

RE: BURSTON GARDEN CENTRE, CHISWELL GREEN, ST ALBANS

**OPENING SUBMISSIONS
ON BEHALF OF APPELLANT**

1. The Appellant will contend that it is a central part of sustainable development that needs should be met – this objective is central to the approach contained within the NPPF. Paragraph 60 explains:

“To support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.”

2. The Appellant will contend that the need for additional housing generally in St Albans is profound – the Council has failed for years to provide a 5-year supply of housing. With the recent collapse of its draft Local Plan at Examination, it will be argued that there is little if any prospect of a 5YHLS being delivered in the short to medium term. As the Inspector in the recent “Roundhouse” decision explained “the position is a bleak one and the shortfall ... is considerable and significant”.
3. Given the constrained nature of the area (80 % of it is allocated as Green Belt), a 5 YHLS can only be delivered via changes to the existing Green Belt boundaries within a development plan process. However, the Council has failed to deliver any new development plan to ensure the needs of this area are met since 1994 – 27 years. That is a total failure of planning in this area.
4. In the meantime, the housing needs of those who reside here are not being met. There is no short-medium term prospect of general housing needs being met in a plan-led way. There is also no prospect of meeting needs without building on land within the Green Belt, as the defunct Local Plan recognised. Meeting needs requires the approval of schemes in the Green Belt through the development management process. It follows that if the development management process is to fill the gap caused by the Council’s total failure to deliver a development plan, it will have to permit development in the Green Belt if the needs of this area are to be met.

5. The Appellant will contend that there is a significant and desperate need for the form of development proposed in the Appeal Scheme. The Appellant will argue that:
 - a. The form of development proposed in this Appeal cannot viably be disaggregated onto smaller sites. It is the economies of scale associated with schemes of around 125 units that enable them to come forward on a viable basis;
 - b. The form of development proposed in this Appeal will not come forward on any other site because the commercial reality is that market housing developers will outbid a specialist developer for a site;
 - c. This could only be overcome via specific allocations in a development plan for the type of development proposed;
 - d. In the absence of any prospect of a development which adopts this approach, there is no prospect of the needs which the Appeal Scheme would meet being met in the short to medium term;
 - e. There are no alternative sites which are suitable, available or viable which has any reasonable prospect of delivering development to meet the needs which the Appeal Scheme will meet; and
 - f. The Appeal Scheme represents the only means to meet just a proportion of the existing and future needs of the District for specialist older persons accommodation.
 - g. Even granting planning permission will result in a continuing failure to meet the needs of many going forward.

6. Thus, it will be argued that a grant of planning permission realises significant benefits that will not be realised if planning is refused at all. The Appeal Scheme is thus the only prospect of meeting the specialised needs that it seeks to meet. The benefits which the development bring are thus very significant and to be given very significant weight in the planning balance – Indeed, a refusal of planning permission for the Appeal Scheme would simply perpetuate the continuing failure of the planning system to meet the needs of the population of St Albans.

Landscape Character and Visual Amenity – Context and Impact

7. The Appellant will contend that the Appeal Site is a landscape that is of low value, one that is already occupied by built form, structures and hardstanding which are of a poor quality and are dilapidated. The Site lies within land that was previously identified as a “Landscape Improvement Area” by the 1994 Local Plan - Policy 105. Whilst this policy has subsequently been deleted, since the policy was written, no improvement has occurred, nor will it occur without planning permission for the proposed Appeal Scheme. Notwithstanding its Green Belt designation this is a Site which is predominantly urban edge strongly influenced by major highway infrastructure, and both residential and commercial/ retail built form on three of its sides.

8. The Appellant will also contend that the Appeal Site is visually very well contained by the adjacent built form and by mature woodlands. This has the effect of visually separating the Appeal Site from the wider Green Belt and countryside. The Appeal Site’s visual containment also limits the perception of any change within the immediate vicinity. The implications of this for the Green Belt assessment and for the appraisal of the impact of the Appeal Scheme upon character and appearance will be explored, not least since this was part of the approach adopted by the decisions makers granted planning permission for residential development on the recent Roundhouse and Harpenden Road schemes.

9. The Appellant will argue that the Appeal Scheme results in reduced impacts compared to the previous scheme - one with more open space, more green infrastructure, a more open and a carefully considered composition of new homes

10. In relation to the potential impact upon character, the Appellant will contend that the residual effects of the Appeal scheme are neutral on the contextual landscape receptors and range from negligible to major positive on the landscape receptors of the Appeal Site. In relation to visual receptors, the removal of unattractive existing built form and replacement with high-quality homes as part of a well-designed place, will see predominantly negligible residual effects to visual receptors with only the adverse impact being limited to those using the PRoW immediately adjacent.

Green Belt

11. Of course, the Appellant recognises that the Appeal Site was designated in the 1994 Development Plan as Green Belt land. It also recognises that the Appeal Scheme is inappropriate development and will give rise to some harm to openness. But the extent to which that is the case will be explored with Mr Greaves. In essence, the Appellant will contend that the extent of harm to openness is exaggerated by the Council. The Appellant also intends to explore with Mr Greaves the degree to which the Appeal Scheme would give rise to conflict with the purposes for including land within the Green Belt. Again, it will be argued that his approach is overblown and out of step with the approach adopted in the Inspector's decision at the Roundhouse appeal and the Council's own decision in relation to the recently permitted housing scheme at Harpenden Road.
12. The Appellant will contend that in relation to the purposes of the Green Belt, the Appeal Site makes no contribution to purposes a) – urban sprawl and d) – setting and special character of historic towns and only limited contributions to purposes b) – neighbouring towns merging and c) – encroachment into the countryside. It will also argue that the Site has a positive effect in assisting urban regeneration through the provision of new homes on land in a poor quality and dilapidated condition – purpose e) especially when noting that although not “previously developed land”, the Site does contain large buildings and extensive areas of hardstanding which spatially and visually dominate the western and southern part of the Site.
13. These factors all mean that the impact of the Appeal Scheme in Green Belt policy terms is much less than the previous scheme.

Heritage Assets

14. The Appellant also recognises the potential for the Appeal Scheme to cause harm to the significance of two heritage assets – Burston Manor and the Outbuilding (granary/Dovecote). It is common ground that the Appeal Scheme would cause less than substantial harm to the significance of Burston Manor and the Outbuilding.
15. However, there is disagreement between Mr Murphy (for the Appellant) and Mr Greaves in relation to the extent of that harm. Mr Murphy identifies that the scale of harm is at the very

bottom of the less than substantial harm scale, whilst Mr Greaves places the impact as being towards the lower end of moderate harm on that scale.

16. The Appellant intends to explore with Mr Greaves his approach to the identification of the extent of harm to significance. In particular, Mr Murphy focuses in his evidence on identifying the nature of the significance of the heritage assets and identifying the contribution that the Appeal Site makes to that significance. He concludes that it makes only a very minor contribution to the evidential and historical value of the heritage assets which comprise part of their significance.
17. As a result, whilst the Appeal scheme will affect the significance of the heritage assets, it will only do so via change to a Site which makes only a small contribution to their significance. It will be argued that, as a consequence, the change on the Appeal Site that the Scheme will cause can only have a small effect upon significance. It will be argued that Mr Murphy's identification of harm at the very bottom of the scale of less than substantial harm is appropriate.
18. Whilst, of course, great weight must be given to the conservation of the significance of a heritage asset, Mr Murphy explains that the harm to the significance of Burston Manor and its outbuildings is very limited indeed. It will be argued that once that harm is weighed against the public interest benefits of the proposed development then the Appeal Scheme can be seen to comply with the requirements of paragraph 202 of the NPPF and is acceptable in terms of its heritage impacts. The Appellant will contend that the need to reach a conclusion on the application of paragraph 202 of the NPPF is important when considering the weight to give to heritage issues in the planning balance more generally.

Very Special Circumstances

19. It is, of course, the case that when considering the Appeal Scheme substantial weight should be given to any harm to the Green Belt. It is also the case that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
20. The Appellant will submit that on balance other considerations that weigh in favour of the grant of planning permission are substantial and significant. These are explained in detail by Mr Philips in section 7 of his Proof of Evidence and have been touched on above. They include:

- a. The compelling and substantial need for general housing in the area;
- b. The compelling and substantial need for high quality care accommodation;
- c. That this specialised need cannot and will not be met by any other development in the short to medium term;
- d. The delivery of significant health and well being benefits to residents;
- e. The release of under-occupied family housing to meet the compelling and substantial need for general housing in the area;
- f. The creation of employment benefits;
- g. Significant net biodiversity gain;
- h. Site access improvements which will improve the safety of access for through traffic and existing garden centre users;
- i. It is accepted to be a well-designed and high quality scheme; and
- j. There is, highly unusually for Green Belt cases, strong local support for the proposed development.

21. It will be submitted that taken together these factors are such that they clearly outweigh the harm to the Green Belt and the limited extent of other harm. Thus, it will be argued that very special circumstances do exist in this case.

The Previous Appeal Decision

22. The previous decision is, of course, relevant. But it does not provide a basis for refusing the Appeal Scheme. For a start, the Appeal Scheme is a very different form of development and is laid out in a very different way. But is also important to recognise that there are other factors that have significantly and materially changed. For example, the need position is different given the collapse of the local plan, the position in relation to alternative sites has changed and the Scheme itself is different resulting in new judgments being needed in relation to its potential impacts.

23. As a result, the principle in the ***North Wiltshire*** case has little, if any, relevance to this Appeal. In short, it will be submitted that, given the changes in circumstances which have arisen since the previous appeal decision, you are free to reach your own judgment on the merits of the Appeal Scheme.

The Planning Balance

24. It will be argued that applying the approach in paragraph 11(d) of the NPPF:

- a. the application of the policies in the NPPF that protect areas or assets of particular importance do not provide a clear reason for refusing the development proposed; and
- b. any adverse impacts of granting planning permission for the Appeal Scheme would not significantly and demonstrably outweigh the benefits that the Scheme will deliver, when assessed against the policies in the NPPF as a whole.

25. Thus, the presumption in favour of sustainable development supports the grant of planning permission for the proposed development.

26. It will be argued that applying section 38(6) of the 2004 Act, planning permission should be granted for the proposed development.

7th December 2021

REUBEN TAYLOR Q.C.

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