkland (in the northern parcel only and prior to establishment). It is hard to fathom how this justifies a landscape reason for refusal and the alleged disagreement as to the extent and level of landscape effects.¹⁵ It seems all Landscape

¹⁰ Landscape SoCG 4.3.

¹¹ Landscape SoCG 3.1-3.2.

¹² Landscape SoCG 4.2.

¹³ MF PoE 2.4.9.

¹⁴ Landscape SoCG 4.4.

¹⁵ Landscape SoCG 7.5.

experts agree the harm on the LCA is limited, that is Mr Waring (the Council's Landscape Officer), Mr Flatman and now Mr Browne concur.

Visual

10. The LVIA identified a range of visual receptors near and further afield (highway, footpaths, golf course), which were identified appropriately. Mr Browne's approach has been to focus on, in his words, 'new views' that he wrongly claims were 'additional' to the LVIA.
11. Not only has Mr Browne scaled the visual assessment down to only 4 locations in winter the 'new' locations are all extremely close to the Appeal Site boundary, in fact there is no clear open view of the Appeal Site at all from 3 of the 4 locations, even in winter. Indeed, with respect to his 4th 'view' (Bradmore Way), it would be rather surprising if any development site across the country didn't experience *some* change at the main access point right on the site boundary edge.
12. Overall, Mr Browne's assessment is overstated in terms of the visual effects and the receptors identified already formed part of the LVIA. This attempt to exaggerate the visual case (and move away from the LVIA which was appropriate and proportionate) is quite simply a failure to acknowledge the limited extent of visibility of the Appeal Site. It is a tool to wrongly allege effects on visual openness which simply don't exist.

Openness

13. The parties agree that there would be a loss of openness on the site itself¹⁶. It is further agreed that there are no views to the north or west of the site (5.3, 5.4), the only views Mr Browne has highlighted in his evidence are the three views very close to the Appeal Site from within the urban area (not the GB), where openness is already altered, plus one location directly on the golf course boundary right next to the Site.
14. It is common ground between the Appellant and the Council that there would be no impact on 4 of the 5 Green Belt purposes (NPPF para 138). It will be demonstrated that

¹⁶ Landscape SoCG 6.3.

Mr Elmore exaggerates the harm in terms to purpose c) *safeguarding the countryside form encroachment*, and that, in fact, as it exists the site makes only a limited contribution to it, with its relationship to existing build development on Bradmore Way and Pelins Way and the high level of containment meaning there would not be any impact from the proposed development.

15. Mr Browne has identified no views of the Appeal Site from the wider open countryside and it is plain that there would be no harm to the wider countryside. Despite maintaining their allegations, the Council has not demonstrated:
- i) how the change in openness is not “*largely restricted to within the Appeal Site itself*”¹⁷
 - ii) how this scheme harms the integrity of the wider GB¹⁸

Very special circumstances

16. Notwithstanding the limited harms to the Green Belt, there are compelling reasons why there are very special circumstances in this case.
17. First, the extent of housing supply in WHBC is abysmal. There is much that is agreed between Mr Pycroft and the Council¹⁹ including the need to deliver 1066 dwellings per annum.²⁰ WHBC cannot demonstrate a 5YHLS. The extent of the supply is the subject of disagreement (2.63 years on the Council’s case, 1.65 years on the Appellant’s). Regardless of the 5YHLS position, the presumption in favour of sustainable development applies because the Council has failed the 2021 Housing Delivery Test (“HDT”) and will also fail the 2022 HDT too. Mr Wilson’s rebuttal does little to overcome these issues, which will be addressed by Mr Pycroft at the Round Table Session.
18. Second, the Appeal Scheme would also deliver an important care facility. The Government has made clear that there is a ‘critical need’ for older person specialist

¹⁷ Landscape SoCG 7.9.

¹⁸ Landscape SoCG 7.10.

¹⁹ Including the base date 1 April 2022; the 5YHLS should be measured against the Local Housing Need calculated using the standard method set out in the PPG. This is

²⁰ 888 dpa, but with a 20% buffer applied meaning that the 5YHLS to be demonstrated is 5,238 dwellings.

housing; and this is a care home in a borough with high number of older people (31% higher than the national profile and rising swiftly). In fact, as detailed in Mr Newton Taylor's Proof of Evidence, the number of persons falling within this most elderly age band is forecast to increase by 28% by 2035.

19. It is perhaps most surprising that even against this startling need, there is just a single operational care home for the elderly within 2-miles of the Site (developed comfortably preceding the millennium). Yet, the net increase in registered bed numbers for the elderly over the past decade across the borough falls below 50, in circumstances where the Borough's population exceeds 120,000 persons.
20. Statutory obligations mean that the local authorities are required to provide a variety of high-quality services to foster choice. This facility would provide a high standard of accommodation – a particularly important consideration aimed to maximise care provision and occupational enjoyment. The need for the care home is not disputed, and WHBC also attribute it 'significant weight'; but, when properly scrutinised, the weight should be even greater.
21. Third, the Appeal Scheme also delivers vital affordable housing – in excess of policy requirements. The consequences of the housing crisis are well known: homelessness, over-crowding, families and individuals living in unsuitable accommodation along with deteriorating affordability ratios. These matters are dealt with by Mr Stacey. This is against the context of a well-established shortfall in WHBC. That shortfall as Mr Stacey explains runs to almost 5,000 homes (4,994 as set out in JS Figure 7.4). There have been just 43 affordable homes delivered per annum²¹ and a shortfall of -4994 dwellings (between 2015/16 and 2021/22) against the SHMA.
22. There have been no affordable homes delivered in North Mymms Civil Parish since 2000/01. That is an astonishing fact. The delivery of 56 affordable homes will make a tangible impact. It is little wonder why WHBC therefore agree that it ought to be attributed very substantial weight.

²¹ Net affordable housing delivery in WHBC taking account of Right to Buy losses and acquisitions since the start of the 2017 SHMA period 2015/16 has averaged just 43 affordable dwellings per annum up to the end of the 2021/22 monitoring period.

23. Finally, the Appeal Scheme delivers other benefits too, including 8% Self Build /Custom housing, where it is common ground that there is a shortfall of at least 318 plots²². It also delivers Biodiversity Net Gain, a Scout Hut, improvements to pedestrian facilities, other s.106 measures and economic benefits.

Other matters

24. In respect of other matters, those parts of RfR 4 concerning protected species and agreement of the BNG financial settlement are likely to fall away,²³ with active progress being made towards agreeing the detail of offset site securement.²⁴ A buffer in excess of 15m²⁵ will be provided along the length of the adjacent Peplin's Wood (ancient woodland). This buffer (15-38m) will be fenced to ensure optimal woodland edge habitat creation scheme. The development incorporates combined onsite and offset biodiversity provision which will achieve an uplift of 15%²⁶ and some £302,349.

25. With regard to flooding (RfR5), a SoCG has been agreed with the Lead Local Flood Authority ("LLFA"), and the initial objection has been withdrawn. 96% of the Site is in Flood Zone 1 (the lowest risk of flooding) and higher flood risk areas on the edges of the Site relate to surface water flooding from minor ditches.²⁷

26. Reason for Refusal 3 relating to highways impact and pedestrian movement has been withdrawn following the Highway Authority's consideration of additional traffic

²² §8.26 main SoCG

²³ It will fall away when a satisfactory s106 obligation is agreed

²⁴ This relates to an initial objection from Natural England concerning the potential for development derived drainage effects derived to adversely impact on Water End Swallow Holes SSSI, located downstream of the development. This was subsequently withdrawn. This part of the Reason for Refusal has now fallen away and the measures are approved by Natural England, to ensure full protection of the SSSI will be secured through condition. Similarly, the development site is low risk in terms of ecological harm. Following review of the submitted documentation, Hertfordshire Ecology have stated that *'the likelihood of adverse ecological impact is low ... the submitted reports suggest reasonable measures to ensure that legally protected species are not harmed'*. Appropriate species mitigation and compensation, habitat creation and other ecological enhancement measures as submitted, will be secured through condition. That part of RfR4 that refers to the potential impact of the development on legally protected species and harm to the site's ecology and biodiversity has also now fallen away.

²⁵ As required in the Natural England and Forestry Commission Standing Advice (January 2022) will be provided along the length of adjacent Peplin's Wood (ancient woodland)

²⁶ As agreed with WHBC and Hertfordshire Ecology and the Herts and Middlesex Wildlife Trust. Details of this have been proposed in a Unilateral Undertaking.

²⁷ The proposed access road will include a culvert to allow surface water to pass underneath it and it has been shown through analysis that this leads to a slight improvement in existing flood risk.

survey work and an audit of local walking route infrastructure which has resulted in an agreed scheme of off-site improvements. The Appeal Scheme is well-located for journeys on foot in respect of its ease of public access to the amenities of the village centre and to public transport, including proximity to the East Cost Mainline and access to London King's Cross/ St Pancras and Moorgate.

Conclusion

27. In due course, the Appellant will therefore invite the Inspector to allow the Appeal.

7 February 2023

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