

Rectory Farm Public Inquiry - Day 1 – Tuesday 9 April 2024 - Briefing note for KL&DRA Committee

The Inquiry opened and after preliminaries, including opening statements from the appellant, Dacorum Borough Council (DBC) and KL&DRA/CPRE, three residents presented their interested party statements. These were in addition to the ones already sent in by Charlie, Chris, Lawrence and Peter Hutchinson (canal boat user & walker).

Up first was DBC who presented their evidence for their grounds for refusal. It was very difficult, physically, to hear everything that was being said.

DBC were then cross-examined by the appellant's barrister. On Green Belt, there was very little cross-examination, however, they tore into Robert Freeman, the DBC planning officer, on the SANG decisions, allocation and policies. To say the Appellant's barrister subjected the council officer to a 'forensic' cross-examination would be kind. Every detail in many documents were compared, cross referenced and questioned. His answers were at times confused and at times ill-informed and lacking. After over an hour, the Inspector suggested an adjournment so that DBC's Officer and Barrister could confer.

Out in the corridor huddles of barristers could be seen. The Inspector resumed the Inquiry and Robert Freeman continued to be cross examined but the appellants KC had taken his foot off the pedal a bit.

After the cross-examination was complete, DBC's barrister said that they may have to leave the Inquiry to review their position with senior members of the planning department, should they become available.

After a further short tea break, it was then our turn and Joe and Jed presented our case with Joe asking questions and Jed replying with his expert opinions. They went through his experience, how he assesses the visual impact and his comments on weighting of these and green belt issues. The Inspector nodded at several points and Jed came across with measured, thoughtful responses.

Rectory Farm Public Inquiry – Day 2 – Wednesday 10 April 2024 - Briefing note for KL&DRA Committee

Despite what we thought last night no statement was made by DBC.

The day started with Joe completing his question session with Jed's regarding presentation of our case. Jed was then cross-examined by the appellant's Counsel and we all felt he did a very good job, answering carefully and calmly. The session ended with Joe re-examining some final points.

Jed answered questions on GB boundary, coalescence, GB reviews and how the site now has a development on the former poultry farm. Our case is broadly in agreement with DBC's, however, we extend our objections to three purposes in the NPPF rather than just one. Jed disagreed with the appellant's Counsel in respect of aspects of ARUP's green belt review and the narrowing of the gap between settlements. Jed also disagreed with the appellant's urban fringe statement. Jed was an author of an early report which set out urban fringe descriptions and it does not relate to Rectory Farm as it's an open site.

Jed stated that coalescence should be considered and put forward that the site is now smaller than in some of the reports and when judging openness, should not include the football ground. Take this

out and the gap would be halved. Consideration should be given not as to whether a development reduces the gap between settlements but the merging of settlements as a whole - the cumulative effect. Rounding off or infill again should not be considered but each application on its own merits.

Appellant maintained that Miller homes site was not designed to have a 'robust' green belt boundary so need to put one in at the north end of the site. This would be the community buildings (no mention of flats). Jed pointed out that now Miller completed it raises the value of the site as it does not have degraded buildings. GB land should have a sense of permanency and releasing it for building was premature.

Affordability issue was raised and Joe came back with: in this area it is not generally affordable.

Pointed out the pressure on Kings Langley due to the building on both sides of canal.

The landscape harm will be dealt with at round table

Overall, we felt Jed & Joe did a very good job for us.

Next up - The appellant's expert on Green Belt – Mr Morton

Greenfield but contained topographically by Gade Valley and gives a degree of closure – surrounded by high density and industrial areas, but contained by robust hedgerow and dense wooded area (?) – These points challenged by Joe.

Mr Morton maintained that the site scored low on green belt review and the site is hidden.

Joe cross-examined Mr Morton and challenged a number of points he had made e.g. that his role is to assess impact, not benefits, that his information was not balanced as he had missed out on stating the built area and that his approach to special openness was fundamentally flawed. Joe further questioned Mr Morton on his views on visual openness and on visibility from certain viewpoints being understated. Regarding the last inspector's report on the last local plan, Joe asked Mr Morton if he was inviting the current Inspector to depart from the views of the previous Inspector! Further cross-examination led to Mr Morton avoiding straightforward questions. The Inspector then interjected and rebuked Mr Morton for not answering Joe's questions, after which he answered more succinctly.

Next was the appellant's Affordable Housing witness - Mr Stacey

Gave lots of detail on need for affordable and that appellant is offering more than Council policy. He made clear the Council has underperformed regarding affordable housing delivery.

He also explained there were more on housing register who have to wait a considerable time for accommodation. Housing number was drastically reduced a few years ago. About 190 of those on the register want a home in Kings Langley. Each available property has a very high number of applications.

This failure should carry substantial weight when making the decision on very special circumstances.

Joe cross-examined on a few points – relating to genuine affordability and that the level of affordable homes on the site did not amount to very special circumstances

After lunch, Next up was the appellant's SANG Expert– Mr Kirkpatrick

He went through his proof of evidence relating to SANG provision: on-site SANG, off-site SANG – Council owned and off-site SANG – third party owned (Boxmoor Trust – Westbrook Hay), generally

concluding that Westbrook Hay was the best solution. He also stated that an on-site SANG would not fit the criteria laid down by Natural England (NE) and that letters from NE indicated they did consider an on-site solution viable.

Inspector asked by they didn't pursue on-site option as Westbrook Hay is more than 5km limit from Rectory Farm and not quiet & tranquil as it is close the A41. Mr Kirkpatrick disagreed with the distance and said not all criteria have to be met as some are desirable. The Inspector stated that Westbrook Hay is not ideal as it not easily reachable by cycle or foot, from the appeal site.

Cross-examination of Mr Kirkpatrick by DBC's Counsel: Mr Kirkpatrick returned to the view that Westbrook Hay was best on balance and that agreement between DBC and the Boxmoor Trust was expected to be agreed soon, and that once that was in place, then the commercial agreement between the appellant and the Boxmoor Trust would happen, provided the appeal was upheld. This could be settled in advance via a Grampian agreement (an agreement that the developer would allow occupation of the site until the SANG provision had been provided). Further discussion was had regarding SANG credits (allocation of housing numbers against a particular SANG site's capacity)

The cross-examination also led to the conclusion that SANG provision, NE's views and the detail on the Chilterns Beechwoods SAC mitigation strategy were not part of planning policy.

The Inspector asked the question: What if I considered an on-site SANG to be appropriate – can I disagree with Natural England? The question of Kings Langley Common as a SANG Linked to an on-site SANG also arose.

At this point DBC's barrister became extremely animated and things got quite hard to follow, but the gist of it is: She said – regarding the SANG, the Inspector is now the decision maker, not Natural England or anyone else and he can disagree with NE if necessary. She stated it is wholly DBC's decision whether they allocate SANG credits or not. The moratorium on housebuilding had contributed to DBC's under delivery of houses. There are only two DBC SANG sites in place (Mr Kirkpatrick maintained there are more in the pipeline).

The appellant's Counsel then stepped in saying that DBC were departing from the evidence they gave yesterday and challenged DBC as to whether they were talking about planning or property.

The inspector stepped in saying this was all "smoke and mirrors" and there needed to be clarity.

DBC's Counsel then said they had made a new decision (Last night) which changes their position, but needed to continue based on their evidence given yesterday as it was too late to introduce new evidence! So the situation became one big muddle!

DBC's Counsel then appeared to be focussing on the fact that the mitigation strategy states SANG credits cannot be given to an application that is inappropriate in the Green Belt. The mitigation strategy is not a planning policy document, so does not need to be consistent with the NPPF. A SANG must be secured before planning permission is granted and therefore a Grampian agreement is not applicable.

There was also discussion regarding the amount of capacity DBC has in terms of SANGs. Mr Kirkpatrick concluded: current credit level from March 24 is Chipperfield – 736, Bunkers Park – 666 (initial capacity was 2,112) Gadebridge – 1,118, Westbrook Hay – 3,029. DBC Maintain there are only 2 SANGs currently (Chipperfield & Bunkers Park) and that the rest are fin the future.

DBC's Counsel then challenged the appellant stating that if, as the appellant maintains, the Boxmoor Trust Westbrook Hay option is the best option, why has there been no written assurance from Boxmoor Trust that it will definitely provide the SANG? Mr Kirkpatrick didn't think Boxmoor Trust wanted to be involved in the public inquiry. He was asked if Boxmoor Trust had been asked for an assurance. He dodged the question. There was further back & forth regarding agreement with Boxmoor Trust and it ended up unresolved and to be discussed further in roundtable discussions tomorrow. The day then ended.

Rectory Farm Public Inquiry – Day 3 – Thursday 11 April 2024 - Briefing note for KL&DRA Committee

The day started ahead of the planned schedule with evidence being presented by Mr Ledwidge the appellant's Planning Matters witness.

It was established that there was some common ground with the council in relation to Sec 106, presumption of housing land supply, limited harm to green belt but has substantial weight, and a few other issues. It was also agreed that the council only has 1.69 years of housing supply, the lowest level in the last 3 years.

He then addressed the planning balance on GB grounds and the mechanism for the SANG and went through the planning policies relevant to the appeal. He concluded that the proposals complied with core strategy planning policies, including that development in the Green Belt should not be approved unless very special circumstances apply. He also stated the proposed development complies with the statutory Development Plan and that the presumption in favour of development is consistent with council policy.

The review of the Green Belt had led to the planning application as the site was classified as low grade Green Belt land.

The developer will provide 40% of affordable (5% more than the minimum 35%) and described the housing mix which was arrived at in consultation with the council. He argued that the undersupply of housing should carry substantial weight. This position will not improve any time soon and that Rectory Farm is suitable for sustainable housing and should be given very substantial weight. The site will be delivered in two years with preliminary works completed in parallel with reserved and other matters. If appeal is allowed in June 2024 work would start at the end of 2024 and completed at end of 2026. Mr Ledwidge went through his perceived weightings, mostly substantial or very substantial, to his interpretation of the benefits of the development. He concluded that the benefits overall were considerable and outweigh the harm to the Green Belt and that very special circumstances applied.

DBC's Counsel's cross-examination

DBC's Counsel provided a chronological history to defend their lack of housing supply:

- March 2022 – Moratorium, so no housing building could take place
- June 2022 – appellant submitted application knowing it could not be approved during the moratorium
- Sept 2022 – Natural England (NE) advised that an on-site SANG proposal was a non-starter
- Nov 2022 – the Chilterns Beechwoods SAC Mitigation strategy was published which included at 7.15 that DVBC would not give SANG credits to an application which is inappropriate development in the Green Belt
- April 2023 On-site SANG was still no go with NE and the appellant had made no attempt to change the scheme
- Mid July 2023 – further consultation with NE, where they acknowledged the Boxmoor Trust proposed SANG, but could not sign it off as it was only a trial option and by law, a SANG Must be secured
- Late July 2023 – The planning application's time extension expired and the appellant appealed on the grounds of non-determination. At this point the Boxmoor Trust SANG option was still not secured

DBC's Counsel told the appellant – You could have waited until the SANG was secured, rather than proceed along the non-determination route.

- Oct 2023 – DBC refused the application

Mr Ledwidge stated that collaboration with DBC had always been ongoing.

DBC Counsel stated that the appellant knew DBC had no substantial objections – just the lack of secured SANG provision and that the appellant knew DBC would have no objection if the public inquiry was delayed. Why did you refuse adjournment?

The disagreement over the SANG position continued along with the use of a Grampian condition being stated by the appellant as a way forward, however, DBC did not agree that this was lawful.

Suggestion made that the inspector could grant permission if a Grampian condition was in place. If not, then permission cannot be granted unless the SANG is signed off. If Boxmoor Trust option fell through, there is a 2 year window to get an alternative in place.

In summary, the SANG argument was not resolved and was parked to be discussed later in the day at the Conditions and Planning Obligations Round Table discussion

It was then our barrister, Joe Thomas' turn to cross-examine Mr Ledwidge

Joe started by establishing Mr Ledwidge's agreement that his role is to consider policies, impacts and benefits and that his evidence must be transparent and precise and also went through a number of other clarifications of policy and factors that are relevant to Mr Ledwidge's planning proof of evidence.

Joe challenged Mr Ledwidge on a number of inconsistencies in his evidence including: reference to a ministerial statement on planning policy; applying weighting bands not included in the NPPF; omission of very special circumstances vs exceptional circumstances test; omissions in the Proof of Evidence that were included in the planning Statement of Case; no evidence presented that the site is viable farming land; no viability evidence for Affordable Housing requirements meaning that optimum affordable housing has not been determined; inconsistent application of weightings in respect of open space and harm to the Green Belt; double counting by attributing weight to harm of openness and but also to the benefits of openness; counter-factual of more social housing not included; no references to two example cases (East of Tring and Brookman's Park), where the Secretary of State overturned planning inspectors decisions where affordable housing was given a high weighting.

Lastly, Joe confirmed with Mr Ledwidge that he agreed that the Miller 2018 Planning Statement was not a very special circumstances case.

The appellant's Counsel then re-examined:

Mr Williams sought to clarify that DBC's decision notice was an appeal against refusal and not non-determination and confirmation that, at the start of the appeal, both offsite SANG options (council provided and Boxmoor Trust provided) were considered and the appellant is working to resolve the issue with DBC and NE. Some other points in relation to DBC's reason 1 for refusal (inappropriate development in the Green Belt) and Grampian conditions was covered but we did not hear clearly what was said or understand the detail.

The next session was the Landscape and Visual Round Table

This was a more informal discussion (not presentation of evidence and cross-examination format) with questions between ourselves (Ann, Michael Bouvier, Jed, Joe and Gary) and the appellant, including their landscape and visual expert witness, Mr Grierson.

Mr Grierson summarised the appellant's Landscape and Visual Impact Proof of Evidence, which includes photographs taken from various viewpoints (visual receptors) around the site and explained the methodology around how these were taken and used in the Landscape and Visual Impact Assessment.

Jed explained that the character impact loss is openness and the site's relationship with the edge of the village of Kings Langley. The hedge and canal is a defensible boundary. IT is fairly well contained by the Grand Union Canal and the hedgerow along the Hempstead Road, the football club and the Miller development. The visual receptors in this rural zone carry very substantial weight.

Mr Grierson opinion is that the site is enclosed but he appreciates the visual receptors are significant to local residents.

Michael Bouvier, a resident living opposite the site, gave many challenges on the accuracy of the outlines of houses which had been superimposed onto the photos. He challenged that they seemed to narrowly miss the highest buildings which were just out of shot. Gary pointed to the filling in of the wire frame outlines submitted in Jed's evidence to highlight these are solid buildings, not see-through. One viewpoint showed that the flats would be seen from Shendish 1.5km away.

Gary talked through his sectional scale drawings showing how impactful the block of flats would be with sightlines from and across Hempstead Rd and how sharp the angles are to the top of the flats.

Ann talked through the removal of the screening hedgerow along the Hempstead Rd and how through the documents it is used as screening so the whole development would be less noticeable. She pointed out that hedge straddles the site boundary chain link fence by several metres. The installation of new boundary fences and an acoustic screen would necessitate it being cut back significantly or removed completely. No mention had been made of this possibility. Ann also asked how it would be protected into the future as house owners could cut it back themselves. James Good (appellant) suggested that a planning condition could be imposed.

In some of the appellant's documents it described a robust tree management plan which we thought would involve extensive works to the canal side trees which are in a poor state. This would further open up the site from the tow path. We restated the importance of the canal for walking and of the open environment for mental health. Gary added that a statement had been submitted by a walker and canal boater explaining the importance of the views from the canal perspective. We also pointed out how small the gap is between the canal edge and the tallest buildings at the north end of the site.

We reminded the inquiry that the openness is important to residents as demonstrated by the number of objections in respect of the Green Belt submitted against the application. No one who lives here considers the area urban.

We pointed out that within the documents they note that the design follows the stepping down of the topography to fit in with the slope of the site, yet they put the highest building right next to the road. This produces a 'tunnelling' effect at the Coniston Rd end of the site on the Hempstead Rd. Normal settlement peters out the further you go away from the centre of the village, yet here the flats are out of keeping with this normal settlement pattern.

Conditions and Planning Obligations Round Table

The KL&DRA / CPRE team did not take part in this session and we won't describe it in detail here because it was mostly comprised of legal arguments relating to Section 106 agreements, the SANG agreements and SANG provision.

In the Section 106 discussion, there was a lot of talk about transfer of buildings and land to Sunnyside and that part of the buildings and allotments would have usage /access restrictions for the wider public as they have vulnerable adults. Discussion was had on how this could be accommodated. James Good explained there needs to be an element of control and known users could have access by arrangement at certain times.

DBC stated there needed to be public access all the time and the buildings could be partitioned to facilitate this. Back and forth continued. Other points discussed included Open Space provision – RSPA provision – accident provision, drafting on fire extinguishers was accepted, Construction compound – resolved, SUDS, but drainage not transferred to HCC - owner retains part ownership. Other points covered included: Biodiversity management plan and maintenance; roads will be unadopted and service charges will apply to new houses; etc.

Lastly, there was another very long, and somewhat heated, exchange on the SANG provision. We did not take part as our case does not in any way relate to SANG provision.

Rectory Farm Public Inquiry – Day 4 – Friday 12 April 2024 – Final Briefing note for KL&DRA Committee

The day started with a continuation of the round table on Conditions and Planning Obligations where the appellant, the Council and the Inspector went through the various conditions set out by the Council to confirm that the appellant was in agreement and the Inspector was happy with the descriptions and terms of the conditions. We commented on some of the conditions where we had felt our input was needed:

Regarding the timing of construction vehicles entering and leaving the site and deliveries to the site, we added to the Council view that such movements should be outside of school run times. The Inspector stated that such a condition was difficult to ensure it was complied with and we explained more about where the schools are and how the traffic increases along Hempstead Road at busy times.

We also expressed concern that cranes were going to be used that would overlook and impact the privacy of adjacent properties and that construction times should be reasonable, especially on a Saturday. The Inspector said he would take this point away and consider inclusion in the Construction Management Plan. The appellant stated that Site Managers will be in daily contact with neighbours.

Regarding conditions related to highway works on A4251:

- Herts Highways want the bus stop on the west side of Hempstead Road moved out from the layby, so buses don't have to wait to pull out. We asked if this would affect the number of parking spaces in the layby and was told no change. It would mean that following traffic would be held up until the bus moved off.
- There will also be some works on the other side of the road. A crossing point, with pedestrian controlled lights will be installed near to Taylor's Tools (the exact point is on plans we could not see but is available in the document).
- A crossing point, with a central island, will be installed at the football club end of the site.

- We think there are other highways conditions but these were not discussed. The Inspector had referred yesterday to a list from Herts Highways that amounted to a 'shopping list'.

Regarding boundaries, Ann expressed a concern that new residents could choose to erect higher fences. The appellant stated this could be dealt with via a height restriction condition.

Proposed further site visit today

The Inspector had indicated earlier in the week that he would carry out a further site visit, following the close of the inquiry, however, he did not seem keen to do this now. Through Joe, we asked if he could bear in mind our concerns over the cutting back of the hedgerow along Hempstead Road, causing a reduction in screening and to consider the photograph taken from an upstairs window, showing the prominence of the existing Miller development on the site and how further building would exacerbate the impact of built form. He agreed to these requests.

Closing Statements – first up – Joe for the Rule 6 party.

I will not write out what Joe said in his closing statement as this was essentially a read out of his printed version, which I will share as soon as I have received the final version. I will say that, after checking the draft version, then hearing the read-through, we felt that he had summed up our case for protecting the Green Belt excellently.

The LPA's (Dacorum's) Closing Statement was next

DBC's Counsel started their closing statement by saying that the situation at this inquiry was highly unusual in that the Council had no planning objections and that the only issue preventing permission was the lack of a secured SANG. She then elaborated in great detail the Council's position regarding the legal arguments as to why they could not grant planning permission and had to refuse it because there was no absolute guarantee that the appellant's proposed SANG solution, provided by The Boxmoor Trust, would be agreed and definitely put in place.

Lastly, the appellant's Counsel presented his Closing Statement

We thought that DBC's Counsel went into great detail regarding their legal position, however, this was nothing compared to what came next. The appellant's Counsel stated the Council's stance on the SANG Position was unreasonable.

Regarding refusal of the appellant's application based on inappropriate development in the Green Belt and not demonstrating very special circumstances that outweigh the harm to the Green Belt, the appellant's Counsel disagreed with our position (the Rule 6 party's position) and re-stated their position in this regard, referencing the various reports and expert witness opinions they presented earlier in the inquiry. They also dismissed our comments on visual harm.

All of this was expected, however, I did feel that they did not exactly shoot a lot of what we put forward down in flames as most of their closing argument was predicated on the SANG issue, which went on and on and on, setting out multiple scenarios and the legality of each. They eventually concluded that SANG capacity is available at the Council owned SANGs, which the Council refuses to allocate to the site as it is inappropriate development in the Green Belt, a position which the appellant states is unreasonable, and that the solution could be a Grampian agreement related to The Boxmoor Trust SANG, which the Council say is not legal. Finally, the appellant stated that the Council do not provide an example of any situation whereby harm to the Chilterns Beechwoods SAC could occur, in any of the scenarios presented.

Final comments from the Inspector, Dominic Young

The Inspector asked the appellant if they wanted to submit an award for costs. The appellant's Counsel replied that, at this point he had not received instructions from his client but would respond to the Inspector as soon as possible. The Inspector also stated that he could, using his authority award costs under his own discretion.

He then thanked everyone, especially the Rule 6 party (KL&DRA and CPRE Hertfordshire), commenting that he was aware that we were the only ones in the room that were not being paid to be there. The Inspector then formally closed the Inquiry.

Determination by the Inspector

According to the Planning Inspectorate timetable, the Inspector is due to report his findings in late June, but he gave no indication of when his report would be issued. An Inquiry last year into the application to build on Green Belt in Tring, although longer and a bigger site, took 6 months for the decision to be published. There had been a comment made yesterday that it would be better if he waited until the SANG provision was in place before he made his decision regarding Rectory Farm.

KL&DRA conclusion

This is the first time we have been involved directly in a public inquiry, something which is not to be taken lightly. It has certainly been a baptism of fire, however, we have been supported admirably by our planning expert witness, Jed Griffiths and our barrister, Joseph Thomas.

This has been a very unusual public inquiry. DBC dropped a bombshell at the eleventh hour, during our preparation of Statements of Case and Proof of Evidence for the Inquiry, stating that they would drop their opposition to the appeal if the appellant secured the SANG provision to mitigate the harm the development would cause to the Chilterns Beechwoods SAC. This meant that effectively, only our party was left, objecting to development of the site on Green Belt grounds (our case was not predicated on any points related to SANG provision). This made our job harder.

Jed and Joe did a great job in presenting our case and our evidence in a measured and convincing way and Joe cross-examined the appellant's expert witnesses firmly and fairly. In our Closing Statement, you will be able to read the strong arguments we put forward, based on planning policy and planning guidance as to why there are no very special circumstances to take Rectory Farm out of the Green Belt and why the benefits of the development do not clearly outweigh the harm to the Green Belt.

Our barrister feels that we are in a better position than we were at the beginning of the week, and all of our reasons for protecting the Green Belt at Rectory Farm in Kings Langley have been put before the Inspector.

We gave our thanks on behalf of Kings Langley to Jed and Joe after the Inquiry closed. Now, we are in the hands of the Inspector, Mr Dominic Young and all we can do is await his decision.

It's been a long week and we are grateful for the thanks and words of support you have sent. A special thank you to the anonymous sender of the chocolate – Thank you!

Gary Ansell, Chair, KL&DRA

Ann Johnson, Secretary, KL&DRA

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