

Appendix A3: List of referenced appeals and legal cases

Legal Cases

Footnote 1:

Langton Homes Ltd v Secretary of State for Communities and Local Government [2014] EHC 487

Reason

A lack of 5-year housing land supply might well demand the need for forceful application of the presumption in favour of sustainable development.

Footnote 2:

Wavendon Properties Limited v Secretary of State of Housing Communities and Local Government, Milton Keynes Council [2019] EWHC 1524 (Admin)

Paul Newman Homes v Secretary of State for Housing, Communities and Local Government [2021] EWCA Civ 15.

Reason

In analysing paragraph 11(d) it is necessary, having identified those policies which are most important for the determination of the application, to examine them individually and then consider whether taken in the round, bearing in mind some may be consistent and some in-consistent with the Framework, and some may have been overtaken by events and others not, whether the overall assessment is that the basket of policies is rightly to be considered out-of-date. That will, of course, be a planning judgment dependent upon the evaluation of the policies for consistency with the Framework (see paragraph 212 and 213) taken together with the relevant facts of the particular decision at the time it is being examined.

This is colloquially known as the “Wavendon Basket” approach.

Footnote 6:

R. (St Albans City and District Council) v Secretary of State for Communities and Local Government [2017] HWHC 1751

Reason

The decision of the examining Inspector (David Hogger) appointed to a previously attempted Local Plan (Strategic Local Plan 2011-2036) was unsuccessfully challenged in the High Court.

Sir Ross Cranston concluded (paragraph 51):

“I accept the Secretary of State's submission that once there is disagreement, I would add even fundamental disagreement, that is not an end of the duty to cooperate, especially in an area such as housing markets and housing need which involve as much art as science, and in which no two experts seem to agree. As Paterson J underlined in R (on the application of Central Bedfordshire Council) v Secretary of State for Communities and Local Government [2015] EWHC 2167 (Admin), the duty to cooperate is active and on-going, and that to my mind means active and on-going even when discussions seem to have hit the buffers. In all the circumstances, my conclusion is that the Inspector did not reach an illogical or irrational conclusion as regards the duty to cooperate over housing.”

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Footnote 15:

Turner vs. Secretary of State for Communities and Local Government [2016] EWCA Civ 466

Reason

Relevant to this proposal in establishing how an examination of openness to the Green Belt should be approached.

Footnote 16:

R (Samuel Smith Old Brewery (Tadcaster) and others v North Yorkshire County Council [2020] UKSC 3

Reason

Relevant to this proposal in establishing how an examination of openness to the Green Belt should be approached.

Appeals

Footnote 3:

APP/M1520/W/20/3246788

Reason

When examining the policy context of a Green Belt site in Castle Point, the Inspector considered that the Green Belt policies of the Framework were more adequately framed to analyse the site – given that the adopted Local Plan was considerably out-of-date and a replacement plan was not forthcoming.

At paragraph 5:

“[...] This is part of the original Metropolitan Green Belt, defined subsequently in the currently adopted 1998 Local Plan (LP). Due to the age of this plan, with its replacement yet to have reached an advanced stage, the Council’s decision relies mainly on the more recent Green Belt policy set out in the Framework.

This decision is appended below.

Footnote 7:

APP/T3725/W/18/3218529

APP/N1920/W/19/3229315

Reason

Inspector’s have previously adjudged that a policy-compliant level of affordable housing is enough to satisfy the requirement to ‘contribute to meeting’ affordable housing need, as set out in paragraph 145(g).

For APP/T3725/W/18/3218529 (‘Waverley Riding School’) the Inspector concludes at paragraph 17:

“The proposal would provide 7 affordable housing units, which equates to approximately 41% of the total number of dwellings (17). The Council at the Hearing confirmed that there is an affordable housing need, which is apparent with the 40% policy requirement from new developments. The appellant has also drawn my attention to the affordable housing provision achieved in recent years within the Council area being under target. Whilst not a development of totally affordable housing, the provision of 7 units would make a significant contribution to the number and type of affordable homes in Cubbington and help meet the need of the Local Authority area.”

For APP/N1920/W/19/3229315, the Inspector states that provision of affordable housing over what is required by policy is not an absolute requirement of the condition at paragraph 145(g). At paragraph 6 of the decision:

“The proposal would provide 7 affordable housing units, which in principle and in terms of the number proposed, the Council do not object to. However, the Council contends that the proposal would not provide affordable housing over and above what would be expected on any similar development in the borough. Even so, the Framework’s stipulation is that affordable housing would need to ‘contribute to meeting’ an identified affordable housing need. In this case, as the Council are satisfied with the number of affordable housing units proposed on the basis that they would address affordable housing

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policies in the Core Strategy, I am satisfied that the intended aim of the proposal would be to contribute to meeting an identified affordable housing need in the local area as required by paragraph 145(g) of the Framework.”

These decisions are appended below.

Footnote 11:

APP/T3725/W/18/3218529

Reason

The Waverley Riding School Inspector concludes that the second ‘substantial harm’ test at Paragraph 145(g) – where the proposal utilises previously developed land and contributes to meeting affordable housing – as a higher test than the first.

At paragraph 16:

“However, the Framework at paragraph 145 states that a development that re-uses PDL in the Green Belt and makes a contribution to affordable housing should not be considered to be inappropriate development unless the harm to the openness of the Green Belt would be substantial, which is a high bar in my opinion”

This decision is appended below.

Appeal Decision

Hearing held on 20 July 2020 and site visit carried out on 21 July 2020

by Jonathan Price BA(Hons) DMS DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 August 2020

Appeal Ref: APP/M1520/W/20/3246788

Land at London Road, west of Rhoda Road North, Thundersley, Benfleet, Essex SS7 1BN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by White Cliffs Caravan Park against the decision of Castle Point Borough Council.
 - The application Ref 19/0231/OUT, dated 29 March 2019, was refused by notice dated 1 November 2019.
 - The development proposed is outline application for residential development comprising 22 dwellings with all matters reserved except access.
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Decision

1. The appeal is allowed and outline planning permission is granted for residential development comprising 22 dwellings on land at London Road, west of Rhoda Road North, Thundersley, Benfleet, Essex SS7 1BN in accordance with the terms of the application, Ref 19/0231/OUT, dated 29 March 2019, subject to the conditions set out in the Schedule attached to this decision.

Procedural Matters

2. The application was made in outline with all detailed matters apart from access reserved for later consideration. I have dealt with the appeal on the same basis, considering as illustrative the plans showing how the site might be developed. A completed Section 106 planning agreement, made between the appellant and the Council and dated 16 July 2020, was submitted prior to the Hearing. This committed to making financial contributions towards affordable housing in the Borough, recreational disturbance avoidance and mitigation measures and local healthcare facilities. This agreement is a material consideration and I deal with the matters provided for in more detail below. The main parties have agreed that the proposal would be inappropriate development in the Green Belt as defined in the National Planning Policy Framework (the Framework), and I concur with that position.

Main Issues

3. The main issues in the appeal are:
 - The effect of the proposal on (i) the openness of the Green Belt and the purposes of including land within it, (ii) local biodiversity interest, including the adjoining area of Ancient Woodland and the resident badger population and (iii) the planned management of sustainable growth within the Borough.

- Whether any Green Belt or other harm would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

(i) The openness of the Green Belt and the purposes of including land within it

4. The appeal site is within the edge of the Green Belt and comprises an open, mainly grassed area to the side of the residential property at 379 London Road. Access to the housing proposed would be to the rear of the site, via Rhoda Road North. This road becomes an unmade bridleway just beyond the proposed entrance point to the development. It then continues onto London Road, forming the boundary to the undeveloped side of the appeal site, between it and the remainder of the Green Belt.
5. The indicative drawing shows the 22 dwellings accommodated within a single two/three storey building. The site fronts onto London Road where, on the opposite side, residential development in the Green Belt has previously been allowed and is either built or under construction. The appeal site lies to the edge of a large residential area and forms the start of a large swathe of Green Belt separating the extensive built-up parts of South Benfleet and Thundersley. Beyond the bridleway this area of Green Belt continues as a substantial parcel of what is mainly Ancient Woodland. This is a part of the original Metropolitan Green Belt, defined subsequently in the currently adopted 1998 Local Plan¹ (LP). Due to the age of this plan, with its replacement yet to have reached an advanced stage, the **Council's decision** relies mainly on the more recent Green Belt policy set out in the Framework.
6. As stated in paragraph 133 of the Framework, the Government attaches great importance to Green Belts where the fundamental aim of policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts being their openness and their permanence. Openness is not defined in the Framework but can be taken as the opposite of urban sprawl. Consequently, in this case, there would be a loss of the undeveloped nature of the appeal site so as to result in a spatial diminution of the openness to the Green Belt. With housing occupying this site, where visible, this would also result in a loss to Green Belt openness as perceived visually.
7. The undeveloped status of the appeal site contributes to four of the five purposes of the Green Belt as set out in paragraph 134 of the Framework. The undeveloped site helps to check the unrestricted sprawl of large built-up areas, prevents neighbouring suburbs merging into one another and assists in both safeguarding the countryside from encroachment and supporting urban regeneration by encouraging the recycling of derelict and other urban land.
8. Other than in exceptions not applying in this case, paragraph 145 of the Framework requires I regard the construction of new buildings as inappropriate in the Green Belt. As advised by paragraph 143, I find inappropriate development to be, by definition, harmful to the Green Belt. Paragraph 144 requires that I give substantial weight to the harm found from the inappropriateness of the proposed housing, along with that resulting from the loss of openness described above, conflicting as this does with the purposes of

¹ Castle Point Borough Council Adopted Local Plan 1998.

the Green Belt. Therefore, the proposal conflicts with national policy through being inappropriate development which would reduce the openness of the Green Belt and thus conflict with its purpose for checking urban sprawl.

9. Whilst attaching substantial weight to that found, the actual degree of Green Belt harm arising from this proposal is mitigated by a number of factors. The site has development to three sides and represents a relatively small indent of open Green Belt into a built-up area. The site is furthermore screened by thick vegetation on its undeveloped sides and this, along with the adjacent large block of Ancient Woodland, provides a reduction in the degree of loss of visual openness to the Green Belt.
10. The overall loss of Green Belt openness, relative to that remaining in Parcel 3A², would be comparatively quite small. The bridleway provides a clearly defined boundary between the appeal site and the large extent of Ancient Woodland beyond. Any further development proposed beyond the bridleway, which forms both a permanent and readily recognisable boundary, would comprise a stark and obvious incursion into the Green Belt. With the additional protection granted by its status as Ancient Woodland, this larger extent of Parcel 3A Green Belt is clearly more defensible when compared to the appeal site.
11. The housing proposed within this relatively small area of Green Belt can be seen as a rounding-off of development, rather than a clear precursor to any further loss of the more defensible Green Belt beyond. The Green Belt that would remain undeveloped is of a size and position sufficient to carry on fulfilling the purposes ascribed to it by the Framework. The accessible Ancient Woodland means this remaining Green Belt offers a wider range of public benefits, including recreation and nature conservation, compared to the privately owned appeal site.
 - (ii) *Local biodiversity interest, including the adjoining area of Ancient Woodland and the resident badger population*
12. The Preliminary Ecological Appraisal³ (PEA), produced during the course of the application, found the native species-rich hedgerow with trees along two boundaries of the proposal to be the only habitat of local value, with none present within of greater than site value. The earth bank, poor semi-improved grassland, scattered trees, dense scrub and tall ruderal herb did however provide potential value as species habitat. There was a badger sett found in the northern part of the site, within the poor-semi improved grassland, which appeared to be active.
13. It was noted that some of these habitats could be retained as undeveloped parts of the site, and the PEA recommended further surveys following any outline permission to inform the details of the development, particularly in respect of badger activity so as to provide the basis for any subsequent protected species licence application. Enhancements were proposed in the form of bat and bird boxes, appropriate fruit tree planting and retention of log piles to support invertebrates. Subject to the further survey work and any mitigation in respect of protected species, notably badgers, along with suitable landscaping and preservation of boundary and on-site habitat, with

² As defined in the Castle Point Green Belt Review 2018

³ ACD Environmental 26 September 2019

enhancements in the form of bird and bat boxes, I find there to be no compelling grounds to resist the development based on the effects on the biodiversity value of the appeal site itself.

14. Coombe Wood, the Ancient Woodland lying beyond the bridleway running alongside the appeal site, is identified as a Local Wildlife Site. Most of this woodland is publicly accessible with a main through path loosely surfaced. Given this public access, the private appeal site plays no significant role as a protective buffer to the ecology in this woodland. The species rich hedging around the appeal site is not proposed for removal and might be preserved under agreed reserved landscaping matters.
15. Regarding any harm to the Ancient Woodland, including its characteristic ground flora, little evidence was provided over the existing impacts of visitor use, the way this was currently managed or how the additional 22 households proposed might exacerbate any presently harmful impacts on biodiversity. Whilst situated next to an entrance to Combe Wood, no detailed case was provided over the additional housing proposed leading to a harmful level of visitor pressure on this protected habitat.
16. The effect of increased visitor pressure on European protected coastal sites at a further distance from the appeal site is addressed separately in this decision. However, with regard to local biodiversity interest, I find there to be no material harm arising from this proposal such as to conflict with either LP policies EC13 and EC14 or paragraphs 170, 174 and 175 of the Framework.

(iii) The planned management of sustainable growth within the Borough

17. Paragraph 136 of the Framework states that, once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans. The appeal site is currently to remain as Green Belt, a part of a wider Parcel 3A included in the emerging replacement LP. **The Council's case** is that the allocation of land for development on the basis of individual applications is likely to lead to poorly planned growth and would fail to deliver housing in a managed way. Its view is that, to achieve sustainable growth within the Borough, the decision on which Green Belt sites to allocate for development should be taken at a strategic level as part of the Local Plan process, which this proposal seeks to circumvent.
18. Due to the need to provide for housing, the Council has itself acted in advance of the adoption of the proposed allocations in its emerging plan, through residential development allowed in the previously developed parts of the Green Belt to the other side of London Road. The proposal is in a similarly sustainable location with regard to nearby services and facilities and, although not previously developed land, is not of a scale that would result in any material harm through prejudicing the wider strategy for sustainable growth within Castle Point, as proposed through the LP review. The case made is not over a change to the Green Belt boundary but the very special circumstances that might allow for housing within this existing designation. This case is made in the context of a very long period of housing under delivery in this Borough and a failure to adopt a Local Plan providing the Green Belt releases necessary to address this.

19. I have no reason to doubt that the Council now has an emerging LP which will make the necessary provision for meeting its housing needs through Green Belt boundary reviews and which is on course for adoption in 2021. However, this emerging plan has yet to reach a stage advanced enough for it to attract any more than limited weight. The proposal is not so substantial that to allow the appeal would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to this emerging plan. Therefore, following the advice in paragraph 49 of the Framework, **the Council's case over the proposal being** premature is insufficient to justify the appeal being dismissed.

(iv) Other considerations that might weigh in favour of the proposal

20. A significant consideration is the LP being many years old and unequivocally out-of-date. The present Green Belt boundary means the authority has for a number of years found difficulty in meeting its objectively assessed needs for housing. Although an emerging plan is on the horizon, its adoption remains some way off, even assuming the lack of any delay in the **Council's** programme. There was no detailed discussion over the current housing land supply position at the Hearing. However, there appeared little dispute over the general picture. This was one of a long period of housing under-delivery and a failure to date in replacing the 1998 LP to make the remedial Green Belt changes.
21. The appellant has drawn my attention to the most recent Housing Delivery Test figures. These show the Council to have met only 48% of the 2015-2018 requirement. Under paragraph 73 of the Framework, this would mean including a 20% buffer to specific deliverable housing sites to improve the prospect of achieving the required five year supply. Whilst the Council is planning ways to accommodate this 20% buffer, this situation can only lend further and significant weight to this proposal.
22. Whilst recognising the relatively modest windfall contribution the proposed 22 dwellings would make, I accept the general case made by the appellant over a pressing need for housing permissions in the context of a Borough where planned delivery has been problematical. This factor adds substantial weight to the benefit to housing supply from a local perspective. In turn, this exists within a national context of ensuring a sufficient amount and variety of land comes forward where needed to support the **Government's objective of significantly** boosting the supply of homes.
23. In paragraph 68, the Framework refers to small and medium sized sites making an important contribution to meeting the housing requirement of an area, noting that they are often built-out relatively quickly. The Council advised this was not always the case in Castle Point. However, it seems reasonable to consider this proposal as deliverable within five years, in contrast with larger housing allocations with more complex infrastructure arrangements and a gradual, phased build.
24. To promote the development of a good mix of sites, paragraph 68 seeks Councils find land to accommodate at least 10% of their housing requirement on sites no larger than one hectare. It further supports windfall developments such as this, giving weight to the benefits of using land within existing settlements for homes. These 22 dwellings would be located sustainably in respect of proximity to existing services and make a modest but rapidly

deliverable contribution towards both the **Council's small**-site requirement and the national objective to boost the supply of homes.

25. The proposed density of residential development would also gain support from the Framework aim to make effective use of land for housing. This is in the context of a Borough without large areas of previously developed land and which relies on the redevelopment and intensification of existing sites. Because the appeal site is less than half a hectare, the amount of Green Belt developed would be relatively small. The remainder of Parcel 3A would be more than adequate to continue providing the Green Belt purposes ascribed to it in paragraph 133 of the Framework.

Other Matters

26. I have considered the further matters raised by interested parties at the application and appeal stages, including those made at the Hearing. The scale of the proposal would not have required this scheme to be the subject of an Environmental Impact Assessment. There is no evidence to support a lack of a need for the accommodation proposed. Any adverse impacts during the building phase might be addressed by an agreed Construction Method Statement. The effects on property values in the vicinity is not a valid planning consideration. Subject to the reserved matter details, the site is capable of accommodating 22 residential units without material harm to the living conditions of any neighbouring occupier, due to effects on outlook or from over-shadowing.
27. Access to the proposed development would be via the surrounding residential streets, rather than directly onto the main A13 London Road. These streets contain frontage housing, often with drives interspersed with lengths of unrestricted kerbside parking. There is a sharp bend on entering Rhoda Road North from Thundersley Church Road. However, the character of these streets, with the intermittent on-street parking, would influence and moderate driver speeds. I consider these approach roads to have the capacity to accommodate the further housing proposed without any significant reduction in the safety of other road users, including pedestrians, cyclists and horse riders.
28. The indicative layout shows 26 car parking spaces. This is below the maximum **requirement of 42 spaces under the Council's standards**. However, this below maximum provision reflects the proximity of the site to public transport and other local services, lessening a dependence on private car ownership. The on-site parking indicated would be adequate and not lead to a finding of any material harm through further on-street parking causing conflict and inconvenience in the approaching streets.

Appropriate Assessment

29. I have had regard to the Essex coast Recreational disturbance Avoidance and Mitigation Strategy⁴ (Essex Coast RAMS). It aims to deliver the mitigation necessary to avoid significant adverse effects on the natural environment from the combined impacts of residential development anticipated across Essex. This is to protect the European sites along the Essex coast from the impacts of increasing visitor pressure and to avoid any adverse effects on their integrity, so as to meet the requirements of the EU Habitats Directive.

⁴ Essex Coast Recreational disturbance Avoidance & Mitigation Strategy (RAMS) Habitats Regulations Assessment Strategy document 2018-2038. January 2019. Final version incorporating Natural England comments March 2019.

30. This proposal is within the evidenced Zone of Influence defined under the Essex Coast RAMS. In combination with other housing growth, this proposal would likely have a significant effect upon these Essex coast European sites, due to increased recreational disturbance from the added population. To address this, financial contributions are offered by the appellant, based on a standard tariff set out in the Essex Coast RAMS and to support the strategic mitigation measures this proposes. I am satisfied that the level of further recreational disturbance resulting from the 22 dwellings would be effectively offset by the contributions made to these strategic mitigation measures. Subject to this payment, and having reviewed the evidence before me, I am able to ascertain that this proposal would not have an adverse effect on the integrity of the European sites along the Essex coast.

Section 106 planning agreement

31. The agreement between the appellant and the Council provides financial contributions towards, firstly, affordable housing elsewhere in the Borough, secondly, recreational disturbance avoidance and mitigation required by the Essex Coast RAMS and, thirdly, local healthcare facilities. I have considered the agreement against the advice in paragraph 56 of the Framework and the statutory requirements of Regulations 122 and 123 of the Community Infrastructure Levy Regulations. These require that such obligations should only be accepted where they are necessary to make the development acceptable in planning terms, directly related to it and fairly and reasonably related in scale and kind. I am content that the agreement meets these tests and therefore is a material planning consideration in deciding this appeal. The affordable housing contribution is a positive benefit which I have weighed in the overall balance. The other contributions are by way of mitigating the effects of the proposal and are neutral factors.

Green Belt balance

32. I have considered the recent appeal decision⁵ relating to the development of edge of Green Belt land at Rhoda Road, to the other side of the A13. However, that decision to dismiss related to just a single dwelling on quite a large site. The factors weighing in the overall balance were not comparable to this case, where 22 dwellings provide comparatively greater benefits in the amount of deliverable housing in the context of a long-standing under-supply.
33. Substantial weight is given to the Green Belt harm found. However, the overall amount of Green Belt harm is moderated to a significant degree by the factors I have discussed above. With the clear boundary provided by the Rhoda Road North bridleway, the Ancient Woodland provides a more defensible area of Green Belt with a wider range of public benefits. This area would act to prevent further urban sprawl and any coalescence of South Benfleet and Thundersley.
34. In the context of an out-of-date plan, and where some sacrifice of the Green Belt is unavoidable in order to provide enough homes in the Borough, this scheme provides substantial social benefits, relative to its size, by the contribution made to housing need. The environmental harm in terms of the development of a small area of Green Belt is relatively quite limited. There would be the local economic benefits also from both the building works and additional household expenditure. Drawing all the factors together, I find that

⁵ Appeal Ref: APP/M1520/W/19/3241203 Querkus, Rhoda Road, Benfleet, Essex.

the other considerations in this case clearly outweigh the Green Belt harm identified. Looking at the case as a whole, I consider that very special circumstances exist which justify housing on this site.

Conditions

35. I have considered the conditions set out in the Statement of Common Ground in the light of the advice in paragraph 55 of the Framework. This states that these should be kept to a minimum and only imposed where necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have amended and/or amalgamated those found necessary, mainly for simplicity and succinctness. Conditions of an advisory nature, or which serve as reminders over reserved matter content, are not considered necessary.
36. The standard outline conditions are required, including the time limit imposed for the submission of reserved matters (1-3). Details of access form part of the proposal and, for reasons of certainty and highway safety, a condition is necessary that these are carried out to agreed engineering specifications prior to occupation (4). In the interests of sustainability, occupation is dependent upon the dwellings meeting the **Council's** standards for water and energy efficiency (5). To ensure adequate waste bin and cycle storage, a condition requires provision of agreed arrangements for these prior to occupation (6). To encourage sustainable transport modes, a condition is necessary to secure travel information packs for each new residence (7).
37. In addition to those specifically reserved, commencement of development should also depend on other detailed matters being satisfied. In the interests of biodiversity, a condition is necessary requiring adherence to an agreed ecological survey, mitigation and enhancement plan (8). Another condition is necessary to secure an approved sustainable drainage system for the development (9). Finally, in the interests of the satisfactory living conditions of residents in the surrounding area, a condition requiring adherence to an agreed construction method plan is also required (10).

Conclusion

38. The very special circumstances exist to support the housing proposed in this area of Green Belt, in compliance with the relevant policies of the LP and the Framework. Therefore, the application of Framework policies that protect the Green Belt do not provide a clear reason for dismissing the appeal. Any adverse impacts of permission would not significantly and demonstrably outweigh the benefits of the housing when assessed against Framework policy as a whole. Therefore, subject to the conditions discussed above, I conclude that the appeal should be allowed

Jonathan Price

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Kevin Leigh	Counsel for the appellant
Martin Taylor	Avison Young
James Wells	Avison Young

FOR THE LOCAL PLANNING AUTHORITY:

Kim Fisher Bright MBA DipTP MRTPI	Castle Point Borough Council
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INTERESTED PERSONS:

Peter Everard

Lee Ryan

DOCUMENT SUBMITTED AT THE HEARING

- 1 Fox Land and Property Ltd v Secretary of State for Communities and Local Government: CA 3 Mar 2015 [2015] EWCA Civ 298. This judgement confirmed that saved LP policies GB 2-7 preserved the Castle Point Green Belt shown in the proposals map.

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) None of the dwellings hereby permitted shall be occupied until the access details shown in drawing ITP DWG/2687/001 have been completed in accordance with detailed constructional specifications that shall have had the prior written approval of the local planning authority. These access arrangements shall thereafter be retained.
- 5) None of the dwellings hereby permitted shall be occupied unless that dwelling has been shown to meet energy and water efficiency standards that accord with details that shall have had the prior written agreement of the local planning authority. These standards shall thereafter be maintained.

- 6) None of the dwellings hereby permitted shall be occupied until cycle and waste bin storage has been provided in accordance with details that shall have had the prior written agreement of the local planning authority. The cycle and waste bin storage shall thereafter be retained as approved.
- 7) None of the dwellings hereby permitted shall be occupied until each has been provided a Residential Travel Information Pack in accordance with details that shall have had the prior written agreement of the local planning authority.
- 8) No development shall take place until an ecological survey, mitigation and enhancement plan has been agreed in writing with the local planning authority. This plan shall address matters including the on-site presence of badgers, the protection of badgers and other species during construction and occupation of the development, including their ongoing movement through the site, the provision of bat and bird nesting/roosting accommodation and details of any external lighting. The agreed ecological survey, mitigation and enhancement plan shall be implemented before any of the dwellings are occupied and the measures therein shall be retained and maintained thereafter.
- 9) No dwelling hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 10) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for matters including:
 - i) the routing and parking of vehicles for site operatives, deliveries and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) wheel washing facilities and measures to control the emission of dust and dirt during construction;

- v) measures to protect on-site and boundary trees and vegetation;
- vi) a scheme for recycling/disposing of waste resulting from construction works;
- vii) delivery and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.



Appeal Decision

Hearing Held on 4 September 2019

Site visit made on 4 September 2019

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2019

Appeal Ref: APP/T3725/W/18/3218529

Waverley Riding School, Coventry Road, Cubbington, Warwickshire CV32 7UJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Daniel Hatcher (Rosconn Strategic Land) against the decision of Warwick District Council.
 - The application Ref W/18/0554, dated 19 March 2018, was refused by notice dated 19 October 2018.
 - The development proposed is the demolition and redevelopment of existing equestrian centre to provide 17 no. dwellings (Class C3); widening and improvement to existing vehicular access and road off Coventry Road; and provision of associated parking, landscaping and surface water attenuation.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition and redevelopment of existing equestrian centre to provide 17 no. dwellings (Class C3); widening and improvement to existing vehicular access and road off Coventry Road; and provision of associated parking, landscaping and surface water attenuation at Waverley Riding School, Coventry Road, Cubbington, Warwickshire CV32 7UJ, in accordance with the terms of the application, Ref: W/18/0554, dated 19 March 2018, subject to the conditions set out in the attached Schedule.

Procedural Matters

2. A completed deed of planning obligation made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted and includes obligations to come into effect if planning permission is granted. This was submitted after the Hearing to allow it to be completed. I will address this matter later on in my decision.
3. Amended plans have been received during the course of the appeal process, prior to the Hearing. The amendment essentially split an initially proposed house into two flats, increasing the number of dwellings proposed to 17 overall. To ensure that no interested party was prejudiced by the amendments, the appellant undertook a consultation process. The Council is content with the amendment being submitted and the consultations undertaken. I am also content that the amendments can be accepted, and that no interested party **would be prejudiced as a result of the appellant's consultations.**

4. The description of development has been amended to take into account the additional dwelling, with 17 units now proposed rather than 16 as the original description on the application form stated.
5. The revision to the proposal would provide an additional affordable housing unit. This would result in the proposal offering a total of 7 affordable dwellings, which would equate to approximately 41% of the overall development. This meets with the Council minimum requirement of 40% affordable housing. At the Hearing the Council confirmed that they withdraw their relevant refusal reason (ii) and as such this is not a matter I shall pursue further.

Main Issues

6. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies. This includes an assessment as to the effect the development would have on the openness of the Green Belt.
 - The effect of the proposal on the living conditions of future occupiers, with regards to accessibility of the site especially for pedestrians and cyclists.

Reasons

Whether the proposal is inappropriate in the Green Belt.

7. The proposal is for 17 new dwellings on a site immediately adjacent to the village envelope and settlement boundary of Cubbington. The site is also within the designated West Midlands Green Belt. The houses and related development would replace existing equine buildings, including stables and a large indoor arena. The Waverley Riding School does not appear to be using the facilities currently, as was apparent from my observations on site.
8. Paragraph 143 of the National Planning Policy Framework (the Framework) indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In paragraph 145 it is stated that the construction of new buildings in the Green Belt should be regarded as inappropriate subject to a number of exceptions. This includes the limited infilling or the partial or complete redevelopment of previously developed land (PDL), so long as it would not have a greater impact on the openness of the Green Belt than the existing development. However, where affordable housing is proposed which contributes to an existing need, there should not be substantial harm to the openness of the Green Belt.
9. There has been no dispute that the site is previously developed land and that the extant use is equine related. As the proposal would be a redevelopment of previously developed land, even if it is currently redundant, then the exception stated above under paragraph 145g of the Framework is relevant. It is also the argument put forward by the appellant as to why the development is not inappropriate in the Green Belt.
10. Although 17 dwellings are proposed, their volume and footprint would be less than the current buildings. The appellant states that the proposals represent a 13.2% reduction in footprint and 6.5% reduction in volume over the existing buildings. The Council does not dispute these calculations. As such,

volumetrically, the proposal would have less of an impact on openness than existing.

11. However, the Planning Practice Guidance (PPG) states **that** "openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume" (Paragraph: 001 Reference ID: 64-001-20190722).
12. In this regard, it is clear that the proposed houses would occupy a much larger area of the site than the existing buildings, which have a more clustered layout. This clustered grouping of buildings has the effect of enabling much of the wider site to be open. However, the proposed development would result in two storey dwellings and garages, together with the associated paraphernalia of domestic houses, on land where there is currently no building. This layout would also result in an encroachment of built development to the north, away from the edge of the village of Cubbington.
13. The houses would be quite well visually contained within the boundary landscaping of the site, which is proposed to be supplemented with additional planting. However, from my observations on site I am not convinced that the development of 17 two-storey dwellings would be completely screened off from all public views. The development would also likely be more visible in the winter months when the vegetation is out of leaf.
14. **The houses would provide a 'looser' form of built development** than existing which would allow for views through the site. However, this would only be achieved as the development would spread across parts of the site which are currently almost fully open and without buildings. The new houses and outbuildings that are proposed to these open areas would therefore erode this openness overall.
15. Therefore, whilst the volume of development is less than exists at present, its geographical spread would be greater. This is, however, mitigated by the existing and proposed screening that would reduce the visual impact of the development on the site openness. Overall, I would consider this would result in a slight adverse effect to the openness of the Green Belt.
16. However, the Framework at paragraph 145 states that a development that re-uses PDL in the Green Belt and makes a contribution to affordable housing should not be considered to be inappropriate development unless the harm to the openness of the Green Belt would be substantial, which is a high bar in my opinion.
17. The proposal would provide 7 affordable housing units, which equates to approximately 41% of the total number of dwellings (17). The Council at the Hearing confirmed that there is an affordable housing need, which is apparent with the 40% policy requirement from new developments. The appellant has also drawn my attention to the affordable housing provision achieved in recent years within the Council area being under target. Whilst not a development of totally affordable housing, this provision of 7 units would make a significant contribution to the number and type of affordable homes in Cubbington and to help meet the need of the Local Authority area.
18. As stated above, I have found that the proposal would have a slight adverse impact to the openness of the Green Belt compared to the existing site and its

buildings. However, this would not result in substantial harm to the openness of the Green Belt. Considering that the proposal would contribute to meeting an identified affordable housing need within the area of the local planning authority, I do not regard the proposed development as inappropriate to the Green Belt within the terms of the Framework.

19. In this regard, the proposal is also in accordance with policy DS18 of the Warwick District Local Plan (2011-2029), which seeks to, amongst other things, seek to prevent urban sprawl that would prejudice the open nature of the Green Belt.

Accessibility of the development proposed and its effect on living conditions

20. The reason for refusal that the Council included in their Decision Notice for this issue was discussed at length in the Hearing. From our discussions it is clear that the primary concern from the Council on this matter is the access road that would connect the houses to Coventry Road. The Council considers that a combination of its length and design would dissuade pedestrians and cyclists from using this route, which may then result in more use of private vehicles instead. This would be the only access in or out of the development, with no linkages to the housing to the south.
21. However, the access road would serve a relatively small development and would not likely be a heavily trafficked route. In terms of its design, the access road would have a footpath for approximately half of its length, with the section nearest the proposed houses having a shared surface. The Council has not provided substantive evidence why this would be a substandard or even hazardous arrangement for pedestrians and cyclists, if vehicles were also using this road. Indeed, the Council has confirmed that there has been no objection from the Highway Authority.
22. The access road is not of a substantial length, being similar to the length of some of the nearby cul-de-sac streets for example. I see no reason why the length of the access road would dissuade people to walk or cycle along its route to continue towards the village centre for example.
23. Therefore, I would regard the proposed access road as being sufficient in all aspects to avoid highway safety issues or harm to the living conditions of future occupiers of the proposed development, in that it would not impede access from Coventry Road or the village itself, and would not likely dissuade people to cycle or walk for access. The proposal is therefore in accordance with policies BE1, BE3 and TR1 of the Warwick District Local Plan (2011-2029). These policies require developments to integrate with connecting streets and networks, not have unacceptable impacts to future occupiers of developments, and not be detrimental to highway safety, among other things.

Planning Obligation

24. The completed, signed and dated (2 September 2019) deed of planning obligation under Section 106 of the Town and Country Planning Act, 1990 (as amended), includes a number of obligations. Consideration of planning obligations is to be undertaken having regard to paragraph 56 of the Framework and the statutory requirements contained in the Community Infrastructure Levy (CIL) Regulations, 2010 as amended.

25. This includes provision of 40% affordable housing of which 80% would be for rental. The other obligations include contributions towards both indoor and outdoor sports facility provision, together with an open space contribution. The amounts and the obligation that payment be made prior to 50% of occupation of the dwellings proposed has been agreed by the Council. There will also be a **payment per dwelling for a 'Sustainability Travel Pack' which would be due** prior to commencement of development. Finally, there would also be a contribution of £10,000 towards delivery of speed reduction features near the access for example, which would be due for payment within three months of the commencement of development.
26. The justification for the infrastructure contributions, as discussed at the Hearing, demonstrates that they would be directly related to the development proposed, are fairly and reasonably related in scale and kind, and are necessary to make the development acceptable. I conclude that the obligations would comply with the requirements of the CIL Regulations and with the tests within Framework paragraph 56.

Other Matters

27. The site is outside of the defined settlement boundary of Cubbington. However, policy H1 of the Warwick District Local Plan allows for development of sites that are in the countryside if they are adjacent to the boundary of a growth village (Cubbington is a growth village, as defined in the Local Plan policy H1) and there is an identified local housing need. The Council have stated that, whilst there has been approval of 120 houses nearby, the proposed houses would contribute towards an identified **'Windfall' requirement for the District. As such,** there is no principle objection to the proposal based on its location outside the settlement boundary.
28. The additional houses would bring more people into the village, although as this is a development of just 17 dwellings, I have no substantive reason before me to show that this would result in overly stretched local facilities and services. The additional people living locally could also potentially help support local businesses. Although there is no link through to adjacent residential streets the occupants would not be cut off from the village, with the centre within a relatively short distance from the site.
29. I recognise that Coventry Road is a busy highway at certain times of the day, but the proposal includes improvements to the junction with the access road, with a highway contribution towards measures such as traffic calming to further improve the situation. From the evidence before me, the proposal would not result in congestion or safety related issues as a result of using what is an existing access, which is to be improved. Furthermore, I have no reason to expect any proposed rumble strips to result in a significant level of disturbance to nearby occupants.
30. The widening of the access road would cut slightly into the adjacent allotments. The owner of the allotments has written in, to state that they have no objections, but a condition should be attached to relocate the existing allotments to elsewhere within this site before the road is widened. There is also a condition included for landscaping details to be required. These details when submitted should avoid new planting which would adversely affect the adjacent allotments.

31. A tree survey has been included with the proposal and a condition recommended has included a requirement for tree protection measures. I recognise that works to the access road would likely be over some roots of trees which are in neighbouring gardens and so measures would need to be utilised to prevent any adverse impact to these trees, many of which are to the boundaries of the site. However, with the condition as recommended I am of the opinion this can be achieved.
32. The proposal would result in some lighting, but this is a relatively small development on the edge of the village and so its impact would likely be limited in terms of light pollution. However, there is a recommended condition which requires further detail to address this matter.
33. There would be some potential disturbance from the construction process, but this would be for a limited period of time. Furthermore, a condition is recommended for a construction method statement which would seek to address issues of noise and dust for example.
34. From the information submitted it is clear that there has been some issue of flooding at the site and on the adjacent area of Coventry Road. However, the site is in Flood Zone 1 so a Flood Risk Assessment is not necessary. With the proposal was a submitted drainage strategy which included the provision of an on-site balancing pond. Following the submission of this additional information, the Lead Local Flood Authority has confirmed there is no objection to the development, subject to a condition for full details of drainage. From the information before me, I have no substantive reasons to regard drainage being an issue that could not be resolved through use of a condition.
35. It has been brought to my attention that there are a variety of birds at the site and the adjacent allotments. The Council has made clear that nesting birds should not be impacted by the development. A condition is attached to address the issue of nesting birds, together with other ecology related conditions. Subject to conditions, I note there is no objection from the Council Ecologist.
36. I understand the line of the HS2 is near the site, but I have no substantive evidence before me why the proposal should be affected by this or vice versa. As such, this is not a reason to dismiss the appeal.

Conditions

37. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance (PPG) and the Framework. The conditions I have included from the recommended list have been subject to some alterations to improve clarity and ensure consistency with the Framework and PPG.
38. I have attached the standard time limit condition and a plans condition as this provides certainty. I have also added a condition concerning materials to ensure a satisfactory appearance.
39. Full details of a soft landscaping scheme are required by a condition, which should safeguard the visual amenities of the site. This landscaping scheme should also have regard to the ecological requirements such as habitat enhancement. There were two separate landscaping conditions suggested by the Council, though I have merged these due to the similarities of the requirements.

40. There are other conditions necessary in the interests of ecology enhancement and preservation, such as a condition requiring details of lighting, a condition requiring nesting boxes, and also a condition stating that an ecologist must be on site when demolishing or removal of potential reptile habitats or birds nests, which also sets out what would be needed if habitats were disturbed.
41. There is a condition which requires full drainage details, which should be of a sustainable form. This would be necessary to avoid issues of potential flooding of the development.
42. Electric charging points are required for each house by another condition, in the interests of sustainable transport.
43. Water supplies and fire hydrant details are required via condition, to aid with dealing with any future fire at the development involving the Fire Service.
44. Due to potential archaeology at the site, an archaeological written scheme of investigation is necessary and required by condition. This also sets out the need for an Archaeological Mitigation Strategy document.
45. The site is near existing dwellings. As such, a construction method statement is required by condition to safeguard neighbour amenities through the course of construction.
46. Due to existing trees on or near the site area, including the access road, it is necessary to require by condition both an arboricultural method statement and tree protection measures to be in place to safeguard trees and their roots, including through the construction process.
47. A condition requiring the access and road layout to be constructed and laid out in accordance with the submitted plans and information has been included. This should be done before any dwelling is occupied, to ensure safe and appropriate access for these future residents.
48. Finally, there is a condition which, following discussion at the Hearing, has been included, to require a scheme for the replacement of that part of the existing allotment plots which would be lost as a result of the road widening. This should ensure there is no loss of overall allotment provision.

Conclusion

49. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be allowed, subject to the following conditions.

S. Rennie

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Peter Frampton -	Planning Consultant
Mr Daniel Hatcher -	Planning Director – Rosconn Group
Mr David Neil -	DTA Transport Consultant

FOR THE COUNCIL:

Ms Lucy Hammond -	Principal Planning Officer
Mr David Butler -	Planning Policy Officer
Mr Max Howarth -	Council Solicitor

INTERESTED PARTIES:

Councillor Trevor Wright
Councillor Pamela Redford
Mr Paul Almond – Neighbour to the site

DOCUMENTS SUBMITTED AT THE HEARING:

- Extract from Manual for Streets
- Cubbington Road Safety Audit Review by Mott MacDonald
- Photographs of trees on the boundary with the site and also of flooding on Coventry Road;
- Letter from Godfrey-Payton Chartered Surveyors, as managing agents for the Coventry Diocesan Board of Finance, regarding the allotments.
- An extract from Planning Policy Guidance with reference the Green Belt (Paragraph 001)
- Warwick District Local Plan
- Warwick District Council – Authority Monitoring Report 2018/2019
- Appeal Decisions ref: 3171169 (Wheatly Riding Centre) and 3200416 (Land at Tanyard Farm);

Schedule of Conditions

1. The development hereby permitted shall begin not later than three years from the date of this permission.
2. The development hereby permitted shall be carried out strictly in accordance with the details shown on the site location plan and approved drawings 3270-04B, 3270-05C, 3270-06B, 3270-07A, 3270-10, 3270-12, 3270-13, 3270-14, 3270-15, 3270-16 and 3270-17, and specification contained therein, submitted on 19 March 2018 and revised drawings 3270-02P and 3270-11B, and specification contained therein, submitted on 15 March 2019.
3. No development shall be carried out above slab level unless and until samples of the external facing materials to be used have been submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in accordance with the approved details.
4. Prior to the first occupation of the development hereby permitted details of all external light fittings and external light columns shall be submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out otherwise than in full accordance with such approved details. In discharging this condition, the Local Planning Authority expects lighting to be restricted on the eastern and southern boundaries and to be kept to a minimum at night across the whole site in order to minimise impact on emerging and foraging bats. This could potentially be achieved in the following ways:
 - Lighting should be directed away from vegetated areas
 - Lighting should be shielded to avoid spillage onto vegetated areas
 - The brightness of lights should be as low as legally possible;
 - Lighting should be timed to provide some dark periods;
 - Connections to areas important for foraging should contain unlit stretches.
5. Other than site clearance and preparation works, no works shall commence on the construction of any dwellings of the development hereby permitted until a scheme for the provision of suitable nesting boxes for swallows to be erected on new buildings within the site has been submitted to and approved in writing by the District Planning Authority. The scheme to include details of box type, location and timing of works. Thereafter, the platform(s)/box(es) shall be installed and maintained in perpetuity.
6. The development hereby permitted shall be undertaken in the presence of a qualified ecologist appointed by the applicant to supervise all destructive works to suitable reptile habitat **as identified in the report 'Preliminary Ecological Appraisal' produced by Cotswold Wildlife Surveys on 8th January 2018 and** inspect the buildings for evidence of nesting birds immediately prior to commencement of works. All refugia to be removed carefully by hand. Should any reptiles such as grass snake be found during this operation, then destructive work must cease immediately whilst Warwickshire County Council Ecological Services are consulted for further advice. If evidence of nesting birds

is found works must not proceed until outside of the nesting bird season (March to September inclusive) or until after the young have fledged, as advised by ecologist. Nesting birds are protected under the 1981 Wildlife and Countryside Act.

In order to discharge the condition above, a brief report from the ecologist must be submitted to the local planning authority within 1 month following completion of the supervised works to summarise the findings.

7. No works to commence on site, including site clearance, until a combined landscaping and ecological scheme has been submitted to and agreed by the Local Planning Authority (with advice from Warwickshire County Council Ecological Services). The scheme must include all aspects of landscaping including details of species planting and habitat enhancements. The agreed scheme to be fully implemented before/during development of the site as agreed with the Local Planning Authority as part of the scheme details.

The details shall include updated soft landscaping details to include local species appropriate for the site location, including full details of all works to enhance existing boundaries. All planting shall be carried out in accordance with the approved details in the first planting and seeding seasons following the first occupation. Any tree(s) or shrub(s) which within a period of five years from the completion of the development dies, is removed or becomes in the opinion of the local planning authority seriously damaged, defective or diseased shall be replaced in the next planting season with another of the same size and species as that originally planted. All hedging, tree(s) and shrub(s) shall be planted in accordance with British Standard BS4043 - Transplanting Root-balled Trees and BS4428 - Code of Practice for General Landscape Operations.

8. Each dwelling shall be provided with an operational charging point for an electrically powered vehicle prior to first occupation of that dwelling in accordance with a scheme which will have first been submitted to and approved in writing by the Local Planning Authority.
9. Other than site clearance and preparation works, no works shall commence on the construction of any dwellings of the development hereby permitted until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, have been submitted and approved in writing by the Local Planning Authority (LPA) in consultation with Warwickshire County Council (WCC). The scheme shall be subsequently implemented in accordance with the approved details before the development is completed. The scheme to be submitted shall include:
 - a) Infiltration testing, in accordance with BRE Digest 365 Soakaway Design guidance, to be completed and results submitted to demonstrate suitability (or otherwise) of the use of infiltration Sustainable Drainage Systems (SuDS).
 - b) Demonstrate that the surface water drainage system(s) are designed in accordance with CIRIA C753 The SuDS Manual.
 - c) Evidence that the discharge rate generated by all rainfall events up to and including the 100 year plus 40% (allowance for climate change)

critical rain storm has been limited to the QBAR runoff rates for all return periods.

- d) Demonstrate detailed design (plans, network details and calculations) in support of any surface water drainage scheme, including details of any attenuation system, and outfall arrangements. Calculations should demonstrate the performance of the drainage system for a range of return periods and storms durations inclusive of the 1 in 1 year, 1 in 2 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus climate change return periods.
- e) If discharging to a drainage system maintained/operated by other authorities (internal drainage board, highway authority, sewerage undertaker), evidence of consultation and the acceptability of any discharge to their system is presented for consideration.
- f) Demonstrate the proposed allowance for exceedance flow and associated overland flow routing.
- g) Provide a Maintenance Plan to the LPA giving details on how the entire surface water system shall be maintained and managed after completion for the life time of the development. The name of the party responsible, including contact name and details, for the maintenance of all features within the communal areas onsite (outside of individual plot boundaries) shall be provided to the LPA.

10. The development hereby permitted shall not be occupied unless and until a scheme for the provision of adequate water supplies and fire hydrants, necessary for firefighting purposes at the site, has been submitted to and approved in writing by the Local Planning Authority and the approved scheme has been implemented in full in strict accordance with the approved details. The water supplies and fire hydrants shall be retained as approved thereafter.

11. No development, other than the demolition of existing buildings and yardage shall take place until:

- a) a Written Scheme of Investigation (WSI) for a programme of archaeological evaluative work has been submitted to and approved in writing by the Local Planning Authority.
- b) the programme of archaeological evaluative work and associated post-excavation analysis, report production and archive deposition detailed within the approved WSI has been undertaken. A report detailing the results of this fieldwork shall be submitted to the planning authority.
- c) an Archaeological Mitigation Strategy document (including a Written Scheme of Investigation for any archaeological fieldwork proposed) has been submitted to and approved in writing by the Local Planning Authority. This should detail a strategy to mitigate the archaeological impact of the proposed development and should be informed by the results of the archaeological evaluation.

The development, and any archaeological fieldwork post-excavation analysis, publication of results and archive deposition detailed in the Mitigation Strategy document, shall be undertaken in accordance with the approved Mitigation Strategy document.

12. The development (including any works of demolition) shall proceed only in strict accordance with a construction method statement which has been submitted to and approved in writing by the local planning authority. The approved statement shall be strictly adhered to throughout the construction period and shall provide for: the parking of vehicles of site operatives and visitors; the loading and unloading of plant and materials; the storage of plant and materials used in constructing the development; the erection and maintenance of a security hoarding including decorative displays and facilities for public viewing where appropriate; wheel washing facilities and other measures to ensure that any vehicle, plant or equipment leaving the application site does not carry mud or deposit other materials onto the public highway; measures to control the emission of dust and dirt during construction; and a scheme for recycling / disposing of waste resulting from demolition and construction works. The construction method statement shall also adhere to the following restrictions:

Noise

1. Work which is likely to give rise to noise off-site is restricted to the following hours: -

- Mon-Fri 8 am - 5pm,
 - Sat 8am - 1pm,
 - No working Sundays or Bank Holidays.
2. Delivery vehicles are not allowed to arrive on site;
- Mon – Fri before 8am or after 4.30 pm
 - Sat before 8am or after 1 pm
 - No deliveries on Sundays or Bank Holidays.
3. Delivery vehicles are not be permitted to wait outside the construction site before the site is open for working.
4. Best practicable means shall be employed at all times to control noise. The Contractor shall employ the best practicable means to reduce to a minimum the noise produced by his operations and shall comply with the **general recommendations in BS 5228: 1984 'Noise Control on Construction and Open Sites'**.

Without prejudice to the generality of the Contractor's obligations imposed by the above statement, the following shall apply:

5. All vehicles, mechanical plant and machinery used for the purpose of the works associated with the Contract shall be fitted with proper and effective silencers and shall be maintained in good and efficient working order.
6. **All compressors shall be "noise reduced" models fitted with properly lined and sealed acoustic covers which shall be kept closed whenever the machines are in use and all ancillary pneumatic percussion tools shall be fitted with mufflers or silencers of the type recommended by the manufacturers.**

7. Whenever possible only electrically-powered plant and equipment shall be used.
8. Acoustic screens shall be used to protect any noise sensitive development where deemed necessary by the Head of Health and Community Protection for Warwick District Council or their representative.
9. All plant and machinery in intermittent use shall be shut down in the intervening periods between work.

Dust

10. Unloading shall only take place within the site itself.
11. Regular sweeping of access roads to the site must be carried out where mud is likely to affect residents and/or highway safety. In dry conditions damping down of road surfaces should be carried out to control dust. a vehicle wheel wash will be provided to minimize carry-over to the highway.
12. **On-site dust shall be controlled by use of "best practicable means" to prevent dust arising from road surfaces, wind whipping of stockpiles, handling of dusty materials, crushing, compacting and cutting and grinding operations.**

Smoke

13. There shall be no burning on site.

Light

14. External work lighting, flood lighting, security lights must not cause light nuisance to neighbouring occupiers. Particular attention must be paid to the siting and orientation of lights to avoid glare. Other measures may be necessary to prevent nuisance subject to the nature of the construction work and site location. Further advice can be obtained from ehpollution@warwickdc.gov.uk

13. Notwithstanding the details already submitted, no development or other operations (including demolition, site clearance or other preparatory works) shall commence unless and until an arboricultural mitigation strategy has been submitted to and approved in writing by the Local Planning Authority. The mitigation strategy shall include details of the methodology (e.g. areas of no-dig, hand dig etc) for all works within the root protection areas of any trees adjacent to the access road and thereafter the development shall be carried out strictly in accordance with the approved details.

The tree protection measures identified in the approved application documentation shall be put into place in full accordance with the approved details and be in place for the full duration of any construction works.

In addition no excavations, site works, trenches or channels shall be cut or pipes or services laid, no fires shall be lit within 10 metres of the nearest point of the canopy of any protected trees; no equipment, machinery or structure shall be attached to or supported by a protected trees; no mixing of cement or

use of other contaminating materials or substances shall take place within, or close enough to, a root protection area that seepage or displacement could cause them to enter a root protection area or any other works carried out in such a way as to cause damage or injury to the trees by interference with their root structure and that no soil or waste shall be deposited on the land in such a position as to be likely to cause damage or injury to the trees.

14. The development shall not be occupied until the site vehicular access and site layout have been constructed and laid out in accordance with Drawing Number 17380-04-05 Revision B (within the submitted Road Safety Audit Stage 1) and Drawing Number 3270-02 Revision P, and to the standard specification of the Highway Authority.
15. No works to widen the access road, including marking out, shall take place until a scheme for the replacement of that part of the existing allotment plots required for the road widening, including a timetable for delivery, has been submitted to and approved in writing by the Local Planning Authority. The replacement allotments/allotment areas shall be provided in accordance with the agreed timetable.

End of Conditions

Appeal Decision

Site visit made on 22 October 2019

by Matthew Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th November 2019

Appeal Ref: APP/N1920/W/19/3229315

Sunny Bank Junior and Infant School, Field View Road, Potters Bar
EN6 2NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Dick Bowler (Hertfordshire County Council) against the decision of Hertsmere Borough Council.
 - The application Ref 18/1475/OUT, dated 20 July 2018, was refused by notice dated 17 April 2019.
 - The development proposed is for the demolition of existing Sunnybank School building and former caretaker's house, removal of hardstanding areas, and development of up to 30 new homes with associated access arrangements and ancillary works.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The application was submitted in outline form with all matters reserved for future consideration, except for access. Therefore, I have treated the submitted '**masterplan**', which shows details of layout and landscaping, as indicative only.

Main Issues

3. The main issues in this case are whether or not the proposal would:
 - be inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies, including its effect on the openness of the Green Belt;
 - result in the unacceptable loss of a community facility;
 - make adequate provision for public open space; and,
 - if the development would be inappropriate, whether the 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 necessary to justify the proposal.

Reasons

Whether inappropriate development

4. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 145 of the Framework makes it clear that new buildings are inappropriate in the Green Belt, subject to a number of exceptions. One exception, set out in paragraph 145(g) concerns the limited infilling or partial or complete redevelopment of previously developed land providing that a) it would not have a greater impact on the openness of the Green Belt than the existing development, or b) would not cause substantial harm to openness where it would contribute to meeting an affordable housing need within the local area.
5. Neither Policy CS13 of the Hertsmere Local Plan Development Plan Document Core Strategy 2013 (Core Strategy), nor Policy SADM26 of the Hertsmere Local Plan Site Allocations and Development Management Policies Plan 2016 (SADMP) fully reflect the provisions of the Framework in respect of development within the Green Belt. The policies predate the Framework and whilst they are consistent in the way they identify inappropriate development to be harmful to the Green Belt, they do not go on to identify the exceptions which are relevant to this appeal, as set out in paragraph 145(g) as referenced above. Therefore, I give these policies limited weight in my consideration of this appeal.
6. The proposal would provide 7 affordable housing units, which in principle and in terms of the number proposed, the Council do not object to. However, the Council contends that the proposal would not provide affordable housing over and above what would be expected on any similar development in the borough. Even so, **the Framework's stipulation is that affordable housing would need to 'contribute to meeting'** an identified affordable housing need. In this case, as the Council are satisfied with the number of affordable units proposed on the basis that they would address affordable housing policies in the Core Strategy, I am satisfied that the intended aim of the proposal would be to contribute to meeting an identified affordable housing need in the local area as required by paragraph 145(g) of the Framework.
7. According to the Framework¹, previously developed land comprises land occupied by a permanent structure, including the curtilage of the developed land. The appeal site comprises a former school **building and a caretaker's** house which includes an extensive area of hardstanding and grass land around it, previously used as a school playground, access roads and areas for parking, and as playing fields. On this basis, I concur with the main parties that the appeal site is previously developed land. The issue therefore hinges on whether the development would cause substantial harm to the openness of the Green Belt.
8. **The term 'openness' is essentially a three-dimensional concept** which effectively denotes an absence of buildings and development. However, no calculations of the volume of the existing buildings or those proposed have been provided. Nevertheless, the appellant has provided development footprint calculations. The existing school footprint and playground to be

¹ See 'Annex 2: Glossary' – the National Planning Policy Framework 2019

demolished would amount to 5,495m². Conversely, the total built floor space of 30 dwellings and associated garages would be approximately 3,945m². However, the existing hardstanding area is relatively flat and has a limited impact on the openness of the Green Belt in comparison with the buildings. Therefore, I have also taken into consideration the total floorspace figure associated solely with the school building, which would be just over 2,120 m², **although this excludes the caretaker's house. However, it appears to me** from the evidence that the floorspace associated with the new dwellings would be greater than the floorspace associated with the existing buildings.

9. I have exercised caution in comparing the aforementioned floorspace figures. Firstly, floorspace is calculated on a two-dimensional basis and this does not give a clear indication of the overall effect of a proposal on the openness of the Green Belt. Secondly, the proposal is in outline form and therefore, the figures at this stage could only ever be an approximation pending subsequent consideration of the details at reserved matters stage. Therefore, whilst I have used the floorspace figures provided by the appellant, I have also considered the visual and spatial effects of the proposal on the ground, taking into account the existing make-up of the site and the nature of the proposal.
10. Accepting that the submitted masterplan is indicative, it is clear that to accommodate the number of dwellings proposed, whatever the final form of the development, it would require dwellings to be erected on land that is currently hardstanding and grass. In this regard, whilst the existing school block would be taller than, and would be replaced by, a number of modest sized dwellings which would be interspersed more sparsely in place of the school building, most of the remaining dwellings would be built on areas of the site which are occupied by hardstanding or grass fields. Even taking into account the topography of the site, which would reduce the prominence of dwellings proposed on the northern portion of the site, the proposal would introduce numerous dwellings on large areas of the site which are currently devoid of buildings. The overall effect would be to substantially reduce the openness of the appeal site.
11. Some of the appeal site is slightly elevated above existing houses to the north and east but obtainable views would be reduced from many properties and surrounding streets by the presence of vegetation along the site boundary and the existing built form. Therefore, the appeal site is not in an exposed location and the perception of openness is reduced by the backdrop of the existing housing **and the site's topography**. The proposal would also result in an increase in openness on some parts of the appeal site, primarily as a result of the removal of the existing school building **and former caretaker's house**. However, this does not detract from my overall findings that the development would cause substantial harm to the openness of the Green Belt.
12. Even if I was to conclude that the proposal would cause less than substantial harm to the openness of the Green Belt, there is no planning obligation or mechanism in place to secure the provision of affordable housing. I also find that the development would have a greater impact on the openness of the Green Belt than the existing built form. Therefore, the proposal would not meet either of the exceptions set out in paragraph 145(g) of the Framework.
13. In conclusion, the proposal would cause substantial harm to the openness of the Green Belt. It would be a form of inappropriate development which, by

definition, would be harmful to the Green Belt and should not be approved except in very special circumstances. It would conflict with paragraph 145 of the Framework which requires that development on previously developed land would not have a greater impact on the openness of the Green Belt than the existing development, or cause substantial harm to the Green Belt in the case of development that contributes to an identified affordable housing need. The development would also conflict with Policy CS13 of the Core Strategy and Policy SADM26 of the SADMP which seeks to protect the Green Belt from inappropriate development, except in very special circumstances.

Community facility

14. The existing school building has been disused since 2008 and the appeal site has remained largely unused since this time. Policy CS19 of the Core Strategy seeks to protect key community facilities unless they are found to be surplus to requirements, or not fit for purpose. The Inspector, in reporting on the Examination into the Hertsmere Local Plan², concluded that the former school was not a facility in public use and was not an existing community facility. I saw on my site visit that the school building was boarded up and there is nothing in the evidence before me to contradict the findings of the Examination Inspector, and no evidence has been presented to me which indicates that the site comprises a key community facility that is fit for purpose.
15. Consequently, I find that the proposal would not lead to the unacceptable loss of a community facility. It would comply with Policy CS19 of the Core Strategy and Policy SADM32 of the SADMP which require, amongst other matters, that key community facilities are protected unless it can be demonstrated that they are surplus to requirements or not fit for purpose. However, the lack of harm in this respect is not a positive factor weighing in favour of the scheme.

Open space

16. Policy SADM37 of the SADMP requires that developments in excess of 50 dwellings or 2500m² provide open space, preferably on-site. The appellant **is of the opinion that the '2500m²' requirement set out in the policy relates to non-residential uses**, thus the development would not be required to provide open space given the proposal is for less than 50 dwellings.
17. However, to my mind, Policy SADM37 is written in a lucid way and it does not state that the floor space requirement would only relate to non-residential developments, and there is nothing in the Policy to suggest that it would. Therefore, I have no reservations in coming to the view that the development would be required to provide open space as the appeal scheme would comprise an external floorspace in excess of 2500m².
18. As **'layout' is a reserved matter, the way in which buildings, routes and open spaces** within the development would be provided, situated and orientated in relation to each other, would be determined at reserved matters stage. However, as the submitted masterplan is indicative, it is unclear whether the final development form would be able to deliver sufficient open space within the appeal site. I note that there is flexibility contained within Policy SADM37 which would allow a financial contribution to be made to fund off-site open

² Inspector appointed by the Secretary of State for Communities and Local Government - Report on the Examination into the Hertsmere Local Plan (site allocations and development management policies) dated 14th September 2016

space, either in full, or part, depending on the feasibility of providing open space on-site. However, the appellant has not provided me with adequate assurance that the open space could be delivered on-site, and there is no planning obligation or mechanism in place to secure the provision of open space either on-site or off-site.

19. Therefore, in conclusion, it has not been adequately demonstrated that the proposal would provide sufficient open space either on-site, or as an off-site contribution. Consequently, I find that the proposal would conflict with the requirements of SADM37 of the SADMP which requires, amongst other matters, that new open space which includes biodiversity benefits and which may include a sustainable urban drainage system, is provided on appropriately sized development sites.

Other considerations

20. The Framework requires me to come to a view as to whether or not, in Green Belt terms, there are other considerations that clearly outweigh the totality of the identified harm so as to amount to very special circumstances. In this regard, the proposed development would provide up to 30 dwellings on brownfield land which would contribute to local and borough wide housing supply, a matter to which I apply significant weight.
21. In addition to the above, there would be indirect benefits to the local economy from the spending potential of future occupiers of the dwellings, and direct and indirect benefits from the construction phase. This matter carries modest weight in favour.
22. There would potential benefits from the proposed additional landscaping which may bring about biodiversity benefits. However, limited details have been provided at this stage and it is a matter to which I apply only limited weight in favour.

Other matters

23. I note that representations were made by local residents, some of whom raise additional concerns, including highways and drainage. However, given my findings on the main issues, it is not necessary to consider these matters in detail.
24. The appeal site was promoted as a potential housing site through the emerging Local Plan Examination process, but no decision has been made concerning any changes to the Green Belt boundary in relation to the appeal site, and the emerging Local Plan does not form part of the development plan. This consideration does not detract from the fact that the appeal site lies in the Green Belt, and the primary concern in this case, as set out in my reasoning, relates to the impact of the proposal on the openness of the Green Belt.

Conclusion and planning balance

25. The proposal would be inappropriate development in the Green Belt which is harmful by definition. According to the Framework, substantial weight should be attributed to any harm to the Green Belt. In addition, I have found that the development would lead to substantial harm to the openness of the Green Belt. The development would also fail to make adequate provision for open space.

26. Against this, whilst I find that the proposal would not result in the unacceptable loss of a community facility, this is a neutral factor which neither weighs in favour or against the appeal.
27. In terms of social benefits, I attach significant weight to the contribution the scheme would make to local housing supply, in line with the aim of significantly boosting the supply of homes, as advocated by the Framework. Other material factors that weigh in favour of the proposal include modest economic benefits and limited biodiversity and landscaping benefits. However, in combination, these benefits are not sufficient to clearly outweigh the harm I have identified.
28. I therefore conclude that the harm by reason of inappropriateness, and any other harm, is not clearly outweighed by other considerations, such that the very special circumstances necessary to justify the development do not exist. Thus, the appeal should be dismissed.

Matthew Woodward

INSPECTOR