

Land south of Chiswell Green Lane, Chiswell Green, St Albans

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

SECTION 78 APPEAL REF: APP/B1930/W/22/3313110

2nd Rebuttal Proof of Evidence – Planning

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**On behalf of
Alban Developments Limited and Alban Peter Pearson, CALA
Homes (Chiltern) Ltd and Redington Capital Ltd**

May 2023

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

SECTION 78 APPEAL REF: APP/B1930/W/22/3313110

TOWN AND COUNTRY PLANNING (INQUIRIES PROCEDURE) (ENGLAND) RULES
2000

APPEAL AGAINST THE REFUSAL OF PLANNING APPLICATION BY ST ALBANS CITY
AND DISTRICT COUNCIL - PLANNING APPLICATION REFERENCE: 5/2022/0927

LAND SOUTH OF CHISWELL GREEN LAND, CHISWELL GREEN, ST ALBANS

2nd REBUTTAL PROOF OF EVIDENCE – PLANNING

JUSTIN MATTEW KENWORTHY

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1.0 INTRODUCTION

- 1.1 I have prepared this 2nd Rebuttal Proof of Evidence (2nd RPOE) in relation to an appeal (reference: APP/B1930/W/22/3313110) submitted by the Appellants¹ to the Planning Inspectorate (PINS), in respect of the appeal lodged under Section 78 of the Town and Country Planning Act 1990 (as amended) ('the 1990 Act') against St Albans City and District Council's ('the Council') refusal of outline planning application reference 5/2022/0927.
- 1.2 This 2nd RPOE (**CD 3.24**) sits alongside the evidence I have already submitted to PINS, which sets out my main planning evidence at the forthcoming Public Inquiry, and comprises:
- Proof of Evidence (POE) (**CD 3.18a**);
 - POE Appendices (**CD 3.18b**);
 - Summary POE (**CD 3.18c**); and
 - Rebuttal Proof of Evidence (**CD 3.24**).

Scope of My 2nd RPOE

- 1.3 This 2nd RPOE provides my response to the email submitted by 'Team CLASH' on 21st April 2023 (**ID 18**), after the Appellant's evidence had concluded. I note that Team CLASH is not a "*person entitled to appear at [the] inquiry*" under Rule 11(1) of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 ("**the Inquiries Procedure Rules**") and does not appear to have previously commented on (or objected to) my clients' application or appeal. Team CLASH has not explained why its email was sent so late in the appeal process, well outside of the designated window for third party representations.

¹ Alban Developments Limited and Alban Peter Pearson, CALA Homes (Chiltern) Ltd and Redington Capital Ltd ("the Appellants")

2.0 RESPONSE TO TEAM CLASH

2.1 I set out below the key matters that the Inspector should consider at the Public Inquiry in relation to the email prepared by Team CLASH.

April 17th: CPRE "Witness"

2.2 I understand that Mr Berry from CPRE Hertfordshire had not informed the Inspector that he intended to appear as a 'witness' at the Inquiry nor become a Rule 6 Party in accordance with normal Public Inquiry procedures.

2.3 Like Team CLASH, neither Mr Berry nor CPRE Hertfordshire are "persons entitled to appear at [the] inquiry" under Rule 11(1) of Inquiries Procedure Rules. Nonetheless, the Inspector (Mr Boniface) allowed Mr Berry more than adequate time to provide an oral summary of his case, prepared on behalf of CPRE. I also note that:

- Expert witnesses for the Appellant of the South Site, the Council and Rule 6 Parties did not read out their own expert's statements (which is not unusual) but are asked to simply summarise their cases;
- CPRE's initial consultation response has been provided to the Inspector by the Council and is considered in the Council's Committee Report (paragraphs 5.6, Section 6.0 and 8.17.1 to 8.17.17 of **CD 3.4**);
- Mr Berry's full statement was also accepted by the Inspector (**ID 7**) to be read and factored into his consideration of the case; and
- Mr Berry did not object to the Inspector's request for his oral representations to summarise, rather than read out, his full statement.

2.4 I therefore conclude that Mr Berry (and CPRE) has been given more than sufficient opportunities to present CPRE's case to the Inspector.

Intention to build on Green Belt

2.5 I note that page 10 of the abortive previous Draft Submission Local Plan (**CD 8.2**) explains that:

"Government figures for housing need, and appropriate approaches to employment land provision, create the exceptional circumstances that necessitate major development in locations previously designated as Green Belt".

Housing Targets

- 2.6 It is also a matter of record, as Mr Connell agreed in cross examination on behalf of the Council, that the Council's Housing Delivery Test Action Plan (**CD 8.25**) indicates that the Council's intended new local plan will meet the applicable housing requirement figure (rather than adopt a constrained 'policy-on' figure).
- 2.7 The housing delivery targets are based on the 'Standard Housing Methodology' and uses 2014 census data. There is no replacement methodology adopted by central or local government and the current housing targets remain valid and are used to determine:
- If Council's are performing against the Housing Delivery Test (HDT); and
 - If Council's benefits from a 5-year housing land supply.
- 2.8 Therefore, the current housing targets set out on page 51 of my main POE (**CD 3.18a**) are a material consideration in the determination of the Public Inquiry.
- 2.9 Further, this approach is consistent with the NPPF. NPPF paragraph 61 expects local housing need to be calculated in accordance with the standard method for the purposes of strategic policies, unless exceptional circumstances justify an alternative approach. The Council has not adopted an alternative approach to date and there is no evidence that the Council will adopt a different approach in future. Further, the draft changes to the NPPF maintain the position that the standard method should be utilised, absent exceptional circumstances.
- 2.10 When considering the Council's chronic and persistent under-delivery of homes in the District, their continuing failure to meet the HDT, the current lack of housing land supply (2.0 years), the lack of brownfield land to meet housing need (currently only 14%) and the lack of a credible housing delivery test action plan, this should carry very substantial weight at the determination of the public inquiry, as discussed on Section 6.0 of my main POE (**CD 3.18a**).

Air Quality

- 2.11 Team CLASH refer to Mr Fray's evidence (**CD 6.15**) which includes samples of pollution data download from a website called "AddressPollution.Org".

2.12 I explain in Section 4.0 of my RPOE (**CD 3.24**) that there is:

- No data provided by Mr Fray to help explain these samples;
- No methodology provided to confirm the accuracy of the data; and
- No information on the date / time of the samples.

2.13 Without the provision of the above, the findings of Mr Fray's comments (and Team CLASH) cannot be given any credibility or weight in the determination of the Inquiry.

2.14 In cross-examination, Mr Fray also confirmed that he had not undertaken (and was not presenting) any evidence that showed the impact of the Proposed Development on air quality (whether they be acceptable, unacceptable or otherwise).

2.15 On the other hand, the Air Quality Assessment (**CD 2.22**) submitted by the Appellants as part of the original outline planning application was prepared by RPS, whom benefit from a specialist and suitably qualified Air Quality Team. I note those that prepared the AQA were:

- Mr Hunt (BSc (Hons), AMIEnvSc²) – An Air Quality Consultant;
- Ms Barker (MSc, BSc (Hons), MIAQM, AMIEnvSc – A Principal Consultant; and
- Ms Prismall (MSc, BSc (Hons), CEnv, FIAQM, MIEnvSC) – A Technical Director.

2.16 The AQA explains that impacts during construction, such as dust generation and plant vehicle emissions, are predicted to be of short duration and, following mitigation measures described in the Institute of Air Quality Management (IAQM) guidance, should be reduced to a level categorised as 'not significant'.

2.17 The air quality impacts during the construction phase of the Appeal Scheme will also be controlled to within specified hours and acceptable levels, in accordance with the Construction Environmental Management Plan (CEMP) required to be approved by the Council via Condition 16. The details of this condition are set out in Appendix 1 of the overarching SOCG (**CD 3.12**) and require the submission of the following:

"xvii. mechanisms to deal with environmental impacts such as noise and vibration, air quality and dust, light and odour".

2.18 This means that the Council, working in the interests of the local community, will

² Associate Member of the Institute of Environmental Science (AMIEnvSc); Member of the Institute of Air Quality Management (MIAQM); Fellow of the Institute of Air Quality Management (FIAQM).

have an invested interest in the implementation of a satisfactory CEMP.

2.19 The Appellants' Air Quality Assessment (AQA) (**CD 2.22**) also considers the air quality impact during the operational phase of the Appeal Scheme. Sections 6 and 8 of the AQA consider the key pollutants associated with the development traffic of the Appeal Scheme and concludes:

- Using detailed atmospheric dispersion modelling, the operational impact of the Appeal Scheme on existing receptors in the local area is predicted to be 'negligible' or 'not significant' (see paragraphs 6.5, 6.9, 6.12, 6.23, 7.4, 7.5, 8.2, 8.3 and 8.5 of the AQA); and
- The Appeal Scheme does not, in air quality terms, conflict with national or local policies, or with the measures set out in the Council's Air Quality Action Plan (AQAP) (see paragraph 8.8 of the AQA).

2.20 I also note that the Council's committee report (**CD 3.4**) explains that:

- There is no objection from Environmental Compliance officer;
- Air quality is not considered to represent a planning constraint in this case (paragraph 8.17.6); and
- The Appeal Scheme will not result in additional harm purported by third party comments and this is considered to weigh 'neutrally' in the planning balance (paragraph 8.19.7).

2.21 I also agree with this neutral weighting (no weight).

Reliance on other decisions for weight

2.22 Team CLASH consider that 'zero weight' should be given to the grant of planning permission (reference: 5/2021/0423/LSM) by the Council's planning committee at 112-156b Harpenden Road in St Albans (**CD 9.3**).

2.23 I conclude that the five St Albans-related cases, including the Harpenden Road case, highlighted in my evidence are a 'material consideration' in this case because there are similarities in the context behind these five decisions and the Appeal Site's circumstances. In particular these decisions concern the same local planning authority, the same housing crisis and the same out-of-date local plan context. They also identify a consistent approach to applying weight to the relevant subject

- 2.28 My understanding is that to bring a High Court challenge to a planning appeal decision under s.288 of the Town and Country Planning Act 1990, a claimant has to be a "person aggrieved" by the decision, which the Courts have defined as (at least normally) only applying to someone who has been an objector or who has otherwise been sufficiently engaged in the planning process.
- 2.29 It is unclear whether there is any current connection between Team CLASH and Mr Buxton in the present case, but in view of their failed High Court challenge last year, it is reasonable to infer that that this belated email by Team CLASH may be a last-minute contrived attempt (with or without the assistance of Mr Buxton) to provide itself with the appearance of sufficient involvement in the application/appeal process to become a "person aggrieved" by any decision to allow this appeal. If so, that attempt should fail. Team CLASH's connection to the process is too tenuous given that they have not participated in the process at any stage prior to now, they are not a person entitled to appear at the inquiry, they did not seek to ask questions of the Appellant's expert, their email was submitted after the Appellant's evidence concluded, and they did not attend the inquiry to make answer any questions. In any event, I note they that they do not suggest – not could they tenably suggest - that there is any legal impediment to granting planning permission. I am not a lawyer but I would expect that the High Court would take a dim view of them later bringing a legal challenge without having identified any legal impediment now.

Conclusion

- 2.30 I continue conclude that the findings of Team CLASH should be given little or no material weight in the determination of the Inquiry.

3.0 CONCLUSION

- 3.1 I conclude that the email submission prepared by the Team CLASH does not change the conclusion I have set out in Section 10 my POE (**CD 3.18a**). There is clear and compelling VSC case in favour of the Appeal Proposals and, when considering the planning balance, there are overwhelming reasons to allow outline planning permission to proceed.