



Department for
Communities and
Local Government

Mr Peter Brady
The Planning Law Practice
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Our Refs: APP/J1915/A/14/2220854 &
APP/J1915/A/14/2220859

3 March 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEALS BY WHEATLEY HOMES LTD: AREA 2 and 3, LAND SOUTH OF HARE
STREET ROAD, BUNTINGFORD SG9 9JQ
APPLICATION REFS: 3/14/0528/OP & 3/14/0531/OP**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, John Braithwaite BSc(Arch) BArch(Hons) MRTPI, who held an inquiry on 6-8 January 2015 into your client's appeals against the failure of East Hertfordshire District Council ('the Council') to give notice of its decision within the appropriate period for approximately 100 houses at Area 2 in accordance with application reference 3/14/0528/OP, and approximately 80 houses at Area 3 in accordance with application reference 3/14/0531/OP, both applications dated 21 March 2014.
2. On 27 March 2015 the appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeals raise important or novel issues of development control, and/or legal difficulties.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that both appeals be allowed. For the reasons given below, the Secretary of State agrees with the Inspector's analysis and conclusions, and agrees with his recommendations. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. The Secretary of State notes an application for costs was made by the appellant against the Council. That application is the subject of a separate decision.

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5. After receiving the Inspector's report, the Secretary of State received an email from the Council dated 15 September, attached to which was a consultant report entitled *Buntingford Transport Modelling Assessment* dated August 2015. The report was in two parts, a *Base Model Report* and a *Future Scenarios Model Report*. The email noted that the report has been discussed at the appeal Inquiry and had now been endorsed by the Council. On 25 September 2015 the Secretary of State received an email from Councillor Jones of East Hertfordshire District Council to which were attached the same report and also an email from Thames Water to the Council dated 15 July about development and infrastructure issues in Buntingford. The Secretary of State has given careful consideration to all these representations, but as they do not raise new issues that would affect his decision he has not considered it necessary to circulate them to the appellant for comment. Copies of the correspondence may be obtained on written request from the address at the bottom of the first page of this letter.

Policy considerations

6. In deciding these appeals, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan consists of the saved policies of the East Hertfordshire Local Plan 2007. The Secretary of State considers that the most relevant policies for this case are those set out at IR10, namely: LP Policy GBC2 (on the Rural Area beyond the Green Belt, RAGB), LP Policy GBC3 (which specifies that within the RAGB permission will not be granted for new buildings other than in specified purposes, none of which specified purposes apply in the case of these appeals)) and LP Policy IMP1 which requires developers to make provision for affordable housing, infrastructure and other purposes by entering into planning obligations or accepting planning conditions. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework), the associated planning practice guidance (the Guidance) and the Community Infrastructure Levy (CIL) Regulations 2010 as amended.
7. The Secretary of State notes that the Council is currently preparing a new District Local Plan covering the period to 2031. A draft has been published and subject to consultation, but has not been submitted for independent examination. As the proposals are still in preparation, are subject to unresolved objections to relevant policies and may, at examination, be found to require modification in order to be consistent with the Framework, the Secretary of State agrees with the Inspector that very limited weight can be accorded to the emerging Plan (IR88).
8. The Buntingford Neighbourhood Plan (NP) is at an early stage, being yet to be submitted to East Hertfordshire District Council for publicity and independent review by an Examiner. The appeal site abuts but is outside the settlement boundary in the emerging NP and is not allocated for development. The appeal proposal therefore conflicts with the emerging NP. However, the Guidance advises that refusal of planning permission on grounds of prematurity will seldom be justified in the case of an NP before the end of the local planning authority publicity period. As the NP is still at an early stage in preparation, is subject to unresolved objections to relevant policies and may be found at examination to require modification, and because of the matter of housing land supply considered below, the Secretary of State gives little weight to the emerging NP.

Main considerations

Housing land supply

9. Paragraph 47 of the Framework requires local planning authorities to identify and update annually a supply of specific deliverable sites to provide five years of housing against their housing requirements. The Appellant's uncontested assessment of current housing supply is, at the very best, 3.3 years. Paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. The Secretary of State agrees with the Inspector that LP policies GBC2 and GBC3 are relevant policies for the supply of housing and should be treated as out of date in this respect, though not in other regards (see below), given the Council's accepted position regarding the housing land supply position (IR89).
10. Aside from housing land supply, the Secretary of State agrees with the Inspector the main issue is whether the site is a sustainable location for housing, with particular regard to matters under the headings below (IR68).

The visual amenity and character of the area

11. Having regard to the reference to the appeal decision on Area 1 at IR88, the Secretary of State considers that although policies GBC2 and GBC3 are out of date in terms of identifying settlement boundaries and housing supply, they are up to date and deserve significant weight in terms of their protection of the countryside from unnecessary development, particularly as they are consistent with the principle at paragraph 17 of the Framework that planning should recognise the intrinsic character and beauty of the countryside. However, the Secretary of State agrees with the Inspector's analysis at IR69-73 and conclusion at IR73 that the proposed developments, both individually and cumulatively, would have a less than significant adverse effect on the character or visual amenity of the area. Consequently he places little weight on this harm, though he agrees with the Inspector that both developments would nevertheless be contrary to saved LP Policy GBC3 (IR73).

Local infrastructure

12. For the reasons at IR74-75 the Secretary of State agrees with the Inspector that the proposed developments would not place an unacceptable burden upon local infrastructure (IR75) and would accord with saved LP Policy IMP1 (IR75).

Best and most versatile agricultural land

13. The Secretary of State has taken account of the fact that the proposed developments would result in the loss of about 14 hectares of the best and most versatile agricultural land (IR76). He places moderate weight on this loss.

Local employment opportunities and public transport links

14. The Secretary of State agrees with the Inspector's assessment at IR77-79 and conclusion at IR80. He agrees that Buntingford has poor public transport links to the other towns in the District and elsewhere, and currently has insufficient employment opportunities for the intended increase in the population of the town. But land exists for the creation of employment opportunities and the appellant's financial contributions would enhance the marketing of this land and enhance sustainable transport

opportunities for both existing and intended residents. In this regard both developments would accord with saved LP policy IMP1. However, the field where the Areas 2 and 3 are located is a less sustainable location for housing in comparison to sites in, or on the edge of, large towns in the District that have a railway station and better public transport (IR80). Taking account of the transport provisions in the Unilateral Undertakings, the Secretary of State places moderate weight against the proposal on account of Buntingford's relatively poor public transport links and the likelihood that a high percentage of journeys by new residents would be made by car including trips to access train services (IR83-84).

Traffic

15. The Secretary of State notes the Council's changed position at the start of the Inquiry regarding its earlier concerns about impact on the transport network (IR3) and that the traffic modelling report that has been drawn to the Secretary of State's attention (paragraph 5 above) is referred to in the unilateral undertakings for both appeal areas (email from the Council to the Secretary of State dated 15 September).
16. The Secretary of State agrees with the Inspector's conclusion that there is no evidence to indicate that the developments would result in unacceptable congestion anywhere on the local road network, or compromise highway safety or cause any unacceptable noise or disturbance due to the increased traffic (IR86).

Whether the proposals would be sustainable development

17. The Secretary of State agrees with the Inspector's assessment at IR81-85. Despite the loss of Grade 2 agricultural land and the likelihood that intended residents would predominantly use their private motor cars for journeys to work and shopping purposes, the balance falls on the developments satisfying the environmental role of sustainable development in view of the improvements to the biodiversity of the area (IR82 and condition 15 in regard to both appeals) and the less than significant adverse effect on the character and visual amenity of the area. The developments fully satisfy the economic and social roles of sustainable development and the Secretary of State agrees that the proposals may therefore be regarded to be, overall, sustainable developments in sustainable locations for housing (IR84-85).

Conditions

18. The Secretary of State has considered the Inspector's assessment at IR64-65 and recommended Schedules of conditions at page 23-25 of his report. The Secretary of State is satisfied that the proposed conditions for both appeals are reasonable and necessary and would meet the tests of paragraph 206 of the Framework.

Unilateral Undertakings

19. The Secretary of State agrees with the Inspector's assessment at IR66 of the Unilateral Undertakings submitted for each of the appeal schemes. He agrees that the Undertakings are all necessary to make the development acceptable in planning terms, are directly related to the development, are fairly and reasonably related in scale and kind to the development, and are in place to mitigate the effects of the development. He therefore agrees with the Inspector that both Undertakings would be CIL compliant and considers that they fully accord with the tests in paragraph 204 of the Framework.

Overall planning balance and conclusion

20. The Secretary of State has had regard to s 38 (6) of the Planning and Compulsory Purchase Act 2004. The Secretary of State agrees with the Inspector's conclusions and planning balance at IR87-92. The proposals do not accord with the development plan taken as a whole, in particular owing to the clear conflict with LP Policy GBC3. The Secretary of State has therefore gone on to consider whether there are any material considerations which might nevertheless justify allowing the appeals.
21. The uncontested current housing supply is at best 3.3 years. In applying Paragraph 49 of the Framework the Secretary of State considers that, as the Council cannot demonstrate a five year supply of deliverable housing sites, LP Policies GBC2 and GBC3 are out of date in so far as they relate to the supply of housing. He has therefore gone on to consider Paragraph 14 of the Framework. This states that there is a presumption in favour of sustainable development and that, for decision taking, this means, where relevant policies in the development plan are out-of-date, granting planning permission for development unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
22. Weighing against the appeal proposal are the less than significant adverse effect on the character or visual amenity of the area, on which the Secretary of State places little weight, and Buntingford's relatively poor public transport links and the likelihood that a high percentage of journeys by new residents would be made by car including trips to access train services, on which he places moderate weight. The Secretary of State also places moderate weight on the loss of 14 hectares of the best and most versatile agricultural land.
23. Weighing in favour, the main benefit of the developments is the provision of market housing units and 40% affordable housing units in a District where there is a significant under supply of housing. The Secretary of State considers that this provision of housing weighs heavily in favour of the appeal. Additionally, he places moderate weight on the improvements to the biodiversity of the site.
24. Overall, the Secretary of State agrees with the Inspector that the appeal proposals would be sustainable developments and, having weighed the adverse effects of the developments against the benefits, the Secretary of State considers that the benefits of both developments clearly outweigh the adverse effects, so justifying determination of the appeals other than in accordance with the development plan.

Formal Decision

25. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation and hereby allows your client's appeals and grants outline planning permission for:
 - approximately 100 houses at Area 2 in accordance with application reference 3/14/0528/OP, subject to the conditions in Annex A; and
 - approximately 80 houses at Area 3 in accordance with application reference 3/14/0531/OP, subject to the conditions in Annex B.

Right to challenge the decision

26. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
27. A copy of this letter has been sent to East Hertfordshire District Council. Notification has been sent to all other parties who asked to be informed of the appeal decisions.

Yours faithfully

Julian Pitt

Julian Pitt

Authorised by Secretary of State to sign in that behalf

Annex A

Conditions applicable to grant of outline planning permission for application No. 3/14/0528/op (Area 2)

1. The development hereby permitted shall be carried out in accordance with the following approved plans: 16700/1019A, 16700/1021 rev B, 16700/1022B, JBA 14/07-SK03 rev A, JBA 14/07-SK04 rev A, JBA 14/07-03 rev A, C-207128/SK24 rev P6, C-207128/SK28 rev P2.
2. Details of the appearance, landscaping, layout, and scale of the development (hereinafter called the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development begins, and the development shall be carried out as approved.
3. Application for approval of the reserved matters shall be made to the local planning authority not later than one year from the date of this permission.
4. The development hereby permitted shall begin no later than one year from the date of approval of the last of the reserved matters to be approved.
5. The landscaping scheme referred to in condition 2 shall include replacement, reinforcement and where appropriate the extension of screen planting on the eastern boundary of the land, together with proposals for the future management and maintenance of this area whilst the development hereby permitted remains.
6. No development or groundworks shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, which has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved programme, and this condition shall only be discharged when the required archaeological reports are submitted to and approved in writing by the Local Planning Authority.
7. No development shall take place until a detailed surface water drainage scheme has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be based on the submitted Flood Risk Assessment C-207128D dated 14 March 2014 and shall include a restriction in run-off and surface water storage as outlined in the FRA, and pollution prevention measures. The approved scheme shall be implemented in phases, prior to the first occupation of each phase of the development.
8. No development shall take place until a scheme to deal with any contamination of land and/or groundwater has been submitted to and approved in writing by the Local Planning Authority and until the measures approved in that scheme have been fully implemented. The scheme shall include all of the following measures unless the Local Planning Authority dispenses with any such requirement in writing:
 - i. A site investigation, based on the details contained in the Submitted Geoenvironmental Desk Study Report (J14066 dated March 2014), shall be carried out to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site;
 - ii. An options appraisal and remediation strategy, giving full details of the remediation measures required and how they are to be undertaken, based on the results of the site investigation and detailed risk assessment referred to in i) above;

- iii. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in ii) above are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
9. The development hereby permitted shall not be brought into use until a verification report, demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation, has been submitted to and approved in writing by the Local Planning Authority. The report shall include the results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. The report shall also include a plan (a 'long term monitoring and maintenance plan') for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plans shall be implemented as approved.
10. No dwelling shall be occupied until the access, junction and parking arrangements serving that dwelling have been completed in accordance with the approved in principle plan, drawing number C-207128/SK28 rev P2, to the standards outlined in Roads in Hertfordshire and constructed to the Highway Authority's specification. This will include widening of the proposed access road to enable two HGVs to pass one another with 0.5m tolerance, and a preferred road radius of 40m.
11. No development shall take place, including any works of demolition, until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:
 - i. the programme and phasing of works on site;
 - ii. the parking of vehicles of site operatives and visitors;
 - iii. loading and unloading of plant and materials;
 - iv. storage of plant and materials used in constructing the development;
 - v. the erection and maintenance of security hoarding, including decorative displays and facilities for public viewing, where appropriate;
 - vi. wheel washing facilities;
 - vii. measures to control the emission of dust and dirt during construction;
 - viii. a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - ix. construction vehicle routing and access;
 - x. the protection of pedestrians using the public footpath that crosses the site.
12. No development shall take place until additional scale layout plans showing the arrangements to be implemented at the intersection of the site entrance with public footpath 21, along with details of temporary fencing/signing to protect the alignment of the footpath, have been submitted to and approved in writing by the Local Planning Authority in accordance with Hertfordshire County Council's Rights of Way Good Practice Guide.
13. A Green Travel Plan, with the object of reducing travel to and from the development by private car, shall be submitted to and approved in writing by the Local Planning

Authority prior to first occupation of any dwelling and the proposed measures shall be implemented to an agreed timetable.

14. All existing trees and hedges shall be retained, unless shown on the approved drawings as being removed. All trees and hedges on and immediately adjoining the site shall be protected from damage in accordance with BS5837: 2012 'Trees in relation to Design, Demolition and Construction', for the duration of the works on site. In the event that trees or hedging become damaged or otherwise defective during the construction period or within five years following practical completion of the approved development, the Local Planning Authority shall be notified as soon as reasonably practicable and remedial action agreed and implemented. In the event that any tree or hedging dies or is removed without the prior consent of the Local Planning Authority, it shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with trees of such size, species and in such number and positions as shall be agreed with the Local Planning Authority.
15. The recommendations to mitigate and enhance the biodiversity of the site highlighted in Section 7 of the Ecological Appraisal and Protected Species report dated March 2014 shall be implemented as approved.
16. The dwellings hereby permitted shall be designed so that their ridge heights do not exceed 117.5 m AOD across the site.

Annex B

Conditions applicable to grant of outline planning permission for application No. 3/14/0531/OP (Area 3)

1. The development hereby permitted shall be carried out in accordance with the following approved plans: 16700/1021B, 16700/1023B, JBA 14/07-SK03 rev A, JBA 14/07-04 rev A, JBA 14/07-SK05 rev A, C-207128/SK25 rev P5, C-207128/SK29 rev P2.
2. Details of the appearance, landscaping, layout, and scale of the development (hereinafter called the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development begins, and the development shall be carried out as approved.
3. Application for approval of the reserved matters shall be made to the local planning authority not later than one year from the date of this permission.
4. The development hereby permitted shall begin no later than one year from the date of approval of the last of the reserved matters to be approved.
5. The landscaping scheme referred to in condition 2 shall include replacement, reinforcement and where appropriate the extension of screen planting on the eastern boundary of the land, together with proposals for the future management and maintenance of this area whilst the development hereby permitted remains.
6. No development or groundworks shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, which has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved programme, and this condition shall only be discharged when the required archaeological reports are submitted to and approved in writing by the Local Planning Authority.
7. No development shall take place until a detailed surface water drainage scheme has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be based on the submitted Flood Risk Assessment C-207128D dated 14 March 2014 and shall include a restriction in run-off and surface water storage as outlined in the FRA, and pollution prevention measures. The approved scheme shall be implemented in phases, prior to the first occupation of each phase of the development.
8. No development shall take place until a scheme to deal with any contamination of land and/or groundwater has been submitted to and approved in writing by the Local Planning Authority and until the measures approved in that scheme have been fully implemented. The scheme shall include all of the following measures unless the Local Planning Authority dispenses with any such requirement in writing:
 - i. A site investigation, based on the details contained in the Submitted Geoenvironmental Desk Study Report (J14067 dated March 2014), shall be carried out to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site;
 - ii. An options appraisal and remediation strategy, giving full details of the remediation measures required and how they are to be undertaken, based on the results of the site investigation and detailed risk assessment referred to in i) above;
 - iii. A verification plan providing details of the data that will be collected in order to

demonstrate that the works set out in the remediation strategy in ii) above are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

9. The development hereby permitted shall not be brought into use until a verification report, demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation, has been submitted to and approved in writing by the Local Planning Authority. The report shall include the results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. The report shall also include a plan (a 'long term monitoring and maintenance plan') for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plans shall be implemented as approved.
10. No dwelling shall be occupied until the access, junction and parking arrangements serving that dwelling have been completed in accordance with the approved in principle plan, drawing number C-207128/SK25 rev P5, to the standards outlined in Roads in Hertfordshire and constructed to the Highway Authority's specification. This will include widening of the proposed access road to enable two HGVs to pass one another with 0.5m tolerance, and a preferred road radius of 40m.
11. No development shall take place, including any works of demolition, until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:
 - i. the programme and phasing of works on site;
 - ii. the parking of vehicles of site operatives and visitors;
 - iii. loading and unloading of plant and materials;
 - iv. storage of plant and materials used in constructing the development;
 - v. the erection and maintenance of security hoarding, including decorative displays and facilities for public viewing, where appropriate;
 - vi. wheel washing facilities;
 - vii. measures to control the emission of dust and dirt during construction;
 - viii. a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - ix. construction vehicle routing and access;
 - x. the protection of pedestrians using the public footpath that crosses the site.
12. No development shall take place until additional scale layout plans showing the arrangements to be implemented at the intersection of the site entrance with public footpath 15, along with details of temporary fencing/signing to protect the alignment of the footpath, have been submitted to and approved in writing by the Local Planning Authority in accordance with Hertfordshire County Council's Rights of Way Good Practice Guide.
13. A Green Travel Plan, with the object of reducing travel to and from the development by private car, shall be submitted to and approved in writing by the Local Planning Authority prior to first occupation of any dwelling and the proposed measures shall be implemented to an agreed timetable.

14. All existing trees and hedges shall be retained, unless shown on the approved drawings as being removed. All trees and hedges on and immediately adjoining the site shall be protected from damage in accordance with BS5837: 2012 'Trees in relation to Design, Demolition and Construction', for the duration of the works on site. In the event that trees or hedging become damaged or otherwise defective during the construction period or within five years following practical completion of the approved development, the Local Planning Authority shall be notified as soon as reasonably practicable and remedial action agreed and implemented. In the event that any tree or hedging dies or is removed without the prior consent of the Local Planning Authority, it shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with trees of such size, species and in such number and positions as shall be agreed with the Local Planning Authority.
15. The recommendations to mitigate and enhance the biodiversity of the site highlighted in Section 7 of the Ecological Appraisal and Protected Species report dated March 2014 shall be implemented as approved.
16. The dwellings hereby permitted shall be designed so that their ridge heights do not exceed 117.5 m AOD across the site.

Report to the Secretary of State for Communities and Local Government

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 26 August 2015

TOWN AND COUNTRY PLANNING ACT 1990

EAST HERTFORDSHIRE DISTRICT COUNCIL

APPEALS

by

WHEATLEY HOMES LIMITED

Inquiry held on 6-8 January 2015

Areas 2 and 3, Land south of Hare Street Road, Buntingford SG9 9JQ

File Refs: APP/J1915/A/14/2220854 and APP/J1915/A/14/2220859

File Ref: APP/J1915/A/14/2220854

Area 2, Land south of Hare Street Road, Buntingford SG9 9JQ

- The application was recovered for decision by the Secretary of State by a direction, made under section 79 of the Town and Country Planning Act 1990, on 27 March 2015.
- The application is made by Wheatley Homes Limited to East Hertfordshire District Council.
- The application Ref 3/14/0528/OP is dated 21 March 2014.
- The development proposed is construction of approximately 100 houses.
- The reason given for making the direction was that the appeal involves a proposal which raises important or novel issues of development control and/or legal difficulties.

Summary of Recommendation: The appeal be allowed.

File Ref: APP/J1915/A/14/2220859

Area 3, Land south of Hare Street Road, Buntingford SG9 9JQ

- The application was recovered for decision by the Secretary of State by a direction, made under section 79 of the Town and Country Planning Act 1990, on 27 March 2015.
- The application is made by Wheatley Homes Limited to East Hertfordshire District Council.
- The application Ref 3/14/0531/OP is dated 21 March 2014.
- The development proposed is construction of approximately 80 houses.
- The reason given for making the direction was that the appeal involves a proposal which raises important or novel issues of development control and/or legal difficulties.

Summary of Recommendation: The appeal be allowed.

Procedural Matters

1. At the Inquiry an application for costs was made by Wheatley Homes Limited against East Hertfordshire District Council. This application is the subject of a separate Report.
2. The Rule 6(6) party at the Inquiry comprised Buntingford Town Council, Buntingford Civic Society, Buntingford Action for Responsible Development, and Buntingford Chamber of Commerce. For the purposes of this report the Rule 6(6) party will be referred to as the Buntingford Alliance (BA).
3. At the opening of the Inquiry the Council indicated that they would not be presenting any evidence. They would have been represented by a Planning Consultant, Mr J Watson. In a letter (ID16) to Mr Steptoe, the Council's Head of Planning and Building Control, Mr Watson concedes that, having been presented with evidence that alleviated concerns regarding impact on the transport network, "...their combined weight would not significantly and demonstrably outweigh the benefits of the development proposals, as required by paragraph 14 of the NPPF".
4. The Appellant and BA had been informed that the Council would not be presenting evidence immediately before the Inquiry opened. BA's advocate, Mr Jameson, had been intending to rely on the Council's advocate to cross-examine the Appellant's witnesses. Furthermore, he was appearing on behalf of BA on a pro bono basis and was therefore only able to attend the Inquiry to make opening and closing statements and to present the evidence of BA's sole witness.
5. The aforementioned unusual circumstances of the Inquiry resulted in there being no cross-examination of the Appellant's four witnesses. In the interests of fairness it was agreed that the Appellant's advocate, Mr Shadaverian, would not cross-examine the evidence given by BA's witness.

6. The Inquiry was held to consider two appeals for the development of two adjoining areas of land. The two areas, Areas 2 and 3, are parts of a large field on the east side of Buntingford. The third part of the field, Area 1, was a subject of a Planning Inquiry held in December 2013. The appeal was successful and a reserved matters application, subsequent to the grant of outline permission, has been granted for the 'erection of 105 dwellings, roads, sewers, garages, landscaping and ancillary works', though construction works have not yet commenced.

7. Both applications that are the subjects of this report were submitted in outline form with all matters except for access reserved for future consideration. This report will consider the appeals on the same basis.

8. After the close of the Inquiry, in exercise of his powers under Section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990 (the Act), the Secretary of State directed, by letters dated 27 March 2015, that the two appeals were to be determined by himself rather than by the Inspector.

The Site and Surroundings

9. The combined appeal site is about 14 hectares and rises generally from west to east. Area 2, about 8.36 hectares, has a north boundary to Area 1, a west boundary to residential development on Layston Meadow and Plashes Drive, a south boundary to a narrow lane, Owles Lane, and an east boundary to a field. Area 3, about 5.72 hectares, has a west boundary to Area 1 and to allotment gardens, a north boundary to Hare Street Road, a south boundary to Area 2, and an east boundary to the same field as Area 2. Within the combined site, along its east boundary, is an established tree belt. To the east of the site is a plateau of open farmed countryside.

Planning Policy

10. The Development Plan includes saved policies of the East Herts Local Plan Second Review 2007 (LP). The LP identifies the field to be outside the development limits of Buntingford and therefore in a 'Rural Area beyond the Green Belt' (RAGB), which is established by saved LP policy GBC2. Saved LP policy GBC3 states that within the RAGB permission will not be granted for the construction of new buildings other than for specified purposes. The proposed housing developments are not for any of the specified purposes. Saved LP policy IMP1 requires developers to make appropriate provision for affordable housing, open space and recreational facilities, education facilities, health care facilities, sustainable transport modes, highway improvements, nature conservation and landscape improvements, sustainable construction issues and other infrastructure improvements by entering into planning obligations or by accepting planning conditions on permissions granted.

The Proposals

11. The development proposed for Area 2 is for about 100 houses and for Area 3 is for about 80 houses. In both cases the development would comprise a mix of dwellings and 40% of the houses would be affordable housing. Vehicular access into Area 2 would be through Area 1, whilst vehicular access into Area 3 would be directly off Hare Street Road. The two developments could be developed independently and the outcome of the two appeals could be different. This will be considered in the overall planning balance.

The Case for Wheatley Homes Ltd

The material points of the case made by Wheatley Homes Ltd are:

Housing and Employment Factors

12. The appeals follow closely in the wake of a successful appeal heard in December 2013 in relation to adjoining land. There are some interesting and important parallels to be drawn between that appeal and these appeals to the extent that material circumstances have not changed substantially. In essence, the similarities lie in the important policy and factual parameters that remain substantially the same, if not more compelling in their significance. These relate substantially to the housing supply position in the District and the considerations that govern the decision-making parameters in these appeals in relation to the three dimensions of sustainability, and the substantial weight to be given to the fact that the appeal proposals will provide market and affordable housing. Nothing has improved in relation to the supply of housing.

13. The chronic shortfall in supply has not improved over the past year and, although more permissions have been granted in Buntingford and elsewhere, they make little difference to the housing supply situation. There is now, however, a positive commitment to provide two hectares of employment land on the Sainsbury's site and three additional hectares at Buntingford Business Park (this being a material change in circumstances since the last appeal). The previous Inspector categorised the Sainsbury site as being allocated for housing – he therefore warned the Council to think carefully before losing the employment site. It is clear that the 2014 Employment Land study undertaken on its behalf is optimistic about the long term capacity of Buntingford to significantly increase local employment provision to meet the prospective increase in population that would be brought about by residential commitments and other proposals in the pipeline given the fact that the resident working population will inevitably contain a commuting element.

14. This is information which we know was not before the previous Inquiry. There was no evidence at the time of this potentiality as, indeed, the Inspector identified at ID48 where he stated that "I accept that if all the current applications and appeals were determined favourably then there would be over 800 dwellings committed. I agree that such a level of housing growth without an accompanying growth in employment could only lead to significant out commuting and given the current state of public transport in Buntingford, this would not be an environmentally sustainable outcome". The 800 figure did not, of course, include these proposals. However, what is essential to understand about the Inspector's analysis is that it was based upon prospective developments in the absence of further employment provision. The population projection increase for the purposes of the Study relates to all of these plus a further 271 dwellings at Baldock Road which was at the time of the previous inquiry a pre-existing commitment under construction and therefore should be taken to represent part of the baseline for the Inspector's assessment in this regard. Thus, if we are to take the Inspector's reasoning as an appropriate starting point in the analysis of out commuting as a sustainability issue, the total he assumed for his assessment would now increase to a maximum of only 947 dwellings, but in a very different jobs growth context.

15. The prospective job creation identified in the Study - 1100 to 1300 jobs - would, in the words of the Study (ES paragraph 20), "...go a long way to creating local employment opportunities for the expected increase in the working population

of up to 1625 people and replacement of jobs when the Sainsbury's depot closed. It would contribute to moderating the very substantial net out-commuting from the town...and contribute to the retention of a full range of services in the town centre". It is important to note that the 1625 dwellings figure is the worst case (scenario G) which also includes the working population attributable to 400 dwellings east of the A10 Bypass which is apparently now the subject of an application. Nevertheless, it has to be ignored for the purposes of these appeals. Scenario C which includes the appeal schemes totals a 1236 increase in the employed population which sits well within the upper and lower range of prospective employment growth identified. There is no evidence before the inquiry to countermand this proposition, based as it is on the Council's commissioned assessment.

16. Of course the Study deals with capacity. It cannot predict the actual number of jobs that will be created overall. Moreover, the planning system can serve only to create the opportunity for growth; it cannot command it. What is important for the purposes of these appeals and the decision to be made is that the opportunities are in balance with prospective need generated by a growing population. That is all the decision maker can ensure and can be expected to ensure in the absence of any evidence that the employment strategy is unachievable or unrealistic. There is no such evidence before this Inquiry.

Housing Supply

17. The current housing supply is, at the very best, 3.3 years, possibly less (this will depend upon the outcome of the Plan process and whether there is any adjustment to the current objectively assessed need of 750 dwellings per annum required for other factors). For the purposes of this appeal it is reasonable to take this figure as the Objectively Assessed Need (OAN) for the District as it still demonstrates that the housing supply situation remains "dire". We have asked the Council whether the figure of 750 includes the pre 2011 shortfall, but have had no response. If the pre 2011 shortfall is included, the 3.3 years reduces further.

18. 3.3 years is the appropriate 5 year figure at the moment (but could be worse). It is based on a 20% buffer and the application of the Sedgefield approach. The Council do not provide evidence to the contrary and, indeed, their own consultants express concern about the applicability of the Liverpool approach in current circumstances. A Liverpool approach would fly in the face of the Government's exhortation significantly to boost the supply of housing and to do so as quickly as possible. There can be no excuse, in the absence of compelling capacity or environmental constraints, to defer delivery.

19. The failure to deliver is chronic. There has been undersupply in each of the past 3 years by reference to the current OAN. There has been under-delivery throughout the previous decade by reference to relevant EEP and SP targets. In only three years in the past decade, 2000-2011, did supply exceed the housing requirement. This is by any standard woeful and fully justifies a 20% buffer. It should also be remembered that the buffer is not intended as some kind of punishment. It has to be applied to ensure that the historic undersupply situation is appropriately addressed by proactive decision-making.

The effect of the lack of a five year supply

20. There are two points to stress. Firstly, because the undersupply is very significant, the weight to be afforded to the fact that these proposals will provide

valuable market and affordable housing remains especially high. Secondly, and given the effect of paragraph 14 of the NPPF (and it is common ground, at least between the Local Planning Authority and the Appellants), this invokes the requirements of paragraph 49 requiring policies for the supply of housing to be regarded as out of date, and paragraph 14 that requires an appropriate harm/benefit analysis of the proposals. In short, it requires an overall balancing exercise to be undertaken with considerable weight to be given to the fact that the proposals would provide both market and affordable housing. A proper planning appraisal must include such an analysis if it is to be credible.

21. In relation to affordable housing, considerations should not be limited to local affordable needs only. That would countermand the fact that the dire need for affordable housing is a national phenomenon, and the objection to the supply of further affordable housing in Buntingford in excess of locally assessed need (as appears to be implied in the Council's withdrawn evidence), is both discriminatory and irrational. The Government's proper invective substantially to increase the supply of housing of all types is based on an incontrovertible national need and the idea that the provision of further housing in Buntingford in a sustainable location should be available only to those who can afford market prices is preposterous given this need, and the objective to create diverse and inclusive communities. Moreover, it will increase the future permanent stock of affordable housing to those within the indigenous population who will need and benefit from it in the future, as well as the employment opportunities that will become available.

22. It is also important to take into account the fact that the Council itself recognizes the role which Buntingford has to play in meeting the housing needs of the District, not merely its indigenous needs. As a minimum it was identified in the Issues and Options draft Local Plan for 500 houses with a possible maximum of 2000 houses. It is identified in the current draft for at least 493 dwellings which does not include the Taylor Wimpey scheme or Area 1. Clearly the possible additional development it contemplates on the Pigeon (180) and Sainsbury's (300) sites marks Buntingford out as a settlement that will have to play its part in this regard and its sustainability merits should not be the subject of arbitrary ceilings.

The Council's withdrawn case

23. The procedural background of these appeals demonstrates two things. Firstly, a willingness by the Appellants to work positively with the Council to achieve a sensible outcome and a desire at officer level to do the same given the prevailing policy context, housing supply position and responses from statutory consultees. Secondly, these efforts have been in the face of an entrenched and, we would assert, unreasonable opposition at Member level.

24. The Council's pre-Inquiry Statement represented the true scope of the Council's case for the purposes of this Inquiry before it was withdrawn. The Council's stance was that, whilst the proposals represent inappropriate development in the countryside contrary to policy GBC3, this policy contravention must be qualified by the fact that there is an acknowledged shortfall in housing supply. It would be unreasonable to base an objection on this policy alone, given the fact that further housing in the District will predominantly have to be green field development to which this policy will ostensibly apply in any event. Moreover, in the absence of a Local Plan that provides for an OAN, such a policy could only apply to unnecessary development. The housing provided by these proposals is necessary given current conditions. Instead, the Council puts its case on the basis of lack of sustainability.

25. The first sustainability objection is that relating to lack of employment opportunities locally. Given the matters outlined above, this objection has no substance. Nonetheless, and when looked at carefully, the Council's pre-Inquiry Statement discloses a somewhat ambivalent approach to this objection because, rather than asserting that there will be a mismatch (which given the conclusions of the Employment Study the Council cannot now assert) it instead orbits the Sainsbury's depot site employment requirement: "...the Council's case is based on the need to ensure that this provision is brought forward and delivered. It is deemed inappropriate for the burden of delivery...to be wholly assigned to the developer of that site". The District Council recognises the employment provision is being brought forward. 'Burden' is an irrelevant issue - employment would be for the benefit of Buntingford and also the rest of the District. The Council has of its own volition vacillated over the future of this employment site, even to the extent in very recent times of suggesting that it would be relinquished for employment purposes entirely, only belatedly now to require the retention of 2 hectares for this purpose following the employment study. This employment purpose is to serve the needs of the town generally (not merely the population generated by that development) which recognizes its planning status as an employment site. This provision is a matter upon which the Appellant can justly and appropriately rely as a material consideration in favour of the appeal proposals, not a factor against them

26. The second sustainability objection relates to lack of education facilities (a new 2FE primary school). It flies in the face of the Education Authority's consultation response to the applications. Indeed, it is hard to see how such a facility will be provided without developer contributions. Moreover there is absolutely no evidence to show that the Education Authority will not deliver as and when necessary. The Position Statement (20th August 2014) does not provide the justification for the Council's position. In particular, its strategy is not to urge an embargo on further housing in Buntingford, but to monitor forecast demand for reception places that may arise and to identify contingency options for the Town's first schools given the identified capacity issues. There is an existing 1.5FE expansion potential within the town and the objective above and beyond the Education Authority's commitment to contingency planning as a means of overcoming immediate needs, is to seek to provide a 2FE reserve site to serve the needs of the community in the longer term. The Education Authority, by indisputable implication, and given its clear response to consultation in respect of the applications, is not requiring the provision of the further 2FE school in advance of further housing development, or to put it another way, is not requiring an embargo on housing development in advance of its provision.

27. The final objection relates to highway capacity. This is wholly unfounded and inappropriately based on high level forecasting and capacity analysis that provides no justification for the Council's position. Moreover, the LHA raise no objections on capacity grounds and there is no evidence in terms of highway safety or capacity advanced by the Council that could conceivably substantiate an objection that the residual impacts of these appeals would, if allowed, be unduly problematic, let alone severe. No request for further modelling was made at any stage of the applications or the resubmitted applications in order to overcome any of the perceived concerns.

28. When properly examined the high level report and the JMP Review provide no evidence to support the previous Watson/EHDC view that "the appeal proposals represent a significant risk to achieving sustainable development until assessment and necessary mitigation measures are identified" or his view that "the addition of just 500 dwellings in Buntingford would cause the B1038 (Baldock Road) to become

significantly congested and could lead to increased congestion throughout the towns road network". In fact, in relation to the 500 dwelling scenario the Non Technical Report concluded that "development of 500 dwellings shows an increase to moderate congestion on this link".

29. It should be noted that the Council has behaved entirely inconsistently in relation to these proposals and those advanced by Fairview in relation to the Sainsbury's site. The additional contributions from the Fairview proposals for the school search, highway modelling and associated matters and the commitment to funding additional highway works were regarded by the EHDC Members as entirely sufficient to overcome their sustainability concerns.

30. Moreover, at no time has the Council suggested that the shortfall in supply will be made up or assisted by the prospective development of sites not within their proposed strategic allocations, let alone sites that might be said to be better located; or that such sites will be found in more sustainable settlements. There is no evidence before this inquiry that there are more sustainable options for making up the shortfall. We know, moreover, that Buntingford has been identified as an appropriate settlement (amongst those available) to assist in the strategic provision of housing. Whether the numbers currently proposed for Buntingford will find expression in a submission draft plan cannot be anticipated at this stage. The plan process is at too early a stage to make any assumptions in this regard, particularly given the dire state of the housing supply position.

Landscape and Visual Impact

31. The only professional evidence before the inquiry in relation to Landscape and Visual Impact is that adduced by the Appellant through Ms Bodiam. Her approach has been entirely objective in terms of the assessment approach adopted and her carefully reasoned assessment conclusions in relation to landscape and visual impact should be accepted.

32. Key factors not in dispute (and have never been disputed by the Council in relation to the amended proposals):

a. The topography of the appeal sites render them more closely allied to the settlement than the surrounding countryside. Moreover, the existing tree belt performs a visual and landscape function in limiting its influence in the wider landscape. It also limits the visual envelope of the appeal sites. Its effectiveness as a containment feature will continue to enhance as it matures. It will become very substantial over the next 10 years.

b. The eastern edge of the settlement is defined by the Taylor Wimpey scheme north of Hare Street Road, which in terms of topography is in line with the easternmost boundary of Area 3.

c. The Landscape Character Assessment identifies the appeal sites as falling within the Wyddial Plateau, but it should be emphasized that it is common for character areas to include adjoining areas of land. In the case of the study it recognizes that "...in terms of topography there is a more marked break of slope to the west and south where the plateau meets with the high rib valley". The valley contains both the settlement and the appeal sites. The proposed developments do not sit on the plateau as a matter of fact and will not be perceived from the plateau in the medium to longer term.

d. The amendments to the scheme ensure that a substantial gap remains between the tree belt and the proposed development (ensuring that the eastern most boundary sits at a lower contour) and the development does not take up the whole of the land within the tree belt, should this be of concern. On this point, it should be noted that Mr Middleton did not express any view about likely impact of further development, only its possible impact that should act as some kind of precedent.

e. In terms of landscape impact and the protection afforded by policy GBC3, the assessment clearly indicates that the harm is minimal and that the appeal sites have ample capacity to accommodate the change. Moreover, there will be little influence on surrounding areas and the developed sites will be seen as part of the natural growth of the town, given the close relationship of the sites to the centre of the settlement. Like Area 1, the loss of these sites to development would be less harmful than would be the case at many other edge of settlement green field sites.

f. In terms of visual impact the longer impact on receptors is similarly restricted to those within the site and the immediately adjoining area at Owles Lane. Ms Bodiam has dealt with this succinctly in answer to questions and it is indisputable that the significance of the effect of the development from this receptor will diminish substantially over the next 10 years or so and that, even in the short term, the impact is hallmarked only by glimpses of roof tops that will be seen in the context of the town itself and Fairview (Sainsbury's).

The Planning Balance

33. The question then arises whether, when taking into account all material considerations, the balance of the evidence indicates that the proposed development is sustainable and should therefore attract the presumption in favour of allowing one or both appeals.

34. Covering all three dimensions is the fact that these proposals will deliver much needed market housing and affordable housing. This is the weightiest factor in the overall balance. Indeed it must, in accordance with the NPPF, carry significant weight. The appeal sites are available, are developable and the Appellant has clearly demonstrated its commitment to bring development about in a responsible and timely fashion, true to its design philosophy.

35. **Economic Sustainability:** The provision of new homes will result in the creation of construction jobs and economic activity associated with the developments. The new population will contribute substantially to the local economy, it will contribute to the local workforce and potential for job creation and enhanced labour supply to fulfil and assist in the generation of local employment and employment opportunities that will come about by the new employment strategy. There are no minuses.

36. **Social Sustainability:** The proposals will introduce a younger population, integrating new families into an aging population, including families of a range of means, enhancing social interaction and the social dimension of the town through a well-integrated development. There will be substantial contributions to education provision at every level (approx £1m from the 2 sites). This will benefit the existing population as well. The transportation enhancements also have a social role (e.g. local bus improvements). There will be the opportunity to use the extensive open space by the community as a whole with the retention and provision of new footpath routes. There are no minuses.

37. Environmental Sustainability: These are centrally located developments. Residents will not be dependent on the car to access local services/facilities as all are within reasonable walking distances. There will be well-designed and landscaped proposals with extensive open space, useable by new and existing residents, including the LEAP. The dwellings will be energy efficient homes (15% to Lifetime Standards). There will be increased wildlife habitat within the development and improvements to the tree belt. These are substantial benefits reflecting the fact that the proposed developments are very well located to the existing centre.

38. There are inevitably some environmental dis-benefits. In the sense that the development of open countryside is such a disbenefit, it cannot carry significant weight because the undersupply can only be remedied by the substantial release of green field sites wherever they might be. There is inevitably some landscape and visual harm, but the evidence does not demonstrate that these impacts are unacceptable. There is also the loss of some Grade 2 agricultural land.

39. As with all rural settlements it is inevitable that there will be a higher proportion of residents using the private motorcar to access some services which may not be available in the town. The additional population that will be generated raises the possibility of extra services being provided. Moreover, it may be that until employment and housing provision are in appropriate balance that there might be further out commuting, but this cannot, given the evidence, be said to be a longer term or permanent feature of further residential development within Buntingford. The employment strategy addresses this.

40. However they are looked at, it cannot reasonably be said that these negative factors demonstrably and significantly outweigh the clearly established benefits of the scheme overall.

Conclusion

41. The proposals are sustainable development, planning permission should be granted for both proposals, and the appeals should be allowed.

The Case for the Buntingford Alliance

The material points of the case made by the Buntingford Alliance (BA) are:

42. These appeals, if successful, would be a good example of the application of the rule of unintended consequences. It is only just over a year since we were defending an appeal by Wheatley Homes for the development of Area 1. The unintended consequence is that where there is not an up to date Local Plan and there is not a five year supply of housing land based on 'full objectively assessed needs' then the local community is forced into the expense of fighting appeals to resist development which they believe to be unsustainable, and unintended by the NPPF in any event.

The National Planning Policy Framework (NPPF)

43. The consequence of paragraphs 47 and 49 of the NPPF, where Councils cannot demonstrate a five year supply of housing land based on full objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework, then their policies for the supply of housing should not be considered up to date. In this situation paragraph 14 of the NPPF applies. The paradox is that paragraph 14 starts by indicating that 'at the heart of the NPPF is a presumption in favour of sustainable development'.

44. It might be assumed that the presumption in favour of development in the absence of a five year housing land supply is only a presumption in favour of sustainable development. But that is not how it currently works. These proposals clearly do not accord with the Development Plan as the Inspector found at the last Inquiry. However, with paragraph 14 in place and in the rush to boost significantly the supply of housing, the development industry has been able to secure planning permissions in locations where the plan led system would never have proposed that development should take place, and in unsustainable locations.

The consequences for Buntingford

45. The result of this application of the NPPF is that Buntingford has become a magnet for developers. Buntingford will be surrounded by substantial blocks of new residential development, many of which have been granted permission, in what is essentially a large village or small town devoid of adequate infrastructure and employment to make it a sustainable location for that development.

46. This is happening because the sustainable towns for development in East Hertfordshire are located within the Green Belt which surrounds them to prevent urban sprawl and encroachment into the countryside. Bishops Stortford, Hertford, Ware, and Sawbridgeworth are the main towns in the District. They are the towns that provide the necessary infrastructure to accommodate growth. They are the towns where the vast majority of development in the emerging Local Plan will be allocated. However, in the absence of an up to date Local Plan and upon an application of the NPPF, Green Belt sites, even though adjoining the main urban areas of the District, still present a tough target for developers.

47. Exclusively of East Hertfordshire's towns, and whilst by some considerable distance the smallest, Buntingford is not located in the Green Belt. It therefore presents a softer target for developers notwithstanding the fact that the policy applicable in the LP for the RAGB is substantially the same as Green Belt Policies. The fact is that they are not Green Belt, they are a softer target, and the result, the unintended consequence of the application of the NPPF, is that development does not take place in and around the urban areas currently located within the Green Belt; it takes place in and around the infinitely less sustainable settlement of Buntingford.

48. The paradox is that whilst the NPPF ostensibly seeks to promote sustainable development, it actually secures non-sustainable development in preference to sustainable development.

Changes since the last Inquiry

- The draft East Herts District Plan has been published with sites to be allocated in Buntingford (not including the Appeal sites) and revised settlement limits defined.
- A substantial amount of further land has been approved for release for housing most notably 2600 dwellings in Bishops Stortford in areas which have been reserved sites for housing development in the LP for many years.
- The previous Inspector's threshold of more than 800 dwellings without an accompanying increase in employment has been breached. There have been over 1000 new dwellings built or approved in Buntingford since the 2011 Census. This, in the previous Inspector's own words is 'not an environmentally sustainable outcome'.

- The former Sainsbury's site has been approved for 316 dwellings with only 2 hectares reserved for employment despite the previous Inspector's comment that the former Sainsbury's site 'is possibly the best opportunity in Buntingford to promote significant employment growth and improve the sustainability of the town. The loss of this opportunity requires careful consideration before this site is released for residential development...'. That opportunity has been lost with the resolution to grant permission for 316 dwellings.

49. The housing/employment balance has thus worsened. Additionally the Pigeon land has also been released for 180 houses and 60 residential care units since the previous Inquiry despite the Inspector's comment that employment in the town 'is not sufficient to sustain the local working population'. As a result, although a large proportion of persons of working age that reside within Buntingford work within the town and its immediate environment, a majority do not. Most of these travel between 10 and 20 miles, probably to the surrounding towns.

50. The Inspector also said 'the town does not possess a railway station and...bus services are infrequent and circuitous. Consequently, unless new employment can be attracted to the town, a significant amount of new residential development is unlikely to be environmentally sustainable, its occupants having to seek work elsewhere and most likely be induced to travel there by private car. This again weighs against the appeal proposals and other residential development proposals at Buntingford, which...are not environmentally sustainable'. The reality is that further large releases of land for residential development such as proposed in these appeals are going to exacerbate out commuting in an unsustainable manner.

51. As well as unsustainable commuting to work patterns the previous Inspector found that "Most residents are likely to travel by car to larger supermarkets and for comparison shopping. In such circumstances it would not be easy to tempt residents of the new development away from this mode of travel by the initiatives that could result from the Travel Plans...the likelihood is that most families would travel by car to supermarkets within the...larger towns for major convenience shopping as well as...for comparison shopping for some considerable time to come. This is not a sustainable outcome and weighs against any future development at Buntingford".

52. BA's case is therefore that Buntingford is an essentially unsustainable location for further housing development, which is being brought forward on an ad hoc basis and without securing the necessary social and transport infrastructure improvements and employment opportunities which could only be secured through a plan led system, if indeed Buntingford were to be proposed for further substantial growth, which appears unlikely from the contents of the emerging District Plan.

Landscape impact

53. The previous Inspector indicated that 'If the whole of the land to the west of the tree belt and to the east of the Site were to be developed, then the resulting built environment could have a presence in the wider landscape of the Wyddial Plateau. However such a proposal or the one considered by the Local Planning Inspector in 2005, is not before me'. As a result of these appeals it is now before this Inquiry.

54. As a result of comments by East Herts Landscape Officer the illustrative layout has pulled back development from the tree belt but, of course, it must be remembered that this is an outline application with all matters other than access reserved. Even if the layout as revised were ultimately approved our case is that

there is an unacceptable landscape impact taking the development of Buntingford further out from its valley bottom setting and up onto the Wyddial Plateau where it will be viewed not only from public vantage points including public rights of way to the east of Buntingford, but also across the town from the countryside to the west from where most of the town is currently mainly hidden.

Loss of Agricultural land

55. Areas 2 and 3 are Grade 2 agricultural land and in Hertfordshire Grade 2 land is not just the best and most versatile land which should be protected from development but is the best in the County, which has no Grade 1 land. It is an important non-renewable resource and is subject to the NPPF advice that 'Local Planning Authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, Local Planning Authorities should seek to use areas of poorer quality land in preference to that of higher quality'.

Sustainability

56. We are now already well above the previous Inspector's 800 threshold. We do not have substantial additional employment provision, indeed we have a substantial reduction in employment land provision compared with the position in front of the previous Inspector. The key employment site was Sainsbury's – some 11 hectares. Some 9 hectares of that has been lost to housing, and even with the proposed Local Plan allocations there is a substantial reduction in available employment land; 5 hectares of business park and 2 hectares reserved at Sainsbury's.

57. There is a whole world of difference between allocation and 'take up'. Buntingford is not the sort of area that will readily attract additional employers to relocate to. There are far more factors at play in relocation, or location decisions, than simply the size of the available pool of labour. We suggest that Buntingford is a marginal location for employment provision because of the inherent unsustainability of the town. Substantial out commuting already takes place, and it will therefore inevitably only worsen with these 'housing only' proposals.

58. Public transport starts from an extremely low base. There is no railway station and no range of bus services that would provide anything meaningful for journeys to work or for other reasons. If anything, the current low base is under threat and potentially in decline. At best, we may get a temporary subsidised service which is under used and will disappear when the subsidy expires. That is the reality because of the unsustainable location. There is no guarantee at all that any enhanced services will be provided. This means that the development will attract commuters who will arrive planning to travel by car to their place of work, and for leisure and shopping. They will have to do that because there is no realistic alternative.

59. The paragraph 14 'presumption' is not engaged for unsustainable development. Why else is paragraph 14 couched in terms of sustainability being 'the golden thread'? This is a major area of concern up and down the country, and a major battleground. It has been considered in Country Life/Times/Daily Mail articles, and it has been considered by a Parliamentary Committee. But paragraph 14 in its own terms should lead to dismissal of the appeals on the basis that the developments are unsustainable, do not benefit from the presumption in favour of development, and accord with neither the existing nor the emerging local plans.

60. The previous decision should be given careful consideration. Then, with the housing then proposed and with employment land availability as it then was, the Inspector found that the balance was just in favour of approvals. But he set out the unsustainability of the proposals, the lack of ability to accommodate more than 800 dwellings without substantial additional employment, and the need to retain Sainsbury's for employment.

Conclusion

61. It is time that the tide turned for the residents of Buntingford. We have a three plank argument, led by sustainability. Both appeals should be dismissed.

Representations made by interested parties at the Inquiry

62. The material points of the cases made by Messrs Waite, Bowman, Jones, Reeves and Spears at the Inquiry (see ID18, ID19, ID20 and ID21) generally accord with the case made by the Buntingford Alliance.

Written Representations

63. The material points of the cases made by those who submitted written representations in opposition to the proposed developments generally accord with the case made by the Buntingford Alliance.

Conditions and Unilateral Undertakings

Conditions

64. Recommended conditions are included in two Schedules attached to this report. The reason for each condition appears after the condition. They are in line with conditions agreed by the Council and the Appellant (ID34 and ID35) though they have been amended, where necessary, to meet the tests set out in the Planning Practice Guidance (PPG) and in the interests of clarity and precision.

65. Conditions 3 and 4, in both cases and with regard to their time limits, depart from those set out in Section 92 of the Town and Country Planning Act 1990 and Article 3(1) of the Town and Country Planning (General Development Procedure) Order 1995. The Appellant put forward the time limits as a commitment to progress the developments at the earliest opportunity. The Council has welcomed this commitment and there is therefore no reason not to include the conditions as agreed.

Unilateral undertakings

66. At the Inquiry the Appellant submitted a signed and dated unilateral undertaking, made under Section 106 of the Act, for each proposed development (ID14 and ID15). The transitional period under Regulation 123(3) of the Community and Infrastructure Levy Regulations 2010, after which planning obligations designed to collect pooled contributions may not lawfully be used to fund infrastructure that could be funded by Community and Infrastructure Levy (CIL) contributions, ended on 6 April 2015. Both main parties and BA were consulted on the consequences of this for each application and their representations have been taken into account in this report. The Appellant submitted revised unilateral undertakings for both developments and these are included as Inquiry Documents (ID31 and ID32). The Council has assessed the revised obligations and has concluded that they comply

with Regulation 123(3). The obligations of the undertakings are all necessary to make the development acceptable in planning terms. They are all, furthermore, directly related to the development, are fairly and reasonably related in scale and kind to the development, and are in place to mitigate the effects of the development. The Legal Undertakings therefore comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010.

Conclusions

Numbers in square brackets at the end of each paragraph refer to earlier paragraphs in this Report.

67. The Secretary of State has not indicated, given that he recovered the appeals after the close of the Inquiry, the matters he wishes to be informed about. Objectors to the proposed developments, principally the Buntingford Alliance, are primarily concerned that the sites are not sustainable locations for the proposed developments, with particular regard to their effect on the visual amenity and character of the area and on local infrastructure, to the loss of best and most versatile agricultural land, and to poor local employment opportunities and poor public transport links to employment areas outside Buntingford that would result in high levels of out commuting from the two developments. These matters all relate to the sustainability of the two sites for the provision of housing and sustainability is a matter specifically addressed by paragraph 7 of the NPPF.

68. The main issue is whether the sites are sustainable locations for housing. The conclusion on the main issue must then be considered in the light of the under supply of housing in the District. This will be considered in the overall planning balance.

The main issue – sustainable location for housing

The visual amenity and character of the area

69. The east boundary of the field that is the site of the permitted Area 1 and would be the site of proposed Areas 2 and 3 is a natural ridge from where ground level falls away to the west towards the town and to the east towards Haley Hill Ditch. Land to the east of the ridge is known as the Wyddial Plateau and is farmed countryside interspersed by occasional small blocks of woodland and farmsteads. The plateau is also criss-crossed by public rights of way including a footpath that follows Haley Hill Ditch from Owles Lane to Hare Street Road and beyond. The field and the plateau are within the Wyddial Plateau Landscape Character Area (WPLCA). [31, 32, 53, 54]

70. From this footpath and from others further afield the tree belt along the east boundary of the field is a distinctive feature of the area. The tree belt, which would be reinforced and where appropriate extended in accordance with an agreed condition for both developments, would screen the developments in views from public rights of way on the plateau to the east. Furthermore, if the dwellings were to be glimpsed through the tree belt it would only be the upper parts of their roofs because another agreed condition would restrict the ridge heights of all proposed dwellings relative to ground levels. The proposed developments would not have a significant adverse effect on the character or visual amenity of the WPLCA. [31, 32, 53, 54]

71. The proposed developments would extend the built form of the town and would fundamentally alter the character of the field. But the field is featureless and will be reduced in size by the development of Area 1. Furthermore, the built form of the town on its east side will be extended by the permitted Taylor Wimpey residential development to the north of Hare Street Road. The two proposed developments would extend the built form of the town no further than this permitted development and no further than the permitted development of land at the former Sainsbury's site at the south end of the town. The proposed developments would not have a significant adverse effect on the character of Buntingford. [31, 32, 53, 54]

72. The greatest visual effect of the two proposed developments would be on the amenity of users of two public footpaths; public footpath 15 crosses the north-east corner of Area 1 and public footpath 21 diagonally crosses Area 2 from Owles Lane at its south-east corner to a turning head on Snells Mead. Rather than crossing an open field users of these two footpaths would pass through housing developments. The footpaths will be used for access to countryside to the east of the town and, for existing residents of the town, that countryside would be reached slightly further into their walks than is currently the case. Nevertheless, the proposed developments would have an adverse effect on the visual amenity of the combined site. The field can be seen in views from footpaths to the west of the town but these are distant views and the introduction of housing developments on the field would not be visually intrusive from these public vantage points. [31, 32, 53, 54]

73. Both developments include parts of the tree belt along the east edge of the field and they would each have the same adverse effect on the character and visual amenity of the area. Cumulatively, the adverse effect would not be materially greater. The proposed developments, both individually and cumulatively, would have a less than significant adverse effect on the character and visual amenity of the area. Both developments would, nevertheless, be contrary to saved LP policy GBC3.

Local infrastructure

74. Buntingford is not a large town and both developments are within easy walking and especially cycling distance of all existing services and facilities. It is a thriving town and the additional population resulting from the two developments would help to sustain these existing services and facilities. Section 106 undertakings would result in index linked financial contributions for education, childcare, youth and library facilities. These contributions, which would be calculated using the County Council's standard formula, would include the provision of a new two form first school in Buntingford, expansion of Edwinstree Middle School to a five form entry, expansion of Freman College to a nine form entry, and provision of out-of-school childcare at the new first school. The undertakings would also provide for the payment of a commuted sum, based on £620.88 for each dwelling, to be used to improve health facilities in the locality of the developments. [26]

75. The contributions to the County Council would also include changing the layout of Buntingford Library to create a larger children's area and the enhancement of facilities at the existing youth facility in Buntingford. If the library is under threat of closure this is less likely to occur if the population of Buntingford is increased. Also, £10,000 would be paid to the County Council to either identify a site for a new first school or the expansion of an existing school in Buntingford. Outdoor sports for the increased population of the town would also be enhanced by payment of a financial contribution to the District Council based on their standard formula. Taking into account the various aforementioned financial provisions of the Section 106 Unilateral Undertakings and other factors, the proposed developments would not place an unacceptable burden upon local infrastructure. In this regard both developments accord with saved LP policy IMP1. [26]

Best and most versatile agricultural land

76. Paragraph 112 of the NPPF states that local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land and that where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of

poorer quality land in preference to that of a higher quality. The combined site is about 14 hectares of Grade 2 land as classified under the Agricultural Land Classification (ALC). Grade 1, Grade 2 and Grade 3A land is regarded to be best and most versatile agricultural land. The proposed development would result in the loss of about 14 hectares of best and most versatile agricultural land. [38, 55]

Local employment opportunities and public transport links

77. Buntingford does not, as a matter of fact, have a railway station. The nearest main line railway stations are at Royston to the north, Stevenage to the west and Bishop's Stortford to the south-east. From these stations there are trains direct to Kings Cross and Liverpool Street stations in London but there are no bus services from Buntingford to the nearest railway stations. Buntingford is not well connected by bus services. There is a service between Royston and Hertford that passes through Buntingford but this is neither a fast nor a frequent service. The three aforementioned towns plus Harlow, Hertford and Welwyn Garden City to the south are all within a 30 kms radius of Buntingford and are the nearest towns where employment opportunities are likely to be found, in addition to those that might become available through development of employment land in Buntingford. [50]

78. There is available employment land in Buntingford, including 2 hectares retained for this purpose at the Sainsbury's site and, potentially in accordance with a proposed allocation in the draft East Hertfordshire District Plan, there will be 3 hectares at Buntingford Business Park. An Employment Land Study was carried out on behalf of the Council in 2014. The study indicated that there is the potential to increase job opportunities in Buntingford by between 1100 and 1300. Such an increase would go a long way towards providing job opportunities for the likely increase in the working population that would result from the appeal proposals in addition to other permitted housing developments in Buntingford. Whilst there is no knowing whether employment land will be developed the possibility that it might be would be enhanced by a financial provision of the Section 106 Unilateral Undertakings; a one off contribution of £20,000 for the marketing of employment land and buildings in Buntingford. [25, 49, 57]

79. Shopping opportunities currently exist in Buntingford for day-to-day food and other needs, for existing and proposed residents of the town, and access to these facilities would be enhanced, particularly for elderly residents, by a financial provision of the Section 106 Undertakings; a one off contribution of £75,000 towards the establishment and operation of a hopper bus service in the town. It is inevitable, however, that current and future residents of the town will travel to nearby larger towns where main food and comparison shopping opportunities exist. If they intend to buy bulky goods they will travel by private car but if not they could benefit from improvements to public transport links to these towns that would result from another financial provision of the Section 106 Unilateral Undertakings; a sustainable transport contribution, index linked and calculated in accordance with the County Council's standard formula. This contribution, if not wholly used to improve public transport, would be used to encourage occupiers of the developments to travel by means other than the private motor car. The contribution would also provide sustainable transport options for access to employment opportunities in nearby larger towns. [39, 58]

80. Buntingford has poor public transport links to the other towns in the District and elsewhere, and currently has insufficient employment opportunities for the intended increase in the population of the town. But land exists for the creation of

employment opportunities and the Appellant has entered into unilateral undertakings that would enhance marketing of this land and would enhance sustainable transport opportunities for both existing and intended residents. In this regard also, both developments accord with saved LP policy IMP1. However, the field is a less sustainable location for housing in comparison to sites in, or on the edge of, large towns in the District that have a railway station and better public transport.

Paragraph 7 of the NPPF

81. Paragraph 7 of the NPPF states that there are three dimensions to sustainable development: economic, social and environmental. In terms of the economic role, the developments would result in the creation of construction jobs, new and existing employment opportunities in the town would have a greater pool of potential employees to draw from, and the new residents of the town would contribute to the vitality of the town's shops and facilities. In terms of their social role the most important factor is the provision, through the Section 106 unilateral undertakings, of 40% affordable housing. There is a significant shortfall in the provision of affordable housing in the District, as there is in all parts of the country. Furthermore, there is no reason to suppose that the developments would not be of high quality and all parts of the two developments would be within easy walking and cycling distance of shops, facilities and services in the town. The proposed developments satisfy the economic and social roles of sustainable development. [35, 36]

82. The environmental role of sustainable development demands careful consideration. The field itself has very low biodiversity credentials whereas the two developments, which would include significant areas of landscaping, would improve the biodiversity of the site. The tree belt would be enhanced and managed and in both cases an agreed condition would require the implementation of improvements to the biodiversity of the area as set out in Section 7 of an Ecological Appraisal and Protected Species Report. Another agreed condition in each case would require the submission and prior approval by the local planning authority of a Green Travel Plan. It is expected that these plans would encourage new residents of the town to travel other than by private motor car. Furthermore, 15% of the proposed dwellings would be constructed to Lifetime Home Standards.

83. Balanced against the environmental credentials of the proposed developments and improvements to the biodiversity of the area is the loss of best and most versatile agricultural land, the likelihood that a higher percentage of journeys would be made by motor car if the developments are compared to housing developments in or on the edge of major urban areas, and the private car journeys that would be made by some new residents to access train services and areas of employment. Employment provision in Buntingford is being addressed through the EHDP. The provision of 2 hectares of employment land at the Sainsbury's site has been secured through the grant of planning permission and there is other employment land available in the town. The one off contribution of £20,000 for the marketing of this employment land may well result in new jobs being created in the town. The developments would also adversely affect the character and visual amenity of the area but this harm would be less than significant and is to be expected if the development of edge of settlement greenfield land is required, as is likely, to meet the housing needs of the District. [37, 38]

84. A conclusion on whether the developments meet the environmental role of sustainable development is finely balanced. However, despite the loss of Grade 2 agricultural land and the likelihood that intended residents would predominantly use

their private motor cars for journeys to work and for major food and comparison shopping purposes, the balance falls on the developments satisfying the environmental role of sustainable development. The developments also satisfy the economic and social roles of sustainable development and may therefore be regarded to be, overall, sustainable developments. [29, 60]

Conclusion on the main issue

85. The proposed developments would have a less than significant adverse effect, both individually and cumulatively, on the character and visual amenity of the area and would not, taking into account provisions of the unilateral undertakings, place an unacceptable burden upon local infrastructure. There is no doubt that the field that is the site of the two proposed developments is in a less sustainable location than sites in, or on the edge of, larger towns in the District and the developments would result in the loss of 14 hectares of best and most versatile agricultural land. The proposed developments do conflict with saved LP policy GBC3. However, the sites are, overall, sustainable locations for housing.

Other matters

86. Concern has been expressed about the possibility of traffic congestion at the junction of Hare Street Road with High Street/Station Road if traffic associated with the development of Area 3 was to be added to existing traffic. There is no evidence to indicate that traffic congestion at the junction would reach an unacceptable level. There is also no evidence to indicate that the developments would result in unacceptable congestion anywhere else on the local road network or would compromise highway safety. Traffic associated with the development of Area 2 would, in addition to that associated with Area 1, use Snells Mead for access to the main road through the town. Residents of this residential road would notice an increase in traffic on their road but the increase would not cause unacceptable noise or disturbance. [27]

The planning balance

87. Planning applications must, with regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004, be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material consideration and was published in March 2012. The NPPF therefore postdates the LP. Paragraph 215 of the NPPF states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the framework and paragraph 216 states that the weight to be given to policies in emerging plans should accord to the stage of preparation of the plan.

88. The Inspector in his decision on Area 1 found that LP policies GBC2 and GBC3 were out of date in terms of identifying settlement boundaries but were of significant weight in terms of their protection of the countryside from unnecessary development, as this is an aspiration of the NPPF. The emerging East Hertfordshire District Plan to 2031 (EHDP) has been the subject of consultation but has not yet been the subject of independent examination. It is therefore at an early stage in the process leading to adoption and the EHDP is thus afforded very limited weight. [48]

89. Paragraph 47 of the NPPF requires local planning authorities to identify and update annually a supply of specific deliverable sites to provide five years of housing against their housing requirements. The Appellant's uncontested assessment of

current housing supply is, at the very best, 3.3 years. Paragraph 49 of the NPPF states that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. It is a conclusion of this report that LP policies GBC2 and GBC3 are out of date given the Council's accepted position regarding the housing land supply position. [17-19, 43, 44]

90. BA regard the Inspector's decision on Area 1 to be an important material consideration. He did suggest that, at that time, a commitment of more than 800 new dwellings without an accompanying growth in employment would not be an environmentally sustainable outcome. The situation has changed since then and new housing commitments are about 1000 and employment opportunities in the town have not appreciably improved. But he did not indicate that 800 new dwellings was any sort of threshold beyond which, as suggested by BA, any further commitments would be inherently unsustainable. Furthermore, his comments about the balance between housing growth and employment were made under the heading of 'Prematurity'. A planning judgement must be made on the specifics of the applications and on the circumstances pertaining at the current time. [14, 15, 48]

91. Paragraph 14 of the NPPF states that there is a presumption in favour of sustainable development and that, for decision taking, this means, where relevant policies in the development plan are out-of-date, granting planning permission for development unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. These benefits are, primarily, the provision of market and affordable housing units in a District where there is a significant under supply of housing land. This particular material consideration significantly and demonstrably outweighs the adverse effects of the two developments and justifies determination of the appeals other than in accordance with the development plan. [20, 44]

92. The circumstances that have resulted in Buntingford being a 'magnet for developers', a claim made by BA, started with the failure of the Council to maintain a five year housing land supply. Paragraphs 47 and 49 of the NPPF are not engaged unless this has occurred. The failure of the Council and the circumstance that places Buntingford as the largest town in the District outside the Green Belt has, indeed, resulted in BA's claim. But housing developers respond to circumstances and opportunities and they are entitled to pursue those opportunities and to have their applications and appeals for the development of land assessed on their planning merits and with regard to national and local planning policy and the requirement of Section 38(6) of the Planning and Compulsory Purchase Act 2004. The appeals made in this case have been so assessed.

Recommendation

93. I recommend in both appeals that planning permission be granted subject to conditions set out in appendices to this report.

John Braithwaite

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ms R Clutton	Of Counsel instructed by Mr G Robertson, Solicitor to the Council
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FOR THE APPELLANT:

Mr P Shadarevian	Of Counsel instructed by Mr P Brady of Planning Law Practice
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He called

Mr G Surkitt DipServ	Consultant with Woods Hardwick Ltd
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Ms R Bodium CMLI	Director of JBA Consultancy Services Ltd
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Mr R Parker MTD DMS MIHT MILT	Director of Peter Brett Associates LLP
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Mr E Keymer FRICS	Keymer Cavendish Limited
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FOR THE RULE 6 PARTY (see paragraph 2 of the Report above):

Mr R Jameson	Planning Solicitor
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He called

Mr S Baker MRTPI	Resident of Buntingford
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INTERESTED PERSONS:

Mr G Waite	Resident of Buntingford
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Mr S Bowman	Resident of Buntingford
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Mr J Jones	East Hertfordshire District Councillor for Buntingford
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Mr M Reeves	Resident of Buntingford
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Mr P Spears	Resident of Espenden and Chairman of Aspenden Parish Council and Buntingford Civic Society
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DOCUMENTS

- 1 Council's letter of notification for Appeal A.
- 2 List of those notified of Appeal A.
- 3 Council's letter of notification for Appeal B.
- 4 List of those notified of Appeal B.
- 5 Mr Jameson's opening statement on behalf of the Rule 6 party.
- 6 Mr Shadarevian's opening submissions on behalf of the Appellant.
- 7 Bundle of third party representations at application stage.
- 8 Statement of Common Ground for Area 2 (Appeal A).
- 9 Statement of Common Ground for Area 3 (Appeal B).
- 10 Statement of Common Ground Supplement.
- 11 List of plans and documents submitted for the application for Area 2.
- 12 List of plans and documents submitted for the application for Area 3.
- 13 Summary of Section 106 Obligations.
- 14 Section 106 Unilateral Undertaking for Area 2 (Appeal A).
- 15 Section 106 Unilateral Undertaking for Area 3 (Appeal B).
- 16 Letter dated 6 January 2015 from Mr Watson to Mr K Steptoe.
- 17 Memo from Ms J Pierce to Ms H Izod regarding the two applications.
- 18 Representation by Mr M Reeves.
- 19 Representation by Mr J Jones.
- 20 Representation by Mr S Bowman.
- 21 Representation by Mr G Waite.
- 22 Extract from the Daily Mail dated 19 November 2014.
- 23 Letter dated 6 January 2015 to the Inquiry from Mr M Moulton FRICS.
- 24 Mr Jameson's closing submissions.
- 25 Mr Shadarevian's closing submissions on behalf of the Appellant.
- 26 Costs application by the Appellant.
- 27 LPA's defence to costs application.
- 28 Letter dated 3 July 2014 from Ms H Izod to Mr E Keymer.
- 29 E-mail dated 24 December 2014 from Mr T Britton to Ms R Clutton.
- 30 Appellant's response to the LPA's defence to costs application.
- 31 Revised Section 106 Unilateral Undertaking for Area 2 (Appeal A).
- 32 Revised Section 106 Unilateral Undertaking for Area 3 (Appeal B).
- 33 East Herts Delivery Study.
- 34 Area 2 Agreed Conditions.
- 35 Area 3 Agreed Conditions.

RECOMMENDED CONDITIONS FOR APPLICATION NO. 3/14/0528/OP (Area 2)

1. The development hereby permitted shall be carried out in accordance with the following approved plans: 16700/1019A, 16700/1021 rev B, 16700/1022B, JBA 14/07-SK03 rev A, JBA 14/07-SK04 rev A, JBA 14/07-03 rev A, C-207128/SK24 rev P6, C-207128/SK28 rev P2.

Reason: To comply with Section 92 of the Town and Country Planning Act.

2. Details of the appearance, landscaping, layout, and scale of the development (hereinafter called the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development begins, and the development shall be carried out as approved.

Reason: To comply with the provisions of Article 4 of the Town and Country Planning (Development Management Procedure) Order 2010.

3. Application for approval of the reserved matters shall be made to the local planning authority not later than one year from the date of this permission.

Reason: To ensure that the outline permission is implemented at the earliest opportunity.

4. The development hereby permitted shall begin no later than one year from the date of approval of the last of the reserved matters to be approved.

Reason: To ensure that the outline permission is implemented at the earliest opportunity.

5. The landscaping scheme referred to in condition 2 shall include replacement, reinforcement and where appropriate the extension of screen planting on the eastern boundary of the land, together with proposals for the future management and maintenance of this area whilst the development hereby permitted remains.

Reason: To minimise the landscape and visual impact of the development.

6. No development or groundworks shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, which has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved programme, and this condition shall only be discharged when the required archaeological reports are submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the proper investigation of archaeological remains.

7. No development shall take place until a detailed surface water drainage scheme has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be based on the submitted Flood Risk Assessment C-207128D dated 14 March 2014 and shall include a restriction in run-off and surface water storage as outlined in the FRA, and pollution prevention measures. The approved scheme shall be implemented in phases, prior to the first occupation of each phase of the development.

Reason: To prevent the increased risk of flooding and to improve and protect water quality.

8. No development shall take place until a scheme to deal with any contamination of land and/or groundwater has been submitted to and approved in writing by the Local Planning Authority and until the measures approved in that scheme have been

fully implemented. The scheme shall include all of the following measures unless the Local Planning Authority dispenses with any such requirement in writing:

- i) A site investigation, based on the details contained in the Submitted Geoenvironmental Desk Study Report (J14066 dated March 2014), shall be carried out to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site;
- ii) An options appraisal and remediation strategy, giving full details of the remediation measures required and how they are to be undertaken, based on the results of the site investigation and detailed risk assessment referred to in i) above;
- iii) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in ii) above are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Reason: To minimise and prevent pollution of the land and the water environment.

9. The development hereby permitted shall not be brought into use until a verification report, demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation, has been submitted to and approved in writing by the Local Planning Authority. The report shall include the results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. The report shall also include a plan (a 'long term monitoring and maintenance plan') for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plans shall be implemented as approved.

Reason: To minimise and prevent pollution of the land and the water environment.

10. No dwelling shall be occupied until the access, junction and parking arrangements serving that dwelling have been completed in accordance with the approved in principle plan, drawing number C-207128/SK28 rev P2, to the standards outlined in Roads in Hertfordshire and constructed to the Highway Authority's specification. This will include widening of the proposed access road to enable two HGVs to pass one another with 0.5m tolerance, and a preferred road radius of 40m.

Reason: To ensure the adequate provision of parking and access in the interests of highway safety and convenience.

11. No development shall take place, including any works of demolition, until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:

- i) the programme and phasing of works on site;
- ii) the parking of vehicles of site operatives and visitors;
- iii) loading and unloading of plant and materials;
- iv) storage of plant and materials used in constructing the development;
- v) the erection and maintenance of security hoarding, including decorative displays and facilities for public viewing, where appropriate;
- vi) wheel washing facilities;

- vii) measures to control the emission of dust and dirt during construction;
- viii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- ix) construction vehicle routing and access;
- x) the protection of pedestrians using the public footpath that crosses the site.

Reason: To minimise the impact of construction vehicles on the local road network.

12. No development shall take place until additional scale layout plans showing the arrangements to be implemented at the intersection of the site entrance with public footpath 21, along with details of temporary fencing/signing to protect the alignment of the footpath, have been submitted to and approved in writing by the Local Planning Authority in accordance with Hertfordshire County Council's Rights of Way Good Practice Guide.

Reason: To protect users of the public right of way.

13. A Green Travel Plan, with the object of reducing travel to and from the development by private car, shall be submitted to and approved in writing by the Local Planning Authority prior to first occupation of any dwelling and the proposed measures shall be implemented to an agreed timetable.

Reason: To promote the use of non car modes of transport.

14. All existing trees and hedges shall be retained, unless shown on the approved drawings as being removed. All trees and hedges on and immediately adjoining the site shall be protected from damage in accordance with BS5837: 2012 'Trees in relation to Design, Demolition and Construction', for the duration of the works on site. In the event that trees or hedging become damaged or otherwise defective during the construction period or within five years following practical completion of the approved development, the Local Planning Authority shall be notified as soon as reasonably practicable and remedial action agreed and implemented. In the event that any tree or hedging dies or is removed without the prior consent of the Local Planning Authority, it shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with trees of such size, species and in such number and positions as shall be agreed with the Local Planning Authority.

Reason: To ensure the continuity of amenity afforded by existing trees and hedges.

15. The recommendations to mitigate and enhance the biodiversity of the site highlighted in Section 7 of the Ecological Appraisal and Protected Species report dated March 2014 shall be implemented as approved.

Reason: To protect the habitats of protected species.

16. The dwellings hereby permitted shall be designed so that their ridge heights do not exceed 117.5 m AOD across the site.

Reason: In the interests of the landscape character of the area.

RECOMMENDED CONDITIONS FOR APPLICATION NO. 3/14/0531/OP (Area 3)

1. The development hereby permitted shall be carried out in accordance with the following approved plans: 16700/1021B, 16700/1023B, JBA 14/07-SK03 rev A, JBA 14/07-04 rev A, JBA 14/07-SK05 rev A, C-207128/SK25 rev P5, C-207128/SK29 rev P2.

Reason: To comply with Section 92 of the Town and Country Planning Act.

2. Details of the appearance, landscaping, layout, and scale of the development (hereinafter called the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development begins, and the development shall be carried out as approved.

Reason: To comply with the provisions of Article 4 of the Town and Country Planning (Development Management Procedure) Order 2010.

3. Application for approval of the reserved matters shall be made to the local planning authority not later than one year from the date of this permission.

Reason: To ensure that the outline permission is implemented at the earliest opportunity.

4. The development hereby permitted shall begin no later than one year from the date of approval of the last of the reserved matters to be approved.

Reason: To ensure that the outline permission is implemented at the earliest opportunity.

5. The landscaping scheme referred to in condition 2 shall include replacement, reinforcement and where appropriate the extension of screen planting on the eastern boundary of the land, together with proposals for the future management and maintenance of this area whilst the development hereby permitted remains.

Reason: To minimise the landscape and visual impact of the development.

6. No development or groundworks shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, which has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved programme, and this condition shall only be discharged when the required archaeological reports are submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the proper investigation of archaeological remains.

7. No development shall take place until a detailed surface water drainage scheme has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be based on the submitted Flood Risk Assessment C-207128D dated 14 March 2014 and shall include a restriction in run-off and surface water storage as outlined in the FRA, and pollution prevention measures. The approved scheme shall be implemented in phases, prior to the first occupation of each phase of the development.

Reason: To prevent the increased risk of flooding and to improve and protect water quality.

8. No development shall take place until a scheme to deal with any contamination of land and/or groundwater has been submitted to and approved in writing by the Local Planning Authority and until the measures approved in that

scheme have been fully implemented. The scheme shall include all of the following measures unless the Local Planning Authority dispenses with any such requirement in writing:

- i) A site investigation, based on the details contained in the Submitted Geoenvironmental Desk Study Report (J14067 dated March 2014), shall be carried out to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site;
- ii) An options appraisal and remediation strategy, giving full details of the remediation measures required and how they are to be undertaken, based on the results of the site investigation and detailed risk assessment referred to in i) above;
- iii) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in ii) above are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Reason: To minimise and prevent pollution of the land and the water environment.

9. The development hereby permitted shall not be brought into use until a verification report, demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation, has been submitted to and approved in writing by the Local Planning Authority. The report shall include the results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. The report shall also include a plan (a 'long term monitoring and maintenance plan') for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plans shall be implemented as approved.

Reason: To minimise and prevent pollution of the land and the water environment.

10. No dwelling shall be occupied until the access, junction and parking arrangements serving that dwelling have been completed in accordance with the approved in principle plan, drawing number C-207128/SK25 rev P5, to the standards outlined in Roads in Hertfordshire and constructed to the Highway Authority's specification. This will include widening of the proposed access road to enable two HGVs to pass one another with 0.5m tolerance, and a preferred road radius of 40m.

Reason: To ensure the adequate provision of parking and access in the interests of highway safety and convenience.

11. No development shall take place, including any works of demolition, until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:

- i) the programme and phasing of works on site;
- ii) the parking of vehicles of site operatives and visitors;
- iii) loading and unloading of plant and materials;
- iv) storage of plant and materials used in constructing the development;
- v) the erection and maintenance of security hoarding, including decorative displays and facilities for public viewing, where appropriate;

- vi) wheel washing facilities;
- vii) measures to control the emission of dust and dirt during construction;
- viii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- ix) construction vehicle routing and access;
- x) the protection of pedestrians using the public footpath that crosses the site.

Reason: To minimise the impact of construction vehicles on the local road network.

12. No development shall take place until additional scale layout plans showing the arrangements to be implemented at the intersection of the site entrance with public footpath 15, along with details of temporary fencing/signing to protect the alignment of the footpath, have been submitted to and approved in writing by the Local Planning Authority in accordance with Hertfordshire County Council's Rights of Way Good Practice Guide.

Reason: To protect users of the public right of way.

13. A Green Travel Plan, with the object of reducing travel to and from the development by private car, shall be submitted to and approved in writing by the Local Planning Authority prior to first occupation of any dwelling and the proposed measures shall be implemented to an agreed timetable.

Reason: To promote the use of non car modes of transport.

14. All existing trees and hedges shall be retained, unless shown on the approved drawings as being removed. All trees and hedges on and immediately adjoining the site shall be protected from damage in accordance with BS5837: 2012 'Trees in relation to Design, Demolition and Construction', for the duration of the works on site. In the event that trees or hedging become damaged or otherwise defective during the construction period or within five years following practical completion of the approved development, the Local Planning Authority shall be notified as soon as reasonably practicable and remedial action agreed and implemented. In the event that any tree or hedging dies or is removed without the prior consent of the Local Planning Authority, it shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with trees of such size, species and in such number and positions as shall be agreed with the Local Planning Authority.

Reason: To ensure the continuity of amenity afforded by existing trees and hedges.

15. The recommendations to mitigate and enhance the biodiversity of the site highlighted in Section 7 of the Ecological Appraisal and Protected Species report dated March 2014 shall be implemented as approved.

Reason: To protect the habitats of protected species.

16. The dwellings hereby permitted shall be designed so that their ridge heights do not exceed 117.5 m AOD across the site.

Reason: In the interests of the landscape character of the area.



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.