

**APPEAL BY CHARTERHOUSE PROPERTY GROUP LTD**

**LAND AT ELIZABETH WAY, SAFFRON WALDEN, ESSEX CB10 2BL**

**PINS REF: APP/C1570/W/19/3241526**

**SHORT OPENING SUBMISSIONS ON BEHALF OF THE APPELLANT**

**Introduction**

1. This appeal, although concerned with a modest proposal on a relatively small site, raises, as we shall see, a number of issues which lie at that heart of the planning system in England.
2. It is not the purpose of these short opening submissions to deal with those issues at length, but rather to mention only the most salient matters in order to introduce the Appellant's case.
3. The Appeal Site is the property of the Appellant. It lies in a suburban situation in Saffron Walden, remote from the clearly designated town centre and unrelated to other retail uses within the town. It was developed over 30 years ago in a way typical

of the time: a basic shed with an adjoining area of hardstanding which serves as a parking area.

4. The Site is not - and never has been - subject to any land use planning allocation in a development plan and is a classic example of an isolated, out of centre A1 retail use.
5. The Appellant took the view back in 2018 that it was a suitable site for redevelopment, especially given the tired nature of the building and the fluctuating fortunes of its tenant, Homebase (whose lease was coming to an end in any event in 2020). It remains a core principle of the English planning system that a landowner should be permitted to do as he wishes with his property unless there is a soundly based public interest reason to prevent him from doing so. The planning system is not a popularity contest, with members of the public being asked to vote for their favoured option; soundly based land use planning principles must lie at the heart of all decision-making.
6. The Appellant approached the Council and began discussions as to how it might reasonably advance its plans for redevelopment and a care home was identified as being a beneficial means of re-using the land. A formal pre-application process was undertaken and the Council's Senior Planning Officer confirmed that: "there are no policies that safeguard the site's existing use and that a care home development could be supported in principle", subject to its scale being resolved satisfactorily. Further pre-application engagement was encouraged and took place, including a public exhibition and other actions documented in the submitted SCI . This in turn led to the submission of the application in February 2019. It is submitted that the process was a textbook example of how such a planning application should be brought forward.

The Senior Planning Officer reported in May 2019 that his recommendation was likely to be for approval.

7. However, in May 2019, a new “Residents 4 Uttlesford” administration swept to power and the roles in the planning department were rapidly reorganised. A new case officer was allocated and, despite great efforts by the Appellants, documented in Mr Butcher’s proof of evidence<sup>1</sup>, communications with the Council became protracted and difficult. As late as 2<sup>nd</sup> September, a recommendation had still, it was reported, not been reached. But, on 11<sup>th</sup> September, with no warning or opportunity for the Appellant to address or consider the concerns which had apparently materialised since May, the application was refused on four grounds. One of these (the fourth relating to parking) has subsequently fallen away, leaving a policy objection and two design objections.
8. The Appellant appealed and its appeal is now, after some months delay, to be heard by means of virtual public inquiry.
9. Following the Case Management Conference on 8<sup>th</sup> June, the Inspector refined the main issues in the following terms:
  - i Whether the site is an appropriate location for a care home, with particular regard to the provision of comparison goods floorspace;
  - ii. The effect of the provision of a care home on the living conditions of the existing occupiers.
10. By way of context, it is important to note that the Council has a serious and increasing 5 Year Housing Land Supply (“5YHLS”) shortfall, with supply standing at only 2.68

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<sup>1</sup> See esp page 13

years last year<sup>2</sup>. Now, in all probability, the position will have worsened yet further. This is important, as care home provision within Use Class C2 is expressly required by the Government in PPG to be counted towards its 5YHLS<sup>3</sup>.

11. Accordingly, it is also agreed with the Council that the tilted balance is engaged, whereby permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

### **The “Policy” Objection**

12. As noted already, the Appellant was very surprised to see a policy objection to its proposal for redevelopment of the site, as it had been assured the Council that there was no policy protection for an out of centre A1 retail use. The objection has now been put in a wide variety of ways, all of which will need to be explored in evidence.

13. The most incoherent is the Council’s attempt to rely upon policy E2 in the adopted Uttlesford Local Plan 2005, which is patently addressed to “employment land”. There is no legally sound way in which, appeal site, which has only ever been in A1 use, can attract protection of the development plan as “employment land”. I note that Mr Roberts for the Rule 6 Party wisely does not pursue this entirely misconceived argument. The references to a policy requirement to show “abandonment” or “harm to residential amenity” all relate policy E2, and are, for the reasons we explain in evidence, completely irrelevant to this appeal.

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<sup>2</sup> SoCG, para.3.13

<sup>3</sup> See A Butcher, proof, paras. 5.13 and 5.14 for refs.

14. Much of the original evidence was focused on the implications of emerging LP policy RET4. However, this has now fallen away with the Council's abandonment of the eLP, following the Inspector's interim conclusions. RET4 is dead and does not need to be prodded further at this inquiry. Neither principal party contends otherwise.
15. The only remaining policy strand to consider - which the Rule 6 party in particular advances with vigour to take the place of the now abandoned RET4 - is para.121 (a) of the NPPF. This argument is, however, equally misconceived, and one can see why so little was made of this in the main proofs of evidence. The suggestion that the loss of Homebase in SW would "undermine" one of the Council's "key economic sectors or sites" is entirely unsubstantiated. A key site would, of course, be protected in a development plan, which the appeal site plainly is not.
16. This leaves the Savills Retail Studies. It is important to note that these do not constitute policy, but were evidence base documents commissioned to support the now abandoned eLP. They now need updating in a number of respects, but are detailed and complex studies, which will be considered in evidence by Mr Best. Happily, some central matters have been agreed with the Council in the Retail SoCG: in particular, it is agreed that there has been - and will continue to be - substantial over-provision of out of centre floorspace in SW. This applies even without Homebase. The revised aggregate retail capacity figures are only one third of those underpinning the eLP, due to a number of errors now corrected and agreed. And that is before actual figures for the turnover of Knight Retail Park are factored in, as Mr Best will explain. It is therefore incorrect to assert that the redevelopment of the Homebase would have the consequences for SW alleged in the RfR.

17. Looking beyond these misconceived policy objections, there is policy support for the reuse of retail land for homes in the NPPF and support for redevelopment of PDL in the LP. There is no land use policy based objection to the location of a care home on the appeal site.
18. Mr Butcher's evidence, which relies in part upon work undertaken by leading experts in the sector, confirms the need for additional care home provision in SW and Uttlesford. Meeting this need contributes directly to the Council's seriously depleted housing land supply and proposals such as the appeal scheme should be warmly supported. The need for modern purpose built facilities with en-suite facilities, which permit isolation (and reduce risks of cross-infection) has only been reinforced by the Covid-19 pandemic. Additionally, the appeal proposal will generate 58 jobs on site and many more in construction. This is three times the number employed on site at present.

### **The Design Objection**

19. Again, this is considered to be entirely misconceived, as Mr Lewis will explain. All objective standards are met and the images to which he will speak demonstrate that the appeal building will be a well-mannered addition to the townscape, contributing a far greater range of landscape and biodiversity benefits than the site as it stands at present.
20. Although, the RfR purport have protection of residential amenity as their object. It is noteworthy that those who live in the houses which the Council says it is seeking to protect have not opposed the appeal proposals on these grounds.

**Conclusion**

21. On the basis of the evidence which I will call, it is the Appellant's case that there is no credible policy objection to the replacement of an out of centre A1 use on unallocated land with a care home and that either on the basis of the adopted development plan, or via the tilted balance, there are no demonstrable reasons for withholding permission and that the appeal should be allowed.

**THOMAS HILL QC**

**21<sup>st</sup> July, 2020**

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