Spatial Planning Policy Consultation Response

Planning Application No.	**5/2020/3022**
Site:	Land To Rear Of Burston Garden Centre North Orbital Road Chiswell Green St Albans Hertfordshire
Description of development:	Demolition of all existing buildings, structures and hardstanding and redevelopment of the site to provide a new retirement community comprising 80 assisted living apartments with community facilities and 44 bungalows together with associated access bridleway extension, landscaping, amenity space, car parking and other associated and ancillary works''.
Recommendation:	**Refusal**
Officer Contact:	Charlotte Morphet

ADVICE/ COMMENTS

The following advice and comments relate to principle of development, very special circumstances, and housing land supply, proposed housing (including affordable and assisted living apartments) and provide an update on planning law.

Principle of Development

The proposed development would be located in the Metropolitan Green Belt.

Local Plan (Saved 2009) Policy 1 'Metropolitan Green Belt' states:

"Within the Green Belt, except for development in Green Belt settlements referred to in Policy 2 or in very special circumstances, permission will not be given for development for purposes other than that required for:

a) mineral extraction;

b) agriculture;

c) small scale facilities for participatory sport and recreation;

d) other uses appropriate to a rural area;

e) conversion of existing buildings to appropriate new uses, where this can be achieved without substantial rebuilding works or harm to the character and appearance of the countryside.

New development within the Green Belt shall integrate with the existing landscape. Siting, design and external appearance are particularly important and additional landscaping will normally be required. Significant harm to the ecological value of the countryside must be avoided."

NPPF states:

"143. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

144. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. '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."

SKM Green Belt Review Purposes Assessment (November 2013)

The site is GB26 – 'Green Belt Land to North of Bricket Wood'. According to the parcel assessment make a:

"Significant contribution towards maintaining the existing settlement pattern (providing gaps between Chiswell Green, How Wood and Bricket Wood). Partial contribution towards preventing merging. Overall the parcel contributes significantly towards1 of the 5 Green Belt purposes."[1]

In addition the parcel assessment states that *"the level of built development is very high at 2.2%".*

Strategic Housing Land Availability Assessment

The site was submitted as part of the 2009 SHLAA (ref. SHLAA-GB-HW-13). SHLAA-GB-HW-13 includes a much larger area, covering the garden centre to the west. Overall, officers concluded that it should be given further consideration for residential development. The comments stated that:

"Development of the entire site would be visually intrusive and result in encroachment into the surrounding countryside, which is rural in nature. It would contribute towards significant coalescence between Bricket Wood and Chiswell Green (and to a lesser extent, between Bricket Wood and How Wood). It would also be of a scale to significantly change the size and character of How Wood and would constitute unrestricted sprawl, in what is currently a vulnerable gap between existing settlements.

Notwithstanding the above, the site partially comprises previously developed land, with existing buildings/development associated with Burston garden centre/nursery, Hertfordshire Fisheries etc. In light of the site's PDL status, there may be limited potential for replacing some the existing uses in the northern part of the site with residential development (providing that there were environmental benefits to be achieved through removal of the majority of the large glass structures on the site and introducing new landscaping and public access to the resultant green space, as part of the Watling Chase Community Forest)"[2]

Conclusion

[1] Page 45 - https://www.stalbans.gov.uk/sites/default/files/documents/publications/planning-building-control/planning-policy/examination-library/SP_EB_GBR_Part1_Nov2013_StAlbansParcelAssessments_tcm15-38993.pdf

[2] Page 141 https://www.stalbans.gov.uk/sites/default/files/documents/publications/planning-building-control/planning-policy/examination-library/SP_SHLAA_2008_App12b_Sites_Shortlisted_tcm15-12352.pdf

The site play an important role in maintaining the existing settlement patterns.

Housing

Proposed development is for 80 assisted living apartments and 44 assisted living bungalows/ cottages. These will be predominantly one and two bedrooms units but there will be a small proportion of three bed units.

Housing Land Supply

SADC currently has a housing land supply of 2.5 years from a base date 1 April 2020. However, it is acknowledged that 2.5 years is still substantially below the required 5 years.

Housing Need

GL Hearn South West Herts – Local Housing Need Assessment (LHNA) (September 2020) Table 92 sets out the need for assisted living/ supported living in the District.

Table 92: Older Persons' Dwelling Requirements 2020 to 2036 – St. Albans

		Housing demand per 1,000 75+	Current supply (2018)	2020 demand	Current shortfall/ surplus	Additional demand to 2036	Shortfall / surplus by 2036
Housing with support	Rented	60	187	752	565	348	914
	Leasehold	60	556	750	194	347	541
Housing with care	Rented	16	57	205	148	95	243
	Leasehold	13	63	163	100	75	175

Source: Derived from demographic projections and Housing LIN/HOPSR/EAC (note surpluses are denoted by a negative number)

Conclusions

It is clear that there is not a 5 year land supply and that substantial weight should be given to the delivery of housing. There is a need for older peoples housing as set out in the LHNA and therefore weight should also be given to the delivery of older peoples housing.

Current Case Law

A review of case law has been undertaken. This has focused on the implementation of paragraph 11 of the NPPF and the titled balance; and very special circumstances. In relation to paragraph 11 & the tilted balance, the most useful judgement has been included below. Further judgements related to this issue are available in Appendix A. Recent appeals, in the district, related to Very Special Circumstances have also been listed.

Paragraph 11 & the Tilted Balance: Monkhill Ltd v SoSCLG [2019] EWHC 1993 (Admin)

"1) The presumption in favour of sustainable development in paragraph 11 does not displace s.38(6) of the 2004 Act. A planning application or appeal should be determined in accordance with the relevant policies of the development plan unless material considerations indicate otherwise;

2) Subject to s.38(6), where a proposal accords with an up-to-date development plan, taken as a whole, then, unless other material considerations indicate otherwise planning permission should be granted without delay (paragraph 11(c));

3) Where a proposal does not accord with an up-to-date development plan, taken as a whole, planning permission should be refused unless material considerations indicate otherwise (see also paragraph 12);

4) Where there are no relevant development plan policies, planning permission should be granted unless either limb (i) or limb (ii) is satisfied;

5) Where there are relevant development plan policies, but the most important or determining the application are out-of-date, planning permission should be granted(subject to section 38(6)) unless either limb (i) or limb (ii) is satisfied;

6) Because paragraph 11(d) states that planning permission should be granted unless the requirements of either alternative is met, it follows that if either limb (i) or limb (ii) is satisfied, the presumption in favour of sustainable development ceases to apply. The application of each limb is essentially a matter of planning judgment for the decision-maker;

7) Where more than one "Footnote 6" policy is engaged, limb (i) is satisfied, and the presumption in favour of sustainable development overcome, where the individual or cumulative application of those policies produces a clear reason for refusal;

8) The object of expressing limbs (i) and (ii) as two alternative means by which the presumption in favour of granting permission is overcome (or disapplied) is that the tilted balance in limb (ii) may not be relied upon to support the grant of permission where a proposal should be refused permission by the application of one or more "Footnote 6"policies. In this way paragraph 11(d) prioritises the application of "Footnote 6" policies for the protection of the relevant "areas or assets of particular importance";

9) It follows that where limb (i) is engaged, it should generally be applied first before going on to consider whether limb (ii) should be applied;

10) Under limb (i) the test is whether the application of one or more "Footnote 6 policies "provides a clear reason for refusing planning permission. The mere fact that such a policy is engaged is insufficient to satisfy limb (i). Whether or not limb (i) is met depends upon the outcome of applying the relevant "Footnote 6" policies (addressing the issue on paragraph 14 of NPPF 2012 which was left open in R (Watermead Parish Council) v Aylesbury District Council [2018] PTSR 43 at [45] and subsequently resolved in East Staffordshire at [22(2)];

11) Limb (i) is applied by taking into account only those factors which fall within the ambit of the relevant "Footnote 6" policy. Development plan policies and other policies of the NPPF are not to be taken into account in the application of limb (i) (see Footnote 6). (I note that this is a narrower approach than under the corresponding limb in paragraph 14 of the NPPF 2012 - see eg. Lord Gill in Hopkins at [85]);

12) The application of some "Footnote 6" policies (e.g. Green Belt) requires all relevant planning considerations to be weighed in the balance. In those cases because the out come of that assessment determines whether planning should be granted or refused, there is no justification for applying limb (ii) in addition to limb (i). The same applies where the application of a legal code for the protection of a particular area or asset determines the outcome of a planning application (see, for example, the Habitats Regulations in relation to European protected sites);

13) In other cases under limb (ii), the relevant "Footnote 6 policy" may not require all relevant considerations to be taken into account. For example, paragraph 196 of the NPPF requires the decision-maker to weigh only "the less than substantial harm" to a heritage asset against the "public benefits" of the proposal. Where the application of such a policy provides a clear reason for refusing planning permission, it is still necessary for the decision-maker to have regard to all other relevant considerations before determining the application or appeal (s. 70(2) of the 1990 Act and s. 38(6) of the 2004 Act). But that exercise must be carried out without applying the tilted balance in limb (ii), because the presumption in favour of granting permission has already been disapplied by the outcome of applying limb (i). That is the consequence of the decision-making structure laid down in paragraph 11(d) of the NPPF;

14) There remains the situation where the application of limb (i) to a policy of the kind referred to in (13) does not provide a clear reason for refusal. The presumption in favour of sustainable development will not so far have been disapplied under limb (i) and it remains necessary to strike an overall planning balance (applying also s.38(6)). Because the presumption in favour of granting planning permission still remains in play, it is relevant, indeed necessary, to apply the alternative means of overcoming that presumption, namely limb (ii). This is one situation where the applicant for permission is entitled to rely upon the "tilted balance";

15) The other situation where the applicant has the benefit of the "tilted" balance is where no "Footnote 6" policies are engaged and therefore the decision-maker proceeds directly to limb (ii).

40. Applicants for planning permission may object that under this analysis of paragraph 11(d), the availability of the tilted balance is asymmetric. Where a proposal fails the test in limb (i), the tilted balance in limb (ii) is not applied at all. In other words, the tilted balance in limb (ii) may only be applied where the proposal either passes the test in limb (i) (and there still remain other considerations to be taken into account), or where limb (i) is not engaged at all. This analysis is wholly unobjectionable as a matter of law. It is simply the ineluctable consequence of the Secretary of State's policy expressed through the language and structure of paragraph 11(d).

…

43. Any suggestion that because limb (ii) falls to be applied where a development passes limb (i), it follows that limb (ii) should also be applied where a proposal fails limb (i) involves false logic. It has nothing to do with the way in which paragraph 11(d) of the NPPF 2018 has been structured and drafted"

<u>Very special circumstances (VSC)</u>

<u>Suffolk Coastal DC v Hopkins Homes Ltd: 2017 UKSC 37</u>

"61. There is nothing in the statute which enables the Secretary of State to create such a fiction, nor to distort what would otherwise be the ordinary consideration of the policies in the statutory development plan; nor is there anything in the NPPF which suggests an intention to do so. Such an approach seems particularly inappropriate as applied to fundamental policies like those in relation to the Green Belt or Areas of Outstanding Natural Beauty. No-one would naturally describe a recently approved Green Belt policy in a local plan as "out of date", merely because the housing policies in another part of the plan fail to meet the NPPF objectives. Nor does it serve any purpose to do so, given that it is to be brought back into

paragraph 14 as a specific policy under footnote 9. It is not "out of date", but the weight to be given to it alongside other material considerations, within the balance set by paragraph 14, remains a matter for the decision-maker in accordance with ordinary principles."

SoS Decision – At Land Off Glebelands, Thundersley, Essex (June 2013)

In the decision the SoS concluded:

"30. The Secretary of State concludes that the appeal proposals are inappropriate development in the Green Belt. Additionally he has identified harm to the GB's openness and harm to the GB's purposes of preventing urban sprawl, preventing encroachment on the countryside and preventing the merging of neighbouring settlements and, furthermore, harm to GB's character and appearance. He considers that, together, this represents considerable harm, to which he attributes substantial weight. The Secretary of State has found that there are factors in favour of the appeal including a severe lack of a forward housing land supply and that, setting aside GB considerations, development of the appeal site would not cause demonstrable harm. He also wishes to emphasise that national policy is very clear that GB reviews should be undertaken as part of the Local Plan process. In light of all material considerations in this case the Secretary of State is concerned that a decision to allow this appeal for housing in the GB risks setting an undesirable precedent for similar developments which would seriously undermine national GB policy.

31. Having weighed up all material considerations, he is satisfied that the factors which weigh in favour of the proposal do not clearly outweigh the harm to the Green Belt that would arise from the proposal. The Secretary of State therefore concludes that the appeal should be dismissed."

Conclusion

The site was shortlisted through the 2009 SHLAA. However, it is located in part of the Green Belt which is considered to make a significant contribution towards maintaining the existing settlement pattern (providing the gaps).

The Council does not currently have a 5 year land supply and this should be given significant weight. In addition, there is a need for older peoples housing within the district.

Appendix A – Titled Balance Judgements

Wavedon Properties Ltd v SoS [June 2019]

Paragraph 56:

"…It needs to be remembered, in accordance with the principles of interpretation set out above, that this is a policy designed to shape and direct the exercise of planning judgment. It is neither a rule nor a tick box instruction. The language does not warrant the conclusion that it requires every one of the most important policies to be up-of-date before the tilted balance is not to be engaged. In my view the plain words of the policy clearly require that having established which are the policies most important for determining the application, and having examined each of them in relation to the question of whether or not they are out of date applying the current Framework and the approach set out in the Bloor case, an overall judgment must be formed as to whether or not taken as a whole these policies are to regarded as out-of-date for the purpose of the decision. This approach is also consistent with the Framework's emphasis (consonant with the statutory framework) that the decision-taking process should be plan-led, and the question of consistency with the development plan is to be determined against the policies of the development plan taken as a whole. A similar holistic approach to the consideration of whether the most important policies in relation to the decision are out-of-date is consistent with the purpose of the policy to put up-to-date plans and plan-led decision-taking at the heart of the development control process. The application of the tilted balance in cases where only one policy of several of those most important for the decision was out-of-date and, several others were up-to-date and did not support the grant of consent, would be inconsistent with that purpose."

Peel Investments V SoS [September 2020] (Appeal)

Paragraph 65:

"I agree with Sir Duncan Ouseley's observations in Paul Newman New Homes that a policy is not out-of-date simply because it is in a time-expired plan and that, if the Framework had intended to treat as out-of-date all saved but time-expired policies, it would not have used the phrase "out-of-date" but rather the language of time-expired policies or policies in a time-expired plan."

Paragraph 68:

"With regard to the second ground of appeal, I do not accept the appellant's submission that a plan without strategic housing policies is automatically out-of-date for the purposes of paragraph 11d so as to engage the tilted balance."

Paul Newman v SoS CLG [2019] (Admin)

"32.I start by construing paragraph 11d in its context in the Framework, as a document on its own. The phrase "where there are no relevant development plan policies" is quite clear. Where one or more relevant development plan policies exist, that trigger for the application of the "tilted balance" cannot be applied. One relevant development plan policy is sufficient to prevent it. Although that policy may exist in a time-expired plan as a saved policy, it is a development plan policy. This trigger contains no requirement that the policy be up to date rather than out of date. "Relevant" can only mean relevant to determining the application. There is, however, no adjective qualifying the degree of relevance it should have for that purpose, for example that it should be decisive or of high importance. "Relevance" connotes no more than some real role in the determination of the application. A fanciful connection

would not suffice, and a policy of wholly tangential significance may be "irrelevant". There is also no requirement in this first trigger that the one or more relevant development plan policies should comprise one or more development plan policies important for determining the application, let alone that they should constitute a body of policy or policies sufficient for determining the acceptability of the application in principle."

"34. In my judgment, the key part of the second trigger, the phrase "where the policies which are most important for determining the application are out-of-date", is reasonably clear. A policy is not out of date simply because it is in a time-expired plan; that is the point which the Inspector appears to have been addressing in DL27, though it appears not to have been an issue before her. I agree with what Dove J said in Wavendon Properties in this respect. It is the correct interpretation. If the 2018Framework had intended to treat as out of date all saved but time-expired policies, it would not have used the phrase "out-of-date", which has different or wider connotations, and would have used instead the language of time-expired policies or policies in a time-expired plan. The Inspector's comment inDL27 is apposite in that context. Although the earlier jurisprudence in Bloor Homes and Hopkins Homes related to that same phrase in the 2012 Framework, I see no reason to discount it here where its role is not materially different."

35. I also agree with the analysis of the phraseology of the second trigger as a whole in Wavendon Properties. The first task is to identify the basket of policies from the development plan which constitute those most important for determining the application. The second task is to decide whether that basket, viewed overall, is out of date; the fact that one or more of the policies in the basket might themselves be out of date would be relevant to but not necessarily determinative of whether the basket of most important policies was itself overall out of date. This second trigger contains no requirement that the up to date basket of the most important policies in the development plan for determining the application should itself also constitute a body of policies sufficient for the determination of the acceptability of the application in principle.

36. I do not consider that the plural "policies" means that a single up to date policy, even if plainly by itself the most important for determining the application, cannot suffice to block the second trigger; the plural encompasses the singular, as is a commonplace construction. Otherwise even an up to date, self-contained, site and development specific policy, the crucial policy, the sole survivor, could lead to the application of the "tilted balance" and to the grant of permission unless the provisos in (i) and (ii)applied. The alternative construction focuses unduly on what is mere linguistic awkwardness, accepted for convenience. The plural "policies" avoids the somewhat legalistic "policy or policies", with "is or are" to follow, at the price of the slightly awkward language seen in DL 26, last sentence. On the basis of her interpretation of GP.35, and on that interpretation of the second trigger, the Inspector's conclusion that the "tilted balance" did not apply is correct."