



Appeal Decision

Inquiry Held on 18 September 2018

Site visit made on 24 September 2018

by **S R G Baird BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26th October 2018

Appeal Ref: APP/C1950/W/17/3190821

Entech House, London Road, Woolmer Green SG3 6JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Taylor Wimpey North Thames against the decision of Welwyn Hatfield Borough Council.
- The application Ref 6/2017/0848/MAJ, dated 21 April 2017, was refused by notice dated 14 September 2017.
- The development proposed is the erection of 72 new dwellings, retail and commercial units, with associated landscaping, parking and infrastructure.

Preliminary Matters

1. Following receipt of closing statements, an agreed list of planning conditions and a S106 Unilateral Undertaking (UU), the inquiry was closed in writing on 2 October 2018. The UU contains obligations regarding: affordable housing, fire hydrants; play facilities; a Framework Travel Plan and financial contributions relating to bins, ecology, education, community facilities and monitoring.
2. The decision notice contains 4 reasons for refusal (RfR). Following the receipt of further information and the UU, RfRs 3 and 4 relating to flood risk and infrastructure were not pursued by the Ipa.

Decision

3. The appeal is allowed and planning permission is granted for the erection of 72 new dwellings, retail and commercial units, with associated landscaping, parking and infrastructure at Entech House, London Road, Woolmer Green SG3 6JE in accordance with the terms of the application, Ref. 6/2017/0848/MAJ, dated 21 April 2017, subject to the conditions set out in the Schedule to this decision.

Background to Main Issues

4. The local planning authority (Ipa) accepts that the proposal does not conflict with the development plan¹ when read as a whole. The outstanding RfRs assert conflict with the emerging Welwyn Hatfield Borough Local Plan (eLP) submitted for examination in May 2017. The Ipa acknowledges that whilst the 2018 Framework² indicates that policies contained in the 2012 Framework will apply for the purposes of examining plans submitted on or before 24 January

¹ Welwyn Hatfield District Plan 2005.

² Annex 1: Implementation.

2019, it is the policies contained within the Framework that are to be taken into account when determining applications and appeals.

Main Issues

5. These are: (1) whether the eLP is at an advanced stage; (2) whether the proposal would be premature and (3) whether the Council can demonstrate a 5-year supply of land for housing.

Reasons

Issue 1

6. Framework paragraph 48 identifies that weight can be given to relevant policies in emerging plans depending on: stage of preparation, the extent of unresolved objections and the degree of consistency with the Framework. Neither the Framework nor Planning Practice Guidance (PPG) defines "advanced". However, whilst the eLP has endured a "...long evolution..."³ and its examination commenced some 18 months ago, a conclusion as to whether it is at an advanced stage is not just a temporal exercise.
7. Two key eLP targets are, the identification of land to deliver some 12,000 dwellings between 2013 and 2032, and the identification of some 294ha of employment land. In October 2017 the Examining Inspector (EI) indicated that as submitted the eLP is unsound in relation to the housing target and employment growth. To meet assessed housing need, additional land would need to be found. As the majority of the Borough is located within Green Belt, the search for additional land has, as the lpa recognises⁴, to include the consideration of further releases from the Green Belt and/or a re-evaluation of the approach to site density and employment land allocations.
8. The lpa has undertaken a Green Belt Review (GBR), identified various scenarios/approaches to progress the eLP and is to write to the EI seeking guidance. This is a significant and fundamental process that goes to the heart of the eLP in relation to the housing and employment strategies. As I understand it the lpa will not identify its preferred approach until the GBR and the various approaches have been tested at an examination session later this year. Once the appropriate strategy for progressing the eLP has been identified, additional sites will need to be found and existing allocations both residential and employment may have to be reappraised. For new sites within the Green Belt, the very special circumstances necessary to justify releasing land will need to be demonstrated for each site and their availability and suitability rigorously assessed. The resulting modifications will need to be the subject of public consultation.
9. The above exercise is likely to result in significant changes for some villages. There are outstanding unresolved objections to the existing eLP allocations and I have no doubt that further releases and/or increasing the density of existing allocations will generate further objections with a requirement for further hearings to take place. Village hearings have yet to be programmed and cannot happen until the lpa has determined which approach it will pursue and its implications are rigorously assessed.

³ Proof of Evidence of Mr Pyecroft for the lpa.

⁴ Green Belt Study Stage 3 and Next Steps Report to Cabinet Planning & Parking Panel 6/9/2018.

10. As yet it is unclear which approach the lpa will pursue, which housing sites may be added, which existing allocations may have their capacity increased, which allocated employment sites may be re-allocated for housing and what impact these changes might have. It is optimistic to suggest that the eLP could be adopted by mid-2019. Taking all the stages that the eLP has yet to pass, including possible intervention by the Secretary of State and the Courts, I consider that adoption of the eLP towards the back end of 2019 or early 2020 is a more realistic conclusion. For these reasons, I conclude that the eLP is not at an advanced stage.

Issue 2 - Prematurity

11. Framework paragraphs 49 and 50 set the context for considering the timing and limited circumstances when a proposal may be considered premature. When permission is refused on prematurity grounds, the lpa is required to demonstrate clearly how granting permission would prejudice the outcome of the plan-making process.
12. Framework paragraph 49 has 2 limbs both of which have to be satisfied. The first limb is that the development is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions ...that are central to the emerging plan. The second limb is that the emerging plan is at an advanced stage. These are high hurdles to clear.
13. Dealing with the second limb first, the eLP is not at an advanced stage. Thus, given that both limbs of Framework paragraph 49 have to be satisfied the appellant's proposal cannot be considered to be premature. Notwithstanding this conclusion, as the lpa's sole case rests on conflict with the eLP, I have, for the sake of completeness, considered the issues it has raised.
14. The lpa says that, given the position of the settlement within the hierarchy (eLP Policies SADM 1 and SP 3), the addition of some 222 dwellings⁵ at Woolmer Green would result in disproportionate growth. In the hierarchy, Woolmer Green is identified as a small excluded⁶ village that has a more limited range of employment opportunities and services than the large excluded villages (Policy SP 3). Large excluded villages have large service centres but with a more limited range of employment opportunities and services than the towns. Neither emerging policy nor its supporting text defines what disproportionate means in quantitative or qualitative terms. The lpa suggest that cumulatively the development of the appeal site and site HS 15 would alter the character of the village by increasing its population and its size making it more akin to a larger village.
15. The lpa submits that granting planning permission on the appeal site would not alter the position regarding the development of site HS15, which, although it has yet to be examined by the EI, has been assessed as appropriate for development. Thus, Woolmer Green would see development on both sides. In terms of increasing the spatial extent of Woolmer Green, this assertion is patently wrong. The appeal site is developed land within the existing settlement boundary of the village, whereas the HS15 site is a green-field site outside the settlement boundary. It is the HS15 site that would

⁵ The appeal site and the eLP residential allocation (Policy SADM 27 Site HS15)

⁶ Excluded from the Green Belt.

increase the spatial extent of the village. In any event, the HS15 site is only a proposed allocation. There are unresolved objections to this site and its appropriateness/suitability for release has yet to be examined as part of the village sessions; a date for which has yet to be determined. Moreover, given the lpa is seeking to identify further releases from the Green Belt it appears to me that the appropriateness and or suitability of releasing site HS15 may need to be reassessed alongside other potential Green Belt releases. As such, site HS 15 cannot be regarded as a commitment.

16. As to Woolmer Green's place in the settlement hierarchy, the lpa failed to provide any rational explanation or identify any potential adverse effects of that asserted change. Indeed, the lpa acknowledged⁷ that if the proposal was accepted the status of Woolmer Green as a small excluded village would not change and that it would remain half the size of any large excluded village. The UU provisions would mitigate the impact of the development on local infrastructure and no doubt if the HS15 site were to come forward it would be required to do the same. The lpa accepted⁶ that in terms of primary education facilities, the County Council has stated that capacity would be made available regardless of the ultimate scale of development in Woolmer Green. Drawing this together, there is nothing to suggest that 72 dwellings on the appeal site would be so substantial as to undermine the overarching settlement strategy of the eLP.
17. As to employment land, the lpa, referring to eLP Policies SP 2, SADM 1, SP 8 and SADM 10 and SADM 27, assert that the loss of the appeal site would: undermine the strategy in the eLP; pre-determine decisions about the location of employment land and conflict with the objectives for Woolmer Green. Policy SP 2 indicates that some 294ha of employment land has been identified to maintain a sufficient supply of jobs in the area. Policy SADM 1 indicates that windfall residential development will be permitted provided that the development would not undermine the delivery of allocated sites or the overall strategy of the plan. Policy SP 8 indicates that the loss of land from Class B uses will be resisted. Policy SADM 10 allocates the appeal site as part of a designated employment area (EA10). The appeal site has a current Class B2 employment use category and the Policy SADM 10 designation identifies it as being suitable for Class B1, B2 and B8 uses. A proposal that would result in the loss of Class B land will only be permitted where it is shown through active, extensive and realistic marketing over a period of 3 years that the site is no longer required to meet future employment land needs and that there is a lack of demand for the land or premises in that location. Paragraph 16.2 of the eLP lists several local objectives for Woolmer Green to be taken into account when considering development proposals. These include maintaining the provision of employment land to protect and enhance the vitality and viability of Woolmer Green as a working village.
18. Dealing first with Woolmer Green as "a working village", it is important to note that the lpa incorrectly, in my view, refers⁸ to these objectives as being part of Policy SADM 27. This policy only allocates site HS15 for residential use and the reference to a working village is contained within the general text in the section dealing with Woolmer Green. The eLP does not explain what is

⁷ X-Examination of Ms Smith.

⁸ Proof of Evidence of Ms Smith paragraph 6.22.

meant by a working village or how vitality and viability could be affected and unfortunately neither could the lpa explain it at the inquiry.

19. If a working village means people living and working in a village, it is something that an lpa cannot exert any control over. This is aptly demonstrated by the appellant's undisputed submission that currently only one full-time employee and one part-time employee lives and works in the existing Class B employment uses in the village. There is nothing to suggest that this miniscule level of employment results in Woolmer Green lacking vitality or viability. If a working village means there is the potential for a resident to find employment within the village then 2 factors are relevant here. The first is that the lpa agreed that a continuing Class B use on the site was not viable and would require considerable one-off expenditure to revamp it; something it was acknowledged is unlikely to happen. Secondly, the appeal proposal would provide for some 657 sq. m of retail and 485 sq. m of office floor space both of which would provide significant local employment opportunities. The retail floor space has particular potential given that retailing provides significant opportunities for part-time employment. Moreover, a retail unit would materially add to the vitality and viability of the village where currently none exist. I consider the appeal proposal would not prejudice the eLP planning objectives for Woolmer Green.
20. As to employment land generally, the objectives of the suite of policies (SP 2, SADM 1, SP 8 and SADM 10) taken together are, in my view, consistent with the Framework objectives of seeking to build a strong, competitive economy. Whilst the evidence base demonstrates an indicative need of some 49 ha of additional Class B land in the plan period, it shows that the need for Class B2 land would drop by some 32ha. Given that there are opportunities for changes of uses within Use Class B, the potential decline in demand for Class B2 land is not, on its own, an indication that the appeal site is no longer required for employment purposes. Whilst with hindsight some aspects of the marketing exercise might have been done differently, I consider it to have been active, extensive and realistic albeit it has not been carried out for 3 years. That said, given the position the lpa finds itself in regarding employment land and balancing this against the additional housing numbers required, I cannot confidently conclude on the evidence before me that the appellant has demonstrated that this site is no longer required for employment purposes. On balance, the requirements of eLP Policy SADM 10 have not been satisfied.
21. Notwithstanding the above, in coming to an overall conclusion on this point, it is necessary to look back to the first limb of Framework paragraph 49 and the instruction within paragraph 50. In doing so, I have in mind that the prediction of employment demand is not an exact science and an awareness of the cumulative impact of small decisions. However, the lpa has not clearly shown that the loss of this relatively small site (2ha or 0.4% of the stock of employment land) is so substantial or cumulatively so significant that it would predetermine decisions central to the eLP such that it would prejudice the strategy of the plan. On this issue, given the eLP is not at an advanced stage and that this proposal would not be premature, I conclude that to allow it would not, as the lpa suggest, imperil the overarching strategy of the eLP or prejudice local objectives for Woolmer Green.

Issue 3 – Housing Land Supply (HLS)

22. The development plan is older than 5 years and the default position for calculating the 5-year HLS is against local housing need using the standard method (Framework paragraph 73). The lpa bases its HLS on the eLP target of 12,000 dwellings referring to Framework paragraphs 60 and 214. Paragraph 60 says that in determining the minimum number of homes needed, strategic policies should be informed by a local need assessment using the standard method unless exceptional circumstances justify an alternative approach. The lpa submits that in light of: the local plan transitional arrangements; the uplift in dwelling numbers has yet to be determined; the potential for an early adjustment to the standard method and the advanced nature of the eLP, it has a "*justified alternative approach*".
23. The lpa's concern that using the 2012 Framework to examine a local plan and the Framework to decide applications/appeals, could place it in a position where, based solely on the method for calculating need, very different results could obtain the week before and the week after adoption of a local plan is, in my view, misplaced. Such a position will not have escaped the authors of the Framework when the transitional arrangements were put in place. If it were a justified concern similar transitional arrangements would have been put in place for determining planning applications/appeals. They have not and, in any event, the conflict the lpa suggests would be addressed by applying Framework paragraph 48.
24. As to the uplift in housing numbers, the identification that the existing housing target is unsound is a clear indication that the existing approach is flawed. Whilst the Government has indicated that it will consider revisions to the standard method, there is no indication when those revisions, if any, will be introduced. Thus, until changes are made, the current system applies. Here the eLP is not at an advanced stage; indeed it is nowhere near the stage in the lpa's example.
25. Framework paragraph 60 applies to the production of strategic policies and not the determination of individual proposals. Moreover, even if it can be argued that it should apply in determining applications/appeals the use of an alternative approach is only justified in "*...exceptional circumstances...*" Here, adopting a base figure identified as unsound is no justification to set aside the Framework requirement to assess local need using the standard method and nowhere near the high bar of exceptional circumstances.
26. I consider that the standard method for assessing local need based on the September 2018 Household projections with the addition of an appropriate buffer should be used for identifying the housing requirement. The Housing Delivery Test is not yet in play and based on the evidence before me, it is appropriate to apply a 5% buffer.
27. Adopting the above position, the lpa calculates the HLS position as some 5.71-years and the appellant at some 1.74-years. The significant discrepancy turns on a fundamental difference between the lpa and the appellant as to which sites should be included within the 5-year supply. In particular the dispute relates to allocated sites within the eLP particularly Green Belt releases and those with outline planning permission.

28. In setting the context for the supply side of the equation, the lpa refers to the 2012 Framework and Footnote 11. This said that to be considered deliverable sites should: be available now; be a suitable location for development now; be achievable with a reasonable prospect that housing will be delivered within 5 years and that the development of the site is viable. In that context, disputes over the 5-year HLS generally revolved around the distinction between what is deliverable and what will be delivered. This distinction was settled by the Court of Appeal with the St Modwen Developments judgement⁹ which, amongst other things, said, "*The assessment of housing land supply does not require certainty that housing sites will actually be developed within that period. The planning process cannot deal in such certainties.*" Thus, for a site to be deliverable it should be capable of being delivered not that it will be delivered. To conclude that a site was not deliverable it was the objector who had to provide clear evidence that there was a no realistic prospect that the site would come forward within 5 years.
29. The lpa submits that, as the Framework retains, largely intact, the definition of deliverable set out in Footnote 11 to the 2012 Framework as the essential test, the decision of the Court of Appeal remains the authoritative definition of deliverable. The appellant submits that the requirement now as set out by the Framework is that the emphasis is now on delivery and that it is for the lpa to provide clear evidence that completions will begin on site in 5 years.
30. Annex 2 of the Framework and updated PPG provides specific guidance on which sites should be included within the 5-year supply. This guidance goes significantly further than the 2012 Framework. Whilst the Framework definition largely repeats the wording of Footnote 11, this now appears to be an overarching reference to be read in the context of the paragraph as a whole. The paragraph goes on to identify 2, closed lists of sites that constitute the 5-year supply. The second closed list refers to sites: with outline planning permission; with permission in principle; allocated in the development plan or identified on a brownfield register. Whilst such sites can be included within the 5-year HLS, there is no presumption of deliverability and it is for the lpa to justify their inclusion with clear evidence that housing completions will begin on-site within 5 years. The PPG provides a non-exhaustive list of examples of the type of evidence that can be used to justify the inclusion of such sites within the 5-year supply.
31. The bulk of the lpa's 5-year supply consists of: (1) sites with outline permission (871 units); (2) sites allocated in the eLP (269 units); (3) sites in the Green Belt allocated in the eLP (1,671 units) and (4) sites awaiting planning permission (440). The addition the Category 4 sites is only part of the equation and for a land supply position to be considered robust it should include losses through demolitions and lapsed permissions. I am not clear that a full exercise has been carried out and I consider this figure should be treated with caution. Thus, for the purposes of determining whether the lpa can demonstrate a 5-year HLS, I have concentrated on Categories 1, 2 and 3 as cumulatively they constitute the bulk of the asserted HLS (2,811 units).
32. The Category 1 sites, feature in the second of the closed lists and are capable of being included in the HLS, subject to being supported by clear evidence from the lpa. The lpa had the opportunity in its evidence and during a round

⁹ St Modwen Developments Ltd and (1) Secretary of State for Communities and Local Government (20 East Riding of Yorkshire Council and Save our Ferriby Action Group [2016] EWHC 968 (Admin)).

table session on the disputed sites to provide the clear evidence required to justify their inclusion in the HLS. Indeed following the presentation of the lpa's evidence and the round table session, I permitted the lpa to provide a note seeking to explain delivery during the 5-years on one site, Broadwater Road West. Moreover, I had the opportunity to examine the lpa's data sheets for the disputed sites on which it drew its evidence. Taken together, whether the approach to these sites adopts the lpa's "capable of being delivered test" or the appellant's "will be delivered" test, I consider the information from these sources falls well short of the clear evidence required by the Framework to justify inclusion of these sites within the HLS.

33. Sites within emerging local plans (Category 2 and 3 sites) are specifically excluded from the second of the closed lists. This is on the basis that it is for the local plan examination to assess these allocations in the round. In that forum, unlike a S78 inquiry, the EI has contributions from all of the relevant stakeholders. This is particularly so for Green Belt releases given the scale of the releases envisaged and the importance that the Framework attaches to the ongoing protection of the Green Belt. Given the Framework as it now stands, I consider that as a matter of principle the Category 2 and 3 sites do not fall within the definition of available and offer a suitable location for development now. Moreover, given that this eLP is not at an advanced stage and the significance of the work the lpa is required to undertake to attempt to meet its objectively assessed need it cannot be said, that there would be a realistic prospect that housing will be delivered on these sites within 5-years.

34. I conclude that the lpa cannot show a 5-year supply of deliverable housing sites and that the scale of its supply falls considerably well short of 5 years.

S106 Unilateral Undertaking

35. In response to requests from the lpa and the County Council (CC), the UU contains obligations to cover: the provision and retention of Affordable Housing; the provision, laying-out and arrangements for the management of the play space; the provision of fire hydrants and the submission of a Framework Travel Plan. The UU also provides for financial contributions of £7,004 for refuse and recycling bins; £9,500 for ecology works; £186,240 for secondary education provision; £12,672 for library provision and £35,528 for youth services.
36. These obligations are derived from a Planning Obligations Supplementary Planning Document February 2012 produced by the lpa, the CC's Planning Obligations Guidance – Toolkit for Hertfordshire 2008 and Hertfordshire's Travel Plan Guidance for Business and Residential Development. The lpa and the CC confirmed that none of the obligations would conflict with the provisions of CIL Regulation 123 regarding pooled contributions for infrastructure. The above obligations comply with Framework and CIL Regulations and I have taken them into account in coming to my decision.
37. The UU includes obligations to pay a monitoring fee of £5,000 to the lpa and to pay a Travel Plan Evaluation and Support Contribution of £6,000 to the CC. There is nothing in the Planning Acts, the CIL Regulations, the Framework or PPG that suggests that an authority could or should claim monitoring fees as part of a planning obligation. Monitoring and administration are one of the

functions of the respective Council's. That said, case law¹⁰ recognises, given the general nature of the Framework/CIL tests, that in exceptional cases i.e. very large developments or a nationally significant project that a decision maker could conclude that the payment of a monitoring fee satisfied those tests.

38. This is a routine planning application for a relatively small residential development. The contributions for monitoring are based on a standardised table of fees that have not, as far as I am aware, been reassessed since 2008 and 2012. They are not an individual assessment of the special costs liable to be incurred for this particular development. Thus, in the absence of a full justification supported by evidence¹¹, the payment of monitoring fees is unnecessary to make the development acceptable in planning terms. Moreover, given these are standard fees, I am not in a position to conclude that the contributions are fair and reasonably related in scale and kind to the development. These contributions do not accord with the tests set out in the Framework/CIL Regulations 122 and I have not taken them into account in coming to my decision.

Planning Balance and Conclusions

39. The starting point for the planning balance is the development plan. Here, the lpa accepts that development does not conflict with the development plan when read as a whole. Accordingly permission should be granted unless material indications indicate otherwise. Other than conflict with the eLP, the lpa does not suggest there are any other material considerations that militate against the proposal. In addition, in the absence of a demonstrable 5-year supply of land for housing and the scale of the deficit engages the second limb of Framework paragraph 11. This says that that permission should be granted unless any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
40. The eLP is a material consideration and the proposal would conflict with Policy SADM 10. However, as the plan is not at an advanced stage only limited weight can be attributed to that conflict. Moreover, because the eLP is not at an advanced stage and a decision to grant planning permission would not undermine the plan-making process through pre-determination, the development would not be premature.
41. There are no constraints that would delay this development and as such granting permission would, in line with the clear objectives spelt out at Framework paragraph 59, provide for a material contribution to meeting housing need within the Borough and as such attracts substantial weight in the planning balance. The early provision of 22 affordable homes in an area where the need for such accommodation is acknowledged as acute is a matter that attracts substantial weight. The provision of a retail unit fronting the main road with off-street car parking in a village that currently has none is a social and economic benefit that also attracts significant weight. The majority of the other benefits highlighted by the appellant are generic and are no more

¹⁰ Oxfordshire County Council and (1) Secretary of State for Communities and Local Government, (2) Cala Management Limited, (3) William Roger Freeman, (4) Ross William Freeman, (5) Julian James Freeman (6) Cherwell District Council [2015] EWHC 186 (admin).

¹¹ Planning Policy Guidance, Paragraph: 004 Reference ID: 23b-004-20150326.

than would be expected from any development. As such I attach limited weight to them. I conclude that the conflict with eLP Policy SADM 10 does not significantly and demonstrably outweigh the benefits of this development, when assessed against the policies in the Framework taken as a whole. Accordingly, having taken all other matters into consideration the appeal is allowed.

Conditions

42. The suggested planning conditions include pre-commencement conditions. The appellant has confirmed in writing acceptance of these conditions.
43. Two conditions were suggested that would remove the benefits of permitted development rights for future occupiers. PPG¹² makes it clear that the removal of permitted development rights will rarely pass the test of reasonableness and necessity and should only be used in exceptional circumstances. Here, no such exceptional circumstances have been advanced and I have not imposed these conditions
44. A benefit of the development would be its contribution to the 5-year housing land supply. In line with the appellant's anticipated programme of implementation, the standard time limit for implementation is varied to 18 months (1)¹³. For the avoidance of doubt and in the interests of proper planning, a condition relating to the specification of plans is imposed (2).
45. Conditions relating to the submission of details and the implementation of approved schemes for: construction management (3); ground remediation (4); surface water drainage (5 & 10); archaeological investigation (6); biodiversity mitigation (7); protection of trees, shrubbery and hedging (8); finishing materials (9); off-site highway works, vehicular access, parking and street lighting (11, 13, 18, 19, 20 & 21); refuse and recycling bin storage (12); hard and soft landscaping (15 & 16); noise mitigation (17 & 23) and Lifetime Homes (22) are reasonable and necessary in the interests of the appearance of the area, highway safety, the preservation of potential archaeology and the protection of future residents' and neighbours' living conditions. In the absence of precise details, a condition requiring the details of photovoltaic panels is reasonable and necessary (14). Where necessary in the interests of precision and enforceability, I have reworded and amalgamated several of the suggested conditions.

George Baird

Inspector

¹² ID: 21a-017-20140306.

¹³ Numbers relate to those in the Schedule of Conditions.

APPEARANCES

FOR THE APPELLANT

Peter Goatley of Counsel, instructed by Taylor Wimpey North Thames.

He called:

Russell Francis BSc, MRICS.
Director, Colliers International.

Richard Garside BSc. (Hons), MRICS.
Director, GL Hearn Limited.

Alex Roberts BSc (Joint Hons), Assoc. RTPI.
Director, DLP Planning Limited.

Neil Osborn BA (Hons), MRTPI.
Senior Director, DLP Planning Limited.

FOR THE LOCAL PLANNING AUTHORITY

Wayne Beglan of Counsel, instructed by Welwyn Hatfield Borough Council.

He called:

Matthew Pyecroft BA (Hons), MIED, Assoc. RTPI.
Senior Projects Officer, Welwyn Hatfield Borough Council.

Michael Davies BSc (Est Man) MRICS Registered Valuer.
Principal, Davies & Co Chartered Surveyors.

Sacha Winfield-Ferreira BSc (Hons), MSc, MRICS.
Senior Associate Director, BNP Paribas Real Estate.

Sarah Smith BA (Hons), Dip TP, MRTPI.
Principal Development Management Officer, Welwyn Hatfield Borough Council.

DOCUMENTS SUBMITTED AT THE INQUIRY

- Doc 1 - Agreed list of suggested planning conditions.
- Doc 2 - Certified copy of S106 Unilateral Undertaking.
- Doc 3 - Extract from Planning Policy Guidance – Viability.
- Doc 4 - Note relating to the delivery of the Broadwater Road West site.
- Doc 5 - Additional clarification for 5-year land supply Scenario A (Row E – allowance for planning applications awaiting determination).
- Doc 6 - Additional clarification for 5-year HLS Scenario A (Row H – allowance for planning applications awaiting determination).
- Doc 7 - Net Completions 2015/16 to 2017/18.
- Doc 8 - C1 Student Completions & C2 Care Home Completions.
- Doc 9 - Scenario A 5-year HLS using Standard Methodology target of 740 (2016 based household projections starting from 2018/2019).
- Doc 10 - Scenario B 5-year HLS using Standard Methodology target of 740 (2016 based household projections starting from 2019/20).
- Doc 11 - Scenario A 5-year HLS Standard Methodology (Local Housing Need) target of 867 dpa starting from 2018/19. Figures frozen as of 31/5/18.
- Doc 12 - Scenario B 5-year HLS Standard Methodology (Local Housing Need) target of 867 dpa from 2019/20. Figures frozen as of 31/5/18.
- Doc 13 - Analysis of Mire Portfolio Comparables.

- Doc 14 - Copies of emails relating to Local Plan examination session notes.
- Doc 15 - Extracts re potential housing sites.
- Doc 16 - Note re S106 Contributions.
- Doc 17 - Statement of Common Ground.
- Doc 18 - Bundle of documents submitted by the appellant.

Richborough Estates

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun before the expiration of 18 months from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following Drawing Numbers;

16916-SK02 Rev I	SK02I Proposed Site Layout - Colour
16916-SK17 Rev B	Flat Type A - Floor Plans
16916-SK18 Rev A	Flat Type A - Floor Plan
16916-SK19	Flat Type A - Front Elevation
16916-SK20 Rev A	Flat Type A - Rear Elevation
16916-SK21	Flat Type A - Flank Elevation & Indicative Section
16916-SK22 Rev A	House Type D - Floor Plans
16916-SK23 Rev A	House Type D - Front & Rear Elevations
16916-SK24 Rev A	House Type D - Flank Elevation & Indicative Section
16916-SK25 Rev A	House Type F - Floor Plans
16916-SK26	House Type F - Front & Rear Elevations
16916-SK27 Rev A	House Type F - Flank Elevations & Indicative Section
16916-SK28 Rev A	House Type B - Floor Plans
16916-SK29 Rev A	House Type B - Front & Rear Elevations
16916-SK30 Rev A	House Type B - Flank Elevations & Indicative Section
16916-SK31	House Type C - Floor Plans
16916-SK32	House Type C - Front & Rear Elevations
16916-SK33	House Type C - Flank Elevations & Indicative Section
16916-SK34 Rev B	House Type G - Floor Plans
16916-SK35 Rev A	House Type G - Front & Rear Elevations
16916-SK36 Rev A	House Type G - Flank Elevations & Indicative Section
16916-SK37 Rev B	House Type H - Floor Plans
16916-SK38 Rev B	House Type H - Front & Flank Elevations
16916-SK39	House Type H - Elevations & Indicative Section
16916-SK40 Rev B	House Type I - Floor Plans
16916-SK41 Rev C	House Type I - Front & Rear Elevations
16916-SK42 Rev A	House Type I - Flank Elevations & Indicative Section
16916-SK43 Rev A	Flat Type K - Floor Plans
16916-SK45 Rev A	Flat Type K - Front Elevation
16916-SK46 Rev A	Flat Type K - Rear Elevation
16916-SK47 Rev A	Flat Type K - Flank Elevation & Indicative Section
16916-SK48	Flat Type L - Floor Plans
16916-SK50 Rev A	Flat Type L - Front Elevation
16916-SK49	Flat Type L - Floor Plan
16916-SK51 Rev A	Flat Type L - Rear Elevation
16916-SK52 Rev A	Flat Type L - Flank Elevation & Indicative Section
16916-SK54 Rev A	House Type N - Floor Plans
16916-SK55	House Type N - Front & Rear Elevations
16916-SK56	House Type N - Flank Elevation & Indicative Section
16916-SK57	House Type M - Floor Plans
16916-SK58	House Type M - Front & Rear Elevations
16916-SK59	House Type M - Flank Elevations & Indicative Section
16916-SK60 Rev A	Flat Type L-Op - Floor Plans
16916-SK61 Rev A	Flat Type L-Op - Front Elevation
16916-SK62 Rev A	Flat Type L-Op - Rear Elevation

16916-SK63 Rev B	Flat Type L-Op - Flank Elevation & Indicative Section
16916-SK64	House Type E - Floor Plans
16916-SK65	House Type E - Front & Rear Elevations
16916-SK66	SK66-House Type E-Flank Elevations & Indicative Section
16916-SK70	Typical Single Garage - Plan & Elevation
16916-SK71	Typical Double Garage - Plan & Elevation
16916-SK72 Rev A	Typical Single Carport - Plan & Elevation
16916-SK73 Rev A	Typical Double Carport - Plan & Elevation
16916-SK74 Rev A	Bin Store 1 - Plan and Elevations
16916-SK75 Rev A	Bin Store 2 - Plan and Elevations
16916-SK76 Rev A	Bin Store 3 - Plan and Elevations
16916-SK77	Cycle Store - Plans & Elevations
16916-SK201 Rev B	Street Elevation A-A
16916-SK203 Rev A	Street Elevation C-C
16916-SK204 Rev A	Street Elevation D-D
16916-SK205 Rev A	Street Elevation E-E
16916-SK206 Rev A	Street Elevation F-F
16916-SK207 Rev A	Street Elevation G-G
16916-SK208 Rev A	Street Elevation H-H
16916-SK209 Rev A	Street Elevation I-I
16916-SK210 Rev A	Street Elevation J-J
5503(P)101 Rev A(D)	Proposed Site & Ground Floor Plan
5503(P)201 Rev A(A)	Proposed Elevations (1 of 2)
5503(P)202 Rev A(A)	Proposed Elevations (2 of 2)
16916-SO02	Site Location Plan
16916 - SK202 Rev A	Street Elevation B-B
6144/LSP.01 Rev E	Landscape Strategy Plan 14 July 2017
CGI 5	3-Storey Apartment Block with Gables Terminating Vista
16916-SK09	Distribution of BR M4 (2) Compliant Dwellings
16916-SK10	Distribution of Photovoltaic Panels 23 August 2017
CGI 6	Residential and Employment Fronting London Road
17656-5-SK02 Rev B	Flood Routing For Extreme Events
16916 - SK11 Rev G	Surface Water Storage
17656-5-SK01	Distribution of Acoustic Screening
5503(P) 102 Rev D(A)	Proposed First, Second Floor and Roof Plans
CG1	London Road Frontage
CG2	Part Countryside Edge, With Inset Green and Retained Existing Tree
CG3	Public Square with Retail Existing Trees
CG4	Typical Street with Terminating Vista
Site Location Plan	

Pre Development

3. No development shall take place, including any works of demolition, until a Construction Method Statement (CMA) 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 include details of:
 - (a) vibro compaction machinery to be used in the construction of the development and a method statement;
 - (b) construction vehicle numbers, type and routing;
 - (c) traffic management requirements;

- (d) the parking of vehicles of site operatives and visitors;
 - (e) loading and unloading of plant and materials;
 - (f) storage of plant and materials used in constructing the development;
 - (g) the erection of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - (h) siting and details, including the operation of, wheel washing facilities;
 - (i) the timing of construction activities.
4. No development other than that required to be carried out as part of an approved scheme of remediation shall commence until Parts A to D of this condition have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the local planning authority in writing until Part D of this condition has been complied with in relation to that contamination.

A. Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The contents of the scheme and the written report are subject to the approval in writing of the local planning authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems;
 - archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

B. Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

C. Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation. The local planning authority must be given 2 weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the local planning authority.

D. Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition A, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of Part B of this condition, which is subject to the approval in writing of the local planning authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority in accordance with Part C of this condition.

E. Long Term Monitoring and Maintenance

Where indicated in the approved remediation scheme, a monitoring and maintenance scheme to include, monitoring the long-term effectiveness of the proposed remediation over the period of five years, and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the local planning authority. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the local planning authority. This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

5. The development hereby permitted shall not be carried out other than in accordance with the approved surface water drainage assessment carried out by Woods Hardwick Infrastructure LLP, reference 17656/FRA revision B dated November 2017 and the mitigation measures detailed within the report. The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing/phasing arrangements embodied within the scheme.
6. No development shall take place on the site until details for the implementation of a programme of archaeological work in accordance with a written scheme of investigation has been submitted to and approved in writing by the local planning authority. The development shall be carried in accordance with the approved programme.

7. No development shall take place (including demolition, ground works, vegetation clearance) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP: Biodiversity shall include details of the following:
- i. a risk assessment of potentially damaging construction activities;
 - ii. the identification of "biodiversity protection zones";
 - iii. practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
 - iv. the location and timings of sensitive works to avoid harm to biodiversity features;
 - v. the times during which construction when specialist ecologists need to be present on site to oversee works;
 - vi. responsible persons and lines of communication;
 - vii. the role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
 - viii. use of protective fences, exclusion barriers and warning signs if applicable;
 - ix. the approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.
8. (a) No retained tree or shrub shall be cut down, uprooted or destroyed, nor shall any retained tree or shrub be pruned other than in accordance with the approved plans and particulars. Any topping or lopping approved shall be carried out in accordance with British Standard 3998:2010 (Tree Work).
- (b) If any retained tree or shrub is removed, uprooted or destroyed or dies, another tree or shrub shall be planted at the same place and that tree or shrub shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.
- (c) The erection of fencing for the protection of any retained tree shrub or hedge shall be undertaken in accordance with details submitted for condition 15 and shall comply with the recommendation of British Standard 5837:2012 before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the local planning authority. No fires shall be lit within 20m of the retained trees and shrubs.

In this condition, retained tree or shrub, means an existing tree or shrub, as the case may be, which is to be retained in accordance with the approved plans and particulars; paragraphs (a) and (b) above shall have effect until the expiration of 5 years from the date of the occupation of the building for its permitted use.

Pre Occupation

9. No above ground work on a building shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby approved have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
10. No occupation of the development shall take place until a detailed surface water drainage scheme for the site based on the approved drainage strategy and sustainable drainage principles, which are outlined below, and which are diverted away from Network Rail property, has been submitted to and approved in writing by the local planning authority. The drainage strategy should demonstrate the surface water run-off generated up to and including 1 in 100 year plus climate change critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed:
 1. detailed engineering drawings of the proposed SuDS features including cross section drawings, their size, volume, depth and any inlet and outlet features including any connection pipe runs;
 2. final detailed management plan to include arrangements for adoption and any other arrangements to secure the operation of the scheme throughout its lifetime.
11. Notwithstanding the details shown on the submitted drawings, no occupation of the development hereby permitted shall take place until a detailed scheme for the off-site highway improvement works including the relocation of northbound bus stop and provision of a shelter to serve this facility, and improved pedestrian crossing facility of London Road in the reasonable vicinity of the site has been submitted to and approved in writing by the local planning authority. Those approved details shall be subsequently implemented prior to the occupation of any of the approved development.
12. No occupation of the development shall take place until details, including the location, of bin provision for the residential dwellings has been submitted to and approved in writing by the local planning authority. Subsequently these approved details together with the approved refuse and recycling materials storage bins and areas for the apartment buildings shall be constructed, equipped and made available for use prior to the occupation of each residential unit to which it is associated with and retained in that form thereafter.
13. Details of any external street lighting proposed in connection with the development hereby approved, shall be submitted to and approved in writing by the local planning authority prior to the occupation of development. The development shall not be carried out other than in accordance with the approved details.
14. No occupation of the development shall take place until full details of the photovoltaic panels hereby approved have been submitted to and approved in writing by the local planning authority. Subsequently the photovoltaic panels

shall be installed in accordance with the approved details prior to the occupation of the development to which the details relate.

15. No occupation of the dwellings hereby permitted shall take place until full details on a suitably scaled plan of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. The development shall not be carried out other than in accordance with the approved details. The landscaping details to be submitted shall include:
- (a) original levels and proposed finished levels;
 - (b) means of enclosure and boundary treatments;
 - (c) hard surfacing, other hard landscape features and materials;
 - (d) existing trees, hedges or other soft features to be retained and a method statement showing tree protection measures to be implemented for the duration of the construction;
 - (e) planting plans, including specifications of species, sizes, planting centres, number and percentage mix, and details of seeding or turfing;
 - (f) details of planting or features to be provided to enhance the value of the development for biodiversity and wildlife;
 - (g) details of siting and timing of all construction activities to avoid harm to all nature conservation features;
 - (h) management and maintenance details.

All agreed landscaping comprised in the above details shall be carried out in the first planting and seeding seasons following the occupation of the first building, the completion of the development, or in agreed phases whichever is the sooner: and any plants which within a period of 10 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. All landscape works shall be carried out in accordance with the guidance contained in British Standards 8545: 2014.

16. The front boundary hedges approved in accordance with condition 15 shall be retained. Should any part of the hedge die, be removed or become seriously damaged or diseased, it shall be replaced during the following planting season by a hedge planted in accordance with a specification previously approved in writing by the local planning authority.
17. No occupation of the residential units hereby permitted shall be undertaken until the noise mitigation and ventilation measures as set out in the Environmental Noise Assessment dated 11 July 2017 have been implemented.

Upon first occupation, testing shall be undertaken to prove the efficiency and effectiveness of the noise mitigation and ventilation measures and a report shall be submitted within 6 months of the first occupation of the first dwelling and approved in writing by the local planning authority, detailing the performance of that scheme. Should the submitted report not be approved, then a further sound insulation and attenuation scheme shall be repeated until a satisfactory level of noise attenuation is achieved. Any further reports submitted under this part of this condition shall be within 6 months of the decision in writing made by the local planning authority. Development shall be carried out in accordance with the approved scheme. The air conditioning,

noise mitigation measures and associated equipment shall thereafter be maintained, including cooling function requirements.

18. Prior to the first occupation of the commercial development hereby permitted, the vehicular access for this part of the development shall be provided and thereafter retained at the positions shown on the approved plan (Drawing No. 1609-22 VS01) and constructed to the Highway Authority's standards. Vehicular access to and from the site shall not be gained other than from London Road.
19. Prior to the first occupation of the retail and commercial units comprised in the development, there shall be submitted to and approved in writing by the local planning authority a scheme providing details of the parking restrictions proposed along the front of the site along London Road and the initial part of the access road for the residential units. Subsequently those approved details shall be implemented prior to the occupation of the commercial building.
20. Prior to the first occupation of any part of the development hereby permitted visibility splays shall be provided in full accordance with the details indicated on the approved plan (Drawing No. 1609-22 VS01). The splays shall thereafter be maintained at all times free from any obstruction between 600mm and 2m above the level of the adjacent highway carriageway.
21. No occupation of any of the flats hereby approved shall take place until provision of secure cycle parking as submitted and approved has been provided and shall be retained in that form thereafter.
22. No occupation of the residential units shown to be Lifetime Homes hereby permitted shall take place until they are implemented as Lifetime Homes, in accordance with Drawing No. 16 916-SKo9 received 23 August 2017.
23. Prior to the occupation of any of the houses that require acoustic fencing, the acoustic fence shall be erected in accordance with the details agreed, and shall be retained in that form thereafter.