

APP/B1930/W/21/3279463

Section 78 TCPA 1990

Opening Submissions on behalf of the Council

Introduction

1. This appeal seeks permission for a new retirement community comprising 80 assisted living apartments with community facilities and 44 assisted living bungalows along with associated ancillary works (the “Development”) on land to the rear of Burston Garden Centre (the “Appeal Site”).
2. Planning permission for a retirement community was refused on the Appeal Site by the Council and on appeal¹ less than two years ago.

Main issues

3. The application was refused by the Council for three reasons. The main issues are identified in the Case Management Conference Summary Note as being:
 - a. the effect of the proposed development on the openness and purposes of the Green Belt;
 - b. the effect of the proposed development on the character and appearance of the area;
 - c. the effect of the proposed development on the significance of the Grade II* listed Burston Manor (the “Manor”) and the Grade II listed outbuilding (the “Outbuilding”);

¹ APP/B1930/W/19/3235642

- d. whether the proposed development would make adequate provision for community and infrastructure needs; and
 - e. whether harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposed development.
- 4. These issues will be examined by a combination of round-table and formal evidence.
 - 5. These opening submissions are not intended to address the evidence in detail, but to set out succinctly the Council's case.

Previous Appeal

- 6. Planning law recognises a principle of consistency. Like cases should be decided alike in the absence of very good reason. Not only should cases be decided in the same way as a point of common sense, that is because the merits are similar, consistency also ensures public confidence in the planning system. The development proposals on this appeal are fundamentally the same as in the previous appeal. The policy context has not materially changed – the draft Local Plan has been withdrawn but prior to its withdrawal the policies had no bearing on the outcome of the previous appeal². The Appeal Site and its surroundings have not changed. The previous appeal decision is highly material to this appeal. The general housing supply position has in fact marginally improved since the previous decision and the need for older persons housing is comparable – that need was given substantial weight by the previous inspector. The outcome should be the same unless the Appellant satisfies the Inspector that there are good reasons for a different result. In effect, the appeal decision provides the starting point for the consideration of the issues that arise on this appeal.
- 7. There are changes to the amount of development and the detail of the proposals. In particular, the proposals no longer provide a nursing home. In terms of detailed matters:
 - a. The size of the Development is reduced compared to the proposals the subject of the previous decision. The floor area has been reduced by 3,520 m²;

² Appeal decision para 20.

- b. The layout has accordingly changed – mostly on the eastern part of the Appeal Site but also along the principal roadway³.
8. The consequences of these changes are fully reflected in the evidence of Mr Greaves.

Green Belt harm

9. The Development constitutes inappropriate development in the Green Belt. The NPPF is clear in paragraph 143 that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Development is also in conflict with Local Plan Policy 1. Substantial weight must be given to any – and all – harm to the Green Belt⁴. National policy emphasises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and permanence – a characteristic not really respected by a second appeal on this GB site within two years.
10. The appeal proposals involve the erection of buildings with a floorspace of 15,807 m² with a height varying from 7.5m to 12.5m.⁵ The vast majority of the Appeal Site is not previously developed land.⁶ This is because the use and structures are horticultural⁷. The eastern part of the Appeal Site is open. The western part contains polytunnels and some glasshouses. These are lightweight in nature. Along the western edge adjoining the garden centre there are a limited number of storage buildings with a footprint of approximately 925 m². The total footprint of structures – including those defined as not being previously developed – and which are appropriate in GB terms – is 7,215 sqm⁸.
11. The impact on openness is significant. Even taking account of the polytunnels and glasshouses there is an increase in floorspace of 8,592 sqm – the new buildings ranging from 7.5m ridge height to 12.5m for the assisted living block A. The Appeal Site is

³ See Mr Smith's Figures 2.1, 2.2, 2.3

⁴ NPPF 144

⁵ Mr Greaves proof of evidence, 6.1.15

⁶ Previous decision, 24; Greaves 6.1.3; Appellant SoC at 6.2.2

⁷ See definition of previously developed land on p70 NPPF

⁸ Appellant SoC at 2.3

relatively contained visually, but the development is appreciable locally and from within the Appeal Site⁹. The visual aspect of openness is distinct from the impact on the character and appearance of the area. Openness is mostly to do with the extent to which the Green Belt would be built up with and without the development¹⁰. There are visual aspects to this, in addition to the core spatial impact¹¹. This was the approach taken in the previous appeal – which considered a larger total floor space of 19,449 sqm (+3,642 sqm) - but which was also spread across the Appeal Site from west to east- where the Inspector found that loss of openness constituted significant harm to the Green Belt.

12. The Appellant refers to the appeal decision at Roundhouse Farm¹². It is hard to see the significance of conclusions on openness – and indeed other matters such as character and appearance and heritage effects – of a different scheme for a different form of development on a different site. The previous decision for C2 development on the Appeal Site – which has not changed since - is a far better guide. There has been no change in policy, practice guidance or the law since the January 2020 appeal decision. Any urban influences on the Appeal Site are a reminder of the context of this part of the Green Belt, which is under significant pressure from development, and bear more on the Appeal Site's role in promoting the relevant GB purposes.¹³ The Inspector's reasoning in relation to openness at para. 26 of the previous decision is applicable to the appeal proposals.

13. In the previous decision, the Inspector considered there would be a degree of sprawl and merger of the nearby settlements of How Wood Village and Chiswell Green, in conflict with GB purposes (a) and (b) and that the development would have an urbanising effect, in conflict with purpose (c).¹⁴ These conclusions turn on the fundamental change to the Appeal Site through its development as a care village – not on the design detail or the precise quantum of development. All these conclusions stand, and there is no reason to depart from them. The Appellant in effect seeks to re-argue the points it lost on the previous appeal, as the Inspector said at 36: “While the appellant considers that the

⁹ Mr Greaves proof of evidence, 6.2.9, previous decision at 28 – 30.

¹⁰ See Samuel Smith – CD5.1 – at 28

¹¹ See PPG on Green Belt – 64 - 001

¹² CD5.12

¹³ Mr Greaves proof of evidence 6.1.24

¹⁴ Previous decision, 34 and 35

development would not harm any of the purposes of the Green Belt, I consider that there is clear conflict with Green Belt purposes (a) (b) and (c)”.

14. All harm to the Green Belt attracts substantial weight¹⁵.

Other harm

Character and appearance

15. In the previous decision, the Inspector concluded that there would be a moderately harmful impact on the character and appearance of the area in the vicinity of the Appeal site and that the Development would conflict with saved policies 69 and 70 of the St Albans Local Plan. The Inspector felt that, taking into account the visual containment of the Appeal Site, the development would create an urbanised site out of step with its wider surroundings.¹⁶ This conclusion was reached explicitly taking into account the unkept appearance of the Appeal Site and the positive aspects of the design of the proposed development, including its layout and landscaping. The same conclusions apply now. The changes only really affect the eastern part of the site, and the overall effects are only slightly reduced when set against the fundamental change in the character – and the perceived character – of the site¹⁷.

Effect on designated heritage assets

16. The relevant effects relate to the Grade II* Manor and the outbuilding which is Grade II listed (together, the “Listed Buildings”). It is common ground that the Listed Buildings have aesthetic, historical and evidential value.¹⁸ Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that when considering whether to grant planning permission for development which affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or its setting. NPPF paragraph 199 provides that great weight should be given to the conservation of a designated heritage asset (and the more important the asset, the greater the weight should be). It is established that considerable weight and importance must be given in the planning balance to any harm to the significance of a listed building¹⁹. It is also

¹⁵ NPPF 148

¹⁶ Previous decision, 49

¹⁷ Greaves proof 6.2.10 – 6.2.14

¹⁸ Heritage Statement of Common Ground, 3

¹⁹ Barnwell Manor – CD 5.4 at para. 24

established that the setting of a heritage asset must be assessed in context, taking into account not only physical and visual factors (such as, in this case, the current condition of the Appeal Site, the intervisibility between the Site and the Listed Buildings and the changes to the wider area around the Listed Buildings) but also social, historical and economic factors.²⁰

17. Local Plan Policy 86 requires the Council to have special regard to the desirability of preserving listed buildings and their setting.

18. It is common ground that the proposals would cause a certain level of less than substantial harm to the significance of the Listed Buildings²¹.

19. The previous inspector (Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC) dealt comprehensively with this issue on the previous appeal at paras. 50 – 66. The Inspector concluded that the Appeal Site as part of the wider setting of the Listed Buildings made a positive contribution to their significance due to the open grassland on its eastern part²². This issue is therefore the subject of a recent and directly relevant finding on behalf of the Secretary of State based on her detailed site visit and hearing of evidence. It is resolved that the Appeal Site represents the last legible of the Manor's historic landscape setting²³.

20. This last legible link is severed by the appeal proposals just as with the previous proposals²⁴. This is a matter of significance – as recognised in the approach as advised (and applied) by Historic England in GPA3²⁵. It is a consequence of the fundamental – and visible – change in the character of the site moving from largely open land with some low level, lightweight horticultural buildings – to a landscaped urban environment. The design changes – principally moving the extra care units away from the northern boundary and exchanging the nursing home for additional extra care units – does reduce the harm slightly but it remains within the range of moderate harm. This inquiry now also has the benefit of detailed consideration by Historic England who conclude that the

²⁰ Catesby Estates Ltd v Steer [2018] EWCA Civ 1697

²¹ Heritage SoCG at 8

²² Para 58

²³ Para 59

²⁴ DL para 60

²⁵ See CD 4.3 - Cumulative Change on p4

appeal proposals would cause low to moderate harm to the significance of the Manor²⁶. The previous inspector, Historic England, the Council's conservation consultation response, and Mr Greaves all acknowledge the existing condition of the site and reach their conclusion in light of it. Mr Murphy recognises a degree of harm, but his assessment seems to disavow the legible link that the Appeal Site provides to the Manor's history and its setting.

21. The Manor is an "asset of the highest significance" in terms of para. 200 of the NPPF.²⁷ Grade II* listed buildings represent the top 7% of England's most significant designated assets.²⁸
22. The Council's case is that the Development would cause moderate harm (within the spectrum of less than substantial harm) to the significance of the Listed Buildings. The harm is slightly reduced from assessment of the previous scheme. On that appeal, the Inspector agreed with the Council's assessment of harm.²⁹
23. Broadly, the reasons for the Inspector's decision still stand. The Development would result in the open appearance and agricultural use of the Appeal Site being lost, such that the remaining historic setting of the Listed Buildings would be taken away. Following the previous decision, as Mr Greaves explains, the changes made to the Development do slightly lessen the harm to the Listed Buildings.³⁰ These changes have been fully taken into account by the Council and Historic England. The body of professional opinion supports a moderate level of harm.

Very Special Circumstances

24. The considerations relied on by the Appellant are the following:
 - (1) Local need for care accommodation and lack of alternative sites

²⁶ CD7.19 and 7.20

²⁷ Mr Greaves proof of evidence 6.3.19

²⁸ Previous decision 65

²⁹ Previous decision, 65

³⁰ Mr Greaves Proof of Evidence, 6.3.21 and 6.3.25

- (2) General housing needs
- (3) Health and wellbeing benefits
- (4) Release of under-occupied family housing
- (5) Meeting a local need
- (6) Employment and economic benefits
- (7) Highway improvements
- (8) Site availability and achievability

Local need for care accommodation and alternative sites

25. It is common ground that there is an existing unmet need for extra care accommodation within the district.³¹ The extent of this need is disputed. The additional SoCG on Need contains a useful table. The Council's assessment relies upon the projections in the South West Hertfordshire Local Housing Needs Assessment (September 2020), which was prepared in accordance with NPPG.³² The position, therefore, remains as at the previous appeal: the Appellant has identified a greater need for specialist housing than the Council. In fact, the Appellant's assessment of current need remains the same as before. Future need also remains broadly the same, albeit taken now to different assessment years (see table at 3.20).
26. Inspector Searson did not find it necessary to reach a precise conclusion on the need for this type of housing, noting that the proper forum for doing so is as part of the development plan process; however, also noting the unmet and growing need and the contribution which could be made by the proposed development to meeting those needs (extra care and nursing home), she gave the benefits relating to specialist housing need substantial weight.³³ The Council accepts and endorses that position and Mr Greaves gives this issue substantial weight in his balancing exercise.
27. In terms of alternative sites, at the time of the previous decision the Inspector found that the Appellant's alternative site assessment lacked robustness in its approach to

³¹ Need Statement of Common Ground, p.1

³² NPPG 63-004

³³ previous decision, 70 and 71

availability.³⁴ The Appellant has now addressed this point, and the respective landowners have confirmed that the alternative sites are not available. Mr Greaves gives greater weight accordingly to this consideration. The weight is moderated because substantial weight is already given to the need for such housing, and extra care is able to come forward on non-GB sites albeit through smaller scale developments than the appeal proposals. The Chelford House decision is an example of a 62 bed nursing home coming forward in the district but not in the Green Belt.

General housing needs

28. The Council currently has 2.4 years' supply of deliverable housing sites which is a slight improvement than at the time of the previous decision. The Council recognises that this is a significant shortfall, and the benefits of the scheme are weighed accordingly. There is no basis for altering the weight accorded by Inspector Searson.

Health and wellbeing benefits

29. There is no reason to alter the weight given to this benefit from the previous appeal. Mr Greaves gives this substantial weight³⁵.

Release of under-occupied family housing

30. Substantial weight is attributed to this planning benefit, in accordance with the previous decision. This assumes a degree of local take-up of the proposed units.

Employment and economic benefits

31. The Council gives these the same as did Inspector Searson. The only change is the reduction in employment and economic benefits resulting from the removal of the nursing home.

Highway improvements

32. It is common ground that some weight should be attributed to highway access improvements.³⁶

³⁴ previous decision, 79

³⁵ 6.35.34

³⁶ Statement of Common Ground, Appendix B

Site availability and achievability

33. There is no reason to doubt the delivery of the scheme – which is taken into account in attributing weight to the benefits. Clearly, if the scheme is not delivered those benefits do not arise.

Conclusion/Planning Balance

34. The critical development control test on this appeal – as last time – is whether or not the potential harm to the GB, which attracts substantial weight, and any other harm is clearly outweighed by the very special circumstances that weigh in favour of the scheme. This is the test that arises under the development plan and national policy. Within that balance considerable importance and weight must be given to the harm to the significance of the listed buildings.
35. The case is fundamentally the same as before. The scheme develops out the horticultural site as a care village. The scheme is reduced in size but the change to the character of the site is essentially the same. There is a significant impact on openness, considerable conflict with GB purposes (a), (b) and (c), moderate harm to the significance of the listed buildings, and harm to the character and appearance of the area. All of this is largely as assessed by Inspector Searson.
36. The benefits of the Scheme also remain effectively the same – albeit a nursing home would no longer be delivered. The general housing position is marginally improved in the district, and the specialist need remains broadly the same. The Council does not shy away from these needs and gives the benefits of the scheme substantial weight – as did Inspector Searson. The balance remains as before, and the considerable harm is not clearly outweighed by the benefits so that the appropriate development control test is not met. Accordingly, permission should be refused, and paragraph 11(d)(ii) NPPF is not engaged.
37. For the above reasons, the Council considers that the appeal should be dismissed.

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GUY WILLIAMS

7th December 2021