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Your ref: 6/2020/3451/MAJ

Our ref: NOR2/4LPF

Email: 

10 March 2022

Dear Sirs

## **6/2020/3451/MAJ – Demolition of existing buildings and erection of 14 dwellings on land at Wells Farm Northaw Rd East, Cuffley (“the Site”)**

1. This representation is made on behalf of Northaw and Cuffley Parish Council (“**the PC**”) in relation to the above redevelopment at Wells Farm. It should be read alongside the PC’s initial objection submitted by Aecom dated 2 February 2021.
2. As Aecom notes, the starting point is that the Site is currently in the Green Belt. The Government’s commitment to the protection of the Green Belt is unequivocal – and the National Planning Policy Framework (“**NPPF**”) states in terms that the Government attaches “great importance to Green Belts” (paragraph 137).
3. Despite contentions in the applicant’s Planning Statement, the proposal for 14 market rate houses and associated infrastructure does not fall within any of the exceptions in paragraphs 149 and 150 of the NPPF, and therefore amounts to inappropriate development in the Green Belt.
4. Specifically, the first limb of the Green Belt exception for previously developed land (“**PDL**”) relied on does not apply because the development will have a greater impact on the openness of the Green Belt by virtue of the fact that what is presently on the Site now – single storey timber-clad sheds of a rural farm character - is far more modest in scale and visibility than the proposed “pin wheel” redevelopment of 14 2 storey stucco houses.<sup>1</sup>
5. This is very plain from the images extracted from the applicant’s Design and Access Statement, with image 1 showing the existing units and image 2 showing the proposed housing.

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<sup>1</sup> The PC does not take issue with the design principles.



Image 1 – Existing units



Image 2 – Proposed housing

6. The second limb relied on in the Planning Statement, that the Green Belt exception for affordable housing applies, is surprising and disingenuous because the planning application form makes clear that no affordable housing will be provided – all 14 houses are market housing. This point is raised by Aecom this way: *“In this instance, the proposal cannot engage criterion 2 as it does not include any affordable housing element and therefore cannot ‘contribute to meeting an identified affordable housing need within the area’”*.

#### Very Special Circumstances test

7. Given the absence of any credible argument that the Site meets one of the Green Belt exceptions, 148 of the NPPF states that inappropriate development should only be approved where very special circumstances (“VSC’s”) exist. Paragraph 148 of the NPPF states that VSC’s will not exist unless the potential harm to the Green Belt, by reason of inappropriateness and any other harm resulting from the proposal, is clearly outweighed by other considerations.
8. Taking these elements in turn:

9. Paragraph 147 of the NPPF clearly sets out two broad categories of harm. The first is the “potential harm to the Green Belt by reason of inappropriateness”. The second is “any other harm resulting from the proposal”.
10. In respect of the first category of harm, that is a reference to paragraph 147 of the NPPF which states that *“inappropriate development is, by definition, harmful to the Green Belt...”* This is also known as “definitional harm”.
11. Definitional harm arises, *by definition* and without the need to demonstrate any additional harm to the Green Belt, simply by virtue of the fact that inappropriate development is taking place in the Green Belt. Indeed, definitional harm occurs even if there is no actual harm to the openness of the Green Belt. The policy reasons for this were explained in Doncaster MBC v Secretary of State for the Environment [2002] J.P.L. 1509, by Sullivan J (as he then was) as follows (at paragraph 69):
- “However, it is very important that full weight is given to the proposition that inappropriate development is by definition harmful to the Green Belt. That policy is a reflection of the fact that there may be many applications in the Green Belt where the proposal would be relatively inconspicuous or have a limited effect on the openness of the Green Belt, but if such arguments were to be repeated the cumulative effect of many permissions would destroy the very qualities which underlie Green Belt designation.”*
12. As the proposed development is inappropriate development, substantial weight should be given to this harm. That is because paragraph 148 of the NPPF states (with emphasis added) *“When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt”*.
13. Turning next to the question of whether the development results in “*any other harm*”, that is a recognition of the fact that development in the Green Belt may also cause additional harm to the Green Belt. For example, development may be both inappropriate (i.e. definitional harm) and also additionally harm the openness of the Green Belt (i.e. additional harm). Both types of harm need to be considered and given weight.
14. *Any other harm* includes not only non-Green Belt harm, but also other Green Belt harm. This is very well established in law. In Doncaster, Sullivan J emphasised (underlining added for emphasis):<sup>2</sup>

*“...the importance of recognising at all times that inappropriate development is by definition harmful, and then going on to consider whether there will be additional harm by reason of such matters as loss of openness and impact on the function of the Green Belt.”*

15. Here, in addition to the definitional harm (to which, as above, substantial weight should be attached), the development causes additional harm to the Green Belt and the PC urges the Council to refuse permission on the findings that:
- (1) the proposal results in a significant reduction in openness as a result of the increase in built form proposed on the site;
  - (2) the proposal results in significant harm to the visual elements of openness of this rural site from key viewpoints, including the Hertfordshire Way

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<sup>2</sup> See also paragraph 70 of the same judgment.

(3) the overall finding is that the development will result in a “*significant degree of impact on the openness of the Green Belt*”.<sup>3</sup>

16. Substantial weight should be given to this harm, in accordance with paragraph 148 of the NPPF. However, it must be emphasised that the development causes significant harm to openness which is, as paragraph 137 of the NPPF is at pains to re-emphasise, one of the “*essential characteristics of Green Belts*”.<sup>4</sup>
17. Significant harm to one of the “*essential characteristics of Green Belts*” in circumstances where we must give substantial weight anyway to “*any harm*”, even if it is only limited, means that the harm identified here can only be given substantial weight at the very highest end of the spectrum (i.e. very substantial weight indeed).
18. So, in terms of the balance under paragraph 148, substantial weight must be given to the definitional harm caused by the development, and very substantial weight must be given to the additional harm that the development causes to the openness of the Green Belt.
19. The benefits of the proposal must not just outweigh but clearly outweigh the harm identified above. The benefits put forward by the applicant can be put into two categories.
20. First, the provision of market housing. Given the lack of any affordable housing, there is at best limited weight attributed to the provision of 14 houses.
21. However, it should be recalled that a written ministerial statement (from December 2015) has emphasised that unmet housing need is unlikely, taken alone, to clearly out-weigh harm to the Green Belt and any other harm so as to establish VSC’s. This statement dates from December 2015, but it has not been withdrawn and, in any event, simply clarifies what is clear from the NPPF itself.
22. Second, the fact that part of the Site is allocated in the emerging Local Plan. The weight to be attached to emerging plans is dictated by paragraph 48 of the NPPF. This states as follows:

*48 “Local planning authorities may give weight to relevant policies in emerging plans according to:*

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);*
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*

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<sup>3</sup> These findings would be consistent with the Council’s stated reasons for refusal for a similar scale of housing redevelopment at Colesdale Farm, located a short distance away along Northaw Road, (application ref 6/2019/2760/OUTLINE) where development in the same Green Belt parcel was refused on the basis that the development constitutes inappropriate development in the Green Belt and is not outweighed by other material planning considerations. The Inspector allowed the Colesdale appeal on the basis that while the proposal would have a greater effect on the visual openness it would not amount to substantial harm given the previously industrial nature of the site and the separation from neighbouring settlements of Cuffley and Northaw – factors which are not comparable to the changes to openness and visibility to the Wells Farm Site arising from this application.

<sup>4</sup> Paragraph 137 of the NPPF states: “*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.*”

*c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).*

#### Emerging plan considerations

23. The plan is still at examination.
24. The Site is contained with a proposed larger allocation "HS30". However, the adoption of that plan is far from certain and indeed, in a recent appeal decision in relation to Colesdale Farm, the Inspector concluded that limited weight could be given the emerging local plan<sup>5</sup>. For this reason, a decision on this speculative planning application in advance of a decision by the Full Council on the adoption or withdrawal of the emerging local plan is paramount to the determination of this planning application. Therefore, the Council should at a minimum defer determination of this planning application until the Council's position on the plan is made clear, and it is known whether the site would be included in any plan should it be adopted.
25. Further, allocation of the Site is the subject of an objection from the PC on 1 May 2020, which directly calls into question whether the Site should be allocated. It is also opposed by the Borough Councillors<sup>6</sup> who have repeatedly made clear they oppose allocation of sites where there is high Green Belt harm. These objections reflect the fact that the proposed allocation, HS30, is not consistent with the NPPF in that "exceptional circumstances" have not been demonstrated for the release of land from the Green Belt. This is a factor which reduces the weight to be attached to the emerging allocation.
26. Finally, the application only delivers a piecemeal delivery of part of the larger site and could be at the expense of the development of larger site should the Site be allocated contrary to the PC and Councillors' objections.
27. Overall, applying the above factors, the emerging allocation should only be given limited weight. Indeed, we note that this degree of weight is consistent with other decisions made by the Secretary of State. For example, when the Draft London Plan had completed its examination but before the Inspector had published his report, its policies were given "limited weight": see Land at 1 Cambridge Heath Road decision at paragraph 12 and Land at Harrow School decision at paragraph 12.
28. Plainly, applying the weightings given above, VSC's do not exist. In those circumstances, permission should be refused.

#### Tilted Balance

29. The Planning Statement argues that the tilted balance applies to determination of this application.

*3.11 In the absence of an adequate five-year housing land supply, the "tilted balance" set out in the NPPF Paragraph 11 is engaged and permission should be granted unless it involves an area or asset of particular importance or "any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole". Such a substantial undersupply against a 5 year Housing Land Supply and under-performance against the HDT are strong contributory factors towards a case for very special circumstances.*

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<sup>5</sup> APP/C1950/W/20/3253559.

<sup>6</sup> Letter of Council to the Planning Inspector dated 10 February 2020

30. This statement is incorrect. NPPF makes clear that the presumption, or so-called tilted balance, does not apply to Green Belt sites for the reason that the adverse effects will not significantly and demonstrably outweigh the benefits.

Hertfordshire County Council (“HCC”) Highways Objection

31. According to the planning register, in February 2021 Highways objected and recommended permission be refused on grounds of highway safety because of the lack of adequate visibility splays from the site access on to B156 Northaw Road East:

*Notice is given under article 18 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 that the Hertfordshire County Council as Highway Authority recommends that permission be refused for the following reasons:*

*There is insufficient information supplied with this application to enable the Highway Authority to reach a recommendation. In the absence of the necessary information, the Highway Authority recommends refusal due to doubt over possible implications for highway safety and convenience.*

*It is evident the required visibility splays at the site access cannot be achieved with the proposed reduction in speed limit from national speed limit to 30mph. The details submitted to support the reduction in speed limit are currently insufficient. The applicant must be aware of the required characteristics for a 30mph zone set out in the HCC Speed Management Strategy (November 2020).*

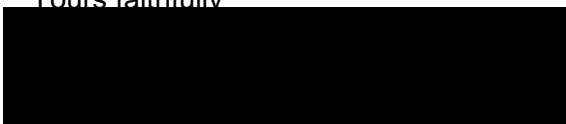
32. The Highways objection makes clear that there is no basis to reduce the road speed on the B156 as there are no active frontages proposed for the development. For this reason, the safety issue remains unresolved.

33. Where Highways objects on grounds of safety, the Council must refuse permission to avoid risk to health and safety as set out in the NPPF 111.

Conclusion

34. For the above reasons, the PC urges the Council to refuse the application on the basis that it does not meet any of the NPPF tests for development in the Green Belt, fails to demonstrate Very Special Circumstances to the grant of permission for inappropriate development in the Green Belt and presents unacceptable safety risks raised by HCC Highways.

Yours faithfully



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