

**RE : HOMEBASE, SAFFRON WALDEN**

**APP/C1570/W/19/3241526**

**CLOSING SUBMISSIONS ON BEHALF OF UTTLESFORD DISTRICT COUNCIL**

1. The appellant's case has unravelled. It has become clear that the case advanced is all gloss and no substance.
2. The proposed development seeks to replace a long-established and very profitable Homebase with a 68 bed care home in Saffron Walden. Homebase themselves want to stay, to the point where they have taken the very unusual step of taking Rule 6 status at this Inquiry and playing a full role. . The people of Saffron Walden want Homebase to stay, 800 of whom wrote letters of objection at the application stage. And UDC continue to object in the clearest terms.
3. Put simply, the enforced removal of Homebase would undermine the local retail economy, in particular in the DIY, decorating, and gardening sector. The justification relied upon by the appellant is an allegation of need for care homes – that allegation has been shown to be wrong.
4. The appeal is to be determined in accordance with the statutory test for determination : in accordance with the development plan unless material considerations indicate otherwise. The NPPF is an important material consideration and it is agreed that in light of UDC's lack of a 5 year housing land supply, the so-called 'tilted balance' set out in paragraph 11 of the Framework is engaged.
5. The development plan consists of the saved policies of the Uttlesford Local Plan 2005 (the Essex Minerals Plan is part of the development plan but is not relevant to this

appeal). There is no emerging development plan policy which carries weight in this appeal, UDC having resolved on 30<sup>th</sup> April 2020 to withdraw the Emerging Local Plan following a letter received from the examining Inspectors.

6. These submissions address the principles issues in the following sequence :
  - i. The retail impact of the proposal ;
  - ii. The conflict with employment policy ;
  - iii. The impact of the proposal on the residential amenity of neighbouring occupiers in Elizabeth Close ;
  - iv. The need for an additional care home ;
  - v. Other benefits relied upon by the appellant.

### **Retail Impact**

7. The existing Homebase is a part of local life in Saffron Walden. The appellant (xx of JB by UDC) agreed with three straight-forward propositions :
  - i. Homebase has been at its Saffron Walden site for a long time (more than 30 years) and is well-established locally ;
  - ii. Homebase is a very well-known brand in the retail sector ;
  - iii. Homebase is aimed primarily at the DIY (and garden) sector (and JB wished to add 'homewares' to its target market).
8. In order to properly understand the importance of Homebase to the local retail sector, it is important, in fact essential, to look at objective and empirical evidence available.
9. The most recent and telling material for these purposes is a household shopping survey carried out in 2016, commissioned by Savills in carrying out their retail work for UDC as the evidence base for the new local plan. This very detailed household

survey formed a part of the 2016 Retail Study (CD.F3) and 2018 Retail Study Update (CD.F4), the survey results featuring in the appendices to each (Appendix 6).

10. The survey was carried out in March/April 2016 by MEMS, a specialist survey company with substantial experience of conducting investigations of this nature (CD.F4 Retail Study Update at 3.20). The methodology adopted by NEMS was set out comprehensively in the Retail Study Update (3.21 to 3.33), and by way of summary :

- i. The survey captured a representative sample of residents in and around the Uttlesford District Council area (3.21) ;
- ii. Convenience and comparison goods shopping habits were assessed (3.21) ;
- iii. Respondents' demographic details were captured (age, gender, household composition, car ownership, household income, employment status – see Q19 of Survey) ;
- iv. A total of 1000 telephone interviews were conducted between 29<sup>th</sup> March 2016 and 20<sup>th</sup> April 2016 (3.22);
- v. All respondents were confirmed to be the main shopping householder (3.22);
- vi. A quality control interview process was employed to maintain standards (3.23) ;
- vii. A geographical zonal system was created to ensure that the samples were representative of the overall survey area and also the individual zones (3.26) ;
- viii. The 'standard error' margin was applied to produce a 95% confidence interval of +/- 3.6% (3.27).

11. Q06 in the survey asked the following question :

*Where do you do most of your household's shopping for DIY and decorating goods ?*

12. It is agreed that the relevant zone for the purposes of this appeal is Zone 1A, which contains Saffron Walden.

13. 53.8% of Zone 1A answered Homebase in Elizabeth Way.

14. This was overwhelmingly the most often-given answer. 24.8% simply answered 'Saffron Walden'. The next highest response was Homebase in Bishops Stortford which accounted for 5.1% of answers.
15. The survey demonstrated that Homebase was the dominant force in the decorating and DIY retail sector in the Saffron Walden area.
16. For very obvious reasons, the results of the survey are extremely unhelpful to the appellant's case, and the attempts to undermine the survey became increasingly more desperate.
17. THQC for the appellant dismissively referred to it in questions as the "much-vaunted" NEMS survey and repeatedly sought through his own questions to imply criticism by referring to the 75 people who gave Saffron Walden Homebase as their answer, the thinly-veiled insinuation being 'merely 75' (the representative sample for Zone 1A in fact being 141 respondents). But whilst that might have shown a nice rhetorical gloss by a barrister it bore little resemblance to the evidence including a detailed methodology by experienced specialists in the field of household surveys.
18. JB for the appellant was clearly aware of the difficulty that the NEMS survey posed for the retail case he was trying to present for the appellant, because of the lengths that he went to to try to undermine it. The best he could do, after no doubt much digging around, was to produce a survey submitted on behalf of Tesco for an application they were making in 2008 (JB10). In answer to the question 'Where do you normally go when shopping for DIY goods, decorating supplies and garden products?', 1.4% answered Homebase and 67% answered Saffron Walden. The attempt to employ the Tesco survey to undermine the NEMS survey was wholly misjudged for a variety of reasons :
  - i. The Tesco survey is 12 years old and pre-dates the NEMS survey by 8 years ;

- ii. Next to nothing is known about the methodology used for the Tesco survey (other than the geographical zoning), none of the methodology is in evidence for this appeal, JB didn't even know the name of the company who had carried out the survey. The contrast in this respect to the NEMS survey is stark ;
- iii. The results are on the face of it so bizarre that JB was frank enough to volunteer the observation (JB Proof 3.37) that "It may be that some respondents selected the town centre when they shop in SW generally" ;
- iv. The suggestion that those whose answer might have been expected to be Homebase simply wrapped up their answer in the answer Saffron Walden Town Centre, or that the survey methodology must have been in some way skewed or unreliable, is reinforced by the comparable outcome of the Tesco survey data for Zone 3 which is the zone based around the town of Bishops Stortford, since in respect of the same questions the answers are recorded as 57.3% Bishops Stortford Town Centre and 10.1% Homebase Bishops Stortford, where the NEMS survey for the equivalent zone produced a 59.2% response for Homebase Bishops Stortford, showing that, like its counterpart in Saffron Walden, Homebase is the dominant force in that local market.

19. Since little is known about the methodology for the relatively ancient Tesco survey, it is near impossible to properly assess the reliability of the methodology, other than to make the point that the outcome for both Saffron Walden and Bishops Stortford is quite obviously wrong on any sensible view. However, a full methodology is advanced for the NEMS survey, such that its reliability can be assessed. In his voluminous written evidence stretching out over three proofs of evidence, JB could not point to a single flaw in the methodology, and in oral evidence (XX by UDC) he gave a clear answer that he accepted the methodology. In fact it was wholly bizarre of JB to suggest (in Re-ex) that a Tesco survey with an unknown methodology should be treated as reliable ("there is no reason to doubt its competence"), yet a NEMS survey where the full methodology is known and is unimpeachable should somehow be the subject of scepticism. JB did eventually offer two reasons why he suggests that the NEMS survey should not be relied upon by the Inspector, and it is noted that

neither reason was put forward in his written evidence, instead they were given (to put it bluntly) on the hoof in oral evidence. These reasons were :

- i. That the NEMS survey question asked where do you do most of your shopping. This was an absurd argument, since a survey which asks where you do all of your shopping in a particular category would not produce positive results. It is noted that the Tesco question asked where you normally go shopping. The fact that a majority of respondents in the relevant zone do most of their shopping for particular goods in a particular store does not somehow diminish the answer ;
- ii. In a moment of ill-judged grasping, in re-examination (having never mentioned it previously) JB was taken to the gender data for NEMS respondents which showed that 68.8% of respondents for Zone 1A were female, in order to underpin the question “is there a distinction between the principal household shopper and the principal DIY shopper ?”. This elicited the answer that it is typically the man of the house who would do the DIY shopping. This point was so staggeringly bad that it was remarkable that it was made at all. Rooted in ill-advised gender stereotypes, it was no better than suggesting that answers to a question about shopping for sporting goods should be taken with a pinch of salt when a respondent is female. It is even worse than suggesting that women don’t shop for DIY/decorating goods because it also implies that women would have no idea where the DIY/decorating goods bought for the household are purchased from, as if that is another world entirely. Putting it bluntly, it is now the appellant’s case that the answers to the question ‘where do you do most of your household’s shopping for DIY decorating goods’ cannot be trusted as most of the respondents were women. [The Inspector may wish to note the gender-composition of the many letters of objection concerned about the loss of their DIY store, although it is hardly necessary to do so].

20. No credible argument has been put forward to undermine the proposition that the NEMS survey provides reliable data demonstrating how much the people in the Saffron Walden area rely on Homebase.
21. It is UDC's case that the loss of Homebase would harm the retail sector in Saffron Walden, because the lack of local alternatives would cause households in the area to have to shop elsewhere which is not consistent with sustainability and would result in more expenditure leaking out of Saffron Walden and out of the district.
22. The appellant focusses attention on two retail outlets in the area, Ridgeons and B&M. The purpose of this appears to be twofold. First, to enable the argument that things have changed since the NEMS survey in terms of the local retail offering. Second, to enable the argument that there are ready-made alternatives in the area were Homebase to disappear.
23. Ridgeons is not new to Saffron Walden. It has been there for some time and was at the time of the NEMS survey. Indeed, within that survey, 1 person out of 141 responded Ridgeons, rounded to 1% of respondents in the survey tables but in fact representing 0.07%. Such a negligible response was not surprising, because Ridgeons is aimed at the building trade, not at household DIYers. The appellant seeks to argue that things changed in 2017 when Ridgeons was 'remodelled', but proper scrutiny shows the claimed impact of this remodelling should be approached with caution. The appellant presents no evidence at all to demonstrate that Ridgeons' market share of the DIY/decorating sector increased after 2017. They merely invite speculation. What is, by contrast, compelling, is the evidence given orally by GR for Homebase that the Ridgeons reopening in 2017 had no discernible impact on Homebase's trade. That is not surprising when looking at the extract provided from Ridgeons planning application that underpinned the reopening. In that extract (JB36) Ridgeons describe themselves as a Timber and Builders Merchants "supplying all the materials and services required to construct residential and commercial properties to the trade, professional DIY'ers and retail customers", with over 5500 account customers. AH explained (EIC) that accounts are normally set up for those who are

regular users, and are geared up for tradesmen to provide a credit service. The purpose of the planning application, and therefore of the remodelling pursuant to that application, was not to change its trading model but was instead expressly about improving efficiency in terms of heating and lighting and environmental standards, the existing building being “past its economic life”. The document concluded “While the building and site area will be reduced, the overall scale of the operation will remain”.

24. There is no evidential basis at all for the appellant’s contention that the new Ridgeons building from 2017 provided a customer-base which did not exist before (confirmed by JB in xx by Homebase). Even JB acknowledged (xx by Homebase) that which is obvious : that Ridgeons is primarily aimed at the building trade, which he described as its “predominant role”, which would make up the majority of its turnover.

25. An examination of opening hours provides a clear indication that Ridgeons caters overwhelmingly for the trades rather than for household DIY’ers. Ridgeons closes its doors on Monday-Friday at 5pm, and on Saturdays at 12 noon. On Sundays it doesn’t open at all. By contrast, Homebase closes at 8pm during the week and on Saturdays, and at 4pm on Sundays. JB in evidence was asked (xx by UDC) when he would expect household DIY’ers to do most of their DIY shopping. If ever there was an answer so transparently unbalanced this was it, as he claimed without hesitation Saturday mornings, conveniently coinciding with Ridgeon’s opening hours. It is obvious that the evening, all-day Saturday, and Sunday openings are because Homebase caters to domestic rather than trade customers. It is not an answer to speculate, as THQC invited JB to do, that Ridgeons could adapt their opening hours : the fact is that their opening hours demonstrate that they are focussed on the building trades.

26. The Inspector will be able from her site visit to make a judgment as to whether Ridgeons really is ploughing the same field as Homebase. The sheer range of technical materials on sale, the strong emphasis on specialist building materials, and the banks of what appear to be account-handler desks provide strong clues. It is of

little surprise that the interested person Mr Whippy, giving oral evidence to the inquiry, explained that even as an experienced DIY'er he found the Ridgeons an alien environment, intimidating to the household DIY'er.

27. There is no evidence whatsoever that Ridgeons has expanded its share of household shopping since the NEMS survey. Nor can it properly be regarded as a true alternative to Homebase.

28. The reliance by the appellant on B&M is even more far-fetched. B&M is a variety retailer that stocks a wide range of goods particularly food, toys, soft furnishings and some furniture (AH Proof 4.9). Its offering to the DIY and decorating sector is very limited indeed, and even where it does offer a product (e.g paint) there will be very limited choice. JB acknowledged (XX by LPA) that, for example, it could be relied upon for a tin of white paint but not for any wider choice. AH (EIC) adopted the terminology suggested in openings : it is a modern-day Woolworths. AH put it (EIC) characteristically clearly : "it has a bit of everything, but no specialisms". AH told the Inquiry that what B7M stock one week might not be the same the following week, and in response to a question from the Inspector JB accepted that B&M does not provide the "predictability that you would get somewhere like Homebase". It should be further noted that the Mintel report produced by the appellant (JB21) explicitly distinguished it from DIY specialists as it was a "broad-based retailer".

29. The appellant through JB produced a 'Product Comparison Table' (JB29). This purported to demonstrate that B&M should be treated as a legitimate alternative to Homebase. On further scrutiny, the table is virtually meaningless, for the following reasons :

- i. It was compiled used an internet search to see what products B&M sells, rather than a shelf survey to indicate what the Saffron Walden branch actually stock ;

- ii. It fails to address the fact, accepted by all three retail witnesses, that the ticking of a box does not indicate how much choice of any particular product is offered ;
  - iii. It was littered with inaccuracies, as eventually accepted by JB (xx by Homebase).
30. A more meaningful exercise was that carried out in relation to the stock on the aisles at B&M (JB Rebuttal at Figure 1). Although this table listed 13 aisles which stocked items described as 'DIY, Gardening, and Houseware', it almost entirely consisted of 'houseware' mainly in the form of soft furnishings, barely a single aisle was devoted to DIY and decorating goods.
31. It was no surprise therefore that Homebase informed the inquiry (GR EIC) that the sales data showed that Homebase had suffered no loss of trade arising from the opening of B&M in 2019. B&M, he explained, was "not a comparable offer and not a direct competitor".
32. The appellant has further sought to argue that, if Homebase was lost, the town centre already provides a meaningful alternative or substitute. It was particularly daring of the appellant to make this argument because as recently as May 2018 Planning Potential wrote to UDC on behalf of their client (the appellant) in respect of a variation of a condition, and wrote that the Homebase offering does "not directly compete with the offer of Saffron Walden town centre, which has a range of household and fashion retailers, alongside independent traders, and the service and leisure sectors" (GR Appendix E). The appellant now performs a brazen volte-face on this issue. Once again, the appellant's argument did not survive scrutiny. A Goad Report (JB8) demonstrated how limited the town centre offering is in this sector.
33. An excellent example of how flawed the appellant's town centre position is, is the inclusion of Glaswells in the Product Comparison Guide (JB29), when Glaswells is "an old-fashioned furniture shop" as described by AH (EIC). The appellant picked out 12 town centre shops which the Inspector was asked to include in the site visit, in order

to demonstrate that the town centre provides a collective alternative to Homebase. Other than a paint shop, the town does not provide any meaningful alternative to Homebase. AH went through (in EIC) most of those shops identified for the site visit : Michael K is a gift shop, Reed & Sons is a second-hand furniture emporium, Lottie Mutton specialises in high-end furniture fabrics and wallpaper, Janet Riley is a high-end fabric shop and haberdashery, Susie Watson is a design store, Angela Reed is a modern furniture shop. These offerings, individually or collectively, are “not comparable with Homebase at all” (AH EIC).

34. The appellant invites the Inspector to consider that the town centre could in the future provide a substitute DIY store to mitigate the loss of Homebase at Elizabeth Way. That exercise was an unattractive invitation to speculate. Be that as it may, there are two obvious hurdles to a DIY store arriving in the town centre :

- i. It is agreed by the parties in evidence that the heritage constraints of a historic town centre provide no opportunity for large retail premises (AH Proof 4.33 – 4.38) ;
- ii. The parking limitations of the town centre are not conducive to bulky goods shopping (AH EIC). There is limited on-street parking and the car parks are some distance from the shops themselves (AH EIC and JB xx by UDC). The NEMS Survey (CD.F4, Appendix 6) is telling in this respect because Q14 asked “What do you most dislike about your town centre”, the largest portion of respondents for Zone 1A having identified Saffron Walden as their town centre at Q12. Over 50% identified difficult and expensive parking (of the other 5 zones, only one identified a similar complaint (Zone 1B). The next highest scoring answer was traffic with 15%. Together, town centre parking and traffic made up nearly 68% of the responses (‘Nothing’ accounted for 28% of the 32% remainder).

35. Once again, an exercise in speculation is encouraged by the appellant to consider that smaller versions of a traditional DIY model could appear in Saffron Walden in the future. These smaller models are not comparable. Screwfix (JB22), for example,

is an entirely different experience, anathema to browsing and ad hoc shopping (AH EIC),, and in any event Screwfix also focusses its offer on the trade which is responsible for 70% of its trade (Mintel JB21) ; B&Q Goodhome (JB23) is an entirely different proposition, the emphasis being on Homeware (AH EIC) ; as is the Homebase smaller store format (JB24) which focusses on lamps, cushions, and picture frames. Moreover, there is not a morcel of evidence that any of these, nor the wide list provided by JB (Proof 9.65), have any interest in coming to Saffron Walden. The fact that Saffron Walden appears as one of 60 towns listed on an undated marketing pamphlet produced by agents apparently acting on behalf of Screwfix does not tell us much if anything.

36. It is not appropriate for important planning decisions to be taken on the basis of loose speculation about what the future might bring. The appellant's qualitative retail case is notable mainly for its lack of proper evidence, instead a superficially-shiny cobbling together of articles, self-serving tables, and guesswork.
37. UDC's retail case relies on qualitative analysis – household shopping patterns, existing out of centre offerings, and existing town centre offerings – to demonstrate that (in the language of the RfR) the proposed development would result in the unjustifiable loss of a commercial retail use, which could not be necessarily placed elsewhere in Saffron Walden of that scale.
38. UDC's case does not rely on a quantitative case, it having been agreed between UDC and the appellant in the Retail SOCG that the aggregate capacity for net comparison goods floorspace in Saffron Walden as a whole for 2026 is 1661 sq m and 1674 sq m (Retail SOCG paras 6 and 7). This indicates that even if Homebase closes, there is forecast to be an oversupply of comparison goods floorspace. The Retail SOCG was clear as to the nature of the agreement, making clear that the "overall quantitative issues raised by the Retail Studies" were agreed (para 10). It was something of a surprise therefore to AH when (in XX by appellant) the appellant sought to put to her an alternative to the agreed position in the shape of JB's so-called Scenario 3. The appellant sought to justify this apparent departure from the SOCG on the basis that

para 10 referred to the issues “as set out in Section 8 of Mr Best’s evidence and Section 4 of Mrs Hutchinson’s evidence”. This was an unfortunate position to be taken by the appellant. The only chapter of AH’s evidence which addressed the quantitative retail issues was Chapter 4, whilst Scenario 3 was introduced in JB’s Chapter 8. The appellant’s attempt to re-open the issue to Scenario 3 does not square with the position taken in the SOCG. Be that as it may, with or without Scenario 3 (which is flawed anyway because JB accepted that it wrongly included Argos) (XX by UDC) , UDC do not rely on a quantitative argument. The issue is qualitative – in the absence of Homebase there is no comparable offering in Saffron Walden – the community would have to go elsewhere for their DIY / decorating shopping.

39. The proposal is clearly in conflict with para 121 of the NPPF, which arises in the context of the national policy to ensure that effective use is made of land. The policy requires a positive approach to applications for alternative uses of land which is currently developed but not allocated for a specific purpose in plans, where this would help to meet identified development needs ; in particular, proposals should be supported which use retail and employment land for homes in areas of high housing demand provided this would not undermine key economic sectors or sites.
40. In applying para 121 in this case, the proviso is key : “provided this would not undermine key economic sectors or sites”. If the Inspector is satisfied (a) that the appeal site is a key economic site and/or that the sector to which Homebase contributes is a key economic sector (ie retail) and (b) that the proposal undermines that site or sector, then a safe conclusion can be reached that the proposal breaches this important section of the Framework.
41. It is the Council’s case that the loss of Homebase would clearly undermine the local retail sector.
42. The appellant’s position, presented by JB, is fundamentally flawed, because their position is informed by two misconceived errors in JB’s analysis :

- (i) JB argues that the contribution is not 'key' because Homebase is not an allocated site, and if it was that important then it would have been. However, that argument fails (XX JB by Homebase) because the policy explicitly applies itself to sites "not allocated for a specific purpose in plans". JB's argument is entirely circular ;
- (ii) JB assessed the application of the policy on the basis of his own, wrong interpretation of the meaning of 'undermine'. He treated it (EIC) as meaning something which "has a very significant affect indeed". That was his own definition and is simply wrong. A proper understanding of 'undermine' is something which is weakened ie less strong.

43. Therefore the appellant's approach to para 121 was wrong. If the Inspector accepts that a key economic sector (ie retail) would be weakened as a result of the proposal, then para 121 is conflicted.

#### **Employment policy**

44. RfR1 alleged a conflict with the saved employment policy E2 (Local Plan at CD.D1). In particular, UDC rely on the second part of E2 : The development of employment land for other uses outside the key employment areas will be permitted if the employment use has been abandoned or if the present use harms the character or amenities of the surrounding area.

45. There is no dispute that the current use has not been abandoned, and there is no evidence presented by the appellant that the present use harms the character or amenities of the surrounding area. UDC through its evidence on the impact on neighbouring properties make plain that there is, in UDC's view, no present harm.

46. The real issues in respect of Policy E2 is whether the appeal site is employment land in employment use. UDC's case is that it is, as a site which generates and provides employment.

47. The appellant's position advanced by JB is that E1 defines employment land as land for business, industry, storage or distribution (JB 1<sup>st</sup> Rebuttal Proof para 4). That argument is wrong. The reference to business, industry etc relates to the proposed use, not the existing use. Moreover, E1 relates specifically to a group of five named sites together providing 17.35 hectares. The appeal site is not one of these five sites.
48. The appellant's second argument on the interpretation of the second part of E2 is that the Structure Plan 2001 (JB 27) – which was superseded in 2008 (ID7) - and an Employment Land Monitoring Report (JB28) further demonstrate that E2 relates to Class B uses. However, the Structure Plan policies relied upon by the appellant to support their position are BIW1 and BIW2. The former, however, specifically relates to the requirement for UDC to provide 16 hectares of B use land and JB agreed (XX by UDC) that this was the forerunner of the 17.35 hectares the subject of E1. BIW2 simply requires this provision to be monitored, and that is what the monitoring report (JB 28) does. The report produces two tables of sites : Table 1 relates to the E1 sites, and Table 2 relates to the sites listed in the first part of E1, all sites listed at a) to f) in E2 except for the E1 sites are listed at Table 2 in the monitoring report. Neither the Structure Plan extracts nor the monitoring report relate to the second part of E2 which concerns “employment land for other uses outside the key employment areas”. Therefore the second part of E2 is not restricted to Class B uses, and UDC are entitled to treat the site as employment land in employment use, and to treat the policy as conflicted [Note : UDC do not accept the point, made by JB in EIC, that the weight that can be given to E2 from the 1<sup>st</sup> September 2020 will reduce as a result of the Amended Use Classes Order – see ID8].

#### **Impact on residential amenity**

49. As reflected in RfRs 2 and 3, it is UDC's case that the residential amenity of the occupiers of Elizabeth Close would be harmed by the proposals.
50. That harm results in a breach of Policy GEN2 in the development plan.

51. Elizabeth Close is a very pleasant suburban cul-de-sac which runs immediately adjacent to the appeal site. UDC's case is particularised to specific properties within Elizabeth Close : namely numbers 5-9, 25-29, and 33.
52. The issues arising are overlooking, and outlook (which in effect co-exists as a harm with an overbearing impact from the proposal).
53. In respect of 5-9 Elizabeth Close the principal issues are outlook and the overbearing impact. The existing situation (PL Appendices D10) is that this row of houses whose front elevations face the site enjoy an open outlook across the area currently used for car parking, there is no sense of any overbearing development nearby since the nearest properties facing the front of the row are a considerable distance away across the other side of the site. The design of the proposed building means that the distance between the building and 5-9 is the closest point between the proposed building and the properties in Elizabeth Close, at 24.5m (PL Proof 3.4). In place of the open outlook will be a substantial three storey building with a ridge height of 11m. However, that height is exacerbated by the difference in ground levels. Elizabeth Close is on lower ground than the appeal site, and the effect of this is that the 'real' ridge height of the proposed building viewed from Elizabeth Close will be 12.5m (AH Proof 5.15). The visualisations (PL Appendices D10) provide a clear illustration of the 'before' and 'after' scene. The proposal would result in harm to 5-9 in terms of outlook and overbearing impact. The proposed mitigation (PL Proof 7.10) consists of trees and planting but AH was clear (EIC) that this would not successfully mitigate the harm.
54. At Numbers 25-29 the issue is not one of outlook but of overlooking. Here, the proposed building is further away at a distance of 40.7m. Helpful guidance is to be found in the Essex Design Guide (CD.F6). Policy GEN2 requires schemes to have regard to adopted guidance and the supporting text at 3.10 identifies the EDG as adopted supplementary planning guidance. Presently, there is no issue of overlooking at all, since there are no windows on the Homebase elevation facing

Elizabeth Close. The visualisations (PL Appendices D8) demonstrate the extent of fenestration facing this row of houses. The gardens of these houses would be directly overlooked by the upper storey windows and there lies the issue. The appellant's argument is that the living rooms have been removed from the section of the proposed building which would directly face these gardens, and argues that the Inspector has the power to condition obscure glazing to these service rooms, even though this is not offered. However, even if that is capable of addressing part of the issue, it does not address the overlooking from the living areas with windows in the central section of this flank elevation. So far as these windows are concerned, PL was clear (XX by UDC) that obscure glazing is not an option, and the EDG explicitly advises that "oblique views over side boundaries from upper-storey living rooms can also be a problem ; this should be safeguarded against". PL accepted (XX by UDC) that there would be oblique views from upper-storey living areas over the side boundaries of numbers 25-29. There is little or no safeguarding against these views.

55. The overlooking issue would be worse still for the occupiers of 33 Elizabeth Close. Their garden would be directly overlooked by the upper-storey living rooms directly opposite. These windows would not be glazed and the appellant does not offer this as an option they would support. The separation distance is 33.9m (PL Proof 3.9), below the applicable minimum of 35m provided by the EDG. Here it is obvious PL has entirely misunderstood, and misapplied the EDG. Even more worryingly, he appeared in xx to have entirely misunderstood the building he designed. He approached 33 on the basis that para 1.98 allowed a 1m separation distance as the gable end of 33 would face the care home, so that the separation distance was 33 times more than the minimum, rather than below the 35m minimum. That argument is wrong. The 1m minimum in 1.98 applies where (i) the rears of the new houses (ii) face those of the existing home at an angle of 90 degrees and (iii) where there are no windows in the flank end. On all three counts, 1.98 is not applicable. The rear of the proposed building is clearly the Ashton Road elevation, because the front elevation faces Elizabeth Close. PL claimed (XX by UDC) that the front elevation faces Ashton Road. That demonstrated a remarkable misunderstanding of his own building, and AB confirmed (XX by UDC) that the entrance to the building – marked by an entrance

porch, an entrance door, next to the car park, and leading to an internal lobby, reception desk, and café – is on the projecting element opposite Elizabeth Close. The rear of the block would therefore face Ashton Road, not Elizabeth Close at an angle of 90 degrees. Even then, there are windows in all flanks, as again confirmed by AB (XX by UDC), which is a second reason that 1.98 does not apply. What is applicable, but effectively ignored by PL, is the EDG guidance for Private Sitting Out Areas :

*Particular attention must be paid to the potential problem of overlooking from the living rooms of upper storey flats, which should be no closer than 35m to a private sitting out areas unless it is effectively screened from view.*

56. The living rooms of upper storey flats in this case would face the private sitting out area (garden) of 33 at a distance below the minimum of 35m. Although the EDG is guidance and need not be followed slavishly, there is no planning reason advanced as to why it is acceptable to be beneath the minimum distance. Indeed, the difference in ground levels provide a good planning reason why the minimum should be exceeded. Nor is the proviso in the guidance engaged because the new block would not be “effectively screened from view” from the garden of 33. The appellant argues that the existing hedge along the 33 boundary performs that role. This had not been mentioned by PL in any of this written evidence and was an argument devised in oral evidence, but in any event (a) it does not effectively screen the building from view (b) the planning consent cannot control the height of this hedge, and although the appellant appeared to say that the appellant owns the hedge, PL told the Inquiry (Re-Ex) that “the longevity of the hedge is in the gift of the owners of the houses”.
57. Overlooking from the windows of the care home into the garden of 33 would harm the residential amenity of the occupiers of 33.
58. PL relies on the fact that the owners/occupiers of the relevant properties in Elizabeth Close have not written objections on amenity grounds (PL Proof 7.8, 7.9, 7.10), and he invited the Inspector to make an assumption that they are not concerned about

this issue Proof 7.10) . He is not a planner, but as an architect of 35 years' experience he should have known better than to make this point. As AH said (EIC) residents don't object at all or in respect of a particular issue for all sorts of reasons, it cannot be assumed it is because they do not perceive any harm. It is noted that in the Statement of Community Involvement it can be seen that the questions put to local residents by the appellant during the public consultation did not include any question relating to residential amenity. Moreover, it is the function of the decision-maker to make objective planning judgments on the merits, not on the basis of how many residents did or did not object. The appellant was wrong to invite the Inspector to attach weight to this matter (PL XX by UDC), and it is notable that AB shied away (XX by UDC) from saying that the Inspector should attach weight to the number of residents who did object on retail grounds – the appellant cannot have it both ways.

#### **Need for an additional care home**

59. At the very heart of the appellant's case is the contention that the provision of a care home meets a specific need for care homes in the area. The case in this respect was presented by AB. He is not an expert in this field but he relied on the reports provided by the consultants HPC, other than the occasional ill-advised frolic on his own.
60. The appellant's care home need case is a smoke and mirrors argument which fails under analysis.
61. There is no issue that a demand and supply approach is an exercise capable of providing an indication as to unmet need. HPC's approach was as follows (AB Appendix 2, page 4) :

*“ The report focusses upon current supply levels (in terms of registered care beds) before estimating statistical demand and considering the supply/demand dynamics for the Target Area. As a point of reference we have further provided a District wide overview of Uttlesford within Appendix II to the report “.*

62. There are three components an assessment of which is fundamental to assess the way in which the appellant puts the need case :

- i. The reliability of demand forecasting ;
- ii. The approach to en-suite bedrooms in the supply chain ;
- iii. The reliance on a so-called 'Target Area'.

63. Demand forecasting is by its nature uncertain. That is a point of agreement between the main parties. Thus HPC very properly acknowledge (AB Appendix B, page 12) this : "There is, of course, a level of uncertainty attached to such forecasting". Therefore, a supply and demand exercise has to be subject to an acknowledgement that there is a margin of error in the forecast. HPC relied for forecasts on a company called Laing & Buisson, and their research and analysis has not been put before the Inquiry. However, this Inquiry has the advantage of seeing that margin in action, because in October 2018 HPC prepared a report for the purposes of the application (CD.A4) which endeavoured to forecast demand for 2020, and then in 2020 prepared a further report (AB Appendix B) in which the demand assessed the current 2020 demand. In the 2018 report, for the Target Area the current demand was estimated to be 325 and the forecast for 2020 was 350, an increase of nearly 8% (7.7%). However, once we were actually in 2020, HPC in the 2020 report assessed the 2020 demand at 323, a fall in demand. On a district-wide basis, the 2018 report forecast a 9% rise to 2020 (623 increasing to 677), but the 2020 report estimated the 2020 demand to be 626, an increase of just 0.5% (3 beds). This provides an excellent illustration of the cautionary approach to be taken to HPC's 2025 forecast, particularly when the forecast is for such dramatic jump in demand : by 20% (19.81%) in the Target Area (323 to 387) and by nearly 24% district-wide. The approach on this issue taken in re-examination might be regarded by the Inspector as unhelpful : Q. is there any reason to doubt the projection ? A. No. That flies in the face of what HPC themselves had said in their report, namely that there is a level of uncertainty in the forecasting, and was entirely at odds with the answers AB had already given in XX. AB seeking to distance himself from HPC.

64. It is not a point of contention that new care homes are expected to provide en-suite bathrooms, or that that is a good thing. However, existing homes are not required to have en-suite bathrooms, nowhere in policy, guidance, or regulations – a point begrudgingly accepted by AB in XX. Nor is there any evidence that bedrooms without en-suite facilities remain empty, even if they are not the ideal. Yet the invitation from the appellant to the Inspector is to treat beds without en-suite facilities as if they do not exist. A very clear example of that approach is found in AB’s written evidence (Proof 6.28) in the text which he drafted to accompany a bar chart lifted from HPC’s report. The bar chart compared total demand with ensuite bedroom supply, and AB’s narrative was “As shown on the reproduced chart [...] the current level of demand [...] plainly exceeds the level of supply [...]”. As if beds without ensuites did not exist. There is no proper basis for that approach.

65. The appropriate area to be considered on the issue of need is the district. The appellant has pointed to nothing in policy or guidance which recommends that a sub-area be devised for narrower focus. The appellant points to the fact (AB EIC) that an even smaller sub-area would have excluded some of the care homes, but that is a poor point, because as AH told the Inquiry (EIC) had the Target Area been drawn 2 miles wider it would have included 4 further care homes. However HPC seek to rationalise a 6 mile target area, it is in the end arbitrary, a unilateral exercise. It is more appropriate for the primary focus to be on the district-wide position.

66. In terms of the supplyline of care homes, there are four important points to have in mind when considering the HPC assessment :

- i. since the HPC report, The Grange Care Home in Newport opened (in March 2020, AH Proof 6.11 and EIC), providing 40 additional beds (all ensuite). This home is within the District and the appellant’s ‘Target Area’ ;
- ii. since the HPC report, the SoS granted consent for a care home at Takeley on 31<sup>st</sup> January 2020 (CD.H1), providing up to an additional 66 beds (all ensuite), this is within the District ;

- iii. HPC provided evidence of the financial robustness of the care homes in the 'target area' (AB Supplemental App 1) , particularly having regard to the economic instability resulting from the pandemic, and concluded that the impact on viability is unlikely to be significant (3.9). There was no evidence that other homes within the District are any less robust ;
- iv. HPC have treated supply as entirely static between 2020 and 2025, choosing to omit even Newport when it was on the brink of opening at the time of the 2020 report. Once again, this one-sided approach to matters triggers alarm bells and should be approached with caution. Even leaving Newport and Takeley to one side, other sites may come forward and an excellent example has been referred to both by interested parties and by AH (EIC picking up on the final sentence of Proof 6.12), namely the Pulse Factory site : the subject of a recent public consultation for a mixed use including a care home, close to Saffron Walden town centre, on a vacant site, and importantly with the formal backing of Care UK who jumped ship from the appeal scheme to the Pulse scheme. There is no consent yet on this site but it is an illustration of the need for caution in treating supply as static.

67. Having regard to the above, a proper analysis of the HPC figures is revealing, by reference to p23 of the HPC report (district position) and p15 ('Target Area' position) :

- (i) The District-wide picture for 2020 estimates demand at 626. Once the now-operational Newport site is added to the supply that means a current supply of 697 ie an oversupply of 71. Even indulging the appellant's argument that those without ensuite should be treated as non-existent, the ensuite supply is 648 ie an oversupply of 22 ;
- (ii) The district-wide picture for 2025 makes similarly encouraging reading. If the Inspector agrees that it is reasonable to add to HPC's supply figure the newly-consented Takeley scheme as well as Newport, this gives a projected supply of 763. This compares with a forecast demand of 775. Leaving aside whether that difference is material, the demand forecast for 2025 would only have to

be a % increase from 2020 of 22% rather than 23.8% and there would be parity between supply and demand. In other words, even the tiniest margin for error on the demand forecast would mean no shortfall. Even on the ensuite measure, even if demand increased by 14% there would still be parity between ensuite beds and demand. And this assumes no other sites in the District coming forward other than Takeley ;

- (iii) Even on the basis of the appellant's 'Target Area', there is currently virtual parity between supply and estimated demand : 319 beds (including Newport) against an estimated demand of 323, this cannot be regarded as material where even the 2020 demand figure is an estimate. 91% of the current beds have ensuite facilities (290/319) ;
- (iv) As for the 'Target Area' position in 2025, against a demand forecast of 387, a static supply figure of 319 (Including Newport) would only require either a site such as Pulse to come forward and/or the demand increase to be less dramatic than forecast and once again there would be no material shortfall.

68. UDC have long accepted that the provision of a care home is a benefit (SOCG 3.14), but as to weight there is nothing in the appellant's case that there is a demonstrable shortfall. There isn't. Even taking every device they can – target areas, ensuites only, static supplylines – the appellant still can't demonstrate a meaningful shortfall particularly when set against the uncertainties of demand forecasting. The evidence is clear that there is no shortfall in the district and nor can a shortfall in 2025 be demonstrated.

69. Out of the blue, in his Rebuttal proof (para 17), AB introduced the concept of a buffer to the supply of care homes. His evidence in this respect, like his evidence overall (which was acutely evasive) lacked any shred of credibility :

- i. the notion of applying a buffer had not been raised previously ;
- ii. it is no coincidence that the first time AB raised it was once Newport had begun operating and Takeley had been granted consent, it was a retrospective device intended to offset the impact of those two events ;

- iii. nowhere in policy or guidance is it said that in the calculation of the supply of care homes a buffer should apply ;
- iv. AB's answers in re-examination , effectively that if he were a policy-maker he would introduce a buffer for care homes, are neither helpful nor relevant ;
- v. Nowhere in any of the three reports provided by HPC in respect of this site have they argued that a buffer should be applied ;
- vi. AB sought to argue (XX by UDC) that HPC also supported the buffer argument because they had referred to 'attrition'. However, whilst HPC referred to 'potential attrition' (report at p14), they went on to say (p15) that 'attrition cannot be predicted with certainty' and that the appropriate course therefore was to assume nil attrition. In other words, HPC considered the question of attrition and concluded that no adjustment should be made. AB therefore attempted to abandon the approach of the experts upon whom he relied by arguing that an attritional adjustment should be made and translating this into the application of a non-specific buffer ;
- vii. The reason AB gave in his Rebuttal (para 17) was because of turnover voids, this was not a point made or supported by the care home experts whose evidence the appellant relies upon ;
- viii. HPC treated supply as entirely static over a 5 year period, a point overlooked by AB in claiming a buffer ;
- ix. In any event, the district position for 2020 has an oversupply (see above).

70. The weight to attach to the provision of a care home needs to be considered in the light of the evidence of supply and demand in the district since that is the basis of the appellant's claim that this should carry substantial weight in the planning balance (AB Proof 7.7). As AH argued, the point is overplayed and the weight should be moderated appropriately.

### **Other benefits**

71. The appellant relies on other benefits and it is right that these too be weighed in the balance.

72. It is agreed that UDC are unable to demonstrate a 5 year housing land supply, and that the figure is 2.68 years (SOCG 3.13). It is agreed that in weighting the provision of housing in these circumstances, the extent of the shortfall is relevant (SOCG 3.13 and *Hallam Land* CD.I1). The rationale behind giving the matter weight is the release of accommodation into the housing market (PPG at CD.J1). In *Takeley* (CD.H1 at DL60) the Inspector took the view that the combination of the “acute need demonstrated” for care homes and the release of homes in the context of UDC’s lack of 5 year housing land supply (the published figure was the same then as it is now) should attract “more than considerable weight” in favour of the appeal. However as AH explained (EIC) the acute need is not demonstrated in this case, not least because the opening of Newport and the grant of consent in *Takeley* have changed the complexion of the care home picture in the district. There is therefore a sound basis to her assessment of more moderate weight (AH Proof 6.19). As to the precise release of homes, AH explained (XX) that this is difficult to quantify because there isn’t a number and it is not possible to know how many of the homes released would be within Uttlesford district.

73. UDC also give no more than moderate weight to the provision of employment, since construction jobs are a short-term benefit and the net increase in jobs which the site would provide is relatively modest. In UDC’s view only limited weight should be given to landscaping and biodiversity benefits, whilst there is no evidence supporting AB’s argument that the scheme would reduce bed-blocking and the burden on the health service, which in any event is at odds with the appellant’s acceptance that the home would provide a burden on the NHS hence the unilateral undertaking of a contribution to the health services. Finally, the appellant claims the effective use of land as a planning benefit : however, this is an expectation of the planning system and should not be relied upon as a benefit, and in any event it is UDC’s position that the proposed development is not an effective use of land conflicting as it does with para 121 of the Framework.

74. This is a clear case where the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. Stripped of its gloss, the appellant's case has limited substance. The appeal should be dismissed.

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