Proposed Development at Rectory Farm,

Kings Langley, Hertfordshire

PINS Reference: APP/A1910/W/23/3333545

LPA Reference: 22/01836/MFA

Closing Statement on behalf of the Joint Objectors Group

Introduction

1. In opening, we said:

> The Joint Objectors[1] represent the local interests and strongly oppose this application for 135 residential units, new community buildings and access. The proposal will harm the character of the area, undermine the visual landscape and townscape, and will, most significantly of all, encroach on the green belt.

None of the evidence you have heard through this inquiry has undermined our case. It has, however, demonstrated that the appellant have seriously over-sold their case.

2. This is not the place or the time to make submissions on green belt policy—the democratically elected government has made it clear that the Green Belt should be permanently open and inappropriate[2] development should only be allowed where there are *very special* circumstances which will only exist if the benefits of a scheme *clearly* outweigh the impacts. All sides agree this is an exceptionally high bar and the high court reminds us that this is not a quasi-mathematical exercise but an overall assessment of whether the circumstances *truly* constitute very special circumstances so that development may be permitted notwithstanding the importance of the Green Belt.[3]

3. The Appellant seeks to rely on a combination of factors (rather than identifying one unique consideration such as national security) in which they argue amount to *very special* circumstances—in their case all the stars align. The evidence demonstrates that is not the case.

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[1] Kings Langley &District Residents Association and the Hertfordshire Branch of CPRE, the Countryside Charity.
[2] All sides agree that this is inappropriate development
[3] *Sefton MBC v Secretary of State For Housing, Communities, And Local Government* [2021] EWHC 1082 (Admin)

4. A further material consideration provided by the Government is the clear indication of travel contained in the recent revisions to the NPPF and the extant written ministerial statement. Specifically, there is explicit recognition that Green Belt boundaries are not expected to give to ameliorate housing need. Moreover, the written ministerial statement reminds us that housing need by itself does not amount to very special circumstances. The appellant (and others) may disagree with that judgment but it is for the democratically elected government to make.

5. It is in this context, that the appellant is inviting the inquiry to consent to inappropriate development on the Green Belt and undermine the principle of plan led development.

The Purported Benefits

6. The Appellant took much inquiry time laying out the benefits of this scheme—much of which is not in dispute. Given the absence of disagreement, we deal with this briefly. However, we do emphasise that these disagreements though slight, are material in a case such as this where the appellant is relying on an accumulation of disparate factors to outweigh the harm to the greenbelt. Accordingly, these purported benefits need to be accurately assessed and calibrated to inform that balancing exercise.

7. Overall, the Joint Objectors broadly adopt the carefully calibrated and considered views of Mr Freeman of the Local Authority where disagreement remains regarding the weighting given to the benefits.

8. Market homes are required and affordable homes especially; that is why Mr Griffiths accepted that these should, respectively, attract substantial weight and very substantial weight in the planning balance. Given the clear steer from Government that unmet housing needs are unlikely by themselves to justify inappropriate development, we are at a loss as to why the appellant seeks to argue that market homes, which are unlikely to have any material impact on the chronic shortage of affordable homes in the borough, should attract the same weight as affordable homes. This consideration can only attract substantial weight at most.[4]

9. At the heart of JOG's case is a desire to protect the countryside from encroachment. The JOG is not, however, absolutist and appreciates that the very special circumstances test means there is not an embargo on development on the Green Belt. However, if the Green

[4] It may be useful for the Inspector to consider what weight would be given to a scheme that had more than 50% (or even 100%) affordable homes and what weight that would attract.

Belt is going to be compromised it must be done on a robust evidence base and JOG has significant concerns regarding the use of affordable housing to justify encroachment when on closer examination it is not genuinely affordable.

10. Ostensibly, the provision of affordable housing at 40% is commendable; however, before it is added to the consideration of whether there are very special circumstances it must be scrutinised and placed in its full context. The appellants have frequently relied on the evidence underlying the emerging local plan and that states that the overwhelming majority (87%) of those in need of affordable housing require social rent.[5]

11. 7 homes out of 135 is roughly 5% of the total housing offered by this proposal. The remaining 95% will be out of reach to those in need of social rent--the 87%.

12. No viability evidence has been submitted to accompany this offer of affordable housing. This matters in two regards:

    a. First, the inspector will have no evidence to satisfy himself that this provision of affordable housing is genuinely deliverable.

    b. Second, any assessment of very special circumstances should be made in the knowledge that the appellant has failed to demonstrate that no more socially rented homes can be viably delivered when violating the Green Belt. If the Green Belt is going to be undermined under the guise of alleviating the acute need for affordable housing, the failure to demonstrate that an even better housing proposal could be provided given the 'eye wateringly' expensive costs of homes in King's Langley is a significant omission.

13. The issue of genuine affordability as opposed compliant affordability is relevant.[6] The appellant claims in opening that the social housing provision has been "tailored to local needs." Whilst there may be no policy requirement to produce viability evidence to demonstrate that this is the optimum provision of social housing, all the circumstances are relevant to the very special circumstances test and as Mr Ledwidge states counter-factuals are relevant to your assessment. This goes to the very heart of your judgment to very special circumstances.[7]

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[5] [CD 5.36], page 7.

[6] The case you were referred to by Mr Stacey at [CD 8.20, page 2] was not a 'very special circumstances' test and therefore of minimal weight in your consideration.

[7] Mr Stacey in cross-examination directed you to East of Tring decision; however, that considered the narrow issue of whether there was a specific policy requirement to demonstrate the optimum provision of affordable housing.

14. We simply do not know if more could be offered or that which has been promised will be delivered. The failure to demonstrate that the provision of affordable housing has been optimised (by a profit-making housebuilder) or robustly secured goes to whether there are very special circumstances. Despite the voluminous evidence adduced at the inquiry and this concern being raised by JOG at the outset, this is a noteworthy omission.[8]

15. The community facilities can only attract moderate weight given the absence of evidence demonstrating explicit or pressing need. The biodiverse net gain of 15% likewise can only attract moderate to substantial weight at most given that it is marginaly over the statutory minimum. There are short term economic benefits arising from construction and additional activity in King's Langley but for the reasons explained by Mr Griffiths (mainly their temporary nature) that can only attract minor weight.

16. Thus, the benefits are in fact relatively few in number—affordable homes, car dependent market homes, a community facility that is not underpinned by demonstrable need and is unlikely have general access judging by the s.106 discussions, minor biodiversity net gain and consequent economic activity. Only one of those attracts very substantial weight. The suggestion by Mr Ledwidge that these attract greater weight than harm to the Green Belt finds no support in the NPPF and is simply not credible.

17. When the benefits of the appellant's case are exposed and examined it becomes clear why the appellant felt it necessary to resort to double-counting and as well as artificially minimising the impacts of the scheme.

Impacts

18. The impacts of this scheme are severe and legion:

    a. Harm to landscape character.

    b. Harm to visual receptors.

    c. Definitional green belt harm, both in terms of spatial openness and visual openness. At least three Green Belt purposes are undermined.

Harm to landscape character.

19. We start with four obvious but necessary points:

[8] [CD 9.10] JOG, Statement of Case, paragraph 17

a. landscape character is a resource that once lost to housing cannot be realistically recovered;

b. once views are compromised, they cannot be re-established.

c. even on the appellant's case, there is harm to landscape character and views

d. harm to the landscape character and visual outlook is distinct from harm to the Green Belt.

20. We open this section with these points because the appellants did not explicitly consider them in their planning balance. Moreover, the appellants felt that there was no need to consider these harms explicitly in the planning balance despite them being foregrounded in the JOG's statement of case as well as being contained in the appellant's statement of case.

21. Turning to the character of the site itself and any suggestion it has an urbanising edge. This is not sustainable.

a. There are no urbanising features on the land itself—it is an agricultural field. Mr Griffith's photographs demonstrate that it has a rich and rustic character.

b. The site communicates with a series of open spaces; the fishing lake, the canalside, the woodland, the fields to the North and North-West. It is not isolated.

c. The appellant's case truly rests on convincing you that the houses on the edge obliterate the rustic character of the site. Whilst the Miller homes do intrude onto the site, they do not impact on any of the character features on the site itself and that site was wholly brownfield development. The remaining homes which partially perimeter the site do not undercut that character given that they are setback, modest in size and picturesque in appearance.

22. The true picture regarding character is this. This is a rustic field where viable farming existed adjacent to a tranquil canal and fishing lakes as well as some modest housing. It is fully consistent with the character assessment area (Rural – L9) and exhibits its key characteristics.

23. The development will obliterate that precious character, will do nothing to support and protect the character area and replace a viable farm in harmony with nature with a large sprawling car dependent housing estate. The development would appear false and therefore at odds with the landscape character of the immediate locality. The harm to

character will be substantial and attracts similarly substantial weight as required under paragraph 174 of the NPPF which requires decision makers to respect the intrinsic beauty of the countryside. The appellant's suggestion that this should only attract moderate weight despite the complete obliteration of all the features the site shares with the L9 – Rural Zone character assessment.[9]

24. There is one further character receptor it is worth mentioning in detail: the canalside—this should have been subject to a separate and distinct character assessment and it is a matter of regret that it was not subject to specific analysis. As Mrs Johnson explained at the Round Table debate the site supports the crucial openness of the Canalside where there is openness on both sides with the fishing lakes on one side, and the open site on the other. This character as well will be severely undermined by the development.

25. In light of the obliteration of the character of the site itself and the severe impact on the Canalside character, the character impact of this development will be acute.

Harm to visual receptors

26. Even the appellant acknowledges that numerous visual receptors will be harmed by this development. Before discussing the images in detail, we would like to emphasise that we retain reservations of the images selected. This is not an example of nit-picking, but a genuinely held concern that the most prominent feature--the four storey flats—have not been properly considered.

27. With regards to specific views, the most relevant are as follows:

    a. Views one and two: both these views (particularly view 2) show that the built development will be a striking intrusion onto the countryside from the Canalside. These views alongside a public rights of way, are highly sensitive to change and the impact will be severe regardless of partial and seasonal shielding by deciduous trees.

    b. Views seven and eight from the Hempstead Road: both these views reveal that the flats particularly and the remaining built development will be a prominent feature on the skyline and the road corridor. This will contribute to a deeply unpleasant and foreboding tunnel effect along the road wholly distinct from the sense of openness that exists today.

[9] Paragraph 5.49 of GLIVIA provides that judgments of impacts should take into account "the extent of existing landscape elements that will be lost, the proportion of the total extent that this represents and the contribution of that element to the character of the landscape."

c. Mr Griffith's view five: this view demonstrates that the acutely sensitive views of from residential receptors will be further undermined by the inclusion of houses wrapping around the Miller homes.

d. Views nine and fourteen: both these views demonstrate that the development will disturb the experience of expanding openness across the fishing lakes.

e. View eleven: this demonstrates that the development will be visible from up to 1.5km away.

f. Mr Griffith's view eleven from the south into the site demonstrates that the view on the site itself will be deeply compromised.

28. Given the sensitivity of the visual receptors and the magnitude of change, the visual impact can only be described as severe.

Harm to the Green Belt

29. This is inappropriate development on the Green Belt—that weighs substantially against the scheme. However, once the extent of the harm is considered, that weight only increases.

30. Only one witness spoke with credibility regarding the impact of the development on the Green Belt, that was Mr Griffiths. Regrettably, once tested in cross-examination Mr Morton's evidence was not robust and based on rudimentary errors.

a. First, Mr Morton failed to even specify the extent of spatial harm. He was, however, willing to identify the amount of green space. This is an extraordinary omission and questions whether the spatial impact of the scheme has actually been considered. Mr Morton conceded in cross-examination that this was not an example of precise or transparent reasoning which he conceded goes to the quality of the judgment making process.

b. Second, Mr Morton sought to "off-set" the extent of spatial harm by relying on visual impacts of the scheme. That is wrong in principle and law; Green Belt openness has a spatial aspect and needs to be considered.

c. Third, Mr Morton sought to further "off-set" the extent of special harm by identifying the benefits of the scheme. These do not reduce the footprint of development.

d. Fourth, Mr Morton's reasoning regarding encroachment on the countryside was confused and confusing. The land is a former farm and is in the countryside according to his own definition and there was no need for inspector to step in to remind Mr Morton that there was no need to be evasive about these basic points.

e. Fifth, Mr Morton regrettably confused his judgment by relying on matters within the NPPF related to plan making rather his discrete task of identifying harm.

f. Sixth, Mr Morton refused to answer questions regarding the consistency of his view with a previous *inspector* who had considered the site in relation to its contribution to the Green Belt.

Regrettably, in light of this evasion and errors, the Rule 6 party must therefore invite the inspector to discount the evidence of Mr Morton and, instead, rely on the measured and considered views of Mr Griffiths relying on his 50 years of experience as a planner in Hertfordshire.

31. The site comprises approximately 7.17ha of undeveloped greenfield countryside. It is free of any built or other development which would be regarded as inappropriate in Green Belt policy terms and is therefore spatially completely open.

32. The context is not as Mr Morton has adduced as very urban, but a mixed environment where green and open space is, however, predominant.

a. To the north, it is visually open leading to open countryside after the football pitch which is appropriate development on the Green Belt..

b. To the East, as was eventually conceded the majority of the site Eastern boundary is the large expanse of the fishing lakes and further East over the railway line is further green space.

c. To the South East there is further undeveloped green space.

d. To the South West, there is established woodland.

e. To the North East, there is further undeveloped green space.

In contrast, the "developed" land adjacent to the site are "suburban" homes on two sides and a tiny slither of industrial land over the canal. This is not an example of heavily urban character. Any assessment of openness must grapple with the fact that this site contributes to a series of green spaces that communicate with one another.

33. Plainly, there will be a loss of spatial openness. Unfortunately, Mr Barton did not identify a figure, but a number of hectors will be built upon with 135 dwellings, other buildings, roads and substantial hard standing for parking. .

34. There will be severe loss of visual openness:

    a. On the appellant's own evidence, there will be losses of open undeveloped land from the canal path. This was clearly marked by the use of solid and dotted lines. In several viewpoints, there was a substantial proportion of solid lines demonstrating unfiltered views.

    b. With regards to residential receptors, the images provided by Mr Griffiths demonstrate that the existing Miller homes are still visible; the additional of further homes on that site will only increase the view of built development.

    c. Moreover, the site will be visible from long-distance views.

    d. Finally, as Ms McGregor stated on the first day Hempstead Road is the only stretch of road in King's Langley provides openness.

35. Even adopting Mr Morton's nebulous concept of openness which appears to abandon the rigour and methodical approach he endorsed which deals with the issues systematically, the proposal will undercut openness and sometimes painfully so. There will be built development throughout almost the entire development and in particular the north of the site will see a concentration of dense flats and a car park. The impact on openness will be severe.

36. At least three Green Belt purposes will be frustrated:

    a. There will be serious and irreversible encroachment into the countryside. All countryside finds protection under the NPPF, and the appellant has conceded that purpose (c) is engaged but fails to identify why one form of countryside should not be protected.

    b. Urban Sprawl will not be kept in check. As Mr Griffiths explained, the grasping hand of London extends along movement corridors and this will be a further example of London's inexorable desire for growth bleeding into the countryside. The suggestion that merely because this is North of King's Langley it is not an example of London spreading misses the fundamental point about urban growth that it does not occur in concentric circles but in fits, spurts and pockets—one field at a time.

c. Settlements will merge. The Appellant's self-serving evidence takes a point along the Northern edge of King's Langley to misleadingly argue that the development will not result in any amalgamation. We adopt the reasoning of the last inspector who reviewed this site:

> In respect of the impact on the Green Belt, the housing on this site would significantly extend the built-up area of the village along the floor of the Gade Valley, reducing the narrow strategic gap between Kings Langley and Nash Mills on the southern edge of Hemel Hempstead. Although the new housing would not be any closer to Hemel Hempstead than the existing housing on Coniston Road it would nevertheless reduce the limited area of open land between the two settlements. I consider, therefore, that development of the land would not only lead to a significant expansion of built development but it would also contribute towards the merging of Kings Langley and Hemel Hempstead contrary to the main purposes of the Green Belt.[10]

d. Like so much in planning, assessment of coalescence requires a healthy dose of common sense and in this case a large number of homes will be closer to other homes and thus the gap between them will be narrowed. We therefore invite you to use your professional judgment to find that the settlements will coalesce as a result of this development and this undermines a further green belt purpose. Moreover, this development could very easily be a stepping stone to further development in the direction to the North of the site.

37. Finally on the Green Belt, the appellant is not offering a clear defensible boundary—there is no physical infrastructure except for a small building that only makes up part of the border, the remainder of the purported border are allotments, the edge of a football pitch and some non-defined planting that will take time to mature.

38. The appellant will no doubt point to the previous green belt assessments in preparation for the local plan. However, they can be differentiated from this assessment since they are not informed by a detailed assessment of this scheme. Moreover, they inform the assessment for plan-led release from the Green Belt, not the more exacting test of 'very special circumstances.' Alternatively, if weight is given to those assessments, countervailing or greater weight should be given to the assessment of a previous *inspector* that this site contributes substantially to the Green Belt.

[10] [CD 9.20G] Paragraph 4.38.9

39. Overall, therefore, the Green Belt will be harmed both in terms of visual and spatial openness and at least three of the Green Belt purposes will be undermined. In the context, that the Green Belt is meant to be permanently open, this is impact, as confirmed by the only reliable witness who spoke to the Green Belt, is severe. This severe impact must attract maximum weight in the planning balance to which I now turn.

The Planning Balance and Conclusion

40. The inquiry must ask itself a simple question, do very special circumstances exist to justify development on the Green Belt notwithstanding the clear policy steer that it is to be permanently open. The impacts are severe and legion:, harm to character and visual receptors, loss of a viable agricultural land and inexcusable and multiple harms to the Green Belt. Not only does this development run counter to the principle of the permanence of the Green Belt, but it would also run counter to the core planning principle of recognising the intrinsic character and beauty of the countryside.

41. Whether very special circumstances exist is an onerous test and more exacting than the 'exceptional circumstances' for redrawing the Green Belt through a plan. All the circumstances are relevant.

42. With regret, the Rule 6 parties invites the inspector to place minimal weight on Mr Ledwidge's evidence. Unfortunately, his proof was deficient in numerous respects:

    a. Mr Ledwidge failed to assist the inspector by identifying that very special circumstances is more exacting than 'exceptional circumstances.'

    b. Mr Ledwidge failed to address the written ministerial statement.

    c. Mr Ledwidge failed to include harms that were even included in the appellant's own statement of case. Mr Ledwidge even acknowledged that this was not an example of being precise or transparent.

    d. Mr Ledwidge failed to differentiate between the mitigation that was embedded in the scheme to purportedly counter openness and that was a residual benefit despite acknowledging the risk of double-counting.

    e. Mr Ledwidge created a new qualification to the substantial weight the green belt requires without any reference or support to the NPPF.

    f. Mr Ledwidge then gave *greater* weight to a series of benefits than the Green Belt despite acknowledging that the Green Belt sits upon the apex of considerations

within the NPPF and no other consideration enjoys that level of protection. In his proof or evidence, Mr Ledwidge did not point to any basis in the NPPF or elsewhere as to why these considerations should attract greater weight than the Green Belt.

g. Mr Ledwidge failed to bring forward to the inspector's attention, two recent decisions where housing and affordable housing were given full weight but did not amount to very special circumstances.

43. Accordingly, we invite you to adopt the measured and considered evidence of Mr Griffith's who called upon his five decades of planning experience to conclude that very special circumstances are not made out. Let us not forget that Mr Griffith's was perfectly capable of seeing the benefits of the scheme and explained his departure from the Appellant's decisions in detail as should be expected from a former president of the RTPI. It is easy to see why he has come to this conclusion.

44. Policy compliance can be dealt with briefly:

a. As Mr Ledwidge stated in cross-examination this scheme would be incompatible with the local development plan (policy CS5) if very special circumstances do not exist.

b. A further policy consideration is that this scheme finds no support within the recently adopted King's Langley neighbourhood plan that does not support houses of this size and scale let alone on this location.

45. We are faced with the qualitative decision as to whether very special circumstances exist. Since we know very special circumstances will not exist if the benefits *clearly* outweigh the harms, I turn to the benefits and impacts first before addressing the full context.

46. Looking overall at the planning considerations and the limited benefits (only affordable housing attracts very substantial weight), the Appellant has painfully oversold their case and comes nowhere near to demonstrating that the benefits warrant departure from a democratically accountable plan led system and erosion of the permanent Green Belt. The benefits do not clearly outweigh the impacts.

47. This would be wholly consistent with the Secretary of State's decision in the East of Tring case[11] and Brookman's Park case[12] where affordable and market housing were given the

[11] [CD 8.19]
[12] [CD 8.24]

highest possible weighting and in neither of those cases were the benefits held to outweigh the harms. Moreover, this would be consistent with the written ministerial statement that great restraint should be shown in applications on the Green Belt and that housing shortages by itself do not amount to very special circumstances. Further, it would be consistent with the clear steer within the updates to the NPPF that the Green Belt is not to be routinely reviewed.

48. Just to anticipate a point we expect the appellants to make; although our findings of weight are *broadly* consistent with the conclusion of the local planning authority it does not follow that either we share there conclusion that (a) the benefits *clearly* outweigh the harm and (b) very special circumstances exist.[13] As the *Sefton* case reminds us, we should not lose sight that talks of balances and weights are metaphors to aid the single qualitative judgment that you must make; whether very special circumstances exist. We are free to depart and do depart from on whether the benefits outweigh the harm even if we use the same adjectives as well as considering all the circumstances in the round, these are no very special.

49. When looking at the qualitative question of whether very special circumstances exist, as Mr Ledwidge states, counter-factuals are relevant. Had the appellant brought forward a truly extraordinary scheme (i.e. one which was car free, 100% affordable homes[14] or Carbon neutral) the balance may be far more finely balanced.

50. Ultimately, the reason for the appellant's failure to make their case is obvious. Their car dependent and dull scheme is not very special—it is ordinary.

51. Accordingly, this appeal should be dismissed.

Joseph Thomas
Landmark Chambers
12 April 2024

[13] Obviously, the council's conclusion is dependent upon finding a solution to the SANG issues.
[14] Or the optimum number of homes available following viability testing.