

APPEAL BY CHARTERHOUSE PROPERTY GROUP LTD

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

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

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

Introduction

1. These submissions have been arranged in order to address the main issues identified by the Inspector on Day 1 of the inquiry, namely:
 - i. Whether the scheme would provide an appropriate use of the site having regard to; the provision of comparison goods floorspace in the district; relevant planning policies and location; and
 - ii. The effect of the development of a care home on the site on the living conditions of the existing occupiers of Elizabeth Close, with particular regard to outlook and privacy.
2. However, before turning to consider these issues in detail, it is important to establish the framework within which these issues and other relevant evidence are to be considered. It is agreed by each of the three main parties that paragraph

11(d) of the Framework is engaged as a consequence of the significant shortfall in UDC's 5 Year Housing Land Supply ("5YHLS"). Accordingly, it is agreed that this appeal must be decided by the application of the "tilted balance", such that the appeal should be allowed and planning permission granted unless the adverse impacts of doing so would *significantly and demonstrably* outweigh the benefits, when assessed against the policies of the Framework taken as a whole.

What then are the benefits of the proposal and why is a care home an appropriate use of the site?

The effective use of land

3. The starting point is that appeal site is, in the clear view of the Appellant (which is a property holding and development company), a woefully underused resource. It comprises a rudimentary shed constructed in the late 1980's for Texas, with an adjoining tarmac yard and carpark, ringed by a low and gappy hedge and otherwise totally devoid of any feature of townscape or landscape value. And yet it sits surrounded by housing on three sides in a pleasant and very largely residential suburban area of Saffron Walden ("SW"). Even the Council recognises through the Delegated Report¹ that "the existing DIY store adds little to the character of the area so the site's redevelopment offers an opportunity for improvement".

¹ See CD-A1 para.11.41

4. It is self-evidently well suited to use for care home purposes and the Council was very clear in its early support for the principle of the use on the site, subject only to considerations of detailed design. Locationally, it will be easy for relatives to visit and convenient to access for a locally based workforce.

Employment

5. The proposals will generate in the region of 58 jobs, which will range across a wide range of disciplines, from nursing and care, through catering and cleaning to property maintenance. Additionally the care home will be a significant consumer of goods and services in SW and will support a further layer of jobs beyond the boundaries of the site. Both in absolute terms and in terms of job density, this would represent a material increase in the jobs supported by the appeal site. This is thus a significant benefit of the appeal scheme to which considerable weight can be attached. Over 9 interested parties² have expressed interest in implementing a care home permission forthcoming from this appeal and so there can be considerable confidence in these jobs being created if the appeal is allowed. Considerable weight must be attached to these benefits.

Townscape

6. Visually, the appeal proposals will transform the site - with a very carefully considered scheme by an award winning specialist practice of architects, who have a long pedigree of designing successful care homes. They, in turn, have

² A Butcher XinC

employed a specialist practice of landscape architects (SLR) to develop a garden which will meet the needs of the elderly and dementia sufferers but at the same time enrich the townscape in this part of SW, “greening” the site to a substantial degree and greatly increasing its biodiversity. Considerable weight must be attached to these benefits.

7. In terms of meeting identified needs, the provision of a brand new care home built to modern standards is relevant in two independent but related respects.

Meeting housing needs

8. First, it is relevant to the urgent need to address the Council’s substantial 5YHLS deficit. The extent of the shortfall is agreed to be significant³. Moreover, PPG is clear that: Plan-making authorities will need to count housing provided for older people against their housing requirement⁴. The rationale for this is plain: by providing new build accommodation in a residential institution which is attractive to the elderly or those suffering from dementia, they will be encouraged to move out of existing conventional housing stock, freeing that up for re-occupation as part of the general supply of housing: see DLs at Takeley⁵ and in West Malling⁶.

³ SoCG para.3.13.

⁴ Paragraph: 016a Reference ID: 63-016a-20190626

⁵ CD-H1, para.60

⁶ CD-H3, paras.41-42

9. As the appeal proposal will provide 68 new units of accommodation on a 0.42 ha site, it is an extremely efficient way of making a material contribution to housing supply in Uttlesford. It is submitted that this should carry substantial weight⁷.

Meeting care home needs

10. Second, and separately, is the contribution which the appeal proposal will make to meeting the specific needs of the elderly. It is expressly agreed⁸ between the Council and the Appellant that this is a separate benefit of the scheme.
11. Given the apparent level of dispute as to the significance of the need, it necessary to set out the Appellant's case in more detail than had been anticipated.
12. Government policy in the PPG is absolutely clear⁹: “The need to provide housing for older people is critical. People are living longer lives and the proportion of older people in the population is increasing. In mid-2016 there were 1.6 million people aged 85 and over; by mid-2041 this is projected to double to 3.2 million. Offering older people a better choice of accommodation to suit their changing needs can help them live independently for longer, feel more connected to their communities and help reduce costs to the social care and health systems” (emphasis added).
13. The PPG asks that authorities plan for these needs, and identifies four types of specialist accommodation for older people¹⁰, of which the fourth is “Residential care homes and nursing homes”, which “have individual rooms within a residential building and provide a high level of care meeting all activities of daily

⁷ See Hallam Land in Court of Appeal: Cdl-1

⁸ SoCG para.3.14

⁹ Paragraph: 001 Reference ID: 63-001-20190626

¹⁰ Paragraph: 010 Reference ID: 63-010-20190626

living. They do not usually include support services for independent living. This type of housing can also include dementia care homes”. It is important to note that this type of accommodation is expressly distinguished from “extra care” facilities, which are a completely different type of accommodation: the third type or category on the list in the PPG. Mrs Hutchinson¹¹ and others have confused matters by referring to extra care facilities, but they address a different need and not that relied upon in this case.

14. There is no adopted assessment of the needs for care home accommodation in Uttlesford, nor in a larger or smaller study area and there are no adopted or emerging development plan policies in place to guide the care sector in terms of provision. Indeed, more broadly, the failure to address adequately the needs of the care sector has resonated throughout this year.

15. In the absence of any alternative, the care sector has had to develop its own metrics, based upon demographics to understand emerging needs and seek to plan ahead for them. The Appellant has sought advice from HPC, acknowledged leaders in this field and at no stage has the Council or any other party obtained conflicting advice from any other consultant in this field. Nor has the Council at any stage sought further and better particulars of any of the data relied upon by HPC.

16. HPC have looked at need in two ways: first, by reference to a Target Area which they have developed to reflect the likely needs of Saffron Walden and its

¹¹ Main Proof, para.6.14.

surrounding hinterland villages; second, by reference to the district. The Target Area deploys a 6 mile radius and strays beyond the district boundary into South Cambridgeshire, incorporating two existing care homes at Thaxted and Linton on the very edge of the area. This area has been defined and assessed by HPC, having regard to its expertise and experience and captures a population of some 40,000 people¹². The Council's suggestion that it is an artifice designed to produce a particular result is, to say the least, a very disappointing response to a genuine attempt by an expert consultancy to address the scale of real needs which the Council has signally failed to provide for to date. This assertion is also entirely without substance. I note that the original HPC Report of October 2018 was submitted with the planning application and that there was no challenge in the Delegated Report to the basis upon which the HPC analysis proceeded; indeed the HPC Report is barely referred to and the Council's assessment of need issues relied simply upon the Newport scheme (which is directly addressed in the HPC Report) and Radwinter Road which is an "extra care" scheme and not relevant.

17. The HPC reports both give a current snapshot and a forward projection based upon a future year. It is self-evident that current year data is of limited relevance in the context of a proposal which would take 3 years to deliver from permission to occupation; however it provides a baseline position from which to look forward. Mr Butcher stated¹³ that he felt that a care home proposal would normally take about 4 years from coming out of the "planning starting blocks" to delivery. This evidence is directly corroborated by the experience at Newport, as

¹² See details at pp.19-20 of the HPC CAN of October 2018.

¹³ Day 4 ReX

documented in the HPC Report of Jan 2020: the consent has a 2016 application reference¹⁴ indicating a four year period to opening in March 2020¹⁵.

18. I turn to address the figures in a little more detail.

i. Demand

Demand figures have been generated by HPC using stated industry sources, which have been notified to the Council for 18 months and as to which the Council offers no alternative figure. Manipulating the differences between the 2018 and 2020 projections¹⁶ is, it is submitted, a pointless exercise. These figures have been available for many months and no others are advanced by any party. Thus 323 at for the 2020 snapshot rising to 387 by 2025 in the Target Area¹⁷(with its population of 40,000); and 626 for the 2020 snapshot rising to 775 in 2025 in the District¹⁸ are the correct figures.

ii. Supply

The Appellant's case, as advised by HPC, is that all care home beds should be provided with en suite facilities consistent with the reasonable expectations and dignity of elderly persons, who are giving up their own homes and private spaces in order to move into an institution - potentially for the remainder of their lives. The Covid-19 pandemic has reinforced the critical importance of being able to isolate the elderly who are at risk and this patently cannot be achieved where

¹⁴ See A Butcher Main Proof, App B, page 10: Newport reference: UTT/16/0459/OP.

¹⁵ Ibid

¹⁶ As Mr Grant did in XX of Mr Butcher and does again in his Closing Submissions

¹⁷ A Butcher, Main Proof, Appendix B, page 15

¹⁸ Ibid, page 23

bathroom facilities are being shared. Mrs Hutchinson agreed that all homes going forward should be provided with en suite facilities. Thus a registered bed space which does not have private bathroom facilities is not meeting “the need” as identified. It still exists, but it is deficient in a key element and should be replaced by accommodation which is not deficient in this way. Thus supply of en suite bedrooms is the proper metric to balance against demand.

iii. Need

Accordingly:

- i. for the Target Area, need for en suite bedrooms at 2025 is agreed to be **97**¹⁹ (387demand less 250 supply less 40 at Newport = 97);
- ii. for the District, need for en suite bedrooms at 2025 is agreed to be **61**²⁰ (775 demand less 608 supply less 40 at Newport and 66 at Takeley).

19. It has been suggested (per Mr Micawber) that something (else) “may turn up”.

This is no basis upon which to plan and has no basis in planning in other fields. HPC expressly reviewed “Planning Activity” at section 4.2 of their January 2020 Report. They found²¹ that the “sole planning activity identified” in the various registers and directories consulted was the Newport scheme (which they already address at pages 10 and 15 of their Report). Beyond the Pulse site (see below), no party has suggested any other emerging proposal either in the Target Area or the District. At the same time, we know from the evidence that homes can close

¹⁹ See A Butcher Rebuttal Proof, page 6, paras 19 and 18

²⁰ Ibid

²¹ A Butcher Main Proof Appendix B, page 10.

unexpectedly due to a wide variety of factors, including viability. No allowance at all has been made in this assessment for attrition.

20. As a footnote, I should mention that there has been a recent (and conveniently timed) resurrection of “consultation” on another proposal at the so called “Pulse” site in SW, which was being “consulted upon” over year ago²² and has made no progress whatsoever since that date. It concerns a large employment site expressly protected by policy E2 of the adopted local plan (as former B2 premises) and a proposal which incorporates a potentially controversial large new out of centre food retailer (Lidl). Mr Grant says that there is “no consent yet”; however there isn’t even an application. Even if it were to proceed, it would not deliver bed spaces in advance of the appeal scheme and another care home is still needed in the Target Area on the basis set out above.

21. In summary, only on the most blinkered analysis can the conclusion be reached that there is anything other than a demonstrable need for accommodation of precisely the type proposed to meet the needs of the elderly and those suffering from dementia in the Target Area. There is no magic tap which can be turned on and off to provide this type of accommodation. Modern care homes can only be provided at a size and critical mass which is viable and, given this size, after negotiating the planning system successfully, followed by 18 months of construction, fit out and staff recruitment. If the needs currently projected are to

²² See emailed response of S&P prior to the opening of the inquiry for details: Email to HS & AH Friday 170720 @14:29.

be met (still bedrooms for less than 1% of the Target Area population), then permission for the appeal scheme needs to be granted now.

22. In my submission, substantial weight must attach to this consideration.

Summary of benefits

23. This then is the array of benefits which propel the tilted balance downward in favour of allowing this appeal and granting planning permission.

24. It is necessary now to consider whether there are factors which would *significantly and demonstrably* outweigh these benefits sufficiently to reverse the powerful pull of gravity supplemented as it is by the matters set out above. It is my submission that they plainly do not for the reasons set out in our evidence and below.

Factors relied upon by the Council/Rule 6 party to “significantly and demonstrably” outweigh the benefits

25. The case has been put by the Council and Rule 6 Party in a variety of ways, but, taken at its simplest and most straightforward, it is that Homebase’s contribution to the “qualitative” retail offer in SW is such that its continued ability to trade from the appeal site must be protected by the land use planning system in the public interest. In my submission, that is a proposition which you should not accept and which would amount to improper restrictive control over the Appellant’s land to protect the commercial interests of Homebase and the desire for undiminished choice expressed by some of its customers.

26. The starting point must be that the retail use of the appeal site is not protected in any plan or policy. There is no allocation for retail use in the Adopted ULP 2005; nor was one proposed in the now withdrawn eLP²³. This is hardly surprising as out of centre retail uses are very rarely the subject of policy protection and the focus of all retail policy in recent decades has been the protection of town centres *against* them, as they continue to draw trade from historic centres of retail activity.
27. The notion that retail uses are in fact protected by policy E2 is one to which the Council has steadfastly clung, but which is so misconceived and wrong-headed that it needs little time to be devoted to it in these Closing Submissions. Mr Grant wisely ignored it entirely in his Opening Submissions; Mr Roberts did not choose to advance this argument at all and no one else has promoted it with any enthusiasm.
28. Policy E2 is an entirely unremarkable policy which flows from the long established division of uses which have underpinned land use planning for many decades, based largely upon the Use Classes Order 1987 and the protections which that conveys. It sits within a Chapter whose principal focus is the location and safeguarding of employment land, which makes allocations in order meet Structure Plan requirements set out in the then adopted Essex SP. Mr Best referred you to SP not because it was “in force”, but as an aid to interpretation of E1 and E2 in the ULP – if there were any room for doubt, which it is submitted there

²³ Draft Policy RET4 was subject to objection and has now fallen away with the withdrawal of the eLP. I say nothing further about it here, as no one has relied upon it in evidence.

really is not. The SP extracts repeatedly refer to employment land/floorspace as being B1/B2/B8, which is hardly surprising.

29. The last paragraph of E2 sets up a test for the redevelopment of “employment land” if the “employment use” has been abandoned or harms the character of an area. The notion that this policy, embedded within this part of the UDP, should properly be applied to any land or use which “supports employment” is wholly misconceived. Mrs Hutchinson was unable to point to any previous example of this policy being applied in this way, although her interpretation would plainly capture all retail uses, many community uses and indeed any use which supports or supported employment. They would all notionally be subject to E2 and have to show abandonment or harm before redevelopment... And yet no example of the policy ever being applied in this way has been advanced.
30. Mr Best rejected this interpretation as wholly implausible and I invite you to agree with him. Even the officer writing the Delegated Report, who has not been called to explain her reasoning, started correctly by conceding “the existing use on site is not classified as “employment”²⁴, but then went on to lose her way in relation to E2.
31. Thus I submit that E2 is simply not engaged and that there is no development plan objection of any sort to the principle of the proposed development on the appeal site.
32. Policy arguments seeking to support RfR No.1 have moved away from the UDP & withdrawn eLP and there has been an attempt to find support from the

²⁴ CD- A1, para.11.6

Framework. In the event, only one paragraph has been prayed in aid: para.121 (a), although this paragraph was not referenced in the RfR. The irony is that this paragraph is focused on encouraging LPAs to take “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 needs”. These are precisely the facts in this case.

33. The paragraph continues: “In particular, they [LPAs] should support proposals to...use retail and employment land for homes in areas of high housing demand, provided this would not undermine key economic sectors or sites or the vitality and viability of town centres..”. There is no guidance as to what is meant by “undermine key economic sectors or sites or the vitality and viability of town centres”. However Mr Best²⁵ referred to the standard PPG test for impact on vitality and viability being one of “significant impact”²⁶ as informing his view that a similar approach would be expected to the consideration of whether a key economic sector or site was being undermined.

34. The whole thrust of this paragraph is that it concerns a clear injunction on LPAs to take a positive approach to the reuse of unallocated retail and employment land for housing purposes. It is must necessarily be the case that LPAs would be presumed already to have protected their key areas of employment and retail land by allocation; so there must, in my submission, be a parallel presumption that any unallocated retail or employment land proposed for reuse would need to have some rather remarkable land use planning characteristics for it to have escaped

²⁵ XX'd

²⁶ “no likely significant impact on a town centre from an edge of centre or out of centre proposal”:
Paragraph: 018 Reference ID: 2b-018-20190722

allocation but still meet the test for underpinning a “key economic sector” or being a “key site”.

35. **Vitality and viability of SW town centre.** In relation to unallocated land in retail use, it is significant that the protection of town centres alone is marked out for special mention. Neither the Council nor the Rule 6 party suggests that the closure of Homebase would have any impact on the vitality and/or viability of the town centre. This allegation did feature in RfR No.1 as originally drafted, but was abandoned early in the appeal process and has not been revived. Indeed, Homebase has gone out of its way to suggest that its trading has very little significance for the town centre. Notably, neither party has suggested that it has evidence of any linked trips between the town centre and Homebase²⁷, although Homebase would have been in an excellent position to produce such evidence had it existed. There is absolutely no indication that an isolated out of centre retail warehouse would meet the terms of the proviso in relation to retail impacts.

36. **Key sector.** Mr Best accepts that town centre retail is a key sector for SW’s economy but that does not encompass each and every retail unit dispersed across SW. This interpretation is again perfectly consistent with the Framework’s express focus on the health of town centres. As noted above, there is absolutely no evidence of a single, isolated out of centre retail warehouse underpinning the retail sector in SW.

37. **Key site.** It is necessary to pause and reflect on the terminology used in the NPPF: “*key site*”. It is submitted that this choice of language is deliberate and that it must refer to the significance of a *site* in land use planning terms and simply cannot be

²⁷ The sole party to mention a linked trip was Mr Whippy, who did not appear to go near the town centre.

a reference to the alleged role of the party who happens to occupy a given piece of land at the date when the policy is being applied. Planning control is focused on matters of land use and is blind to the identity of the party implementing (or taking advantage of) a planning permission or the particular trading format which it chooses to deploy at any given time. For example, we know that, in the very recent past, Homebase management adopted a format which proved hugely unpopular and resulted in the entire chain changing hands for £1²⁸. Homebase is running the argument that it is a key player at the present time in the DIY market in SW. Contrary to Mr Lewis's Closing Submissions²⁹, Mr Best in XX by Mr Lewis accepted – in answer to the question posed – that Homebase was a “key DIY store” in SW; he did **not** accept that it was a “key site”³⁰. I will address that argument below, but it must not be confused with the “key site” concept in para.121 (a).

38. Thus the focus must be on “the site”, which in this case cannot possibly fall within the scope of para.121 (a) of the Framework.

39. Physically and locationally, it is quite unremarkable and its status as an A1 Retail site is also completely unremarkable – a land use which it shares with a large proportion of the town centre and the larger out of centre stores such as Tesco and Aldi. Even this A1 status will become blurred in just over a month's time on 1st September, 2020 when the A1 Use Class merges with A2, A3 and B1, and indoor sports as part of the new E Use Class. Indeed, until 2018, only 2 years ago

²⁸ J Best Main Proof , para.9.62. and JFB24.

²⁹ Paras. 1,6 of GL Closing Submissions and elsewhere

³⁰ Indeed, Mr Lewis's own note of his XX at para.13 of his Submissions confirms my note to be correct. “Key DIY store” does not translate to “key site” for the purposes of the Framework, para.121 (a).

Homebase was even prohibited from selling: electrical appliances, carpets and curtains, textiles, plants, and furniture³¹.

40. Accordingly, there is nothing to support the assertion that the appeal site is a “key site” for the purposes of para.121 (a). The test is not directed at whether the site presently houses a leading or dominant “store” within a small subset of SW’s overall A1 floorspace, but whether it is a key site.

Qualitative issues

41. This then leaves the sole argument upon which the Council and Homebase now rely, namely that Homebase (as it is currently operated under its present management) makes a *qualitative* contribution to the DIY offer in SW which is so great that it should be protected by the land use planning system. This argument is simply not rooted in the development plan nor in national planning policy.
42. The central plank of the cases advanced by the Council and Homebase is the NEMS survey of 2016³². There is nothing more current. This survey needs to be treated with caution for the following reasons, all carefully explained by Mr Best in his evidence³³:
- i. This survey only asks - at Q06 - where the household shopper does *most* shopping for DIY and decorating goods. Virtually all other out of centre outlets capturing DIY spend in SW are unmentioned in the survey, which is then relied upon by Savills to allocate the full 53.8% of all Zone 1A DIY out of centre spend to Homebase on the basis of 75 replies: see the market share

³¹ G Roberts, App E, page 11.

³² CD-F3, Appendix 6

³³ XinC, XX & ReX

tables in App 7³⁴ (Table 14c) . In fact, Savills actually allocate 53.8% of all DIY/Hardware and Garden spend to Homebase, even though “Garden spend” element was entirely unreferenced in Q06. Barely any other outlet outside the town centre in SW or beyond SW is allocated a penny of market share. This is plainly inaccurate and results in Homebase being assigned a turnover which is 5 times its national average³⁵. Mr Best does not believe this to be correct, but Homebase has not revealed its *actual* turnovers – no doubt for normal (and understandable) reasons of commercial confidentiality.

- ii. The survey asks about online spend at Q18, but (as with other outlets) the study fails to factor these answers into the results or to allocate a single penny of market share to online spend: see Table 14c of Appendix 7 to CD-F3. See also Tables 14a and 14b, which are even more surprising, given the answer that 50% of respondents purchase clothing and footwear on the internet leads to not a penny of market share being allocated to online. Moreover, Mr Best considers that the impact of “click & collect” is significant and growing in the DIY market.
- iii. The NEMS survey pre-dates the complete transformation of the offer at Ridgeons at SW, which Mr Best describes as “unlike any builders’ merchant he has ever seen in the UK”. It is certainly a gleaming flagship store for Ridgeons and you have seen it first-hand. To suggest that it is “intimidating” for a DIYer is fanciful; it offers a veritable feast for the DIYer, with no less than 18,000 lines available and it is expressly targeting “trade, professional DIYers and retail customers”³⁶. At present, Ridgeons opens daily and on

³⁴ To CD-F3

³⁵ Best Xinc & XX

³⁶ See Mr Roberts Appendix D, page 8, para.4.

Saturday mornings, perfect for topping up for a DIY enthusiast intent upon putting the remainder of the weekend to good use. However, it has no restrictions on its opening hours and could no doubt open for longer hours if it chose to do so. Its present offer and retail attraction is entirely unreflected in the NEMS survey.

- iv. The NEMS survey also predates the opening of B&M, which has a more broadly based offer, which covers a wide variety of DIY, homeware and garden lines, the latter being considerably more extensive than the Homebase offer (over twice the floorspace even including the Homebase forecourt area³⁷). B&M's offer is also entirely unreflected in the NEMS survey.
- v. The NEMS survey is entirely unspecific about the town centre retailers which appear to attract 25%³⁸ of market share on the basis that, notwithstanding their small size, they are the main shopping destination for 25% of Zone 1A DIY shoppers. The Homebase evidence is dismissive about the town centre offer due to the size of the units and alleged parking difficulties, but it seems clear that 25% of the sample rely upon it as their main destination for DIY goods.
- vi. Mr Best's JPB29 demonstrates that SW can already offer a wide variety of alternatives to Homebase for virtually every product class considered. I completely reject the suggestion made by Mr Grant in his Closing that this survey was shown to be "littered with errors". That was not the evidence. The JB29 survey tabulates 200 places in which products sold at Homebase are available elsewhere in SW. At most, only a handful of boxes were queried. This survey includes a wide range of outlets in the town centre but also at out

³⁷ Best ReX

³⁸ Mr Best's understanding of the survey

of centre locations such as the Shire Hill Trading Estate³⁹. This is not to say that there is any one outlet which replicates precisely all - or even most - of the Homebase offer (which is obviously changing regularly to adapt to market demand in any event). However, Mr Best considers that the vast majority of goods sold at Homebase can be obtained or ordered elsewhere within SW. He also considers that other outlets – of which there are a large number – would readily adapt to fill any perceived gaps in the SW DIY offer. None of this is reflected in the bald, somewhat dated - figure from the 2016 NEMS survey, upon which so much reliance is placed.

- vii. Quite apart from existing retailers with overlapping product ranges, Mr Best is aware that SW is on the target list for other DIY retailers and considers that there is clear scope for these to occupy much smaller units than Homebase, given the format of extremely successful more recent entrants into the market such as Screwfix⁴⁰. The range of potential premises which they might occupy has also changed now that A1 retail warehouse uses will be able to occupy B1 sheds pursuant to the UCO changes.
- viii. We also note that Homebase's target shopper is female⁴¹, so a survey which interviews well over twice as many females than males (69% F: 31% M according to Q19, and clearly not the national split and properly the subject of comment) is plainly likely to favour the Homebase offer. This effect cannot be ignored.
- ix. Mr Best also draws attention to the result of the Tesco Shopper Survey compiled in 2008, where only 7 respondents out of 503 in Zone 1 replied that

³⁹ Kent Blaxill Decorating Centre, Howdens etc

⁴⁰ See JPB22: Screwfix is the most successful

⁴¹ GL intervention during ReX of Mr Best.

they normally go shopping for DIY goods, decorating supplies and garden products at Homebase in SW. This result is fundamentally inconsistent with the NEMS survey, although it was submitted by GL Hearn on behalf of Tesco and Mr Best was absolutely confident that it was compiled by a reputable and professional survey company. Mr Grant attempts to raise doubts about the reliability of this survey and complains that the methodology is not before the inquiry. This is an empty complaint as the survey was submitted directly to the Council, which has access to the methodology if it so desires and, of course, on the basis of this survey, UDC granted planning permission for Tesco's extension, so it must have been regarded as robust.

- x. Finally, there is absolutely no evidence before this inquiry that any material number of new trips outside SW would be undertaken in the absence of Homebase. Again, Homebase could have sought to assemble such evidence using its customer base, but has chosen not to do so.

43. In considering these issues at the inquiry, there have been assertions about the comparative quality of products or levels of service at different stores. However, these matters do not lend themselves to judgments by a planning inspector and will vary from year to year, depending upon the management and resourcing of any given outlet. They reinforce my submission that this appeal should be determined by reference solely to objectively ascertainable matters which fall within the scope of planning control. However, if contrary to my principal submission, you take the view that you can have regard to all these fluctuating qualitative matters relating to the operation of the current occupier of the appeal

site in determining whether or not it is a *key site* for SW, then I would urge you to reject that proposition for the reasons set out above.

44. Homebase has also sought to support its case by commissioning assistance from a well-known London PR agency, Lexington Communications. Whilst they have no doubt coordinated support for the Homebase case, and sought to encourage people to write in, there has in fact been remarkably little participation from local people in SW, especially having regard to the wide notification of the inquiry in the Homebase store and elsewhere.

Quantitative matters

45. Quantitative matters have occupied a great deal of time outside the inquiry and very little time at the inquiry. They have arisen solely because the Council chose to include in its unheralded RfR No.1 the allegation that the proposed development would result in “unacceptable pressure for new comparison goods floorspace” referencing the Uttlesford Retail Study Update 2018 . This came as a complete surprise to the Appellant, who was obliged eventually to instruct Montagu Evans to grapple with the hundreds of pages which comprise the 2016 and 2018 Retail Studies. After unsuccessful attempts to approach Savills directly to clarify matters in January, 2020⁴², Mr Best redirected his efforts to do this through Mrs Hutchinson. Eventually, clarity was obtained. However, this has resulted in large parts of the Savills Studies being re-written. It is undeniable that the Appellant has performed at its own expense a significant public service in

⁴² See letter to AH of 4th March, 2020 copied to Kerr Brown at PINS.

putting right Studies which gave a seriously misleading picture as to the scale of need for additional comparison goods floorspace in SW.

46. The position now reached is summarised in the Council's Opening⁴³: "it is agreed between UDC and the appellant that the [revised] forecasts indicate that even if Homebase [were to] close there would remain an over supply of existing comparison goods floorspace out of the town centre". The Retail SoCG⁴⁴ confirms Savills revised view that there will be an overprovision of 1,736 sqm of out of centre floorspace at 2026.

47. Both Mrs Hutchinson and Mr Roberts in their XinC and XX also confirmed that they were no longer relying upon any quantitative matters in presenting the evidence for the Council and for Homebase respectively. Mr Lewis's Submissions at para.33 are really a protective measure which would allow Homebase to apply for a new store in SW if it so desired. They have no bearing on this appeal.

48. Accordingly, I can submit on behalf of the Appellant that there is no possible basis upon which redeveloping the appeal site can be regarded as a undermining a key economic sector or site for the purposes of para.121 (a) of NPPF, because the

⁴³ ID2, para 6

⁴⁴ Para.4 (f)

appeal site is patently not either of these. I should add, as Mr Best explained⁴⁵, that this policy positively promotes the re-development of unallocated retail land, so it is inevitable that some existing retail uses on such land will from time to time be displaced and, as individual retail businesses or employers, may well be adversely affected by such displacement. That, however, cannot be a bar to the objective of the policy, which is seeking to promote reuse of unallocated retail land in “areas of high housing demand”. All parties agree that Uttlesford is indeed an “area of high housing demand” (which is currently agreed to be exhibiting a serious 5YHLS deficit). NPPF 121 (a) is thus satisfied.

A1P1⁴⁶

49. For good measure, the Rule 6 party has thrown in (in a single paragraph of its Opening Submissions⁴⁷) a loosely based claim that there would be interference with its rights under A1P1 and asserts that such alleged interference with “the peaceful enjoyment of its business” would not be justified and proportionate and would thus be unlawful. There has been no reference to any legal authority to support this claim. If this metamorphoses into a fully-fledged claim for the first time in Closing Submissions supported by authority, then this would not serve the inquiry well and I reserve the right to request that Inspector consider this matter more carefully and seek further written submissions confined to this point from the Appellant.

⁴⁵ In ReX

⁴⁶ Article 1 of the First Protocol to the European Convention on Human Rights

⁴⁷ ID3 para 14

50. For the time being, I make five short points in this context:

- i. The Courts have warned against the use of A1P1 in planning cases.
- ii. A1P1 protects existing “possessions” and it is well established that a right to earn future income is not protected.
- iii. Homebase has a business tenancy of the site which comes to an end this year. Any extension of this term is regulated by the terms of the Landlord & Tenant Act 1954, which has its own system of checks and balances. Homebase has not suggested that it has a private law option to renew its lease; nor does it have an unqualified statutory right to lease extension.
- iv. In any event, a decision on the future of this site flowing from this appeal and the inquiry held to assist with its determination will inevitably review the various public interest reasons which govern its outcome: the urgent need for housing and care home provision, including the absence of an planning policy rationale to perpetuate A1/new Class E Use on the appeal site. Thus any interference would be justified and proportionate having regard to the broader public interest which the planning appeal system administered by the Planning Inspectorate seeks to uphold.
- v. In fact, this is just another way to express the points which Homebase has had ample opportunity to make during the course of the inquiry but with the added threat that you may be entertaining an outcome which Homebase proclaims to be “unlawful”. You may be assured that it would not be and you should not be deflected from reaching the conclusion which flows from the evidence and submissions on the main issues, You can be confident, in my submission, that any such decision would be upheld by the Courts - were

Homebase to be rash enough to seek to run an A1P1 challenge in the Courts if this appeal is allowed.

51. I turn now to consider the only other point of objection which has been raised against the scheme by the Council, which relates to allegations that the appeal proposal would unacceptably affect the outlook from the close of residential properties which lies to the south of the appeal site.

Outlook

52. This is pre-eminently a matter for you to judge both on site and with the benefit of the various drawings and images provided, and with the knowledge that final details of matters such as landscaping and lighting will be determined pursuant to condition if this appeal is allowed.

53. I have already observed that the scheme is the product of very careful consideration by a very experienced architect and landscape design practice, specialising in the design of gardens for the elderly and those suffering from dementia.

54. The proof and appendices of my design witness Mr Philip Lewis will repay re-reading in this context. Neither the Council nor any other party called architectural evidence.

55. Mr Philip Lewis's CGIs illustrate the views which will be enjoyed from houses to the south: see especially D5, D7-D10 and CD-C4. These houses presently look out across a service road to the business units to the east towards either a tired carpark with minimal landscaping or the blank side wall of the Homebase shed. Of course, the proposals will bring about a change of outlook for these occupiers, but this change will, in my submission, undoubtedly be a positive one.

56. This is surely reflected in the fact that, although directly consulted about the appeal proposals on no less than four separate occasions, not one of the residents has objected to suggest an unacceptable impact on their outlook will arise. Indeed, at least one local resident⁴⁸ has warmly welcomed the proposals.

57. This is *par excellence* a subjective judgment and I will not burden you with further submissions on this matter.

Privacy

58. Mr Lewis has also considered the privacy of these houses in detail and has tested it against the Essex Design Guide, notwithstanding its demanding requirements, such as 35m separation for overlooking purposes (contrasting with 27m⁴⁹ standards in use in other parts of the country).

59. Mr Lewis has considered not only the application of the standards, but also the conditions on the ground: see his proof and Rebuttal proof paras.10-14. It will be

⁴⁸ Elizabeth Close

⁴⁹ Lewis XX and ReX

noted that neither the Delegated Report nor Reasons for Refusal Nos 2 & 3 allege breach of the requirements of the Essex Design Guide.

60. It must be remembered that the privacy standards engaged are seeking to address the “rear to rear” relationship between a “rear facing upper storey living room” and “the rear of any other dwelling”⁵⁰. This is on the well-established basis that rear to rear relationships already safeguard a degree of privacy and intimacy, which it is desirable to protect. The same principles apply to the amenities of private sitting out areas, where the EDG is plainly illustrating rear to rear relationships⁵¹. I regret to say the Council has completely misunderstood the SPD which it has chosen to adopt and apply and invite you to re-read the guidance in due course.

61. Mr Lewis applied the standards notwithstanding that there is room for interpretation as to which is the front and which the rear of the building. What is undeniable is that the Elizabeth Close service road providing access to the Saffron Business Centre passes directly between the appeal site and the residential properties to the south, with HGV’s passing to and fro the business centre, cars parked on the road and pavements along both sides and in particular beside the garden to No.33. On no possible interpretation can this be regarded as a typical “rear to rear” relationship.

⁵⁰ CD-F6, paras.1.98 & 1.99

⁵¹ See the diagrams on page1/2.

62. Mr Lewis regards the relationship with No.33 as being with the side of the property, on which there is only a small stairlight. This is therefore protected by the 1m distance at para.1.98.
63. The Council appears to regard it as a side to front relationship, which does not engage the 35m separation guideline. Either way, there is just short of 34m separation and Mr Lewis considers that the amenities of No.33 are more than adequately protected.
64. As already mentioned, this is not a protected and private “rear to rear” relationship. The side and garden of No.33 sits alongside a public highway and footway. The owners already take advantage of the change in level to their garden and a fence and hedge to protect their privacy (such as it is). There is no material worsening of this condition by the introduction of the appeal building nearly 35m away to the north: see CD-C4 for confirmation.
65. The Appellant does not need to rely upon the continued presence of the fence and hedge alongside No.33’s garden for the reason already given, but it is an existing part of the street scene, no doubt approved when the Elizabeth Close houses were developed and now owned and maintained by the management company in which all the householders of Elizabeth Close have an interest. It is inconceivable that they would want to do away with the hedge, but this is really a point of academic interest only.
66. In summary, the Council’s case on impacts on residential amenity is extremely thin indeed and has been supported only because of the necessarily subjective nature of some of the judgments involved. I reemphasize that neither Delegated

Report nor the RfR Nos 2 & 3 alleged breach of the EDG, which is because none has been established. For the avoidance of doubt, the Appellant does not suggest that opaque glazing is needed at any point, although it would be content to consider this if it is considered necessary.

67. I commend the design of the appeal scheme to you. It has been very carefully considered, developed through a process of engagement with the Council's officers (sadly absent from this process) and will give rise to a very substantial improvement to the townscape of this pleasant suburban area of SW, if the appeal is allowed.

CONCLUSIONS

68. I summarise the Appellant's case in the following way:

- i. The tilted balance is agreed by all parties to be engaged.
- ii. Against the background of woefully deficient 5YHLS, substantial additional weight must attach to the provision of a new care home in freeing up existing housing which can then return to the market.
- iii. There is a powerful free standing need case for this care home based upon the HPC needs analysis, which requires this proposal to come forward if there is to be any reasonable prospect of meeting identified needs for the Target Area and district. The "something else might turn up" argument has no traction in the planning system and should be disregarded, especially given the unchallenged evidence that a large modern care home has a 4 year lead in time from planning application to the delivery of bedspaces. Substantial weight must attach to this consideration.

- iv. 58 new jobs on site (across a wide variety of disciplines) and more spin off jobs must be regarded as a substantial benefit, carrying great weight, especially given the present economic circumstances. 9 parties are interested in operating the care home there can be confidence that these jobs will be created if the appeal is allowed. These will be new jobs as care sector provision expands to meet needs which have been ignored for far too long.
- v. The townscape and environment of the local area will be transformed for the better, with a material greening of the appeal site and consequential increase in biodiversity.

69. These weighty and powerful considerations lie in the already tilted balance. It is submitted that the matters raised in opposition to this appeal do not come close to outweighing the positive case for allowing the appeal. In particular:

- i. The complete absence of any soundly based land use planning policy reason to protect the current use of the appeal site.
- ii. NPPF para.121 (a) is actively promoting the reuse of unallocated retail land, of which the appeal site is perfect example. To suggest that this relatively small and isolated out of centre site with its 1980s shed and carpark is “key” to SW’s economy or a “key site” (properly so defined) is simply not credible. If this site passes that test then the government’s aims in bringing forward such land in areas of high housing demand look destined to be frustrated. No doubt many eyes will be on the outcome of this appeal.
- iii. As I have set out above, a “key site” must be judged in land use planning terms by reference to its size, location and lawful use. This is now complicated by the UCO amendment, which combines all A1-A3 and B1 uses, but the

particular characteristics and format of a given occupier at a given moment in time (which can, of course, change overnight as business are taken over or subject to new management regimes) cannot be relevant to the identification of such sites.

- iv. Even if such qualitative considerations are examined, there is nothing about the particular operation of Homebase on the appeal site which marks it out as “key” to SW in land use planning terms. In particular, there is absolutely no evidence of linked trips to the town centre or of customer intention to leave SW in significant numbers if it closes. Mr Best has established that SW has a wide and improving DIY offer and that new formats on smaller and more efficient sites are highly likely to come forward in SW to supplement it further. This process is eased still further now that A1 retail warehouse uses will be able to trade from B1 sheds from September.
- v. The E2 point is plainly misconceived and should never have been taken.
- vi. The design/amenity objections amount to nothing for the reason which I have expressed above and should be accorded minimal weight in my submission.

70. According there are no considerations which significantly and demonstrably outweigh the benefits of these proposals and accordingly I respectfully request that this appeal be allowed.

THOMAS HILL QC

30th July, 2020

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