WHBC Appeal Ref: APP/B1930/W/20/3265925
SADC Appeal Ref: APP/C1950/W/20/3265926

LAND OFF BULLENS GREEN LANE, COLNEY HEATH

OPENING STATEMENT BY THE LOCAL PLANNING AUTHORITIES

Introduction

1. In these appeals, Canton Limited ("**the Appellant**") seeks outline planning permission for up to 100 homes, including 45% affordable and 10% self or custom build, on land off Bullens Green Lane, Colney Heath ("**the Site**").

2. The Site is partly within the area of St Albans City and District Council ("**SADC**") and partly within the area of Welwyn Hatfield Borough Council ("**WHBC**") (together, "**the Councils**"). The Councils jointly resist the appeals.

3. The Site lies within the Green Belt, to which the Government attaches "great importance" under para. 133 of the National Planning Policy Framework ("**NPPF**"). The "fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open", and "the essential characteristics of Green Belts are their openness and their permanence": para. 133.

4. Altering the boundaries of the Green Belt through the preparation and updating of local plans is hard enough – "exceptional circumstances" need to be "fully evidenced and justified": para. 136.

5. As difficult as it may be to change Green Belt boundaries through a local plan, "exceptional circumstances" is a "less demanding test"[1] than the one for permitting "inappropriate development" in the Green Belt on an individual planning application, namely the "stringent"[2] requirement to demonstrate "very special circumstances".

6. It is common ground that the proposal constitutes "inappropriate development" for the purposes of NPPF para. 143[3]. Para. 144 provides the central test which the Appellant must overcome in this case:

> "When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not

[1] *Compton Parish Council v Guildford BC* [2019] EWHC 3242, at [70] per Sir Duncan Ouseley.
[2] *R (Luton BC) v Central Bedfordshire Council* [2015] EWCA Civ 537, at [56] per Sales LJ.
[3] SoCG para. 10.1.

exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations."

7. In the context of the history of planning law and policy, the "very special circumstances" test has an ancient pedigree, dating back to a Circular published by the Ministry of Housing and Local Government on 3 August 1955, which for the first time recommended that local planning authorities establish a Green Belt. The "very special circumstances" test is therefore as old as national Green Belt policy itself. Coincidentally, 1955 was the same year which saw housing development on the Site refused for the first time by the Secretary of State[4].

8. While there are some who saw the Government's recent proposals for reform of the planning system as a ripe opportunity to change national Green Belt policy and potentially water down the "very special circumstances" test, such a proposal is conspicuously absent from an otherwise radical agenda.

Main issues

9. The main issues in this appeal are[5]:

   (1) The effect of the proposal on the openness of the Green Belt and the purposes of including land within it;

   (2) The effect of the proposal on the character and appearance of the area;

   (3) The effect of the proposed development on the setting of the nearby listed building 68 Roestock Lane;

   (4) Whether the site is in an accessible location with regards to local services and facilities;

   (5) 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 necessary to justify the development.

Effect of the proposal on the openness of the Green Belt and the purposes of including land within it

10. It is common ground that the loss of the existing open agricultural field to a development of up to 100 dwellings would comprise a loss of openness in both a visual and spatial context[6]. The dispute concerns the extent of the harm.

11. The Councils will present evidence to demonstrate that the proposal would cause substantial harm in terms of a loss of openness, both in visual and spatial terms. The Site is currently a

[4] CD10.2.
[5] Inspector's Case Management Conference Summary, 16 March 2021
[6] SoCG para. 10.2.

completely open arable field. It has a public footpath (48) running through it. In spatial terms, contrary to the Appellant's suggestion that the Site is "wrapped around" or "contained" by Colney Heath, a majority of the Site is in fact bounded by open land. It is a "gap" between the different parts of the settlement, as recognised recently by the Inspector in the Roestock Deport appeal[7]. As to the visual aspect of openness, the views looking south from footpath 48, the houses and gardens along Roestock Lane and Roestock Gardens, Roestock Park looking east, from public footpath 23 running south from Roestock Lane, and south along Bullens Green Lane, are of open countryside. The change to the view of a housing development would be profound and substantial.

12. It is also common ground that the development of open countryside for 100 dwellings would lead to encroachment into the countryside, contrary to the third Green Belt purpose in NPPF para. 134. Consistent with previous Green Belt assessments of parcels containing the site, the Councils will provide evidence to demonstrate that the Site contributes to this purpose, and that the proposed development would represent a significant encroachment causing substantial harm. The suggestion that there would only be "limited harm"[8] to this Green Belt purpose, again on account of the "level of containment", is rejected.

13. It is common ground[9] that there is also harm to the fifth Green Belt purpose, in that the Site by being an agricultural field currently contributes to assisting urban regeneration by encouraging the recycling of derelict and other urban land.

<u>The effect of the proposal on the character and appearance of the area</u>

14. The Councils will present evidence to demonstrate that the proposal will cause substantial harm to the character and appearance of the area.

15. The Appellant overstates the extent to which the character and appearance of the area is defined by the settlement of Colney Heath rather than the open land bordering much of the Site. The Council will explore the visual influence of the settlement on the appeal site with particular reference to the western site boundary. By building 100 homes on an agricultural field, the development would severely detract from the character of the area, with harm in both landscape and visual terms. The proposal does not respect and relate to the character and context of the area, and will not conserve or enhance the local landscape character of Hertfordshire Landscape Character Area 29: Mimmshall Valley.

[7] CD10.21, para. 10.
[8] Russell Gray PoE, para. 5.12
[9] Russell Gray PoE, para. 5.13

16. In terms of appearance, it is acknowledged that the visual envelope of the Site is relatively limited. However the impact of the development within that area is substantial. There are a number of viewpoints both within and near the Site, including along the country lanes and public footpaths and from nearby houses, where the visual impact arising from the proposed development will be harmful in effect. It will be shown that the impacts are significantly understated by the Appellant.

<u>The effect of the proposed development on the setting of the nearby listed building 68 Roestock Lane</u>

17. The Inquiry will include a roundtable session to consider the heritage impact of the scheme. It is common ground that the proposal will cause "less than substantial" harm to the setting of 68 Roestock Lane, a Grade II listed timber framed building dated to the late 17th century.

18. The Site forms part of the setting of this listed building. The Councils will show that the listed building has an association with the surrounding agricultural land, including the Site, as part of its historical context. The listed building was likely occupied by people who worked the agricultural land comprising the Site. The Site is the only remaining agricultural land which lies adjacent to the listed building. This historical association, and the uninterrupted longer range view from the listed building to the south east, contribute to the significance of the listed building.

19. The Appellant suggests the harm is at the "very lowest end" of the category of less than substantial harm. Although the Councils do not consider the harm to be at the high end of the scale, it will be shown in the roundtable session why "low to moderate" is a more appropriate description of the harm.

<u>Whether the site is in an accessible location with regards to local services and facilities</u>

20. By reference to the agreed Facilities Plan[10], it will be demonstrated that the Site is not in an accessible location with regards to local services and facilities.

21. "Walkable neighbourhoods are typically characterised by having a range of facilities within 10 minutes' (up to about 800m) walking distance of residential areas which residents may access comfortably on foot"[11]. Although 800m is not an "upper limit" and "walking offers the greatest potential to replace short car trips, particularly those under 2km"[12], it is worth pausing to assess the Site's performance against the "typical" 800m marker.

22. The only "facilities" within 800m of the Site are Roestock Park and Bullens Green / Red Hall Wood. It is only just possible to reach a bus stop within 800m of the Site. The facilities in Table

[10] Appendix 1, Scott Schedule
[11] CD9.9, Manual for Streets, para. 4.4.1.
[12] Ibid.

1 of the Facilities Plan, accessible only by the A1(M) underpass and by navigating the Bullens Green Lane / Roestock Lane junction with no footpath, are all more than double (or in some cases nearly four times) the typical 800m walking distance. The nearest convenience store / post office is over 1km away.

23. The nearest school is 1,661m away, around double the typical distance, and significantly in excess of the "acceptable" 1km walking distance for a school[13]. The walking pace of parents with children is typically lower than the average. It is simply not realistic to expect families to walk their children to and from school each day with such a distance to travel.

24. Even assuming distances in excess of 800m can reasonably be walked, the availability of services and facilities in Colney Heath is very poor.

25. In terms of cycling, many of the facilities thought by the Appellant to be accessible by cycling – e.g. doctor surgeries, supermarkets, day nurseries and schools – are unlikely to be visited by bike. The Appellant does not have regard to the quality and safety of the roads that need to be used to access the National Cycle Routes and facilities they rely on. Cycling to Welham Green Station along Tollgate Road is hazardous given the width of the road and the speed of traffic, especially at rush hour. St Albans Station, if you can cycle there through the congestion crossing the A405 and along the unlit Albans Way, presents only limited available cycle spaces given high demand.

26. Turning finally to buses, the circa 800m walk to the nearest bus stop is only the beginning. The bus stops within Colney Heath largely serve the same buses. The frequency is very poor, even by rural standards. The timetables[14] are alarmingly sparse, with three of the buses (200, 312 and 230) only coming once a week. The only bus to run a Monday – Saturday service, the 305, is still extremely limited, with hours between each bus and no bus late enough for a homeward commute.

27. Overall, the suggestion by the Appellant that the Site is in a sustainable location is demonstrably flawed. Although it is right that the NPPF requires account to be taken of the more limited opportunities for sustainable transport modes in rural locations (paras. 103 and 108(a)), it is clear that the appeal scheme is contrary to the requirement in NPPF para. 103 that "significant development should be focused on locations which are or can be made sustainable".

28. Residents of the scheme would predominantly rely on the private car to access services and facilities.

[13] Phillip Hughes PoE Appendix 6, Guidelines for Providing For Journeys on Foot, p.52, Table 3.2.
[14] Scott Schedule, Appendix B

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 necessary to justify the development

29. The scheme constitutes "inappropriate development" in the Green Belt. Inappropriate development is "by definition, harmful to the Green Belt" (NPPF para. 143), even before one considers harm due to loss of openness and harm to Green Belt purposes.

30. On top of the definitional harm, the proposal will cause substantial harm in terms of the loss of openness of the Green Belt, having regard to both visual and spatial aspects. In addition, the proposal will cause harm due to conflict with two Green Belt purposes.

31. All of this harm to the Green Belt must be given "substantial weight": NPPF para. 144.

32. Added to the Green Belt harm are the following "other harms" for the purposes of NPPF para. 144:

    (1) Significant harm to the character and appearance of the area;

    (2) Low to moderate "less than substantial" harm to the setting of a listed building, to which "considerable importance and weight" must be given[15];

    (3) Harm by reason of the Site's unsustainable location with regard to local services and facilities.

33. Set against this, the Inspector must consider the "other considerations" said by the Appellant to "clearly outweigh" the harms as required by NPPF para. 144.

34. Principally, the Appellant relies on the serious and substantial shortfalls in the housing land supplies of both Councils. The Councils consider their housing land supply to be 2.4 years (SADC) and 2.58 years (WHDC). The Appellant puts these figures at 1.64 and 1.85 respectively, but on account of the Appellant's acceptance that the difference does not materially affect the outcome of the "very special circumstances" balance[16], it has been agreed that it is not necessary for the Inspector to determine which side is right.

35. In recognition of these shortfalls, the Councils accept that the provision of housing in this case is a matter to which significant to substantial weight should be given[17].

[15] *Barnwell Manor Wind Energy Ltd v East Northamptonshire DC* [2014] EWCA Civ 137, para. 22 per Sullivan LJ.
[16] Confirmed by Zack Simons on behalf of the Appellant at the CMC.
[17] Phillip Hughes PoE para. 6.21.

36. The scheme is also to be commended for proposing that 45% of the 100 homes are to be affordable homes. Given the significant under-provision of affordable housing in both areas, this is a benefit which should carry substantial weight[18].

37. It is further recognised that the provision of 10 self-build homes accords with the requirement in NPPF para. 61 to ensure the provision of housing for different groups in the community, including people wishing to commission or build their own homes.

38. The Appellant also relies on "the fundamental failure of plan making in this area and the inability of the two LPAs in question to bring forward an up-to-date plan to meet housing and other needs"[19].

39. This is another dimension of the market and affordable housing shortfall. In other words, if there were no shortfall, there could be no complaint about any failure in plan-making to deliver sufficient housing to meet needs. Therefore, the Inspector does not need to give weight to this issue as an "other consideration" distinct from the benefits brought about by the provision of market and affordable housing.

40. The Councils accept the need for their existing development plans to be updated (which both are in the process of doing). Taking the plans in turn:

    (1) In WHBC's emerging plan, there will be significant Green Belt release following a comprehensive site selection process[20], but the WHBC part of the Site has never been considered a suitable candidate for a housing allocation. In the Welwyn Hatfield Green Belt Study Stage 3 (March 2019)[21], the WHBC part of the Site was included in Parcel 54, which was assessed as causing a "Moderate-High" level of harm to the Green Belt if released, and as making a significant contribution to the third Green Belt purpose.

    (2) In SADC's now withdrawn plan, the SADC part of the Site had been assessed and rejected in the SHLAA 2009[22], and was not identified for further consideration in the Stage 1 Green Belt Review Purposes Assessment (November 2013). The Green Belt review process in SADC was criticised by the Examining Inspectors for excluding consideration of sites with a capacity of fewer than 500 homes. However, the evidence of Mr Hughes[23] is that, even if a finer grained review of non-strategic sites had taken place, and the SADC part of the Site had been considered, in his view it would have been rejected on account of the contribution

[18] Phillip Hughes PoE para. 6.30.
[19] Russell Gray PoE para. 5.16
[20] See Site Selection Background Paper CD6.23
[21] CD6.14, Appendix 6.1, p.240-242
[22] Phillip Hughes PoE para. 4.51
[23] Phillip Hughes PoE para. 4.56.

it makes to the Green Belt's purposes and the significant impact on openness that would result from release for development.

41. The Councils also note what Sir David Keene said in *St Albans v Hunston Properties Limited* [2013] EWCA Civ 1610 at [31]:

> "There seemed to be some suggestion by Hunston in the course of argument that a local planning authority, which did not produce a local plan as rapidly as it should, would only have itself to blame if the objectively-assessed housing need figures produced a shortfall and led to permission being granted on protected land, such as Green Belt, when that would not have happened if there had been a new-style local plan in existence. That is not a proper approach. Planning decisions are ones to be arrived at in the public interest, balancing all the relevant factors and are not to be used as some form of sanction on local councils. It is the community which may suffer from a bad decision, not just the local council or its officers."

42. To the extent that the Appellant tries to draw anything from recent appeal decisions granting permission for inappropriate development in the Green Belt of other local authorities on the basis of "very special circumstances"[24], the Councils will demonstrate that there are very significant material differences between those successful schemes and this scheme.

43. The alleged benefits of "additional footpaths and new landscaped areas"[25] need to be seen in the context of the loss of an open arable field that already has a public footpath running through it, and the economic benefits from construction and new residents contributing to the local economy are noted but should only carry limited weight[26].

44. Finally, the Appellant wrongly relies on "the achievement of a net gain to biodiversity" as an "other benefit" of the scheme[27] despite the section 106 agreement only ensuring no net loss to biodiversity through on-site compensation and off-site offsetting.

45. In short, there is nothing "very special" about the circumstances of this case. The "other considerations" cumulatively fall far short of "clearly outweighing" the harms.

<u>Conclusion</u>

46. The proposal must be determined in accordance with the development plans unless material considerations indicate otherwise: s.38(6) of the Planning & Compulsory Purchase Act 2004.

47. In the case of WHBC, the Welwyn Hatfield District Plan 2005 originally had a policy (Policy RA1[28]) which effectively replicated the "very special circumstances" test in national policy. As a result of this replication, it was not "saved". However, as the Appellant recognises[29], the

[24] See Russell Gray PoE para. 5.19
[25] Russell Gray PoE para. 5.27
[26] Phillip Hughes PoE para. 7.18
[27] Russell Gray PoE para. 5.27
[28] CD5.01, p.185
[29] Russell Gray PoE para. 3.53-3.54.

supporting text to Policy GBSP2, "Towns and Specified Settlements"[30] makes reference to Bullen's Green as being among a number of settlements that are located within the Green Belt and thereby subject to national Green Belt policy. A proposal which breaches national policy, principally NPPF para. 144, will accordingly breach this policy of the development plan.

48. In the case of SADC, the St Albans District Local Plan Review 1994 contains Policy 1, entitled "Metropolitan Green Belt", which consistently with national policy precludes this form of development in the Green Belt save in "very special circumstances".

49. For the reasons given above, the proposal does not pass the "very special circumstances" test and is therefore contrary to the relevant policies of both development plans. Also for the reasons given above, the proposal breaches those policies identified in the reasons for refusal and Mr Hughes' Proof of Evidence that relate to locational sustainability, character and appearance, and heritage.

50. Accordingly, it is submitted that the proposal does not accord with either development plan.

51. As to material considerations, NPPF para. 11 and footnote 7 provide that the most important policies for determining the application are deemed to be out-of-date in the absence of a five year housing land supply. That is the case here. NPPF para. 11 provides that permission should be granted unless "the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed". Among these policies are those protecting designated heritage assets, and those protecting the Green Belt: see footnote 6.

52. Although it is not considered that the application of NPPF para. 196 (the heritage balance) provides of itself a clear reason for refusing the development (because the public benefits do outweigh the heritage harm in isolation), the Councils will demonstrate that the application of NPPF para. 144 (the "very special circumstances" test) does provide a clear reason for refusing the development.

53. For these reasons, the proposal conflicts with the development plans and no material considerations justify a departure from those plans. The Councils accordingly invite the Inspector to refuse permission and dismiss the appeals.

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27 April 2021

[30] CD5.01, p.29, para. 4.12.