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Borough Council

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Planning and Economic Development

Hertsmere Borough Council

**Rebuttal of the assessment of the five year land supply
submitted Mr S. Brown on behalf of the appellant**

APP/N1920/W/22/3311193

April 2023

LPA reference: 22/0971/OUT

Appeal by: Griggs (Options) Ltd

Site Address: Land Adjacent And To The Rear Of 52 Harris Lane, Shenley,
WD7 9EG

Proposal:

Construction of up to 37 dwellings with associated landscaping and open space to include access from Harris Lane. (Outline Application with Appearance, Landscaping, Layout and Scale Reserved).

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1.0 Scope

- 1.1 This rebuttal has been prepared Mark Silverman BA Hons BPI MRTPI in response to the assessment (“the assessment”) of the five year housing land supply (5YHLS) produced on behalf of the appellant. This rebuttal does not seek to challenge all the points made where there is disagreement with the Council but responds where necessary to clarify the Council’s position or provide further information.
- 1.2 In responding to points raised by the appellant on individual sites, it should be emphasised that the submission of a pre-application to the Council by developers, site promoters and landowners is often undertaken on a confidential basis. Where those parties have agreed, the existence of a pre-application has been included in this rebuttal. It should also be emphasised that the Council is currently in a purdah period and as a landowner in its own right, is constrained by what it is able to state in relation to its sites in the 5YHLS which are deemed to be politically sensitive.
- 1.3 The Council also wishes to clarify how it has engaged with the appellant in respect of the 5YHLS, noting that the appellant has stated in paragraph 3.28 that the evidence upon which the Council is relying has been asked for ‘repeatedly’ and ‘has not been provided in any detail’. On 28th February 2023, the Council received a request for the ‘detailed site schedule that sits behind each source of supply.’ with a response the same day requested. The requested information was provided on 2nd March. A further request was made by the appellant on 6th March for the Council to justify the inclusion of a large number of sites; it was suggested that if that information is not available, agreement was sought for those sites to be omitted from the 5YHLS. The Council responded on 9th March setting out the basis for why the sites within those categories had been included in the 5YHLS. A draft Statement of Common Ground was subsequently issued by the appellant on 13th March seeking the Council’s comments on individual sites, this being the day before the Statement was due to be submitted. The Council did not consider this to be sufficient time and advised the appellant that the details would be addressed in its Proof of Evidence. The Council considers that it has engaged constructively and in a timely manner.

2.0 Points raised by the appellant

Assessing the five year land supply position

- 2.3 Mr Brown has, in paragraph 3.10, referred to the definition of 'deliverable' in the NPPF Glossary and the fact that b) is not a 'closed list' is an important distinction. Sites considered to be deliverable within five years will be identifiable through a variety of sources and the need for clear evidence to justify their inclusion is noted. Although the appellant has referenced the appeal decision at Sonning Common, the reality is that many developers will be unable or unwilling for all of the 'commercial/financial aspects of delivery' to be disclosed publicly, let alone as part of any confidential pre-application engagement with the Local Planning Authority. The existence of a pre-application may in some instances need to remain confidential and this is reflected in the fact that one of the sites in the 5YHLS has been subject to a pre-application whose identity cannot be confirmed publicly at this stage.
- 2.4 Many of the submissions made in response to the recent Call for Sites have been from chartered town planners, acting professionally on behalf of developers, rather than simply being a speculative statement of intent from the landowner. The submission of a Call for Sites form has often been preceded, accompanied or followed by extensive technical work and engagement with the Local Planning Authority, including an assessment in the Housing and Economic Land Availability Assessment (HELAA). The Council's proof of evidence, submitted last month, appended copies of both the Call for Sites forms and HELAA assessments. Where additional technical information has been submitted or a site is, for example, subject to a pre-application which can be publicly disclosed, this is highlighted in section 3 below and the Council notes that the PPG specifically states that 'firm progress with site assessment work' may constitute the evidence required to demonstrate deliverability. As such, the Council wishes to emphasise that it has not simply relied on the submission of an email or pro-forma to justify inclusion of a site within its 5YHLS.
- 2.5 The Council notes the reference made by Mr. Brown in the Sonning Common decision that

'Developers are financially incentivised to reduce competition (supply) and this can be achieved by optimistically forecasting delivery of housing from their own site and consequentially remove the need for other sites to come forward.'

- 2.6 It is unclear how such a statement is applicable to this appeal and the appellant has not provided any evidence to support the view that such an approach has been adopted by any developers promoting land in Hertsmere. One assumes this developer is not 'optimistically forecasting delivery of housing' from the appeal site.

Analysis of deliverability

- 2.7 Paragraph 007 Reference ID: 68-007-20190722 of the Planning Practice Guidance advises on what constitutes a 'deliverable' housing site in the context of plan-making and decision taking. Many of the sites in question would be defined as having evidence in either one of the following categories;

1. *'firm progress being made towards the submission of an application-for example a written agreement between the local authority and the site developer(s) which confirms the developer's delivery intentions and anticipated start and build-out rates'* or;

2. *'firm progress with site assessment work'*.

- 2.8 In some cases, commercial sensitivity which is often a factor in pre-application discussions and the fact that the local authority is within purdah, means full disclosure of the nature and extent of discussions and submitted technical information is not possible or desirable.

Sites included in the HELAA

HEL176 - Former Bushey Golf and Country Club

- (a) Hertsmere Borough Council (HBC), as landowner, re-submitted this site as part of the Call for Sites in 2022. The Head of Asset Management and Engineering Services has clarified the Council's position, as landowner, in relation to this site (see Appendix D).

- (b) This has followed a public consultation on the site and the submission of extensive technical work to the planning department by a consultant team working for the Council's Asset Management department in 2021. This included the following reports:
- Transport Statement (Origin)
 - Tree Survey (Arbtech)
 - Heritage Statement (Mola)
 - Archaeological assessment (Mola)
 - Sustainability Statement (Michael Dyson Associates)
 - Tree retention and loss schedule (Parker Planning Services)
 - Landscape and Visual Appraisal (Parker Planning Services)
 - Planning Statement (Michael Dyson Associates)
- (c) The planning department provided responses to the consultant team on the technical reports.
- (d) The Appellant has argued that the extent of the allocation in the now set-aside R18 Local Plan is of a different form and scale (200 units) to that in the HELAA (85 units) and that no responses were received from the landowner (HBC) to the 2021 Local Plan public engagement withdrawing the site. This is not considered to be relevant or a reason for the non-deliverability of the site; the HELAA provides an assessment of the previously developed part of the site only which could be brought forward within the existing policy framework.
- (e) Due to commercial sensitivities and the fact that the local authority is in purdah, it is not possible to disclose more information at this stage.

HEL388 The Point

- (a) The Head of Asset Management and Engineering Services has clarified the Council's position, as landowner, in relation to this site (see Appendix D).
- (b) There have been continuous discussions between the Local Planning Authority, the leaseholder, HBC Asset Management department and HBC Streetscene department. Due to commercial sensitivities and the fact that the local authority is in purdah, it is not possible to disclose more information at this stage.

HEL199 - Land at Church Lane

- (a) This site was put forward as part of the Call for Sites in 2017 and 2022 and is stated to be deliverable within 5 years. This site has been subject to a pre-application submission, supporting the owners' ambition to bring the site forward within a 5 year timeframe.

HEL216 – Land West of Potters Bar Station

- (a) This site was put forward as part of the Call for Sites in 2018 and 2022 as being deliverable within 5 years. It is a brownfield site in the centre of Potters Bar. No landowner issues or site availability issues have been identified (it is Network Rail owned car park presently).

Further to this, there has been further engagement with the agent acting for the site with a number of reports submitted; the latest proposed scheme is for 55 units. This shows the operator's willingness to move this site forward for development within 5 years.

HEL138 – Former Sunnybank School

- (a) The site was included in HCC's Call for Sites submission in 2022) and there has already been a scheme submitted for residential development on the site (dismissed on appeal) but the northern part of the site is capable of accommodating a quantum of development which could be regarded as appropriate.
- (b) The submission of a previous application on the site and subsequent appeal, together with the response of HCC Property to the Local Plan in 2021 (attached at Appendix B) and the re-submission of the site in the 2022 Call for Sites, demonstrates HCC's intent, as landowner, to bring the land forward for development at the earliest opportunity.

HEL 220- Porters Park Golf Club

- (a) This site has been submitted as part of the Call for Sites in 2017 and 2022. It has been stated as deliverable within the next 5 years within the most recent iteration of the process, although the boundary was slightly revised in the new version of the site, which incorporates a larger area. Current feasibility studies are being undertaken for

a new clubhouse location within the course, which will leave this area free for residential development.

Elstree Way Corridor Sites

(a) Mr. Brown says that

'it is not apparent to me how the Council can treat a site as "available" where the relevant "public sector landowners" have not yet determined or agreed to bring it forward'.

(b) This is not the case, as evidenced in the latest submission of HCC land within the EWC in the 2022 Call for Sites *[omitted in error from the original Proof of Evidence]*. In relation to the NHS, there has been continued dialogue with the Clinical Commissioning Group (now Integrated Health Board) regarding the provision of health facilities in Borehamwood, including on Elstree Way, with officers meeting as recently as last month to consider the local land use requirements of the NHS.

(c) Although it is the preferred approach in the Elstree Way Corridor Area Action Plan to bring forward sites together, this does not preclude public sector-owned or any other sites coming forward individually and this is evidenced in the planning application on the former police station site within Opportunity Site 5 in the Elstree Way Corridor.

(d) As stated in the Proof of Evidence, the site has received consent for planning permission for 96 units (20/0057/OUT) subject to the outstanding signing of the s106 agreement. This has been overlooked in the appellant's assessment which incorrectly states there are no pending applications in Site 5 which is 'currently occupied by a Job Centre and a Fire Station'. Site 5 also contains the former police station.

3.0 List of Appendices

Appendix A: Hertfordshire County Council call for sites submissions for Elstree Way Corridor

Appendix B: Hertfordshire County Council (as landowner) response to draft Local Plan 2021.

Appendix C: Technical work submitted in relation to land promoted through the Call for Sites

Appendix D: Update from Malcolm Greaves, Head of Asset Management and Engineering Services, April 2023