LAND NORTH OF GARDENIA CLOSE AND GARDEN SQUARE
RENDLESHAM
APPEAL BY CAPITAL COMMUNITY DEVELOPMENTS LTD
APP/X3540/W/19/3242636

OPENING SUBMISSIONS
ON BEHALF OF THE APPELLANT

INTRODUCTION

1. The context of the appeal proposals is of critical importance. It is twofold. The first is in terms of the recent history of development on the adjacent site, Garden Square/Gardenia Close, of which the appeal proposals form a natural and appropriate extension. The second is in terms of the achievements of that development as living testimony to the success of its design in terms of the highly attractive environment it creates, it's legibility in urban design terms, the living conditions of its occupiers and the contribution it makes to the Village as a whole. The appeal proposals take the same successful principles forward, completing, in a coherent and compatible manner, this long standing allocation in the village, a village which the local plan indicates can probably accommodate more than the 100 dwellings currently allocated to it.

2. The appeal site is an allocated site for approximately 50 dwellings. It has latterly been acknowledged by the LPA that an additional 25 dwellings would, in principle, be acceptable and this is not surprising given the capacity of the site to accommodate this number. Given Government's exhortation significantly to boost the supply of housing (the existence of a 5-years supply does not remove this objective) and the irrationality of capping the number to 50 (thereby underutilising a finite resource), the development of this site for 75 dwellings has "in principle" support from the development plan. The derogation from the number of dwellings identified in SSP12 is of no material consequence in this regard.

THE REASONS FOR REFUSAL

3. This appeal has been necessitated by the dogged determination by officers to refuse the application. Unconstitutionally, the decision was kept from Members. The process has been hallmarked by lack of transparency and, on occasions, a fundamental lack of objectivity by officers in discharging their functions, contrary to the public interest. Moreover, there has been, on many occasions, a fundamental failure to engage with the Appellant during the application stage as a means of resolving matters that could easily have been resolved in a timely way. It is no defence to say that the application would have been refused on design grounds in any event. It is the responsibility of the LPA in discharging its DM functions to assist in resolving all that is capable of being resolved at the application stage. It requires openness and proactivity and not left to an appeal process to resolve. Requests by the Appellant to defer determination to enable outstanding issues to be resolved were rejected (with no good reason). Bearing in mind officers were determined to keep this as a delegated decision, the lack of co-operation was either ill-judged or indicative of a determination to refuse the application irrespective of the means being available to resolve many of the outstanding issues (such as they were).

4. Redolent of this is the withdrawal of several of the reasons for refusal at statement of case stage.

5. **RfR 1 "principle of development**" Policy SSP12: This reason for refusal was entirely unnecessary and unjustified in the first place. The site has a nett developable area of 3.2 hectares and could accommodate up to 100 units at a reasonable density of 30 dwellings per hectare, let alone 75 or 50. In the Refusal Report the Council seeks to justify the reduced number by linking it to three 'concerns', but this is unjustified. The three 'concerns' are covered in later reasons for refusal. In RfR 1 the principle and quantum of development should have been addressed on its own, without linkage to

extraneous 'concerns'. The reasons given for its withdrawal in the LPA's SoC are specious and disingenuous (see para 5.16-17). SSP12 is a strategic policy, not a DM policy. Clearly there never was an issue with the principle of development for 75 houses on the appeal site. The proposals have always been compatible with the housing and transportation objectives of RNP and always provided policy compliant AH with an appropriate level of greenspace. The fact that the proposal increases the number of houses beyond the allocated number is inconsequential in planning terms and has no impact whatsoever on the strategic housing objectives of the plan and no local implications. The "derogation" is planning positive (increase in the number of houses being commensurate with the site's capacity), but otherwise immaterial.

6. **RfR 4 "odour impact**": should never have been included. The LPA always had the information available to it to understand categorically that odour was not an issue. The 2014 odour assessment which influenced the cordon sanitaire was anomalous. The 2018 assessment corrected the record and the remodelled odour levels were very low: more than 20 times below the accepted threshold for offensive odours. In December 2017 Anglian Water themselves recommended a cordon sanitaire with a radius of 110 m from the centre point of the water recycling centre, and this was respected in the site layout. In their public consultation response of May 2019 Anglian Water, knowing that the Appellant had followed their earlier recommendation, did not raise any concerns. And yet perversely the Council did, and turned this into a reason for refusal. The 2018 report, submitted for the purposes of both the first and second applications included the first application layout for reference purposes. This was an oversight. However, the layout did not influence the modelling which was plain to see from the contours. The whole application site (regardless of the proposed layout) was shown to be unaffected by odour for planning purposes.

7. The 2019 assessment before the Inquiry was undertaken for the local plan hearings to show that the odour levels in the 2018 assessment were consistent and to prove the 2014 results were anomalous and contributed to an amendment to the cordon sanitaire criteria of the site specific policy. The 2019 assessment was submitted with the appeal to show the current layout only. The submission of the 2019 odour

assessment with this appeal did nothing more than confirm evidence which was already in front of the LPA in the form of the 2018 assessment. Reason for refusal no.4 was unjustified from the start.

8. The change in layout drawing had no effect, and could have had no effect, on predicted odour levels. The submitted report required no specialist to conclude that this would be so. In any event, if planning officers did not understand the technical evidence before them, there was still greater need to seek clarification (from Anglian water, the appellant or their own EHO) before refusing permission on this ground. It would have taken a phone call or short email to elicit a short factual response by way of clarification and, if strictly needed, the substitution of a plan. Again, the reason given for its withdrawal is specious and disingenuous.

9. **RfR 7 Sewers**: The relevant policy, SSP12, only requires that the sewers be accommodated. Paragraph 6.53 the planning statement made it clear that they would be accommodated and re-aligned. Paragraph 3.2.7 of the Flood Risk Assessment of May 2018 also made it clear that the existing 750 mm public surface water sewer would be diverted. With the planning application the Appellant had also submitted the February 2018 sewer survey that had been carried out by Flowline. In May 2019, prior to the refusal in July 2019, the Appellant had submitted a Section 185 sewer diversion application to Anglian Water. It seems that the provision of this additional plan now satisfies the LPA. It could have asked for it at any time after the application was made. Indeed, it should have asked for it if it considered that the application was deficient in this regard. It should never have been the basis of a reason for refusal.

10. **RfR 6: "habitats and HRA**": could have been avoided altogether if the LPA had seen fit to deal with this on a transparent and open basis from the beginning and engaged constructively and openly with the Appellant and NE. All that was needed was open dialogue and a transparent approach. It is not a legitimate response by the LPA to this profound failure on its part to say that permission was going to be refused irrespective of this issue (so that there was no "need" to carry out a AA). The simple point is the

Appellant as applicant was denied the opportunity of addressing it and thereby to obviate the need to deal with it via the appeal process. The deficiencies in process (some of which remain at large through no fault of the Appellant) could have been properly addressed at a much earlier stage.

11. It should be noted from the outset that the requirement of a 2.7km circular dog walking route was not mentioned in pre-application discussions. Neither is there a record of any such requirement in the email correspondence that followed the meetings. The very first mention of it is the consultation response that was published on the LPA's website shortly before the decision was made. The Officer's Planning Report contains only a partial record of the Ecology Officer's consultation response. He actually advises the case officer that without such a route there remains the potential that nearby sites will be used for regular recreational activities (such as dog walking) which may result in significant effects and that this on site mitigation is necessary for developments over 50 dwellings within the Zone of influence in addition to the RAMS contribution. This was based on Jenkinson document [3594]. There was no mention of the template (by the time evidence was exchanged for the purposes of this appeal, the template had still not been entered onto the LPA's website). However, he also went on to advise that NE should be consulted on the application for their advice on the greenspace provision and HRA and that the applicant be engaged to see if such a route can be accommodated. Given that the Council's ecologist appeared to have differed from the the Applicant's HRA conclusion and that the matter was capable of resolution by way of open discussion with NE and the Applicant, the recommended way forward was not only entirely sensible, but the only fair way it could be dealt with given the fact that the consultation response was made available so close to the decision and the Appellant was given no prior notification of this potential requirement. The Appellant did not have, and could not have had, any idea that the application scheme would be considered to be deficient in habitats terms without a new dog walking route, remembering that other routes already exist locally.

12. Moreover, in relation to developments within the Zone of Influence (that is not less than 1kilometre from the nearest part of the relevant protected site), The SANGS

mitigation and avoidance scheme is intended to provide the necessary strategic approach to mitigation and avoidance of harm. For proposed developments in the Zone there is no threshold of 50 dwellings beyond which further mitigation or avoidance measures are necessary. Moreover, there is no evidence to justify the requirement for a 2.7km circular dog walking route simply because the development proposes an additional 25 dwellings. The only other apparent justification for it is by reference to the Jenkinson document [3594]. The advice it contains is not necessarily of general application (local circumstances have to be taken into account) and is certainly not predicated on the existence of a RAMS mitigation and avoidance strategy.

13. Against this background, the Appellant contacted NE to seek its guidance. As can be seen from NE's response [NS PoE Appendix 10], the Appellant could not understand why given the open space being provided and the pre-existing walking routes available in close proximity to the proposed development, would not satisfy both NE and the LPA.

14. Following this there was further correspondence between the LPA and NE on the subject that might best be described as "opaque" and from the LPA's point of view of a leading nature exhorting NE, in effect, to hold the line. The Appellant has attempted to engage openly and neutrally with NE on this subject following this and the subsequent second Case Conference in order to elicit a response to the latest proposals and the other options available. Natural England has (29th June) agreed to the appellant's proposal but has not commented on the alternative existing routes within Rendlesham. .

15. Given the importance of this issue to the determination of this appeal and the responsibility imposed on the Inspector in this context, it is very important, indeed, essential, that the process of consultation is carried out transparently, openly and on a non-partisan basis in the public interest. We also note that Natural England has not raised the need for a new dog-walking route for this allocation in the emerging Local Plan, nor has the Council done so.

16. Nevertheless, and recognising the importance of the Inspector's duty as the competent authority by means of an appropriate assessment to identify and examine the implications of the proposals for the designated features present on the Sandlings SPA and their conservation objectives, the Appellant has taken action to procure a circa 2.7km dog walking route as now proposed, if the Inspector finds it to be necessary. This will be secured through the terms of the s.106 agreement along with the open space. It will be noted that this will result in a number of dog walking options for residents taking into account the availability of other routes and the various permutations to which they give rise with ample off-lead opportunities If provided, the proposed route will serve not only the future residents of the development but also benefit the wider Rendlesham population.

17. It will be noted that a recently modified contribution is being made for PROW purposes that the County Council had previously confirmed as CIL compliant and their agreement to the modified contribution is also given by them.

DESIGN AND RESIDENTIAL AMENITY

18. Let us remind ourselves what the NPPF tells us about design issues:

"130. *Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development.*"

19. In this case there is no up to date local design guide or supplementary planning document to guide design in Rendlesham. There are three policies of direct application and relevance: DM21 (Aesthetics), DM22 (Function) and DM23 (Residential Amenity). If it is found that the proposals meet their criteria, there can be

no valid justification for rejecting the proposals. We say the proposals are fully in accordance with the expectations of the development plan.

20. Before I deal with the design policies, it is important to note the context to which I referred earlier. The present development of Garden Square and Gardenia Close was permitted in 2004 against the requirements of an earlier development plan. The proposals were very different from those that characterise most of the post war and modern development in Rendlesham. The linear approach to ensure good solar gain, to enhance the well-being of the occupants of the development and to provide individual dwellings of exceptional quality in a verdant and well landscaped setting was relatively novel but its advantages were recognised by the LPA in granting permission. Of course it went counter to certain ingrained pedestrian and unimaginative design approaches adopted by many multiple housebuilders which so many LPA's were ill equipped to resist, but this LPA to its great credit at the time, permitted it on the basis that it would, despite its formal linear layout, "fit harmoniously" on the rural edge of the settlement. It was right. Local Plan policy at that time required a design of the highest quality and the relevant Government Guidance on design would have been found in PPS1 which has, itself, found re-expression in key high level respects in subsequent iterations of Government policy. Relevant development plan policies have not changed significantly since then.

21. Established design guidance is important because its function is to encourage the achievement of good outcomes, but they do not prescribe any particular form of development. Moreover, as will be demonstrated (if it has not already), the principal issue is to understand how and why a development works to give effect to positive outcomes. Given the very obvious precedent of Garden Square and Gardenia Close, the fact that it is one of the most recent of developments in Rendlesham and has had the opportunity to mature into a recognisable neighbourhood within the Village since its completion, it should be assessed for *its* outcomes which are now readily discernible (in this regard there is little to distinguish the design approach of this existing development and the proposals before this inquiry). Moreover, they are a natural extension of the existing development. The existing development at Garden

Square and Gardenia close constitutes the major element of the appeal site's surroundings and it would be absurd to require a contrasting approach at the very end of this part of the settlement, between the existing development and the settlement boundary if (as it does) the existing development performs so well in terms of its design and functionality. Still more absurd would it be, in these circumstances, not to extend a successful design concept into the adjoining site to produce a harmonious and homogenous solution. It is, indeed, noteworthy that the LPA do not rely upon any local or district wide precedent as setting a more appropriate urban design solution for this particular site. Nor is any indicative/schematic alternative offered by way of comparison.

22. The failure of the LPA in its Report, its Statement of Case and its evidence to this inquiry, to take this profound and very important precedent (a material planning consideration) into account when evaluating the design of the appeal scheme is astounding: it is a wholly unreasonable and a perverse omission. Why speculate about the outcomes of the proposed design when it is possible to evaluate a living and functioning development encompassing its principles as a cast iron means of testing its performance in urban design terms? In this context it is remarkable, for example, that the LPA persist in objecting to the scheme on the premise that it fails to design out crime. The existing scheme has by far the lowest crime rate in Rendlesham. It is an outcome that has never been acknowledged.

23. The Inspector will now have read the design proofs submitted by Gary Hall. His expertise, experience, objectivity, and standing within the urban design industry and those institutions pioneering good urban design, is beyond question. It is perhaps appropriate at this stage to recall what he said about the LPA's approach to the evaluation of the design of the appeal proposals: "*It is my opinion that by simply assessing the scheme against established urban design principles without focusing on the outcomes these principles are aiming to achieve, the determining LPA have failed to approach their design analysis (such as it is) fairly or appropriately*". This is, I would suggest, a proper assessment of the integrity of the LPA's approach to design and,

coming from one of the country's leading experts, it is also a profound indictment. I return now to the relevant development plan policies.

24. As it is, we now have the benefit of the contribution of David Birkbeck who is standing in for Mr. Hall. You will by now have noted that BfL has now been superseded by BfHL 2020 of which Mr Birkbeck is one of the authors. You will have noted also that previous iterations of BFL should be used as a means of assessing outcomes (I refer you to GH proofs) and that the application of their principles should not have led to the refusal of this scheme. This, as you will hear, has been put beyond question by the new guidance that seeks to encourage development that benefits the health and well-being of the communities they create and in which they are created.

DM21 Aesthetics

25. This policy begins by stating that proposals that comprise poor visual design and layout or seriously detract from the character of their surroundings will not be permitted. It goes on to say that development should create a strong sense of place, using street scenes and buildings to live, work and visit. Very importantly, the final sentence of this opening paragraph then tells us what is required in order to meet these expectations: "*Accordingly, development will be permitted where the following criteria are met*". Put another way, it follows that if these criteria are met the policy will be satisfied**.**

26. It is criteria (a), (b) and (f) that appear to be in play for the purposes of this appeal. Criterion (a) requires that proposals should relate well to the scale and character of their surroundings, particularly in terms of their siting, height, massing and form. Without doubt the proposals will relate well to the scale and character of its surroundings in terms of siting, massing and form. Contextually, there can be no other conclusion given the existence of a successful development of which this will form a logical extension. Criterion (b) requires that in areas of little or no varied townscape quality, the form, density and design of the proposals should create a new composition and point of interest which would provide a positive improvement in the

standard of the built environment of the area generally. The development will continue the design philosophy which itself has created a new composition and point of interest in the settlement. Contextually there can be no other conclusion. So far as criterion (c) is concerned, the proposals do pay attention to the form, scale and landscape of the spaces between buildings and their boundary treatments. See how well it performs in Garden Square and Gardenia Close. Policy DM21 is unquestionably satisfied.

DM22 Function

27. All its criteria are satisfied. There is ample surveillance of public and private outdoor spaces.

DM 23 Residential Amenity

28. The only criteria which it is alleged the proposals fail to perform is in relation to privacy and overlooking (criterion (a)).

29. This is really a scant issue and it would have been noted that the LPA have consistently retreated from the broad criticisms made in the Report and Statement of Case. What remains now are a limited number of instances where there is some potential for overlooking. DM23 does not preclude overlooking, it merely makes it a critical issue if the overlooking causes an *unacceptable* loss of amenity.

30. Most householders would welcome the additional light that these windows are intended to allow into the properties (criterion(c)) (it is not a question of whether the additional windows are 'necessary') and most occupiers would use discretion whether to draw a curtain or lower a blind to ensure privacy if it were required from time to time. Nonetheless, if there are any residual concerns which is felt should be addressed, a condition requiring that the identified windows be installed with obscure glass and be maintained thus can be imposed. There is no rocket science in this.

Compliance with the DP

31. The proposals are without doubt in accordance with the provisions of these development plan policies and the development plan taken as a whole. It does not require the use of considerable public resources via an appeal to confirm it. They benefit from the presumption in favour of the Development Plan for the purposes of s.38(6) and should be permitted. Even if some features are found to be less than ideal in terms of layout and design, they are likely to be no more than sub-optimal. Few developments perform perfectly and a proper sense of proportion is required in exercising discretion. It is very difficult, indeed, to see how or why any particular element of the design of the proposals could be found to be so deficient that it would justify the refusal of the whole scheme.

32. The position is, thus, really straightforward (so much so that to have to deliver this Opening is deeply disappointing). The proposals benefit from the presumption in favour of the DP taken as a whole. Moreover, the proposals are compliant with those policies of direct application. There are no other material considerations that would indicate permission should be refused. There is nothing to cause any unacceptable harm to any interest of acknowledged importance; but there are considerable benefits to be weighed in favour of the development (irrespective of the presumption in its favour) including the provision of affordable housing well integrated within a quality development, the provision of more than the policy requirement (against a considerable shortfall) which should be welcomed, the fact that it is a residential scheme that satisfies the ambition of the plan in terms of realising this last major opportunity in Rendlesham (in the context of the DP) and assists in furthering the Government's aim to significantly boost the supply of housing (a matter that should carry significant weight notwithstanding the presence of a 5 years supply), short, medium and long term economic benefits for Rendlesham, the creation of well laid out publicly accessible open space and a dedicated dog walk, if it is thought necessary, which would also benefit the wider community. If contrary to our case any harms are found, it is inconceivable that they could be anything more than minor in nature such that they would, in any event, clearly be outweighed by the considerable contribution

this development would make to the village and its inhabitants, a contribution that the refusal of planning permission has unnecessarily delayed at great public and private expense.

30th June 2020

PAUL SHADAREVIAN QC

Cornerstone Barristers