

**RE: LAND AT CHICHELE ROAD, OXTED**

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**OPENING SUBMISSIONS  
ON BEHALF OF  
APPELLANT**

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1. This is an appeal by CALA Homes (South Home Counties) Ltd, (the "Appellant") against the refusal of planning permission by Tandridge District Council ("The Council") for residential development consisting of 116 Dwellings (Class C3) including affordable housing with associated access, car parking, soft landscaping and play provision, land at Chichele Road, Oxted, RH8 0NZ ("The Appeal Site")
2. The nature of the Appeal Site and surrounding area are described in the Statement of Common Ground. That is not repeated here.
3. The appeal follows the refusal of planning permission by officers under delegated powers for seven reasons relating to a number of issues including:
  - a. Green Belt;
  - b. The Surrey Hills National Landscape (or AoNB) and the countryside generally;
  - c. Ecology and protected trees;
  - d. Ancient Woodland;
  - e. Prejudice to the National Landscape Boundary variation project.

**The Housing Crisis in Tandridge**

4. Before I turn to deal with those matters, it is important to place them in context. There is a very real housing crisis in Tandridge. Mr Martin Taylor will speak to this.
5. It is agreed that the Council is unable to demonstrate a five-year housing land supply (5YHLS). Whether 1.8 years supply or 1.9 years supply is adopted, the deficit in the provision of housing land is significant and represents a shortfall of around 2,400 homes. Indeed, Tandridge is the 8th worst performing local authority in the country in terms of the Housing Delivery Test (latest results just 38%) and it is consistently failing year on year. This failure is being compounded by the failure to adopt a development plan. It is 2024 but Tandridge has not adopted a development plan since before the inception of the NPPF in 2012. It has never had a plan in place which reflects the national policy imperative to significantly boost the supply of housing.

Mr Martin Taylor will explain in his evidence that this significant failure to deliver the homes that people need is causing significant affordability issues to the extent that Tandridge is one of the least affordable places to access housing in the country.

6. As of July 2024, there were 1,841 households registered on the Council's housing waiting list. Each of these households needs and wants affordable housing and already have a connection to the District. The Council's assessment of affordable housing needs identifies a need for 310-391 affordable homes per year, but against this just 68 affordable homes have been completed annually since 2006. Looking to the future, the supply pipeline of affordable housing (estimated as 234 homes) falls well short of meeting ongoing annual need and well short of addressing the scale of the housing waiting list. Small wonder that the Inspector in the Land West of Limpsfield Road decision concluded that this under-delivery of homes is causing significant affordability issues within the District leading to acute local affordable housing needs with a continuing extremely bleak outlook for local affordable housing provision" (para 72 of Inspectors decision on Land West of Limpsfield Road appeal).
7. Indeed, there are no mechanisms in place which are likely to change the position in the short to medium term. The Council has not even got a draft development plan out to consultation and even if all of the housing site identified by its Interim Policy were to come forward, Mr Martin Taylor will explain that there would still be a shortfall of around 1,600 homes over the next five years.
8. The Appellant will contend that the Council has not identified any mechanism that will remedy the scale of the existing problem or even get close to doing so – and yet the Council and its officers continue to refuse planning permission for sites. The only way to achieve the objective of meeting housing and affordable housing needs is for Inspectors to grant planning permission on appeal.

### **Impact upon the Green Belt**

9. The parties are agreed that, under the present NPPF, the proposed development is inappropriate development in the Green Belt and as such. should not be approved except in very special circumstances (NPPF 152). 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations (NPPF 153). The relevant Development Plan Policy is DP10 which the Appellant will submit reflects the approach in the NPPF. Accordingly, if you agree that very special circumstances exist, then it can be concluded that the proposed development accords with GB Policy in the NPPF and with Policy DP10.

10. In terms of assessing the degree of harm that the proposed development may cause, the starting point is of course to consider its potential impact on openness. Mr Gibbs will address all the relevant aspects of openness in his evidence, including as his starting point impact upon landscape character and upon visual amenity. He will consider both the spatial and visual components of openness before addressing the purposes for including land within the Green Belt.
11. We intend to explore with Ms Hooper and Mr Thurlow, the extent to which they have properly considered the impact of the proposed development upon openness.
12. It will be argued that the part of the Appeal Site upon which inappropriate development is proposed is highly contained and is difficult to perceive from the wider landscape. In essence, the site is a "wedge" of Green Belt land in-between the two already developed areas in the northwest and northeastern parts of Oxted and it abuts urban development on three of its sides. The Appellant will contend that the proposed development will not give rise to a sense of a loss of openness from within the wider countryside since such an impact will not be readily perceived either spatially or in a visual impact sense. Thus, the Appellant's case will be that when considered in the round from the wider townscape and countryside, the level of harm to openness would be at the lower end of the scale.
13. In terms of the role that the part of the Site upon which inappropriate development is proposed makes to meeting the purposes for including land within the Green Belt, Mr Gibbs agrees with the Council's Green Belt Assessment (CD 12.1 dated 2018) that it makes a contribution to purposes a) (to check the unrestricted sprawl of large built-up areas); and c) (to assist in safeguarding the countryside from encroachment). The Appellant will contend that the site makes only a limited contribution to Purposes (a) and (c) of the Green Belt and in agreement with TDC's own GB assessment and criteria, no contribution to the remaining Purposes.
14. The Appellant will argue that, since the site already sits within a "wedge" of Green Belt land in-between the two already developed areas in the northwest and northeastern parts of Oxted and it abuts urban development on three of its sides, its impact In terms of urban sprawl, will be very low.
15. In terms of encroachment into the countryside, the Appellant will argue that the proposed residential scheme would be visually and physically limited to the part of the Site on which housing is proposed. There would continue to be a strong disconnection between the urban area with the scheme in place and the wider countryside to the north and northwest. Any

encroachment, as a consequence of the scheme, would be solely limited to the area on which housing is proposed, with the land beyond remaining open countryside. As such, the level of harm in terms of encroachment would be limited and low and have no material impact beyond the limits of the area on which housing is proposed. At most, the level of harm would be at the bottom end of the scale.

16. Mr Thurlow suggests in his evidence that the Site serves purposes a), b) c) and e) i.e. four of them (Thurlow para 8.5). We intend to explore with Mr Thurlow the basis for his assessment and his disagreement with the Council's Green Belt Assessment.
17. Accordingly, both in terms of its impact upon openness and the purposes for including land within the Green Belt, whilst it is recognised that the proposed development would have adverse impacts, these will be argued to be confined to the area of land upon which housing is proposed. The Appellant will submit that the proposed development would not have any material impact on the perception of openness nor in terms of the Green Belt purposes from within the wider countryside area.
18. I will return below to the very special circumstances balance after addressing you on other elements of "harm" that the Council identified as forming the basis for its refusal of planning permission.

### **Landscape**

19. RfR1 states that the development would have an urbanising effect upon and fail to conserve and enhance the setting of the Surrey Hills National Landscape (AONB/NL). RfR 4 states that the development by reason of siting, form and appearance would adversely impact the character and distinctiveness of the landscape and countryside of the site and wider area and significantly detract from the overall character and appearance of the area.
20. The Council contends that the Appeal Scheme is contrary to Policies CSP20 and CSP21 of the Core Strategy and Policies DP1, DP7, DP10 and 13 of the Local Plan Part 2. The Rule 6 Party also refers to CSP18.
21. No development is proposed with the AoNB. The area of the site for housing thus lies only within the setting of the AoNB. As Mr Slatford identifies (see Slatford para 8.6)), paragraph 182 of the NPPF (CD8.1) confirms that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs/National Landscapes, but also states that development 'within their setting' should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.

22. The Appellant will argue that NPPF policy is not that there can be no development in the setting of the AONB/National Landscape, but rather that it must be sensitively located and the scheme designed to 'avoid or minimise' adverse impacts. There is no national policy which requires the character or appearance of the setting of a National Landscape to be conserved or preserved. We intend to explore the extent to which the scheme has been designed to avoid or minimise adverse impact upon the AONB.
23. Policy CSP20 of the Core Strategy (CD4.1) states that the 'principles to be followed' are "b) conserve and enhance important viewpoints, protect the setting and safeguard views out of and into the AONB". Policy CSP21 states that the character and distinctiveness of the district's landscapes and countryside will be protected for their own sake, and that new development will be required to conserve and enhance landscape character. The Appellant will argue that these pre-NPPF policy approaches are both inconsistent with national policy guidance and out of out of date. The implications of this will be explored with Mr Thurlow.
24. The Surrey Hills National Landscape Planning Adviser's response to the application (CD9.4) will be referred to. He concluded that

*"In my view, **the development would have little impact upon distant public landscape views from the AONB.** The impact would be more localised. Further, should the development become capable of being publicly viewed from the existing AONB to a greater extent than the LVIA would suggest, it would be against the backdrop of the built-up area. In this context it would be seen as being part of Oxted. **For these reasons I find it difficult to substantiate that the development would harm public views into or from the AONB so as to spoil the setting of the AONB.**"(emphasis added)*

25. The Appellant will explore with Ms Hooper why it is she disagrees with the Officer charged with the protection of the AONB in relation to the impact of the Scheme.
26. In paragraph 180(a), the NPPF states that 'Planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan)'.
27. 'Valued landscapes' need not be designated. However, the courts have indicated that these have to possess physical attributes to make the land "valued" in the sense that they are

landscapes exhibiting qualities beyond simply being countryside: ***Forest of Dean DC v Secretary of State for Communities and Local Government*** [2016] EWHC 2429 (Admin)

28. Ms Hooper's assessment of whether the Appeal Site is to be treated as a valued landscape will be explored in cross-examination. The Appellant will contend that the area on which housing is proposed is not a valued landscape. Whilst that area is pleasant, it does not contain any features of specific value that raise it that of mere countryside. (see Gibbs para 6.58 and following).
29. The Appeal site lies within the GV4 Merstham to Clacket Lane Greensand Valley LCA as defined by the Surrey Landscape Character Assessment. The Appellant will contend that, in terms of impacts upon landscape character, the defining characteristics of the LCA would not be materially affected by the proposed development. In particular, boundary vegetation remains largely unchanged and would be supplemented in the longer term as part of the mitigation strategy. The field pattern and ancient woodland would be unaffected.
30. The Appellant will contend that the visual containment of the site is such that it is separated from the wider more open landscape to the north and east. As such it relates more strongly to the urban settlement edge. The LVIA concluded that, with the exception of VP1 on Footpath 75 Greensand Way immediately to the east of the site, in all views assessed from within the AoNB the proposed development would not cause any material visual impact (See LVIA Appendix D4 for illustrative photomontages).
31. Ms Hooper's assessment which underlies her proof will be examined in cross-examination. It will be suggested that it is unreliable, in contrast to Mr Gibbs's careful assessment.
32. Overall, the Appellant will argue that no material harm would be caused to the setting of the SHNL [Surrey Hills National Landscape]; rather, the proposed development will result in a degree of enhancement to that setting. There will be no unacceptable impacts on the setting of the National Landscape when considered in the context of the NPPF, which requires that development 'must be sensitively located and the scheme designed to 'avoid or minimise' adverse impacts'.
33. Section 85(A1) of the Countryside and Rights of Way Act 2000 contains a duty which falls upon you, as decision maker, to "seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty." The Appellant will submit that this duty is only engaged in a planning decision relating to the development of land outside an AONB, where the grant of planning permission would affect land within an AONB. Since the proposed

development will have no material adverse impact upon the AONB/National Landscape, a grant of planning permission will be consistent with this statutory duty.

### **Ecology and Trees**

34. The remaining issue regarding biodiversity relates to the mechanisms to secure biodiversity net gain. It is hoped that agreement can be reached on this and the appropriate mechanism prior to the conditions and planning obligations session.

35. In relation to protected trees, Mr Thurlow has confirmed that the Council has withdrawn its reason for refusal.

### **Ancient Woodland**

The proposed development will have no direct impact upon any Ancient Woodland. The Appellants are proposing the establishment of a buffer zone and planting thereof to deter trespassing within the woodland. In addition, it is proposed to agree a management plan. The Appellant agrees with the proposed Heads of Terms document, subject to any management plan providing that it is not to be read as preventing compliance with the requirements of any Felling Licence obtained to implement the management plan. This is to ensure that the Appellant is not put in a position where it is subject to inconsistent requirements by the Council and the Forestry Commission. The Appellant will contend such an approach is required since "it is not the job of the planning system to duplicate controls which are the statutory responsibility of other bodies...": See *Gateshead MBC v Secretary of State for the Environment* (1996) 71 P. & C.R. 350.

36. Given that the Council has not identified any in principle objection remaining which could not be addressed in a management plan to be submitted and approved, the Appellant will be exploring with Mr Thurlow whether any conflict with policy and thus any reason for refusal remains.

### **Highways**

37. The Rule 6 Party has raised concerns relating to highways impacts. Mr Whittingham will speak to these in the round table sessions. The Appellant's case will be that all of the highway engineers agree that the proposed development accords with relevant policy and will not give rise to any unacceptable highways impacts

### **Drainage**

38. The Rule 6 Party has also raised some issues regarding surface water flooding. The Appellant's case is that overall, the proposed development will result in an enhanced position compared to the existing situation.

39. Foul drainage issues have also been raised. These need to be seen in the context that the planning system exists alongside the system contained within the Water Industry Act 1991. Under section 106 of the 1991 Act, all Water and Sewerage Companies (WaSC's) have a legal obligation to provide developers with the right to connect to a public sewer. The duty imposed by section 94 of the 1991 Act requires WaSC's to deal with any discharge that is made into their sewers pursuant to section 106. The scheme of the legislation is that where connection of a development to a public sewer requires consequential works to accommodate the increased load on the public sewer, the cost of these works falls exclusively upon the undertaker (see *Barratt Homes v Welsh Water* [2010] Env. L.R. 14). It follows that if there is a lack of foul drainage capacity, there is a duty on the WaSC to address that issue. Again, given the approach arising from the *Gateshead* decision (above), a planning decision-maker is entitled to assume that a parallel statutory regime will function as it should. As a result, issues relating to foul drainage cannot form a basis for objection.

#### **Prejudice to the National Landscape Boundary Variation Project**

40. The Appellant intends to explore the basis on which it is proposed to change the boundary of the AoNB to include the Site. It will be argued that the process is at a relatively early stage, the site is not of central importance to the project and is not so substantial that it would undermine that project. The policy basis for this reason for refusal and the weight to ascribe to it will be explored with Mr Thurlow.

#### **Other Considerations - The Justification of the Scheme**

41. The Appellant will argue that the harm to the Green Belt and any other harm is limited in the present case and that other considerations would clearly outweigh that harm such that very special circumstances exist for granting planning permission.

42. Mr Martin Taylor and Mr Slatford will explain that the factors which clearly outweigh the harm by reason of inappropriateness are:

a. **It is a sustainable site:** When it is concluded that a GB site should be released for housing the NPPF prioritises sites that are "well served by public transport". (NPPF 142). The site forms a logical extension to Oxted and is highly accessible for sustainable modes of transport including public transport.

b. **It is within a Category 1 settlement,** indeed Oxted is the highest scoring settlement in the District Hierarchy Study (CD5.10). It is then the most sustainable settlement within the district. The Site is thus consistent with the settlement hierarchy



and is located in the settlement that was identified as the preferred location for growth within the District (see previous draft plan policy TLP01)

- c. **The Council's five-year housing land supply position and housing delivery test results are both exceptionally severe.** The provision of 116 new homes to meet a range of housing needs in a location where housing delivery is so poor is a substantial benefit.
- d. **Tandridge has a substantial shortfall in housing delivery, affordable housing and acute affordability pressures.** There is a pressing need for affordable housing delivery. The provision of the proposed affordable homes is also a substantial benefit of the proposed development.
- e. **The release and development of Green Belt land is necessary to meet the district's needs and there is an absence of preferable alternative sites to the Appeal site to do so.** As explained Oxted is a Tier 1 settlement and the most sustainable location within the District to deliver homes to meet housing needs. The necessity to use Green Belt land for housing is reflected in the Council's previous proposals to remove land from the Green Belt. It is also reflected in the IPSHD which indicates that allowing development under very special circumstances on emerging allocations is one action the Council is (meant to be) supportive of. Further, it will be argued that there is a fundamental lack of alternative preferable Green Belt options than the appeal site upon which to deliver those housing needs.
- f. **There has been a failure of plan making** and there is no mechanism available to release sites for housing sufficient to meet needs other than by way of development management decisions.
- g. **The housing site would limit harm to the Green Belt.** Whilst harm would not be avoided, nor should the weight to be attached to the harm be reduced in any way, the development proposals by virtue of the contained envelope of the site and nature of development, would overall limit harm to the different Green Belt considerations as explained above. If needs are to be met, the Appellant will contend that it is difficult to conceive a Site within the Green Belt which could come forward with less harm arising.
- h. **The provision of new open space and play space** directly responds to identified needs with Oxted and Limpsfield, where there is a current deficit. There is a potential

to link to PRow footpath 75, however the Council appeals to object to such a proposal. The basis for that objection will be explored with Ms Hooper and Mr Thurlow.

- i. **The scheme is a high-quality design** and it will be argued accords with all relevant design guides and Development Plan policies. As such it will be argued that it should attract significant weight in the planning balance (see NPPF 139).
- j. **The housing will deliver total carbon efficiency savings** significantly in excess of current planning policy and building regulations;
- k. **The housing will generate a range of economic benefits** including construction jobs, local expenditure in supply chains, shops and services and contributions towards local infrastructure improvements. It is forecast to generate £1.6m expenditure within shops and services in Oxted.

43. The Appellant intends to explore the weight to be given to these matters with Mr Thurlow and will contend they would clearly outweigh that harm such that very special circumstances exist for granting planning permission.

### **The NPPF Consultation**

44. The Appellant will contend that the implications of the draft NPPF are that, for the new Local Plan, the Council should be meeting a higher housing requirement in full and that this will necessitate the release of Green Belt land significantly beyond that which it has previously envisaged. In these circumstances, even greater weight should be given to the fact that the Appeal Scheme seeks to deliver new homes, including affordable homes, in the District. In terms of the approach to Green Belt policy, it will be argued that the Appeal Scheme accords with the thrust of the new draft policy as Mr Slatford will explain. Indeed, it will be argued that if the site came forward with 50% affordable housing it would be a "grey belt" development and would not be inappropriate development. We intend to explore this with Mr Thurlow.

### **The Planning Balance**

45. Section 38(6) of the Planning Compulsory Purchase Act 2004 identifies that proposals should be determined in accordance with the development plan unless material considerations indicate otherwise. It will be argued that Policy DP10 allows for the grant of planning permission where VSC exist. The Appellant will contend that, since VSCs do exist, there is no material harm to the AoNB and the impact of the proposed development upon the AoNB has been minimised, the proposed development does not conflict with the Development Plan as a whole.

46. It will be argued that the current NPPF supports the grant of planning permission and that there are no other material considerations which indicate a reason to refuse the proposed development. On this basis, the Appellant will ask you to allow this appeal and to grant planning permission.

REUBEN TAYLOR K.C.

Landmark Chambers

180 Fleet Street

London

EC4A 2HG