

**STATEMENT OF CASE OF NORTH HERTFORDSHIRE
DISTRICT COUNCIL**

Appeal by Gladman Developments Ltd against the failure to determine an application submitted to North Hertfordshire District Council, as Local Planning Authority, for Outline planning permission for up to 70 residential dwellings (including 40% affordable housing), new village gateway, new retail outlet/village facility, planting, landscaping, informal public open space, children's play area and sustainable drainage system (SuDS). All matters reserved except for access.

Land North of Luton Road, Offley

FEBRUARY 2018

PLANNING INSPECTORATE REFERENCE: APP/X1925/W/17/3187286

LPA REFERENCE: 17/01781/1

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1.0 INTRODUCTION AND BACKGROUND

- 1.1 The proposal is for residential development on a site that lies outside the settlement limits of the village of Offley within the open countryside.
- 1.2 This appeal relates to an application that seeks outline planning permission for the erection of up to 70 residential dwellings (including 40% affordable housing), new village gateway, new retail outlet/village facility, planting, landscaping, informal open space, children’s play area and sustainable drainage system (SuDS). All matters reserved except for access.
- 1.3 The application dated 11 July 2017 was validated by the Council 14 July 2017. The date of expiry of the statutory period was 13 October 2017. An appeal was lodged against the failure to determine the application on 19 October 2017. The application was reported to the Council’s Planning Control Committee on 9th November 2017 when it was resolved to refuse planning permission. A decision notice was issued on 10 November 2017. However, the application was no longer within the jurisdiction of the Council.
- 1.4 These reasons for refusal have been reviewed and the application the subject of this appeal will be reported back to the Council’s Planning Control Committee to clarify certain matters and to confirm what the Council’s decision would have been. This would include updating the Committee on any additional information provided by the Appellant concerning archaeological investigations that are taking place on the site as well as the outcome of discussions between the appellant and the Lead Local Flood Authority.

2.0 THE SITE AND ITS SURROUNDINGS

- 2.1 The appeal site comprises allotments and an agricultural field to the west of the village of Offley and to the north-west of Luton Road and to the south-west of Westbury Farm Close of 5.79 hectares.
- 2.2 The boundary of the site with Luton Road is defined by post and rail fencing along with established mature hedgerow/trees, as are the western and northern boundaries. A mature oak tree sits in the south-west corner of the site.
- 2.3 Two public footpaths (PROW) cross the site. These are Offley 17 that runs along the western boundary of the site and Offley 16 that runs in an east-west direction within the southern part of the site through the allotments.
- 2.4 The Great Offley Conservation Area adjoins the north-east boundary of the appeal site and extends slightly into the site at the entrance to the allotments and start of PROW Offley 16. There are Grade II listed buildings on Westbury Farm Close to the north-east of the appeal site.
- 2.5 The Council will seek to agree a full description of the site and its surroundings in the Statement of Common Ground.

3.0 THE PROPOSAL

- 3.1 The application the subject of this appeal seeks outline planning permission for residential development on allotments and an agricultural field. The application indicates that permission is sought for up to 70 dwellings.
- 3.2 Included in the description of planning permission is a new village gateway, a new retail outlet/village facility, planting, landscaping, informal public open space, children’s play area and sustainable drainage system.
- 3.3 The application is accompanied by a Development Framework Plan (drawing No. CSA/3282/105) that illustrates the proposed site layout.

4.0 PLANNING POLICY CONTEXT

4.1 The development plan for North Hertfordshire comprises the saved policies of the North Hertfordshire District Local Plan No. 2 with alterations (DLP).

4.2 Other relevant planning policies that are material considerations in the determination of this appeal are the National Planning Policy Framework and the North Hertfordshire District Local Plan Submission Local Plan 2011 – 2031.

4.3 The Proposed Submission Draft Local Plan (PSLP) was approved by North Hertfordshire District Council's Cabinet in April 2017 following public consultation. The Plan has now been submitted for examination. A programme has been issued that sets out hearing dates that will take place from 13 November 2017 to 1 March 2018.

North Hertfordshire District Local Plan No. 2 with alterations 2007 (DLP)

4.4 Relevant policies are listed below.

Policy 6 - Rural Areas beyond the Green Belt

Policy 7 – Selected Villages

Policy 8 - Development in Towns

Policy 14 - Nature Conservation

Policy 26 - Housing Proposals

Policy 29 - Rural Housing Needs

Policy 51 - Development Effects and Planning Gain

Policy 55 - Car Parking Standards

Policy 57 - Residential Guidelines and Standards

4.5 The Council considers that the proposed development conflicts with the following policies.

4.6 **Policy 6** addresses rural areas beyond the Green Belt. This confirms that the Council will maintain the existing countryside and villages, and their character. Except in Selected Villages (Policy 7) a development proposal will normally be allowed only if:

- i. It is strictly necessary for the needs of agriculture, forestry or any proven need for local community services, provided that:
 - a. The need cannot practicably be met within a town, excluded village or selected village, and
 - b. The proposal positively improves the rural environment; or
- ii. It would meet an identified rural housing need, in compliance with Policy 29; or
- iii. It is a single dwelling on a small plot located within the built core of the settlement which will not result in outward expansion of the settlement or have any other adverse impact on the local environment or other policy aims within the Rural Areas; or
- iv. It involves a change to the rural economy in terms of Policy 24 or Policy 25.

4.7 **Policy 51** addresses development effects and planning gains and indicates that the Council will seek agreement (usually under Section 106 of the Town and Country Planning Act 1990) to ensure contributions towards the provision and maintenance of facilities or other aspects including contributions towards offsetting the costs to the community arising directly as a result of the development where these are relevant to planning. The Council will seek voluntary agreements where the effects of development relate to wider issues relevant to planning.

4.8 **Policy 57** sets out residential guidelines and standards for all proposals for residential development and the Council expects all development to meet the objectives of the guidelines. These relate to a site and its surroundings, design and layout, roads and footpaths, mix of dwelling sizes, floorspace,

orientation, privacy, play and amenity space, landscape, noise, car parking and garaging, and servicing.

National Planning Policy Framework

- 4.9 This document sets out the Government’s policies for the delivery of sustainable development.
- 4.10 The following are relevant to the appeal proposal.

Paragraph 14 'Presumption in Favour of Sustainable Development'

Paragraph 17 'Core Planning Principles'

Section 1 - Building a strong, competitive economy

Section 3 - Supporting a prosperous rural economy

Section 4 - Promoting sustainable transport

Section 6 - Delivering a wide choice of high quality homes

Section 7 - Requiring good design

Section 8 - Promoting healthy communities

Section 9- Protecting Green Belt land

Section 10- Meeting the challenge of climate change, flooding and coastal change

Section 11 - Conserving and enhancing the natural environment

Section 12 - Conserving and enhancing the historic environment

North Hertfordshire District Local Plan – Submission Local Plan 2011 – 2031 (PSLP)

- 4.11 The Framework identifies the weight that may be attributed to emerging Local Plan policies by decision-takers at Paragraph 216. Weight is attributed to the stage of preparation of the emerging plan; the more advanced the preparation, the greater the weight that may be given. The extent to which there are unresolved objections to relevant policies is also a consideration; the less significant the unresolved objections, the greater weight that may be

given. Finally, the degree of consistency of the relevant policies in the emerging plan to policies in the Framework is another consideration; the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given.

4.12 At the time that this statement was written the emerging LP was in the middle of the Examination in Public. Therefore, the weight to be attributed to the emerging local plan may be different now compared to when the Public Inquiry takes place.

4.13 Relevant policies are listed below.

Policy SP1: Sustainable development in North Hertfordshire

Policy SP2: Settlement hierarchy

Policy SP5: Countryside and Green Belt

Policy SP8: Housing

Policy SP9: Design and Sustainability

Policy SP10: Healthy Communities

Policy SP12: Green infrastructure, biodiversity and landscape

Policy SP13: Historic Environment

Policy D1: Sustainable Design

Policy D3: Protecting living conditions

Policy D4: Air Quality

Policy T1: Assessment of Transport Matters

Policy T2: Parking

Policy NE1: Landscape

Policy NE3: The Chilterns Area of Outstanding Natural Beauty (AONB)

Policy NE4: Protecting Publicly accessible open space

Policy NE5: New and improved public open space and biodiversity

Policy NE7: Reducing flood risk

Policy NE8: Sustainable drainage systems

Policy HS2: Affordable Housing

Policy HE1: Designated heritage assets

Policy HE4: Archaeology

5.0 HOUSING LAND SUPPLY POSITION

- 5.1 The Council consider that from the date that Full Council decided to submit the Proposed Submission Local Plan (PSLP) to the Secretary of State on 11 April 2017, the Council can demonstrate a deliverable five-year supply of housing sites – 5.5 years.
- 5.2 However, until the PSLP is adopted the Council consider that a precautionary approach should be taken to the weight that should be given to the PSLP and therefore at the time of writing this statement the Council accepts that it cannot demonstrate a five-year supply of housing.
- 5.3 As a result, the Council’s case is that based upon the presumption in favour of sustainable development the tilted balance advocated by Paragraph 14 of The Framework would normally apply. Except where specific policies in the Framework indicate that development should be restricted, such as those relating to designated heritage assets. The Council consider that such restrictive policies apply in this instance.
- 5.4 The Council will show that the proposal would not constitute sustainable housing development and that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits of delivering new homes, when assessed against the policies within the Framework taken as a whole.

6.0 THE COUNCIL'S CASE

Housing Development in this Location

6.1 The site lies outside the settlement of Great Offley and is located on land regarded as open countryside. The proposed development does not meet any of the exceptions for development set out in DLP Policy 6 that apply to the Rural Area Beyond the Green Belt. The proposal therefore conflicts with Saved DLP Policy 6 and the Council considers that material weight can still be given to this policy.

6.2 In terms of the emerging local plan, Great Offley is identified as a Category A village within which general development will be supported. However, the site lies beyond the proposed village boundary and has not been allocated for future development but would be within the extended Green Belt. Policy SP5 of the PSLP states under criterion (c) that the Council will *“only permit development proposals within the Green Belt where they would not result in inappropriate development.”* The site will be within the Green Belt if the Examining Inspector agrees to the terms of the proposed Green Belt boundary and following adoption of the local plan. This is a material consideration in the determination of this appeal, to which the Council considers limited weight should be attributed.

6.3 Therefore, whilst at the time of writing this statement the site does not lie within the Green Belt, there is an intention to restrict development in this location in the emerging local plan.

Effect upon landscape character and visual amenity

6.4 In terms of landscape character, the site is relatively level in an elevated position within Local Character Area 211 Offley – St. Pauls Walden, which is identified as gently rolling upland plateau in the Landscape Character Study.

To the north beyond the A505 lies the Chilterns Area of Outstanding Natural Beauty (AONB).

- 6.5 The proposed development would have a significant urbanising effect on the site and the surrounding landscape. Whilst a large proportion of the site would be dedicated to green infrastructure this would remove the land from agricultural production and would bring about changes to the character of the landscape. The Council considers that the westward encroachment of the village into the countryside would have a significant impact upon the wider views of the settlement, to the significant detriment of the character of the landscape.
- 6.6 Regarding visual amenity, the proposed development would have a significant impact upon views from Public Rights of Way (PROW) within and adjacent to the site, including Luton Road. PROW 16 passes through the site, and the submitted development framework indicates that there would be housing to both sides. The Council considers that views from this PROW and the enjoyment of the countryside by users would be significantly adversely affected. In addition, there would be a perception of the village expanding into the countryside from PROW 17 and 21, this would be detrimental to visual amenity of the users of the PROWs and their enjoyment of the countryside.
- 6.7 The Council will show that the proposed development would have a detrimental impact on the landscape and would harm the visual amenity of the area, contrary to the aims of DLP Policy 6, PSLP Policy NE1 and the Framework.

Effect upon designated Heritage Assets

- 6.8 The site lies partially within and adjacent to Great Offley Conservation Area. The site is also within the setting of Grade II listed buildings on Westbury Farm Close to the east of the site and within the conservation area.

- 6.9 Paragraph 132 of the Framework requires great weight to be given to the conservation of heritage assets and confirms that significance can be lost through development within their setting.
- 6.10 The Council considers that Great Offley Conservation Area is a designated heritage asset of high significance. The Council will show that the appeal site forms part of the setting of Great Offley Conservation Area and its open rural character and appearance makes a positive contribution to the significance of the Conservation Area as a designated heritage asset.
- 6.11 Evidence will be adduced to demonstrate that the proposal would result in a significant change to the character and appearance of the appeal site and consequently the setting of Great Offley Conservation Area. This change of the setting of the Conservation Area would cause less than substantial harm to its significance as a designated heritage asset. Paragraph 134 of the Framework stipulates that where there is less than significant harm to a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
- 6.12 The Council will adduce evidence to demonstrate that the appeal site forms part of the setting of nearby Grade II listed buildings most notably Westbury House and associated former barns, which are designated heritage assets of high significance.
- 6.13 Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that where considering whether to grant planning permission for development which affects a listed building, or its setting special regard shall be had to the desirability of preserving the building or its setting.
- 6.14 The Council will show that the proposed development would harm the setting of Westbury House and to some lesser extent other buildings associated with it and that the proposal would cause less than substantial harm to the significance of these buildings as designated heritage assets.

- 6.15 Therefore, the Council will show that there would be harm to the significance of designated heritage assets and there would be conflict with PSLP Policy HE1, which indicates that development proposals affecting Designated Heritage Assets and their setting should preserve their significance.
- 6.16 The balance required by Paragraphs 132 and 134 of the Framework needs to be undertaken and the Council will show that the public benefits of the development would not outweigh the harm to the significance of the identified heritage assets.

Effect upon Non-Designated Heritage Assets

- 6.17 Paragraph 135 of the Framework indicates that the effect of an application on the significance of a non-designated heritage asset should be considered in determining the application. Regard should be had to the scale of any harm or loss and to the significance of the heritage asset.
- 6.18 The appeal site lies immediately adjacent to an Area of Archaeological Significance. The site is within an area of extremely significant archaeological potential and given the large scale of the proposed development it is likely to have a substantial impact on significant heritage assets with archaeological interest, some of which may be of sufficient importance to meet the test set out at Paragraph 139 of The Framework. Therefore, the Council will show that archaeology in this instance should be subject to the policies with the Framework relating to designated heritage assets.
- 6.19 PSLP Policy HE4 indicates that where justified developers should submit an archaeological field evaluation. It requires developers to demonstrate how archaeological remains will be preserved and incorporated into the layout.
- 6.20 It will be shown that in the absence of a full evaluation of the site, including trial trenching, the development should be regarded as likely to have a significant impact upon heritage assets of archaeological importance. Given

the location and the large scale and nature of the proposed development, it is likely to have an impact upon significant heritage assets with archaeological interest, to the extent that they should be considered subject to the policies for designated heritage assets. It will be shown that the proposal would be contrary to Section 12 of the Framework and the aims of PSLP Policy HE4.

Effect upon Services, Facilities and Infrastructure

6.21 The Council will show that S106 planning obligations are necessary to address the impacts of the proposed development and that failure to enter into appropriate undertakings would comprise reasons to withhold permission. The Council will show that obligations relating to the following are reasonable and necessary:

- Secure and retain 40% affordable housing;
- Education Provision;
- Libraries;
- Improvements to rights of way;
- Provision of replacement allotments;
- Sustainable Transport Measures;
- Playing Pitch Provision and Maintenance;
- Waste Services; and
- Travel Plan to be developed and implemented.

6.22 As such, the proposed would not accord with the adopted Planning Obligations Supplementary Planning Document, DLP Policy 51, and PSLP Policy HS2.

6.23 However, the Appellant has indicated in its Statement of Case an intention to provide a Unilateral Undertaking (UU) in advance of the Inquiry with an intention to reach agreement with the Council.

6.24 Therefore, the Council reserves its position pending the submission of a UU and subsequent discussions with the Appellant.

Flood Risk and Drainage

6.25 It will be shown that the submitted Flood Risk Assessment does not provide a suitable basis for assessment to be made of the flood risks arising from the proposed development because it does not demonstrate a feasible discharge location.

6.26 However, it is understood that the Appellant is in discussion with the Local Lead Flood Authority who objected to the proposal.

6.27 Therefore, the Council reserves its position pending the outcome of discussions with the LLFA and any subsequent submissions by the Appellant.

7.0 The Council's Documents

7.1 The Council has agreed with the Appellant to seek to work from one suite of Core Documents for reference purposes.

7.2 The Council may refer to the following documents at the Inquiry:

- Planning application file 17/01781/1
- Relevant Planning Appeal Decision
- National Planning Policy Framework
- National Planning Practice Guidance
- North Hertfordshire District Local Plan No. 2 with alterations 2007
- North Hertfordshire District Local Plan – Submission Local Plan 2011 – 2031
- North Hertfordshire Parking at New Development Supplementary Planning Document – September 2011
- North Hertfordshire Design Supplementary Planning Document – July 2011.

- North Hertfordshire Supplementary Planning Document – Planning Obligations - November2006
- North Herts Landscape Study 2011

8.2 The Council reserved the right to call on other documents during the preparation of its case.