

# **SMALLFORD WORKS**

**Summary Proof of Evidence of David Churchill – Planning**

Ref: APP/B1930/W/20/3260479

**SUBMITTED ON BEHALF OF STACKBOURNE LTD**

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## **1 QUALIFICATIONS AND EXPERIENCE**

- 1.1 I – David Churchill – am a qualified town planner and am a Partner of Carter Jonas LLP.
- 1.2 The evidence I have prepared and provide for this appeal is true, has been prepared, and is given in accordance with the guidance of RTPI and the 'Procedural Guide: Planning Appeals – England' published by the Planning Inspectorate (November 2020). I confirm that the opinions expressed are my true and professional opinions.

## 2 SCOPE AND PROCEDURAL MATTERS

2.1 A s106 agreement and list of conditions are being agreed and produced by the parties. These are to address the concerns held by the Council in regard to reasons for refusal 3, 5 and 6, and will result in the Council no longer relying on these reasons for refusal within their case.

2.2 My evidence, which also draws upon the evidence of my fellow witnesses where applicable, will examine the issues that remain in dispute between both parties. These are:

- Compliance with Green Belt policy;
- Design and impact on character and landscape;
- Drainage and water quality;
- Other matters (including sustainability of location, ecology and archaeology); and
- Planning balance.

### 3 PLANNING POLICY CONTEXT

#### National Planning Policy Framework (NPPF)

- 3.1 It is common ground that the Council has significant and chronic shortfall in its five year housing land supply (5YHLS) and has a Housing Delivery Test (HDT) result below 75% of the housing requirement. The effect of this is to render the relevant housing supply policies with the development plan out-of-date.
- 3.2 Both parties agree that the key Green Belt policy in this case is paragraph 145(g) of the Framework, in particular the second bullet point within that policy given that the proposal includes the provision of affordable housing.
- 3.3 The central question to the appeal is whether the proposed development would cause *substantial harm* to the openness of the Green Belt. If it would not cause such substantial harm, it can be considered appropriate development in the Green Belt pursuant to paragraph 145 of the Framework. Accordingly, the Green Belt policies in the Framework would not provide a clear reason for dismissing the appeal and so the presumption in favour of granting permission should apply (unless, for other reasons, any adverse impacts of approving the proposal would *significantly and demonstrably* outweigh the benefits when assessed against the policies of the Framework taken as a whole, which cannot possibly be the case here).

#### Local Planning Policy

- 3.4 The St Albans District Local Plan Review (DLPR) was adopted in 1994 - some 27 years ago. It is reputedly the oldest development plan in the country. The failure to deliver an update to the 1994 DLPR leaves a significant vacuum in local planning policy and demonstrates – to my mind – that the Council is unable to carry out its planning functions effectively.

#### *Need for Housing*

- 3.5 Despite agreement on the 5YHLS position, it is material to consider the wider context surrounding the delivery of housing in St Albans. I refer the reader to previous evidence set out in the SoC<sup>1</sup> in demonstrating it as a significant, chronic and worsening problem.

#### *Withdrawn Local Plan(s)*

- 3.6 The more recent draft Local Plan was withdrawn in November 2020. The Inspector's report raised concerns regarding the Council's process in seeking to demonstrate 'exceptional circumstances'

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<sup>1</sup> Paragraphs 3.16-3.33

for removing areas from the Green Belt, noting the failure to prioritise previously developed sites in the first instance.

- 3.7 There is a clear correlation between the Council's long-standing failure to deliver an up-to-date Local Plan, its significant and consistent under-delivery of housing against its assessed needs, and the chronic and worsening unaffordability of homes available to local people. There is no evidence which suggests to me that this cycle of failure is soon to be rectified.

## 4 PLANNING MATTERS

### Green Belt

#### *Paragraph 145(g)*

- 4.1 The Government has long emphasised that local planning authorities should prioritise the delivery, and maximise the potential, of previously developed land (PDL) in advance of greenfield sites.
- 4.2 This context is important when applying the test in paragraph 145(g) of the Framework in this appeal. The introduction of the second bullet point in paragraph 145(g) of the Framework – the “substantial harm” test – has been a step-change in policy in this regard and it would be reasonable to infer that the Government had this in mind when formulating the policy.

#### *Openness*

- 4.3 The second bullet point in paragraph 145(g) requires the development to “*not cause substantial harm to the openness of the Green Belt*”.
- 4.4 The term “*substantial harm*” is not further defined. It must therefore be a matter of planning judgement. Nevertheless, this test has been described by an inspector as a “*high bar*”<sup>2</sup>. This observation was rightly made by the Case Officer in the present case<sup>3</sup>, but unfortunately, this did not prevent the test from being applied incorrectly and has incorrectly assessed the existing baseline condition of the current lawful use of the site.
- 4.5 The existing development includes a number of structures across the site, both fixed and transient, stacked high in places to the equivalent of approximately 3 storeys, leaving minimal open space. Whilst the majority of structures on site are transient, the intensive use of the site has been consistent. So, whilst some high stacked storage may be moved on, it is readily replaced and/or another part of the site becomes itself highly stacked.
- 4.6 Furthermore, the appeal proposals will reduce the disturbance that the site currently generates due to industrial noise and light pollution. Comparing the masterplan for the proposed development with an aerial image of the site in its current state enables the positive and negative aspects of both possibilities for the site to be understood. It is clear from this comparison that substantial harm would not be caused.
- 4.7 As a result, I consider the existing development is significantly harmful spatially, visually and in general perceptual terms to the openness of the Green Belt in this location. For these reasons, I

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<sup>2</sup> Paragraph 16 APP/T3725/W/18/3218529

<sup>3</sup> Paragraph 8.3.13, Officer’s Report



consider that the proposed development should be considered appropriate development in the Green Belt in accordance with paragraph 145(g) of the Framework.

## Design, Character and Landscape Impact

- 4.8 The Council's second reason for refusal judges the development to cause '*detrimental impact on the wider Green Belt countryside*'.
- 4.9 Many of the same arguments set out in relation to the impact of openness are pertinent when considering its impact on the character of the countryside. The existing condition of the site provides an intensive industrial use that has negative visual, audible, and physical (e.g. from dust) impacts on the surrounding countryside and those that enjoy it.
- 4.10 The indicative layout shows a minimal number of trees at risk of removal, with the majority of these already removed from the delivery of the site access and that is subject to committed replacement. These will not be further impacted by the proposed development with the access retained. Overall, there will be a net increase in trees provided in the development, with details secured at reserved matters stage.

## Drainage

- 4.11 For the purposes of this matter, I refer to Karl Pitman's Proof of Evidence relating to drainage matters and the Written Statement from Dr Robert Murdock on public water supply. I agree with their conclusions.
- 4.12 Accordingly, the appeal would comply with paragraph 163 and 165 of the Framework and the Council's fourth reason provides no grounds for dismissing the appeal.

## Other Matters

### ***Sustainability (of Location)***

- 4.13 The Transport Assessment (TA) submitted as part of the application demonstrates that the proposed development would result in a decrease in peak hour and daily vehicle trips, as well as a significant decrease in HGV vehicle movements associated with the existing industrial land use. Overall, it is concluded that the proposed development would improve highway capacity on the local highway network and key junctions, and would lead to a net improvement in road safety.
- 4.14 The Alban Way is under 250m north of the site, providing a designated trail for cyclists and walkers along a disused section of the Great Northern Railway, between St Albans and Hatfield. There is also a bus stop immediately outside of the site providing services into St Albans, Colney Heath, and Potters Bar.

- 4.15 The s106 agreement includes provision for Travel Plans that would provide further measures to encourage sustainable transport methods.
- 4.16 The Council's description of the site as "unsustainably located" is therefore unfounded.

### ***Ecology***

- 4.17 A draft condition has been provided to the inquiry requiring the surveying of Great Crested Newts. The proposed planning obligation will also secure a financial contribution towards a scheme for mitigating the impact of recreational users on the adjacent LWS.
- 4.18 The Appellant's ecologist has reviewed both the draft planning condition and the planning obligation and concludes that they would provide a suitable solution to any concerns held by the Council relating to these ecological assets.

### ***Archaeology***

- 4.19 The Council raised in its SoC an absence of analysis from the Appellant in relation to the potential for archaeological interest at the site. An Archaeological Desk Based Assessment was undertaken in 2018, but due to an administrative error when the application was submitted, it was omitted. This has now been rectified and the document being reviewed by the Council.

## **Very Special Circumstances**

- 4.20 Should the Inspector conclude that the proposed development would result in "substantial harm" to the openness of the Green Belt, it would amount to inappropriate development in the Green Belt and engage paragraph 143 of the NPPF. This states that inappropriate development in the Green Belt should only be approved in very special circumstances (VSCs)

### ***Assessment of harm***

- 4.21 Were the development found to be inappropriate in the Green Belt, the conclusion would necessarily have been reached that it would cause "substantial harm". However, even in this event, the existing baseline of the site is still material, and the degree of harm cannot be considered the same as if the site were greenfield or a less intensively developed PDL site.
- 4.22 Moreover, the Council does not consider that the proposed development would conflict with any of the five purposes at paragraph 134 of the NPPF<sup>4</sup>. I agree. In my judgment, this significantly reduces the weight on the 'harm' side of the scale when undertaking the VSC balance.

### ***Countervailing considerations***

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<sup>4</sup> Paragraph 5.7 of Council's Statement of Case.

4.23 I consider that the following matters amount to compelling “other considerations” when undertaking the VSC balance.

- Chronic failure of local plan-making;
- Affordable Housing Provision in excess of policy requirement;
- Reuse of Previously Developed Land; and
- Reduction in Vehicle Trips, particularly HGVs.

4.24 In the context of an out-of-date Local Plan, where some loss of the Green Belt is unavoidable to provide enough homes in the District, the proposed development would deliver substantial social benefits (relative to its size) by contributing to housing need and providing significant environmental improvements, including remediating contamination. There would be local economic benefits from both the building works and additional household expenditure.

4.25 Overall, if the proposed development were considered to be inappropriate (which is not my judgment), the considerations identified above would still clearly outweigh the Green Belt harm identified such that VSCs exist.

## 5 PLANNING BALANCE

- 5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The exceptional vintage of the development plan for the District means that the policies of the Framework must come to the fore in this case.
- 5.2 The Council has a significant shortfall of 5-year housing land supply and has failed the HDT – rendering its housing policies out-of-date and requiring the ‘tilted balance’ to be applied in the determination of this appeal subject to footnote 5 and policies relating to the Green Belt.
- 5.3 The evidence provided demonstrates that the proposals should not be considered inappropriate development in the Green Belt, when assessed against the second test in paragraph 145(g) of the Framework.
- 5.4 However, should the Inspector conclude that the proposed development does not meet the second test of paragraph 145(g), I have explained why VSCs are made out in this case.
- 5.5 On either analysis, therefore, whether the development is considered to be appropriate or inappropriate in the Green Belt, the relevant policies of the Framework do not provide a clear reason for refusing the development proposed.
- 5.6 In favour of the scheme, I attribute very substantial positive weight to the delivery of both market and affordable housing. I also note that the provision of affordable housing is in excess of Local Plan policy requirements, weighing strongly in favour of the proposal.
- 5.7 I give significant positive weight to the economic benefits associated with the delivery of up to 100 dwellings, including the contribution these households would make to the local economy.
- 5.8 I also give significant positive weight to the environmental benefits of removing the existing use and replacing it with a more environmentally beneficial permanent use. I also give significant positive weight to the reduction in vehicle movements, with very significant weight applied to the removal of a large number of HGV movements along Smallford Road.
- 5.9 Set against these I give significant negative weight to the potential visual impact harm, though it is noted that this harm is minor, appreciating the existing baseline position.
- 5.10 Weighing these judgments against each other, it is plain that the adverse effects of the proposal would not come close to significantly and demonstrably outweighing its benefits; indeed, the contrary would be true, with the benefits significantly and demonstrably outweighing the adverse effect.

- 5.11 It follows that the presumption in favour of sustainable development applies with full force in this appeal and the appeal should be allowed.