

Statement of Case

Welwyn Garden City Society

17th May 2022

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Appendix B: Appeal Case: Westferry Printworks London E14 3QS

Recovered appeal: land at former Westferry Printworks Site, 235 Westferry Road, London E14 3QS

Proposal for circa 1,400 flats on an 11 acre site in the Isle of Dogs. The appeal against deemed refusal had to be reheard following the Government's refusal to contest a legal challenge brought by Tower Hamlets LBC alleging bias by the former Secretary of State (Mr Jenrick) in the decision-making process. The second decision was issued 21 November 2021.

The following sections refer to the issue of affordable housing:

Paragraphs 121-148 Developer's Argument on Affordable Housing

Paragraphs 253-267 Tower Hamlets LBC's

Paragraphs 316-358 Greater London Council's "(GLA supported THLBC's position)

Paragraphs 502-550 Inspector's findings

In his letter, the Secretary of State concurs with the Inspector and dismissed the appeal. Paragraphs 54-56 deal with housing mix - highlights the lack of family housing provision.

The final Appeal Decision dated 18 November 2021 is 262 pages and is attached.

Appendix C: Appeal Case 65-69 Parkhurst Road, London N7 0LP

The following hyperlinks give access to the Appeal decisions

Original appeal decision July 2015 APP/V5570/A/14/2227656; link is below:

<https://democracy.islington.gov.uk/documents/s22220/Item%20B3%20Appendix%203%20Parkhurst%20Rd%2021%20July.pdf>

Second appeal decision April 2017 APP/V5570/W/16/3151698; link is below:

<https://acp.planninginspectorate.gov.uk/ViewDocument.aspx?fileid=22025395>

High Court Decision 2018 EWHC 991 (admin): Case No: CO/3528/2017; decision dated 27 April 2018 – is attached. A link to the case is below:

<https://www.bailii.org/ew/cases/EWHC/Admin/2018/991.html>

Appendix D: Occupancy on the Existing BioPark

The following is an estimate of the occupancy numbers of the Existing BioPark.

Using the Savills' Report on the BioPark https://planning.welhat.gov.uk/Document/Download?module=PLA&recordNumber=96399&planId=1752296&imageId=1519&isPlan=False&fileName=Savills%20Marketing%20Report%2C%20BioPark%2C%20WGC%20REDACTED%20VERSION%2C%20March%202020.docx..._Redacted.pdf , available on the Council LPA's planning website.

This report says:

1. in paragraph 2.2, "BioPark was purpose built by Roche for their own occupation in the 1970's as a mixed office and laboratory building on basement, ground and three upper floors. The net occupiable area is 72,000 sq. ft (6,690 m2) The fourth floor holds plant and machinery."
2. in paragraph 6.5, it says occupancy was, "above 80% until late-2016 when it continued dipping, then nosedived to 44% in late 2018 with the departure of Heptares."
3. in paragraph 6.1 it says, "We understand Heptares took 280 staff with them."

Assuming the net occupiable area of 72,000ft² mentioned above excludes the fourth floor (which holds plant & machinery and is presumably unoccupiable), together with a fairly modest allowance of 120ft² of office space per person, BioPark could accommodate 600 people.

As Heptares' departure with 280 staff reportedly led to a c.50% reduction in occupancy, this also implies a capacity of around 600 people.

A reasonable estimate of BioPark's occupancy capacity is therefore approximately 600 staff.

This compares to an estimated population of The Proposal of 850 persons.

The Proposal therefore has an increase of persons on the Site in excess of 40%.

END

Appendix E: Poor Transport Links from East to West in Herts Hertfordshire

The article news item in Hertfordshire Mercury dated 17 February 2022 which can be located on the following link: <https://www.hertfordshiremercury.co.uk/news/hertfordshire-news/tried-cross-hertfordshire-public-transport-6673609>

Extracts below:

If there's one thing you pick up quickly after moving to Hertfordshire, it's that the county is blessed with great transport links - as long as it involves London.

Small towns, and even a handful of villages, are connected directly to London by train, and those in the south of the county can even jump on the tube or Overground directly, but less is said about actually getting across Hertfordshire.

The estate agents and developers often boast that King's Cross is less than half an hour away, which can send a shiver down the spine of many born-and-bred locals. **I've sat in plenty of planning meetings where projects have been described as sustainable because they're located near train stations or along a bus route, while councillors' questions about east-to-west connections often go unanswered.**

As someone who regularly drives across the county but wouldn't ever consider doing it on public transport, I asked whether it could really be that bad.

Bus 3 - Hatfield to Hertford

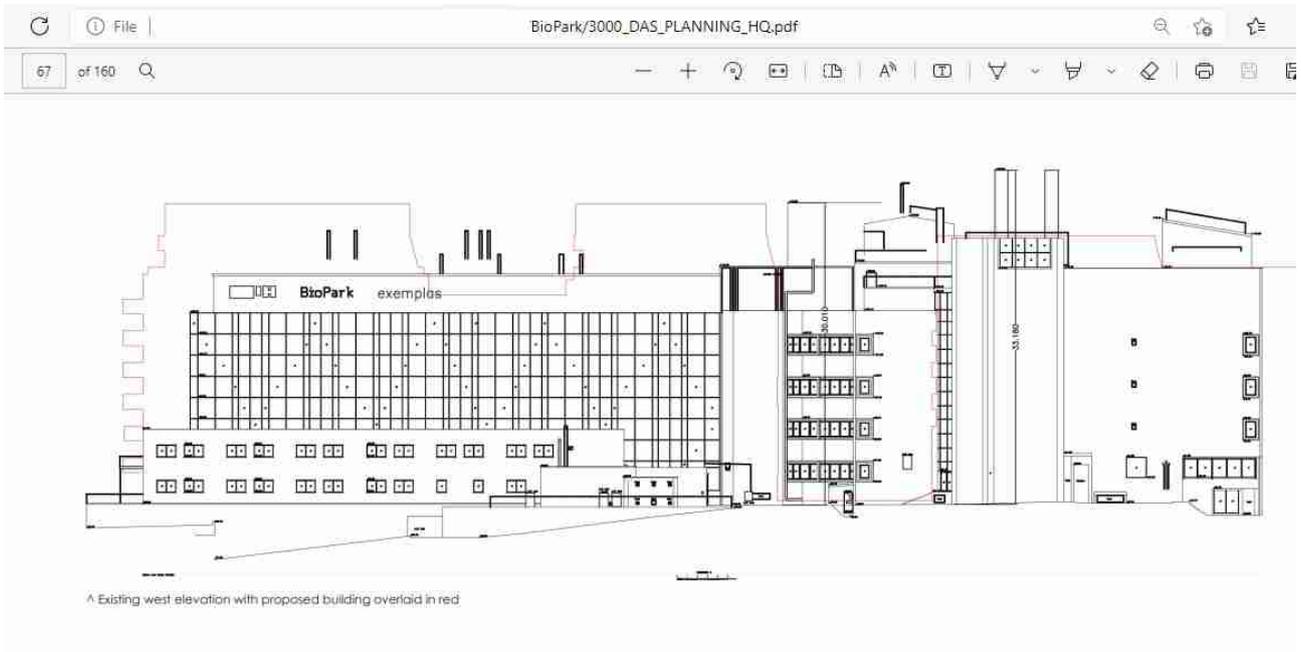
I made it to Hertford two hours after setting off, but I only had time for a whistle-stop tour before having to find my next train. As someone who lumbered around the county without a car for months when I first moved, I was stunned when I realised how close these two towns actually are. If I wasn't as lucky with my connections, the recommended route on Google Maps is a 50 minute journey on two trains to get just eight miles, which makes travelling between the two pointless for most people. For reference, to get from Hatfield to Kings Cross is just 24 minutes.

The 20 minute ride got me into Hertford as scheduled, it's just unfortunate that 'as scheduled' was exactly two hours after I left Berkhamsted. That's three times as long as it would take me by car, and it had crossed a line from it not being feasible for a commute, to it not even really being feasible for a day trip - and I dread to think about the journey if you wanted to enjoy the pubs and restaurants anywhere along the route and then try to get back. I had one connection to go before reaching my finish line.

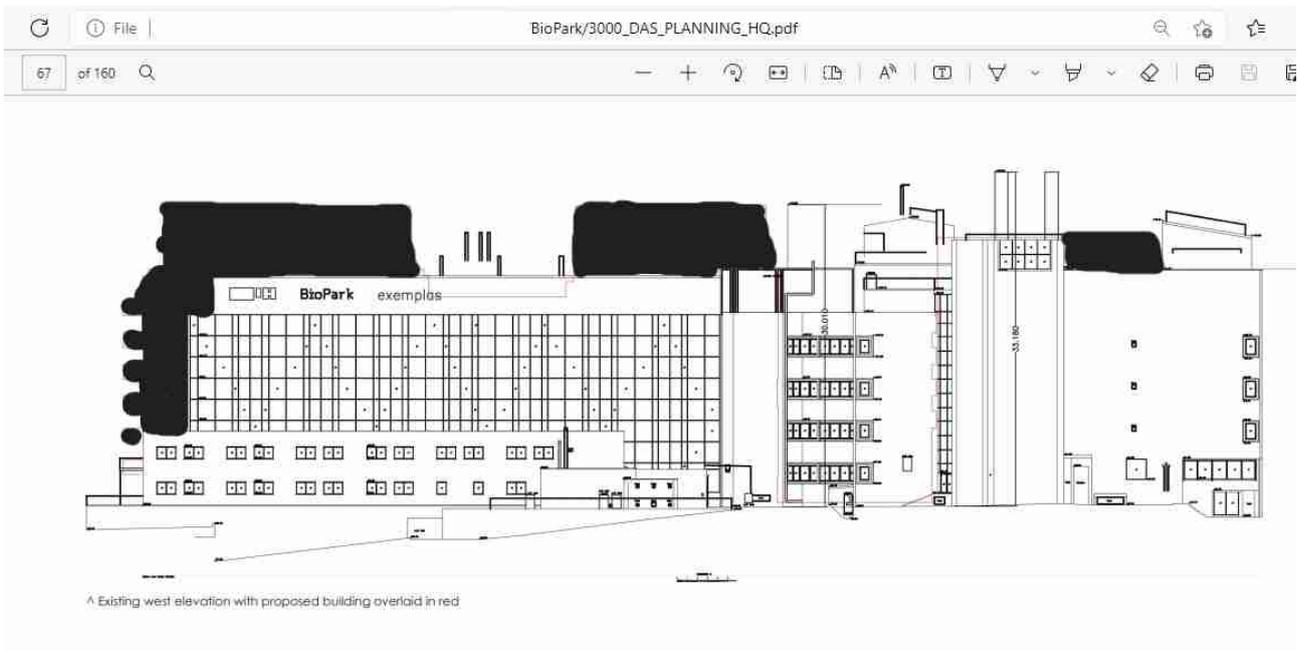
Return Journey: I decided it made most sense to give in and go through London to get home. This journey seemed a breeze in comparison and got me back in just under 90 minutes, along with much more comfortable seats for the duration. END

Appendix F: Images Demonstrating that the Proposal is both higher and bulkier than the existing BioPark building

Extract from Appellant's DAS Document. The bulky Proposal is shown as a red-line.



Marked up version demonstrating the additional height and bulk:



END

Appendix G: Assertion That The Current SPD (Supplementary Planning Document) Is An Important Policy Document

The aim of the SPD (Council LPA SOC APPENDIX 4: Broadwater Road West Supplementary Planning Document) was to set out a clear framework to bring about the sustainable regeneration and redevelopment of the 'Broadwater Road West' site. The SPD establishes the type, amount and mix of development that should be delivered on the site, as well as identifying design and layout constraints, and other requirements that need to be addressed as part of the redevelopment process: details on design and sustainability initiatives are also provided.

It was intended that the SPD would assist developers in preparing development proposals for the site and in the submission of planning applications of sufficient quality to meet the requirements of both the council and the local community.

The SPD site (which includes all of the BioPark area) is bounded on all four sides: with Broadwater Road (A1000), a distributor road, running along the eastern side of the site - this is one of the main access routes into the Welwyn Garden City Industrial Area; housing in Broadwater Crescent to the southern end of the site; the East Coast Mainline to the west of the site; and Bridge Road and Hunters Bridge, which provides the main access to Welwyn Garden City town-centre from the east of the town, to the north of the site.

At the time of the SPD publication, the Bio Park buildings located in the south western corner of the site were occupied by the University of Hertfordshire, providing a unique facility for Bioscience and Health technologies. The SPD did not therefore propose the redevelopment of this part of the site, as it recognised the economic development potential of the facility for the town, which should be supported through the redevelopment of the rest of the land.

Because the SPD assumed the BioPark would carry on as an industrial unit it did not consider its potential redevelopment. So the SPD set design criteria for all the other areas of the site, which the planners expected to be redeveloped. Now that the BioPark site *is* to be redeveloped, it would be logical & consistent to apply the SPD's design criteria that apply everywhere else in the SPD site to the BioPark area itself, as there were and are no grounds for treating the BioPark site differently from the rest of the SPD area. For example, there were taller industrial buildings on the other areas of the site previously and these were replaced by the lower residential buildings that we now see, which are consistent with the SPD.

So the Broadwater Road West SPD design criteria should still apply to the redevelopment of the BioPark.

Appendix G: Assertion That The Current SPD (Supplementary Planning Document) Is An Important Policy Document

Refutation of The Appellant's Comments on the Broadwater Road West SPD

The Appellant has commented on the Broadwater Road West SPD in paragraphs 7.62 to 7.65 of its 'Statement of Case for the Broadwater Gardens Planning Appeal':

"7.62 The SPD, which was adopted in 2008, is outdated. It does not account for WBCs current stance towards the preferred use for the Appeal Site for residential, the recent context of emerging development within the Opportunity Area, nor the change in ownership and use of the site.

7.63 The SPD does not consider the redevelopment of the Appeal Site, The design principles of the SPD therefore cannot necessarily be applied. Instead, the SPD signals the retention of the Appeal Site in its current form and use, and thus its baseline position as a tall building with a large mass.

7.64 The decreasing relevance of the SPD is evidenced by recent permissions in the Opportunity Area for developments that depart from the land use, density and design principles of the SPD. Further detail is at Paragraphs 6.19 and 6.20 of the application Planning Statement."

The Appellant's arguments are not correct and are not relevant to the Appeal for the following reasons:

1. Paragraph 7.62 Legally, the SPD is not outdated. It was adopted by the council on 2 December 2008. It has not been repealed or superseded and it continues to be in force.

The SPD *does* account for the Council's stance towards the preferred use for the redeveloped SPD Site for residential purposes. The SPD was to be applied to the whole of the site to be redeveloped. Once BioPark became a site for redevelopment, it was no different from the other land on the site and so its redevelopment should comply with the SPD

The Applicant's comments on the recent developments within the area and the change in ownership and use of the site are irrelevant, as individual planning application decisions do not invalidate or override Council-approved policy.

2. Paragraph 7.63 The SPD *did* consider the redevelopment of the whole site, and this included recognising the existing use of the BioPark for industrial purposes. The SPD did not say the BioPark would be subject to unique planning rules if it was ever to be developed. The SPD rules were meant to be applied to those parts of the SPD site that were to be redeveloped and now that the BioPark has become such an area it should be governed by the SPD..

3. Paragraph 7.64 A Council-adopted policy is never legally undermined by individual planning approvals. The SPD continues to apply, with full force. **END**

Appendix H: Density Comparison of the Proposal with The Wheat Quarter

(Extract from page 36 of the Appellant's Case)

	Dwellings per hectare (dph)
BioPark Proposal	233
Wheat Quarter	201
Increase	32
	16%

Extract from page 36 of Appellant's SOC >

HG Group
Broadwater Gardens

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hgh

- Density - the net density of the Wheat Quarter scheme is 201dph compared to 233dph within the Appeal Proposal.
- Mix - the approved Wheat Quarter housing mix compared to the Appeal Proposal is:

Beds	Wheat Quarter	Appeal Proposal
1B	653 (49%)	129 (44%)

END

Appendix I: Comparison of Existing and Proposed Gross Internal Floor Areas

(Extracted from The Appellant's CIL Form).

Extract from Appellant's CIL Form >

Gross Internal Floor Area
 Existing 20,366
 Proposed 32,973
 Increase 12,607
62%

6. Proposed New Gross Internal Area

a) Does the application involve new **residential development** (including new dwellings, extensions, conversions/changes of use, garages, basements or any other buildings ancillary to residential use)?

Please note, conversion of a single dwelling house into two or more separate dwellings (without extending them) is **not** liable for CIL. If this is the sole purpose of your development proposal, you should answer 'No' to Question 4b above.

Yes No

If yes, please complete the table in section 6c below, providing the requested information, including the gross internal area relating to new dwellings, extensions, conversions, garages or any other buildings ancillary to residential use.

b) Does the application involve new **non-residential development**?

Yes No

If yes, please complete the table in section 6c below, using the information from your planning application.

c) Proposed gross internal area:

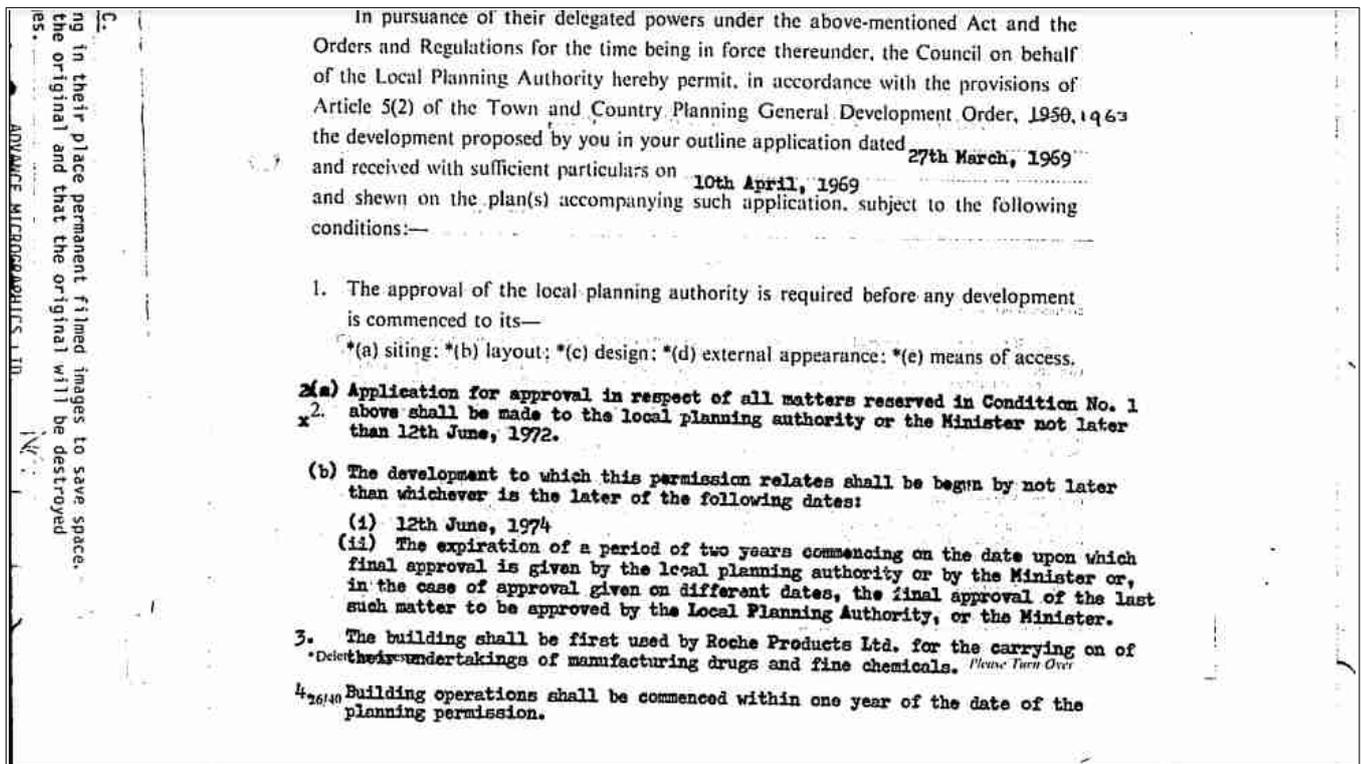
Development type	(i) Existing gross internal area (square metres)	(ii) Gross internal area to be lost by change of use or demolition (square metres)	(iii) Total gross internal area proposed (including change of use, basements, and ancillary buildings) (square metres)	(iv) Net additional gross internal area following development (square metres) (iv) = (iii) - (ii)
Market Housing (if known)	0	0	30,819.74	30,819.74
Social Housing, including shared ownership housing (if known)	0	0	2,042	2,042
Total residential	0	0	32,861.74	32,861.74
Total non-residential	20,366.24	-20,366.24	112.38	-20,253.86
Grand total	20,366.24	20,366.24	32,973.12	12,606.88

Welwyn Garden City Society BioPark Appeal: PINS Ref: APP/C1950/W/22/3294860

Appendix J: Summary of Outdoor Space - Some of Which is Not Deemed Usable

(To be extracted from The Appellant's case in The Society's Proof of Evidence)

Appendix L: 1969 Planning Permission for the Existing BioPark Building



Extract from 1969 Planning Permission for Existing Bio-Park Building demonstrating that it was granted for Employment Purposes

More to be provided in the Society's Proofs of Evidence

END

Appendix M: Commentary on Change From the Original Planning Permission for Employment Purposes

At the time of the approval of the SPD the former Roche products site was occupied by many industrial/commercial buildings of significant height. Although the Council had regard to the former use of the site it did not blindly accept that such height and massing could be merely repeated across the site as part of any redevelopment. As a consequence it can be seen that the new development is of a more reduced height at its southerly boundary which then increases.

It is understood that the only reason that the site the subject of this appeal was not included in the subsequent planning guidance is because it was intended to be retained in its approved employment use. It is not unreasonable to assume that had it been released for development when the planning guidance was being developed it would have been incorporated as part of the overall guidance in the same way that Cereal partners was rather than as a stand alone site. It would have been illogical to have treated this site outside of the overall SPD as there would have been no sound planning reasons for doing this.

When the Bio Park was granted consent it was part of an already established industrial site and the mass of the building reflected not only its proposed use but what existed at that time. Thus it would have been considered as another major industrial employment building on a major industrial site.

This of course is no longer the case as all of the other industrial buildings have long since been demolished and thus the context within which this development should be considered is the one which exists today i.e. the low rise neighbouring residential development on the neighbouring Mirage site.

**Appeal APP/C1950/W/22/3294860: Statement of Case: Welwyn Garden City Society
Appendix N: Local Views Showing Benign Impact of the Existing BioPark Building**



Building pleasantly reflecting sunset: taken from West of The Site from garden of concerned resident living on Longcroft Lane



Reflective facade mitigates building impact – taken East of The Site from the Mirage Development

**Appeal APP/C1950/W/22/3294860: Statement of Case: Welwyn Garden City Society
Appendix N: Local Views Showing Benign Impact of the Existing BioPark Building**



White facade and few windows blends into background: taken from South of The Site from railway bridge



**Appeal APP/C1950/W/22/3294860: Statement of Case: Welwyn Garden City Society
Appendix N: Local Views Showing Benign Impact of the Existing BioPark Building**



White facade and few windows blends into background: taken from South of The Site from the neighbouring allotments



White facade blends into background: taken from North of The Site from railway footbridge by the Howard Centre

**Appeal APP/C1950/W/22/3294860: Statement of Case: Welwyn Garden City Society
Appendix N: Local Views Showing Benign Impact of the Existing BioPark Building**



Worst view of existing building: Dark inner facade and more windows shows impact that The Proposal will have on all elevations and views. This view taken from railway station platform.



**Appeal APP/C1950/W/22/3294860: Statement of Case: Welwyn Garden City Society
Appendix N: Local Views Showing Benign Impact of the Existing BioPark Building**



White facade and few windows blends into background: taken from South of The Site from the neighbouring low rise housing on Coralsmead



Appendix O: 3D-Model of the Proposal Demonstrating the Negative Impacts



Deep Shade Cast By High Towers

More to be provided in the Society's Proofs of Evidence

END



Plans to build high rises that opponents said would turn a 100-year-old garden city into a "concrete city" have been rejected by councillors. The HR (sic HG) Group wanted to build 289 homes on the former BioPark site in Welwyn Garden City, Hertfordshire.

Campaigners dressed up as the town's founder Sir Ebenezer Howard ahead of the council meeting, claiming the plans were against his "ethos". [Extract Ends]

Full article on link: https://www.bbc.co.uk/news/uk-england-beds-bucks-herts-58513488?fbclid=IwAR36yXwj6qHXvZ2yx1Sh_OWqzorQWH-swVje_Qp-pmCffOf_dQqJMA6Pik_

Appendix Q: TCPA Garden City Principles Compared to The Proposal

Garden City Principle (GCP)	Assessment of The Proposal
Mixed-tenure homes and housing types that are genuinely affordable	FAILS to meet GCP criteria; Evidence base as noted in Society Statement of Case
Beautifully and imaginatively designed homes with gardens, combining the best of town and country to create healthy communities, and including opportunities to grow food.	FAILS to meet GCP criteria; Evidence base: missing from The Proposal
Development that enhances the natural environment, providing a comprehensive green infrastructure network and net biodiversity gains, and that uses zero-carbon and energy-positive technology to ensure climate resilience	FAILS to meet GCP criteria; Evidence base: as noted in Society Statement of Case
Integrated and accessible transport systems, with walking, cycling and public transport designed to be the most attractive forms of local transport.	FAILS to meet GCP criteria; Evidence base: <ol style="list-style-type: none"> 1. Section 106 transport proposals are insufficient and time limited. 2. East-West public transport is very poor (see Appendix E)
Strong vision, leadership and community engagement.	FAILS to meet GCP criteria; Evidence base: Extensive public objection to the Proposal
Land value capture for the benefit of the community/ Community ownership/ Vibrant neighbourhood/ Local jobs	FAILS to meet all 4 GCP criteria

END

Appendix R: The Economist Journal ‘The Fight to Preserve a Pioneering Planned Town.’



The Economist

Menu Weekly edition Search

Britain
Apr 17th 2021 edition >

Welwyn Garden City

The fight to preserve a pioneering planned town

The NIMBYs are right this time



IF THE MANHATTAN skyline represents one urban ideal, the view from the white bridge in Welwyn Garden City reveals another. To the south stretches a mile-long parkway, lavishly wide, planted with grass, flowers and a fountain. On one side is an orderly shopping district. Curved roads spread out from the town centre, filled with two-storey houses, trees, hedges and verges—a perfectly controlled blend of urban and rural. Although it is a century old, you can still sense the confidence of its designer. No wonder the locals are fighting to protect it.

Welwyn Garden City was the second garden city to be built in Britain, after Letchworth, a few miles to the north in Hertfordshire. It was also the last. The idea and some of the money came from Ebenezer Howard, a farmer turned urban visionary who wanted to strike a balance between polluted, slummy cities and boring villages. His towns promised decent houses and fresh air but also factory jobs. He tried calling his new amalgam “rurisville” and “town-country” before settling on “garden city”.

Full article on link: <https://www.economist.com/britain/2021/04/15/the-fight-to-preserve-a-pioneering-planned-town>

Appendix T: Viability and Affordable Housing - Transcript of Planning DMC Discussion

BioPark DMC Meeting 9 September 2021: Viability Extracts: From Council LPA Webcast:

<https://democracy.welhat.gov.uk/ieListDocuments.aspx?CId=156&MId=1296>

1 hour 11 minutes: Councillor Boulton (Chair): The next question Siobhan asked was in relation to affordable housing and viability and specifically policies H7 and HB7. So could we have a comment from officers in relation into:

a) what the viability reports both applicants and independent assessors stated?

b) the weighting that needs to be put on viability when considering the planning balance?

David Elmore (WHBC): I would just like to mention to begin, with regard to policy H7 and SB7 of the emerging local plan. It sets out the policy compliance level of affordable housing. It also says that if you cannot provide a policy compliant level of affordable housing this will be subject to viability a viability assessment has been submitted with the proposal and assessed by the council's independent Viability Advisors I will now pass you on to our Viability Advisors to explain that in further detail. Thank you

M. Olive (Aspinall Verdi – Council's Viability Advisors) Speaker 1: Myself, my colleague P. Dosanjh were instructed by the council to provide an independent review of the applicants liability assessment. Findings were that there was an uplift in viability, but fundamentally the scheme remained unviable without any affordable housing provision. Just to put that into numbers...

Cllr Boulton: For just for the layman here, could you talk a little bit about what viability means and when you say it was assessed to be a viable and viable what that means.

P. Dosanjh (Aspinall Verdi – Council's Viability Consultants) Speaker 2: In terms of assessing viability, what we look at is the existing use value of that property. So we assess what the value of the property is. And then we assess the value of the proposed scheme, less the costs, and the profit required by the developer. And obviously policy requirements in our first position is to test policy requirements to see what it generates, and what's left over is called the residual land value. Now if that residual land value if that is higher than the existing use value of that property, then we can say it's viable. in this scenario, it's not viable, it's actually generating a deficit. *[Inaudible shout from audience] They haven't explained the fact.*

They have actually paid more than what they've put in their assessments. So they paid circa £10 million but we assessed it and they assessed it to be around £6 million. [Base position for a viability assessment] So there's a £4 million hit they're taking already in terms of the land value. On a policy compliant basis, it's generating a deficit of £9 million, plus the £4 million taken on the hit in terms of land value

Appendix T: Viability and Affordable Housing - Transcript of Planning DMC Discussion

And the other factors we hadn't actually included, at that time, the £2 million for Section 106. So actually, the viability is even worse now than it was when we first assessed this.

We then looked at 100% sort of market analysis, what could it generate, and it still generated a deficit of £2 million. So it's all unviable even with 100% private housing, but it will impact on their profit. So effectively, it's down to the applicant, whether they want to take a lower profit to deliver this scheme in terms of deliverability.

1 hour 15 minutes Councillor Boulton (Chair) OK thank you for that. And can we have a comment from officers in relation to the weight that should be put on vulnerability assessment is specifically in relation to schemes which don't deliver policy compliant affordable housing, or legal. David.

David Elmore (WHBC): The reports in the planning balance section, substantial weight is attached to the provision of affordable housing in our site, significant rate is attached to affordable housing in this case, it would normally be substantial weight. However, that's negated by the fact that the development wouldn't be providing the policy compliant provision as set out in our district and emerging local plan. Nevertheless, it's still significant weight attributed to it. So it needs to be weighed in the balance against the other benefits and also the adverse impacts of the proposal.

1 hour 16 minutes Councillor Gail Ganney: OK thank you. I've read the recommendations. And I think there's some real tangible benefits in terms of the financial contributions towards education and community services, infrastructure, etc. And I also acknowledged that we are in need of housing, and potentially not at any cost.

And I've got a couple of concerns. So if I could just, they've been brought up again and again, but I just have a question at the end of them. Thank you for explaining the viability issue on affordable housing.

The council policy, as we know is 30% to achieve 30% affordable housing and new developments. This report in point 9.181, etc, is only 10%. As we've established I'd like to understand what scope there might be to increase that 10% to achieve something a bit nearer to the council's policy. That's my first question.

My other concern is around the parking as well. I accept that it's a sustainable site. The council's declared a climate emergency. So the fact is people will still want to drive and will still have cars and the 0.64 spaces per unit. Can someone explain if this has been compared? What, what two comparable sites have comparison being done? And I'd like to understand how that provision compares to others. Thank you.

Appendix T: Viability and Affordable Housing - Transcript of Planning DMC Discussion

Councillor Boulton: Great. Thank you. So first question was in relation to the scope to increase the social housing provision

David Elmore: As outlined in the report the scheme even with no affordable housing is rendered unviable so providing additional affordable housing in this case will increase the deficit even further for the developer.

And in terms of the parking Comparison Report, outlines a parking ratio of naught point seven six in comparison with the Shredded Wheat site [Unbuilt] data against the concern that should we develop next time which was naught point seven and that was and that was granted by members of committee with the with the site being located right next door to to this application site, the sustainability credentials, the development and the proximity to transport and transport is very comparable.

1 hour 19 mins P. Dosanjh (Aspinall Verdi - Council's Viability Advisors) Speaker 2: Just on that point in terms of the increase in the affordable housing. So the offers at 10%. And it's not viable, but what we have recommended is a review clause. And what that means is you have two stages to review, you have an early stage review clause, so that say at 12 months. Developer starts on site but to manage to find some cost savings or there's some value engineering or values start to go up and you do a recalculation at that point and if that generates additional housing then that can be delivered on site.

Another way is to have late stage review at the end - reviews a possible surplus as a contribution to a possible off-site Affordable Housing contribution.

So there are mechanisms that will be recommended as part of this.

END of this section of the transcript.



Appeal Decision

Inquiry held from 9-11 February 2010

by **A J Davison BA(Hons) LLB(Hons) MSc
MBA Dip LD RIBA FRTPi**

an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
11 March 2010

Appeal Reference: APP/C1950/A/09/2113786/NWF

Former Roche buildings, Broadwater Road, Welwyn Garden City AL7 3AX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Taylor Wimpey (North Thames) against the decision of Welwyn Hatfield District Council.
- The application Reference N6/2009/1053/MA, dated 27 May 2009, was refused by notice dated 25 September 2009.
- The development proposed is the erection of 207 residential dwellings and the retention and alteration of the existing Listed Building for community uses, together with associated open space, landscaping, car parking and new access arrangements.

Decision

1. I dismiss the appeal.

Main issues

2. The Council refused planning permission for nine reasons but subsequent negotiations between the parties led to four of these being withdrawn before the Inquiry. The revisions to the scheme resulting from these negotiations were accepted by the Council as minor amendments. In the light of these changes and exchanges between the parties in the course of the Inquiry I consider that there are now two main issues in the appeal.
3. The first is whether the Appellants' Unilateral Undertaking under Section 106 of the Planning Act (S106) makes adequate provision for affordable housing and infrastructure contributions. The second is the effect of the scheme on the character and appearance of the area with particular regard to the setting of the former Roche Headquarters, which is a Grade II Listed Building.

Reasons

4. The 3.2ha appeal site is at the southern end of a much larger (16ha) area of land lying between Broadwater Road to the east and the main east coast railway line to the west. This area was formerly occupied by industrial buildings. It has largely been cleared and its potential redevelopment is the subject of the 2008 Broadwater Road West Supplementary Planning Document (SPD). There is residential development to the south of the appeal site. Adjoining its western boundary is the large Hertfordshire BioPark office and laboratory building. There are more office buildings to the east, on the other side of Broadwater Road. To the north is vacant land, owned by Tesco, which is awaiting development as part of the larger scheme envisaged by the SPD.

The Adequacy of the Section 106 Undertaking

5. Policy H7 of the 2005 Welwyn Hatfield District Plan requires a minimum of 30% of the units to be provided as affordable housing. The Council's 2004 Housing Needs Survey concluded that the need was such that the target should be 40%. The target in Policy H2 of the 2008 East of England Plan (EEP) is 35%. The Broadwater Road West Supplementary Planning Document (SPD) also envisages that 35% of the housing in the SPD area would be affordable.
6. The Council says that, in order to comply with these policies the 207 dwellings proposed by the Appellant would need to include 62 affordable units, 43 of which would be "social rented" and 19 "shared ownership". The scheme as submitted did not include any affordable housing at all and no Section 106 obligation to make a financial contribution towards its provision elsewhere was proposed.
7. The District and County Councils also required contributions to be made towards the cost of infrastructure provision. Before the application was determined the Appellants maintained that the scheme could not afford any financial contributions other than those relating to a Green Travel Plan and the provision of fire hydrants. Two of the reasons for refusal related to the lack of contributions.
8. Subsequent negotiations between the parties prior to the Inquiry resulted in the Appellants offering to provide 14 social rented homes and part payment of the S106 money. Further contributions would be made by means of an "escalator" mechanism whereby the balance of the S106 money would be paid once the Gross Development Value (GDV) of the scheme had increased by 8%. Any further increase in the GDV would then be shared by the developer and the Council on a 60/40 basis, with the Council's share being paid as a commuted sum capped at £1,604,941. The commuted sum would be used to purchase dwellings, either on the site or elsewhere, for shared ownership.
9. One concern of the local authorities with regard to the escalator was that the S106 contributions would not be index linked. This was addressed by the Appellants in the course of the Inquiry and the final version of the Undertaking included indexation of the contributions and provided for payment of some of them prior to occupation of the dwellings.
10. It seems to me that the escalator mechanism would introduce a considerable degree of uncertainty as to how much affordable housing would eventually be provided. In my view this would not be consistent with the emphasis that national, regional and local planning policies place on the importance of providing affordable housing.
11. Furthermore, the escalator would be heavily weighted in the Appellants' favour. The best that the Council could hope for would be that, if the development was successful, the amount of affordable housing (30%) required by Policy would be achieved. However, it could also be that as few as 14 affordable homes (7%) would be included in the scheme. On the other hand the worst that could happen so far as the developers are concerned is that they would have to provide the amount of affordable housing they should have provided in the first place while it is possible that they would have to provide less than a quarter of that amount.

12. Furthermore, the need for the escalator only arises if the scheme is not viable. The affordable housing requirement is the same now as it was when the Appellants acquired the site. Of course, market conditions have changed since then and it is accepted that the land is worth less than it was. That is a risk that developers must take. In so far as the affordable housing requirement is concerned it is necessary to assess the situation on the basis of current market values.
13. Following the refusal of planning permission the parties carried out a viability assessment of the scheme based on the "Three Dragons" methodology, which involves deducting the costs of development from the GDV and comparing the residual land value with its value for existing or alternative uses. This assessment was, however, based on the price paid for the site rather than on its present value. The figure for the GDV has been agreed by the parties but no figure for the current valuation of the site has been provided.
14. The Appellants accept that it is normal practice to use the existing value as the comparator but say that the time scale for the appeal made it impossible to obtain an independent valuation. They also wished to recover the purchase price and ensure the delivery of the development. I do not consider either that these factors justify a departure from the normal methodology or that the Appellants' alternative approach of holding land values constant and manipulating profit levels, provides adequate justification for their claim that the scheme is not viable. In my view the Appellants have failed to demonstrate that the scheme could not provide the required amount of affordable housing while remaining economically viable.
15. The Appellants have drawn attention to the impact that a delay in developing this site would have on the supply of housing land in the Borough. The site is one of the largest in the Council's five year housing land supply figures. However, the situation with regard to housing land supply is unclear at present following the quashing by the High Court of the housing allocations in the EEP. In any event, there can be no certainty that the site would be developed without delay, given the current market conditions. Furthermore, the fact that this is one of the larger available housing sites in the Borough makes it all the more important that it should, as far as possible, provide the requisite amount of affordable units. As the Council has pointed out, it might be difficult to make up any shortfall elsewhere.
16. My conclusion is that the S106 Undertaking would satisfactorily provide the contributions towards the provision of infrastructure. However, the Appellants have failed to show that including the requisite number of affordable homes within the scheme would render it unviable. The proposals therefore conflict with Local Plan Policy H7 and with EEP Policy H2.

Character and Appearance

17. The appeal site has been cleared of buildings, with the exception of the Grade II listed former Roche Headquarters building in the north east corner. This important heritage asset has been empty for some years and I saw during my visit to the site that it was showing signs of deterioration. The original 1930s Listed Building would be retained for community use but the modern extension to it would be removed.

18. This aspect of the scheme already has listed building consent and is not at issue in the appeal. I agree with the Appellants that one benefit of the proposed development is that it would result in the building being put back to beneficial use.
19. The Appellants have sought to design the scheme so as to reflect its context and the requirements of the SPD. Development would take the form of blocks of various sizes, providing a transition from the scale of the larger buildings around the site to the residential development to the south. Materials would include render and brick. The former would reflect the character of the listed Building and the latter the brick built residential development to the south. Windows in elevations facing the former Roche offices would be large, again reflecting the character of that building, while those on other elevations would have a more informal character.
20. I do not agree with the Council's concerns about this. I consider that, along with variations in scale and materials, the fenestration helps to achieve a subtle transition from the industrial character of the larger buildings around the site and the established residential area to the south of it.
21. The SPD envisages that a boulevard extending southward into the appeal site would form part of the overall development of the Broadwater Road West development area. Construction of the southern stretch of this boulevard would require the co-operation of two other landowners besides the Appellants. In the case of the Biopark site, which occupies much of the western boundary, the land concerned is occupied by plant and equipment. There is no evidence before me to indicate that there is any immediate prospect of this land being released for inclusion in the boulevard. The appeal scheme leaves a landscaped strip along the western edge of the site to allow for future construction of this part of the boulevard. Despite the Council's concerns there would, in my view, be little point in doing more than this given the uncertainty as to when or if the boulevard will be implemented.
22. One of the Council's concerns is that the western elevations of the blocks facing the boulevard would not have active frontages. There would be one house entrance and two garages on this elevation and the ground floor of Block 4 would consist of ventilation grilles to the undercroft parking. The whole frontage would, however, contain the windows of the houses and flats overlooking the boulevard. There would also be pedestrian routes leading from the boulevard into the site and on to Broadwater Road. Should the boulevard not be completed, however, the western elevations of blocks 2 and 4 would be left facing the Biopark building and the industrial plant around it. In that context the Appellants' decision to focus major elevations on the tree lined walkways and open spaces within the scheme seems entirely reasonable. Indeed they say that this is what the Council encouraged them to do.
23. Similar considerations apply to the east-west access route along the northern boundary. This would require the contribution of land from both the Appellants and from Tesco. It would be in the interests of both landowners to provide this link and the Appellants produced evidence at the Inquiry of Tesco's willingness to co-operate. However, in the absence of any firm proposals for the development of the Tesco site the Appellants can do no more than make allowance in their scheme for the future creation of the link.

24. The Council points out that, once the appeal scheme had been completed without them, the provision of the boulevard and link road in future would depend on the goodwill of whoever owned the land at the time. However, the appeal scheme would not impede their construction and, even if agreement from the owners was not forthcoming, the Council could have recourse to compulsory purchase powers to acquire the necessary land.
25. My conclusion on this issue is that the appeal scheme would enhance the character and appearance of the area in general and the setting of the Listed Building in particular and that it would not prevent implementation of the boulevard or link road. Consequently it would not conflict with the SPD or with Local Plan Policy D1.

Overall Conclusion

26. Implementation of the scheme would remove an area of dereliction close to the town centre, generally enhance the character and appearance of the area and act as a stimulus for the development of the rest of the Broadwater Road West area. It would also provide valuable housing in the area and help to secure the future of an important heritage asset.
27. My overall conclusion is, however, that these benefits would be outweighed by the failure to provide the requisite amount of much needed affordable housing. For the reasons given above I conclude that the appeal should be dismissed.

Anthony J Davison

Inspector

DOCUMENTS SUBMITTED DURING THE INQUIRY

- 1 Lists of persons attending the Inquiry
- 2 The Council's letter of notification of the Inquiry
- 3 Addendum to the Statement of Common Ground
- 4 Opening Statement for the Appellants
- 5 Opening Statement for the Council
- 6 Statement by Welwyn Hatfield Access
- 7 ATLAS Topic Papers T1.2.3 and T1.3.2
- 8 Letter from Mr Quartermain (CLG) to Chief Planning Officers
- 9 Letter from dp9 dated 5 February 2010
- 10 Economic Appraisal Tool User Manual (2009) (Homes and Communities Agency)
- 11 Extract (page 53) from Manual for Streets
- 12 Strategic Housing Market Assessment Report: Draft Executive Summary (2010)
- 13 Housing Needs Survey Final Report (2004)
- 14 East of England Plan 2008: Policy H2
- 15 Copy of email from Paul Fellows
- 16 Mr Leahy's Speaking Note
- 17 Council's list of suggested conditions
- 18 Taylor Wimpey UK Ltd S106 Unilateral Obligation
- 19 Closing submissions for the Council
- 20 Closing submissions for the Appellant

PLANS SUBMITTED DURING THE INQUIRY

- A Bundle of application plans reduced to A3 size

APPEARANCES

FOR THE APPELLANT:

Mr Mark Lowe QC

He called

Simon Parfitt MSc BA MCIT MILT MIHT	Director, David Tucker Associates
James Fowler BA(Hons) BArch	Associate Design Director, HTA Architects
Andrew Leahy BSc MIOD	Bespoke Property Group
Geoff Armstrong BA(Hons) MRTPI	Partner, Development Planning Partnership

FOR THE LOCAL PLANNING AUTHORITY:

Mr Robin Green of counsel

He called

Jaqueline Nixon BA(Hons) MA MRTPI	Principal Planning Officer, Hertfordshire County Council
Lindsey Lucas MSc MIHT	Development Control Engineer, Hertfordshire County Council
Steve Walker BSc(Hons) DipArch RIBA	Director, Urban Practitioners
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