

# Planning Statement

Bricket Lodge Sports and Country Club and Paintball Site, Lye Lane, St Albans AL2 3TF



The demolition of existing buildings, the construction of up to 115 dwellings, the creation of a new access and associated highways improvements.

# Outline Planning Application with Access Sought

The demolition of existing buildings, the construction of up to 115 dwellings, the creation of a new access and associated highways improvements.

On behalf of Mr Ken Rudkin, J K Rudkin Builders Ltd

Ref: KR/BL/ps

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## Personal Statement

The information and evidence in this Statement have been prepared and are given in accordance with the guidance of the RTPI and I confirm that the views expressed are my professional opinions.

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## 1 Summary

- 1.1 This Planning Statement is submitted to support a new residential development in the context of a local housing crisis and the national and local drive for “brownfield first”.
- 1.2 It sets out the case for the scheme from a planning policy perspective. It considers the need for the proposed development, the local planning context and relevant planning policies before conducting a planning balance which requires an assessment of the harm to the Green Belt (and other harm) and an evaluation of the scheme’s benefits. The Statement is submitted together with a Design and Access Statement – which considers national and local design policies – a Location Plan, an Indicative Proposed Site Layout, other plans and a series of reports that satisfy the Council’s Local Requirements for Outline Applications of this scale with Some Matters Reserved.
- 1.3 The proposal is to build up to 115 dwellings on a brownfield site in the Green Belt to the north of Bricket Wood. This will require a number of buildings to be demolished and a new vehicular access to be created from Lye Lane.
- 1.4 The Statement concludes that, in accordance with Policy 1 of the Local Plan and paragraph 147 of the NPPF, “very special circumstances” exist to allow the scheme to be approved.

## 2 The Local Housing Context

- 2.1 There's a housing crisis in St Albans.
- 2.2 The 2021 AMR<sup>1</sup> states that the Council can demonstrate just 2.2 years' supply of deliverable housing sites. From the perspective of the economic and social objectives of sustainable development (NPPF, paragraph 8a and b), this is clearly unacceptable. From a planning policy perspective, it means that the most important policies for determining applications for new housing are, technically, out-of-date (NPPF, paragraph 11 d and footnote 8).
- 2.3 The historic shortfall in housing and affordable housing cannot be addressed in the immediate future following, first, the Council's decision to Withdraw its latest draft Local Plan in November 2020 and, secondly, the Council's recent approval of a Local Development Scheme which schedules Adoption of a replacement Local Plan in 2025. In the meantime, therefore, the majority of homes, including affordable homes, recently built or soon to be built in the District, are via schemes on greenfield Green Belt sites approved on the basis of "very special circumstances" including: at Beaumont School; at Oaklands College; off Bullens Green Lane, Colney Heath; and off Harpenden Road, St Albans.
- 2.4 This is the policy context in which a scheme to deliver over 100 homes on a brownfield site in the Green Belt is to be considered.

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<sup>1</sup> SADC AMR 2021, Section 2, para 2.3 p.18

### 3 The Site's Brownfield Status

3.1 The NPPF (July 2021), defines "brownfield land" or "previously developed land" as:

*"Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape."* (Glossary, pp.70-71)

3.2 As the Existing Site Plan and 4-page Site Photographs document confirm, the Site is occupied by a number of permanent structures, including 33 dwellings, and extensive associated fixed-surface infrastructure. None of the exclusions in the NPPF Glossary apply. Consequently, this is clearly a brownfield Site.

3.3 Paragraph 119 of the NPPF states that *"Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land"*. However, there are no up-to-date strategic policies in the current Local Plan which do this.

3.4 In October 2021, when announcing the allocation of £58 million from the Brownfield Land Release Fund, Michael Gove MP, Secretary of State for Levelling Up, stated: *"Making the most of previously developed land is a government priority and it will help protect our cherished countryside and green spaces"*<sup>2</sup>. This confirms the national drive towards prioritising *"brownfield first"*.

3.5 In June 2002, a Report entitled *"Banking on Brownfield: Can previously developed land supply enough homes where they are needed?"* (Lichfields on behalf of Land Promoters & Developers Federation<sup>3</sup>), concluded:

*"Our analysis in this report shows that there is simply not enough brownfield land in any part of the country to meet housing needs alone."*

3.6 This conclusion appears to be borne out in St Albans where the latest Brownfield register (December 2021) identifies potential sites capable of delivering fewer than 1,200 dwellings in total, none of which

the Council considers suitable for Part 2 of the register. This is less than 10% of the capped housing target in its most-recently Withdrawn draft Local Plan.

3.7 The Site isn't included within the Brownfield Register because the Council decided, in 2017, only to include brownfield sites *"within existing urban areas"*<sup>4</sup>. Obviously, just because a brownfield site is excluded from the Brownfield Register doesn't stop it from being brownfield (*"a rose by any other name would smell as sweet"*).

3.8 As will be considered in more detail in section 7 below, brownfield sites in the Green Belt are preferred to greenfield sites, in part, because of the much lower contribution brownfield sites contribute towards the Green Belt, especially its visual amenity.

<sup>2</sup> [Thousands of new homes to be built and derelict land transformed - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/thousands-of-new-homes-to-be-built-and-derelict-land-transformed)

<sup>3</sup> [Banking on Brownfield - Lichfields - Final.pdf \(lpdf.co.uk\)](#)

<sup>4</sup> Report to Planning Policy Committee, 13.06.17 Agenda 8, paragraph 4.5

## 4 The Proposal

4.1 The proposal is to demolish the existing buildings, to build up to 115 new dwellings, to create a new vehicular access from Lye Lane and to make improvements to local highways, particularly to improve opportunities for walking. Further details of how this Outline scheme responds to the challenges and opportunities set by the Site's context are set out in Design and Access Statement included within the Application.

### Existing Development

4.2 The brownfield site can be considered in three distinct parts. First, a number of redundant and vacant buildings around a large area of hardstanding, built over the years to accommodate, variously, a cricket club house, country club and gymnasium. Secondly, a paintball operation with numerous outbuildings, containers and *ad hoc* structures, together with substantial areas of hardstanding. And, thirdly, a residential area comprising 33 dwellings and car parking spaces.



Photo 1: The brownfield site has three distinct areas: 1. Vacant buildings around hardstanding; 2 paintball area with numerous fixed structures and hardstanding; 3 residential dwellings and car parking

### Housing Mix

4.3 The indicative mix for the Site is set out in Table 1. This is indicative only and may change at the Reserved Matters stage (hence the flexibility to construct “up to” 115 dwellings), subject to consultation with the Council and others, including how many, if any, are to be made available as self-build. The current

housing mix has been informed by the Local Housing Needs Assessment published in September 2020 by GL Hearn for the five districts within South-West Hertfordshire, including St Albans.

	1-bed	2-beds	3-beds	4-beds	5-beds	Total
No. of units	21	35	34	12	7	109

Table 1: Indicative housing mix by size

4.4 Whilst there is no Local Plan policy for affordable housing in large Green Belt sites outside the villages ‘washed over’ by the Green Belt, the Council’s 2004 Supplementary Planning Guidance sought to impose a contribution target of 35%. Whilst SPGs cannot create policy, in the absence of any Adopted Policy an applicant may wish to consider a Council’s publicly-stated intentions and/or preferences when submitting an *ad hoc* application, particularly when the Local Plan is approaching 28 years of age. Consequently, 35% of the housing at the Site will be affordable, 25% of which will be First Homes (see Table 2 below). As there’s no Adopted Policy on affordable housing mix, and because neither the NPPF nor PPG supports ranking one form of affordable housing over another, the precise mix of the remaining affordable homes will be subject to discussion with the Council to inform an appropriate S106 Agreement.

	Market Housing	First Homes	Other Affordable
No. of units	71	10	28
Percentage	65%	9%	26%

Table 2: Indicative affordable housing mix

4.5 10% of the homes (which could include some of the affordable homes) will be self-build.

4.6 The evidence is clear that each and every dwelling on the Site meets just a fraction of the proven need.

### New Access

4.7 Via highways consultants, Paul Mew Associates, a Pre-Application process was entered into with Hertfordshire County Council through their agents, WSP, starting in March 2022: this identified key issues and established a scope of works. Subsequently, a Transport Assessment and a Travel Plan were submitted for consideration in July 2022. Questions and requests for further information were raised by WSP in August 2022, including a request for a Road Safety Audit. The responses to these requests (Highways Response, August 2022, and RSA Report, September 2022) were submitted to WSP. They subsequently considered the Pre-App process to be complete and raised no further concerns.

4.8 There are currently three accesses to/from Lye Lane: one to the redundant country club (which has been temporarily blocked for security purposes); an unmade track to the paintball area; and a safe, vehicular

access to the residential element of the Site. All three will be removed and replaced with a single vehicular access designed to accord with the requirements of Hertfordshire County Council (“HCC”) as shown in drawing “Proposed Site Access Junction Layout”, 29/09/22.

4.9 The new access will also be for pedestrian use and will link into the village, and other public and permissive footpaths south of the Site, by way of an enhanced (widened and lit) pavement along Lye Lane, as shown in drawings “Proposed New Footpath on Lye Lane (4 pages)” 29/09/22.

4.10 For full details of the highways and transport proposals, please refer to:

- Transport Assessment, July 2022
- Travel Plan, July 2022
- Highways Response, August 2022
- Road Safety Audit Response Report, September 2022.

#### Sustainable Development

4.11 The scheme clearly contributes to the achievement of sustainable development as set out in Section 2 of the NPPF. Whilst Paragraph 9 of the Framework acknowledges that the three objectives “*are not criteria against which every decision can or should be judged ...*”, the following paragraphs consider the sustainable credentials of this Outline scheme.

#### **Economic Objective**

4.12 As the densely-built towns and villages of the District have proven to be incapable of delivering sufficient market and affordable housing, the Council is increasingly reliant on Green Belt sites to do so. However, because brownfield sites are preferable, the Application Site should be seen as more of “the right place” for new development than the greenfield Green Belt sites on which permissions have recently been granted.

4.13 As set out in the Travel Plan, the Site is also a sustainable location close to schools, shops, pubs, a library, a pharmacy, cafes, restaurants and public transport, including Bricket Wood Station (Section 4.0 Connectivity Assessment).

4.14 The demolition of existing dwellings, the construction of over one hundred new dwellings and the provision of associated infrastructure and landscaping will create employment for a number and variety of local people and businesses, bringing money into the economy during the construction phase and thereafter through local spending and Council taxes. In the booklet accompanying the Public Consultation of its draft Strategic Local Plan, Oct-Nov 2014, the Council stated “*new housing in the District supports economic growth*”: I agree.

#### **Social Objective**

4.15 The delivery of up to 115 market and affordable homes in a District with a significant and persistent housing crisis is clearly a significant social benefit.

4.16 I note that when the Planning Committee Central approved a Council application for a single new home in 2018, the Case Officer Report recommending Approval stated: “*Significant weight is given to the benefit of providing one additional housing unit*” (Ref: 5/2017/3132, paragraph 8.2.3). I agree, and it follows that very significant weight should be given to the benefit of up to 115 additional homes here.

#### **Environmental Objective**

4.17 Whilst the “*historic environment*” is of no direct relevance here, the “*natural environment*” will be enhanced by increasing biodiversity via extensive tree planting and the landscaping of over 100 hundred plots which can be guaranteed by way of Condition and set out in detail in the Reserved Matters application even if that is submitted before November 2023 when the 10% net gain in biodiversity becomes mandatory.

4.18 For further details of ecological surveys, please see paragraph 7.19-7.21 below.

#### **Conclusion on Sustainable Development**

4.19 The scheme pursues the three objectives in a mutually supportive way so that net gains in each of them can be achieved. Consequently, the proposal clearly represents sustainable development.



## 5 The Planning Context

- 5.1 The District's Local Plan was Adopted in November 1994. Policy 3, "Housing Land Supply", extended only to 2001. The Council has sought to replace this Plan via: the Local Development Framework Core Strategy, 2006-2021; the Core Strategy Spatial Strategy 2011-2028; the Strategic Local Plan 2011-2031; and the Local Plan 2020-2036. Unfortunately, like many Councils, it appears to have found the reality of competing priorities and the complexities of the Duty To Cooperate too difficult to overcome.
- 5.2 This is the context in which this application to meet the needs of over 100 households is submitted: where the Council appears genuinely committed to delivering more housing and more affordable housing via an up-to-date Local Plan but unable to do so.
- 5.3 However, there is room for some optimism. Whilst it has failed to replace its 1994 Local Plan, in each attempt the Council acknowledged that 'exceptional circumstances' existed to release sites from the Green Belt to build new homes. And in July 2021 and January 2022, after losing a succession of Appeals for large housing schemes in the Green Belt, the Council finally acknowledged that the local housing crisis is so great that it Granted Permission for housing-only schemes on the basis of 'very special circumstances'<sup>5</sup> ... and both of those were greenfield Green Belt sites.
- 5.4 So, whilst here has been a long period of under-delivery, there is now hope that positive and creative decision-making is beginning to address the urgent need for new housing by developing greenfield Green Belt sites, making the delivery of a brownfield Green Belt site even more acceptable.

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<sup>5</sup> Ref: 5/2021/0423 and Ref: 5/2021/2730.

## 6 Relevant Planning Policy

6.1 Paragraph 2 of the NPPF confirms that *“Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.”*

6.2 The Development Plan for St Albans comprises the 1994 Local Plan Review, the Waste Core Strategy & Development Management Policies DPD (2012), the Waste Site Allocations DPD (2014), the Hertfordshire Minerals Local Plan (2007), the Harpenden Neighbourhood Plan (2019), the Sandridge Neighbourhood Plan (2021) and the St Stephens Neighbourhood Plan (2022).

### Current Local Plan - 1994 Local Plan Review

6.3 The only Development Plan Housing Policy for the Green Belt is Policy 8 *“Affordable Housing in the Metropolitan Green Belt”*. However, Policy 8 requires the housing to meet only the needs of the relevant Parish, to be within the reasonable physical limits of a Green Belt Settlement and, normally, to be on a small site of c.0.4 hectares ... none of which apply to this site or scheme. At a meeting of the Planning Referrals Committee on 26<sup>th</sup> July 2021, Officers confirmed that Policy 8 doesn't apply to major sites in the Green Belt.

6.4 Development Plan Policy 1 *“Metropolitan Green Belt”* does apply and, in respect of this scheme, is in accordance with the NPPF because both consider the proposal to be inappropriate development which can proceed if *“very special circumstances”* are found to apply.

6.5 Like Policy 8 (see 6.3 above), Policy 7A *“Affordable Housing in Towns and Specified Settlements”* doesn't apply to this scheme either, for obvious reasons. It must be noted that neither Policy 7A nor Policy 8 sought to prefer one type of affordable housing need over another. Nor, indeed, does the Council's Affordable Housing Supplementary Planning Guidance (March 2004) (*“the SPG”*).

### Emerging Local Plans

6.6 As referenced in the previous Section, the Council has sought to replace its 1994 Local Plan on a number of occasions. Whilst none were Adopted, it's important to note that each version sought to release sites from the Green Belt in order to deliver new housing.

6.7 Initial consultation on a new Local Plan 2020-38, finished on 8<sup>th</sup> March 2021. There are, as yet, no draft policies to consider.

### The St Stephen's Neighbourhood Plan (*“The SSNP”*)

6.8 The SSNP was Made on 20<sup>th</sup> July 2022. It is, therefore, a material consideration in decision-making although it must be noted that any perceived conflict with this newly-made neighbourhood plan is unlikely to significantly and demonstrably outweigh the benefits because, as set out in paragraph 14 of the NPPF:

b – the SSNP doesn't contain policies and allocations to meet its identified housing requirement

c – the District Council can't demonstrate a 3 years' supply of deliverable housing sites

d – the LPA's housing delivery has been less than 45% over the past 3 years.

6.9 Notwithstanding the housing supply position, the Design & Access Statement considers the proposed Outline scheme against each of the SSNP's most important policies and concludes it to be in general accordance. It must be noted that, in accordance with the Local Plan (Policy 1) and the NPPF, Policy S1 of the SSNP, *‘Location of Development’*, states, in part, that *“Residential development which ... demonstrates very special circumstances will be supported ...”*.

### The NPPF

6.10 The current NPPF was published in July 2021, replacing previous versions which themselves replaced the previous range of Guidance Notes, and Policy Statements. Paragraph 2 of the NPPF states, amongst other things, that the Framework *“... is a material consideration in planning decisions”*.

6.11 Whilst most of sections of the NPPF are relevant to this Application, it is considered that the more important ones for this particular application are:

- *“Achieving sustainable development”*, Section 2;
- *“Decision-making”*, Section 4;
- *“Delivering a sufficient supply of homes”*, Section 5;
- *“Achieving well-designed places”*, Section 12;
- *“Protecting Green Belt land”*, Section 13; and
- *“Meeting the challenge of climate change, flooding and coastal change”*, Section 14.

6.12 Whilst the Council can't demonstrate a sufficient supply of housing, permission isn't granted just because the most important policies are out-of-date. This is because the Green Belt is an asset and area *“of particular importance”* (paragraph 11 d) i and footnote 8). Consequently, the challenge for applicants – and the test for decision-makers – is set out in paragraphs 147 and 148 of the NPPF:

*“Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. ... When considering any planning application, local planning*

*authorities should ensure that substantial weight is given to any harm to the Green Belt. '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."*

**Planning Practice Guidance ("the PPG")**

- 6.13 The PPG was published on 6<sup>th</sup> March 2014 (with updates since) and replaced all previous planning guidance documents.

**Conclusion on Planning Policy**

- 6.14 The 1994 Local Plan is out-of-date because of both its age and the absence of a five-year supply of deliverable housing sites. However, the NPPF and Courts are clear that whilst these are material considerations in the Planning Balance, they can't be determinative in respect of a scheme for inappropriate development in the Green Belt. Instead, "very special circumstances" must be demonstrated in which the benefits clearly outweigh the substantial harm. Deciding whether or not "very special circumstances" exist is not "*a mechanical or quasi-mathematical activity*" but "*largely, an exercise in planning judgment ...*"<sup>6</sup>. The next Section of this Statement covers the potential harm the proposal may cause.

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<sup>6</sup> Barwood Strategic Land II LLP v East Staffordshire Borough Council & SoS for CLG [2017] EWCA Civ. 893 paragraph 50

## 7 The Harm to the Green Belt and Other Harm

7.1 As explained above, under both Local Plan Policy 1 and the NPPF, the scheme clearly represents inappropriate development. Consequently, it can only be approved if “*very special circumstances*” are demonstrated and such 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, paragraphs 147 and 148).

7.2 As mentioned above (see 6.14), “*very special circumstances*” aren’t established by imposing an inflexible, mechanical or quasi-mathematical approach but, as confirmed by the High Court in May 2021, by deploying planning judgment (please note the Court’s references are to an earlier version of the NPPF):

*“When paragraphs 143 and 144 are read together they can be seen as explaining that very special circumstances are needed before inappropriate development in the Green Belt can be permitted. In setting out that explanation they emphasise the seriousness of harm to the Green Belt in order to ensure that the decision maker understands and has in mind the nature of the very special circumstances requirement. They require the decision maker to have real regard to the importance of the Green Belt and the seriousness of any harm to it. They do not, however, require a particular mathematical exercise nor do they require substantial weight to be allocated to each element of harm as a mathematical exercise with each tranche of substantial weight then to be added to a balance. The exercise of planning judgement is not to be an artificially sequenced two-stage process but a single exercise of judgement to assess whether there are very special circumstances which justify the grant of permission notwithstanding the particular importance of the Green Belt.”<sup>7</sup>*

7.3 In this Section, I set out the potential harm that could be caused by the scheme and in Section 8 go on to identify the benefits to be taken into account as other considerations. Section 9 provides the planning judgment as to whether “*very special circumstances*” exist.

### Potential Harm to the Green Belt

7.4 It is undeniable that the proposal will cause harm by way of inappropriateness. It is also indisputable that even on this brownfield site where substantial development has already taken place, the openness of the Green Belt will be harmed, too, by the construction of up to 115 homes. However, it’s important to note that such harm will be caused at all undeveloped sites in the Green Belt. This is important because the Council has long-since concluded that in the St Albans District “*exceptional circumstances*” exist to release sites from the Green Belt and because it’s currently heavily dependent upon *ad hoc* housing

schemes on unallocated greenfield Green Belt sites which have been approved on the basis of “*very special circumstances*”.

7.5 Whilst, since 2009, the Council has concluded that “*exceptional circumstances*” exist to release sites from the Green Belt via a Local Plan, it has failed to deliver a new Plan and so failed to ensure sufficient houses have been built. In addition, the Council has failed to produce a satisfactory District-wide study to identify which sites contribute least to the purposes of the Green Belt. A GB Review was commissioned in 2013-14, from Sinclair Knight Merz (“SKM”), however, that Review can no longer carry any weight because of:

- the strong criticisms of it by Inspectors Crosby and Worthington<sup>8</sup>, and
- the Council’s acknowledgment that all of the Strategic Sites/Broad Locations shortlisted by the GB Review and allocated in the (now Withdrawn) 2018 Local Plan, could be replaced by smaller sites if they are judged to be better alternatives<sup>9</sup>.

7.6 The de-allocation of the Broad Locations and the inevitable requirement for development in the Green Belt in a future Local Plan, were confirmed by the Head of Planning at the Planning Policy Committee meeting on 2<sup>nd</sup> February 2021:

*“Members need to remember that those 8 Broad Locations, they’re no longer in existence because they were in the old Withdrawn Local Plan. So, Members have not actually identified – and won’t do until we get to the end of the Site Selection Process – which sites that Members may wish to take forward in the Regulation 18 Consultation next year.”* (verbatim statement taken from the Council webcast)

7.7 In an Appeal Decision<sup>10</sup> published 31<sup>st</sup> January 2022, the Inspector confirmed that the Council agreed that the SKM GB Review and the (now withdrawn) Emerging Local Plan, had no place in decision-making:

*“The development plan for the purposes of this appeal is the St Albans Local Plan Review 1994 (LP). The draft ELP had been submitted for examination at the time of the previous appeal. It sought to allocate broad locations for development, including for C2 units, and included a review of the Green Belt as part of the identification of such locations. The appeal site was not proposed for allocation. However, the examining Inspectors identified several concerns in April and September 2020 and the ELP was withdrawn from examination in late 2020. Work has begun on a new version of the ELP with initial public consultation expected during 2022. The parties agree that no weight can be attributed to the ELP in decision-making and I have no reason to disagree.”* (para 13)

<sup>7</sup> Sefton Metropolitan Borough Council v SoS for HCLG & Jerry Doherty [2021] EWHC 1082 (Admin) (paragraph 34)

<sup>8</sup> “... smaller sites have been disregarded as part of the plan making process. It is our view that this approach has ruled out an important potential source of housing that may have been found to have a lesser impact on the purposes of the Green Belt than the sites selected without sufficient justification.” Inspectors Crosby and Worthington, letter to the Council, Ref: ED40 14<sup>th</sup> April 2020, paragraph 45.

<sup>9</sup> The Council assured the Inspectors that it would conduct a new Green Belt Review “to capture both additional strategic and smaller-scale parcels of land ...” (paragraph 37) and that “The Council would not seek to limit consideration of sites coming forward or their ability to add to or replace existing locations identified in the plan ...” (paragraph 38), Ref: ED41 2<sup>nd</sup> July 2020

<sup>10</sup> Ref: APP/B1930/W/21/3279463 Burston Nurseries, Chiswell Green

7.8 Thus, the fact that the Application Site wasn't shortlisted in a heavily-criticised GB Review and, consequently, not included in a now-redundant Site Allocations Policy, is immaterial. Instead, weight should be put on the inevitable fact that large unallocated sites in the Green Belt must be developed if the Council is to make any impression on the affordable housing shortfall, let alone meet current and future housing needs .. and, crucially, priority should be given to "brownfield sites".

7.9 In addition to the inevitable harm by inappropriateness and to openness, it is essential to consider the specific characteristics of the Application Site in respect of: the Purposes of the Green Belt; Landscape and Visual Amenity; and other potential harm.

#### The Purposes of the Green Belt

7.10 In respect of the five purposes served by the Green Belt as set out in paragraph 138 of the NPPF:

- a) To check the unrestricted sprawl of large built-up areas – the proposal will be restricted in extent to the mature trees that border the existing brownfield site: in my view, no sprawl of a large built-up area will take place;
- b) To prevent neighbouring towns merging into one another – the site is already developed and will bring development no nearer to Park Street or St Albans: no merging will occur;
- c) To assist in safeguarding the countryside from encroachment – as above, the site is already developed: no encroachment into the countryside will occur;
- d) To preserve the setting and special character of historic towns – given the distance from St Albans, the scheme will have no impact on its setting or character; and
- e) To assist in urban regeneration, by encouraging the recycling of derelict and other urban land – there are few opportunities to recycle derelict and other urban land in a District where the Council has long-since acknowledged that development in the Green Belt is unavoidable and necessary. It must be noted, however, that the scheme involves the recycling of a substantial volume of redundant buildings and derelict land.

#### Landscape Character and Visual Amenity

7.11 The Site isn't subject to any landscape designation in the Development Plan<sup>11</sup>. As confirmed in the attached Landscape and Visual Impact Assessment (UBU Design, May 2022), *"There are no major landscape elements and features within the site as it is primarily hardstanding, tracks and waste grassland"* (UBU Design, para. 5.6).

7.12 I draw the Council's attention to the LVIA which states:

*"The findings of the landscape and visual assessment concludes that there will be no long term significant adverse effects arising as a result of a proposed residential development and it can be considered as being beneficial due to the landscape enhancements that will be brought into a site which, apart from its retained boundaries, is currently limited in any valuable vegetation or ecological diversity."*

(UBU design, para. 7.4)

7.13 Finally, on this subject, it's acknowledged that the Site sits within an area identified in Fig 21A and Policy 143A of the 1994 Local Plan as part of Watling Chase Community Forest. However, As confirmed by Inspector Ware in Appeal ref: APP/B1930/W/15/3051164, paragraph 221, Policy 143a is a welcoming policy for landscape conservation that doesn't seek to restrict development proposals such as this.

7.14 In respect of Landscape Character and Visual Amenity, therefore, the limited harm that will be caused is to an artificial landscape with little visual appeal. Furthermore, this harm must be weighed in the context of the lack of a landscape designation and the absence of any conflict with a specific Development Plan policy.

#### Other Potential Harm

7.15 **Traffic and Highways safety** – Please refer to the Transport Assessment, Travel Plan, Highways Response and Road Safety Audit Response Report. These were produced following a formal Pre-Application consultation process with HCC as the highways authority and its advisers, WSP.

7.16 The Transport Assessment and Highways Response confirms that the impact of the development on local junctions for the year 2035 *"has been shown to be minimal"* (paragraphs 7.6 and 2.39, respectively).

7.17 The RSA Response sets out how the concerns raised by Allen Transport Consultancy, acting independently, have been or can be addressed: appropriate solutions can be delivered by suitable Conditions and/or at the Reserved Matters stage.

7.18 As the impact of road safety is considered acceptable and because the impact on the road network won't be severe then, in accordance with Paragraph 111 of the NPPF, the development shouldn't be prevented or refused on highways grounds.

7.19 **Ecology** – An initial Ecology Appraisal (Cherryfield Ecology, January 2022) found evidence of bats and the possibility of reptiles. Consequently, additional surveys were carried out.

<sup>11</sup> Policy 105 'Landscape Development and Improvement' wasn't 'Saved' in 2007.

7.20 The subsequent Emergence and Activity Bat Survey (Cherryfield Ecology), informed by on-site surveys in June and July 2022 (para 3.6 and Table 5), sets out its Conclusions and Recommendations in Section 4. This includes recommending an application for a Natural England Protected Species Licence be applied for post the granting of permission. The Applicant is content for the recommendations to inform suitable Conditions.

7.21 The subsequent Full Common Reptile Survey (Cherryfield Ecology), informed by on-site surveys between March and May, found a single slow worm on the edge of the woodland adjacent to the site. Consequently, the only recommendations are for precautionary actions to be taken prior to the development taking place (paragraph 4.3), which are acceptable to the Applicant.

7.22 **Flooding** – Please refer to the Flood Risk Assessment and Sustainable Drainage Assessment (GeoSmart Information, Feb 2022). The FRA identifies the flood risk as “Very low to low” concluding: (p.1)

*“The Site is located within fluvial Flood Zone 1 (low probability). Taking into consideration the presence of defences, the risk of flooding from rivers and sea is classed as Very Low. The Site is at a Very Low to Low risk of pluvial flooding and a Negligible risk of groundwater flooding.”*

7.23 The SDA states (p.3):

*“The proposed SuDS strategy would ensure surface water runoff is stored on-site in SuDS features for the 1 in 100 year event including a 40% allowance for climate change and will not cause flooding to the proposed development in accordance with DEFRA’s non-statutory technical standards (DEFRA, 2015).”*

7.24 By way of its letter dated 8<sup>th</sup> April 2022, Thames Water confirmed – subject to the final scheme being in line with the details provided at the Pre-Application stage – that there is sufficient capacity for both Foul Water and even Surface Water if the latter is essential and in line with the disposal hierarchy (Thames Water ref: DS6091896).

7.25 Consequently, the scheme will cause no harm by way of increasing flood risk on the Site or on neighbouring land.

7.26 Suitable Conditions can be applied by the Council at this stage as set out in Appendix A.

7.27 **Noise** – Whilst Local Plan Policy 83 Traffic Noise wasn’t Saved in 2007 and, so, is no longer part of the Development Plan, the NPPF explicitly and implicitly references noise as an element of households’ living environment (see paras 174 and 185). Consequently, a Noise Assessment (Spectrum, March 2022) was conducted to consider the potential harm from noise that new residents might experience “... to inform

*the subsequent design constraints at the site and assist in the early consideration site mitigation supporting good acoustic design” (Spectrum, paragraph 5.2). It found that: “... the most effective mitigation measure to reduce noise levels across the site has been determined to be 3m high acoustic screen installed along the southern boundary of the proposed residential area, bounding the wooded area to the south” (Spectrum, paragraph 5.2).*

7.28 Spectrum’s analysis and recommended mitigation informed the Indicative Proposed Layout, to support the conclusion that: “acceptable internal and external noise levels can be achieved at this site in accordance with the criteria set out in BS 8233” (Spectrum, Section 7, final paragraph). The Spectrum report added that “Final details of any mitigation to be installed, however, would be subject to detailed design”, confirming that the noise mitigation issue will be addressed in more detail at the Reserved Matters Stage.

7.29 **Air Quality** – The Site is not in an Air Quality Management Area. The demolition of the existing structures and the construction of new homes and infrastructure are likely to generate dust and should be subject to a suitable Condition to minimise and mitigate such potential air pollution.

7.30 It must also be noted that at the Reserved Matters stage, each home will be provided with an EV charging point in accordance with Policy 5 of Hertfordshire County Council’s LTP4. This recognises the importance of minimising emissions from traffic and acknowledges the Government’s policy to ban the sale of new petrol and diesel cars and vans from 2030<sup>12</sup>.

7.31 **Education** – Over 100 new households will inevitably include children who will require place at nurseries and schools. It is anticipated that Hertfordshire Growth and Infrastructure will seek a proportionate and justified contribution towards education which can be secured via a suitable Planning Obligation.

7.32 **Healthcare** – Over 100 new households will also increase the number of patients attending hospitals and GP surgeries. It is anticipated that Herts Valley Clinical Commissioning Group will seek a proportionate contribution towards healthcare provision which can be secured via a suitable Planning Obligation.

7.33 **Historic Environment** – Paragraph 195 of the NPPF states, in part, “Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.”. The Site isn’t a heritage asset and cannot be seen from any heritage asset. In addition, it isn’t identified as an Archaeological Site (whether for Local Preservation or Subject to Recording Conditions). Consequently, in accordance with the NPPF, neither a desk-based assessment nor a field evaluation is required.

<sup>12</sup> Outcome and Response to ending the sale of new petrol, diesel and hybrid cars and vans. 14<sup>th</sup> July 2021 [Outcome and response to ending the sale of new petrol, diesel and hybrid cars and vans - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/outcome-and-response-to-ending-the-sale-of-new-petrol-diesel-and-hybrid-cars-and-vans)

7.34 **Minerals** – The Site is within the Sand and Gravel Belt as identified in HCC’s Minerals Local Plan 2002-2016. Minerals Policy 5 ‘Minerals Sterilisation’ states, *inter alia*, that “*Mineral extraction will be encouraged prior to other development taking place where any significant mineral resource would be sterilised ...*” (my underlining). It continues that HCC would object to proposals unless:

- “i) the land affected does not contain potentially workable mineral deposits; and/or*
- ii) there is an overriding need for the development; and*
- iii) the mineral cannot practically be extracted in advance.”*

7.35 It must be noted, therefore, that development – including residential development – has already taken place on this Site such that the site the mineral resource, significant or otherwise, has already been sterilised. Consequently, mineral extraction cannot take place “*prior to other development taking place*”. Given the presence of residential dwellings across a significant part of the site, it is considered clear that the mineral cannot practically be extracted in advance of the development beginning given the unacceptable impact on the residents. Given, too, the over-riding need for market and affordable housing in a District with a housing crisis, I consider items ii) and iii) of Policy 5 apply and, thus, an objection to the scheme isn’t justified. This is the same conclusion that was arrived at by decision-makers when granting permission for residential development on the Sand and Gravel Belt in St Albans without extraction at: Beaumont School; Oaklands College; Bullens Green Lane; Park Street; and Burston Nurseries, when concluding that “very special circumstances” existed to outweigh harm to the Green Belt and “*any other harm*”.

7.36 The Council may wish to consider a suitable Condition in respect of opportunistic extraction, see Appendix B

7.37 **Prejudicial to plan-making** – Paragraph 50 of the NPPF states: “*Refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination ...*”. The Council’s next draft plan is yet to be submitted for examination and so any objection on the grounds of prematurity would be unjustified.

#### Conclusion on Harm to the Green Belt and Other Harm

7.38 Whilst it’s clear that the scheme causes substantial harm to the Green Belt by way of inappropriateness and the impact on openness, in my view the potential harm to landscape character and visual amenity should be seen as very limited given the brownfield nature of the Site.

7.39 Expert reports conclude that the potential harm to or from: traffic and highway safety; ecology; flooding; and noise, are limited and acceptable.

7.40 The impact on education and healthcare can be mitigated by proportionate contributions to these public services. There is no harm to the historic environment or to the plan-making process and items ii) and iii) of Policy 5 of HCC’s Minerals Local Plan can be seen to apply because of the existing development, including homes.

## 8 Other Considerations – the Benefits of the Scheme

8.1 Having established that the Scheme will inevitably cause harm to the Green Belt, this Section explores the “other considerations” to be taken into account when carrying out the Planning Balance.

### **Market and Affordable Housing inc. self-build**

8.2 As set out above, there is a significant and persistent housing crisis in St Albans. The only hope of significant numbers of homes – and especially affordable homes – being delivered is via large Green Belt schemes approved on the basis of “very special circumstances”.

8.3 That the delivery of new housing can contribute significantly to the demonstration of “very special circumstances” is undeniable. In June 2021, the Council<sup>13</sup> lost an Appeal on a greenfield Green Belt Site off Bullens Green Lane, Colney Heath<sup>14</sup>. That scheme, like this, was for housing only (up to 100 dwellings), i.e. unlike other Appeal losses at Beaumont School and Oaklands College, for instance, there were no other site-specific benefits such as new school and college buildings. In granting permission, Inspector Masters MA (Hons) MRTPI, concluded:

*“However, these appeals involves (sic) two local authority areas, both of which have acute housing delivery shortages and acute affordable housing need. The proposals would make a contribution towards addressing these needs in the form of market, self build and affordable housing in both WHBC and SADC. I have attached very substantial weight to the provision of both market housing and affordable housing.”*  
Paragraph 78.

8.4 In July 2021, the month after the Bullens Green Lane Decision, the Council itself Granted permission for another housing-only scheme (up to 150 dwellings) on a greenfield Green Belt site off Harpenden Road<sup>15</sup>. In the Officer Report to the Planning Referrals Committee, the Council wrote:

“8.7.2. SADC currently has a housing land supply of 2.5 years from a base date 1 April 2020. It is acknowledged that 2.5 years is substantially below the required 5 years. There is also a clear and pressing need for affordable housing within the District.

8.7.3. The provision of housing therefore weighs heavily in favour of the proposals. How much weight is a matter of planning judgement, informed by material considerations. In this regard, the recent appeal decision at Colney Heath (appeal by Canton Limited) is a relevant consideration. This decision was issued on 14 June 2021 and therefore considers the very same housing and affordable housing position in the District as applies in relation to the application subject of this committee report. Some data, such as ward specific data is not relevant, but the Council acknowledges that there is pressing need across the

District in its entirety. The Council did not contest the data on housing need submitted by the appellant to the Inquiry. The Inspector concluded that:

*“49. There is therefore no dispute that given the existing position in both local authority areas, the delivery of housing represents a benefit. Even if the site is not developed within the timeframe envisaged by the appellant, and I can see no compelling reason this would not be achieved, it would nevertheless, when delivered, positively boost the supply within both local authority areas. From the evidence presented in relation to the emerging planning policy position for both authorities, this is not a position on which I would envisage there would be any marked improvement on in the short to medium term. I afford very substantial weight to the provision of market housing which would make a positive contribution to the supply of market housing in both local authority areas.”*

...

*“52. In common with both market housing and affordable housing, the situation in the context of provision of sites and past completions is a particularly poor one. To conclude, I am of the view that the provision of 10 self build service plots at the appeal site will make a positive contribution to the supply of self build plots in both local planning authority areas. I am attaching substantial weight to this element of housing supply.*

...

*“54. The persistent under delivery of affordable housing in both local authority areas presents a critical situation. Taking into account the extremely acute affordable housing position in both SADC and WHBC, I attach very substantial weight to the delivery of up to 45 affordable homes in this location in favour of the proposals.”*

8.7.4. There is no material reason for officers to apply a different weighting to the proposals subject of this officer’s report. The housing situation and the emerging plan situation are the same. There is no reason to think that the site cannot come forward immediately on receipt of full planning permission and significantly boost local supply. Accordingly, very substantial weight is attached to the delivery of market and affordable housing, and substantial weight to the delivery of self build”

8.5 The Council’s approach reflects the fact that whilst all planning decisions must be made on the individual merits of each application, there is an acknowledged public interest in consistent decision making in planning. This was confirmed in *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government and another* [2014] EWHC 754 (Admin), *per* Lindblom J (as he then was), at [19(7)]:

*“Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system. ...: see, for example, the judgment of Pill LJ Fox Strategic Land and Property Ltd v Secretary of State for*

<sup>13</sup> The Appeal was against St Albans Council and Welwyn Hatfield Council as the Site straddled the District boundary.

<sup>14</sup> Appeal Refs: APP/B1930/W/20/3265925 and APP/C1950/W/20/3265926

<sup>15</sup> Ref: 5/2021/0423, Granted Conditional Permission, July 2021.



*Communities and Local Government [2013] 1 P & CR 6, paras 12–14, citing the judgment of Mann LJ in North Wiltshire District Council v Secretary of State for the Environment (1992) 65 P & CR 137, 145.”*

8.6 Via its Report – and Decision – on the Harpenden Road site, the Council retained “public confidence” in the planning system by applying the same weighting to the delivery of market and affordable housing that had been applied at Bullens Green Lane. At least the same weight should be applied in this case, if not more because the housing land supply position has worsened since (from 2.5 years to 2.2).

#### **Use of a brownfield site**

8.7 In the conclusions to both the Bullens Green Lane site and the site off Harpenden Road, the decision-makers considered that housing alone (market, affordable and self-build), outweighed the harm to those undeveloped, greenfield Green Belt sites. In this case, of course, there is far less harm to the Green Belt and to visual amenity precisely because the Site is previously developed. That’s because the very clear benefit of building on brownfield site is that every house delivered on it means one less dwelling has to be built on a greenfield site.

#### **Increased Biodiversity**

8.8 Given the paucity of flora at the Site (see The Ecology Appraisal (Cherryfield Ecology, 2022), and the LVIA (UBU Design, 2022), there is considerable opportunity to significantly increase biodiversity through tree planting, open spaces and the landscaping of over one hundred residential gardens. The intention is to deliver a Biodiversity Net Gain (“BNG”) significantly higher than 10%, the details of which will be confirmed at the Reserved Matters Stage and secured through a s106 Agreement. That such an approach is appropriate was confirmed by St Albans Council in its Report to the Planning Referrals Committee, July 2021, in respect of the Outline Application off Harpenden Road (Ref: 5/2021/0423), when the Officers wrote:

*“... the most appropriate time to assess biodiversity loss and gain, and to determine the most appropriate compensation, is when the full details of the proposed development are known.”*

8.9 That the Council’s approach is correct was confirmed:

- by Dr Nick White, Principal Adviser on Net Gain for Natural England, when he explained during an RTPI Webinar on 18<sup>th</sup> January 2022, that there is no regulation requiring BNG from outline schemes; and

- at a meeting of the Council’s Local Plan Advisory Group on 1<sup>st</sup> March 2022, when Lynne Ceeney, Team Leader, Hertfordshire County Council LEADS (Landscape, Ecology, Archaeology, Design quality and Sustainability), clarified that the requirement for the 10% BNG doesn’t become mandatory until November 2023.

8.10 In the meantime, therefore, it is perfectly reasonable for the Council to consider applying a suitable pre-commencement Condition<sup>16</sup> in respect of BNG.

#### Conclusion on Other Considerations

8.11 The use of brownfield land and the opportunity to significantly increase biodiversity are, in my view, significant benefits which should be taken into account in the planning balance. However, in a District with a housing crisis and where the Council, the most significant benefit of the proposal is the delivery of market, affordable and self-build homes, as was the case at Bullens Green Lane and Harpenden Road.

<sup>16</sup> During the RTPI webinar on 18<sup>th</sup> Jan 2022, Mr Tom Graham, a barrister and former Chief Solicitor to North Herts Council suggested a Grampian-style condition to guarantee the 10% BNG, such as “The development may not begin unless ...”

## 9 The Planning Balance

- 9.1 Substantial weight should be attached to the harm caused by reason of inappropriateness and to openness. However, the evidence demonstrates that only very limited weight should be attached to the impact on the landscape character and visual amenity of the area and to other harm.
- 9.2 In a District with a housing crisis, very substantial weight should be given to the provision of new housing, just as it was at other Green Belt sites in the District where Permission for housing-only schemes have been granted on the basis of “very special circumstances”.
- 9.3 Substantial weight should also be given to the re-development of a brownfield site and to the potential of significantly increasing biodiversity via tree planting and landscaping.
- 9.4 When considered collectively, I submit that very special circumstances clearly exist to allow this scheme to be granted.

## 10 Obligations and Draft Section 106 Agreement

10.1 Paragraph 57 of the NPPF state that planning obligations may only be sought “*where they meet all of the following tests:*

- a) necessary to make the development acceptable in planning terms;*
- b) directly related to the development; and*
- c) fairly and reasonably related in scale and kind to the development.”*

10.2 A Draft Head of Terms for a S106 is included with the application documents.

## 11 Conclusion

- 11.1 This Planning Statement has carefully assessed the need for residential development in the context of a District with the oldest Local Plan in England and, as a direct consequence, a significant and persistent housing crisis.
- 11.2 The Statement acknowledged that the scheme is inappropriate development for which “very special circumstances” must be demonstrated. It then carefully considered the harm to the Green Belt on this unattractive brownfield site, and other potential harm, and evaluated the other considerations in order to inform a planning balance.
- 11.3 The clear conclusion is that, in accordance with Policy 1 of the Local Plan, Policy S1 of the St Stephen Neighbourhood Plan and paragraph 147 of the NPPF, “very special circumstances” exist to allow this scheme to be approved.

Brian Parker  
BA MSc MRTPI  
September 2022

Appendix A – Draft Conditions in respect of drainage  
Appendix B – Draft Condition in respect of minerals.

Appendix A – **Draft** Conditions in respect of drainage

1) The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment and Sustainable Drainage Assessment produced by GeoSmart, including the following mitigation measures detailed within the FRA.

1. Limiting the surface water run-off generated by the critical storm events so that it will not exceed the surface water run-off rate of TBC l/s during the 1 in 100 year event plus 40% of climate change event.
2. Providing storage to ensure no increase in surface water run-off volumes for all rainfall events up to and including the 1 in 100 year + climate change event providing a total storage volume in attenuation pond.
3. Discharge of surface water from the private drainage network into the existing Thames Water Surface Water Sewer.

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

REASON: To prevent flooding by ensuring the satisfactory disposal and storage of surface water from the site. To reduce the risk of flooding to the proposed development and future occupants, to comply with the NPPF 2021.

2) No development approved by this planning permission shall take place until a detailed surface water drainage scheme has been submitted to, and approved in writing by, the local planning authority.

The surface water drainage scheme should include;

1. Detailed, updated post-development calculations/modelling in relation to surface water for all rainfall events up to and including the 1 in 100 year return period, this must also include a +40% allowance for climate change.
2. A detailed drainage plan including the location and provided volume of all SuDS features, pipe runs and discharge points. If areas are to be designated for informal flooding these should also be shown on a detailed site plan.
3. The overland flow route through the site should be managed to ensure that it does not cause flood risk to the proposed development.
4. Exceedance flow paths for surface water for events greater than the 1 in 100 year including climate change allowance.
5. Detailed engineered drawings of the proposed SuDS features including cross section drawings, their size, volume, depth and any inlet and outlet features including any connecting pipe runs. This should include details regarding the connection into the existing ordinary watercourse.
6. Final detailed management plan to include arrangements for adoption and any other arrangements to secure the operation of the scheme throughout its lifetime.

The scheme shall be fully implemented and subsequently maintained, in accordance with the timing / phasing arrangements embodied within the scheme or within any other period as may subsequently be agreed, in writing, by the local planning authority.

REASON: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site. To reduce the risk of flooding to the proposed development and future users. To comply with the NPPF.

3). Prior to works commencing on site, details of how the development will incorporate a mix of rainwater and greywater harvesting, and water efficient fixtures, fittings and landscaping to achieve compliance with the target of TBC/litres/person/day must be submitted to the Local Planning Authority for approval. The development will be constructed in accordance with the approved details and maintained in perpetuity.

REASON: To improve that the additional dwellings do not adversely affect the ability to supply water to the area as a whole, and ensure the meet the definition of sustainable development with regard to the efficient use of water, as required by the National Planning Policy Framework.

## Appendix B – Draft Condition in respect of minerals

Prior to the commencement of development/excavation or ground works in each phase of the development a minerals management plan for the sustainable extraction of minerals shall be submitted to and approved in writing by the Local Planning Authority.

Thereafter, the relevant phase or phases of the development must not be carried out other than in accordance with the approved minerals management plan. The minerals management plan must include the following:

- a) An evaluation of the opportunities to extract minerals (sand and gravel, hoggin and other soils with engineering properties); and
- b) A proposal for maximising the extraction of minerals, providing targets and methods for the recovery and beneficial use of the minerals; and
- b) a method to record the quantity of recovered mineral (re-use on site or off-site).

REASON: In order to prevent mineral sterilisation, contribute to resource efficiency, promote sustainable construction practices and reduce the need to import primary materials in accordance with Policy 5 of the adopted Hertfordshire Minerals Local Plan Review and the National Planning Policy Framework'