

**APPEAL BY COUNTRYSIDE PROPERTIES (UK) LTD AND  
LANDOWNERS**

**LAND NORTH OF CUFFLEY HILL, GOFF'S OAK**

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**OPENING STATEMENT ON BEHALF OF THE APPELLANT**

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**Introduction and Issues**

1. The proposals before this Inquiry are well thought out and can be sensitively delivered to provide appropriate housing development on an allocated site in a sustainable location. The scheme is in accordance with the Broxbourne Local Plan 2018-2033 (adopted in June 2020) and represents sustainable development for the purposes of the National Planning Policy Framework (“NPPF”) with the potential to achieve environmental, social and economic benefits.
2. This is a site which is suitable for development of this nature and scale. The appeal site is part of a wider site that is allocated for residential development under Policy GO5 of the Local Plan. On one part of the allocated site, the Former CG Edwards site, residential development is well underway. The allocation means that the principle of residential development on the site has already been established as acceptable through the Local Plan process, and there is a presumption in favour of its development. It is agreed between the parties that the Council has only achieved 72% against the Housing Delivery Test: 2021 Measurement (“HDT”), and as such the tilted balance in paragraph 11(d) of the NPPF is engaged. That means that the decision taker should be disposed to grant

planning permission<sup>1</sup> unless the LPA can demonstrate that the alleged harms significantly and demonstrably outweigh the benefits of the scheme.

3. Following extensive and constructive engagement throughout the application process, including revisions to the scheme, professional officers of the Council recommended the scheme for approval. There were no technical objections. The Case Officer carried out a careful analysis of the proposals and closely considered the issues that have been raised by the Council in this Inquiry. Ultimately, the Planning Committee did not accept the professional advice of their Officer and the relevant consultees in this matter and issued a single reason for refusal.
4. The reason for refusal identifies two issues. First, it alleged that the proposal would over-develop the site to the detriment of its semi-rural character. Second, it alleged that the quantum of development made the site incapable of delivering a net gain of biodiversity. On these bases it was alleged that the proposal was contrary to policies DSC1 and NEB1 of the Local Plan, and contrary to paragraph 174 of the NPPF 2021. No other policies are cited in the rfr.
5. As will be shown in evidence throughout this Inquiry, the proposals are in keeping with the character of the area and accord with site-specific requirements contained in Policy GO5. The scale of the development is appropriate for this site and makes the most efficient use of land, while delivering high quality design. Similarly, the site delivers biodiversity net gain through habitat improvements, including new hedgerows, additional tree planting, installation of drainage ponds, and extensive installation of bird and bat boxes. This is consistent with the DEFRA methodology, and has been developed in close collaboration with the Council, in part through the revision of the scheme in August 2021. Accordingly, there is no conflict with Policy NEB1.
6. Following the CMC, the Inspector identified the main issues as follows:

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<sup>1</sup> Suffolk Coastal DC v Hopkins Homes Ltd [2017] UKSC 37

- (i) *The effect of the proposal on the character and appearance of the area; and*
- (ii) *Whether the proposal would lead to biodiversity net gain.*

7. We address those matters in turn after setting out salient parts of the Common Ground reached between the Appellant and the Council.

### **Common Ground**

8. The Appellant and the Council agree<sup>2</sup> that:

- (i) The appeal site is part of a wider site allocated for residential development for approximately 26 homes under Policy GO5 of the Local Plan. The 26 dwellings were shown as an indicative number to be delivered across the Fairmead and Rosemead Nursery sites (§2.1; 6.1);
- (ii) The former CG Edwards site, allocated alongside the two appeal sites, already has residential development underway (§2.5);
- (iii) Following extensive discussions with the Council, the proposal was amended to remove the originally proposed flat block, and a revised scheme was submitted in August 2021 (§3.3);
- (iv) The scheme includes 40% (23 dwellings) of affordable housing, which is a significant benefit of the scheme (§3.7);
- (v) The design of the scheme retains significant areas of green space and all significant protected Oak trees (§3.8-3.9);
- (vi) The application was reported with an Officer's recommendation of approval without technical objections (§5.2; 8.6-8.7);
- (vii) The Local Plan sets out approximate numbers of dwellings for sites allocated for residential development within the Borough. These approximate figures are only a starting point and were used to inform the plan making process. (§6.2-6.3);

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<sup>2</sup> By way of Statement of Common Ground between the Appellant and the Council. The process of agreeing Common Ground with the Parish Council as Rule 6 party has not been particularly fruitful.

- (viii) The Annual Monitoring Report 2020-21 shows a 5.17 year supply. The trajectory supporting the Annual Monitoring Report 2020-21 includes the delivery of 84 dwellings on the appeal site (§8.8-8.9);
- (ix) The Council confirmed in June 2021 at Appeal ref: APP/W1905/W/21/3271027 that the Council could not demonstrate a 5-year land supply (§8.10);
- (x) The Council only delivered 335 dwellings in 2021-2022, 119 less than the annual housing requirement (§8.11);
- (xi) The Council only achieved 72% against the HDT, triggering the presumption in favour of sustainable development (§8.12);
- (xii) There are no residential amenity issues that would prevent the grant of planning permission (§8.19);
- (xiii) There are no objections in relation to noise; air quality; or minerals or waste (§8.21-8.23);
- (xiv) The housing mix is appropriate for this location and should not prevent the grant of planning permission (§8.23);
- (xv) The Council's Affordable Housing Strategy 2020-25 identifies that there are 1400 households on the Council's housing register and that there are low levels of affordable housing in the Borough compared with demand.
- (xvi) The Herts & Middlesex Wildlife Trust had no objection to the application subject to conditions securing biodiversity gain on-site (§8.27);
- (xvii) The Environment Act 2021 has not yet come into effect (§8.28);
- (xviii) It is agreed that there is no shortfall in provision of sports facilities locally (§8.31);
- (xix) It is agreed that the proposed development would secure benefits in economic, social and environmental terms (§8.36);

### **Effect of the proposal on the character and appearance of the area**

9. The starting point for considering the impact of the proposal on the character and appearance of the area is the allocation of the site for housing development.

By choosing to allocate the site, the Council considered that it was suitable for residential housing, and that its character would change. Policy GO5 has only three requirements, all of which are satisfied by the proposal: (1) provision of 40% affordable housing; (2) provision of public open space; and (3) retention of protected trees.

10. Much has been made of the indicative quantum of development of 26 homes contained in the Local Plan. It is clear that this figure is approximate and qualified, as identified by the explanatory text at paragraph [3.19] that “*the Council will apply dwelling numbers in the context of sustainable place-making, to achieve efficient use of land through a design-led approach*”. This proposal is consistent with the requirement in the NPPF to make efficient use of land, and further, it optimises the potential of the appeal site to accommodate an appropriate amount and mix of development: NPPF 130(e).
11. The NPPF paragraph 120(d) places high importance on development of under-utilised land and buildings, particularly in circumstances where there are identified needs for housing. The Framework emphasises that planning policies and decisions should avoid homes being built at low densities where there is a shortage of supply to meet housing needs: NPPF paragraph 125.
12. As will be explored at this Inquiry through Mr Pullan’s evidence, the appeal site lies within a suburban housing area, bound by development on three sides and therein falls within the context of other urbanizing influences. This is not an area of local distinctiveness, but the scheme would reinforce some of the more attractive local characteristics and materials through high-quality design.
13. The appeal scheme would form part of the wider suburban housing area to the village, continuing the pattern of growth at the edges of the village behind ribbon development along the principal routes. In terms of density, the proposed development achieves 18.7 dwellings per hectare (“dph”), which is well within the local range, with developments ranging from 12-26dph. The number of dwellings proposed is appropriate for the site. Mr Pullan concludes that the appeal scheme would be an attractive place in which people would want to live

and be of a design which is wholly appropriate for its surroundings and considerate of the existing retained landscape elements and the interface with open countryside.

14. Turning to the requirements of Policy GO5, the scheme retains protected trees, and includes approximately 23% of open space. The site has substantial areas of landscaping to the north of the site, with areas of internal green space providing an appropriate setting for the built environment. This informs the character of the scheme, with the presence of trees and open spaces being the primary experience of the site, with the built form and street spaces being secondary.
15. The Officer recommendation considered that the design of the houses would not be out of place in Goff's Oak and that the scheme offers "*an attractive layout which makes good use of the land*". The proposals are in accordance with adopted Policy DSC1.

### **Whether the proposal would lead to biodiversity net gain**

16. Turning to biodiversity net gain, it is common ground between the parties that the DEFRA methodology and calculations identify a 1% net gain on the site. In straightforward factual terms, the proposals can achieve a net gain, and planning conditions can ensure that net gain is realised.
17. For the avoidance of doubt, both parties agree that Section 98 and Schedule 14 of the Environment Act 2021 have not come into force, and therefore the requirement for a 10% biodiversity net gain does not apply in this appeal. Similarly, there are no policies in the Local Plan or SPDs that require biodiversity net gain at a particular level, 10% or otherwise. Therefore, the extent of the policy requirement is the demonstration of net gain. In particular, Policy NEB1 requires that proposals should result in biodiversity net gain "*wherever possible*".

18. As will be explored in the evidence of Mr Pankhurst in the coming days, the delivery of 1% biodiversity net gain on the site is robust and consistent with policy. This view was supported by the Council’s consultee on biodiversity matters, the Herts and Middlesex Wildlife Trust, as well as the Officer’s recommendation, which both confirmed that the scheme will deliver net gain consistent with the Local Plan policies NEB1 and NEB4.
19. As Mr Pankhurst will explain in his evidence, the Council’s core argument on this issue is accounted for by the DEFRA Biodiversity Metric 3.0 User Guide. That guide explains that uncertainty in the proposed creation and management of habitat is controlled for by risk multipliers, which sufficiently captures the Council’s concern about erosion in the course of delivery. The use of those risk multipliers also constitutes a methodologically precautionary approach. Further, no buffer is required by policy, nor has the Council identified any relevant appeals which have sought a buffer in similar circumstances.
20. By contrast, the Appellant has identified a number of relevant planning appeals to support the level of net gain provided on this site. An Inspector at an inquiry in Malmesbury (CD G6) stated clearly that notwithstanding the passage of the Environment Act 2021 “[a] net gain of just 1% would be policy compliant”. Similarly, an Inspector in Rickmansworth (CD 67) concluded that “[a] net gain simply has to be demonstrable”. As such, it is clear that a robust and deliverable biodiversity net gain will be deliverable on the site in a manner consistent with policy.

### **The effect of the development on local infrastructure provision**

21. The proposals mitigate their impact on local infrastructure in the ordinary way, through the provision of section 106 contributions. The Appellant makes clear that it is willing to be bound by any condition or obligation, the need for which is properly evidenced, and has sought to provide a comprehensive Agreement (it is still an Agreement at the point of writing) that covers every eventuality. The Appellant has not been assisted by the lack of evidence provided to justify

the contributions, and disagreement between the County and the Borough as to the quantum of some of the sums and where they ought to be directed. Nonetheless, the Agreement between the parties can secure the following contributions:

- i. Affordable Housing.
- ii. Highway Improvements Contribution
- iii. Library Contribution
- iv. Education
- v. Strategic Transport
- vi. Youth Services
- vii. Health
- viii. Fire and Rescue
- ix. Waste Services
- x. Monitoring Fee
- xi. Estate Management Scheme

22. The Appellant remains of the view that there are no infrastructure impacts that cannot be mitigated by planning condition or the section 106, should the Inspector conclude that the requests are CIL compliant.

### **The overall planning balance**

23. Fundamentally the proposals are in accordance with the development plan. There are no outstanding technical issues between the Appellant and the Council, and permission should be granted without delay.

24. As set out in the areas of common ground above, the benefits of the scheme are significant and cover all three dimensions of sustainable development. In terms of economic benefits, they include direct and indirect job creation through the building of the site and household expenditure of new residents that would support the local economy, and the local businesses within the surrounding area.



25. The social dimension of sustainability would be fulfilled not just by the provision of market housing, but also affordable housing, for which there is an urgent and pressing need. The increased quantum of housing on the site has secured an increase in the number of affordable housing dwellings, rising to 23. Set against the context of a decreasing ability to meet the 75% Housing Delivery Test, and a failure to demonstrate a 5-year housing land supply, it cannot be argued that the benefit of that housing is anything other than very significant.
26. The scheme provides environmental benefits through retention of protected trees on the site and biodiversity net gain. The scheme will create an attractive and verdant setting which will replace the disused buildings and debris currently on the site, all of which will meaningfully benefit the area.
27. When completed, the scheme will be an attractive built environment that can be successfully assimilated into its environmental and landscape context. It will be a place where people want to live.

## **Conclusion**

28. This is a case where the tilted balance is engaged. What that means is that the decision taker should be disposed to grant planning permission; there is a presumption in favour of the appeal scheme. That presumption can of course be displaced, but only where the harm significantly and demonstrably outweighs the benefits, assessed against the policies of the Framework taken as a whole. That requires a holistic assessment of the proposals in terms of the harm, but also all of the benefits, as against the development plan and the Framework's clear emphasis on significantly boosting the supply of housing.
29. It is the Appellant's case that the harm does not significantly and demonstrably outweigh the benefits. There is only a limited impact to be weighed against a number of significant benefits – chief among them, but certainly not exclusively, is the provision of market and affordable housing. The clear, detailed, and comprehensive Officer's report recommending approval of the scheme reflected these facts. The site is entirely suitable to accommodate

residential development, in principle and of this scale.

30. Accordingly, the Appellant will in due course invite the Inspector to grant permission subject to appropriate conditions and the terms of any agreed Section 106.

**27 September 2022**

**Thea Osmund-Smith  
Harj Narulla  
No5 Chambers**