

# CHESHUNT SPORTS VILLAGE

## APPELLANT'S OPENING STATEMENT & LIST OF APPEARANCES

### List of appearances

1. **Zack Simons**, of counsel, instructed by **Fred Quartermain** of Thrings LLP, will call:
  - (i) **Roland Bolton** BSc (Hons) MRTPI, Senior Director at DLP Planning Ltd (housing land supply).
  - (ii) **Paul Maidment**, Associate Director at Savills (viability).
  - (iii) ***Nick Clark**, Partner at Madlins (build costs).*
  - (iv) **Dean Williamson** MSc PGDip MRICS, Chairman of Cheshunt Football Club and Director of LW Developments (the Appellant's aspirations).
  - (v) **Tim Waller** BA(Hons) MSc PgDip MRTPI, Director of Waller Planning (living conditions, character and appearance, planning policy and balance).

## Opening

2. The Cheshunt Football Club is a treasured local institution. But its facilities are on their knees and redevelopment is urgently required. The Council has long recognised and supported the principle of that redevelopment, and they've also supported the proposition in this scheme: i.e. that the much-needed redevelopment of the club is paid for by new housing.
3. The Council released our site from the Green Belt in June 2020 specifically to allow **this scheme** to come forward to achieve that purpose. We have a bespoke, site- and scheme-specific allocation policy which supports **exactly** the development which is the subject of this appeal.<sup>1</sup> The Council's officers have now recommended that permission should be granted not just once,<sup>2</sup> or twice,<sup>3</sup> but three times.<sup>4</sup> It also has the powerful support of Sport England.<sup>5</sup> Of course, the major planning hurdle before the new local plan was adopted was national Green Belt policy, but that point has fallen away. The scale of the scheme has been reduced considerably. Its design has changed to suit the Council's preferences.<sup>6</sup> Even now, the Council **agrees** that the appeal scheme **accords** with our allocation policy.<sup>7</sup>
4. Members' decision to refuse planning permission against all of their professional and technical advice was many things, but it certainly wasn't plan-led.

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<sup>1</sup> CD5.1 - Broxbourne Local Plan, policy CH7.

<sup>2</sup> CD3.1 – July 2017 OR.

<sup>3</sup> CD3.3 – 2018 OR.

<sup>4</sup> CD3.5 – November 2020 OR.

<sup>5</sup> Tim Waller's Appendix 2.

<sup>6</sup> See Tim Waller's proof at §3.64.

<sup>7</sup> SoCG, §5.2.

5. Members' refusal only gets more puzzling when you appreciate that this Council's failing the housing delivery test means that it **agrees** that the most important development plan policies for deciding this appeal are out of date.<sup>8</sup> The Council also now **agrees**<sup>9</sup> - in a departure from the position set out in its latest AMR – that it cannot demonstrate a 5 year supply of housing land within the meaning of national policy and guidance. All of which means that the Council **agrees** that you should allow this appeal unless any adverse impacts both **significantly and demonstrably** outweigh the scheme's benefits.<sup>10</sup>

6. What are those adverse impacts said to be?

7. Members raised an allegation about air quality<sup>11</sup> but that's (quite rightly) no longer pursued.

8. They then said – against all of their professional and technical advice – said that our scheme's at fault for not delivering affordable housing. A very strange position to find ourselves in when:

(i) Officers confirmed that:

“The development of the stadium, the football club facilities and the community / commercial block are not inherently viable in their own right. These would not therefore take place in the absence of a substantial housing development to pay for those facilities. The enabling development of the wider complex has therefore been accepted by the Council through the allocation of this site within the draft Local Plan. The conclusion drawn from the viability assessment is that should this development proceed, affordable housing and other obligations cannot be afforded.”<sup>12</sup>

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<sup>8</sup> FN8 and §11(d) NPPF.

<sup>9</sup> Martin Paine Proof, §10.

<sup>10</sup> Jennifer Thompson's proof at section §12.4.

<sup>11</sup> RfR2.

<sup>12</sup> CD3.5 – November 2020 OR, at §8.40.

- (ii) The conclusions of that viability assessment were independently verified by none other than Gerry Wade<sup>13</sup> (the same witness the Council now calls to tell us why our viability assessment is – apparently – so very flawed).
- (iii) But even taking all of Mr Wade’s evidence at its very highest,<sup>14</sup> he *still* ends up showing that our scheme cannot viably deliver any affordable housing (because the profit he shows *without any affordable housing* falls right into the middle of what the Government suggest is an appropriate range).
- (iv) Then, as of literally *yesterday*, the key premise of the Council’s 1<sup>st</sup> reason for refusal<sup>15</sup> – that the scale of our scheme is said not to be “*proportionate*” – has been ditched.<sup>16</sup>
- (v) And even if the all current predictions are proven wrong, and the scheme ends up being able to make some level of contribution to affordable housing, the Council can receive a contribution through the open-book claw-back provisions built into the planning obligation. And its Head of Planning explained to members why all of that amounted to a reasonable position for the Council to take.<sup>17</sup> Which makes most of the arguments about e.g. build costs academic. Because even if the Council ends up being right that the costs are lower (which we obviously don’t accept), then it will benefit from that in the end through the profit sharing arrangements in the s.106.

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<sup>13</sup> CD1.39.

<sup>14</sup> Gerry Wade’s rebuttal, Appendices 1 and 2.

<sup>15</sup> See e.g. §2.3 of its original Statement of Case.

<sup>16</sup> See the Council’s 26.7.21 amended Statement of Case.

<sup>17</sup> CD3.5 – November 2020 OR, page A33 – “briefing note”.

- (vi) What the evidence shows is that to make even a limited contribution to affordable housing, you'd need to remove **all of the footballing facilities**.<sup>18</sup> A nonsense, obviously, because providing those facilities is the whole point of the allocation policy.
9. Next it's said that the scheme would unacceptably impact the amenity of the residents of Montayne Road. This point was dealt with in detail by Council officers<sup>19</sup> who confirmed – correctly, as Mr Waller shows – that there won't be **any** materially adverse impacts on those residents, and that the scheme complies with the Council's SPG on this topic.<sup>20</sup>
10. And finally, it's said our scheme will unacceptably impact on local character. Another surprising finding when:
- (i) No point is taken on the design of the football or commercial facilities. And Ms Thompson agrees that the design of our homes is satisfactory.<sup>21</sup>
  - (ii) Officers confirmed that our scheme “*represents a **high quality** standard of layout and design that would contribute to the character and appearance of the local area*”.<sup>22</sup>
  - (iii) As you will see, sir, this area has a mixed character with built form of a wide range of periods and styles. Our scheme's design is the product of years of discussion and collaboration with the Council. It responds very well to its context and it would, as Mr Waller explains, make an excellent contribution to the character of this area.

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<sup>18</sup> See 4<sup>th</sup> column in Mr Maidment's table 4.1 in his updated proof.

<sup>19</sup> CD3.5 – November 2020 OR, §8.18, page A22.

<sup>20</sup> CD5.3.

<sup>21</sup> See §1.9 and §1.11 of her rebuttal.

<sup>22</sup> CD3.5 – November 2020 OR, §8.16, page A21.

11. On the other side of the tilted balance, we have the scheme's **benefits**. And they will be profound, including:
- (i) Achieving the “*first class sporting, leisure, community and business facility for the Borough*”<sup>23</sup> which is required by this local plan and supported by Sport England.
  - (ii) It will give the football club – an enormously valuable local institution – a viable future, a sustainable financial model, a path forward to achieve its aspirations of promotion and the chance to increase its range of sport, education and employment programmes which serve this community.
  - (iii) Delivering 163 homes in a Borough which desperately needs them.
  - (iv) Delivering a range of new local facilities alongside a large number of permanent new jobs – catalysing much-needed economic activity.
12. In the end, the adverse impacts (if any) of allowing the appeal would **not** significantly and demonstrably outweigh the benefits of doing so.
13. If you agree then the Framework tells us that the appeal is to be allowed.
14. To put that into the context of section 38(6) of the Planning and Compulsory Purchase Act 2004, the determination which would accord with the development plan, when read as a whole, would be to allow the appeal and if you agree with that, we contend that material considerations (most especially the benefits of providing new facilities for the football club, delivering 163 homes, and the application of the tilted balance in the Framework) far from indicating otherwise, lend support to the grant of planning permission. If contrary to our case, you conclude that the determination which would accord with the development plan,

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<sup>23</sup> Tim Waller's Appendix 1, p.50, §122(a).

when read as a whole, would be to dismiss the appeal, then we contend those material considerations indicate otherwise such that the appeal should be allowed despite this.

15. However one gets there, the outcome should be that the appeal is allowed.

ZACK SIMONS

Landmark Chambers

180 Fleet Street

London EC4A 2HG

**27<sup>th</sup> JULY 2021**