

Broxbourne Borough Council

Town and County Planning Act 1990

Planning Application Reference 07/190200/F

Appeal by Countryside Properties (UK) Limited and Landowners site at:
Fairmead, 90 Cuffley Hill, Goffs Oak. Hertfordshire EN7 5EX

Statement of Case Submitted on Behalf of Broxbourne Borough Council

22nd July 2022

1 Introduction

1.1 The application giving rise to this appeal was received with sufficient particulars on 4th March 2019 and following a number of revisions and further submissions, refused with the Decision issued on 9th February 2022.

1.2 The application is a full application for the erection of 58 dwellings (12no. 2 bed, 14no.3 bed, 22no. 4 bed, 5no. 5 bed and 5no. 1 bed) with associated infrastructure.

1.3 Broxbourne Borough Council's case for seeking refusal of this planning application is drawn primarily from the reason set out in its decision to refuse the planning application reference 07/19/0200/F, the reason being as follows:

The proposal would over-develop the site to the detriment of its semi-rural character. As a result of the quantum of development, the proposal is incapable of guaranteeing delivery of a net gain in biodiversity, as secured by an additional buffer. As such, the proposal would be contrary to policies DSC1 and NEB1 of the Broxbourne Local Plan and to the aims and objectives of paragraph 174 of the NPPF 2021 which seeks to conserve and enhance the natural environment and promote biodiversity.

1.4 There are two limbs to the reason for refusal.

- The first relates to the impact of the proposal, and in particular the overdevelopment of the site, on the character of the site in its context.
- The second relates to the impact of the overdevelopment of the site on the biodiversity net gains which the proposal can secure.

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

- Consideration of the local character and context for the development and the impacts arising as a result of the proposals.
- Consideration of the quantum of development, and how this undermines the ability of the proposals to secure a deliverable biodiversity net gain on site.

1.6 It has been agreed that this Appeal should proceed by Public Inquiry.

2 Location and description of the appeal site

2.1 The roughly rectangular application site forms part of the strategic site allocation in Goffs Oak under the terms of Local Plan Policy GO5, being located to the north of Cuffley Hill and to the west of Robinson Avenue/Millcrest Road. The site area extends to just under 3.71ha and formerly contained two horticultural businesses. With the adoption of the Local Plan, the site was removed from the Green Belt. It currently takes its main vehicular access to Fairmead Nursery from Cuffley Hill to the western side of no.90 which is set back from the building line. A second access to Rosemead Nursery from the nearby service road, which gives access to 90a to 100 Cuffley Hill, has been long disused and is

overgrown. There are dwellings along the frontage on Cuffley Hill while houses back onto the site from Robinson Avenue and Millcrest Road to the east. To the west is the former CG Edwards landscaping site which has been developed for 23 detached dwellings which back onto the application site and are approaching completion. The land was previously home to two nurseries with Rosemead now indicated by some masonry and hard surfacing. Fairmead which lay to the east of the site is heavily overgrown but represented by low-quality storage/packing buildings which are derelict and abandoned equipment buried in the undergrowth.

2.2 There is self-set vegetation along the garden boundary to the east and along the boundary with the adjoining housing site to the west. There is mature woodland to the northern part of the site and other mature, protected trees to the south-eastern part of the site. The land falls to the west with a notable gradient in the north-western corner of the site. The site is located within flood zone 1 with a low probability of fluvial flooding. There is a drainage ditch close to the northern boundary which runs east-west and eventually connects through the woodland to Cuffley Brook. The site is subject to a Tree Preservation Order No.2 2017 LT6-290 which covers all the mature trees of quality on the site.

2.3 Cuffley Hill is a classified 'B' road [B156] subject to a 30mph speed limit where it passes the application site.

3. Planning history

3.1 There was a series of planning applications for residential development on this site in the 1970s, all of which were refused. These applications culminated in an outline residential scheme set out below:

Planning reference 7/248/1990 – application for outline residential development – refused permission 17th July 1990 on Green Belt grounds, loss of rural outlook and highway access/safety

4 Relevant Planning Policies and documents

4.1 The following policies of the Borough of Broxbourne Local Plan (2018-2033) are relevant to consideration of this application:

GO5	North of Cuffley Hill
DSC1	General Design Principles
DSC4	Management and Maintenance
EQ1	Residential and Environmental Quality
EQ5	Contaminated Land
H2	Affordable Housing

INF8	Local Cycle and Walking Infrastructure
NEB1	General Strategy for Biodiversity
NEB3	Green Infrastructure
NEB4	Landscaping and Biodiversity in New Developments
ORC1	New Open Space, Leisure, Sport and Recreational Facilities
P01	Planning Obligations
TM1	Sustainable Transport
TM2	Transport and New Development
TM3	Access and Servicing
TM4	Electric Vehicle Charging Points
TM5	Parking Guidelines
W1	Improving the Quality of the Environment
W2	Water Quality
W3	Water Efficiency
W4	SuDS
W5	Flood Risk

- 4.2 The Borough-Wide Supplementary Planning Guidance (SPG) (August 2004) (updated in 2013) is relevant in this case as it provides design guidance for all forms of development.
- 4.3 The Borough-Wide Waste Supplementary Planning Guidance (August 2019) provides the details for the provision of refuse and recycling at residential and commercial properties, it is therefore relevant for all forms of development.
- 4.4 The National Planning Policy Framework (NPPF) July 2021 also needs to be considered as it sets out the Government's planning policies for England and how these are expected to be applied. The associated National Planning Policy Guidance is also relevant.
- 4.5 The Environment Act 2021 also bears a relevance on this Appeal (though it is accepted that the BNG provisions of the Act are not yet in force and do not apply directly to this application).

5

Reason for Refusal, first limb - Overdevelopment

- 5.1 The Council's case on the first part of the reason for refusal is as follows.
- 5.2 The Local Plan sets out the design expectations and criteria for new development in Policy DSC1: General Design Principles, and this is explained further in the supporting text for the policy. DSC1 includes a requirement enhance local character and distinctiveness.
- 5.3 The Council's expectation for the site was established by way of the allocation of the site in the Local Plan (Policy GO5). The allocation gives an indicative quantum for the site of 26 homes.

- 5.4 The quantum of development proposed by the Appellant is 58 homes. That more than doubles the quantum indicated by the site allocation.
- 5.5 The Council will show that the quantum proposed will have adverse impacts on the character of the site, the surrounding countryside and attached village of Goffs Oak. Whilst some uplift in numbers from allocation can be anticipated as a result of design constraints, the uplift here is very significantly beyond that anticipated by the allocation, even taking design variations into account.
- 5.6 The denser scheme contrasts with the existing edge of settlement development, materially alters and harms the context in which the village is viewed from the wider landscape and alters the character of the settlement by providing denser more urban character on the outskirts. The Council will show that these are the harms which the indicative quantum of development in Policy GO5 is designed to avoid.
- 5.7 The Council will show that, in consequence of the overdevelopment of the site, the layout is more urban in nature than anticipated in or appropriate for a village outskirts location. A consequence of this layout is a greater sense of enclosure of public realm.
- 5.8 At the Inquiry the Council will provide evidence to demonstrate the above points, and the resultant conflict with Policy DSC1.

Reason for refusal second limb: biodiversity net gain

- 5.9 Policy NEB1: General Strategy for biodiversity and associated paragraph 174 of the NPPF seeks protection and enhancement of the countryside. In particular, those policies require developments to secure biodiversity net gain wherever possible.
- 5.10 The Council's case is that the proposals are not only an overdevelopment of the site, but that this overdevelopment diminishes the ability to deliver a meaningful biodiversity gain on site. The application indicated biodiversity net gain at only 1% (with no buffer) is likely to be reduced and eroded through delivery, as a result (for instance) of construction alterations or occupiers' choices within their own curtilages.
- 5.11 The Council will show in evidence that, as a matter of policy (by reference in particular to the approach to be adopted under the Environment Act 2021 when it enters force, and to the manner of operation and the margins of error of the metric), and in the circumstances the case, the 1% net gain indicated by the metric does not provide a reliable basis for concluding that the proposal will secure a net gain. As an environmental matter to which the precautionary principle should apply, that risk of erosion is not acceptable. This is a further element of the harm caused by overdevelopment of the site in excess of the indicative quantum in the allocation.

Other Matters

- 5.12 The Appellant has indicated in its Statement of Case the intention to include evidence on housing land supply matters. The extent or meaning appears tied to the 5th issue raised in respect of planning balance, and the Appellant will be seeking to demonstrate the Council does not have a 5-year housing land supply and thus seeks to apply the tilted balance where the housing delivery test is not met.
- 5.13 The Council is not contesting matters related to the five year housing land supply and will not be providing any further evidence. It is accepted that the Council does not

pass the Housing Delivery Test, so that the NPPF para 11(d)(ii) tilted balance is engaged irrespective of the land supply position.

6 Summary

6.1 To conclude, as set out within this Statement of Case, the Council considers that the Appeal proposal does not comply with the Development Plan which is compliant with the aims and objections of the NPPF. On this basis the Inspector is respectfully requested to dismiss the Appeal.

6.2 Without prejudice to the above, should the Inspector determine that planning permission should be granted, then the Council requests that the conditions set out below are given consideration (further detail of these conditions is set out in the officers' report to committee). The Council will seek to agree a list of conditions with the Appellant in advance of the inquiry.

7 Suggested Conditions

7.1 Should the Inspector be minded to allow the Appeal, the Council would seek the following conditions are imposed;

1. Time limit
2. Development in accordance with approved plans
3. Details and samples of external facing, roofing materials
4. Details and samples of surfacing materials
5. Details of fencing boundary treatments.
6. Notwithstanding the submitted scheme, details of a comprehensive landscaping scheme for the site including tree retention/protection, play area/equipment and the areas around the drainage basins.
7. Surface water drainage to be implemented in accordance with the FRA
8. Submission of full drainage details including the drainage ditch, SUDS, pipe runs and drainage calculations
9. Ground investigation and remediation to include asbestos
10. Details of site levels to be agreed prior to commencement.
11. Details of refuse/recycling storage and collection
12. Details of foul drainage to be submitted and approved prior to the commencement of development
13. Completion of all roads and parking before first occupation
14. Retention of all parking spaces and garaging for domestic use
15. Closure of redundant vehicle access
16. Details of scheme to install EV charging facilities and installation prior to first occupation
17. Full details of the new road access junction to be submitted for approval – including pedestrian facilities
18. Relocation and upgrade of the two closest bus stops on Cuffley Hill
19. Details of new pedestrian crossing point on Cuffley Hill
20. Details of installation of new dropped kerbs at Robinson Ave and the Meadway
21. Full details of junctions of access roads and main spine road
22. Revision, implementation and retention of the Green Travel Plan
23. Full details of external lighting to be installed
24. Details of digital infrastructure to be provided on first occupation
25. Comprehensive site management and maintenance plan
26. Construction Environmental Management Plan including:

- Hours for Construction
 - Hours for deliveries
 - Measures to reduce dust and dirt within the development
 - Space within the site for the storage of materials and parking for site operatives and visitors
 - Details of Tree Protection Measures
 - Details of site hoardings
27. Removal of permitted development rights [Class A to E]
28. Pre-commencement protected species surveys
29. *Development shall not commence until a landscape and ecological management plan (LEMP) has been submitted to, and approved in writing by, the local planning authority. The content of the LEMP shall ensure the delivery of the agreed number of habitat and hedgerow units as a minimum (15.38 habitat units, 0.08 hedgerow units) to achieve a net gain in biodiversity and include the following;*
- a) Description and evaluation of features to be managed
 - b) Aims and objectives of management
 - c) Appropriate management actions for achieving target condition for habitats as described in the approved metric.
 - d) Preparation of a work schedule) including a 30 year work plan capable of being rolled forward in perpetuity), clearly marked on plans.
 - e) Details of the body or organisation responsible for implementation of the plan.
 - f) Ongoing monitoring plan and remedial measures to ensure habitat condition targets are met.
 - g) Details of species selected to achieve target habitat conditions as identified in approved metric, definitively stated and marked on plans.
 - h) Details of make, model, location of 24 integrated bat boxes, and hedgehog highways between all garden barriers.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery.

The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The approved plan will be implemented in accordance with the approved details.