

**APPEAL REF: APP/B1930/W/23/3323099**

**Land to rear of 42 to 100 Tollgate Road and 42 Tollgate Road,  
Colney Heath, St Albans AL4 0PY**

## **INSPECTOR'S CASE MANAGEMENT CONFERENCE SUMMARY NOTE AND DIRECTIONS**

### **Introduction**

1. The case management conference (CMC) for the Inquiry into the above appeal was held on 1 August 2023. It was led by the Inquiry Inspector, Mike Hayden, with representatives present from Vistry Homes Ltd (the Appellant), St Albans City and District Council (the District Council) and Colney Heath Parish Council as the Rule 6 party (the Parish Council), as listed in Annex 1.
2. This Note provides a summary of the outcome of the conference and the Inspector's directions on the preparation of evidence and its handling at the Inquiry, the documents required and the timescales for their submission.
3. The District Council is requested to publish a copy of this note on its website for information.

### **The Inquiry**

4. The Inquiry is scheduled to open at 10.00am on Tuesday 19 September 2023, in the Council Chamber, at the Civic Centre, St Peter's Street, St Albans, Herts AL1 3JE. It is scheduled to sit for 7 days, on 19-22 and 26-28 September 2023.
5. Representing the parties at the Inquiry will be: Zack Simons, of Counsel, for the Appellant; Luke Wilcox, of Counsel, for the District Council; and John Clemow, a Parish Councillor, for the Parish Council.

### **Main Issues**

6. It was agreed that the main issues in this case are likely to be:

Whether the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed, or whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, with particular regard to:

- a) The effect of the proposed development on the openness and purposes of the Green Belt;
- b) The effect of the proposal on the landscape character and appearance of the site and surrounding countryside;

- c) The effect of the proposed development on the setting and significance of nearby heritage assets, including the Grade I listed North Mymms Park House, Grade II listed Colney Heath Farmhouse and the adjacent Grade II listed barn, and the non-designated heritage assets of North Mymms Park and Tollgate Farm;
- d) Whether the appeal site is in a location which is or can be made sustainable in transport terms; and
- e) Whether or not the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

### Other Matters

7. It was also agreed that the following other matters will be dealt with in evidence and at the Inquiry:
  - The provision of affordable housing and self/custom build plots, healthcare, education and other community infrastructure, open space, biodiversity net gain, transport and highway improvements, and a travel plan, to address the second reason for refusal, which the appellants propose to deal with by way of a S106 agreement;
  - The effects of the proposed development on traffic and highway safety, flood risk and drainage, the ecology of the area including the River Colne, noise, air quality and the living conditions of the occupiers of nearby residential properties. Whilst these matters are not in dispute between the main parties, the Inquiry will need to consider evidence on them in regard to the representations of the Parish Council and others.
  - Any benefits to be weighed in the planning balance, including the social, environmental and economic benefits advanced by the appellants.

### **How evidence on main issues and other matters will be dealt with**

#### Main Issues

8. It was agreed that there is potential for the evidence on the following main issues to be dealt with by means of Round Table (RT) discussions, subject to the outcome of work on topic-specific Statements of Common Ground (SsoCG):

#### ***b) Landscape Character and Appearance***

Written evidence on this main issue will be covered in witness proofs of evidence (PoEs), informed by a topic-specific SoCG on landscape and visual impacts. It was agreed that the SoCG will include agreement on the baseline analysis of landscape character, landscape and visual receptors, and viewpoints for the evaluation of visual impacts. This will enable PoEs and witness evidence to focus on the differences between the parties on the sensitivity and importance of receptors, and the magnitude of any landscape

effects and change. A draft of the landscape SoCG will be shared the Parish Council.

On receipt of the Landscape SoCG and PoEs, the Inspector will determine whether testing of the evidence on this main issue can be dealt with by RT discussion with the relevant witnesses or through evidence in chief (EiC) and cross-examination (XX).

**c) *Heritage***

Whilst the main parties agree the appeal proposal would result in less than substantial harm to designated heritage assets, there are differences between the parties on the degree of harm within that spectrum of harm which would result. The main parties agreed to prepare a topic-specific SoCG on heritage, which should identify: the heritage assets affected; define their significance and the contribution of their settings to significance; establish any contribution the appeal site makes to their settings and thereby significance; assess the degree of harm to each asset within the spectrum of less than substantial harm that would result from the proposed development, taking into account any mitigation measures proposed; and explain the differences between the parties on the degree of harm. A draft of the heritage SoCG will be shared the Parish Council.

Subject to this it was suggested by the District Council that this issue could be dealt with by RT discussion, which the Parish Council also supported. However, the Appellant advised that their preference would be to deal with heritage through EiC and XX of expert witnesses, due to the statutory duties of the Inspector as decision maker on heritage.

The Inspector agreed to determine whether the evidence on this main issue can be dealt with by RT discussion with the relevant witnesses or through EiC and XX, once he has seen the Landscape SoCG and PoEs.

**d) *Sustainability of Location***

The Appellant is preparing a SoCG on this main issue with Hertfordshire County Council as the Highway Authority, in order to narrow the points of difference on the objection regarding the adequacy of information on the accessibility of the appeal scheme by sustainable modes of transport. It was agreed that a draft of the SoCG would be shared with the Parish Council to assist in their preparation of evidence on this issue.

The District Council suggested that the SoCG could resolve their objection to this aspect of the proposed development, but that any remaining differences between the parties could be dealt with by RT discussion. The Inspector agreed to determine whether this main issue should be dealt with by a RT session or through EiC and XX on witnesses, once he has seen the relevant SoCG and PoEs.

The main parties agreed to prepare agendas for any RT discussions which are agreed. The submission date for RT agendas is set out in the timetable below.

9. It was agreed that the remainder of the parties' cases, including on **main issues a)** and **e)** and the benefits to be weighed in the planning balance will be heard on a case by case basis, covered in the relevant PoEs and dealt with by means of EiC and XX at the Inquiry. The order for this will be the Council's case first, followed by that of the Parish Council as the Rule 6 party, and then the Appellant.
10. The Appellant confirmed they will be presenting witness evidence on the need for affordable housing and self/custom-build housing as part of their case on the benefits of the appeal proposal. The District Council also advised that a SoCG is being prepared with the Appellant on affordable housing needs. This SoCG should be shared with the Parish Council to inform preparation of their evidence on local housing needs and affordable housing.
11. PoEs should adhere to the guidance on content and format in Annex 2.

#### Other Matters

12. How the S106 matters are to be dealt with is set out below.
13. It was agreed that matters to do with highway safety, flood risk and drainage, ecology, noise, air quality and living conditions, raised in representations by local residents and other interested parties will be dealt with at a Question and Answer (Q & A) session to be programmed on the first day of the Inquiry. The Appellant agreed to address these matters in the PoEs of the appropriate witnesses and to make those witnesses available on the first day of the Inquiry. The Inspector requested that the Highway Authority should also be present for the Q & A session to assist with any questions on highway safety.

#### Site Visit

14. The Inspector will undertake an accompanied site visit at an appropriate point during the course of the Inquiry, including any requests to view the site from surrounding properties. The timing of this will be confirmed at the Inquiry. The Inspector will also conduct an unaccompanied visit of the surrounding area before and, if necessary, after the Inquiry. The parties agreed to prepare a site visit itinerary for the purpose of the Inspector's unaccompanied visits, to include the agreed locations from which it would be best to view the site and the effects of the proposed development.

### **Planning Obligation and Conditions**

15. The Appellant confirmed that a S106 agreement is being prepared with planning obligations for the provision of Affordable Housing, Self-Build and Custom-Build Housing, Open Space and Play Space, Highways and Sustainable Transport improvements, Biodiversity Net Gain, and Education, Waste and Health Service Contributions, in order

to deal with the second reason for refusal. The District Council confirmed that heads of terms have been agreed and work has commenced on drafting the Deed.

16. It was confirmed that a CIL Compliance Statement will be provided to justify each planning obligation. This should explain how they comply with the statutory tests, including any policy support and, in relation to any financial contributions, how these have been calculated and precisely on what they would be spent. The main parties are expected to continue to work together to enable final drafts of the S106 agreement and CIL Compliance Statement to be submitted in advance of the Inquiry opening, in line with the timetable set out below.
17. A schedule of suggested planning conditions has been submitted by the District Council along with its statement of case. It was confirmed this is a first draft which has not yet been agreed by the Appellant. The conditions will need to be justified having regard to the tests for the use of conditions set out in national policy, in particular with regard to necessity.
18. The main parties agreed to work with the Parish Council in preparing the final schedule of suggested conditions, which should be submitted at the same time as the PoEs. Any differences in view between the three parties on the suggested conditions should be highlighted in the schedule with a brief explanation of the reasons for those differences.
19. The final drafts of the S106 agreement, CIL compliance statement and schedule of conditions will be discussed at a RT discussion, to be programmed towards the end of the Inquiry.

### **Core Documents**

20. A list of Core Documents to be referred to will be agreed between the parties in advance of the preparation of PoEs so they can be consistently referenced. The final list and a full set of documents are to be sent in electronic format to the Planning Inspectorate at the same time as the PoEs. The Inspector requested that a hard copy set of the Core Documents also be made available for his use at the Inquiry.
21. The District Council confirmed that the Core Documents will be made available for public access on its website with a link from the homepage.

### **Inquiry Running Order**

22. Based on the discussions at the CMC, a provisional running order for the Inquiry over 7 sitting days, would be as follows:

Opening statements: by Appellant, District Council, and Parish Council.

Interested parties wishing to speak.

Question & Answer session on Other Matters: including Highway Safety, Flood Risk and Drainage, ecology, air quality, noise and living conditions.

Round Table discussions: on Landscape and Visual Impact, Heritage, and Sustainability of Location (subject to the scope of agreement in the topic specific SsoCG for these issues).

District Council's case: EiC & XX of witnesses on issues not dealt with at RT discussions.

Parish Council's case: EiC & XX of witnesses on issues not dealt with at RT discussions.

Appellant's case: EiC & XX of witnesses on issues not dealt with at RT discussions.

Planning Obligation and Conditions: RT discussion.

Closing statements: by the District Council, Parish Council and the Appellant

23. Mr. Clemow advised that he would be available during the first week of the Inquiry (19-22 September) and that another representative of the Parish Council would stand in for him in the second week (26-28 September). Accordingly, the Inspector agreed to programme the RT sessions and the presentation and XX of the Parish Council's case during the first week of the Inquiry.
24. An Inquiry timetable will be issued by the Inspector before the start of the Inquiry. This will be informed by the advocates' and Parish Council's time estimates for each stage of their respective cases. The three parties are expected to work collaboratively on their time estimates and agree a draft timetable for the Inspector to consider. The parties are expected to take no longer than the timings indicated.
25. Copies of opening and closing statements in writing are to be provided prior to presentation.

## **Costs**

26. The parties confirmed that no applications for costs are currently anticipated. The Inspector requested that any such applications should be submitted in writing before the opening of the Inquiry. In order to support an effective and timely planning system, the Inspector also has the ability to initiate an award of costs for unreasonable behaviour, which can include not complying with the prescribed timetables for the submission of evidence and the Inquiry.

## **Other procedural/practical matters**

### Inquiry Venue

27. The District Council confirmed that the Council Chamber has sufficient space for seating up to 40 members of the public, as well as the Inspector and the advocates and witnesses of all three parties. The Council will also make arrangements to live stream the Inquiry so that members of the public unable to attend in person can observe the proceedings. With these arrangements, it was confirmed that the venue should have adequate capacity for those wishing to attend the Inquiry.

28. The District Council confirmed that the following will be available at the Inquiry venue:
- Parking in the Civic Centre car park and nearby public car parks
  - Retiring rooms for the Inspector, main parties and Rule 6 party
  - Microphones for all speakers
  - Wi-Fi for all Inquiry participants
  - Photocopying facilities
29. The District Council will confirm the times during which the Council Chamber is available for the Inquiry for each sitting day.
30. **Post meeting note:** The Inspector also asks the District Council to confirm that the venue will be able to provide: Lockable room(s) for documents to be left overnight; and a reserved parking space for the Inspector on Inquiry sitting days at the venue car park.
31. Although the Inquiry is scheduled to take place as a physical in-person event, the District Council confirmed that it will be able to host the Inquiry virtually over a suitable video-conferencing platform, should this be necessary. The platform will be confirmed by the Council.

Description of Development

32. The change to the description of the proposed development agreed between the Appellant and the District Council, to include self-build and well as custom-build plots, will be explained in a supplementary note to the main SoCG. The title page to the SoCG will also be corrected to make clear it is between the District Council and Appellant.

**Timetable for the submission of documents**

33. The following deadlines for the submission of evidence were discussed:

15 August 2023	Submission of final SoCGs on planning, landscape, heritage, transport sustainability and affordable housing.
22 August 2023	Submission of: <ul style="list-style-type: none"> <li>• all proofs of evidence</li> <li>• agreed suggested planning conditions</li> <li>• core documents list</li> <li>• initial draft planning obligation.</li> </ul>
29 August 2023	Submission of inquiry notification letter.
5 September 2023	Submission of: <ul style="list-style-type: none"> <li>• final draft planning obligation (and relevant office copy entries)</li> <li>• CIL Compliance Statement</li> <li>• any necessary rebuttal proofs</li> <li>• final timings</li> <li>• draft agendas for the RT sessions.</li> </ul>
19 September 2023	Inquiry opens at 10.00 am.

34. The CMC was started at 10.30am and concluded at 12.17pm.

*Mike Hayden*

INSPECTOR  
2 August 2023

## **Annex 1**

### **PARTICIPANTS**

#### **Council**

Spokesperson: Luke Wilcox (*of Counsel at Landmark Chambers*)

Participants: Philip Hughes (*PHD Planners*)  
George Burgess (*St Albans City & District Council*)

#### **Colney Heath Parish Council (Rule 6 Party)**

Main Speaker: John Clemow (*Parish Councillor*)

Attendees: Mike Rawlins (*Advisor to the Parish Council*)

#### **Appellant**

Spokesperson: Isabella Buono (*of Counsel at Landmark Chambers*)

Attendees: Oliver Bell (*Nexus Planning*)  
Carl Housden (*Nexus Planning*)  
Megan Douglas (*Nexus Planning*)  
Joel Merris (*Vistry Group*)  
David Freer (*Vistry Group*)  
Victoria Trotman (*Vistry Group*)  
Annie Gingell (*Tetlow-King*)  
Andy Moger (*Tetlow-King*)  
Clive Self (*CSA Environmental*)  
Gail Stoten (*Pegasus Group*)  
Melanie A'Lee (*RPS Group*)

## **Annex 2**

### **Content and Format of Proofs and Appendices**

#### Content

##### Proofs of evidence **should**:

- focus on the main issues identified, in particular on areas of disagreement;
- be proportionate to the number and complexity of issues and matters that the witness is addressing;
- be concise, precise, relevant and contain facts and expert opinion deriving from witnesses' own professional expertise and experience, and/or local knowledge;
- be prepared with a clear structure that identifies and addresses the main issues within the witness's field of knowledge and avoids repetition;
- focus on what is really necessary to make the case and avoid including unnecessary material, or duplicating material in other documents or another witness's evidence;
- where data is referred to, include that data, and outline any relevant assessment methodology and the assumptions used to support the arguments (unless this material has been previously agreed and is included as part of the statement of common ground);
- where case law is cited in the proof, include the full Court report/transcript reference and cross refer to a copy of the report/transcript which should be included as a core document.

##### Proofs **should not**:

- duplicate information already included in other Inquiry material, such as site description, planning history and the relevant planning policy;
- recite the text of policies referred to elsewhere: the proofs need only identify the relevant policy numbers, with extracts being provided as core documents. Only policies which are needed to understand the argument being put forward and are fundamental to an appraisal of the proposals' merits need be referred to.

#### Format of the proofs and appendices:

- Proofs to be no longer than 3000 words if possible. Where proofs are longer than 1500 words, summaries are to be submitted.
- Pages and paragraphs should be numbered
- Text font and paragraph spacing should be to accessible standards of legibility
- Front covers to proofs and appendices are to be clearly titled, with the name of the witness on the cover.
- Proofs are to be spiral bound in such a way as to be easily opened and read.
- Appendices are to be bound separately.
- Appendices are to be indexed using projecting tabs, labelled and paginated.