



Appeal Decision

Inquiry held on 12-15 and 18-20 July 2022

Site visit made on 21 July 2022

by Michael Boniface MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2022

Appeal Ref: APP/C1950/W/22/3294860

BioPark, Broadwater Road, Welwyn Garden City, Hertfordshire, AL7 3AX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by HG Group against the decision of Welwyn Hatfield Borough Council.
 - The application Ref. 6/2020/3420/MAJ, dated 18 December 2020, was refused by notice dated 16 September 2021.
 - The development proposed is demolition of existing buildings and construction of 289 residential units (Use Class C3) and community hub (Use Class E/F.2), with public realm and open space, landscaping, access, associated car and cycle parking, refuse and recycling storage and supporting infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing buildings and construction of 289 residential units (Use Class C3) and community hub (Use Class E/F.2), with public realm and open space, landscaping, access, associated car and cycle parking, refuse and recycling storage and supporting infrastructure at BioPark, Broadwater Road, Welwyn Garden City, Hertfordshire, AL7 3AX in accordance with the terms of the application, Ref 6/2020/3420/MAJ, dated 18 December 2020, subject to the conditions contained in the attached Schedule.

Application for costs

2. At the Inquiry an application for costs was made by HG Group against Welwyn Hatfield Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Two groups were granted Rule 6 status in the appeal, the Welwyn Garden City Society (the Society) and, acting together, Keep the G in WGC and the Welwyn Garden City Heritage Trust (Keep the G/the Trust). Both parties actively participated in the inquiry throughout.
4. On 7 July 2022, shortly before the inquiry opened, the Council confirmed that it no longer intended to defend its second reason for refusal in light of evidence produced by the appellant. It was agreed that the level of on-site car parking proposed would be sufficient to meet anticipated demand and that occupation of the appeal site would not result in a detrimental impact on surrounding roads. The inquiry proceeded on this basis, albeit that Rule 6 parties continued to raise concerns on this topic.

Main Issues

5. Having regard to the above, the main issues in the appeal are whether the proposed design is acceptable and the effect on the character and appearance of the area; and whether the development would provide suitable housing in terms of tenure and mix.

Reasons

Design, character and appearance

6. The appeal site accommodates a large commercial/industrial building which has been vacant for some time, served by a long access drive leading to Broadwater Road. There is no dispute by any party that the site is now a suitable location for residential development given the lack of demand/unsuitability of the building for the current use. Indeed, the Council now actively encourages such development as part of efforts to regenerate this formerly industrial part of the city.
7. The site is a proposed allocation for 250 dwellings in the Council's emerging Local Plan¹ and sits in the context of large-scale redevelopment in the area, known as the Shredded Wheat Quarter. As early as 2008, the Council adopted the Broadwater Road West Supplementary Planning Document (the SPD) outlining the vision for Broadwater Road West and setting out a masterplan to guide and promote the comprehensive redevelopment of this key site, albeit that the appeal site was not expected to be developed at that stage.
8. Given the size of the site and the amount of development anticipated, there should be no illusion that the Council expects sizeable buildings to be accommodated on the appeal site. Importantly, the site now sits in the context of adjacent buildings that will extend to 8 and 9 stories high and were under construction at the time of my visit. This represents development far in excess of the guideline parameters for development contained in the, now dated, SPD in terms of height and density.
9. Understandably, the proposed scheme has been designed with this recent development in mind, as well as the height and scale of the existing building on the appeal site, which is tall and bulky. This seems to me, to be a perfectly legitimate reference point, notwithstanding that buildings of lower height and density are also part of the context, including the Mirage development and neighbouring Broadwater Crescent.
10. The appellant's evidence carefully and convincingly sets out the design process followed in arriving at the scheme subject of this appeal and assesses the effect on townscape. The height of the proposed buildings is comparable to those under construction in the Broadwater Road West area and they would transition across the site to much lower heights where they adjoin Broadwater Crescent to the south.
11. When viewed in the context of the wider Broadwater Road West development, the transition would be less successful given that the tallest buildings proposed would be nine stories, the maximum allowed in the northern parts of the redevelopment area, but they would still be close to sizeable eight storey buildings on more southerly parts of the SPD area such that they would not

¹ Draft Local Plan Proposed Submission August 2016

- appear unduly tall or out of context. The greater height in the northern part of the appeal site would, in my view, be mitigated by the very successful transition that would be achieved within the site itself.
12. The perception of height is also reduced through the detailed roof design of the tallest buildings, which would be in the style of a mansard roof, tapering inwards from their base. Although the roofs are not set back from the face of the buildings as might normally be expected from traditional mansards, the design would add visual interest and assist in diminishing the mass of the upper parts of the building.
 13. There was much debate about these features, which are undoubtedly very different to the style of mansard commonly found in the city, but the building is not seeking to replicate existing buildings, nor is there any reason why it should. Mansard roofs and other steeply pitched roof designs are a common feature in the city and the proposed roof structure would reflect this, with a contemporary and interesting interpretation.
 14. This approach is also seen in other elements of the design, including the sweeping curved edge of Block F and the fenestration design of the proposed community hub and Block E stair core, both of which reflect Art Deco precedents in the area, notably the Roche building. A varied palette of materials would ensure visual interest whilst seeking to reflect the local vernacular in terms of colour, whilst protruding balconies and dormer windows would punctuate the facades.
 15. The buildings would be arranged in blocks surrounded by communal gardens and open space of various types, including children's play space and areas for growing fruit with high quality landscaping, including trees. This would reflect the green and open character that is notable in the city and the garden city principles on which the city was founded, albeit that it is part of a relatively high-density residential development.
 16. The density of the appeal scheme, in numerical terms, would be high for the area. Higher than the majority of development in the locality and higher even than that of the development under construction in the SPD area. However, that is not in itself objectionable. What is important, is not the numerical figure, but any harm that would arise from that density. In this case, I have found none. The development would be high quality, it would reflect the scale and height of other development nearby, it would provide good quality living conditions both internally and externally, including amenity space beyond policy requirements. The fact that the scheme achieves this at a relatively high density, delivering a significant number of residential units in an area where they are desperately needed, is to be commended.
 17. Although tall, the buildings would not become an overly prominent feature in the city. During my extensive site visit it was clear that there are very few vantage points where the existing building has a notable presence and that would remain the case with the new buildings. The picturesque Parkway and Campus areas of the city that are so iconic as part of its identity are set apart from the former industrial zone. The Howard shopping centre and multi-storey car park is itself a tall building that turns its back on the railway line and largely screens views of the appeal site from the town centre. It is also another building that is relevant to any contextual analysis of the appeal site.

18. Those views that are available currently reveal the unsightly BioPark building which lacks architectural merit, being tall, wide and uncompromising its mass. Replacement of the building with a high quality and well-conceived scheme that would significantly break up the mass of built form on site into separate blocks with spaces between would be an improvement. This includes views from the residential gardens on the opposite side of the railway track and when approaching on the railway, removing the very sorry looking vacant building and raising the standard of architecture in this neglected part of the city.
19. The development cannot be said to fully accord with the SPD in that it would deliver development taller and denser than anticipated. That said, much has changed since its adoption in 2008, not least the urgent need for housing in this area and the Council's recognition that more development will be needed on this site and in the SPD area. It has itself granted planning permission for development that is significantly taller and denser than the SPD would suggest, albeit that so far as height is concerned, the SPD allows some flexibility.
20. Although the appeal site was not originally anticipated to be developed in the SPD, the principles it sets out are a guide and have been considered above so far as they are relevant. That said, given the changes that have occurred and bearing in mind that it includes design principles that fail to have regard to the contemporary contextual baseline, the usefulness of the SPD is significantly reduced and it attracts only limited weight.

Heritage

21. As the proposal is close to a conservation area and listed buildings, I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Roche building and Shredded Wheat Factory

22. The development would be in the setting of the Roche building and Shredded Wheat Factory, which are both listed at Grade II. The former has been converted into residential use as part of a larger scheme whilst the latter is awaiting redevelopment for similar purposes. New residential buildings have been constructed between the appeal site and the listed buildings and so the setting is much changed, having previously been an industrial area. No party argues that the development would harm these heritage assets and I agree that they do not derive significance from the appeal site or BioPark building such that harm would result.

Hatfield House and Gardens

23. Hatfield House is located around 4km from the appeal site and is listed Grade I, as are its Registered Park and Gardens. The submitted Heritage and Townscape Visual Impact Assessment (HTVIA) and other evidence before the inquiry demonstrate that views of the proposed development would be available from the house and gardens, albeit at great distance. The surrounding landscape is part of their setting, as a large country estate that derives much significance from its prominence in the landscape and impressive views and vistas towards the buildings and beyond.
24. However, the heritage assets do not stand alone in splendid isolation. They now stand close to large urban centres and views of the buildings, street lighting and other urban paraphernalia associated with Welwyn Garden City are

part of its backdrop. In this context, the existing BioPark building is barely distinguishable in the long-distance views that are available from some vantage points and it is largely distinguished as a result of its bright white finish. This includes important views from the Hatfield House parkland looking north where the buildings would just be distinguishable between the central clock tower and the chimneys on the east wing.

25. The proposed development would be similar in height to the existing building, albeit very different in design and configuration. It would, however, utilise materials that are more similar in colour to the built form in the city and would become a more subtle part of the urban fabric when viewed over the significant distance involved, even having regard to the likely increase in the use of lighting, which would again, be seen in the context of the well-lit urban environment. Whilst the proposed development is unlikely to appreciably enhance the heritage assets or their setting, it would not harm them.
26. I have carefully considered the comments from Historic England which conclude that less than substantial harm (low is scale) would result and I attach this view great weight in my deliberations. The conclusions of Gascoyne Estates on behalf of Hatfield House are broadly in line with this assessment. Whilst I do not agree that any harm would result in this case for the reasons I have set out above, even less than substantial harm would be of considerable importance and weight in the decision making process. However, even considering any such harm, taking it at its highest identified in evidence to this appeal, I am satisfied that the delivery of a significant amount of much needed market and affordable housing would be a public benefit sufficient to easily outweigh the level of harm anticipated such that it would not be a reason to refuse planning permission in any case.

Welwyn Garden City Conservation Area

27. The Welwyn Garden City Conservation Area is located on the opposite side of the railway line but as I have described, there are few positions from which the appeal site features prominently. The designed Parkway and Campus within the town centre are largely unaffected by the scheme, as would be the majority of the residential areas surrounding. The old industrial area was purposely set apart from these areas in designing the city and remains so. Whilst the former industrial area was part of the original concept for Welwyn Garden City, providing employment for the residents, its character and that of Broadwater Road is very different and continues to evolve. Whilst views of the proposed development would be possible from some parts of the conservation area, the existing building is a detracting feature and its replacement with buildings of higher architectural quality would not harm its character or appearance.

Other heritage matters

28. No other designated or non-designated heritage assets would be harmed by the development.

Design, character and appearance conclusion

29. Overall, I conclude that the development would achieve the high-quality design expected by local and national planning policy and would not harm heritage assets. As such, I find no conflict with Policies D1, D2 or EMP2 of the Welwyn

Hatfield District Plan (2005) (WHDP), or emerging Policies SP 9 and SADM 15 of the Draft Local Plan (emerging LP).

Housing tenure and mix

30. Policy H7 of the WHDP and Policy SP 7 of the emerging LP require that 30% of residential developments should be delivered as affordable housing, with the latter recognising that this is subject to viability. In this case, the appellant has provided a detailed viability appraisal which demonstrates that the scheme cannot viably provide any affordable housing whilst remaining deliverable. This appraisal has been reviewed independently on behalf of the Council, whose consultants agree. No other party has produced professional evidence that calls the conclusions of the viability appraisal into question and I am satisfied that it is a robust assessment.
31. Despite the lack of technical viability, the appellant has undertaken to provide 10% affordable housing. The proposal accords with draft Policy SP 7 in this regard, bearing in mind viability. There is a conflict with Policy H7 in that the minimum 30% provision would not be achieved but the policy is now dated and the emerging LP recognises the need to take viability into account in line with national policy and guidance. As it has been demonstrated that the scheme cannot viably deliver 30% affordable housing, the policy conflict attracts only limited weight. Conversely, the benefit of delivering 10% affordable housing in an area where there it is demonstrated that there is an acute and unmet need, weighs in favour of the development.
32. The development plan does not stipulate the mix of housing required in the Borough, but emerging policy SP 7 seeks to deliver a choice of homes and to help create sustainable, inclusive and mixed communities. Proposals should, according to the latest wording in the main modifications to the emerging LP, demonstrate how the mix of tenure, type and size of housing proposed has had regard to the Council's latest evidence of housing need and market demand with the aim of meeting the various needs of different households.
33. The latest evidence is contained in the Strategic Housing Market Assessment Update (2017) and the Welwyn Hatfield Technical OAN Paper (2019). It can be readily seen from this evidence that the greatest need is for three bed properties but there is a need for all sizes, from one bed to 4+ beds.
34. The vast majority of recent housing completions have been smaller properties, largely one and two bed flats. That could be for many reasons, including the nature and location of the sites that have been delivered over the past few years, but there remains a need for housing of all sizes nonetheless.
35. The proposed development would provide mainly one and two bed flats but some three bed units and four bed houses are also proposed such that there is some variation in house types and sizes proposed. There would be a high proportion of smaller flats, but this allows for the efficient use of brownfield land at a very centrally located site, close to public transport links and the various shops, services and facilities available within easy walking distance.
36. The mix is also supported by the appellant's viability and market evidence, which shows increasing house prices with distance from the town centre and a good number of past transactions for smaller flats in the vicinity of the town centre, indicating demand within the market. The appellant's evidence also

- shows that an alternative scheme incorporating a greater proportion of larger units would become less viable than the current proposal and so there is little prospect of such a scheme coming forward, even if it were desirable.
37. There are a large number of flats being developed in the Shredded Wheat Quarter in line with the Council's aspirations for redevelopment, but this again includes a mix of house types, including a proportion of extra-care properties suitable for elderly people. The proposed flats would add to the local mix and would also be suitable for a range of people, being accessible and adaptable dwellings able to meet a range of needs, including a proportion of wheelchair user dwellings.
 38. With this in mind, the development would likely be attractive and/or available to a wide variety of prospective occupants, not confined to only a small section of the housing market. There is also a supply of houses and larger units nearby, within the Mirage development and at Broadwater Crescent such that there would not be an over proliferation of small flats in the wider area. There is no reason why residents of the scheme would not become part of that wider community, using the various services and facilities open to all local residents, including schools, shops, cafes and gyms.
 39. The Council accepts that the implied housing mix requirement in the emerging LP should not be applied as an absolute requirement for individual schemes and this is clear from the SHMA itself. It is a Borough-wide requirement to be achieved over the plan period and there will inevitably be sites that lend themselves to higher density schemes with a high proportion of smaller units and other sites where the opposite is true.
 40. The development would deliver housing in line with the identified need, albeit that there would remain a need for further housing, including a large proportion of three and four bed units. Such delivery would not be jeopardised by allowing this scheme or prevent the Council from achieving the overall implied housing mix during the plan period. Available Brownfield land close to the town centre is a scarce resource in the city and development should be optimised where there are opportunities to do so. There is no reason to think that the development, as part of the large mixed use redevelopment taking place in the Shredded Wheat Quarter, would not become part of a sustainable, inclusive and mixed community.
 41. The proposed scheme has had regard to the latest evidence available in relation to housing need and market demand and would deliver housing that would contribute towards meeting that Borough-wide need. It would also provide a suitable proportion of affordable housing. As such, I find no conflict with Policy SP 7 of the emerging LP. So far as there is a conflict with Policy H7 of the WHDP, I attach this only limited weight.

Other matters

Parking and highways

42. The submitted Transport Assessment concludes that the development can be accommodated without unacceptable harm to highway safety or capacity. The scheme would provide 219 car parking spaces which is comfortably within the range (80-289) suggested by the Council's Parking Standards SPG (January

- 2004) and Interim Policy for Car Parking Standards (August 2014), albeit that these provide local guidance and not development plan policy.
43. The guidance places the onus on the developer to demonstrate the appropriate level of parking and a thorough assessment has been undertaken as part of the planning application and appeal process. Having regard to the latest census data available, the level of parking provision will exceed likely car ownership levels for the proposed development, bearing in mind typical car ownership levels associated with flats. This allows for some flexibility given that the 2011 census data is now dated, though there is no more reliable data before the inquiry that suggests car ownership levels have significantly changed.
 44. The Rule 6 parties suggest that insufficient parking provision has been made at other recent developments, but it is difficult to find other schemes that are directly comparable to the appeal proposal in terms of the housing mix, tenure, accessibility and sustainable transport measures. Parking demand can be influenced by many factors. Although I acknowledge the evidence provided in relation to other schemes, it does not persuade me that the level of parking proposed, based on empirical evidence and data specific to this scheme are unreliable.
 45. Even if the site could not accommodate future parking demand, parking management provisions are to be secured and the submitted parking survey demonstrates that there is ample on-street parking available locally. The Council has indicated that it intends to introduce parking restrictions in the area, and this would further discourage car ownership in favour of sustainable modes of travel if onsite parking provision proved insufficient.
 46. The site is located very close to the town centre and all of its services, shops, restaurants and facilities, as well as the train station and various bus stops, all of which are within a reasonable walking distance. Whilst the closest bus stops provide a limited service, additional bus stops are within walking distance and serve a greater variety of destinations with their attendant services and facilities, including employment opportunities.
 47. Local people have reservations about the potential for using public transport but it seems to me that the site is in a highly sustainable location where sustainable travel is a realistic prospect and should be encouraged. Very good public transport options exist and future residents would not need to be reliant on private cars, particularly if sustainable travel patterns are encouraged from first occupation. In this case, additional measures would be secured, such as a Travel Plan, car club and cycle storage facilities.
 48. As such, I find no conflict with Policy H2 or M14 of the WHDP, the Council's Parking Standards SPG, Interim Policy for Car Parking Standards; or Policies SP 4, SADM 2 and SADM 3 of the emerging LP.

Garden City Principles

49. The Garden City Principles upon which Welwyn Garden City was founded, specifically those set out by the Town and Country Planning Association were referenced during the appeal. These were important principles that have guided the inception and successful development of the city. As such, whilst not planning policy, they are a relevant material consideration, and the appeal documents explain how the design of the appeal scheme has sought to have

regard to them. That said, the principles are broad ranging, and it was accepted during the inquiry that it would not be appropriate, or indeed possible, to apply each and every one to individual developments or to the appeal proposal.

50. Local people spoke passionately about Welwyn Garden City and it was clear to me that there is a great desire to protect it and maintain the principles upon which it was built. That is understandable, as an acclaimed and pioneering Garden City. However, it remains necessary for the city to grow and meet modern needs. For the reasons that I have set out, I do not consider that the proposed development would detract from the city or be at odds with the Garden City Principles. Rather, it is the next phase in the cities evolution.

Sustainability

51. At a very late stage in the appeal, the Society raised concerns regarding the sustainability of demolishing the existing building and replacing it with new buildings. Matters relating to sustainability are considered in the appellant's Sustainability Statement, which explains the measures taken to ensure a sustainable development, including reducing carbon dioxide emissions through the installation of renewable technology.
52. It was also explained during the inquiry that the existing building is not suitable for conversion to residential use as it would not provide acceptable living conditions for future occupants. Furthermore, removal of the existing building is clearly desirable given my conclusion on the main issues. No evidence was provided to demonstrate that the scheme would be likely to compromise the Government's ability to achieve net-zero by 2050 and it is not credible to suggest that it would, given the small scale of the proposal in the context of a long-term national objective.

Air quality

53. The application is accompanied by an air quality assessment carried out in accordance with industry standard guidelines and practice. No significant adverse effects are anticipated.

Flooding and drainage

54. The Council and Lead Local Flood Authority are satisfied that the development can be suitably drained and will not lead to flooding on site or elsewhere. There is no evidence before me that leads me to a different conclusion and a suitable scheme for the drainage of the site can be secured by condition.

Living conditions

55. The proposed buildings are set away from neighbouring properties within open space and the height of buildings is significantly lower where it meets established residential areas, particularly those adjoining Broadwater Crescent. Having regard to the arrangement of the proposed buildings, and bearing in mind the existing building on the site, I see no reason why the scheme should unacceptably harm neighbours living conditions.
56. The height and scale of the tallest buildings would be similar to the BioPark buildings currently experienced by residents though the spaces between buildings, open green spaces surrounding and transition in heights are likely to

improve the current outlook for many residents and would not result in any harmful visual or overbearing impacts.

57. There would be increased activity within the site, with many residential windows facing towards established residential areas but again, the distances involved and the arrangement of the buildings is such that this would not harm living conditions. It must be remembered that the site is located in an urban context and a degree of mutual overlooking is to be expected. Good levels of privacy would be maintained by existing residents.
58. The submitted Daylight and Sunlight Report (December 2020) demonstrates that the development will not materially reduce the levels of light reaching the rooms of neighbouring properties, and in many cases will improve the situation when considering the existing building.
59. The development would deliver good sized units with access to both private and communal amenity spaces. A further Daylight & Sunlight Report² demonstrates that the proposed dwellings and associated amenity spaces would receive suitable levels of light. Conditions would ensure that measures are incorporated to protect future residents from noise.

Crime and disorder

60. There is no evidence of particular issues with crime and disorder in this location and having regard to the submitted information, the Hertfordshire Constabulary support the application from a crime prevention and safety perspective.

Other issues

61. Concerns are raised that the development would adversely affect house prices in the area. There is no evidence before me to support this assertion but in any case, maintaining private house prices is not an objective of the planning system or a matter that attracts any significant weight in the planning balance.

Planning Obligations

62. The appellant has entered into two S106 agreements to secure planning obligations, one with the Council and another with Hertfordshire County Council (HCC). The obligations have been identified by the respective authorities and are supported by CIL Compliance Statements which explain how each obligation accords with Regulation 122 of the Community Infrastructure Levy Regulations 2010.
63. There is no dispute between the appellant and the Council that the obligations contained in the agreement are necessary and would otherwise meet the tests contained at Regulation 122. Having regard to the Council's policies and the need to mitigate the impacts of the development, I have no reason to take a different view and have taken the obligations into account.
64. The appellant had agreed to provide the various obligations sought by HCC but the requested financial contributions were subsequently increased during the course of the appeal, following adoption of the *Hertfordshire County Council Guide to Developer Infrastructure Contributions (2021)* (the HCC Guide). Whilst the appellant does not dispute the methodology used by HCC in arriving

² Daylight and Sunlight Within the Proposed Dwellings & Sunlight to Proposed Amenity Spaces (December 2020)

- at the requested contributions, they are opposed on the basis that the scheme is not viable or deliverable if the additional amounts are required.
65. It is clear from the viability appraisal submitted that the scheme is already technically unviable and so additional contributions would worsen the situation and compromise deliverability of the scheme. The HCC Guide is not an SPD and has not been viability tested, meaning that the effect of the policy on development viability in the area is unknown.
 66. HCC accepted during the inquiry that viability is a relevant consideration but has not sought to consider the viability evidence provided for the appeal proposal itself, instead choosing to defer to the Borough Council to decide whether the contributions can be reasonably made without compromising deliverability of the scheme. The Borough Council accepts the appellant's viability case and does not support the additional contributions.
 67. As such, it would not be reasonable to require the Revised Requested County Contributions. This would worsen the viability position and likely make the scheme undeliverable, such that its wider benefits would be lost. Therefore, the additional contributions are not necessary to make the development acceptable in planning terms, they do not accord with the requirements of the CIL Regulations and I have not taken them into account. Option A in the S106 agreement is rejected.
 68. Although the development will not fully mitigate its impacts based on the new HCC Guide, it would make a proportionate contribution, having regard to viability, in line with the amounts originally sought by HCC. These contributions were taken into account in the appellant's viability appraisal and accepted as necessary contributions that would not jeopardise deliverability of the scheme. I am satisfied that the Initially Requested County Contributions, referred to as Option B in the S106 agreement, meet the requirements of the CIL Regulations and have taken them into account in reaching my decision. If it transpires that the viability of the scheme improves by the time of development, the S106 agreement makes provision for additional contributions where there is a surplus profit.
 69. The obligations secured are based on evidence provided by the various authorities and service providers. There is no detailed evidence before me to justify further obligations or to suggest that other services and infrastructure could not accommodate the development.

Planning Balance

70. The Council accepts that the development is broadly in line with the spatial strategy contained in the emerging LP, but until such time as it is adopted the proposal is to be considered as a windfall site in line with Policy H2 of the WHDP. Either way, there is strong policy support for redevelopment of the site for residential purposes in principle.
71. The proposal is not entirely in accordance with Policy H7 of the WHDP due to its absolute requirement for 30% affordable housing, but for the reasons set out above I attach this conflict little weight. In addition, the failure of the scheme to fully mitigate its impacts on local infrastructure weighs against the proposal.
72. However, the policies most important for determining the application are out of date due to the lack of a five-year housing land supply, as required by the

National Planning Policy Framework (the Framework). The Council and the appellant agree that the housing land supply in the Borough is currently in the range of 1.75-2.46 years and the most recent Housing Delivery Test has been failed by a substantial margin. The Council is persistently failing to provide the number of homes needed in the area and there is currently no firm plan to rectify that situation.

73. The emerging LP has progressed at an exceptionally slow pace and there remain significant uncertainties as to whether or when it will be adopted, with fundamental questions outstanding surrounding how the housing requirement identified by the Examining Inspector will be met. Meanwhile, the housing requirement contained in the WHDP is hopelessly out of date and inadequate. In this context, the provision of market and affordable housing attracts substantial weight.
74. In addition, the proposed development would deliver other benefits, including a substantial net biodiversity gain; the provision of jobs during the construction and operational phases; increased expenditure in the local area that will contribute to the local economy in a relatively deprived part of the city; and the provision of publicly accessible open space and play equipment.
75. The proposal is in accordance with the development plan, taken as a whole. The benefits arising from the proposed development would be substantial. I have identified no adverse impacts that would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. Having regard to the provisions of the development plan and all material considerations, planning permission should clearly be granted.

Conditions

76. The Council and the appellant have agreed conditions that are considered necessary in the event that planning permission is granted. I have largely attached the conditions as agreed, noting that the appellant has provided written agreement to all pre-commencement conditions. However, I have altered the wording of conditions as necessary to improve their precision or otherwise ensure accordance with the relevant tests contained within the Framework. The reason for each condition is set out alongside it in the attached Schedule.
77. I have not attached the suggested condition removing permitted development rights for the town houses as no exceptional circumstances have been identified that would justify such removal. The Government has granted consent by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015 for various forms of household development which are generally considered acceptable without the need for a planning application and I was not persuaded that such development would be unduly harmful in this case.

Conclusion

78. In light of the above, the appeal is allowed.

Michael Boniface

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY³:

Meyric Lewis & Mark O'Brien
O'Reilly of Counsel

They called:

Mette Mc Larney BSc, BArch (Hons), RIBA	Director, Bluepencil Designs Ltd
Mike Spurgeon BSc (Hons), MSc, MRTPI	Associate Planning Consultant, Phase 2 Planning

FOR THE APPELLANT⁴:

Zack Simons & Isabella Buono
of Counsel

They called:

Simon Camp BA (Hons) Arch, Pg Dip, Arch. RIBA	Partner, Alan Camp Architects
Stephen Levrant RIBA, AA Dip, FRSA, Dip Cons (AA), IHBC, ACArch	Principal, Heritage Architecture Ltd
Alex Roberts BSc (Joint Hons), Assoc RTPI	Director, Lambert Smith Hampton
Neil Marshall BSc (Hons), CMILT, MIHT	Partner, I-Transport LLP
Petrina Froud	Senior Viability Surveyor, Kempton Carr Croft
Mark Westcott BSc (Hons), DipTP, MRTPI	Director, hgh Consulting

FOR THE WELWYN GARDEN CITY SOCIETY:

William Walton

He called:

Susan Parham MRTPI, FRSA	Associate Professor, University of Hertfordshire
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³ Rob Walker (Solicitor) and David Elmore (Planner) took part in the conditions and obligations sessions

⁴ Victoria Du Croz (Solicitor) took part in the planning obligations session

Richmond Bauer AA Dipl.	Former Director of Planning & Design Consultants
Russ Platt	Local Councillor
Lynn Chesterman OBE	Local Councillor
Justin Gardner BSc MSc	Director, Justin Gardner Consulting
Clive Wilson MRICS	Former WGCS Chair and local resident

FOR KEEP THE G IN WGC AND THE WELWYN GARDEN CITY HERITAGE TRUST:

Rose Grewal

She called:

Tim Parton BA (Hons), MPLAN, MRTPI	Associate Director, DAC Planning
Tony Skottowe	WGC Heritage Trust Chair and local resident

INTERESTED PERSONS:

Martin Norman	Founder of Keep the G in WGC
Duncan Jones	Local Councillor
Russ Platt	Local Councillor
Malcolm Cowan	Former Councillor & local resident
Angela Eserin	Local Historian
Karen Winbow	Local resident
Antony Proietti	Team Leader, Hertfordshire County Council

DOCUMENTS SUBMITTED DURING THE INQUIRY

- 1 Appellant's Opening Statement
- 2 Council's Opening Statement
- 3 Keep the G/the Trust's Opening Statement
- 4 The Society's Opening Statement
- 5 Written copy of statement by Angela Eserin
- 6 Written copy of statement by Russ Platt
- 7 Written copy of statement by Malcolm Cowan
- 8 Written copy of statement by Duncan Jones
- 9 Written copy of statement by Tony Skottowe
- 10 Errata from Simon Camp
- 11 Letter from Carter Jonas on behalf of Gascoyne Estates dated 14 July 2022
- 12 Extract from SPRU document dated 14 July 2020
- 13 Rose Grewal – Background information
- 14 Rebuttal to Letter from Mr John Boyd on behalf of Gascoyne Estates
- 15 Cabinet Planning & Parking Panel Report – 21 July 2022
- 16 Written copy of statement by Karen Winbow
- 17 Draft S106 agreement between the appellant and the Council
- 18 Draft S106 agreement between the appellant and HCC
- 19 Draft planning conditions
- 20 Appellant's Inquiry Note on County S106 Contributions
- 21 Appellant's costs application
Planning Statement associated with Gascoyne Estates planning application
- 22
- 23 Closing Submissions for the Council (including costs response)
- 24 Closing Submissions for the Society
- 25 Closing Submissions for the Keep the G/the Trust
- 26 Closing Submissions for the appellant (including final comments on costs)

DOCUMENTS SUBMITTED AFTER THE INQUIRY

- 1 Final version of conditions, revised to reflect discussions during the conditions session
- 2 Completed S106 agreement between the appellant and the Council
- 3 Completed S106 agreement between the appellant and HCC
- 4 Draft minutes from Cabinet Planning and Parking Panel Committee (21 July 2022) and Public Reports Pack
- 5 Draft minutes from Cabinet (25th July) and Full Council Committee (26th July)
- 6 Comments from the Council on (4) and (5) above
- 7 Comments from the Society on (4) and (5) above
- 8 Comments from the appellant on (4) and (5) above

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

REASON: In accordance with the Town and Country Planning Act 1990.

- 2) Development must not commence until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The CMP shall include details of:
 - a) Hours of construction works;
 - b) Construction vehicle numbers, type, routing;
 - c) Traffic management requirements;
 - d) Construction and storage compounds (including areas designated for car parking, loading/unloading and turning areas);
 - e) Siting and details of wheel washing facilities;
 - f) Cleaning of site entrances, site tracks and the adjacent public highway;
 - g) Timing of construction activities (including delivery times and removal of waste) and to avoid school pick up/drop off times;
 - h) Provision of sufficient on-site parking prior to commencement of construction activities;
 - i) Post construction restoration/reinstatement of the working areas and temporary access to the public highway;
 - j) Where works cannot be contained wholly within the site a plan should be submitted showing the site layout on the highway including extent of hoarding, pedestrian routes and remaining road width for vehicle movements;
 - k) Provision of hoarding around the site;
 - l) Noise control measures to minimise noise and vibration; and
 - m) Dust control measures.

The construction of the development shall not be carried out otherwise than in accordance with the approved CMP.

REASON: In order to protect highway safety and the amenity of other users of the public highway and rights of way and the amenity and living conditions of the wider public in line with the mitigation measures set out in the Environmental Statement and in accordance with the National Planning Policy Framework.

- 3) No development above ground (other than works of demolition) and no drainage works shall take place until a detailed surface water drainage scheme for the site based on sustainable drainage principles has been submitted to and approved in writing by the local planning authority. The scheme shall include:
 - a) Full, detailed modelling for the surface water drainage network to demonstrate how the system operates during up to and including the

1 in 1 year, the 1 in 30 year and the 1 in 100 year rainfall event including a 40% allowance for climate change. Half drain down times for all storage features should be included;

- b) Full, detailed, engineering drawings of any SuDS, surface water storage or conveyance features including cross and long sections, location, size, volume, depth and any inlet and outlet features. This should be supported by a clearly labelled drainage layout plan showing any SuDS and pipe networks. The plan should show any pipe 'node numbers' that have been referred to in network calculations and it should also show invert and cover levels of manholes. Total storage volumes provided within each storage feature should be identified;
- c) Detailed engineered drawings of the proposed SuDS features including cross section drawings, their size, volume, depth and any inlet and outlet features including any connecting pipe runs;
- d) Demonstrate an appropriate SuDS management and treatment train;
- e) Details of final exceedance routes, including those for an event which exceeds the 1 in 100 year rainfall event including climate change event;
- f) Detailed management plan to include arrangements for adoption and any other arrangements to secure the operation of the scheme throughout its lifetime; and
- g) Details showing how surface water on the site is to be intercepted and disposed of separately so that it does not discharge onto the highway carriageway.

The approved scheme must be implemented and subsequently maintained, in accordance with the timing / phasing arrangements embodied within the scheme.

REASON: To prevent the increased risk of flooding, both on and off site, and, in respect of (g), to avoid the carriage of extraneous material or surface water onto the highway in the interest of highway safety, in accordance with Policies SADM 2 and SADM 14 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016, and the National Planning Policy Framework.

- 4) The development permitted shall be carried out in accordance with the sustainable urban drainage principles and the following mitigation measures:
 - a) Limiting the surface water runoff generated by the critical storm events so that it should not exceed the surface water runoff rate of 1.6 l/s (or a rate agreed with the LPA) during the 1 in 100 year event plus a 40% allowance for climate change. If an increased discharge rate is required to ensure effective drain down times, this must not be greater than 5.3 l/s for up to and including the 1 in 100 year event plus a 40% allowance for climate change;
 - b) Providing storage to ensure no increase in surface water runoff volumes for all rainfall events up to and including the 1 in 100 year plus climate change event plus a 40% allowance for climate change, providing a minimum of around 840 m³ (or such storage volume as agreed with the LPA) of storage volume in features including;

permeable paving with sub-base storage, an attenuation basin, green roofs, bioretention areas and an underground attenuation tank;

- c) Discharge of surface water from the private drainage network to be directed into the existing Thames Water surface water sewer network on Broadwater Road; and
- d) Surface water must not be disposed of via direct infiltration into the ground via a soakaway.

The mitigation measures shall be fully implemented prior to first occupation of the development and subsequently in accordance with the timing / phasing arrangements embodied within the scheme.

REASON: To prevent flooding by ensuring the satisfactory storage and disposal of surface water from the site; and to reduce the risk of flooding to the proposed development and future occupants: and to ensure that direct infiltration via soakaways will not be used due to the potential presence of contaminated land and the risk of groundwater pollution, in accordance with Policies R2 and R7 of the Welwyn Hatfield District Plan, Policies SADM 14 and SADM 18 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016, and the National Planning Policy Framework.

- 5) Development must not commence (other than works of demolition) until a surface water management plan for the construction phase of the development is submitted to and approved in writing by the Local Planning Authority.

The approved surface water management plan must be fully adhered to from commencement (other than works of demolition) to completion of the development.

REASON: To prevent the increased risk of surface water flooding, to improve and protect water quality, protect natural habitats and the amenity of residents during the construction phases of the development, in accordance with Policy R7 and R11 of the Welwyn Hatfield District Plan, Policy SADM 14 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016, and the National Planning Policy Framework.

- 6) The submitted Site Resource Management Plan (by HG Construction, 17 December 2020) must be adhered to from commencement to completion of the development.

REASON: To minimise waste and pollution from the development, in accordance with Policy R5 of the Welwyn Hatfield District Plan 2005, Policy SP 10 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016, and the National Planning Policy Framework.

- 7) The Arboricultural Method Statement contained within the submitted Arboricultural Report (by David Clarke Chartered Landscape Architect and Consultant Arboriculturist Limited, December 2020) and associated Tree Protection Plan (drawing no. TPP/BBRWGCH/010 A) must be adhered to in full.

REASON: To protect retained trees and in the interest of the visual amenity of the site and area, in accordance with Policies D2, D8 and R17

of the Welwyn Hatfield District Plan; Policy SADM 16 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016, and the National Planning Policy Framework.

- 8) Part A - Prior to the construction of the approved site access at the junction of BioPark Drive and Broadwater Road, as indicated on drawing number ITL16195-GA-005- Rev B, the results of a Stage 2 (Detail Design) Road Safety Audit must be submitted to and approved in writing by the local planning authority.

Part B - Notwithstanding the details indicated on the submitted drawings, no on-site works (excluding works of demolition) above slab level shall commence until the Road Safety Audit referred to in Part A of this condition has been approved and a detailed scheme for the offsite highway improvement works has been submitted to and approved in writing by the Local Planning Authority.

Part C – Prior to the first occupation of the development, the site access must be constructed as per the approved Stage 2 (Detail Design) Road Safety Audit and be retained permanently thereafter.

REASON: To ensure satisfactory and safe access into the site, and that the highway improvement works are designed to an appropriate standard in the interest of highway safety, in accordance with Policy SADM 2 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016 and the National Planning Policy Framework.

- 9) No development above ground level (excluding works of demolition) shall take place until a scheme for the provision of adequate water supplies and fire hydrants, necessary for firefighting purposes at the site, has been submitted to and approved in writing by the Local Planning Authority. No part of the development (including any dwelling) shall be occupied until the scheme has been implemented in accordance with the approved details.

REASON: To ensure adequate water infrastructure provision is made on site for the local fire service to discharge its statutory firefighting duties, in accordance with the National Planning Policy Framework.

- 10) No development above ground level (other than works of demolition) shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby granted have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented using the approved materials and subsequently, the approved materials shall not be changed.

REASON: To ensure a satisfactory standard of development in the interests of visual amenity in accordance with Policies D1 and D2 of the Welwyn Hatfield District Plan 2005, Policy SP 9 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016, and the National Planning Policy Framework.

- 11) Notwithstanding drawing no. BMD.20.044.DR.P101 Revision C, no development above ground level of Block A or Block B shall take place until an amended front hard boundary treatment for Plot A008 and Plot B006 has been submitted to and approved in writing by the local planning

authority. The approved details must be implemented prior to first occupation of Plot A008 and Plot B006.

REASON: The current hard boundary treatments, by virtue of its design and height would fail to protect the living conditions of future occupiers. Amended details are required to ensure that the living conditions of the future occupier are protected, in accordance with Policy D1 of the Welwyn Hatfield District Plan 2005, Policy SADM 11 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016, and the National Planning Policy Framework.

- 12) No development above ground level of Block A, B, C, D, E and F shall take place until details of the photovoltaic (PV) cells on the roof of those blocks have been submitted to and approved in writing by the local planning authority. The details must be metrically scaled and include:
- Elevations of PV cells;
 - Elevations of each block inclusive of PV cells; and
 - Roof plan of each block showing final layout of PV cells.

Prior to the first occupation of each block, the PV cells for that block must be installed in accordance with the approved details and subsequently, must be permanently retained in operational use.

REASON: In the interest of environmental sustainability and high quality design, in accordance with Policies SD1 and R3 of the Welwyn Hatfield District Plan; Policies SP 1, SP 10 and SADM 13 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016; and the National Planning Policy Framework.

- 13) No development above the uppermost floor slab level of Block A, B, C, D, E and F shall take place until details of the green roof for those blocks have been submitted to and approved in writing by the local planning authority. The details must include:
- The type and specification of the green roof; and
 - Management and maintenance plan.

The approved green roofs must be carried out in the first planting and seeding seasons following first occupation of the development, and any plant which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

The approved management and maintenance plan must be fully adhered to in perpetuity with the development.

REASON: In the interest of environmental sustainability and high quality design, in accordance with Policies SD1 and R3 of the Welwyn Hatfield District Plan; Policies SP 1, SP 10 and SADM 13 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016; and the National Planning Policy Framework.

- 14) No development above ground level (other than works of demolition) shall take place until details of an external lighting scheme have been

submitted to and approved in writing by the Local Planning Authority. The details must include:

- Metrically scaled elevations of the types of external lighting;
- A site plan showing the location of the external lighting; and
- Vertical lux diagrams showing potential light trespass into windows of the approved residential units and neighbouring residential properties outside of the site.

The external lighting scheme must meet the requirements within the Institution of Lighting Professionals guidance notes for the reduction of obtrusive lighting.

The approved details must be implemented prior to first occupation of the development and retained permanently thereafter.

REASON: To protect the living conditions of future occupiers and neighbouring properties in terms of light spill, in accordance with Policy R20 of the Welwyn Hatfield District Plan 2005; Policy SADM 18 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016, and the National Planning Policy Framework.

- 15) No development above ground level (other than works of demolition) shall take place until a scheme to protect future occupiers from noise associated with the railway and neighbouring distribution depot has been submitted to and approved in writing by the Local Planning Authority, in accordance with the following requirements:
- a) Indoor ambient noise levels in living rooms and bedrooms from the railway should meet the standards within BS 8233:2014;
 - b) Internal L_{Amax} levels should not exceed 45dB more than ten times a night in bedrooms;
 - c) Details relating to a scheme to mitigate the noise from activities, deliveries, plant and equipment associated with the distribution depot to ensure that there will be no adverse impact to future residents. Assessment for noise from commercial operations must be in accordance with BS4142. Detailed façade noise levels should be provided for all areas of the development (This can be presented in the form of a noise model);
 - d) If opening windows raise the internal noise levels above those within BS8233, mechanical ventilation will need to be installed. Indoor ambient noise levels in living rooms and bedrooms must then meet the standards within BS 8233:2014 (with the mechanical ventilation system off, on and on maximum boost setting). Also, ventilation rates are required to meet those found within The Noise Insulation Regulations 1975; and
 - e) Outdoor amenity areas will need to meet the 55dB WHO Community Noise Guideline Level. If outdoor amenity areas cannot comply, then it must be shown through measurements that a suitable place is available within 5 minute walk from the development that complies with the amenity noise level.

In terms of requirements (d), alternative methods (such as passive systems) and rates can be considered, however, evidence that

overheating will not occur will need to be provided in the form of a SAP assessment conducted with windows closed, curtains/blinds not being used, showing the required ventilation rates to ensure that the medium risk category is not exceeded. Details must be provided of the ventilation system to be installed and to demonstrate that it will provide the ventilation rates shown in the SAP Assessment.

The approved scheme must be implemented prior to first occupation of the development and must be fully adhered to in perpetuity with the development.

REASON: To ensure that intended occupiers of the development are not subject to unacceptable levels of noise due to transport and commercial noise sources, in accordance with Policy R19 of the Welwyn Hatfield District Plan 2005, Policy SADM 18 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016, and the National Planning Policy Framework.

- 16) No development above ground level (other than works of demolition) shall take place until a scheme to protect future occupiers from noise due to new plant and equipment has been submitted to and approved in writing by the local planning authority, in accordance with the following requirements:
- a) The impact of new plant and equipment should be assessed in accordance with BS4142:2014;
 - b) If noise sources show signs of tonality, noise levels need to be 10dB below background noise level at the nearest receptor location; and
 - c) In instances where the noise source presents no tonality, the noise level need to be 5dB below the background noise level at the nearest receptor location.

The approved scheme must be implemented prior to first occupation of the development and must be fully adhered to in perpetuity with the development.

REASON: To ensure that intended occupiers of the development are not subject to unacceptable levels of noise due to plant and equipment, in accordance with Policy R19 of the Welwyn Hatfield District Plan 2005, Policy SADM 18 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016, and the National Planning Policy Framework.

- 17) No development above ground level (excluding demolition) shall take place until a scheme for the biodiversity enhancements in the submitted Ecological Impact Assessment & Biodiversity Net Gain report (by Green Environmental Consultants, report number: 1434/2, August 2020 – updated December 2020) including: bat roost boxes; swift nesting boxes; hedgehog hibernation/nesting boxes and commuting corridors; and insect boxes, has been submitted to and approved in writing by the local planning authority. The scheme must include:
- a) A site plan(s) and elevations identifying the location of the biodiversity enhancement features; and
 - b) Images of the type of biodiversity features to be installed.

Prior to first occupation of the development, the approved details must be implemented and retained in perpetuity.

REASON: To contribute positively to and provide net gains for biodiversity, in accordance with Policy R11 of the Welwyn Hatfield District Plan 2005, Policy SADM 16 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016, and the National Planning Policy Framework.

- 18) The development hereby permitted must be constructed in accordance with the water saving design measures of Section 3.3 of the Sustainability Statement (by Stroma Built Environment Ltd, ref. SUT10-20-84957, 18 Dec 2020) to achieve compliance with the target of 110/litres/person/day.

REASON: To improve the sustainability of dwellings, with particular regard to the efficient use of water, in accordance with Policy SADM 13 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016 and the National Planning Policy Framework.

- 19) The approved soft landscaping, as shown on approved drawing numbers: BMD.20.044.DR.P302 Revision A; BMD.20.044.DR.P303 Revision A; BMD.20.044.DR.P304 Revision A; BMD.20.044.DR.P101 Revision C; BMD.20.044.DR.P102 Revision B; BMD.20.044.DR.P103 Revision B; BMD.20.044.DR.P104 Revision B; and BMD.20.044.DR.P301 Revision A, must be carried out in the first planting and seeding seasons following first occupation of the development, and any plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. All landscape works shall be carried out in accordance with the guidance contained in British Standards 8545: 2014.

REASON: To ensure proper implementation of the agreed landscape details in the interest of high quality design, in accordance with Policies D1, D2 and D8 of the Welwyn Hatfield District Plan 2005; Policy SADM 16 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016; and the National Planning Policy Framework.

- 20) The approved hard landscaping, structures and street furniture, and boundary treatments (excluding the frontage metal railing and gate enclosure of Plot A008 and Plot B006), as shown on approved drawing numbers: BMD.20.044.DR.P101 Revision C; BMD.20.044.DR.P102 Revision B; BMD.20.044.DR.P103 Revision B; and BMD.20.044.DR.P104 Revision B, must be implemented prior to first occupation of the development and be retained permanently thereafter.

REASON: To ensure proper implementation of the agreed landscape details in the interest of high quality design, in accordance with Policies D1, D2 and D4 of the Welwyn Hatfield District Plan 2005, Policy SP 9 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016; and the National Planning Policy Framework.

- 21) The communal roof gardens must be made available for use upon first occupation of each respective Block and be retained permanently thereafter for no other purpose.

REASON: To ensure that the communal amenity space is implemented for use by future occupiers in the interest of high quality design, in accordance with Policy D1 of the Welwyn Hatfield District Plan, Policy SP 9 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016, and the National Planning Policy Framework.

- 22) Prior to the first occupation the development, vehicular access to and egress from Broadwater Road shall be limited to the access position shown on approved drawing no. ITL16195-GA-005- Rev B only which is contained in a Technical Note (by i-Transport, ref: NM/MD/ITL16195-007, 19 February 2021).

The footway / highway verge shall be reinstated in accordance with a detailed scheme to be submitted to and approved in writing by the local planning authority, prior to bringing into use the new access.

REASON: In the interest of highway safety, in accordance with Policy SADM 2 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016, and the National Planning Policy Framework.

- 23) Prior to the first occupation of the development, full details of arrangements for future management and maintenance of the proposed streets must be submitted to and approved in writing by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved details.

REASON: To ensure roads are managed and maintained thereafter to a suitable and safe standard, in accordance with Policy SADM 2 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016, and the National Planning Policy Framework.

- 24) The hereby approved application must safeguard an area to the north of the site to connect with the emerging Wheat Quarter development to provide a pedestrian and cycle route, in accordance with approved plan GA-SP-M rev. PL1.

Reason: To ensure construction of a satisfactory development and to promote sustainable transport in accordance with Policies 1 and 5 of Hertfordshire's Local Transport Plan (adopted 2018), Policies M5 and M6 of the Welwyn Hatfield District Plan 2005, Policies SP 4 and SADM 3 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016, and the National Planning Policy Framework.

- 25) Prior to first occupation of the development hereby permitted, the car parking spaces must be designated in accordance with the Parking Plans in Appendix C of the submitted Transport Assessment (by i-Transport, ref: NM/MD/AT/ITL16195-004C, 17 December 2020).

All car parking spaces must then be retained permanently for their specific purpose in the said Parking Plans.

REASON: To promote sustainable transport in accordance with Policy SADM 12 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016, and the National Planning Policy Framework.

- 26) Prior to first occupation of each block, all cycle stores serving that block must be implemented in accordance with drawing numbers: AB-GA-P-

B01-01 rev. PL 1, AB-GA-P-B01-02 rev. PL 1, CD-GA-P-L00 rev. PL 2; AB-GA-P-L00 rev. PL 2; E-GA-P-L00 rev. PL 2; F-GA-P-L00-L01 rev. PL 2. The type of cycle rack under drawing numbers CD-GA-P-L00 rev. PL 2 and F-GA-P-L00-L01 rev. PL 2 must be either Sheffield or Josta spaces. Thereafter, the cycle stores must be made available for use and retained permanently.

REASON: To ensure that the development is served by sufficient cycle provision and to encourage cycling as a sustainable mode of transport, in accordance with Policy M6 and M14 of the Welwyn Hatfield District Plan 2005, Policies SP 4 and SADM 3 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016, and the National Planning Policy Framework.

- 27) Prior to first occupation of the development, details of the secure cycle shelter for up to 10 bikes on drawing no. BMD.20.044.DR.P101 Revision C, must be submitted to and approved in writing by the local planning authority. The details must include:
- Metrically scaled elevations and roof plan of the cycle shelter; and
 - Confirmation of the type of cycle rack.

The approved cycle shelter must be implemented prior to first occupation of the development, be made available for use and retained permanently thereafter.

The cycle stands within the public realm on the aforementioned drawing number, must be Sheffield stands.

REASON: To ensure that sufficient visitor cycle provision is provided and to encourage cycling as a sustainable mode of transport, in accordance with Policy M6 and M14 of the Welwyn Hatfield District Plan 2005, Policies SP 4 and SADM 3 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016, and the National Planning Policy Framework.

- 28) Prior to first occupation of the development, a final Completion and Verification Report to a specification agreed and defined by the local planning authority, and signed off by an appropriately qualified person or body, which demonstrates that the sustainable urban drainage measures have been implemented as per the details approved; shall be submitted to and approved in writing by the Local Planning Authority. It shall include the following:
- a) Provision of a Completion and Verification Report appended with substantiating evidence demonstrating the approved construction details and specifications have been implemented in accordance with the surface water drainage scheme. The verification report shall include photographs of excavations and soil profiles/horizons, installation of any surface water structure, during construction and final make up, and the control mechanism.
 - b) Provision of a complete set of as built drawings for site drainage.
 - c) Post-construction surveys including a CCTV survey for any underground features and piped networks.

- d) A management, maintenance and adoption plan for the SuDS features and drainage network.

REASON: To prevent the increased risk of surface water flooding, to improve and protect water quality, protect natural habitats and the amenity of residents, and ensure the future maintenance of the Sustainable Urban Drainage System in perpetuity, in accordance with Policy R7 and R11 of the Welwyn Hatfield District Plan, Policy SADM 14 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016, and the National Planning Policy Framework.

- 29) The units marked 'WCH' in the 'type' column of the submitted Accommodation Schedule (drawing no: SC-AS rev. PL 1) must comply with Part M4(3) 'wheelchair user dwellings' of the Building Regulations 2010. All other units in this Accommodation Schedule must comply with Part M4(2) 'accessible and adaptable dwellings' of the Buildings Regulations 2010.

Written verification of compliance must be supplied to the local planning authority within 30 days of the practical completion [of the block it forms part of].

REASON: To comply with the level of accessible and adaptable housing which was applied for and to ensure that suitable housing is provided for households in need of accessible and wheelchair housing in accordance with Policies D1, and H10 of the Welwyn Hatfield District Plan 2005; Policy SP 7 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016, and the National Planning Policy Framework.

- 30) The undercroft parking areas for the eight townhouses (Block G) must be provided and retained for car parking as annotated on drawing number: G-GA-P-L00-L01 rev. PL 1.

REASON: To ensure that sufficient car and cycle provision is provided for the occupiers of each townhouse, in accordance with Policy M14 of the Welwyn Hatfield District Plan 2005, Policy SADM 12 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016, and the National Planning Policy Framework.

- 31) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority.

Investigation and risk assessment:

An investigation and risk assessment and, where remediation is necessary, a remediation scheme must then be submitted to and approved in writing by the Local Planning Authority and implemented as approved.

The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

The investigation and risk assessment must assess the nature and extent of any contamination on the site, whether or not it originates on the site and must be undertaken by competent persons. A written report of the findings must be produced and the findings must include:

- a) a survey of the extent, scale and nature of contamination;
- b) an assessment of the potential risks to:
 - human health;
 - property (existing or proposed) including buildings;
 - crops;
 - livestock;
 - pets;
 - woodland and service lines and pipes;
 - adjoining land;
 - groundwaters and surface waters;
 - ecological systems;
 - archaeological sites and ancient monuments.
- c) an appraisal of remedial options, and proposal of the preferred option(s).

The investigation and risk assessment must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

Remediation Scheme:

Following completion of measures identified in the approved remediation scheme, a verification report which demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the local planning authority.

REASON: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors, in accordance with Policy R2 of the Welwyn Hatfield District Plan 2005, Policy SADM 18 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016, and the National Planning Policy Framework.

- 32) The community hub hereby approved shall be used only in Use Classes E.b), E.d), E.e), E.f), F.2a) and/or F.2b) of the Town and Country Planning (Use Classes) Order, 1987 (as amended), unless otherwise agreed in writing by the Local Planning Authority.

REASON: To clarify the terms of the permission.

- 33) The development hereby permitted shall be carried out in accordance with the following approved plans: CD-GA-E-03 PL 1; CD-GA-P-L00 PL 2; CD-GA-P-L01-L04 PL 1; CD-GA-P-L05 PL 1; CD-GA-P-L06 PL 1; CD-GA-P-L07 PL 1; CD-GA-P-R08 PL 1; CD-GA-S-01 PL 1; CD-GA-S-02 PL 1; AB-GA-E-01 PL 1; AB-GA-E-02 PL 1; AB-GA-E-03 PL 1; AB-GA-P-B01-01 PL 1; AB-GA-P-B01-02 PL 1; AB-GA-P-B02 PL 1; AB-GA-P-L00 PL 2; AB-GA-P-L01-L05 PL 1; AB-GA-P-L06 PL 1; AB-GA-P-L07 PL 1; AB-GA-P-L08 PL 1; AB-GA-P-R09 PL 1; AB-GA-S-01 PL 1; AB-GA-S-02 PL 1; CD-

GA-E-01 PL 1; CD-GA-E-02 PL 1; S-GA-E-01 PL 1; S-GA-E-02 PL 1; S-GA-E-03 PL 1; S-GA-E-04 PL 1; E-GA-E-01 PL 1; E-GA-P-L00 PL 1; E-GA-P-L01 PL 1; E-GA-P-L02-L04 PL 1; E-GA-P-L05 PL 1; E-GA-P-L06 PL 1; E-GA-P-R07 P 1; E-GA-S-01 P 1; E-GA-S-02 P 1; F-GA-E-01 PL 1; F-GA-P-L00-L01 PL 2; F-GA-P-L02-L03 PL 1; F-GA-P-R04 PL 1; F-GA-S-01 PL 1; GA-EX-L00-OS PL 1; GA-LS-01 PL 1; GA-LS-02 PL 1; GA-SP-B01 PL 1; GA-SP-B02 PL 1; GA-SP-L00 PL 2; GA-SP-L01 PL 2; GA-SP-L02 PL 1; GA-SP-L03 PL 1; GA-SP-L04 PL 1; GA-SP-L05 PL 1; GA-SP-L06 PL 1; GA-SP-L07 PL 1; GA-SP-L08 PL 1; GA-SP-L09 PL 1; GA-SP-M PL 1; GA-SP-N PL 1; G-GA-E-01 PL 1; G-GA-P-L00-L01 PL 1; G-GA-P-L02-R03 PL 1; G-GA-S-01 PL 1; BMD.20.044.DR.P302 A; BMD.20.044.DR.P303 A; BMD.20.044.DR.P304 A; BMD.20.044.DR.P401 A; BMD.20.044.DR.P402 A; BMD.20.044.DR.P403 A; BMD.20.044.DR.P101 C; BMD.20.044.DR.P102 B; BMD.20.044.DR.P103 B; BMD.20.044.DR.P104 B; BMD.20.044.DR.P301 A; BMD.20.044.DR.P001 C; BMD.20.044.DR.P002.

REASON: To ensure that the development is carried out in accordance with the approved plans and details.



Costs Decision

Inquiry held on 12-15 and 18-20 July 2022

Site visit made on 21 July 2022

by Michael Boniface MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2022

Costs application in relation to Appeal Ref: APP/C1950/W/22/3294860 BioPark, Broadwater Road, Welwyn Garden City, Hertfordshire, AL7 3AX

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by HG Group for a full award of costs against Welwyn Hatfield Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for demolition of existing buildings and construction of 289 residential units (Use Class C3) and community hub (Use Class E/F.2), with public realm and open space, landscaping, access, associated car and cycle parking, refuse and recycling storage and supporting infrastructure.
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Decision

1. The application for an award of costs is refused.

The submissions for HG Group

2. The application was made in writing during the inquiry and is not repeated in this decision. In summary, it says that the Council's planning evidence failed properly to address the central tests for deciding the appeal, specifically the relevant balances under section 38(6) of the Planning and Compulsory Purchase Act 2004, and paragraph 11(d)(ii) of the National Planning Policy Framework (the Framework).

The response by Welwyn Hatfield Borough Council

3. The Council's response to the costs application was made in writing. In summary, it says that all relevant considerations were set out in the Council's Committee Report, notwithstanding that members of the Council ultimately arrived at a different overall conclusion to that of officers. Members were entitled to exercise their judgement and refuse planning permission. The Council's evidence sought to concentrate on the areas of dispute between the parties and the main issues in the appeal. The Council's planning evidence/witness substantiated the reasons for refusal and did not cause the appeal or lead to the expense incurred by the appellant.

Reasons

4. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

5. Members were informed of all relevant considerations by officers in a comprehensive Committee Report before deciding to refuse planning permission. They were entitled to do so, having exercised their own judgement. Reasons for refusal were clearly set out in the formal decision.
6. It is, however, important that any reasons given can be substantiated at appeal. In this case, professional witnesses were called to deal with the issues outstanding between the Council and the appellant. Evidence was produced and the appellant had the opportunity to test it during the inquiry.
7. The planning evidence and indeed, the Council's entire case, was very brief. There is nothing wrong with evidence being concise, but it should address all the pertinent issues so that reasons are properly substantiated. The Council's case was far from convincing, but it did seek to deal with the main issues in dispute and explain where the Council's concerns arose.
8. The planning evidence should be considered in the context of more detailed background information before the inquiry, including the Committee Report and Statement of Case. Bearing all of this in mind, it seems to me that the Council would have had wider issues in mind in concluding that the adverse impacts it anticipated should lead to the refusal of planning permission.
9. The Council's planning evidence states that these adverse impacts would significantly and demonstrably outweigh the benefits, which indicates some regard to the appropriate balancing exercise contained within the Framework. Furthermore, in response to my questions, the Council's planning witness confirmed his view that the outcome of the balancing exercise remained the same by the time that he gave evidence at the inquiry, notwithstanding acceptance that the development was largely in accordance with the spatial strategy.
10. Overall, the inquiry was necessary as a result of members decision to refuse planning permission. The reasons for refusal were adequately addressed and I do not consider it likely that the Council's opposition to the case would have changed if the planning witness had set out the relevant balancing exercises more explicitly in writing.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Michael Boniface

INSPECTOR