

CD 2.13

Rebuttal Evidence - Planning Balance Brian Parker BA MSc MRTPI

Bricket Wood Sports and Country Club, Paintball Site and Bricket Lodge, Lye Lane, St Albans AL2 3TF

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Outline application (access sought) for the demolition of existing buildings, the construction of up to 115 dwellings, the creation of a new access and associated highways improvements.

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1.0 **INTRODUCTION**

1.1 This Rebuttal Proof of Evidence is submitted in response to the Proof of Evidence of Mr Phillip Hughes (CD 9.2). In addition, at paragraphs 6.7-6.11 below, I briefly comment on the planning policy issues arising from the Proof of Evidence of Chris Carr of Hertfordshire County Council (HCC) (CD 9.4).

1.2 This Rebuttal should be read alongside my Rebuttal Proof of the Evidence of Katherine Waters (Flood Risk and Drainage) (CD 2.14), and the Rebuttal Proofs of Rachel Williams (Landscape and Visual Impact) (CD 2.15), Nick Ferguson (Highways) (CD 2.16) and Paul Hartfree (Highways Engineering) (CD 2.17). Mr Ferguson had submitted a Proof of Evidence in respect of Highways which was considered sufficient to address the elements in Putative Reason for Refusal 4. However, Mr Carr's Proof identified that, in late April 2024, "*concerns were raised about the implementability of the proposals*", (CD 9.4 [31]). The precise meaning of 'implementability' was not clear but as it could refer to detailed engineering issues, it was considered helpful to the Inquiry for Mr Hartfree to submit a separate Rebuttal so that the implementability of the footpath could be addressed from an engineering perspective if required.

1.3 The main matters which require addressing in this Rebuttal are:

- a) The nature of an Outline application;
- b) The character of the Appeal Site;
- c) The difference between tests of 'greater impact' and 'harm to openness';
- d) The purposes of the Green Belt;
- e) A footpath for Lye Lane; and
- f) Assessment of benefits.

1.4 The lack of comment on other matters should not be construed as agreement.

2.0 **THE NATURE OF AN OUTLINE APPLICATION**

2.1 This is an Outline proposal with all matters reserved save access. Consequently, matters of layout, scale, appearance and landscaping are all for the future. The application is for "up to

115 dwellings”, which is considered an appropriate density by the Council for sites selected in its emerging Local Plan (2.4 [2.16]).

- 2.2 The Council’s own Local Requirements Checklist (“LRC”) (CD 1.14) confirms that because layout is not currently being sought, a Layout Plan is not required; and because the scheme is for fewer than 300 dwellings, a Parameter Plan is not required either. Nevertheless, because I know from experience that the Council frequently refuses to validate applications which do not include plans which its adopted LRC explains are not required, an illustrative Layout Plan showing one of the ways in which 109 dwellings could be accommodated on the Site was submitted.
- 2.3 Following a request at the Case Management Conference on 18th April 2024, an alternative Layout Plan showing one of the ways in which 115 dwellings could be accommodated was also submitted (CD 2.4.5).
- 2.4 This alternative layout, and the inevitability that the final scheme submitted at a Reserved Matters stage will be different again, demonstrates:
 - a) Why the Council’s focus on scale, layout and, especially, landscaping is premature and unhelpful; and
 - b) Why the LLFA’s markedly different approach to this Outline scheme compared to other Outline schemes is unreasonable and unfair¹.
- 2.5 The application documents and the Section 106 make it clear that the quantum and mix of dwellings is to be agreed at the Reserved Matters stage (see also: CD 2.4 [2.15-2.21]).

3.0 **THE CHARACTER OF THE APPEAL SITE**

- 3.1 As will be confirmed on the Site Visit, the Appeal Site is clearly not part of the “*open countryside*” (CD 9.2 [5.85) and contributes nothing to “*the character and intrinsic beauty of the countryside*” (CD 9.2 [5.114]).
- 3.2 Mr Hughes’ claim that “*the site has both a countryside character and is intrinsically beautiful as part of the countryside*” (CD 9.2 [5.116]), undermines the credibility of his evidence on the planning balance.

¹ As demonstrated in the Rebuttal to the Proof of Katherine Waters (CD 2.14)

- 3.3 His claims reflect similar arguments put by the Council at the Smug Oak Lane site (CD 5.16 [2.30-2.35]) but rejected by the Inspector, thus (CD 5.16 [7.39]):

*“The appeal site itself should not be treated as ‘countryside’ into which development should not be allowed to ‘encroach’ for the purposes of paragraph 80 of the NPPF. Firstly, it is a heavily developed, self-contained institutional site, with ornamental parkland and institutional buildings and facilities. Secondly, **as such it finds no place in a functional or indeed perceptual definition of ‘countryside’.** This is clear from the Green Belt appraisal work done by the Council’s consultants (the SKM Report). Thirdly, just because some of it has parkland or recreational characteristics which on their own might be referred to as urban fringe countryside land uses, says nothing about the character of the Hanstead Park site as a whole, which clearly falls outside any such open/soft use, again as the Council’s consultants’ work indicates.”*

(emphasis added)

4.0 **THE DIFFERENCE BETWEEN TESTS OF ‘GREATER IMPACT’ AND ‘HARM TO OPENNESS’ Affordable Housing Policy in St Albans**

- 4.1 Mr Hughes makes a serious error in respect of affordable housing policy. At (CD 9.2 [5.17]), he states:

“I note that the affordable housing element of the proposed scheme delivers only what is necessary to meet the policy requirement and had it not proposed such a level of affordable housing then absent any justification then the proposals would conflict with development plan policy, emerging local plan policy and the NPPF.”

- 4.2 Mr Hughes does not quote the policy because, as I have previously set out and the Council has previously acknowledged, there is no affordable policy for new housing outside the District’s settlements. To reiterate: Policy 7a applies only within the Towns and Specified Settlements and Policy 8 applies only within the Green Belt Settlements (CD 1.23 [6.3-6.5] and CD 1.24 [2.7]).

- 4.3 The assertion that, absent the affordable housing contribution of 35%, the proposal would conflict with the development plan is, therefore, simply wrong.

The Proper Interpretation and Application of NPPF paragraph 154(g)

4.4 As for Mr Hughes' comment at (CD 9.2 [5.18]), it has never been in doubt that the Appeal Scheme will have *"a greater impact on the openness of the Green Belt than the existing development"*. That much was, and remains, obvious. But that is not the test for a scheme that meets an identified need for housing. The correct test, as set out in my Supplementary Planning Statement, (CD 1.38 [Sections 2 and 3]) and my Proof (CD 2.4 [8.13-8.15]) is whether the harm to the openness of the Green Belt is "substantial".

4.5 Furthermore, to the extent that Mr Hughes suggests² that the test of *"substantial harm"* to the openness of the Green Belt might not apply if the affordable housing contribution towards meeting identified needs is no more than policy or SPG compliant³, that is a total misrepresentation of national planning policy, as clearly set out in the second element of paragraph 154(g).

4.6 In particular:

a) The second element of paragraph 154(g) expressly states that the *"relaxed test of Green Belt impact"*⁴ of not causing *"substantial harm"* to the openness of the Green Belt applies where the development and re-use of previously developed land would *"contribute to meeting an identified affordable housing need within the area of the local planning authority"*;

b) That plainly applies in St Albans, where the affordable housing needs has not just been identified and agreed, but has been declared by an experienced Inspector to be *"extremely acute"* and a *"critical situation"*⁵; and

c) It plainly applies, also, to all affordable housing proposals on previously developed land, and especially when what is proposed complies with the Council's own policy, or as here, with its SPG.

Existing Housing Mix

4.7 At (CD 9.2 [6.16]), Mr Hughes identifies two errors to which I must admit but which, I submit, cause no prejudice to the Council. First, from my appointment in December 2021, I had recorded

² For example, at (CD 9.2 [5.19]).

³ Noting that the 35% affordable contribution is what is suggested in the Council's Affordable Housing SPG (CD 4.4 [1.1 and 7.9]).

⁴ In Mr Hughes' words at (CD 9.2 [5.19])

⁵ Land off Bullens Green Lane, Colney Heath, per Inspector Masters (CD 5.1 [54]).

that there were 33 dwellings on the Appeal Site, a figure which informed my subsequent submissions. Prompted by Mr Hughes' comment, I can confirm that there are, in fact, 30 x 1-bedroom dwellings on the Site and 1 x 2-bedroom, a total of 31. The dwellings are all private rent, short-hold tenancies with 2 months' notice. Secondly, I inadvertently checked box two in the Application Form instead of box one 'Market Housing'. These facts do not change the description of the Appeal Proposal nor the contribution of 35% affordable housing.

The Scale of Harm

4.8 Mr Hughes states that when referring to harm, he does so in accordance with a scale in which "substantial" is at the very top (CD 9.2 [1.15]). Subsequently, he concludes that the harm that the Appeal Scheme will cause to the openness of the Green Belt is "*substantial*" (CD [5.16, 5.35 and 5.51]). This means that Mr Hughes is claiming that the harm to the openness of the Green Belt at the Appeal Site is the highest level of harm that he can apply.

4.9 I consider that position to be completely untenable.

4.10 My entirely different conclusion, that the harm to the openness of the Green Belt is "*less than substantial*" (CD 2.4 [8.15b]), is far more realistic. It reflects the undeniable fact that the harm caused to openness at a previously developed, extensively screened site which is no longer part of the open countryside (CD 2.4 [8.11]), **must be** less than the very highest level of harm that would be caused, for instance, at an undeveloped, unscreened site which is still part of the open countryside.

5.0 THE PURPOSES OF THE GREEN BELT (CD 9.2 [5.81-5.94])

5.1 Mr Hughes' reliance on an 11-year old Green Belt Review discredited by Inspectors Crosby and Worthington at the Public Examination of the most recently withdrawn emerging Local Plan is inappropriate and unjustified (CD 1.23 [7.5-7.9]).

5.2 Further, Mr Hughes' belief that the site is part of the open countryside misleads him into claiming harm to two purposes of the Green Belt (CD 9.2 [5.94]). In particular:

a) The site is already developed and, so, unlike the development of greenfield Green Belt sites between St Albans and Watford⁶, the Appeal Scheme will do nothing to merge these towns into one another (CD 2.4 [9.13]); and

b) The entire site has already been encroached upon and, so, no further encroachment into the countryside will occur (CD 2.4 [9.14]).

5.3 That is the same conclusion arrived at by the Secretary of State and Inspector when rejecting the same argument made by the Council at the Smug Oak Lane site (CD 5.16 [DL11 and IR 7.37-7.40, respectively]), paragraph 3.3 above.

6.0 **A FOOTPATH FOR LYE LANE**

Introduction

6.1 At (CD 9.2 [6.31]), Mr Hughes states:

“As matters stand and some 20 months after the application the subject of this appeal was submitted no satisfactory scheme to provide a footpath link has been submitted for consideration.”

6.2 The Appellant’s case is that a satisfactory scheme to provide a footpath to the junction with West Riding has been submitted, as set out in the Proof of Nick Ferguson (CD 2.11).

Whether a Benefit

6.3 Mr Hughes is correct in stating at (CD 9.2 [5.171]) that:

“The site does not offer safe opportunities for pedestrians and other non-car users to reach Bricket Wood.”

6.4 However, at (CD 9.2 [6.34]), Mr Hughes asserts as follows when assessing the benefit of a footpath:

“Should, the Inspector disagree and consider some benefits arises it is manifestly a benefit that arises mostly for future occupiers of the appeal site. A limited number of other dwellings

⁶ Such as the Copsewood Site (see CD 2.14 [3.2])

south of the appeal site would need to utilise the footpath. Therefore even if it is a benefit (which we say it is not) then it can only carry limited weight.”

6.5 Accordingly, the essence of Mr Hughes’ case is that:

- a) Lye Lane is a dangerous place for the current residents to walk along; but that;
- b) If a footpath is created to make it safe for both current and future residents to walk to Bricket Wood, that is not a benefit.

6.6 This is obviously untenable. Indeed, I find it deeply concerning that a Council and Highways Authority can hold so little regard for the safety of local people that it considers the provision of a safe footpath where there is currently none, to be of no benefit.

Planning Response to Mr Carr

6.7 Whilst Mr Ferguson’s Rebuttal (CD 2.16) addresses Mr Carr’s Proof (CD 9.4) in detail, there are certain matters raised by Mr Carr which relate to planning policy and/or balance and, so, require comment here.

6.8 First, at (CD 9.4 [23]), Mr Carr quotes paragraphs 110-112 of the NPPF. It is important to note, however, that Mr Carr failed to reference a key paragraph from the NPPF which is very relevant to this Appeal. Specifically, paragraph 109 states:

*“The planning system should actively manage patterns of growth in support of these objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. **However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.**”*

(emphasis added)

- 6.9 By demanding unachievable sustainable transport solutions along a rural country lane, Mr Carr and Mr Hughes ignore the final sentence of Paragraph 109. Consequently, the substantial benefit of the footpath is downplayed and the lack of a shared walking and cycling scheme is overplayed (CD 9.4 [30]). A scheme providing a safe footpath where none exists should not be criticised because it does not also provide a shared cycling lane where none can be provided.
- 6.10 Secondly, uncontested by Mr Hughes, Mr Carr attributes a single character to Lye Lane “*from the A414⁷ in the north to West Riding in the south*” (CD 9.4 [27]). Mr Carr explains that “... *there are multiple vehicle passing locations due to how narrow the lane is which are in a current poor condition with potholes created from vehicles and during wet weather these are filled with water*”.
- 6.11 At the Site Visit, the Inspector will be asked to agree with my assessment, at (CD 2.4 [2.7]), that there are, in fact, two distinct characters to Lye Lane, which means cycling from the Site southwards to the station, shops and other facilities is an entirely different prospect from cycling north.

Ecological Impact of the Footpath

- 6.12 At (CD 9.2 [5.146-5.157]), Mr Hughes raises asserted ecological harms (on and off site) of the Appeal Scheme, even though neither has been raised as a Reason for Refusal by the Council (CD 9.2 [5.148]).
- 6.13 In these regards, and at (CD 9.2 [5.155]), Mr Hughes references a letter from Bernard Fleming of Hertfordshire Ecology, dated 6th May 2024, which I had not seen before and which raised ecological concerns about the proposed footpath.
- 6.14 Mr Fleming’s submission about the footpath (CD 9.2.1 [Appendix 5]), which focuses primarily on its impact on the Ancient Woodland, contains, however, numerous inaccurate assumptions, including that:

- a) The “... *proposed footpath will encroach to a greater or lesser extent upon this woodland (or even lie completely within it)*”, whereas it lies entirely outside the Ancient Woodland;

⁷ In fact, it is the A405 not the A414.

- b) It “... is not known if this will require the disturbance of tree roots or, indeed, if some trees will need to be felled”, whereas David Clarke’s Arboricultural Method Statement (CD 2.4.3), confirms neither will take place; and
- c) There is a possibility of cabling disturbing the bat population, whereas no cabling for the floor-level lighting is proposed.

6.15 Attached as Appendix A to this Rebuttal is a Survey by Cherryfield Ecology (CD 2.13.1) which, in answer to Mr Fleming’s concerns, explains that no bats or other protected species were present or likely but that the presence of some reptiles was likely (CD 2.13.1 [3.3]). It recommends a cautious approach in respect of the construction of the footpath including accounting for the potential for Great Crested Newts. Cherryfield’s recommendations can be fully addressed via the environmental assessment required to inform an Application for Ordinary Watercourse Land Drainage Consent which will be required to allow the culverting to take place.

Arboricultural Impact of the Footpath

6.16 Appendix 6 of Mr Hughes’ Proof is an email from Roz Richardson, the Council’s Tree Officer (which, again, I had not seen before). Appendix B to this Rebuttal (CD 2.13.2), is a response by Mr Clarke.

6.17 Mr Clarke explains why, contrary to the Council’s assertions, an ‘extensive’ number of trees will not be negatively affected because:

- a) *“Arboricultural Supervision will be undertaken to ensure that there is no significant damage to trees including the introduction of these localised adaptations to the specification ...”* (CD 2.13.2 [1]);
- b) *“No further works are required. Pedestrians using the footpath would have a transient relationship to these trees and have no ownership of the trees. Additionally, the majority of the trees are protected and any works to these trees can be controlled by the Council.”* (CD 2.13.2 [2]);
- c) *“The only tree management will be to crown lift canopies above the footpath. These canopies generally have a good clearance above ground level along this part of Lye Lane. If required, they will need to be maintained to a specific height (approximately 3.0 m)*

above the level of the footpath. This is the current requirement for the use of the adjacent road. These works are considered to be minor and insignificant to the long-term viability or amenity value of these trees.” (CD 2.13.2 [3]); and

- d) *“... root activity will have preferentially taken place where conditions for root growth are more favourable – the soft landscaped areas to the east of the trees and the face of the ditch nearest the trees. The footpath and culvert can therefore be constructed without impacting on the rooting areas of trees” (CD 2.13.2 [3]).*

Culverting the Footpath

- 6.18 Section 6 of the Proof of Evidence of Katherine Waters (CD 9.3) objects to the culverting of the sporadic watercourse and is dealt with by way of a separate Rebuttal (CD 2.14).

Conclusion on the Footpath

- 6.19 The Appellant’s case remains, as it has since mid-2022, that a safe footpath can be delivered along Lye Lane without encroaching onto the Ancient Woodland and without harming trees or narrowing the road. If HCC still does not believe this is a satisfactory solution, the Inspector will be asked to agree with the Appellant, that the proposed footpath is both satisfactory and a positive benefit which can be secured via a S278 Agreement.

7.0 ASSESSMENT OF BENEFITS

Economic Benefits

- 7.1 For clarity and in response to (CD 9.2 [6.39]), my Statement of Case listed “*key benefits*” (CD 2.1 [49]). The economic benefits were set out briefly in my Planning Statement (CD 1.23 [4.14]) and expanded upon in my Proof of Evidence (CD 2.4 [Section 10, particularly, 10.19-10.20]).

Appendices

CD 2.13.1 – Appendix A Report by Cherryfield Ecology, 22nd May 2024

CD 2.13.2 – Appendix B Letter from David Clarke, 23rd May 2024