THE STATUS OF THE "SALISBURY LINE"

O P I N I ON

Introduction

1. I am asked for my opinion on the status, if any, of the "Salisbury Line" that has been relied on by, inter alia, Gascoyne Cecil Estates ("GCE") in objections made to the proposed allocation of Birchall Garden Suburb. The land has been proposed to be allocated for development in both the emerging Welwyn Hatfield Local Plan (SDS2) and the East Hertfordshire District Plan (EWEL1), to accommodate approximately 2,550 new homes over the plan period. Of these, 1,200 would be in the area administered by Welwyn Hatfield Borough Council and 1,350 in East Hertfordshire District Council.

The background

2. Thus in a summary of GCE's representations on the East Herts Pre-Submission District Plan, 2016 it is said[1]:

> "10. In the opinion of the Estate the development of the eastern portion of the proposed allocation in the East Hertfordshire District Plan and southern portion in the Welwyn Hatfield Local Plan would breach the well-established edge to Welwyn Garden City in a way which would give rise to lasting harm in planning terms.
> 11. The Marquess of Salisbury established the southern edge to Welwyn Garden City in 1946 via the creation of the 'Salisbury Line'. The objective was to provide an important 'green lung' between Welwyn Garden City and Hatfield to prevent the coalescence of the two towns.
> 12. In landscape terms the Salisbury Line provides a wooded landscaped framework to Welwyn Garden City and safeguards views from Hatfield House and its Registered Park and Garden which are heritage assets of the highest possible significance. This is explained more fully in a paper entitled 'A View Management Framework for Hatfield House' produced by the Estate. A copy is amended to this representation. Please see Appendix One.
> 13. The Estate is of the view that the development of the southern-most and eastern-most portions of the proposed allocation would not only breach but fundamentally undermine the longstanding principle established by the Salisbury Line. As such it would constitute a marked incursion into a well-defined green corridor, contrary to the principles set out in the NPPF for the protection of Green Belt land
> ….
> 29. The setting of Hatfield House and the Park is defined in part by its association with the historic town of Hatfield, and indeed Hertford, as the history of both settlements is intrinsically linked. More fundamentally however, the character and setting of the Park, and the wider Estate, is defined by its association with the surrounding countryside. Despite developments that have taken place within the twentieth century, Hatfield House and its environs continue to be experienced as part of a wider rural landscape. The foresight of the Marquess of Salisbury has reinforced this through his establishment of the 'Salisbury Line' and the existence of the statutory Green Belt."

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[1] See http://consult.eastherts.gov.uk/portal/pre-submisson_district_plan_consultation/pre-submission_plan?&page=1&pageSize=20&pointId=ID-4151144-394&do=view&q:sortMode=

3. The "Salisbury Line" is referenced in a number of appendices to GCE's representations e.g. App. 1 'A View Management Framework for Hatfield House' and App. 3 report by Michelle Bolger on the 'Landscape and Visual Implications of proposed development of Birchall Lane, Welwyn Garden City (EWEL1)'. In addition it is referenced in a Heritage Impact Assessment undertaken by Montagu Evans for GCE 'Heritage Impact Assessment Birchall Garden Suburb Draft Site Allocation'. There is also a document entitled 'The Salisbury Line Supplementary note' provided to the examination by GCE.

4. The background to the "Salisbury Line" set out in the Supplementary Note makes clear that it is derived from a land sale agreement between Welwyn Garden City Limited and Lord Salisbury entered into in 1946. Thus the Supplementary Note records:

> "1.7 On 22nd January 1946, representatives of Lord Salisbury wrote confirming the transaction:
> "The Company has agreed to sell to the Welwyn Garden City Company the various properties extending to 566.548 acres or thereabouts described in the schedule."
> "It is agreed between the parties that the southern boundary of the land in the sale will become the southern limit of the purchasers town and that the land on either side of this boundary, to a depth of 800ft shall remain as undeveloped land, to be used only for agriculture, games, sports or recreations."
> 1.8 This 800ft wide buffer established some lasting principles and from then on became known as the 'Salisbury Line'. The principles of the sale were confirmed in national newspapers including 'The Times' on 2nd February 1946 as well as local newspapers and correspondence."

5. The deeds of this exchange were I understand signed on the 16 December 1946 and the associated plan shows I understand an area to the south of Welwyn, and delineates a strip of land which was not to be developed. The only exception was the one parcel of land retained to provide the hospital for the town, which was itself subject of restrictive covenants.

6. In the Heritage Assessment produced by GCE it is suggested that there is some sort of "cultural heritage legacy" represented by the "Salisbury Line", as an important example of early environmental planning. It is said (see para. 4.1) that "the 'Salisbury Line' [was] later consolidated and formalised by the introduction of the Green Belt in Welwyn Hatfield".

7. The Inspector's note 'Birchall Garden Suburb/East of Welwyn Garden City INSPECTORS' MATTER AND ISSUES' says:

> "Garden City principles

The original Garden City was founded on a set of principles that sought to establish a settlement that minimized its impact on the surrounding Countryside. A southern boundary known as the "Salisbury Line" was established beyond which it was not considered appropriate for the town to extend in a southerly direction.
Issues
38) Does the proposed new edge to Welwyn Garden City maintain the principles of urban containment upon which the Garden City was founded to the same extent as the original boundary?
39) Some of the residential areas appear isolated and remote from the urban area of Welwyn Garden City? How does this fit in with Garden City principles."

The issue on which my opinion is sought

8. The issue on which my opinion is sought is the status, if any, of the "Salisbury Line" as a matter of planning law.

9. The issue of the status of the "Salisbury Line", in planning law or more generally, is assiduously avoided in all the GCE documentation. It is though of some note that no statement is made by GCE anywhere that the "Salisbury Line" is legally binding on third party landowners or the local planning authorities or that it otherwise has any particular status in planning law.

Analysis

10. In my opinion it is clear that the "Salisbury Line" has no status whatever in planning law and no application more generally to the proposals for Birchall Garden Suburb. There are a number of points to be made.

11. First, the agreement which was entered into in 1946 is a private law agreement between two private parties. The agreement pre-dates modern planning law in the form of the Town and Country Planning Act 1947. It is not a planning agreement made under any Planning Act. The legal position is clear that private agreements containing restrictive covenants are immaterial to the issue of whether planning permission should be granted. This is because the function of a planning authority was to decide whether a proposal was desirable and in the public interest; and this is not to be dictated by the content of private agreements see the House of Lords decision in ***British Railways Board v Secretary of State for the Environment*** [1993] 3 P.L.R. 125 and the many cases applying this since. The same principle must be applicable in respect of plan preparation. It would be quite wrong to suggest that a purely private agreement between two private parties in the middle of the last century had any planning consequences at all in the twenty-first century and

having regard to the terms of modern planning legislation. The "Salisbury Line" was, it is clear, influenced by a desire to protect private interests namely those of Lord Salisbury. It cannot be correct that such private interests be given any effect in planning law.

12. Second, in any event as a matter of private law, leaving aside planning law for a moment, there may well be covenants affecting land sold by Lord Salisbury to Welwyn Garden City Limited in 1946 but there is no such covenant in the title relating to land proposed for the development of Birchall Garden Suburb and so the "Salisbury Line" has no relevance whatsoever even in private law.

13. Third, the "Salisbury Line" has been breached on numerous occasions. The Supplementary Note produced for the examination by GCE suggests that "the principles espoused in the 1946 agreement have held true and a clear 'green corridor' remains between the two towns and along the river valley" despite acknowledged variations and "minor detailed changes". The reality is rather different. The acknowledged variations and "minor detailed changes" include the QEII hospital site, now significantly developed for housing, an 18-hole golf course, a pub and restaurant and an 8-acre caravan and camping site. In his book Welwyn Garden City - A town designed for healthy living by Maurice de Soissons (son of Louis de Soissons - responsible for the masterplan of Welwyn Garden City) lists the later developments and states "[m]ost significantly, in an adjustment of monetary interests between the district council and the owner of the land, Lord Salisbury, the line between the garden city and the green belt, known since the 1950's as the Salisbury Line, was to be breached." This was to enable Lord Salisbury to develop a 10-acre parcel - the Haven Green development. Other developments have taken place outside GCE ownership such as Burnside, the household waste facility and the A414. The Salisbury Line is thus something more honoured in the breach than the observance, with Lord Salisbury himself having breached it when it suited his interests.

14. Fourth, and crucially for present purposes, I have seen no evidence at all that the "Salisbury Line" has been given any express or implied planning status or recognition since 1946. It is not something that has been incorporated into, or referred to, in any Development Plan for the area so far as I am aware[2]. Nor am I aware of any planning

[2] I have seen in the Heritage Assessment reference to the Town Plan of 1949 but this deals with Green Belt status and does not expressly reference the "Salisbury Line": see paras. 4.19 - 4.23

decisions that have been made by reference to the "Salisbury Line" whether on appeal or at first instance by the local planning authority.

15. Fifth, as noted above GCE's Heritage Assessment refers to the "Salisbury Line" being "later consolidated and formalised by the introduction of the Green Belt in Welwyn Hatfield". The reality is that for planning purposes, and the purposes of the examination, it is Green Belt and related issues (e.g. landscape and townscape impact) that need to be considered and not whether what is proposed might be said to offend against a private agreement entered into in 1946. In any event, the "Salisbury Line" aimed to preserve the separate identities of Welwyn Garden City and Hatfield to its south. That function does not extend as far east as to the Birchall Garden Suburb site, because the site lies well beyond the area separating these two towns.

Conclusion

16. It seems to me clear that the "Salisbury Line" has no status at all in planning law. It is irrelevant as regards the issues to be considered at the examination. What needs to be considered are the actual planning issues e.g. Green Belt, landscape etc. The suggestion that the "Salisbury Line" has some "cultural heritage legacy" as an important example of early environmental planning appears to me to be a wholly specious claim.

JAMES MAURICI QC

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