

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

Final 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. The main issues that are still live 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 outlook;
 - D. Whether the proposal would deliver an adequate mix of homes;
 - E. ...
 - 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

3. 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

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. The parkland is arranged to provide a gap between the built up areas of Upper Halliford and Sunbury where presently the bungalow and the northern commercial yard is. This will be opposite the southern part of Upper Halliford Park.

Main Issue A – Inappropriate Development

4. It is 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.
5. 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.
6. 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.

Gateway

7. The Council takes its stand on points (i) and (ii). The Council’s position on point (i) is that the gateway to 149(g) is that the proposed development must be entirely on or within the previously developed land. The Appellant’s position is that the gateway is that the scheme must partly or completely redevelop previously develop land. The redevelopment need not be confined to the previously developed land. It is the Council’s interpretation that seeks to add words into the paragraph – some words like – “Exceptions to this are the limited infilling or the partial or complete redevelopment of previously developed land (provided that the development does not extend beyond that land), whether redundant or in continuing use...”.

8. The starting point for interpretation must be that the Framework is a policy document and not a statute. In all cases, regard should be had to the purpose of the policy, and read the words used in context¹. Even so, the Council's interpretation requires considerable addition to or departure from the words used. There are immediate problems on the wording:

- (a) Internal inconsistency – the concept of infilling of previously developed land can only mean developing land that is not already previously developed land. If this meant developing on PDL then it would be the partial redevelopment of PDL. Accordingly, on the Council's interpretation, "limited infilling" has no meaning. The Courts will inevitably avoid giving a meaning to a phrase that renders a key term meaningless.
- (b) It necessarily involves reading in words that are not there. Although in cross-examination of Mr Ledwidge it was suggested that it was the *Appellant's* case that required words to be read in, that is not so: the Appeal Scheme is a scheme for the complete redevelopment of previously developed land.

9. Secondly, the Council's approach appears to read "complete redevelopment" as meaning only the construction of buildings. If that was the case, paragraph 149 would have said so – as it does, e.g. in (a) and (d) relating to agricultural buildings or replacement buildings. Instead, it uses the wide term "complete redevelopment". Thus, on the Council's interpretation one could propose a series of houses on PDL randomly distributed across a site, with their gardens beyond the PDL. But as soon as a garden shed is placed beyond the PDL the proposal is outside of the exception. This ignores the breadth of "complete redevelopment" and the obvious extension of the exception to proposals for the complete redevelopment of a previously developed site.

10. Thirdly, this policy has been interpreted and applied in other Secretary of State decisions including on this site. In the previous appeals², neither proposal located the

¹ See *Suffolk Coastal DC v Hopkins Homes Ltd* [2017] UKSC 37, 24-26

² CD 10.1

residential development entirely within the PDL³. The Inspector was clear (para. 11) that “both appeals fell to be considered as proposals that would deliver complete redevelopment of the appeal site and against the second test as set out in that paragraph”. The Council’s current case is therefore fundamentally inconsistent with that appeal decision. The approach taken by the Inspector was consistently that the gateway test was met because “substantial parts of the site are previously developed land” (para 37, and see also 13, 26). The Appellant does no more than take a consistent interpretation as between recent secretary of state decisions considering exactly the same policy context and site.

11. The Council’s approach is also inconsistent with the appeal decision at the Former Loxley Works⁴. In that case, the buildings were mainly on PDL, but considerable parts were not⁵. The Inspector considered that the gateway test was met⁶.
12. It is an important legal principle that like cases must be decided alike in the absence of some good reason. There is no relevant change in circumstances at the Appeal Site or in policy since the previous 2021 decision, and the Council did not challenge the decision on the ground that the Inspector had misinterpreted paragraph 149(g), or at any time suggested that the Inspector Hunter made an error of law in his interpretation.
13. Fourthly, regard should be had to the purpose of the policy. Para. 149(g) sits within the Green Belt chapter of the Framework, which begins by identifying the fundamental aim of GB policy is to prevent urban sprawl by keeping land permanently open. As such, ordinarily, constructing new buildings in the GB will be inappropriate, that is, presumed against. Paragraph 149 sets out a set of exceptions, in each case reflecting other important policy objectives, e.g. the promotion of agriculture, provision of recreational facilities, delivery of housing and affordable housing, and the reuse of brownfield land. In the case of 149(g) there are three other important policy objectives in play (as set out

³ Para 20: The incursion of development beyond PDL in Appeal B was limited to a strip of land to provide the access, but for Appeal A the incursion was more substantial – see the outline for that scheme at CJ19 and compare with the pdl plan at EL Reb App.2 for a broad indication – e.g. it developed the garden of the bungalow as well as the area south of the access.

⁴ CD 10.28

⁵ See paras 30-32

⁶ Para 32.

in opening⁷) – the effective and efficient re-use of brownfield land, and the delivery of housing and affordable housing. The Framework encourages meeting objectively assessed needs by making as much use as possible of brownfield land (para 119). It gives “substantial weight” to the value of using suitable brownfield land within settlements for homes and other identified needs. The provision of housing and affordable housing is central to the NPPF, which has as a fundamental objective significantly boosting the supply of homes (NPPF 60). Para 149(f) provides for the use of Green Belt countryside sites to provide affordable housing regardless of the impacts on openness. Paragraph 149(g) is more circumscribed. The proposal must redevelop PDL – that is the gateway. Once, engaged, if the proposal is for, e.g. commercial development then it must have no greater impact on openness than the existing development (indent 1). The same would be true of a proposal for only market housing. Where, however, the proposal re-uses previously developed land and meets an identified affordable housing need, the proposal may cause up to substantial harm to the openness of the GB. This is where the Government strikes the balance between openness and the re-use of PDL. This can be seen as extending the Govt support for the redevelopment of suitable brownfield land to meet identified housing and affordable housing needs into the GB – but only to the point where those proposals do not cause substantial harm to its openness. That is the explanation for the phrase ‘where the development would re-use previously developed land’ it is echoing 119-120 and tailoring it to the GB.

14. The Council’s interpretation serves no purpose. It seems to be a purely technical point. The identified policy purposes of protecting the GB’s openness are served by the tests within the indents. The GB purposes fall to be taken into account in any event as harm to the Green Belt.
15. It also has the potential to operate directly contrary to the objectives underlying the policy – ie balancing GB protection and the delivery of housing including affordable housing. The Appeal Site offers such an example. Say the Waste Transfer Station is PDL. Then the Council’s interpretation of the gateway directs development to the east and west of the site. That development is in principle appropriate subject to a test of

⁷ The Appellant’s opening (para. 12) explicitly referred to 120(c) of the NPPF – apparently overlooked by the Council.

substantial harm to openness. That extends development spatially further into the GB. On the Appellant's interpretation the Appeal Site passes the gateway test, the PDL must be redeveloped, but the disposition can be designed to balance the delivery of housing and openness to get the maximum benefit with the minimum harm.

16. The Appellant accepts Inspector Hunter's qualification that substantial parts of the development site must be PDL as pragmatic and avoid misuse of the policy where only a minimal amount of PDL exists. That test is plainly met by the Appeal Scheme at the Appeal Site. As shown on Mr Ledwidge's rebuttal at App.2 – between 1.2-1.6 ha of the site is pdl (depending on the WTS) – and the proposed development area is approx. 2ha. A substantial part of the site proposed for redevelopment is PDL on either figure, and even taking Mr Hughes' narrow approach of only looking at the new houses and ignoring the redevelopment of the PDL into open space (30%).

17. Therefore the gateway test is met now as it was in 2021.

Substantial Harm

18. In Opening the Appellant drew attention to the fact that “substantial harm” is a familiar term – it is used in two places in the NPPF – once here, and also in relation to heritage assets, where it is acknowledged in numerous cases and the PPG to represent a high test. It is a basic principle of drafting and interpretation that the author will use the same language consistently within the same document. The Council offers to date no explanation as to why the Government would consider substantial harm to the significance of a heritage asset to represent a different threshold to substantial harm to the openness of the GB. In each case, the significance of heritage assets and the openness of the GB is a matter of importance in national policy. There is certainly no reason to think it is not a high test. It is necessarily fundamentally different from the test in indent 1 of “no greater impact on the openness”. It deliberately uses the term “substantial harm”⁸.

⁸ It may be noted the Appellant is not suggesting that the PPG guidance on heritage assets should be applied – it is obviously inapplicable as it relates to the significance of heritage assets, itself a defined term. Rather, the point is one of grading – substantial harm denotes a high test.

19. By contrast, the Council gives no indication as to what it measures substantial harm against. There was a suggestion in cross-examination that it derived some guidance from Inspector Hunter’s comment in relation to the previous Appeal A – “In this instance, due to the urbanising effect of the proposal it would have a significant impact upon the openness of the Green Belt, which would cause substantial harm”. In truth, that takes the matter little further. A judgment on harm must reflect the totality of the site circumstances. Here, it is common ground that the site is previously developed over at least 1.2ha. It is physically and visually enclosed⁹. It is common ground that the Appeal Site will be open across its northern and western parts, and will create a net increase in green infrastructure¹⁰. It is frankly very difficult to see how in combination the proposals could cause “substantial harm” to the openness of the Green Belt. The extent of development presently across the site compared to the extent of development proposed (1.2/1.6 ha v 2ha) effectively rule that out. As a comparison, in the recent Sondes Place Farm decision¹¹, the erection of 144 dwellings, new vehicular access, school parking and drop off, gypsy and traveller pitches and public open space on 8 ha of open agricultural land¹², where 45% would be kept open, the Inspector concluded there would be moderate loss of openness¹³. In the present case, post-development over half the Appeal Site would remain open land – secured as open space – with 2 ha development – and, of course, 1.2-1.6ha of the Appeal Site is already built upon.

20. 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 and west which can provide a strategic separation to Sunbury to the north. The form of the development reflects the Council’s

⁹ Landscape SoCG 9

¹⁰ Landscape SoCG at 15 and 17.

¹¹ ID8

¹² See DL paras 18-21

¹³ Para 24

site requirements in the Council’s emerging Local Plan¹⁴. The Appeal Scheme does not cause substantial harm to the openness of the Green Belt.

Caselaw and Guidance

21. In Turner¹⁵ the CA interpreted the term “openness” in the GB context (which was then endorsed by the SC – see Samuel Smith¹⁶. In particular,

- (a) A number of factors may be relevant to a particular case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs – “in the context of which volumetric matters may be a material concern, but are by no means the only one” – and factors relevant to the visual impact on the aspect of openness which the Green Belt preserves (para 14);
- (b) The question of visual impact is implicitly part of the concept of the “openness of the Green Belt”. ...There is an important visual dimension to “checking the unrestricted sprawl of large built up areas” and the “merging of neighbouring towns”...Openness of aspect is a characteristic quality of the countryside (para 15)
- (c) openness also has a spatial aspect as well as a visual aspect.

22. The caselaw has been brought into the PPG - as set out at ID 64-001 (and see Mr Hughes proof at 5.72).

Application to the Appeal Scheme

23. The Appellant submits that the Council’s approach places far too much emphasis on statistical comparison of floorspace and volume, and it fails to take into account the true impact on openness of the present use, including of the hardstandings which are- and have been for many years¹⁷ - used for high levels of tall open storage uses, the

¹⁴ CD 6.1

¹⁵ See extract at Mr Hughes para 5.71

¹⁶ Mr Hughes at 5.73

¹⁷ See the historic aerial photos at the end of Mr Hughes’s proof of evidence.

placement of lorry containers, and storage of large vehicles; and also the consequences of the disposition of the developed areas, as well as the visual aspects of openness.

24. In terms of spatial openness, spatial does not mean volumetric. In terms of how built up the Green Belt is before and after the development the disposition of the development is critical in a case like this where the intention is to consolidate development in one part of the site, and ensure that the remainder is entirely unbuilt upon. Housing necessarily involves increases in volume over an industrial and part open storage use. This is well considered in plan form. As shown by the existing site uses plan¹⁸ hardstanding extends across the site north south (and a long way west along the access track and on the appellant's case including the WTS), and the building are arranged so as to run from the south to the north of the site one after the other. The appeal proposals are consolidated to the south of the site – aligning with the existing westward depth of the settlement (and wrapping around no. 137) so that the proposed open space forms a continuation of the openness of the allotments, and arcs round the consolidated development area to join Upper Halliford Road opposite the southern part of Upper Halliford Park. The extent to which the Green Belt is built up is evidently a combination of the areas where development is – but also where it is not. This latter point has been overlooked by Mr Hughes who seemed unable to recognise any benefits to the openness of the GB from the provision of 2.6 ha of parkland open space secured into perpetuity. In a rebalancing scheme such as this the metric approach is of little value – as the comments in Turner and the PPG anticipated would be the case in some circumstances.

25. In terms of visual openness, the role of the parkland open space is critical. This is a site that contains a large number of buildings of different shapes, sizes, and uses disposed across the site, together with hardstanding, that is visible from the road and the footpath. This is appreciable north-south. These building, including the bungalow, convey a strong impression that the GB in this location is built upon. The re-balancing described by Mr Jenkinson has a very strong effect in that a large part of the site – some 2.6ha is very obviously not built upon. This is highly appreciable in the Appeal Scheme from the PROW – which currently runs for some 100m alongside the bungalow/industrial

¹⁸ CD 1.21

site to the rear – and also from Upper Halliford Road (See VP2). Mr Hughes’s counter to this is that the current site also contains unbuilt upon land. But this entirely ignores the point of rebalancing and consolidation. The planned open space combines with the open land to the west, and the parkland to the east to create a clear area of GB which is appreciably not built up or on. At the same time, that part of the GB that is built up – is consolidated to the area that relates well to the existing settlement.

26. These points are best judged by the Inspector following his site visits. The Appellant commends the views of Mr Jenkinson as set out in this proof of evidence, section 7. Those views are reached fully-cognisant of the increases in floorspace, but recognising that the proposals represent a designed approach – encouraged by the emerging Local Plan allocation – to the consolidation of that floorspace. Far from causing substantial harm, viewed comprehensively, the proposals bring a number of openness benefits (see para. 7.22¹⁹), and generate a betterment in the openness of the Green Belt in this area. It is in fact only through the appeal proposals that there can be a continuous “belt” of open space between Sunbury and Upper Halliford.

27. However, in choosing between the competing views it is notable that the views of Mr Jenkinson align with council policy/plan-making officers, and the Council’s resolved position as plan-making authority. The Appeal Scheme has been allocated for residential development and open space in the form presented in the Appeal Scheme in the emerging Local Plan.

Conclusion on Issue 1

28. Therefore, the Appellant submits that the proposals are not inappropriate development. If this is accepted, then it is common ground that permission should be granted.

¹⁹ Mr Jenkinson does not accept the suggestions that some of the benefits listed are not “openness” benefits. The package is a holistic one and the whole can be more than the sum of its parts. For example, removing the bad neighbour uses removes the uncontrolled open storage that can lawfully and does spread into the open land to the south, the remediation of the WTS removes the hardstanding and the items stored/left within it, the enhanced landscaping can help screen the residential development reducing its visual impact on openness, and the restoration; biodiversity and habitat creation go hand in hand with restoring those built elements of the site to landscaped open space, and their future management as such as places of biodiversity gain. These are all the counterpoint to land being and appearing built upon or degraded by development.

B- Green Belt Purposes

29. 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.

Introduction and Overview

30. The starting point for this appeal must be the objective assessment of development of the Appeal Site in the Stage 3 GB assessment. Mr Hughes was frank in admitting that he had overlooked this in setting out his conclusions. This is surprising, and means his conclusions should be treated with caution – he is effectively contradicting the Council’s evidence base and its resolved position in relation to the site. Instead, Mr Hughes relies on and refers to the Stage 1 and Stage 2 GB assessments. But these relate to much wider parcels of land, and do not consider sub-areas, or address the extent of PDL on the site. It is obvious that a wider parcel of land will serve GB purposes in a stronger way than smaller areas. What can fairly be taken from these three studies as a whole is that there is a real concern and strong GB purpose in this area in maintaining and enhancing the degree of separation between Upper Halliford and Sunbury to the north.
31. The real value of the Stage 3 assessment is that it – for the first time - descends to a compartmentalised assessment. It is at this more detailed level of consideration that the role of existing development is understood. It offers considered and objective views on the design approach reflected in the Appeal Scheme. Those are:

“If released in its entirety, the overall impact on the wider Green Belt function would be notable and its role weakened. If development is constrained to the southeastern 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 open 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 and to minimise views of railway to the [west] and increase perceived connections to the wider countryside to the west”.

32. This was endorsed and expanded upon in the Officers’ Site Assessment of potential allocations²⁰. This concluded:

- (a) Under ‘PDL’: “The majority of the eastern part of the site is developed with hardstanding, structures and storage facilities. The site does have a semi-urban character and sits within a strongly performing area of Green Belt.
- (b) Under the Overall Conclusions²¹: “The retention of a strategic Green Belt gap and a public open space are considered to be strong benefits not offered by the consented scheme...”

33. When the Council’s assessments then are taken as a whole they entirely endorse the Appeal Scheme. The first two reports at first a high level, and then a more focused level identify the need for concern in this area as to managing urban sprawl and the coalescence of Upper Halliford and Sunbury. The Stage 3 report and the Local Plan identify that the best way to do this is to rebalance the site so that the development can be consolidated in one area, and a strategic gap with a minimum width of 50m can be introduced to separate Upper Halliford from Sunbury and restrict its northward sprawl, while connecting to the open spaces beyond. This reinforces why Mr Hughes’ conclusions are unbalanced in failing to reflect this objective analysis endorsed by the full Council in allocating the site for development.

The Specific GB Purposes

34. 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 landscaped parkland open space. This component meets the GB purposes in full. The Council’s case focuses on the housing component largely to the exclusion of the open space component. This leads to unbalanced conclusions

²⁰ CD6.3

²¹ Pdf 99

35. As to purpose (a), this is to check the unrestricted sprawl of large built-up areas.
36. Upper Halliford is not treated as a large built up area by the Council in its GB assessments²². Nonetheless, Mr Hughes accepts that the existing development of the Appeal Site constitutes urban sprawl. This is unrestricted – it has emerged over time through immunity from planning control. The proposal is for consolidated and co-ordinated modest scale well-planned and designed residential development, which is well-related to the existing settlement form being directly adjacent to Halliford Close and Bramble Close (but not extending alongside the allotments). The parkland open space wraps around the residential component providing a separation of 50m at its narrowest point from the developments to the north. The entire site is kept open – and restored - along its western portion to combine the allotments to the waterbodies and woodland to the north. The open space connects to other open land to west and east. The planning permission will provide the opportunity to provide robust landscape features and a defensible GB boundary. In the future, urban sprawl will be checked, and the limits of Upper Halliford appropriately fixed. Mr Jenkinson concludes that the proposals represent a better resolution to the defined settlement edge than the existing situation and do not create or contribute to the unrestricted sprawl of a large built up area.
37. Purpose (b) is to prevent neighbouring towns merging into one another.
38. Based upon the GB studies the potential concern relates to the merging of Upper Halliford and Sunbury²³, and this is identified as being of real sensitivity. This is not contested by the Appellant. However, the existing site is part of the problem, and as identified by the Council, the Appeal Scheme part of the solution. Those settlements have already merged along Upper Halliford Road. Mr Hughes thinks that the Appeal Site provides a gap between those two settlements (although he thinks the bungalow is perceived as being in Sunbury). The Appeal Site is not part of a gap but constitutes ribbon development leading to the merger of the two settlements so that – as Mr Jenkinson said – there is no separation along Upper Halliford Road between the two

²² CD 6.4 pdf 34 table 4.2

²³ Using that term to refer to the settlement to the north starting with the former Bugle public house.

settlements at this location. This is evident from the LVIA viewpoints, but will have been seen on site. In spatial terms it is illustrated by the existing site plans. It is also consistent with the Spelthorne LCA²⁴ which shows the PDL across the eastern part of the Appeal Site as being within the urban area. This is reinforced by the GB Stage 3 report set out above, and officer's assessments. The consistent picture is that the rebalancing of the site provides the opportunity to provide strategic separation between settlements where presently there is none. The Appeal Scheme confirms to the site requirements in the draft allocation in that the strategic gap is 50m at its narrowest, getting wider as one moves west – and it connects to Upper Halliford Park to the east (via a new pedestrian crossing) and the countryside to the west to provide separation between settlements and to help contain Sunbury.

39. Purpose (c) is to assist in safeguarding the countryside from encroachment.

40. Mr Hughes's concerns relate only to the residential development on land to the west of the PDL. Mr Jenkinson recognises there is a limited westward encroachment into the countryside. The placement of the housing development on the PDL itself does not encroach on the countryside. There are a number of offsetting factors. The proposals return a considerable amount of PDL to open space which will be maintained as countryside in the future, thus safeguarding it from encroachment. Regardless of its PDL status, the WTS contains substantial bunds and hard surfacing, and has a lawful waste use which may lawfully resume at any time. The Appellant has not led evidence that this is a fall-back in terms of likely use – because that is not the point. The point is that the use could resume, and even if it does not this represents damaged and derelict land that is not in a countryside use and does not have a countryside appearance – on the contrary the use and condition of the WTS is discordant. The proposal remedies this in all respects and returns the land to undeveloped open space with landscaping and safeguard it from any future encroachment.

41. As to the other GB purposes, purpose (d) is irrelevant as there are no nearby historic towns. Purpose (e) is relevant – it is to assist in urban regeneration, by encouraging the recycling of derelict and other urban land. The Council appears to say this does not apply because the land is not urban. This is a specious and artificial distinction. The

²⁴ CD9.4 at pdf 42

land is urban in character, and is urban in use. It is ribbon development which is in all practical senses part of the urban area.

Other relevant GB considerations

42. The Framework sets out in paragraph 145 a number of ways in which the beneficial use of the GB can be positively enhanced. 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”.

43. It is agreed by Mr Hughes that the Appeal Scheme is beneficial in each of these respects, and that these are material considerations that way in favour of the development. The only issue between the parties is whether they fall into the general planning balance or within the Green Belt balance. The Appellant considers that these are plainly material considerations identified in the GB chapter of the NPPF, and these benefits must be taken into account in forming an overall view on the degree of GB harm or benefit caused by the proposals.

44. The Council raises no landscape objection to the scheme – and the site is assessed – and not disputed – as being of low landscape value and sensitivity²⁵. 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 character²⁶. It is agreed that the appeal

²⁵ Mr Jenkinson proof of evidence at 6.7-6.12; Landscape SoCG at 12

²⁶ Mr Jenkinson proof para 6.19.

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 landscaping²⁷. Put colloquially, the site will be more attractive after development than it is now. The Appeal Scheme is also able to deliver biodiversity net gain²⁸. All of these are consistent with the objective of the Government for the Green Belt to serve as attractive and useable land.

Issues C – Amenity and living conditions.

45. It is now agreed that the privacy element of Issue C can be addressed through conditions.
46. The only 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.
47. The agreed starting point for the assessment of this issue is the Council’s SPD – Design of Residential Developments (CD5.6). Para 3.17 states: “The separation distances shown in Diagram 1 will also help to preserve outlook”. Diagram shows a back-to-back separation distance of 21m for a two storey development.
48. Para 3.10 states:

“The term ‘storey’ is widely used to describe the number of floors up to the eaves or gutter level of a roof and is helpful in conveying the general scale of a building. Scale is an important consideration in assessing a potential overbearing impact of a structure and its impact on outlook. This is why the distance measurements in Diagram 1 differentiate between two and three storey buildings. These minimum distances must be maintained when two or three storey extensions are proposed for existing properties.”

²⁷ Landscape SoCG at para 16 and 17

²⁸ Landscape SoCG para 18 – and see CD 1010 Biodiversity Net Gain Assessment confirming an increase in Habitat Units of 10.88%

49. The appeal proposal is for two storey only development along the boundary that backs onto Halliford Close. Notwithstanding this the minimum separation distance back to back for the closest property is 30m – which the Council identifies as appropriate for a 3 storey building. The proposals provide at least 9m more than the minimum separation. Mr Hughes suggests that with a maximum eaves height of 6m rather than a max of 5.5m or typical 5.2m the properties are tall. Mr Ledwidge disagreed for modern dwellings. But the issue is really beside the point – a difference of 80cm over a separation of 30m will make little difference. As Mr Ledwidge said, the guidance is in the SPD to serve a purpose. A separation of 30m from a two storey building will not cause an unacceptable impact in the absence of some exceptional circumstance. There is nothing unusual about the arrangements between the existing and proposed dwellings – e.g. there are no particular level issues – the proposals are for pairs of semi-detached units or small terraces of four units. These are regular two-storey houses of normal scale. The roof design is a matter for detailed assessment. There are existing mature trees along the boundary, as will have been noted on the site visit. There is no unacceptable overbearing impact.

Issue D – Housing Mix

50. The Appellant has found the Council's case difficult to follow. Ultimately, the Appellant wishes to provide a mix of units across the agreed tenure split that meets the district's needs. It seems to be the case that the Council is unable to confirm how this should be approached – should it be by reference to its 2009 Core Strategy Policy or its 2019 SHMA?

51. The Appellant has sought to provide an indicative mix that largely reflects the most up-to-date assessment of need. For reasons given elsewhere, it is in fact clear that there is a massive shortfall of housing and affordable housing in the district and the delivery of all of the appeal housing is needed and beneficial.

52. Further, the breakdown of need by house type is necessarily fluid over time and to an extent imprecise. There is not perfect symmetry between the number of bedrooms in a house and the occupation of it. The final mix of housing is not for approval now. As per

Mr Ledwidge’s rebuttal there is scope for flexibility within the parameters to adjust the unit mix²⁹; and if the scheme is permitted the final mix would be agreed with the Council’s Planning and Housing Officers. The description of development does not fix the unit mix, and “layout” – as defined in the PPG (14-006) does not fix the unit mix either.

53. Nonetheless, it is agreed that the indicative mix for market housing accords with the SHMA assessed need. Mr Hughes suggests that perhaps there should be 2 more one bedroom affordable rents – a 4 fewer three bed social rents³⁰. But it cannot be said that providing too many 3 bed affordable rental units is harmful. This is a significant benefit where there is an assessed need for affordable rented family accommodation. Similarly, Mr Hughes suggests the indicative provision of First Homes should in larger units. It could be. However, the provision of small affordable homes for first time buyers is again a significant benefit. Mr Hughes did not make clear why there is no flexibility in the mix ultimately delivered given that only layout if for approval and the Council will be able to agree a mix pursuant to condition at reserved matters stage. The section 106 providing for the affordable housing does not fix the unit mix between tenures.

54. 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. As addressed in the round-table session, there is either flexibility within policy HO4 that would allow it to reflect the needs of the borough over time, or there is not. This puts forward a dichotomy:

(1) Flexibility could be built in by seeing policy compliance as depending on the Council “ensur[ing] that the size and type of housing reflects the needs of the community”. The sub-paragraphs that follow “by” are examples based on a fixed point of time which are intended to be moved on from alongside up-to-date need assessments. There is some support for this interpretation in

²⁹ Rebuttal 3.15-3.22

³⁰ See Table at 3.18 of EL Rebuttal

the 2012 SPD which appears to overwrite the text of the policy to reflect more up-to-date needs³¹.

- (2) If no flexibility is built in then the policy is significantly out-of-date and inconsistent with the Framework and unfit for purpose. Put simply, compliance with it will not deliver the size and type of housing that reflects the needs of the community – which is the stated purpose of the policy. For example, for market housing, the 2019 SHMA shows 1-2 bed properties should account for only about 20% of the homes proposed – not the 80% in the policy. The policy is working against the requirement of the Framework emphasis (NPPF 60) that “it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed...”.

55. The Appellant does not accept that any of the details put forward for approval approve the mix of units. Inevitably, there is the scope for flexibility within any layout. Mix will be approved by way of condition alongside the final reserved matters. It is telling that the Council’s confusion in relation to its policies – and whether it wishes to fix the mix approved in 2009 rather than meet current assessed needs – leads it to asserting a moderate level of harm in respect of a mix of units that is broadly reflective of its range of housing needs – in circumstances where there is a massive shortfall of housing and affordable housing, and in particular family housing which the scheme delivers.

Issue E – Affordable Housing

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

Issue F: Very special Circumstances and Planning Balance

57. There is a fair amount of agreement in relation to the scale of the benefits – making allowance for the use of a different scale as between witnesses³².

³¹ E.g. 3.4 and 5.2(4)

³² Mr Ledwidge: Very substantial – substantial – significant – moderate – limited – very limited

Benefit	Council	Appellant
General Housing	Substantial (ie top weight)	Very substantial (top weight) – incorporating also failure of the plan-led system
Affordable Housing	Substantial	Very substantial
Bad Neighbour	Moderate	Moderate
Economic Benefits	Moderate	Moderate
Sustainable Location	Moderate	Moderate
Open Space	Limited to moderate	Moderate
Draft Allocation	Limited	Moderate
Strategic Gap	None	Significant
Pedestrian Crossing	Limited	Limited
Reuse of suitable brownfield land 120(c)	None	Substantial

58. The Council in cross-examination criticised the Appellant’s witnesses (Mr Stacey and Mr Ledwidge) for using a scale of benefits that included a weighting above “substantial”, suggesting that this was somehow creating an uneven balance against the GB. Such criticism is misplaced. Why should some considerations not attract a greater weight than the protection of the Green Belt? It is important – not sacrosanct. The danger in fact lies in Mr Hughes’s approach – which in effect fixes the protection of the Green Belt as of the highest possible importance out of all planning considerations. This is readily visible in the suite of planning decisions before the inquiry – see those in Mr Stacey’s proof in section 10 – (para 10.14 *Dylon* – “very substantial weight” – para 10.15 *Colney Heath* – “very substantial weight” – 10.19 – *Maitland Lodge* “very substantial positive weight”. The same approach is taken in last week’s *Sondes Place Farm* decision where the Inspector gave “very substantial weight” to market housing³³

Mr Stacey: Very substantial – substantial – very significant – significant – moderate – limited – very limited
Mr Hughes: Substantial – significant – moderate – limited - None

³³ ID8

(70% HDT, range 2.9-3.7³⁴), and separately affordable housing “very substantial positive weight”³⁵ (shortfall of 396 units in past 3 years³⁶).

Housing Land Supply and weight to Market Housing

59. The assessment of weight to this issue is driven by the particular circumstances of the area. Generic, historic statements balancing harm and benefit are of no utility³⁷. Mr Hughes agrees both housing and affordable housing here should separately attract the highest level of weight. The Framework requires authorities to have a forward looking supply of housing land to meet five year’s need. The Council has a shortfall against this assessed need by 2027 of between 1,029 to 1,635 homes. On either figure (2.79yrs supply or 3.52) this is a huge number of homes that have been assessed as needed by April 2027 that will not be delivered. The position is worsening – at the time of Inspector Hunter’s decision that housing land supply as taken to be 4.79³⁸.

60. The Framework also requires Councils to look back and take past delivery into account through the Housing Delivery Test. Here the Council has a HDT result of 69% - showing that it has failed to deliver 31% of the homes needed over the past three years. A HDT score of below 85% is described in the Framework as “significant under delivery” (para. 74(c)), and a score of below 75% is by itself sufficient to deem the most important development plan policies out of date (para 11 (d) and fn8). This helps put the severity of a HDT score of 69% in context.

61. The situation is more severe because this persistent failure to meet housing needs is not only generating a very substantial shortfall in homes, the Council is frankly unable to make it up, or identify any tangible measures to do so.

62. This is related to the failure of the Local Plan – although that is not the cause of the problem – it is compounding of the problem by failing to advance a solution. I return

³⁴ See paras 70-71

³⁵ Para. 89

³⁶ See 85-89)

³⁷ E.g. the 2015 WMS – see CD 10.27 at para 55.

³⁸ CD 10.1 para 42

to the Local Plan below. At present, all that needs to be said is that the Council cannot say if or when it will adopt a new Local Plan.

63. The severity of the housing delivery problem in the past and going forward justifies giving **very substantial weight** to the delivery of 80 units on a deliverable site³⁹.

Affordable Housing

64. Affordable housing delivery is of the highest societal importance. As Mr Stacey emphasises granting permission for affordable units provides homes for families in severe need who otherwise will not have such a home⁴⁰. 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 2035⁴¹; 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 losses⁴². The 459 dpa figure represents an assessed increase in need from 267 dpa in the 2015 SHMA – showing a rapidly worsening picture. That is unsurprising given the long term shortfalls in delivery, which have become even more pronounced in recent years. A longer term analysis shows delivery at about 41 affordable dpa⁴³. 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.

65. 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 2027⁴⁴. There are other

³⁹ The draft Allocation in its delivery programme assessed the site as deliverable within 5 years. That is eminently achievable, as Mr Ledwidge explained. The weighting is not however dependent on the housing being delivered by April 2027 – which is simply the base date for the 5 year supply. The supply issue is deep-rooted. There is no suggestion that if the Council had updated the assessment to a base date of April 2023

⁴⁰ See Section 3 of his proof for the consequences of failing to meet affordable housing needs

⁴¹ Mr Stacey proof of evidence 5.9

⁴² Fig 6.1 of Mr Stacey, p24

⁴³ Mr Stacey 6/2

⁴⁴ Mr Stacey fig. 7.1

ways of looking at this situation - all of them paint the same bleak picture. There were 3,378 households on the housing register as of March 2022⁴⁵ (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 as an affordable housing specialist. His views are endorsed and adopted by Mr Roberts – who is also an affordable housing specialist. Mr Stacey is uniquely placed at this inquiry to offer a view on the weight to be given to the benefits of delivering affordable housing in Spelthorne. His conclusions are stark:

- (a) It is clear that a ‘step change’ in affordable housing is needed now in Spelthorne to address these shortfalls and ensure that the future authority-wide needs for affordable housing can be met (6.17);
- (b) In light of the identified level of need and these chronic and persistent shortfalls, there can be no doubt that the delivery of up to 40 affordable dwellings on the proposed site will make an important contribution to the affordable housing needs of Spelthorne and its residents (6.18);
- (c) The future shortfall is even greater and underlines the significant need for more affordable homes to receive permission now if future needs are to be met (7.9);
- (d) Market signals indicate a worsening trend in affordability in the borough. By any measure of affordability, this is an authority in the midst of an affordable housing crisis, and one through which urgent action must be taken to deliver more affordable homes (8.51);
- (e) The affordable housing to be delivered is tailored to the needs of the district. Each one of the 40 units will be occupied by a household in need, and can be transformative of the lives and prospects of their occupants (9.10).
- (f) By any measure of affordability this is an authority which is facing serious and worsening affordability pressures, and one through which urgent action must be taken to deliver more affordable homes (10.28);
- (g) “Against the scale of unmet need across Spelthorne District, there is no doubt in my mind that the provision of up to 40 affordable homes through the proposed development will make a substantial contribution. Considering

⁴⁵ Mr Stacey 8.2

all the evidence, I consider that this contribution should be afforded **very substantial weight** in the determination of this appeal.”

66. Mr Stacey’s views are consistent with the view of the Housing Minister as expressed recently in the Intervention Letter⁴⁶ which points out that affordability in Spelthorne is worse than in three-quarters of the country.

67. The Appeal Scheme offers one very significant opportunity in delivering 50% of the units as affordable – in a context where in this plan period since 2006 an average of 17% has been achieved⁴⁷ against a policy target of 40%); 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.

The Emerging Local Plan

68. The Local Development Scheme for Spelthorne indicates that the new Local Plan should have been adopted in September 2023. If that timetable had been adhered to, and the Plan that *the Council* considers to be sound had been adopted, then the Appeal Site would be allocated for the Appeal Scheme. This inquiry reflects a contradiction between the views of the Council as plan-making authority for the first part of para. 11 NPPF and decision-taker for the second part of that paragraph. The Appellant considers that the draft allocation and the evidence base behind it mean that the draft allocation should be given moderate weight in support of the Scheme.

69. Approached through the lens of para 48 NPPF, this seems fair:

- (a) *The stage of preparation of the emerging plan*: the evidence base is complete, a finalised plan has been formulated, the Council considers it sound, it has been submitted to the Secretary of State and the examination is part-completed. This is an advanced stage

⁴⁶ CD6.12

⁴⁷ See Figure 6.1 of Mr Stacey’s proof of evidence

- and it is significant that the Council has not only resolved that the plan is sound, but it is resolved to progress the examination⁴⁸;
- (b) *The extent of unresolved objections* – there is only one objection to the allocation⁴⁹;
- (c) *The degree of consistency with the Framework*: there is no suggestion of any inconsistency. The Officers' Report confirms the Council view that the allocation is consistent⁵⁰.

70. Mr Ledwidge also draws attention to the role of up-to-date plans in the plan system and public confidence within it, rather than an uncertain process of planning by appeal⁵¹. This confidence is undermined where an authority fails to maintain an up-to-date plan, and this feeds into the benefits of housing granted on appeal in sustainable locations. The Minister for Housing and Planning has intervened in this local plan because she considers that intervention is required because the Council is failing in its plan-making duties⁵². The Secretary of State has directed the Council not to withdraw the local plan and to proceed to the conclusion of the examination. At this stage it remains unclear what the Council will do once the examination is concluded following the present pause. It has indicated a wish to have the option of withdrawing the plan available to it⁵³, alongside adopting it. If the plan is withdrawn this will be a further failure – if the Secretary of State allows that to happen. If it is adopted, then it is highly likely the site will be allocated given the low level of objection, and the fact that the site already has planning permission for residential development. Either way, the current plan failings are undermining public confidence in the plan system, and holding back the delivery of housing. For all these reasons, the Appellant considers this reinforces the need to give **very substantial weight** to the delivery of housing, and **moderate weight** to the draft allocation.

⁴⁸ CD 6.11

⁴⁹ CD6.14

⁵⁰ CD 1.41 para 7.29

⁵¹ Proof of evidence 4.73 to 4.79

⁵² CD 6.12 – assessed against the criteria there set out.

⁵³ CD 6.11

NPPF 120 and PDL

71. As set out above the Appellant's primary case is that the Appeal Scheme is not inappropriate development.
72. Its secondary argument is that if the Appeal Scheme amounts to inappropriate development then it is justified by very special circumstances. As noted above and in opening part of the justification for 149(g) is the importance placed on redeveloping PDL. If the scheme is inappropriate, that support does not fall away, it takes its place elsewhere in the planning balance.
73. There is general support for redeveloping PDL so as to make as much use as possible of brownfield land (NPPF 119). This weighs in favour of the scheme. Paragraph 120(c) is more specific. It requires the decision-maker to "give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs". (In cross-examination the Council criticised Mr Ledwidge for not identifying this consideration explicitly in his proof of evidence. Mr Ledwidge did refer to the effective and efficient use of brownfield land⁵⁴. Para 120(c) was also referred to in the Council's Opening as the justification for 149(g). In any event it is not clear where the criticism goes – there is in any event support for redevelopment of PDL, and if paragraph 120(c) is met then it is mandatory that the decision-maker gives substantial weight to it).
74. Para. 120(c) is met:
- (i) The proposal uses brownfield land (this is common ground);
 - (ii) The PDL used is suitable – this is put beyond question by the extant planning permission for the redevelopment of all the PDL for housing in the 2021 appeal decision⁵⁵;
 - (iii) The PDL is within settlement. This is partly common ground. Mr Hughes considers the bungalow to form part of Sunbury. The Spelthorne LCA identifies the PDL as being within the urban area. The previous

⁵⁴ Proof .93

⁵⁵ EL RE-X. It does not matter that the site is in the GB – its suitability for redevelopment has been confirmed by the Secretary of State.

inspector found the bungalow of the garden to be not PDL on the grounds that it was in a “built-up area”⁵⁶. Mr Jenkinson and Mr Ledwidge both consider the PDL to form ribbon development within the merged/merging settlements of Upper Halliford and Sunbury.

75. It follows that **substantial** weight should be given to the reuse of brownfield land in this case.

Sustainable Location

76. The suitability of the land is reinforced by the agreed sustainable location of development, to which both Messrs Hughes and Ledwidge attributed **moderate** weight, as did Inspector Hunter (para. 48).

The Public Open Space and strategic gap

77. There are a number of benefits that arise through the provision of the public open space. Firstly, an attractive and useable space available to the public for recreation in line with NPPF 145, in place of inaccessible and in places damaged and derelict land. Secondly, an improvement in the environment for the users of the PROW to the north of the site. Thirdly, an improvement in the connectivity through the site and feeding into the PROW to the west, and Upper Halliford Park to the east.

78. Fourthly, it is common ground that the open space and landscaping together with the residential proposals bring about a moderate/minor beneficial change on landscape character⁵⁷. It is also agreed that the appeal proposals offer opportunities for betterment in landscape character⁵⁸. Fifthly, there will be biodiversity net gain⁵⁹.

79. Sixthly, it is through the provision of the public open space together with the residential development that the opportunity to create a strategic gap is taken. The previous scheme

⁵⁶ CD 10.1 para. 17

⁵⁷ Jenkinson proof para 6.19

⁵⁸ Landscape SCG 16/17

⁵⁹ Landscape SCG para 18.

did not do this – the approach taken was to follow the pattern of PDL on the Site. The Appeal Scheme in taking a rebalancing approach provides the only opportunity to create a strategic gap between Upper Halliford and Sunbury and to maintain this into the future. This combines with the open spaces to east and west to create a buffer to Sunbury in this broader area. This is a significant advantage and one which if permission is not granted will be lost for good.

80. There are a number of benefits here that could be separated out in a number of ways – for example biodiversity net gain is often given significant weight in its own right. The pragmatic approach of Mr Ledwidge is to give **significant** weight to the on-off opportunity to create the strategic gap, and **moderate** weight to the provision of the parkland public open space.

Bad Neighbour Use

81. Both parties give **moderate** weight to the removal of the bad neighbour uses. The Appeal Site represents an accident of planning history which has thrown up an industrial estate in a residential area, and a lawful waste transfer site in the countryside to the rear of the site north of the allotments. These uses are immune from planning control but are unregulated by for example hours of use, or restrictions on vehicle movements such as would commonly be in place. The uses include B2 uses, which are inappropriate in an area such as this. In the Officers’ Sites Assessment of the Allocations they draw attention to “the support for the redevelopment of the site given its unappealing existing use”⁶⁰.

82. For the avoidance of doubt, the fact that if the extant permission is implemented then the bad neighbour uses will be removed is irrelevant to the assessment of the benefits of the Appeal Scheme. As Mr Ledwidge said, the Appeal Scheme is instead of, not additional to the extant scheme – incidentally this point also addresses any suggestion that weight should only be given to the additional affordable housing. That is wrong.

83. Further, the WTS is not put forward as a “fall back” – that is a freestanding material consideration. The Appellant therefore does not lead – or need to lead – evidence of the

⁶⁰ Cd 6.3 pdf p 98 – Stage 4

likelihood of the WTS becoming operational again. It is a lawful use that could be reinstated at any time. There is a certificate to that effect which conclusively presumes its lawfulness. The Appeal Scheme resolves this issue, and that area of land will lose its lawful status as a WTS on implementation of the scheme and that land area will become public open space in perpetuity.

Economic Benefits

84. Both Mr Hughes and Mr Ledwidge attribute **moderate** weight to the economic benefits of the Appeal Scheme⁶¹.

Conclusion

85. If the Appeal Scheme is not inappropriate development then it is agreed that planning permission should be granted.

86. If the Appeal Scheme is not inappropriate then the GB harm and other harm must be assessed. The Appellant rejects the notion that Green Belt harm should be entirely disaggregated and substantial weight given to definitional harm, harm to openness, and harm to the GB purposes. This duplicates those factors that in combination cause harm to the GB. For example, consideration of 149(g) involves in any event consideration of openness. The Appellant also notes that the Council then fails to take into account any GB benefits arising from the enhancement of the use and appearance in forming an overall view of GB harm e.g. through para 145, or through the considerations that arise in 142 which suggest boundaries should be reviewed taking into account previously developed land and sustainable locations. This is a one-sided approach which will overstate and over-weight GB harm. The approach taken in Sondes Place Farm is consistent with the Appellant's – "the totality of Green Belt harm attracts substantial weight"⁶². This allows a conclusion to be reached in the round on the harm to the GB taking into account the objectives and purposes of the GB, as well as benefits arising from the way it looks and is used.

⁶¹ See EL Rebuttal at section 5

⁶² ID8 para106.

87. The Appellant also suggests that when a balanced approach is taken then on the *Council's* assessment of the weight to be given to the benefits of the Appeal Scheme that the very special circumstances case is made out. Mr Hughes was at pains to point out that he considers the delivery of housing and affordable housing – given the growing identified need for both, the poor record, and the failure of the plan – should separately be given the highest possible weight. The Appeal Site is of no landscape value – the Scheme improves the landscape character of the area. Indeed, the Scheme improves landscape character, character and appearance of the area, the biodiversity role of the site, and public accessibility. Unlike many of the GB cases in the CDs – this is a site that contains a large amount of buildings, and hardstanding, an industrial estate, and is for all practical purposes in an urban area.

88. This is a very clear case where the potential harm to the Green Belt and any other harm is clearly outweighed by the benefits of the scheme. Reading the NPPF as a whole this is precisely the kind of brownfield site to which national policy directs needed housing development whether under 149(g) or otherwise (e.g. 120(c)). Its suitability and role in delivering housing is confirmed by the extant permission. Its suitability and role in delivering this specific form of development is confirmed by the Council's allocation of the site and its continuing view that doing so is sound and consistent with national policy.

89. For these reasons the Appellant submits that planning permission should be permitted.

Landmark Chambers,

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GUY WILLIAMS KC

5th December 2023

Appendix on Flood Risk

1. The Inspector raised the question of whether or not a sequential test is required.
2. By way of context, at no point in the handling of the planning application or its resolution as to whether planning permission should be granted did the local planning authority suggest that a sequential test was required. No such suggestion was made by the LLFA or the EA. The LLFA in particular have responsibility for surface water matters – and are plainly aware of national and local policy relating to flood risk – and their two consultation responses⁶³ considered the question of surface water flood risk. If any of the bodies had thought that a sequential assessment was required they would no doubt have said so.
3. The NPPF suggests that inappropriate development in areas at risk of flooding should be avoided by directing development from areas at highest risk (159). It aims to steer development towards area at the lowest risk of flooding. The strategic flood risk assessment is to provide the basis for applying this test (162). As explained by Mr Lecocq, the SFRA does not identify the Appeal Site to be within an area of a higher risk of flooding.
4. The NPPF and the PPG are not capable of being interpreted as a statute. They are policy documents and not legal documents. Read as such, it is clear that the sequential approach is a risk-based approach that requires a judgment first as to whether an application should be assessed as low risk of flooding such that it is not necessary to undertake a sequential assessment. For fluvial flooding, this will be FZ1 – as is the Appeal Site. For other sources of flooding additional judgment may be required. It is not, however, the case that if any part of the site is at any risk of flooding from a particular source then the site should be treated as higher risk necessitating a sequential test. This is consistent with the PPG in referring to “little risk of flooding”, and “low risk from all sources of flooding”⁶⁴.

⁶³ CD 2.3 and 2.7

⁶⁴ PPG IF 7 – 23 and 27

5. As such, the EA flood risk maps for surface water flooding can be seen as part of the picture but not determinative. Importantly, as Mr Lecocq explained they do not include an assessment of the infiltration rates. They do not therefore reflect the real risk of there being surface water flooding on a site, but rather a theoretical risk based on topography but not geology. Mr Lecocq has considered infiltration rates on the site⁶⁵ – which is gravel-based and relatively porous. Further, the assessment should take other site features into account. As Mr Lecocq explained the site is surrounded by features that would intercept and collect surface water flows generated off-site and therefore any surface water flood risk shown on the EA flood map would be generated by rainwater falling on the site itself.
6. His professional overall is that the site is at low risk of flooding assessed having regard to all sources of flooding. This is the only professional opinion on the level of flood risk at the site, other than implicitly by the LLFA and EA not raising any suggestion in relation to the sequential approach. This is also consistent with the allocation of the site in the emerging Local Plan with no sequential test undertaken (despite surface water screening for draft allocations having occurred) or identified as a site requirement. The Officers' Sites Assessment⁶⁶ concludes at stage 2b that there is “limited flood risk identified. Possible low level ground water and surface water flood risk”. This is consistent with the sequential approach.

⁶⁵ See App. G to the FRA

⁶⁶ CD6.3