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MATTER 6: HOUSING ALLOCATIONS

HSG18: Former Shelton Sports Ground, Warlingham

6.93 What are the exceptional circumstances for the release of the site from the Green Belt?

Exceptional circumstances in the context of paragraph 83 of the original NPPF, as well as the NPPG, is not defined, but the phrase clearly has been the subject of case law, as the contents of paragraphs 124 and 125 of the High Court judgement *Gallagher Estates Ltd; Lioncourt Homes Ltd v Solihull Metropolitan Borough Council (2014) EWHC 1283 (Admin)* reveal.

More recently, Mr Justice Jay in the High Court case *Calverton Parish Council v Nottingham City Council; Broxtowe Borough Council; Gedling Borough Council; Peveril Securities Ltd and UK PP (Toton) Ltd (2015) EWHC 1078 (Admin)* set out a number of factors involved in the ascertainment of “exceptional circumstances” in the context of both national policy and the provisions of Section 39(2) of the Planning & Compulsory Purchase Act 2004:

“(i) The acuteness/intensity of the objectively assessed need (matters of degree may be important);

(ii) The inherent constraints on supply/availability of land prima facie suitable for sustainable development;

(iii) (On the facts of this case) the consequent difficulties in achieving sustainable development without impinging on the Green Belt;

(iv) The nature and extent of the harm to this Green Belt (or those parts of it which would be lost if the boundaries were reviewed); and

(v) The extent to which the consequent impacts on the purposes of the Green Belt may be ameliorated or reduced to the lowest reasonably practicable extent.”

The first three criteria which the LPA are required to identify and grapple with concern issues such as the level of housing provision being provided in the Local Plan area. This means paying regard not only to the Council’s proposed total delivery target figure of 6,056 homes in accordance with the Regulation 22 version of Policy TLP01, but equally, the revised OAN figure of 7,960 dwellings. It also requires consideration to be given to the unmet housing needs of neighbouring authorities within the same HMA. A sustainable development approach is required to be taken towards the provision of future housing provision, with reasonable alternatives examined as part of a Sustainability Appraisal incorporating a Strategic Environmental Assessment. Items (iv) and (v) set out in the “*Calverton Parish Council*” High Court judgment require a more site specific assessment, requiring an examination of matters raised in paragraphs 002 and 003 of the recently published NPPG on “Green Belts”, in a wider context.
The total delivery target housing figure in Policy TLP01 is 24% below the revised OAN figure of 7,960 homes over the same time period, as calculated in the latest report published in December 2018 updating the objectively assessed housing needs for Tandridge District. If those sites which have planning permission and/or have been completed, are added to the proposed housing numbers arising from the South Godstone Garden Community during the Local Plan period, leaves only 2,322 houses, including empty houses, windfall sites and town centre initiatives, or 38% of the total delivery target of 6,056, which is required to be met over a 20 year period. This equates to 116dpa, which is less than the housing requirement figure in the Core Strategy adopted more than 11 years ago, itself based on the South East Plan.

These figures are required to be viewed in the context that 94% of the Council’s administrative area lies within the Metropolitan Green Belt, with an additional constraint, being the need to retain the limited number of employment sites in the Council’s jurisdiction to meet the Council’s future employment needs. These factors underline the challenging task confronting the Council in terms of future housing provision in circumstances particularly where it is intending to meet only part of its OAN.

The “Green Belt Assessment (Part 2): Areas for Further Investigation” identified a total of 478 dwellings from sites based on the findings of the Landscape Capacity and Sensitivity Study and the Site Based Ecology Assessment, which were not in the Metropolitan Green Belt, and which had a good prospect of being considered for development under current Local Plan policy. These were notated as Category 1 green sites.

Other sites not in the Metropolitan Green Belt, requiring further information prior to considering whether or not they should be nominated for release for residential purposes were termed Category 1 amber sites. The combined provision of Category 1 green and amber sites had a yield of 478 dwellings, accounting for 6% of the revised OAN figure, with all six Category 1 amber sites comprising existing open space within built-up areas.

A total of only five Category 2 amber site were selected for release for residential development, comprising sites within the Green Belt where exceptional circumstances existed. These five sites had an estimated yield in terms of housing provision of 283 dwellings, one of which was Reference WAR019 – Former Shelton Sports Club, Warlingham, i.e. the current Policy HSG18 site.

Adding the amber Category 2 sites to the Category 1 green and amber sites, results in a yield of 761 dwellings, contributing to only 9.6% of the amended OAN figure, or 12.4% of the total delivery target figure set out in the Regulation 22 version of Policy TLP01.
These figures highlight the acuteness in meeting any kind of future housing provision in the LPA’s administrative area, with high dependency on releasing land from the Metropolitan Green Belt being a crucial step. It also places into perspective the importance to be attached to Policy HSG18 and the significance of the former Shelton Sports Ground site in meeting the Council’s future housing needs.

No equivalent sequential exercise is possible in Tandridge District Council’s administrative area to that undertaken by authorities particularly in the north of the country, where the focus is placed on using developable and deliverable previously developed land, offering benefits in terms of regeneration and improvement to an area; before looking at greenfield sites, split firstly between those of a non-Green Belt nature, before considering those situated in a Green Belt.¹

It is for these reasons that exceptional circumstances exist, justifying the release of the former Shelton Sports Ground site from the Metropolitan Green Belt.

6.94 Is the proposed Green Belt boundary justified and consistent with national policy as set out in paragraph 85 of the Framework?

Sustainability considerations play an important role in Green Belt assessments, influencing the suitability of land to meet a Council’s future housing needs. The sustainability credentials of the former Shelton Sports Ground site can be assessed from an examination of the shared vision and masterplan document prepared by Mosaic Ltd, reproduced at Appendix 1. It enjoys good accessibility to shops and community facilities, with connectivity to other settlements, including the ability to take advantage of existing public transport provision.

The site based ecological assessment prepared by TEP on behalf of the Council concluded that the former Shelton Sports Ground fell within the Category “majority ecologically suitable”, meaning that most of the site had few habitats of value, with discreet areas of high value which can be avoided and protected during development. The site contains a number of derelict buildings and disused sports pitches, well enclosed by peripheral mature woodland. There was no conclusive proof of any protected species being present, although a bat survey was recommended for the derelict buildings present on the site, which should also take into account the semi-natural broadleafed woodland which defines the site’s boundaries.

There are no Sites of Special Scientific Interest (SSSI) within a 1 km buffer. A Local Nature Reserve at Blanchmans Farm is found approximately 600m to the south east of the site, with the only groups of TPOs found within 150m outside the boundaries of the site. In terms of non-statutory designated sites, a Site of

¹ Inspector’s Report dated 22 August 2016 on the Examination of the Local Plan for the Bradford District Core Strategy DPD
Special Nature Conservation Importance (SNCI) is located 800m north west of the former Shelton Sports Ground at Whyteleafe Recreation Ground, connected by rows of trees, whilst a potential Site of Nature Conservation Importance (pSNCI) is located at Warlingham Court Field 600m to the north west, with ancient woodland at Crewe’s Wood found 900m to the north east.

The Tandridge Landscape Capacity and Sensitivity Study assessed the site visibility of the former Shelton Sports Ground where it previously formed part of Reference Number WAR019 in the following terms:

1.1 Site WAR019 is a redundant playing field and fields behind housing on Hillbury Road, on gentle slopes with settlement to the south, east and west. There is dense boundary vegetation around the perimeter and the visual envelope of the site is limited to adjacent housing, and public rights of way.

1.2 From Hillbury Road to the south there are views of the houses which are within the site boundary and glimpses of the site behind. Views of this part of the site are very limited to glimpses from the road and views from houses along Hillbury Road which back onto the field.

1.3 There are views into the site from the public rights of way to the east of the site. Footpath 110, where there is no boundary vegetation (see photograph 8 above). Housing along Shelton Avenue to the east has views into the site where housing backs directly onto the site.

1.4 Fields to the north and west have views of boundary vegetation but no views into site.

1.5 Overall, the visual sensitivity is judged to be Slight. This rating feeds into the overall sensitivity assessment table on the following page.

The landscape capacity of the former Shelton Sports Ground site for residential development was determined by combining the tabulated assessments based on the overall landscape sensitivity with the overall landscape value judgements, from which the site in terms of its capacity to accommodate residential development scored as follows:-

Slight sensitivity x Slight value = high landscape capacity

The Tandridge Landscape Capacity and Sensitivity Study summarised the former Shelton Sports Ground’s suitability for development in the following terms:-

“2.2 With slight sensitivity and value, WAR 019 is a relatively unconstrained site with a high landscape capacity for housing development, provided that the form of new development proposals are closely related to, and in scale with existing development adjacent to the site.

It can be seen from the photograph overleaf that the Green Belt boundaries surrounding the former Shelton Sports Ground are well defined, follow physical features which are permanent and easily recognisable and which need not be altered at the end of the plan period.
6.95 Is the proposed allocation consistent with paragraph 74 of the Framework in respect of the loss of playing fields? Would it be effective in bringing forward replacement provision?

The contents of paragraph 74 of the NPPF 2012 are concerned with “existing open space, sports and recreation buildings and land, including playing fields” which should not be built upon unless they meet one of three requirements. The LPA engaged Knight Kavanagh & Page Ltd to prepare a Tandridge District Council Playing Pitch Strategy and Action Plan.
Representations on behalf of Chartwell Land & New Homes Ltd to Our Local Plan: 2033

and associated Playing Pitch Strategy Assessment Report, both of which were published in June 2018.
The Tandridge District Council Playing Pitch Strategy and Action Plan states that the Playing Pitch Strategy should be used to inform development management decisions that affect existing or new playing pitch provision and accompanying ancillary facilities. All applications are expected to be assessed by the LPA on a case by case basis, taking into account site specific practice.

The former Shelton Sports Ground has been a long disused facility for a continuous period approaching ten years. It is fenced off and has not been available for any form of public open space use or recreational use. Accordingly, it falls into the definition of “disused” and “lapsed” sports provision in the same Assessment Report, categorised as being unused for more than five years.

Importantly, no site analysis relating to the former Shelton Sports Ground site was undertaken as part of the Tandridge District Council Playing Pitch Assessment Report, despite the definitions of “disused” and “lapsed” in the same document, and notwithstanding the contents of page 28 of the Action Plan which included an examination of “disused” and “lapsed” playing fields.

Given this situation, the former Shelton Sports Ground cannot be said to result in the “loss of playing pitch provision” as set out in sub-paragraph VII, nor can it be said that it would result in a “loss of space” in sub-paragraph VIII of the Regulation 22 version of Policy HSG18 where it falls under the title “Open Space”. That is not a proper basis to consider the release of the land for residential purposes, and it is irrational to conclude that it would result in a “loss of playing pitch provision” or “loss of space” when at present its release for housing will secure access to public open space provision as part of the residential redevelopment of the same land, where currently none exists. Similar arguments were advanced and found to be successful in the recent High Court decision Renew Land Developments Ltd v Welsh Ministers; Conway BC and Cartrefi Conway CRF (2019) EWHC 472 (Admin); (2019) JPL 1002.

My clients accept that there have been alterations made to Regulation 22 version of Policy HSG18 where it relates to open space, and to this end it is noted that permission will only be granted where replacement provision is provided to an equal or better standard, and in a
suitable location either locally or as part of the South Godstone Garden Community. These amendments are helpful.

Three important factors dictate against any replacement of playing pitch provision as part of the South Godstone Garden Community. Firstly, the housing trajectory set out in the Housing Topic Paper January 2019 reveals that the development of the former Shelton Sports Ground is expected to take place over 3 years beginning in 2022/23; whilst the South Godstone Garden Community is not anticipated to provide any new housing until 2026/27. Secondly, the South Godstone Garden Community will generate a need for its own public open space/recreation provision which is expected to be developed over a period extending beyond the end date of the Plan in 2033. Thirdly, and as stated in paragraph 16.7 of the Regulation 22 version of the Local Plan, the South Godstone Garden Community scheme is currently undetailed, not anticipated to commence for some years, and will be built out over a longer period, with further viability assessments taking place as part of the Area Action Plan.

My clients consider that replacing playing pitches ahead of development on this site represents a serious impediment to its future release. It is particularly inappropriate when considering the South Godstone Garden Community development for reasons outlined in the previous paragraph, as well as given my client’s willingness to follow the recently published national guidance on “Green Belt”, providing for a series of compensatory improvements.

These compensatory improvements include matters relating to an enhancement to ecology; environmental benefits relating to the strengthening of boundary treatments to further reinforce containment of the site; and associated infrastructure as set out in the Regulation 22 version of Policy HSG18. In addition, benefits will be achieved in terms of access to neighbouring sports facilities, with a financial contribution made to a local suitable sports facility, namely the Warlingham Rugby Club to enhance existing playing pitch provision, whilst ensuring its availability to all members of the local community.

6.96 Are the requirements for financial contributions as set out under Infrastructure consistent with national policy for planning obligations and conditions as set out in the Framework, and are they justified?
The second, third, fourth and fifth bullet points of the Regulation 22 version of HSG18 found under sub-paragraph X are associated with transport infrastructure requirements in the short to medium term. There is no indication in the latest iteration of the Infrastructure Delivery Plan of:

a) the programming of these infrastructure works which are expected to take place extending over an unspecified 10 year time frame;

b) what proportion or how, those items of infrastructure are to be apportioned amongst those parties involved in those sites to be released from the Metropolitan Green Belt for residential purposes; and

c) it is unclear what is meant by the “Re-provision of high quality and suitably located playing pitches” which is a matter considered under sub-paragraph VII of the same policy, and which for reasons indicated earlier, comprise a constraint to the timely delivery of residential development on this allocated housing site.

My clients therefore question whether these infrastructure works are justified in accordance with the provisions of Regulation 122 of the CIL Regulations 2010 (As Amended) and in particular whether they are necessary to make the development acceptable in planning terms and directly related to the development. A Grampian type condition prohibiting commencement of the development prior to replacement playing provision being provided, would fail the test of reasonableness by placing unjustifiable and disproportionate financial burdens on the applicant concerning the deliverability of the development.

6.97 Would criterion II. Ecology be effective in mitigating the effects of the proposed allocation on ecology and the nearby woodland?

Yes. The Tandridge DC ecological surveys relating to Policy HSG18 site suggest a 15m buffer zone around the site’s perimeter woodland boundaries, which coupled with enhancement measures to the same boundaries, will provide improvements to biodiversity and habitats connectivity in accordance with paragraph 002 Reference ID: 64-002-20190722 of the recently released Guidance on Green Belt. In this way, there is accordance with the recommendations made by the Council’s consultant ecologists.
6.98 Are there any matters which would mean that the site is not deliverable or developable as per footnotes 11 & 12 of the Framework?

No.

6.99 Are the proposed modifications necessary for soundness?

Yes. For reasons stated in the second paragraph on page 9 of this company’s representations dated 6th September 2018 to the Regulation 19 version of the Our Local Plan; 2033.
Shared Vision and Masterplan Document Prepared by Mosaic Ltd