

Rebuttal of the Officer Report and Recommendation

Given the seriousness of publishing misleading information, the Monitoring Officer has been written to separately.

The following addresses each of the topics considered by Officers within the Discussion Section of the Report – albeit in a different order. We trust you will find it both useful and worrying.

Discussion – Section 8

Provision of Affordable Housing – 8.11

1. This section holds the key to the Officers' opposition: they don't believe there's a need for Key Worker Housing and, consequently, rank it below all other forms of housing.
2. That may explain why, when the Application was submitted, Officers asked us to change the description to remove reference to "Key workers and military personnel".
3. It also explains why they terminated the Section 106 negotiations when we wouldn't ditch Key Worker Housing in favour of the affordable housing mix they wanted.
4. Of course, your Officers don't quote a particular Policy to support their approach – because they can't. There are no national policies which rank one form of affordable housing over another. There are no local policies or even local guidance which do that either [Planning Statement, 7.5].
5. That there is no policy support for ranking one form of affordable housing was made clear to Officers in our Planning Statement [7.5 and 8.32] ... which they ignored. It's now made clear in the enclosed Legal Opinion [10] ...

"It should further be noted in this regard that it has recently been decided as follows by a senior Inspector in a decision letter dated 29th October 2021 (APP: A5270/W/21/2360157):

"34. ... There is no provision in local or national policy or guidance that justifies ranking one form of affordable housing need over another. Indeed, Planning Practice Guidance makes clear that all households whose needs are not met by the market and who are eligible for one or more of the types of affordable housing specified in the Glossary to the Framework are in affordable housing need.

35. On that basis, the significant weight to be attached to the benefits of the proposal in this regard are in no way diluted by the forms of tenure offered ...".

6. Because of their in-principle opposition to Key Worker Housing, the Report only reluctantly acknowledges the benefits of the scheme's provision of affordable housing but then unlawfully reduces the weight given to it for two reasons ...

7. The type of development proposed [8.11.10 – 8.11.17]. This is not an application for shared ownership housing! It's an application for *"discounted affordable housing for Key Workers, including military personnel"*. It will comprise First Homes, discounted market sales housing and shared ownership – the precise mix to be agreed with the Council if you instruct your Officers to re-engage with us. Misrepresenting what's being proposed is unfair and should cease.
8. The Officer Report (like the submission from Spatial Planning), quotes from the SW Herts Local Housing Needs Assessment ("LHNA") from September 2020 to demonstrate their preference for "affordable rent" without telling you that it – like every other Housing Needs Survey the Council has commissioned since first defining Key Workers in 2004 – never even attempted to measure the amount of Key Worker Housing Need. Think about that for a second – never even been attempted.
9. This was confirmed by Officers at the Local Plan Advisory Group on 1st March 2022. They admitted that every Housing Needs Survey the Council has commissioned – including GL Hearn's LHNA in September 2020 – has excluded Key Workers. Officers intend to report back to the LPAG in September to advise on potential ways for the Council to measure Key Worker Housing Need.
10. In the meantime, there is, of course, one Affordable Housing Needs Assessment that can be taken into account, entitled: ***"An Assessment of Affordable Home Ownership housing for Key Workers in St Albans and South West Hertfordshire"***. Given the Officers' persistent practice to exclude Key Workers from housing assessments, it was produced for this application and submitted with the Application documents.
11. Your Officers don't even mention it.
12. As you can see, it doesn't appear in the list of documents on which they say they made their determination (Informative, Section 12, 2nd paragraph).
13. Quite simply, the only evidence of Key Worker Housing Need in the District has been either inadvertently overlooked or deliberately ignored. Unless you've personally trawled through the Application documents, you wouldn't know it was submitted to inform you and your Officers.
14. [8.11.11] The overlooking of the Housing Need Assessment explains why the Strategic Housing response doesn't even mention the words "Key Workers" [6.20.1]. It's not unreasonable to conclude that Housing Officers never read the Key Worker Housing Assessment (the alternative explanation being that it was read but deliberately ignored).
15. Please consider the Strategic Housing Department's submission more closely [6.20.1]. It says:

"...there is no evidence that these homes will meet the demand for affordable rented properties or that there is a demand for such a large development or how genuinely affordable these properties will be in an area of such high house prices."

- There's no evidence that the scheme will meet the demand for affordable rented properties ... because it's not a proposal for affordable rented properties! It's a scheme for home ownership affordable housing. Your Officers either haven't read the application documents or are being obtuse.
 - Only someone who hasn't read the Affordable Housing Needs Assessment could suggest that there's no demand for these houses.
 - Again, how can the affordability of these properties be questioned if Officers knew that they were being discounted by at least a third explicitly to make them genuinely affordable?
16. Your Officers' obsession with the Affordable Rent set out in the LHNA, will continue to exclude Key Workers. By definition, Key Workers aren't unemployed. And whilst everyone agrees they're underpaid for the incredible work they do ... they generally earn too much to qualify for the Council's Allocations Policy. For instance, the annual household income limit for a 3-bed house in St Albans is £56,152. The Royal College of Nurses reports that the average wage for a nurse is £33,384. The Check-a-Salary website records the average salary in the UK as £30,045. Consequently, a household with a nurse and a second worker on average wage is excluded from the Council's Allocations Policy. £63k isn't enough to get on the market ladder locally ... but it is within the £80,000 limit for the First Homes and other home ownership houses at Addison Park! By opposing our scheme and insisting on Affordable Rent, your Officers are effectively excluding Key Workers (continuing the pattern which saw them excluded from Housing Need Surveys and your last draft Local Plan).
17. [8.11.12 – 8.11.13] Policy 8 doesn't apply to major sites outside the Green Belt Settlement. Officers acknowledged this at the Planning Referrals Committee in July 2021 [Planning Statement, 7.3].
18. [8.11.15] The reference to NPPF Paragraph 63 is misleading. It implies that each individual application must deliver balanced communities. This is not what it says. Paragraph 63 states:
- "Where a need for affordable housing is identified, **planning policies** should specify the type of affordable housing required, and expect it to be met on-site unless:*
- a) off-site provision or an appropriate financial contribution in lieu can be robustly justified;*
- and*
- b) the agreed approach contributes to the objective of creating mixed and balanced communities."* (our emphasis)
19. So, "planning policies" not individual applications. That's why the Council could approve its own scheme for 100% affordable housing in Sandridge and why, in January 2022, the Inspector could allow the Appeal at Burston Nurseries for 100% C2 use, restricting occupation to a specific group within the community.
20. However, as you now know, the Council has never even attempted to mention the need for Key Worker Housing let alone propose policies to meet that need. In the last Local Plan, Policy

S6 sought to build 12,345 dwellings in the Green Belt but allocated just 10 to Key Workers. Ten! So, for your Officers to urge you to Refuse this scheme for Key Workers Housing because it's not creating balanced communities is unforgivable.

21. Any reasonable person can see, of course, that Addison Park is seeking to redress the imbalance caused by the historic and persistent lack of evidence and policies, and by your Officers' misplaced opposition to Key Worker Housing.
22. [8.11.17] relies on concerns Herts Highways have raised with us and which are being addressed. It is unfair for Officers to refuse to wait for the results and then use HCC's interim findings to support their opposition to Key Worker Housing.
23. Uncertainty over the delivery of Affordable Housing [8.11.18 – 8.11.20]. This sub-section is incredibly worrying.
24. At the Outline stage there is simply no need to nominate a delivery partner. Officers will confirm that the Section 106 the Council signed in January 2022, in respect of the land off Harpenden Road, doesn't nominate a delivery partner. We've had discussions with Housing Associations, Charities and Local Planning Authorities (not SADC because your Officers refused to engage), and envisage no problem at all in partnering with one or more of them.
25. This issue could have been discussed with Officers ... if they hadn't terminated the Section 106 negotiations because of their opposition to Key Worker Housing!
26. Which leads directly onto, and I paraphrase: *"we won't agree a Section 106 with you and so will refuse the scheme because there isn't a Section 106"* [8.11.19]. Joseph Heller, eat your heart out!

Green Belt Harm – 8.2

27. [8.2.1 – 8.2.5] correctly summarises policy, guidance and the Site.
28. [8.2.6 – 8.2.9] The LVIA was produced by an experienced and professional Landscape Architecture and Urban Design practice using the methodology set out in Guidelines for Landscape and Visual Impact Assessment (The Landscape Institute and Institute of Environmental Assessment – 3rd edition 2013). It is considered appropriate and sufficient.
29. [8.2.11 – 8.2.13]. The day after Spatial Planning made its submission to the Case Officer, he advised McPartland Planning in a Teams Meeting that it was determinative. To be clear, it's detailed references to and reliance on the SKM Green Belt Review were the basis on which the Officers told us the scheme would be Refused.
30. Please refer to the Legal Opinion of Mr Paul Stinchombe QC to see why, in fact, no reliance should be put upon that Green Belt Review.
31. Many of you will know that no reliance should have been put on the SKM GBR because you'd be aware that the Council has told a succession of Planning Inspectors that it was flawed, particularly in relation to schemes delivering fewer than 500 houses. Some of you will have

been at either the Planning Policy Committee in Feb 2021 or the LPAG in Jan 2022, or both, when Senior Officers dismissed the SKM GBR, too.

32. That the Council, represented by Counsel, told a Planning Inspector in December 2021 that the SKM GBR had no role to play in decision-making [Legal Opinion, 26-28], should tell you all you need to know about the inappropriateness of relying on it now. But rely on it the Officers did, when telling us it was determinative ... and they do so here, too, when stating [8.2.13]:

“Noting that the Green Belt or settlement pattern in the wider area has not been significantly changed or eroded since the above assessment was made, it is considered that this assessment remains applicable.”

33. As the Legal Opinion makes clear, it isn't applicable and your Officers should be instructed to remove all reference to the SKM GBR ahead of the Planning Committee and acknowledge that their subsequent assessment of the Site [8.2.15 – 8.2.16] has been prejudiced by their reliance upon it.
34. As anyone who knows the sites at: Oaklands College (Sandpit Lane); Bullens Green Lane, Colney Heath; and Harpenden Road/Sandridgebury Lane ... there is nothing about the Chiswell Green Lane site compared to those which warrants the conclusion that this Site is so special it can never be built upon.
35. But you don't even have to know those sites to conclude that the Application Site can be built upon. That's because the Officers were prepared to negotiate a Section 106 with us if the affordable housing mix was different! So, it's not the Site's contribution to the purposes of the Green Belt that prevents them from recommending Permission be Granted ... it's the delivery of Key Worker Housing that's fuelling their Recommendation to Refuse.

Highways and Sustainable Transport – 8.9

36. [8.9.1] In accordance with paragraph 104 of the NPPG, we engaged in a formal Pre-Application dialogue with HCC in March 2021 at the earliest stage of the proposal.
37. The concerns raised by HCC in its submissions were made, without warning, 11 months later in February 2022. We immediately re-engaged with them to provide the additional information requested and to address their concerns.
38. Officers refused to grant our request for an extension until a statutory consultee had consulted on the evidence it demanded. They're now using the lack of results to support a Reason for Refusal.
39. We trust you will agree such a stance isn't in the public interest and that a deferral is warranted.

Impact on social and physical infrastructure – 8.10

40. Of course, we understand and support the need for developers to mitigate the impact of new housing schemes. However, there's no Section 106 Agreement because your Officers terminated discussions when we refused to ditch Key Worker Housing.
41. Please instruct them that Key Worker Housing is acceptable and to re-engage with us on a Section 106.

Minerals – 8.5

42. Whilst HCC Minerals never requested a Minerals Resource Assessment at other undeveloped sites in the Green Belt which are also on the Sand & Gravel Belt, they insisted on one being done here. Drilling took place between 15th and 17th March and the results will be completed in April.
43. Officers refused to grant our request for an extension until a statutory consultee had consulted on the evidence it demanded. They're now using the lack of results to add extra harm to the scheme.
44. We trust you will agree their refusal to wait wasn't in the public interest and that a deferral is warranted.

Loss of Agricultural Land – 8.6

45. Officers will confirm that the only areas of agricultural land of the highest quality in the District are at Oaklands College and East of Hemel Hempstead – where Officers have recommended thousands of homes should be built.
46. The Officers have considered it completely acceptable to lose agricultural land of the same value as Addison Park at numerous other sites in the District.
47. The reference to waiting for the Local Plan process [8.6.6] is wholly inappropriate because no consideration of "prematurity" is included in the Report. This is because reliance on "prematurity" would be totally unjustified and contrary to paragraph 50 of the NPPF [Planning Statement, 8.34].

Ecology – 8.7

48. [8.7.5] Herts Ecology are correct, "*... there is nothing to suggest this site meets LWS status*".
49. [8.7.8] Natural England said no such thing. As confirmed in the comments section of the Report [6.21.1], the Natural England submission literally said it had "*no comments to make on this application*". Its standing advice is for LPAs to consult with Applicants on how to consider biodiversity but no Officers consulted with us. The misleading comment must be removed from the Officer Report ahead of the Committee.

Design and Amenity – 8.3

50. The Officers' comments are noted.

Landscape Character – 8.4

51. [8.4.6 – 8. 4.11] As set out above [28], the LVIA is appropriate and sufficient.

52. The statement [8.4.7] that “... *it would be beneficial to confirm the location of these viewpoints so that the extent of visibility can be fully understood*”, makes no sense because the LVIA includes 22 viewpoints and carefully shows the precise locations from which each was taken [LVIA, pp 30-41].

Heritage – 8.8

53. [8.8.6] The suggested Condition is considered appropriate.

Recent Planning Decisions – 8.12

54. Please refer to the enclosed Legal Opinion in respect of:

- the importance of consistency in decision-making; and
- the unlawful reliance on the SKM Green Belt Review [8.12.2]

Other Matters – 8.13

55. [8.13.1 – 8.13.16] Noted.

56. [8.13.17] With respect, the Report should advise that the Special Area of Conservation has potentially far-reaching consequences for both decision-making and plan-making as set out in the letter to SADC and others from Joanna Averley, Chief Planner, DLUHC, 16th March 2022. The indefinite moratorium on housing schemes in the Exclusion Zone, until this serious issue is resolved via cross-boundary co-operation, means there must be considerable doubt about any new housing development being allowed East of Hemel Hempstead and around Redbourn.

57. Addison Park is, of course, outside the Exclusion Zone and this is another factor in its favour.

The Planning Balance – 8.14

58. Because of your Officers':

- inappropriate and misplaced opposition to Key Worker Housing;
- unlawful reliance on the SKM Green Belt Review; and
- refusal to await further consultation from statutory consultees

no weight should be placed on their Planning Balance.

59. Instead, with respect, Councillors should instruct Officers that Key Workers are welcome in St Albans and that they're affordable housing needs are not to be ranked below others. They should instruct them to cease any reliance on the SKM Green Belt Review. They should instruct them to await the results of further reports requested by statutory consultees. And, finally, they should instruct them to re-engage in Section 106 negotiations to guarantee the delivery of 100% discounted affordable housing for Key Workers. Then, and only then, can a proper Planning Balance be made.