RE : BUGLE NURSERIES, SHEPPERTON TW17 8SN

APP/Z3635/W/23/3325635

CLOSING SUBMISSIONS ON BEHALF OF SPELTHORNE BOROUGH COUNCIL

[Witness are referred to by their initials : PH (Phillip Hughes), CJ (Chris Jenkinson), EL (Edward Ledwidge]

1. These submissions are structured as follows :

   i. Inappropriate development
   ii. Harm to openness of Green Belt
   iii. Conflict with Green Belt purposes
   iv. Other harms (a) housing mix (b) living conditions of neighbouring occupiers
   v. Considerations supporting the appeal proposal
   vi. Balance

2. As a starting-point, it is important to be reminded that the Green Belt matters. National planning policy puts it in the clearest of terms[1] : "The Government attaches great importance to Green Belts".

[1] NPPF para 137

3. National policy[2] sets out 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. The pre-submission Local Plan of June 2022[3] puts the matter in a local context in the text supporting the proposed policy SP4 : "The Metropolitan Green Belt plays a key role in Spelthorne to protect its character by preventing the immediate outward sprawl of London, to ensure settlements to not merge into each other, encouraging development of previously developed land and safeguarding the countryside from encroachment".

5. The appeal site extends to 4.84 hectares. Part of the site consists of previously developed land, and that is the rationale behind the planning consent granted on appeal for up to 31 dwellings, where the amount of development to be provided on non-previously developed land was "limited to the strip of land required to provide a widened access"[4], described in oral evidence in this Inquiry by PH as "a slither which was not material, about a metre wide".

6. In stark contrast to the permitted scheme, the proposed development extends well beyond the previously developed land, and the layout shows 56 of the up to 80 dwellings on land which was not previously developed, effectively by extending the development area into open land further west into the site.

Inappropriate development

7. The starting-point is that national policy directs that[5] :

   i. The construction of new buildings should be regarded as inappropriate in the Green Belt, subject to narrowly-prescribed exceptions ;

[2] NPPF para 137
[3] CD 6.1 at para 5.18
[4] Decision letter para 20, at CD 10.1
[5] NPPF paras 147, 148, 149

ii. Inappropriate development is by definition harmful ;

iii. That harm should be given substantial weight ;

iv. Inappropriate development should not be approved unless very special circumstances can be established to exist.

8. The exceptions in respect of the construction of new dwellings are provided by paragraph 149 at a) to g). The appellant accepts that none of a) to f) apply to the appeal proposal, but seeks to rely on g).

9. The so-called 'gateway' into 149g) is for "limited infilling or the partial or complete redevelopment of previously developed land […]". EL in EiC twice suggested that this translates as development which "relates to" limited infilling etc. Whilst that interpretation would loosen 149g), he appeared to accept in XX that he was not inviting the Inspector to insert the words "relate to" into the exception.

10. It is agreed between the parties that some parts of the site are not previously developed land ('PDL'). Entirely consistent with the conclusions of Inspector Hunter (subject to disagreement between the parties as to Inspector Hunter's position on the Waste Transfer Station 'WTS') at the previous appeal for this site, SBC take the view that :

i. The western parcels of the site are not previously developed[6] ;

ii. The garden area surrounding the bungalow is not previously developed[7] ;

iii. The land south of the access road fronting Upper Halliford Road is not previously developed.

11. The appellant appeared to take issue with Inspector Hunter's conclusions above except the footprint of the bungalow and the garage as they set out in the SOCG[8]. However CJ in XX appeared to finally agree that other than the WTS the appellant

[6] Previous DL CD 10.1 at para 15
[7] Previous DL CD 10.1 at para 17
[8] SOCG para 7.4, CD 3.7b

accepts that the westerly portion of the site is not PDL, and that the proposed dwellings shown to the west of the hatching on PH's hatched plan at 5.57 of his Proof would not be sited on PDL. The appellant never made clear why the Inspector's conclusions above were rejected , but in any event at least CJ accepted the obvious in XX in respect of the westerly land.

12. There is disagreement between the parties in respect of the status of the WTS. That disagreement is a continuation of the debate at the previous appeal, and PH in EiC explained that on his reading of the previous decision letter Inspector Hunter did not set out a conclusion on this issue. The WTS issue is to be determined by reference to the definition of PDL in the Glossary to the Framework. By reference to that definition :

    i. there is no evidence to indicate that the land comprising the WTS is or was occupied by a permanent structure, nor is this suggested by the appellant ;
    ii. the parties agree that there is some fixed surface infrastructure, by way of hardstanding (although limited, in SBC's view) ;
    iii. the issue therefore is whether the fixed surface infrastructure has blended into the landscape. SBC say it has, the appellant disagrees. A helpful photograph is found in PH's Proof[9], but the Inspector will be able to make a judgment on this at his site visit. It is relevant to recall PH's evidence (EiC) that the hardstanding has "blended" to a greater degree than was evident two-and-a-half years ago at the previous appeal.

13. SBC's position is therefore that the WTS does not fall within the meaning of PDL.

14. Returning to 149g), whether or not the WTS is PDL, a swathe of open land which was not PDL to the west of the area which contained the consented scheme would be built over by up to 56 houses . It is an adventurous approach by the appellant which attempts to argue that this benefits from the 149g) exception. As was put to EL in XX,

[9] Page 6

the appellant is effectively inviting the Inspector to insert into the Glossary definition the words "or partially previously developed land" after "partial or complete redevelopment of previously developed land". EL denied that is what he is seeking to do, but he clearly is. It is helpful to note that the wording in 149g) refers to redevelopment and re-use of PDL – a proposal cannot be re-developing or re-using land which is not PDL. The appellant's approach is non-sensical. On its approach, a site which consists of 0.01 ha of PDL within an application site extending to 10ha could benefit from the 149g) exception for the entire site. That approach would enable developers to draw the line as widely as they like to bring surrounding land within the exception (which would have potentially disastrous consequences for the protection of the Green Belt).

15. Only around 1.2ha at most relates to PDL if the Inspector agrees that the approximately 0.4ha where the WTS is located is not PDL. However, the area which would comprise the housing estate would extend to over 2ha.

16. The proposal cannot therefore benefit from the 149g) exception.

17. Even if the Inspector disagreed with SBC's PDL position, the proposed development would still fail to meet the 149g) exception because the proposal would cause substantial harm to the openness of the Green Belt, thus falling foul of the second bullet within g). The appellant in Opening made the daring suggestion that the Inspector should treat 'substantial harm' for the purposes of the openness of the Green Belt in the same way that the courts and the PPG treat substantial harm for the purposes of heritage policies relating to the impact on the significance of heritage assets. That approach is simply wrong. There is nothing in the PPG, or any caselaw to which the appellant can point, which supports that proposition. The question of what is or is not 'substantial harm' is left entirely open to the Inspector's judgment. Inspector Hunter's approach was to consider whether the impacts would be significant[10], these then resulted in substantial harm. Given the importance in

[10] Para 36, CD 10.1

policy of protecting Green Belt, and the approach of the Framework in giving any harm even if only in a definitional sense substantial weight, the Inspector may think that a proposal which results in a significant adverse impact on the openness of the Green Belt is likely to cause substantial harm for the purposes of 149g).

18. If the Inspector is satisfied that the proposal would result in substantial harm to the openness of the Green Belt, then in respect of paragraph 149 he may think does not need to go on to consider the issues relating to PDL because the exception cannot be met in any event.

Harm to openness of Green Belt

19. Openness is identified in the Framework as one of the two essential characteristics of the Green Belt, the fundamental aim of Green Belt policy being to keep land permanently open.

20. The courts[11] have considered the concept of openness in the context of Green Belt policy and the PPG provides further assistance. The following is established :

    i. The word openness is open-textured ;
    ii. Openness is capable of having both spatial and visual aspects such that the visual impact of a proposal may be relevant as could its volume ;
    iii. Duration, remediability, and degree of activity may also be relevant.

21. CJ agreed in XX that where a decision-maker is considering visual impacts in the context of openness, it is the visual impact on the aspect of openness[12] that is relevant, not visual impact in the wider LVIA sense.

22. Both parties have considered the issue by assessing the impact on openness in both the spatial and visual sense.

[11] See in particular *Turner* and *Samuel Smith*, PH proof 5.71 and 5.73
[12] See para 14 of *Turner*, at PH proof 5.71

Spatial

23. The spatial approach is helpfully considered by comparing the proposed development with the existing development and with the consented development.

24. Existing : The footprint, floor area, and volume of the existing development on site are all a matter of agreed figures, set out in the SOCG[13].

25. Consented : The footprint and floor area of the consented development are not agreed but are set out as a bracket in the SOCG[14]. The volume of the consented development is set out as SBC's calculation in the SOCG[15]. As PH explained in EiC, for reasons best known to itself the appellant declined a request during SOCG discussions to put forward its volume figure. Thus the only figure in front of the Inquiry is SBC's figure, this was not challenged by the appellant, and should thus be treated as the applicable figure.

26. Proposed : The footprint, floor area, and volume of the proposed development are not agreed, and the competing figures are also set out in the SOCG[16]. It is clear, however, that the appellant has under-stated the figures for the proposed development. The reason for this is revealed in the asterisks to the appellant's figures set out in CJ's proof[17]. CJ explained in XX that he had simply adopted the figures set out in the DAS. The asterisks show that in respect of volume, the appellant's figure deliberately omitted to include car ports, substation, and even more remarkably all roof spaces. CJ was unable to explain in XX the rationale behind that decision. It might be considered extraordinary, since CJ was explicitly considering the spatial comparisons, that he did not seek to rework the figures to remedy these exclusions, and that the appellant stayed wedded to that approach in

[13] Para 4.5 SOCG at CD 3.7b
[14] Para 4.12
[15] Para 4.13
[16] Para 7.6
[17] At para 7.20

setting out their figures in the SOCG. The explanation for why the appellant calculated lower figures than PH for footprint and floor area appears from the asterisk note to be a decision to omit car ports, bin stores, cycle stores, and substation. The approach of PH is clearer and plainly more robust and should be preferred[18].

27. Even being generous and adopting the appellant's figures for the proposed development, the volumetric approach is particularly revealing, involving an increase by 721%. On PH's clearly more robust figures, the increase would be by 26,000 cubic metres (3500 to 29,500) or 843%.

28. These figures are very significant.

29. In respect of the consented scheme, the volumetric increase would be by 19,329 cubic metres, or 290%. Nearly three times more.

30. The appellant through CJ seeks to apply an offset approach to the increase. In particular, CJ wrote in his evidence[19] :

[…] there will be an increase in the footprint, floor space and volume of the built form that will affect the spatial openness. There will also be a reduction in hardstanding and the waste transfer area will be removed. Combined with the overall increase in the extent of green space this effectively offsets the increase[20] in spatial openness.

31. That approach was clearly flawed :

    i. In calculating and taking into account a decrease in hardstanding area of 961 sqm, CJ accepted in XX that he had not factored in patios and terraces that

[18] Although the maximum height of the proposed dwellings has changed from 9.5m to 8.7m, this did not materially affect PH's volume calculation since he has taken a conservative approach to the roof space calculation

[19] CJ Proof 7.21

[20] Presumably he meant decrease

are likely to be associated with up to 80 dwellings. As PH explained in his oral evidence, that is likely to moreorless cancel out the reduction relied upon by the appellant ;

ii. The calculation of the WTS figure depends on the view that the Inspector takes to of the WTS, in SBC's view the WTS has effectively blended into the landscape already ;

iii. The inclusion of an increase in green space appears to effectively double-count the reduction in hardstanding and probably the WTS area which in SBC's view is already open green space.

32. It is fanciful of the appellant to suggest that the spatial increase, in volumetric terms by 26,000 cubic metres, is cancelled out in this way.

33. There is no sensible conclusion other than that the proposal would result in a substantial loss of openness in spatial terms, whether measured against the existing position or the against the consented scheme. 56 of the dwellings would be built on open rural land.

Visual

34. The impact on the visual aspect of openness is apparent in views from Upper Halliford Road, from FP19, and from Halliford Close.

35. Whilst the viewpoints produced within the LVIA assist with this exercise, it is agreed between the parties[21] that static viewpoints are no substitute for the kinetic experience.

36. Of course the Inspector will form his own planning judgments on this issue, informed by his own visits to the site and its surroundings.

[21] Landscape SOCG CD 3.7a at para 4

37. However, it is beyond dispute that the proposal comprises a significant increase in built form on the appeal site[22]. it is SBC's clear position that :

    i. In views from Upper Halliford Road, the development which will be two-storey (plus roof) throughout will extend up to the front boundary of the appeal site with Upper Halliford Road with flats and dwellinghouses proposed to be sited within 13-17m of the Upper Halliford Road frontage. This can be compared to the existing development and to the permitted scheme. When viewed from Upper Halliford Road along the access road or through gaps in the frontage planting the existing development[23] is viewed behind open land to the south of the access road and around the bungalow and comprises only single-storey development. In the permitted scheme the proposed new houses would be situated 55-60m from the Upper Halliford frontage[24]. The loss of open frontage is particularly important in the context of the role the land plays in providing a spatial and visual gap between development when travelling along Upper Halliford Road and the experience of openness[25] ;

    ii. From FP19 views of the open rural grazing land in the western portion of the site will be replaced by a clear view of a housing estate, albeit in a setback from the footpath views ;

    iii. The proposal will have a further visual impact on Halliford Close, with a visual perception of sprawl, enclosure, and loss of openness[26], seen from the street (ie the Close) and from the gardens in the Close.

38. The loss of openness would be further reduced by the high degree of activity which would be introduced onto the site, particularly viewed from Upper Halliford Road and Halliford Close.

[22] PH Proof 5.87
[23] PH Proof 5.89
[24] PH Proof 5.88
[25] PH Proof 5.92
[26] PH Proof 5.98

39. It was clear from both the written and oral evidence of CJ that he was conflating an assessment of the visual aspect of openness with visual impact on a wider LVIA sense (ie impact on character and appearance of the area beyond considerations of openness). Thus references by him to improvements in the 'street scene'[27] are not relevant other than the extent to which any clamed improvements affect openness.

Overall impact on openness

40. CJ's flawed approach in that respect was exacerbated by his approach in treating as matters offsetting loss of openness, considerations which frankly have nothing whatsoever to do with openness. For example, ecological improvements provided by landscaping, improvements in habitat connectivity, and providing walking/cycling routes : these may be capable of being relevant as planning balance considerations, but they are not relevant to the issue of openness. Much is made by the appellant of so-called 'rebalancing' – however, this just glosses over that the proposed developed area is just over 2ha and even on its own figures[28] the existing developed part of the site is 1.61ha, reducing to a maximum of 1.2ha if the Inspector agrees with SBC about the WTS area. Thus even on the appellant's approach the developed area would be significantly increased.

41. The flaws in CJ's approach contributed to a clear under-statement of the impact on openness :

i. He under-played the extent of spatial impact ;
ii. He over-stated the significance of removing the WTS which is already blended into the landscape ;
iii. He conflated the visual aspect of openness with visual impact in a more general sense ;
iv. He treated as offsets to a loss of openness matters which do not bear on that issue, or over-states them.

[27] See for example CJ Proof 7.15
[28] EL Rebuttal 2.12

42. CJ's approach is further exacerbated by the appellant's unrealistic and contrived approach to what is meant by substantial harm in the context of paragraph 149g).

43. PH's assessment that there would be a substantial and permanent loss of openness[29] (resulting in substantial harm) is robust and realistic. That is a harm which should be accorded substantial weight as per the direction in the Framework[30].

Conflict with Green Belt purposes

44. The proposed development would conflict with purposes a), b) and c) of the 5 purposes set out at paragraph 138 of the Framework.

45. That the site contributes to each of these purposes is clear and is consistent with the approach in the evidence-base for the emerging local plan. Thus the Green Belt Assessment Stage 3 Report[31] identifies the site as performing particularly strongly in relation to Purpose b)[32], whilst also contributing to Purposes a) and c)[33]. The contribution to Purpose b) recognises that Local Area 39 forms the essential gap between Ashford / Sunbury-on-Thames / Stanwell and Upper Halliford, also playing an important role in preventing further ribbon development along Upper Halliford Road.

46. The Regulation 19 Officer Site Assessment[34] was consistent with the Stage 3 Review, commenting that the Bugle Nurseries parcel forms almost all of the essential gap.

47. The previous Inspector[35] had found that Appeal A (the refused scheme) conflicted with Purposes a) and b)[36]. He found that Appeal B (the permitted scheme) did not

[29] PH Proof 5.97
[30] Par 148
[31] CD 6.6
[32] Identified in the Report as Purpose 2
[33] Which correspond to Purposes 1 and 3 in the Report
[34] CD 6.3
[35] CD 10.1

conflict with the Purposes[37] – however, it is important and helpful to note that in reaching that conclusion for Appeal B, he explicitly noted the set back from the road[38]. Furthermore, he explicitly noted that "the western parts of the site would be retained as open space"[39].

48. The development now proposed would bring the built development significantly closer to the road than the permitted scheme (see paragraph 37 above) and would build into the open western part of the site.

49. The proposal would result in urban sprawl ; it would erode the gap between Ashford / Sunbury-on-Thames / Stanwell and Halliford ; it would encroach into the countryside by extending development to the west up to 130m west from the extent of the PDL[40] (which is not offset by the remediation of the WTS area not least as PH noted in XX because the hardstanding is already blended into the landscape and there is no realistic prospect - and certainly no evidence of such a prospect - of the WTS use resuming).

50. PH's assessment is consistent with the considerations which influenced the conclusions of Inspector Hunter.

51. CJ by contrast under-states the conflict with the purposes, acknowledging a minor level of encroachment and no conflict at all with purposes a) and b). The proposed strategic gap is not an effective substitute for the erosion in the existing gap, whilst to argue that the proposal does not compromise the anti-sprawl purpose is simply unrealistic.

52. The appellant suggests that the proposal will assist with purpose e) : however, this proposal is not "urban regeneration".

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[36] DL33
[37] DL34
[38] DL34
[39] DL35
[40] PH Proof 5.122

53. The conflict with Purposes is a harm resulting from the proposal[41]. Since this is a harm to the Green Belt, it should be given substantial weight as directed by the Framework[42].

54. Before turning to other (not Green Belt related) harms, these submissions deal briefly with paragraphs 142 and 145 within the Green Belt chapter of the Framework from which the appellant seeks to draw support. Paragraph 142 is a plan-making policy not a decision-making policy (as agreed by CJ in XX). Paragraph 145 is arguably also about plan-making, but even if it relates to enhancing beneficial use, matters such as providing publicly accessible open space are in any event considered within the benefits section of the paragraph 148 balance, whilst the WTS is already subsumed into the natural landscape (bar the pile of skips "dumped"[43] on the site).

Other harms (in addition to loss of openness and conflict with purposes)

Housing Mix

55. SBC do not accept that the issue of mix can be left over to reserved matters. Not least because the description of development (unlike in respect of landscaping and appearance) does not treat mix as a reserved matter, and the mix is specified within the application form. Furthermore, the proposed layout is fixed and that is predicated on the proposed mix. The appellant suggested in the RTD that SBC cannot refuse on a matter that is not proposed as part of the description – that argument does not stand up to simple scrutiny, and the example SBC gave was where the provision of affordable housing is not specified in the description of development, that would not bar a local planning authority from relying on an affordable housing objection.

[41] Within the meaning of "other harm" per para 148 NPPF
[42] Para 138
[43] PH in XX

56. Policy HO4 is the development plan policy addressing housing mix. This requires developments "that propose four or more dwellings to include at least 80% of their total as one or two bedrooms".

57. The proposal is for just 43% to be just one and two bedroom units.

58. There is therefore a clear conflict with Policy HO4. The weight to be given to that conflict is a separate matter (from whether or not it is conflicted).

59. The appellant's position is contradictory because on the one hand it accepts that the policy is conflicted[44], but at the same time advances a misconceived argument that the policy is one which allows flexibility :

    i. EL argues that the reference in the policy to "needs of the community" should be read as "current needs of the community". That is not what the policy says and is plainly incorrect. If the "need" was to be assessed fluidly under the policy, then the policy would not go on to say "by requiring […] at least 80% of their total as one or two bedroom units".

    ii. EL argues that the 2012 SPD[45] "updates" or "changes" the policy. That is also incorrect. The policy is for the period to 2026. The SPD is not a DPD and is not capable of changing policy. It can provide guidance as to how the local planning authority will apply the policy, and in that vein indicates that in certain character areas (applicable to the area containing the appeal site) a "majority" should have one and two bedrooms[46].

60. Therefore the SPD does not change the policy itself. But even on the SPD's relaxation in applying the policy to areas such as this, the proposal falls short ie less than a majority proposed are one and two bedroom units.

[44] EL Proof 4.66
[45] CD 5.4
[46] Para 5.2

61. The appellant points to the more recent evidence-base in the 2019 SHMA and to draft policy H1 in the emerging local plan. However, the examination process is paused and in SBC's view the emerging policy, and its evidence-base, are untested and can only be given limited weight at this stage. However, even when considered against the draft policy, the proposal would conflict with that policy in terms of the affordable element[47] (not a matter that can be addressed by condition without affecting the fixed layout).

62. PH takes a balanced approach to the housing mix issue, by affording it moderate weight in the planning balance (on his scale[48] of substantial – significant – moderate – limited – none). He accepts that on its own the issue would not justify refusal.

Living conditions of neighbouring occupiers

63. SBC accept that the combination of conditions agreed between the parties in advance of the Inquiry – in particular draft conditions 19-22 which incorporate inter alia a reduced maximum height – addresses the overlooking objection, should the Inspector impose those conditions if consent is granted.

64. However, the outlook objection remains.

65. In policy terms the scheme would conflict with EN1 at b) and paragraph 130f) of the Framework.

66. The relevant occupiers are those in Halliford Close who back on to the appeal site, and PH particularly draws attention to the ten houses in Halliford Close between numbers 6 and 24.

67. Although the appellant points for support to the 2011 SPD[49], PH noted during the RTD the following :

[47] See PH Proof 5.149 – 5.151
[48] PH Proof 1.8

i. The SPD is a guide ;

ii. The SPD identifies separation distances as minima ;

iii. The SPD refers to a "typical" street layout[50]. However at maximum height of up to 6m for eaves and up to 8.7m for ridge, in PH's long experience that is not a typical arrangement. He set out that allowing up to 2.2 – 2.4m for ceiling heights and around 300mm for floor construction that ought to produce an eaves height of around 5m. In PH's experience, it is very rare for a two-storey building to see an eaves height above 5.5m. At Halliford Close, the eaves are at around 4.9m and the ridges at around 7.6m ;

iv. Looking at the relationship of the proposed dwellings as a whole along that boundary with the adjacent properties on Halliford Close, the proposed development would have the appearance of a solid enclosing wall, with the gaps only perceptible directly in front of the gaps ;

v. The impact of the extant consented scheme would be much less extensive, creating a much shorter length of development that does not extend beyond 12 Halliford Close and thus is less of a "wall of development" ;

vi. The issue of outlook should be considered from the Halliford Close gardens as well as from the buildings.

68. Although SBC have expressed their reservations as to whether there is sufficient information available to assess scale, on the information available the proposed development along the Halliford Close boundary would harm the living conditions of the residents backing onto the appeal buildings in terms of outlook.

69. Once again, PH's approach to weighting was demonstrably well-balanced. He attributes limited weight to the issue, which he says would not by itself justify a refusal. Nonetheless it has its place as a harm in the planning balance.

Considerations supporting the appeal proposal

[49] CD 5.6
[50] Para 3.9

70. It is almost impossible to think of a proposal for the provision of housing which does not have considerations to support it and this proposal is no different.

71. Once again, there was a marked contrast between the well-balanced approach of PH on behalf of SBC and the lop-sided approach taken by the appellant.

72. This contrast begins with the scale that each party adopted. PH adopted a scale[51] at the top of which was 'substantial' weight. That ensures an even-handed approach because the Framework is clear that "substantial weight is given to any harm to the Green Belt"[52]. EL in XX appeared to resile from a suggestion that the Inspector should rewrite paragraph 148 to insert the words "at least" before "substantial weight". On EL's approach, a decision-maker can give greater weight to considerations on one side of the balance than he can to harm to the Green Belt on the other side of the balance. That is obviously not a balanced approach. Although in a recent appeal decision[53] an Inspector in a Green Belt case gave very substantial weight to the provision of housing, that is not binding and perhaps more importantly there is no suggestion that the Inspector in that case was asked to consider the issue of a relative scale.

73. A balanced approach in a Green Belt case such as this should adopt substantial weight as the uppermost weighting both to Green Belt harm and to other material considerations.

74. Both parties attributed weight at the top of their respective scales to each of market and affordable housing[54]. PH recognised (a) that for the purposes of this appeal SBC cannot demonstrate a 5YHLS and can only demonstrate 3.52 years, which is not an

[51] PH Proof 1.8
[52] Para 148
[53] ID9
[54] PH in his Proof weighted these together but he explained in his oral evidence that disaggregated he would give each substantial weight

improvement since the most recent SBC appeal[55] (b) SBC's most recent HDT result was 69% (c) the local plan examination process has paused (d) there is a demonstrable need for affordable housing and SBC have an accumulated shortfall. Inspector Hunter had given significant weight to the provision of market and affordable housing. It is noted that PH did not seek to moderate the weight given that the consented scheme would also provide market and affordable housing albeit at a lower quantum.

75. Apart from EL's contrived use of the word "very", there appears to be little or nothing between the parties in respect of the weight to be given to market and affordable housing.

76. However, even though EL both in his Proof and in his EiC included, as had PH, the pause in the local plan process in the weighting he gave to housing, he then sought to double-count the point with a separate weighted consideration which he described as the failure to progress the local plan. In XX he appeared finally to accept that this amounted to double-counting the same point.

77. In the appellant's Statement of Case and in his original Proof EL had omitted to weigh economic benefits in the balance. PH nonetheless did weigh the matter in the appellant's favour and the appellant responded by including the matter in EL's Rebuttal. Here both parties agree on a weighting of moderate.

78. At the previous appeal for the site, the Inspector had given moderate weight to removing a 'bad neighbour' use. Unlike at the previous appeal (a) this would now be achieved anyway by an extant consent (b) a further 2.5 years has gone by without any resumption of the WTS use (c) the existence of the extant consent makes a resumption of the WTS use a more remote prospect than ever (d) there is no suggestion of any increased level of complaints. Notwithstanding these factors, PH again demonstrated a very fair and balanced approach in giving the matter the same

[55] Debenhams CD 10.3

level of weight that it carried in 2021 (moderate). EL had tried to upgrade the weight to significant without there being any rational basis to do so, again demonstrating the contrasting approach between the parties to taking a balanced approach, and it was not until XX that EL abandoned that attempt.

79. PH attributed moderate weight to each of the sustainability of the location and the provision of open space, and once again his approach was consistent with the conclusions of Inspector Hunter.

80. The parties differ as to the weight to give the draft allocation. PH's assessment of weight but at a limited level is well-considered and proportionate : there is support as well as objection to the allocation[56], and a number of objections to this proposal which indicates a level of local opposition, and the allocation has yet to be examined and the process is now paused with no currently identified date for adoption[57].

81. There is obvious disagreement between the weight to be given to the provision of a strategic gap. In SBC's view, the proposed gap would not compensate for the erosion in the existing gap. If the Inspector agrees with that assessment, then this consideration should carry no weight. However, it should also be noted that the appellant relies on this matter as mitigating harm to openness and to Green Belt purposes, yet seeks to count it again as a benefit of the proposal.

82. Finally, SBC had to address the appellant's bizarre submission that local support should be treated as material consideration in favour of the scheme. Not only that it should be so treated, but that it should be given significant weight. Not only was that factually wrong since the only third party representations were objecting to the scheme, including from the Residents Association who the appellant had been keen to point out in its Planning Statement[58] represented 2000 people, but even if the submission had not been a factual howler it would inevitably have double-counted

[56] As pit to EL in XX and see CD 6.14
[57] Confirmed by PH in XX
[58] CD1.7

the benefits already relied upon by the appellant. EL sensibly abandoned the point., albeit not until his XX at the eleventh hour.

83. The appellant seeks belatedly to draw support from paragraph 120c) of the Framework relating to the value of using suitable brownfield land within settlements for homes. This was an opportunistic point never raised in the years over which EL has been making submissions in respect of the development of this site, and latched onto only after the Inspector raised the point for comment. However, 120c) does not support the development proposal : much of the development area is not brownfield land, and that which is brownfield land is not within a settlement.

Balance

84. The proposed development is inappropriate within the meaning of Green Belt policy.

85. It should therefore not be approved except in very special circumstances (Policy GB1 carries reduced weight – SBC say to moderate – because it does not expressly incorporate very special circumstances in the policy itself notwithstanding its incorporation in the supporting text, but the parties agree that very special circumstances are to be considered under the Framework) .

86. In considering the VSC test prescribed by paragraph 148 of the Framework, EL in XX agreed that decision-makers should underline the word 'clearly'.

87. In additional to the substantial weight to be given to definitional harm on account of inappropriateness, substantial weight should be given to actual harm to openness and to the conflict with the Green Belt purposes. In addition to Green Belt harms, moderate weight should be given to the issue of housing mix and limited weight to the issue of outlook. For completeness, SBC do not rely on the absence of a sequential test in respect of flooding as an objection, noting (a) that the development plan does not require a sequential test, although that appears not be to be consistent in that respect with the Framework (b) that the local lead flood

authority did not require one (c) that the affected areas are very small (d) that any risk can be managed by conditions.

88. The harms relied upon by SBC are not clearly outweighed by other considerations.

89. In these circumstances, the Framework sets out that the proposed development should not be approved.

90. For completeness, the tilted balance is not engaged (because the Green Belt policies of the Framework provide a clear reason for refusal), and the statutory presumption in favour of the development plan is not outweighed by material considerations.

91. It is respectfully submitted that this appeal should fail.

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