

Town and Country Planning Act 1990

Land at Bugle Nurseries, Shepperton.

Appeal by Angle Property (RLP Shepperton) LLP

Spelthorne Borough Council

PINS REF: APP/Z3635/W/23/3325635

Opening Submissions of the Appellant

Introduction

1. This appeal relates to the proposed development of land at Bugle Nurseries to deliver 80 dwellings of which 40 would be affordable homes and an area of public open space (“the Appeal Scheme” on “the Appeal Site”).
2. A detailed statement of common ground has been agreed which narrows the issues in the appeal.
3. The main issues are those set out by the Inspector in the Case Management Conference Summary Note:
 - 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, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

The Appeal Scheme

4. The Appeal Scheme comprises two principal components: the residential development which delivers 80 units on 2.28 hectares – and the proposed landscaped open space on some 2.56 hectares. The scheme therefore consolidates the site into two uses – residential and parkland – and in doing so consolidates the built form – demolishing all the buildings presently on the site including the bungalow on the north eastern part of the site. The parkland is arranged to provide a gap between the built up areas of Upper Halliford and Sunbury where presently the bungalow and its garden sits. This will be opposite the southern part of Upper Halliford Park.

Narrowed Issues in dispute

5. The Statement of Common Ground was agreed very recently – and the Appellant apologises to the Inspector for the timing of this. This reflected ongoing discussions including matters relating to conditions influenced by comments made by the Inspector.
6. In relation to main issue C and the amenity of adjoining occupiers, the Council's concerns were limited to the occupants of Halliford Close. The parties have agreed draft conditions following the Inspector's comments such that the Council is satisfied that the privacy element of main issue C would also fall away. Those conditions would secure that the garages have a maximum height of 4m and eaves height of 3 metres, and that the houses are no more than two storeys with no living accommodation in the roofspace and a maximum height of 8.7m.

Main Issue A – Inappropriate Development

7. It appears to be common ground that the provision of the parkland open space is not inappropriate development in the GB. The Council's case is entirely based on the residential element of the Scheme – in fact the open space component of the

development is largely ignored in its assessment of whether the proposal as a whole is inappropriate development.

8. Paragraph 149(g) of the NPPF provides that the construction of new buildings in the Green Belt will not be inappropriate where (i) the proposals are for the complete redevelopment of previously developed land which would (ii) not cause substantial harm to the openness of the Green Belt, where (iii) 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.
9. It is agreed that (iii) the proposals would re-use previously developed land and contribute to meeting an identified affordable housing need within the Council's area.
10. The Council takes its stand on points (i) and (ii). The Council's position on point (i) is directly at odds with the decision on the 2021 appeal for the Appeal Site where it was common ground that – notwithstanding that the proposals went beyond the previously developed land – para. 149(g) was engaged. The Council provides no explanation why it sets itself against a recent decision of the Secretary of State on the same policy framework.
11. The proper interpretation of 149(g) is straightforward. It involves consideration of whether the Appeal Scheme proposes the complete redevelopment of previously developed land. It does. Substantial parts of the Appeal Site are previously developed land – as the Council acknowledges – and these are comprehensively redeveloped by the Appeal Scheme either as parkland or for housing. Paragraph 149(g) is engaged. Any concerns as to whether the development – and the disposition of the development including the housing – assessed against the existing lawful development on the site has an impact on openness or causes substantial harm to openness fall to be addressed in the second part of paragraph 149(g) and not as part of the gateway issue as to whether 149(g) is engaged. That was the approach taken by Inspector Hunter in the previous appeals. On those appeals the complete redevelopment proposed by Appeal A was inappropriate and Appeal B was not inappropriate. That represents the proper application of policy to the facts of the case.

12. It is important to apply the policy to the comprehensive development proposals – that is underlined by the use in 149(g) of the term “complete redevelopment”. Para 149(g) also covers proposals to infill between previously developed or **only** to partly redevelop the PDL. Here the proposal is one of complete redevelopment where some of the PDL is redeveloped to form open space and landscaping and the other **part** is redeveloped to provide housing. This enables the scheme to advance and promote the openness of, and Green Belt role and objectives on, the open part of the site. Authorities are encouraged to plan positively to enhance the beneficial use of Green Belts. This reflects the scope and purpose of 149(g) – it provides flexibility to promote development on brownfield sites meeting housing objectives and Green Belt objectives at the same time – subject to the need to ensure that general redevelopment proposals do **not** cause substantial harm to the openness of the Green Belt. There is an explicit tolerance for housing proposals that meet affordable housing need of the district – as here – whereby harm to openness is permitted provided that the harm is less than substantial harm. That term is a familiar one in the Framework – it is the same language as used in the context of heritage assets, and is a high test. This reflects the weight given **in** national policy to making effective use of previously developed land (e.g. NPPF 120(c) – “substantial weight”) and the centrality of delivering affordable housing **to** the NPPF and the fundamental objective of significantly boosting the supply of homes (NPPF 60).

13. The Appellant contends that the Appeal Site represents an ideal site for a comprehensive redevelopment. 80 homes including 40 affordable homes can be **delivered** on a site that is not only brownfield but an industrial estate incompatible with its surrounding uses, and which includes a lawful waste transfer site. The development **proposes** public open space which will secure the openness of the land for **perpetuity**. The housing development is consolidated in the southern part of the site **where** it relates to the existing settlement, and leaves a gap to the north which can **provide** a strategic separation to Sunbury to the north. The form of the development **reflects** the Council’s site requirements in the Council’s emerging Local Plan¹. The Appeal Scheme does not cause substantial harm to the openness of the Green Belt. Further **detail** on the impacts on openness are provided by Mr Jenkinson².

¹ CD 6.1

² See section 7 of his proof of evidence.

14. Therefore, the Appellant submits that the proposals are not inappropriate development. If this is accepted, then it now appears to be common ground that permission should be granted subject to conditions.

B- Green Belt Purposes

15. An assessment of the proposed development against the Green Belt purposes does not bear on the determination of whether the proposals amount to inappropriate development.
16. The Appellant relies on the evidence of Mr Jenkinson in relation to landscape and visual matters, and Mr Ledwidge on the planning aspects of these issues. These Opening Submissions do not rehearse that evidence which will be heard shortly,.
17. Again, the proposals should be assessed as a whole with fair recognition given to the proposals to develop more than half the Appeal Site as a parkland open space. This component meets the GB purposes in full. The current site is not only to a large extent brownfield, but the western part of the site is degraded, and evidences the lawful use as a waste transfer site and access route to it. The western and northern part of the Appeal Site is proposed to remain in the Green Belt and does much to meet the objectives for the Green Belt set out in NPPF 145:

“Once Green Belts have been defined, local planning authorities should plan positively to enhance their beneficial use, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation, to retain and enhance landscapes, visual amenity and biodiversity, or to improve damaged and derelict land”.

18. The strong support that this provides for the development is not coincidental. The Appeal Scheme has been deliberately and carefully formulated – in line with the allocation in the emerging Local Plan³ – to minimise harm and maximise benefit to the Green Belt while making an effective use of land.

³ For an overlay see p9 of Mr Jenkinson’s proof

19. The Council's case focuses on the housing component largely to the exclusion of the open space component. This leads to unbalanced conclusions. A more balanced approach is contained in the Council's latest GB Assessment (Stage 3⁴) which of course led to the allocation of the site in the new Local Plan for the very form of development that the Appeal Scheme will deliver. The Appellant considers that this proposed layout properly balances the site cognisant of the Green Belt purposes and objectives. It deliberately focuses the residential development in the southern portion along the existing residential edge of Upper Halliford – which involves developing more at depth from the road than the existing industrial estate – but leaving the western part north of the allotments as open space, as well as the full breadth of the northern part of the site. The principles for the laying out of the open space are explained by Mr Jenkinson⁵. The residential component is visually contained, and of modest domestic scale.

20. Further, related to Green Belt objectives, is that the Appeal Site contains 'damaged' land (NPPF 145). The Council raises no landscape objection to the scheme – and the site is assessed – and not disputed – as being of low landscape value and sensitivity⁶. Both components of the proposed development will be high quality and attractive, resulting in localised character enhancements. The LVIA assesses the proposals as bringing about a moderate/minor beneficial change on landscape character⁷. It is agreed that the appeal proposals offer opportunities for betterment in landscape character through the removal of the low quality existing uses and remediation of part of the site, and would result in a net increase in green infrastructure and positive benefits in terms of landscaping⁸. Put colloquially, the site will be more attractive after development than it is now. The Appeal Scheme is also able to deliver biodiversity net gain⁹.

21. As to the Green Belt purposes, in short:

- (a) urban "sprawl" is reduced as between the existing site and the Appeal Scheme, the residential development is not "unrestricted" and the proposals

⁴ CD6.6

⁵ See proof at 4.17 and LVIA (CD1.15 at 4.9-4.16)

⁶ Mr Jenkinson proof of evidence at 6.7-6.12; Landscape SoCG at 12

⁷ Mr Jenkinson proof para 6.19.

⁸ Landscape SoCG at para 16 and 17

⁹ Landscape SoCG para 18

- provide containment and defensible Green Belt boundaries and landscape features¹⁰; the unregulated industrial estate is removed;
- (b) the Appeal Scheme does not lead to the merger of **any** towns – the open space provides strategic separation in perpetuity¹¹;
 - (c) the Appeal Site is not genuinely “countryside” – it a largely brownfield, and damaged site. The residential component will develop some undeveloped land, but this is offset by the creation of new landscaped open space in perpetuity; in the future the countryside within the Site will be attractive, useable, and secured for the future;
 - (d) there is no affected historic town;
 - (e) the Appeal Site provides direct and considerable **direct** regeneration and recycles derelict and other urban land.

Issues C – Amenity and living conditions.

- 22. The appropriateness of the Appeal Scheme in relation to these issues is addressed in the evidence of Mr Ledwidge.
- 23. It is now agreed that the privacy element of Issue C can be addressed through conditions.
- 24. The only remaining element remaining element of reason for refusal 3 is – under policy EN1(b) - whether or not the proposals would cause a significant harmful impact in terms of the developments overbearing effect. They will not – and reserved matters will control the detailed design. This will be discussed in the round-table session.

Issue D – Housing Mix

- 25. This will also be addressed at the round-table session. The final housing mix will be resolved at the reserved matters stage. As such, the proposed housing mix cannot justify refusal of the scheme.

¹⁰ Mr Jenkinson 7.3

¹¹ Ibid 7.6

26. The Council refers to policy HO4 of the Core Strategy adopted in 2009. However, the appropriate housing mix for developments in the Council's area **will** change over time. Good planning requires the mix to reflect up-to-date circumstances not those in place when the plan was adopted 14 years ago. The more up-to-date **position** is reflected in the 2019 SHMA Update. This shows a need for a greater amount **of** family housing. As Mr Ledwidge explains in his rebuttal the Appeal Scheme is **capable** of delivering a mix of units that accords with the SHMA. The Council accepts that **the** proposed mix would not by itself justify the refusal of planning permission¹². It is **hard** to see how it could justify the refusal of an outline planning permission in any event.

Issue E – Affordable Housing

27. A section 106 planning obligation has been agreed and prepared **on** terms that address issue E.

Issue F: Very special Circumstances

28. Issue F only arises in the event that the Appeal Scheme is **found** to be inappropriate development. In this scenario, all of the benefits of the **development** fall to be taken into account and weighed against the harm to the Green Belt **and** any other harm. Following the agreements within the Statement of Common **Ground** it is not clear that "other harm" the Council now alleges. Harm to the Green Belt is **attributed** substantial weight (NPPF 148).

29. The benefits are summarised in a table within Mr Ledwidge's **rebuttal**, as follows:

(1) Delivery of 80 homes	very substantial
(2) Delivery of 40 affordable homes	very substantial
(3) Removal of bad neighbour use	significant
(4) Public Open Space	moderate
(5) Strategic Gap	significant
(6) Local Support	significant
(7) Draft Allocation	moderate

¹² Mr Hughes at 5.153

(8) Plan failure	significant
(9) Economic contribution	moderate

30. In cases such as this there may be differences in terminology and weighting of benefits. There are, however, in this case a number of matters of agreement that provide the context for the weighing exercise.

31. The Council's housing delivery record is poor, its housing supply significantly deficient, its affordable housing need acute, and its local plan process is in paralysis. Mr Hughes recognises that the benefit of providing housing at the site must attract the highest weight – in his language – substantial. Allocating weight to an issue is a necessary part of the planning balance – but understanding the real underlying issue is critical to good decision-making. As Mr Stacey emphasises granting permission for affordable units provides homes for families in severe need who otherwise will not have such a home.

32. Affordable housing delivery is of the highest societal importance. This is a national issue – but highlighted in an area such as Spelthorne where the past delivery has been so poor. To give an example: the 2019 SHMA assesses a need of 459 affordable dwellings pa from 2019 to 2035¹³; so far in the 4 years within that period 173 units have been provided against an assessed need of 1,836; in 3 of those 4 years (and over the last two) there were net losses¹⁴. A longer term analysis shows delivery at about 41 affordable dpa¹⁵. Delivery is getting worse. This means that 1,664 homes for those in assessed need have not been provide in only 4 years. Having policies adopted in a plan becomes meaningless if the performance record bears so little relationship to it. All it does is highlight the severity of the failings. Mr Stacey has also looked at the future supply. Taking the *Council's* 5 year supply figure and applying current affordable housing development yields this suggests that the existing shortfall of 1,664 homes will grow to 3,514 by only 2027¹⁶. There are other ways of looking at this situation - all of them paint the same bleak picture – there were 3,378 households on the housing register

¹³ Mr Stacey proof of evidence 5.9

¹⁴ Fig 6.1 of Mr Stacey, p24

¹⁵ Mr Stacey 6/2

¹⁶ Mr Stacey fig. 7.1

as of March 2022¹⁷ (having doubled since 2019); there are 622 households as of March 2023 seeking a shared ownership home in Spelthorne. Mr Stacey is highly experienced in this field, and has considered the situation in many authorities. He concludes that by any measure of affordability this is an authority in the midst of an affordable housing crises, and one through which urgent action must be taken to deliver more affordable homes.

33. The Appeal Scheme offers one such opportunity in delivering 50% of the units as affordable; 30 are affordable homes for rent which will help to meet the priority housing needs; 10 are First Homes; the rented affordable homes will be managed by a Registered Provider – and the site is deliverable in the short term.

34. The status of the Appeal Site is also common ground – it is a bad neighbour industrial estate in a residential area which has planning permission for residential redevelopment granted on appeal, and is allocated for in effect the Appeal Scheme in the Council's new Local Plan.

35. A clear guide to the proper balance of land use planning considerations in this case is given by the Council's new Local Plan – which it considers sound – the Appeal Site should be developed in the next five years for a combination of 80 homes and 2.58ha of public landscaped public open space.

36. For these summary reasons the Appellant will submit that planning permission should be permitted.

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GUY WILLIAMS KC

28th November 2023

¹⁷ Mr Stacey 8.2