

Broxbourne Borough Council

Town and Country Planning Act 1990

Planning Application Reference 07/18/0514/F

Appeal by LW Developments Ltd Cheshunt Football Club, Theobald's Lane, Cheshunt, Herts

Statement of Case Submitted on Behalf of Broxbourne Borough Council

~~23rd April 2021~~

26 July 2021

1 Introduction

1.1 Broxbourne Borough Council's case for seeking refusal of this planning application is drawn primarily from the reasons set out in its decision to refuse the planning application reference 07/18/0514/F, those reasons being as follows:

1. In the absence of any inclusion of affordable housing and contributions to community facilities that would mitigate the impacts of the development, the development fails to deliver a balanced package of planning obligations contrary to Policies PO1 and H2 of the Broxbourne Local Plan 2018-2033
2. Increased levels of motorised traffic associated with the development would exacerbate air quality issues within the A10 air quality management area without adequate mitigation contrary to Policy EQ2 of the Broxbourne Local Plan 2018-2033
3. The development would have an unacceptable impact on the amenity of the residents in Montayne Road bounding the site by way of overlooking and the perception of being overlooked, contrary to Policy EQ1 of the Broxbourne Local Plan 2018-2033
4. The design of the development would have an unacceptable impact on the visual amenity and character of the surrounding area, contrary to Policy DSC1 of the Broxbourne Local Plan 2018-2033

1.2 The appellant has also introduced housing land supply matters into their case to which the Council will present a case in response.

1.3 In addition, part of the appeal site is subject to a partially implemented planning permission to landfill the wider football club site, to create new pitches and a sustainable urban drainage basin (within the appeal site). Outstanding matters relating to that development are pertinent to the appeal.

1.4 The case to be presented by the Council in respect of the foregoing will be as follows:

2. Reason for Refusal 1 – Planning Obligations

2.1 The Council's first reason for having refused the planning application is as follows:

In the absence of any inclusion of affordable housing and contributions to community facilities that would mitigate the impacts of the development, the development fails to deliver a balanced package of planning obligations contrary to Policies PO1 and H2 of the Broxbourne Local Plan 2018-2033

2.2 Broxbourne Council's adopted Local Plan and the associated Broxbourne Transport Strategy and Infrastructure Delivery Plan all set out the range of infrastructure and community facilities required to support the delivery of the Local Plan and its allocations and policies. This infrastructure will not be provided without contributions from the developments it is required to service. Substantial contributions are being made by the Borough's larger developments but little will be made by the Cheshunt FC development. That is based on a position that it is unviable to do so. That viability is dependent upon the football club works (the stadium, the clubhouse and the commercial block) being "enabled" by the housing development.

2.3 Prior to the service of Paul Maidment's second replacement proof of evidence, ~~T~~the Council consider~~eds~~ that the football club works (particularly, the stadium works) ~~are—were~~ disproportionate to the scale of the club and that these ~~are—were~~ set at a scale that maximises returns to the Club at the expense of affordable housing and infrastructure/community planning obligations and the wider public good. As the viability appraisal provides for monies to be used to subsidise the business itself, ~~there is also~~ the Council also considered there was the potential for this to be used to enhance the profits obtained by private investors in the business, which would also be disproportionate.

2.4 Local Plan policy CH7 does not allow for any amount of club facilities or club-related contributions irrespective of their cost and irrespective of their effect on the development's ability to contribute towards infrastructure and community facilities under other policies of the plan. Such an interpretation would be contrary to the plan's approach of requiring development to deliver sustainable development through planning obligations (under policy PO1). Rather, policy CH7 anticipates a balance between residential development, including affordable housing, and the delivery of club facilities. The Council's evidence submitted to the inquiry ~~-will~~ demonstrated why the club's approach is disproportionate by reference to the recent history of Cheshunt FC and comparable football clubs as well as the history of the relationship between the Council and the Club.

2.5(a) Following receipt of Mr Maidment’s replacement proof of evidence on 20 July 2021, which amended the Appellant’s stadium proposals and substantially reduced the level of costs associated with the stadium, the Council is no longer alleging that the stadium costs are disproportionate. While the Council is able to continue to argue that the number of seats proposed by the Appellant is disproportionate (1,300 seats are unnecessary for the club to progress through the leagues), because of the difference between the cost of the Council’s alternative proportionate scheme (based on 700 seats) at £1,016,000 and the Appellant’s revised stadium costs at £1,227,400, the Council considers that inquiry time should not be spent arguing over the issue of disproportionality. Taking this stance will narrow the issues between the parties, reducing the requirement for formal evidence and cross-examination.

2.5(b) It should be noted that, if the Appellant reverts to its earlier schemes and/or costs contained in Mr Maidment’s first proof or seeks to introduce the costs of the second phase of development into the development appraisal, the Council will then continue to assert that the level of costs is disproportionate.

2.5(c) On the assumption that no further changes in the Appellant’s case occur, two issues remain, each of which shows: (a) that affordable housing and other contributions can and should be provided, (b) that the development is not unviable with such contributions and (c) that the Appellant’s position is contrary to policies PO1 and H2 of the Local Plan.

2.5(d) The first is that the Appellant’s case relies upon a residual benchmark profit level of between 15 – 20% profit on gross development value (“PoGDV”). This is the incorrect baseline upon which to judge whether the development is viable and deliverable. Given the Appellant’s willingness to deliver the development at a lower PoGDV - specifically at, variously, 3.5% and 6.09% - a PoGDV at 3.5% or, alternatively, 6.09% should be used to judge the viability of the scheme. The Appellant’s current appraisal shows that the development is capable of delivering 9.45% PoGDV. The difference between this figure and 3.5% or, alternatively, 6.09% should be used to contribute towards s. 106 contributions under the relevant local plan policies.

2.5(e) The second and separate issue is that the Appellant’s stated level of cost increases in the non-stadium costs are over-inflated and that, if an appropriate costs increase is used, consistent with the BCIS general building index, the development would deliver a PoGDV of 17.56% and is capable of delivering affordable housing and other contributions.

2.5(f) Consequently, the Appellant's failure to deliver affordable housing and other contributions to any extent amounts to a failure to deliver a balanced package of planning obligations, contrary to policies PO1 and H2 of the Local Plan.

- 2.5 The Council's case on community versus football club returns and the extent to which those are mutually interdependent will be closely informed by the detailed content of the proposed section 106 agreement. That document is not currently drafted, a draft being awaited from the appellant. In negotiating that agreement, the Council will seek to maximise long-term returns to the community. The Council's ambitions in doing so may not correspond with the ambitions of the Club and it is therefore probable that the S106 agreement will not be finalised and that its contents will be a fundamental matter for examination at the public inquiry. In the absence of that agreement having been negotiated, the Council is unable to provide further detail on this aspect of its case at this stage of proceedings.
- 2.6 The Council correspondingly rejects the basis of the appellant's case that the implementation of the Local Plan policy for this development enables it to proceed without affordable housing or a proportionate financial contribution to planning obligations, contrary to policies PO1 and H2 of the Local Plan.

3 Reason for Refusal 2 – Air Quality

3.1 The Council's second reason for having refused the planning application is as follows:

Increased levels of motorised traffic associated with the development would exacerbate air quality issues within the A10 air quality management area without adequate mitigation contrary to Policy EQ2 of the Broxbourne Local Plan 2018-2033

Background

3.2 Air Quality Management Area [AQMA] no. 6 was designated 05/05/2017, with respect to likely breaches of the 60 µg/m³ Hourly Mean and the 40 µg/m³ Annual Mean objectives for nitrogen dioxide as specified within The Air Quality (England) Regulations 2015 and covers the A10 corridor from immediately to the north of Theobalds Lane to the Turnford interchange junction.

3.3 The Borough of Broxbourne received a legally binding Ministerial Direction on the 22/03/2018 which required it to develop a Targeted Feasibility Study (TFS) and provide the Secretary of State with a document setting out the nature of exceedance on the stretch of A10 concerned and where the exceedance exists to provide recommended measure(s) that would achieve compliance with the Ambient Air Quality Directive in the shortest time possible. The TFS concluded that the pollution along the A10, was far worse than anticipated within the initial PCM Model. The A10 is projected to be compliant in 2025 as opposed to 2019 and therefore has a more persistent exceedance.

Appeal Considerations

3.4 Policy EQ2 of the Broxbourne Local Plan 2018-2033 requires that applicants should consider the impact of their proposals on air quality. Where it is likely that a decline in air quality will occur, applicants should provide details of how the adverse effects will be mitigated in order to comply with national air quality objectives. Where adequate mitigation cannot be provided, development will not normally be permitted.

3.5 This requirement of Policy EQ2 is triggered by the appeal application. Additional motorised traffic will access not only the proposed 163 dwellings but also the enhanced clubhouse facilities and the range of commercial uses envisaged in the western block. The proposed stadium capacity at 2000 persons would be similar to the existing situation but in practical terms, if the Club progresses up the league pyramid as desired by the owners, there is highly likely to be a significant increase in the crowd numbers which attend matches. The outcome

would be multiple uses contributing to greater motorised traffic use of the A10 and passing through the AQMA.

- 3.6 With regard to traffic patterns, in the medium term, the Council's transport strategy is to downgrade the old A10 corridor so that it becomes a green route with extensive cycling facilities and a 20mph speed limit reinforced by traffic calming. This change to the status of the A1170 Crossbrook Street, as the nearest main road to the east accessing Cheshunt Sports Village, is intended to concentrate motor traffic on the A10 and this will result in more vehicles accessing the appeal site from the west via the nearby AQMA or feeding traffic into the AQMA via the roundabout immediately to the south on the A10.
- 3.6 The air quality analysis which accompanied the submission of the appeal scheme was undertaken in September 2016. Since that time, the adjacent planning context has significantly changed with the approval and part implementation of the major data centre and industrial business centre at Maxwell West on the opposite side of the A10. The Council recognises that all developments in its area have the potential to increase motor traffic on the A10, including all the sites with allocations in the recently adopted Local Plan. Indeed, the adopted Policy EQ2 is cognisant of this fact by seeking mitigation proposals from applicants who should provide details of specific mitigation for the effects that their proposed development will generate. No mitigation has been put forward by the appellant and the requirement of Policy EQ2 has not therefore been satisfied.
- 3.7 The air quality technical note supplied as part of the appellant's Statement of Case seeks to deal with the full range of air quality impacts which are likely to result from the proposed development. The Council does not dispute that the appeal site itself is suitable for development in terms of air quality or that the impacts of construction would be not be excessive – matters which in any event are controlled by planning conditions or other legislation.
- 3.8 The appellant in its statement of case notes that its assessment was undertaken some five years ago, but then goes on to state that the baseline year for completion of the development is 2018. This is followed up by their submission that the 2019 air quality data for Broxbourne (in line with a national trend], which was published in 2020, showed a reduction in pollutant concentrations. While air quality has improved more generally nationally due to the more stringent emission regulations enacted under EU regulations, the information on which the appellant bases its case is more than five years old, was not updated for the revised application the subject of this appeal and relies on generalised improvements in air quality

rather than specifically looking at data which is applicable to the appeal site. The completion of development would now be no sooner than 2023, some five years later than set out in the consultant report and there is no commentary on the effects on traffic volumes/patterns resulting from Council transport policies: Covid-19 and likely effects on traffic have not been mentioned, let alone considered in this air quality assessment.

Summary

- 3.9 The Council anticipates providing evidence to the Inquiry that the air quality assessment provided with the current planning appeal is inadequate by reason of it being out of date, does not take into account all relevant matters of detail in respect of developments in the vicinity of the appeal site, ignores changes in the road priorities planned by the Council, relies on generalised data and most crucially, does not meet the terms of the Council's adopted Local Plan Policy EQ2 in that no mitigation is proposed in respect of additional motorised traffic travelling through the nearby Cheshunt AQMA.

4 Reason for Refusal 3 – Residential Amenity

4.1 The Council's third reason for having refused the planning application is as follows:

The development would have an unacceptable impact on the amenity of the residents in Montayne Road bounding the site by way of overlooking and the perception of being overlooked, contrary to Policy EQ1 of the Broxbourne Local Plan 2018-2033

4.2 The proposed development would be on elevated ground, sited to the rear of houses on Montayne Road.

4.3 The concern raised by the Council in relation to loss of amenity is two-fold, relating to both the actual harm caused and that arising from the perception of being overlooked, which would be exacerbated by the higher ground levels. The Council will refer to the submitted site layout plans and section drawings within its case.

4.4 The Council, will within its evidence, refute the Appellant's suggestion that the extant planning permission for the raising of ground levels in association with use as a football pitch would provide a fall-back position that would cause a comparable impact. Use of pitches would be intermittent and, whilst in use, most spectators would logically be facing the pitches, thereby facing away from residential gardens. This would therefore not be comparable with the permanent presence of the residential development together with associated use and movements.

4.5 Whilst the Council intends to provide evidence within the inquiry sessions in relation to this matter, this issue is one that the LPA believe is ultimately best judged on site. It is therefore considered important for the Inspector to give consideration on site – if access can be achieved then ideally this would include visiting the house/garden of a willing neighbouring resident.

5 Reason for Refusal 4 – Visual Amenity and Character

5.1 The Council's fourth reason for having refused the planning application is as follows:

The design of the development would have an unacceptable impact on the visual amenity and character of the surrounding area, contrary to Policy DSC1 of the Broxbourne Local Plan 2018-2033

5.2 The appeal scheme consists of modern, flat-roofed apartments surrounding the new stadium with predominantly three storey, terraced townhouses to the east of the site. The eastern end house of each terrace is reduced in height, as part of the attempt to minimise impact on the houses and bungalows of Montayne Road immediately to the east.

5.3 The appellant has sought in its statement of case to limit the scope of the reason for refusal to the area of housing at the east of the site. The reason for refusal is clear in addressing the entire development as being out of character with the residential designs in the local area and as a consequence, harming visual amenity.

5.4 The Council will contend in its evidence and at the Inquiry that the appeal scheme as conceived is at odds with the established patterns and designs of residential development in the surrounding area.

5.5 The site allocation Policy CH7: Cheshunt Football Club, does not seek to prescribe how the site is designed although it is apparent that apartments would be needed to provide the scale of development outlined in the policy. The notion of attaching these apartments to the stadium has been tested and is understood to work elsewhere but this radical approach to the proposed development of the site has resulted in rectilinear, flat-roofed blocks which are far from characteristic in the local setting. The Council will evidence that the design, height and bulk of these structures are ill-suited to this suburban setting and belong more properly in a built up, city environment.

5.6 The townhouses have been re-designed with shallow pitch roofs rather than the flat roofs proposed as part of the scheme refused in 2017. The red brick may better reflect the materials to be encountered along Montayne Road to the east of the site, but the three-storey townhouse is an alien form of dwelling in the immediate area and the end terrace properties are no more than a design contrivance aimed at placating neighbours immediately to the east of the appeal site. The use of bay windows cannot conceal the incongruous nature of these dwellings in the local context. Materials for cladding can of course be the subject of a suitable

planning condition but seeking to match the materials used by other dwellings in the vicinity would not resolve the overall problematic design.

- 5.7 The Appellant seeks to connect the design of the scheme to the adopted Local Plan Policy CH7 and contends that the scheme has been amended to render it congruent with designs in the local area. Policy CH7 does not seek to control design and using a traditional form by including a bay window does not, in the Council's view, result in building forms reflective of the local townscape.
- 5.8 The Council's evidence will demonstrate that the conception and design of the apartments and houses are out of keeping in the context of the local area and as such fail to comply with Policy DSC1 of the Broxbourne Local Plan 2018-2033.

6 Housing Land Supply

- 6.1 The Council disagrees with the appellant's position that there is not a 5 year land supply. The Council's current published land supply is 5.39 years @ 1st April 2020. This cannot be updated until the latest survey of completions has been undertaken by Hertfordshire County Council (HCC). Those returns are normally made in June.
- 6.2 A number of inaccuracies have been identified in the report by DLP provided with the appellant's statement. In view of the fact that the evidence upon which they are based is largely out of date, as explained further below, these initial comments should not be considered as the Council's final word and may be supplemented during the course of the appeal process, if necessary.
- 6.3 Contrary to the DLP Five Year Supply Assessment (January 2021), the Council does have a five year housing land supply position as set out in Section 3d of the most recent Authority Monitoring Report (AMR) for 2018-20, published at www.broxbourne.gov.uk/amr. No AMR was published during the examination of the Local Plan in 2018-2020 in order to avoid pre-empting the Local Plan inspector's conclusions.
- 6.4 DLP argue at paragraph 3.9 of their report that since the Local Plan was examined under the 2012 Framework, a five year supply could only be demonstrated through a further examination of an annual position statement under the latest Framework. The Council rejects this interpretation. Indeed, if newly adopted Local Plans are not to be afforded appropriate weight, this would completely undermine the credibility of the plan-led system.
- 6.5 As set in Table 2 of the AMR, correct application of the principles established through the Local Plan examination in respect of shortfall, windfall, and a 20% buffer brought forward, establishes a housing land supply of 3582 dwellings, of which 2818 are from Local Plan allocations. This results in an annual requirement of 716 dwellings and a total supply of 5.39 years.
- 6.6 5.39 years is the position as at 1 April 2020. The position will be updated to 1 April 2021 once HCC, which monitors housing completions on behalf of the lower-tier authorities, has completed its survey. This is anticipated to be completed this summer. Whether that will be in time for the Public Inquiry is unknown. It is understood that last year's survey was incomplete due to the Coronavirus lockdown and the new survey may well reveal additional completions, which would result in a reduction in the shortfall to make up in the first five years and a consequent improvement in the supply position.

6.7 Within this calculation, the contribution made by Cheshunt Football allocation is 100 dwellings within the first five years, and 65 dwellings thereafter. This is set out within the housing trajectory published as Appendix H to the AMR. Removal of the contribution would result in a reduction of the supply position from 5.39 to 5.25 years.

6.8 The Council reserves the right to supplement its case should other parties raise additional issues within their statements that require challenge or corroboration. It is also yet to appoint professional witness(es). Those witnesses will address the topic areas set out within the Council's Statement of Case and an addendum statement of case will be submitted if necessary.

7 Drainage and Contamination

7.1 The inquiry parties should be aware that the section 106 is likely to contain provisions in relation to the drainage of the development and the wider lands and potentially to matters relating to the contamination of the site (these also will be matters for condition). It is hoped that these matters will be resolved within the draft section 106 agreement and/or by draft conditions but the Council reserves the right to introduce evidence into the appeal should that not be the case.

8 Possible Rule 6 Parties

8.1 As Hertfordshire County Council is the freeholder of the application site, it would require to be signatory to the S106 alongside the appellant, the Council as local planning authority, and the Council in its capacity as long leaseholder of the site. The County Council is therefore likely to be a Rule 6 party for the purposes of the public inquiry. The Council may also need to present its position as the land owner in its land holding capacity.

9 Conclusion

9.1 The Council's concluding position is that the development is contrary to the Development Plan for the reasons set out within this Statement of Case. No material reasons, including those of housing land supply and the benefits to Cheshunt Football Club, would justify the grant of planning permission. This planning application should be refused.

