



East Herts District Council

Statement of Case

Land at Land East of the A10

Buntingford

Hertfordshire SG9 9SQ

May 2024

Appeal Ref: APP/J1915/W/24/3340497

LPA Ref: 3/23/1447/OUT

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1. Introduction

- 1.1 This Statement of Case is submitted on behalf of East Herts District Council (EHDC) in support of its decision to refuse outline planning permission for:

“Outline planning application (with all matters reserved except for access) for up to 350 dwellings, up to 4,400 sqm of commercial and services floorspace (Use Class E and B8), and up to 500 sqm of retail floorspace (Use Classes E) and other associated works including drainage, access into the site from the A10 and Luynes Rise (but not access within the site), allotments, public open space and landscaping.”

- 1.2 The decision to refuse the planning application was made by officers under delegated authority on 15 February 2024 for the following 5 reasons:

“1.The proposal comprises a substantial urban extension of Buntingford which would encroach into the rural area beyond the Green Belt, beyond the settlement boundary, to the detriment of the landscape character, rural appearance, and distinctiveness of the area contrary to Policies DES2, DES3, DES4, GBR2 of the East Herts District Plan (2018), Policies ES1, HD1, HD2, HD4 and BE2 of the Buntingford Community Area Neighbourhood Plan and the National Planning Policy Framework.

2.The proposals represent an unsustainable form of development and residents and visitors would be heavily reliant on the private car to access

employment, main food and comparison shopping elsewhere. The proposals do not amount to sustainable development (in accordance with the NPPF) and would result in a form of development outside of the settlement boundary that conflicts with the Development Strategy within the District Plan and objectives of the Buntingford Community Area Neighbourhood Plan. The proposal would be wholly contrary to Policies DPS2, INT1, BUNT1, BUNT3 and TRA1 of the East Herts District Plan (2018), policy HD1 of the Buntingford Community Area Neighbourhood Plan and the National Planning Policy Framework.

3.It has not been demonstrated that the application site can accommodate the maximum quantum of development outlined within the submitted parameter plans. The proposal at the maximum level outlined within these plans would create a dense and urban appearance which does not respect the site's rural character or its landscape character and fails to transition between the urban settlement boundary and the countryside beyond. The proposal would fall contrary to policies DES2, DES3, DES4, GBR2 or HOU2 of the East Herts District Plan (2018), policies ES1, HD1, HD2 and HD4 of the Buntingford Community Area Neighbourhood Plan, and guidance in the National Planning Policy Framework.

4.In the absence of a completed legal agreement the application fails to secure appropriate financial contributions to infrastructure to off-set the impact of the development on local infrastructure or to provide any affordable housing, or a required bus route. As such the proposal is contrary to policies DPS4, DEL1, DEL2, HOU3, CFLR1, CFLR7, CFLR9 and CFLR10 of the East Herts District Plan 2018, policies of the Buntingford Community Area Neighbourhood Plan and the National Planning Policy Framework.

5. Insufficient information has been submitted to demonstrate that the proposal would not have an unacceptable impact on flood risk. This is due to it not being evidenced that there is a viable location to discharge the surface water runoff from the proposal, the greenfield runoff rates and volumes are not agreed and Thames Water have advised that there is no capacity to discharge surface water sewer at the proposed manhole. The development may increase the risk of flooding elsewhere. The proposal falls contrary to policies WAT1, WAT3, WAT4, WAT5 and WAT6 of the East Herts District Plan (2018) and the National Planning Policy Framework."

- 1.3 All Matters are Reserved for the outline application, with the exception of the Means of Access to the Site from the A10 and Luynes Rise - for which determination is sought at this stage. A list of drawings, plans and other documents submitted in support of the planning application will be set out in the Statement of Common Ground.
- 1.4 This Statement of Case sets out the issues to be considered in Section 2. In Section 3 a summary of the supporting documentation to be submitted is provided. The likely Planning Conditions, legal agreements and other Inquiry documents to be prepared are summarised in Section 4.

2. Issues to be considered

- 2.1 Whilst it is open to the Appeal Inspector to consider all relevant planning merits and material planning considerations in relation to the appeal proposal, EHDC's evidence and justification for its decision will focus on

the five reasons for refusal, as set out above, unless otherwise advised by the Inspector.

Preliminary Issues

- 2.2 At the time the decision was made to refuse planning permission, EHDC was not able to demonstrate a 5 year supply of housing.
- 2.3 From a position statement published in March 2024 and an Addendum in April 2024 EHDC can now demonstrate a 5.95 years' supply of housing. This is as a result of the way "affordability ratios" are now calculated within the NPPF (2023) and as a result of recent approvals for housing schemes in the district.
- 2.4 The planning history is a material consideration in the determination of the application. There have been previous schemes that have been refused planning permission. The most recent in 2022 was a hybrid application that sought full planning permission for up to 350 homes and outline permission for commercial and community floorspace.
- 2.5 Due to the decision on the previous application, and in terms of the quantum of development proposed, officers advised the appellants in a meeting on 28 November 2023 that this element of the scheme was again not likely to be supported by the officers due to the submitted information showing a scheme that was too dense. The appellants did not change their position.

- 2.6 A Masterplan document was not submitted to accompany this application. A Masterplan document from the appellants is not currently anticipated by EHDC. A Phasing Plan has not been submitted.
- 2.7 The appeal site was submitted by the appellants as a potential housing site, for inclusion within the current Local Plan. The site was rejected due to Buntingford not being considered a suitably sustainable location.

Reason for Refusal No.1

- 2.8 The appeal site falls within the countryside, outside the development boundary of Buntingford. EHDC considers that the proposal causes harm to the landscape character and rural appearance of the countryside. The degree of harm would be contrary to the objectives and policies of the development plan and the National Planning Policy Framework.

Reason for Refusal No.2

- 2.9 The appeal site is located in the countryside and for this quantity of housing and commercial floorspace, and with a lack of reasonable proximity and limited access to services and facilities, the occupiers of the proposed development would be over reliant on the use of the private car. The Council does not consider the proposals to constitute a sustainable form of development in the context of the settlement and its remote location within the District.

Reason for Refusal No.3

- 2.10 EHDC's reason for refusal relates to the failure of the appeal proposal to demonstrate that the development could be assimilated within the context of the existing built development and natural environment, and achieve good quality design and place-making. The failure to assimilate appropriately with the context (contrary to the District & Neighbourhood Planning policies) contributes to further harm in the planning balance.

Reason for Refusal No.4

- 2.11 The reason for refusal reflects the fact that there is no current or suitable means for the development to mitigate its impact and provide necessary infrastructure to ensure the proposed development could be integrated with the local area.
- 2.12 The applicant (appellant) had indicated that some contributions to off-set the impact of the development were not accepted. A Section 106 Agreement had not been submitted at the time the application was determined.
- 2.13 EHDC remains unclear as to the reason why the contributions sought were not considered acceptable – whether this was a point of principle, or for viability reasons.
- 2.14 The appellant has recently submitted a Draft S106 legal agreement in an attempt to address the reason for refusal. However, the contributions

that have been offered do not meet the requirements of the County or District Councils. The s106 agreement does not include all other necessary planning obligations that would be required to mitigate the impact of the development and does not enable compliance with the Development Plan policies, at this stage.

- 2.15 It is EDHC's view that the appeal be dismissed due to the impact of the proposal on the local area and local infrastructure and the scheme's failure to meet the requirements of the development plan and the NPPF.

Reason for Refusal No.5

- 2.16 The Local Lead Flood Authority commented on the proposal and the case officer's report assessed this. The Local Lead Flood Authority had stated that the appellants had not demonstrated that the proposal would adequately accommodate surface water run-off.
- 2.17 Following on-going discussions, the LLFA has recently confirmed that subject to the imposition of conditions, which shall be set out in the forthcoming Draft Schedule of Conditions, it would withdraw its objection to the appeal proposal. Subject to appropriately worded conditions, EHDC considers that this reason for refusal can be considered to be addressed.

Planning Policy

- 2.18 The Development Plan for the District comprises the East Herts Local Plan 2018 and the Buntingford Community Area Neighbourhood Plan.
- 2.19 The Strategic Priorities and objectives of the Plan set out what the Plan is seeking to do in order to achieve the Council's vision and deliver sustainable development for the District.
- 2.20 The EHDC Landscape Character Assessment 2007 is a Supplementary Planning Document that is a material planning consideration.
- 2.21 The National Planning Policy Framework is relevant to the determination of this Appeal.
- 2.22 The Government's Planning Practice Guidance is relevant to the determination of this Appeal.

3. Supporting Documentation

- 3.1 A list of supporting documents is as follows, which may form part of EHDC's evidence.
- Relevant Local Plan Policies, Guidance, Strategies, SHMA and supporting documents
 - Relevant EHDC documents in support of the Local Plan and its Examination in Public including those documents in the Examination Library, the Local Plan Inspector's comments,

- Exchanges of correspondence between the site promoters, the Appellant, the landowner and EHDC
- Relevant Supplementary Planning Documents
- NPPF, NPPG, CIL Regulations
- Other relevant decisions by EHDC in respect of planning applications in the District
- Relevant High Court decisions, judicial considerations and appeal decisions

4. Planning Conditions, Section 106 Agreements and Other Inquiry Documents

4.1 A Schedule of Draft Planning Conditions will be prepared by EHDC with the intention of discussing and agreeing them as far as possible with the Appellant in advance of their discussion as part of the inquiry.

4.2 A Draft Section 106 Agreement has been submitted by the Appellant. EHDC does not consider that the proposed contributions meet the requirements of the development plan, supplementary development plan or the NPPF. The Draft Section 106 Agreement submitted does not comprise a full set of planning obligations (including non-financial contributions) to mitigate the impacts of the development and therefore the proposals would not meet the requirements of the development plan and NPPF. As such, it has not suitably addressed the reasons for refusal. EHDC considers that the planning obligations requested by EHDC and HCC would meet the national and local policy tests, and that they are necessary to make the development acceptable in planning terms, directly

related to the development, and fairly and reasonably related in scale and kind to the development. A Statement setting out whether the S106 Agreement complies with the CIL Regulations will be jointly prepared for the Appeal Inspector by EHDC and Hertfordshire County Council.

- 4.3 A draft Statement of Common Ground has been shared between the parties and further work will be carried out with a deadline set for 7 June 2024.
- 4.4 Following from the Pre-Inquiry meeting with the Appeal Inspector, EHDC may submit further documents as required.

5. Conclusion

- 5.1 EHDC anticipates that it will call three expert planning witness to address the reasons for refusal. However, if an agreement cannot be reached on the wording and the level of contributions and provision of all other necessary planning obligations sought in the Draft S106 Agreement, there may be a requirement for additional Inquiry time and input from officers.
- 5.2 EHDC's evidence will seek to demonstrate that the Appeal proposal is contrary to the Development Plan taken as a whole. The Development Plan is the primary planning policy document for determining the proposals in accordance with S38(6) of the P&CPO Act and there are no other material circumstances to determine otherwise than in accordance with the Development Plan.

5.3 At the time of making its decision, EHDC considered that in applying the 'tilted balance' approach, as set out in paragraph 11 of the NPPF, the harm that would have been caused by this particular proposed development was considered to significantly and demonstrably outweigh the benefits of the development, and would not have constituted sustainable development. EHDC's current position is that it can now demonstrate a 5 year supply of deliverable housing sites, and this means that the application of the 'tilted balance', for this reason, is not now required.