Marshcroft, Land East of Tring

Appeal by Redrow Homes Ltd, and James, John and Jaqueline Westrope

Public Inquiry: APP/A1910/W/22/3309923

LPA Planning Application Reference: 22/01187/MOA

Closing on behalf of the Combined Objectors Group

Introduction

1. The Combined Objectors Group[1] strongly opposed this application and in light of the voluminous evidence heard over the last 15 days continue to do so.

2. This development finds no support in the adopted plan. I therefore start with an obvious point: this is not an example of plan led development; it is an example of developer led development and the antithesis of a plan led system. The Combined Objectors are not NIMBYs who are averse to house building as has been suggested, we welcome development but it must be the right number of houses, in the right place with the right supporting infrastructure, enabling Tring to thrive whilst maintaining the market town character. The size and location of houses are all questions of judgment which should be decided by a democratically accountable council, not a developer intent on making a return to investors.

3. The Local Authority is taking its time to prepare and produce a plan—but that does not mean that they should be perpetually punished when they are confronting the necessary trade-offs. The delays are not in spite of a plan led system; but the result of a plan led system. The regulation 18 draft produced an unprecedent number of responses from the community and these require careful consideration. This is the plan led system in action and we are reminded in the NPPF at paragraph 15, that development is meant to be *genuinely* plan led. Development contrary to the plan erodes trust in and undermines the plan led system. Accordingly, a direct impact of this scheme is a further erosion of the plan led system and this weighs heavily against permission.

4. There are multiple ways to increase the provision of housing, however, there is as Professor May acknowledged[2] one way to protect the Green Belt—do not develop upon

[1] CPRE Hertfordshire – the Countryside Charity ("CPREH"), The Chiltern Society ("CS"), and Grove Fields Residents Association ("GFRA").
[2] Cross-examination of Professor May on 26 April 2023

it. As the council have explained in their closing, there are multiple sites available for development—the acute housing challenges are not going to be solved by building on this site.

5. This 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[3] 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.[4]

6. There was a somewhat juvenile attempt by the appellants to paint those who objected to the scheme as selfish or hypocritical.[5] A point is either good or bad and the motivation of the speaker is irrelevant.[6] Nevertheless, the truth is the opposite; far from being selfish, protecting the green belt is a manifestation of our better selves—forsaking the immediate desire to develop to ensure that there is open space for future generations. Our children, grandchildren and future generations should benefit from the countryside just as we have done. We must be vigilant against the temptation to abandon the needs of future generations.

7. We must also be vigilant to procedural points obscuring the evidence. As Ms Brown made plain, landscape and character harm could have been a reason for refusal.[7] The approach of the appellant to hide behind the council's decision not to articulate a separate reason for refusal for landscape and character harm is extremely unhelpful. We spent four days discussing and exploring it and all sides appointed specialists witnesses. It matters and was rightly identified as a main issue by the inspector.[8]

8. The COG had no intention of wasting the inquiry's time by replicating the council's case which with a few minor differences where we go further, we adopt wholeheartedly. In

[3] All sides agree that this is inappropriate development
[4] *Sefton MBC v Secretary of State For Housing, Communities, And Local Government* [2021] EWHC 1082 (Admin)
[5] Cross-examination of Mr Berry and Evidence of Chief of Professor May on 26 April 2023
[6] Alternatively, if the motivation of the speaker is relevant the assertion of the appellant has to be considered in the context that they are a corporate entity with a duty to make a return for their shareholders who have already invested substantial amount of time and money in this scheme and are very keen to make a return on their investment.
[7] Ms Brown's evidence, page 4.
[8] Case Management Conference 13 January 2023, section 4.

pursuit of protecting the Green Belt, we called two witnesses and cross-examined three. We therefore limit our submissions to the following six topics

a. Affordable housing;

b. Landscape, character and visual harm;

c. Damage to the setting of the Area of Outstanding Natural Beauty

d. Green Belt

e. Local Plan process

f. The very special circumstances test

Affordable Housing

9. At the heart of COG's case is a desire to protect the countryside from encroachment. The COG 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 Belt is going to be compromised it must be done on a robust evidence base and COG has significant concerns regarding the use of affordable housing to justify encroachment when on closer examination it is not genuinely affordable as Mr Stacey's Shelter report makes plain.

10. Ostensibly, the provision of affordable housing at 45% 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 evidence for the emerging local plan attracts 'very significant weight'[9] and that states that the overwhelming majority (87%) of those in need of affordable housing require social rent.[10]

11. Once the appellant was reminded of this in cross-examination,[11] the affordable housing provision was altered so that it included 25% social rent. 25% of 45% is 11.25% of the total housing offered by this proposal. The remaining 88.75% will be out of reach to those in need of social rent.

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

[9] Professor May's proof at paragraph 5.12.
[10] [CD 8.1] page 112.
[11] Cross-examination of Mr Stacey on 10 March 2023

a. First, the inspector will have no evidence to satisfy himself that this provision of affordable housing is genuinely deliverable except for Professor May's assertions. However, Professor May confirmed that professional opinions should only attract weight if they are made by an expert and that he was not a chartered surveyor.[12] At the very least, any consent should make plain that permission is contingent on delivering all these affordable homes.

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 housing, the failure to demonstrate that an even better housing proposal could be provided given the 'eye wateringly' expensive costs of homes in Tring is a significant omission.[13]

13. 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 COG at the outset, this is a noteworthy omission.[14]

Landscape, Character and Visual Harm

14. We start with four obvious but necessary points:

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 and harm to the setting of the AONB.[15]

[12] Cross-examination of Professor May on 26 April 2023.
[13] Mr Young on behalf of the appellant in response to a question from the inspector to Professor May, 26 April 2023.
[14] COG, Statement of Case, paragraph 7.1.
[15] Accepted by Professor May in Cross-examination on 26 April 2023.

15. We open this section with these points because the appellants did not explicitly consider them in their planning balance. Whilst they were willing to emphasise that they did not explicitly articulate as part of the Local Authority's reasons for refusal they compounded that error by failing to explicitly consider it within the planning balance.[16] Moreover, the appellants felt that there was no need to consider these harms explicitly in the planning balance despite them being foregrounded in the COG's statement of case.[17]

16. Even on the appellant's case there is harm to the character:

    a. Mr Chard states that during the *10 year* construction period there will be major adverse harm to the character of the agricultural fields, adverse harm to hedgerows, trees, NCA 110 character area, Tring Gap Foothills Local character area. Overall, Mr Chard states that there will be moderate adverse harm to the character, the site and its immediate surroundings during that period.

    b. Mr Chard states at the end of construction, there will still be Major adverse impacts on the character of the agricultural fields and, moreover, at the end of construction there will be adverse impacts on Chiltern's National Character Area and the Tring Gap foothills Local Character Area.

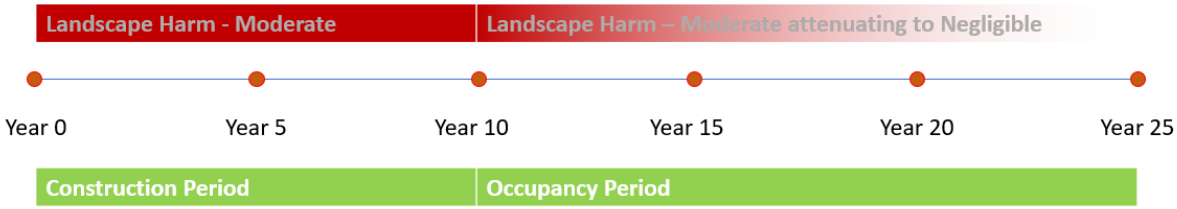
    c. Mr Chard fully accepts that there will be moderate adverse impacts to the night-time sky even at Year 15.

    d. Mr Chard fully accepts that there are harms to views during and after construction. Pedestrians on *national* rights of way will have their view compromised. Moreover, critical views alongside Marshcroft Lane which forms a popular access walk[18] will have their experience compromised. Residential views will be sorely and permanently compromised.

17. It is only at year 15 that these character, landscape and visual harms attenuate on Mr Chard's case to a negligible level. Realistically this means that even on the appellant's case there will be at least moderate adverse impacts over at least a twenty year horizon if the adverse impacts over the construction period and the years of plant growth are combined. These obvious impacts should have been recognised, properly weighed and explicitly weighed in the planning balance regardless of the existence or absence of

[16] Cross examination of Professor May on 26 April 2023.
[17] Section 4 of the COG's Statement of Case.
[18] The inspector will recall during the opening that it was described as 'walking rush hour' on Sundays by one resident and this was not challenged by the appellant.

landscape and visual impacts forming part of a reason for refusal as they are plainly relevant to the decision before you.



18. You will obviously form your own view regarding the value to be ascribed to certain landscape and visual effects. However, to use Mr Young's phrase, ascribing landscape value is not equivalent to 'pinning the tail to the donkey' but a methodical exercise informed by expertise. All three parties called expert witness all qualified as landscape architects. Ms Kirk's and Ms Brown's evidence should be preferred.

19. Mr Chard omitted key pieces of information from his analysis. This matters. It is not only an example of not being transparent or failing to take into account relevant material, but it also affects the quality of judgment since giving reasons concentrates the mind and results in better decisions.

20. In terms of Mr Chard's approach the following omissions are made and were acknowledged in cross-examination:

    a. With respect to GLIVIA[19]'s requirement to explicitly state how judgments regarding susceptibility and value result in judgments concerning sensitivity, Mr Chard does not explain in any way how he combined those judgments.[20] This is all the more surprising given that in some cases he rounds up, whilst in others he rounds down without explanation.

    b. With respect to GLIVIA's requirement to identify all relevant viewpoints, Mr Chard omitted viewpoints from high up upon the escarpments where there was seating but substitutes those for views which are heavily filtered by woodland![21]

    c. The LVIA extraordinarily does not note (let alone grapple) with the Dacorum Borough Landscape Sensitivity Study (April 2020) despite this forming the most recent, site specific GLIVIA compliant appraisal. This was a significant omission

[19] Guidelines for Landscape and Visual Impact Assessment – Third Edition
[20] See specifically, paragraphs 3.28 and 3.29 of GLVIA.
[21] Ms Brown's First Appendix, page 12.

particularly as GLIVIA states that baseline studies should be informed by existing landscape character assessments.[22]

d. Mr Chard freely acknowledged that his assessment of the legacy effects with regards to the character assessment depends on the landscape quality of the SANG provision. Mr Chard freely acknowledged that he was under professional obligation to grapple with the positive *and negative* impacts of the appellants proposals. Despite this professional obligation and critical importance, there is no mention (let alone analysis) of the obvious negative features of the SANG such as fencing. This was a significant omission which undermines Mr Chard's overall conclusion.

e. Given the obvious importance of Marshcroft Lane to local residents and recreational visitors from further afield., it was a stark omission not to include it within the character assessment.

21. These omissions matter; not only are they an example of failing to be transparent or thorough, but they also undermine Mr Chard's credibility as an expert.

22. Regardless of (or perhaps because of) the paucity of Mr Chard's evidence and the LVIA. Mr Chard substantially undercounts the impact of the scheme in landscape and character terms for the reasons advanced by the Council and Ms Brown. To take four examples:

23. Mr Chard's view was that there was a strong urban influence on the site. Not just an urban influence, but a strong one. This is plainly unsubstantiated. Looking at the northern field, there are no urbanising features on site; to the North there is a garden centre and cottages. To the East, South and West there are fields or Marshcroft Lane. For the Southern plot, to the North and East there are fields (including an Area of Outstanding Natural Beauty), to the South is station road with a spattering of heavily shielded houses. To the West there are large and developed back gardens. This is not an example of a strong urban influence and it is somewhat brave to suggest otherwise.

a. Mr Chard's view that the overall impact of the scheme on the Agricultural Fields as a landscape resource at year 15 is negligible is simply not credible. All the defining features of an agricultural field: the ploughing, the tilling, the openness and the crops will be lost. As a landscape resource, it will be obliterated.

[22] Paragraphs 3.15 to 3.17 of GLVIA

b. Mr Chard's view that this was fragmented landscape is simply not tenable. As Ms Brown explained in both her evidence in chief and re-examination, Tring is a nucleated settlement that nestles within a cohesive and shielded landscape. It is telling that the Appellant did not feel it would be profitable to challenge Ms Brown's view with any specific photographs.

c. Mr Chard's view that the views from public rights of way 57 and 58 would not have long lasting effects in terms of the visual impact is simply non sustainable. As Ms Kirk observes, 'view of the Chilterns reduced to occasional glimpses. The residual view would not be unpleasant but would not have the links to the wider countryside, which are so apparent at the baseline stage.'

24. Accordingly, you will be invited to find that Ms Kirk's evidence is the more robust and preferable. The landscape harms are long-lasting, legion and severe. As Ms Kirk concluded, these will result in permanent and irreversible landscape and visual harm to at least (at year 15):

    a. The agricultural fields

    b. Tring Gap Foothills Local Character Area

    c. Aldbury Scarp Slopes Character Area

    d. The character of the Site and its immediate surroundings

    e. Night-time harms

    f. Visual harm to users on footpaths 57, 58, residents at properties on the north-eastern settlement edge of Tring, pedestrians on the Grand Union Canal Walk, users of Marshcroft Lane, pedestrians on the Ridgeway and users of Station Road.

25. These multiple harms must be carried through to the planning balance and assessment of very special circumstances. It is highly regrettable that they were effectively ignored.

Harm to the Setting of the Area of Outstanding Natural Beauty

26. The site *immediately* abuts an Area of Outstanding Natural Beauty. It is part of its *immediate* setting as well as forming the backdrop to impressive and important views from the Chiltern escarpments.

27. The Chilterns Conservation Board Position Statement on Development states in no uncertain terms that 'the best way of minimizing adverse impacts on the setting of the AONB is through avoidance in the first place.'

28. This proposal will harm the setting of the AONB in numerous ways, as Ms Brown explicitly identifies at paragraph 4.31 of her proof:

    a. The proposal will **interfere with views out of the AONB**, including the Ridgway National Trail.

    b. The proposal will **interfere with views of the AONB**, including from public footpaths Tring 57, 58 and the Grand Union Canal Walk. And Marshcroft Lane

    c. There will be a **loss of tranquillity through the introduction of lighting, noise and traffic movements**

    d. There will be a **loss of openness in the AONB setting.**

29. Contrary to the position advanced by Mr Chard these impacts will be severe, longstanding and noticeable as this site serves as a critical buffer between the AONB and Tring. Moreover, the flat land adjacent to site is an example of outstanding natural beauty in its own right which warrants the protection afforded to it under the NPPF.

Green Belt

30. The Green Belt's two defining features are the absence of development and its permanence.

31. Mr Chard's treatment of the Green Belt can be wholly discounted as he patently gets his methodology wrong for the reasons exposed by the Local Authority. Visual harm is defined by the absence or presence of development—no more, no less. Mr Chard's judgment was informed by the quality of that development. Such a rudimentary error vitiates his judgment.

32. Similarly, Mr Chard's attempts to average out purposes mechanistically without explanation also brings his judgment into question. Ascribing weight to the Green Belt in a particular location must be done transparently and with rigour; neither of which Mr Chard attempts to do.

33. Mr Berry is, however, correct in his consideration of Green Belt harm at paragraphs 12 to 24 of his proof:

a. There is undoubtedly definitional Green Belt harm since land which was free from development will be developed.

b. There will be harm to spatial openness; tranquil open land will be permanently lost.

c. There will be harm to visual openness; green belt land will no longer appear free from development. This is particularly weighty, given that this part of the Green Belt is seen from elevated viewpoints.

d. There will be harm the first green belt purpose—Dacorum borders LB Barnet. London's role as a global city means that left unrestricted it will grow exponentially and will seep through to any cracks along transport corridors to grow if given the chance. As the appellants were at pains to emphasise Tring station sits upon the West Coast mainline.

e. There will plainly be harm to the third green belt purpose—this is a large and substantial encroachment of the countryside.

f. There will be harm to the fifth green belt purpose—on any measure this is a large and ambitious scheme and if given permission will operate as a persuasive precedent to developers up and down the country that there is no need to exhaust brownfield sites.

34. Although the appellants describe this scheme as an example of master planning at scale, they also seek to characterise this as 'vanishingly small' in Green Belt terms to attempt to mask their schemes impacts. The arguments put forward to Mr Berry to justify abandoning the Green Belt in the form of the acute housing challenges this country is facing could be replicated at inquiry after inquiry. This would plainly be death by a thousand cuts to the Green Belt were this development to be allowed without demonstrating very special circumstances. Professor May acknowledged that planning inspector Wilkinson[23] had not dismissed this as an invalid argument in a previous case and it is one that must be considered.[24]

[23] Inquiry Document 17, paragraph 179.
[24] Cross-examination of Professor May 26 April 2023

Very Special Circumstances

35. Development covering in excess of 50 hectares in the Green Belt should be the exception, never expected. As stated at the opening the NPPF as a high level document, the Green Belt[25] sits upon the apex of priorities as a nationally significant asset. No other planning consideration enjoys a higher status within planning. Very special circumstances are required to justify inappropriate development on the green belt.

36. Therefore, this case comes down to one simple question of judgement: are there very special circumstances that warrant permission notwithstanding the importance of the Green Belt? Very special circumstances will not exist unless the benefits of a proposal *clearly* outweigh the harms; or in other words, benefits clearly outweighing the harms are necessary for permission, but not sufficient—you must look at all the circumstances. As stated in opening, that phrase 'very special circumstances' should not be reduced to an evidential hurdle but given its proper meaning and the importance of keeping land *permanently* open must be consciously considered in your assessment.

37. This scheme comes with benefits; no one is disputing that. However, we must be mindful that provision that mitigates a development's own impacts is not a benefit. The relevant benefits are considered in detail in section 7 of Mr Stickley's evidence and should be considered in the overall judgment. However, they do not clearly outweigh the harms which are severe and legion:

38. The harms of this scheme are severe and legion given its unprecedented scale:

    a. There is substantial landscape and visual harm. Given that these impacts are irreversible and long-lasting, they should attract substantial weight in your consideration.

    b. There is harm to the setting of an Area of Outstanding Natural Beauty; this demands great weight as per paragraph 176 of the NPPF.

    c. There is definitional harm to the Green Belt. There are harms to the underlying purposes of the Green Belt – the countryside is going to be badly encroached; development such as this discourages developers from robustly considering brownfield sites, Dacorum borders the London Borough of Barnet and therefore this Green Belt restricts the urban sprawl of London. This is an archetype of a Green Belt site preserving openness and countryside.

[25] Alongside Local Green Space

d. There is loss of the **best** and most versatile agricultural land; in a time when supermarket shelves have been empty this weighs heavily against permission.

e. There is heritage harm and this attracts great weight.

39. As before, all sides have called forth experts on planning to assist the inspector since the balancing of planning considerations is not (to borrow Mr Young's phrase again) equivalent to pinning the tail on a donkey—it should be approached with rigour and consideration.

40. The nature of the appellant's case—that there are an accumulations of factors that amount to Very Special Circumstances—requires precision and clarity. Professor May's judgment in this case is unfortunately questionable and his proof disappointing:

    a. There has been no attempt to explicitly weigh the landscape and visual harms arising from this developments.

    b. There has been a complete failure to precisely distinguish between the 'benefits' of the scheme that are actually mitigation of the site's inherent impacts.

    c. There has been a failure to bring to the inspector's attention material matters despite the professional obligation to bring forward everything that is relevant and apply a fair and even handed approach. Specifically, whilst the appellants are happy to 'bank' the benefits arising from construction jobs for a ten year period they are not happy to mark down the character impacts for the same time.

41. These errors matter since as Professor May acknowledged in cross-examination; a lack of working does not only undermine the transparency of a decision but also the quality of the underlying judgment.

42. In contrast Mr Stickley methodical, robust and detailed approach should be preferred and his finding that the benefits of this scheme do not clearly outweigh the impacts should be adopted.

43. However, as stated above—this is a question of judgment and not a mathematical or mechanistic balancing exercise. Once stripped back a true analysis of this scheme's purported benefits reveal that they are not very special either together or singularly:

    a. The affordable housing does not predominately address the pressing need for socially rented homes.

    b. There is no justification provided for this offer in terms of viability argument.

c. The development is a further car led development dominated by market homes.

d. The additional facilities (SANG, education provision, community infrastructure) mostly mitigate the development's own impact.

e. A further attempt to undermine the principal of a democratically accountable plan led system.

f. Promises and boasts are made about affordable housing without viability evidence.

44. As this is plainly a departure of the plan led system, the COG emphasises the importance of materially grappling with concerns raised by interested parties. The appellant is inviting a departure from a plan led system and it is therefore critically important that they are not able to solely dictate the topics for discussion. Given the wealth of evidence and insight that has been provided from experienced and knowledgeable local residents, COG invite you to grapple with explicitly:

    a. Elizabeth's Hamilton's consideration of the ecological impacts and

    b. Peter Davidson's consideration of the highway's impacts.

    If these concerns are adopted, these should further weigh against the proposal.

45. Moreover, if anything the unique circumstances of this case point away from development, not towards it. It is a substantial land grab; it is within the *immediate* setting of an Area of Outstanding Natural Beauty. The appellants cite numerous authorities and previous decisions and none could justify this degree of encroachment.

46. Overall, this is a *typically* ambitious land grab on an *untypically* precious and vulnerable site by a housebuilder seeking to turn a profit who finds the local plan inconvenient. The only thing that is special is the extent that this land is unsuitable for development: visible from afar, open countryside in the Green Belt and adjacent to an area of outstanding natural beauty which once lost cannot be recovered. Whilst this decision must be decided on its merits and so must every future one, to recommend this carve out of the green belt, would be a deeply worrying precedent without a comparator.

47. We therefore request, for the reasons set out above, that you advise the Secretary of State to refuse permission.

Joseph Thomas

Landmark Chambers

2 May 2023