Town & Country Planning Act 1990 s.78

LAND NORTH OF BRADMORE WAY, BROOKMANS PARK, HERTFORDSHIRE

APP/C1950/W/22/3307844

CLOSING SUBMISSIONS

On behalf of the Local Planning Authority

2 March 2023

Introduction

1. As I said in Opening, this planning inquiry is – as so many are – a case about competing priorities. It is not black and white, or binary. The inquiry has identified and focused on a series of national and local priorities, and this case is about how those priorities are to be balanced one against the other. There is no straightforward answer. The answer will emerge from an overall judgment, itself taking in a series of judgments about the weight to be attached to the various elements, about how best to reconcile those competing priorities. That is at the heart of this appeal. The competing priorities cannot *all* be served by granting (or refusing) permission here.

2. Much of the inquiry has been spent discussing the benefits of these proposals, and they are undeniable: this authority has a significant shortfall in housing land supply, largely as a result of a very protracted battle to adopt a sound plan, and an acute shortage of affordable units. Additional care beds of high quality are needed everywhere: this country has a shortage of specialist accommodation for the elderly, and our population is ageing; there is no doubt that facilities of the kind proposed here are welcome, and much-needed. There are not enough self-build plots to meet demand in this part of the world. The Scouts could do with a replacement hut. That these benefits would arise from the proposals is common ground, and in most cases so too the weight to be attached to them.

3. However, and crucially, the appeal site is in the Green Belt, and would amount to around 8 hectares of open Green Belt land lost permanently to built development. That sets it aside from 'ordinary' proposals of this nature. The Government attaches great importance to Green Belts, as it says at §137 of the chapter of the NPPF dedicated to protecting them. The fundamental aim of Green Belt policy is to keep land in the Green Belt permanently open. It is common ground that these proposals, for all their undoubted benefits, amount to a direct conflict with that fundamental aim.

4. The aim is at the <u>top of the hierarchy of priorities</u> in the NPPF:

a. Any harm to the Green Belt is to be afforded no less than substantial weight: how much weight to be attached is not left to planning judgment, but a minimum level is essentially prescribed. That is rare;
b. Green Belt protection 'trumps' the tilted balance, the key mechanism in the NPPF to help address another national priority, that of significantly boosting the supply of homes. The tilted balance is disapplied[1] in Green Belt cases, however bad the five-year supply position, unless very special circumstances can be shown (which is the key test). As such the flagship national policy intervention to help alleviate the shortage in housing permissions is made subservient to the priority of protecting the Green Belt. Previous Ministerial Statements on that issue take the same approach; and
c. That there is a policy-based intervention in the planning balance designed to deal with the issue of a shortfall in land for housing is confirmation (should it be needed) that that issue, too, is a national policy imperative: it is trite that we are in the midst of a housing crisis and the Government wishes to 'fix' it: the tilted balance is the key measure for achieving that in planning policy terms. That it is 'trumped' by the importance of protecting the Green Belt is crucial to understanding the hierarchy of these priorities.

5. The importance that the Government attach to preserving the openness of the Green Belt, and its position in the national hierarchy of priorities, may not be everybody's view of how we should plan for development in this country; it is a political choice, of course, but it is unquestionably the political choice that has been made and that national planning policy reflects (and so must be the guiding approach to this appeal). It may well be about to be reinforced and taken yet further. That these proposals are in fundamental conflict with that aim is their defining feature; ordinarily, they should be refused; and it is only where what can genuinely be described as very special circumstances arise that there is any question of granting permission.

[1] By footnote 7

6. The other point to make about the loss of open Green Belt land here is that the appeal site's proximity to built form, and the settlement edge, is not the advantage that the Appellant seeks to portray it as: Green Belts, by definition, encircle and abut built-up areas. That is their entire *raison d'etre.* The harm caused by replacing open land in these places with built form is not reduced by the proximity to built form: that is obviously illogical and would be, if adopted, a recipe for wholesale loss of Green Belt land. Green Belts lie adjacent to built-up areas <u>because</u> their aim is to stop their spread. They are perhaps at their most valuable where they lie adjacent to the built up areas they seek to contain.

7. Before turning to whether the circumstances that arise here can properly be described as 'very special', it is important to correctly identify, and quantify, the harm that would arise if these proposals were to go ahead. That is a crucial part of recognising the importance Government attaches to Green Belts.

<u>Harm</u>

8. The parties agree that harm to the Green Belt by loss of openness can be comprised of both spatial and visual components, and it is common ground that both arise here. The controversy is about their extent, not their existence. For the Appellant, Mr. Gray addresses the 'spatial' aspect and Mr. Flatman the visual, while both are addressed for the Council by Mr. Browne.

Harm in principle

9. The definitional (or spatial) harm to the Green Belt here is comprised in the removal of the appeal site – around 8 hectares – which is presently completely open (the essential Green Belt characteristic) and its replacement with its antithesis, built development. That openness will be lost permanently, replaced with built form and

much-increased activity[2]. It is a significant quantum of open Green Belt land lost, on any sensible view, and the Appellant's attempts to minimise this aspect of the proposals is unconvincing and infects the overall assessment here.

10. In particular it is important to bear in mind that the purpose of Green Belt policy would be completely undermined if it permitted 'death by a thousand cuts', which is essentially what the Appellant's witnesses are suggesting when they claim no impact on the 'integrity of the wider Green Belt' (whatever that really means). The fundamental aim of Green Belt policy is to keep land in the Green Belt permanently open and these proposals conflict directly with that aim.

11. Mr. Gray's approach to the spatial component of the harm to the Green Belt here, which begins at page 69 of his proof, is obviously faulty. He correctly identifies the PPG advice, noting that assessing loss of openness may require consideration of spatial and visual aspects, the duration of the development and its remediability, and the degree of activity likely to be generated (and yet he says no more about the latter two elements, which clearly both point to harm here, as noted by Mr. Browne and agreed by Mr. Flatman in xx).

12. Having noted Mr. Flatman's conclusions about the <u>visual</u> component, which legitimately address the extent to which the reduction in openness can be <u>seen</u> from various viewpoints, he turns to the spatial component, which everyone agrees is a separate concept. However, he immediately confuses it with the visual aspect dealt with by Mr. Flatman: he says the spatial harm will be "*limited by the appeal site's relationship with the existing settlement of Brookman's Park and its general level of containment by existing landscaping*…". That is self-evidently a point about the *visual* component, and one already made by Mr. Flatman in that context. Containment is a visual concept, and has no part to play in the assessment of the spatial aspect of Green Belt loss. The same is true of the effect of the site's proximity to, and influence by, the settlement edge (leaving aside the point that Green Belts, by definition, abut built-up

[2] See the reference to the PPG contained at paragraph 7.1.1 of M. Browne's proof, which is from para 001 of the Green Belt chapter of the PPG

areas). It is, I am afraid, clear that Mr. Gray's approach to Green Belt harm is badly underplayed in this respect.

13. To be absolutely clear: it is entirely legitimate, as part of the assessment of the visual component of Green Belt harm, to consider visual containment, and the range of views from where the change in openness can be observed. But it is *not* legitimate to bring those factors into the assessment of the discrete concept of spatial harm to openness. To do so is an obvious double-count of those factors.

14. Further, at paragraphs 5.1 and 5.2 of his Rebuttal, in seeking to respond to Mr. Elmore's self-evidently sensible point (at 5.8 of *his* Proof) about the extent of the harm here compared to other schemes, Mr. Gray betrays a further serious error in his approach to quantifying harm: his assessment (that overall, the harm to the Green Belt would be 'limited') has been reached by taking into account the benefits brought by a proposal of this size. That has nothing to do with the quantification of harm: the benefits are to be *weighed against* the harm, but can't be used as part of the *assessment* of harm. Mr. Gray's approach is an obvious double-count and badly undermines the reliability of his assessment.

15. More worryingly for the reliability of his evidence to you, his explanation for paragraphs 5.1 and 5.2 (in that he was somehow talking about the planning balance, rather than the quantification of harm) flies in the face of his own words. I can do no more than invite you to read those two paragraphs, and note that they respond to Mr. Elmore's evidence at 5.8, suggesting that Mr. Elmore is wrong. There is no way they can be read in the way Mr. Gray contended for in cross-examination. He has self-evidently made another serious error in his approach to quantifying the harm of his client's scheme.

16. Thirdly, he underplays the harm – for what it is worth, as an additional point – to the Green Belt 'purpose' of preventing encroachment into the countryside, which he concludes is *not harmed at all*, despite the conversion of 8 hectares of open countryside into built form. Mr. Browne is obviously right that these proposals will harm this 'purpose' of Green Belt policy. What would be the point of Green Belt policy

if converting an area of 8 hectares of completely open land in the Green Belt to a new housing estate did not conflict with the purpose of preventing encroachment into the countryside? Mr. Flatman's answers in cross-examination gave the lie to that suggestion: of *course* there will be encroachment. Mr. Gray's conclusion that there will be none – not limited harm, but none – depends on his assessment of the visibility of the encroachment – but as he accepted (in line with Mr. Flatman) that is only part of the assessment required (and in any event, the encroachment *will* be visible, albeit not over a wide area, as accepted by Mr. Flatman).

17. Given that substantial weight is required to be given to *any* harm to the Green Belt, and thus to any proposals which reduce openness (including, for example, modest proposals to extend individual dwellings, or replacement individual buildings larger than those they replace), the fact that these proposals will remove around 8 hectares of open Green Belt land must be appropriately acknowledged. They amount to a significant reduction in openness, and substantial weight must be afforded to that loss, commensurate to the quantum of the reduction (i.e., considerably more than would be attached to, for example, the reduction in openness comprised in a dwelling extension).

18. Here, Mr. Elmore's point is not that the particular extent of the intrusion into openness tips the assessment of harm above 'substantial' (which is the minimum it must attract anyway, by national policy). It is that within the category of 'substantial weight' there will be schemes which pose much greater harm than others, and this one is likely to be at the upper end of that range. It was surprising to hear that Mr. Gray could not accept that proposition. It is *obvious* that these proposals would cause more harm to openness than an extension to a single building in the Green Belt elsewhere (subject, as always, to an individual assessment of that harm in each case).

19. As Mr. Elmore's approach recognises, it is undeniably true that the *benefits* here are likely to be much greater than those comprised in a dwelling extension too, but that says nothing about the *harm* side of the equation, which is independent of the assessment of benefits. Benefits come later. As I have said, both have to be assessed

in an objective and logical way, before they are weighed one against the other as the last part of the exercise. We are confident you will do that. On the 'harm' side of the balance, only one of the two planning witnesses to this inquiry have done so reliably.

Visual/perceptual loss of openness

20. As to the visual element of the loss of openness: to what extent will the loss of openness be perceptible and appreciable? It is common ground that this form of harm exists, and that the reduction in openness here will be perceptible/visible from a number of viewpoints. The range and extent of viewpoints is agreed (which rather renders the debate about whether the site is 'well'-contained, or some other adjective, sterile). As such the only meaningful controversy is the extent of this aspect of the harm to the Green Belt here.

21. This is quintessentially a matter for your judgment, of course, but the Council relies on the evidence of Mr. Browne to the effect that the loss of openness will in fact be perceptible from a range of off-site viewpoints, albeit 'localised' and not visible in long-range views (which would, of course, be much worse). There is literally nothing in Mr. Flatman's point that because some of these views are from the urban area, that somehow diminishes the harm – it does not – Green Belts, by their very nature and intent, abut built-up areas (and are intended to stop their spread). Perceiving a loss of their openness from within the urban area they abut is entirely to be expected, and does not reduce or minimise that harm.

22. The Council thus stands by Mr. Browne's assessment that the visual 'component' of the loss of openness is commensurate with the spatial aspect. It can be observed from a range of offsite viewpoints, albeit not from far away. It is substantial.

23. In addition to that harm (and thus on top of the substantial weight already afforded) must be added 'any other harm'.

Character and Appearance

24. It is common ground that there will be harm to the character and appearance of the area. This harm is no less important because this is a Green Belt site – the harm to character and appearance must be assessed, and will weigh against the proposals here[3]. Again, the controversy here is as to its extent, not as to its existence.

25. Both experts approach this aspect of the case on the (proper) basis that there might be both landscape *and* visual effects, and both must be (and are) assessed. Their approaches are not fundamentally different, but Mr. Browne's is to be preferred as a guide to judging the likely effects on character and appearance that these proposals will have. These submissions will focus primarily on the differences in their approach and conclusions, but I recognise that ultimately you will form your *own* assessment of the likely effects.

Landscape effects

26. Methodological differences often feel like nit-picking. However, the adoption of a transparent and authoritative method for assessing effects is important, and recognised by both experts as essential for providing a transparent exposition of their expertise. Having set that benchmark for their own work, it is appropriate to judge their evidence by that benchmark.

27. The first key difference between them can be addressed shortly: Mr. Browne notes that the site has a strong, rural character, with the settlement edge of Brookmans Park only really influencing a small portion of the overall site, to the south. Mr. Flatman's analysis lacks this nuance, making repeated references to the influence the settlement edge has on 'the site'. He stood by his description of the northern edge of Brookmans Park as it abuts the appeal site as 'harsh'. That is genuinely surprising. It seems nothing of the sort – but we recognise that you will form your own view on this controversy, having visited the site.

[3] Mr. Flatman in xx

28. As to value, Mr. Browne follows the latest professional guidance closely. His assessment of value follows the Landscape Institute's Technical Guidance Note, and is transparent and easy to understand. His conclusion is that the site and surrounding landscape is, while not a 'valued landscape' properly to be described as 'high/local' value, with the descriptor for that label being clearly set out, and obviously appropriate. Mr. Flatman's attempts to suggest the site is more properly to be in the 'medium/local' category defied the words on the page: the appeal site features *none* of the features which that descriptor mentions, and it undermined his credibility to suggest that the distant transmitter aerial, or the railway line, had such an effect.

29. Mr. Browne identifies a number of landscape receptors in and around this site, in line with the GLVIA guidance, which calls this 'the first step'. Each are '*components of the landscape that are likely to be affected by the proposed development*[4]'. The effect on each is then assessed, producing a comprehensible and clear route to assessing the overall effects. That is rather the point of expert LVIA work.

30. By contrast Mr. Flatman's approach to assessing sensitivity of landscape receptors appears to be that the Landscape Character Area LCA54: Potters Bar Parkland is the only receptor to consider: see paragraph 3.2.2 (which refers to LCA 54b), and perhaps also the site itself (see paragraph 3.2.8). There is no separate assessment of the two additional receptors Mr. Browne identifies and which are agreed to be appropriate receptors (i.e. Peplin's Wood, and the settlement edge). There is also no assessment at all of the *magnitude of* change to those receptors, a crucial step in the LVIA process as described by GLVIA.

31. By contrast, for each receptor, Mr. Browne assesses the likely effects – using the combination of susceptibility, sensitivity, magnitude of change and thus significance of each such effect, in line with the GLVIA-mandated approach. It is a helpful and thorough exercise which properly assesses the likely landscape effects of these proposals.

[4] GLVIA3, paragraph 5.34

32. Mr. Flatman's work does not do that. While acknowledging that all four of Mr. Browne's landscape receptors were properly to be described as such, in respect of Peplin's Wood and the settlement edge, there is no assessment *at all* in his proof of their sensitivity, or of the magnitude of change upon them, despite the attempt in cross-examination to give an *ex tempore* assessment (for the first time) of them. Nor did the re-examination help, focusing on significance (a completely different, and logically subsequent, concept). The point is, to understand the conclusions on significance of effect, and by Mr. Flatman's own approach, you need to understand how he has got there, via sensitivity and magnitude of effect. In respect of Peplin's Wood and the settlement edge as landscape receptors, there is neither in Mr. Flatman's evidence.

33. The point made by Mr. Flatman in his Rebuttal (that there will be no physical effect on the trees of Peplin's Wood, which is uncontroversial) misses the point, as Mr. Browne explained in his evidence. The question is the effect on the wood *as a landscape receptor* – a component of the landscape character here that would be affected by the proposals. The contribution to landscape character made by Peplin's Wood here would be obviously changed: for the entirety of its southern and eastern boundary, it would be flanked by a housing estate, albeit with a 'buffer' strip, whereas presently (with the exception of a negligible stretch at the extreme south-west of its extent) it gives on to open grassland. It will be a really significant change in its role in the landscape.

34. We invite you to find that the effect on landscape receptors will be greater than that contended for by Mr. Flatman, and more in line with the assessment made by Mr. Browne.

Visual effects

35. There really isn't a great deal between the experts on this aspect of the impact. They agree the receptors, the range of views, and the appropriate viewpoints to assess. Their judgments as to the overall effect on each differ, but you will form your own.

36. The one point I will touch on is the visual receptor identified as users of the golf course. Mr. Browne's analysis of this seems right: golfers *are* more engaged with the landscape and surroundings when they play than might be footballers, or those playing tennis. They *are* properly to be considered of 'intermediate' sensitivity, on the approach set out by GLVIA3. The consequences of that are that Mr. Browne's assessment of the effect upon them is more reliable.

37. As I have said, there is no dispute that there will be harm to the character and appearance of the area, and that must be added to the Green Belt harm here before weighing it all against the benefits. The Council ask that you attribute the proper amount of weight to this aspect of the harm, essentially as assessed by Mr. Browne.

Conclusion - harm

38. This is not one of those cases where the harm to be assessed is limited to the 'definitional harm' comprised in a reduction in openness. That exists here and to a significant degree, but there is also a very real range of other harms caused by the proposed development. The definitional harm alone would attract substantial weight as a matter of national policy, but over and above that are those other harms, which add considerable additional weight against a grant of permission here. National policy requires that harm to be properly acknowledged. The Appellant's case fails to do that, instead seeking to minimise it at every turn.

<u>Benefits</u>

39. Before I turn to those factors which can properly weigh against this harm, I want to address a few matters that are *not* of that nature, and seek to show that they really don't play any material role in the assessment of whether this scheme should have planning permission.

Conflict with the local plan

40. The local plan is significantly out of date. If this case was based on the proposals being contrary to it, then it is likely you would attach reduced weight to its provisions. But it isn't. Everyone agrees that the question for this appeal is whether Very Special Circumstances arise, which is the test set out in the current version of the NPPF. It will be determinative.

41. Mr. Elmore does *not* include in his assessment of harm here, any free-standing harm from breach of the development plan, as Mr. Gray accepted in xx.

42. Further, it is self-evident (and agreed) that policy GBSP1 would be breached by these proposals if no VSCs arise; but if they do not arise, then permission should be refused in any event (so the breach of GBSP1 would add nothing to the picture). Similarly, if they *do* arise, then whether or not that would amount to compliance with GBSP1[5] would not add anything meaningful. As such I don't need to say anything more about that policy. Its provisions (or the weight to be attached to them) add literally nothing of value here.

43. What *does* need to be said is that Mr. Gray's point that the <u>boundaries</u> of the Green Belt are somehow 'out of date' and should be given less weight, does not work in the way he wishes it to: he agrees that this site *is* in the Green Belt, and that national policy on the Green Belt applies to it. There is no support in the NPPF for reduced weight to the VSCs test, or to the approach, in circumstances where Green Belt boundaries are proposed to be changed. The test must be applied as it says. In any event, changes to the Green Belt boundaries must (per NPPF para 140) be made by the local plan process: in this authority that is exactly what is being attempted, and yet those proposed changes (which are, for all Mr. Gray's scepticism, at an advanced stage now) do not affect this site. There is no prospect at all[6] of this site being removed from the Green Belt by that process.

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[5] Albeit that on the face of that policy, it seems clear that they would not. Policy RA1, referred to by Mr. Young, was not saved and is not part of the development plan.

[6] Mr. Gray (sensibly) confirmed in xx that he was not asking you to attach any weight to the possibility of this site being included in some future iteration of the local plan.

44. That is not to say that it is not a material consideration that in order to meet future needs arising in this Borough, housing will need to be delivered on what is presently Green Belt land, and that will entail a loss of (and harm to) openness in each case. That is undeniable. But the question of *which* Green Belt land that will have to happen upon is one that is being answered by the local plan process. It cannot be answered in this inquiry. In any event it is self-evident that this appeal is not (and could not be) suggested as some kind of *alternative* to another site presently allocated in the draft plan: if permission is granted here, that will be *additional* harm to the Green Belt, over and above the sites removed from the Green Belt as a result of the plan process.

The weight to be attached to the emerging plan

45. It is common ground that the emerging plan does not provide any support for the proposals. They are not included in it, and nor is the appeal site. None of its policies point towards planning permission here. The emerging plan (for what it is worth) envisages this site remaining as open Green Belt land.

46. Nor do any of its policies take matters further in term of the determination of this appeal: policy SADM1 simply defers to NPPF policy on the Green Belt, which everyone agrees will be determinative of this appeal in any event.

47. In those circumstances there is nothing to be gained from embarking on the exercise of deciding how much weight should be given to its policies: they add nothing of any substance here.

48. Nor do the Council rely on the draft plan's payload of new draft allocations to suggest that its five-year housing land supply will soon be 'fixed'. Mr. Elmore gives proper weight to what is a present, and serious, shortfall in housing land supply in his balance. He does not go beyond that.

49. Finally, everyone agrees that it is no part of your remit to 'punish' the Council for the length of time it has taken to get its plan to this stage. Questions of that sort are not for this inquiry, and cannot point towards permission.

The evidence base behind the emerging local plan

50. The evidence base is obviously a material consideration, and relevant. We have looked at it in detail in the course of this inquiry. The various assessments made provide helpful context.

51. However, the judgments reached (and observations made) by Inspector Middleton about the site's capacity to be developed for housing are in no sense binding on you. You will have to make assessments akin to them yourself. You may agree with his, and you may not. By themselves, his assessments are not benefits worthy of weight in favour of planning permission here. If you agree with them, then plainly that will assist the Appellant's case. But they don't (and can't) get separate 'weight' here as part of the balance.

52. In particular, and almost by definition given the nature of the local plan process, the observations made by Inspector Middleton are mainly (but not exclusively) about the *harm* that might follow from sites (or parcels) being allocated for development. You will make your own assessment of the harm here, armed (unlike him) with an actual scheme (albeit in outline), two landscape experts, a detailed look at the likely impacts, and an illustrative masterplan. In reality his observations are not likely to assist you greatly in that exercise. At best they may constitute a reasonable starting point.

53. The other crucial point of context here is that the *test* for inclusion of Green Belt sites as housing allocations in a local plan is a '*less demanding test*'[7] than the development control test of 'very special circumstances'. As such, the local plan inspector is asking himself a *different question* when considering suitability of sites. In any event he makes it perfectly clear (at paragraph 11 of CD6.70) that his observations on the appeal site (amongst others) are subject to exceptional circumstances being made out, a question upon which he makes no observations[8].

[7] Compton Parish Council v Guildford BC [2019] EWHC 3242 (Admin) – CD11.16 – at paragraph 70

[8] This is clear – as Mr. Gray agreed in xx, from footnote 5 on p.4 which directs the reader back to paragraph 6 of that document.

54. What follows from all of that, unsurprisingly, is that any meaningful conclusions about the inclusion of a candidate site in the emerging plan would require a balancing of harm against potential benefits, but against a less demanding test for inclusion; for example, the site known as HS22 is identified as a higher *harm* site, but also has a much greater potential to deliver housing units – almost three times as many as here – and a primary school, as benefits. Those comparative decisions are quintessentially ones for the local plan process to answer.

*Factors which are **not** benefits*

55. Beyond the matters already touched on, Mr. Elmore's evidence is that certain of the things claimed as benefits of the scheme (in the sense that they can be weighed against the harm in the planning balance) are, properly understood, not benefits at all. They are:
    (a) The site's location in accessibility terms;
    (b) The s.106 infrastructure contributions; and
    (c) The claimed environmental benefits.

56. The site is in a sustainable location, adjacent to a third-tier settlement with a good range of shops and services, but not at the level of either of the larger towns in the area (neither of which is close by). The majority of residents of the proposals would remain dependent on the private car for a large proportion of their journeys.

57. This aspect of the site's credentials is helpful, but is no more than an absence of harm: any less sustainable location, or one with fewer opportunities for walking, cycling and using public transport, would be likely to attract an objection. There is no such objection here but that is not synonymous with being a benefit.

58. Mr. Gray's proposition is that the site is in a *highly* sustainable location: that it is *so* well-located that it amounts to a benefit in and of itself. That is just not made out on the evidence: there is nothing unusually sustainable about the location; this is not a car-free (or even car-limited) development; there are sufficient opportunities for non-

car travel but as Mr. Elmore (patiently) explained, there is nothing to take this site's accessibility credentials out of the ordinary.

59. Nor does Mr. Elmore's analysis of this aspect contradict anything the Council has said before. Mr. Gray's Rebuttal (at 4.2) attempts to suggest that the Council has previously described this location as a highly sustainable one but the references do not say what he claims they say:

    a. They are in respect of a different site, with different locational features;
    b. They do not describe the location of that site as 'highly sustainable', but instead describe the potential development on that site as being 'highly sustainable', which is a different point; and
    c. The description of Brookmans Park as being one of the borough's most sustainable locations is apt: but it is a third-tier such settlement, less sustainable than either Hatfield or Welwyn Garden City. This site's location near Brookman's Park does not make it 'highly sustainable'.

60. As to the s.106 contributions, by definition these are to offset the impacts of the proposals, and mitigate their impact. They are not (and cannot be) weighed as 'benefits' of the scheme. Without them, the proposals would (again, by definition) be unacceptable. They cannot be weighed positively against the harm here. They amount to an absence of *further* harm, as articulated by Mr. Elmore.

61. There are aspects of the scheme which, in themselves, are beneficial in environmental terms. The biodiversity enhancements are acknowledged as separate benefits – which I will turn to in a moment; but there are also proposals for beneficial planting, and structural landscaping. Mr. Browne acknowledges their beneficial effect. But both Mr. Browne and Mr. Flatman, correctly, factor this into their overall assessment of the impact of the scheme in character and visual terms: they function to reduce the overall harm. Both conclude, crucially, that even after this mitigation, there is an overall outcome of harm.

62. On that basis, as accepted by Mr. Gray in xx, these aspects cannot be counted (again) as benefits of the scheme.

*Benefits that **are** benefits*

63. Turning to the various factors that it is common ground do amount to benefits of the scheme, there is not a great deal to say in terms of how much weight they should attract. It is agreed that the following factors are all benefits of the proposals:

    a. The contribution of up to 125 new houses to the Council's housing land supply, which is in a state of deficit;
    b. The contribution of up to 56 affordable homes to a situation of acute shortage;
    c. The provision of up to 10 self-build plots in an area of deficiency of such plots;
    d. The delivery of a 60-bedroom care home in Brookmans Park, in line with the Council's aspiration for this area;
    e. A new Scout Hut;
    f. A biodiversity enhancement, amounting to a 15% net gain, as a combination of on-site provision and off-site enhancements at a receptor site to be identified; and
    g. Economic benefits associated with construction and spending by new residents; and
    h. Some improvement in the pedestrian and highway safety provision in the area.

64. As to their weight, the Council points out the following factors, which tend to support Mr. Elmore's approach to weight ahead of that deployed by Mr. Gray:

65. In terms of the **contribution to housing land supply**, Mr. Elmore says that this is a benefit worthy of substantial weight (compared to the 'very substantial weight' contended for by Mr. Gray). The rationale is clear: there is no evidence that these

proposed homes will actually contribute to the supply of homes in the five-year period (i.e. be delivered by 31 March 2027[9]).

66. In particular, there are a number of factors which suggest that it is not self-evident that they will be delivered swiftly:

    a. This is an outline application, requiring reserved matters to be approved before work can begin;
    b. There is a requirement to identify a receptor site for the off-site BNG works before works on site can commence[10]; none has yet been identified;
    c. There is a requirement to deliver the care home before the second half of the homes on the site can be delivered[11]; and
    d. The Appellant's evidence has not addressed this issue save for a slightly surprising suggestion that because the site owners are all surveyors, and one of them Chartered, somehow that will lead to speedier delivery. It does not indicate anything of the sort.

67. The slightly provocative point is that, on Mr. Pycroft's approach to the sort of evidence he would want to see before accepting a site is 'deliverable' within the five year period, this site has none of the features he identifies: there is no developer on board, there is no indication or schedule of anticipated delivery, and no evidence of site assessment work having begun. Even if outline permission were granted at the end of this appeal, the site would fail his test of deliverability.

68. As to the disputed sites, I don't propose to say anything about the 29 units on the YMCA site: you have the points from the RTS, and 29 units makes no material difference to the picture either way.

[9] That is the end of the five-year period under consideration at this inquiry – see the HLS SoCG at 1.1
[10] See s.106 at Schedule 9, para. 2.2
[11] See s.106 at Schedule 10, para. 2.4

69. For the Broadwater Road site[12], for which the Council includes 760 units in its five-year supply (and for which the Appellant removes 552 of those, accepting 208 already delivered), the points are:

    a. The site has full planning permission for 1340 units, and has been commenced so cannot expire. As such the NPPF requires it to be considered deliverable **unless there is clear evidence that units will not be delivered within five years.**
    b. There is no such clear evidence here: at best there is a new, but undetermined application for a more intense form of development on the site; and evidence that part of the site is for sale. The applicant for that undetermined application is in administration now.
    c. The purchaser of that part of the site will have a choice: either get on and implement the existing, extant permission and deliver homes on the site, or pursue a different form of development on the site.
    d. None of that gets anywhere near the clear evidence required to discount this site from the supply. The test does not require certainty of delivery.

70. For the Panshanger site[13], the position is reversed: that site has outline permission only, granted in 2020, for 650 units, and it is also a draft allocation in the emerging local plan:

    a. As such, it cannot be considered deliverable unless there is **clear evidence that units will be delivered on site within five years.**
    b. The site is being promoted by Homes England, the national body tasked with accelerating housing delivery;
    c. A reserved matters application for the first phase of delivery, involving the spine road and related highways, has been submitted and is awaiting determination;
    d. There are no known constraints and the latest indication is that delivery will be in line with the Council's assessment.

[12] Site 1 in the Scott Schedule
[13] Site 2 in the Scott Schedule

71. In any event, both witnesses say in terms that however you decide on these controversies (i.e., whether the five year supply is 2.64 years or 1.86 years) makes no difference to their assessment of the weight to be attached to the delivery of new houses here. You may feel similarly. The shortfall is significant on either case.

72. There is no controversy at all as to the weight to be afforded to the contribution of **affordable housing units**: both main parties agree that it should attract very substantial weight.

73. As to **self-build plots**, again, both parties attribute substantial weight to this benefit.

74. Mr. Elmore gives the provision of the **care home** significant weight, whereas Mr. Gray says it should attract substantial weight. The points are:

    a. Of the three recent decisions relied upon by Mr. Newton Taylor as to this sort of benefit, two support Mr. Elmore's position and the third supports his, but is about a case where there was a borough-wide shortfall of care home provision against identified need;
    b. While delivering new care beds is important, it does not hold as high a place in the national hierarchy as does delivering housing. It is not even mentioned in the NPPF;
    c. Mr. Newton Taylor's entire approach depends on his identification of a 2-mile radius around the appeal site for the assessment of need and supply. That seems unnecessarily limiting, and crucially excludes the nearby town of Potters Bar. It does not seem unreasonable to expect to find a suitable care home a little more than 2 miles from home;
    d. Mr. Newton Taylor says that to expand that radius would be to 'skew the figures', which was an intriguing turn of phrase. He is no doubt correct that expanding it would bring in additional need, but it would also undoubtedly bring in additional supply. He produces no sensitivity testing or alternative scenarios at all to show what the potential effect of this would be, which leaves

one wondering why 2 miles was chosen. His conclusions as to local need should be seen in that context.

e. The Care Act duties are expressed in Borough-wide, not hyper-local, terms; and

f. Overall, the Council's approach is to have identified more supply of care home beds in the pipeline (even if the disputed Shredded Wheat factory site is discounted) than their identified needs arising. Mr. Newton Taylor's entirely unevidenced (and unheralded) assertion that the Council's methodology in this respect was flawed is therefore to be disregarded: this is an evidence-led exercise. No doubt he could have made such points to the Local Plan examination if he wished to.

75. On that basis the provision of a care home should attract significant weight, as per Mr. Elmore's assessment.

76. Turning to the **new Scout Hut**, Mr. Elmore says that on the basis of the evidence provided that the existing hut is nearing the end of its natural life, he is prepared to afford this benefit limited weight. Mr. Gray contends for moderate weight. You will form your own view in the context of this case.

77. As to **Biodiversity Net Gain**, the parties agree that a 15% net gain can be achieved here, with a combination of on- and off-site provision, as set out in the s.106 Agreement; and that this should attract moderate weight.

78. There will be **economic benefits** associated with the construction of the scheme, and the spend arising from new residents. Mr. Elmore ascribes them limited wight, while Mr. Gray says they should attract moderate weight. You are unlikely to be assisted by submissions on that difference.

79. Lastly, there will be some **improvements to the local pedestrian facilities** which will benefit users beyond those arising from the site itself, and those are properly to be characterised as benefits of the scheme. It is hard to see, though, how they could really be said to be worthy of the moderate weight contended for by Mr. Gray.

The Planning Balance

80. It is trite that, properly weighed and considered, the last hurdle is to ask whether the benefits and other factors are such that they clearly outweigh the harms identified. If they do clearly outweigh them, then very special circumstances will exist, and planning permission will likely follow. But the hurdle is an important one; not just to outweigh the harms, but to do so 'clearly'.

81. What is surprising in this case is the lengths to which the Appellants seem to have gone to attempt to downplay the harms. The Council is confident you will not follow suit, and will assess the harm that these proposals give rise to objectively, and methodically. When you do, we are confident that you will agree with the Council's assessment that the harm, overall, is substantial.

82. The Council's case is that, when weighed against the undoubted benefits of the scheme, the harm is not outweighed, let alone 'clearly'. The package of benefits, while significant, is not in any sense remarkable or unusual, and nor are the circumstances here. They are not very special. Planning permission should be refused and the national priority of keeping Green Belt land permanently open should prevail here.

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2 March 2023