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**Via the Appeals Casework Portal**

Your ref APP/C1950/W/21/3287854

27 April 2022

Dear Sirs

**Objection to appeal APP/C1950/W/21/3287854 by LW Developments Ltd for development at Northaw House Coopers Lane Northaw Potters Bar EN6 4NG (the "Proposed Development")**

We write to object to the appeal by LW Developments Ltd in respect of the refusal of the planning application 6/2021/0072/MAJ (the "**Application**") by Welwyn Hatfield Borough Council ("**WHBC**") on 26 May 2021.

Our client is [REDACTED] a large private residential estate located immediately to the north of the Proposed Development, on the opposite side of the Judge's Hill Road.

The basis of the appellant's case to the Planning Inspectorate is fundamentally unattractive: that the commitments and assurances previously given to WHBC in order to secure its existing planning permission are now to be held back unless this appeal is allowed, so as to allow the construction of six further dwellings contrary to national and local policy.

**Our client's objection**

We refer to our client's written objection to the Application dated 16 February 2021, as enclosed. This sets out four primary grounds of objection which can be summarised as follows:

- visual impact on the openness of the Green Belt and the rural landscape character of the area, including in views to and from Nyn Park;
- failure to demonstrate the "Very Special Circumstances" policy test required to justify inappropriate development in the Green Belt;
- potential for drainage of waste water onto our client's land; and
- failure to constitute "Enabling Development" in relation to the listed buildings on the site.

We do not repeat the technical detail of these points in this present letter and understand that they will be taken into due consideration by the Inspector determining this appeal.

FAO Jonathan Alden

The Planning Inspectorate

- 2 -

27 April 2022

In addition to those points, we make further observations below on the legal basis of the appeal, as set out in the appellant's Statement of Case dated 19 November 2021, which in our client's view is fundamentally flawed.

### **The consented scheme**

Despite the lengthy arguments put forward in the appellant's Statement of Case, the facts of the planning background to this appeal are simple. The appellant has commenced development pursuant to planning permission ref. 6/2019/0217/MAJ (the "**Consented Scheme**") for 25 dwellings including the conversion of the listed buildings on the site. The only change to the Consented Scheme now proposed is the construction of six additional houses – one at either end of the site, and four along East Drive (the "**Additional Dwellings**").

Therefore, as is accepted at 2.2 of the Statement of Case, "this appeal essentially only relates to these 6 additional houses". Accordingly, the elements of the Proposed Development that already have consent should simply have been excluded from the Application. The inclusion of these elements represents a legally unjustified attempt to rely on the benefits already secured by the Consented Scheme as justification for the Additional Dwellings now proposed.

### **The restoration of the listed buildings**

The crux of the appellant's case is to assert that the Consented Scheme does not provide sufficient funding to secure the enabling development that has already been commenced, and therefore the Additional Dwellings are required to realise the benefits already secured. As set out in the officer's report for the Application, WHBC's viability consultant disagrees and considers that the Consented Scheme remains viable to enable the restoration of the heritage assets on the site.

In any event, we note that by commencing the Consented Scheme the appellant has accepted the requirement to restore the listed buildings. We refer in particular to condition 25 which requires the completion of the development "in accordance with the approved plans and details" and the accompanying section 106 obligation for the restoration of the listed buildings on the site prior to the occupation of the thirteenth dwelling.

The appellant asserts at 7.6 of its Statement of Case that "the existing consents do not obligate the developer to undertake the repairs to the listed buildings and convert them into what is agreed would be their optimum viable use, as they can in theory walk away after buildings [sic] and selling the 10 new build houses".

We consider that this scenario is in fact wholly unlikely and represents an unbecoming threat for any appellant to make as part of its case for planning permission. If the listed buildings were left in an incomplete or vulnerable state, WHBC would of course have a number of legal remedies open to it, such as service of an urgent works notice on the owners to prevent deterioration, vandalism or theft, or enforcement action for failure to comply with the conditions of the Consented Scheme. These would be enforceable on any future owner if the listed buildings were sold (if indeed the properties were marketable in the face of such breach). The failure to complete works to the listed buildings might well also constitute a criminal offence under the Planning (Listed Buildings and Conservation Areas) Act 1990.

The appellant's threat that if the appeal is refused the listed buildings "will be placed in significant jeopardy" is therefore both concerning – as an indication of their attitude towards custodianship of these significant buildings – and legally without substance.

We await sight of the new legal agreement that the appellant says will be provided to support the appeal and we will wish to comment on that document in due course.

FAO Jonathan Alden

The Planning Inspectorate

- 3 -

27 April 2022

**The planning balance**

Given the above, it is our client's view that the Additional Dwellings should properly be considered without any reliance whatsoever on the Very Special Circumstances or Enabling Development arguments that formed the planning justification for the Consented Scheme.

The Consented Scheme represents the maximum quantum of development that can be justified on the site having regard to the impacts on the landscape, Green Belt and listed buildings. It would not have been approved without meeting the planning policy tests for Very Special Circumstances and Enabling Development. It was so approved solely on the basis that it was the extent of development determined by WHBC (and agreed by the appellant) as required to fund the restoration of the listed buildings in accordance with Historic England's guidance on Enabling Development.

The Additional Dwellings constitute significant further harm without bringing about sufficient benefits to justify that harm. The only benefits that can lawfully be taken into account to weigh against this harm are those which are constituted by the Additional Dwellings; the wider benefits have already been secured by the Consented Scheme, which has commenced.

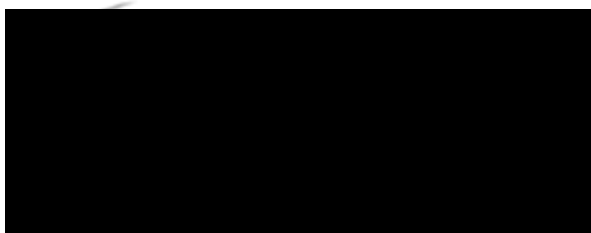
As such, it is plain that the appeal should be refused.

**Listed building consent**

By way of a final observation, we note that the Application was refused by WHBC alongside an associated listed building consent application (ref. 6/2021/0071/LB), which was not appealed in time. A duplicate application has now been submitted to WHBC (ref. 6/2022/0132/LB) and it is apparently the appellant's expectation that this application will be refused and appealed, to be conjoined with the present appeal. If this occurs our client requests an opportunity to make a representation on that appeal in due course.

We await details of the hearing date and arrangements for making oral representations on behalf of our client at the hearing.

Yours faithfully



Encs.

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By email ([w.myers@welhat.gov.uk](mailto:w.myers@welhat.gov.uk))

Our ref BES001/0002/4161-1256-0171/6/TB  
16 February 2021

Dear Mr Myers

**Objection to Planning Application 6/2021/0072/MAJ and Listed Building Consent Application 6/2021/0071/LB ("the Applications") by LW Developments Ltd ("the Applicant") validated 20 January 2021 for development at Northaw House Coopers Lane Northaw Potters Bar EN6 4NG ("the Site")**

We write on behalf of our client, [REDACTED] located to the north of the Site, to object to the Site's proposed development ("the Proposed Development"), which comprises 31 dwellings including conversion of the Grade II listed Northaw House.

The Applications are an unjustified attempt by the Applicant to secure approval for the construction of six additional dwellings ("the Additional Dwellings") beyond the scope of the development that is the subject of its existing planning permission (6/2019/0217/MAJ) and listed building consent (6/2019/0218/LB) for 25 dwellings ("the Consented Scheme") granted in January 2020. The Council should not entertain such a proposal for such further development of the green belt in this highly visible and sensitive location within the curtilage of a listed building. The proposal is lacking in sound planning or design justification and seeks to undermine the credibility of the established principle of "enabling development" in relation to heritage assets.

**Visual Impact**

The application documents do not consider the impact of the Additional Dwellings on longer views from the valley to the north, including from Nyn Park. This is despite the prominent location of the Site along the ridge of Judges Hill. Although the application documentation has failed to consider this our client believes that the Additional Dwellings will be visible from Nyn Park. In particular, we refer to the five houses now proposed along East Drive, where there is no development currently consented. It is clear that these will infill the existing gap between Northaw House and Northaw Village in these views from the north. The harmful impact of this has not been considered by the Applicant. We note that all of the Additional Dwellings were previously reviewed by the Council in pre-application discussions or during determination of the Consented Scheme, but were removed in response to Officer concerns as to their acceptability; these concerns remain unaddressed by the Applications for the Proposed Development.

More broadly, our client is of the view that the Additional Dwellings will cause clear harm to the openness of the green belt and the rural landscape character of the area. We note that the submitted Landscape and Visual Impact Assessment by Landscape Collective (December 2018) ("the LVIA") fails to properly consider

Mr William Myers

Welwyn Hatfield Borough Council

- 2 -

16 February 2021

or assess the wider visibility of the Additional Dwellings (all of the viewpoints are taken from the immediately surrounding context of Coopers Lane/Judges Hill and Well Road), which we suggest is surprising given the topographical prominence of the Site. As such it remains for the Applicant to demonstrate the impact of the Additional Dwellings in visual terms, although for the avoidance of doubt we are of the view that any such assessment will necessarily find wholly unjustified harm to the openness and landscape character of the green belt.

### **Green Belt**

The Applicant accepts in the submitted Planning, Design and Access Statement by Waller Planning (January 2021) (“the PDAS”) that the Proposed Development constitutes inappropriate development in the green belt but asserts that it meets the policy test for “Very Special Circumstances” to justify the inappropriate development. We strongly object to its interpretation of relevant case law and planning policy on this point and note that basing its case on the fact that planning permission has previously been granted on the Site for other development does not demonstrate that the Very Special Circumstances test has been met.

In fact it is plain that the Proposed Development constitutes additional inappropriate development within the green belt (in particular, through erosion of the presently open views across East Drive) with no additional benefits to amount to Very Special Circumstances, other than reliance on the provision of the six Additional Dwellings (given the implemented scheme, the benefits of the Proposed Development cannot be assessed on the basis of the 31 dwellings claimed by the Applicant to be a “*valuable contribution towards meeting the identified need for housing*” in this respect). For the avoidance of doubt, even if further development in this unsustainable location were to be regarded as remotely acceptable, ministerial policy remains that unmet housing need in isolation should not be considered to amount to Very Special Circumstances.

### **Drainage**

The Consented Scheme requires the submission and approval of a detailed surface water drainage scheme for the Site, which condition appears to have been discharged on 20 July 2020. However, our client does not accept the position asserted in the report provided by the Applicant and requests that your Council requires verification of its conclusions. In view of the Applications referring to an increased number of dwellings on the Site, please also require the Applicant to provide an updated surface water strategy report (the report previously submitted was dated December 2018). Further, no approach has been made to our client for permission to undertake detailed survey work to establish if the existing outfall ditch and associated drainage infrastructure on its land (being land burdened by the drainage right granted in the 1971 conveyance, a copy of which was submitted as part of the application for the Consented Scheme) remain fully fit for purpose.

The Consented Scheme makes no reference to waste water drainage, other than a short statement in Thames Water’s consultee response to the effect that “with regard to waste water network and waste water process infrastructure capacity, we would not have any objection to the above planning application, based on the information provided”. Our client (being the owner of the land to the north of Judges Hill that may be subject to waste water discharge) has attempted to obtain assurances from the Applicant that waste water will instead be drained by a connection to the public sewer (operated by Thames Water) at a point immediately to the east of the site.

At 8:36 this morning, the Applicant provided us with an email forwarding only a conditional consent from Thames Water that is subject to final survey following a Pre-Planning Enquiry application. We have received no confirmation that such an application has been or will be made, so the waste water strategy remains unclear. The treatment of waste water is an essential element of the Consented Scheme, particularly as the

Mr William Myers

Welwyn Hatfield Borough Council

- 3 -

16 February 2021

Applications now refer to an increase in the number of dwellings. Our client has grave concerns as to the adverse impact of waste water drainage on its land, for both ecological and amenity reasons, and also seeks a commitment from the Applicant for proper and agreed management of surface water and related infrastructure.

### **Enabling Development**

Having commenced some of the new-build housing, as the Applicant's agent notes in their cover letter (7 January 2021), alongside works to the Listed Building including stripping the roof, the Applicant now seeks, contrary to accepted planning principles, to achieve a "second bite of the same cherry" (as it was described in paragraph 5.4.4 of Historic England's document "Enabling Development and the Conservation of Significant Places", June 2012), seeking to rely once again on an "enabling development" argument, despite that already having been the basis for the Council initially approving the Consented Scheme.

In doing so, the Applicant fails to acknowledge or to make any reference to Historic England's updated guidance on Enabling Development ("the Guidance", June 2020), instead suggesting only that the previous version is "is out of date and inconsistent with national policy" (PDAS 6.35). We do not seek here to provide a detailed analysis of the compliance of the Proposed Development with the Guidance but do suggest that failure to refer to it is a critical omission of the Applications. In our client's view, in particular, it is clear that the Applications, by relying on the fact that it has "been previously accepted that enabling development can be justified on this site in order to secure the future of the listed buildings" (PDAS 6.9), do not address the fundamental principle of the Guidance that there is a "tipping point at which the harm to the heritage asset's significance is so great as to make the exercise of securing its future self-defeating". The Applications clearly surpass this tipping point, by the very considerable additional built form now proposed within the curtilage of the Listed Building, which will irrevocably harm its setting and significance.

Further, this harm cannot be said to be justified on the basis of the application material submitted by the Applicant, which is in numerous respects both lacking in detail and outdated. For example, the Building Condition Survey by Stuart Little is based on a survey carried out in January 2017 and is not considered to include sufficient detail to support the "enabling development" case put forward; similarly, the LVIA is dated December 2018 and while a letter has been provided to assert that it assesses a 31-unit development, we can see no reference to the four semi-detached houses now proposed along East Drive, which is an especially significant omission given their likely impact on openness and views, including from our client's property. We further note that we have not had sight of the Viability Report by James R Brown & Co. Ltd, referred to in the PDAS, which is central to the "enabling development" case relied upon by the Applicant, as (contrary to the advice in the Government's planning practice guidance) this does not appear to be available on the Council's online planning system. We would like the opportunity to review this prior to determination of the Applications.

Finally, we would be grateful if Nyn Park were added to the list of addresses to be informed as to applications submitted in relation to this property in future.

Yours sincerely

