

CD 2.4

Planning Balance Proof of Evidence of Brian Parker BA MSc MRTPI

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

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Outline application (access sought) for the demolition of existing buildings, the construction of up to 115 dwellings, the creation of a new access and associated highways improvements.

SADC Ref: 5/2022/2443

PINS Ref: APP/B1930/W/24/3338501

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1.0 **PERSONAL BACKGROUND AND INTRODUCTION**

1.1 My name is Brian Parker. My credentials are:

a) I hold a BA (Hons) degree in Geography from Leicester University (1985) and an MSc in Urban and Rural Planning from the University of the West of England (2017). I am a Chartered Member of the Royal Town Planning Institute;

b) I have 15 years' experience in Town Planning and act for a variety of clients, including householders, developers, agents and landowners; and

c) I am particularly familiar with the St Albans District and, since 2009, with the Council's efforts to replace its extant Local Plan, the 1994 Local Plan Review.

1.2 I am a Director of MRP Planning, an independent planning consultancy based in St Albans where I have lived since 1990.

1.3 During my career I have provided advice and support on a wide range of residential planning proposals including a significant number of planning applications and appeals and the promotion of sites through the Local Plan process.

1.4 I was instructed by Mr Rudkin of JK Rudkin Builders Ltd (the Appellant) to submit a planning application to develop a brownfield site under his control on Lye Lane, Bricket Wood and am now instructed to co-ordinate the submission of evidence at this Appeal and, in particular, to represent the Appellant on the planning balance in relation to the Appeal Proposal.

1.5 The evidence that I have prepared and have set out for this appeal in this Proof of Evidence is to the best of my knowledge true and is given in accordance with the guidance of my professional institution, the Royal Town Planning Institute (RTPI). I can confirm that the opinions expressed are my genuine professional opinions.

1.6 Because this Proof of Evidence sets out two cases (primarily, that the proposal is appropriate development and, in the alternative, that if found to be inappropriate development that Very Special Circumstances apply), it is, by necessity longer than normal. It should be read alongside

my Summary Proof, together with those other Proofs comprising the case for the Appellant from which I have drawn and which are referenced in my evidence.

2.0 **THE APPEAL SITE AND PROPOSAL**

2.1 This appeal is against the failure by St Albans City and District Council (“the Council”) to publish a decision in respect of an Outline Planning Application, with all matters reserved except for access, for up to 115 dwellings (net 82), including 35% affordable housing (“the Appeal Proposal”) on land at the eastern side of Lye Lane, Bricket Wood, St Albans AL2 3TF (“the Appeal Site”).

The Appeal Site

2.2 The Appeal Site is in the Green Belt, located on the eastern side of Lye Lane, Bricket Wood, immediately to the north of Blackgreen Wood and the M25 (the motorway is inaccessible from Lye Lane) - see Fig. 1 below (CD 1.28). Unlike land on the opposite side of Lye Lane, which is undeveloped, open countryside, the Appeal Site is Previously Developed Land (“PDL”), or “brownfield land”. This much is clear from its history (first as a cricket ground; then as a sports and social facility; and more recently through housing development and a paintball facility), and is readily apparent on one’s first visit to the site. In July 2023, the Council expressly acknowledged that “*the site can be regarded as previously developed land ...*” (CD 2.1 [33]).



Fig. 1 Site Location Map, Rev A (CD 1.28)

2.3 Today, the brownfield Appeal Site comprises three distinct sections:

- a) A number of vacant and derelict buildings around a large area of hardstanding, built over the years to accommodate, variously, a cricket club house, country club, and gymnasium;
- b) A residential area comprising 33 dwellings and car parking spaces; and
- c) A paintball operation with numerous outbuildings, containers and *ad hoc* structures, together with an access road, substantial areas of hardstanding and artificial grass (the paintball operation extends south beyond the Appeal Site and into the Ancient Woodland/Local Wildlife Site).

2.4 The Appeal Site is heavily-screened from external views. As further elaborated upon in the Landscape evidence, the Site is bound by mature trees on three sides. The length of the eastern boundary and, most of the southern boundary abuts the northernmost part of Blackgreen Wood which was bisected when the M25 was constructed. Most of Blackgreen Wood is ancient woodland and protected by a TPO (no. 1666, designated 9th November 2016).

2.5 Nevertheless, the majority of the northern half of Blackgreen Wood has a Lawful Development Certificate (“LDC”) (Council Ref: Ref: 5/2017/2801; Appeal Ref: APP/B1930/X/18/3202577) for paintball activities (see Fig. 2 below). These activities will cease if the Appeal Proposal is granted. Rather than causing harm to an ancient woodland, the proposal will provide a significant, positive benefit.



Fig. 2 The red hatching on the Site Plan demonstrates the extent of paintball activities. The southern half extends into the Ancient Woodland/Local Wildlife Site (CD 2.41.).

2.6 Blackgreen Wood is also a Local Wildlife Site (“LWS”), a non-statutory site which is not referenced in the Council’s Local Plan (extant or emerging), or on its Policies Map. The Wildlife Trusts define LWSs as (CD 2.42 [2.1]):

“... sites with ‘substantive nature conservation value’. They are defined areas, identified and selected locally for their nature conservation value, based on important, distinctive and threatened habitats and species that have a national, regional and importantly, a local context.”

2.7 The western boundary of the Appeal Site is formed by Lye Lane, which has two distinct characters:

a) North/north-west of the Appeal Site, towards A405 North Orbital Road (and, from there, to J21a of the M25) Lye Lane is single-lane with few passing places, mostly poorly-maintained with numerous potholes, and serves large residential dwellings on its eastern side; and

b) From the Appeal Site southwards to Bricket Wood, Lye Lane is well-constructed and better maintained, wide enough for two vehicles to pass (providing there are no pedestrians in the road) and serves both the Appeal Site and smaller residential dwellings on both sides.

2.8 The Appeal Site is close to the village of Bricket Wood which is identified as a “large village” in Policy 2 of the St Albans District Local Plan Review 1994 (“the Local Plan”). The following are to be noted regarding the proximity of the Appeal Site to this “large village”:

a) First, as set out at [3.16] of the Transport Assessment submitted in support of the Appeal Application (CD 1.14): Bricket Wood provides a wide range of local amenities including a food store, a pharmacy, cafes, restaurants and public houses, a GP surgery, a library and schools within a short distance of the Appeal Site via Lye Lane, albeit that sustainable access to these facilities would require improvements to pedestrian routes via the creation of a footpath; and

b) Secondly, as noted at [3.12-3.15] of the Transport Assessment, Bricket Wood is itself linked by public transport to St Albans and Watford (and other towns) via the 361 and 635 buses and by the Abbey Flyer railway line.

2.9 Accordingly, once connected to the junction of Lye Lane and West Riding by a suitable footpath, the Appeal Site is a very sustainable location for new residential development.

2.10 Further details of the Appeal Site are set out in the Design & Access Statement (“DAS”) (CD 1.22) and the Landscape and Visual Impact Assessment (“LVIA”) (CD 1.11).

The Appeal Proposal

2.11 As noted above, the Appeal Application is for Outline Planning Permission¹. Consequently, whilst detailed approval of “Access” is sought now, all other details of “scale”, “layout”, “landscaping” and “appearance” will be dealt subsequently through one or more Applications for the Approval of Reserved Matters.

2.12 On this point, the Planning Practice Guidance (“PPG”) explains that:

¹ As provided for by Section 92 the Town and Country Planning Act 1990.

*“An application for outline planning permission allows for a decision on the **general principles** of how a site can be developed. Outline planning permission is granted subject to conditions requiring the subsequent approval of one or more ‘reserved matters’.”*

[Emphasis Added]

- 2.13 Thus, statute and Government guidance allow for the general principles of a scheme’s acceptability to be established at the Outline Stage, without the Applicant/Appellant having to submit detailed information which do not speak to the ‘principles’ of a scheme and are more appropriate for the Reserved Matters Stage, when matters such as detailed “scale” and “layout” are to be approved.
- 2.14 A Local Requirements Checklist setting out what the Council formally require for an application with some matters reserved, was included with the Application documents (CD 1.25).
- 2.15 The Appeal Proposal is to demolish all the existing buildings and structures on the Appeal Site, including 33 existing dwellings, and build up to 115 new dwellings – offering, therefore, a net gain of up to 82 family homes in a District with a chronic and worsening housing crisis, particularly with regard to affordable housing. The figure of “up to 115 dwellings” provides flexibility in case the Council seeks a higher-than-usual proportion of 1-bedroom dwellings, to reflect that fact that all but one of the existing dwellings to be replaced are, in fact, 1 bedroom.

Indicative Housing Mix

- 2.16 The indicative layout (Proposed Site Layout Rev. C, see Fig. 3 below) shows how the Appeal Site might accommodate a development with a more common housing mix. The 109 dwellings (a density of 34 dwellings per hectare, the same as many of the sites allocated in the Emerging Local Plan), comprise 21 x 1-bed; 35 x 2-bed; 34 x 3-bed, 12 x 4-bed; and 7 x 5-bed. This indicative design seeks to demonstrate the ability of the Appeal Site to offer a good living environment including sufficient levels of open space. An alternative scheme of 115 dwellings to better reflect the loss of the existing dwellings, could comprise: 37 x 1-bed; 36 x 2-bed; 34 x 3-bed and 8 x 4-bed (see Fig. 4 below).



Fig. 3 Indicative Proposed Site Layout, Rev. C (CD 1.4)

2.17 The layout, detailed design of the development, the landscape scheme, the provision and location of open space and the actual mix of dwellings and, consequently, the quantum (of 115 or fewer), would be the subject of a Reserved Matters Submission.

2.18 The precise location of the acoustic screen is part of the indicative layout and may also change at the Reserved Matters stage. The Officer Report correctly identified that three detached dwellings in the Indicative Proposed Site Layout Rev. C, where in an area where noise would be unacceptable (CD 3.1 [8.4.17]). At the Case Management Conference on 18th April (“the CMC”), it was agreed that the Appellant would submit further evidence to address this concern. Consequently, an Alternative Indicative Proposed Site Layout was produced (CD 2.4.5) – see Fig 4 below, which the Council has the opportunity to address in a Rebuttal.



Fig. 4 Alternative Proposed Site Layout (CD 2.4.5)

- 2.19 The alternative scheme helps demonstrate that many elements of which the Council and others have expressed concern are matters most appropriately considered at the Reserved Matters stage.
- 2.20 The tenure mix (of any alternative) proposed is 65% open market housing (75 dwellings) and 35% affordable housing (40 dwellings), of which 25% will be First Homes (10 dwellings). 10% of the new dwellings will be self-build (12 dwellings).
- 2.21 The mix of house sizes and tenures is consistent with the principles of good planning and it would be appropriate to apply a Condition to secure a mix of dwellings to include market and affordable homes of different sizes. The Section 106 Agreement expressly anticipates changes to the quantum and mix of houses.

Access and Off-Site Highways Works

- 2.22 Access is a matter for approval and was set out in detail in the Transport Assessment, Travel Plan and accompanying Highways Plans and Reports, produced subsequent to a Pre-Application exercise with the Highways Authority, Hertfordshire County Council (“HCC”).

2.23 From the outset, the Appellant’s highways specialists, Paul Mew Associates (“PMA”), insisted that the construction of a footpath from the Appeal Site to the junction with West Riding was necessary to make the Appeal Site a sustainable location.

2.24 HCC had raised concerns about the feasibility of a footpath along the preferred route. However, after being unable to progress potential alternatives satisfactorily with HCC, and subsequent to the Council’s statement that it would refuse the scheme on Green Belt grounds, the Appellant commissioned additional work to support PMA’s original proposal. This included collaboration between PMA, Conisbee (structural and civil engineers), and David Clarke (an arboriculturalist), to design a footpath which struck the most appropriate balance between:

- a) Delivering a safer walking option for existing and future residents;
- b) Avoiding any harm to trees on the adjoining Ancient Woodland/Local Wildlife Site (eastern side of Lye Lane);
- c) Minimising harm to trees on the western side of Lye Lane; and
- d) Maintaining the character of the southern part of Lye Lane.

2.25 David Clarke’s Arboricultural Method Statement (CD 2.4.3), sets out how the footpath can be constructed without the loss of any trees or damage to their roots. He concludes:

“11.4 Retained trees will be protected during the site development. This report sets out how retained trees are an important part of the development of the site and how protection and retention of trees will be achieved. The effect on trees from the proposals will be minimal given the proposed site layout and conditions and providing that the Arboricultural Method Statement is implemented.

11.5 The development is therefore acceptable in arboricultural terms and should receive planning consent.”

- 2.26 As set out in the DAS (CD 2.1 [65b]), whilst the footpath will not encroach on land designated as Ancient Woodland and it will require development on Common Land. Consequently, the use of a Grampian Condition requiring an application to the Secretary of State via the Planning Inspectorate is appropriate.
- 2.27 Following the CMC, PMA and Conisbee have engaged positively and collaboratively with HCC. The resulting revisions to the design of the footpath (including materials and floor-level lighting) and the introduction of a passing bay are covered in details in the Proof of Evidence of Nick Ferguson and the associated appendices (CD 2.11).

Conditions and Section 106 Agreement

- 2.28 Commitments to undertake specific actions at a later and more appropriate stage can be secured either by Condition or by the accompanying Section 106 agreement.

3.0 THE DEVELOPMENT PLAN

- 3.1 Section 38(6) of the Town and Country Planning Housing Act 1990 requires decisions to be made in accordance with the Development Plan unless material considerations indicate otherwise.

- 3.2 The Development Plan for St Albans comprises:

- a) The saved policies of the 1994 Local Plan Review (CD 4.1);
- b) The Hertfordshire Minerals Local Plan (2007);
- c) The Waste Core Strategy & Development Management Policies DPD (2012);
- d) The Waste Site Allocations DPD (2014); and
- e) The St Stephens Neighbourhood Plan (2022) (CD 4.2).

- 3.3 Documents b) to d) are not directly relevant to this Appeal.

3.4 Before identifying the key development plans policies, it is important to acknowledge a key decision of the Supreme Court² which explained:

“Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment.”

3.5 In other words, a decision-maker must accept that not every proposal can accord with every policy of a Plan, because policies can pull in different directions.

The Local Plan Review, 1994 (“The Local Plan”)

3.6 As set out in my Planning Statement (CD 1.23 [5.1]), the extant Local Plan is approaching 30 years of age and its Housing Land Supply policies expired in 2001. Furthermore, attempts to replace this Plan with the following have all ended in failure:

- a) The Local Development Framework Core Strategy, 2006-2021;
- b) The Core Strategy Spatial Strategy 2011-2028;
- c) The Strategic Local Plan 2011-2031; and
- d) The Local Plan 2020-2036.

3.7 Notably, however, each of these draft Plans, like the Emerging Draft Plan, concluded that exceptional circumstances existed to release Green Belt land for new housing.

3.8 The 30-year-old policies which are relevant to this Appeal are:

² *Tesco Stores Limited v Dundee City Council* [2021] UKSC 13 [2012] PTSR 983, Lord Reed [19] (CD 6.8)

POLICY 1 - Metropolitan Green Belt
POLICY 2 - Settlement Strategy
POLICY 34 - Highways Considerations in Development Control
POLICY 35 - Highways Improvements in Association with Development
Policy 36a - Location of New Development in relation to Public Transport Network
POLICY 39 - Parking Standards, General Requirements
POLICY 40 - Residential Development Parking Standards
POLICY 69 - General Design and Layout
POLICY 70 - Design and Layout of New Housing
POLICY 84 - Flooding and River Catchment Management
POLICY 84a - Drainage Infrastructure
POLICY 106 - Nature Conservation
POLICY 143a - Watling Chase Community Forest
POLICY 143b - Implementation

3.9 The Council's Statement of Case (CD 3.2 [4.2]), also listed:

- a) Policy 8 (Affordable Housing in the Metropolitan Green Belt). However, this policy only applies to schemes of 100% affordable housing on small sites and within Green Belt Settlements;
- b) Policy 74 (Landscaping and Tree Preservation). However, this is an Outline application in which Landscaping is not sought (see: Local Requirements Checklist (CD 1.25 p.3));
- c) Policy 86 (Buildings of Special Architectural or Historic Interest). However, that is clearly not applicable here; and
- d) Policy 104 (Landscape Conservation). However, as confirmed by Fig. 14 of the Local Plan (CD 4.1 [p.157]), the Appeal Site is not within a Landscape Conservation Area.

3.10 By far the most important policy is Policy 1 Metropolitan Green Belt. However, because it fails to recognise the full extent of exceptions to inappropriate development detailed at paragraph 154, it is inconsistent with the NPPF. Only if the Appeal Proposal is considered "*inappropriate*"

under the NPPF can Policy 1 be considered consistent with national policy because of its requirement for Very Special Circumstances.

- 3.11 As for Affordable Housing, as noted above Policy 8 (Affordable Housing in the Metropolitan Green Belt) only applies to small sites in Green Belt Settlements, and the Council has previously acknowledged that neither it nor Policy 7A (Affordable Housing in Towns and Specified Settlements) apply to sites in the Green Belt outside settlements. There is, therefore, no applicable policy target for affordable housing contributions
- 3.12 The Council's Affordable Housing Supplementary Planning Guidance (March 2004) ("the SPG") sought to apply Policy 7A's requirement for a 35% affordable housing contribution across the District, which may be considered material. However, it must be noted that this is guidance and not policy³ (CD 4.4 [4.4]).

Emerging Local Plans

- 3.13 As referenced in the previous Section, the Council has sought to replace its 1994 Local Plan on several occasions. Although none were adopted, it is important to note that each version sought to release sites from the Green Belt to deliver new housing.
- 3.14 Whilst the Council have embarked upon yet another replacement Plan (the first draft was published on 12th July 2023 and the Regulation 18 consultation took place between 12th July and 25th September 2023), it is openly accepted by the Council that, given that the emerging Local Plan is in its very early stages of preparation (CD 3.1 [8.25-8.26]):
- a) It is to be afforded little weight in accordance with paragraph 48 of the NPPF; and
 - b) It cannot be argued that the application is premature because the criteria set out in paragraph 49 of the NPPF are not satisfied.

³ Planning Practice Guidance: *"Supplementary planning documents (SPDs) should build upon and provide more detailed advice or guidance on policies in an adopted local plan. As they do not form part of the development plan, they cannot introduce new planning policies into the development plan. They are however a material consideration in decision-making. They should not add unnecessarily to the financial burdens on development"*. Paragraph: 008 Reference ID: 61-008-20190315. See also: ***William Davis Ltd & Others vs Charnwood Borough Council*** [2017] EWHC (3006) Admin. (CD 6.7)

- 3.15 Consequently, the Inquiry need not concern itself with all the unresolved objections to either:
- a) The recent Green Belt Review (Arup, 2023), the recommendations of which are controversial and may all be rejected when properly reviewed in the autumn; or
 - b) The subsequent draft site allocations policies, which replicates the same mistakes criticised at the Examination of the most recently Withdrawn draft Local Plan, by giving excessive weight to a controversial Green Belt Review and insufficient weight to undetermined factors such as the potential benefits of alternative sites.
- 3.16 These are Plan-making issues which will be dealt with via the Regulation 19 Consultation and Public Examination.
- 3.17 Suffice to say, the only element of the latest Emerging Local Plan which may be considered material to this Section 78 Appeal, is the fact that, once again, the Council is seeking to release sites from the Green Belt to meet some of its housing need.

The St Stephen’s Neighbourhood Plan (“The SSNP”)

- 3.18 The SSNP (CD 4.2) was made on 20th July 2022. The SSNP is, therefore, a material consideration in decision-making. However, it must be noted that any perceived conflict with it is unlikely to significantly and demonstrably outweigh the benefits because, as set out in paragraph 14(b) of the NPPF, the SSNP does not contain policies and allocations to meet its identified housing requirement.
- 3.19 Notwithstanding paragraph 14 (b) of the NPPF, it must be noted that the SSNP support key elements of the Appeal Scheme.
- 3.20 The first bullet point in the “Vision and Objectives” section of the SSNP states, at (CD 4.2 [3.11]):

“The high cost of property in the local area makes it increasingly difficult for first-time buyers to move into and for younger inhabitants to move into the area. Additionally, developers’ preference for building larger houses in the area restricts the opportunity for older people to release property by downsizing. This is already having an impact on St Stephen where the

numbers of working-age residents is (sic) falling, despite the Parish's location being within easy reach of London."

- 3.21 Under "Housing, Character and Design of development", at (CD 4.2 [3.3]), the SSNP's first Objective is to "Encourage the development of housing that meets an identified need".
- 3.22 Finally, noting that the SSNP uses paragraph numbers from an earlier iteration of the NPPF, the 4th numbered point⁴ of Policy 1 of the SSNP expressly welcomes new housing development which (CD 4.2 [p. 19]):

"... meets either the exceptions to inappropriate development in the Green Belt as set out in paragraphs 145 and 146 of the National Planning Policy Framework, or demonstrates very special circumstances, as set out in paragraph 147 of the National Planning Policy Framework".

4.0 **NATIONAL PLANNING POLICY**

- 4.1 The current National Planning Policy Framework ("the NPPF"), was published in December 2023, 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 it *"... is a material consideration in planning decisions"*.

Achieving Sustainable Development

- 4.2 Paragraph 7 of the NPPF confirms that the purpose of the planning system is to contribute to the achievement of sustainable development. The Proof addresses the sustainability of the Appeal Proposal directly in Section 13.
- 4.3 Paragraph 8 of the NPPF identifies the three overarching objectives of sustainable development, which should be pursued in mutually supportive ways (again, addressed directly in Section 13).
- 4.4 So that sustainable development is pursued in a positive way, paragraph 10 of the NPPF explains that *"at the heart of the Framework is a presumption in favour of sustainable development"*.

⁴ The numbering of Policy 1 on page 19 of the SSNP is somewhat awry: 1, 2, 3, 1, 4 and 5.

4.5 Paragraph 11 of the NPPF explains the implications for this presumption in respect of both plan-making and decision-taking. As for the latter, where, as here in St Albans⁵, the policies of the development plan are out-of-date, paragraph 11 d) of the NPPF is engaged and provides as follows:

“For decision-taking this means:

...

d) ... granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”*

4.6 The requirement to grant permission unless either of those two caveats apply is known as the “tilted balance”.

4.7 The NPPF policies which may provide a “a clear reason for refusing the development proposed” under the first limb of NPPF paragraph 11 d) are specified in footnote 7 and include the Green Belt.

Housing

4.8 Paragraph 60 of the NPPF makes it clear that to support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed.

4.9 Paragraph 64 of the NPPF makes it similarly clear that where a need for affordable housing is identified, planning policies should specify the type of affordable housing required. However, the St Albans Local Plan (CD 4.1), which effectively expired 11 years before the first iteration of the NPPF, contains no such policy.

⁵ See: footnote 8 to paragraph 11 of the NPPF and St Albans’ housing land supply position, as explained in paragraphs 4.12 below.

4.10 In recognition of the fact that redevelopment of PDL is sequentially preferable to development of a greenfield site, but is likely to can be more expensive, paragraph 65 of the NPPF expressly states that:

“To support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount”.

4.11 As set out above (paragraph 3.11), there is no Local Plan policy requiring any affordable housing contribution on brownfield sites in the Green Belt outside settlements, only local guidance which seeks a target of 35%. Despite not being policy, and notwithstanding the encouragement in paragraph 65 of the NPPF to reduce any contribution for the redevelopment of brownfield sites, the Appeal Proposal will meet this non-policy target in in full.

4.12 Paragraph 75 requires Local Planning Authorities to manage their housing land supply and paragraph 77 states that they should identify a minimum of 5- or 4-years’ supply, subject to the criteria explained in paragraph 226. Because the Council has completed a Regulation 18 Consultation, it has a housing land supply target of 4 years. However, in its latest (January 2024) Authority Monitoring Report (“AMR”) (CD 8.7), the Council can demonstrate just 1.7 years’ supply of deliverable housing sites.

Green Belt

4.13 Footnote 7 of the NPPF identifies the Green Belt as one of the policies that *“protect areas of assets of particular importance”* which, for the application of the ‘tilted balance’, may indicate that development should be restricted. The word “may” is used because the NPPF does not seek to restrict “appropriate” development in the Green Belt at all; and also allows for “inappropriate development” to be permitted where Very Special Circumstances are demonstrated.

4.14 Paragraph 142 of the NPPF confirms that the Government attaches great importance to Green Belts, the fundamental aim of which is *“to prevent urban sprawl by keeping land permanently open”* explaining that *“the essential characteristics Green Belts are their openness and their permanence”*.

4.15 Paragraph 143 sets out the following five purposes of Green Belts:

- a) To check the unrestricted sprawl of large built-up areas;
- b) To prevent neighbouring towns merging into one another;
- c) To assist in safeguarding the countryside from encroachment;
- d) To preserve the setting and special character of historic towns; and
- e) To assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

4.16 Paragraph 145 explains that there is *“no requirement for Green Belt boundaries to be reviewed or changed when plans are being prepared or updated”*, but that *“authorities may choose to review and alter Green Belt boundaries where exceptional circumstances are fully evidenced and justified, in which case proposals for changes should be made only through the plan-making process”*. It is important to note that the Emerging Local Plan (like its predecessors) seeks to alter Green Belt boundaries.

4.17 Paragraph 147 of the NPPF expressly further states as follows in these regards, recognising that where it is necessary to release Green Belt land for development, it is sequentially preferable to release PDL:

“Where it has been concluded that it is necessary to release Green Belt land for development, plans should give first consideration to land which has been previously-developed and/or is well-served by public transport.”

4.18 Paragraph 152 of the NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in Very Special Circumstances. Paragraph 153 confirms that substantial weight is given to any harm to the Green Belt and advises that Very Special Circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In these regards, as a matter of national planning policy and as confirmed by recent Appeal Decisions in the District (see Section 7), meeting unmet housing needs, and especially affordable

housing needs, can amount to Very Special Circumstances justifying otherwise inappropriate development in the Green Belt.

- 4.19 Paragraph 154 describes types of development which are appropriate in the Green Belt, the final example being set out as follows at sub-paragraph 154 g):

*“... **the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:***

– not have a greater impact on the openness of the Green Belt than the existing development;

or

*– **not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.**”*

[Emphasis Added]

- 4.20 Finally, with regards to the Green Belt, the PPG makes it clear, at Paragraph: 001 Reference ID: 64-001-20190722, that assessing the impact of a proposal on the openness of the Green Belt requires a judgment based on the circumstances of the case and that the relevant factors may include both spatial and visual aspects, as well as its permanence and other impacts.

Plan-Led

- 4.21 Paragraph 15 of the NPPF states that the planning system should be genuinely Plan-led. It requires plans to meet the housing needs of their area, to address economic, social and environmental priorities, and aim to contribute positively to the achievement of sustainable development. Plans should identify broad locations for development and specific allocations and give a clear starting-point for decision making.
- 4.22 Paragraph 35 requires Plans to be positively prepared, justified, effective and consistent with national policy.
- 4.23 For decision taking, paragraph 38 of the NPPF states:

“Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.”

4.24 Paragraph 47 of the NPPF confirms the statutory requirement that planning decisions must be made in accordance with the Plan unless material considerations indicate otherwise.

4.25 Paragraph 48 considers the weight to be given to policies in an Emerging Local Plan and explains that this depends on:

a) The stage reached (the more advanced its preparation, the greater the weight that may be given);

b) The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and

c) The degree of consistency of the relevant policies in the Emerging Local Plan to the NPPF (the closer the policies, the greater the weight that may be given).

4.26 Paragraph 49 explains that prematurity is unlikely to justify a refusal, other than where the development is so substantial that to grant consent would undermine the Plan making process; and the Emerging Local Plan is at an advanced stage.

Sustainable Transport

4.27 NPPF paragraphs 108 and 109 require sustainable transport opportunities to be embedded within development proposals and Plan policies. Patterns of growth should reflect sustainable transport options and focus development on locations that are or can be made sustainable, with a genuine choice of travel modes and access to goods and services. Paragraph 109 explains that:

“... opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making”.

- 4.28 Paragraph 115 states that development should only be restricted or refused on highways grounds if there would be an unacceptable impact on highway safety or if the residual cumulative impacts on the network would be “severe”.

Design

- 4.29 The NPPF seeks to achieve well designed places. As set out at paragraph 135 (f), it requires high standards of amenity, including landscaping for existing and future users. Such matters are most properly addressed in Full or Reserved Matters applications when Design, Layout, Landscaping and Appearance are sought.

Flooding and Drainage

- 4.30 Paragraph 173 requires planning decisions to ensure that “flood risk is not increased elsewhere”, and paragraph 175 requires major development to incorporate sustainable urban drainage systems.

Natural Environment

- 4.31 Section 15 requires development to “contribute to and enhance the natural and local environment”.

5.0 THE PUTATIVE REASONS FOR REFUSAL

- 5.1 In the Appellant’s Statement of Case, I set out four anticipated Reasons for Refusal, which can be summarised as:

a) The proposal is for inappropriate development and Very Special Circumstances do not exist;

b) Highways concerns over:

i. Whether the Site is a sustainable location;

ii. Changes to the character of Lye Lane;

iii. Uncertainty over the delivery of a suitable footpath;

iv. The narrowing of the roadway of Lye Lane;

c) Insufficient information about drainage; and

d) The absence of a Section 106 agreement.

5.2 As confirmed by the Council's Statement of Case (CD 3.2 [1.3]), seven putative Reasons for Refusal are, in fact, being put to this Inquiry. They can be summarised as follows:

a) The proposal is for inappropriate development and Very Special Circumstances do not exist;

b) Unacceptable design, layout, landscaping and impact on residential amenity;

c) Insufficient information about drainage;

d) Failure to demonstrate that the Site can be made sustainable;

e) Inadequate passing spaces for vehicles;

f) Insufficient information in respect of the potential impact on two SSSIs; and

g) The absence of a Section 106 Agreement.

5.3 After reviewing the Planning Context and Recent Appeal Decisions, this Proof sets out the correct approach to assessing Green Belt Harm and the other harms alleged before carrying out a measured Planning Balance, which includes addressing these putative Reasons for Refusal.

6.0 **THE PLANNING CONTEXT IN ST ALBANS**

6.1 Planning is broken in St Albans. There has been a persistent and continued failure by the Council to bring forward a Local Plan that accords with Government policy and provides an appropriate

Plan-led approach to meeting the housing and other needs of the community. As a direct consequence, there is a significant housing crisis particularly in respect of affordable housing.

- 6.2 As set out in my Planning Statement (CD 1.23 [5.1]), the extant Local Plan is approaching 30 years of age and its Housing Land Supply policies expired in 2001. Furthermore, every attempt to replace this Plan has ended in failure. Notably, however, each of these draft plans, like the Emerging Draft Plan, concluded that exceptional circumstances existed to release Green Belt land for new housing.
- 6.3 Since that Planning Statement was produced (September 2022), the housing land supply situation has worsened, from 2.2 years (CD 1.23 [2.2]) to 1.7 years (CD 2.1 [23b]). To underline the Council's unacceptable performance as a planning authority, in March 2024 it was designated by the Government in respect of non-major applications.
- 6.4 Simply put, the Local Plan is so out-of-date that it is not fit-for-purpose as a framework for addressing current housing needs and other priorities, and the Council has a very poor record in decision-making.
- 6.5 As set out in Section 7 below, the vacuum created by the Council's failure to meet the housing needs of its communities is now frequently met by landowner-promoted schemes on greenfield sites in the Green Belt, approved on appeal (against the wishes of the Council), because Very Special Circumstances exist.

Housing Land Supply

- 6.6 The agreed position with the Council is that the Council cannot demonstrate a 4-year housing land supply. Indeed, the supply is now at a new low of just 1.7 years. This position worsened as each of the appeals and decisions referred to in Section 7 below were considered. Without the houses to be built as result of the Council losing Planning Appeals, it's housing land supply would be even worse.

Housing Delivery Test

- 6.7 A Housing Delivery Test (HDT) "*measures net homes delivered in a local authority area against the homes required, using national statistics and local authority data*" [NPPF, Glossary]. On 19th December 2023, the Government published the latest HDT figures. For St Albans it revealed that in the three years 2019-2022, the total number of houses required was 2,307 but the total

number delivered was 1,273. This means the Council delivered just 55% of its housing requirement. This is the worst performance in the 5 consecutive years in which St Albans has failed to achieve 75% since the HDT began in 2018.

- 6.8 Because the delivery of housing is significantly below the 75% threshold set in paragraph 79 (c) of the NPPF, the presumption in favour of sustainable development is engaged and a 20% buffer applied. In addition, the Council is required to produce yet another HDT Action Plan.
- 6.9 In December 2023, the Council published the most recent of its Action Plans (CD 8.9). This was in response to delivering only 69% of its housing requirement for the previous 3-year period, i.e. far below the 75% threshold but significantly better than the 55% figure it will have to explain later this year.
- 6.10 At 5.2.1 of its most recent Action Plan (CD 8.9), the Council again professes that it “... *recognises the importance of its planning service in enabling and supporting growth*” and assures local residents that it is “*committed to ensuring the delivery of an efficient and effective service*”. However, despite the publication of a succession of Action Plans “*to show how the Council is responding to the challenge of ensuring that more homes are built in the District and faster*”, fewer homes are being built and the situation is getting worse.

Affordable Housing Delivery

- 6.11 The supply of affordable housing is even more acute, as again evidenced by Annie Gingell (CD 2.6). There has again been a persistent and extreme under delivery of all forms of affordable housing, exacerbating an already unacceptable situation (CD 2.6 [10.3]):

“Market signals indicate a worsening trend in affordability across St Albans and by any measure of affordability, this is an authority amid an affordable housing emergency, and one through which urgent action must be taken to deliver more affordable homes.”

Economic and Social Impact

- 6.12 The evidence by Annie Gingell (CD 2.6) highlights the widespread and serious impact that the shortage of housing, including affordable housing, creates for the local community.

- 6.13 The economic objective of sustainable development requires sufficient land of the right type is available in the right places and at the right time to help build a strong, responsive and competitive economy. The Council's persistent failure to deliver sufficient housing land is undermining that imperative.
- 6.14 The social objective of sustainable development requires a sufficient number and range of homes can be provided to meet the needs of present and future generations to support strong, vibrant and healthy communities. The Council's negative approach to plan-making and decision-taking is failing it communities.

Conclusion on the Planning Context

- 6.15 The current position in St Albans has been recently summarised as follows by Inspector Boniface, at paragraphs 585 and 588 of his Report to the Secretary of State on two called-in Appeals at Chiswell Green (CD 5.2) when recommending that planning permission be granted for 721 dwellings in the Green Belt, a recommendation with which the Secretary of State agreed (CD 5.2):

"585. There is a very substantial need for housing in the district which is persistently going unmet. The LP is one of the oldest in the country and its housing requirement is hopelessly out of date, such that it does not attempt to deliver anywhere near the amount of housing that is now required. ... Consequently, the Framework dictates that the policies which are most important for determining the applications are out-of-date."

"588. Various attempts have been made to replace the existing LP but all have failed to date and whilst a further attempt is now being made, it is at the early stages of preparation and provides little certainty that the situation will improve at present. Even the Council accepts that there is no early prospect of the housing land supply deficit being addressed. The situation is dire".

- 6.16 Such a dire situation is the antithesis of good planning and provides the context in which Very Special Circumstances exist.

7.0 RECENT APPEAL DECISIONS

- 7.1 The above Chiswell Green decisions are among a number of Appeal Decisions concerning major residential schemes in the Green Belt which are considered relevant. Appeals 1 - 3 concern

greenfield Green Belt sites, whilst Appeals 4 - 7 concern PDL or brownfield Green Belt sites. All, save Appeal 6, are in St Albans; and all post-date the publication of the 2018 version of the NPPF when the final exception to the normal presumption of inappropriate development was revised (paragraph 154 g).

Appeal 1 - Roundhouse Farm, Bullens Green Lane, Colney Heath - APP/B1930/W/20/3265925, June 2021 (CD 5.1)

- 7.2 The appeal concerned up to 100 homes on a site adjacent to Colney Heath, identified as a Green Belt Settlement in Policy 2 of the 1994 Local Plan, but which also extended into neighbouring Welwyn Hatfield District. The main issues concerned the effect on landscape character and appearance, on nearby listed buildings, on the Green Belt and its purposes, whether it was a sustainable location and whether, in the overall planning balance, Very Special Circumstances existed sufficient to outweigh the definitional harm to the Green Belt (through inappropriateness) and all other harm.
- 7.3 The appeal site comprised an undeveloped agricultural field crossed by a number of public footpaths and was regarded as a greenfield site. The Outline appeal proposal was for 100 dwellings (55% market housing, 45% affordable) with associated access roads and pavements. Whilst the precise Scale and Layout would be determined at the Reserved Matters stage, it was apparent that new buildings on this greenfield site would reduce openness considerably, and this was accorded substantial weight.
- 7.4 At that time, neither District could demonstrate a 5-year housing land supply. The Council's housing supply was 2.4 years, which represented a shortfall which the Inspector considered both "*considerable*" and "*significant*", such that the housing position was "*a bleak one*" [DL48]. The Inspector further considered that the persistent under delivery of affordable housing in both Districts represented a "*critical situation*" [DL54].
- 7.5 The Inspector found the proposal would cause harm by reason of inappropriateness and, on a site "*entirely free from development*" [DL23], harm to openness, which both attracted "*substantial weight*" [DL11] [DL23], and she attached "*moderate weight*" to harm to the character and appearance of the area [DL18]. However, against all of that, the Inspector found that "*very substantial weight*" should be attached to the provision of both market housing [DL49] and affordable housing [DL54]; and "*substantial weight*" to the provision of self-build

housing [DL52]. In the overall planning balance, she concluded that Very Special Circumstances existed [DL78].

Appeal 2 – South of Chiswell Green Lane, Chiswell Green – APP/B1930/W/22/3313110,

March 2024 (CD 5.2 Appeal A)

- 7.6 The Recovered Appeal was for up to 391 homes and the potential provision of land for a school on a site adjacent to Chiswell Green, a large village excluded from the Green Belt. The main issues concerned the effect on the Green Belt; landscape and visual impacts; best and most versatile agricultural land (“BMV”); highways and transport; and on education provision; and whether, in the overall planning balance, Very Special Circumstances existed.
- 7.7 The appeal site comprised an undeveloped agricultural field with few structures and was agreed by all to be greenfield. The Outline appeal proposal was for up to 391 dwellings (60% market, 40% affordable) and the potential provision of land for a school, plus associated access roads and pavements and open space.
- 7.8 At the time of the Inquiry (April-May 2023), the Council’s housing supply was 2 years, which the Inspector considered to represent a significant shortfall. By the time the Decision was Published (March 2024), the housing land supply had fallen to 1.7 years. The Secretary of State agreed with the Inspector that “*very substantial weight*” should be attributed to the proposed housing [DL19] [IR586-591], and significant weight to the potential school land.
- 7.9 On a “*largely undeveloped and open*” site [DL18] [IR534], both the Inspector and the Secretary of State found the proposal would cause harm by reason of inappropriateness [DL17] [IR528] and significant harm to openness [DL18] [IR535], both of which attracted “*substantial weight*” [DL18], and would have adverse landscape and visual impacts which attracted “*limited weight*” [DL21] [IR554]. Limited weight was also applied to the loss of BMV [DL24] [IR566-567]. In the overall planning balance, the Inspector and Secretary of State agreed the other considerations clearly outweighed the harm to the Green Belt and other harm such that Very Special Circumstances existed [DL42] [IR.612]

Appeal 3 – North of Chiswell Green Lane, Chiswell Green – APP/B1930/W/22/3312277,

March 2024 (CD 5.2 Appeal B)

- 7.10 The Recovered Appeal, conjoined at a Planning Inquiry with Appeal 2 above, was for up to 330 homes on a site adjacent on the opposite side of Chiswell Green Lane, also abutting the village. The main issues concerned the effect on the Green Belt; landscape and visual impacts; the effect on BMV agricultural land; highways and transport; and whether, in the overall planning balance, Very Special Circumstances applied.
- 7.11 The appeal site comprised an undeveloped agricultural field with few structures and was agreed by all to be greenfield. The Outline appeal proposal was for up to 330 dwellings (100% affordable), plus a memorial park, associated access roads and pavements and open space.
- 7.12 As above, the Secretary of State agreed with the Inspector that “*very substantial weight*” should be attributed to the proposed housing when the housing situation was so dire [DL29] [IR586-591].
- 7.13 On a “*largely open and undeveloped*”, site [D 19] [IR543], the Secretary of State agreed with the Inspector that proposal would cause harm by reason of inappropriateness and substantial harm to openness [DL19] [IR544-548], which attracted substantial weight, and would have adverse landscape and visual impacts which attracted significant weight. Limited weight was also applied to the loss of BMV DL24] [IR566-567]. In the overall planning balance, the Inspector and Secretary of State agreed the other considerations clearly outweighed the harm to the Green Belt and other harm such that Very Special Circumstances existed [DL42] [IR.612].

Appeal 4 – Land at Lye Lane, - APP/B1930/W/18/3212658, September 2019 (CD 5.4)

- 7.14 The Appeal Proposal was for the remediation of the entire landholding to create a community forest, with enabling residential development of 16 detached dwellings, on the large triangle of land opposite the Appeal Site, bordered by the M25, the A405 and Lye Lane. The main issues were the effect of the proposal on the openness and purposes of the Green Belt; the effect on the character and appearance of the area; whether the provision of affordable housing was adequate; and whether Very Special Circumstances existed.
- 7.15 The Inspector found that the proposal would not deliver adequate affordable housing [DL25]. However, it would deliver some housing in the context of a shortfall, generate employment, increase spending locally and generate New Homes Bonuses, all of which attracted “*significant weight*”.

- 7.16 On a site which “with the exception of an electricity substation and pylon ... appears entirely free of built development” [DL14], the Inspector found there would be encroachment into the countryside [DL14] and that the proposal would “significantly decrease the openness of the Green Belt” [DL17]. The Inspector gave “substantial weight” to each harm to the Green Belt [DL37], including inappropriateness.
- 7.17 In the overall planning balance, the Inspector concluded that the harm to the Green Belt was not outweighed by the benefits such that Very Special Circumstances did not exist [DL38].

Appeal 5 – Smallford Works, Smallford - APP/B1930/W/20/3260479, May 2021 (CD 5.5)

- 7.18 The Appeal was for the redevelopment of a PDL site, including the demolition of existing buildings to provide up to 100 dwellings. The main issues were whether or not the proposal would be inappropriate development in the Green Belt, which required an assessment of the effect of the proposal on openness of the Green Belt; the effect on the purposes of the Green Belt; the effect on the character and appearance of the area; the Site’s accessibility by non-car modes of transport; and, if inappropriate, whether Very Special Circumstances existed.
- 7.19 The Site was relatively flat and contained a number of yards used for storage and distribution of various items including scaffolding, building or construction materials, plant, containers, and vehicles. Some of the plots included permanent buildings and other structures. The proposal was to demolish the buildings on Site and construct up to 100 dwellings. The Inspector acknowledged that the Council agreed that “very substantial weight” should be given to the delivery of housing and concluded that it should receive “significant weight” [79].
- 7.20 The Inspector found “the appeal site ... should be regarded as PDL for the purposes of this appeal” [DL12] and that it was “conspicuous from a number of points of the extensive Public Rights of Way Network” [DL30]. The Inspector also implied the PDL status was a benefit stating [103]:

“The proposed development would occupy PDL and there would also be other less significant economic and environmental benefits as set out above.”

7.21 Nevertheless, the Inspector found the proposal would cause substantial harm to the openness of the Green Belt [DL37] and, thus, would be inappropriate development which also cause substantial harm by way of inappropriateness and moderate harm caused by encroachment into the countryside [DL40]. The Inspector also found that the proposal would cause significant harm to character and appearance [DL62]. In the overall planning balance, the Inspector concluded that the harm to the Green Belt was not outweighed by the benefits such that Very Special Circumstances did not exist [DL104].

Appeal 6 – Maitland Lodge, Billericay, Essex - APP/V1505/W/22/3296116, November 2022 (CD 5.6)

7.22 The Appeal concerned the proposed demolition of Maitland Lodge and stables and for the construction up to 47 homes on the southern edge of South Green, a village located between Billericay and Basildon. The main issues were whether or not the proposal would be inappropriate development in the Green Belt, which required an assessment of the effect of the proposal on openness of the Green Belt; and the effect on the character and appearance of the area, in particular on landscape character.

7.23 Other than Maitland Lodge and its garden (which were not in the Green Belt), the Site comprised *“equestrian facilities, other buildings or built form and paddocks directly linked to the equestrian facilities and forming part of the curtilage of the equestrian buildings”* [9]. Consequently, the Appellant, the Council and the Inspector agreed that that *“all of the GB land within the appeal site is PDL”* [DL9]: i.e. PDL or brownfield land as defined by the NPPF.

7.24 Because 34% of the 47 dwellings proposed would be affordable housing that met an identified need within the district, the second bullet point of paragraph 149 g) of the 2021 iteration of the NPPF was engaged (paragraph 154 g) of the current version); and the Inspector had to determine whether or not the proposed development would *“cause substantial harm to the openness of the Green Belt.”*

7.25 The Inspector explained the correct approach to be taken to this question as follows [DL17]:

“It is important to note that the threshold for the proposal to be considered as inappropriate development is substantial harm. This is a high bar.”

7.26 Indeed, the height of that “high bar” is clear from the Maitland Decision Letter itself, where the Inspector determined that it was not reached even though:

- a) The proposed development would result in an 80% increase in footprint and a 124% increase in the volume of built form on the Green Belt element of the Appeal Site, an increase in built form which was “*relatively significant*” [DL12];
- b) The layout of that proposed development would be “*relatively dense*”, with “*runs of rooflines ... fairly close together and prominent, and relatively limited landscaping development*” [DL13];
- c) The proposed development would “*spread built form across the whole site, rather than being concentrated to the eastern edge adjacent to the existing housing*” [DL14];
- d) There would be a significant increase in activity on the site in comparison to the existing use for equestrian purposes [DL14]; and
- e) The gardens of the proposed dwellings would likely be the subject of residential paraphernalia once occupied, further negatively affecting openness [DL14].

7.27 In particular, having found all of the above, the Inspector also found that “*the appeal site is largely visually self-contained by the mature planting to the west and existing development to the north and east*” [DL15]. Consequently, the Inspector found as follows [DL16]:

“Overall, there is relatively significant existing built form and the GB element of the appeal site is only a small part of a much wider parcel of GB land. The proposal would result in an increase in built form on the site both in overall footprint and volume and spread across the site. However, the appeal site is largely visually self-contained, with existing housing to Billericay to two sides of the site and the extensive existing and proposed boundary landscaping to the other two sides. Where the boundary planting would be more open the proposal would be seen in the context of the existing housing to Billericay. The harm to openness on the appeal site itself would therefore have limited effect on the wider GB. Allowing for the slightly greater harm to openness of the appeal site itself, the overall harm to the openness of the GB would be moderate.”

7.28 Accordingly, and because the Appeal Site was so well-screened that it made little contribution to openness in its current state, the Inspector found that the harm occasioned to openness was only “*moderate*”, not “*substantial*”. Further, and for similar reasons, the Inspector found, with regard to landscape effects, that the proposal would not result in material harm to the character and appearance of the area [DL27] [DL56].

7.29 Having found that the Appeal Proposal was appropriate Green Belt development and caused no harm to character and appearance also, the Inspector attributed weight to the development’s benefits, including as follows:

- a) The Inspector gave “*very substantial positive weight*” to the open market housing [DL30] and, separately, “*very substantial positive weight*” to the proposed affordable housing also [DL33]; and
- b) The Inspector also placed “*substantial positive weight*” on the use of brownfield land as required by paragraph 120 c) of the NPPF [DL35], noting, at [DL39] and [DL58], that, because it was brownfield, the Site was sequentially preferable to non-PDL sites in the Green Belt:

“39. Therefore, the appeal site in general is sequentially preferable to non-PDL sites in the GB, which make up the majority of GB land in the Borough.”

“58. The ...appeal site represents the effective use of land to provide homes. The appeal site is sequentially preferable to non-PDL sites in the GB in a Borough where GB release is inevitable to meet its housing needs.”

7.30 The Appeal was therefore allowed having regard to paragraph 11 d) of the NPPF [DL59]:

- a) The Council could not demonstrate a five-year supply of housing land;
- b) There was no clear reason for refusing related to areas or assets of particular importance;

c) There was no conflict with the Development Plan; and

d) There were a number of weighty benefits.

Appeal 7 – Tollgate Road, Colney Heath - APP/B1930/W/23/3323099, January 2024 (CD 5.7)

- 7.31 The Appeal was for the demolition of a house (42 Tollgate Road) and stables and for the construction up to 150 dwellings on the edge of Colney Heath (the same Green Belt village as Appeal 1). The Site primarily comprised, however, open fields, used for grazing and exercising of horses, except for the dwelling and garden of no. 42 and a small equestrian facility in the northwest corner of the site. Consequently, whilst the site technically met the definition of PDL it was, in the Inspector's words "*patently not 'brownfield' in character or appearance*" [DL108] and, thus, all parties agreed the proposal was inappropriate development.
- 7.32 The main issues were the effect of the proposal on openness and purposes of the Green Belt; and the effect on the landscape character and appearance; the effect on heritage assets; whether the site was or could be made a sustainable location; and whether, in the overall planning balance, Very Special Circumstances applied.
- 7.33 The Outline appeal proposal was for up to 150 dwellings (60% market, 40% affordable), plus associated access roads and pavements and open space. The Inspector found that the development would cause substantial harm to both the openness of the Green Belt and its purposes [DL32]. The Inspector also found the proposal would cause significant harm to landscape character [DL52] and less than substantial harm to heritage assets [DL64].
- 7.34 Acknowledging the difference in opinion with the Inspector who Allowed the Bullens Green Lane Appeal (Appeal 1 above) at [DL86-89], the Inspector concluded that the limitations in the choice of sustainable transport modes (particularly to medical facilities in a village with no GP surgery), weighed against the proposal.
- 7.35 In the overall planning balance, the Inspector attributed "*very substantial weight*" to both market housing and to affordable housing [DL148] and "*substantial weight*" to self-build and custom-housing [DLK149].

7.36 However, and controversially, the Inspector came to the view⁶ (completely contrary to Appeal Decision 4 above, “The Maitland Lodge Decision”) that no weight should be given to the PDL status of the site [DL109-117]. After deciding to attribute no weight to the sequential preference of building on PDL rather than greenfield Green Belt sites, the Inspector concluded that Very Special Circumstances did not exist [DL154].

7.37 In March 2024, however, the Appellant sought permission to challenge the Inspector’s Decision under section 288 of the Town and Country Planning Act 1990 on two grounds, the second of which was that the Inspector erred when giving no weight to the PDL status of the site in the planning balance. The reasons given in the legal challenge to that decision were as follows (CD 2.4.4) [29]-[30]):

“29. ... The Inspector’s thesis was that once it has been decided a scheme comprises “inappropriate development” in the Green Belt, then the benefits of delivering homes on PDL cannot be taken into account in the overall balancing exercise at DL:153. That was wrong. In particular:

(i) §154(g) NPPF... sets out a particular exception to the general policy that new buildings in the Green Belt comprise “inappropriate development”. No more. It is not a full statement of the NPPF’s position on development of PDL, in the Green Belt or otherwise.

(ii) In particular, if development is inappropriate, §154(g) does not seek to restrict what factors feed into the overall planning balance required by §153. The Inspector thought the opposite (see DL:113) and he was wrong.

(iii) In particular, his reference at DL:111 to Dartford BC and SoSCLG [2017] EWCA Civ 141 does not assist, because it does not make the point he was deriving from it, i.e. that making effective PDL cannot be a free-standing benefit in a Green Belt case, even if the relevant development is “inappropriate”.

(iv) The correct approach to this question of principle was taken by the Maitland Lodge inspector ..., i.e. the NPPF imports a sequential preference for PDL sites in the Green Belt

⁶ Cross-referring to the case of **Dartford BC v Secretary of State for Communities and Local Government** [2017] EWCA Civ 141. (CD 6.9)

over non-PDL sites in the Green Belt. The Inspector gave no relevant reasons for disagreeing with that point of principle. He said (at DL:114 and DL:116) that, on the facts of Maitland Lodge, the development was found to be not “inappropriate”. But that is separate from the wider point of principle that had been put to him, i.e. that pursuant to national policy, PDL land is “in general is sequentially preferable to non-PDL sites in the GB”, which makes its use beneficial irrespective of whether the development proposed falls into the §154(g) exception or not.

30. For those reasons, the Inspector erred by misunderstanding the effect of §154(g) NPPF, i.e. that following the Dartford case it precluded the use of PDL being a free-standing planning benefit in the §153 balance, and his reasons for distinguishing the Maitland Lodge decision were inadequate because they failed to grasp the intellectual nettle of the disagreement” before him, i.e. whether the support in national policy for development on PDL means that PDL is sequentially preferable to land which is not PDL, and therefore whether the development of PDL was a benefit to be weighed in favour of the scheme in the balance (whether the scheme was in the Green Belt or not).

7.38 I share the Appellant’s reasoning and consider that Government policy clearly means that the PDL status of a proposed site in the Green Belt is a material benefit and that the re-use of PDL sites is preferable to the development of greenfield sites.

8.0 **DEVELOPMENT IN THE GREEN BELT**

8.1 Given the Council’s persistent failure to plan properly, the chronic shortfalls in St Albans in terms of both market and affordable housing can only be met through decision-makers accepting housing development in the Green Belt on either of the following bases:

- a) Because the proposal falls within one of the exceptions to new buildings being “inappropriate” in the Green Belt, as provided for in paragraph 154 of the NPPF; or
- b) Because Very Special Circumstances exist as a result of “*other considerations*” clearly outweighing the harm to the Green Belt and any other harm, as set out in paragraphs 152 and 153 of the NPPF.

8.2 The rest of this Section assesses the Appeal Proposal against these two possibilities.

1. **Appropriate Development**

- 8.3 The Appellant's principal case is that the Appeal Proposal, like the Maitland Lodge Appeal (Appeal 6 in Section 7), represents appropriate development in accordance with paragraph 154 g) of the NPPF which (with apologies for repeating paragraph 4.19 above) states as follows:

"A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:

...

*(g) limited infilling or **the partial or complete redevelopment of previously developed land**, whether redundant or in continuing use (excluding temporary buildings), **which would:***

- not have a greater impact on the openness of the Green Belt than the existing development;*
- or*
- **not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.**"*

[emphasis added]

- 8.4 It must be noted that the final example of appropriate development in the 2012 NPPF's equivalent paragraph of 154 g) (bullet point 6 of paragraph 89), was very different. It stated:

"... limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development."

- 8.5 Accordingly, and by deliberate revision, the Government has:

- a) Removed the reference to *"the purpose of including land in the Green Belt"*;
- b) Removed the test of *"greater impact on the openness of the Green Belt"* for schemes which meet an identified need for affordable housing; and

c) Introduced, for such schemes, an entirely different test of **substantial harm to the openness of the Green Belt**, the “high bar” as accurately stated by the Inspector in Maitland Lodge Appeal (CD 5.6 [DL17])

8.6 It is accepted by the Council (CD 3.1 [8.2.14]), that the second part of 154 g) must be considered in this case given that the Appeal Site is PDL and that the affordable housing element of the proposal (35% contribution) meets an identified need in the district. Accordingly, the test to be applied is whether the proposed redevelopment of the Appeal Site would cause “*substantial harm*” to the openness of the Green Belt. If it does not breach this threshold, the Appeal Proposal is “*appropriate*” development in the Green Belt and Very Special Circumstances are not required.

8.7 Paragraph 142 of the NPPF explains that “*the essential characteristics of Green Belts are their openness and their permanence.*”. It is important, therefore, to understand what is meant by “openness”. In 2016, the Court of Appeal explained that: “*The concept of “openness” here means the state of being free from built development, the absence of buildings – as distinct from the absence of visual impact*”⁷. Thus, individual sites (indeed whole villages) subsumed within the Green Belt may not, of themselves, possess the “*essential characteristics of the Green Belt*”, if they are open and permanent built development has already taken place on them. This explains why, if a Council has concluded that it must release Green Belt land for development, it is directed to give “*first consideration to land which has been previously developed and/or is well-served by public transport*” (NPPF [147]).

8.8 As noted in paragraph 4.20 above, Paragraph: 001 Reference ID: 64-001-20190722 of the PPG explains the factors to be taken into account when considering the potential impact of development on the openness of the Green Belt:

“Assessing the impact of a proposal on the openness of the Green Belt where it is relevant to do so, requires a judgment based on the circumstances of the case. By way of example, the courts have identified a number of matters which may need to be taken into account in making this assessment. These include, but are not limited to:

⁷ **R (Lee Valley Regional Park Authority) v Epping Forest DC** [2016] EWCA Civ 404, Treacy, Underhill, Lindblom LJ [7] (CD 6.2)

- *openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume;*
- *the duration of the development, and its remediability – taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness; and*
- *the degree of activity likely to be generated, such as traffic generation.”*

8.9 Accordingly, one must ordinarily consider:

- a) The impact of the proposed development in both “*spatial*” and “*visual*” terms;
- b) Whether or not the proposed development is permanent; and
- c) The extent to which the proposed development will generate activity (such as traffic).

8.10 In these regards, however:

- a) All housing development in the Green Belt will have a spatial impact on openness simply through being built, and will both be permanent and generate traffic.
- b) Accordingly, it is principally the visual aspects of openness which paragraph 154 g) of the NPPF is inviting the decision-maker to consider (which was, of course, the approach of the Inspector in the Maitland Lodge decision letter (CD 5.6)).

8.11 In particular, when making an assessment, the current state of openness of the Green Belt is obviously important: if not, there is no reason to distinguish between ‘undeveloped’ and PDL. In other words, the same amount of proposed development that would cause substantial harm to the openness of the Green Belt on an undeveloped site which is exposed, must cause less harm to the openness of the Green Belt on a site where the openness is already compromised, whether through having been previously developed or because it is screened and enclosed, or a combination of the two.

8.12 Turning then to the Appeal Site, Photo 1 is an aerial photograph which demonstrates that the site is, as acknowledged by the Council, PDL and very well-screened by mature trees on three sides and by Lye Lane on the fourth.



Photo 1: The Appeal Site © Google Earth, 2024

8.13 The Appellant’s principal case at this Appeal, therefore, is that, like the proposal at Maitland Lodge, the Appeal Proposal represents “appropriate development” in the Green Belt because it meets an identified affordable housing need on PDL without causing substantial harm to the openness of the Green Belt. Consequently, there is no need for Very Special Circumstances to exist.

8.14 Indeed, the present case is considerably stronger than that allowed on Appeal at Maitland Lodge. In particular, and as more fully set out in the landscape evidence:

- a) Buildings, hardstanding, fencing, structures and artificial ‘grass’ extends across most of the Site;
- b) Many of the substantial permanent structures are now derelict and visually unattractive;

- c) The Site includes 33 dwellings which already generate round-the-clock activity and nighttime lighting;
- d) The Site includes a visually unattractive paintball area, with structures, hardstanding, tall fencing and artificial grass, which generates occasional activity; and
- e) Far from being “open”, the Site already benefits from extensive, mature screening on three sides and, so, is highly contained both spatially and visually, such that it is barely visible (if visible at all) from outside; and
- f) For all these reasons, the Appeal Site does not exhibit the “*essential characteristics of the Green Belt*” and, clearly, no part of it can reasonably be described as “open countryside”.

8.15 Drawing all of the above threads together:

- a) As the Appeal Proposal will meet an identified affordable housing need, the question is whether it will “*cause **substantial** harm to the openness of the Green Belt*” (“the high bar”);
- b) Just as the Inspector for the Maitland Lodge Appeal considered the harm caused to the openness of the Green Belt to be **moderate**, for all the reasons set out above and in the Appellant’s landscape evidence, I consider the harm caused to the openness of the Green Belt by the development of this more heavily-developed and highly-screened Appeal Site is also **moderate**, i.e. *less than substantial*;
- c) Consequently, the Appeal Scheme is appropriate development and Very Special Circumstances do not need to be demonstrated;
- d) As a further consequence, paragraph 11 d)(i) of the NPPF is not engaged, because the Framework, plainly, does not provide a clear reason for refusing development which is appropriate;

- e) Thus, paragraph 11 d)(ii) applies and the “tilted balance” is engaged, which means that planning permission must be granted unless any adverse impacts *“significantly and demonstrably outweigh the benefits”*.

8.16 These are assessed in the overall Planning Balance in Section 11 below.

8.17 The comments below with regard to Very Special Circumstances are, therefore, made entirely on a “without prejudice” basis.

2. Very Special Circumstances

8.18 If, contrary to the Appellant’s primary case, the “high bar” of “substantial harm” to the openness of the Green Belt is considered to be reached, paragraphs 152 and 153 of the NPPF are engaged, the context for which is set out in paragraph 142 and 143. With apologies for repeating some of paragraphs 4.13-4.17 above:

- a) Paragraph 142 makes clear that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open;
- a) Paragraph 143 sets out the five purposes of the Green Belt - to check the unrestricted sprawl of large built-up areas; to prevent neighbouring towns merging into one another; to assist in safeguarding the countryside from encroachment; to preserve the setting and special character of historic towns; and to assist in urban regeneration, by encouraging the recycling of derelict and other urban land;
- b) Paragraph 152 makes it clear that *“inappropriate development”* is, by definition, harmful to the Green Belt and should not be approved except in Very Special Circumstances.; and
- c) Paragraph 153 states that:

“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.”

The Correct Approach

- 8.19 In ***Sefton Metropolitan Borough Council v Secretary of State for Housing Communities and Local Government & Jerry Doherty*** [2021] EWHC 1082 (Admin), (CD 6.12 [34]), the High Court confirmed that the question as to whether Very Special Circumstances requires a single exercise of planning judgement, and is not to be artificially sequenced two-stage process, or approached in an inflexible, mechanical or quasi-mathematical way⁸:

“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.”

- 8.20 Consistent with this, in ***R (Basildon DC) v First Secretary of State and Temple and Dennard*** [2004] EWHC 2759 (Admin), it was held, at (CD 6.13 [10]), that a number of factors, none of them "very special" when considered in isolation may, when combined together, amount to Very Special Circumstances:

“There is no reason why a number of factors ordinary in themselves cannot combine to create something very special. The claimant's approach flies in the face of the approach normally adopted to the determination of planning issues: to consider all relevant factors in the round. The weight to be given to any particular factor will be very much a matter of degree and planning judgment. To adopt the numerical approach above, whilst some factors may score nought, planning judgments are rarely so clear-cut or absolute, and seven times one/seventh equals one.”

⁸ The Paragraph references are to an earlier version of the NPPF.

8.21 However, although the Very Special Circumstances test requires matters to be looked at in the round, and not artificially sequenced into a two-stage process, there are nonetheless two sides to the planning balance which have to be weighed in accordance with paragraph 153 of the NPPF:

a) Harms (including 'Green Belt harms' and 'other harms'); and

b) Other considerations (meaning 'Benefits').

8.22 These are considered in Sections 9 and 10 below.

9.0 **GREEN BELT HARM AND OTHER HARM**

Green Belt Harm

In Principle Harm

9.1 If, contrary to my view, the proposed development is decided to be "*inappropriate*", then the definitional harm by reason of that inappropriateness must be given **substantial weight** - see: paragraph 153 of the NPPF.

9.2 However, it is important to remember in this regard that since the Council has long-since acknowledged that the housing shortage in St Albans is so severe that there are "exceptional circumstances" to justify removal of land from the Green Belt in accordance with paragraphs 145 and 146 of the NPPF, then such harm definitional harm will be caused in any event as housebuilding must take place on open field Green Belt sites if housing needs are to be met.

Openness

9.3 As set out in paragraph 8.8 above, the PPG identifies several matters which may affect the assessment of openness, namely the spatial and visual impact of a proposal; the duration of the development; and the degree of activity likely to be generated. However, for the reasons given in paragraphs 8.9-8.10 above, it is principally the visual aspects of openness which paragraph 154 g) of the NPPF is inviting the decision-maker to consider. For completeness, however, I address each aspect in turn below.

Spatial Impact

9.4 It is obvious that 115 dwellings will have a greater spatial impact than the existing dwellings, derelict buildings and paintball area that occupy the Site. However, it is equally obvious:

a) First, that since the Council acknowledge that there must be considerable residential development in the Green Belt if housing needs are to be met, this spatial impact is both inevitable and unavoidable - it is inherent to the housebuilding which must take place on the Green Belt; and

b) Secondly, that the spatial impact of the needed residential development will be greater on a greenfield Green Belt site, with an “*absence of buildings*”, than it will be on PDL, like the Appeal Site, with extant dwellings and buildings which are substantial constructions.

Visual Impact

9.5 As is more fully covered in the Appellant’s landscape evidence, the Appeal Site is so enclosed by mature woodland that its Zone of Visibility is minimal and any visual impact on the wider landscape is negligible:

“Through the field survey, the site was found to have a very limited zone of visual influence, only being visible at close range, while from a distance, its broad location was only identifiable by reference to the telecommunication masts to the south of the site’s boundary.” (CD 2.9 [5.8]).

9.6 Effectively, it can only be seen by a viewer stood in front of it on Lye Lane.

The Duration of the Development

9.7 As for the duration of the development, the proposed housing will be permanent. However, two points fall to be made:

a) First, the existing dwellings and buildings are permanent constructions too; and

b) Secondly, as with the point made above regarding spatial impact, if the housing needs in St Albans are to be met, there must to be considerable, **and permanent**, residential development in the Green Belt.

Degree of Activity

9.8 Residential development necessarily brings with it residential activity. However, once again, two points fall to be made:

- a) First, the existing dwellings already generate typical residential activities including the coming and going of vehicles, the presence of nighttime lighting and domestic paraphernalia. In addition, the paintball site introduces activity on an ad hoc basis. Consequently, the Appeal Proposal will not introduce such activity – as it would to an undeveloped greenfield site – but it will increase the degree of activity significantly;
- b) Secondly, however, since the Council acknowledges that there must be considerable residential development in the Green Belt if housing needs are to be met, to the extent that such development generates activity, this is both inevitable and unavoidable - it is inherent to the housebuilding which must take place in the Green Belt.

Conclusion on Openness

9.9 Consequently, whilst I would not attribute substantial harm to the openness of the Green Belt, if the Inspector concludes the harm is **substantial** then, as required by the NPPF, it attracts **substantial weight**.

9.10 However, as with the definitional harm through inappropriateness, if the proposed development is decided to be *“inappropriate”*, then that can only be because, contrary to the Appellant’s primary case, it is decided that the development housing in the quantum proposed would cause substantial harm to the openness of the Green Belt by reference to paragraph 154 g) of the NPPF. However, given the Appeal Site’s very limited zone of visibility, that can only be by reference to the impact on openness in *“spatial”* terms; and that *“spatial impact”* on openness is, like the definitional Green Belt harm, inherent to the housebuilding which must take place on open field Green Belt sites if housing needs are to be met.

Green Belt Purposes

9.11 Paragraph 143 sets out the five purposes of the Green Belt and I assess the Appeal Proposal and Site against each of these in turn below.

A – Checking the Unrestricted Sprawl of Larger Built-Up Areas

9.12 The proposed development will be restricted in extent to the existing PDL enclosed by mature trees on three sides. No sprawl of large built-up areas will take place. There will be **no harm** to this purpose.

B – Preventing Neighbouring Towns Merging

9.13 The Appeal Site is already developed and accommodates over 30 dwellings. The proposed housing will not bring any towns closer to each other. There will be **no harm** to this purpose.

C – Assisting in Safeguarding the Countryside from Encroachment

9.14 This well-contained part of the countryside has been encroached upon for decades - first as a cricket pitch, and now as housing, a paintball operation and a number of derelict buildings. No further encroachment into the countryside will occur. Indeed, encroachment into the countryside south of the Appeal Site will be reversed when the paintball operation ceases. There will be **no harm** to this purpose.

D – Preserving the Setting and Special Character of Historic Towns

9.15 Given the distance to St Albans and the self-contained nature of the Site, the Appeal Scheme will have no impact on the setting or character of the city. There will be **no harm** to this purpose.

E – Assisting urban generation by encouraging the recycling of derelict and other urban land

9.16 Two points fall to be made with regard to this Green Belt purpose:

a) First, there are few opportunities to recycle derelict and other urban land in a District where the Council has long-since acknowledged that development on greenfield Green Belt sites is unavoidable and necessary; and

b) Secondly, unlike those greenfield Green Belt sites, the Appeal Scheme involves the recycling of a substantial amount of redundant buildings and derelict land.

9.17 Accordingly, I consider there will be **no harm** to this purpose.

Conclusion on Green Belt Purposes

9.18 Consequently, I consider the Appeal Scheme generates **no harm** to the purposes of the Green Belt.

Conclusion of harm to the Green Belt

9.19 Accordingly, the Green Belt harms are limited to the harm to the Green Belt by way of inappropriateness and harm to openness, both of which attract **substantial weight**.

9.20 However, as explained above, both of these harms are inherent to the development of housing in the Green Belt; and it is agreed by the Council that Green Belt development must take place if housing needs are to be met. Accordingly, these Green Belt harms are going to be occasioned in any event.

2. Other Harm (non-Green Belt)

9.21 At paragraph 8.15.5 of the Officer Report (CD 3.1), the Council identified six issues which it considered qualified as “*additional harm*”:

“8.15.5 There is additional harm identified to which, cumulatively, very substantial weight is given, due to:

- ...
- *Site layout / design, open space provision and noise impacts on residential amenity.*
- *Impact on the landscape character of the site and surrounding area, impact on visual amenity and on protected landscape features.*
- *Sustainability of location in terms of transport.*
- *Highway safety.*
- *Flood risk / drainage.*
- *Impact on nearby SSSIs.”*

9.22 I address these in turn below.

1 – Site Layout/Design, Open Space Provision and Noise Impacts on Residential Amenity

9.23 This is an Outline Application with all matters reserved save for access. Accordingly, these three issues will be for detailed consideration and resolution at the Reserved Matters stage. However, the following points can be made even at this stage.

Site Layout / Design

9.24 As set out in Section 4 of the Design and Access Statement (CD 1.22), whilst being indicative only, the Indicative Proposed Site Layout has been influenced by *“the unique characteristics of the Site and the particular circumstances of its surroundings ...”* and by *“...the context and needs of the District”*, and can be seen to be in general accordance with the most relevant policies in the Local Plan and the Neighbourhood Plan.

9.25 As set out above (paragraph 2.18), in response to concerns raised about the Indicative Proposed Layout, a further Indicative Layout has been submitted to aid the Inquiry (Fig. 4 above and CD 2.4.5). This, too, demonstrates general accordance with the most relevant policies in the development plan. It is entirely appropriate to submit this level of detail at the Outline stage to confirm the principle of residential development. Accordingly, **no harm** is evidenced by reference to the Indicative Layout or Design.

Open Space Provision

9.26 As explained by the Design and Access Statement (CD 1.22 [4.28]), in reference to criterion xi of Policy 70:

“Open space. For a scheme of 109-115 dwellings, the formula in this Criterion requires a contribution of 0.34-0.36 hectares of open space, including a Children’s Play Area. The Indicative Proposed Site Layout indicates that c.0.42 hectares of Open Space will be provided.”

9.27 Accordingly, **no harm** is evidenced by reference to, the indicative presence of Open Space which, in any case, is policy compliant.

Noise Impact

9.28 The Noise Assessment (Spectrum, March 2022) confirms that, as a matter of principle, *“... acceptable internal and external noise levels can be achieved at this site in accordance with the criteria set out in BS 8233”* adding, crucially, *“... final details of any mitigation to be installed, however, would be subject to detailed design”* (CD 1.12 [p. 16]). Once again, this is an entirely appropriate level of detail at this Outline stage to demonstrate that acceptable noise levels can be achieved on the Appeal Site. Accordingly, **no harm** in terms of noise impact is evidenced by reference to the Noise Assessment and/or the Indicative Layout or Design. All relevant details

are properly addressed at the Reserved Matters stage when the precise locations and orientations of both the housing and the acoustic fence can be agreed.

2 – Impacts on Landscape and Protected Landscape Features

9.29 The landscape matters are fully addressed in the LVIA (CD 1.11) and in the evidence of Rachel Williams (CD 2.9). However, it is helpful to stress the following from a planning perspective:

- a) Contrary to the Council’s reference to Policy 104, the Appeal Site is not subject to any landscape designation in the Local Plan (CD 2.9 [2.7]);
- b) The Appeal Site is not in the setting of any such designated land;
- c) The Appeal Site is not within a “valued landscape” within the meaning of paragraph 180 of the NPPF (CD 2.9 [2.7]);
- d) The Appeal Site is so enclosed by mature woodland that its Zone of Visibility is minimal and any visual impact on the wider landscape is negligible (CD 2.9 [5.8]); and
- e) As stated in paragraph 7.4 of the LVIA (CD 1.11), the Appeal Proposal will actually bring improvements in terms of landscape appearance and character:

“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.”

9.30 Adjacent to the site’s eastern and southern boundaries is Ancient Woodland, the area to the south also including a Local Wildlife Site. Paragraph 186 (c) states:

“development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists”.

9.31 The development will not result in the loss of deterioration of the ancient woodland. In fact, it will enhance the Blackgreen Wood by ceasing paintball activities and removing the harmful paintball paraphernalia (CD 2.9 [3.6]).

9.32 The PPG explains:

“If you decide to grant planning permission that results in unavoidable loss or deterioration where wholly exceptional reasons are demonstrated, you should use planning conditions or obligations to make sure the developer:

- *avoids damage*
- *mitigates against damage*
- *compensates for loss or damage (use as a last resort)”*

9.33 Under *“mitigation”*, the PPG includes *“creating buffer zones”*, the size and type of which *“should vary depending on the: scale and type of development and its effect on ancient woodland, ancient and veteran trees ...”*.

9.34 Therefore, whilst guidance seeks a buffer zone of 15 metres, this can vary in depth depending on its effect on the ancient woodland and, in any case, is to mitigate against damage. As no damage is being caused but, in fact, a benefit is being provided, a buffer zone is not essential. This is especially true on the Site’s southern boundary because most of the length of the theoretical buffer zone currently comprises a hardstanding access track and parking areas, and a variety of containers and other buildings. These can be removed, a no-dig timber acoustic fence installed and new planting of native tree species can take place to benefit the ancient woodland.

9.35 Nevertheless, the alternative Proposed Layout, Fig 4 above (CD 2.4.5), shows how a different quantum and mix of houses can be built without encroaching into the theoretical buffer zone.

9.36 Finally, it is noted that paragraph 8.5.5 of the Officer Report (CD 3.1), references the Watling Chase Community Forest, however, this was addressed in the DAS which explained (CD 1.22 [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.”

9.37 The Watling Chase Community Forest Plan was a 30-year Plan which terminates this year. The Council’s Regulation 18 Consultation Version of its Emerging Local Plan makes no reference to it.

9.38 Overall, therefore, I consider there will be **limited harm** to landscape character and visual amenity and a **positive benefit** to the Ancient Woodland/Local Wildlife Site.

3 – Sustainability of Location in Terms of Transport

9.39 The Appeal Site is a brief walk to the village of Bricket Wood, identified as one of the large villages in the District, and which is home to a wide variety of local facilities and services including public transport. Consequently, once a footpath has been constructed southwards along Lye Lane to the junction of West Riding, the Appeal Site becomes a very sustainable location for new housing.

9.40 Moreover, that footpath is needed now. Dozens of households already live on the Appeal Site and at Woodview Lodge immediately south of the M25 bridge. Currently, they must walk in the road to reach the social club, the shops, the bus stops, the train station, schools etc. This unacceptable state of affairs can be remedied as a direct consequence of the Appeal proposal, through the introduction of the carefully-designed footpath described in Nick Ferguson’s Evidence (CD 2.11) and the detailed drawings (Consisbee, 2004) included in his Appendices. These demonstrate that a safe and suitable footpath can be delivered on land under the control of the Highways Authority and outside land identified as Ancient Woodland.

9.41 Concern was raised in respect of the potential harm to the Ancient Woodland on the eastern side of Lye Lane. As set out in the Method Statement by David Clarke (CD 2.4.3), the footpath can be constructed without the loss of any trees or damage to their roots – on either side of Lye Lane.

9.42 The footpath will be within the theoretical 15 metre-wide buffer zone required to mitigate harm, but (a) there will be no harm to the trees or their roots and (b) the footpath is required to justify the Appeal Scheme which will enhance the northern part of Blackgreen Wood by removing the paintball operation. Overall, therefore, the lack of a buffer zone is justified in this instance.

9.43 The fact that the Appeal Site can be made a safer and sustainable location is **a benefit not a harm**.

4 - Highway Safety

9.44 The Council's putative Reasons for Refusal 5 and (CD 3.1 [10]), states, in part:

"... insufficient information has been provided in respect of vehicle swept path analysis and a revised Stage 1 Road Safety Audit and associated Designer's Response, to demonstrate that there would not be further harm to highway safety".

9.45 A Road Safety Audit (Allen Transport Consultancy Ltd) and a subsequent Road Safety Audit Response (Paul Mew Associates) were submitted as part of the Appeal Application (CD 1.17). Whilst this information was considered sufficient, a revised Road Safety Audit is being undertaken to inform the Highways Statement of Common Ground.

5 - Flood Risk / Drainage

9.46 Putative Reason for Refusal 3 (CD 3.1 [10]), states:

"Insufficient information has been provided to demonstrate that a sustainable surface water drainage strategy can be delivered on the site and whether the proposed development will increase flood risk either onsite or elsewhere."

9.47 Paragraph 16.15.1 of the Officer Report (CD 3.1) lists the seven reasons behind this general objection. Attached as CD 2.4.6 is GeoSmart's response to each of these objections. The two recurring theme is that the FRA and SDS provided with the application were (a) sufficient and proportionate for an Outline Scheme and (b) included elements which HCC believed to be absent.

9.48 The Conclusion to GeoSmart's Addendum states:

"In conclusion, the Flood Risk Assessment and Sustainable Drainage report provided are considered sufficient for Outline Planning and it is considered reasonable to conclude that flood risk would not be increased elsewhere as a result of the development, provided suitable conditions, including 3rd party permissions if required, are applied."

9.49 Essentially on a site that currently has no permeable hardstanding and low infiltration, the introduction of permeable paving, swales, an attenuation basin, soakaways and water butts and even green roofs will all help to reduce flooding on the Site and elsewhere, even before surface water discharge to watercourses or Thames Water's network is required.

9.50 Greater detail and certainty can be delivered at the Reserved Matters stage when Layout and Landscaping are sought. At this stage, therefore, it is appropriate to use Conditions as was proposed in the Statement of Case (CD 2.1 [62]). The particular Conditions proposed in respect of Flooding/Drainage by the Council on 13th May 2024 are considered acceptable.

6 - Impact on SSSIs

9.51 In response to the SSSI Statement (CD 1.39), Natural England responded as follows:

"We note and welcome the submission of your Response to Natural England SSSI statement. We are satisfied that this provides an adequate level of assessment of the potential recreational pressure effects of the proposed development on Bricket Wood Common SSSI and Moor Mill Quarry, West SSSI, noting that the latter site is notified for its nationally important geological interest and is not publicly accessible. Natural England supports the conclusions of this report that the proposed development is unlikely to have any significant adverse recreational pressure impact on either of these SSSIs and we therefore have no objection to the planning application as submitted."

9.52 Consequently, putative Reason for Refusal 6 is unjustified.

3. Other Harm as submitted by Third Parties

9.53 The Officer Report (CD 3.1), indicates that the following additional points have been made by third-parties regarding non-Green Belt harms.

Trees

- 9.54 All the development on the Site will take place within the area developed decades ago to create the cricket ground. No trees that border the Site will be lost or damaged. A few small saplings growing on derelict land will be removed but their loss will be mitigated at the Reserved Matters Stage via a detailed Landscaping Strategy and compliance with the Biodiversity requirements set out in the Section 106 (permission to be remove trees at the Reserved Matters stage would be compliant with Condition 9 proposed by the Council on 13th May 2024).
- 9.55 Off-site, the footpath along Lye Lane has been carefully engineered to ensure each potentially affected tree will be retained and unharmed.
- 9.56 It must also be noted, that the termination of paintball activities and the removal of its paraphernalia from the Ancient Woodland between the Site and the M25, should be regarded as a positive benefit.

Wildlife

- 9.57 An initial Ecology Appraisal (Cherryfield Ecology) (CD 1.5), found evidence of bats and the possibility of reptiles. Consequently, additional bat and reptile surveys were carried out (CDs 1.6, 1.7 and 1.30). All the relevant recommendations can be secured by condition, including the provision of bat boxes and swift bricks.
- 9.58 As above, the removal of paintballing activities from Blackgreen Wood will be a positive benefit to wildlife.

Air Pollution and Climate Crisis

- 9.59 The Appeal 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, however, and should be subject to a suitable condition to minimise and mitigate such potential air pollution.
- 9.60 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 Local Transport Plan 4. 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.

9.61 At the Reserved Matters stage, other elements to reflect the Government’s policy towards reducing energy use and waste will be incorporated into the detailed design, most likely including solar panels, air/heat pumps, sustainable timber in accordance with emerging policy “Strategic Policy SP2 – Responding to the Climate Emergency” – the second bullet point of which is to *“prioritise the development of previously developed land”*.

Access, Highways and Transportation

9.62 Third party objections were made by reference to increased congestion; the sustainability of the Appeal Site in locational terms; and safety. By way of brief response:

- a) So far as congestion and cumulative impact is concerned, this is fully dealt with in the Appellant’s Highways Evidence. Suffice to say here that, in recognition of the need to significantly boost the supply of housing (NPPF [60]), paragraph 115 of the NPPF provides that development should only be prevented or refused on highways grounds if the residual cumulative impacts on the road network would be “severe”. That is a very high bar indeed, and one which the Highway Authority agrees is not remotely reached in consequence of this Appeal Proposal.
- b) As for the concern that the Appeal Site is in an unsustainable location and cannot be made sustainable, that is comprehensively addressed through the provision of the footpath joining Lye Lane to the facilities in Bricket Wood.
- c) As for the asserted danger to pedestrians/cyclists, including by reference to Lye Lane not being suitable for increased traffic, being narrow and with a blind bend, that – too – is comprehensively addressed in the Appellant’s highways evidence.

Social and Physical Infrastructure

9.63 All infrastructural needs generated by the Appeal Proposal will be comprehensively met through requisite contributions under the Section 106 Agreement.

Residential Amenity

9.64 As recognised in paragraph 8.4.19 of the Officer’s Report (CD 3.1):

- a) The amenity of existing and proposed residents would be fully considered at the Reserved Matters stage; and
- b) There is scope on the site to provide housing which would provide for suitable amenity for future occupiers in terms of privacy, light and outlook.

Conclusion on Harms

9.65 For all of the above reasons, even if the Appeal Proposal were considered to be inappropriate development (which it should not), it will occasion no harm at all beyond being inappropriate *per se* and the harm to openness. Furthermore, both of these harms will be occasioned by any of the housing development necessarily required to be on Green Belt land if St Albans' housing needs are to be met. It is in the light of that simple reality that the benefits of the Appeal Proposal are considered next.

10.0 THE BENEFITS

10.1 The following benefits all fall to be weighed in the Green Belt planning balance:

- a) The contribution to both market and affordable housing;
- b) The re-use of a brownfield site;
- c) The economic benefits of the Appeal Proposal;
- d) The net gain in biodiversity; and
- e) The provision of a safe and suitable footpath to Bricket Wood.

The Contribution Towards Both Market and Affordable Housing

10.2 The significant benefit of housing generally is accepted by the Council and, in respect of affordable housing is considered in detail in Annie Gingell's Proof of Evidence (CD 2.6). However, to set that evidence in its appropriate planning context, the following is to be noted.

10.3 First, earlier Ministerial Statements⁹ indicating that the single issue of unmet demand for conventional housing was unlikely to satisfy the Very Special Circumstances test, have been overtaken by changes to national planning policy and guidance. That earlier approach was deleted from the PPG and not translated into the 2019, 2021 or 2023 versions of the NPPF. Accordingly, and as a matter of up-to-date national planning policy, meeting unmet needs can now amount to Very Special Circumstances.

10.4 Secondly, this has been recently confirmed with regard to inappropriate development in St Albans by the Inspector's Recommendation and Secretary of State's Decision in respect of the following schemes¹⁰ (CD 5.2)

a) 391 dwellings on a Green Belt site south of Chiswell Green Lane, Ref: APP/B1930/W/22/3313110; and

b) 330 dwellings on a Green Belt site north of Chiswell Green Lane, Ref: APP/B1930/W/22/3312277.

10.5 In permitting these two schemes for a combined 721 dwellings, the Secretary of State agreed with the recommendation of Inspector Boniface who stated, as referenced in paragraph 6.15 above, that:

a) There is a very substantial need for housing in the District which is persistently going unmet [IR585];

b) The Local Plan is one of the oldest in the country, its housing requirement is hopelessly out of date, and it does not attempt to deliver anywhere near the amount of housing that is now required [IR585];

⁹ Made by Brandon Lewis on 2nd July 2013, 17th January 2014 and 17th December 2015.

¹⁰ Noting that consistency in planning decisions is highly important. The seminal case is **North Wiltshire v Secretary of State for the Environment** [1993] 65 P&CR 13, in which Mann LJ gave his reasons, as follows: *"One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency in the appellate process. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system."*

- c) Against the requirement for a deliverable five-year housing land supply, using the standard method, the Council can demonstrate a two-year supply at best (it has since fallen further) [IR585];
- d) The latest Housing Delivery Test (“HDT”) has been failed by some margin [IR585];
- e) Consequently, the policies which are most important for determining the applications are out-of-date [IR 585];
- f) The Council accepts that there is an acute need for affordable housing – a shortfall of 1,428 affordable dwellings had arisen, but the Council’s estimated supply of affordable housing up to 2027 was just 39 dwellings per annum [IR586];
- g) There was also a sizeable shortfall against the necessary supply of self-build/custom housing, and a delivery rate of just 20% against registrations [IR587];
- h) Whilst various attempts had been made to replace the existing Local Plan, they had all failed [IR588] and the Council further accepts that there was no early prospect of the housing land supply deficit being addressed [IR588]; and
- i) Put shortly, the situation is dire [IR588].

10.6 In agreeing with Inspector Boniface, the Decision Letter stated, among other things, as follows at [DL28-29]:

“28. The Secretary of State agrees with the Inspector that there is a very substantial need for housing in the district which is persistently going unmet, that the Local Plan housing requirement is hopelessly out of date, and that, using the standard method, the Council can demonstrate just a two-year housing land supply at best. He also notes that the latest HDT has been failed by some margin. Therefore, the presumption in favour of sustainable development is triggered, in accordance with footnote 8 to paragraph 11(d) of the Framework.

29. For the reasons given in IR586-591, the Secretary of State agrees with the Inspector that in the context of such a great housing need, very substantial weight should be attached to the proposed housing.”

10.7 Accordingly, in March 2024, the Secretary of State confirmed that (CD 5.2):

- a) There is a “*very substantial need*” for housing in St Albans which is persistently going unmet [DL28];
- b) The extant Local Plan in St Albans is “*hopelessly out-of-date*”, and “*can demonstrate just a two-year housing land supply at best*” (it has since fallen to 1.7 years) [DL28];
- c) The latest Housing Delivery Target “has been failed by some margin” [DL28]; and, consequently [DL29]:

“... In the context of such a great housing need, very substantial weight should be attached to the proposed housing” [

[Emphasis Added]

10.8 The Council’s agreement that there was “*no early prospect of the housing land supply deficit being addressed*”, (CD 5.2 [IR588]), is a stark admission of its self-evident inability to replace the oldest Local Plan in the country; an admission made worse by its persistent refusal of schemes (or failure to determine applications) which seek to undo just some of the harm its ineffectiveness is causing to local people in need of new housing.

10.9 As the housing crisis continues to deepen in the face of the Council’s inaction, **very substantial weight** must be accorded to provision of market housing by the present Appeal scheme, too.

10.10 Furthermore, and as set out earlier, there is no policy requirement for affordable housing in the Green Belt outside the towns and villages. Furthermore, whilst the Council’s Guidance seeks a contribution of 35%, this is from all major sites, greenfield or brownfield, and, as such, it fails to give credit to brownfield sites which deliver 35% affordable housing despite the additional cost of demolition and remediation. As brownfield sites within the towns where Policy 7A applies

often receive permission despite delivering zero affordable housing¹¹, **very substantial weight** must be accorded to the provision of 35% affordable housing.

10.11 In line with the recent Chiswell Green decisions (CD 5.2) **very substantial weight** should be afforded to self-build/custom housing.

The Re-use of a Brownfield Site

10.12 That Government policy is to prioritise brownfield land over greenfield land is without question.

10.13 Paragraph 123 of the NPPF states:

“Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. 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.”

10.14 Paragraph 124 (c) adds:

“Planning policies and decisions should ...

... give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land.”

10.15 And paragraph 89 explains, in part, that:

“The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.”

¹¹ For instance, the 31 dwellings approved at 222 London Road, St Albans under ref: 5/2021/1972. The Council’s Housing Department’s submission stated: *“With regards to the above planning application, the Strategic Housing department has no comments other than it is disappointing to note no affordable housing will be delivered on this sustainable, brown field site.”*

10.16 Consequently, when considering the appeal scheme at Maitland Lodge, the Inspector correctly concluded (CD 5.6 [39]):

“Therefore, the appeal site in general is sequentially preferable to non-PDL sites in the GB, which make up the majority of GB land in the Borough.”

10.17 As referenced in paragraph 7.36 above, controversially, the Inspector for the Appeal scheme off Tollgate Road the Inspector came to the contrary view, determining that no weight should be given to the PDL status of the site [DL109-117]. However, as further referenced in paragraphs 7.37-7.38 above, that Decision is currently under challenge.

10.18 Consequently, as matters stand, I take the view that the Inspector in the Maitland Lodge Appeal was correct on this point and that the re-use of brownfield land in the Green Belt is a positive benefit that carries **moderate weight** because it is sequentially preferable to the use of undeveloped greenfield Green Belt land.

The Economic Benefits

10.19 As for the economic benefits of the Appeal Scheme, on any view these are considerable. Under the heading: **“How can new homes support the economy?”**, Fact Sheet 8 of the PPG states:

“Employment

In 2021, one in 20 jobs in England were in the construction sector, approximately 1.3 million jobs.

Jobs in the construction sector include those involved in building and renovating homes as well as supporting infrastructure. This can include roads, utilities, schools and healthcare facilities

Jobs in construction include entry-level apprenticeships and traineeships as well as roles that require specialist skills and management experience.

Depending on the location and scale of new homes, a proportion of construction jobs will likely be taken up by people living in the local area, including school-leavers and people

previously unemployed. New job opportunities can help support economic strategies such as Levelling Up.

Based on national averages using the Home Builders Federation's Housing Calculator, 100 homes is estimated to support:

- *310 jobs in construction and the supply chain*
- *3 new construction apprenticeships, graduate placements or traineeships*

Based on ONS data on householder spending in England for 2022, 100 homes could generate:

- *£1.2 million in annual spending by residents in the retail and leisure sector*

Spending

New residents can lead to an increase in spending in the local economy which can help to boost activity in high streets and support local jobs and businesses such as shops, pubs and cafés."

10.20 The consequences for the local economy of (net) up to 82 additional homes is, therefore, a positive benefit, which should be given **substantial weight**.

Biodiversity

10.21 Net gains in biodiversity can be guaranteed through the provisions of the S106 Agreement. The Appeal proposal will also deliver a positive benefit to local ecology by removing buildings and activity from the Ancient Woodland/Local Wildlife Site between the Appeal Site and the M25 (see Fig. 2 above). The contribution to biodiversity and local ecology should be afforded **moderate weight**.

The Provision of a Safe and Suitable Footpath along Lye Lane

10.22 Residents of the Appeal Site (and of the dwellings and mobile homes site to the south) who wish to walk to West Riding in Bricket Wood, and beyond, must currently walk in the road. This is an unacceptable state of affairs which must be addressed. Consequently, the provision of a safe and suitable footpath, which causes no harm to the trees on either side of Lye Lane (protected or otherwise), is, therefore, a positive benefit (a) to existing residents and (b) by making the

most effective use of a brownfield site by making it a sustainable location. The provision of the footpath should receive **substantial weight**.

11.0 **THE PLANNING BALANCE**

11.1 As set out in Section 8, the proposal must be considered as either:

- a) Appropriate development in the Green Belt which benefits from the “*tilted balance*” in favour of new housing; or as
- b) Inappropriate development, for which Very Special Circumstances must exist if permission is to be granted.

The Planning Balance for Appropriate Development

11.2 If it is determined that the Appeal Proposal is appropriate Green Belt development by reason of falling within the exception provided for by NPPF paragraph 154 g), then there is no footnote 7 policy which provides a clear reason for refusal and so permission must be granted:

“... unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”¹².

11.3 In this regard, I have concluded that:

- a) The only harm to the Green Belt is to openness which is moderate but which should, nevertheless be accorded **substantial weight**;
- b) There is **no harm** to purposes of the Green Belt;
- c) There is **no harm** to Site layout/design, open space provision or noise impacts on residential amenity;

¹² See: ***Monkhill Ltd –v- The Secretary of State for Housing, Communities & Local Government and Anr*** [2019] EWHC 1993 (Admin), at [39]and [45], as approved by Court of Appeal at [2021] EWCA Civ 74. (CD 6.11)

- d) There is **very limited harm** to Landscape impacts, including visual amenity and impact on protected landscape features;
- e) There is **no harm** to highways safety;
- f) There is **no harm** to flood risk; and
- g) There is **no harm** to SSSIs.

11.4 Set against this low level of harm, I have also concluded that:

- a) The benefit meeting unmet housing need should be accorded **very substantial weight**;
- b) The benefit of affordable housing should be accorded **very substantial weight**;
- c) The benefit of self-build plots should be accorded **very substantial weight**;
- d) The economic benefits should be accorded **substantial weight**;
- e) The benefit of the footpath should be accorded **substantial weight**;
- f) The benefit of building over 80 additional homes on a PDL site in the Green Belt instead of a greenfield one, should be accorded **moderate weight**; and
- g) The benefit of a net gain in biodiversity and the removal of buildings and activity from the Ancient Woodland / Local Wildlife Site should be accorded **limited weight**.

11.5 In my judgement therefore, the adverse harm caused by the Appeal Scheme would not significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. Consequently, the Appeal should be Allowed.

The Planning Balance for Inappropriate Development

11.6 Whilst my view is that the harm to openness is less than substantial, if the Inspector concludes that it is substantial, then the scheme is inappropriate development and Very Special

Circumstances must exist for the Appeal to be Allowed. Such Circumstances require the harm to the Green Belt by inappropriateness and any other harm, to be clearly outweighed by other considerations (NPPF [153]).

11.7 It has been accepted by the Council, in the preparation of each of the failed reviews of the Local Plan, as well as the latest Emerging version, that exceptional circumstances exist that will necessitate the release of Green Belt land for housing in order to meet some of the housing needs within the district.

11.8 The Council has repeatedly failed to meet the requirements of Government policy to deliver a new Local Plan that would address housing need and has not provided for the proper planning of the area in a plan-led manner. And whilst its Local Plan ages inexorably, the housing land supply deteriorates inexcusably.

11.9 In considering whether Very Special Circumstances exist, I have concluded:

- a) The harm due to inappropriateness should be accorded **substantial weight**¹³;
- b) The harm to openness should be accorded **substantial weight**¹⁴;
- c) The harm to purposes of the Green Belt should be accorded **no weight**;
- d) The harm to Site layout/design, open space provision and noise impacts on residential should be accorded **no weight**;
- e) The harm to Landscape impacts, including visual amenity and impact on protected landscape features should be accorded **limited weight**;
- f) The harm to highways safety should be accorded **no weight**;
- g) The harm to flood risk should be accorded **no weight**; and

¹³ Whilst highlighting that this harm is inevitable if housing needs in St Albans are going to be met.

¹⁴ *Ditto*.

h) The harm to SSSIs should be accorded **no weight**.

11.10 Set against this, I have also concluded that:

a) The benefit meeting unmet housing need should be accorded **very substantial weight**;

b) The benefit of affordable housing should be accorded **very substantial weight**;

c) The benefit of self-build plots should be accorded **very substantial weight**;

d) The economic benefits should be accorded **substantial weight**;

e) The benefit of the footpath should be accorded **substantial weight**;

f) The benefit of building over 80 additional homes on a PDL site in the Green Belt instead of a greenfield one, should be accorded **moderate weight**; and

g) The benefit of a net gain in biodiversity and the removal of buildings and activity from the Ancient Woodland / Local Wildlife Site should be accorded **limited weight**.

11.11 In my judgement therefore, the substantial benefits of the Appeal Proposals clearly outweigh the harm to the Green Belt and any other harm in this case. Consequently, Very Special Circumstances exist and the Appeal should be Allowed.

12.0 **PLANNING OBLIGATIONS**

12.1 A Draft S106 Planning Obligation has been submitted to the Inquiry in the form of a trilateral Agreement between the Appellant, the Council and HCC. It contains the following commitments:

a) Affordable Housing: comprising 35% housing units, as defined by the NPPF, to be provided to those whose needs are not met by the private market including:

- i. Discounted Markets Sales Housing; and
- ii. First Homes;

b) Biodiversity offset (if required);

- c) Financial contributions to the following (subject to final agreement):
 - i. East of England Ambulance Service contribution;
 - ii. Leisure and Cultural Centres Contribution;
 - iii. Library contribution;
 - iv. NHS contribution;
 - v. Play area contribution;
 - vi. Primary Education Contribution;
 - vii. Secondary education contribution;
 - viii. Special Educational Need and Disabilities Contribution; and
 - ix. Youth contribution.

- d) The management of the public open space by an open space management company according to an appropriate management scheme;

- e) Provision of a Travel Plan, to include among other things:
 - i. Provision of a resident travel pack setting out sustainable travel options; and
 - ii. Provision to residents of the development a sustainable travel voucher; and

- f) Provision of the related highway works in conjunction with an associated S278 Agreement.

12.2 These commitments ensure that the key benefits of the Appeal Proposal can be secured to ensure that these benefits will endure for the duration of the development.

12.3 The S106 also provides for the payment of financial contributions for the requested public infrastructure and services. While these are in an agreed form, these are subject to confirmation by the Inspector that they meet the relevant compliance tests.

12.4 In relation to the 'Biodiversity Offset' contribution, this is a standard clause included to ensure that where a site cannot meet the BNG commitments on site, then there is a mechanism baked into the s106 which provides for such biodiversity gains to be delivered off-site through a contribution to an appropriate District-wide scheme.

12.5 The planning conditions provide, among other things, for both Approved Plans and for the matters to be covered by one or more subsequent Reserved Matters applications.

12.6 These conditions provide the Council and stakeholders with the reassurance that the development will be undertaken in a positive manner and will be consistent with the principles of good design.

12.7 As such, I consider the Appeal Proposal to comply with Policy 143B of the Local Plan and to be capable of delivering the required infrastructure, subject to completion of the draft S106 Agreement.

13.0 **CONCLUSION**

13.1 At paragraph 7, the NPPF instructs us that:

“The purpose of the planning system is to contribute to the achievement of sustainable development, including the provision of homes ... and supporting infrastructure in a sustainable manner. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs ...”

13.2 At paragraph 10, the NPPF explains:

“So that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development.”

13.3 Whilst paragraph 9 of the NPPF explains that the three objectives set out in paragraph 8 “... are not criteria against which every decision can or should be judged”, the following considers how the proposal delivers against each of them.

Economic Objective

13.4 The Council has clearly failed, at any time over the past decade, to ensure that sufficient land of the right type is available in the right place to help build a strong, responsive and competitive economy.

Social Objective

- 13.5 The Council has also clearly failed to support its local communities, manifestly failing to provide a sufficient number and range of homes to meet the needs of present and future generations. The Appeal Scheme directly address some of the shortfall caused by the Council's failure to meet the housing needs of past, present and future generations.
- 13.6 The details of good design, safe places and open spaces are matters to be properly addressed at the Reserved Matters stage.

Environmental Objective

- 13.7 Whilst the Council seeks to release dozens of greenfield Green Belt sites in its Emerging Local Plan, the Appeal Scheme makes more "*effective use of land*" by delivering new homes – including affordable homes – on a brownfield site. Furthermore, it can deliver these houses without harming Ancient Woodland or Local Wildlife Sites. In fact, it will deliver a positive benefit by removing buildings and activity from the Ancient Woodland/LWS adjacent to the Site. Further gains in biodiversity can be guaranteed through the provisions of the S106 Agreement.
- 13.8 At the Reserved Matters stage, the detailed design will be required to demonstrate how the scheme will help to minimise waste and pollution, and mitigate climate change, including moving to a low carbon economy.
- 13.9 Whether viewed as appropriate development benefitting from the tilted balance in favour of new housing, or inappropriate development benefitting from the presence of Very Special Circumstances, the Appeal Scheme can clearly be seen as a reasonable example of sustainable development, benefitting from a presumption in its favour.

Overall Conclusion

- 13.10 If part of the purpose of good planning is to ensure delivery of the right homes, in the right place and at the right time, the Appeal Proposal does just that. Taking these in reverse order:
- a) The Appeal Proposal is coming forward in the midst of a housing crisis which continues to damage the local economy, and at precisely the "*right time*".

- b) Since the Appeal Site is PDL, it is the right type of land, too, in full accordance with the drive to deliver “brownfield first”. Furthermore, the creation of a new footpath along Lye Lane also makes the Appeal Site a sustainable location and, so, it is the “*right place*” too; and

- c) Since the Appeal Proposal is bringing forward a mix of homes in terms of both size and tenure, and at times of immense housing need in St Albans, they are the “*right homes*” as well.

13.11 Consequently, it is respectfully requested that the Appeal is Allowed.