

APPEAL REF: APP/C1950/W/23/3323564

LAND TO THE REAR OF 19 THE AVENUE, WELWYN, AL6 0PW (WELWYN HATFIELD BOROUGH COUNCIL)

CASE MANAGEMENT VIDEO CONFERENCE (CMC) HELD AT 10:00 HRS ON WEDNESDAY, 20 SEPTEMBER 2023

INSPECTOR'S CONFERENCE NOTE

1. The CMC was held on Wednesday 20 September 2023 by myself, Matthew Nunn and I will be determining the appeal. At the CMC, the Appellant was represented by Mr Stephen Hinsley; the Council by Ms Ruchi Parekh; and Hertfordshire County Council by Mr Ben Bowles.

Purpose of the CMC

2. The early engagement conference was an opportunity for the Planning Inspectorate to give an indication as to the ongoing management of the case. It considered how the evidence would be presented so that the forthcoming Inquiry is conducted in an efficient and effective manner. This note seeks to reflect the discussions that took place.
3. It was made clear that there would be no discussion of evidence, nor consideration of the merits of the appeal at the CMC.

Event procedure and accommodation

4. It was agreed that the event would proceed in-person rather than virtually. The Council has confirmed that facilities including appropriate accommodation would be available for the Inquiry. I understand that the Council Chamber has been booked for the event at the Council Offices. It was confirmed that an Inspector's retiring room would be provided, as well as a car parking space.

Inquiry dates and duration

5. The Inquiry is due to open on 28 November 2023 and is currently programmed to sit for 4 days (28-30 November & 1 December). It was agreed that this should be enough time for the evidence and the number of witnesses. Whether the full 4 days is required rather depends on the scope of issues that need to be addressed at the Inquiry (I address this more fully below).
6. On sitting days, I will generally start at 10.00 am with breaks for lunch, as well as mid-morning and mid-afternoon breaks. I will not normally sit beyond 5.00 pm. However, these timings can be adjusted to suit circumstances. Individual Inquiry sessions will not usually exceed around 1.5 hrs, as longer periods are generally less productive.

Inquiry notification

7. The Council understands the Inquiry notification procedure and that the letter sent out will explain how interested people can take part in or observe the Inquiry.
8. A site notice, which will be provided by the Planning Inspectorate, must be put up by the appellant on public land adjoining the appeal site at the appropriate time. This will also contain details of how people can attend the Inquiry.

Representation at the Inquiry

9. Mr Hinsley advised that Mr David Hardy will be appearing at the Inquiry for the Appellant and is likely to call four witnesses in relation to the following topics: (1) planning (2) locational sustainability / highways; (3) drainage / flooding; (4) biodiversity / protected species. Full details of the witnesses will be advised as soon as possible.
10. Ms Parekh for the Council is likely to call two main witnesses in relation to the following topics: (1) planning, including development management issues (2) planning policy / sustainability. The witnesses will be William Myers and Matthew Wilson respectively.
11. Interested third parties may wish to speak at the Inquiry. It is important that interested persons can participate if they wish to do so. Usually, I hear any third parties wishing to speak early on in the Inquiry, after the main parties' opening submissions.

Main Issues

12. The main issues for the Inquiry will be derived from the Council's reasons for refusal (RFR) in the appeal. There are 6 RFRs. As things currently stand, I see the preliminary main issues as follows: (1) the effect on the Green Belt, including openness, and whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development; (2) the effect on the character and appearance of the area (in terms of the number and layout of dwellings); (3) whether the site is locationally sustainable; (4) the effect on highway safety – including whether there is safe and suitable access for all users; (5) the effect on drainage and flooding; (6) the effect on biodiversity / protected species; (7) the absence of a s106 agreement to mitigate the effects of the proposals – the requirements (including financial contributions) are set out within the Council Planning Officer's Delegated Report¹.
13. As stated at the CMC, it seems to me that a number of these issues may be capable of resolution with the Council (or at least narrowing the areas of dispute) through further discussions, or provision of further information, especially in relation to the following: highway safety; drainage / flooding; biodiversity / protected species; and the legal agreement. Indeed, certain of

¹ Pages 18-20

the Council's objections primarily relate to an absence of information to enable a proper determination to be made, rather than an 'in principle' objection.

14. Consequently, I strongly urge the Appellant to enter into discussions with the Council on these matters, providing additional information as necessary to narrow the areas of dispute as soon as possible. It is essential that Inquiry time is not taken up with matters that are capable of resolution, as this could have potential costs implications.
15. It should be noted the main issues may be refined and recast as discussions progress, as more detailed evidence becomes available, and the exact scope of the parties' cases becomes clear.
16. The production of a single Statement of Common Ground (SoCG) covering all matters is currently in progress. This will include areas of agreement as well as disagreement, including Housing Land Supply (HLS).
17. In terms of HLS, the appellant contends that there is a 2.46 year supply², whereas the Council says it is 3.2 years³. Either way, there is not a five-year HLS, and it was agreed that it would not be necessary to undertake an in-depth and potentially time-consuming analysis of HLS, especially given that the difference between the parties is not that great.

Inquiry documentation

18. There was a discussion about how Inquiry information could properly be presented so as to be useful to the Inspector and Inquiry participants. I enquired whether either the Council or the Appellant could set up and host a website (or provide a link) where all Inquiry documentation would be made available, including proofs of evidence and core documents. Both the Council and Appellant stated they would ensure appropriate measures were made in this regard, including setting up an 'inquiry documents' page.
19. It is very important that the Inquiry website is clearly organised, enabling quick accessing of documents (core documents and proofs), so as to ensure the smooth running of the Inquiry. The website should be as 'user friendly' as possible, including ensuring documents are in a logical order, and easily accessible during the Inquiry.
20. In terms of proofs of evidence, **hard copies should be provided to the Inspector, as well as digital copies.** In the first instance, hard copies should be sent to the case officer (Alison Bell) at Temple Quay House and will thereafter be forwarded on to the Inspector.
21. In terms of **core documents**, efforts should be made to ensure the number is not excessive, as too many are not helpful. Targeted core documents should be the approach. Lengthy appendices attached to proofs are strongly discouraged where this information would be more appropriately located within the core documents. The Appellant undertook to produce an initial core documents list and then liaise with the Council.

² Appellant's Statement of Case, Paragraph 4.5 – March 2021 figure

³ Council's Statement of Case, Paragraph 7.4

22. **Late evidence is strongly discouraged.** If information is to be submitted at the Inquiry itself, this will need to be distributed and the other parties may need time to absorb it. There should be no surprises at the event as this can disadvantage the opposing side and can be unfair. It may also have costs implications.

Inquiry running order and programme

23. There was a discussion as to the best way of dealing with the evidence. The general consensus appeared to be that certain matters could be dealt with by way of 'round table' discussions, rather than conventional cross examination. However, this will be kept under review as the scope of the evidence becomes clear. Similarly, whether the evidence is taken by 'topic' or on a traditional 'case by case' basis will be kept under review⁴. Nothing is fixed in stone until the exact scope of evidence is clear. Similarly, the Inquiry timetable has yet to be finalised.

Accompanied site visit

24. A convenient time will be agreed for the accompanied site visit in due course, either during or after the Inquiry.

Procedural Matter

25. There was a concern raised by the Council that not all those with an interest in the land subject of the development had been notified during the planning application process⁵. Mr Hinsley confirmed that this had now been rectified, and formal notice had now been given of the planning application to all relevant interests. The Council indicated that this allayed their concerns about the validity of the appeal.

Schedule of Conditions and Planning Obligation

26. A draft list of conditions should be finalised in the event the appeal is allowed. This is a normal part of the appeal process and does not indicate I have prejudged the outcome of the Inquiry. I would stress the importance of targeted conditions that meet the relevant tests. Long schedules including unnecessary and verbose conditions are not helpful.
27. A planning obligation is to be completed with various provisions. It was clear that much work is still required on the obligation but that the parties would work together to expedite the matter. Mr Hinsley confirmed that 'Heads of Terms' are being drawn up.
28. A CIL Compliance Statement will also need to be produced to support the case that any planning obligation sought in respect of the appeal development would meet the relevant tests.

⁴ The Council's evidence will usually be heard first followed by the appellant's evidence

⁵ Paragraphs 1.1 – 1.4 Council's Statement of Case

Timetable for document submission

A bespoke programme was agreed at the CMC as follows:

By Tuesday 7 November 2023: Main Proofs of evidence (and appendices) paper and electronic) and agreed Statement of Common Ground;

By Tuesday 14 November 2023: views from each party as to the most appropriate method for hearing the evidence, i.e. whether round table or cross examination for each topic area.

By Tuesday 21 November 2023: draft s106 obligation and draft conditions; time estimates for evidence in chief and cross examination (where appropriate) and draft Inquiry timetable.

Conclusion

29. Thanks to everyone for their participation and assistance. Hopefully this note accurately reflects the discussion that took place at the CMC. If any clarifications are required, or if there are any inaccuracies or omissions, please let the Inspector know as soon as possible.

Matthew Nunn

INSPECTOR

21 September 2023