APP/P1940/V/26/3378268

LAND EAST OF OXHEY LANE
CARPENDERS PARK

OPENING STATEMENT ON BEHALF OF THE LOCAL PLANNING AUTHORITY
THREE RIVERS DISTRICT COUNCIL

Introduction

1. This inquiry has been convened to consider the application[1] (“**the Application**”) of Burlington Developments London Ltd (“**the Applicant**”) for outline planning permission (all matters reserved save for access[2]) for the following development at Land East of Oxhey Lane, Carpenders Park (“**the Site**”):

   “Up to 256 homes (C3 use class) (including affordable and self/custom build housing), housing with care (C2 use class), a children’s home (for looked after children) (C2 use class) together with associated access (including off-site highway works), parking, open space and landscaping” (“**the Scheme**”).

2. At the meeting of the Council’s Planning Committee (“**the Committee**”) on 19 March 2026, Members resolved to refuse planning permission for the Scheme. The Application was subsequently called-in for determination by the Secretary of State (instead of the Council). The putative reasons for refusal approved by the Committee are as follows[3]:

   2.1. The proposed development constitutes inappropriate development within the Green Belt which is by definition harmful to the Green Belt. In addition the development would also result in actual harm to the openness of the Green Belt which is exacerbated by the loss of hedgerows to facilitate access points and would conflict with purposes (a) and (c) of including land within the Green Belt. Whilst material considerations in favour of the development have been identified, no Very Special Circumstances exist to clearly outweigh the harm that would be caused by the proposed development on the Green Belt. The proposed development would therefore be contrary to Policy CP11 of the Core

[1] 25/1020/OUT.
[2] Excluding internal estates roads.
[3] Council’s SoC (CD6.2), para. 1.3.

Strategy (adopted October 2011), Policy DM2 of the Development Management Policies LDD (adopted July 2013) and Section 13 of the NPPF (2024) ("**RfR1**"); and

2.2. In the absence of a signed agreement or undertaking under the provisions of S106 of the Town and Country Planning Act 1990 the development fails to secure necessary infrastructure obligations towards: Secondary Education; Special Educational Needs and Disabilities (SEND); Waste Transfer Station at Waterdale; Children's Home transfer of land; Housing with Care (including transfer of land, CQC care registered, occupancy restrictions, communal facilities); Highways (including new bus service, bus stop and associated infrastructure, travel plans); Beryl Bikes; Primary Healthcare; Affordable Housing relating to Housing with Care; Affordable Housing on-site provision (Use Class C3); Custom / Self Build; Off-site Biodiversity Net Gain and associated monitoring fees. The application therefore fails to provide obligations necessary to make the application acceptable in planning terms and fails to meet the requirements of Policies CP1, CP4, CP8, CP9 and CP10 of the Core Strategy (adopted October 2011), Policies DM6, DM10 and DM12 of the Development Management Policies LDD (adopted July 2013) and the NPPF (2024) ("**RfR2**").

3. Both reasons for refusal ("**RfR**") remain unresolved. For the reasons summarised in this statement, they remain well founded. The rest of this statement deals in summary form first with the RfR, then with the approach to be taken to the determination of the Application, before addressing the disposal of the Application in conclusion.

RfR1: Inappropriate development in the Green Belt, not justified by "very special circumstances" ("VSC")

4. It is common ground[4] between the Council and the Applicant that unless (i) the Site is "grey belt" land and (ii) the requirements of para. 155 of the *National Planning Policy Framework* ("**NPPF**" and "**Para. 155**", respectively) are met, the Scheme would be inappropriate development in the Green Belt for the purpose of para. 153 of the NPPF and "very special circumstances" ("**VSC**") would need to be shown, for the Scheme to be acceptable in principle.

[4] Para. 4.17 of the Planning SoCG (CD6.4).

5. The Council's case is that:

   5.1. The Site is not grey belt;

   5.2. In any event, the requirements of Para. 155 are not met; such that

   5.3. The Scheme would be inappropriate development in the Green Belt – and VSC do not exist.

The Site is not grey belt

6. The Site is not grey belt land. As Ms Fitzgerald and Mr Dawson explain in their proofs of evidence, the Site strongly contributes to purpose (a) of para. 143 of the NPPF[5] ("**Para. 143**"). The Site is free of existing development and lacks physical features to the south that could restrict and contain development. It is near to a large built-up area and would, if developed, result in an incongruous pattern of development, given the limited development that has thus far taken place on the eastern side of Oxhey Lane in this location.

The requirements of Para. 155 are not met

7. In any event, even if one were to conclude that the Site is grey belt, the Scheme would remain inappropriate development in the Green Belt because the requirements of Para. 155 are not met. The failing is (at present) two-fold:

   7.1. First, the Scheme would not be in a sustainable location and so Para. 155c is not satisfied; and

   7.2. Secondly, unless and until an adequate s. 106[6] obligation is provided that properly secures the contributions identified at para. 156a-c of the NPPF, the Scheme does not meet the 'Golden Rules' and Para. 155d is not satisfied.

Para. 155c – the Scheme would not be in a sustainable location

8. The Site is on the furthest extreme of Carpenders Park. No local facilities would be within comfortable walking distance (800m) from the furthest extent of the Site and only two (Little

[5] The Site also makes a moderate contribution to purpose (b) of Para. 143 and additionally contributes to purpose (c) (Fitzgerald proof (CD6.14), paras. 5.64 and 5.65).
[6] Of the Town and Country Planning Act 1990.

Hearts Pre-School and St Meryl Primary School) would be within comfortable walking distance of the centre of the Site. Furthermore, there is a significant slope on the Site, which means that walking routes are ultimately likely to be less direct (in order to achieve the gradients necessary to facilitate access for all users).

9. The Site's main access is beyond the recommended 400m to the nearest bus stop and is also beyond the recommended 800m from the railway station. For the reasons identified in more detail by Ms Fitzgerald in her proof of evidence, the proposed provision of an additional hourly bus service would not be effective to encourage people to use means of transport other than the private car.

Para. 155d – the Golden Rules are not met

10. The Council did not anticipate that this point would still be in dispute at the opening of the inquiry, since its expectation was that the Applicant would provide a s. 106 obligation that properly secured (*inter alia*) the contributions that are identified at para. 156a-c of the NPPF.

11. The Applicant has not done so. The shortcomings of the latest draft of the s. 106 obligation ("**the S. 106**") are explained in more detail below, under RfR2. In summary – and with reference to the Golden Rules at para. 156 of the NPPF – given the lack of enforceability against individual owners / occupiers, as presently drafted the S. 106 fails properly to secure (i) affordable housing (para. 156a); and (ii) necessary infrastructure improvements (para. 156b).

<u>VSC do not exist</u>

12. For VSC to exist, the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the Scheme would need to be <u>clearly</u> outweighed by other considerations (para. 153 of the NPPF).

13. The Scheme's benefits do not <u>clearly</u> outweigh its harms. Those benefits are acknowledged by the Council. Ms Fitzgerald in her written evidence[7] gives substantial weight to the delivery of market, affordable and self-build housing; significant weight to the delivery of housing with care; moderate weight to the proposed children's home; moderate weight to the proposed public open space; and additional limited weight to the economic benefits of the Scheme.

[7] Proof (CD6.14) para. 5.121 ff.

(The Council notes that these weightings were given in anticipation that an adequate, effective s. 106 obligation would be provided. However as matters stand, no such obligation has been provided and so it will be necessary to consider the weight to be given in the light of the S. 106 as currently drafted, in oral evidence.)

14. However, against those benefits the following harms fall to be weighed:

    14.1. Green Belt harm: in addition to the "definitional" harm that the Scheme would cause to the Green Belt by reason of inappropriateness, the Scheme would conflict with Green Belt purposes (a), (b) and (c); and would cause harm to the openness of the Green Belt. Para. 153 of the NPPF expressly requires substantial weight to be given to that Green Belt harm (including to the harm to Green Belt openness);

    14.2. It is common ground that the Scheme would result in landscape harm[8]. Significant weight should be given to that harm; and

    14.3. Significant weight should be given against the Scheme to its failure to provide meaningful alternative modes of transport, which leaves the Site poorly connected and not in a sustainable location.

15. When the harms that would result from the Scheme are taken into account, those harms are not "clearly outweighed" by other considerations (including the benefits of the Scheme). It follows that the necessary VSC do not exist. The VSC test is a stricter and more demanding test than the test of "exceptional circumstances" that applies where it is proposed to change the Green Belt boundary through the local plan process: ***R (o.a.o. Luton BC) v Central Bedfordshire Council*** [2015] 2 P&CR 19 at [54] and [56] *per* Sales LJ (Tomlinson and Longmore LJJ agreeing).

RfR2: No adequate s. 106 obligation

16. The Council's position is that the S. 106 as currently drafted is inadequate in the following respects (in addition to the mortgagee-in-possession clause point, which is addressed in the written evidence):

[8] Planning SoCG (CD6.4) at para. 4.28.

16.1. It is insufficiently enforceable against individual occupiers and owners. For the avoidance of doubt, the Council is not suggesting that those parties should be made potentially liable for the payment of any financial contribution(s) – but there is no reason why restrictions on occupation should not be enforceable against individual occupiers and owners. The Applicant recently accepted such a restriction (in relation to the provision of affordable housing) in the ***Sarratt*** appeal[9] and there are numerous other examples of the Council's approach having been accepted at appeal[10].

16.2. The definition of "Agreed Tenure Mix" ("**ATM**") - which would otherwise secure 70% of the Affordable Housing Units as Social Rent and 30% as Shared Ownership - contains wording that would permit any proposed variation of the mix to be referred to an Expert in the event of the Council failing to agree to the proposed amended mix. The ATM should however be a matter exclusively for the Council, given its detailed knowledge of local housing need (planning department, planning policy and housing department).

The approach to be taken to the determination of the Application

17. Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("**the 2004 Act**") requires applications for planning permission to be determined in accordance with the statutory development plan unless material considerations indicate otherwise.

18. As is explained in the Council's evidence[11], the Scheme does not accord with the development plan. It conflicts with it. In those circumstances, section 38(6) of the 2004 Act requires planning permission to be refused unless material considerations indicate otherwise. They do not.

[9] CD5.1.

[10] E.g. 6002930 Land to the rear of 76 and 78 Church Lane, Sarratt WD3 6HL (restriction on occupation in relation to provision of affordable housing – s. 106 obligation agreed with the Council; decision on the appeal awaited); and APP/P1940/W/21/3280443 Killingdown Farm, Little Green Lane, Croxley Green, WD3 3JJ (restriction on occupation in relation to provision of affordable housing). The Council also recently granted planning permission in respect of Land at Woodside Road, Abbots Langley, Hertfordshire and the applicant agreed to restrictions enforceable against individual owner-occupiers in relation to affordable housing, First Homes and the obligations in favour of the County Council.

[11] Fitzgerald proof (CD6.14) para. 6.6.

Material considerations: the NPPF

19. The NPPF is an important material consideration. It indicates that planning permission should be refused.

20. Having regard to para. 11 of the NPPF, in the absence of a five-year housing land supply the policies that are most important for determining the application are deemed to be out-of-date[12]. However, the "tilted balance" in para. 11d(ii) of the NPPF is not engaged. Rather, para. 11d(i) is engaged: the application of NPPF policies that protect areas or assets of particular importance does provide a strong reason for refusing the Scheme. The relevant footnote 7 policies are those relating to Green Belt.

Overall conclusions

21. Overall, therefore, the Scheme does not accord with the development plan and material considerations do not indicate that planning permission should nevertheless be granted. The Council therefore respectfully submits that the Scheme should not be granted planning permission and the Application should be refused.

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[12] Footnote 8 to the NPPF.