

Appeal ref: APP/W1905/W/22/3300254

Local Authority Planning Application ref: 07/19/0200/F

Land at Fairmead, 90 Cuffley Hill, Goff's Oak, Hertfordshire EN7 5EX

Broxbourne Borough Council

OPENING STATEMENT ON BEHALF OF THE LOCAL PLANNING AUTHORITY

Introduction

1. This appeal concerns a full planning application for 58 dwellings and associated development (“the Proposal”) on the sites of the former Fairmead and Rosemead Nurseries, located on land at 90 Cuffley Hill, Goff's Oak, Hertfordshire (“the Site”).
2. Following a vote of the LPA's Planning Committee, on 9 February 2022 the LPA formally refused the application. The single reason for refusal was this:

“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.”

3. The essence of the LPA's case is that the Proposal simply delivers too much development in this edge of settlement location.
4. The RfR identifies two principal planning harms as flowing from that overdevelopment: the damage to the character of the Site as part of the semi-rural edge of Goff's Oak; and the incapability of guaranteeing the actual delivery of biodiversity net gain (“BNG”) in the real world.

5. The main focus of the inquiry will be on those two elements of the RfR.

The policy framework

6. The local and national policies relevant to this appeal are agreed, and set out in the SoCG.¹

7. There are three development plan policies which are of particular relevance to the appeal.

8. The first is the site allocation: Policy GO5.² It is common ground that the appeal site is allocated for housing.

9. That is not, however, the end of the story.

10. Policy GO5 contains, within the policy wording itself, an indication of the quantum of housing for which the Site is allocated. The indicative figure is 26 homes.³ The Proposal before the inquiry is dramatically in excess of that indication: in fact more than double it.

11. The harms which the Proposal will cause, and which led the LPA to refuse the application, are a direct result of the exceedance of the indicative quantum, as we will show.

12. The second relevant policy is DSC1,⁴ which sets the design standards for development in the borough. DSC1 contains a number of mandatory provisions: the breach of any one of them results in a conflict with the policy. The first of those mandatory requirements is for development to enhance local character and distinctiveness, including by reference to existing patterns of development and urban form.

13. The third relevant policy is NEB1, which concerns the protection and improvement of the natural environment. The second of the requirements of that policy is for development to deliver biodiversity net gains (“BNG”) wherever possible. NEB1 is one of a number of

¹ REF

² CD E1 pdf page 69.

³ That is the sum of the two allocated areas – Fairmead and Rosemead – which comprise the appeal Site.

⁴ CD E1 pdf page 115.

local and national policies which, we will show, are targeted at maximising the environmental benefits that flow from development.

The first issue – overdevelopment and adverse effects on character

14. The Proposal is for 58 homes, more than twice the indicative quantum for the Site in the local plan.
15. The Council will show that the western edge of Goff's Oak, where the Site is located, has a generally open character and permeable sense of built form, arising from the predominance of large houses on spacious plots, with good views into and out of the settlement. That sense of openness is appropriate to the character of a small village where it meets the open countryside.
16. That semi-rural character will be lost if the Proposal is allowed to proceed.
17. We will show that the density of development introduced by the Proposal is significantly greater than is suitable for this edge of settlement location. Combined with the largely impermeable layout of the scheme and the small plot sizes compared to other properties in the locality, this overdevelopment will cause irreparable and unacceptable harm to the character of Goff's Oak, contrary to the requirements of local and national policy.
18. The evolution of the design of the scheme seems to have anticipated this harm from the outset – we will demonstrate that the real focus of the appellant has been on securing its quantum figure, rather than on preserving the settlement edge or meeting the indicative quantum from the allocation.
19. Taking those points together, we will show that the Proposal is contrary to Policy DSC1.

The second issue – biodiversity net gain

20. The second aspect of the reason for refusal, and the second adverse consequence of the proposed overdevelopment of the Site, relates to biodiversity.

21. In short, the quantum of development being proposed is such that the BNG indicated by the DEFRA metric is inherently uncertain: it is far smaller and more fragile than would have been the case if the quantum of housing on the Site matched the indication given in the allocation policy.
22. We accept that, on the application of the metric, the Proposal can show a BNG. That gain, however, is very small indeed – less than 1%. We will show that such a small gain is uncertain actually to manifest in practice: indeed, one of the reasons that the Environment Act 2021 proposes a minimum 10% BNG is to ensure that, when a proposal becomes reality, some real-world gain is actually delivered.
23. We will contend that, for a gain this small, even a very minor deviation from construction plans, or an otherwise inconsequential change to the development, may result in no net gain or even a net loss. The fragility of the BNG proposed is demonstrated by the fact that it took three attempts at the metric to achieve even the 0.96% gain that is on offer.
24. We will also demonstrate that the Proposal is a missed opportunity – if the Proposal were in line with the allocation, a far more stable and beneficial BNG is likely to have arisen. That loss is another result of the overdevelopment of the Site which would arise if the Proposal is permitted.

Housing land supply and the tilted balance

25. One of the first disputed matters which will be addressed in this inquiry is the housing land supply position of Broxbourne.
26. This is not an occasion where the application of the NPPF tilted balance depends on the result of the land supply investigation. That is because it is common ground that the tilted balance is engaged anyway, by virtue of the council's HDT results.⁵
27. The HLS position is thus less important than it otherwise might have been.

⁵ SoCG para 8.12.

28. Nevertheless, the weight which can properly be attached to the housing delivered by the Proposal is clearly influenced by the HLS position. For that reason, the LPA has prepared comprehensive and detailed evidence which shows a healthy land supply position of 5.79 years. That evidence will be presented at the round table by the Council's officers.

The planning obligation and CIL contributions

29. There are a number of proposed s. 106 contributions that are in dispute between the parties. The parties' positions, and supporting arguments, will be set out by the relevant officers in the round table.

30. For now, it suffices to say that the LPA is satisfied that the contributions which it seeks are CIL compliant, as demonstrated by the compliance statement which it has prepared.⁶

31. Where there is a dispute over a contribution, the draft planning obligation has been drafted with the necessary blue-pencil clauses, so that the obligation's content will match the inspector's determinations on CIL compliance.

The development plan and the planning balance

32. Drawing the threads together, the Council will show that the Proposal is contrary to three of the most important policies in the development plan for this site: GO5, DSC1 and NEB1. Our evidence will demonstrate that, given those breaches, the development plan overall is not complied with, so that the statutory presumption against the grant of permission is engaged.⁷

33. Turning to the planning balance, we will show that the material considerations do not outweigh the development plan conflict.

34. While the delivery of housing is always to be welcomed, it cannot be provided whatever the wider cost to the area. There is no policy basis for delivering housing which is harmful to the character of the area – on the contrary, there are strong policy arguments against such delivery.

⁶ CD C26a.

⁷ S. 38(6) of the Planning and Compulsory Purchase Act 2004.

35. Nor does the borough have a need for housing which warrants such dramatic overdevelopment as is being proposed by this appellant.

36. We fully accept, of course, that this is an allocated site, and we strongly encourage the right amount of homes to be delivered on it, in a sensitive manner. Sadly, this Proposal delivers far too many homes, crammed on to a site which cannot properly accommodate them. The Proposal causes avoidable and unnecessary harm to the character of the area, and is a missed opportunity to deliver real and tangible BNG.

37. In those circumstances, we will show that the Proposal is contrary to the development plan as a whole, and that the harms of the Proposal significantly and demonstrably outweigh its benefits. For those reasons we will be inviting the inspector to dismiss the appeal and refuse permission for this scheme.

Luke Wilcox

Landmark Chambers

27 September 2022