



APPEAL STATEMENT OF CASE

Site: Land North of Cuffley Hill
Goffs Oak
Hertfordshire
EN7 5EX

For: Countryside Properties (UK) Limited

Project Ref: LF/17086_SoC

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1.0 **INTRODUCTION**

1.1 This Statement of Case has been prepared on behalf of Countryside Properties Ltd and the owners of the land (the Appellant). It relates to a Planning Appeal made pursuant to Section 78 of the Town and Country Planning Act 1990, in respect of Land North of Cuffley Hill, Goffs Oak (the Appeal Site).

1.2 The Appeal has been lodged following the refusal of full planning permission (LPA ref: 07/19/0200/F) by the Borough of Broxbourne (the Local Planning Authority) on the 9 February 2022 for:

“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 The application was reported to the Planning Committee meeting on the 25 January 2022 with an Officer’s recommendation of approval.

1.4 There were no technical objections to the application and the Committee Report concluded:

“7.3 The principle of residential development is considered to be acceptable under the terms of Policy GO5.

7.4 As amended the scheme is considered to offer an attractive layout which makes good use of the land. The scheme is considered to be in accordance with adopted Policy DSC1.

7.16 There would be habitat improvements via new hedgerows, significant levels of additional tree planting, installation of two drainage ponds in the new open space and by widespread installation of bird and bat

boxes. This would have achieved a level which would result in a net gain of 1% in biodiversity overall. While this is a marginal uplift, it is in line with the methodology set out by DEFRA and would meet the terms of Policy NEB1 by generating a net gain. Subject to the actions set out above, the scheme is considered to be acceptable in accordance with Policies NEB1 and NEB4.

9.1 The application site is allocated for residential development in the Local Plan as the larger component of adjoining land to the north of Cuffley Hill under the terms of Policy GO5. The scheme has been amended as the applicant has sought to meet the main criteria set out in above policy to achieve 40% affordable housing, public open space and retention of the protected trees. The agenda report indicates that there is no technical shortfall in the proposal in terms of the sizes of dwellings, their plots or the relationships between them in terms of privacy and outlook. There would be no material impact on amenity for nearby residents. The design of the houses would not be out of place in Goffs Oak and has the potential to produce attractive façade designs as were approved in the scheme which is under construction to the south of Goffs Lane. There is no substantive outstanding technical issue to resolve in this scheme: the site and views from neighbouring houses would change fundamentally as a result of any residential scheme built under this Local Plan allocation for housing.

9.2 Officers understand and fully appreciate that there is disquiet around the application site and in Goffs Oak more generally over the amount of development which is taking place in the area and which will be on going for several years as all the Local Plan housing sites come on stream. The Local Plan does of course include a programme of improvements to the village centre including community facilities, a new village green and remodelling of the main junction to ease congestion. If approved, the

scheme would deliver substantial financial benefits towards social and physical infrastructure in the locality and across to Cheshunt. The concerns of neighbours are acknowledged, but objection cannot be sustained to the principle of development. The number of dwellings proposed is more than double the amount estimated in the Local Plan policy but the density of development would be less than 16 dwellings per hectare: this is partly a function of the amount of developable area on the site but is low density nonetheless. There would be an area of public open space to the northern part of the site, there would be 40% affordable provision, all of which would be houses. The section above on ecology sets out the impact on natural vegetation and in particular the TPO protected mature trees. There would be a modest gain in biodiversity from the development. The Transport Statement contends that the scheme would not have a significant impact on the local highway network, a position accepted by the County Council as local highway authority. The historic refusal on highways grounds is noted but the site is allocated in the context of up-to-date traffic modelling and the access is considered to be acceptable. The overall effect of sites being developed in Goffs Oak increase pressures on the road system but the Local Plan proposes measures to address network pinch points and local congestion. This proposal would contribute financially to these highway works. The scheme is recommended for approval subject to the conditions and legal agreement as set out below.”

- 1.5 Members voted to refuse the application, contrary to the Officer’s recommendation and a decision notice was issued on the 9 February 2022 with the following single reason for refusal:

“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.”

- 1.6 This Statement of Case seeks to address the main issues raised in this single reason for refusal, as it is anticipated that these points will remain in dispute between the principal parties. However, the Appellant reserves the right to add to and/or amend its case, once the Local Planning Authority’s position has been clarified and confirmed.

- 1.7 The Appellant will seek to engage with the Local Planning Authority to narrow down the issues that remain in dispute through Statements of Common Ground (SoCG).

2.0 **THE APPEAL SITE LOCATION AND DESCRIPTION**

2.1 The appeal site forms part of a wider site that is allocated for residential development under Policy GO5 of the adopted Broxbourne Local Plan 2018-2033 (adopted June 2020). The principle of residential development is established on the site.

2.2 The allocation is formed of three sites, this appeal site is comprised of the former Fairmead and Rosemead Nurseries.

2.3 Extending to approximately 3.1ha, the site is located north of Cuffley Hill and to the west of Robinson Avenue/Millcrest Road. To the west of the appeal site is the remainder of the site allocation, the former CG Edwards site, upon which residential development is now well underway. To the north of the site are further residential gardens (extending from properties fronting Millcrest Road) and a dense tree belt, beyond which are agricultural fields.

2.4 The site is currently accessed via the main vehicular access to Fairmead Nursery from Cuffley Hill, to the west of No. 90 which is set back from the building line fronting Cuffley Hill. Rosemead Nursery provides a second access from the service road which provides access to Nos. 90a to 100 Cuffley Hill. This second access point has been long disused and is overgrown.

2.5 The site is set to the rear of properties fronting Cuffley Hill to the south and dwellings fronting Robinson Avenue to the east. By the time of any Inquiry being held, it is likely that properties on the former CG Edwards site will also be occupied.

2.6 The site is comprised of self-set vegetation along the garden boundary to the east and development site to the west. There is mature woodland to the northern part of the site and other mature, protected trees within the south-

- eastern part of the site. The land falls to the west with a notable gradient in the south-western corner of the site.
- 2.7 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.
- 2.8 The site is subject to a Tree Preservation Order (No. 2 2017 LT6-290) which covers the copse, significant individual and groups of trees on site.
- 2.9 Cuffley Hill is a classified 'B' road (B156) and is subject to a 30mph speed limit where it passes the appeal site.

3.0 **THE APPEAL PROPOSALS**

3.1 The Planning Application that is now the subject of this appeal was submitted to the Borough of Broxbourne on 4 March 2019. The description of Development was as follows:

“Erection of 58 dwellings (12no. 2 bed 14no. 3 bed 22no. 4 bed 5no. 5 bed and 5no. 1 bed) with associated infrastructure.”

3.2 The application was submitted in full.

3.3 Following extensive discussions with the Local Planning Authority the proposal was amended and a revised scheme (under the same application reference) submitted in August 2021.

3.4 The revised scheme removed the originally proposed flat block and amended the dwelling mix to the following:

No. Beds	No. Dwellings
2-Bed	14
3-Bed	9
4-Bed	32
5-Bed	3

3.5 The revised description of the development as reported in the Committee report for the application is therefore:

“Erection of 58 dwellings (14no. 2 bed, 9no. 3 bed, 32no. 4 bed and 3no. 5 bed) with associated infrastructure.”

3.6 The scheme consists of detached family housing, semi-detached properties and terraced dwellings of two to two and half storeys. Most properties benefit from on-plot parking, with frontage parking for the terraced properties.

3.7 The scheme includes 40% (23 dwellings) affordable housing, in accordance with policy H2, which offers a significant public benefit in a Borough where the presumption in favour of sustainable development applies. The Council's Affordable Housing Strategy 2020-2025 identifies that there are around 1,400 households on the Council's housing register and that the affordable housing supply in the Borough is low compared to the level of demand. The strategy states the lack of supply of affordable housing has put pressure on the demand for temporary accommodation with the Council accommodating around 300 households in temporary accommodation. It also states the evidence base demonstrates the need for more homes at more affordable prices within the Borough to meet local housing need. The high need for new affordable housing in the Borough is also acknowledge in the Council's Review of Objectively Assessed Housing need (2016), which states:

"An assessment of affordable housing need has been undertaken which is compliant with Government guidance to identify whether there is a shortfall or surplus of affordable housing in Broxbourne. This has estimated current affordable housing need in 2014 of between 696 and 967 households, excluding existing social housing tenants where they would release a home for another household in need. The affordable housing needs model then looked at the balance between needs arising and the supply of affordable housing. Each year an estimated 406 to 596 households are expected to fall into affordable housing need and 215 properties are expected to come up for relet.

Overall, in the period from 2014 to 2031 a net deficit of 232-438 affordable homes per annum is identified.

There is thus a requirement for new affordable housing in the Borough and the Council is justified in seeking to secure additional affordable housing.”

- 3.8 There are significant areas of green space retained within the centre and northern parts of the site which would also benefit from a play area and two SUDs basins, this area would extend to 8533m², 23% of the overall site area.
- 3.9 The revised scheme seeks to retain all significant Protected trees on site, there will be a loss of 6 protected trees as a result of the proposal. All these trees are of a lower quality, with a C categorisation. As can be seen on the submitted Landscape Strategy Layout ref: C00185_CSP_EL_XX_DR_L_X001 PL12, over 100 replacement trees are proposed to mitigate against any loss, such that the scheme ensures a well-treed site is retained.
- 3.10 Access into the site is proposed via a re-modelled access point adjacent to no. 90a Cuffley Hill. The service road would be re-configured to create a direct access onto Cuffley Hill with the existing service road becoming spurs accessed via the new connection.

4.0 **PLANNING HISTORY**

4.1 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.

4.2 It is understood that this application was not subject to an appeal. It was also submitted prior to the adoption of the Local Plan in 2020, which now allocates the site for residential development. The planning history for the site therefore has little relevance to this appeal.

5.0 **PLANNING POLICY**

5.1 The planning policies and guidance that are of most relevance to this appeal are set out in the SoCG. It is anticipated that the main planning policy issues will be agreed with the Local Planning Authority prior to the opening of the Public Inquiry.

National Guidance

5.2 The Appellant will refer to national policies and guidance set out in the revised National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG).

The Development Plan

5.3 The Appellant will explain that the Development Plan for the area is comprised of the Broxbourne Local Plan 2018-2033.

Supplementary Planning Guidance

5.4 Where relevant, reference will be made to supplementary planning guidance, documents and advice.

Other Documents

5.5 Where relevant, reference will be made to relevant legislation including the Town and Country Planning Act 1990 and the Environment Act 2021.

6.0 **APPEAL PROCEDURE AND PRESENTATION OF EVIDENCE**

6.1 The Appellant considers that a **Public Inquiry** would be the most appropriate appeal procedure in this case.

6.2 While it is hoped that the issues in dispute can be narrowed down in Statements(s) of Common Ground (SoCG), given the scale and nature of the development proposal and that the Local Planning Authority refused the application, contrary to Officer's recommendation, it is anticipated that complex issues may remain unresolved.

6.3 These include matters of planning policy, Biodiversity Net Gain and associated legislation and policy, as well as urban design matters. These topics will require the submission and examination of detailed evidence.

6.4 Expanding on the above, the Planning Committee did not accept the professional advice of their Officers and the relevant consultees in this matter. It is unclear what evidence the Local Planning Authority intends to present to justify that departure from professional advice given to members which led them to withhold planning permission, contrary to the development plan, but this will no doubt require the presentation and examination of that detailed evidence.

6.5 It will also be necessary to consider the lawfulness of the financial contributions that are being sought in relation to education, highways and other matters, which will involve an in-depth analysis of the evidence behind any CIL Justification. The decision on this matter alone has the potential for wide ranging implications for other sites within Broxbourne.

6.6 The issues give rise to complex legal and planning policy considerations for the decision maker. Respectfully, the issues should be tested through formal

questioning of Expert Witnesses by an Advocate, which would not be permissible under the Informal Hearing procedure. It is also anticipated that there will be a need to make legal submissions in respect of development plan compliance, and biodiversity net gain which again are best dealt with through the Inquiry procedure.

- 6.7 This is a case that has attracted public interest and it is unlikely to conclude in 1 or 2 days, and thus a public inquiry would be most appropriate.
- 6.8 The Appellant considers that **4 days** would be required, depending on the extent of evidence advanced by the Local Planning Authority and the extent of public involvement in the process, and to include a site visit.

7.0 **PROOFS OF EVIDENCE**

7.1 On the basis that the Planning Inspectorate agrees to the appeal being dealt with under the Public Inquiry procedure, the Appellant will prepare written evidence in advance of the Inquiry to address the Reason for Refusal and the financial contributions sought.

7.2 The evidence will also consider any other valid issues raised by Third Party objectors or by statutory consultees.

7.3 At this stage it is anticipated that evidence will be presented as follows:

Urban Design

- Trevor Wright

Ecology and Biodiversity

- Andrew Pankhurst

Planning Policy and Housing Land Supply Matters

- Elizabeth Fitzgerald

7.4 The Appellant reserves the right to introduce additional witnesses as necessary to address any other issues that may be raised by the Local Planning Authority and/or any other Third Parties.

8.0 **CASE FOR THE APPELLANT**

8.1 A draft Statement of Common Ground (SoCG) has been submitted as part of the appeal to help narrow down the issues that are likely to remain in dispute.

8.2 It is anticipated that the final SoCG will record that the Appellant and the Local Planning Authority are in agreement on several issues under the following headings:

- Form of Planning Application and Supporting Material
- Environmental Impact Assessment
- The Principle of Development
- Housing Land Supply
- Housing Delivery
- Development Plan Designations
- Quantum of Development
- Access and Highways
- Landscape and Visual
- Design and Layout
- Residential Amenity
- Noise
- Air Quality
- Minerals and Waste
- Housing Mix
- Affordable Housing
- Drainage and Flood Risk
- Built Heritage
- Archaeology
- Open Space, Outdoor Recreation and Sports Facilities.
- Trees
- Other Infrastructure.

Main Issues

8.3 It is unclear at this time as to whether the Local Planning Authority intend to contest this appeal and if so, the nature of the grounds upon which they intend to rely.

8.4 The Appellant therefore sets out the main issues it anticipates that the appeal will need to address. The Appellant reserves the right to expand upon their case to address any other issues that may evolve. The Appellant also reserves the right to add to and amend its statement of case if the Inspectorate does not accept that the appeal should be heard by way of public inquiry, and would request time to do that.

8.5 The following are likely to be the main issues:

Issue 1 The Principle of Development

Issue 2 Design Principles

Issue 3 Biodiversity Net Gain

Issue 4 Planning Contributions and CIL

Issue 5 The Planning Balance

Issue 1: The Principle of Development

8.6 This should not be an issue in dispute between the principal parties, but it nonetheless establishes an important background context for the appeal.

8.7 The Appellant will explain that the appeal proposals accord with the Development Plan when it is read as a whole.

8.8 It will be highlighted that the site is allocated for housing as part of an adopted Development Plan and therefore the principle of development is already firmly established through the plan making process.

8.9 It will be explained that the proposals would contribute towards meeting the identified housing needs of Broxbourne, as part of the planned development strategy for the Borough, therefore consistent with Policy DS1 of the Local Plan. The Appellant will also demonstrate that the proposals are consistent with the site-specific policy GO5.

Issue 2: Design Principles

8.10 The Appellant will explain the context of the site, along with the design principles that led to the proposed development.

8.11 It will be explained that the proposals are entirely in keeping with the character of the area and accord with the site-specific requirements set out in Policy GO5.

8.12 It will be demonstrated that the scale of development is entirely appropriate for this site and seeks to make the most efficient use of land, whilst delivering high quality design.

8.13 The Appellant will review whatever evidence the Local Planning Authority intends to present but will demonstrate that there are no reasonable grounds to withhold planning permission for this allocated site on the basis of design.

Issue 3: Biodiversity Net Gain

8.14 The Appellant will set out the legislative and policy position in respect of Biodiversity Net Gain.

8.15 The nature of the site assessment, completion of the DEFRA Metric 3.0 and the basis upon which Net Gain is achieved will be explained.

- 8.16 It is anticipated that the Local Planning Authority will seek to demonstrate that a requirement of 10% Net Gain is required, to secure a buffer to any Net Gain calculation. They will endeavour to demonstrate that the Net Gain achieved by this proposal is not guaranteed.
- 8.17 The Appellant will set out that the Herts and Essex Wildlife Trust (the Local Planning Authority's Ecology Consultee) raised no objection to the proposals.
- 8.18 The Appellant will demonstrate that the proposals accord with the requirements of Policy BR6, NPPF paragraph 174.

Issue 4: Planning Contributions and CIL

- 8.19 The Appellant will set out the contributions sought by the Local Planning Authority in respect of Education, Childcare, Youth Facilities, Libraries, Highways, NHS England, Air Quality, Local Community, Sport and Recreation are not CIL compliant.
- 8.20 The financial contributions sought by the Local Planning Authority, pertaining to transport/highways, education, childcare, and air quality, lack any robust justification and are not (at least at the present time) therefore CIL compliant.
- 8.21 The Appellant intends to provide a s106 Agreement with a blue pencil clause allowing for contributions to be secured as deemed necessary by the Inspector.
- 8.22 The Appellant will continue to liaise with the Local Planning Authority and County Council on these matters and it may be that an agreed solution can be found.

Issue 5: The Planning Balance

- 8.23 The Appellant will explain that planning law and guidance requires that planning application and appeals be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 8.24 It will be explained that the appeal proposals accord with the Development Plan, because amongst other things, the site is allocated for residential development. As such, the appeal proposals should be approved without delay in accordance with paragraph 11c of the NPPF.
- 8.25 The Appellant will set out that the scheme will contribute towards the housing supply for Broxbourne, in accordance with Policy DS1 of the Local Plan.
- 8.26 The Appellant will present evidence on the Council's five-year housing land supply and the Housing Delivery Test, the latter of which triggers a presumption in favour of sustainable development, in accordance with NPPF paragraph 11.
- 8.27 It also means that if the Inspector finds that the appeal proposals do not accord with the Development Plan, then the proposals would need to be considered in the context of the tilted balance for reasons relating to housing delivery.
- 8.28 That being the case, the Appellant will demonstrate that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits (as was the conclusion of Officers when the application was recommended for approval).

The Overall Planning Balance

- 8.29 Having considered all of the main issues in turn, the Appellants will conclude that the proposals represent sustainable development, and that planning permission should be granted subject to the imposition of any necessary conditions and/or planning obligations.



9.0 **DOCUMENTATION**

9.1 A set of Core Documents will be agreed with the Local Planning Authority in advance of the Public Inquiry.

9.2 In addition to the application documents and consultation responses, it is anticipated that the following will be referred to.

National Documents

- National Planning Policy Framework (NPPF)
- National Planning Practice Guidance (NPPG)
- Environment Act 2021
- CIL Regulations

Local Documents

- Broxbourne Local Plan 2018-2033
- Draft Infrastructure Delivery Plan 2018-2033
- Draft Broxbourne Transport Strategy 2017
- Broxbourne Infrastructure Funding Statement 2020-21
- Hertfordshire County Council Guide to Developer Infrastructure Contributions. 2021
- Borough Wide Supplementary Planning Guidance (updated 2013)

Relevant Appeal Decisions and Legal Cases

- Various appeal decisions
- Various legal judgements

9.3 The Appellant reserves the right to refer to additional documents to those outlined above in preparation of its case and in support of the proposals.



10.0 **PLANNING CONDITIONS AND OBLIGATIONS**

Planning Conditions

10.1 An agreed set of conditions will be provided to the Inspector before the start of the Inquiry.

Planning Obligations

10.2 The Appellant will also present deed(s) pursuant to S106 of the Town and Country Planning Act which will secure any planning obligations that are deemed necessary to make the development proposals acceptable.