

**BUGLE NURSERIES, 171 UPPER HALLIFORD ROAD
APP/Z3635/W/23/3325635**

**PROOF OF EVIDENCE OF EDWARD LEDWIDGE
MRTPI
APPELLANT, TOWN PLANNING**

October 2023



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1.0 Qualifications and Experience

- 1.1 My name is Edward Ledwidge. I have a Bachelor of Arts Degree and Post Graduate Diploma in Town and Country Planning and am a Member of the Royal Town Planning Institute.
- 1.2 I am a Partner with the firm of Montagu Evans LLP, Chartered Surveyors and Town Planning Consultants, with offices in London, Manchester, Edinburgh and Glasgow. Before Montagu Evans I was a Director of Blue Sky Planning.
- 1.3 My experience in advising on town planning matters of all kinds has covered much of England and has included a wide range of commercial and residential development.
- 1.4 In particular, I have had a wide experience in dealing with large and complex proposals, including residential and commercial developments of significant scale. I have also appeared as an expert in numerous situations, including at planning inquiries and hearings.
- 1.5 The evidence which I have prepared and present in this Proof of Evidence is true and has been prepared and is given in accordance with the guidance of the Royal Town Planning Institute, my professional institution.
- 1.6 I confirm that the opinions expressed are my true and professional opinions.

2.0 Introduction

2.1 I am instructed by Angle Property (RLP Shepperton) LLP ('the Appellant') to give town planning evidence in relation to appeal APP/Z3635/W/23/3325635 ('the Appeal') which relates to Bugle Nurseries, 171 Upper Halliford Road, Shepperton, TW17 8SN ('the Appeal Site').

2.2 The Appeal against non-determination was made following the failure of Spelthorne Borough Council to determine planning application 22/01615/OUT ('the Appeal Scheme'):

"Outline application with approval sought for scale, access and siting, with details of appearance and landscaping reserved, for the demolition of existing buildings and structures, removal of waste transfer facility and the redevelopment of the site for up to 80 residential units and the provision of open space and a play area, plus associated works for landscaping, parking areas, pedestrian, cycle and vehicular routes".

2.3 Following submission of the Appeal in July 2023 the Council identified its putative reasons for refusal at Planning Committee on 23rd August 2023 (CD 1.41). Members resolved at the Committee that, if the Council had the power to do so, it would have refused to grant planning permission for the following reasons:

- 1) *The development comprises inappropriate development in the Green Belt for which no other considerations sufficient to amount to very special circumstances have been demonstrated. It will result in the site having a more urban character, will diminish the openness of the Green Belt and conflict with the purposes of including land within it. In particular, it would fail to check the unrestricted sprawl of large built-up areas, fail to prevent neighbouring towns merging together and would not safeguard the countryside from encroachment. It is therefore contrary to Saved Policy GB1 of the Spelthorne Borough Local Plan 2001 and Section 13 (Protecting Green Belt Land) of the Government's National Planning Policy Framework 2021.*
- 2) *The number of smaller units (1 bed and 2 bed units) is 35 out of the total 80 units and equates to 43% of the total units, or not including the affordable units only 11 out of 40 which equates to 27.5%. Therefore, the proposal fails to comply with Policy HO4 which requires a majority of smaller units, of the Core Strategy and Policies Development Plan Document 2009.*
- 3) *By reason of the location, scale and height of the proposed dwellings and their proximity to the boundaries, along the lack of detail shown on the siting and scale parameter plans, and details on the application form, it has not been demonstrated that the impact on neighbouring properties will be acceptable and as such it is not possible to enable scale and layout to be determined at this stage¹.*

2.4 I have been instructed to advise on this site since 2015. In addition to preparing the planning application that is the subject of this Appeal, I have been involved in several applications pre-dating this Appeal. This includes application ref: 20/00123/OUT for a development of up to 31 dwellings which was allowed at appeal (ref: 3268661) (CD 10.1) in July 2021 and application

¹ No policy conflict identified in reason for refusal 3. The Council's Statement of Case then refers to conflict with Policy EN1 and the Housing Size and Type SPD.

19/01022/OUT for 43 dwellings and a 62 bed care home which was dismissed in July 2021 (ref: 3252420) (CD 10.1). I deal with the implications of the Appeal Site's planning history in my evidence below.

Issues Identified by the Inspector

2.5 Following the Case Management Conference (CMC) on 20th September 2023 the Inspector set out the main issues to be considered at the inquiry. These are:

- a) Whether the proposal would be inappropriate development in the Green Belt, including the effect of the proposal on openness;
- b) The effect of the proposal on the purposes of the Green Belt;
- c) The effect of the proposed development on the living conditions of the occupants of Halliford Close, with reference to privacy and outlook;
- d) Whether the proposal would deliver an adequate mix of homes;
- e) Whether the appeal scheme would make an adequate contribution towards affordable housing; and
- f) If the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

2.6 In relation to main issue D, the Appellant considers that housing mix is a matter before the Inspector for this Appeal and I deal with this in my proof of evidence.

Scope of My Evidence and Relationship with the Appellant's Other Evidence

2.7 My evidence addresses town planning matters in relation to the following main issues identified by the Inspector:

- Main issue A;
- Main issue B;
- Main issue C;
- Main issue D; and
- Main issue F

2.8 My evidence also addresses the benefits associated with the development and the application of the planning balance.

2.9 It is anticipated that the Council and the Appellant will agree to a planning obligation such that the affordable housing proposed is secured were the appeal to be allowed. As such it is expected that it will be common ground that Main Issue E falls away as a main issue.

2.10 This proof of evidence should be read in conjunction with the Appellant's Statement of Case ('SoC') and the Housing Land Supply Statement of Common Ground ('HLS SoCG'). The Overarching SoCG is at an advanced stage and it is anticipated that this will be signed well before the Inquiry opens.

2.11 I will not repeat in my evidence the information provided within the SoCG. I will, however, draw on the conclusions of other experts who have been instructed to provide evidence in relation to this case. To put our case forward at the inquiry we are proposing the following witnesses/topics:

- James Stacey of Tetlow King on affordable housing need and supply;
- Ben Pycroft of Emery Planning on five year housing land supply; and
- Chris Jenkinson of Aspect on matters of landscape and visual effects of the development.

Other Matters Identified by the Inspector

Network Rail

2.12 The Council will prepare a Justification Statement for the requested planning obligations. This does not include any financial contribution in relation to the footbridge crossing as requested by Network Rail as this did not meet the tests and this was not considered necessary in relation to the obligations for the extant 31 unit scheme.

Risk of Surface Water Flooding

2.13 I append a report (**Appendix 1**) prepared by Mayer Brown in relation to the potential for surface water flooding risk and the potential need for a sequential test under Paragraph 162 of the Framework. This has been submitted to the Council for consideration along with PPG Guidance. It is envisaged that agreement will be reached with the Council on this matter well in advance of the Inquiry opening.

3.0 Planning Policy Considerations

The Development Plan

- 3.1 Per Section 38 (6) (*Development Plan*) of the Planning and Compulsory Purchase Act 2004:

“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

- 3.2 Section 70 (2) (*Determination of applications: general considerations*) of the Town and Country Planning Act 1990 (the ‘1990 Act’) makes similar provisions but also expressly includes reference to neighbourhood development plans and local finance considerations:

“In dealing with an application for planning permission or permission in principle the [decision-maker] shall have regard to—

- (a) the provisions of the development plan, so far as material to the application,*
- (aa) a post-examination draft neighbourhood development plan, so far as material to the application,*
- (aa) any considerations relating to the use of the Welsh language, so far as material to the application,*
- (b) any local finance considerations, so far as material to the application, and*
- (c) any other material considerations.”*

- 3.3 I firstly explain below the status of the Statutory Development Plan and the weight that should be attached to the relevant policies contained therein for the purposes of determining the Appeal. I then set out the relevant aspects of the NPPF which relate to the consideration of the Appeal. Finally I identify any other relevant material considerations.

The Council’s Development Plan

- 3.4 The statutory Development Plan comprises the:

- Spelthorne Core Strategy and Policies DPD – Adopted February 2009
- Spelthorne Allocations DPD and Proposals Map – Adopted December 2009
- Saved policies of the Spelthorne Local Plan 2001.

- 3.5 In January 2022 the Housing Delivery Test 2021 measurement for the Borough was published by the Secretary of State. The 2021 measurement determined that Spelthorne scored only 69%. This represents that the net number of homes delivered over the preceding 3 year period (1,073 homes) was substantially below the minimum housing requirement (1,554 homes) when considered against footnote 7 of the NPPF.

- 3.6 Accordingly, Spelthorne is required to:

- 1) Engage the presumption in favour of sustainable development (Paragraph 11 of the NPPF);
- 2) Apply 20% buffer to the strategic housing requirement; and
- 3) Adopt a Housing Delivery Action Test Action Plan.

3.7 The Council has since adopted its Housing Delivery Test Action Plan (HDTAP) in September 2022 in response to the Housing Delivery Test 2021 measurement.

3.8 It is common ground that the Council cannot demonstrate a five-year housing land supply or a plan period supply at the present time. The Statement of Common Ground (“Housing SoCG”) confirms that the Council can only demonstrate between 2.79 to 3.52 years of housing land supply.

3.9 The Development Plan policies related to determination of the Appeal Scheme are therefore deemed out of date and the provisions of Paragraph 11 of the NPPF are engaged (see below).

3.10 The weight given to the Development Plan in the consideration of this Appeal is therefore diminished considerably as those policies are not delivering housing consistent with the central objectives and requirements of national policy. This includes its policies relating to housing, settlement boundaries, and the Green Belt. I summarise the policies relevant to the Council’s reasons for refusal below:

- The Policies Map 2009 confirms that the entire Site is designated as Green Belt;
- Saved Local Plan Policy GB1 (as cited in the reason for refusal) makes reference to National Planning Policy Guidance 2 which has been replaced by relevant policies of the NPPF;
- Policy HO4 identifies a preferred housing mix; and
- Policy EN1 is a design policy and targets a high standard in the design and layout of new development.

3.11 Therefore, whilst the Appeal Site is within the Green Belt as designated by the Proposal Map, Local Plan Policy GB1 is out of date and it is appropriate to defer principally to the relevant policies of the NPPF in the determination of this appeal in relation to the Green Belt (see paragraph 11(d)(ii) of the NPPF addressed below).

National Planning Policy Framework (NPPF)

- 3.12 The Framework (2023) sets out the Government’s approach to planning matters and is a material consideration in the determination of planning applications.

Presumption in Favour of Sustainable Development

- 3.13 Part d of Paragraph 11 of the NPPF notes that plans and decisions should apply a presumption in favour of sustainable development, and for decision making this means:

“Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

- i. The application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
- ii. Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”.*

- 3.14 Footnotes to the above clarify that policies referred to in Part i of Paragraph 11(d) above include those relating to land designated as Green Belt.

- 3.15 The Council has confirmed that is unable to demonstrate a five year housing land supply when assessed against a local housing need of 3,636 homes per annum. Local Plan Policy GB1 concerning development in the Green Belt is also out of date. The relevant aspects of the Development Plan are therefore fundamentally out of date and the provisions of Paragraph 11 (d) (i) are engaged in relation to the determination of the Appeal Proposals.

- 3.16 Paragraph 149 (g) of the NPPF deals with the construction of new buildings within the Green Belt. Accordingly, the presumption in favour of granting planning permission applies in this case. Two questions arise. Firstly, whether the proposal is for appropriate development under Paragraph 149 (g) of the NPPF. Secondly, and only if not, whether there are very special circumstances that clearly outweigh the harm to the Green Belt and any other harm. In either of these scenarios paragraph 11 applies so that planning permission should be granted.

Plan-making

- 3.17 Paragraph 12 explains that where a planning application conflicts with an up-to-date Development Plan, permission should not usually be granted.

- 3.18 Paragraph 15 relates to Plan-making and makes explicit that “the planning system should be genuinely plan-led” where up-to-date plans should provide a positive vision for the future of each area and a framework for addressing housing needs and other priorities.
- 3.19 Paragraph 47 of the Framework outlines that applications for planning permission are to be determined in accordance with development plan unless material considerations indicate otherwise. Paragraph 48 goes on to identify that Councils may give weight to relevant policies in emerging Plans according to:
- a) The stage of preparation of the emerging Plan (the more advanced its preparation, the greater the weight that may be given);
 - b) The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
 - c) The degree of consistency of the relevant policies in the emerging Plan to the Framework.
- 3.20 I will deal with the Framework in relation to Plan-making later in my evidence, but evidently the Framework makes clear the importance of having an up to date plan at the heart of Plan-making and decision making. Returning to Paragraph 12 of the Framework, where the Plan is out of date, conflict or departure from the Local Plan can more readily be justified where material considerations indicating in favour of the grant of permission include compliance with up-to-date national policy and the presumption in favour of sustainable development.

Green Belt

- 3.21 Section 13 of the NPPF (as cited in the reason for refusal) concerns the protection of the Green Belt, to which the Government attaches great importance.
- 3.22 The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence (paragraphs 137). The Green Belt serves five purposes (paragraph 138):
- To check the unrestricted sprawl of large built-up areas;
 - To prevent neighbouring towns merging into one another;
 - To assist in safeguarding the countryside from encroachment;
 - To preserve the setting and special character of historic towns; and
 - To assist regeneration, encouraging the recycling of derelict and other urban land.
- 3.23 It should be noted that it is not a requirement of Paragraph 149(g) to assess the impact of development proposals on the five purposes of the Green Belt. Paragraph 149(g) provides a route to the protection of the Green Belt in a way that balances development needs.

- 3.24 Paragraphs 147-148 state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be 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. New buildings are inappropriate in the Green Belt except where they meet the requirements of Paragraph 149, which includes at (g):

"Limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:

– not have a greater impact on the openness of the Green Belt than the existing development;
or

– not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority". (our emphasis)

- 3.25 Annex 2 of the NPPF provides the following definition of Previously Developed Land (PDL) to assist with the application of planning policies:

"Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape".

- 3.26 The Appeal Scheme is a site that includes land falling within the Annex 2 definition of PDL. The Appeal Proposals therefore qualify for consideration under Paragraph 149(g).

- 3.27 The underlined sentence above (our emphasis) represents a change to national policy in September 2018 in respect of the consideration of proposals that would contribute to meeting identified affordable housing need. Such proposals on brownfield land are to be regarded as "appropriate" where harm to the openness of the Green Belt is not "substantial". As the Appeal Proposal relates to PDL and includes provision of 50% affordable housing that will contribute to meeting identified needs, it is relevant to consider if the development would cause "substantial" harm to the openness of the Green Belt. The identified need for affordable housing is set out in the evidence of Mr Stacey.

- 3.28 In the event that it is considered that substantial harm would be caused, the presumption in favour of granting planning permission afforded by Paragraph 11(d) would be engaged only where the impact is clearly outweighed by other considerations (i.e. in the form of very special circumstances).

Sustainable Development

- 3.29 The NPPF confirms that the purpose of the planning system is to contribute to the achievement of sustainable development. The three, mutually dependant, dimensions to sustainable development are:

- Economic – contributing to building a strong, responsive and competitive economy, providing sufficient land to support growth and innovation;
- Social – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a well-designed built environment, with accessible services and open spaces; and
- Environmental – contributing to protecting and enhancing our natural, built and historic environment including making effective use of land.

- 3.30 Sustainable development involves positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life, including (but not limited to):

- Making it easier for jobs to be created;
- Moving from a net loss to a net gain of bio-diversity;
- Replacing poor design with better design;
- Improving the conditions in which people live, work, travel and take leisure;
- Widening the choice of high quality homes.

Housing Delivery

- 3.31 Paragraph 60 confirms the Government's central objective to significantly boost the supply of homes and to ensure that a sufficient amount and variety of land can come forward to meet the needs of groups with specific housing requirements. Delivering a wide choice of high quality homes is a key aspect of sustainable development.
- 3.32 Paragraphs 61 states that to determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance – unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals. In addition to the

local housing need figure, any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for.

3.33 Paragraph 62 goes on to explain that within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies, including those who require affordable housing, families with children and older people.

3.34 Paragraph 49 identifies that small and medium sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly. Local authorities are encouraged to identify smaller brownfield sites and encourage development of windfalls in the interest of speeding up the delivery of homes.

Natural Environment

3.35 Section 15 concerns the natural environment. It requires the planning system to contribute towards and enhance the natural and local environment by; protecting and enhancing valued landscapes, recognising the wider benefits of natural capital and ecosystem services, minimising impacts on and providing gains in biodiversity, preventing pollution and remediating derelict, contaminated and unstable land (paragraph 174).

Planning Practice Guidance

3.36 The National Planning Practice Guidance (2014) (“NPPG”) published in March 2014 is also a material consideration and should be read in conjunction with the NPPF. The Housing and Economic Land Availability Assessment section of the NPPG has been updated twice since its original publication, firstly in September 2018 and most recently July 2019.

3.37 Paragraph ID 3-034-201403306 of the March 2014 version was entitled ‘Can unmet need for housing outweigh Green Belt Protection’ and states that “Unmet housing need (including for traveller sites) is unlikely to outweigh the harm to the Green Belt and other harm to constitute the “very special circumstances” justifying inappropriate development on a site within the Green Belt”.

3.38 However, this was deleted in the September 2018 version and it does not appear in the latest September 2023 version.

3.39 The Government has therefore clearly indicated that there is no reason why unmet housing need cannot outweigh harm to the Green Belt and other harm to constitute “very special circumstances” justifying inappropriate development. It is a question of weighing all relevant factors in the balancing exercise.

Other Material Considerations

2017 Ministerial Statement

3.40 The Housing White Paper – Fixing our Broken Housing Market was published in February 2017. Its central aim is to boost housing delivery and the NPPF has recently been amended in order to reflect aspects of the Ministerial Statement.

3.41 The White Paper states at Paragraph 1.24 that:

“We must make as much use as possible of previously-developed (‘brownfield’) land for homes – so that this resource is put to productive use, to support the regeneration of our cities, towns and villages, to support economic growth and to limit the pressure on the countryside”

3.42 This reinforces the clear priorities that should be afforded to the development of PDL to boost the supply of housing and is a significant material consideration in respect of the Appeal Proposals.

Housing Size and Type SPD (2012)

3.43 The Council adopted this SPD in 2012 to provide further guidance to elaborate on Policy HO4 of the Core Strategy.

Design of Residential Extensions and New Residential Development SPD (2011)

3.44 This SPD provides guidance on how Policy EN1 of the Core Strategy should be interpreted, to help achieve high standards of design.

Emerging Local Plan

3.45 The Council is currently preparing a new Local Plan and the Appeal site is put forward as an allocation within it. I have explained that the Appeal scheme will deliver entirely on the draft site allocation requirements in the July 2023 SoC (paragraph 2.34 of CD 3.5) and that the Council had chosen to pause the Examination process until September 2023 (paragraph 3.6 of CD 6.9).

3.46 Since then, the Council voted to extend the pause until the changes to the NPPF are published at its September 2023 Extraordinary Council Meeting (CD 6.10). This was despite there being no Government announcement on when the NPPF published and the Committee Report explicitly accepting that this would result in the delay of adopting the new Local Plan and there could be potential intervention by Government.

3.47 The Minister of State for Housing and Planning subsequently wrote to the Council on 14th September (CD 6.11) to intervene using powers under Section 27 of the 2004 Act, where “a local planning authority is failing or omitting to do anything it is necessary for them to do in connection with the preparation, revision or adoption of their Local Plan”. Of particular relevance is the below statement from the letter which identifies the main issues:

“I have also considered the Local Plan intervention criteria in the 2017 White Paper “Fixing our broken housing market”, to assist me in determining priority and whether intervention should take place. The applicable criteria are:

- *The least progress in plan-making has been made: More than 90% of English Councils have adopted a local plan since Spelthorne (February 2009). If the Council withdraws the plan, it would be left with one of the oldest adopted local plans in the country.*
- *Policies in plans have not been kept up to date: The adopted local plan is now over 14 years old, and it is reasonable to assume, given the age of the plan, that many of the policies it contains will not be up to date.*
- *There was higher housing pressure: I note in recent years that the Council has not performed well against the Housing Delivery Test and affordability in Spelthorne is worse than in three quarters of the country. I can therefore conclude that there is higher housing pressure.*
- *Intervention would have the greatest impact in accelerating Local Plan production: Considering the average time taken to prepare a local plan is seven years and we are approaching the phased introduction of a new planning system, withdrawing the plan at this stage could only lead to significant further delay whilst a new plan is prepared. Intervening would therefore accelerate plan production given the current plan is submitted and at examination.*

Having considered Spelthorne’s performance against the intervention policy criteria and the statutory test set out in section 27(1) of the 2004 Act, I am satisfied that intervention is justified”.

3.48 The letter imposed a direction on the Council to not take any action to withdraw the Local Plan from Examination.

3.49 In response the Council has made its case to continue to pause the Local Plan Examination (6th October letter, CD 6.12) pending the publication of the NPPF, and a response is awaited from the Government. The risks to delay of the Plan Examination remain very serious in relation to housing delivery and housing land supply, where the Council’s case appears to be that it cannot offset under supply without adopting a Plan, nor approve planning applications for proposed Green Belt release sites.

- 3.50 In relation to weight to be attached to the emerging Plan, I say that weight can be attached to the emerging Plan and the proposed allocation of the Appeal Site, given its stage of production, as a material consideration as per NPPF Paragraph 48 (CD 4.1).
- 3.51 The Plan responds to extensive consultation carried out at the Regulation 18 and 19 stages and was submitted for examination by the Secretary of State in November 2022. The Council also voted to continue with the Examination in January 2023, including its Green Belt release strategy designed to address acute housing and affordable housing needs, following consultation by the Government on proposed changes to the NPPF (CD 11.3). The emerging Plan is supported by an extensive evidence base, including a comprehensive Green Belt Review carried out over 3 stages and a Strategic Housing Market Assessment identifying contemporary needs. The examination process was well advanced before it was paused ahead of the final week when proposed site allocations were due to be considered. The Appeal Site was subject to a very limited level of response comprising only 1 x objection, 3 x supportive representations and 1 x neutral comment (CD 6.14). The emerging Plan is consistent with policies of the NPPF and the Council has already accepted that the proposed amendments by the Government would not, if adopted, impact the substance of the Plan including the Green Belt release strategy designed to meet housing needs.
- 3.52 Therefore, the emerging Plan is well advanced in Examination process; the relevant policies related to the allocation of the Appeal Site are subject to limited objection; and relevant policies are consistent with the NPPF. I give consideration to these factors in applying weight to the emerging Local Plan and the proposed site allocation later.

Development Plan Policies of Relevance to the Appeal

- 3.53 As I noted at paragraph 2.3 of my evidence, the Council's reasons for refusal cited a number of Development Plan policies it considers that the proposal does not comply with. These are listed below:
- Policy GB1 – this policy relates to development proposals within the Green Belt; and
 - Policy HO4 – identifies the Council's preferred dwelling size mix which should 'reflect the needs of the community' by providing 80% of the proposed units as one or two bedroom homes, as well as extra care housing and housing for people with disabilities.
- 3.54 The Officer's Report (CD 1.41, section 1) listed other development plan policies which are not cited in the reasons for refusal and therefore which one must assume the Appeal Scheme complies with. These are:
- SP1 (Location of Development)
 - LO1 (Flooding)

- SP2 (Housing Provision)
- HO1 (Providing for New Housing Development)
- HO3 (Affordable Housing)
- HO5 (Housing Density)
- CO3 (Provision of Open Space for New Development)
- SP6 (Maintaining and Improving the Environment)
- EN1 (Design of New Development)²
- EN3 (Air Quality)
- EN7 (Tree Protection)
- EN8 (Protecting and Improving the Landscape and Biodiversity)
- EN15 (Development on Land Affected by Contamination)
- SP7 (Climate Change and Transport)
- CC1 (Renewable Energy, Energy Conservation and Sustainable Construction)
- CC2 (Sustainable Travel)
- CC3 (Parking Provision)

3.55 I will discuss the above policies, including the weight to be attached to them (bearing in mind the Council's acceptance that the policies which are most important to this application are out-of-date) in [Section 6.0](#) where I will set out my opinion on the overall planning balance.

Appeal Decisions of Relevance

Appeal Site History

3.56 Section 2.0 of the Appellant's SoC presents the relevant planning history for the Appeal scheme.

Relevant Appeal Decisions

3.57 I note that there are a number of recent appeal decisions that are particularly relevant to the consideration of this Appeal. I have identified several in the Appellant's SoC which I continue to rely on and will deal with in my evidence.

3.58 Below are additional appeal decisions that are relevant to his Appeal. I will draw upon these in my evidence.

World of Pets, Thorley Lane, Timperley (ref: 3307615 – CD 10.27)

3.59 This appeal proposal bears many similarities to current Appeal Proposals in so far as the site is located in the Green Belt and the appeal was allowed on a very special circumstances case

² Conflict with Policy EN1 introduced by the Council in its Statement of Case.

predicated on housing land supply and affordable housing delivery. The site in question also benefitted from a draft allocation in the emerging Local Plan to which the Inspector gave weight.

Former Loxley Works, Storrs Bridge Lane, Sheffield (ref: 3262600 – CD 10.28)

- 3.60 This appeal dealt with Paragraph 149(g) of the Framework and involved delivering 10% affordable housing (30 units) on previously developed land. This decision importantly confirms that the Framework does not quantify the contribution to affordable housing under Paragraph 149(g) and concluded that the provision of 10% affordable housing met the second limb of Paragraph 149(g) by contributing to meeting an identified affordable housing need.

4.0 The Case for the Appellant

4.1 In this section of my evidence, I will explain why I consider that the appeal proposals represent sustainable and appropriate development and I will demonstrate that there are compelling reasons that justify the grant of planning permission.

4.2 My evidence will concentrate on the planning policy issues raised in the reasons for refusal. The main strains of the Council's case can be summarised as follows:

Reason for Refusal 1

- a. The development comprises inappropriate development in the Green Belt and there are no other considerations presented amounting to very special circumstances that would justify approval of the Appeal.
- b. The Appeal scheme would diminish the openness of the Green Belt and conflict with purposes a, b and c of Paragraph 138 of the NPPF.
- c. The development is contrary to Saved Policy GB1 of the 2001 Local Plan and Section 13 of the NPPF.

Reason for Refusal 2

- d. The proposed scheme mix is not acceptable to the Council.
- e. Consequently, it is contrary to Policy HO4 of the Core Strategy.

Reason for Refusal 3

- f. The Council suggests that the submitted plans are insufficient for reaching a judgement on the potential for impacts on neighbouring properties that would be unacceptable.
 - g. The Council did not refer to any policy conflict in the reason for refusal. In the CMC note dated 21st September 2023, the Inspector clarified that the potential for effects on the living conditions of nearby residents was contained only to the privacy and outlook of occupants of Halliford Close. The Council now alleges conflict with Policy EN1 and the Design of Residential Extensions and New Residential Development SPD.
- 4.3 To assist with the Inspector's consideration of my evidence, I have broken down my proof using the following structure for each main issue:

- a. The Policy Framework – I list the relevant policy and explain how I interpret it. I have said above that the Development Plan is out of date and so these policies should be given limited weight as they are not consistent with the objectives of the Framework;
- b. Evidence – I explain where I am reliant on the evidence of others; and
- c. Overall Policy Compliance – I conclude whether the appeal scheme is compliant with the policy framework and where conflict is identified, I reach a judgement on the weight to be given to the conflict.

Main Issue A: Whether the proposal would be inappropriate development in the Green Belt, including the effect of the proposal on openness

The Policy Framework

- 4.4 Saved Policy GB1 of the Spelthorne Borough Local Plan 2001 (SBLP) identifies that development will not be permitted where it would conflict with the purposes of the Green Belt and fail to maintain its openness.
- 4.5 I say that Saved Policy GB1 is out of date and pre-dates the current Framework, the original 2012 version and makes no reference to the balancing exercise in the Framework. Due to a lack of consistency between the Local plan and exceptions in Paragraph 149 of the Framework, the NPPF attracts more weight in this case, and GB1 should be given limited weight.
- 4.6 Paragraph 149(g) of the NPPF specifically explains that the complete redevelopment of previously developed land is not inappropriate development, where it would:
 - a) not have a greater impact on the openness of the Green Belt than the existing development;
or
 - b) not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.
- 4.7 My interpretation of Paragraph 149(g) is that where either of the above exclusions is met by the Appeal scheme the proposal cannot be regarded as inappropriate development. The Appellant's position is that the appeal falls to be assessed against both tests in Paragraph 149(g) and that the extant permission does not set a limit on what can be regarded as appropriate development.

- 4.8 In my opinion the two principal considerations under Main Issue A are whether the Appeal Site meets the definition of previously developed land and the impact of the proposal on the openness of the Green Belt, that is whether it causes substantial harm over and above the existing lawful uses of the site.
- 4.9 Paragraph 137 of the Framework explains that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
- 4.10 Although Green Belts might include land which is of high quality and possibly recognised as a valued landscape or land designated as being of nature conservation value, its purpose is not to protect such features (there are other policies to do that) but to keep land permanently ‘open’. ‘Openness’ is concerned with the degree to which land is built upon, and the Green Belt is not a landscape designation.
- 4.11 The NPPF advocates enhancement of Green Belts, stating (paragraph 145) that: “local planning authorities should plan positively to enhance their beneficial use.” Practically, this includes measures such as the provision of opportunities for access, outdoor sport and recreation, enhancing landscapes, visual amenity and biodiversity, and improving damaged and derelict land. For the avoidance of doubt, I consider the Appeal Site, or at least parts of it, constitutes damaged and derelict land.
- 4.12 The NPPF (paragraph 142) also requires local authorities, as part of the revision of Green Belt boundaries, to: “set out ways in which the impact of removing land from the Green Belt can be offset through compensatory improvements to the environmental quality and accessibility of remaining Green Belt land.”
- 4.13 In assessing potential harm to openness, below I summarise the key components of Green Belt assessment amongst practitioners:
- Physical and visual aspects of openness must be considered in assessing the effects on and judgement on the degree of harm to the Green Belt³;
 - There are various local and strategic on- and off-site matters, for example associated with recreational provision, to be taken into account in respect of determining the likely degree of harm resulting from development⁴; and
 - Visual impact may, in some cases, be relevant to the question of whether openness will be preserved; the weight to be given to it is a matter of planning judgment⁵.

³ *Samuel Smith Old Brewery (Tadcaster) Limited v North Yorkshire CC* [2018] EWCA Civ 489

⁴ *Brown v Ealing LBC* [2018] EWCA Civ 556

⁵ *R on the Application of Samuel Smith Old Brewery (Tadcaster) & Others v North Yorkshire County Council*. Case Number: (2020) UKSC 3

Evidence

4.14 Here I am reliant on the evidence of Mr Jenkinson, in respect of landscape, visual and spatial matters that are relevant to openness.

4.15 I also draw out the conclusions made in the previous appeal decisions relevant to the Appeal Site.

Overall Policy Compliance

4.16 I have explained above how the policy must be correctly interpreted and how I deal with policy compliance.

4.17 The Appeal site comprises predominately previously developed land and this was established by appeal decision 3268661 where the Inspector accepted that “substantial parts of the site are previously developed land” (paragraph 37). The Appeal Scheme is focused on the previously developed part of the site and the proposal will ‘rebalance’ the site by removing the aggregate recycling facility and restoring this as open space. The result is that Paragraph 149(g) applies to this case.

4.18 The extant scheme established by appeal decision 3268661 was determined to be an appropriate form of development. However, it would involve retention of the bungalow and development of a band of housing from north-south across the Site in the location of existing previously developed land. Whilst providing public open space it would not deliver those aspects of the Appeal Scheme that would mitigate impact on openness in the form of public open space that will provide a clear and permanent boundary between the urban edge and undeveloped Green Belt.

4.19 In relation to the judgement of ‘substantial harm’ to openness, the Inspector for the dismissed appeal 3252420 concluded that the scheme in question would result in a significant impact upon the openness of the Green Belt, causing substantial harm. In my opinion that was primarily because of the following factors identified in the decision:

- More permanent appearance than the existing situation;
- Significant increase in built form including residential paraphernalia and associated infrastructure;
- The size and scale of the proposed care home and apartment block; and
- The development being located close to the eastern boundary of the site.

4.20 The Appeal scheme has sought to mediate this by containing the development to the south-east part of the Site which is predominately previously developed land and through landscaping to ensure views into the Site from the wider area are limited. The Appellant has also put forward a scheme that delivers on the aspirations of the draft allocation, through providing a strategic gap

along the north part of the Appeal Site as well as provision of publicly accessible open space. A final important distinction is that the care home is no longer proposed and the maximum height of any building is 9.5 metres in the form of housing plots as shown by the parameter plans for approval. It is important to bear in mind that it is the totality of the development proposals that falls to be assessed under paragraph 149(g) and so the beneficial impacts on the openness of the Green Belt secured through the provision and retention of open space into the future must also be taken fully into account.

- 4.21 The Appeal scheme delivers entirely the objectives of Paragraph 145 of the Framework, by planning positively for the beneficial use of the Green Belt through providing access, outdoor recreation, visual amenity and biodiversity and, significantly, to improve damaged and derelict land.
- 4.22 The Appeal Site is in some respects an accident of planning history. It is a bad neighbour as a consequence of its lawful operational use. This Appeal Scheme would result in the removal of this use and restoration of the land as open space which would be a far more beneficial use. These are important Council objectives too in the draft site allocation which is amplified in the Spelthorne Local Plan Green Belt Assessment Stage 3 Report, July 2022 (CD 6.6), to which I afford weight, which includes the following statements:

“It is considered that overall the parcel plays a fundamental role with respect to the performance and integrity of the wider Green Belt. However, it is noted that the site consists of a high percentage of PDL and offers opportunity for significant mitigation, in the form of enhancement of the green infrastructure and the creation of publicly accessible green space on the site.”

“If development is constrained to the south-eastern area (including the previously developed land), the retention of the northern and western portions of the site for the creation of extensive new publicly accessible space would help to preserve the role of the Green Belt and help to maintain separation between Upper Halliford and Sunbury”

“Furthermore, the parcel would offer opportunities for extensive enhancement of the green infrastructure and biodiversity which it is considered necessary in order to go some way towards mitigating the loss of Green Belt as well as maintaining the perception of separation between settlements. The parcel offers opportunities to enhance the landscape to minimise views of railway to the rest and increase perceived connections to the wider countryside to the west.”

- 4.23 As a result the Appeal scheme provides clarity and permanence to the wider Green Belt by preventing sprawl and limiting encroachment.

- 4.24 Clearly this development falls to be considered under the second limb of Paragraph 149g by contributing to identified affordable housing need. This means that the test of whether the development would result in substantial harm to Green Belt openness or not.
- 4.25 I agree with the conclusions reached by Mr Jenkinson that there will be a change to the visual aspect of openness as a result of the proposed development but that this will be an improvement to the current situation and the extant permission by retention of substantial open land in the northern portion of the Site.
- 4.26 I also consider that the increase in built development form giving rise to an impact on spatial openness will be offset by the reduction in hardstanding, removal of the waste transfer site and provision of extensive open space and landscaping. Furthermore, the Appeal Scheme would result in less impact on Green Belt openness than the Inspector concluded in relation to appeal 3252420.
- 4.27 On this basis I consider that the Appeal Scheme would fall below the threshold of substantial harm and is appropriate development. It follows that the presumption in favour of granting planning permission applies in this case.

Main Issue B: The effect of the proposal on the purposes of the Green Belt

The Policy Framework

- 4.28 Saved Policy GB1 of the Local Plan refers to the now superseded PPG2 in relation to Green Belt purposes. In this case I therefore refer to the Framework in relation to Green Belt purposes. Paragraph 138 explains that the Green Belt serves the five following purposes:
- a) to check the unrestricted sprawl of large built-up areas;
 - b) to prevent neighbouring towns merging into one another;
 - c) to assist in safeguarding the countryside from encroachment;
 - d) to preserve the setting and special character of historic towns; and
 - e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
- 4.29 My firm position in relation to the Framework is that its policies are to be read together and that is how the Framework should be interpreted. I have explained above that the Appeal Scheme is appropriate development under Paragraph 149g such that the presumption in favour applies and permission should be granted. Where this is the case for this Appeal, there should not be a separate test on its own right on Green Belt purposes. This does not bear on whether or not paragraph 149(g) development is inappropriate or whether substantial harm is caused to openness.

4.30 Therefore, there is no requirement to complete an assessment of the Appeal Scheme against Green Belt purposes against Paragraph 138 of the Framework as this is not a development control policy.

4.31 Nonetheless for completeness I will demonstrate that there would be no conflict with Paragraph 138 of the Framework in any event.

Evidence

4.32 I rely on the evidence of Mr Jenkinson who has completed an assessment of the proposals on the purposes of the Green Belt.

Policy Compliance

4.33 There is no conflict with criterion d) and e).

4.34 It is the Appellant's position that there is no conflict with Paragraph 138 of the Framework as it is not a development control policy for housing in the Green Belt.

4.35 The Appellant continues to rely on the assessment of the Appeal Scheme on impacts on Green Belt purposes in the November 2022 Planning Statement (paragraphs 7.45-7.47 of CD 1.7) and I summarise my views on this matter in relation to criterion a-c below.

a) To check the unrestricted sprawl of large built-up areas

4.36 In accordance with the Stage 3 Green Belt Review and the draft allocation, the Appeal Proposals incorporate well-defined boundaries that will restrict the scale of growth and the scope for any potential "sprawl". The extent of the Green Belt will be redefined by the provision of public open space that will provide permanence to the Green Belt and a durable boundary that will limit growth beyond the developed area. As above this would be a much better arrangement of the settlement edge than the existing situation and that which would be established by the extant scheme.

b) To prevent neighbouring towns merging into one-another

4.37 I have acknowledged that the introduction of further built form will increase the level of built development at the site from a spatial perspective. This will, however, be limited to the south-eastern portion of the Site and the inclusion of a significant strategic gap and landscape buffer to the west and north will have a mitigating effect whilst enabling the Green Belt to prevent neighbouring towns merging. This coherence is not achieved by the existing site conditions, nor would it be through implementation of the extant scheme.

c) To assist in safeguarding the countryside from encroachment

4.38 The Appeal Scheme would give rise to a limited degree of encroachment on undeveloped land beyond the settlement boundary. However, the balancing approach adopted in accordance with the evidence base and the site allocation provides a clear rationalisation of where the countryside begins through the provision of safeguarded open space. These factors will ensure that the countryside is safeguarded from encroachment.

4.39 On this basis, whilst compliance with Paragraph 138 is not a necessary policy test in the determination of this Appeal, I consider that the proposals would not conflict with the purposes of the Green Belt and, in fact, will assist the policy objectives of the Framework by facilitating containment of the built up area through the inclusion of safeguarded open space that will be both permanent and durable preventing urban sprawl, coalescence of settlements and countryside encroachment.

Main Issue C: The effect of the proposed development on the living conditions of the occupants of Halliford Close, with reference to privacy and outlook

4.40 In the Council's Statement of Case it was argued that insufficient detail was provided for the Council to be satisfied that the proposed siting and scale would ensure a satisfactory relationship including sufficient separation distance from properties on Halliford Close to the south of the Site. As a result, the Council alleged conflict with Policy EN1 and the Design SPD in its Statement of Case.

4.41 The Inspector's CMC note (paragraphs 17 and 18 of CD 3.4) established that the matters for approval at this Appeal relevant to Main Issue C are layout and scale. This is anticipated to be common ground with the Council (paragraph 1.2 of the SoCG). Collectively the parameter plans fix the layout as it relates to land uses, the layout, the scale (maximum height), the siting of buildings and the access into the Site and circulation routes

Policy Framework

4.42 The Council alleges conflict with Policy EN1 and the associated SPD. Dealing first with Policy EN1, the policy stipulates that proposals for new development should demonstrate that they will:

- a. create buildings and places that are attractive with their own distinct identity; they should respect and make a positive contribution to the street scene and the character of the area in which they are situated, paying due regard to the scale, height, proportions, building lines, layout, materials and other characteristics of adjoining buildings and land,*

- b. achieve a satisfactory relationship to adjoining properties avoiding significant harmful impact in terms of loss of privacy, daylight or sunlight, or overbearing effect due to bulk and proximity or outlook,*
- c. be designed in an inclusive way to be accessible to all members of the community regardless of any disability and to encourage sustainable means of travel,*
- d. incorporate landscaping to enhance the setting of the development, including the retention of any trees of amenity value and other significant landscape features that are of merit, and provide for suitable boundary treatment,*
- e. create a safe and secure environment in which the opportunities for crime are minimized,*
- f. incorporate measures to minimise energy consumption, conserve water resources and provide for renewable energy generation in accordance with Policy CC1,*
- g. incorporate provision for the storage of waste and recyclable materials and make provision for sustainable drainage systems (SUDS).*

4.43 In my opinion Policy EN1 is not a 'prohibitive' policy, by which I mean the policy is flexibly worded to cater for site specific circumstances. I accept that full weight should be given to this policy given it is broadly consistent with the Framework, specifically Chapter 12 which lists good design as a key aspect of sustainable development.

4.44 There is nothing in the Council's Statement of Case that alleges the scheme would result in conflict with parts a, c, d, e, f or g. In fact, the only concern relates to limited parts of Policy EN1(b) in relation to privacy and outlook and this is only in relation to the residents of Halliford Close to the south.

4.45 The SPD provides further guidance on how Policy EN1 should be applied to planning applications in relation to privacy and outlook. I accept that it is relevant as a material consideration. The SPD provides minimum separation distances (Diagram 1, page 8 of CD 5.6) for developments to observe which I have applied to the Appeal Scheme below.

Evidence

4.46 I rely on the parameter plans submitted for approval as part of this Appeal. Focusing on the Proposed Parameter Siting Plan (CD 1.26), this is important as it would fix the siting of the proposed units within the residential area to show the width and length of each building. It also controls the height of the houses as two storeys and garages/car ports as single storey structures.

4.47 The Council and the Appellant are yet to agree to a set of planning conditions in relation to layout and scale such that Main Issue C has been resolved and is no longer a matter in dispute. However, it is anticipated that this will be agreed in advance of the Inquiry opening and that conditions will be included restricting the maximum gable height of each property to 9.5 metres

and that there can be no habitable accommodation in the roof space of any unit in accordance with CD 1.40.

Development Plan Compliance

- 4.48 I have explained above how the policy must be correctly interpreted and now I will deal with policy compliance in relation to privacy and outlook for residents of Halliford Close.
- 4.49 I have already explained that the siting and maximum height of the proposed housing would be secured under this Appeal by condition. The siting plan shows the southern terrace of properties closest to Halliford Close would front onto the internal road rather than the rear gardens. The result of this is a back to back separation distance of approximately 30 metres. This is materially larger than the Design SPD targets, which is 21 metres for two storey properties such as in this case. The rear gardens for the Appeal Scheme would also be approximately 10.5 metres as is sought by the SPD.
- 4.50 The scale and appearance of the proposed dwellings are reserved matters which will be subject to consideration at the detailed design stage. The approved parameters and any related planning conditions would provide the basis on which the final design will be considered against Policy EN1.
- 4.51 I conclude that there is no conflict with Policy EN1 nor the associated SPD in relation to the Appeal Proposal and that fixing the layout and scale of the development via the parameter plans and planning conditions will provide appropriate controls by which future reserved matters proposals can be governed.

Main Issue D: Whether the proposal would deliver an adequate mix of homes

Policy Framework

- 4.52 The Council's putative reasons for refusal allege that the development does not comply with Policy HO4 in relation to dwelling mix.
- 4.53 Policy HO4 of the Local Plan outlines the target dwelling size mix for developments in Spelthorne as 80% as one or two bedroom units. Policy HO4 does not attempt to control the unit mix of the remaining 20% of units. Policy HO4 states as follows:

"The Council will ensure that the size and type of housing reflects the needs of the community by:

- a) requiring developments, including conversions, that propose four or more dwellings to include at least 80% of their total as one or two bedroom units,*

- b) encouraging the provision of housing designed to meet the needs of older people, including the provision of 400 units of extra care housing on suitable sites over the period 2006 to 2026,*
- c) encouraging the inclusion within housing schemes of a proportion of dwellings that are capable of meeting the needs, as occupiers, of people with disabilities”.*

4.54 This policy was set based on the recommendations of the Council’s Housing Market Assessment and Housing Needs Survey prepared before the adoption of the Core Strategy in 2009.

4.55 As I have mentioned above, the Framework requires Councils to meet the needs of groups with specific housing requirements and that within this context the size, type and tenure of housing needed should be assessed and reflected in planning policies. Paragraph 62 of the Framework explicitly refers to those who require affordable housing and families with children. I say that Policy HO4 does not achieve this given the Plan is over 14 years old and its housing policies do not provide policy for current needs, so should not be afforded full weight, but rather limited weight.

4.56 I accept that if the desire for 80% 1 and 2 bedroom units was the only component of Policy HO4 the scheme would not be policy compliant. However, Policy HO4 must be read in its entirety and it specifically refers to the Council needing to ensure that the size and type of housing reflects the needs of the community.

4.57 This caveat is important and would suggest that a deviation from the preferred mix can be found acceptable, where in my opinion the adopted policy does not reflect the current needs of the community. Policy HO4 is an aged policy requirement that does not reflect the Council’s most recently published assessment of housing need. However, it can be read in a way which reflects the reality of the situation that housing needs will change over time and that the objective of the policy is to achieve a mix that it appropriate to meet housing needs of the community at the time of the determination of an application.

4.58 Of course, if the local plan had been kept under review and up to date this difficulty would not arise albeit that we do have the benefit of a more up to date evidence base related to housing need to which I afford weight.

Evidence

4.59 Here I rely on the Council’s published evidence base, but specifically the Council’s current assessment of housing need which is the 2019 SHMA Update. It is notable that the Council’s putative reason for refusal, nor committee report, makes no reference to this assessment.

Development Plan Compliance

- 4.60 I do not find the Council's objection to unit mix logical, given the Council is attempting to defend an aged policy position that does not reflect prevailing housing needs. The rationale for the proposed unit mix (43% 1 and 2 bed units) is that Council's entire draft spatial strategy is predicated on the principle of Green Belt release in Spelthorne being necessary to meeting housing need for larger homes across tenures as per the 2019 SHMA Update which is reflected in the emerging policy.
- 4.61 Draft Policy H1 is more openly worded and seeks development to provide a mix of housing tenures, types and sizes appropriate to the size, characteristics and location. This is not referenced in the Committee Report at all.
- 4.62 The Appellant is responding to current prevailing housing needs rather than Policy HO4 of the Core Strategy. The current needs were set out as priorities by Members at the January 2023 Extraordinary Environment and Sustainability Committee (CD 6.13), where Members stated that the Council's approach in the emerging Local Plan was to move away from a historic supply of flatted developments to utilising Green Belt release as a means of delivering family houses with gardens.
- 4.63 The proposed scheme corresponds with the 2019 SHMA Update and the aspiration to deliver more family housing, especially socially rented tenure where the scheme is able to support 47% family sized housing based on the indicative scheme presented.
- 4.64 The Council should not be planning to meet its historic housing needs at the expense of the pressing current needs of its residents. This goes entirely against Paragraph 62 of the Framework and the approach taken by the Appellant is more appropriate.
- 4.65 I accept the draft Plan should be given limited weight, but the Council appears to give virtually no weight to it which is surprising given this presents the up-to-date position on need. Further, significant weight can be given to the objective evidence base underlying it.
- 4.66 Ultimately I accept that there is some conflict with Policy HO4, though I say this is only limited conflict because the policy itself refers to 'current needs' which in fact are most recently set out in the 2019 SHMA. These differ significantly from the historic needs that Policy HO4 was written to deliver on over 14 years ago. Policy HO4 takes no account of this and is not consistent with the Framework.

- 4.67 In any event the final scheme mix is not for approval at outline stage and would be presented as part of a reserved matters application. Were the Inspector, or Council, to require a different scheme mix this could be controlled by condition and so this would not result in a refusal of planning permission.

Main Issue F: If the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it

- 4.68 The Appellant does not accept that the Appeal Scheme is inappropriate development, rather that the Appeal Scheme is appropriate development of previously developed land under Paragraph 149(g) of the Framework as I have explained under Main Issue A. However, for completeness I deal with Main Issue F below in my evidence.

The Policy Framework

- 4.69 The Development Plan is fundamentally out-of-date so only limited weight can be given to its policies, including those which affect the supply of land for development on the basis that there is not only a very significant housing shortage, but that at present, there is no ability to meet the need given the Council's approach to deciding planning application for development in the Green Belt. The emerging Plan cannot yet be afforded overriding weight and therefore the principal policy consideration is the NPPF and specifically paragraphs 147 and 148:

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

"148. 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."

- 4.70 The correct way to assess harm is that a judgement should be made as to whether the totality of harm to the Green Belt is outweighed by the combined weight of other material considerations, which is an approach confirmed by the courts⁶.

⁶ Sefton Metropolitan Borough Council v Secretary of State for Housing, Communities and Local Government and Doherty [2021] EWHC 1082 (Admin), 7 May 2021

Evidence

- 4.71 Here I rely on the evidence of Mr Stacey and Mr Pycroft on affordable housing and housing supply matters. I also rely on the conclusions of the Inspector in the appeal decision for the extant consented scheme and other relevant appeal decision on the weight to be attached to the material considerations.

Overall Policy Compliance

- 4.72 When comparing my assessment with the Council's assessment of the Appeal Scheme differences essentially relate to the weight that we have given to each of the components of the planning balance. Below I have set out the weight that, in my opinion, ought to be given to each material consideration⁷.

Plan-led Failure

- 4.73 As I have mentioned above, the Council's Plan has stalled following Members clear endorsement to progress to Examination in January 2023. The Council is still working from its 2009 Local Plan and many of its policies are substantially out of date. The Council is then using this to object to developments that would actually be responding to the needs of its residents, for example developments that would deliver much needed housing and affordable housing such as this Appeal.

- 4.74 As the Government has put it:

“...more than 90% of English Councils have adopted a Local Plan since Spelthorne (February 2009). If the Council withdraws the Plan, it would be left with one of the oldest adopted Local Plans in the Country”. (CD 6.11)

- 4.75 The fundamental difficulty with the Council's putative reason for refusal can be seen in this way. It recognises that its development plan is out of date, and that it is failing to deliver the required levels of housing and affordable housing. The Council has prepared and submitted to the Secretary of State a new Local Plan that it considers sound. That plan remains at examination stage – and allocates the Appeal Scheme for in effect the Appeal Scheme. This represents sustainable development in terms of the Council's emerging plan and its strategy for delivering the up-to-date objectives of national policy. The refusal of permission, however, rests entirely on the policies in the adopted Local Plan that the emerging Local Plan is intended to supersede on

⁷ The weightings I apply are as follows: very limited, limited, moderate, significant, very significant, substantial and very substantial.

the grounds that they are no longer fit for the purpose of delivering housing in line with national planning policy.

- 4.76 Alongside this, the Council has sought to pause its Local Plan process. The result of this is Government intervention in the Local Plan process. Given the failures in Plan-making I have highlighted above, unless there is either a likelihood that development needs can be addressed on non-footnote 7 land or there is a prospect of the need being addressed through the allocation of sufficient land, the issues associated with under-delivery of housing (and failing on other objectives) will persist and become more acute. This can be seen through the Council's worsening housing land supply position which Mr Pycroft has dealt with in his evidence.
- 4.77 Even though Spelthorne is a 'presumption authority', the presumption has had little to no effect given the approach taken by the Council to the Framework's footnote 7 constraints which have rendered this measure toothless.
- 4.78 The natural consequence of the lack of a Plan-led approach is 'planning by appeal' including for sites the Council has identified for allocation in its draft Local Plan such as Bugle Nurseries. This is a wholly unsustainable approach and results in significant uncertainty and delays for applicants such as the Appellant. It all brings tangible public interest disbenefits. For example, the Appellant's objective is to deliver the mix of all types of housing that the Council most requires – this is being thwarted by the Council's apparent adherence to adopted development plan policies that it accepts are out of date.
- 4.79 Given the issues I have identified on the failure of the Council to progress the Local Plan and the vital importance the Framework places on the Plan-led approach, I give this **significant weight** as a material consideration in the application of the planning balance.

Housing Delivery

- 4.80 To be able to quantify the weight to be given to housing delivery, it is important to consider housing land supply and delivery.
- 4.81 On supply, it is common ground that the Council can, at most, identify 3.52 years of housing land supply. In relation to delivery, Spelthorne has only delivered 1,073 homes against a minimum requirement of 1,554 homes as per the 2021 Housing Delivery Test results. Given the fact that only 323 dwellings were completed in 2021/22 and a housing need of 611 dwellings in the same year, Mr Pycroft concludes that the Council's HDT result is not expected to improve when the 2022 HDT results are published.

4.82 In the context of acute under-supply and need for housing, the delivery of 80 homes should be given very substantial weight in the planning balance. This is consistent with the weight afforded by various Inspectors in relation to planning appeals. These are included within this Proof of Evidence and in Core Document series 10 ('Decisions and Judgements').

4.83 The Inspector gave significant weight to the delivery of housing in the allowed appeal. In my opinion given the failure of the Council to positively plan to meet the need for new homes, the greater level of detailed evidence on housing land supply, and the fact that the draft Plan has stalled, this adds further weight to this component of the planning balance resulting in **very substantial weight**.

Affordable Housing

4.84 Mr Stacey's evidence gives an insightful and accurate analysis of the Council's dire track record of affordable housing delivery and the significant need for affordable housing that is not being addressed. It identifies that affordability across Spelthorne Borough has been and continues to be in crisis with market signals indicating a worsening trend in affordability.

4.85 This evidence highlights that since the start of the Core Strategy period in 2006/07, net affordable housing delivery represented 17% of overall housing delivery (41 affordable dwellings per annum) which is less than half the 40% target contained in adopted policy HO3. There is a considerable shortfall of affordable housing delivery due to the chronic and persistent undersupply against the development plan targets over 17 years.

4.86 The Council has resolved that the limited release of Green Belt sites is required to address the affordable housing crisis and also to deliver the right type of housing to in the right locations to meet identified needs. This includes family houses with gardens that would not otherwise be delivered on urban sites and a policy requirement for 50% affordable housing on greenfield sites. (CD 6.1).

4.87 The Appeal Scheme provides 50% affordable housing exceeds the adopted policy requirement and meets emerging policy target. This relates to 40 affordable housing units of a tenure that accords with the emerging Local Plan requirements and hence responds to the most up to date housing needs. This comprising 30 units for rent (75%) to help meet priority housing needs and 10 First Homes (25%) representing a discount to open market housing in an area with existing and increasing affordability challenges. I agree with Mr Stacey that delivery of these dwellings will make an important contribution to the affordable housing needs of Spelthorne and its residents.

- 4.88 Given the dire track record of affordable housing delivery, the situation and the proposed affordable housing offer in this Appeal means that **very substantial weight** should be given to the delivery of affordable housing in the overall planning balance.

Removal of bad neighbours

- 4.89 The Appeal Site is currently occupied by a variety of commercial operations including a lawful aggregate recycling facility. Because the uses have evolved over time they are not subject to planning controls that would normally be applied to such uses. None of the properties are therefore restricted in terms of use, hours of operation, access arrangements or other environmental controls.
- 4.90 The Appeal Site lies adjacent to residential properties to the south and north. Given the close relationship of these properties with the estate and the absence of any planning restrictions over the commercial uses, there is significant potential for the occurrence of adverse environmental conditions. Indeed there have been a number of complaints and investigations regarding the impact of operations at the site on nearby residents. Bugle Nurseries is therefore an inappropriately located industrial site.
- 4.91 Vehicular access to the Site is also unrestricted. Currently the commercial uses are accessed via Upper Halliford Road. Existing operations generate considerable amounts of daily traffic movements as evidenced within the Transport Statement. Due to the nature of existing uses at the site this includes HGVs as well as smaller commercial vehicles. The proposal seeks the removal of the lawful aggregate recycling facility and other commercial uses and replace them with more appropriate residential uses. Therefore the existing vehicular activity associated with the Appeal Site will be removed and this will provide significantly improved environmental conditions for local residents.
- 4.92 The Appeal Proposals will therefore result in comprehensive redevelopment of the site for residential purposes which is a more appropriate form of development than the existing unregulated commercial uses. This will significantly improve environmental conditions for existing residents adjacent to the site.
- 4.93 This will also result in the remediation of contaminated land which is a significant environmental benefit of the proposal. Such measures will only take place if the site is redeveloped for housing. The remediation enables the effective and efficient use of brownfield land.
- 4.94 This is a further material consideration that contributes to the “very special circumstances” in favour of the Appeal Proposal. I say this should be given **significant weight** for the reasons highlighted above.

Open Space

- 4.95 The proposal will restore a substantial area of open space within the western part of the site. It is intended that this area will be publicly accessible, which is a significant benefit to the community on land which is currently private and inaccessible.
- 4.96 This accords fully with the Framework which supports planning positively for such beneficial uses, such as providing access, retain and enhance landscapes, visual amenity and biodiversity and to improve damaged and derelict land in the Green Belt. Furthermore, as demonstrated by the submitted LVIA as a result of the landscaping proposals put forward, and the very poor existing site conditions, there will be a beneficial landscape impact from the development.
- 4.97 In the Dylon International appeal decision (CD 10.8) the Inspector expressed that “very significant weight” was to be attached to the beneficial provision of public open space in weighing up the overall harm to the Green Belt.
- 4.98 It is logical to suggest that a similar weight should be attached to the provision of public open space on this site. The current Proposals include enhanced open space provision by comparison to the extant permission on the basis that it will be accessible directly from Upper Halliford Road and continuous with open space to the west of the site. This is considered a substantial benefit of the proposal, which must at least attract **moderate weight** as found by the Inspector in the previous appeal decision.

Strategic Gap

- 4.99 Provision of a strategic gap: the Appeal Scheme would provide a permanent and defensible Green Belt boundary through provision of a strategic gap of at least 50 metres as sought by the draft site allocation. This would not be achieved by the extant approved scheme (ref: 20/00123/OUT), nor was it proposed by dismissed appeal scheme 19/01022/OUT.
- 4.100 Were the Applicant to implement the 31 unit scheme, which has consent for a ribbon of development, this would in effect linking development south and north of the site and there would be no opportunity to provide a strategic gap in this part of the Borough, which would be strengthened by the Appeal Scheme seeking to demolish the existing bungalow located in the proposed strategic gap corridor.
- 4.101 Accordingly securing the strategic cap under this application in order to provide a permanent and durable Green Belt boundary, whilst also supporting Green Belt purposes, is a further material consideration of **significant weight**.

Local Opinion

- 4.102 Section 7 of the November 2022 Planning Statement (CD 1.7) detailed the feedback provided by third parties and the SRA to the redevelopment proposals. From this it is clear that the community affords a high degree of importance to the direct improvements to local amenity, environmental conditions, highway conditions, local housing provision and economic gains that would arise from the regeneration of this site.
- 4.103 The expression of these independent views by multiple third parties, including the SRA representing the local community as a whole, adds significant weight to the very special circumstances identified above. I find that these views remain highly relevant in the case of this appeal.

Draft Site Allocation

- 4.104 Further, I note that the Site has been identified for release from the Green Belt within the Pre-Submission Publication Version of the Local Plan, under draft site allocation HS1/009. This is supported by the evidence base for emerging Plan comprising principally Stage 3 of the Green Belt Review (CD 6.6).
- 4.105 The Local Plan and the policies and allocations within it are yet to be adopted, however weight can be given to the draft site allocation under paragraph 48 of the NPPF and the associated evidence base as I have identified above.
- 4.106 Given the draft Plan has progressed to Examination stage I say the draft site allocation is relevant as a material consideration. In my opinion weight can be given to the draft allocation which was the case in the Basildon appeal (CD 10.10) where the Inspector gave weight to a site allocation in a draft, withdrawn Local Plan. He also confirmed that the evidence base is a material consideration despite the withdrawal. In this case the Inspector found it relevant that the site in question was found to be part previously developed land, suitable for development and for withdrawal from the Green Belt, and that the Council's Action Plan relied on adoption of the Plan to improve the Council's housing land supply position.
- 4.107 Both sites in the York and Wheatley Campus appeals (CDs 10.29 and 10.12) were similarly subject to draft allocations which were factored into the decisions as material consideration weighing in support of the proposals.
- 4.108 I accept that limited weight can be given to the draft Plan at this stage and that this would be consistent with relevant appeal decisions. However, I draw a distinction between that and the evidence base which supports allocation of the Appeal Site for the form of housing and open space which is directly represented by the Appeal Scheme.

- 4.109 This support comes in the form of the conclusions of the Green Belt Review which identifies the clear benefits of rebalancing the site to achieve a more robust urban /Green Belt boundary whilst contributing to meeting housing and affordable housing needs. The proposals also respond to contemporary housing needs set out in the SHMA and will contribute to addressing the acute affordable housing shortfall whilst also providing family homes with gardens.
- 4.110 Furthermore, the Plan has not been withdrawn in this case and the proposed allocation of the Appeal Site remains on table and was subject to very little objection before the Examination was paused. Even it were to be withdrawn the evidence base would still be regarded as material consideration.
- 4.111 On this basis I place **moderate weight** on the draft Allocation, to which the Appeal Proposal accords in full.

4.112 To assist the Inspector, I have summarised my conclusions in the table below in relation to each material consideration.

Negative				Positive		
Green Belt Harm		Substantial	As set out in national policy	Plan-led failure	Significant	No prospect of draft Plan being brought forward
				80 units of Class C3 housing	Very Substantial	Insufficient land supply and no prospect of sufficient land being brought forward
				50% affordable housing	Very Substantial	Severe supply issues and need for affordable housing
				Removal of bad neighbours	Significant	Remediation and removal of lawful and operational aggregates site
				Open space	Moderate	Public access to significant open space on land not currently accessible
				Strategic gap	Significant	Secures a permanent Green Belt boundary and a key objective of the draft site allocation
				Local opinion	Significant	Strong support locally for the redevelopment
				Draft site allocation	Moderate	Site is proposed for removal from the Green Belt in the draft Local Plan

5.0 The Planning Balance

- 5.1 I conclude that the Appeal Scheme represents appropriate development under Paragraph 149(g) of the Framework, such that the presumption in favour of sustainable development applies that would justify the grant of planning permission.
- 5.2 If the Inspector were to disagree on this matter, I accept that the Appeal Scheme would cause harm by reason of inappropriateness and to the openness of the Green Belt which would attract substantial weight. I also accept minor conflict with the adopted policy position on housing mix.
- 5.2.1 In my opinion when these harms are balanced against the many substantive benefits I identified under Main Issue F, the benefits clearly outweigh the harm such that very special circumstances exist and this Appeal should be allowed.

h. Declaration

- a) I confirm that I have made clear which facts and matters referred to in my Proof of Evidence are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.
- b) I confirm that my Proof of Evidence includes all facts which I regard as being relevant to the opinions which I have expressed and that attention has been drawn to any matter which would affect the validity of those opinions.
- c) I have given full references to any external sources (i.e. sources other than my professional knowledge and opinion) that I have relied on in preparing this Proof of Evidence.
- d) I confirm that my duty to the Inquiry as an expert witness overrides any duty to those instructing or paying me, that I have understood this duty and complied with it in giving my opinion impartially and objectively, and that I will continue to comply with that duty as required.
- e) I confirm that I have no conflicts of interest of any kind.
- f) I confirm that my Proof of Evidence also complies with the requirements of the Royal Town Planning Institute and that I have acted in accordance with the Institute's Code of Conduct for Members.

Signed:

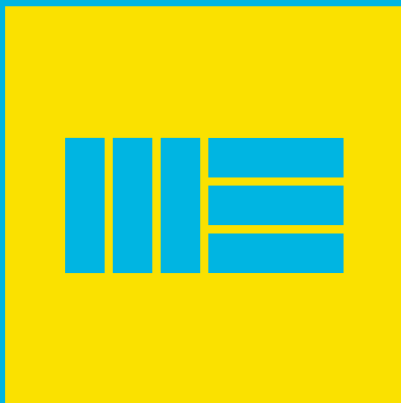


Edward Ledwidge MRTPI
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Date: 31 October 2023

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