

g) CD17.11 APP/J1915/W/22/3303408, 3303413 & 3288702; 1 Whempstead Road, Benington SG2 7BX

In respect of GA1:the Gilston Area and HERT3:West Herford North the inspector found (CD17.11 paragraph 55) that despite outline planning applications for housing having been submitted in 2019, they remained undetermined and that the failure of these sites to come forward according to the Council's timescales in the 2019 5YHLSPS (CD17.12) undermines any confidence in the future milestones set out in the 2022 position statement (CD5.3), particularly as no planning permission existed, and reserved matters and planning conditions submissions will be required before substantive works can commence in order to deliver housing according to the timescales outlined.

In para 55 (CD17.11) the inspector considers that the Council's timing for the resolution to grant outline permission for WARE2: Land north and east of Ware in the first quarter of 2023 to be incredibly optimistic and indeed it was as this application was not validated until Jan 2023 and remains undetermined to this date.

In respect of EWEL 1: Land east of Welwyn Garden City the inspector (CD17.11 para 58) identifies the issues of having to approve a large complex scheme across LPA boundaries as an issue that will add additional complexities to securing the approval and development of the site and indeed the 50 completions that the Council predicted as occurring next year (2025/26) again appear highly unlikely as the outline application remains undetermined despite the Council's timescale of granting permission last month (March 2024).

It is pertinent to note that the inspector (CD17.11 paragraph 59) accepted the appellants approach for WARE2 and EWEL 1 despite the signed statements of common ground with respective applicants citing that none of the timescales set out previously in 2019 had been met.

The above led to the inspector (CD17.11 para 60 and footnotes 18 to 21 page 10) to question the overall deliverability of the Council's anticipated supply of housing and accepting the appellant's position excluded contributions from the following sites:

- i) Sites GA1:the Gilston Area
- ii) HERT3:West Herford North
- iii) WARE2: Land north and east of Ware
- iv) EWEL 1: Land east of Welwyn Garden City

This resulted in the inspector concluding that there was a modest shortfall in the five year land supply of some 760 dwellings (CD17.11 para 60 page 10).



Appeal Decisions

Hearing held on 14 and 15 December 2022

Site visits made on 15 December 2022

by M Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2023

Appeal A Ref: APP/J1915/W/22/3303408

1 Whempstead Road, Benington SG2 7BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr P Newman and Ms C Pepperell against the decision of East Hertfordshire District Council.
 - The application Ref 3/21/2907/OUT, dated 17 November 2021, was refused by notice dated 3 March 2022.
The development proposed is demolition and removal of all poultry houses and other buildings and the erection in their place of 12no detached dwelling houses (8no market houses and 4no affordable houses) with garages and car parking including the change of use of the land to C3 residential, together with alterations to the existing vehicular access and driveway off Whempstead Road with childrens' play space, new turning head and visitor car parking.
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Appeal B Ref: APP/J1915/W/22/3303413

1 Whempstead Road, Benington SG2 7BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr P Newman and Ms C Pepperell against the decision of East Hertfordshire District Council.
 - The application Ref 3/21/2908/OUT, dated 17 November 2021, was refused by notice dated 3 March 2022.
 - The development proposed is demolition and removal of all poultry houses and other buildings and the erection in their place of 10 self-build / custom build units with garages and car parking including the change of use of the land to self-build residential plots, together with alterations to the existing vehicular access and driveway off Whempstead Road with childrens' play space, new turning head and visitor car parking.
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Appeal C Ref: APP/J1915/W/21/3288702

1 Whempstead Road, Benington SG2 7BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Phillip Newman against East Hertfordshire District Council.
 - The application Ref 3/21/1760/FUL, is dated 2 July 2021.
 - The development proposed is a revised 'free go' planning application for the change of use and conversion of 5no poultry house buildings to form dwelling houses and the demolition and removal of two agricultural storage buildings and their replacement with 1no detached one bedroom dwelling house, to provide, overall, 6no dwelling houses, together with car parking, electric charger points, secure cycle storage for 2no bicycles for each dwelling, air source heat pump enclosures, a double garage for one of the
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dwelling houses, a turning head, refuse and recycling bins enclosures, and post and rail fencing to define maintenance strips for each of the dwelling houses, and the continued use of the existing vehicular access.

Decision

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Appeal C

3. The appeal is dismissed and planning permission is refused.

Preliminary Matters

4. This decision relates to three appeals which were dealt with at a joint Hearing involving a total of five appeals. The remaining two appeals (Refs: APP/J1915/W/21/3288588 and APP/J1915/W/21/3288595) occupy adjacent lying sites and are dealt with in separate decisions.
5. Appeals A and B involve outline proposals¹ which relate to the same site, although each scheme differs in terms of the type and quantum of housing proposed. Appeal C occupies part of the same site area as Appeals A and B, but it also differs in terms of the type and quantum of housing proposed, and involves the partial conversion of existing buildings. It is a detailed proposal as opposed to an outline. I have considered each proposal on its individual merits. However, to avoid duplication, I refer to the three schemes together, except where otherwise indicated.
6. Appeal C *only* results from the Council's failure to determine the planning application within the prescribed period. There is no formal decision on the application, as jurisdiction over that was taken away when the appeal was lodged. However, the Council's evidence includes the reasons why the planning application would have been refused had it been empowered to do so.
7. The Council's reasons for refusal in relation to Appeals A and B did not cite a lack of mitigation in respect of infrastructure. However, during the Hearing it was confirmed that financial contributions were deemed necessary by the Council to provide infrastructure and services to support the housing associated with these schemes. As a result, Unilateral Undertakings (UU) under Section 106 of the Town and Country Planning Act 1990 were submitted by the appellants following the Hearing. I address this in my reasoning.
8. Prior to the Hearing, a Statement of Common Ground (SoCG) was submitted setting out the areas of agreement and disagreement in relation to each appeal proposal. I used this in part to form the main issues in each appeal. The SoCG also included disagreement over whether or not the Council could demonstrate a 5-year housing land supply (HLS). I also address this later in my reasoning.

¹ Appeal A reserves appearance and landscaping. Appeal B reserves all matters except for access.

Main Issues

9. As a result of the foregoing, the main issues in these appeals are:

- Whether or not the appeal sites are an appropriate location for housing, having particular regard to local and national policies and the accessibility of services and facilities.
- The extent to which the proposals would affect the employment generating potential of the appeal sites, and any harm arising as a result.
- Whether the proposals would make adequate provision for infrastructure (Appeals A and B).
- The effect of the proposal on the character and appearance of the area (Appeal A).
- The effect of the proposals on highway safety (Appeals A and B).

Reasons

Location

10. According to the East Herts District Plan 2018 (DP) the appeal sites are located within the *Rural Area Beyond the Green Belt*. Policy GBR2 of the DP lists the types of development that will normally be permitted in these areas. Under criterion (e) of this policy, this includes limited infilling or the partial or complete redevelopment of previously developed land in sustainable locations, where appropriate to the character, appearance and setting of the area.
11. There is no definition of 'limited infilling' in the DP. However, the word 'limited' preceding the word 'infilling' indicates to me that only a restricted form of infilling would be acceptable. In the absence of strict criteria, I have not only considered the quantum of development in each case, but also the characteristics of the proposals in relation to their surroundings.
12. In this regard, the built form proposed in each case would be generally situated some distance to the rear of a linear arrangement of housing which faces Whempstead Road. To the south of the appeal sites a scheme involving up to 13 houses was allowed on appeal at *Gosmore Paddock*². Assuming this scheme is built out, it would link the housing along Whempstead Road with the looser arrangement of housing located generally to the south and east of the appeal sites. As a result, housing would occupy land generally beyond the southern, western and eastern boundaries of the proposals.
13. In contrast, the land generally to the north of the appeal sites is considerably more rural in character. This is despite the presence of a large house and associated outbuildings³, along with several agricultural buildings, some of which have permission to be converted to dwellings⁴. Overall, these buildings occupy a relatively small proportion of a much wider area of countryside.
14. Whilst I appreciate that Appeal C would largely involve the conversion of existing agricultural buildings, it would also involve a new build dwelling and a garage along with the use of the surrounding land for residential purposes. Therefore, it would not be an appropriate type of development under criterion (d) of GBR2, nor is this argument advanced by the appellants. Therefore, the

² Appeal Ref: APP/J1915/W/17/3184877 – up to 13 dwellings

³ Referred to as 'Lingfields'

⁴ Including Moles Farm

- proposal would introduce six new dwellings and associated development beyond the built-up area of the village.
15. As a result, and applicable to all the appeal schemes, they would not occupy a space in between areas characterised by housing; rather, they would extend housing in a northerly direction and away from the settlement in a manner which could not be described as 'infilling'.
 16. Moreover, as well as not being a form of infill, the proposals accompanying Appeal A and Appeal B would not be limited either, this due to the footprint and overall scale of the built form proposed which would be greater than the spatial extent of the buildings that currently exist on the site.
 17. In respect of the previously developed nature of the appeal sites, in 2008 a Lawful Development Certificate (LDC) was issued⁵. It certified that specific areas had been used for the storage and maintenance of skips, containers and cages, with the remaining land having been in agricultural use. Furthermore, there is no disagreement between the main parties that a proportion of the appeal sites comprises previously developed land.
 18. However, elements of the new build associated with each of the schemes would occupy land which is not previously developed. In any event, irrespective of the extent of previously developed land utilised, Policy GBR2(e) also requires that such schemes are in sustainable locations.
 19. In this regard, Benington is identified as a *Group 2 village* in the DP⁶, indicative of a smaller village with access to some services and facilities. Policy VILL2 of the DP relates to proposals within group 2 village boundaries, but whilst the appeal sites lie close to Benington, they lie outside of it. Nevertheless, I accept that locations outside settlement boundaries may not necessarily be unsustainable, depending on the accessibility of services and facilities.
 20. The southern part of Benington is the closest part of the settlement to the appeal sites, lying within suitable walking distance. However, this part of Benington contains limited facilities, including an agricultural business with an associated retail area, and a public house. The northern part of Benington lies further away and although still within theoretical walking distance⁷, it offers limited provisions, including a primary school, churches and a village hall. The appellants also refer to a branch doctors' surgery within Benington, although no details concerning the extent of health services available have been provided. In any event, these facilities together would not be sufficient to meet the day to day needs of future occupiers of the proposals.
 21. As a result, residents would have to travel further afield to food stores, shops, larger places of employment, and secondary or higher educational establishments, all of which are located outside Benington and out of range so that walking or cycling would not be a practical or realistic option. I appreciate that bus stops are located along Whempstead Road within comfortable walking distance of the proposals⁸, but the bus services are limited in frequency⁹.

⁵ East Herts Council Certificate Ref - 3/08/0151/CL – under S191 of the TCPA 1990

⁶ Benington comprises two separate boundaries as depicted by document HD4 (annexe A of this decision)

⁷ Approximately 1.6km away from the appeal sites

⁸ Circa 200m according to SoCG

⁹ See paragraph 2.6.1 of appellants appeal statement

22. Therefore, despite proposals to improve access to bus stops in the form of pedestrian footway improvements and potential improvements to cycle infrastructure¹⁰, the fundamental lack of daily bus services would be unlikely to reduce the propensity of future occupiers to travel to access shops, facilities and places of employment by car.
23. As a result, the proposals would not be an appropriate location for housing, having particular regard to local and national policies and the accessibility of services and facilities. The schemes would conflict with Policy GBR2, which requires, amongst other matters, that proposals in rural areas beyond the Green Belt are permitted provided they comprise limited infilling, or the partial redevelopment of previously developed sites in sustainable locations. The schemes would also conflict with Policies DPS2 and TRA1 of the DP which require, in summary, that development is located in places which enable sustainable journeys to be made to key services and facilities, and that sustainable brownfield sites are prioritised.

Employment

24. Policy ED1(iii) of the DP requires that development which would cause the loss of a site/premises which is currently, or was last, in employment use will only be permitted if its retention has been fully explored, including whether improvements to the existing site would make it more attractive, and evidence to show that it has been marketed. Policy ED2(iii) similarly requires evidence to show that agricultural or other businesses in rural areas are no longer viable.
25. The appeal sites are not allocated for employment purposes in the DP. However, the LDC confirms historic storage and maintenance of skips and other containers, along with agricultural uses on the remaining land. In relation to the latter, it was put to me during the Hearing by the appellants that the existing poultry sheds had not been in use for a period in excess of 12 years, and other agricultural activities ceased on the appeal sites approximately 8 years ago. Furthermore, there was no evidence of activities indicative of a current agricultural business when I visited the site, nor do I have any substantive evidence before me to suggest otherwise.
26. Aside from this, the appeal sites have mainly been used for the storage of skips and containers, along with their occasional maintenance and repair. This involves vehicles occasionally travelling to and from the site to collect and return them. According to the appellants, no employee is directly employed at the site, nor have they been in the past. Therefore, whilst the appeal sites support limited current and historic businesses, this land is peripheral, and the associated headquarters and employment base appear to be located elsewhere.
27. Overall, I conclude that the appeal sites have historically made, and currently make, a limited employment contribution to the local area. Nevertheless, their future potential for employment purposes has not been explored. As such there would be conflict with Policies ED1 and ED2 of the DP as there is limited information suggesting marketing or exploration of the sites for employment purposes, or relevant viability justification.

¹⁰ Submitted as planning obligations as part of Unilateral Undertakings associated with Appeal A and Appeal B

Infrastructure (Appeal A and B)

28. The submitted UUs propose financial contributions towards meeting the need for additional infrastructure arising from the developments. Contributions towards library services, education, waste, transport and youth services are proposed in accordance with the Council's guidance¹¹. The Council has provided justification for each of the contributions sought, and I find that they are necessary, related direct to the developments, and fairly related in scale and kind. Therefore, the contributions sought would meet the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the National Planning Policy Framework (Framework).
29. In respect of affordable housing, Policy HOU3 of the DP requires provision to be made for developments of more than 10 dwellings, or any development where the floor space would be greater than 1000m². Appeal A proposes affordable housing in line with this policy. However, no affordable housing is proposed as part of appeal B.
30. In this regard, I am aware that appeal B proposes 'self-build' dwellings¹². However, there is nothing within Policy HOU3 to suggest that self-build developments should not make appropriate affordable housing provision. Whilst this policy allows an exemption for viability reasons, no detailed viability information accompanies this appeal. Moreover, self-build housing is not listed as a type of affordable housing in annexe 2 of the Framework, and the definition of 'self-build' contained in the same annexe recognises that this form of housing can either be market or affordable. Consequently, I see no reason why the proposal should be exempt from providing affordable housing.
31. Based on the indicative details accompanying Appeal B, the floorspace thresholds set out in Policy HOU3 would be exceeded by the proposal¹³. Even if that was not the case, the Framework requires affordable housing to be provided for schemes involving 10 or more dwellings¹⁴. As a result, Appeal B would fail to secure appropriate financial contributions towards affordable housing as required by Policy HOU3 of the DP and the Framework.

Character and appearance (Appeal A)

32. In respect of Appeal A, the proposed dwellings would be a mix of single-storey and one and a half storeys, comprising several courtyards laid out in a linear arrangement. Examples of cul-de-sac housing are evident in the locality along Whempstead Road. Despite the relatively low density of the development proposed in this case, this would also be in keeping with the more dispersed arrangement of housing evident in the locality.
33. Notwithstanding this, the Council are concerned that the proposal would be a departure from the prevailing pattern of existing housing in the area, which either fronts onto the road, or involves dwellings directly facing each other. Whilst that might be the case for housing generally to the west of the site, dwellings to the south have a less regimented pattern, with numerous dwellings set back in their plots and at angles relative to the street and each

¹¹ Hertfordshire County Council – Guide to Developer Infrastructure Contributions 2021

¹² In accordance with the Self-Build and Custom Housebuilding Act 2015 (as amended)

¹³ The Design and Access statement confirms footprints likely to be in excess

¹⁴ Paragraph 65 of the Framework

- other. The style of housing is equally varied. In this regard, the proposal would be in keeping with the varied composition of the streets in the area.
34. In terms of existing trees, Policy DES3 of the DP requires proposals to demonstrate how they will retain, protect and enhance existing landscape features of amenity value. It is noteworthy that whilst the submitted topographical surveys give an indication of tree location and canopy spread, no detailed assessment of existing trees either within or close to the site has been provided in support of the appeal. Therefore, I have based my consideration on the evidence before me and the observations I made on my site visit.
35. The proposed dwellings would occupy land which contains hardstanding, poultry sheds and skips, as well as grassland and an assortment of vegetation. The number of trees in this area is limited, and I saw no evidence on my site visit to suggest that the proposed dwellings would directly impact on trees that make a significant positive contribution to the visual amenity of the area.
36. However, the trees close to the site's boundaries generally make a positive contribution to the area's verdant character, whilst also affording the site a degree of screening from nearby properties. Be that as it may, the proposed dwellings would mostly be positioned a significant distance away from the boundaries thus reducing the likelihood of impacts on these trees through damage to their roots.
37. The Council raises particular concerns that the dwelling associated with proposed plot no.6 would be sited close to an existing boundary tree. The plans suggest that the building would be outside the canopy spread of this tree, but I accept that the construction of its foundations in particular could undermine the tree's roots. However, this tree is one of many along this boundary and individually it makes a limited contribution to the visual amenity of the area. There is nothing to suggest potential harm to any of the other trees close by. Therefore, even if this tree was lost, the verdant character of this boundary would remain.
38. A number of other smaller trees would also be affected by the development. This includes trees located in between the pond and the dwelling proposed in association with plot no.1, along with trees on either side of the existing access. The proposal would involve a new service margin alongside this access, along with partial widening to provide visitor car parking, all of which has the potential to disturb these trees. However, even if I was to assume an unlikely worst-case scenario, that all the trees potentially affected would be lost, the visual contribution they make to the area is limited.
39. Moreover, given that 'landscaping' is a reserved matter, and sufficient space within the site would remain so that compensatory planting could be provided, I am satisfied that planning conditions could be imposed to identify trees to be retained, details of tree protection during construction, and details of compensatory landscaping.
40. Finally, whilst I note the Council's concerns relating to the lack of surveillance of the proposed play area, this could be addressed by the considerate positioning of windows within proposed dwellings as part of reserved matters, 'appearance', appropriate landscaping, and the provision of specific details of the play area. These details could be secured by planning conditions.

41. Overall, I am satisfied that the proposal would not harm the character and appearance of the area. It would not conflict with Policies DES3, DES4 and HOU2 of the DP which require, amongst other matters, that development is of a high standard of design and layout to reflect and promote distinctiveness, and that landscaping features of amenity value, including mature trees, shrubs and hedgerows, are retained, protected and enhanced with provision made for new green infrastructure.

Highway safety (Appeals A and B)

42. The proposals would utilise an existing access from Whempstead Road which serves the existing dwelling at no.1, and historically served the agricultural use, along with the commercial storage element. There is nothing to suggest that the carriageway widths proposed would prevent the safe passing of cars along its length.
43. However, the Council contends that the appellants' swept path analysis of the junction with Whempstead Road tracks a 10.8m long refuse vehicle, as opposed to a vehicle with a length of 12.2m. Therefore, according to the Council, an unsuitable vehicle length has been assessed. Whilst no justification for the accommodation of a larger vehicle has been advanced by the Council, I have assumed that the 12.2m long vehicle is representative of refuse vehicles used in this part of the District.
44. Be that as it may, I see no reason why a larger refuse vehicle would not be capable of safely manoeuvring into the site, notwithstanding the vehicle dimensions detailed on the submitted plans. Refuse vehicles would be infrequent visitors to the schemes. Moreover, the appellants have referred to *Manual for Streets*, which advises *inter alia* that large vehicles that use the street infrequently do not need to be fully accommodated.
45. Furthermore, to my mind drivers of refuse vehicles are generally accustomed to navigating substandard roads and addressing other road vehicles and hazards on a regular basis. There is no robust evidence before me to contradict the observations I made on my site visit, which suggests that Whempstead Road is not particularly busy. As a result and given the limited volume of traffic generated by up to 12 dwellings, drivers of refuse vehicles and cars would have sufficient time and space to manoeuvre safely in order to allow each vehicle to pass both along the proposed access itself, and at its junction with Whempstead Road.
46. For the foregoing reasons, and in the absence of any information concerning local accidents which would lead me to question the overall safety of the junction and this stretch of Whempstead Road, I conclude that there would be no unacceptable impact on highway safety as a result of either proposal.
47. The proposals would, therefore, not conflict with Policy TRA2 of the DP which, amongst other things, requires that development is acceptable in highway safety terms.

Other Matters

48. I acknowledge that there are locational parallels between these appeals and the housing allowed on appeal at Gosmore Paddock. Indeed, my conclusions on the accessibility of services and facilities for future occupiers of these

appeals resonates with that decision. Crucially, however, the circumstances of that case were materially different for several reasons.

49. Firstly, the local policy context was different in relation to that appeal as the current DP had not been adopted at that time. Secondly, the Gosmore Paddock scheme was considered to be *'within a built-up area'*¹⁵, unlike the appeal sites in this case which are outside the defined settlement boundary. Finally, as I will come onto in my planning balance, the Council's housing land supply shortfall at the time of that decision was considered to be more significant than it is in this case.
50. In common with that appeal decision, the acceptability of these appeals involves balancing any findings that would weigh for and against each proposal, which I do in my planning balance. Given the clear differences outlined above, I am not bound to reach the same decision as the Gosmore Paddock Inspector.
51. Other appeals have also been referred to by the appellants¹⁶. However, the policy context in both appeals was different given the sites lie within a different local authority area. Moreover, one of the schemes was found to be reasonably well situated in respect of services and facilities, unlike the appeal schemes before me. The other proposal was considered to be sufficiently enclosed by adjoining developments. Again, that is not the case here. Therefore, the conclusions drawn in these cases are not sufficiently similar to the appeals before me to warrant me reaching the same overall conclusions.

Planning Balance

Housing Land Supply (HLS)

52. The DP seeks to deliver a minimum of 18,458 new homes over the plan period. Accompanying the Council's evidence in the case of these appeals was a Housing Land Supply and Position Statement dated 2019. Shortly before the Hearing the Council provided an updated position statement, dated November 2022. According to this, the Council's HLS is 5.8 years. This equates to 7,516 deliverable dwellings in comparison with the HLS 5-year requirement of 6,483 dwellings¹⁷.
53. The appellants' concerns mainly relate to several of the sites allocated in the DP which the Council considers to be deliverable, and upon which the Council have relied to inform their latest HLS position. Annex 2 of the Framework states *'where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years'*.
54. I note that neither the 2019 nor 2022 position statements produced by the Council follow the annual position statement criteria set out in paragraph 75 of the Framework. Nevertheless, they represent the Council's best available evidence on HLS, and the appellants have had the opportunity to address both position statements as part of this appeal. I have therefore, considered these

¹⁵ Paragraph 51 of appeal ref: APP/J1915/W/17/3184877

¹⁶ Appeal refs: APP/L3245/W/20/3260022 and APP/B1930/W/20/3249093

¹⁷ This also includes the previous shortfall additional buffer requirement – Five Year Land Supply Position Statement – November 2022 – East Herts Council

documents in determining whether clear evidence exists that those sites contested by the appellants are deliverable.

55. In respect of two of the sites, despite outline planning applications for housing having been submitted in 2019, they have not yet been determined¹⁸. I appreciate that the masterplanning process on both sites has progressed and a statement of common ground has been signed with developer(s) confirming intentions and delivery milestones. However, in both cases anticipated timescales for the delivery of housing were set out in the 2019 position statement, but none of those timescales have been met. This undermines my confidence in the future milestones set out in the 2022 position statement, particularly as no planning permission yet exists, and reserved matters and planning conditions submissions will be required before substantive works can commence in order to deliver housing according to the timescales outlined.
56. Moreover, it is put to me by the Council that one of these schemes has been delayed due to viability issues. However, I have not been provided with specific details of the viability issues, nor the outcome of viability considerations, and this further reduces confidence that planning permission will subsequently be granted as per the anticipated timescales.
57. A further contested site¹⁹ only recently received an associated planning application for housing, but at the time of the Hearing it was yet to be validated. On this basis, the Council's anticipated resolution to grant in the first quarter of 2023 seems incredibly optimistic given the early stages of the formal consultation process.
58. Similarly, an outline planning application was submitted for another allocated site in July 2022²⁰. Not only is this application yet to be determined, but it appears to straddle an adjacent Council's administrative boundary. The implications of this are not immediately apparent, but it seems reasonably likely that this will add further complexity. In addition, I have no assurance that the anticipated March 2023 outline planning application determination is likely.
59. Both the latter sites also have signed statements of common ground with respective applicants, but none of the timescales set out previously in 2019 have been met. Given this, and that there is no planning permission in place on either site, and subsequent reserved matters and condition discharge applications will be required, clear evidence of deliverability is lacking.
60. All of the above leads me to question the overall deliverability of the Council's anticipated supply of housing. In line with the appellants' assessment²¹, the four sites above account for *circa* 1800 dwellings. As such, in omitting these sites from the anticipated 5-year HLS, the Council's deliverable supply of housing would fall short of the 5-year HLS requirement by approximately 760 dwellings. This would represent a moderate shortfall.
61. Nevertheless, this means that the Council are unable to demonstrate a five-year supply of deliverable housing sites as required by paragraph 68 of the Framework. Therefore, the policies which are the most important for

¹⁸ Sites GA1:the Gilston Area and HERT3:West Herford North

¹⁹ WARE2: Land north and east of Ware

²⁰ EWEL 1: Land east of Welwyn Garden City

²¹ Annex A – HD1

determining these schemes are deemed to be out of date. In such circumstances, paragraph 11d)(ii) of the Framework indicates that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Benefits

62. The number of dwellings proposed in each of the appeals ranges from 6 to 12. Whilst this is a relatively limited number of houses, in light of the Council's housing land supply shortfall, and the Framework's objective of significantly boosting housing supply, it is a matter which carries moderate weight in favour of the appeals.
63. Moreover, Appeal B proposes 10 self-build plots. The Council accepted during the Hearing that at approximately 39 names were on the Council's register for self-build/custom-build plots. Whilst I was told that plots had been granted planning permission in the District, none of them appear to have been built out. Therefore, limited progress has been made to address the shortfall and associated requirement under the Self Build and Custom Housebuilding Act 2015.
64. As such, the proposed 10 self-build plots associated with Appeal B would make a notable contribution towards addressing a considerable lack of delivery in the District. This attracts significant weight in favour.
65. Affordable housing would be provided in accordance with local policy requirements in association with Appeal A. Whilst the four units proposed would constitute a relatively low level of provision, they would contribute towards an unmet need across the District. Therefore, this attracts moderate weight in favour.
66. There would be benefits to the local economy, both during construction and indirectly through a likely increase in local spending by future residents. There would also be additional Council tax receipts for the Council as a result of residential occupation. In all cases, due to the relatively small scale of the developments, these benefits would be limited.
67. In terms of environmental benefits, the proposals would include sustainable construction techniques and measures to reduce energy demands for future occupiers of each dwelling proposed. There would also be scope to provide additional native planting, and the potential to support biodiversity improvements on site. However, the details provided in respect of biodiversity and landscaping are limited. As a result, and given the limited scale of the developments, the environmental benefits would be limited in all cases.
68. The schemes would result in the removal of the commercial use and HGV traffic associated with it. However, this is a low-key use which does not generate significant activity. Therefore, its removal would provide only limited benefit to the local environment.
69. In terms of harm, the proposals would not comprise limited infilling, and whilst each of the schemes would utilise previously developed land to varying degrees, they would not occupy sustainable locations; with future occupiers being heavily reliant on the private car to make journeys to services and facilities.

70. The Framework²² recognises that proposals that enhance or maintain the vitality of rural communities, including supporting services in villages nearby, may be acceptable even in locations that are not well served by public transport. However, these considerations carry limited weight in these appeals as the proposals would lie outside the settlement boundary, which is where growth should be focused, and in an unsustainable location.
71. Therefore, the schemes would be contrary to Policies DPS2, TRA1 and GBR2 of the DP. Overall, there would be conflict with the development plan when read as a whole. This attracts significant weight against the appeals.
72. There would also be conflict with Policies ED1 and ED2 of the DP. However, the contributions made by the appeal sites to local employment is limited. As such, I attribute only limited weight to these policy conflicts.
73. Appeal B would not address the DP requirement to provide affordable housing. This also weighs significantly against the scheme.
74. Whilst the appeal schemes would not result in harm to the character and appearance of the area or highway safety, these considerations neither attract weight for or against the developments.

To summarise my findings in each case:

75. Appeal A - as a result of the proposal's location outside the settlement boundary, in an unsustainable location, it would be contrary to the development plan. This carries significant weight against. There would be limited conflict with employment policies. Weighing these matters in the balance, I find that the harm would be overriding, and would significantly and demonstrably outweigh the moderate benefits associated with 12 houses and four affordable units, along with the other benefits outlined. As a result, the proposal would not constitute sustainable development with regard to paragraph 11 d ii) of the Framework.
76. Appeal B - as a result of the proposal's location outside the settlement boundary, in an unsustainable location, it would be contrary to the development plan. This carries significant weight against. The lack of affordable housing as required by policy also attracts significant weight against the appeal. There would be limited conflict with employment policies. Weighing these matters in the balance, I find that the harm would be overriding, and would significantly and demonstrably outweigh the significant weight afforded to the provision of self-build housing, along with the other benefits outlined. As a result, the proposal would not constitute sustainable development with regard to paragraph 11 d ii) of the Framework.
77. Appeal C - as with appeals A and B, the proposal's location outside the settlement boundary in an unsustainable location and the conflict with the development plan is a matter which carries significant weight against the appeal. There would also be some limited conflict with employment policies. Weighing these matters in the balance, I find that the harm would be overriding, and would significantly and demonstrably outweigh the moderate benefits associated with six new houses, along with the other benefits outlined. The proposal would not constitute sustainable development with regard to paragraph 11 d ii) of the Framework.

²² Paragraphs 79 and 85 of the Framework

Conclusion

78. These decisions should be taken in accordance with the development plan, and no material considerations indicate otherwise. This leads me to conclude that these appeals should be dismissed.

M Woodward

INSPECTOR

Annexe A:

Hearing Documents

HD1 – Appellant document ‘East Herts Five Year Land Supply notes’

HD2 – Appeal decision ref: APP/J1915/W/22/3301655

HD3 – Delegated Officer Report for Application Number: 3/19/1569/ARPN (East Herts)

HD4 – East Herts District Plan 2018 extract showing settlement boundaries of Benington

HD5 – Council and appellant agreed list of ‘approved plans’

HD6 – Council recommended conditions ‘self-build’

Annexe B: APPEARANCES

FOR THE APPELLANT:

David Lane DLA Town Planning Ltd.

Simon Andrews DLA Town Planning Ltd.

Chris Watts Agent

Mr Newman Appellant

Ms Pepperell Appellant

FOR THE LOCAL PLANNING AUTHORITY:

David Lamb BA (Hons) Dip TP MRTPI Principal Planning Officer (Development Management)

George Pavey Bsc (Hons) Msc Principal Planning Officer (Planning Policy)

Ellen Neumann Assistant Planning Officer (Development Management)