



Appeal Decision

Inquiry Held on 27, 28, 29 and 30 September 2022

Site visit made on 29 September 2022

by J P Longmuir BA(Hons) DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 March 2023

Appeal Ref: APP/W1905/W/22/3300254 90 Fairmead, Cuffley Hill, Goffs Oak EN7 5EX

- 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 Countryside Properties (UK) Limited & Landowners against the decision of Borough of Broxbourne Council.
 - The application Ref 07/19/0200/F, dated 26 February 2019, was refused by notice dated 9 February 2022.
 - The development proposed is the erection of 58 dwellings with associated infrastructure.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of 58 dwellings with associated infrastructure at 90 Fairmead, Cuffley Hill, Goffs Oak EN7 5EX in accordance with the terms of the application, Ref 07/19/0200/F, dated 26 February 2019, subject to the conditions in the conditions annexe.

Application for costs

2. An application for costs was made by the appellant. This is the subject of a separate decision.

Preliminary matters

3. A Section 106 agreement was signed on 27 October 2022. This provides for affordable housing and contributions towards management of open space on the site, a new fire and rescue station, increasing library capacity at Goffs Oak, recreational facilities at Goffs Oak, a new recycling centre, improvement works to the A10, youth services and monitoring fees. The agreement has been drafted to include so called 'blue pencil'¹ clauses for potentially different education, highway works and healthcare contributions, due to dispute on various aspects between the District and County Councils as well as the appellant. The agreement therefore seeks to secure the necessary contributions that meet the relevant legal and policy tests in accordance with my findings. I shall return to these matters below.

¹ A blue pencil clause allows certain provision(s) in an agreement to be struck out whilst other provision(s) may be found to be enforceable.

Main Issues

4. The main issues are:

- the effect of the proposed development on the character and appearance of the area; and
- whether the proposal would lead to a biodiversity net gain.

Reasons

Background

5. The appeal site is part of a larger area allocated for development in Policy GO5 of the Broxbourne Local Plan (LP). This allocation is the amalgamation of several sites: CG Edwards for approximately 20 dwellings, Fairmead Nursery for approximately 12 dwellings, and Rosemead Nursery for approximately 14 dwellings. The appeal site consists of the latter two, amounting to approximately 26 dwellings in total. Policy GO5 specifically uses the word 'approximately' which I consider below.
6. The decision notice refers to the over-development of the site and harm to its semi-rural character. The Council's evidence relates to the approximate number of houses proposed which it considers to be over and above the figures in Policy GO5.
7. Policy GO5 gives no quantum of the open space needed and the explanatory text makes no such mention. There was no evidence presented to the Inquiry on the rationale for the open space, other than to retain the trees. Similarly, the Local Plan has an indicative concept plan² for Goffs Oak, which shows the allocated housing in an orange hue but does not annotate any associated open space.

Character and appearance

8. The decision notice does not refer to Policy GO5 but relies on DSC1. This seeks a high standard of design for all development. It also states wherever possible development proposals must enhance local character and distinctiveness taking into account the context and retention of features including trees.
9. The Metropolitan Green Belt wraps around Goffs Oak. The boundaries were reviewed in the current Local Plan so that this allocation, including the appeal site, is excluded and the revised Green Belt boundary is now adjacent.
10. The appeal site is not in a designated landscape and both parties confirmed it is not a valued landscape as referred to in paragraph 174 of the National Planning Policy Framework (the Framework). Paragraph 8.7 of the Local Plan describes the allocated site as semi-derelict being formerly occupied by [horticultural] nurseries. The site is a mix of rough ground, grass, former nursery structures and trees.
11. The western (CG Edwards) element in the GO5 allocation has been very recently developed for 23 houses which takes the form of a cul-de-sac. As a result, the appeal site is now surrounded by twentieth century housing on its western, eastern and southern sides. Consequently, the site is not particularly

² Figure 10 Goffs Oak indicative Concept Plan

sensitive to change from residential development. Indeed, as a result of the surrounding development the site is largely obscured from public view, except for a glimpse through the southern boundary of the site, off the Cuffley Hill road. I find that the site's character is largely derived from the expanse of the existing trees.

12. The proposal includes an open space towards the frontage which would provide a sense of arrival and soften the glimpse from Cuffley Hill. The layout also features another larger open space towards the northern part of the site around the existing trees thereby allowing them to be a focal point. This would create a discernible sense of place and would provide an open setting to the adjacent countryside and Green Belt.
13. The submitted layout shows that there would be scope for tree planting alongside the access roads, in prominent positions which would create character. Reasonable space is also shown for them to flourish.
14. A 2017 Tree Preservation Order covers part of the site: a group to the north, which the Order notes as mainly oaks and a scattering of individual broad leaved trees spread across the southern part. Policy GO5 requires retention of protected trees. A 2018 tree survey was submitted with the application and the layout retains most of the significant trees, placing them within open space. However, trees would be lost in the line of the proposed access and infrastructure route, including 13 identified as 'Category B'³ specimens in the survey.
15. Whilst the Category B trees are estimated as having at least 20 years life expectancy, they are quantified as 'moderate quality'. In addition, the lost trees are partially obscured and distanced from public view by the row of adjacent two storey houses along the Cuffley Hill Road. The PPG⁴ states: 'the extent to which the trees or woodlands can be seen by the public will inform the authority's assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public'.
16. More 'Category C' trees would be lost but these are not significant. Ten other trees are identified for removal due to poor health and/or structural condition. The Council's specialist officer had no objection to the loss of the trees, and I similarly concur. In any event these trees would also be likely to preclude any development here as they are in the line with the route of the access, with no other opportunity identified due to the surrounding houses.
17. The appellant calculates the density of the proposed development would be 18.7 dwellings per hectare⁵ as measured by the number of dwellings within the appeal site. Even taken as a ballpark this would be very low and would be commensurate with the surroundings. The Council suggested at the Inquiry that the density should be calculated on the basis of excluding the open space identified around the trees. However, that open space is experienced within the appeal site and therefore I find that the overall density is more relevant because that is what would be perceived: the houses would be experienced together with the open space.

³ Criteria provided in BS 5837:2012

⁴ Tree Preservation Orders and trees in conservation areas

⁵ Paragraphs 2.16 and 6.4 Mr Pullan Proof of Evidence

18. Similarly, whilst evidence was provided taking extracts from the proposed layout, the overall density yardstick would reflect the overall perception of the scheme as experienced on the ground.
19. The dwellings would have fair sized gardens, which together with the informal juxtapositions and short building lines would lead to the buildings not dominating. Similarly, I find that the several terraces proposed would be deferential being short and on the periphery of the development.
20. Both parties make reference to other recent schemes in the area and their respective densities. However, I find that this site has particular characteristics, not least being surrounded by houses on three sides, with the proposed open space to the only other side abutting the countryside, and only open to a narrow public view, which leads me to conclude that the layout and density of the proposal is reasonable.
21. The Council in their opening referred to the impermeable nature of the layout but that reflects the shape of the allocated site. The adjacent (CG Edwards) development is also similar.
22. Much of the Council's case was based on the proposal presenting an excessive number of units rather than the principle of development and in this regard, relied upon the approximate numbers in Policy GO5, which asserted did not provide support for a scheme with a larger number of units. The 58 dwellings as proposed in this development would exceed the 'approximate' total dwellings identified in Policy GO5.
23. Paragraph 3.19 is explanatory text relating in general to allocations. This states that the figures allocating dwellings are 'indicative'. It continues that they are 'neither minimum nor maximum but rather an estimate of capacity to inform the plan making process and provide a detailed starting point for considerations of the site specific issues through the planning application process'. It continues that the Council 'will apply dwelling numbers in the context of sustainable place making, to achieve efficient use of land through a design led approach'. It finishes by stating that proposals which differ should be 'fully justified in relation to site specific factors'.
24. The proposal would be in keeping with the surroundings and meet the 'site specific issue' as in paragraph 3.19. The development being surrounded by houses on three sides would appear contained and logical and the open spaces (as shown in the Estate Managed Areas Plan) would contribute towards an attractive scheme.
25. The proposal has a different built development area to that shown in the Goffs Oak indicative Concept Plan in the Local Plan. However, the new houses would not extend northwards into the countryside beyond the adjacent housing, so would be within the perceivable confines of the settlement. In addition, the area needed for the access road is excluded from the development area in the Concept Plan. Also excluded is a modest area to the north of the neighbouring No.90 Fairmead, which would be surrounded by houses and gardens on all four sides. Furthermore, the housing allocations are shown in the Concept Plan as separate development entities, whereas they are amalgamated in this proposal leading to a more efficient overall layout. I find that the above would at least in part account for the lesser number of houses foreseen in the Local Plan.

26. The Council highlighted that the Design and Access Statement does not mention the GO5 allocation for approximate 26 dwellings. However, this is not an overriding factor as I have found that the design responds to the site and surroundings.
27. The Council had no objection to the designs of the houses. I find that the elevations would be simple and harmonious, and the houses would be well proportioned, modest scale and in materials prevalent in the area.
28. Policy GB1 refers to sites within the Green Belt and cross references to considerations in the Framework. As I have found above the proposal would retain the trees within an open space, thereby respecting the setting of the Green Belt and Policy GB1.
29. I have found above that the loss of trees would not be harmful to the character and appearance of the area, the layout and density respond to the site's constraints and opportunities, whilst the elevational design and materials would be sympathetic to the surroundings. Accordingly, the proposal would not conflict with Policy DSC1 or Paragraphs 126, 130, 133 and 174 of the National Planning Policy Framework (the Framework).
30. Policy GO5 allocates the site for residential development. It also requires 40% affordable housing, public open space and retention of protected trees. The proposal does provide 40% affordable housing and open space. I have found that the proposal retains the significant trees, whilst allowing an access to be made. I conclude that the proposal would not be in conflict with Policy GO5.

Whether the proposal would lead to a biodiversity net gain

31. The Planning practice guidance: Natural Environment (PPG) defines biodiversity net gain as works which deliver: 'measurable improvements for biodiversity by creating or enhancing habitats in association with development. Biodiversity gain can be achieved on-site, off-site or through a combination of on-site or off-site measures'.
32. Local Plan Policy NEB1 amongst other matters states development should result in a biodiversity net gain wherever possible but offers no quantum of the gain required. The explanatory paragraph 27.8 endorses the use of the DEFRA metric as an appropriate method for determining ecological value and delivering measurable ecological gain. Paragraphs 174 and 180 of the Framework have a similar aim to promote biodiversity. However, these policies only seek a net gain and both parties agreed that no threshold has been identified for the quantum of gain which could be as little as 1%. Whilst reference was made to the Environment Act 2021 which aims for a 10% biodiversity net gain this requires secondary legislation to come into force and at the moment it is not in place.
33. The appellant has used the DEFRA metric 3.0 in accordance with NEB1. The Council's concern is that the result shows the proposal would only provide a biodiversity net gain of 0.96%, which they feel is only marginal and could lead to a negative biodiversity effect.
34. The PPG says that biodiversity enhancement should be led by a local understanding of ecological networks and should seek to include habitat restoration, re-creation and expansion, improved links between existing sites,

- buffering of existing important sites, new biodiversity features within development and securing management for long term enhancement.
35. The appellant worked on several iterations of the proposal with the Hertfordshire and Middlesex Wildlife Trust, who represent the Council's interest in this field. The Trust is an independent body and would be expected to know and understand the ecological characteristics of the locality. The Trust had no objection to the proposal and agreed the finalised metric calculation.
 36. The appellant has reproduced extracts from the metric spreadsheet which confirm its methodology and the inputs for the calculation. Assessment of the type, condition and size of the existing habitat on site forms a baseline assessment. The proposed changes are then quantified, together with timescales for action.
 37. The Trust agreed the existing ecological significance of the appeal site and its potential, which were inputs into the assessment. The metric also requires the setting of target conditions and factoring impacts such as recreational pressure.
 38. The User Guide explains that risks are recognised in the metric. Multipliers are used in the calculation, which have the effect of reducing the resulting value. Hence by its very nature the metric is pre-cautionary.
 39. The User Guide foresees risks including the timing for ecological works, accounting for temporary losses often as a result of the development process in construction or from the finished development. The main focus of the enhancements here would be the defined open spaces, which would be away from the footprint of buildings and as such the measures would be expected to be readily achievable and the risks low.
 40. The submitted Habitat Areas Plan shows the various habitats intended: woodland, scrub, garden and grassland including the wetland meadow in the attention basins. The proper management and enhancement measures of the woodland are particularly significant in the metric calculation, including establishment of new growth and utilising deadwood habitat. Bat and bird boxes are also proposed. These outputs from the metric were not questioned by the Council and I find that the above measures would provide targeted management to create and bolster various habitats.
 41. The enhancements would be delivered by a condition requiring a Landscape and Ecology Management Plan. This would require submission of details on the implementation and management of enhancements, specifically to achieve a net gain, which would need to be agreed by the Local Planning Authority. Indeed, the condition also specifies the number of new habitat and hedgerow 'units' that would have to be provided. Thus, I am satisfied that the condition would secure the delivery of a net gain to biodiversity.
 42. The suggested condition also requires monitoring and a 30 year work programme which would safeguard the future ecological value of the site. Similarly, a planning obligation would require the maintenance of the open areas by a management company in accordance with a scheme approved by the Council.

43. The appellant provided a recent appeal decision⁶ at Filands Road/Jenner Lane Malmesbury, where a 1% biodiversity net gain was considered appropriate. However, the Council suggests the decision does not mention the risks for measures to fail. However, I have not been provided with the workings of the metric in that particular case, so it does not lead me to a different conclusion.
44. Based on the evidence before the Inquiry, I therefore conclude that a biodiversity net gain would be achieved. I therefore find that the proposal would not conflict with Policy NEB1 or paragraphs 174 and 180 of the Framework.

Other matters

45. Several local residents comment on birds, foxes, badgers, bats and deer using the site. Very late evidence was presented during the Inquiry of a photograph of deer; it was not made clear where precisely it was taken from. Nonetheless this was considered at the Inquiry by re-examination of the appellant's ecology witness. It was explained that they are not rare or threatened species in the UK⁷ and the Council had no comment on the submission. I agree with this view.
46. The committee report⁸ states: 'a phase 1 habitat survey was undertaken to inform the Ecology Report and this has found limited potential for bat presence but has not found any other protected species on the site. The Ecology Report recommends further, detailed on site survey work prior to any building works commencing. This would be secured by a planning condition'. Whilst the last survey was undertaken in July 2018, the site has not had any further tree planting or construction of buildings or structures subsequently that would have added or enhanced any habitat.
47. The appeal questionnaire⁹ response from the Council, which provides background information for an appeal, states that there are no protected species are present on the site. The committee report¹⁰ also suggests that the proposed area for development is largely where there has been previous development.
48. The Council adopted its Local Plan on 23 June 2020. This allocated the appeal site for housing development which would not have been the case without understanding the site's potential ecological significance. In addition, as stated earlier, the PPG emphasises the importance of understanding the existing ecology to calculate biodiversity net gain.
49. The committee report recommends a condition requiring a survey prior to the commencement of any building works. Latterly the main parties reiterate the use of a condition, which would require a pre-commencement walkover survey, then more detailed species and habitat specific surveys with the details submitted and approved by the Local Planning Authority. This gives the Council a final check of any ecological significance before development commences. Indeed, a Natural England license would be required if protected species or habitat was evident. The Estate Management Plan shows that the managed

⁶ APP/Y3940/W/21/3278256

⁷ Appellant closing paragraph 42

⁸ Paragraph 7.15

⁹ Question 19b

¹⁰ Paragraph 7.21

planting and open spaces within the appeal site would offer potential for any mitigation.

50. Indeed, the tree with the greatest bat potential¹¹ would be retained within the northern open space away from the development. Whilst a tree with 'moderate bat potential' would be lost as well as a chimney on a derelict building, their removal could be purposefully timed and with appropriate mitigation in place if found to be a roost.
51. From the evidence before the Inquiry, subject to the proposed mitigation secured by condition, I conclude that there is no reasonable likelihood of protected species or habitat being on site and affected by the development. Having regard to Circular 06/2005 the above condition would offer a pre-commencement check at that time.
52. Some local residents also express concern about air quality. However, the site is not within an air quality management area. Moreover, the vehicular traffic associated with the 58 dwellings would be minimal compared with the volume of traffic using the Cuffley Hill Road. The Council's Environmental Health Officer had no objection and I similarly concur. For similar reasons the level of traffic from the proposal would not impair highway safety and I note that the Council had no objection in this respect. The detailed proposal provides sufficient parking so that there would be reasonable provision for each dwelling and their visitors. There is also concern about overlooking and daylighting, but I find the new dwellings would be sited, designed and set sufficiently away from the existing to maintain reasonable privacy, and the Council also reached a similar conclusion. Similarly, there is mention of impaired security by increasing access, but the proposal would provide clear and defined boundaries. There is also concern about water pressure, but I have not been provided with clear evidence that this would be significant and note the site has been allocated for development.
53. The potential for asbestos and contamination from the previous use as nurseries was cited at the Inquiry by local residents. A condition is recommended by both parties on investigation and remediation, which I find would suitably address this potential.
54. There are also concerns about noise and dust emanating from the construction works. However, a condition on construction management could control working hours and use of machinery, deliveries, as well as dust/dirt.

Planning obligations

55. The 2010 CIL Community Infrastructure Levy Regulations (CIL) and paragraph 57 of the Framework provide the legal and policy tests for obligations. These tests require that planning obligations should only be sought where they are: a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development.
56. Policy PO1 of the Local Plan confirms that obligations may include measures to mitigate the impacts of development and meet the costs of associated infrastructure. It also cross references to the CIL Regulations and similarly the

¹¹ Figure 1 of Updated ecology walkover survey report

Hertfordshire County Council Guide to Developer Infrastructure Contributions, which was approved in July 2021.

57. The Borough of Broxbourne Draft Infrastructure Delivery Plan 2018 (IDP) supports the Local Plan and its allocated growth. This plan is intended for 15 years ahead and foresees the need for primary and secondary education provision, highway improvements, recreation and healthcare.
58. Both the District and the County Councils have provided evidence on CIL compliance.
59. The proposal would provide 40% of the dwellings as affordable homes. This would meet the requirements of Local Plan Policy H2 and is accepted by both parties.
60. The £164,692 'Recreational Sporting and Community Contribution', £6,484 'Library Contribution' and £14,138 'Youth Services Contribution' would meet the additional demands of new households on everyday facilities which support health and wellbeing and sense of community. The funding would go to facilities within the catchment area and would meet the requirements of Policy ORC1 which seeks contributions to community and leisure facilities.
61. The £100,248 'Strategic Transport Contribution' is necessary for improvements to capacity at the nearby A10 junction due to the increase in vehicles arising from the development. The County Council confirmed at the Inquiry that an improvement scheme has been devised. The proposal would therefore comply with Policy TM2 which seeks to ensure that safety for all movement corridors is not compromised. It is therefore necessary and related to the development proposed.
62. The £21,200 'Fire and Rescue Contribution' would help ensure that the new residents would be covered by lifesaving services. The £9,216 'Waste Services Contribution' would go to a new recycling centre at Brookfield Garden Village, which would deal with the inevitable waste arising from households. These contributions would go towards these community facilities as required by Policy ORC1. It is therefore necessary and related to the development proposed.
63. The 'Education Contribution' has various potential provisions, and the obligation is so worded that I have to determine which meets the tests and is material to this proposal so that the others can be struck out. The manner in which the section 106 agreement is worded requires me to determine whether the proposed development should contribute to primary, secondary and SEND individually¹².
64. Firstly, there is dispute whether the education contribution should be paid to the Borough or County Council. Whilst the Borough Council expressed its involvement in school place planning at the Inquiry, it is the County Council that has the statutory responsibility for education provision and the funding should go to them. In any event, the agreement specifies¹³ that the funding is intended towards the expansion of Woodside Primary School and towards building a new secondary school at Broxbourne.

¹² Section 106 agreement Definitions and interpretation

¹³ Section 106 Agreement. 1.1 definitions

65. Secondly whilst the appellant acknowledges the pupil generation and the costs of provision, the dispute was whether the contributions are necessary for primary and secondary provision given the existing capacity in the area. The appellant suggests that the County Council forecasts indicate that there is capacity.
66. Paragraph 95 of the Framework states it is important that a sufficient choice of school places is available. It continues by promoting a proactive, positive and collaborative approach to meet this requirement and to development that will widen the choice in education. The PPG on Planning Obligations also refers to the need to consider existing capacity and cross references to Department of Education: 'Securing developer contributions for education', which also confirms the need for adequate mitigation.
67. The National Audit report¹⁴ paragraph 1.17 refers to a minimum of 5% surplus for choice. Whilst some of the forecasted years could meet that, it is nonetheless a minimum, and there is also reference for this to be up to 10%. Furthermore, whilst some years are forecasted to be less pressured than others, the 2022/23 forecast shows only 1.5% surplus.
68. In addition, the County Council forecast on capacity is only up to 2026/27 and there is no certainty when the development would be finished, after which there is not even a forecast of the capacity.
69. The County Council also explained at the Inquiry that the forecasting cannot be expected to be completely accurate: it is a prediction not a precise science. The above National Audit report at paragraph 1.10 states: 'all forecasts are uncertain and ONS projections have been subject to major revisions upwards to reflect the demographic changes'. In particular birth rates will influence the figures and cannot be wholly foreseen, which this report highlights. In addition, migration will also influence pupil numbers and that too is unforeseen. Indeed, it is evident that pupil need will vary from one year to another in this locality: this variation is evident in the forecasts.
70. The secondary education situation is similar in terms of capacity, the need for choice and the forecasting and potential for variation between years.
71. Therefore, based on the evidence of the forecasting before the Inquiry, I find that the proposal would place demand on school places whereby the capacity is constricted, and adequate choice would be likely to be jeopardized. Therefore, primary and secondary education contributions would be needed.
72. The Special Educational Needs and Disabilities (SEND) Contribution was not disputed. This would provide funding towards the expansion of specific facilities of which some need would be likely from the development.
73. I therefore conclude that contributions towards primary, secondary and SEND provision are necessary to make the development acceptable as in the 'vii County Education Contribution'¹⁵.
74. Thirdly, there is a dispute between the Councils as to whether the education payments should be staged or wholly prior to commencement. The submission

¹⁴ National Audit Office Capital funding for new school places. 15 March 2013

¹⁵ Definitions and interpretation

by the County Council favours stepped payments¹⁶ as pre-commencement, then at 29 dwellings. The appellant offered no view. As the County Council have suggested this approach as the Education Authority, I am not inclined to differ.

75. The 'Health Contribution'¹⁷ has two different amounts to which judgment is needed on which is most appropriate in terms of the above tests: the District Council request £35,802, whereas the NHS seeks £191,266.60 to cover comprehensive services. The CIL Compliance Statement from the Borough Council, confirmed at the Inquiry, that funding would be targeted to the forthcoming satellite expansion of the Goffs Oak surgery at Rosedale Park. I find the £35,802 provision to be fairly and reasonably related in scale and kind as it is focussed on local expansion to meet the specific needs of the intended occupants rather than the suggested generalised payment. This would meet the requirements of Policy ORC1.
76. The 'Highway Improvements' Contribution is defined as either £100,248 or £103,500 dependent on my finding. The funding would go towards off site works to create a pedestrian refuge on Cuffley Hill, improvements to bus stops on Cuffley Hill and the provision of tactile paving at The Meadway /Cuffley Hill and Robinsons Avenue /Cuffley Hill. The site is close to everyday facilities and therefore residents would not be dependent on use of private cars and these works would promote the use of sustainable transport and low carbon living. Policy TM1 expects all major development to show potential alternatives to car use. The obligation makes provision that any residual funding is spent on other sustainable transport in Goffs Oak, and as this is material to this proposal and its location is close to facilities, I therefore find that the higher amount is necessary to maximise the accessibility of the locality.
77. Whilst the Borough Council support the Highway Improvements Contribution obligation, the County Council suggest a 'Grampian' condition would be more precise and implementable. However, the obligation would allow for the use of pooled resources to achieve a more comprehensive approach and could cover several aspects promoting sustainable local travel. I therefore find that the obligation would provide the necessary range of sustainable transport measures which would be beyond the scope of a condition.
78. The obligation sets out timescales for making split highway improvement payments during the course of development however there is provision under clause 1.7 of Schedule 2 if I am so minded for it to be made in total prior to development. It would take time for the works to be procured and implemented. Provision should be in place prior to occupation to establish the habit of using non private car use for everyday living. I therefore find that clause 1.7 should take precedence over the timescales in clauses 1.1 -1.6 of Schedule 2.
79. Both Councils requested monitoring fees, based on their own calculations for their particular responsibilities in each obligation within the agreement as outlined in their respective obligations guidance. The PPG allows for monitoring costs if proportionate and reasonable. The obligations would have to be checked by the Council staff throughout the progress of the development and payments would need to be requested, received, and actioned. Both Councils

¹⁶ Paragraphs 5.15 and 6.19 of Charlie Thompson Statement

¹⁷ Definitions and interpretation

have particular responsibilities for overseeing the obligations and the funding. I therefore find that the monitoring fees are necessary and reasonably related to the proposal.

80. The above obligations are intended to mitigate the needs and impact of the intended occupants of 58 additional houses, to avoid placing undue pressure on the existing community facilities. The requirements were based on calculating the resulting new residents and the likely need for the particular facilities.
81. The CIL Compliance evidence sets out how each obligation would meet the tests in the CIL Regulations and the Framework. I am satisfied that each obligation below would meet the tests in that they are all necessary to make the development acceptable, directly related and fairly and reasonably related in kind and scale. Provision is also necessary to accord with Development Plan Policies H2, ORC1, TM1, TM2 and PO1 as well as the IDP.
82. I therefore confirm that the obligations contained in the section 106 agreement would be necessary and reasonable, including the 'County Education Contribution vii': primary and secondary and SEND education contributions payable to the County Council (as in clause vii¹⁸), £103,500 'Highway Improvements Contribution' payable prior to the commencement of development (as in clause 1.7 of Schedule 2¹⁹), £35,802 'Health Contribution'²⁰, the £4,600 and £1,360 monitoring fees of both the Borough and County Councils respectively.

Housing land supply

83. The Local Plan requires the provision of 454²¹ new dwellings a year, 2018-2033. The parties agree that 5 year housing land supply should be based on the period from 1 April 2022 up to 31 March 2027 and should include a 20% buffer. The existing shortfall is 968 dwellings and on this basis the requirement is 3,886²². The appellant suggests that housing land supply equates to 3.33 years, the Council suggests 5.79 years. The appellant suggests a deficit of over 1300 dwellings.
84. Both sides acknowledge the definition of deliverable in the Glossary to the Framework and the need for clear evidence. However, the build rate and deliverability of several sites are disputed. The Council base their suggested delivery rates on their findings of over 20 sites in their borough. The appellant instead favours the Lichfield Report²³, which is based on extensive research of housing developments and is widely used as a yardstick.
85. The developers for White House, High Street Cheshunt, state in an e-mail that the current permission for 57 dwellings is unviable and are seeking a revised scheme. Until this new scheme has permission delivery would be uncertain. Similarly Chestnut Lakeside and The Former Playing Fields do not have planning permission for which the Council assume 1031 and 75 dwellings respectively. The Turnford Surfacing site for 104 dwellings has no permission as the required Section 106 agreement has not been signed since a positive Council resolution in December 2020. Consequently, based on the submitted

¹⁸ Clause vii: 'Definitions and interpretation' requires primary, secondary and special educational needs

¹⁹ Rather than clauses 1.1-1.6 of Schedule 2

²⁰ Rather than £191,266.60 in the definition/interpretation of 'Health Contribution'

²¹ Paragraph 3.2 Ms Rantz McDonald Proof of Evidence

²² Appendix 2 Ms Fitzgerald Proof of Evidence

²³ The second edition considers 180 sites from 50 to over 2,000 dwellings

evidence I am unable to conclude that there is a realistic prospect that housing will be delivered within five years. I therefore find that these do not fall within the definition of deliverable and should therefore be discounted.

86. Planning permission for Units 4 and 5 Kilarney Court, Lodge Crescent, Waltham Cross for 11 dwellings is due to expire on 22 April 2023. There are various pre-commencement conditions on noise and asbestos which based on the submitted evidence at the Inquiry have not been discharged. Implementation is therefore uncertain and so this should be discounted from the land supply.
87. The 250 dwellings at Brookfield Riverside and the 150 dwellings per year at Brookfield Garden Village do not have outline planning permission and implementation is not certain, so appear optimistic. Therefore, these dwellings should not be included in the land supply.
88. Theobalds Brook for 90 dwellings is the subject of an outline application which has not received permission and the Council acknowledge there is no update since March 2021. Reserved matters approval would also be needed. Consequently, I am therefore not persuaded that there is a realistic prospect of housing being delivered within 5 years.
89. The Rosedale Park sites have outline permissions but various infrastructure constraints. A reserved matters approval for a spine road which is still awaited. The site east of Dinant Link Road for 70 dwellings has no permission. The submitted evidence was conflicting and therefore I have not excluded these from the land supply.
90. There is also dispute over 140 dwellings windfalls, as the Council have added 70 dwellings per year on top of existing commitments, for which The Framework requires compelling evidence. Whilst some allowance for future years is rational this would be tantamount to double counting for the first two years of the five-year period for supply. Similarly, 25 self-build units are assumed, and I also find that this would amount to double counting.
91. Taking the above sites together against the annual requirement I find that land supply is approximately 4.5 years. In any event, the Council confirmed that it has only achieved 72% of the required delivery over the last three years. This fails the Housing Delivery Test and is 'substantially below' as defined in footnote 8 of the Framework as less than 75%. The PPG²⁴ confirms where delivery of housing has fallen below the test certain policies from the Framework will apply. This is considered below in the planning balance.
92. In addition, the housing delivery shortfall is evident²⁵ in 5 of the last 6 years.
93. The prospects for the land supply improving are poor given that review of the Local Plan has only just commenced and will take time. In addition, there is considerable reliance on large sites where infrastructure needs to be in place and the potential for new outward green field development is constrained by the Green Belt.

Planning Balance

94. I find that the proposal would provide appropriate open space and an attractive scheme complying with Policy DSC1. Policy GO5 is the allocation of the site for

²⁴ Housing supply and delivery

²⁵ Paragraph 3.3 Ms Rantz Mc Donald Proof of Evidence

housing and therefore the principle of the appeal proposal is acceptable. The policy also requires 40% affordable housing, public open space and whilst there would be loss of some protected trees this would not be significant.

95. The numbers of dwellings foreseen in the allocations in Policy GO5 are 'approximate'. Any lower density would not make efficient use of land, which is particularly important bearing in mind that the Local Plan removed the site from the Green Belt in order to meet the housing land supply requirement. Paragraph 3.8 of the Local Plan refers to Green Belt sites in Goffs Oak being proposed to meet the full housing need. Moreover, the occupants of the proposal would have easy access to everyday facilities without being car dependent, thereby promoting low carbon living. Paragraph 3.4 of the Local Plan states that the allocations are orientated towards potential non-vehicular access. In addition, the proposal would provide 23 affordable homes and paragraph 1.15 of the Local Plan notes the 'challenges of access to affordable housing'.
96. Based on the evidence before the Inquiry, I find that the proposal would provide a biodiversity net gain, albeit very limited, and the Council were satisfied that no protected species or habitat would be harmed, and I concur as there was no clear evidence provided to the Inquiry to show otherwise. The proposal therefore complies with Policy NEB1.
97. The failure to meet the Housing Delivery Test and the absence of a five housing land supply engages paragraph 11(d) of the Framework. Consequently, planning permission should be granted unless any adverse impacts of the proposal would significantly and demonstrably outweigh the benefits of the scheme, when assessed against the policies in the Framework taken as a whole.
98. In any event, I find that the proposal would not be harmful and accords with the Development Plan when taken as a whole. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states determination must be made in accordance with the plan unless material considerations indicate otherwise. This is re-iterated in paragraph 2 of the Framework.
99. As the proposal accords with the Development Plan and material considerations do not indicate otherwise, I therefore find the proposal should be approved.

Conditions

100. Paragraph 56 of the Framework and the Planning practice guidance, Use of planning conditions (PPG), provide the tests for the imposition of conditions. Whilst there was considerable agreement on the wording of conditions, there was dispute on some which were tabulated in the e-mail of 27 September 2022. However, the Framework is clear that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning, and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have assessed the suggested conditions accordingly.
101. The conditions on timing and approved plans help provide clarity and certainty.
102. The considerations in the Construction Environmental and Traffic Plan would help to maintain living standards of the surrounding residents particularly in

terms of noise, disturbance and dust. I have amended it to include construction activities as well as the suggested construction transport effects. As I found earlier, a condition on potential contamination is warranted. The timescale for implementation has been added.

103. The approval of materials is necessary to ensure an appropriate appearance. Similarly, the protection of retained trees is important for their contribution to the character of the area and biodiversity, however the suggested tailpiece wording effectively saying unless otherwise agreed, would weaken the intent and is therefore not included. The submission of landscaping details is also necessary to help the character and appearance of the area as well as biodiversity. The levels drawings are included as approved plans. A condition on external lighting is imposed to respect ecology and dark landscapes as promoted in paragraph 185 of the Framework.
104. The submission and approval of the details of the surface water management is necessary to ensure that adequate provision is made to hold surface water run-off to prevent problems for the homes and roads in the vicinity.
105. As I found earlier the condition requiring submission and approval of a landscape ecology management plan is necessary to achieve a biodiversity net gain and similarly an additional condition is required for a walkover survey to check for protected species and habitat.
106. The Travel Plan condition is necessary to highlight and promote the accessibility of the local services to the incoming residents, in the interests of low carbon living and sense of community. The wording is slightly changed to remove the approval by the County Council since the Local Planning Authority have that responsibility.
107. The condition on footway works is necessary to promote safety. This has been re-worded to avoid a pre-commencement trigger and in the interests of simplicity. A condition is suggested for compliance of the site access with the submitted plans and closure of the existing. However, this would be unnecessary as the access plans could be included in the list of approved plans and the existing access would be subsumed by the new one.
108. The condition on electric charging points would be unnecessary as there is no clear evidence why the Building Regulations requirements would not suffice.
109. The Council suggest conditions removing permitted development rights in Use Classes A and E as well as no changes to garages and car parking spaces. Paragraph 54 of the Framework states planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Given the site is not prominent from public view and the houses would be sufficiently distanced to maintain living conditions as well as the availability of local services to ease parking, it would not be justified in this case. The connection to broadband would be dependent upon the suppliers and no evidence has been provided on such practicality. It is therefore not imposed.
110. A condition is suggested about provision of turning if the road is not built out, including temporary charging points and parking. However, the road and turning will have to be constructed to carry out the development and the houses would be unlikely to be saleable without parking. Similarly, the

condition on foul drainage is unnecessary as this would be a matter for Building Regulations.

111. A condition is recommended on the details for the access. However, this would be subject to approval under highways legislation. Similarly, a condition requiring surfacing of the access and parking prior to first occupation may well be impractical with construction vehicles working on other plots. Other conditions on pedestrian works and bus stop improvements are unnecessary as the Section 106 makes provision of funding.

Conclusion

112. I therefore conclude that the appeal should be allowed, subject to the conditions in the conditions annexe below and the Section 106 agreement, including the obligations confirmed in paragraph 75 above.

John Longmuir

INSPECTOR

Appearances

For the Council

Mr Luke Wilcox	Counsel Landmark Chambers
Ms Camille Rantz Mc Donald BA(Hons) MSc	Senior Policy Planner Broxbourne
Ms Jenifer Thompson BSc MSC MRTPI	Consultant Principal Planner Broxbourne

For the Appellant

Ms Thea Osmund-Smith and Hari Narulla	Counsel No.5 Chambers
Ms Elizabeth Fitzgerald BA(Hons) DipTP MRPI	Director Barker Parry
Mr Andrew Pankhurst BA(Hons) CIEEM	Director Southern Ecological Solutions
Mr Michael Pullan BA (Hons) DipUD	Head of Urban Design and Masterplanning Lambert Smith Hampton

For the Planning obligations session

Mr Anthony Proietti MSc	Herts County Council
Mr Christopher Martin	Herts County Council
Mr Matthew Armstrong	Herts County Highways

Documents submitted during the Inquiry

ID1 Opening statement: Appellant
ID2 Opening Statement: Council
ID3 Mr Gray two e-mails. Additional comments
ID3 Photograph of deer from Mr Gray
ID4 Scheme for improvements to community/recreation facilities at Goffs Oak
ID5 Rosedale Park section 106: new school
ID6 Borough Council preferred direction for sustainable /highway contributions
ID5 E-mails/ updated table on delivery of housing sites
ID6 Appellant explanatory note on Section 106 agreement
ID7 Closing statement: Council
ID8 Closing statement: Appellant

Conditions annexe

1. The development to which this permission relates shall be begun within a period of 3 years commencing on the date of this decision.

2. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

Site Location Plan SLP.01.A
Affordable Housing Layout AHL.02 P5
Materials Layout ML.02 P5
Refuse Layout RL.02 P5
Site Layout SL.02 P16
Site Access 17094-00-009 Rev C
HT – 2B AFF Floor Plans and Elevations HT.2B AFF.pe P3
HT – 3B AFF Floor Plans and Elevations HT.3B AFF_1.pe P2
HT – 405 Floor Plans and Elevations HT.405.pe P3
HT – 419 Elevations HT.419.pe P3
HT – 419 Floor Plans HT.419.p P3
HT – 2B AFF – Terrace Floor Plans and Elevations HT.2B AFF-1.pe P2
HT – 2B AFF – Terrace Floor Plans and Elevations HT.2B AFF-2.pe P2
HT – 2B AFF – Terrace Floor Plans and Elevations HT.2B AFF-3.pe P2
HT – 3B AFF Floor Plans and Elevations HT.3B AFF.pe P2
HT – 3B AFF Floor Plans and Elevations HT.3B AFF_2.pe P1
HT – 401 Floor Plans and Elevations HT.401.pe P2
HT – 401 Floor Plans and Elevations HT.401-1.pe P2
HT – 401 Floor Plans and Elevations HT.401-2.pe P2
HT – 401 Floor Plans and Elevations HT.401-3.pe P2
HT – 401 Floor Plans and Elevations HT.401-4.pe P2
HT – 404 Floor Plans and Elevations HT.404.pe P2
HT – 407 Floor Plans and Elevations HT.407.pe P2
HT – 407 Floor Plans and Elevations HT.407-1.pe P2
HT – 407 Floor Plans and Elevations HT.407-2.pe P2
HT – 407 Floor Plans and Elevations HT.407_3.pe P2
HT – 410 Floor Plans and Elevations HT.410.pe P2
HT – 410 Floor Plans and Elevations HT.410-1.pe P2
HT – 412 Floor Plans and Elevations HT.412.pe P2
HT – 412 Floor Plans and Elevations HT.412-1.pe P2
HT – 416 Floor Plans and Elevations HT.416.pe P2

HT – 416 Floor Plans and Elevations HT.416.pe P2
HT – 419 Elevations HT.419.pe P2
HT – 424 Floor Plans and Elevations HT.424.pe P2
HT – 500 Floor Plans HT.500.p P2
HT – 500 Elevations HT.500.pe P2 HT – 500 Elevations HT.500-1.pe P2
Garages Floor Plans and Elevations GR.02.P2
Landscape Strategy Layout C00185_CSP_EL_XX_DR_L_X001 PL9
Cut and Fill Appraisal C00185-ACE-IG-XX-DR-C-P005 P1
Cut and Fill Calcs Longsections (1 of 3) C00185-ACE-IG-XX-DR-C-P006
Cut and Fill Calcs Longsections (2 of 3) C00185-ACE-IG-XX-DR-C-P007
Cut and Fill Calcs Longsections (3 of 3) C00185-ACE-IG-XX-DR-C-P008
Cut and Fill Isopachyte C00185-ACE-IG-XX-DR-C-P010
Attenuation Basin Sections (1 of 2) C00185-ACE-IG-XX-DR-C-P020 PL1
Attenuation Basin Sections (2 of 2) C00185-ACE-IG-XX-DR-C-P021 PL1
Proposed Drainage Strategy C00185-ACE-IG-XX-DR-C-P100 PL2
Proposed Levels Strategy C00185-ACE-IG-XX-DR-C-P101 PL2

3. Prior to the commencement of development, a Construction Environmental and Traffic Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The construction of the development shall be carried out in accordance with the approved Plan. The Construction Environmental and Traffic Management Plan shall set out:

- a. The phasing of construction.
- b. The methods for accessing the site, including wider construction vehicle routing.
- c. The number of daily construction vehicles including details of their sizes at each phase of the development.
- d. The hours of all deliveries and the construction works.
- e. Details of any highway works necessary to enable construction to take place.
- f. Details of construction vehicle parking, turning and loading/unloading arrangements clear of the public highway.
- g. Details of on site provision for storage of materials and parking for visitors and contractors.
- h. Details of any hoarding.
- i. Details of how the safety of existing public highway users and existing public rights of way users will be maintained.
- j. Management of traffic to reduce congestion.
- k. The provision for addressing any abnormal wear and tear to the highway.
- l. The details of consultation with local businesses or neighbours.
- m. The details of any other construction sites in the local area.
- n. Waste management proposals.
- o. Measures to contain dust and dirt within the development including the provision and use of wheel washing facilities.

4. Prior to the commencement of any above ground works, details and samples of all external materials shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.

5. Prior to the commencement of development, a scheme for the protection of retained trees, in accordance with BS5837:2005 shall be submitted to and approved in writing by the Local Planning Authority. The tree protection measures shall be carried out in accordance with the approved details before any machinery, equipment, or materials are brought onto the site for the purposes of development or other operations. The fencing shall remain in place for the full duration of development until all equipment, materials and surplus materials have been removed from the site. If the fencing is damaged all operations shall cease until it is repaired in accordance with the approved details. Nothing shall be stored or placed in any fenced area in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavations be made within those areas without the prior written approval of the Local Planning Authority.

6. No existing trees, shown to be retained on the plans hereby approved shall be lopped, topped, felled or otherwise interfered with and no existing hedges shown to be retained shall be removed without the prior agreement of the Local Planning Authority in writing.

7. No above ground development shall commence until a scheme of hard and soft landscaping together with a programme for implementation, has been submitted to and approved in writing by the Local Planning Authority. All landscaping shall be carried in accordance with the approved scheme and the approved implementation programme. Any trees or plants which within a period of 5 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.

8. Prior to the commencement of any above ground works, a Landscape and Ecology Management Plan (the LEMP) shall be submitted to and approved in writing by the Local Planning Authority.

The LEMP shall ensure the delivery of the agreed number of habitat and hedgerow units as a minimum (15.38 habitat units and 0.08 hedgerow units) to achieve a net gain in biodiversity and include the following:

- Description and evaluation of features to be managed.
- Aims and objectives of management.
- Appropriate management actions for achieving target condition for conditions as described in the DEFRA metric.
- Preparation of a work schedule (including a 30 year work plan capable of being rolled forward in perpetuity), clearly marked on plans.
- Details of the body or organization responsible for implementation of the plans.
- Ongoing monitoring plan and remedial measures to ensure habitat conditions are met.

- Details of species selected to achieve target habitat condition targets detailed in the DEFRA metric are definitively stated and marked on any plans.
- Details of make, model and location of 24 integrated bat boxes, 24 integrated swift boxes and hedgehog highways between all garden barriers.
- Implementation timescales.
- Preparation of an annual work plan, including monitoring (which shall include the provision and maintenance of habitats for a period of not less than 10 years from the completion of development.)

The LEMP shall also include details of the legal and funding mechanism(s) by which the long term implementation of the plan will be secured by the Developer with the management body(ies) responsible for its delivery.

The LEMP shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

From the outset the development shall only be carried out in accordance with the approved LEMP and the approved LEMP will be implemented in accordance with the approved details.

9. Prior to the commencement of development, a site walk-over survey by a qualified ecologist shall be undertaken to update the Phase 1 Habitat Assessment (James Blake Associates 2017). The findings of the walk-over survey, along with a list of recommended species and habitat specific surveys shall be submitted to and approved in writing by the Local Planning Authority.

The recommended species and habitat surveys shall thereafter be undertaken to a methodology and timetable submitted to and approved by the Local Planning Authority beforehand. The results from the surveys shall be submitted to the Local Planning Authority for approval within one month, together with any mitigation measures including a timetable for any their implementation.

The development shall thereafter be constructed in accordance with the approved mitigation measures to the approved timetable for their implementation.

10. Prior to first occupation, a scheme for any external lighting shall be submitted to the Local Planning Authority for approval. Only external lighting in accordance with the approved scheme shall be installed. The external lighting shall be maintained and retained as approved thereafter.

11. Prior to the commencement of development the following components of a scheme to deal with the risks associated with contamination at the site shall be submitted to and approved in writing by the Local Planning Authority:

Phase 2 Site Investigation

A site investigation scheme for contaminants including asbestos, including detailed assessment of the risks to all receptors that may be affected, including those off site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The report of the findings must include a survey of the extent, scale and nature of contamination, an appraisal of remedial options, and a proposal of the preferred option(s).

Remediation Strategy

A detailed remediation strategy 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. The strategy must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The strategy 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.

The scheme shall be implemented in accordance with the approved details and timetable.

12. Following implementation of the remediation strategy approved pursuant to condition 11 above, a verification report that demonstrates the success of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority prior to first occupation of any dwelling. The verification report must also identify any requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action. Any changes to these components would require the express consent of the Local Planning Authority.

If 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 details to be agreed in writing by the Local Planning Authority. Following completion of measures identified in the approved remediation scheme, a verification report shall be submitted within one month to the Local Planning Authority.

13. No development shall take place until a detailed surface water drainage scheme for the site based on the Surface Water Drainage Strategy set out in the Ardent Consulting Engineers Flood Risk Assessment ref: 1621010-03C, has been submitted to and approved in writing by the Local Planning Authority. The drainage details should demonstrate the surface water run off generated up to and including 1 in 100 year + 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 and shall include:

- a. Detailed engineered drawings of the proposed SuDS features including cross section drawings, their size, volume, depth and any inlet and outlet features including any connecting pipe runs.
- b. Detailed, updated post-development calculations and half drain down times in relation to surface water for all rainfall events up to and including the 1 in 100 year + 40 climate change return period.

14. At least two months before the occupation of any dwelling, a revised Travel Plan Statement shall be submitted and approved in writing by the Local Planning Authority in consultation with the Highway Authority. This shall set out a scheme to encourage, regulate, and promote sustainable travel measures for owners, occupiers, and visitors to the development in accordance with the provisions of the County Council's 'Travel Plan Guidance for Business and Residential Development'. The Plan shall be implemented in full prior to first occupation of any dwelling.

15. Prior to the first occupation of any dwelling the following shall be fully constructed in accordance with plans first submitted and approved by the Local Planning Authority:

- a. Pedestrian dropped kerbs and tactile paving on either side of all junctions within the site which have footways at the bellmouth.
- b. Footways extended beyond the incline of raised tables within the site, where the main spine road routes into shared surface roads.

End of conditions