

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

PLANNING COURT

ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR LEASE UNDER S.288(4B) OF THE TOWN AND
COUNTRY PLANNING ACT 1990

BETWEEN:

VISTRY HOMES LIMITED

Claimant

-and-

(1) SECRETARY OF STATE FOR HOUSING, LEVELLING UP AND COMMUNITIES

First Defendant

(2) ST ALBANS CITY AND DISTRICT COUNCIL

Second Defendant

-and-

COLNEY HEATH PARISH COUNCIL

Interested Party

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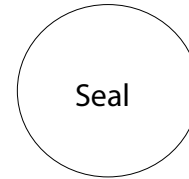
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Planning Statutory Review
Part 8 Claim Form (CPR8.1(6) and
Practice Direction 8C)

In the High Court of Justice
 Planning Court in the Administrative Court

For Court use only	
Planning Court Reference No.	
Date filed	



SECTION 1 Details of the claimant(s) and defendant(s)

Claimant(s) name(s) and address(es)

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Telephone no. 0345 209 1358 **Fax no.** 0345 209 2002

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Claimant(s) or claimant(s) legal representative(s) address to which documents should be sent.

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 TA1 2PG

Telephone no. 0345 209 1358 **Fax no.** 0345 209 2002

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 EC4A 2HG

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 zsimons@landmarkchambers.co.uk

1st Defendant

name
 Secretary of State for Housing, Levelling Up and Communities

Defendant(s) or (where known) Defendant(s) legal representative(s) address to which documents should be sent.

name
 The Treasury Solicitor

address
 Government Legal Department
 102 Petty France
 Westminster
 London, SW11 9GL

Telephone no. 020 7210 8500 **Fax no.**

E-mail address
 newproceedings@governmentlegal.gov.uk

2nd Defendant

name
 St Albans City and District Council

Defendant(s) or (where known) Defendant(s) legal representative(s) address to which documents should be sent.

name
 St Albans City and District Council

address
 Civic Centre
 St Peter's Street, St Albans
 Hertfordshire
 AL1 3JE

Telephone no. 01727 866100 **Fax no.**

E-mail address

SECTION 2 Details of other interested parties as set out in paragraph 4 of PD 8C

Include name and address and, if appropriate, details of DX, telephone or fax numbers and e-mail

name Colney Heath Parish Council	name
address Highfield Park Visitor Centre Hill End Lane, St Albans Hertfordshire AL4 0RA	address
Telephone no. 01727 825314	Telephone no.
Fax no.	Fax no.
E-mail address clerk@colneyheathparishcouncil.gov.uk	E-mail address

SECTION 3 Details of the decision to be statutorily reviewed

Decision:
The decision given by the First Defendant's Inspector dated 26 January 2024 to dismiss an appeal brought by the Claimant pursuant to section 78 of the Town and Country Planning Act 1990.

This claim for statutory review is being made under the following section as set out in CPR PD 8C 1.1:-

- section 287 of the Town and Country Planning Act 1990
- section 288 of the Town and Country Planning Act 1990
- section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990
- section 22 of the Planning (Hazardous Substances) Act 1990
- section 113 of the Planning and Compulsory Purchase Act 2004
- other, please state

Date of decision:
26 January 2024

Name and address of the authority, tribunal or minister of the Crown who made the decision to be reviewed.

name Secretary of State for Housing, Levelling Up and Communities	address Government Legal Department 102 Petty France Westminster London, SW11 9GL
---	--

SECTION 4 Permission to proceed with a claim for a planning statutory review

I am seeking permission to proceed with my claim for a planning statutory review.

Are you making any other applications? If Yes, complete Section 8. Yes No

Is the claimant in receipt of a Civil Legal Aid Certificate? Yes No

Are you claiming exceptional urgency, or do you need this application determined within a certain time scale? If Yes, complete Section 8. Yes No

Have you issued this claim in the region with which you have the closest connection? (Give any additional reasons for wanting it to be dealt with in this region in the box below). If No, give reasons in the box below. Yes No

Counsel for the Claimant is based in London. The First Defendant is based in London

Does the claim include any issues arising from the Human Rights Act 1998? Yes No
If Yes, state the articles which you contend have been breached in the box below.

SECTION 5 Detailed statement of grounds

set out below attached

Please see attached Statement of Facts and Grounds

SECTION 6 Aarhus Convention Claim

If you have indicated that the claim is an Aarhus claim set out the grounds below, including (if relevant) reasons why you want to vary the limit on costs recoverable from a party.

N/A

SECTION 7 Details of remedy (including any interim remedy) being sought

set out below attached

Please see attached Statement of Grounds and Facts

SECTION 8 Other applications

set out below attached

I wish to make an application for:-

SECTION 9 Statement of facts relied on

set out below attached

Please see attached Statement of Grounds and Facts

SECTION 10 Supporting documents

If you intend to use a document to support your claim but do not presently have that document, identify it, give the date when you expect it to be available and give reasons why it is not presently available in the box below.

Please also tick the following boxes in relation to the papers you are filing with this claim form and any you will be filing later.

- | | | |
|---|--|--|
| <input checked="" type="checkbox"/> Detailed statement of grounds | <input checked="" type="checkbox"/> set out in Section 5 | <input checked="" type="checkbox"/> attached |
| <input type="checkbox"/> Application for directions | <input type="checkbox"/> set out in Section 8 | <input type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Statement of the facts relied on | <input checked="" type="checkbox"/> set out in Section 9 | <input checked="" type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Written evidence in support of the claim | | <input checked="" type="checkbox"/> attached |
| <input type="checkbox"/> Where the claim for a planning statutory review relates to a decision of a court or tribunal, an approved copy of the reasons for reaching that decision | | <input type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Copies of any documents on which the claimant proposes to rely | | <input checked="" type="checkbox"/> attached |
| <input type="checkbox"/> A copy of the legal aid or Civil Legal Aid Certificate (<i>if legally represented</i>) | | <input type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Copies of any relevant statutory material | | <input checked="" type="checkbox"/> attached |
| <input type="checkbox"/> A list of essential documents for advance reading by the court (<i>with page references to the passages relied upon</i>) | | <input type="checkbox"/> attached |


Reasons why you have not supplied a document and date when you expect it to be available:-

Statement of Truth

I believe (The claimant believes) that the facts stated in this claim form are true.

Full name KELLY HANNA ROWLEY

Name of claimant's legal representative's firm Clarke Willmott LLP

Signed  Position or office held Associate Solicitor
Claimant ('s legal representative) (if signing on behalf of firm or company)

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IN THE HIGH COURT OF JUSTICE

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COMMUNITIES

(2) ST ALBANS CITY AND DISTRICT COUNCIL

Defendants

-and-

COLNEY HEATH PARISH COUNCIL

Interested Party

STATEMENT OF FACTS AND GROUNDS

- **OBI/x**: References are to page x in the Exhibit OBI.
- **DL:x**: References are to paragraph x in the Inspector’s decision letter at [OBI/1-31].
- Essential reading:
 - o The DL [OBI/1-31].
 - o 1st witness statement of Oliver Bell

Introduction

1. The Claimant seeks leave to challenge a 26.1.24 decision letter (“**DL**”) of a planning inspector (“**the Inspector**”) appointed by the 1st Defendant (“**the Secretary of State**”) to determine the Claimant’s appeal against the refusal by the 2nd Defendant (“**the Council**”) of its application for planning permission for development including up to 150 dwellings (“**the Scheme**”) on land off Tollgate Road in Colney Heath, Hertfordshire (“**the Site**”).
2. The Scheme included the delivery of 10% biodiversity net gain (“**BNG**”). The Inspector reduced the weight attributable to that benefit on account of what he saw as the requirements of the Environment Act 2021, albeit those requirements (a) were not in force, and in any event (b) would not apply to the Scheme. That was an error, similar to the error which led Eyre J to quash the decision letter in *NRS Saredon Aggregates Ltd v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 2795 (Admin).
3. Further, the Inspector found that the Site comprises – in its entirety – “previously developed land” (“**PDL**”, also known as “brownfield land”). He accepted that national policy priorities maximising the use of brownfield land, but decided that the NPPF, read in light of the Court of Appeal’s judgment in *Dartford BC and SoSCLG* [2017] EWCA Civ 141, meant that he should give no weight to this factor in the planning balance.

4. Leave is accordingly sought on two grounds:
 - (i) Ground 1: The Inspector erred reducing the weight attributable to the scheme's provision of BNG on account of future legislative requirements which would not, in any event, apply to the scheme; and
 - (ii) Ground 2: The Inspector's approach to PDL was based on a misunderstanding of national policy, and was inadequately reasoned.

Background

5. The Claimant is a national housebuilder. The Site lies within the Council's administrative boundary. By an application dated 5 August 2022, the Claimant sought outline planning permission for residential development of the Appeal Site (up to 150 dwellings) on the Site. It was refused for the reasons in the Decision Letter (**pages 1-31 of Exhibit OB1**).
6. On 26 May 2023, the Claimant appealed to the Secretary of State under s. 78(2) of the Town and Country Planning Act 1990 ("TCPA").
7. The Secretary of State appointed the Inspector to determine the appeal. The Planning Inspectorate decided that the inquiry procedure should apply.
8. The Claimant and the Council signed up to a Statement of Common Ground (**pages 35-57 of Exhibit OB1**) which noted that:
 - (i) It was agreed (see §6.35-40) that the scheme was "*satisfactory in respect of its ecological impact*" on account of its provision of a "*biodiversity net gain*"; and

(ii) At §8.1, among the areas of disagreement was “*the extent of the Appeal Site comprising previously developed land*”.

9. On PDL, the Claimant’s evidence was set out in the Proof of Evidence (**pages 146-188 of Exhibit OB1**):

“5.20 Given the above, and noting the definition of PDL at Annex 2 of the Framework, I consider that the entire extent of the Appeal Site comprises PDL. The Site is therefore generally a sequentially preferable location for development over other greenfield Green Belt sites, particularly in the highly constrained context of St Albans District. This approach aligns with the findings of the Inspector at paragraph 39 of the aforementioned Maitland Lodge appeal.

5.21 I place significant weight on the effective use of PDL to provide homes, which accords with paragraph [123] of the Framework and again aligns with the weight given by the Inspector at paragraph 35 of the Maitland Lodge appeal”.

10. By the end of the inquiry, on the Council’s case:

(i) It accepted the provision of BNG was a benefit, but sought to reduce the weight attributable to that benefit from significant to moderate because the net gain arose, at least in part, off-site rather than on-site: §102 of its closings (**page 272 of Exhibit OB1**).

NB no reliance was put in the Council’s closings, on this point or at all, on the requirements of Environment Act 2021.

(ii) It conceded that the entirety of the site comprised PDL (see §94 of its closings) (**page 271 of Exhibit OB1**), albeit was said to be only on a “*mechanistic, legalistic*” reading of the NPPF), and its status as PDL was said to attract no weight.

11. On the Claimant’s case:

(i) On BNG, it was said at §72 of its closings (**page 219 of Exhibit OB1**) that:

“there is nothing in policy, guidance or legislation to support [the Council’s] approach and the enhancements will indeed be maximised on site, with only residual improvements dealt with off-site. The delivery of 10% BNG should be given significant weight on the basis that: (a) the development plan is silent on this matter; and (b) the offer will materially exceed national planning policy.”

(ii) On PDL, the position was addressed from §61-§70 of its closings (**pages 214-219 of Exhibit OB1**). The submissions were that:

(a) All of the site was, by that stage, agreed by the Council to be PDL (§66);

(b) As another Inspector pointed out in a appeal decision known as “*Maitland Lodge*”, the optimisation of an equestrian PDL site to promote homes is a “*significant positive benefit of the proposal in the context of a [district] where Green Belt release is accepted as being inevitable to meet its housing needs*” (§67), as was the case before this Inspector. In consequence, PDL should be weighed as a benefit in the balance which supports the grant of permission (§68-§70).

12. The DL was published on 26.1.24 (**pages 1-31 of Exhibit OB1**). The Inspector dismissed the appeal on the basis that the scheme’s benefits did not outweigh its harms in the balance, see DL:152:

“Accordingly, I have considered the totality of the benefits of the proposed development against the totality of its harms. Even though the provision of market and affordable housing attracts the highest level of weight of any consideration in this case, overall I judge that the housing and other benefits do not clearly outweigh the combination and extent of harms to the Green Belt, landscape character and appearance, and heritage assets, and arising from the limitations in the choice of sustainable transport modes. Therefore, I conclude that the other considerations in this appeal do not clearly outweigh the harm that I have identified.”

13. In relation to BNG, the Inspector decided at DL:104 that:

“The proposed 10% BNG would be equivalent to the minimum level of BNG mandated in the Environment Act 2021, which is expected to apply to all major development proposals, such as the appeal scheme, during 2024. Given that at the time of writing the statutory requirement for BNG is not yet in force, I consider that the commitment to its provision in advance would be a benefit in favour of the appeal scheme. However, because the gain proposed would be at the minimum of the level set out in the Act, I attach no more than moderate weight to it.”

14. On PDL, the Inspector’s analysis runs from DL:105-117. In particular, he decided that:

- (i) All of the site meets the National Planning Policy Framework’s (“NPPF’s”) definition of PDL: DL:108.
- (ii) The NPPF’s enjoinder to make as much use of PDL as possible is relevant not only to plan-making, but also to decision-taking: DL:109. However, the effect of §154(g) NPPF and the Court of Appeal’s decision in *Dartford BC and SoSCLG* [2017] EWCA Civ 141 meant that this issue should not be relevant as a free-standing benefit in the planning balance: DL:110-113.
- (iii) The reasoning in Maitland Lodge decision was dismissed as not “comparable” because, in that case, the impacts on the openness of the Green Belt were different, and so the development was “not inappropriate”: DL:114-116.
- (iv) In consequence, the Inspector gave the “PDL status” of the Site no weight in the balance: DL:117.

Legal and Policy Framework

Legal framework

15. The applicable legal principles are well-established:

- (i) Decisions of the Secretary of State and his inspectors are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues are between them and what evidence and argument has been deployed. They should not be subject to “*hypercritical scrutiny*”: *St Modwen Developments Ltd. v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643 at §§6-7.
- (ii) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the “*principal important controversial issues*”. An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council v Porter (No. 2)* [2004] 1 WLR 1953, at p.1964B-G).
- (iii) Previous appeal decisions are capable of being material considerations. They may be material, for example, because they relate to the same or a similar form of development on another site to which the same policies apply. Where another decision is material, the Inspector is free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons

for departure from the previous decision: *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P&CR 137 at p.145, *DLA Delivery Ltd v Baroness Cumberlege of Newick* [2018] EWCA Civ 1305 at §34. The Inspector must, as Lloyd LJ put it in *Dunster Properties Ltd v the First Secretary of State* [2007] EWCA Civ 236 at §23, to “grasp the intellectual nettle of the disagreement”.

(iv) Although the *application* of planning policy is a matter of judgment for the decision-maker, the *interpretation* of planning policy is a matter of law for the Court: *Hopkins Homes Ltd v Secretary of State for Community and Local Government* [2017] UKSC 37 at §§26 and 73. The interpretation of planning policy is “logically prior” to its application: *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13 at §21.

16. By section 98 and Schedule 14 of the Environment Act 2021 provision is made for it to be a condition of the grant of planning permission that the biodiversity gain objective is met. That provision takes the form of the introduction of section 90A and Schedule 7A into the 1990 Act. In summary the effect of paragraphs 2, 13, and 15 of the schedule is that the grant of planning permission will be conditional upon the post-development biodiversity value of the site in question exceeding its pre-development biodiversity value by at least 10%.

17. The relevant provisions in the Environment Act were brought into force on 12th February 2024 (so after the DL under challenge) by Regulation 2 of the Environment Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations 2024. Regulation 3 notes that:

“3. The biodiversity gain planning condition does not apply in relation to a planning permission within the scope of regulation 2(2) of these Regulations, where the application for planning permission was made before 12th February 2024.”

Policy framework

18. PDL is defined in Annex 2 to the National Planning Policy Framework (“NPPF”) (**pages 58-135 of Exhibit OB1**).

19. Chapter 11 of the NPPF (“*Making effective use of land*”) (**pages 93-95 of Exhibit OB1**) sets out national policy in relation to maximising the use of PDL, e.g.

“123. 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.”⁴⁹

⁴⁹ Except where this would conflict with other policies in this Framework, including causing harm to designated sites of importance for biodiversity.”

20. Chapter 13 of the NPPF deals with the Green Belt. §154 (**pages 99-102 of Exhibit OB1**) states that “*a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt*”, but then lists a number of exceptions including:

“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.”

21. Inappropriate development in the Green Belt requires justification with reference to the test at §153 (i.e. “*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 parties agreed in this case that the scheme comprised inappropriate development, so required justification with reference to that test.

22. In the Maitland Lodge appeal referred to above (**pages 234-255 of Exhibit OB1**), the Inspector found that:

“38. [...] this inquiry has established that the GB element of the appeal site is all PDL.

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. In any event, as established above, the specific appeal proposal is ‘not inappropriate’ development in the GB. I therefore find no harm from the location of the proposal in the GB in addition to its sequential preference over non-PDL GB sites. This is a significant positive benefit of the proposal in the context of a Borough where GB release is accepted as being inevitable to meet its housing needs.

Grounds of challenge

Ground 1: The Inspector erred reducing the weight attributable to the scheme’s provision of BNG on account of future legislative requirements which would not, in any event, apply to the Scheme.

23. There was agreed to be no policy requirement for the scheme to deliver any particular quantity of BNG – on- or off-site.

24. As above, the BNG requirements of the Environment Act 2021:

(i) Were not in force at the time of the DL; and

(ii) Would never, in any event, apply to the Scheme on account of the transitional provisions set out above at §17.

25. The Inspector’s conclusions on BNG at DL:104 (above at §13) erred because:

- (i) The Act’s requirements were not yet in force.
 - (ii) The Inspector mistakenly inferred that the 2021 Act’s requirements would apply “to **all** major development proposals, **such as the appeal scheme**” – again, that was wrong. The Scheme was not and could not be covered by the relevant requirements.
 - (iii) The Inspector referred to commitment “**in advance**” of the requirements coming into effect – again his mistaken inference was that the requirements would (eventually) in fact apply to the Scheme, which they do not.
 - (iv) The Inspector’s finding that “*because the gain proposed would be at the minimum of the level set out in the Act, I attach no more than moderate weight to it*” was wrong because
 - (a) the Act was not in force, and the Inspector had no way of knowing if and when it would come into force, and more importantly
 - (b) it does **not** prescribe a minimum level of BNG for the Scheme to achieve.
26. The error is comparable to the error this Court found in *NRS Saredon Aggregates Ltd v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 2795 (Admin). In that case:
- (i) The scheme also involved “inappropriate” development in the Green Belt in a scheme which offered, among its benefits, the provision of BNG;
 - (ii) The Inspector found at DL:195 (reproduced at §34 of Eyre J’s judgment) that “*the net gain would be nearly 4 times that required by forthcoming legislation. However, some of the biodiversity net gain that would be achieved is required to meet national policy and future legislative requirements in order to mitigate the environmental impact of the*

development. Consequently, I consider that such enhancements should be afforded only moderate weight."

(iii) That conclusion is similar to the Inspector's finding in this case at DL:104.

(iv) Eyre J found that conclusion was in error, and quashed the decision because:

"I have reflected on the language used by the Inspector and have reminded myself of the principles which are to govern my approach to the interpretation of the Decision Letter. Nonetheless I am driven to the conclusion that the meaning and effect of [195] is that the Inspector noted the extent of the biodiversity net gain but then decided that the weight to be attributed to that gain was to be reduced because some of the gain would be needed anyway in respect of the development at the Site by reason of the future legislative requirements. I have concluded that this is the only interpretation which makes sense of the language used by the Inspector and the way in which he structured that paragraph. The sentence beginning "however" can only be read as being the reason given by the Inspector for rejecting the Claimant's contention that considerable weight was to be given to the biodiversity net gain and that reason was in part the belief that some of the gain would be required by the future legislation. If instead of the words "some of the biodiversity net gain that would be achieved" the Inspector had used the words "some of that net gain" the fact that he was referring back to the biodiversity net gain on which the Claimant was relying and was doing so in relation to the Site would have been clear beyond peradventure. The words which he used were to the same effect and it is clear that in the sentence beginning "however" the Inspector was addressing that gain and having regard to the gain at the Site."

(v) Again, the same logic applies to the DL in this case at DL:104.

(vi) Eyre J found that the error was material, that he could not be satisfied that the decision would necessarily have been the same but for the error (because it could have tilted the planning balance one way or the other) and so the DL was quashed.

27. In consequence, the DL should be quashed.

Ground 2: The Inspector's approach to PDL was based on a misunderstanding of national policy, and was inadequately reasoned.

28. No challenge is made those parts of DL:105-109 where the Inspector concluded that the whole site meets the definition of PDL, and that national policy's emphasis on maximising the use of PDL applies both to plan-making and decision-taking.

29. The key errors are from DL:110-117. 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 (above at §20) 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 (see §22 above), i.e. the NPPF imports a sequential preference for PDL sites in the Green Belt 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).
31. Those were material errors on a key matter of dispute which bore on the weight attributable to benefits in the planning balance. In consequence, the decision should be quashed on this ground too.

Conclusion

32. The Claimant submits that the above two grounds of challenge are, at the very least, arguable.
33. The Claimant accordingly asks that the Court grant the Claimant leave to bring its claim under s. 288(4B) of the TCPA.
34. In the substantive proceedings, the Claimant will seek:
 - (i) An order quashing the Decision; and
 - (ii) An order requiring the Secretary of State to pay the Claimant's costs.

ZACK SIMONS

Landmark Chambers
180 Fleet Street
London EC4A 2HG

4 MARCH 2024

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Witness Statement
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-and-

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COMMUNITIES**

First Defendant

(2) ST ALBANS CITY AND DISTRICT COUNCIL

Second Defendant

-and-

COLNEY HEATH PARISH COUNCIL

Interested Party

WITNESS STATEMENT OF OLIVER BELL

I, Oliver Bell of Nexus Planning Limited of Holmes House, Pear Place, London, SE1 8BT will say as follows:

Introduction

1. I am a Director of Nexus Planning Limited, a position which I have held since 2020. I provide planning advice throughout the UK on planning matters relating to residential and commercial development.
2. I was instructed by the Claimant, Vistry Homes Limited, to provide evidence in relation to an appeal made by them under Section 78 of the Town and Country Planning Act 1990 against the refusal of planning permission by the Second Defendant in respect of land to the rear of 42-100 Tollgate Road & 42 Tollgate Road, Colney Heath (“**the Site**”).
3. My evidence was provided in the Inquiry held between 19-22 and 26-28 September 2023 to which the Appeal Decision of M Hayden, BSc, Dip TP, MRTPI relates and which I understand is the substance of these proceedings.
4. I have been provided with and have reviewed a copy of the Statement of Facts and Grounds prepared by the Claimant’s Counsel and filed in these proceedings and confirm that all the assertions of facts set out are correct.
5. I am duly authorised by the Claimant to make this statement on their behalf. The facts in this statement come from my own personal knowledge of the appeal and are true to the best of my knowledge, information and belief.
6. Within this Witness Statement I make reference to a number of documents which are included and marked as Exhibit “**OBI**”.

Background

7. The Claimant was the applicant for an outline planning application with all matters reserved save for access for the following development:

Outline application (access sought) - Demolition of existing house and stables and the construction of up to 150 dwellings including affordable and custom-build dwellings together with all ancillary works.

8. The application was given the reference 5/2022/1988 and refused by the Second Defendant on 25 May 2023 for the reasons set out in the planning application decision notice (**Pages 32-34 of Exhibit OB1**).
9. On 26 May 2023 Nexus Planning lodged an appeal to the First Defendant on behalf of the Claimant under Section 78(2) of the Town and Country Planning Act 1990 (“TCPA”) against this refusal of the Second Defendant. The First Defendant appointed a planning inspector (“**the Inspector**”) to determine the Appeal on his behalf.
10. The Planning Inspectorate gave the Appeal the reference APP/B1930/W/23/3323099 and determined that an Inquiry was the most appropriate procedure to follow. The Interested Party was granted Rule 6 Status on 16th June 2023.
11. A Statement of Common Ground was agreed between the Claimant and the Second Defendant on 15 August 2023 (**Pages 35-57 of Exhibit OB1**), through this it was agreed to amend the description of development to the following:

*“Outline application (access sought) - Demolition of existing house and stables and the construction of up to 150 dwellings including affordable and self-build and custom housebuilding dwellings together with all ancillary works” (“**the Appeal Scheme**”).*

12. The Inquiry sat between 19th – 22nd and 26th – 28th of September 2023, in which the Claimant, Planning Inspector (on behalf of the First Defendant), the Second Defendant and the Interested Party all participated in. Following the close of the Inquiry a satisfactory

- Section 106 Agreement was entered into by the Claimant (**enclosed at pages 275-328 of Exhibit OB1**), the Second Defendant and Hertfordshire County Council which resolved the second reason for refusal set out in the Second Defendant's Decision Notice (defined below).
13. On 19 December 2023 the Government published a revised version of the National Planning Policy Framework ("**the Framework**") and as a result the Claimant and the Second Defendant entered into a further statement of common ground to establish the implications of this on the Appeal (**the Framework is enclosed at pages 58-135 of Exhibit OB1 and the further statement is enclosed at pages 136-145**).
 14. On behalf of the First Defendant, the Inspector dismissed the Appeal of the Claimant on the 26 January 2024 with his reasons for dismissing the appeal set out in a Decision Letter ("**DL**") (**enclosed at pages 1-31 of Exhibit OB1**).

Ground 1: The Inspector erred reducing the weight attributable to the scheme's provision of BNG on account of future legislative requirements which would not, in any event, apply to the Scheme.

15. In relation to the Claimant's first Ground for relief, the Appeal Scheme proposed a Biodiversity Net Gain ("**BNG**") of 10%. This was a benefit of development to which I prescribed significant weight in the planning balance, with the reasoning that I attributed this weight outlined in my Proof of Evidence (**pages 146-188 of Exhibit OB1**) at paragraphs 5.93 – 5.97.
16. It was common ground between the First and Second Defendants that the transitional measures of the Environment Act applied to the Appeal Scheme and as a result there was no legislative requirements for the Appeal Scheme to achieve a 10% BNG. This was also indeed recognised by the Inspector in paragraph 103 of his DL (**page 20 of Exhibit OB1**).
17. As such, before the Inspector there was no legislative or indeed Development Plan requirement for the Appeal Scheme to provide a BNG, noting the latter was silent in this

regard. The only relevant test for BNG was contained within the Framework at paragraph 186d (**page 111 of Exhibit OB1**):

“When determining planning applications, local planning authorities should apply the following principles:

...

d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate” (my emphasis).

18. I am therefore clear that the test before the Inspector was if the Appeal Scheme could achieve a measurable net gain. ‘Measurable net gain’ is not defined in the Framework but to my mind, this could amount to as little as a 0.1% gain in biodiversity.
19. The proposed 10% net gain in biodiversity is significant in itself, and materially higher than the requirements of the Framework, as a result I afforded significant weight to this benefit.
20. The Inspector however reached a different view on weighting, arriving at “moderate weight” at paragraph 104 of his DL (**page 20 of Exhibit OB1**). Within the same paragraph the Inspector sets out his reasoning for diminishing weight to this benefit of the development (relative to my judgement):

“104. The proposed 10% BNG would be equivalent to the minimum level of BNG mandated in the Environment Act 2021, which is expected to apply to all major development proposals, such as the appeal scheme, during 2024. Given that at the time of writing the statutory requirement for BNG is not yet in force, I consider that the commitment to its provision in advance would be a benefit in favour of the appeal scheme. However, because the gain

proposed would be at the minimum of the level set out in the Act, I attach no more than moderate weight to it.”

21. I believe that the approach of the Inspector to downgrading the weight prescribed to BNG on the basis of future legislative requirements is erroneous and fundamentally the DL does not engage with the relevant test expressed at paragraph 186 of the Framework. Indeed, I note there is no reference to it.
22. I am and was aware of the recent case of *NRS Saredon Aggregates Ltd v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 2795, which I note was handed down from the High Court prior to the Inspector’s dismissal of the Claimant’s appeal.
23. In my view, the erroneous approach of the *NRS Saredon Aggregates Ltd* Inspector draws similarities to that of the Inspector of the case who dismissed the Claimant’s appeal.
24. Accordingly, I am clear the future requirements of the Environment Act should have no bearing on the weight to be given to BNG for the purposes of the determination of the Appeal Scheme. As such, I am of the view this is an erroneous approach to adopt and one which significantly detracted from a key benefit of the Appeal Scheme.

Ground 2: The Inspector’s approach to PDL was based on a misunderstanding of national policy, and was inadequately reasoned.

25. In relation to the Claimant’s second ground for relief, the entire Site’s status as previously developed land (“**PDL**”) eventually ended up being a matter of common ground between the Claimant and the Second Defendant, with the Second Defendant’s planning witness conceding this point in cross examination (**pages 256-274 of Exhibit OB1**).
26. In approaching PDL, the Inspector identified that there were two questions to be answered which was set out in paragraph 105 of his DL (**page 21 of Exhibit OB1**):

“There are two related questions to consider here. Firstly, whether the whole of the appeal

site constitutes previously developed land (PDL) as defined in Annex 2 of the Framework. Secondly, if the whole of the site is PDL, whether its status as such should carry any weight in the planning balance to be undertaken to determine whether ‘very special circumstances’ exist to justify the appeal proposal as inappropriate development in the Green Belt taking account of the Framework’s policies on making effective use of PDL and on the re-use and redevelopment of PDL in the Green Belt.”

27. In dealing with the first question, the status of the site as PDL was also a matter of common ground with the Inspector who stated the below in his DL:

“108. Therefore, whilst the majority of the appeal site comprises green fields and is patently not brownfield’ in character or appearance, I agree that because the fields form part of the same curtilage as the stables, the whole of the appeal site meets the definition of PDL in the Framework.”

28. However, in examining his second PDL related question the Inspector comes to a differing conclusion to the Claimant through what I understand to be a misinterpretation of how paragraph 154(g) of the National Planning Policy Framework operates (**page 102 of Exhibit OB1**).

29. In my Proof of Evidence at paragraphs 5.11 – 5.21 (**pages 146-188 of Exhibit OB1**), I set out that the making effective use of land and the sequential preferability of utilising a previously developed site is a free-standing material consideration which can attract weight in its own right. This is given in the context of the Framework’s requirement to make effective use of land and the accepted inevitability of building on Green Belt land in St Albans to meet its housing need. This was a matter accepted by the Second Defendant in cross examination (**pages 225 of Exhibit OB1**).

30. In my evidence I made reference to an appeal at Maitland Lodge, Billericay (**pages 234-255**

of Exhibit OB1) where that inspector grappled with PDL as a free-standing material consideration. Here the Inspector recognises in paragraphs 38 and 39 of the Maitland Lodge Decision Letter:

“38. ...this inquiry has established that the GB element of the appeal site is all PDL.

*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. In any event, as established above, the specific appeal proposal is ‘not inappropriate’ development in the GB. I therefore find no harm from the location of the proposal in the GB **in addition to its sequential preference over non-PDL GB sites. This is a significant positive benefit of the proposal in the context of a Borough where GB release is accepted as being inevitable to meet its housing needs.**” [my emphasis added]*

31. However, despite this established approach to PDL, which was specifically referred to at paragraph 8.14 of my Proof of Evidence (**page 180 of Exhibit OB1**), in my view the Inspector inadequately and erroneously attributes no weight to the free-standing benefit of the Site being PDL. On this matter the Inspector concludes:

“113. Whether or not this policy conflict and the resulting Green Belt harm would be outweighed by other considerations is the subject of the ‘very special circumstances’ test, which I deal with below. However, in circumstances where the appeal proposal does not comply with the Framework’s policy on the re-use of PDL in the Green Belt, it would undermine that policy to then attach weight to the development and use of PDL in favour of the appeal proposal, when carrying out the ‘very special circumstances’ Green Belt balancing exercise.”

...

117. Therefore, on the above basis, I conclude that the PDL status of the appeal site should not carry any weight in favour of the proposed development.”

32. It is my interpretation of the Framework, that a failure of a scheme to comply with paragraph 154(g) of the Framework does not preclude PDL from being a freestanding benefit of the Appeal Scheme attracting weight in the planning balance in its own right. Paragraph 154(g) does not set out the Framework’s overarching approach of PDL, rather it is one very specific Green Belt test. It is my view that the failure to comply with this test does not then mean no weight can be applied separately to PDL, noting wider objectives of the Framework, in particular the first sentence of paragraph 123 of the Framework (**page 93 of Exhibit OB1**) which 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”

Conclusion

33. From my direct first-hand involvement in the Claimant’s s.78(2) Planning Appeal and my review of the Inspector’s DL, I am clear that his reasons for diminishing weight to both the delivery Biodiversity Net Gain and the effective use of Previously Developed Land are erroneous. These are benefits to which I individually attribute significant weight to and form a key part of the planning balance, noting the Inspector already accepts that *“the provision of market and affordable housing attracts the highest level of weight of any consideration in this case”* (**§152 of the DL**)(**page 29 of Exhibit OB1**).
34. These two errors are clearly material and, in my view, had a detrimental impact to the

Inspector's overall planning balance which could have been different had these errors not been made and appropriate weight be applied in line with the correct respective planning tests.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



Signed

OLIVER BELL

Name

29TH February 2024

Date

Section D

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IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

PLANNING COURT

ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR LEASE UNDER S.288(4B) OF THE TOWN AND
COUNTRY PLANNING ACT 1990

BETWEEN:

VISTRY HOMES LIMITED

Claimant

-and-

(1) SECRETARY OF STATE FOR HOUSING, LEVELLING UP AND COMMUNITIES

First Defendant

(2) ST ALBANS CITY AND DISTRICT COUNCIL

Second Defendant

-and-

COLNEY HEATH PARISH COUNCIL

Interested Party

EXHIBIT "OB1"

TO WITNESS STATEMENT OF OLIVER BELL

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Appeal Decision

Inquiry held on 19-22 and 26-28 September 2023

Site visit made on 26 September 2023

by M Hayden BSc, Dip TP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2024

Appeal Ref: APP/B1930/W/23/3323099

Land to the rear of 42-100 Tollgate Road & 42 Tollgate Road, Colney Heath, St Albans AL4 0PY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Vistry Homes Limited against the decision of St Albans City & District Council.
- The application Ref 5/2022/1988, dated 5 August 2022, was refused by notice dated 25 May 2023.
- The development proposed is described as '*Outline application for the demolition of the existing house and stables and the erection of up to 150 dwellings, including affordable and custom-build properties, together with all ancillary works (all matters reserved except access)*'.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was made in outline with matters relating to layout, scale, appearance and landscaping reserved for subsequent approval. A Parameters Plan was submitted for determination, which, together with an Illustrative Masterplan, Concept Plan and Landscape Cross-Sections, indicates the broad extent of the proposed development, the storey height of dwellings, and the position of landscaping and surface water flood management infrastructure. I have taken these into account insofar as they have informed my assessment of the Green Belt, visual, landscape and heritage impacts of the appeal proposal.
3. Access is the only detailed matter fixed for determination as part of the appeal. The Proposed Access Layout plan¹ was revised during the application process to include pedestrian crossing facilities with tactile paving at the proposed junction². Although it was not referred to in the decision notice, the revised access plan was referenced in the Committee Report³, so I am satisfied that the relevant parties, including the Highway Authority, were consulted on it. I have determined the appeal on this basis.
4. A draft legal agreement under Section 106 of the 1990 Act was submitted by the Appellant, containing planning obligations for the provision of affordable housing, self-build and custom housebuilding plots, open space, sustainable transport improvements, biodiversity offsetting, and education, childcare, youth, library,

¹ Drawing no. JNY11289-RPS-0100-001 Rev B (CD5.26)

² As explained in RPS Technical Note JNY11289-06 (CD5.10)

³ Paragraph 6.15 of CD6.1

waste and health service contributions. The agreement was discussed at the Inquiry and amended to clarify the definition of the sustainable transport contribution. The signed and executed Deed was submitted after the close of the Inquiry, and I have had regard to it in determining the appeal, as set out in my decision below.

5. A revised National Planning Policy Framework (the Framework) was published in December 2023⁴, the policies of which are material considerations in determining appeals from the date of its publication. The main parties, including the Rule 6(6) party, were invited to submit comments on the implications for this appeal of the revisions to the Framework, which included a Statement of Common Ground (SoCG) between the Council and the Appellant. I have taken the SoCG, their responses and the revised Framework into account in reaching my decision. All references to the Framework below are to paragraph or footnote numbers in the December 2023 version.

The Appeal Site, Location and Surroundings

6. Colney Heath is a small, nucleated village, which is located between the larger settlements of St Albans to the northwest, Hatfield to the northeast, Welham Green to the southeast, and London Colney to the southwest. The village is composed of three triangular clusters of development, separated and surrounded by open countryside, comprising a mixture of fields and woodlands, and the valley and washlands of the River Colne.
7. The appeal site is located adjacent to the southernmost part of the village, at Roestock, and includes 42 Tollgate Road as well as land to the south of 42-100 Tollgate Road. The site consists primarily of 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. The fields slope gently down to a woodland belt along the River Colne, which forms the south western boundary of the site. The north western and south eastern boundaries of the appeal site are formed by post and wire fences with intermittent field hedgerows, beyond which are further fields and paddocks.

Development Plan Context

8. The relevant development plan policies in this case are contained in the Saved Policies of the City and District of St Albans Local Plan Review (1994) (the Local Plan). Saved Policy 1 of the Local Plan, which is agreed by the Council and the appellant to be the most important policy in this appeal, establishes that the whole of St Albans District lies within the Metropolitan Green Belt, except for towns and specified settlements listed in saved Policy 2 of the Local Plan. Colney Heath is not a town or specified settlement, but is classified in Policy 2 as a Green Belt Settlement, which are smaller villages located within or 'washed over' by the Green Belt. Therefore, notwithstanding the age of the Local Plan, it is common ground that the whole of the appeal site lies within the Metropolitan Green Belt⁵.
9. A new Local Plan to 2041 (the emerging Local Plan) is being prepared, which has undergone Regulation 18 public consultation. The emerging Local Plan proposes a number of changes to Green Belt boundaries in order to meet the future development needs of the District. Whilst these do not include any alterations to the Green Belt at Colney Heath, it is at an early stage in its preparation and has not yet been subject to Examination. Therefore, I attach limited weight to the

⁴ Published on 19 December 2023, and republished on 20 December 2023 to remove erroneous text

⁵ Paragraph 6.14 of the Statement of Common Ground between the Council & Appellant (CD8.3)

policies in the emerging Local Plan in the determination of this appeal. This is also a matter of common ground between the Council and appellant.

Main Issues

10. The decision notice comprises two reasons for refusal. The substantive issues in this case are contained within the first reason for refusal. The main parties agree that the appeal proposal comprises inappropriate development in the Green Belt⁶. Paragraph 152 of the Framework establishes that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 153 of the Framework goes on to state that '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.
11. One of the changes to national policy in the December 2023 Framework, concerns the requirement to demonstrate a supply of deliverable housing sites. Due to the fact that the emerging Local Plan has reached the Regulation 18 stage, the Council is now required to identify a 4-year supply of deliverable housing sites against the housing requirement for St Albans, rather than a 5-year supply as previously.
12. However, it remains common ground between the main parties that the Council is unable to demonstrate a 4-year supply⁷. In such circumstances, the tilted balance under paragraph 11(d)(ii) of the Framework would normally apply⁸. However, the Courts⁹ have established that where, as in this case, Green Belt policy requires all relevant planning considerations to be weighed in the balance, the outcome of that assessment determines whether planning permission should be granted or refused, so there is no justification for applying limb (ii) in addition to limb (i) of paragraph 11(d) of the Framework.
13. Therefore, the determination of this appeal hinges on whether or not 'very special circumstances' exist. Saved Policy 1 of the Local Plan is consistent with the Framework in respect of the 'very special circumstances' test and, therefore, carries weight in this appeal¹⁰. The Council and appellant agree that, whether or not 'very special circumstances' exist to justify the proposed development will determine the consistency of the appeal proposal with saved Policy 1, and, thereby, as the most important policy, with the development plan as a whole. I return to this towards the end of my decision below.
14. In view of the above, and having regard to everything I have read, heard and seen in this case, the main issues in this appeal are:
 - The effect of the proposed development on the openness and purposes of the Green Belt;
 - The effect of the appeal proposal on the landscape character and appearance of the area;
 - The effect of the proposed development on the setting and significance of nearby heritage assets, including the Grade I listed North Mymms Park

⁶ Paragraph 6.16 of CD8.3

⁷ Page 5 of the SoCG on the Implications of the Revised Framework for the Appeal, January 2024

⁸ By reason of footnote 8 of the Framework

⁹ Paragraph 39(12) of *Monkhill Ltd v SSHCLG & Waverley BC* [2019] EWHC 1993 (Admin)

¹⁰ Under paragraph 225 of the Framework

House, Grade II listed Colney Heath Farmhouse and adjacent Grade II listed barn, and the non-designated heritage assets of North Mymms Park and Tollgate Farm;

- Whether the site's location is or can be made sustainable in transport terms; and
 - Whether or not the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, including the provision of housing and any other benefits which the proposed development may bring, so as to amount to the very special circumstances necessary to justify the proposed development.
15. The second reason for refusal cited the absence of a completed and signed S106 agreement, at the time of the decision, to mitigate the effects of the proposed development on local services and infrastructure. However, the Council confirmed¹¹ that once the submitted S106 agreement had been signed, as is confirmed in the preliminary matters above, the second reason for refusal would fall away. I deal with the provisions of the S106 agreement as part of the 'Other Considerations' below.
16. The effects of the proposed development on traffic and highway safety, flood risk and drainage, air quality and the living conditions of neighbouring properties were also raised in representations by the Rule 6(6) party and other interested parties. Although these matters did not form part of the reasons for refusal, they were, nevertheless, discussed at the Inquiry, and I have addressed them below as part of the 'Other Matters'.

Reasons

Effect on Green Belt Openness

17. Paragraph 142 of the Framework establishes that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Accordingly, openness is one of the essential characteristics of Green Belts which it is necessary to maintain. Whilst the main parties agree that the proposed development of up to 150 dwellings would reduce the openness of the Green Belt at Colney Heath, the extent of any harm to openness is disputed.
18. The Courts have identified a number of factors that may be taken into account in assessing the impact of a proposal on the openness of the Green Belt¹². These include that openness can comprise both spatial and visual aspects, and that the duration and remediability of the development, and the degree of activity likely to be generated, such as traffic movement, may also be relevant.
19. In terms of the spatial component of openness, the appeal site measures approximately 7.82 hectares (ha) in area, nearly all of which comprises open fields. Based on the Council's estimates¹³, the existing development in the north-west corner of the site, including the manège, stables, stores and hardstandings, and the curtilage of no. 42, occupies an area of around 3,000 square metres (sqm), amounting to just 3.8% of the appeal site area. It is clear, therefore, that the appeal site is currently almost entirely free of buildings and other development.
20. The Parameter Plan shows that the developable area of the appeal scheme, including the access, would be 4.06 ha, which amounts to approximately 52%

¹¹ At the Inquiry during the round table discussion on the S106 agreement on 28 September 2023

¹² PPG Paragraph: 001 Reference ID: 64-001-20190722

¹³ In paragraphs 5.23 and 5.24 of Phillip Hughes' proof of evidence (CD9.10)

of the site area. The change from open fields to urban development across more than half of the appeal site would have a significant impact on the spatial openness of the Green Belt in this location.

21. Turning to the visual component of openness, the appeal site can be seen from a number of locations on surrounding roads and public footpaths. The key viewpoints are identified in the Landscape and Visual Impact Assessment (LVIA), submitted with the application¹⁴. Photographs 7, 13, 14 and 16 in the LVIA show the site is visible from Tollgate Road to the southeast and northwest, from Coursers Road to the northwest, and from Public Footpath 33, which runs along the northwest boundary of the site.
22. From each of these locations, which I also visited, the appeal site is seen as part of a corridor of open fields and countryside, which runs along the River Colne, to the south and west of the houses along Tollgate Road. The Green Belt Review: Washed Over Villages Study¹⁵ records that the views from the southern boundary of Colney Heath along Tollgate Road have very strong connections to the wider landscape with open fields and woodland blocks in the background. I observed the same and that the appeal site forms part of the open landscape in these views. Although hedgerows and stable buildings line parts of the northwest and southeast boundaries, the openness of the appeal site can be seen above and beyond them and in the gaps between the field hedges. As such, in visual terms, the site makes an important contribution to the openness of the Green Belt in this location.
23. The appeal proposal would extend residential development across a substantial proportion of the site. Based on the dimensions of the developable area on the Parameter Plan, the proposed development would infill around three-quarters of the gap between the houses on Tollgate Road and the woodland along the River Colne on the south eastern boundary of the site¹⁶. On the north western boundary it would take up around half of the distance between the rear garden fences of the dwellings on Tollgate Road and the river¹⁷.
24. The appellant argues that the proposed development would be visually and physically contained by existing hedgerows and additional planting on the field boundaries. However, it is evident from the visualisations for viewpoints 7, 13 and 16¹⁸, that the dwellings would be clearly visible above the existing and proposed boundary landscaping, at years 1 and 15 post development, filling the open space currently afforded by the appeal site. Furthermore, any 'containment' or screening provided by the proposed landscaping at the edges of the appeal scheme would serve to reduce the visual openness of the site, rather than mitigate the effect of the development on the openness of the Green Belt.
25. The increased level of activity generated by up to 150 new homes would also affect the openness of the site as it is currently experienced. Traffic movement throughout the proposed development during the daytime, and light emitted by

¹⁴ Landscape and Visual Impact Assessment and Green Belt Assessment, June 2022 (CD4.10)

¹⁵ Page 11 of the Green Belt Review: Washed Over Villages Study, June 2023 (CD3.5)

¹⁶ The south eastern boundary of the appeal site measures around 320 metres (m) from the rear garden fence of 100 Tollgate Road to the River Colne; the developable area measures approximately 250 m along this boundary; 250 is 78% of 320.

¹⁷ The north western boundary of the site measures approximately 100 m from the rear garden boundary of 42 Tollgate Road to the River Colne; the developable area would extend around 50 m from the rear of no. 42, which is half of 100 m.

¹⁸ Photosheets (CSA3925121 Rev E), April 2023 (CD5.25)

dwelling and street lights at nighttime, would visually disrupt what is presently an open site with a minimal level of movement and activity associated with the stables and the dwelling at no. 42. The loss of openness on the site would also be permanent and not remediable.

26. Overall, the loss of openness on the appeal site due to the permanent change from fields used for horses to a housing estate of up to 150 dwellings, which would be built across more than half of the site and be clearly visible from surrounding roads and footpaths, intruding into the corridor of open land between Colney Heath and the River Colne, would be substantial. The resulting harm to the openness of the Green Belt in this location would, therefore, be substantial.

Effect on Green Belt Purposes

27. Paragraph 143 of the Framework establishes that the Green Belt serves five purposes. In this case, it is common ground between the Council and the appellant that the proposed development would not assist in safeguarding the countryside from encroachment¹⁹. As such it would conflict with one of the five purposes of the Green Belt as defined in paragraph 143(c) the Framework, albeit the degree of harm to this purpose is disputed.
28. The appellant's evidence concludes that the appeal site makes a relatively weak contribution to this Green Belt purpose, on the basis that they consider the site to be well screened to views from the wider area by the intervening settlement and the vegetation along the river corridor²⁰. However, from my own observations and the photographic evidence in the LVIA referenced above, I have found that the appeal site is clearly visible from a range of public vantage points within and around Colney Heath and that it forms part of a swathe of open land along the River Colne, which is visually connected to the wider countryside beyond to the southeast and northwest. On this basis, I consider that the appeal site, in its current form, makes a strong contribution to the purpose of the Green Belt in safeguarding the countryside from encroachment in this part of the District.
29. The appellant seeks to draw a parallel here with the appeal decisions for the Roundhouse Farm site, off Bullens Green Lane, in Colney Heath²¹. In that case the Inspector concluded that the proposed development would have only a localised effect on the Green Belt, that the broad function and purpose of the Green Belt would remain and that there would be no significant encroachment into the countryside. However, the decision makes clear that this was a result of the locational characteristics of the site, contained on three sides by residential development and separated from the countryside to the south and east.
30. Although the appeal site in this case forms part of the same wider tranche of Green Belt identified and assessed in the 2013 Green Belt Review²², it is distinct from the Roundhouse Farm site, in that it forms part of the open countryside outside of the settlement, rather than being contained by it. Therefore, I do not accept that the Inspector's findings on the impacts of the proposal for the Roundhouse Farm site on the purposes of the Green Belt should be applied in this appeal. Furthermore, no two cases are the same, and it is a core principle of the planning system that each proposal is considered on its own merits.

¹⁹ Paragraph 6.18 of the Core SoCG (CD8.3)

²⁰ Paragraphs 5.46-5.48 of Clive Self's PoE (CD9.5) and paragraphs 6.23-6.25 of the LVIA (CD4.10)

²¹ Paragraphs 24-26 of appeal decisions APP/B1930/W/20/3265925 and APP/C1950/W/20/3265926

²² Parcel 34 in the Green Belt Review Purposes Assessment, Final Report, November 2013 (CD12.3)

31. In this case, the appeal proposal would constitute a substantial incursion of urban development into the open countryside to the south of Colney Heath, extending the settlement well beyond the existing ribbon of housing on Tollgate Road. This would cause substantial harm to the key purpose of the Green Belt in this location in safeguarding the countryside from encroachment.
32. Paragraph 153 of the Framework establishes that substantial weight should be given to any harm to the Green Belt. Accordingly, the harm to the openness and purposes of the Green Belt, in addition to the harm by reason of inappropriateness, carry substantial weight against the appeal proposal.

Effect on Landscape Character and Appearance

33. The appeal site consists primarily of fields of open pasture land, which slope gently down to a woodland belt along the River Colne on its south western boundary. Although the site has a settlement edge context on its north eastern side from the backs of the houses and gardens along Tollgate Road, its predominant character is rural. It forms part of a corridor of open countryside along the River Colne, which includes Colney Heath common to the northwest and the parkland landscape of North Mymms House to the southeast, and contributes to the attractive rural setting to Colney Heath on its south and west sides.
34. In terms of its defined landscape character type, the appeal site is located within the Colney Heath Farmland Landscape Character Area (LCA)²³. The key landscape characteristics of the site which reflect those of the LCA are: its medium-scale farmland features of remnant hedgerows and fields, which although not in arable use are nevertheless consistent with the medium-scale landscape of the LCA; the subtle, gently undulating landform of the fields towards the river; and the presence of urban development on one side of the site, which is filtered by the trees and hedgerows along the rear gardens of the houses on Tollgate Road.
35. The proposed development would result in the loss of much of the rural character of the site. Its open fields and gently undulating landform would be largely replaced by an urban landscape. Only the portion of land within the Colney Heath Farm Meadows Local Wildlife Site (LWS) adjacent to the River Colne would remain undeveloped. But even this would be mostly hidden from wider views along Tollgate Road by the proposed housing, and apparent only from within the development and on Public Footpath 33 where it crosses the river. As such the contribution of the site to the corridor of open countryside along the River Colne would be significantly diminished.
36. I acknowledge that the boundary trees and hedgerows would be retained and supplemented, such that over time, the hard urban edge of the proposed development would become softened and filtered by landscaping, in the same way as the existing settlement edges of Colney Heath. However, the photographic visualisations show that, even once the planting has established, the development would continue to be an urbanising element in the landscape, projecting into the Colne Valley.
37. In its current form the site makes a positive contribution to the rural setting of Colney Heath. Although it is common ground between the Council and the appellant that the site is not a 'valued landscape' under the terms of paragraph

²³ LCA 30 as defined in the Hertfordshire Landscape Character Assessment (p131-134 of CD12.1)

- 180(a) of the Framework²⁴, it has intrinsic character and beauty as part of the countryside, under paragraph 180(b) of the Framework. As a result of the proposed development, the contribution and value of the site to the rural character of the area and setting of Colney Heath would be substantially eroded.
38. I have considered the respective assessments of the appellant and Council of the landscape and visual effects of the proposed development, which are summarised in the Landscape SoCG²⁵. These are based on the methodology set out in the LVIA²⁶, which acknowledges an element of subjectivity is involved in the assessment process. The parties disagree in their judgements on the level of landscape and visual effects for a number of the key receptors. Overall, I find the Council's assessment to be a fairer representation of the effects of the proposed development, and the appellant's to underestimate the landscape and visual impacts of the proposal, for the following reasons.
39. With regard to landscape effects, the appellant assesses the quality of the existing landscape on the appeal site to be 'medium to low', whereas the Council regards it as of 'medium' quality. The LVIA methodology describes 'low' quality as an unattractive or degraded landscape, affected by numerous detracting elements, with limited public views²⁷, which is not a fair description of the landscape character of the appeal site. Whilst the landscape of the appeal site does not fit the description of 'high' quality in the LVIA methodology, it is of at least 'medium' quality and value, which the LVIA methodology regards as generally pleasant, with no distinctive features and relatively ordinary characteristics, having limited public access, but visible in public views.
40. In terms of the impact of the proposed development on the landscape character of the appeal site itself, the appellant considers the effect would be at a 'moderate adverse' level. However, the proposal would fundamentally alter the landscape of the appeal site from predominantly open fields to urban development. This could not be regarded as merely 'noticeable', which is how the LVIA methodology describes a 'moderate adverse' effect. Rather the change to the character and appearance of the site itself would be substantial, visually intrusive and could not be adequately mitigated, which the LVIA methodology counts as a 'substantial adverse' effect. Moreover, the impact on site would not reduce over time, given that the change to an urban form would be permanent. Therefore, I consider that the proposed development would continue to have a 'substantial adverse' effect on the landscape of the site itself, as illustrated in the visualisation of the view from Public Footpath 33 at year 15²⁸.
41. In respect of the surrounding landscape, the Council and the appellant agree that the appeal proposal would have a 'moderate adverse' effect on the neighbouring landscape at year 1, but the appellant considers this would reduce to a 'slight adverse' effect by year 15. However, even with the planting established, I have concluded above that the proposed development would continue to be an urbanising element in the landscape along the River Colne. This would be noticeable in key views rather than having a minor residual effect, which is one of the important differences between 'moderate' and 'slight

²⁴ Paragraph 12 of the Landscape SoCG (CD8.5)

²⁵ Appendix 2 of CD8.5

²⁶ Appendix 1 of CD4.10

²⁷ Table LE 1 of CD4.10

²⁸ Massing Model Photomontage from Viewpoint 07 – Year 15 (CD5.25).

- adverse' landscape effects in LVIA methodology²⁹. In my judgement, therefore, the adverse effect of the proposed development on the neighbouring landscape would remain at a 'moderate' level.
42. Within the wider landscape, the proposed development would be clearly visible as a new urban extension into the countryside south of Colney Heath, as illustrated in the visualisation from Tollgate Road to the east of the site³⁰. It would also be evident from other positions in the surrounding landscape, such as from Coursers Road to the northwest and the private access track to Park Cottages off Tollgate Road to the southeast³¹.
43. Its visibility within the wider landscape would noticeably change the character, scale and pattern of the landscape and townscape in the area, resulting in a 'moderate adverse' effect at year 1, which would be likely to reduce to a 'slight adverse' effect over time, as the boundary planting matures to filter the impact of the development. However, I do not agree that the effects at year 15 would be 'negligible', as judged by the appellant, given that the development would extend across more than half of the site and fill a large part of the gap between the existing houses on Tollgate Road and the River Colne, in views from the southeast and northwest.
44. Turning to visual effects, the Landscape SoCG identifies four key views or visual receptors³² affected by the proposed development. These are: the view from Public Footpath 33 (Photo 7); the views from Tollgate Road to the northwest and southeast of the site (Photos 13 and 16 respectively); and the private view from North Mymms House.
45. Users of Public Footpath 33 currently enjoy open views across the appeal site of the corridor of countryside along the River Colne, both when arriving at and leaving the village. The Council and the appellant agree these views have a medium to high level of sensitivity, which reflects the criteria in the LVIA for the sensitivity of public rights of way as visual receptors³³. Although the existing houses on Tollgate Road form a partly urban fringe background in this view, the proposed development would extend the urban area along and much closer to the footpath. It is clear from the visualisations for viewpoint 7³⁴, that the proposed development would present a hard urban edge, close up in views from Public Footpath 33, at year 1, and would remain prominent, even at year 15 when the landscaping has matured. The view of the open landscape setting to the village would be substantially eroded, which, in my judgement, would have a 'substantial adverse' visual effect on the views enjoyed by users of Public Footpath 33. Whilst the visual impact of the development would reduce over time, the effect would remain at least at a 'moderate adverse' level.
46. In terms of the views from Tollgate Road, to the northwest of the site at the entrance to Colney Heath Farm (viewpoint 13), road users currently enjoy open views across the fields to the woodland along the River Colne. The photographic visualisations of the proposed development³⁵ show that the new housing would be very prominent in this view, even at year 15, extending the settlement

²⁹ Table LE 4 in CD4.10

³⁰ Massing Model Photomontages from Viewpoint 16 (CD5.25)

³¹ Photographs 14 and 17 in Appendix C to the LVIA (CD4.10)

³² Appendix 2 to CD8.5

³³ Table VE1 in the LVIA (CD4.10)

³⁴ Massing Model Photomontage from Viewpoint 7 – Years 1 and 15 (CD5.25)

³⁵ Massing Model Photomontages from Viewpoint 13 (CD5.25)

towards the river, urbanising, disrupting and foreshortening the view. As such, the magnitude of change to this view would be substantial rather than moderate, resulting in a 'substantial adverse' effect, albeit this would be mitigated to a 'moderate adverse' effect over time, as the boundary landscaping matures. The appellant's assessment that the visual effect at year 15 would be 'slight adverse' is based on an assumption that the houses would become assimilated into the surrounding landscape. However, I do not consider this would be the case given that the existing landscape in this view is largely free of domestic buildings.

47. To the southeast of the appeal site, the proposed development would be seen in the middle distance in views from Tollgate Road and the private access track to Park Cottages (viewpoints 16-18). Again based on the photographic visualisations³⁶, the proposed development would be a noticeable element in views from this location, extending the village by around 120 m to the south into what is currently undeveloped landscape. As a middle distance view, I am satisfied this would result in a 'moderate' rather than 'substantial' adverse effect at year 1, reducing to a 'slight adverse' effect by year 15, as the proposed boundary landscaping would serve to filter the view, with minor residual effects remaining.
48. The view from North Mymms House is restricted to the north eastern corner of the site, where the Illustrative Masterplan and Parameter Plan show bungalows that would be limited to 6 m in height. The visualisations illustrate that only the roofs of dwellings in this corner of the site would be visible from North Mymms House at year 1, but largely screened by vegetation at year 15. As such, I agree with the conclusions of the Landscape SoCG that the proposed development would have a 'minimal adverse' effect on the private view from North Mymms House, which over time would reduce to 'neutral'. I consider the heritage effects of the proposal on the setting of North Mymms House separately below.
49. In addition to the key views identified in the Landscape SoCG, it is clear from the evidence of the landscape witnesses, the LVIA and my own observations on site, that a number of other views would also be affected. In the view from Coursers Road (photo 14), the proposed development would be seen extending well beyond the line of dwellings on Tollgate Road southwards into the corridor of open countryside along the River Colne. I agree with the Council that this would have at least a 'moderate adverse' impact on the view from Coursers Road, at year 1, which may reduce to a 'slight adverse' effect by year 15 as the boundary landscaping within the site matures. However, the housing would remain visible in this view, particularly during the winter months when there are no leaves on the trees.
50. Many of the dwellings along Tollgate Road, including nos. 42-100, have open views over the appeal site, both from ground and first floor windows. Based on the criteria in the LVIA³⁷ these residential views have a high degree of visual sensitivity to change. Whilst the existing views are filtered by garden and boundary landscaping, the proposed development would still have a 'moderate adverse' visual effect on them. Even with the benefit of supplementary planting along the north eastern boundary of the site, as suggested at the Inquiry, the

³⁶ Massing Model Photomontages from Viewpoint 16 (CD5.25)

³⁷ Table VE1 in the LVIA (CD4.10)

view of the existing fields would be lost to urban development. Therefore, I agree with the Council's assessment that the adverse effect of the development on those private views would remain at a 'moderate' level over time.

51. Based on the landscape and visual evidence I have seen and heard, I do not share the appellant's view that the appeal site is visually contained or that the impacts of the proposed development on the surrounding landscape would be limited and localised. The site is clearly visible from the surrounding roads, footpaths and dwellings on all sides, in nearby and middle distance views. Its existing open farmland character would be replaced by urban development, which would have adverse effects on the existing rural setting of Colney Heath and the views of countryside from surrounding receptors. The adverse visual and landscape effects would range from 'substantial' and 'moderate' in the first year following the completion of the development, to 'slight' after 15 years with landscaping mitigation. However, in a number of locations, the impacts would remain at a 'substantial' or 'moderate' adverse level over time.
52. Overall, I consider that the adverse landscape and visual impacts would cause significant harm to the landscape character and appearance of the appeal site and the surrounding area. In my view the proposed development would fail to recognise the intrinsic character and beauty of the countryside on the site and to the south of Colney Heath. As such it would be contrary to paragraph 180(b) of the Framework. It would also be contrary to Policy 2 of the Local Plan which seeks to safeguard the character and setting of Green Belt settlements, including Colney Heath.

Effect on Heritage Assets

53. It is common ground³⁸ that the following heritage assets located around the appeal site would be affected by the proposed development:
- North Mymms Park house, a Grade I listed building, located to the southeast of the appeal site, and the surrounding landscape of North Mymms Park that it lies within, which is a non-designated heritage asset;
 - Colney Heath Farmhouse and its associated Barn, which are both Grade II listed buildings, and are located to the northwest of the site; and
 - Tollgate Farm, which is a non-designated heritage asset, located to the east of the appeal site.
54. Although none of the heritage assets are within the appeal site, each has a degree of intervisibility with it. As such, the site forms part of the setting of these heritage assets, which the Glossary in the Framework defines as the surroundings in which heritage assets are experienced. Paragraph 206 of the Framework establishes the need to consider the effect of development within the setting of designated heritage assets. I also have a statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the setting of listed buildings in determining the appeal. In addition, paragraph 209 of the Framework requires that the effect of proposals on the significance of non-designated heritage assets should be taken into account.

³⁸ Paragraphs 1.2.and 1.3 and section 3 of the Heritage SoCG (CD8.4)

55. Dealing firstly with North Mymms Park, the Grade I status and heritage significance of the house is derived largely from its architectural, artistic and historic interest as a late 16th century, Jacobean country house, with later additions and alterations. The non-designated parkland has both historic and artistic value as the original deer park to the house, which was evolved into the current ornamental landscape in the 18th century. The parkland provides long distance vistas to and from the northwest façade of the house, and forms one of the principal elements of its setting.
56. The appeal site lies around 300 m from the north western end of the parkland and about 1.4 km from the house. Whilst historic mapping³⁹ reveals that it was once part of the wider agricultural estate of North Mymms Park, that link is not legible in the landscape, and is purely of historic interest. The northeast corner of the appeal site can be seen from the upper floor windows of North Mymms Park house, but there is no evidence that it was designed as such to be part of a borrowed view in the landscape beyond the parkland. It is common ground between the Council and the appellant, therefore, that the appeal site makes only a very minor contribution to the heritage significance of the Grade I Listed House and unregistered parkland through setting⁴⁰.
57. I have concluded above that the proposed development would have a minimal adverse effect on views from North Mymms Park house, reducing to a neutral effect over time as the proposed boundary landscaping matures. Accordingly, any urbanising influence it would have on the wider setting of North Mymms Park, including from light spill, would likewise be minimal. On this basis, I concur with the agreed position in the SoCG, that the harm to the heritage significance of North Mymms Park house arising from the appeal proposal would be less than substantial, and that its impact on the heritage significance of the parkland would be very minor.
58. Colney Heath Farmhouse and the associated Barn on its northeast side are located around 180 m from the appeal site, separated by a field used for horse grazing. The Farmhouse dates from the late 17th century and the Barn, which fronts Coursers Road, from the late 18th century. Their heritage significance is principally derived from the architectural and historic illustrative interests of their physical form and layout, both individually and together with the other buildings in the complex, which reference their original role in the historical development of Colney Heath as an agricultural and rural community.
59. It is common ground that the setting of the Farmhouse and Barn, which includes the historic landholding associated with the farm, makes a contribution to their heritage significance. It does so by affording views of the listed buildings and illustrating their agricultural past. Historic mapping reveals that the appeal site was at one time part of the tenancy associated with the farm⁴¹. The adjacent field immediately to the southeast of the complex offers the best views of the Farmhouse and is most legible as part of its original farmland setting. But the appeal site, in its current form as open pasture, also contributes to the wider rural, once agricultural, setting of the Farmhouse and Barn, albeit to a lesser degree.

³⁹ Plate 13 in Appendix 3 of the Heritage SoCG (CD8.4)

⁴⁰ Page 5 of the Heritage SoCG

⁴¹ Plate 4 in Appendix 1 to the Heritage SoCG

60. The proposed development would diminish the wider rural setting to the listed former farm buildings, and result in the loss of an illustrative part of their historic setting. It would also alter the character of the adjacent field, largely removing its visual connection to the wider corridor of open land, and reducing the farmland setting of Colney Heath Farm to a standalone field. Therefore, the appeal proposal would cause harm to the heritage significance of the Farmhouse and Barn through the change to their setting. But the harm would be less than substantial, given that the principal parts of the setting would be preserved.
61. Finally, Tollgate Farm is located around 200 m to the east of the appeal site, fronting Tollgate Road at its junction with Bullens Green Lane. Historic maps record a complex of farm buildings located here from the early 19th century, and it is registered in the Historic Environment Record (HER) as a non-designated heritage asset. However, the farmhouse is modern and there is no special architectural interest apparent in the historic fabric of the farm buildings around the triangular courtyard. The heritage significance of the asset is primarily derived from the historic interest of a post medieval farmstead on the site, and its possible association with an adjacent tollbar recorded in the HER. Accordingly, it is common ground between the Council and the appellant that Tollgate Farm is a non-designated heritage asset of minimal value⁴². I have little evidence to conclude otherwise.
62. The setting of the asset comprises agricultural land to the south and west, and the adjacent Tollgate Road. The appeal site forms part of the farm's broader historic agricultural setting, but there is limited intervisibility between it and the oldest buildings on the farm, which are screened by a group of modern silos on its western boundary. As such, the appeal site makes a very minor contribution to heritage significance of Tollgate Farm through setting. Accordingly, although the proposed development would be co-visible with the farm buildings in views from the southeast along Tollgate Road, the harm to any heritage significance in these views would be very minor.
63. Paragraph 209 of the Framework states that in weighing proposals that affect non-designated heritage assets, a balanced judgement is required having regard to the scale of any harm or loss and the significance of the asset. In respect of Tollgate Farm, the very minor harm, given the minimal significance of the asset, carries minimal weight against the appeal scheme. Whilst the North Mymms Park landscape is of heritage significance to the setting of the Grade I listed house, the very minor harm which the proposed development would cause, due to the minor contribution of the appeal site to that setting, likewise adds minimal weight against the proposal. Whilst not determinative, these need to be weighed in the Green Belt balance below.
64. With regard to the designated heritage assets, I have found that the proposed development would result in less than substantial harm to the heritage significance of North Mymms Park house, Colney Heath Farm and its associated Barn through setting. Paragraph 208 of the Framework expects that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, that harm should be weighed against the public benefits of the proposal. I carry out this heritage balance in the light of my consideration of the benefits of the proposed development below.

⁴² Page 7 of the Heritage SoCG

Sustainability of Location in terms of Transport

65. Paragraph 109 of the Framework expects significant development to be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes, taking into account that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Paragraph 114 of the Framework also seeks to ensure that in assessing development proposals, appropriate opportunities to promote sustainable transport modes can be taken up, given the type of development and its location.
66. Colney Heath has a number of facilities and services, which one would expect for a settlement of this size, including a pre-school, primary school, village hall, public house, church, hairdressers, takeaway, and a village store and post office. All of these would be accessible on foot for residents of the proposed development, within a 10-20 minute walk from the site, via level and safe walking routes along Tollgate Road and the High Street.
67. I have considered the evidence submitted by Colney Heath Parish Council on the walking routes to facilities in the village⁴³. Whilst this assesses routes along the High Street and Tollgate Road to be of insufficient quality and safety to encourage walking, the assessment methodology, based on the Welsh Active Travel Design Guidance, requires an element of subjective judgement. I walked these routes and did not find them unattractive or inconvenient, notwithstanding the speed and volume of traffic using Tollgate Road and the High Street.
68. In addition the Highway Authority did not raise any highway safety objections to the reliance of the proposed development on these walking routes to access facilities in the village. A series of improvements to the routes is proposed by the appellant, including the installation of accessible crossing points at the entrance to the site and upgrading crossing points along the High Street, which could be secured by condition. The raised table proposed on Tollgate Road at the entrance to the site would also assist in reducing traffic speeds along this part of the walking routes. As such, I am satisfied that journeys to the available services and facilities within Colney Heath on foot would be a genuine modal choice for residents of the proposed development.
69. However, residents would need to travel to the surrounding settlements of St Albans, London Colney, Welham Green, Hatfield and Welwyn Garden City to access secondary schools, healthcare facilities, employment, larger supermarkets and railway stations. None of these services are within reasonable walking distance of the appeal site. Therefore, safe and reliable access to them by cycling and public transport would be necessary for the appeal site to be considered a sustainable location for the proposed development in terms of transport.
70. With regard to public transport, the Highways SoCG provides a summary of the existing bus routes serving Colney Heath⁴⁴. Although seven services run through the village, three are principally school services with a single out and return bus operating in term time only, and three consist of a single service running mid to late morning, enabling short shopping trips to London Colney, Hatfield, Welwyn Garden City and St Albans on just one day per week. Only the 305 provides a regular service. However, even this is limited to five buses per day in each direction on weekdays and Saturdays, with no service on a Sunday.

⁴³ Colney Heath Walking Routes Assessments (CD9.18)

⁴⁴ Table 1 of Highways SoCG (CD8.2)

71. The nearest railway stations serving Colney Heath are in Welham Green and St Albans, approximately 3.7 and 6.8 kilometres from the appeal site. The Parish Council's evidence shows that the current timetable for the 305 bus is impractical for most commuters seeking to travel to work by train from St Albans, Welham Green or Potters Bar⁴⁵. Although the 305 route passes close to a number of secondary schools in St Albans, with only one bus in the morning peak period, it is also doubtful that the current service would provide a genuine travel choice for secondary school pupils living on the appeal site.
72. Access to medical services is also problematic. The GP practices that the Hertfordshire and West Essex Integrated Care Board (ICB) identify as providing primary care services for Colney Heath⁴⁶, and to which the financial contribution for general medical services in the S106 agreement would be provided, are located in Hatfield. There are no direct bus services to Hatfield from Colney Heath and the nearest GP surgery at Northdown Road in Hatfield is around 2.4 km away on foot, which is beyond reasonable walking distance.
73. The Highway Authority defines a minimum service provision level of 4 buses per hour peak and 2 buses per hour off peak (06:30 to 22:00) as appropriate for most developments to make public transport a sustainable travel option⁴⁷. It is clear that Colney Heath lacks this level of bus service provision. Therefore, without a railway station within reasonable walking distance of the village, public transport is not currently a genuine travel choice for future residents of the proposed development to access services not available in the village.
74. The S106 agreement contains a planning obligation for a financial contribution of £433,000/year for 3 years, which would enable the 305 service to be increased to two buses per hour in the peak periods and to introduce a service on Sunday. Although not at the minimum service level specified above, the Highway Authority confirmed in oral evidence at the Inquiry that a half-hourly service would be sufficient to provide for the likely increase in patronage that the proposed development would generate.
75. Whilst the exact timetable was not available in evidence, such a frequency of service would be likely to make public transport a genuine modal choice for residents of the proposed housing to access employment opportunities in London, St Albans and other surrounding settlements, including via interconnecting train services at St Albans and Welham Green stations. For journeys to school, the increased frequency of the 305 route would make bus travel a realistic option to access most of the secondary schools in St Albans, including the Samuel Ryder Academy, to which the financial contribution for secondary education expansion in the S106 agreement would be provided.
76. In terms of access to supermarkets and shops by bus, whilst the 305 does not serve the nearest large shopping centre at Colney Fields, the enhanced service would offer an increased choice of bus times during the day and at weekends to access shops and services in St Albans, including the supermarket on Hatfield Road. However, there would still be no direct access by bus to the GP surgeries in Hatfield providing primary care services to residents of Colney Heath. Whilst the increased frequency of the 305 bus would reduce waiting times for connecting bus services to Hatfield, I am not persuaded that having to catch two or more buses to get to a GP medical appointment would make public transport a genuine travel choice for this type of journey.

⁴⁵ Paragraphs 3.2.3-3.2.5 of Colney Heath Parish Council PoE on Sustainability of Location (CD9.14)

⁴⁶ Paragraph 6.9 of the Committee Report on application Ref: 5/2022/1988/LSM (CD6.1)

⁴⁷ Place & Movement Planning and Design Guide for Hertfordshire, HCC 2023 (CD16.15)

77. Turning to cycling, a number of pieces of evidence were provided on the suitability of cycle routes from Colney Heath for regular journeys to facilities and services not available in the village. These include the cycle route audit contained within the Transport Assessment (TA) submitted with the appeal⁴⁸, the evidence of both the appellant's transport witness and the Highway Authority, the Cycle Route Assessments undertaken by the Parish Council⁴⁹, the Local Cycling and Walking Infrastructure Plan (the LCWIP)⁵⁰, and Local Transport Note (LTN) 1/20⁵¹, which provides the Department for Transport's design guidance for cycling infrastructure. I have considered all of these carefully, as well as making my own observations on site of the different cycling routes.
78. The two key cycling journeys that were identified by the parties are to the Samuel Ryder Academy, as the secondary school with increased capacity, and to Welham Green Station, as the nearest station for onward commuting journeys by public transport north and south. Starting with the route to Samuel Ryder Academy, it is possible to travel from the appeal site to the school by bicycle using a mixture of on-road and off-road/segregated cycle routes. The shortest route would be approximately 5.3 km and take around 20 minutes to cycle.
79. The LCWIP identifies the first part of the route along Tollgate Road and the High Street, crossing over the A414 and continuing into St Albans via Colney Heath Lane, as a primary route, albeit not audited. However, access to Samuel Ryder Academy from this route would require cycling along Barley Mow Lane, which although identified in the LCWIP as a secondary cycling route, is a single track, unlit road with no road markings. Whilst it might be appropriate as a leisure cycling route during daylight hours, Barley Mow Lane would be unsafe and unsuitable for cycling home from school, particularly during the hours of twilight and darkness in the afternoons of the winter months.
80. An alternative route is available along the segregated cycle lane on the north side of the A414 from the junction with Colney Heath Lane to the London Colney roundabout, from where there is a shared pedestrian and cycle route along London Road and Drakes Drive to the school. However, this is not the most direct route to Samuel Ryder Academy, and is a longer journey than the secondary route along Barley Mow Lane. In addition, whilst the cycleway is segregated along most of its length, there are no traffic signals where it crosses the junction of the A414 with Colney Heath Lane. With the high vehicle speeds and traffic volumes along the A414, I noted the clear potential for conflict between cyclists and motorised vehicles turning into Colney Heath Lane at this point on the route.
81. LTN 1/20 identifies five core principles, which comprise the key requirements for people wishing to travel by bicycle; these are that routes need to be coherent, direct, safe, comfortable and attractive. I recognise the main purpose of LTN 1/20 is to guide the design of new cycle infrastructure, and that the change in approach set out in the guide will take time to work through the cycle network. However, in the meantime, I am satisfied that it is reasonable to have regard to the same principles in assessing the suitability of cycle routes along existing highway infrastructure, where they are being promoted as part of a sustainable travel plan for new development.

⁴⁸ Appendix 16 of Transport Assessment by RPS, dated November 2022 (CD5.12)

⁴⁹ Cycle Route Assessments (CD9.17)

⁵⁰ St Albans and District Local Cycling and Walking Infrastructure Plan, July 2023 (CD19.13)

⁵¹ Cycle Infrastructure Design, Local Transport Note 1/20, DfT, July 2020 (CD16.4)

82. In this case, the two main cycle routes to the Samuel Ryder Academy are unsafe and/or indirect. As such I do not consider cycling to the local secondary school would be a genuine travel choice for pupils living on the proposed development. The evidence presented by the main parties demonstrates that cycling to other secondary schools in the area, both in St Albans and Hatfield, would be affected by similar drawbacks of unlit or unsegregated routes.
83. Cycle access to Welham Green Station is possible by one of two routes. The most direct route is via Tollgate Road and Dixons Hill Road, a journey of around 3.5 km, taking around 12 minutes to cycle. However, the TA⁵² notes that the derestricted speed limit and speed of traffic along a large part of the route makes it suitable only for frequent and confident cyclists. The alternative cycle route is via the tunnel under the A1(M) at the end of Bullens Green Lane, then along a shared use pedestrian and cycle route to Pooleys Lane in Welham Green, and from there through a short section of on-road route to reach the station. Whilst the tunnel under the A1(M) is poorly lit and uninviting, measures are proposed to improve its environment, which could be secured by condition. Therefore, I do not regard this as a drawback.
84. However, this route via Hatfield is longer, at approximately 5.5 km, and the direction of the route is not clear in places. Whilst a section forms part of National Cycle Route 12, large parts of the route are not signed, including the shared path along Roehyde Way and South Way, where it runs adjacent to the carriageway, and the connection to this from the A1(M) underpass. The section of the route running from the bridge over South Way to Pooleys Lane is also isolated, lacks natural surveillance where it passes along the back of the industrial estate on Travellers Lane, and dense hedgerows also reduce the effectiveness of the lighting on this stretch. Due to these issues, I found that the route lacks safety, coherence and directness.
85. Overall, therefore, the two alternative cycle routes from the appeal site to Welham Green Station have significant drawbacks. Consequently, I do not consider they would provide a genuine modal choice for journeys to the station for most residents of the proposed development.
86. In considering this issue, I have had regard to the Roundhouse Farm appeal decision, in which the Inspector concluded that the site in Bullens Green Lane represented a sustainable location in terms of the choice of transport modes⁵³. The Courts have established the importance of consistency in decision making on similar cases, but also that decision makers are entitled to reach different conclusions to an earlier decision, provided the reasons for doing so are substantiated.
87. My findings are consistent with the Roundhouse Farm decision in respect of the accessibility of facilities and services in Colney Heath on foot, which I consider weighs in favour of this appeal proposal as well. I also acknowledge that in the case before me, access to facilities outside of the village by bus would be better than was the case at the Roundhouse Farm appeal. Accordingly, I have concluded that public transport would be a genuine choice of transport mode for journeys to secondary schools, places of employment and larger supermarkets and shops, similar to the Inspector for the Roundhouse Farm appeal. However, I have explained why I reach a different conclusion in respect of access to medical facilities by public transport, which is based on the evidence presented to me.

⁵² Sustainable Modes of Travel Audit, Appendix 16 of Transport Assessment, RPS, Nov 2022 (CD5.12)

⁵³ Paragraphs 37-41 of appeal decisions APP/B1930/W/20/3265925 and APP/C1950/W/20/3265926

88. My conclusions on cycle access are different to those of the Inspector for the Roundhouse Farm appeal. However, the evidence before me is also different. In this case, I have been provided with an audit of cycle routes conducted by the Parish Council, and evidence from the Highway Authority, which were not available at the Roundhouse Farm appeal. I have given detailed reasons, based on this evidence and my own observations of the alternative cycle routes, as to why I consider that cycling would not be a genuine mode of transport to access facilities outside of Colney Heath. As such, I am satisfied that my conclusions on this issue are justified having regard to the Roundhouse Farm appeal and the need for consistency.
89. That said, I concur with the Council that the limitations on the appeal site's location in terms of access by sustainable modes of transport may not be sufficient to fail the policy tests in paragraphs 109 and 114 of the Framework and, therefore, justify the dismissal of the appeal in their own right. However, the lack of a genuine choice of sustainable modes of travel to access medical facilities, and the incoherent, indirect and unsafe cycling routes from the village, are important material considerations which weigh against the proposed development in the overall planning balance.

Other Considerations

Provision of Market and Affordable Housing

90. It is common ground that the District Council is unable to demonstrate a 4-year supply of housing land, as now required under paragraphs 77 and 226 of the revised Framework. Whilst the Council and the appellant have not been able to agree an updated housing land supply figure, they do agree that the shortfall against the 4-year requirement remains substantial⁵⁴.
91. In addition, it is evident that there is serious under-delivery of housing in the District, based on the Government's Housing Delivery Test (HDT). The latest HDT for 2022 reveals that the delivery rate over the 3 years from 2019/20 to 2021/22 has fallen to 55% against the housing requirement for this period⁵⁵. These figures highlight a substantial shortfall in the delivery and supply of new homes in St Albans against what is required to address the needs of the District.
92. The Council has taken steps to address housing needs in the publication of its emerging Local Plan, which allocates sites to meet the housing requirements for the period to 2041. The Local Development Scheme for St Albans⁵⁶ anticipates that the emerging Local Plan would be adopted in December 2025. But even if this is achieved, the Housing Trajectory in the emerging Local Plan⁵⁷ shows that housing delivery on the allocated sites would not commence until 2028/29, around 5 years from now. In the meantime, the housing trajectory shows that the delivery of new homes, even with an allowance for windfall, would continue to fall well short of the annual number of dwellings required. In turn this would only serve to deepen the problems associated with an under supply of housing, including increased house prices, decreased affordability and households remaining in unsuitable accommodation for their needs, which have been evidenced by the appellant⁵⁸.

⁵⁴ Page 7 of the SoCG on the Implications of the Revised Framework for the Appeal, January 2024

⁵⁵ Page 5 of the SoCG on the Implications of the Revised Framework for the Appeal, January 2024

⁵⁶ St Albans City & District Council Local Development Scheme, September 2022 (CD3.3)

⁵⁷ Table 3.2 of St Albans City and District Council Draft Local Plan 2041, July 2023 (CD3.1)

⁵⁸ Affordable Housing Proof of Evidence of Annie Gingell (CD9.1)

93. The proposed development would provide up to 150 new dwellings, of which 81 units would be in the form of market housing. I have no reason to believe that the development could not be delivered in the next 5 years, making a material contribution to the supply. Indeed, the appellant has offered to shorten the standard time limit for implementation. Given the substantial shortfall in the supply of housing in the District, the likelihood that the gap will not be bridged in the next 5 years without further permissions on non-allocated sites, and the Government's objective in paragraph 60 of the Framework to significantly boost the supply of homes, I consider that the provision of 81 units of market housing should carry very substantial weight in favour of this appeal.
94. Up to 60 of the proposed dwellings would be provided as affordable housing, with a tenure split of 25% First Homes, 8% Shared Ownership and 67% Affordable Rent, secured through planning obligations in the S106 agreement. The evidence presented in the Affordable Housing SoCG shows that there is a shortfall in the supply of affordable homes of around 2,220 dwellings, which is projected to increase over the next 5 years⁵⁹.
95. Policy 7A of the Local Plan requires a proportion of affordable housing on sites of 0.4 ha within Towns and Specified Settlements, which the Council's Affordable Housing Supplementary Planning Guidance (SPG)⁶⁰ sets at 35%. Whilst this policy does not apply to Colney Heath as a Green Belt Settlement, it is common ground that the provision of 60 units of affordable housing on the appeal site, amounting to 40% of the total, would represent a social benefit to which very substantial weight should be given. I concur with this, given the scale of the need for affordable housing in the District and the evidence that this will worsen in the next 5 years without further permissions on non-allocated sites.

Self-Build and Custom Housebuilding

96. The proposed development would also provide up to 9 dwellings in the form of self-build and custom housebuilding (SB&CH) plots, secured through obligations in the S106 agreement. Although not a policy requirement in the Local Plan, people wishing to build their own homes is one of the types of housing need which the Framework seeks to address⁶¹. To that end local authorities are required to keep a register of people seeking to acquire serviced plots within the area for SB&CH, and to grant enough planning permissions to meet the identified need on the register⁶².
97. It is common ground that the Council is not currently meeting the need on its Self-Build Register and that there is unmet demand for serviced plots for SB&CH in St Albans⁶³. Up to the end of October 2022, there had been 735 entries on the St Albans Register, amounting to a demand for 745 plots for SB&CH, which the Council has a duty to meet by the end of October 2025⁶⁴. Based on the appellant's evidence, to date the Council has granted permissions for 31 SB&CH plots⁶⁵, leaving a substantial unmet need.

⁵⁹ Figure 7 in the Affordable Housing SoCG (CD8.1)

⁶⁰ Paragraph 7.13 of the St Albans SPG on Affordable Housing, March 2004 (CD2.4)

⁶¹ Paragraph 63 of the Framework

⁶² Footnote 29 of the Framework

⁶³ Paragraphs 6.57 and 6.58 of the Core SoCG (CD8.3)

⁶⁴ Figure 4.1 and paragraph 4.10 of Andrew Moger PoE (CD9.2)

⁶⁵ Figure 5.2 of Andrew Moger PoE (CD9.2)

98. Therefore, the provision of 9 plots on the appeal site would make a material contribution to addressing the unmet need for SB&CH in the District. Given the scale of need or demand for SB&CH relative to that for affordable housing in St Albans, I consider the provision of 9 plots for SB&CH would be a benefit attracting substantial weight in favour of the appeal proposal. This would also be consistent with the weight afforded to the provision for SB&CH by the Inspector in the Roundhouse Farm appeal decision, where a comparable number of 10 plots were being provided.

Economic benefits

99. It is common ground that the appeal proposal would result in economic benefits through the creation of temporary jobs in construction and related activities during the development process and additional household spend in the local area. The appellant calculates that 360-465 direct, indirect and induced jobs would be created and an extra £3.76 million of household expenditure would benefit local services and facilities.
100. However, these are generic figures. It is unclear from the evidence provided how many jobs would be contracted for the full length of the construction process and how many would be related to just one construction phase. The gross expenditure figure is a multiplier of an average weekly household expenditure, not all of which would be spent in local shops and services, so the benefit of this to the District's economy would be likely to be less.
101. Although paragraph 85 of the Framework places significant weight on the need to support economic growth, the appellant confirmed in oral evidence that this does not dictate the weight to be given to economic benefits in each case. Overall, therefore, whilst I acknowledge that the proposed development would generate economic benefits, the scale of any economic benefit would be modest, and, therefore, I attach no more than moderate weight to this in favour of the appeal.

Ecology

102. The south western part of the appeal site is located within the Colney Heath Farm Meadows LWS, which would be retained. Measures to ensure its protection from increased recreational pressure as a result of residential development could be secured by condition. Subject to this and other on-site mitigation measures to enhance retained and create new habitats to provide for protected species, it is common ground that the proposed development would not result in any significant residual negative effects on important ecological features⁶⁶.
103. However, the Ecological Impact Assessment submitted with the appeal confirms that there would be an overall net loss in area based habitats, due to the loss of grassland habitats on the north eastern part of the site⁶⁷. This cannot be mitigated on-site, but the appellant proposes to compensate for the loss by delivering a 10% biodiversity net gain (BNG) off-site, through a Biodiversity Offsetting Scheme, secured through the S106 agreement.
104. The proposed 10% BNG would be equivalent to the minimum level of BNG mandated in the Environment Act 2021, which is expected to apply to all major development proposals, such as the appeal scheme, during 2024. Given that at the time of writing the statutory requirement for BNG is not yet in force, I consider that the commitment to its provision in advance would be a

⁶⁶ Paragraph 6.38 of the Core SoCG (CD8.3)

⁶⁷ Paragraph 5.78 of Ecological Impact Assessment, July 2022 (CD4.8)

benefit in favour of the appeal scheme. However, because the gain proposed would be at the minimum of the level set out in the Act, I attach no more than moderate weight to it.

Previously Developed Land

105. There are two related questions to consider here. Firstly, whether the whole of the appeal site constitutes previously developed land (PDL) as defined in Annex 2 of the Framework. Secondly, if the whole of the site is PDL, whether its status as such should carry any weight in the planning balance to be undertaken to determine whether 'very special circumstances' exist to justify the appeal proposal as inappropriate development in the Green Belt, taking account of the Framework's policies on making effective use of PDL and on the re-use and redevelopment of PDL in the Green Belt.
106. Dealing with the first question, PDL is defined in Annex 2 of the Framework as land which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure. It is clear that the house and garden at 42 Tollgate Road and the land on which the stables, manege and associated hardstanding areas are located, comprise PDL. The dispute is over the whether the remainder of the site, consisting of open fields, comprises part of the curtilage to the stable facilities and thereby PDL.
107. The planning permission for the stables and associated grooming and storage facilities granted in 1996⁶⁸ applies to the whole of the appeal site apart from no. 42. This is evident from the site plan relating to the permission, which includes all of the land and the adjacent fields to the southeast, and from the application form which confirms the site area as 10.8 ha. Although the permission did not involve a change of use of the land, the application form confirmed the land was already in use for horse grazing. I recognise horse grazing is different to an equestrian use, and the Parish Council disputes whether the fields have been in regular and consistent equestrian use without interruption for the last 10 years. However, the photographic evidence supplied by the appellant shows the fields being used for riding and exercising horses as far back as 2009. Moreover, the Council as the local planning authority (LPA) has confirmed that the appeal site, excluding no. 42, is in lawful equestrian use.
108. These pieces of evidence are sufficient for me to conclude, for the purposes of this appeal, that the fields within the appeal site form part of the curtilage to the stables. Therefore, whilst the majority of the appeal site comprises green fields and is patently not 'brownfield' in character or appearance, I agree that because the fields form part of the same curtilage as the stables, the whole of the appeal site meets the definition of PDL in the Framework.
109. Turning to the second question, paragraph 123 of the Framework expects strategic policies to accommodate development needs in a way that makes as much use as possible of PDL or 'brownfield' land. Although the focus of this sentence in the Framework is on plan-making, the emphasis on making use of PDL is also relevant to decision making, and the appellant refers to it in this context⁶⁹. However, this sentence is qualified by footnote 49 of the Framework, which makes clear that maximising the use of PDL should not be done in a way that would conflict with other policies in the Framework.

⁶⁸ Application Reference: 5/96/1240

⁶⁹ Paragraph 5.11 of Oliver Bell PoE (CD9.6)

110. Paragraph 154(g) of the Framework sets out the policy approach which should be taken to PDL in the Green Belt. It defines the circumstances in which the re-use and redevelopment of PDL would qualify as an exception to the presumption against new buildings in the Green Belt. These are where it would not have a greater impact on the openness of the Green Belt than the existing development or would not cause substantial harm to openness if meeting local affordable housing need.
111. The Court of Appeal judgement in the Dartford case⁷⁰ established that the proviso on the circumstances in which PDL may be developed or re-used in the Green Belt means that the Framework's encouragement of development on brownfield land is not unqualified where the land in question lies within the Green Belt. Whilst the Dartford judgement preceded the changes to the Framework introduced since 2018, the policies on the development of PDL in the Green Belt and making best use of brownfield land that existed at the time of the judgement are broadly consistent with those in the 2023 revised Framework.
112. I have concluded above that the proposed development would cause substantial harm to the openness and purposes of the Green Belt. As such it would not qualify as an exception under paragraph 154(g) and would, therefore, constitute inappropriate development in the Green Belt. Accordingly, the appeal proposal would conflict with the Framework's policy on the approach to the re-use and redevelopment of PDL in the Green Belt.
113. Whether or not this policy conflict and the resulting Green Belt harm would be outweighed by other considerations is the subject of the 'very special circumstances' test, which I deal with below. However, in circumstances where the appeal proposal does not comply with the Framework's policy on the re-use of PDL in the Green Belt, it would undermine that policy to then attach weight to the development and use of PDL in favour of the appeal proposal, when carrying out the 'very special circumstances' Green Belt balancing exercise.
114. I have been referred to the Maitland Lodge appeal decision⁷¹, in which the Inspector attached positive weight to the use of PDL within the Green Belt, in the light of the Framework's policy on making effective use of PDL. However, this was in a context where the Inspector had already concluded the proposal would not cause substantial harm to the openness of the Green Belt, and was, therefore, an acceptable use of PDL in the Green Belt that did not constitute inappropriate development in the Green Belt. Accordingly, he did not need to determine 'very special circumstances' and the use of PDL was capable of being weighed as a free-standing material consideration as part of the overall planning balance. The circumstances in this appeal are very different, and accordingly, the Maitland Lodge decision does not offer a comparable precedent for me in determining this issue.
115. The appellant also suggests that the appeal site is a sequentially preferable location for development over other non-PDL Green Belt sites, in the context of the need for housing in the District. This is based on the expectation in paragraph 147 of the Framework that plans should give first consideration to land which has been previously-developed, in circumstances where it has

⁷⁰ In paragraph 13 of Dartford BC and SoSCLG and Ors [2017] EWCA Civ 141 (CD13.7)

⁷¹ Appeal Ref: APP/V1505/W/22/3296116

been concluded it is necessary to release Green Belt land for development. However, paragraph 147 of the Framework clearly applies to the preparation of development plans. Therefore, whether or not the appeal site should be considered a sequentially preferable site over non-PDL sites within the Green Belt, is a matter to be determined through the preparation and examination of the emerging Local Plan rather than this appeal.

116. I note that in the Maitland Lodge decision, the Inspector regarded the sequential preference of that site as PDL in the Green Belt as a positive benefit. However, again, that was in a context where the appeal proposal was not inappropriate development in the Green Belt or harmful to the Green Belt. In this appeal, notwithstanding the PDL status of the site, the proposal would constitute inappropriate development in the Green Belt, due to the substantial harm it would cause to the openness of the Green Belt.
117. Therefore, on the above basis, I conclude that the PDL status of the appeal site should not carry any weight in favour of the proposed development.

Other Matters

Flood Risk and Drainage

118. The majority of the appeal site, including the land on which housing development is proposed, is located within Flood Zone 1, as shown on the Environment Agency's Flood Zone Map for fluvial flooding⁷². The south western part of the site within the Colney Heath Farm Meadows LWS is located in Flood Zones 2 and 3, being at a lower ground level and adjacent to the River Colne.
119. Paragraph 173 and footnote 59 of the Framework expect applications to be supported by a Flood Risk Assessment (FRA) for all development within Flood Zones 2 and 3. An FRA was submitted with the application the subject of the appeal, which assesses the risk from all sources of flooding. With regard to fluvial flood risk, the flood mitigation strategy in the FRA recommends the ground floor levels within the residential scheme be set above the EA modelled maximum flood level, which the appellant confirmed could be achieved.
120. The EA mapping in the FRA shows that the majority of the appeal site is at very low risk of surface water flooding⁷³. There is a strip of land along the north eastern boundary of the site to the rear of the houses on Tollgate Road, sections of which are mapped as being at medium and high risk of surface water flooding. Photographic evidence submitted by the Parish Council and local residents shows lying water in this location.
121. It has been suggested that this is evidence of an underground chalk stream. However, the appellant has provided technical evidence based on ground investigations and topographical surveys, which confirms that this is due to rainwater accumulating in shallow surface depressions, because of the underlying impermeable clay rich strata on this part of the site⁷⁴. The County Council as the Lead Local Flood Authority (LLFA) agrees with this position and that the ground conditions preclude the presence of an underground stream at the surface in this location⁷⁵. I am satisfied the evidence supports this position.

⁷² Fig 5-1: Flood Risk Assessment, Surface Water & Foul Water Drainage Strategy, June 2022 (CD4.9)

⁷³ Figure 5-3 in the FRA (CD4.9)

⁷⁴ Paragraph 8.1.1 of Ronald Henry's Rebuttal Proof (CD9.23)

⁷⁵ Paragraph 3.1.1 of the SoCG on Surface Water Flood Risk (CD8.6)

122. With regard to groundwater flood risk, the FRA confirms a relatively high groundwater table beneath the site, with groundwater levels at or near the surface in the western part of the site, closest to the River Colne. The risk of ground water flooding is considered to be medium in this area and low across the remainder of the site⁷⁶, which comprises the proposed development areas. As a precautionary measure, the LLFA agreed a condition to investigate seasonal groundwater levels, with measures to mitigate the risk of flooding from this source. I consider this would be a reasonable approach.
123. The FRA recommends both flood mitigation and surface water drainage strategies, including sustainable drainage systems and features to manage the discharge of water generated onsite, without increasing the risk of flooding elsewhere. Ultimately details of the drainage strategy would be dealt with at reserved matters stage and would remain within the control of the LPA. Neither the Environment Agency nor the LLFA have outstanding objections to the appeal proposals in relation to the risks of flooding from any sources. Overall, therefore, I am satisfied that the evidence demonstrates the proposed development would be capable of managing and/or mitigating any residual flood risks.
124. It was argued by the Parish Council and in third party representations that the appeal proposal fails to satisfy the sequential test because part of the appeal site lies within Flood Zones 2 and 3. I have considered the relevant appeal decisions referred to me on this matter. However, each of those cases are materially different in that critical elements of the proposed developments, such as the site access, were located within Flood Zones 2 or 3. In the appeal before me, the areas proposed for development are located within Flood Zone 1.
125. Accordingly, in this case, I conclude that the appeal proposal satisfies the requirements of the sequential test set out in paragraph 168 of the Framework. The mitigation measures proposed would also ensure consistency with paragraph 173 of the Framework, in not increasing flood risk elsewhere.

Traffic and Highway Safety

126. Access to the proposed development would be via a new junction on the southern side of Tollgate Road, created by the demolition of the property at no. 42. It would be opposite the entrance to Fellowes Lane on the north side of the road. The new junction would be designed so that vehicles exiting the appeal site would give priority to traffic on Tollgate Road.
127. The Proposed Access Layout Plan⁷⁷ demonstrates adequate visibility in both directions for vehicles exiting the site onto Tollgate Road, based on a 30 mph speed limit on Tollgate Road. Although average vehicle speeds along this section of Tollgate Road are currently in excess of that limit, a raised table would be installed at the junction to calm traffic and reduce speeds to below 30 mph, on what is a busy section of Tollgate Road.
128. Pavements on either side of the access road that tie into the existing footway on the southern side of Tollgate Road would ensure safety for pedestrians leaving and entering the site. In addition, to improve pedestrian visibility at the entrance to Fellowes Lane, a new section of pavement is proposed to the west of Fellowes Lane to provide a continuous east-west footway along the

⁷⁶ Paragraphs 5.3.3 and 5.3.4 of CD9.23

⁷⁷ Drawing no. JNY11289-RPS-0100-001 Rev B (CD5.26)

northern side of Tollgate Road opposite the site access. Dropped kerbs with tactile paving would also be installed to provide pedestrian crossing facilities on all four arms of the junction.

129. I acknowledge the concerns about parked cars on the north side of Tollgate Road and in Fellowes Lane reducing visibility for vehicles and pedestrians at the entrance to Fellowes Lane and adding to traffic congestion. However, the proposed junction has been designed in line with the recommendations of the Road Safety Audit submitted as part of the TA⁷⁸. The changes to the junction as part of the appeal scheme would improve highway safety along this stretch of Tollgate Road, by slowing traffic speeds.
130. With regard to traffic volumes, the TA predicts that the proposed development would generate 66 vehicle trips during the morning peak hour and 70 in the evening peak hour⁷⁹. The distribution of trips across the local road network was modelled based on Census travel to work data, using the TRICS database. This predicts that around two-thirds of the vehicle trips will travel northwest along Tollgate Road towards the A414 and M25, and one third southeast towards Welham Green and the A1000. The modelled effects of the additional vehicle trips on the surrounding junctions within Colney Heath and onto the A414 and A1000 show that all junctions would continue to operate within their design capacity and, whilst queue lengths would increase, the impact on delays would be minimal⁸⁰.
131. The TA also modelled the effect of the additional traffic on Tollgate Road, where on street parking on the north side of the street narrows the carriageway to one vehicle width, causing queues and delays⁸¹. Whilst the results show that for traffic travelling northwest along Tollgate Road, the average delay would increase from 5 to 8 seconds against the 2027 baseline, overall the impact of the proposed development on flows would be minimal.
132. Paragraph 115 of the Framework states that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety or a severe impact on the operation of the road network. The proposed development would not give rise to such levels of highway impact, and the Highway Authority did not seek to oppose it on these grounds. I am satisfied that the appeal proposal would therefore be consistent with the Framework and comply with the requirements of Policy 34 of the Local Plan in these respects.

Air Quality

133. The Air Quality Assessment (AQA) submitted with the appeal records that the existing concentrations of Nitrogen Dioxide (NO₂) and Particulate Matter (PM_{2.5} and PM₁₀), as recorded at the roadside monitoring stations within the surrounding area, are well below the relevant limit values and national objectives for these vehicle emission pollutants⁸². Furthermore, it confirms that these limit values and objectives are unlikely to be exceeded either within or outside the site, based on the levels of traffic predicted to be generated by the proposed development⁸³. Nevertheless, transport mitigation measures are

⁷⁸ Appendix 11 of the Transport Assessment, November 2022 (CD5.12)

⁷⁹ Table 6.1 of CD5.12

⁸⁰ Tables 7.1-7.16 of CD5.12

⁸¹ Tables 7.17-7.20 of CD5.12

⁸² Paragraph 4.4.2 and Table 4-2 of the Air Quality Assessment, Stantec, June 2022 (CD4.2)

⁸³ Paragraph 5.4.1 of the Air Quality Assessment (CD4.2)

proposed as part of the Travel Plan required by the S106 agreement, to encourage travel by sustainable modes of transport, which would help to reduce vehicle emissions further.

134. The risk to human health from the effects on air quality of the increase in heavy duty vehicles on the road network during the construction period, is likewise assessed to be low. Whilst the risk of dust soiling from construction works is high, mitigation measures would be put in place as part of a Construction Management Plan, the implementation of which could be required by condition.
135. Therefore, whilst I note the concerns of local residents about the impact of traffic growth on air quality in the surrounding area, the evidence shows that the overall effect of development traffic from the appeal scheme on local air quality would be 'not significant'. The Council's Environmental Compliance Officer also confirmed the proposal to be acceptable in terms of air quality. I have no alternative evidence to indicate otherwise. Accordingly, this factor would carry neutral weight in the planning balance.

Living Conditions

136. Based on the illustrative masterplan the proposed development would result in dwellings at the ends of the gardens to nos. 44-100 Tollgate Road. However, the length of the rear gardens to these properties ranges from around 25-60 m. As such the likely separation distances between the habitable room windows of the existing and proposed dwellings would be such as to avoid any loss of privacy through overlooking. This is a matter which could otherwise be controlled by condition at a reserved matters stage.
137. The design and position of the proposed access road at the entrance to the site would result in all traffic entering and leaving the development adjacent to 44 Tollgate Road. This would be likely to generate an additional level of noise for the occupiers of no. 44, at the side of the property. However, the Noise Impact Assessment identified the main source of existing noise on the site to be from traffic along Tollgate Road and that the existing daytime and night-time noise levels are within acceptable noise limits.
138. Whilst future traffic movements and noise would occur to the side and rear of no. 44, there is no evidence that the predicted level of traffic entering and exiting the site within peak hours and throughout the day would result in an unacceptable increase in noise levels for the occupiers of no. 44. The illustrative masterplan indicates there would be scope for landscaping along the side and rear boundary of no. 44 to assist in mitigating the effects of extra traffic noise, which could be secured by conditions if this were necessary.
139. Therefore, the effect of the proposal on the living conditions of the occupiers of existing properties surrounding the site would weigh neutrally in the planning balance.

Community Infrastructure

140. The proposed development would place pressure on existing local community facilities by generating additional demand for primary and secondary school places and healthcare services, and increasing the use of recreation facilities, libraries and other services. Policy 143B of the Local Plan expects development proposals to provide for their infrastructure consequences. The S106 agreement includes obligations for the payment of financial contributions towards off-site provision at existing or new facilities, which have been agreed

in consultation with the respective service providers, and would satisfy the tests for planning obligations in paragraph 57 of the Framework. Consequently, the appeal scheme accords with Policy 143B of the Local Plan and any effects on infrastructure carry neutral weight in the planning balance.

Minerals safeguarding

141. The appeal site is located in a Sand and Gravel Belt identified in the Hertfordshire Minerals Local Plan (2007) (the MLP), Policy 5 of which encourages mineral extraction prior to development taking place which may sterilise any significant mineral resource. However, in this case the Minerals Resource Assessment submitted with the application demonstrates that prior extraction would likely not be feasible or economically viable. The County Council as the Minerals Planning Authority requested a condition requiring a minerals recovery strategy for the opportunistic use of minerals on the site. But subject to this, the proposed development would comply with Policy 5 of the MLP and be consistent with paragraph 218 of the Framework. Accordingly, this consideration does not weigh against the appeal proposal.

Whether very special circumstances necessary to justify the proposed development within the Green Belt exist

142. The starting point in this case is that the appeal proposal constitutes inappropriate development in the Green Belt, which paragraph 152 of the Framework establishes is, by definition, harmful to the Green Belt, and should not be approved except in very special circumstances. In carrying out the 'very special circumstances' test, it is important to note that under paragraph 153 of the Framework, for 'very special circumstances' to exist, the harm by reason of inappropriateness and any other harm resulting from the proposal must be 'clearly' outweighed by other considerations. So, it is not sufficient for the factors in support of the proposal to merely outweigh the harm. Rather, for the appeal to be allowed, the overall balance of benefits against harms would have to weigh decisively in favour of the appeal scheme, not just marginally.
143. Beginning with harms, in addition to the harm by reason of inappropriateness, I have found that the proposed development would cause substantial harm to the openness of the Green Belt at Colney Heath and to its purpose in safeguarding the countryside from encroachment. Paragraph 153 of the Framework requires substantial weight to be given to any harm to the Green Belt. Accordingly, the harm to the openness and purpose of the Green Belt, in addition to the harm by reason of inappropriateness, each carry substantial weight against the appeal proposal. In my view these comprise a comprehensive range of Green Belt harm, not merely by reason of inappropriateness, but to the fundamental aim and purposes of the Green Belt.
144. In terms of other harms, the proposed development would also cause significant harm to the rural landscape character and appearance of the appeal site and the surrounding countryside to the south of Colney Heath, which I have established would be contrary to both national and Local Plan policies. Whilst the Council did not rely on the harm to landscape character as a separate reason for refusal, it is a distinct harm to be considered alongside the Green Belt harm in the overall balance. In my view, for the reasons I have given above, the level of landscape harm which would result, adds further significant weight against the appeal proposal.

145. With regard to heritage effects, in carrying out the heritage balances in paragraphs 208 and 209 of the Framework, I find that the public benefits of the appeal scheme, including the delivery of market, affordable and SB&CB housing, would outweigh the less than substantial harm to the heritage significance of North Mymms Park house, Colney Heath Farm and Barn, and the very minor harm to the heritage value of the North Mymms parkland and Tollgate Farm, through setting. Therefore, the policies of the Framework that protect heritage assets do not provide a clear reason for dismissing the appeal on heritage grounds, under paragraph 11(d)(i) of the Framework.
146. However, this does not constitute a finding of 'no heritage harm' and therefore a neutral factor in the overall Green Belt balance. Instead, the harm to the designated heritage assets remains an impact to which paragraph 205 of the Framework indicates great weight should be given, irrespective of the finding of less than substantial harm to their significance. Accordingly, the fact that the proposed development would harm rather than conserve the settings and significance of the Grade I and Grade II listed buildings, carries great weight against the appeal proposal in the Green Belt balance. The very minor harm to the non-designated heritage assets adds a minimal degree of further weight against the proposal.
147. In respect of access by sustainable modes of transport, notwithstanding the proposed improvements to the 305 bus service, which would be a benefit arising from the appeal scheme, the lack of a genuine choice of sustainable modes of travel to medical facilities, and the inadequacies of the cycling routes from the village to other key facilities, would result in journeys being made by car rather than more sustainable modes. In my view, these factors carry a moderate amount of weight against the proposed development.
148. Turning to the benefits of the proposal, there is a pressing need for additional housing in St Albans District, which the appeal scheme would help to address. The shortfalls against the requirement for a 4-year supply of housing land and the need for affordable housing are substantial. Although there is an emerging Local Plan, which allocates sites to meet housing needs over the next 20 years, this is unlikely to result in the delivery of sufficient new homes to meet the shortfalls within the next 5 years. Therefore, the construction of up to 150 new homes, including 60 affordable units, are key benefits of the appeal proposal, which, given the shortfalls and the Government's objective to significantly boost the supply of homes, should be accorded very substantial weight in the overall Green Belt balance.
149. In addition, the provision of 9 plots for SB&CB housing within the appeal scheme, although small in number, represents a benefit attracting substantial weight, given the level of unmet demand for this type of housing in the District. The proposed development would also deliver material economic and ecological benefits, in the form of jobs, increased trade for local services, and a 10% BNG, both of which I consider should attract moderate weight in favour of the appeal proposal. I also attach moderate weight to the improvements to the 305 bus service, which would result from the proposal and be a benefit to existing and future residents of the District.
150. All other matters carry neutral weight in the Green Belt balance, including the PDL status of the appeal site, and the effects on flood risk and drainage, traffic and highway safety, air quality, living conditions, community infrastructure and minerals safeguarding. I have explained my reasoning for this above.

151. In carrying out the Green Belt balance, the Courts have established that determining whether 'very special circumstances' exist to justify inappropriate development in the Green Belt, is an exercise of planning judgement, rather than a mathematical exercise in which each element of harm or benefit is added to a balance⁸⁴.
152. Accordingly, I have considered the totality of the benefits of the proposed development against the totality of its harms. Even though the provision of market and affordable housing attracts the highest level of weight of any consideration in this case, overall I judge that the housing and other benefits do not clearly outweigh the combination and extent of harms to the Green Belt, landscape character and appearance, and heritage assets, and arising from the limitations in the choice of sustainable transport modes. Therefore, I conclude that the other considerations in this appeal do not clearly outweigh the harm that I have identified.
153. Consequently, the very special circumstances necessary to justify the proposal as inappropriate development in the Green Belt do not exist. In these circumstances, paragraph 152 of the Framework dictates that the proposed development should not be approved. Accordingly, the policies of the Framework that protect the Green Belt also provide a clear reason for dismissing the appeal, under paragraph 11(d)(i) of the Framework. On this basis, the appeal scheme does not benefit from the presumption in favour of sustainable development, as defined in the Framework.
154. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. It is common ground that saved Policy 1 of the Local Plan, which deals with the Green Belt is the most important policy in this case. Although the most important policies of the development plan are out of date in this case⁸⁵, I have established above that saved Policy 1 is consistent with the Framework in respect of the 'very special circumstances' test, and, therefore, carries weight in the appeal.
155. The main parties agree that whether or not 'very special circumstances' exist to justify the proposed development will determine the consistency of the proposed development with saved Policy 1 and, thereby, as the most important policy, with the development plan as a whole. As 'very special circumstances' do not exist in this case, saved Policy 1 also stipulates that permission for the appeal scheme should not be granted. Therefore, a decision to dismiss the appeal would be in accordance with the development plan, and there are no material considerations to indicate otherwise.

Conclusion

156. For the reasons given above, and taking account of all other matters raised, I conclude that the appeal should be dismissed.

M Hayden

INSPECTOR

⁸⁴ Paragraph 34 of *Sefton Metropolitan Borough Council v SSHCLG & Jerry Doherty* [2021] EWHC 1082 (Admin)

⁸⁵ By reason of Footnote 8 of the Framework

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Luke Wilcox, of Counsel	instructed by St Albans City & District Council
Christopher Carr, MPlan CMILT MTPS	Senior Transport Development Officer, Hertfordshire County Council (HCC)
David Uncle, BSc MSc	Senior Flood Risk Officer, HCC (LLFA)
Nick Collins, BSc (Hons) MSc MRICS IHBC	Consultant, Portico Heritage
John-Paul Friend HND (LGD) BA Hons Dip LA CMLI	Director, LVIA Ltd
Phillip Hughes, BA (Hons) MRTPI FRGS Dip Man MCMi	Director, PHD Chartered Town Planners Ltd
Jaqueline Hutton	Head of Legal, SACDC (<i>for S106 Round Table</i>)

FOR THE APPELLANT:

Zack Simons, of Counsel	instructed by Nexus Planning
Joel Semakula, of Counsel	instructed by Nexus Planning
Ian Dimbylow MEng CEng MICE MCIHT	Director, RPS Transport
Oliver Bell, BSc MSc MRTPI	Director, Nexus Planning
Chris Brownlie	Principal Air Quality Consultant, Stantec
Ronald Henry, BEng MSt (Cantab) CEng CMgr MICE MIEI FCMI	Director, Stantec
Gail Stoten, BA (Hons) MCIfA FSA	Heritage Exec Director, Pegasus Group
Clive Self, MA (Urb Des) Dip LA CMLI	Managing Director, CSA Environmental
Annie Gingell, BSc (Hons) MSc, MRTPI	Associate, Tetlow King Planning Ltd
Andrew Moger, BA (Hons) MA MRTPI	Director, Tetlow King Planning Ltd
Jade Lyus	Vistry Homes Ltd (<i>for S106 Round Table</i>)

FOR COLNEY HEATH PARISH COUNCIL (RULE 6 PARTY):

John Clemow	Parish Councillor, CHPC
Tony Burns	Parish Councillor, CHPC
Mike Rawlins	Neighbourhood Plan Project Officer, CHPC
Ian Skelt	Local Resident (<i>for Flooding Round Table</i>)
Lesley Bloomfield	Local Resident (<i>for Planning evidence</i>)

INTERESTED PARTIES:

Deepak Bhat	Local Resident
Lesley Bloomfield	Local Resident
Lynn Skelt	Local Resident
John Rowland	Local Resident
Susan Blunt	Local Resident
Peter Clarke	Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- CD 19.1 Appellant's Opening Statement and Appearances (dated 19/09/23)
- CD 19.2 Colney Heath Parish Council Opening Statement (19/09/23)
- CD 19.3 Opening Statement on behalf of Local Planning Authority (19/09/23)
- CD 19.4.1 Deepak Bhat - Interested Party Statement (19/09/23)
- CD 19.4.2 Lesley Bloomfield - Interested Party Statement (18/09/23)
- CD 19.4.3 Corrinne Doust - Interested Party Statement (18/09/23)
- CD 19.4.4 Margaret Nash - Interested Party Statement (submitted 19/09/23)
- CD 19.4.5 Lynn Skelt - Interested Party Statement (submitted 19/09/23)
- CD 19.4.6 Melvin & Marianne Davies - Interested Party Statement (16/09/23)
- CD 19.4.7 Peter & Jenny Stevenson - Interested Party Statement (16/09/23)
- CD 19.4.8 Ryan Simpson Flowerday - Interested Party Statement (16/09/23)
- CD 19.4.9 John Rowland - Interested Party Statement (19/09/23)
- CD 19.4.10 Nancy Taffs - Interested Party Statement (submitted 19/09/23)
- CD 19.4.11 Kate Day - Interested Party Statement (submitted 19/09/23)
- CD 19.4.12 Sue Slingsby - Interested Party Statement (submitted 19/09/23)
- CD 19.5 Round Table agenda for Flood Risk (dated 19/09/23)
- CD 19.6 Round Table agenda for Heritage (dated 19/09/23)
- CD 19.7 Round Table agenda for Landscape (dated 20/09/23)
- CD 19.8 St Albans City & District Council Map of Cycle Routes
- CD 19.9 305 Bus Route Plan (dated 19/09/23)
- CD 19.10 Colney Heath Parish Council presentation slides (22/09/23)
- CD 19.11.1 Summary of Obligations in S106 Agreement (dated 21/09/2023)
- CD 19.11.2 Final Draft of S106 Agreement (submitted 21/09/23)
- CD 19.11.3 S106 Agreement Site Location Map
- CD 19.11.4 List of conditions agreed between the LPA and Appellant (27/09/23)
- CD 19.12 CIL Compliance Statement (dated 27/09/23)
- CD 19.13 Local Cycling & Walking Infrastructure Plan for St Albans District, Dec 2022
- CD 19.14 Closing Statement on behalf of Local Planning Authority (28/09/23)
- CD 19.15 Colney Heath Parish Council Closing Statement (28/09/23)
- CD 19.16 Appellant's Closing Statement (28/09/23)

DOCUMENTS SUBMITTED FOLLOWING THE CLOSE OF THE INQUIRY

- S106 Agreement - signed and certified (dated 11/10/2023)
- Statement of Common Ground between St Albans City & District Council and Vistry Homes Ltd on the implications of the updated National Planning Policy Framework (dated January 2024)
- Position Statement - Implications of the revised NPPF, obo Vistry Homes Ltd (dated January 2024)
- Email from Colney Heath Parish Council on the implications of the revised NPPF (dated 5 January 2024)

TOWN AND COUNTRY PLANNING ACT 1990

AGENT

DLA Town Planning Ltd
5 The Gavel Centre Porters Wood
St Albans
Hertfordshire
AL3 6PQ

APPLICANT

Vistry Homes Ltd
C/o Agent

PLANNING REFUSAL

Outline application (access sought) - Demolition of existing house and stables and the construction of up to 150 dwellings including affordable and custom-build dwellings together with all ancillary works

Land to the Rear of 42-100 Tollgate Road & 42 Tollgate Road Colney Heath St Albans Hertfordshire


In the pursuance of their powers under the above-mentioned Act and the Orders and Regulations for the time being in force thereunder, the Council hereby **refuse** the development proposed by you in your application dated 05/08/2022 and received with sufficient particulars on 23/08/2022 and shown on the plan(s) below for the following reasons:-

1. The site is within the Metropolitan Green Belt and the proposed development represents inappropriate development within the Green Belt, as set out in the National Planning Policy Framework 2021. In addition to the in-principle harm to the Green Belt by reason of inappropriateness, other harm is identified as a result of the proposed development in terms of: its detrimental impact on the openness of the Green Belt, harm to Green Belt purposes and harm to landscape character and appearance. Harm is also identified to the significance of the Grade I listed North Mymms Park house, Grade II listed Colney Heath Farmhouse and adjacent Grade II listed barn and the non-designated heritage assets of North Mymms Park and Tollgate Farm. Harm is also identified as insufficient information has been provided to demonstrate that the site has suitable access to sustainable transport modes. The benefits of the proposed development comprise the provision of up to 150 dwellings, including 40% affordable housing and up to 9 self-build units at the site which could contribute significantly towards meeting an identified housing need in the District, and the provision of public open space and delivery of 10% biodiversity net gain (through on-site and off-site provision). The potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is not clearly outweighed by other considerations; and as a result the very special circumstances required to allow for approval of inappropriate development in the Green Belt do not exist in this case. The proposal is therefore contrary to Policy 1 of the St Albans District Local Plan Review 1994 and the National Planning Policy Framework 2021.

2. In the absence of a completed and signed S106 legal agreement or other suitable mechanism to secure: additional health services provision; education provision in the form of new primary school, secondary school, and childcare provision; Special Educational Needs and Disabilities provision; library service provision; youth service provision; waste service provision; leisure and cultural services provision; affordable housing provision; open space and play space provision; biodiversity net gain; and highway works including provision for sustainable transport improvements and a travel plan; the development fails to adequately mitigate its effect upon local services and infrastructure and secure the identified 'very special circumstances'. The proposal is therefore contrary to Policies 1 (Metropolitan Green Belt) and 143B (Implementation) of the St. Albans District Local Plan Review 1994 and the National Planning Policy Framework 2021.

THIS IS AN IMPORTANT DOCUMENT AND IS LIKELY TO BE REQUIRED WHEN YOU COME TO SELL YOUR PROPERTY. YOU ARE ADVISED TO KEEP IT WITH YOUR TITLE DEEDS.

Signed



Christine Traill
Strategic Director – Community and Place Delivery
St Albans City & District Council

Dated 25/05/2023

INFORMATIVES:

The Local Planning Authority has been positive and proactive in its consideration of this planning application. The Local Planning Authority encourages applicants to engage in pre-application discussions as advocated under paragraphs 39-46 of the NPPF. The applicant did not engage in pre-application discussions with the Local Planning Authority and the form of development proposed fails to comply with the requirements of the Development Plan and does not improve the economic, social and environmental conditions of the District.

This determination was based on the following drawings and information: Site Location Plan (CSA/3925/109 Rev E), Parameters Plan (CSA/3925/120 Rev G), Proposed Access Layout (JNY11289-RPS-0100-001 Rev A), Concept Masterplan (CSA/3925/117 Rev F), Illustrative Masterplan (3925/118 Rev D), Illustrative Landscape Cross Sections (CSA/3925/123 Rev A), Photosheets (CSA/3925/121 Rev E), View from North Mymms House (CSA/3925/124), Air Quality Assessment, Arboricultural Impact Assessment, Arboricultural Survey Report, Archaeology and Heritage Assessment, Design and Access Statement, Ecological Impact Assessment, Existing Elevations and Floor Plans, Existing Features, Flood Risk Assessment, Landscape and Visual Impact Assessment, Noise Assessment, Opportunity and Constraint Plan, Planning Statement, Statement of Community Involvement, Utilities Assessment, Response to Resident Objection, dated 16 and 17 January 2023 (planning application reference 5/2022/1988) (note number TN001), Applicant Response to HCC Highways Comments (Report Reference: JNY11289-06), Letter from Stantec addressing EA, Affinity Water and Thames Water comments (dated 10 November 2022), Health Impact Assessment, Heritage Setting Addendum, Letter from CSA Environmental in response to HCC Ecology comments (dated 16 December 2022), Minerals Assessment Desk Study, Transport Assessment (dated 11 November 2022), and Framework Residential Travel Plan.

THIS IS AN IMPORTANT DOCUMENT AND IS LIKELY TO BE REQUIRED WHEN YOU COME TO
SELL YOUR PROPERTY. YOU ARE ADVISED TO KEEP IT WITH YOUR TITLE DEEDS.

Appeals to the Secretary of State

If you are aggrieved by the decision of your Local Planning Authority to refuse permission for the proposed development, or to grant it subject to conditions, then you can appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990.

This is a decision to refuse planning permission for a Full planning permission. If you want to appeal against your Local Planning Authority's decision then you must do so within 6 months of the date of this notice.

However, if an enforcement notice has been served for the same or very similar development within the previous 2 years, the time limit is:

- **28 days** from the date of the LPA decision if the enforcement notice was served before the decision was made yet not longer than 2 years before the application was made.
- **28 days** from the date the enforcement notice was served if served on or after the date the decision was made (unless this extends the appeal period beyond 6 months).

NB – the LPA determination period is usually 8 weeks (13 weeks for major developments and 28 days for non-material amendment applications). If you have agreed a longer period with the LPA, the time limit runs from that date.

Appeals must be made using a form which you can get from the Secretary of State at Temple Quay House, 2 The Square Temple Quay Bristol BS1 6PN or online at <https://www.gov.uk/appeal-planning-decision>

The Secretary of State may allow a longer period for the giving of notice of an appeal, but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to the Secretary of State that the Local Planning Authority could not have granted planning permission for the proposed development, or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of the development order and to any directions given under a development order.

Purchase Notices

If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that the owner can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted. In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase the owner's interest in the land in accordance with the provisions of Chapter I of Part 6 of the Town and Country Planning Act 1990.

Land to the Rear of 42-100 Tollgate Road & 42 Tollgate Road, Colney Heath


Statement of Common Ground

BETWEEN ST ALBANS CITY & DISTRICT COUNCIL AND VISTRY HOMES LTD

August 2023

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Signed: George Burgess	Signed: 
Name: George Burgess	Name: Oliver Bell
On behalf of: St Albans City and District Council	On behalf of: Vistry Homes Ltd
Date: 15/08/2023	Date: 03/08/2023

1. Introduction

1.1 This Statement of Common Ground (“SoCG”) has been prepared by Nexus Planning on behalf of Vistry Homes Ltd. (“the Appellant”) and St. Albans City & District Council (“the Council”), in accordance with the Procedural Guidance issued by the Planning Inspectorate in December 2022.

1.2 The appeal is lodged against the Council’s refusal of the following development:

“Outline application (access sought) - Demolition of existing house and stables and the construction of up to 150 dwellings including affordable and custom-build dwellings together with all ancillary works”

At

Land to the Rear of 42-100 Tollgate Road & 42 Tollgate Road, Colney Heath, St Albans, Hertfordshire (“the Appeal Site”).

1.3 It is agreed that the description of development can be amended to:

“Outline application (access sought) - Demolition of existing house and stables and the construction of up to 150 dwellings including affordable and self-build and custom housebuilding dwellings together with all ancillary works” (“the Appeal Scheme”).

2. The Appeal Site and its Surroundings

- 2.1 The Appeal Site measures approximately 7.82 hectares in total comprising the detached dwelling at 42 Tollgate Road which fronts Tollgate Road, along with equestrian facilities (including a 12-bay stable building, all-weather manège, equestrian storage) and associated paddocks to the rear. The Appeal Site is located on the south eastern edge of Colney Heath. The topography of the Appeal Site gently slopes to the south west.
- 2.2 The Appeal Site is located adjacent to and outside the settlement of Colney Heath, which is washed over by Green Belt. The Appeal Site is located within the Green Belt.
- 2.3 A ribbon of residential development fronts Tollgate Road and backs on to the Appeal Site to the north whilst land to the south east and north west comprises agricultural land the boundaries of which comprise hedgerows, the River Colne and a strong, mature tree line form a boundary to the south west.
- 2.4 The majority of Appeal Site is located within Flood Zone 1, with the south western part located within Flood Zones 2 and 3. There are no heritage assets within or directly adjacent to the Appeal Site. Any impacts on the setting of designated and non-designated assets located close to the appeal site are described in the evidence of the parties. The Appeal Site is located within a Minerals Safeguarding Area for sand and gravel. A Local Wildlife Site is located in the southern part of the Appeal Site.
- 2.5 A Public Right of Way (“PRoW”) runs alongside to the north-western boundary of the Appeal Site but it outside of the site itself.
- 2.6 Two existing vehicular accesses are available off Tollgate Road serving the existing dwelling and the equestrian facilities.

Surrounding Area

- 2.7 The Appeal Site is located to the south west of Colney Heath. The development plan identifies Colney Heath as a Green Belt Settlement, which is defined as a ‘smaller village located within the Green Belt’.
- 2.8 The nearest bus stop is located on Tollgate Road within 75m of the Appeal Site entrance, with services 230, 305, 312 and 355 providing connections to Brookmans Park, Enfield, Hatfield, St Albans, Welwyn Garden City and Welham Green. Welham Green railway station is located 3.7km away, providing regular services to London (Finsbury Park), Moorgate and Welwyn Garden City.
- 2.9 Services and facilities located within 1200m of the entrance to the Appeal Site comprise:
 - Colney Heath Primary School and Nursery (1,100m)
 - Colney Heath Village Hall (900m);
 - Colney Heath News convenience store (600m);
 - Colney Heath Football Club (1100m);
 - The Rice takeaway (600m); and
 - The Crooked Billet Free House (1000m).
- 2.10 Furthermore, within a 5km cycling distance from the entrance to the Appeal Site, are the following:

- University of Hertfordshire (3700m);
- Links Academy Hatfield (secondary school) (3700m); and
- Welham Green railway station (3600m).

3. Planning History

3.1 The relevant planning history of the Appeal Site is outlined within the table below:

Application Reference	Proposal	Outcome
5/1996/0787	Erection of stable	Refused 22 nd July 1996
5/1996/1240	Erection of stable with associated grooming and storage facilities	Approved 8 th October 1996 (appeal against condition allowed)
5/1997/0779	Hard-surfaced access, drive and turning area	Approved 19 th June 1997

4. The Appeal Scheme

4.1 The Appeal Scheme was validated by the Council on 23rd August 2022. The statutory 13-week date from validation for the determination of the planning application was 20th November 2022. The Appeal Scheme was given reference 5/2022/1988. Extensions of time had been agreed with the Council, including until the 20th January 2023, 28th February 2023 and most recently until 27th March 2023.

4.2 The following documents were originally submitted in support of the Appeal Scheme:

- Application Form;
- Air Quality Assessment;
- Arboricultural Impact Assessment;
- Arboricultural Survey Report;
- Archaeology and Heritage Assessment;
- Design and Access Statement;
- Draft Heads of Terms for Section 106 Agreement;
- Ecological Impact Assessment;
- Flood Risk Assessment, Surface Water and Foul Water Drainage Strategy;
- Landscape and Visual Impact Assessment and Green Belt Assessment;
- Noise Impact Assessment;
- Planning Statement (including affordable housing statement);
- Statement of Community Involvement;
- Transport Assessment;
- Travel Plan;
- Utilities Appraisal Report;
- Concept Masterplan (drawing no. CSA/3925/117 Rev B);
- Existing Features Plan (drawing no. CSA/3925/122 Rev A);
- Existing Elevations and Floor Plan (drawing no. TR/01);
- Opportunity and Constraint Plan (drawing no. CSA/3925/108 Rev A);
- Illustrative Masterplan (drawing no. 3925/118 Rev A);
- Parameter Plan (drawing no. CSA/3925/120 Rev B);
- Proposed Access and Layout Plan (drawing no. JNY11289-RPS-0100-001 Rev A); and
- Site Location Plan (drawing no. CSA/3925/109 Rev E).

4.3 During the consideration of the planning application the following additional documents were submitted:

- Technical Note – Response to HCC Highways (November 2022);
- Technical Note – Response to HCC Highways (February 2023);
- Technical Note – Response to Resident Objection in relation to underground stream (January 2023);
- EIA Screening Opinion;
- Drainage Letter from Stantec (November 2022);
- Health Impact Assessment;
- Heritage Setting Addendum;
- Hertfordshire Ecology Response Letter (December 2022);
- Mineral Assessment Desk Study;
- Phase 1 Ground Conditions Assessment;

- Phase 2 Ground Investigation Report;
- Transport Assessment (November 2022);
- Travel Plan (November 2022);
- View from North Mymms House (drawing no. CSA/3925/124);
- Concept Masterplan (drawing no. CSA/3925/117 Rev E);
- Concept Masterplan (drawing no. CSA/3925/117 Rev F);
- Illustrative Masterplan (drawing no. CSA/3925/118 Rev C);
- Illustrative Masterplan (drawing no. CSA/3925/118 Rev D);
- Parameter Plan (drawing no. CSA/3925/120 Rev C);
- Parameter Plan (drawing no. CSA/3925/120 Rev F);
- Parameter Plan (drawing no. CSA/3925/120 Rev G);
- Photosheets (drawing no. CSA/3925/121);
- Photosheets (drawing no. CSA/3925/121 Rev A);
- Photosheets (drawing no. CSA/3925/121 Rev B);
- Photosheets (drawing no. CSA/3925/121 Rev E);
- Proposed Access and Layout Plan (drawing no. JNY11289-RPS-0100-001 Rev B); and
- Illustrative Landscape Cross-Section (drawing no. CSA/3925/123 Rev A).

4.4 A Screening Opinion was issued by the Council on the 15th February 2023 which confirmed that the Appeal Scheme does not amount to Environmental Impact Assessment (“EIA”) development.

4.5 For clarity, it is agreed that the plans forming the basis for determination of the Appeal Scheme are as follows:

- Site Location Plan (drawing no. CSA/3925/109 Rev E);
- Parameter Plan (drawing no. CSA/3925/120 Rev G);
- Proposed Access and Layout Plan (drawing no. JNY11289-RPS-0100-001 Rev B);

4.6 The following drawings and documents comprise material prepared in support of the Appeal Scheme:

- Concept Masterplan (drawing no. CSA/3925/117 Rev F);
- Illustrative Masterplan (drawing no. CSA/3925/118 Rev D);
- Illustrative Landscape Cross-Section (drawing no. CSA/3925/123 Rev A);
- Photosheets (drawing no. CSA/3925/121 Rev E);
- View from North Mymms House (drawing no. CSA/3925/124);
- Air Quality Assessment;
- Arboricultural Impact Assessment;
- Arboricultural Survey Report;
- Archaeology and Heritage Assessment;
- Design and Access Statement;
- Ecological Impact Assessment;
- Existing Elevations and Floor Plan (drawing no. TR/01);
- Existing Features Plan (drawing no. CSA/3925/122 Rev A);
- Flood Risk Assessment, Surface Water and Foul Water Drainage Strategy;
- Landscape and Visual Impact Assessment and Green Belt Assessment;
- Noise Impact Assessment;
- Opportunity and Constraint Plan (drawing no. CSA/3925/108 Rev A);

- Planning Statement (including affordable housing statement);
- Statement of Community Involvement;
- Utilities Appraisal Report;
- Technical Note – Response to Resident Objection in relation to underground stream (January 2023);
- Technical Note – Response to HCC Highways (February 2023);
- Drainage Letter from Stantec (November 2022);
- Health Impact Assessment;
- Heritage Setting Addendum;
- Hertfordshire Ecology Response Letter (December 2022);
- Mineral Assessment Desk Study;
- Transport Assessment (November 2022); and
- Travel Plan (November 2022).

5. Planning Policy

Development Plan

5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be determined in accordance with provisions of the development plan unless material considerations indicate otherwise.

5.2 The development plan comprises the following:

- Saved Policies of the St. Albans District Local Plan Review (1994) (“the Local Plan”).
- HCC’s Waste Core Strategy & Development Management Policies DPD (2012); and
- HCC’s Hertfordshire Minerals Local Plan 2007.

5.3 The Local Plan was originally adopted in 1985 and reviewed in 1994. A number of policies were saved by direction of the Secretary of State on the 20th of September 2007. The Council’s document ‘Saved and Deleted Policies Version (July 2020)’ details which policies were saved by this Direction. It is agreed that this document does not assess the extent to which these policies comply with the National Planning Policy Framework (“NPPF”) and the subsequent weight that should be afforded to each policy.

5.4 It is agreed that the following policies of the development plan are of relevance in the determination of the Appeal Scheme:

- Policy 1 – Metropolitan Green Belt;
- Policy 2 – Settlement Strategy;
- Policy 8 – Affordable Housing in the Metropolitan Green Belt;
- Policy 34 – Highways Consideration 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 74 – Landscaping and Tree Preservation;
- Policy 84 – Flooding and River Catchment Management;
- Policy 84A – Drainage Infrastructure;
- Policy 86 – Buildings of Special Architectural or Historic Interest;
- Policy 106 – Nature Conservation;
- Policy 111 – Archaeological Sites;
- Policy 143A – Watling Chase Community Forest; and
- Policy 143b – Implementation.

5.5 It is agreed that the following policies of the development plan are most important in the determination of the Appeal Scheme:

- Policy 1 – Metropolitan Green Belt;
- Policy 2 – Settlement Strategy;
- Policy 69 – General Design and Layout; and

- Policy 86 – Buildings of Special Architectural or Historic Interest; and
- Policy 143b – Implementation

- 5.6 It is agreed that the most important policies in the determination of the Appeal Scheme are out of date by reason of the Council's inability to demonstrate the required five-year supply of deliverable housing land.
- 5.7 The parties do not agree whether a conflict with Policies 1, 2, 69 and 143b of the Local Plan arises in relation to the Appeal Scheme. However, both parties do agree that the Appeal Scheme complies with, or can comply with at the reserved matters stage, all other relevant policies in the Local Plan, as listed above, albeit the Council does not consider the Appeal Scheme to support the objectives of the Watling Chase Community Forest consistent with Policy 143A.

Supplementary Planning Documents or Guidance

- 5.8 In addition to development plan policies, the Council has also adopted a number of relevant Supplementary Planning Documents ("SPDs") / Supplementary Planning Guidance ("SPGs") including the following:
- Design and Layout of New Housing Advice Leaflet No.1 (1998);
 - Revised Parking Policies and Standards (2002); and
 - Supplementary Planning Guidance – Affordable Housing (2004).

Other Material Considerations

Emerging Local Plan Documents

- 5.9 The Council had been preparing a new St. Albans Local Plan (2020-2036). This was submitted to the Secretary of State for examination in March 2019. However, on 14th April 2020, the Inspector wrote to the Council identifying serious concerns regarding the Duty to Cooperate and that the plan would very likely need to be withdrawn. The Local Plan was subsequently formally withdrawn by the Council on 23rd November 2020.
- 5.10 Whilst the withdrawn Local Plan is no longer subject to the provisions of paragraph 48 of the NPPF (weight to emerging policies), its evidence base remains a material consideration.
- 5.11 The most recent Local Development Scheme (September 2022) sets out that the Council is preparing a new Local Plan. It identifies that the first Regulation 18 Consultation is proposed to be undertaken between July – September 2023, with adoption targeted for December 2025.
- 5.12 The Regulation 18 Local Plan to 2041 has been published the consultation period runs from 12 July to 25 September 2023. It is agreed that this emerging plan can only be afforded limited weight in the determination of this appeal.

National Planning Practice Guidance

- 5.13 On 6th March 2014, the Government published the PPG. The PPG is a live document that is actively updated to ensure that it remains up to date. The PPG is divided into different topic areas, which provide advice and guidance to inform the understanding and approach to implementation of the National Planning Policy Framework ("NPPF"). Reference will be made to this document throughout the Appeal.

National Planning Policy Framework

- 5.14 The National Planning Practice Guidance ("PPG") outlines that the NPPF represents up-to-date Government planning policy and is a material consideration that must be taken into account where it is relevant to a planning application or

appeal (ID: 21b-006-20190315). It is agreed that significant weight should be given to the NPPF in the determination of this appeal.

- 5.15 A consultation on proposed amendments to the NPPF ended in March 2023. At the time of writing this SoCG, the outcomes of this consultation are unknown.

6. Areas of Agreement

Housing Land Supply

- 6.1 Paragraph 8b of the NPPF states that in order to support strong, vibrant and healthy communities, the Government needs to ensure that a sufficient number and range of homes can be provided to meet the needs of present and future generations.
- 6.2 To support the Government's objective of significantly boosting the supply of homes, paragraph 60 of the NPPF sets out that: *"it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay."*
- 6.3 Paragraph 74 of the NPPF requires local planning authorities to *"identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old"*.
- 6.4 It is agreed that the development plan is more than five years old and therefore the Council's housing land supply should be measured against the local housing need figure calculated using the standard method (PPG ref. ID: 68-005-20190722). This results in a local housing need of 887 dwellings per annum at the time of calculation.
- 6.5 The Council's latest Authority Monitoring Report (re-published in March 2023) covers 1 April 2021 to 31 March 2022 and identifies a supply of 2.0 years. The Appellant considers the Council's housing land supply to be 1.97 years. It is agreed that the difference between the parties does not warrant spending Inquiry time on such matters given the agreement on weight to the provision of housing.
- 6.6 Whatever figures are used, it is agreed that the housing land supply shortfall is substantial.
- 6.7 The Housing Delivery Test ("HDT") 2021 results show the Council having a result of 69%, triggering the presumption in favour of sustainable development irrespective of the housing land supply position.

Use of Previously Developed Land

- 6.8 Paragraph 117 of the NPPF states that strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously developed or 'brownfield' land.
- 6.9 Paragraph 120d of the NPPF promotes and supports the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained, and available sites could be used more effectively. It is agreed that Green Belt is a constraint on new development.
- 6.10 The Appeal Site comprises the detached dwelling at 42 Tollgate Road, along with equestrian facilities (including a single storey 12-bay stable building, all-weather manège, equestrian storage containers) and associated paddocks to the rear.
- 6.11 It is agreed that the detached dwelling at 42 Tollgate Road and its private garden comprises previously developed land ("PDL").
- 6.12 It is also agreed that the remainder of the Appeal Site is in lawful equestrian use.
- 6.13 NPPF paragraph 149(g) provides an exception to the presumption against new buildings in the Green Belt. It is agreed that the proposals do not meet these exceptions.

Green Belt

- 6.14 Policy 1 of the Local Plan confirms the boundaries of the Green Belt within the District and it is agreed that the entirety of the Appeal Site lies within the Green Belt. It is also agreed that Colney Heath is identified as a smaller village washed over by the Green Belt as confirmed by Policy 2 of the Local Plan.
- 6.15 It is agreed that the essential characteristics of Green Belts are their openness and permanence (paragraph 137 of the NPPF).
- 6.16 It is agreed that the Appeal Scheme comprises inappropriate development in the Green Belt which should not be approved unless the potential harm to the Green Belt and any other harm is clearly outweighed by other considerations (paragraph 148 of the NPPF).
- 6.17 It is agreed that the proposed 150 dwellings and associated development will reduce the openness of this part of the Green Belt.
- 6.18 It is agreed that there are five purposes that Green Belts serve. The parties agree that the proposals will not assist in safeguarding the countryside from encroachment.

Effect on Character and Appearance

- 6.19 Paragraph 130 of the NPPF sets out criteria to achieve well-designed places, including the creation of visually attractive development, sympathetic to local character and history and create places that are safe, inclusive and accessible.
- 6.20 Policy 69 of the Local Plan states that all development shall have an adequately high standard of design taking into account the scale and character of its surroundings in terms of height, size, scale, density or plot to floorspace ratio.
- 6.21 It is agreed that the Appeal Site is not subject to any statutory or non-statutory designations for landscape or heritage value.
- 6.22 It is agreed that the landscape impacts will not be significant on the character of the landscape / townscape in the immediate vicinity of the Appeal Site and there will be no material effects on the wider, rural landscape character around Colney Heath.
- 6.23 It is agreed that the site is within the countryside where the intrinsic character and beauty should be recognised.

Building a Strong and Competitive Economy

- 6.24 Paragraph 81 of the NPPF states that significant weight should be placed on the need to support economic growth and productivity.
- 6.25 It is agreed that the Appeal Scheme will result in a number of economic benefits, including:
- the direct temporary creation of construction jobs;
 - the temporary creation of other jobs in construction related activities such as brick manufacturing; and
 - additional household expenditure in the local area.
- 6.26 The Council considers that moderate weight should be given to the economic benefits of the Appeal Scheme, whilst the Appellant considers significant weight should be given, having regard to paragraph 81 of the NPPF.

Transport Considerations

- 6.27 Paragraph 109 of the NPPF stipulates that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual impacts on the road network would be 'severe'.
- 6.28 Policy 34 of the Local Plan states that development likely to generate a significant amount of traffic, or which involves the creation or improvement of an access onto the public highway, will not normally be permitted unless acceptable in terms of road safety, environmental impact on traffic, road capacity, road hierarchy, car parking provision and local rural roads.
- 6.29 The Appeal Site is located on the edge of Colney Heath within close proximity to bus stops with limited services.

Highway Safety and Impact on Highway Network

- 6.30 On the 9th January 2023, Hertfordshire County Council as Highway Authority recommended that permission be refused, subject to receipt of the following additional details:
- An updated site access plan showing pedestrian crossing facilities at the site access.
 - A plan showing the location of proposed mitigation measures.
 - A Stage 1 Road Safety Audit for the proposed site access (with crossing facilities).
- 6.31 Additional information was submitted by the appellant on 2nd February 2023 to Hertfordshire County Council Highways and the LPA addressing these comments.
- 6.32 On the 5th May 2023 immediately prior to the application reporting to the Planning Committee for determination, the County Highway Authority raised a new objection in relation to locational sustainability. The objection particularly focussed on the safety of identified cycle routes and further consultation being required with local bus providers to explore if further services could be provided with the Appeal Scheme. This objection is reflected in the reason for refusal.
- 6.33 The Appellant will seek to agree a separate Highways Statement of Common Ground in relation to locational sustainability with the County Council and Local Planning Authority to narrow points of difference.

Car and Cycle Parking

- 6.34 As an outline application, it is agreed that this is not a reason to refuse permission of the Appeal Scheme.

Ecology

- 6.35 Paragraph 179 of the NPPF seeks to protect and enhance biodiversity.
- 6.36 Natural England confirmed no objection on the 8th September 2022 and reconfirmed this position on the 24th January 2023.
- 6.37 Hertfordshire Ecology provided a response on the 12th October 2022 confirming that the Appeal Scheme is considered acceptable subject to the imposition of conditions. Hertfordshire Ecology then provided another response on the 7th February 2023 confirming how the provision of a biodiversity net gain could be achieved offsite.
- 6.38 It is common ground that the Appeal Scheme would not result in any significant residual negative effects on important ecological features.

- 6.39 It is agreed that the Appeal Scheme would result in an overall biodiversity net loss in area based habitats. It is agreed that this can be compensated by the Appellant through an agreement with the Council for offsite compensation to achieve a biodiversity net gain and meet trading rules.
- 6.40 It is therefore agreed that the proposed development is satisfactory in respect of its ecological impact.

Arboriculture

- 6.41 The Council's Tree Officer confirmed no objection to the Appeal Scheme on the 30th August 2022.
- 6.42 It is agreed that the Appeal Scheme is acceptable or can be made acceptable subject to conditions and the details presented at reserved matters stage in terms of arboricultural matters.

Promoting Healthy and Safe Communities

- 6.43 Paragraph 98 of the NPPF states that "access to a network of high quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities, and can deliver wider benefits for nature and support efforts to address climate change."
- 6.44 It is agreed that the Appeal Scheme could provide 1.84ha of publicly accessible green infrastructure, to promote active lifestyle and a sense of wellbeing through the provision of new public open space, seating / picnic area, and recreational routes.
- 6.45 HCC Public Health provided a response 30th August 2022 requesting a Health Impact Assessment was submitted. The Appellant submitted a Health Impact Assessment to the Council 6th January 2023 which confirmed that positive health impacts relating to the Appeal Scheme include access to outdoor play areas, walking and cycling routes and provision of green infrastructure. A further response from HCC Public Health was issued 6th February 2023, this provided general recommendations relating to health and wellbeing, and confirmed they had no comments on the Health Impact Assessment.
- 6.46 The Crime Prevention Officer supports the Appeal Scheme which is in outline with no details of siting or house types, orientation etc. and requests that the Appellant seeks to achieve the relevant Secured by Design accreditation.
- 6.47 It is common ground that the Appeal Scheme could achieve a high standard of design and could provide a substantial area of landscaped open space which could be accessible to the public.

Affordable Housing

- 6.48 Policy 7A of the Local Plan states that the Council will seek to negotiate an element of affordable housing on sites over 0.4ha. It is agreed this Policy is specific to sites contained within Towns and Specified Settlements as defined in Policy 2, which does not include Colney Heath and accordingly does not apply to the Appeal Scheme/Site.
- 6.49 St. Albans Affordable Housing SPG (2004) sets out the Council is applying the threshold of Circular 6/98, that being affordable housing is required on all sites of 1ha or more, or of 25+ dwellings, the Council will seek an on-site affordable housing provision equivalent to 35% of dwellings on the site. Circular 6/98 is no longer relevant and SADC therefore applies the threshold that affordable housing is required on sites where 15 or more dwellings are proposed, as set out in Policy 7A, across the entire District.
- 6.50 It is agreed there is an acute need for more affordable housing within St. Albans, and the delivery of 60 much needed affordable units (40%), which exceeds the minimum SPD requirement of 35% and reflects the emerging Policy requirement in the Regulation 18 Local Plan, represents a social benefit to which very substantial weight should be given. The Appellant intends to agree a separate Affordable Housing Statement of Common Ground with the Council.

Market Housing

- 6.51 Paragraph 60 of the NPPF seeks to support the Government's objective of significantly boosting the supply of homes.
- 6.52 The Council's Regulation 18 Local Plan identifies a local housing requirement of 888 dwellings per annum in the District. It is agreed that the Council has a severe and acute shortfall in the delivery of market housing.
- 6.53 The Appeal Scheme, at 81 market dwellings, could be delivered in full over the next five years and it is common ground that this would make a material contribution towards supply to which very substantial weight should be given.

Self-Build / Custom Build

- 6.54 The provision of self-build and custom housebuilding is to be recognised as part of the overarching housing need of each district as set out in the NPPF (2021) and the PPG.
- 6.55 The Self-build and Custom Housebuilding Act (2015) requires the Council to keep a register of individuals and associations of individuals who wish to acquire serviced plots of land to bring forward self-build and custom housebuilding projects and places a duty on the Council (or other decision maker) to have regard to these registers in carrying out planning functions.
- 6.56 The Housing and Planning Act (2016) made amendments to The Self-Build and Custom Housebuilding Act and places a statutory duty on local authorities to permit enough serviced plots to meet demand arising from each Base Period of its Self-Build Register within three years of the end of a Base Period.
- 6.57 It is agreed that the Council is not meeting its statutory duty to meet Self-build Register demand.
- 6.58 It is agreed there is an unmet demand for serviced plots for self-build and custom housebuilding in St Albans.
- 6.59 It is agreed that the provision of 9 custom and/or self-build plots weighs in favour of the Appeal Scheme but parties do not agree on the weight to be afforded in this regard.

Flood Risk and Drainage Considerations

- 6.60 Policy 84 of the Local Plan states that in areas liable to flood, development or the intensification of existing development will not normally be permitted. It goes on further stating that proposals shall not increase flood risk in areas downstream due to additional surface water run off and that if development is permitted, it must include appropriate surface water runoff control measures.
- 6.61 Policy 84A of the Local Plan states that a detailed drainage impact study may be required at the planning application stage.
- 6.62 Paragraph 159 of the NPPF states inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.
- 6.63 A Flood Risk Assessment and Surface Water Drainage Strategy has been submitted in support of the Appeal Scheme. It is agreed that the majority of the Appeal Site is located within Flood Zone 1, with the south western part located within Flood Zones 2 and 3.
- 6.64 The Environment Agency issued responses 3rd October 2022 and 30th January 2023 objecting to the Appeal Scheme because it involves works within 8 metres of a main river – River Colne and risks to groundwater. The Appellant provided additional information which satisfied the Environment Agency's concerns, and consequently it removed its objection 17th March 2023 subject to the imposition of conditions.

-
- 6.65 The Councils Drainage Consultant confirmed that the Appeal Scheme is considered acceptable subject to the imposition of conditions.
- 6.66 It is agreed that the sequential test does not need to be applied as all built development would be located within Flood Zone 1. It is not also required in respect of surface water flood risk.
- 6.67 It is agreed that the Appeal Scheme is acceptable in terms of flood risk and drainage considerations, subject to the imposition of conditions.

Conserving and Enhancing the Historic Environment

- 6.68 On the 31st August 2022 the Councils Principal Historic Environment Consultant confirmed that the Appeal Scheme is considered acceptable in terms of archaeological matters subject to the imposition of conditions.
- 6.69 It is agreed that the Appeal Scheme is acceptable in terms of archaeological matters, subject to the imposition of conditions.
- 6.70 There are three designated heritage assets in the vicinity, in which the Appeal Site forms part of their setting. These designated heritage assets are the Grade I listed North Mymms Park House, the Grade II listed Colney Heath Farmhouse and the Grade II listed barn on the north side of Colney Heath Farm. It is agreed that less than substantial harm will occur upon the significance of Colney Heath Farmhouse, Grade II listed barn and North Mymms Park House, and whilst the extent of harm is not agreed, it is agreed to be less than substantial and at the lower end of that spectrum. .
- 6.71 It is agreed that as less than substantial harm is identified to the designated heritage assets, paragraph 202 of the NPPF states that this harm should be weighed against the public benefits of the Appeal Scheme.
- 6.72 The parties agree that the public benefits outweigh the harm to designated heritage assets.
- 6.73 The appeal site also falls within the setting of two non-designated heritage assets, Tollgate Farmhouse and the landscape at North Mymms Park. It is agreed that the impact on their setting should be taken into account in determining the appeal.

Ground Conditions and Pollution

- 6.74 Paragraph 174(e) of the NPPF states that planning decisions should contribute to and enhance the natural environment by “preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution”
- 6.75 On 12th January 2023, Environmental Compliance confirmed the Appeal Scheme is acceptable in terms of air quality and noise. A further response from Environmental Compliance was issued 13th February 2023, which concluded that the Appeal Scheme is acceptable in terms of contamination subject to the imposition of conditions.
- 6.76 It is agreed that subject to the imposition of conditions the Appeal Scheme could be made acceptable in terms of air quality, contamination and noise.

Minerals

- 6.77 HCC Minerals and Waste lodged an objection to the Appeal Scheme on the 1st September 2022 and requested further information was provided in order to assess the potential for workable mineral deposits underlain at the site and to avoid the possibility of mineral sterilisation. The Appellant provided a Minerals Resource Assessment on the 6th January 2023. HCC Minerals and Waste responded on the 10th February removing its objection and confirming that the Appeal Scheme is considered acceptable subject to the imposition of conditions.

6.78 It is agreed that subject to the imposition of conditions the Appeal Scheme could be made acceptable in terms of minerals.

7. Planning Obligations / Conditions

7.1 It is agreed that both parties will work together to prepare a Section 106 in advance of the Inquiry and it is likely to include the following matters:

- Affordable Housing;
- Self-Build and Custom-Build Housing;
- Open Space and Play Space;
- Highways / Sustainable Transport;
- Biodiversity Net Gain;
- Legal Costs;
- Education;
- Waste Service;
- Health Service Contributions.

7.2 A list of conditions will be provided in advance of the Inquiry.

8. Areas of Disagreement

8.1 Areas of disagreement include:

- Whether the Appeal Site represents a sustainable location for housing;
- The impact on the openness of the Green Belt;
- The extent of the Appeal Site comprising previously developed land;
- The impact on the Green Belt in respect of purpose c) of NPPF paragraph 138;
- The weight given to the provision of self build / custom build housing.
- The weight given to the economic benefits of the Appeal Scheme;
- Whether the benefits of the Appeal Scheme clearly outweigh the potential harm to the Green Belt and any other harms; and
- Whether the Appeal Scheme complies with the development plan as a whole.

9. Core Documents

9.1 An agreed list of Core Documents will be prepared in advance of the Inquiry.



Department for Levelling Up,
Housing & Communities

National Planning Policy Framework

December 2023



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1. Introduction

1. The National Planning Policy Framework sets out the Government's planning policies for England and how these should be applied¹. It provides a framework within which locally-prepared plans can provide for sufficient housing and other development in a sustainable manner. Preparing and maintaining up-to-date plans should be seen as a priority in meeting this objective.
2. Planning law requires that applications for planning permission be determined in accordance with the development plan², unless material considerations indicate otherwise³. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.
3. The Framework should be read as a whole (including its footnotes and annexes). General references to planning policies in the Framework should be applied in a way that is appropriate to the type of plan being produced, taking into account policy on plan-making in chapter 3.
4. The Framework should be read in conjunction with the Government's planning policy for traveller sites, and its planning policy for waste. When preparing plans or making decisions on applications for these types of development, regard should also be had to the policies in this Framework, where relevant.
5. The Framework does not contain specific policies for nationally significant infrastructure projects. These are determined in accordance with the decision-making framework in the Planning Act 2008 (as amended) and relevant national policy statements for major infrastructure, as well as any other matters that are relevant (which may include the National Planning Policy Framework). National policy statements form part of the overall framework of national planning policy, and may be a material consideration in preparing plans and making decisions on planning applications.
6. Other statements of government policy may be material when preparing plans or deciding applications, such as relevant Written Ministerial Statements and endorsed recommendations of the National Infrastructure Commission. This includes the Written Ministerial Statement on Affordable Homes Update (24 May 2021) which contains policy on First Homes.

¹ This document replaces the previous version of the National Planning Policy Framework published in September 2023.

² This includes local and neighbourhood plans that have been brought into force and any spatial development strategies produced by combined authorities or elected Mayors (see Glossary).

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

2. Achieving sustainable development

7. The purpose of the planning system is to contribute to the achievement of sustainable development, including the provision of homes, commercial development, 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 needs⁴. At a similarly high level, members of the United Nations – including the United Kingdom – have agreed to pursue the 17 Global Goals for Sustainable Development in the period to 2030. These address social progress, economic well-being and environmental protection⁵.
8. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):
 - a) **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;
 - b) **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and
 - c) **an environmental objective** – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.
9. These objectives should be delivered through the preparation and implementation of plans and the application of the policies in this Framework; they are not criteria against which every decision can or should be judged. Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.
10. So that sustainable development is pursued in a positive way, at the heart of the Framework is a **presumption in favour of sustainable development** (paragraph 11).

⁴ Resolution 42/187 of the United Nations General Assembly.

⁵ Transforming our World: the 2030 Agenda for Sustainable Development.

The presumption in favour of sustainable development

11. Plans and decisions should apply a presumption in favour of sustainable development.

For **plan-making** this means that:

- a) all plans should promote a sustainable pattern of development that seeks to: meet the development needs of their area; align growth and infrastructure; improve the environment; mitigate climate change (including by making effective use of land in urban areas) and adapt to its effects;
- b) strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas⁶, unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area⁷; 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.

For **decision-taking** this means:

- c) approving development proposals that accord with an up-to-date development plan without delay; or
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, 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 proposed⁷; 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.

⁶ As established through statements of common ground (see paragraph 27).

⁷ The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 187) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 72); and areas at risk of flooding or coastal change.

⁸ This includes, for applications involving the provision of housing, situations where: (a) the local planning authority cannot demonstrate a five year supply (or a four year supply, if applicable, as set out in paragraph 226) of deliverable housing sites (with a buffer, if applicable, as set out in paragraph 77) and does not benefit from the provisions of paragraph 76; or (b) where the Housing Delivery Test indicates that the delivery of housing was below 75% of the housing requirement over the previous three years.

12. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.
13. The application of the presumption has implications for the way communities engage in neighbourhood planning. Neighbourhood plans should support the delivery of strategic policies contained in local plans or spatial development strategies; and should shape and direct development that is outside of these strategic policies.
14. In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided the following apply:
 - a) the neighbourhood plan became part of the development plan five years or less before the date on which the decision is made; and
 - b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement (see paragraphs 67-68).

3. Plan-making

15. The planning system should be genuinely plan-led. Succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for meeting housing needs and addressing other economic, social and environmental priorities; and a platform for local people to shape their surroundings.
16. Plans should:
 - a) be prepared with the objective of contributing to the achievement of sustainable development⁹;
 - b) be prepared positively, in a way that is aspirational but deliverable;
 - c) be shaped by early, proportionate and effective engagement between plan-makers and communities, local organisations, businesses, infrastructure providers and operators and statutory consultees;
 - d) contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals;
 - e) be accessible through the use of digital tools to assist public involvement and policy presentation; and
 - f) serve a clear purpose, avoiding unnecessary duplication of policies that apply to a particular area (including policies in this Framework, where relevant).

The plan-making framework

17. The development plan must include strategic policies to address each local planning authority's priorities for the development and use of land in its area¹⁰. These strategic policies can be produced in different ways, depending on the issues and opportunities facing each area. They can be contained in:
 - a) joint or individual local plans, produced by authorities working together or independently (and which may also contain non-strategic policies); and/or
 - b) a spatial development strategy produced by an elected Mayor or combined authority, where plan-making powers have been conferred.
18. Policies to address non-strategic matters should be included in local plans that contain both strategic and non-strategic policies, and/or in local or neighbourhood plans that contain just non-strategic policies.
19. The development plan for an area comprises the combination of strategic and non- strategic policies which are in force at a particular time.

⁹ This is a legal requirement of local planning authorities exercising their plan-making functions (section 39(2) of the Planning and Compulsory Purchase Act 2004).

¹⁰ Section 19(1B-1E) of the Planning and Compulsory Purchase Act 2004.

Strategic policies

20. Strategic policies should set out an overall strategy for the pattern, scale and design quality of places (to ensure outcomes support beauty and placemaking), and make sufficient provision¹¹ for:
 - a) housing (including affordable housing), employment, retail, leisure and other commercial development;
 - b) infrastructure for transport, telecommunications, security, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat);
 - c) community facilities (such as health, education and cultural infrastructure); and
 - d) conservation and enhancement of the natural, built and historic environment, including landscapes and green infrastructure, and planning measures to address climate change mitigation and adaptation.
21. Plans should make explicit which policies are strategic policies¹². These should be limited to those necessary to address the strategic priorities of the area (and any relevant cross-boundary issues), to provide a clear starting point for any non-strategic policies that are needed. Strategic policies should not extend to detailed matters that are more appropriately dealt with through neighbourhood plans or other non-strategic policies.
22. Strategic policies should look ahead over a minimum 15 year period from adoption¹³, to anticipate and respond to long-term requirements and opportunities, such as those arising from major improvements in infrastructure. Where larger scale developments such as new settlements or significant extensions to existing villages and towns form part of the strategy for the area, policies should be set within a vision that looks further ahead (at least 30 years), to take into account the likely timescale for delivery¹⁴.
23. Broad locations for development should be indicated on a key diagram, and land-use designations and allocations identified on a policies map. Strategic policies should provide a clear strategy for bringing sufficient land forward, and at a sufficient rate, to address objectively assessed needs over the plan period, in line with the presumption in favour of sustainable development. This should include planning for and allocating sufficient sites to deliver the strategic priorities of the area (except insofar as these needs can be demonstrated to be met more appropriately through other mechanisms, such as brownfield registers or non-strategic policies)¹⁵.

¹¹ In line with the presumption in favour of sustainable development.

¹² Where a single local plan is prepared the non-strategic policies should be clearly distinguished from the strategic policies.

¹³ Except in relation to town centre development, as set out in chapter 7.

¹⁴ Transitional arrangements are set out in Annex 1.

¹⁵ For spatial development strategies, allocations, land use designations and a policies map are needed only where the power to make allocations has been conferred.

Maintaining effective cooperation

24. Local planning authorities and county councils (in two-tier areas) are under a duty to cooperate with each other, and with other prescribed bodies, on strategic matters that cross administrative boundaries.
25. Strategic policy-making authorities should collaborate to identify the relevant strategic matters which they need to address in their plans. They should also engage with their local communities and relevant bodies including Local Enterprise Partnerships, Local Nature Partnerships, the Marine Management Organisation, county councils, infrastructure providers, elected Mayors and combined authorities (in cases where Mayors or combined authorities do not have plan-making powers).
26. Effective and on-going joint working between strategic policy-making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. In particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.
27. In order to demonstrate effective and on-going joint working, strategic policy-making authorities should prepare and maintain one or more statements of common ground, documenting the cross-boundary matters being addressed and progress in cooperating to address these. These should be produced using the approach set out in national planning guidance, and be made publicly available throughout the plan-making process to provide transparency.

Non-strategic policies

28. Non-strategic policies should be used by local planning authorities and communities to set out more detailed policies for specific areas, neighbourhoods or types of development. This can include allocating sites, the provision of infrastructure and community facilities at a local level, establishing design principles, conserving and enhancing the natural and historic environment and setting out other development management policies.
29. Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies¹⁶.
30. Once a neighbourhood plan has been brought into force, the policies it contains take precedence over existing non-strategic policies in a local plan covering the neighbourhood area, where they are in conflict; unless they are superseded by strategic or non-strategic policies that are adopted subsequently.

¹⁶ Neighbourhood plans must be in general conformity with the strategic policies contained in any development plan that covers their area.

Preparing and reviewing plans

31. The preparation and review of all policies should be underpinned by relevant and up-to-date evidence. This should be adequate and proportionate, focused tightly on supporting and justifying the policies concerned, and take into account relevant market signals.
32. Local plans and spatial development strategies should be informed throughout their preparation by a sustainability appraisal that meets the relevant legal requirements¹⁷. This should demonstrate how the plan has addressed relevant economic, social and environmental objectives (including opportunities for net gains). Significant adverse impacts on these objectives should be avoided and, wherever possible, alternative options which reduce or eliminate such impacts should be pursued. Where significant adverse impacts are unavoidable, suitable mitigation measures should be proposed (or, where this is not possible, compensatory measures should be considered).
33. Policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary¹⁸. Reviews should be completed no later than five years from the adoption date of a plan, and should take into account changing circumstances affecting the area, or any relevant changes in national policy. Relevant strategic policies will need updating at least once every five years if their applicable local housing need figure has changed significantly; and they are likely to require earlier review if local housing need is expected to change significantly in the near future.

Development contributions

34. Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan.

Examining plans

35. Local plans and spatial development strategies are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. Plans are 'sound' if they are:

¹⁷ The reference to relevant legal requirements refers to Strategic Environmental Assessment. Neighbourhood plans may require Strategic Environmental Assessment, but only where there are potentially significant environmental effects.

¹⁸ Reviews at least every five years are a legal requirement for all local plans (Regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012).

- a) **Positively prepared** – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs¹⁹; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;
 - b) **Justified** – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;
 - c) **Effective** – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and
 - d) **Consistent with national policy** – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant.
36. These tests of soundness will be applied to non-strategic policies²⁰ in a proportionate way, taking into account the extent to which they are consistent with relevant strategic policies for the area.
37. Neighbourhood plans must meet certain ‘basic conditions’ and other legal requirements²¹ before they can come into force. These are tested through an independent examination before the neighbourhood plan may proceed to referendum.

¹⁹ Where this relates to housing, such needs should be assessed using a clear and justified method, as set out in paragraph 61 of this Framework

²⁰ Where these are contained in a local plan.

²¹ As set out in paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended).

4. Decision-making

38. 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.

Pre-application engagement and front-loading

39. Early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community.
40. Local planning authorities have a key role to play in encouraging other parties to take maximum advantage of the pre-application stage. They cannot require that a developer engages with them before submitting a planning application, but they should encourage take-up of any pre-application services they offer. They should also, where they think this would be beneficial, encourage any applicants who are not already required to do so by law to engage with the local community and, where relevant, with statutory and non-statutory consultees, before submitting their applications.
41. The more issues that can be resolved at pre-application stage, including the need to deliver improvements in infrastructure and affordable housing, the greater the benefits. For their role in the planning system to be effective and positive, statutory planning consultees will need to take the same early, pro-active approach, and provide advice in a timely manner throughout the development process. This assists local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs.
42. The participation of other consenting bodies in pre-application discussions should enable early consideration of all the fundamental issues relating to whether a particular development will be acceptable in principle, even where other consents relating to how a development is built or operated are needed at a later stage. Wherever possible, parallel processing of other consents should be encouraged to help speed up the process and resolve any issues as early as possible.
43. The right information is crucial to good decision-making, particularly where formal assessments are required (such as Environmental Impact Assessment, Habitats Regulations assessment and flood risk assessment). To avoid delay, applicants should discuss what information is needed with the local planning authority and expert bodies as early as possible.
44. Local planning authorities should publish a list of their information requirements for applications for planning permission. These requirements should be kept to the minimum needed to make decisions, and should be reviewed at least every two

years. Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question.

45. Local planning authorities should consult the appropriate bodies when considering applications for the siting of, or changes to, major hazard sites, installations or pipelines, or for development around them.
46. Applicants and local planning authorities should consider the potential for voluntary planning performance agreements, where this might achieve a faster and more effective application process. Planning performance agreements are likely to be needed for applications that are particularly large or complex to determine.

Determining applications

47. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing.
48. Local planning authorities may give weight to relevant policies in emerging plans according to:
 - a) the stage of preparation of the emerging plan (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 plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)²².
49. However, in the context of the Framework – and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both:
 - a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and
 - b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

²² During the transitional period for emerging plans consistency should be tested against the version of the Framework as applicable, as set out in Annex 1.

50. Refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination; or – in the case of a neighbourhood plan – before the end of the local planning authority publicity period on the draft plan. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the outcome of the plan-making process.

Tailoring planning controls to local circumstances

51. Local planning authorities are encouraged to use Local Development Orders to set the planning framework for particular areas or categories of development where the impacts would be acceptable, and in particular where this would promote economic, social or environmental gains for the area.
52. Communities can use Neighbourhood Development Orders and Community Right to Build Orders to grant planning permission. These require the support of the local community through a referendum. Local planning authorities should take a proactive and positive approach to such proposals, working collaboratively with community organisations to resolve any issues before draft orders are submitted for examination.
53. The use of Article 4 directions to remove national permitted development rights should:
- a) where they relate to change from non-residential use to residential use, be limited to situations where an Article 4 direction is necessary to avoid wholly unacceptable adverse impacts (this could include the loss of the essential core of a primary shopping area which would seriously undermine its vitality and viability, but would be very unlikely to extend to the whole of a town centre)
 - b) in other cases, be limited to situations where an Article 4 direction is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities)
 - c) in all cases, be based on robust evidence, and apply to the smallest geographical area possible.
54. Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

Planning conditions and obligations

55. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.
56. Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early

is beneficial to all parties involved in the process and can speed up decision-making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification²³.

57. Planning obligations must only be sought where they meet all of the following tests²⁴:
- a) necessary to make the development acceptable in planning terms;
 - b) directly related to the development; and
 - c) fairly and reasonably related in scale and kind to the development.
58. Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.

Enforcement

59. Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.

²³ Sections 100ZA(4-6) of the Town and Country Planning Act 1990 will require the applicant's written agreement to the terms of a pre-commencement condition, unless prescribed circumstances apply.

²⁴ Set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

5. Delivering a sufficient supply of homes

60. 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, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. The overall aim should be to meet as much of an area's identified housing need as possible, including with an appropriate mix of housing types for the local community.
61. To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance. The outcome of the standard method is an advisory starting-point for establishing a housing requirement for the area (see paragraph 67 below). There may be exceptional circumstances, including relating to the particular demographic characteristics of an area²⁵ which justify an alternative approach to assessing housing need; in which case the alternative approach should also reflect current and future demographic trends and market signals. In addition to the local housing need figure, any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for²⁶.
62. The standard method incorporates an uplift which applies to certain cities and urban centres, as set out in national planning guidance. This uplift should be accommodated within those cities and urban centres themselves except where there are voluntary cross boundary redistribution agreements in place, or where it would conflict with the policies in this Framework²⁷.
63. Within this context of establishing need, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. These groups should include (but are not limited to) those who require affordable housing; families with children; older people (including those who require retirement housing, housing-with-care and care homes); students; people with disabilities; service families; travellers²⁸; people who rent their homes and people wishing to commission or build their own homes²⁹.

²⁵ Such particular demographic characteristics could, for example, include areas that are islands with no land bridge that have a significant proportion of elderly residents.

²⁶ Transitional arrangements are set out in Annex 1

²⁷ In doing so, strategic policies should promote an effective use of land and optimise site densities in accordance with chapter 11. This is to ensure that homes are built in the right places, to prioritise brownfield and other under-utilised urban sites, to utilise existing infrastructure, and to allow people to live near the services they rely on, making travel patterns more sustainable.

²⁸ Planning Policy for Traveller Sites sets out how travellers' housing needs should be assessed for those covered by the definition in Annex 1 of that document.

²⁹ Under section 1 of the Self Build and Custom Housebuilding Act 2015, local authorities are required to keep a register of those seeking to acquire serviced plots in the area for their own self-build and custom house building. They are also subject to duties under sections 2 and 2A of the Act to have regard to this and to give enough suitable development permissions to meet the identified demand. Self and custom-build properties could provide market or affordable housing.

64. Where a need for affordable housing is identified, planning policies should specify the type of affordable housing required³⁰, and expect it to be met on-site unless:
- a) off-site provision or an appropriate financial contribution in lieu can be robustly justified; and
 - b) the agreed approach contributes to the objective of creating mixed and balanced communities.
65. Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). 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 amount³¹.
66. Where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the total number of homes to be available for affordable home ownership³², unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups. Exemptions to this 10% requirement should also be made where the site or proposed development:
- a) provides solely for Build to Rent homes;
 - b) provides specialist accommodation for a group of people with specific needs (such as purpose-built accommodation for the elderly or students);
 - c) is proposed to be developed by people who wish to build or commission their own homes; or
 - d) is exclusively for affordable housing, a community-led development exception site or a rural exception site.
67. Strategic policy-making authorities should establish a housing requirement figure for their whole area, which shows the extent to which their identified housing need (and any needs that cannot be met within neighbouring areas) can be met over the plan period. The requirement may be higher than the identified housing need if, for example, it includes provision for neighbouring areas, or reflects growth ambitions linked to economic development or infrastructure investment. Within this overall requirement, strategic policies should also set out a housing requirement for designated neighbourhood areas which reflects the overall strategy for the pattern and scale of development and any relevant allocations³³. Once the strategic policies have been adopted, these figures should not need re-testing at the neighbourhood plan examination, unless there has been a significant change in

³⁰ Applying the definition in Annex 2 to this Framework.

³¹ Equivalent to the existing gross floorspace of the existing buildings. This does not apply to vacant buildings which have been abandoned.

³² As part of the overall affordable housing contribution from the site.

³³ Except where a Mayoral, combined authority or high-level joint plan is being prepared as a framework for strategic policies at the individual local authority level; in which case it may be most appropriate for the local authority plans to provide the requirement figure.

circumstances that affects the requirement.

68. Where it is not possible to provide a requirement figure for a neighbourhood area³⁴, the local planning authority should provide an indicative figure, if requested to do so by the neighbourhood planning body. This figure should take into account factors such as the latest evidence of local housing need, the population of the neighbourhood area and the most recently available planning strategy of the local planning authority.

Identifying land for homes

69. Strategic policy-making authorities should have a clear understanding of the land available in their area through the preparation of a strategic housing land availability assessment. From this, planning policies should identify a sufficient supply and mix of sites, taking into account their availability, suitability and likely economic viability. Planning policies should identify a supply of:
- a) specific, deliverable sites for five years following the intended date of adoption³⁵; and
 - b) specific, developable sites or broad locations for growth, for the subsequent years 6-10 and, where possible, for years 11-15 of the remaining plan period.
70. Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities should:
- a) identify, through the development plan and brownfield registers, land to accommodate at least 10% of their housing requirement on sites no larger than one hectare; unless it can be shown, through the preparation of relevant plan policies, that there are strong reasons why this 10% target cannot be achieved;
 - b) seek opportunities, through policies and decisions, to support small sites to come forward for community-led development for housing and self-build and custom-build housing;
 - c) use tools such as area-wide design assessments, permission in principle and Local Development Orders to help bring small and medium sized sites forward;
 - d) support the development of windfall sites through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes; and
 - e) work with developers to encourage the sub-division of large sites where this could help to speed up the delivery of homes.

³⁴ Because a neighbourhood area is designated at a late stage in the strategic policy-making process, or after strategic policies have been adopted; or in instances where strategic policies for housing are out of date.

³⁵ With an appropriate buffer, as set out in paragraph 77. See Glossary for definitions of deliverable and developable.

71. Neighbourhood planning groups should also give particular consideration to the opportunities for allocating small and medium-sized sites (of a size consistent with paragraph 70a) suitable for housing in their area.
72. Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends. Plans should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.
73. Local planning authorities should support the development of exception sites for community-led development³⁶ (as defined in Annex 2) on sites that would not otherwise be suitable as rural exception sites. These sites should be on land which is not already allocated for housing and should:
- a) comprise community-led development that includes one or more types of affordable housing as defined in Annex 2 of this Framework. A proportion of market homes may be allowed on the site at the local planning authority's discretion, for example where essential to enable the delivery of affordable units without grant funding; and
 - b) be adjacent to existing settlements, proportionate in size to them³⁷, not compromise the protection given to areas or assets of particular importance in this Framework³⁸, and comply with any local design policies and standards.
74. The supply of large numbers of new homes can often be best achieved through planning for larger scale development, such as new settlements or significant extensions to existing villages and towns, provided they are well located and designed, and supported by the necessary infrastructure and facilities (including a genuine choice of transport modes). Working with the support of their communities, and with other authorities if appropriate, strategic policy-making authorities should identify suitable locations for such development where this can help to meet identified needs in a sustainable way. In doing so, they should:
- a) consider the opportunities presented by existing or planned investment in infrastructure, the area's economic potential and the scope for net environmental gains;
 - b) ensure that their size and location will support a sustainable community, with sufficient access to services and employment opportunities within the development itself (without expecting an unrealistic level of self-containment), or in larger towns to which there is good access;
 - c) set clear expectations for the quality of the places to be created and how this

³⁶ This exception site policy does not replace the First Homes exception policy set out in the Affordable Homes Update Written Ministerial Statement, dated 24 May 2021, which remains extant policy.

³⁷ Community-led development exception sites should not be larger than one hectare in size or exceed 5% of the size of the existing settlement.

³⁸ i.e. the areas referred to in footnote 7.

can be maintained (such as by following Garden City principles); and ensure that appropriate tools such as masterplans and design guides or codes are used to secure a variety of well-designed and beautiful homes to meet the needs of different groups in the community;

- d) make a realistic assessment of likely rates of delivery, given the lead-in times for large scale sites, and identify opportunities for supporting rapid implementation (such as through joint ventures or locally-led development corporations)³⁹; and
- e) consider whether it is appropriate to establish Green Belt around or adjoining new developments of significant size.

Maintaining supply and delivery

- 75. Strategic policies should include a trajectory illustrating the expected rate of housing delivery over the plan period, and all plans should consider whether it is appropriate to set out the anticipated rate of development for specific sites. Local planning authorities should monitor their deliverable land supply against their housing requirement, as set out in adopted strategic policies.
- 76. Local planning authorities are not required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing for decision making purposes if the following criteria are met⁴⁰:
 - a) their adopted plan is less than five years old; and
 - b) that adopted plan identified at least a five year supply of specific, deliverable sites at the time that its examination concluded.
- 77. In all other circumstances, local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide either a minimum of five years' worth of housing⁴¹, or a minimum of four years' worth of housing if the provisions in paragraph 226 apply. The supply should be demonstrated against either the housing requirement set out in adopted strategic policies, or against the local housing need where the strategic policies are more than five years old⁴². Where there has been significant under delivery of housing over the previous three years⁴³, the supply of specific deliverable sites should in addition include a buffer of 20% (moved forward from later in the plan period).

³⁹ The delivery of large scale developments may need to extend beyond an individual plan period, and the associated infrastructure requirements may not be capable of being identified fully at the outset. Anticipated rates of delivery and infrastructure requirements should, therefore, be kept under review and reflected as policies are updated.

⁴⁰ Transitional provisions relating to the application of this paragraph are set out in footnote 79.

⁴¹ For the avoidance of doubt, a five year supply of deliverable sites for travellers – as defined in Annex 1 to Planning Policy for Traveller Sites – should be assessed separately, in line with the policy in that document.

⁴² Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance.

⁴³ This will be measured against the Housing Delivery Test, where this indicates that delivery was below 85% of the housing requirement. For clarity, authorities that are not required to continually demonstrate a 5 year housing land supply should disregard this requirement.

National planning guidance provides further information on calculating the housing land supply, including the circumstances in which past shortfalls or over-supply can be addressed.

78. Where the criteria in paragraph 76 are not met, a local planning authority may confirm the existence of a five-year supply of deliverable housing sites (with a 20% buffer if applicable) through an annual position statement which:
- a) has been produced through engagement with developers and others who have an impact on delivery, and been considered by the Secretary of State; and
 - b) incorporates the recommendation of the Secretary of State, where the position on specific sites could not be agreed during the engagement process.
79. To maintain the supply of housing, local planning authorities should monitor progress in building out sites which have permission. Where the Housing Delivery Test indicates that delivery has fallen below the local planning authority's housing requirement over the previous three years, the following policy consequences should apply:
- a) where delivery falls below 95% of the requirement over the previous three years, the authority should prepare an action plan to assess the causes of under-delivery and identify actions to increase delivery in future years;
 - b) where delivery falls below 85% of the requirement over the previous three years, the authority should include a buffer of 20% to their identified supply of specific deliverable sites as set out in paragraph 77 of this framework, in addition to the requirement for an action plan.
 - c) where delivery falls below 75% of the requirement over the previous three years, the presumption in favour of sustainable development applies, as set out in footnote 8 of this Framework, in addition to the requirements for an action plan and 20% buffer.
80. The Housing Delivery Test consequences set out above will apply the day following the annual publication of the Housing Delivery Test results, at which point they supersede previously published results. Until new Housing Delivery Test results are published, the previously published result should be used.
81. To help ensure that proposals for housing development are implemented in a timely manner, local planning authorities should consider imposing a planning condition providing that development must begin within a timescale shorter than the relevant default period, where this would expedite the development without threatening its deliverability or viability. For major development involving the provision of housing, local planning authorities should also assess why any earlier grant of planning permission for a similar development on the same site did not start.

Rural housing

82. In rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs,

including proposals for community-led development for housing. Local planning authorities should support opportunities to bring forward rural exception sites that will provide affordable housing to meet identified local needs, and consider whether allowing some market housing on these sites would help to facilitate this.

83. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.
84. Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:
 - a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;
 - b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;
 - c) the development would re-use redundant or disused buildings and enhance its immediate setting;
 - d) the development would involve the subdivision of an existing residential building; or
 - e) the design is of exceptional quality, in that it:
 - is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and
 - would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.

6. Building a strong, competitive economy

85. Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future. This is particularly important where Britain can be a global leader in driving innovation⁴⁴, and in areas with high levels of productivity, which should be able to capitalise on their performance and potential.
86. Planning policies should:
- set out a clear economic vision and strategy which positively and proactively encourages sustainable economic growth, having regard to Local Industrial Strategies and other local policies for economic development and regeneration;
 - set criteria, or identify strategic sites, for local and inward investment to match the strategy and to meet anticipated needs over the plan period;
 - seek to address potential barriers to investment, such as inadequate infrastructure, services or housing, or a poor environment; and
 - be flexible enough to accommodate needs not anticipated in the plan, allow for new and flexible working practices (such as live-work accommodation), and to enable a rapid response to changes in economic circumstances.
87. Planning policies and decisions should recognise and address the specific locational requirements of different sectors. This includes making provision for clusters or networks of knowledge and data-driven, creative or high technology industries; and for storage and distribution operations at a variety of scales and in suitably accessible locations.

Supporting a prosperous rural economy

88. Planning policies and decisions should enable:
- the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed, beautiful new buildings;
 - the development and diversification of agricultural and other land-based rural businesses;

⁴⁴ The Government's Industrial Strategy sets out a vision to drive productivity improvements across the UK, identifies a number of Grand Challenges facing all nations, and sets out a delivery programme to make the UK a leader in four of these: artificial intelligence and big data; clean growth; future mobility; and catering for an ageing society. HM Government (2017) *Industrial Strategy: Building a Britain fit for the future*.

- c) sustainable rural tourism and leisure developments which respect the character of the countryside; and
 - d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.
89. Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.

7. Ensuring the vitality of town centres

90. Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Planning policies should:
- a) define a network and hierarchy of town centres and promote their long-term vitality and viability – by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses (including housing) and reflects their distinctive characters;
 - b) define the extent of town centres and primary shopping areas, and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre;
 - c) retain and enhance existing markets and, where appropriate, re-introduce or create new ones;
 - d) allocate a range of suitable sites in town centres to meet the scale and type of development likely to be needed, looking at least ten years ahead. Meeting anticipated needs for retail, leisure, office and other main town centre uses over this period should not be compromised by limited site availability, so town centre boundaries should be kept under review where necessary;
 - e) where suitable and viable town centre sites are not available for main town centre uses, allocate appropriate edge of centre sites that are well connected to the town centre. If sufficient edge of centre sites cannot be identified, policies should explain how identified needs can be met in other accessible locations that are well connected to the town centre; and
 - f) recognise that residential development often plays an important role in ensuring the vitality of centres and encourage residential development on appropriate sites.
91. Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.
92. When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.
93. This sequential approach should not be applied to applications for small scale rural offices or other small scale rural development.

94. When assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500m² of gross floorspace). This should include assessment of:
- a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
 - b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).
95. Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 94, it should be refused.

8. Promoting healthy and safe communities

96. Planning policies and decisions should aim to achieve healthy, inclusive and safe places and beautiful buildings which:
- a) promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other – for example through mixed-use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages;
 - b) are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of beautiful, well-designed, clear and legible pedestrian and cycle routes, and high quality public space, which encourage the active and continual use of public areas; and
 - c) enable and support healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling.
97. To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:
- a) plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;
 - b) take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community;
 - c) guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs;
 - d) ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community; and
 - e) ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.
98. Planning policies and decisions should consider the social, economic and environmental benefits of estate regeneration. Local planning authorities should use their planning powers to help deliver estate regeneration to a high standard.
99. It is important that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should:

- a) give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications; and
 - b) work with school promoters, delivery partners and statutory bodies to identify and resolve key planning issues before applications are submitted.
100. To ensure faster delivery of other public service infrastructure such as further education colleges, hospitals and criminal justice accommodation, local planning authorities should also work proactively and positively with promoters, delivery partners and statutory bodies to plan for required facilities and resolve key planning issues before applications are submitted.
101. Planning policies and decisions should promote public safety and take into account wider security and defence requirements by:
- a) anticipating and addressing possible malicious threats and natural hazards, especially in locations where large numbers of people are expected to congregate⁴⁵. Policies for relevant areas (such as town centre and regeneration frameworks), and the layout and design of developments, should be informed by the most up-to-date information available from the police and other agencies about the nature of potential threats and their implications. This includes appropriate and proportionate steps that can be taken to reduce vulnerability, increase resilience and ensure public safety and security; and
 - b) recognising and supporting development required for operational defence and security purposes, and ensuring that operational sites are not affected adversely by the impact of other development proposed in the area.

Open space and recreation

102. Access to a network of high quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities, and can deliver wider benefits for nature and support efforts to address climate change. Planning policies should be based on robust and up-to-date assessments of the need for open space, sport and recreation facilities (including quantitative or qualitative deficits or surpluses) and opportunities for new provision. Information gained from the assessments should be used to determine what open space, sport and recreational provision is needed, which plans should then seek to accommodate.
103. Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:
- a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
 - b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable

⁴⁵ This includes transport hubs, night-time economy venues, cinemas and theatres, sports stadia and arenas, shopping centres, health and education establishments, places of worship, hotels and restaurants, visitor attractions and commercial centres.

location; or

- c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.

- 104. Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.
- 105. The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated, and be capable of enduring beyond the end of the plan period.
- 106. The Local Green Space designation should only be used where the green space is:
 - a) in reasonably close proximity to the community it serves;
 - b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and
 - c) local in character and is not an extensive tract of land.
- 107. Policies for managing development within a Local Green Space should be consistent with those for Green Belts.

9. Promoting sustainable transport

108. Transport issues should be considered from the earliest stages of plan-making and development proposals, so that:
- a) the potential impacts of development on transport networks can be addressed;
 - b) opportunities from existing or proposed transport infrastructure, and changing transport technology and usage, are realised – for example in relation to the scale, location or density of development that can be accommodated;
 - c) opportunities to promote walking, cycling and public transport use are identified and pursued;
 - d) the environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effects, and for net environmental gains; and
 - e) patterns of movement, streets, parking and other transport considerations are integral to the design of schemes, and contribute to making high quality places.
109. The planning system should actively manage patterns of growth in support of these objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However, 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.
110. Planning policies should:
- a) support an appropriate mix of uses across an area, and within larger scale sites, to minimise the number and length of journeys needed for employment, shopping, leisure, education and other activities;
 - b) be prepared with the active involvement of local highways authorities, other transport infrastructure providers and operators and neighbouring councils, so that strategies and investments for supporting sustainable transport and development patterns are aligned;
 - c) identify and protect, where there is robust evidence, sites and routes which could be critical in developing infrastructure to widen transport choice and realise opportunities for large scale development;
 - d) provide for attractive and well-designed walking and cycling networks with supporting facilities such as secure cycle parking (drawing on Local Cycling and Walking Infrastructure Plans);

- e) provide for any large scale transport facilities that need to be located in the area⁴⁶, and the infrastructure and wider development required to support their operation, expansion and contribution to the wider economy. In doing so they should take into account whether such development is likely to be a nationally significant infrastructure project and any relevant national policy statements; and
 - f) recognise the importance of maintaining a national network of general aviation airfields, and their need to adapt and change over time – taking into account their economic value in serving business, leisure, training and emergency service needs, and the Government’s General Aviation Strategy⁴⁷.
111. If setting local parking standards for residential and non-residential development, policies should take into account:
- a) the accessibility of the development;
 - b) the type, mix and use of development;
 - c) the availability of and opportunities for public transport;
 - d) local car ownership levels; and
 - e) the need to ensure an adequate provision of spaces for charging plug-in and other ultra-low emission vehicles.
112. Maximum parking standards for residential and non-residential development should only be set where there is a clear and compelling justification that they are necessary for managing the local road network, or for optimising the density of development in city and town centres and other locations that are well served by public transport (in accordance with chapter 11 of this Framework). In town centres, local authorities should seek to improve the quality of parking so that it is convenient, safe and secure, alongside measures to promote accessibility for pedestrians and cyclists.
113. Planning policies and decisions should recognise the importance of providing adequate overnight lorry parking facilities, taking into account any local shortages, to reduce the risk of parking in locations that lack proper facilities or could cause a nuisance. Proposals for new or expanded distribution centres should make provision for sufficient lorry parking to cater for their anticipated use.

Considering development proposals

114. In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:

⁴⁶ Policies for large scale facilities should, where necessary, be developed through collaboration between strategic policy-making authorities and other relevant bodies. Examples of such facilities include ports, airports, interchanges for rail freight, public transport projects and roadside services. The primary function of roadside services should be to support the safety and welfare of the road user (and most such proposals are unlikely to be nationally significant infrastructure projects).

⁴⁷ Department for Transport (2015) *General Aviation Strategy*.

- a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
 - b) safe and suitable access to the site can be achieved for all users;
 - c) the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code⁴⁸; and
 - d) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.
115. Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
116. Within this context, applications for development should:
- a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use;
 - b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport;
 - c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;
 - d) allow for the efficient delivery of goods, and access by service and emergency vehicles; and
 - e) be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.
117. All developments that will generate significant amounts of movement should be required to provide a travel plan, and the application should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed.

⁴⁸ Policies and decisions should not make use of or reflect the former Design Bulletin 32, which was withdrawn in 2007.

10. Supporting high quality communications

118. Advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband connections. Policies should set out how high quality digital infrastructure, providing access to services from a range of providers, is expected to be delivered and upgraded over time; and should prioritise full fibre connections to existing and new developments (as these connections will, in almost all cases, provide the optimum solution).
119. The number of radio and electronic communications masts, and the sites for such installations, should be kept to a minimum consistent with the needs of consumers, the efficient operation of the network and providing reasonable capacity for future expansion. Use of existing masts, buildings and other structures for new electronic communications capability (including wireless) should be encouraged. Where new sites are required (such as for new 5G networks, or for connected transport and smart city applications), equipment should be sympathetically designed and camouflaged where appropriate.
120. Local planning authorities should not impose a ban on new electronic communications development in certain areas, impose blanket Article 4 directions over a wide area or a wide range of electronic communications development, or insist on minimum distances between new electronic communications development and existing development. They should ensure that:
- a) they have evidence to demonstrate that electronic communications infrastructure is not expected to cause significant and irremediable interference with other electrical equipment, air traffic services or instrumentation operated in the national interest; and
 - b) they have considered the possibility of the construction of new buildings or other structures interfering with broadcast and electronic communications services.
121. Applications for electronic communications development (including applications for prior approval under the General Permitted Development Order) should be supported by the necessary evidence to justify the proposed development. This should include:
- a) the outcome of consultations with organisations with an interest in the proposed development, in particular with the relevant body where a mast is to be installed near a school or college, or within a statutory safeguarding zone surrounding an aerodrome, technical site or military explosives storage area; and
 - b) for an addition to an existing mast or base station, a statement that self-certifies that the cumulative exposure, when operational, will not exceed International Commission guidelines on non-ionising radiation protection; or

c) for a new mast or base station, evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure and a statement that self-certifies that, when operational, International Commission guidelines will be met.

122. Local planning authorities must determine applications on planning grounds only. They should not seek to prevent competition between different operators, question the need for an electronic communications system, or set health safeguards different from the International Commission guidelines for public exposure.

11. Making effective use of land

123. 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' land⁴⁹.
124. Planning policies and decisions should:
- a) encourage multiple benefits from both urban and rural land, including through mixed use schemes and taking opportunities to achieve net environmental gains – such as developments that would enable new habitat creation or improve public access to the countryside;
 - b) recognise that some undeveloped land can perform many functions, such as for wildlife, recreation, flood risk mitigation, cooling/shading, carbon storage or food production;
 - c) 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;
 - d) promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively (for example converting space above shops, and building on or above service yards, car parks, lock-ups and railway infrastructure)⁵⁰; and
 - e) support opportunities to use the airspace above existing residential and commercial premises for new homes. In particular, they should allow upward extensions where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, is well-designed (including complying with any local design policies and standards), and can maintain safe access and egress for occupiers. They should also allow mansard roof extensions on suitable properties⁵¹ where their external appearance harmonises with the original building, including extensions to terraces where one or more of the terraced houses already has a mansard. Where there was a tradition of mansard construction locally at the time of the building's construction, the extension should emulate it with respect to external appearance. A condition of simultaneous development should not be imposed on an application for multiple mansard extensions unless there is an exceptional justification.

⁴⁹ Except where this would conflict with other policies in this Framework, including causing harm to designated sites of importance for biodiversity.

⁵⁰ As part of this approach, plans and decisions should support efforts to identify and bring back into residential use empty homes and other buildings, supported by the use of compulsory purchase powers where appropriate.

⁵¹ See glossary for further details.

125. Local planning authorities, and other plan-making bodies, should take a proactive role in identifying and helping to bring forward land that may be suitable for meeting development needs, including suitable sites on brownfield registers or held in public ownership, using the full range of powers available to them. This should include identifying opportunities to facilitate land assembly, supported where necessary by compulsory purchase powers, where this can help to bring more land forward for meeting development needs and/or secure better development outcomes.
126. Planning policies and decisions need to reflect changes in the demand for land. They should be informed by regular reviews of both the land allocated for development in plans, and of land availability. Where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan:
- a) it should, as part of plan updates, reallocate the land for a more deliverable use that can help to address identified needs (or, if appropriate, deallocate a site which is undeveloped); and
 - b) in the interim, prior to updating the plan, applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area.
127. Local planning authorities should also take a positive approach to applications for alternative uses of land which is currently developed but not allocated for a specific purpose in plans, where this would help to meet identified development needs. In particular, they should support proposals to:
- a) use retail and employment land for homes in areas of high housing demand, provided this would not undermine key economic sectors or sites or the vitality and viability of town centres, and would be compatible with other policies in this Framework; and
 - b) make more effective use of sites that provide community services such as schools and hospitals, provided this maintains or improves the quality of service provision and access to open space.

Achieving appropriate densities

128. Planning policies and decisions should support development that makes efficient use of land, taking into account:
- a) the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it;
 - b) local market conditions and viability;
 - c) the availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use;
 - d) the desirability of maintaining an area's prevailing character and setting

(including residential gardens), or of promoting regeneration and change; and

- e) the importance of securing well-designed and beautiful, attractive and healthy places.

129. Area-based character assessments, design guides and codes and masterplans can be used to help ensure that land is used efficiently while also creating beautiful and sustainable places. Where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site. In these circumstances:

- a) plans should contain policies to optimise the use of land in their area and meet as much of the identified need for housing as possible. This will be tested robustly at examination, and should include the use of minimum density standards for city and town centres and other locations that are well served by public transport. These standards should seek a significant uplift in the average density of residential development within these areas, unless it can be shown that there are strong reasons why this would be inappropriate;
- b) the use of minimum density standards should also be considered for other parts of the plan area. It may be appropriate to set out a range of densities that reflect the accessibility and potential of different areas, rather than one broad density range; and
- c) local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in this Framework. In this context, when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards).

130. In applying paragraphs 129a and b above to existing urban areas, significant uplifts in the average density of residential development may be inappropriate if the resulting built form would be wholly out of character with the existing area. Such circumstances should be evidenced through an authority-wide design code which is adopted or will be adopted as part of the development plan.

12. Achieving well-designed and beautiful places

131. The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this. So too is effective engagement between applicants, communities, local planning authorities and other interests throughout the process.
132. Plans should, at the most appropriate level, set out a clear design vision and expectations, so that applicants have as much certainty as possible about what is likely to be acceptable. Design policies should be developed with local communities so they reflect local aspirations, and are grounded in an understanding and evaluation of each area's defining characteristics. Neighbourhood planning groups can play an important role in identifying the special qualities of each area and explaining how this should be reflected in development, both through their own plans and by engaging in the production of design policy, guidance and codes by local planning authorities and developers.
133. To provide maximum clarity about design expectations at an early stage, all local planning authorities should prepare design guides or codes consistent with the principles set out in the National Design Guide and National Model Design Code, and which reflect local character and design preferences. Design guides and codes provide a local framework for creating beautiful and distinctive places with a consistent and high quality standard of design. Their geographic coverage, level of detail and degree of prescription should be tailored to the circumstances and scale of change in each place, and should allow a suitable degree of variety.
134. Design guides and codes can be prepared at an area-wide, neighbourhood or site-specific scale, and to carry weight in decision-making should be produced either as part of a plan or as supplementary planning documents. Landowners and developers may contribute to these exercises, but may also choose to prepare design codes in support of a planning application for sites they wish to develop. Whoever prepares them, all guides and codes should be based on effective community engagement and reflect local aspirations for the development of their area, taking into account the guidance contained in the National Design Guide and the National Model Design Code. These national documents should be used to guide decisions on applications in the absence of locally produced design guides or design codes.
135. Planning policies and decisions should ensure that developments:
 - a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
 - b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;

- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
 - d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
 - e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
 - f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users⁵²; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
136. Trees make an important contribution to the character and quality of urban environments, and can also help mitigate and adapt to climate change. Planning policies and decisions should ensure that new streets are tree-lined⁵³, that opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards), that appropriate measures are in place to secure the long-term maintenance of newly-planted trees, and that existing trees are retained wherever possible. Applicants and local planning authorities should work with highways officers and tree officers to ensure that the right trees are planted in the right places, and solutions are found that are compatible with highways standards and the needs of different users.
137. Design quality should be considered throughout the evolution and assessment of individual proposals. Early discussion between applicants, the local planning authority and local community about the design and style of emerging schemes is important for clarifying expectations and reconciling local and commercial interests. Applicants should work closely with those affected by their proposals to evolve designs that take account of the views of the community. Applications that can demonstrate early, proactive and effective engagement with the community should be looked on more favourably than those that cannot.
138. Local planning authorities should ensure that they have access to, and make appropriate use of, tools and processes for assessing and improving the design of development. The primary means of doing so should be through the preparation and use of local design codes, in line with the National Model Design Code. For assessing proposals there is a range of tools including workshops to engage the local community, design advice and review arrangements, and assessment frameworks such as Building for a Healthy Life⁵⁴. These are of most benefit if used as early as possible in the evolution of schemes, and are particularly important for significant projects such as large scale housing and mixed use developments. In

⁵² Planning policies for housing should make use of the Government's optional technical standards for accessible and adaptable housing, where this would address an identified need for such properties. Policies may also make use of the nationally described space standard, where the need for an internal space standard can be justified.

⁵³ Unless, in specific cases, there are clear, justifiable and compelling reasons why this would be inappropriate.

⁵⁴ Birkbeck D and Kruczkowski S et al (2020) *Building for a Healthy Life*

assessing applications, local planning authorities should have regard to the outcome from these processes, including any recommendations made by design review panels.

139. Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design⁵⁵, taking into account any local design guidance and supplementary planning documents such as design guides and codes. Conversely, significant weight should be given to:
- a) development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes; and/or
 - b) outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.
140. Local planning authorities should ensure that relevant planning conditions refer to clear and accurate plans and drawings which provide visual clarity about the design of the development, and are clear about the approved use of materials where appropriate. This will provide greater certainty for those implementing the planning permission on how to comply with the permission and a clearer basis for local planning authorities to identify breaches of planning control. Local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).
141. The quality and character of places can suffer when advertisements are poorly sited and designed. A separate consent process within the planning system controls the display of advertisements, which should be operated in a way which is simple, efficient and effective. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts.

⁵⁵ Contained in the National Design Guide and National Model Design Code.

13. Protecting Green Belt land

142. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
143. Green Belt serves five purposes:
- 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.
144. The general extent of Green Belts across the country is already established. New Green Belts should only be established in exceptional circumstances, for example when planning for larger scale development such as new settlements or major urban extensions. Any proposals for new Green Belts should be set out in strategic policies, which should:
- a) demonstrate why normal planning and development management policies would not be adequate;
 - b) set out whether any major changes in circumstances have made the adoption of this exceptional measure necessary;
 - c) show what the consequences of the proposal would be for sustainable development;
 - d) demonstrate the necessity for the Green Belt and its consistency with strategic policies for adjoining areas; and
 - e) show how the Green Belt would meet the other objectives of the Framework.
145. Once established, there is no requirement for Green Belt boundaries to be reviewed or changed when plans are being prepared or updated. 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. Strategic policies should establish the need for any changes to Green Belt boundaries, having regard to their intended permanence in the long term, so they can endure beyond the plan period. Where a need for changes to Green Belt boundaries has been established through strategic policies, detailed amendments to those boundaries may be made through non-strategic policies, including neighbourhood plans.

146. Before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic policy-making authority should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for development. This will be assessed through the examination of its strategic policies, which will take into account the preceding paragraph, and whether the strategy:
- a) makes as much use as possible of suitable brownfield sites and underutilised land;
 - b) optimises the density of development in line with the policies in chapter 11 of this Framework, including whether policies promote a significant uplift in minimum density standards in town and city centres and other locations well served by public transport; and
 - c) has been informed by discussions with neighbouring authorities about whether they could accommodate some of the identified need for development, as demonstrated through the statement of common ground.
147. When drawing up or reviewing Green Belt boundaries, the need to promote sustainable patterns of development should be taken into account. Strategic policy-making authorities should consider the consequences for sustainable development of channelling development towards urban areas inside the Green Belt boundary, towards towns and villages inset within the Green Belt or towards locations beyond the outer Green Belt boundary. 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. They should also set out ways in which the impact of removing land from the Green Belt can be offset through compensatory improvements to the environmental quality and accessibility of remaining Green Belt land.
148. When defining Green Belt boundaries, plans should:
- a) ensure consistency with the development plan's strategy for meeting identified requirements for sustainable development;
 - b) not include land which it is unnecessary to keep permanently open;
 - c) where necessary, identify areas of safeguarded land between the urban area and the Green Belt, in order to meet longer-term development needs stretching well beyond the plan period;
 - d) make clear that the safeguarded land is not allocated for development at the present time. Planning permission for the permanent development of safeguarded land should only be granted following an update to a plan which proposes the development;
 - e) be able to demonstrate that Green Belt boundaries will not need to be altered at the end of the plan period; and
 - f) define boundaries clearly, using physical features that are readily recognisable and likely to be permanent.

149. If it is necessary to restrict development in a village primarily because of the important contribution which the open character of the village makes to the openness of the Green Belt, the village should be included in the Green Belt. If, however, the character of the village needs to be protected for other reasons, other means should be used, such as conservation area or normal development management policies, and the village should be excluded from the Green Belt.
150. Once Green Belts have been defined, local planning authorities should plan positively to enhance their beneficial use, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land.
151. The National Forest and Community Forests offer valuable opportunities for improving the environment around towns and cities, by upgrading the landscape and providing for recreation and wildlife. The National Forest Strategy and an approved Community Forest Plan may be a material consideration in preparing development plans and in deciding planning applications. Any development proposals within the National Forest and Community Forests in the Green Belt should be subject to the normal policies for controlling development in Green Belts.

Proposals affecting the Green Belt

152. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
153. 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.
154. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:
 - a) buildings for agriculture and forestry;
 - b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;
 - c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
 - d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
 - e) limited infilling in villages;
 - f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and

- 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.

155. Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are:

- a) mineral extraction;
- b) engineering operations;
- c) local transport infrastructure which can demonstrate a requirement for a Green Belt location;
- d) the re-use of buildings provided that the buildings are of permanent and substantial construction;
- e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds); and
- f) development, including buildings, brought forward under a Community Right to Build Order or Neighbourhood Development Order.

156. When located in the Green Belt, elements of many renewable energy projects will comprise inappropriate development. In such cases developers will need to demonstrate very special circumstances if projects are to proceed. Such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.

14. Meeting the challenge of climate change, flooding and coastal change

157. The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.

Planning for climate change

158. Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes, and the risk of overheating from rising temperatures⁵⁶. Policies should support appropriate measures to ensure the future resilience of communities and infrastructure to climate change impacts, such as providing space for physical protection measures, or making provision for the possible future relocation of vulnerable development and infrastructure.
159. New development should be planned for in ways that:
- a) avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure; and
 - b) can help to reduce greenhouse gas emissions, such as through its location, orientation and design. Any local requirements for the sustainability of buildings should reflect the Government's policy for national technical standards.
160. To help increase the use and supply of renewable and low carbon energy and heat, plans should:
- a) provide a positive strategy for energy from these sources, that maximises the potential for suitable development, and their future re-powering and life extension, while ensuring that adverse impacts are addressed appropriately (including cumulative landscape and visual impacts);
 - b) consider identifying suitable areas for renewable and low carbon energy sources, and supporting infrastructure, where this would help secure their development; and

⁵⁶ In line with the objectives and provisions of the Climate Change Act 2008.

- c) identify opportunities for development to draw its energy supply from decentralised, renewable or low carbon energy supply systems and for co-locating potential heat customers and suppliers.
161. Local planning authorities should support community-led initiatives for renewable and low carbon energy, including developments outside areas identified in local plans or other strategic policies that are being taken forward through neighbourhood planning.
162. In determining planning applications, local planning authorities should expect new development to:
- a) comply with any development plan policies on local requirements for decentralised energy supply unless it can be demonstrated by the applicant, having regard to the type of development involved and its design, that this is not feasible or viable; and
 - b) take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption.
163. When determining planning applications⁵⁷ for renewable and low carbon development, local planning authorities should:
- a) not require applicants to demonstrate the overall need for renewable or low carbon energy, and recognise that even small-scale projects provide a valuable contribution to significant cutting greenhouse gas emissions;
 - b) approve the application if its impacts are (or can be made) acceptable⁵⁸. Once suitable areas for renewable and low carbon energy have been identified in plans, local planning authorities should expect subsequent applications for commercial scale projects outside these areas to demonstrate that the proposed location meets the criteria used in identifying suitable areas; and
 - c) in the case of applications for the repowering and life-extension of existing renewable sites, give significant weight to the benefits of utilising an established site, and approve the proposal if its impacts are or can be made acceptable.
164. In determining planning applications, local planning authorities should give significant weight to the need to support energy efficiency and low carbon heating improvements to existing buildings, both domestic and non-domestic (including

⁵⁷ Wind energy development involving one or more turbines can also be permitted through Local Development Orders, Neighbourhood Development Orders and Community Right to Build Orders. In the case of Local Development Orders, it should be demonstrated that the planning impacts identified by the affected local community have been appropriately addressed and the proposal has community support.

⁵⁸ Except for applications for the repowering and life-extension of existing wind turbines, a planning application for wind energy development involving one or more turbines should not be considered acceptable unless it is in an area identified as suitable for wind energy development in the development plan or a supplementary planning document; and, following consultation, it can be demonstrated that the planning impacts identified by the affected local community have been appropriately addressed and the proposal has community support.

through installation of heat pumps and solar panels where these do not already benefit from permitted development rights). Where the proposals would affect conservation areas, listed buildings or other relevant designated heritage assets, local planning authorities should also apply the policies set out in chapter 16 of this Framework.

Planning and flood risk

165. Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.
166. Strategic policies should be informed by a strategic flood risk assessment, and should manage flood risk from all sources. They should consider cumulative impacts in, or affecting, local areas susceptible to flooding, and take account of advice from the Environment Agency and other relevant flood risk management authorities, such as lead local flood authorities and internal drainage boards.
167. All plans should apply a sequential, risk-based approach to the location of development – taking into account all sources of flood risk and the current and future impacts of climate change – so as to avoid, where possible, flood risk to people and property. They should do this, and manage any residual risk, by:
 - a) applying the sequential test and then, if necessary, the exception test as set out below;
 - b) safeguarding land from development that is required, or likely to be required, for current or future flood management;
 - c) using opportunities provided by new development and improvements in green and other infrastructure to reduce the causes and impacts of flooding, (making as much use as possible of natural flood management techniques as part of an integrated approach to flood risk management); and
 - d) where climate change is expected to increase flood risk so that some existing development may not be sustainable in the long-term, seeking opportunities to relocate development, including housing, to more sustainable locations.
168. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.
169. If it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in Annex 3.

170. The application of the exception test should be informed by a strategic or site-specific flood risk assessment, depending on whether it is being applied during plan production or at the application stage. To pass the exception test it should be demonstrated that:
- a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and
 - b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
171. Both elements of the exception test should be satisfied for development to be allocated or permitted.
172. Where planning applications come forward on sites allocated in the development plan through the sequential test, applicants need not apply the sequential test again. However, the exception test may need to be reapplied if relevant aspects of the proposal had not been considered when the test was applied at the plan-making stage, or if more recent information about existing or potential flood risk should be taken into account.
173. When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment⁵⁹. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:
- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;
 - b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;
 - c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;
 - d) any residual risk can be safely managed; and
 - e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

⁵⁹ A site-specific flood risk assessment should be provided for all development in Flood Zones 2 and 3. In Flood Zone 1, an assessment should accompany all proposals involving: sites of 1 hectare or more; land which has been identified by the Environment Agency as having critical drainage problems; land identified in a strategic flood risk assessment as being at increased flood risk in future; or land that may be subject to other sources of flooding, where its development would introduce a more vulnerable use.

174. Applications for some minor development and changes of use⁶⁰ should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments set out in footnote 59.
175. Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The systems used should:
- a) take account of advice from the lead local flood authority;
 - b) have appropriate proposed minimum operational standards;
 - c) have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development; and
 - d) where possible, provide multifunctional benefits.

Coastal change

176. In coastal areas, planning policies and decisions should take account of the UK Marine Policy Statement and marine plans. Integrated Coastal Zone Management should be pursued across local authority and land/sea boundaries, to ensure effective alignment of the terrestrial and marine planning regimes.
177. Plans should reduce risk from coastal change by avoiding inappropriate development in vulnerable areas and not exacerbating the impacts of physical changes to the coast. They should identify as a Coastal Change Management Area any area likely to be affected by physical changes to the coast, and:
- a) be clear as to what development will be appropriate in such areas and in what circumstances; and
 - b) make provision for development and infrastructure that needs to be relocated away from Coastal Change Management Areas.
178. Development in a Coastal Change Management Area will be appropriate only where it is demonstrated that:
- a) it will be safe over its planned lifetime and not have an unacceptable impact on coastal change;
 - b) the character of the coast including designations is not compromised;
 - c) the development provides wider sustainability benefits; and
 - d) the development does not hinder the creation and maintenance of a continuous signed and managed route around the coast⁶¹.

⁶⁰ This includes householder development, small non-residential extensions (with a footprint of less than 250m²) and changes of use; except for changes of use to a caravan, camping or chalet site, or to a mobile home or park home site, where the sequential and exception tests should be applied as appropriate.

⁶¹ As required by the Marine and Coastal Access Act 2009.

179. Local planning authorities should limit the planned lifetime of development in a Coastal Change Management Area through temporary permission and restoration conditions, where this is necessary to reduce a potentially unacceptable level of future risk to people and the development.

15. Conserving and enhancing the natural environment

180. Planning policies and decisions should contribute to and enhance the natural and local environment by:
- a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);
 - b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;
 - c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;
 - d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
 - e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and
 - f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.
181. Plans should: distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework⁶²; take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries.
182. Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks

⁶² Where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality. The availability of agricultural land used for food production should be considered, alongside the other policies in this Framework, when deciding what sites are most appropriate for development.

and the Broads⁶³. The scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.

183. When considering applications for development within National Parks, the Broads and Areas of Outstanding Natural Beauty, permission should be refused for major development⁶⁴ other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:
- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
 - b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and
 - c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.
184. Within areas defined as Heritage Coast (and that do not already fall within one of the designated areas mentioned in paragraph 182), planning policies and decisions should be consistent with the special character of the area and the importance of its conservation. Major development within a Heritage Coast is unlikely to be appropriate, unless it is compatible with its special character.

Habitats and biodiversity

185. To protect and enhance biodiversity and geodiversity, plans should:
- a) Identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity⁶⁵; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation⁶⁶; and
 - b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.

⁶³ *English National Parks and the Broads: UK Government Vision and Circular 2010* provides further guidance and information about their statutory purposes, management and other matters.

⁶⁴ For the purposes of paragraphs 182 and 183, whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.

⁶⁵ Circular 06/2005 provides further guidance in respect of statutory obligations for biodiversity and geological conservation and their impact within the planning system.

⁶⁶ Where areas that are part of the Nature Recovery Network are identified in plans, it may be appropriate to specify the types of development that may be suitable within them.

186. When determining planning applications, local planning authorities should apply the following principles:
- a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;
 - b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;
 - c) 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 reasons⁶⁷ and a suitable compensation strategy exists; and
 - d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.
187. The following should be given the same protection as habitats sites:
- a) potential Special Protection Areas and possible Special Areas of Conservation;
 - b) listed or proposed Ramsar sites⁶⁸; and
 - c) sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.
188. The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

⁶⁷ For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat.

⁶⁸ Potential Special Protection Areas, possible Special Areas of Conservation and proposed Ramsar sites are sites on which Government has initiated public consultation on the scientific case for designation as a Special Protection Area, candidate Special Area of Conservation or Ramsar site.

Ground conditions and pollution

189. Planning policies and decisions should ensure that:
- a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation);
 - b) after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and
 - c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.
190. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.
191. Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:
- a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life⁶⁹;
 - b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and
 - c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.
192. Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. So far as possible these opportunities should be considered at the plan-making stage, to ensure a strategic approach and limit the need for issues to be reconsidered when determining individual applications. Planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan.

⁶⁹ See Explanatory Note to the *Noise Policy Statement for England* (Department for Environment, Food & Rural Affairs, 2010).

193. Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed.
194. The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.

16. Conserving and enhancing the historic environment

195. Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value⁷⁰. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations⁷¹.
196. Plans should set out a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats. This strategy should take into account:
- a) the desirability of sustaining and enhancing the significance of heritage assets, and putting them to viable uses consistent with their conservation;
 - b) the wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring;
 - c) the desirability of new development making a positive contribution to local character and distinctiveness; and
 - d) opportunities to draw on the contribution made by the historic environment to the character of a place.
197. When considering the designation of conservation areas, local planning authorities should ensure that an area justifies such status because of its special architectural or historic interest, and that the concept of conservation is not devalued through the designation of areas that lack special interest.
198. Local planning authorities should maintain or have access to a historic environment record. This should contain up-to-date evidence about the historic environment in their area and be used to:
- a) assess the significance of heritage assets and the contribution they make to their environment; and
 - b) predict the likelihood that currently unidentified heritage assets, particularly sites of historic and archaeological interest, will be discovered in the future.

⁷⁰ Some World Heritage Sites are inscribed by UNESCO to be of natural significance rather than cultural significance; and in some cases they are inscribed for both their natural and cultural significance.

⁷¹ The policies set out in this chapter relate, as applicable, to the heritage-related consent regimes for which local planning authorities are responsible under the Planning (Listed Buildings and Conservation Areas) Act 1990, as well as to plan-making and decision-making.

199. Local planning authorities should make information about the historic environment, gathered as part of policy-making or development management, publicly accessible.

Proposals affecting heritage assets

200. In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.
201. Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.
202. Where there is evidence of deliberate neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision.
203. In determining applications, local planning authorities should take account of:
- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
 - b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
 - c) the desirability of new development making a positive contribution to local character and distinctiveness.
204. In considering any applications to remove or alter a historic statue, plaque, memorial or monument (whether listed or not), local planning authorities should have regard to the importance of their retention in situ and, where appropriate, of explaining their historic and social context rather than removal.

Considering potential impacts

205. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
206. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:
- a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional;
 - b) assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional⁷².
207. Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:
- a) the nature of the heritage asset prevents all reasonable uses of the site; and
 - b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
 - c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and
 - d) the harm or loss is outweighed by the benefit of bringing the site back into use.
208. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
209. The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

⁷² Non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.

210. Local planning authorities should not permit the loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred.
211. Local planning authorities should require developers to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence (and any archive generated) publicly accessible⁷³. However, the ability to record evidence of our past should not be a factor in deciding whether such loss should be permitted.
212. Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.
213. Not all elements of a Conservation Area or World Heritage Site will necessarily contribute to its significance. Loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area or World Heritage Site should be treated either as substantial harm under paragraph 207 or less than substantial harm under paragraph 208, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area or World Heritage Site as a whole.
214. Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies.

⁷³ Copies of evidence should be deposited with the relevant historic environment record, and any archives with a local museum or other public depository.

17. Facilitating the sustainable use of minerals

215. It is essential that there is a sufficient supply of minerals to provide the infrastructure, buildings, energy and goods that the country needs. Since minerals are a finite natural resource, and can only be worked where they are found, best use needs to be made of them to secure their long-term conservation.
216. Planning policies should:
- a) provide for the extraction of mineral resources of local and national importance, but not identify new sites or extensions to existing sites for peat extraction;
 - b) so far as practicable, take account of the contribution that substitute or secondary and recycled materials and minerals waste would make to the supply of materials, before considering extraction of primary materials, whilst aiming to source minerals supplies indigenously;
 - c) safeguard mineral resources by defining Mineral Safeguarding Areas and Mineral Consultation Areas⁷⁴; and adopt appropriate policies so that known locations of specific minerals resources of local and national importance are not sterilised by non-mineral development where this should be avoided (whilst not creating a presumption that the resources defined will be worked);
 - d) set out policies to encourage the prior extraction of minerals, where practical and environmentally feasible, if it is necessary for non-mineral development to take place;
 - e) safeguard existing, planned and potential sites for: the bulk transport, handling and processing of minerals; the manufacture of concrete and concrete products; and the handling, processing and distribution of substitute, recycled and secondary aggregate material;
 - f) set out criteria or requirements to ensure that permitted and proposed operations do not have unacceptable adverse impacts on the natural and historic environment or human health, taking into account the cumulative effects of multiple impacts from individual sites and/or a number of sites in a locality;
 - g) when developing noise limits, recognise that some noisy short-term activities, which may otherwise be regarded as unacceptable, are unavoidable to facilitate minerals extraction; and
 - h) ensure that worked land is reclaimed at the earliest opportunity, taking account of aviation safety, and that high quality restoration and aftercare of mineral sites takes place.
217. When determining planning applications, great weight should be given to the benefits of mineral extraction, including to the economy⁷⁵. In considering proposals

⁷⁴ Primarily in two tier areas as stated in Annex 2: Glossary

⁷⁵ Except in relation to the extraction of coal, where the policy at paragraph 223 of this Framework applies.

for mineral extraction, minerals planning authorities should:

- a) as far as is practical, provide for the maintenance of landbanks of non-energy minerals from outside National Parks, the Broads, Areas of Outstanding Natural Beauty and World Heritage Sites, scheduled monuments and conservation areas;
- b) ensure that there are no unacceptable adverse impacts on the natural and historic environment, human health or aviation safety, and take into account the cumulative effect of multiple impacts from individual sites and/or from a number of sites in a locality;
- c) ensure that any unavoidable noise, dust and particle emissions and any blasting vibrations are controlled, mitigated or removed at source⁷⁶, and establish appropriate noise limits for extraction in proximity to noise sensitive properties;
- d) not grant planning permission for peat extraction from new or extended sites;
- e) provide for restoration and aftercare at the earliest opportunity, to be carried out to high environmental standards, through the application of appropriate conditions. Bonds or other financial guarantees to underpin planning conditions should only be sought in exceptional circumstances;
- f) consider how to meet any demand for the extraction of building stone needed for the repair of heritage assets, taking account of the need to protect designated sites; and
- g) recognise the small-scale nature and impact of building and roofing stone quarries, and the need for a flexible approach to the duration of planning permissions reflecting the intermittent or low rate of working at many sites.

218. Local planning authorities should not normally permit other development proposals in Mineral Safeguarding Areas if it might constrain potential future use for mineral working.

Maintaining supply

219. Minerals planning authorities should plan for a steady and adequate supply of aggregates by:

- a) preparing an annual Local Aggregate Assessment, either individually or jointly, to forecast future demand, based on a rolling average of 10 years' sales data and other relevant local information, and an assessment of all supply options (including marine dredged, secondary and recycled sources);
- b) participating in the operation of an Aggregate Working Party and taking the advice of that party into account when preparing their Local Aggregate Assessment;
- c) making provision for the land-won and other elements of their Local Aggregate

⁷⁶ National planning guidance on minerals sets out how these policies should be implemented.

Assessment in their mineral plans, taking account of the advice of the Aggregate Working Parties and the National Aggregate Co-ordinating Group as appropriate. Such provision should take the form of specific sites, preferred areas and/or areas of search and locational criteria as appropriate;

- d) taking account of any published National and Sub National Guidelines on future provision which should be used as a guideline when planning for the future demand for and supply of aggregates;
- e) using landbanks of aggregate minerals reserves principally as an indicator of the security of aggregate minerals supply, and to indicate the additional provision that needs to be made for new aggregate extraction and alternative supplies in mineral plans;
- f) maintaining landbanks of at least 7 years for sand and gravel and at least 10 years for crushed rock, whilst ensuring that the capacity of operations to supply a wide range of materials is not compromised⁷⁷;
- g) ensuring that large landbanks bound up in very few sites do not stifle competition; and
- h) calculating and maintaining separate landbanks for any aggregate materials of a specific type or quality which have a distinct and separate market.

220. Minerals planning authorities should plan for a steady and adequate supply of industrial minerals by:

- a) co-operating with neighbouring and more distant authorities to ensure an adequate provision of industrial minerals to support their likely use in industrial and manufacturing processes;
- b) encouraging safeguarding or stockpiling so that important minerals remain available for use;
- c) maintaining a stock of permitted reserves to support the level of actual and proposed investment required for new or existing plant, and the maintenance and improvement of existing plant and equipment⁷⁸; and
- d) taking account of the need for provision of brick clay from a number of different sources to enable appropriate blends to be made.

⁷⁷ Longer periods may be appropriate to take account of the need to supply a range of types of aggregates, locations of permitted reserves relative to markets, and productive capacity of permitted sites.

⁷⁸ These reserves should be at least 10 years for individual silica sand sites; at least 15 years for cement primary (chalk and limestone) and secondary (clay and shale) materials to maintain an existing plant, and for silica sand sites where significant new capital is required; and at least 25 years for brick clay, and for cement primary and secondary materials to support a new kiln.

Oil, gas and coal exploration and extraction

221. Minerals planning authorities should:

- a) when planning for on-shore oil and gas development, clearly distinguish between, and plan positively for, the three phases of development (exploration, appraisal and production), whilst ensuring appropriate monitoring and site restoration is provided for;
- b) encourage underground gas and carbon storage and associated infrastructure if local geological circumstances indicate its feasibility;
- c) indicate any areas where coal extraction and the disposal of colliery spoil may be acceptable;
- d) encourage the capture and use of methane from coal mines in active and abandoned coalfield areas; and
- e) provide for coal producers to extract separately, and if necessary stockpile, fireclay so that it remains available for use.

222. When determining planning applications, minerals planning authorities should ensure that the integrity and safety of underground storage facilities are appropriate, taking into account the maintenance of gas pressure, prevention of leakage of gas and the avoidance of pollution.

223. Planning permission should not be granted for the extraction of coal unless:

- a) the proposal is environmentally acceptable, or can be made so by planning conditions or obligations; or
- b) if it is not environmentally acceptable, then it provides national, local or community benefits which clearly outweigh its likely impacts (taking all relevant matters into account, including any residual environmental impacts).

Annex 1: Implementation

For the purposes of decision-making

224. The policies in this Framework are material considerations which should be taken into account in dealing with applications from the day of its publication⁷⁹. Plans may also need to be revised to reflect policy changes which this Framework has made.
225. However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
226. From the date of publication of this revision of the Framework, for decision-making purposes only, certain local planning authorities will only be required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of four years' worth of housing (with a buffer, if applicable, as set out in paragraph 77) against the housing requirement set out in adopted strategic policies, or against local housing need where the strategic policies are more than five years old⁸⁰, instead of a minimum of five years as set out in paragraph 77 of this Framework. This policy applies to those authorities which have an emerging local plan that has either been submitted for examination or has reached Regulation 18 or Regulation 19 (Town and Country Planning (Local Planning) (England) Regulations 2012) stage, including both a policies map and proposed allocations towards meeting housing need. This provision does not apply to authorities who are not required to demonstrate a housing land supply, as set out in paragraph 76. These arrangements will apply for a period of two years from the publication date of this revision of the Framework.

For the purposes of plan-making

227. The policies in the original National Planning Policy Framework published in March 2012 will apply for the purpose of examining plans, where those plans were submitted on or before 24 January 2019. Where such plans are withdrawn or otherwise do not proceed to become part of the development plan, the policies contained in this Framework will apply to any subsequent plan produced for the area concerned.
228. For the purposes of the policy on larger-scale development in paragraph 22, this applies only to plans that have not reached Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (pre-submission) stage at the point the previous version of this Framework was published on 20

⁷⁹ As an exception to this, the policy contained in paragraph 76 and the related reference in footnote 8 of this Framework should only be taken into account as a material consideration when dealing with applications made on or after the date of publication of this version of the Framework.

⁸⁰ Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a four year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance.

July 2021 (for Spatial Development Strategies this would refer to consultation under section 335(2) of the Greater London Authority Act 1999).

229. For the purposes of the policy on renewable and low carbon energy and heat in plans in paragraph 160, this policy does not apply to plans that have reached Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (pre-submission) stage, or that reach this stage within three months of the date of publication of the previous version of this Framework published on 5 September 2023. For Spatial Development Strategies, paragraph 160 does not apply to strategies that have reached consultation under section 335(2) of the Greater London Authority Act 1999 or that reach this stage within three months of the date of publication of the previous version of this Framework published on 5 September 2023.
230. The policies in this Framework (published on 19 December 2023) will apply for the purpose of examining plans, where those plans reach regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (pre-submission) stage after 19 March 2024. Plans that reach pre-submission consultation on or before this date will be examined under the relevant previous version of the Framework in accordance with the above arrangements. For Spatial Development Strategies, this Framework applies to strategies that have reached consultation under section 335(2) of the Greater London Authority Act 1999 after 19 March 2024. Strategies that reach this stage on or before this date will be examined under the relevant previous version of the Framework in accordance with the above arrangements. Where plans or strategies are withdrawn or otherwise do not proceed to become part of the development plan, the policies contained in this Framework will apply to any subsequent plan or strategy produced for the area concerned.
231. The Government will continue to explore with individual areas the potential for planning freedoms and flexibilities, for example where this would facilitate an increase in the amount of housing that can be delivered.

Annex 2: Glossary

Affordable housing: housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions⁸¹:

- a) **Affordable housing for rent:** meets all of the following conditions: (a) the rent is set in accordance with the Government's rent policy for Social Rent or Affordable Rent, or is at least 20% below local market rents (including service charges where applicable); (b) the landlord is a registered provider, except where it is included as part of a Build to Rent scheme (in which case the landlord need not be a registered provider); and (c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision. For Build to Rent schemes affordable housing for rent is expected to be the normal form of affordable housing provision (and, in this context, is known as Affordable Private Rent).
- b) **Starter homes:** is as specified in Sections 2 and 3 of the Housing and Planning Act 2016 and any secondary legislation made under these sections. The definition of a starter home should reflect the meaning set out in statute and any such secondary legislation at the time of plan-preparation or decision-making. Where secondary legislation has the effect of limiting a household's eligibility to purchase a starter home to those with a particular maximum level of household income, those restrictions should be used.
- c) **Discounted market sales housing:** is that sold at a discount of at least 20% below local market value. Eligibility is determined with regard to local incomes and local house prices. Provisions should be in place to ensure housing remains at a discount for future eligible households.
- d) **Other affordable routes to home ownership:** is housing provided for sale that provides a route to ownership for those who could not achieve home ownership through the market. It includes shared ownership, relevant equity loans, other low cost homes for sale (at a price equivalent to at least 20% below local market value) and rent to buy (which includes a period of intermediate rent). Where public grant funding is provided, there should be provisions for the homes to remain at an affordable price for future eligible households, or for any receipts to be recycled for alternative affordable housing provision, or refunded to Government or the relevant authority specified in the funding agreement.

Air quality management areas: Areas designated by local authorities because they are not likely to achieve national air quality objectives by the relevant deadlines.

Ancient or veteran tree: A tree which, because of its age, size and condition, is of exceptional biodiversity, cultural or heritage value. All ancient trees are veteran trees. Not all veteran trees are old enough to be ancient, but are old relative to other trees of the same species. Very few trees of any species reach the ancient life-stage.

⁸¹ This definition should be read in conjunction with relevant policy contained in the Affordable Homes Update Written Ministerial Statement published on 24 May 2021.

Ancient woodland: An area that has been wooded continuously since at least 1600 AD. It includes ancient semi-natural woodland and plantations on ancient woodland sites (PAWS).

Annual position statement: A document setting out the 5 year housing land supply position on 1st April each year, prepared by the local planning authority in consultation with developers and others who have an impact on delivery.

Archaeological interest: There will be archaeological interest in a heritage asset if it holds, or potentially holds, evidence of past human activity worthy of expert investigation at some point.

Article 4 direction: A direction made under [Article 4 of the Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#) which withdraws permitted development rights granted by that Order.

Best and most versatile agricultural land: Land in grades 1, 2 and 3a of the Agricultural Land Classification.

Brownfield land: See Previously developed land.

Brownfield land registers: Registers of previously developed land that local planning authorities consider to be appropriate for residential development, having regard to criteria in the Town and Country Planning (Brownfield Land Registers) Regulations 2017. Local planning authorities will be able to trigger a grant of permission in principle for residential development on suitable sites in their registers where they follow the required procedures.

Build to Rent: Purpose built housing that is typically 100% rented out. It can form part of a wider multi-tenure development comprising either flats or houses, but should be on the same site and/or contiguous with the main development. Schemes will usually offer longer tenancy agreements of three years or more, and will typically be professionally managed stock in single ownership and management control.

Climate change adaptation: Adjustments made to natural or human systems in response to the actual or anticipated impacts of climate change, to mitigate harm or exploit beneficial opportunities.

Climate change mitigation: Action to reduce the impact of human activity on the climate system, primarily through reducing greenhouse gas emissions.

Coastal change management area: An area identified in plans as likely to be affected by physical change to the shoreline through erosion, coastal landslip, permanent inundation or coastal accretion.

Community forest: An area identified through the England Community Forest Programme to revitalise countryside and green space in and around major conurbations.

Community Right to Build Order: An Order made by the local planning authority (under the Town and Country Planning Act 1990) that grants planning permission for a site-specific development proposal or classes of development.

Community-led developments: A development instigated and taken forward by a not-for-profit organisation set up and run primarily for the purpose of meeting the housing needs of its members and the wider local community, rather than being a primarily commercial enterprise. The organisation is created, managed and democratically controlled by its members. It may take any one of various legal forms including a community land trust, housing co-operative and community benefit society. Membership of the organisation is open to all beneficiaries and prospective beneficiaries of that organisation. The organisation should own, manage or steward the homes in a manner consistent with its purpose, for example through a mutually supported arrangement with a Registered Provider of Social Housing. The benefits of the development to the specified community should be clearly defined and consideration given to how these benefits can be protected over time, including in the event of the organisation being wound up.

Competent person (to prepare site investigation information): A person with a recognised relevant qualification, sufficient experience in dealing with the type(s) of pollution or land instability, and membership of a relevant professional organisation.

Conservation (for heritage policy): The process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance.

Decentralised energy: Local renewable and local low carbon energy sources.

Deliverable: To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

- a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).
- b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.

Design code: A set of illustrated design requirements that provide specific, detailed parameters for the physical development of a site or area. The graphic and written components of the code should build upon a design vision, such as a masterplan or other design and development framework for a site or area.

Design guide: A document providing guidance on how development can be carried out in accordance with good design practice, often produced by a local authority.

Designated heritage asset: A World Heritage Site, Scheduled Monument, Listed Building, Protected Wreck Site, Registered Park and Garden, Registered Battlefield or Conservation Area designated under the relevant legislation.

Designated rural areas: National Parks, Areas of Outstanding Natural Beauty and areas designated as 'rural' under Section 157 of the Housing Act 1985.

Developable: To be considered developable, sites should be in a suitable location for

housing development with a reasonable prospect that they will be available and could be viably developed at the point envisaged.

Development plan: Is defined in section 38 of the Planning and Compulsory Purchase Act 2004, and includes adopted local plans, neighbourhood plans that have been made and published spatial development strategies, together with any regional strategy policies that remain in force. Neighbourhood plans that have been approved at referendum are also part of the development plan, unless the local planning authority decides that the neighbourhood plan should not be made.

Edge of centre: For retail purposes, a location that is well connected to, and up to 300 metres from, the primary shopping area. For all other main town centre uses, a location within 300 metres of a town centre boundary. For office development, this includes locations outside the town centre but within 500 metres of a public transport interchange. In determining whether a site falls within the definition of edge of centre, account should be taken of local circumstances.

Environmental impact assessment: A procedure to be followed for certain types of project to ensure that decisions are made in full knowledge of any likely significant effects on the environment.

Essential local workers: Public sector employees who provide frontline services in areas including health, education and community safety – such as NHS staff, teachers, police, firefighters and military personnel, social care and childcare workers.

General aviation airfields: Licenced or unlicenced aerodromes with hard or grass runways, often with extensive areas of open land related to aviation activity.

Geodiversity: The range of rocks, minerals, fossils, soils and landforms.

Green infrastructure: A network of multi-functional green and blue spaces and other natural features, urban and rural, which is capable of delivering a wide range of environmental, economic, health and wellbeing benefits for nature, climate, local and wider communities and prosperity.

Habitats site: Any site which would be included within the definition at regulation 8 of the Conservation of Habitats and Species Regulations 2017 for the purpose of those regulations, including candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation, Special Protection Areas and any relevant Marine Sites.

Heritage asset: A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. It includes designated heritage assets and assets identified by the local planning authority (including local listing).

Heritage coast: Areas of undeveloped coastline which are managed to conserve their natural beauty and, where appropriate, to improve accessibility for visitors.

Historic environment: All aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past

human activity, whether visible, buried or submerged, and landscaped and planted or managed flora.

Historic environment record: Information services that seek to provide access to comprehensive and dynamic resources relating to the historic environment of a defined geographic area for public benefit and use.

Housing Delivery Test: Measures net homes delivered in a local authority area against the homes required, using national statistics and local authority data. The Secretary of State will publish the Housing Delivery Test results for each local authority in England annually.

International, national and locally designated sites of importance for biodiversity: All international sites (Special Areas of Conservation, Special Protection Areas, and Ramsar sites), national sites (Sites of Special Scientific Interest) and locally designated sites including Local Wildlife Sites.

Irreplaceable habitat: Habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking into account their age, uniqueness, species diversity or rarity. They include ancient woodland, ancient and veteran trees, blanket bog, limestone pavement, sand dunes, salt marsh and lowland fen.

Local Development Order: An Order made by a local planning authority (under the Town and Country Planning Act 1990) that grants planning permission for a specific development proposal or classes of development.

Local Enterprise Partnership: A body, designated by the Secretary of State for Housing, Communities and Local Government, established for the purpose of creating or improving the conditions for economic growth in an area.

Local housing need: The number of homes identified as being needed through the application of the standard method set out in national planning guidance (or, in the context of preparing strategic policies only, this may be calculated using a justified alternative approach as provided for in paragraph 61 of this Framework).

Local Nature Partnership: A body, designated by the Secretary of State for Environment, Food and Rural Affairs, established for the purpose of protecting and improving the natural environment in an area and the benefits derived from it.

Local planning authority: The public authority whose duty it is to carry out specific planning functions for a particular area. All references to local planning authority include the district council, London borough council, county council, Broads Authority, National Park Authority, the Mayor of London and a development corporation, to the extent appropriate to their responsibilities.

Local plan: A plan for the future development of a local area, drawn up by the local planning authority in consultation with the community. In law this is described as the development plan documents adopted under the Planning and Compulsory Purchase Act 2004. A local plan can consist of either strategic or non-strategic policies, or a combination of the two.

Main town centre uses: Retail development (including warehouse clubs and factory outlet centres); leisure, entertainment and more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, nightclubs, casinos, health and fitness centres, indoor bowling centres and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities).

Major development⁸²: For housing, development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more. For non-residential development it means additional floorspace of 1,000m² or more, or a site of 1 hectare or more, or as otherwise provided in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Major hazard sites, installations and pipelines: Sites and infrastructure, including licensed explosive sites and nuclear installations, around which Health and Safety Executive (and Office for Nuclear Regulation) consultation distances to mitigate the consequences to public safety of major accidents may apply.

Mansard roof: A type of roof that is characterised by two slopes, the lower steep and the upper shallow. It is generally regarded as a suitable type of roof extension for buildings which are part of a terrace of at least three buildings and at least two stories tall, with a parapet running the entire length of the front façade (reference: Create Streets, 2021, *Living Tradition*).

Minerals resources of local and national importance: Minerals which are necessary to meet society's needs, including aggregates, brickclay (especially Etruria Marl and fireclay), silica sand (including high grade silica sands), coal derived fly ash in single use deposits, cement raw materials, gypsum, salt, fluorspar, shallow and deep-mined coal, oil and gas (including conventional and unconventional hydrocarbons), tungsten, kaolin, ball clay, potash, polyhalite and local minerals of importance to heritage assets and local distinctiveness.

Mineral Consultation Area: a geographical area based on a Mineral Safeguarding Area, where the district or borough council should consult the Mineral Planning Authority for any proposals for non-minerals development.

Mineral Safeguarding Area: An area designated by minerals planning authorities which covers known deposits of minerals which are desired to be kept safeguarded from unnecessary sterilisation by non-mineral development.

National trails: Long distance routes for walking, cycling and horse riding.

Natural Flood Management: managing flood and coastal erosion risk by protecting, restoring and emulating the natural 'regulating' function of catchments, rivers, floodplains and coasts.

Nature Recovery Network: An expanding, increasingly connected, network of wildlife-rich habitats supporting species recovery, alongside wider benefits such as carbon capture, water quality improvements, natural flood risk management and recreation. It includes the existing network of protected sites and other wildlife rich habitats as well as

⁸² Other than for the specific purposes of paragraphs 182 and 183 in this Framework.

and landscape or catchment scale recovery areas where there is coordinated action for species and habitats.

Neighbourhood Development Order: An Order made by a local planning authority (under the Town and Country Planning Act 1990) through which parish councils and neighbourhood forums can grant planning permission for a specific development proposal or classes of development.

Neighbourhood plan: A plan prepared by a parish council or neighbourhood forum for a designated neighbourhood area. In law this is described as a neighbourhood development plan in the Planning and Compulsory Purchase Act 2004.

Non-strategic policies: Policies contained in a neighbourhood plan, or those policies in a local plan that are not strategic policies.

Older people: People over or approaching retirement age, including the active, newly-retired through to the very frail elderly; and whose housing needs can encompass accessible, adaptable general needs housing through to the full range of retirement and specialised housing for those with support or care needs.

Open space: All open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity.

Original building: A building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally.

Out of centre: A location which is not in or on the edge of a centre but not necessarily outside the urban area.

Out of town: A location out of centre that is outside the existing urban area.

Outstanding universal value: Cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations. An individual Statement of Outstanding Universal Value is agreed and adopted by the UNESCO World Heritage Committee for each World Heritage Site.

People with disabilities: People have a disability if they have a physical or mental impairment, and that impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. These persons include, but are not limited to, people with ambulatory difficulties, blindness, learning difficulties, autism and mental health needs.

Permission in principle: A form of planning consent which establishes that a site is suitable for a specified amount of housing-led development in principle. Following a grant of permission in principle, the site must receive a grant of technical details consent before development can proceed.

Planning condition: A condition imposed on a grant of planning permission (in accordance with the Town and Country Planning Act 1990) or a condition included in a Local Development Order or Neighbourhood Development Order.

Planning obligation: A legal agreement entered into under section 106 of the Town and Country Planning Act 1990 to mitigate the impacts of a development proposal.

Playing field: The whole of a site which encompasses at least one playing pitch as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

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

Primary shopping area: Defined area where retail development is concentrated.

Priority habitats and species: Species and Habitats of Principal Importance included in the England Biodiversity List published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006.

Ramsar sites: Wetlands of international importance, designated under the 1971 Ramsar Convention.

Renewable and low carbon energy: Includes energy for heating and cooling as well as generating electricity. Renewable energy covers those energy flows that occur naturally and repeatedly in the environment – from the wind, the fall of water, the movement of the oceans, from the sun and also from biomass and deep geothermal heat. Low carbon technologies are those that can help reduce emissions (compared to conventional use of fossil fuels).

Rural exception sites: Small sites used for affordable housing in perpetuity where sites would not normally be used for housing. Rural exception sites seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. A proportion of market homes may be allowed on the site at the local planning authority's discretion, for example where essential to enable the delivery of affordable units without grant funding.

Recycled aggregates: aggregates resulting from the processing of inorganic materials previously used in construction, e.g. construction and demolition waste.

Safeguarding zone: An area defined in Circular 01/03: *Safeguarding aerodromes, technical sites and military explosives storage areas*, to which specific safeguarding provisions apply.

Secondary aggregates: aggregates from industrial wastes such as glass (cullet), incinerator bottom ash, coal derived fly ash, railway ballast, fine ceramic waste (pitcher), and scrap tyres; and industrial and minerals by-products, notably waste from china clay, coal and slate extraction and spent foundry sand. These can also include hydraulically

bound materials.

Self-build and custom-build housing: Housing built by an individual, a group of individuals, or persons working with or for them, to be occupied by that individual. Such housing can be either market or affordable housing. A legal definition, for the purpose of applying the Self-build and Custom Housebuilding Act 2015 (as amended), is contained in section 1(A1) and (A2) of that Act.

Setting of a heritage asset: The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.

Significance (for heritage policy): The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting. For World Heritage Sites, the cultural value described within each site's Statement of Outstanding Universal Value forms part of its significance.

Special Areas of Conservation: Areas defined by regulation 3 of the Conservation of Habitats and Species Regulations 2017 which have been given special protection as important conservation sites.

Special Protection Areas: Areas classified under regulation 15 of the Conservation of Habitats and Species Regulations 2017 which have been identified as being of international importance for the breeding, feeding, wintering or the migration of rare and vulnerable species of birds.

Site investigation information: Includes a risk assessment of land potentially affected by contamination, or ground stability and slope stability reports, as appropriate. All investigations of land potentially affected by contamination should be carried out in accordance with established procedures (such as BS10175 Investigation of Potentially Contaminated Sites – Code of Practice).

Site of Special Scientific Interest: Sites designated by Natural England under the Wildlife and Countryside Act 1981.

Spatial development strategy: A plan containing strategic policies prepared by a Mayor or a combined authority. It includes the London Plan (prepared under provisions in the Greater London Authority Act 1999) and plans prepared by combined authorities that have been given equivalent plan-making functions by an order made under the Local Democracy, Economic Development and Construction Act 2009 (as amended).

Stepping stones: Pockets of habitat that, while not necessarily connected, facilitate the movement of species across otherwise inhospitable landscapes.

Strategic environmental assessment: A procedure (set out in the Environmental Assessment of Plans and Programmes Regulations 2004) which requires the formal environmental assessment of certain plans and programmes which are likely to have significant effects on the environment.

Strategic policies: Policies and site allocations which address strategic priorities in line with the requirements of Section 19 (1B-E) of the Planning and Compulsory Purchase Act 2004.

Strategic policy-making authorities: Those authorities responsible for producing strategic policies (local planning authorities, and elected Mayors or combined authorities, where this power has been conferred). This definition applies whether the authority is in the process of producing strategic policies or not.

Supplementary planning documents: Documents which add further detail to the policies in the development plan. They can be used to provide further guidance for development on specific sites, or on particular issues, such as design. Supplementary planning documents are capable of being a material consideration in planning decisions but are not part of the development plan.

Sustainable transport modes: Any efficient, safe and accessible means of transport with overall low impact on the environment, including walking and cycling, ultra low and zero emission vehicles, car sharing and public transport.

Town centre: Area defined on the local authority's policies map, including the primary shopping area and areas predominantly occupied by main town centre uses within or adjacent to the primary shopping area. References to town centres or centres apply to city centres, town centres, district centres and local centres but exclude small parades of shops of purely neighbourhood significance. Unless they are identified as centres in the development plan, existing out-of-centre developments, comprising or including main town centre uses, do not constitute town centres.

Transport assessment: A comprehensive and systematic process that sets out transport issues relating to a proposed development. It identifies measures required to improve accessibility and safety for all modes of travel, particularly for alternatives to the car such as walking, cycling and public transport, and measures that will be needed deal with the anticipated transport impacts of the development.

Transport statement: A simplified version of a transport assessment where it is agreed the transport issues arising from development proposals are limited and a full transport assessment is not required.

Travel plan: A long-term management strategy for an organisation or site that seeks to deliver sustainable transport objectives and is regularly reviewed.

Wildlife corridor: Areas of habitat connecting wildlife populations.

Windfall sites: Sites not specifically identified in the development plan.

Annex 3: Flood risk vulnerability classification

ESSENTIAL INFRASTRUCTURE

- Essential transport infrastructure (including mass evacuation routes) which has to cross the area at risk.
- Essential utility infrastructure which has to be located in a flood risk area for operational reasons, including infrastructure for electricity supply including generation, storage and distribution systems; and water treatment works that need to remain operational in times of flood.
- Wind turbines.
- Solar farms

HIGHLY VULNERABLE

- Police and ambulance stations; fire stations and command centres; telecommunications installations required to be operational during flooding.
- Emergency dispersal points.
- Basement dwellings.
- Caravans, mobile homes and park homes intended for permanent residential use.
- Installations requiring hazardous substances consent. (Where there is a demonstrable need to locate such installations for bulk storage of materials with port or other similar facilities, or such installations with energy infrastructure or carbon capture and storage installations, that require coastal or water-side locations, or need to be located in other high flood risk areas, in these instances the facilities should be classified as 'Essential Infrastructure'.)

MORE VULNERABLE

- Hospitals
- Residential institutions such as residential care homes, children's homes, social services homes, prisons and hostels.
- Buildings used for dwelling houses, student halls of residence, drinking establishments, nightclubs and hotels.
- Non-residential uses for health services, nurseries and educational establishments.
- Landfill* and sites used for waste management facilities for hazardous waste.
- Sites used for holiday or short-let caravans and camping, subject to a specific warning and evacuation plan.

LESS VULNERABLE

- Police, ambulance and fire stations which are not required to be operational during flooding.

- Buildings used for shops; financial, professional and other services; restaurants, cafes and hot food takeaways; offices; general industry, storage and distribution; non-residential institutions not included in the 'more vulnerable' class; and assembly and leisure.
- Land and buildings used for agriculture and forestry.
- Waste treatment (except landfill* and hazardous waste facilities).
- Minerals working and processing (except for sand and gravel working).
- Water treatment works which do not need to remain operational during times of flood.
- Sewage treatment works, if adequate measures to control pollution and manage sewage during flooding events are in place.
- Car parks.

WATER-COMPATIBLE DEVELOPMENT

- Flood control infrastructure.
- Water transmission infrastructure and pumping stations.
- Sewage transmission infrastructure and pumping stations.
- Sand and gravel working.
- Docks, marinas and wharves.
- Navigation facilities.
- Ministry of Defence installations.
- Ship building, repairing and dismantling, dockside fish processing and refrigeration and compatible activities requiring a waterside location.
- Water-based recreation (excluding sleeping accommodation).
- Lifeguard and coastguard stations.
- Amenity open space, nature conservation and biodiversity, outdoor sports and recreation and essential facilities such as changing rooms.
- Essential ancillary sleeping or residential accommodation for staff required by uses in this category, subject to a specific warning and evacuation plan.

* Landfill is as defined in Schedule 10 of the Environmental Permitting (England and Wales) Regulations 2010.

Land to the Rear of 42-100 Tollgate Road & 42 Tollgate Road, Colney Heath

Statement of Common ground on the implications of the updated National Planning Policy Framework
(December 2023)

BETWEEN ST ALBANS CITY & DISTRICT COUNCIL AND VISTRY HOMES LTD

APPEAL REF: APP/B1930/W/23/3323099

January 2024

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1. Introduction

1.1 This Statement of Common Ground (“**SoCG**”) has been prepared by Nexus Planning on behalf of Vistry Homes Ltd (“**the Appellant**”) and St Albans City & District Council (“**the Council**”).

1.2 This SoCG has been informed by the Planning Statement of Common Ground (“**the Planning SoCG**”) signed by the Appellant and the Council on the 15th August 2023 and should be read alongside this document.

1.3 The appeal is lodged against the Council’s refusal of the following development:

“Outline application (access sought) - Demolition of existing house and stables and the construction of up to 150 dwellings including affordable and custom-build dwellings together with all ancillary works”

At

*Land to the Rear of 42-100 Tollgate Road & 42 Tollgate Road, Colney Heath, St Albans, Hertfordshire (“**the Appeal Site**”).*

1.4 As per agreement within the Planning SoCG, the description of development has been amended to:

*“Outline application (access sought) – Demolition of existing house and stables and the construction of up to 150 dwellings including affordable and self-build and custom housebuilding dwellings together with all ancillary works” (“**the Appeal Scheme**”).*

1.5 The Inquiry for appeal APP/B1930/W/23/3323099 was held from the 19th September 2023 until 28th September 2023.

1.6 In September 2023, during the Inquiry, a revised version of the Framework was published, however these amendments solely related to renewable energy which it was verbally agreed had no implications on the appeal scheme compared to the 2021 version.

1.7 On the 19th December 2023, the Government published a further revised version of the National Planning Policy Framework. This was republished on the 20th December 2023 to remove some erroneous text. This SoCG sets out the agreed implications of the revised National Planning Policy Framework (December 2023) (“**the revised Framework**”) between the Appellant and the Council in relation to the appeal reference APP/B1930/W/23/3323099.

1.8 The parties agree that the changes to the NPPF have no material impact on the cases they presented at the Inquiry

2. Weight Afforded to the Revised Framework

- 2.1 The Framework referred to within the main Planning SoCG was the July 2021 edition. Paragraph 5.14 of the Planning SoCG sets out that:

“It is agreed that significant weight should be given to the NPPF in the determination of this appeal.”

- 2.2 It is agreed by both parties that the revised Framework dated December 2023 should be afforded significant weight in line with paragraph 5.14 of the Planning SoCG.
- 2.3 It is further agreed that the now superseded July 2021 and September 2023 versions of the NPPF carry no weight.

3. Implications of the Revised Framework on the Appeal

Achieving Sustainable Development

Paragraph – Framework (September 2023)	Paragraph – revised Framework (December 2023)	Changes from the September 2023 Framework to the revised December 2023 Framework (additions underlined, deletions struck through and fully revised paragraphs in italics)	Implication on the Appeal
Footnote 8	Footnote 8	This includes, for applications involving the provision of housing, situations where: <u>(a)</u> the local planning authority cannot demonstrate a five year supply <i>(or a four year supply, if applicable, as set out in paragraph 226)</i> of deliverable housing sites (with a buffer, if applicable, as set out in paragraph 77) <u>and does not benefit from the provisions of paragraph 76;</u> or <u>(b)</u> where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) of the housing requirement over the previous three years.	<p>It is agreed that due to the Council having published a Regulation 18 Plan on 12/07/2023 with both a policies map and allocations, a four-year supply is required to be demonstrated by the Council in line with paragraph 226.</p> <p>It is common ground that the Council cannot demonstrate a four-year supply.</p> <p>It is common ground the Council’s housing delivery test (HDT) result for 2022 is 55%, down from 69% in 2021 but with the same consequence of triggering the presumption in favour of sustainable development.</p>

Delivering a Sufficient Supply of Homes

Paragraph – Framework (September 2023)	Paragraph – revised Framework (December 2023)	Changes from the September 2023 Framework to the revised December 2023 Framework (additions underlined, deletions struck through and fully revised paragraphs in italics)	Implication on the Appeal
61	61	To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals. In addition to the local housing need figure, any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for. <u>The outcome of the standard method is an advisory starting-point for</u>	<p>It is agreed that this amendment relates to plan making and not decision taking.</p> <p>It is agreed for the purposes of this appeal that the Standard Method should be used to calculate the housing requirement in relation to housing land supply.</p>

		<p><u>establishing a housing requirement for the area (see paragraph 67 below).</u> There may be exceptional circumstances, including relating to the particular demographic characteristics of an area which justify an alternative approach to assessing housing need; in which case the alternative approach should also reflect current and future demographic trends and market signals.</p>	
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Maintaining Supply and Delivery

Paragraph – Framework (September 2023)	Paragraph – revised Framework (December 2023)	Changes from the September 2023 Framework to the revised December 2023 Framework (additions underlined, deletions struck through and fully revised paragraphs in italics)	Implication on the Appeal
74	75	<p>Strategic policies should include a trajectory illustrating the expected rate of housing delivery over the plan period, and all plans should consider whether it is appropriate to set out the anticipated rate of development for specific sites. Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing <u>monitor their deliverable land supply against their housing requirement, as set out in adopted strategic policies.</u> or against their local housing need where the strategic policies are more than five years old</p>	It is agreed that paragraph 75 is relevant to plan making not decision taking.
	76	<p><i>Local planning authorities are not required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing for decision making purposes if the following criteria are met:</i></p> <ul style="list-style-type: none"> <i>a) their adopted plan is less than five years old; and</i> <i>b) that adopted plan identified at least a five year supply of specific, deliverable sites at the time that its examination concluded.</i> 	It is agreed that neither criteria a nor b of paragraph 76 are met by the Council's development plan and the application was submitted before publication of the NPPF and therefore it is not relevant to the Appeal Scheme.
	77	<p><i>In all other circumstances, local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to</i></p>	It is agreed between the parties that paragraph 77 is engaged.



Paragraph – Framework (September 2023)	Paragraph – revised Framework (December 2023)	Changes from the September 2023 Framework to the revised December 2023 Framework (additions underlined, deletions struck through and fully revised paragraphs in italics)	Implication on the Appeal
		<p><i>provide either a minimum of five years’ worth of housing, or a minimum of four years’ worth of housing if the provisions in paragraph 226 apply. The supply should be demonstrated against either the housing requirement set out in adopted strategic policies, or against the local housing need where the strategic policies are more than five years old(42). Where there has been significant under delivery of housing over the previous three years(43), the supply of specific deliverable sites should in addition include a buffer of 20% (moved forward from later in the plan period).</i></p>	<p>It is agreed that the Council should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of <u>four years’</u> worth of housing rather than five years noting that the Council has published a regulation 18 draft plan that meets the requirements of paragraph 226.</p> <p>It is agreed that a 20% buffer should continue to be applied given the Council’s performance in the HDT, most recently at 55% in the 2022 results released in December 2023.</p> <p>It is agreed that supply should now be calculated over a four-year period.</p> <p>It is agreed that the housing land supply shortfall remains substantial, as previously agreed in paragraph 6.6 of the Planning SoCG.</p>
76 and 223 (Previously in Annex 1)	79(c)	<p>To maintain the supply of housing, local planning authorities should monitor progress in building out sites which have permission. Where the Housing Delivery Test indicates that delivery has fallen below 95% of the local planning authority’s housing requirement over the previous three years, the authority should prepare an action plan in line with national planning guidance, to assess the causes of under-delivery and identify actions to increase delivery in future years. <u>the following policy consequences should apply:</u></p> <p><u>...c) where delivery falls below 75% of the requirement over the previous three years, the presumption in favour of sustainable development applies, as set out in footnote 8 of this Framework, in addition to the requirements for an action plan and 20% buffer.</u></p>	<p>It is agreed that this does not alter paragraph 6.7 of the Planning SoCG and the presumption in favour of sustainable development remains to be engaged as a result of the Council’s performance against the HDT, irrespective of HLS position. It is also agreed that disengagement of the presumption is also a matter for the Inspector pursuant to the evidence at the inquiry.</p>

Annex 1: Implementation

Paragraph – Framework (2021)	Paragraph – revised Framework	Changes from the Framework (2021) to the revised Framework	Implication on the Appeal Scheme
N/A	226	<p><i>From the date of publication of this revision of the Framework, for decision-making purposes only, certain local planning authorities will only be required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of four years’ worth of housing (with a buffer, if applicable, as set out in paragraph 77) against the housing requirement set out in adopted strategic policies, or against local housing need where the strategic policies are more than five years old, instead of a minimum of five years as set out in paragraph 77 of this Framework. This policy applies to those authorities which have an emerging local plan that has either been submitted for examination or has reached Regulation 18 or Regulation 19 (Town and Country Planning (Local Planning)(England) Regulations 2012) stage, including both a policies map and proposed allocations towards meeting housing need. This provision does not apply to authorities who are not required to demonstrate a housing land supply, as set out in paragraph 76. These arrangements will apply for a period of two years from the publication date of this revision of the Framework.</i></p>	<p>It is agreed that the implications of paragraph 226 are covered by the agreement to paragraph 77 earlier in this SoCG.</p>

4. Other Matters

4.1 The parties agree that the Revised Framework raises no additional implications for the appeal.

Signed: 	Signed: 
Name: Nabeel Kasmani	Name: Oliver Bell
On behalf of: St Albans City and District Council	On behalf of: Vistry Homes Ltd
Date: 05/01/2024	Date: 05/01/2024

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**Land to the rear of 42-100 Tollgate Road & 42
Tollgate Road, Colney Heath – Appeal ref.
APP/B1930/W/23/3323099**

Proof of Evidence (including summary) of Oliver Bell BSc MSc MRTPI

ON BEHALF OF VISTRY HOMES LTD

August 2023

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Appendix 1: Housing Land Supply Statement

Appendix 2: Extent of Previously Developed Land Plan and Existing Field Usage Plan

Appendix 3: Landowner Note

Appendix 4: Stantec Note

1. Qualifications, Experience and Declaration

- 1.1 My name is Oliver Bell and I am a Chartered Town Planner and Member of the Royal Town Planning Institute. I hold a Bachelor of Science (Honours) in Geography from Swansea University and a Master of Science in Development Planning from University of Reading. I have more than 15 years' professional experience as a town planner.
- 1.2 I am a chartered member of the Royal Town Planning Institute.
- 1.3 I appear at this Inquiry on behalf of Vistry Homes Ltd to provide planning evidence with respect to the appeal against St Albans City & District Council's refusal of planning application reference 5/2022/1988.
- 1.4 I am a Director at Nexus Planning, which was established in 2013 as a specialist town planning consultancy. I joined Nexus Planning since its outset some 10 years ago, and prior to this worked at Guildford Borough Council and Woking Borough Council in the development management team.
- 1.5 In my present capacity I advise a range of developers and housebuilders on town planning matters with a focus on greenfield residential developments in the south east of England.
- 1.6 I have extensive experience of managing a wide range of projects throughout my career, with a particular focus in strategic land promotion and the management of complex major residential and mixed-use planning applications across the UK, participating in numerous Local Plan Examinations and appeals.
- 1.7 I have also co-ordinated the preparation of a number of Environmental Impact Assessments (EIAs) for major developments across the country.
- 1.8 I have been directly involved in the project since April 2023.
- 1.9 The evidence which I have prepared and provide for this Appeal is consistent with the RTPI's professional code of conduct and is true to be best of my knowledge and belief; and I confirm that this reflects my professional opinion irrespective of by whom I am instructed.
- 1.10 This proof has been prepared having regard to the Inspector's pre and post Case Management Conference ('CMC') notes.

2. Introduction and Scope of Evidence

2.1 It is worth highlighting at the outset that there is a considerable degree of common ground between the Appellant and the Council on a number of matters. To avoid duplication with the content of the Statement of Common Ground (SoCG) (CD8.3), I do not outline these matters in full in my evidence. Further topic based SoCGs are currently being prepared in respect of:

- Affordable Housing;
- Landscape;
- Transport; and
- Heritage.

2.2 Against this background, my evidence focuses on the Main Issues identified by the Inspector in his Case Management Conference Summary Note, which are as follows:

- a. The effect of the proposed development on the openness and purposes of the Green Belt;
- b. The effect of the proposal on the landscape character and appearance of the site and surrounding countryside;
- c. The effect of the proposed development on the setting and significance of nearby heritage assets, including the Grade I listed North Mymms Park House, Grade II listed Colney Heath Farmhouse and the adjacent Grade II listed barn, and the non-designated heritage assets of North Mymms Park and Tollgate Farm;
- d. Whether the appeal site is in a location which is or can be made sustainable in transport terms; and
- e. Whether or not the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

2.1 Detailed matters relating to landscape and Green Belt are addressed in the evidence of Mr Self (CD9.5).

2.2 Detailed matters relating to heritage are addressed in the evidence of Ms Stoten (CD9.3).

2.3 Detailed matters relating to transport are addressed in the evidence of Mr Dimbylow (CD9.4).

2.4 Detailed matters relating to affordable housing are addressed in the evidence of Ms Gingell (CD9.1).

2.5 Detailed matters relating to self build / custom housing are addressed in the evidence of Mr Moger (CD9.2).

2.6 It was also agreed that a number of Other Matters are to be dealt with at the Inquiry as addressed below.

2.7 A draft Section 106 Agreement necessary to mitigate the impacts of the Appeal Scheme (in the event planning permission is granted) is being drafted with the Council. Subject to this being finalised, it is common ground that Reason for Refusal (RfR) 2, which is procedural, would be addressed and I proceed on the basis it has been.

2.8 The Inspector's CMC note outlines a need to consider evidence on the effects of the proposed development on traffic and highway safety, flood risk and drainage, the ecology of the area including the River Colne, noise, air quality and the living conditions of the occupiers of nearby residential properties. It is however noted these matters are not in dispute between the main parties. These matters are dealt with in the SoCG and the evidence of Mr Dimbylow, although I provide further commentary later on in my evidence.

3. The Appeal Site / Appeal Scheme

- 3.1 A full summary of the Appeal Scheme is set out in Section 4 of the SoCG.
- 3.2 The Appeal Site and surrounding area is described in full within the SoCG.
- 3.3 The planning application was validated by the Council on 23rd August 2022 and the 13-week statutory date from validation for the determination of the planning application was 22nd November 2022. The Appeal Scheme was given reference 5/2022/1988. Multiple extensions of time were agreed with the Council, including until the 20th January 2023, 28th February 2023 and finally until 27th March 2023. The application was determined 25th May 2023.

4. The Development Plan

4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, where regard is to be had to the statutory development plan in determining an application for planning permission, the determination shall be made in accordance with the development plan, unless material considerations indicate otherwise.

4.2 Relevant case law¹ confirms that in applying Section 38(6) it is necessary to have regard to the accordance of the proposals with the development plan as a whole.

4.3 The SoCG confirms that the development plan comprises:

- Saved Policies of the St. Albans District Local Plan Review (1994) (“the Local Plan”) (CD2.1);
- HCC’s Waste Core Strategy & Development Management Policies DPD (2012) (CD2.2); and
- HCC’s Hertfordshire Minerals Local Plan 2007 (CD2.3).

4.4 The Local Plan was originally adopted in 1985 and reviewed in 1994. I note that the evidence base of the Local Plan Review, was predicated on the already out of date Hertfordshire County Structure Plan 1986 Review, rather than the up-to date (at the time) Hertfordshire County Structure Plan 1991 Alterations. Indeed, this is recognised at paragraph 1.18 of the Local Plan which states:

“Preparatory work on the District Plan Review was well advanced before the Structure Plan Alterations were finalised. Consequently the District Plan Review was prepared against the background of the County Structure Plan 1986 Review, rather than the Alterations 1991”.

4.5 However, despite this even at the time of adoption of the Local Plan, paragraph 1.18 of the Local Plan recognises the consequences of the dated evidence base:

“The District Council recognises that there is a need to alter or review the District Plan as a matter of urgency”.

4.6 Therefore, whilst the Local Plan was adopted in 1994, some 29 years ago, it is based on the requirements of the County 37 years ago in 1986.

4.7 A number of policies were saved by direction of the Secretary of State on the 20th of September 2007. The Council’s document ‘Saved and Deleted Policies Version (July 2020)’ details which policies were saved by this Direction. Paragraph 219 of the National Planning Policy Framework (“the Framework”) is clear due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework, which I address against the relevant policies below.

4.8 A full list of development plan policies relevant to the determination of the Appeal Scheme are set out within the SoCG.

4.9 The SoCG confirms at paragraph 5.5 the most important policies in determining the Appeal Scheme are Policies 1, 2, 69, 86 and 143b of the Local Plan and that it is common ground the most important policies of the Local Plan are out of date by reason of the Council’s inability to demonstrate the required five-year supply of deliverable housing sites, in accordance with footnote 8 of the Framework. The Council’s position is its housing supply sits at only 2.0 years and

¹ R. v. ROCHDALE METROPOLITAN BOROUGH COUNCIL ex p. MILNE 31st July 2000 (CO/292/2000) at paragraphs 49 and 50 (CD13.1)

the Appellant’s position is that the supply position is even worse (1.97 years [See Appendix 1]), but whichever figure is used, the SoCG confirms at paragraph 6.7 the shortfall is “substantial”.

- 4.10 Furthermore, the development plan is considered to be out of date having regard to footnote 8 of the Framework and also in the context of the Housing Delivery Test (HDT) results 2021 (CD16.1) which show the Council having a result of only 69%, triggering the presumption in favour of sustainable development irrespective of the housing land supply position.
- 4.11 The Local Plan period ran until to 2001 and consequently there has been no plan led strategy to meet the District’s development needs for a staggering 22 years, which as I explain later in this Proof, is the principal cause of the Council’s woeful housing land supply position, noting the Green Belt constraints that prevails across the District.
- 4.12 I am clear that in the absence of an up to date plan-led system within an area highly constrained by Green Belt, it is only going to result in a further worsening of housing delivery for the foreseeable future.
- 4.13 Turning to the development plan policies relevant to the determination of the Appeal Scheme (which as I have detailed above is agreed with the Council), I set out my assessment of the Appeal Scheme’s compliance below:

Policy 1

- 4.14 Policy 1 of the Local Plan is agreed to be a most important policy and a purported conflict with this Policy is referred to in the Council’s first reason for refusal.
- 4.15 This policy confirms the boundaries of the Green Belt within the District and states these boundaries have been defined by reference to the degree of long-term expansion of the built-up areas acceptable in the context of the purposes of the Green Belt. In this context, I note that the original St Albans District Plan (adopted July 1985) placed all the District in the Green Belt except for the main built-up areas (para. 2.3 of CD2.1). Supporting paragraph 2.4 of the Local Plan then confirms it proposes “...a limited number of minor adjustments to the Green Belt in order to improve the long term permanence of the boundaries...More major boundary adjustments have been made at the following locations...”. Adopted in 1994, it is clear Green Belt boundaries haven’t been reviewed in the District for a staggering 29 years and were only defined to meet development needs until 2001. In recognition of this paragraph 4 of the Local Plan states:

“Nevertheless, the District Council recognises that there is a need to prepare Alterations or a full Review of the District Plan, looking to 2001 or beyond, as a matter of urgency.” (my emphasis)

- 4.16 Policy Intention 35 ‘Monitoring and Review of the District Plan’ crystallises this, stating that the District Council will:

“(iii) prepare, as a matter of urgency, alterations or a full review of the Plan, taking account of the County Structure Plan Approved Alterations 1991 and looking to 2001 or beyond.”

- 4.17 One might reasonably expect that process to have commence immediately following the adoption of the Local Plan in 1994 and yet 29 years later, we still await the completion of the review.
- 4.18 Policy 1 outlines that other than for development in Green Belt settlements referred to in Policy 2 (which does not apply to the Appeal Scheme) or in very special circumstances, permission will not be given for development other than for a specific number of purposes. These exceptions are not wholly consistent with those outlined at paragraphs 149 and 150 of the Framework. However, in the context of the Appeal Scheme, the relevant provision is ‘very special

circumstances’ which exists within Policy 1 and the Framework. Accordingly, I am of the view that Policy 1 can be afforded full weight in the determination of this appeal.

4.19 As I outline later on in my evidence, the benefits of the Appeal Scheme clearly outweigh any harms such that very special circumstances exist and on this basis, I consider the Appeal Scheme is compliant with Policy 1.

Policy 2

4.20 Policy 2 establishes the hierarchy of settlements and spatial strategy for the District across the plan period of 1994 – 2001. Whilst it is identified as a most important policy, I note that a conflict with Policy 2 is not cited in the Council’s reasons for refusal.

4.21 The hierarchy of settlements identified in Policy 2 is predicated on the County Structure Plan which was adopted in 1986. This identifies three distinct settlement types: Towns, Specified Settlements and Green Belt Settlements.

4.22 In general terms the policy seeks to protect and enhance the essential character of the existing settlements. Colney Heath is identified as a Green Belt Settlement where Policy 2 identifies that apart from exceptions in Policy 1, development will not normally be permitted except where it meets local housing needs or the local facilities and service needs of the settlement where the development is proposed. Development must not also detract from the character and setting of the settlement.

4.23 Firstly dealing with weight given to this policy, the hierarchy of settlements and spatial strategy contained within Policy 2 was defined to meet development needs between 1994 and 2001 and is therefore plainly out of date as it was devised to meet the needs of a different generation. Slavishly adhering to the settlement strategy would have the effect of thwarting otherwise sustainable development, which would fly in the face of the Government’s objective of “*significantly boosting the supply of homes...*” and ensuring “*a sufficient amount and variety of land can come forward where it is needed...*” (paragraph 60 the Framework). Furthermore, paragraph 61 of the Framework is clear that “*To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment...*” which is demonstrably not the case, noting strategic policies are informed by housing needs determined decades ago.

4.24 The Council’s woeful housing land supply position of 2 years at best, is symptomatic of this issue, further reinforced by a Housing Delivery Test score of only 69%.

4.25 Furthermore, and as I have outlined earlier, the Local Plan was clear that at the time of adoption that reviewing the Plan to look beyond 2001 was an ‘urgent priority’ at that time, let alone now.

4.26 It is clear that if the Council is to get anywhere close to meeting its development needs, the release of Green Belt sites is essential, as reflected in the Council’s emerging Local Plan (CD3.1). Accordingly, I afford only limited weight to Policy 2.

4.27 In relation to compliance with Policy 2, this links back to exceptions identified in Policy 1, which as I have already identified the Appeal Scheme would comply with.

4.28 As I outlined earlier, Policy 2 generally seeks to protect and enhance essential character of the existing settlements and under part 3 relating to Green Belt Settlements states “*development must not detract from the character and setting of these settlements within the Green Belt.*”

4.29 Firstly, it should be noted that there is a limitation to which the Appeal Scheme’s compliance with this aspect of the policy can be assessed, being an outline application. Nevertheless, I refer to the evidence of Mr Self (CD9.5), which explains the following:

“7.2 the scale and configuration of the development will complement the nucleated settlement pattern of the southern part of Colney Heath”.

“7.3 From my observations on Site and from the wider area I believe that there will be a negligible adverse impact on the character of the wider landscape.”

4.30 Furthermore, the Design and Access Statement (CD4.6) prepared in supporting of the planning application for the Appeal Scheme outlines at paragraph 7.2 that:

“The design proposals for the Site have evolved through an iterative design process informed by environmental and technical work, an understanding of the development’s relationship with Colney Heath and the surrounding context, and an assessment of planning and design policy, including building upon the Objectives contained within the St Albans City and District Council Local Plan. This has resulted in the Development Plan (Figure 7.1) which seeks to minimise environmental impacts whilst maximising social, economic, biodiversity and sustainability benefits.”

4.31 Section 7 of the Design and Access Statement then explains in great detail the rationale for the form of the development, its scale, inclusion of green infrastructure, layout principles and character areas. Whilst much of this is illustrative at this stage, in my view it provides the framework for a high quality development that respects the character of the existing settlement.

4.32 Given the above, I agree that the Appeal Scheme would protect and enhance the essential character of the existing settlement including its setting.

4.33 Overall, I consider the Appeal Scheme complies with Policy 2 but even if a conflict was found, this policy can only be afforded limited weight due to its lack of consistency with the Framework.

Policy 69

4.34 The main parties have agreed through the SoCG that Policy 69 is a most important policy, it is however noted that the policy is not referred to in the reasons for refusal. Policy 69 requires all development to have an adequately high standard of design, taking into account the following factors:

- i. *Context – the scale and character of its surroundings in terms of height, size, scale, density or plot to floorspace ratio;*
- ii. *Materials – shall normally relate to adjoining buildings. Large isolated buildings in rural or settlement edge settings shall be clad in materials that take account of the general colour and tonal value of their background;*
- iii. *Other policies – Applicants shall take into account all relevant policies and requirements.*

4.35 I consider this policy to be generally consistent with the Framework and accordingly can be afforded full weight in the determination of this appeal.

4.36 In relation to the requirements regarding scale and character in terms of plot ratios, height, size and scale, as well as the requirements in relation to materials (criteria i and ii), I can see no reason why these matters could not be

satisfactorily addressed at the reserved matters stage. This view appears to be shared by the Council where at paragraph 8.5.16 of the Committee Report (CD6.1) its states:

“Taking the above discussion into account, it is not considered that there would be harm caused in relation to design and amenity that could not be mitigated through good detailed design and through the appropriate use of planning conditions. As such, this matter is considered to weigh neutrally in the planning balance, with no positive or negative weight given in these regards.”

4.37 However, I note that at paragraph 5.35 of the Council’s SoC it now alleges conflict with Policy 69 due to a purported *“failure to respect context to respect context, deliver high quality design and have proper regard to setting and the character of the area together with the loss of existing attractive arable landscape”*.

4.38 I have already addressed this matter in relation to the requirements of Policy 2 to the extent it is relevant for an outline application and found compliance. As such, I do not agree with this statement.

4.39 With regards to criterion iii, the SoCG records at paragraph 5.7 that:

“The main parties do not agree whether a conflict with Policies 1, 2, 69 and 143b of the Local Plan arises in relation to the Appeal Scheme. However, both parties do agree that the Appeal Scheme complies with, or can comply with at the reserved matters stage, all other relevant policies in the Local Plan, as listed above, albeit the Council does not consider the Appeal Scheme to support the objectives of the Watling Chase Community Forest consistent with Policy 143A.”

4.40 Having regard to my findings in relation to the above mentioned policies and the fact it is agreed the Appeal Scheme complies with, or can comply with at the reserved matters stage, all other relevant policies in the Local Plan, no conflict arises with Policy 69.

Policy 86

4.41 Policy 86 relates to covers the protection of buildings of special architectural or historical interest and is agreed through the SoCG to be a most important Policy although no conflict with Policy 86 is alleged in the Council’s decision notice (CD6.2).

4.42 Criterion i of Policy 86 requires that:

“...for planning permission for development which affects a listed building or its setting), the Council will have special regard to the desirability of preserving the building or its setting or any features of architectural or historic interest which it possesses.”

4.43 Criterion i reflects the duty of decision makers set out in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Criterion i of Policy 86 is therefore consistent with the most up to date legislation and current national policy set out in the Framework in this specific regard (paragraph 197a of the Framework).

4.44 I do not consider Criterion ii relevant to the Appeal as this relates to the demolition of listed buildings.

4.45 Criterion iii of Policy 86 sets out criteria that a development should be assessed against when considering a developments impact on heritage assets and makes reference to the guidance in *“Appendix iv of the Department of the Environment Circular 8/87 (or successive Government advice)”*.

4.46 In respect of Circular 8/87 and ‘successive Government advice’, I understand the following:

- Circular 8/87 was superseded by PPG 15: Planning and the historic environment (DETR, 1994)
- PPG 15 was superseded by Planning policy statement 5: planning for the historic environment (DCLG, 2010)
- PPS 5 was superseded by the Framework (2012)
- The Framework 2012 has been revised to the present day version – the Framework 2021.

4.47 In respect of parts a-h within criteria iii, none would be relevant to the Appel Scheme as they relate to the impacts on the fabric/curtilage of a listed building itself rather than its setting.

4.48 Returning to the overarching requirement of criterion iii of Policy 86, this effectively leads the decision maker to consider the Framework. In this regard, paragraph 199 states:

“When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.”

4.49 The SoCG (CD8.3) outlines the following relation to heritage matters:

“6.70 There are three designated heritage assets in the vicinity, in which the Appeal Site forms part of their setting. These designated heritage assets are the Grade I listed North Mymms Park House, the Grade II listed Colney Heath Farmhouse and the Grade II listed barn on the north side of Colney Heath Farm. It is agreed that less than substantial harm will occur upon the significance of Colney Heath Farmhouse, Grade II listed barn and North Mymms Park House, and whilst the extent of harm is not agreed, it is agreed to be less than substantial and at the lower end of that spectrum.

6.71 It is agreed that as less than substantial harm is identified to the designated heritage assets, paragraph 202 of the NPPF states that this harm should be weighed against the public benefits of the Appeal Scheme.

6.72 The parties agree that the public benefits outweigh the harm to designated heritage assets.

6.73 The appeal site also falls within the setting of two non-designated heritage assets, Tollgate Farmhouse and the landscape at North Mymms Park. It is agreed that the impact on their setting should be taken into account in determining the appeal.”

4.50 As set out in the Heritage Statement of Common Ground (CD8.4), there are no significant areas of disagreement in relation to the impact on heritage assets from the Appeal Scheme. The Heritage Statement of Common Ground sets out the following agreed position of the Appellant and Council with respect to the impact on identified heritage assets in Section 3:

- Grade II Listed Colney Heath Farmhouse and Barn - less than substantial harm and at the lowermost end of the spectrum
- Grade I Listed North Mymms Park House - less than substantial harm and at the lowermost end of the spectrum
- Non-designated North Mymms Park Parkland - very minor harm
- Non-designated Tollgate Farm – very minor harm

4.51 I am in full agreement with the agreed position between the parties.

4.52 Paragraph 202 of the Framework states:

“Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.”

4.53 The main parties agree impacts on the designated heritage assets sit at the lowermost end of the less than substantial harm spectrum² and are agreed that the public benefits of the Appeal Scheme outweigh this harm³. I agree.

4.54 Paragraph 203 of the Framework states:

“The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”

4.55 As previously set out, the agreed position of the parties is that there is a ‘very minor’ impact upon the setting of the North Mymms Parkland and Tollgate Farm, both of which are non-designated heritage assets. The Framework states *“a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”*

4.56 Having regard to the significance of the non designated assets and scale of harm identified, I am clear that the benefits of the Appeal Scheme comfortably outweigh this ‘very minor’ harm.

4.57 It is also agreed that the Appeal Scheme is acceptable in terms of archaeological matters, subject to the imposition of conditions.

4.58 Given the public benefits of the Appeal Scheme outweigh the heritage harms, I am of the view there is no conflict with Policy 86 of the Local Plan. I do however acknowledge this does not take away the fact harms have been identified to heritage assets, which I address in the planning balance later on in my evidence.

Policy 143A

4.59 The Appeal Site falls within the Watling Chasing Community Forest area as shown in Figure 21A of the Local Plan (CD2.1). The SoCG at paragraph 5.7 records that *“the Council does not consider the Appeal Scheme to support the objectives of the Watling Chase Community Forest consistent with Policy 143A”* (CD8.3) rather than alleging an overt conflict.

4.60 The Policy details that the Council *“will welcome detailed proposals for the purposes of landscape conservation, recreation, nature conservation and timber production”*. The policy is very broad in its objectives and there is nothing the Appeal Scheme directly conflicts with, which might explain the Council’s choice of words. However, I see no reason why these objectives can’t be complied with at the reserved matters stage in so far as they are relevant, such as details relating to the recreational use of areas of open spaces and details relating to the protection and management of the Local Wildlife Site in the southern part of the Appeal Site.

² Heritage Statement of Common Ground paragraph 2.1 (CD8.4)

³ Statement of Common Ground paragraph 6.72 (CD8.3)

4.61 Policy 143A also requires compliance with Policy 1 (addressed earlier) and other specified policies, where it is common ground there is no conflict. Accordingly, I find that the Appeal Scheme would not conflict with the policy or undermine the overall delivery of its objectives.

Policy 143B

4.62 Policy 143b is agreed to be a most important Policy and conflict with this policy is referred to in the Council's second reason for refusal.

4.63 As set out in the SoCG, the Council and Appellant will be working towards the agreement of a S106 agreement to address the infrastructure requirements set out in the Council's second reason for refusal. On this basis, there is no conflict with Policy 143B.

Compliance with the Development Plan as a whole

4.64 As I have outlined earlier, relevant case law⁴ confirms that in applying Section 38(6) it is necessary to have regard to the accordance of the proposals with the development plan as a whole. As identified by Mr Justice Sullivan at that time, given the numerous conflicting interests that the development plan seeks to reconcile:

"...it would be difficult to find any project of any significance that was wholly in accord with every relevant policy in the development plan. Numerous applications would have to be referred to the Secretary of State as departures from the development plan because one or a few minor policies were infringed, even though the proposal was in accordance with the overall thrust of development plan policies." (paragraph 49)

4.65 As such there may be:

"..no clear cut answer to the question: "is this proposal in accordance with the plan?"" (paragraph 48)

4.66 Accordingly, he concluded that for the purposes of according with the relevant legislation:

"..it is enough that the proposal accords with the development plan considered as a whole. It does not have to accord with each and every policy therein." (paragraph 50)

4.67 My assessment of compliance with Policy 1 is on the basis very special circumstances exist to allow the Appeal Scheme. I have then assessed compliance with all other disputed policies and found the Appeal Scheme to comply or is capable of complying at the reserved matters stage. There is no other alleged conflict with relevant development plan policies. On this basis, I consider the Appeal Scheme to comply with the development plan taken as a whole.

4.68 However, even if some conflict with relevant policies is found, that does not automatically mean a failure to comply with the development plan as a whole. Instead, a judgement will need to be made as to the weight to be given to that policy, the extent of the conflict and the importance of that policy in the consideration of the development proposed.

⁴ R. v. ROCHDALE METROPOLITAN BOROUGH COUNCIL ex p. MILNE 31st July 2000 (CO/292/2000) at paragraphs 49 and 50 (CD13.1)

5. Other Material Considerations

National Planning Policy Framework

- 5.1 It is common ground with the Council that the Framework is a material consideration in the determination of this appeal to which significant weight should be given.
- 5.2 The Framework includes a range of policies that are relevant to the Appeal Scheme and the Council in its reason for refusal reference conflict with the Framework.

The Need for up to Date Local Plans

- 5.3 Paragraph 33 of the Framework is clear that:

“Policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary. Reviews should be completed no later than five years from the adoption date of a plan, and should take into account changing circumstances affecting the area, or any relevant changes in national policy. Relevant strategic policies will need updating at least once every five years if their applicable local housing need figure has changed significantly; and they are likely to require earlier review if local housing need is expected to change significantly in the near future.”

- 5.4 The PPG (Paragraph: 062 Reference ID: 61-062-20190315) provides further detail, outlining that:

“To be effective plans need to be kept up-to-date. The National Planning Policy Framework states policies in local plans and spatial development strategies, should be reviewed to assess whether they need updating at least once every 5 years, and should then be updated as necessary.”

Under regulation 10A of The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) local planning authorities must review local plans, and Statements of Community Involvement at least once every 5 years from their adoption date to ensure that policies remain relevant and effectively address the needs of the local community. Most plans are likely to require updating in whole or in part at least every 5 years. Reviews should be proportionate to the issues in hand. Plans may be found sound conditional upon a plan update in whole or in part within 5 years of the date of adoption. Where a review was undertaken prior to publication of the Framework (27 July 2018) but within the last 5 years, then that plan will continue to constitute the up-to-date plan policies unless there have been significant changes as outlined below.

There will be occasions where there are significant changes in circumstances which may mean it is necessary to review the relevant strategic policies earlier than the statutory minimum of 5 years, for example, where new cross-boundary matters arise. Local housing need will be considered to have changed significantly where a plan has been adopted prior to the standard method being implemented, on the basis of a number that is significantly below the number generated using the standard method, or has been subject to a cap where the plan has been adopted using the standard method. This is to ensure that all housing need is planned for as quickly as reasonably possible.”

- 5.5 The Local Plan was originally adopted in 1985 and reviewed in 1994. A number of policies were saved by direction of the Secretary of State on the 20th of September 2007. As I have outlined earlier in my evidence the plan period only ran until to 2001. It planned the provision of 6,400 units between 1981 – 1996 and 7,400 between 1986 – 2001. Consequently, I find it astonishing that there has been no plan led strategy to meet the Council’s development needs for 22 years, even more so when the Council identified a review of the Local Plan was necessary “as a matter of urgency” at the point of adoption 29 years ago given it was based on the already out of date Hertfordshire County

Structure Plan 1986 Review. In my experience, the Local Plan is therefore likely to represent one of the oldest development plans still in operation across the whole of England. Put simply, the Council has exhibited a monumental failure in ensuring the planning system in the District is “*genuinely plan-led*”, as required by paragraph 15 of the Framework.

- 5.6 This is a situation which cannot be described as anything other than appalling but the consequences are more important, namely an authority that is fuelling the housing and affordability crisis this country faces through woeful performance against the HDT (69%) and a severe housing land supply shortfall which even on the Council’s figures is a mere 2.0 years⁵.
- 5.7 The Council had been preparing a new St. Albans Local Plan (2020-2036) (CD3.1). This was submitted to the Secretary of State for examination in March 2019. However, on 14th April 2020, the Inspector wrote to the Council identifying serious concerns regarding the Duty to Cooperate and that the plan would very likely need to be withdrawn. The Local Plan was subsequently formally withdrawn by the Council on 23rd November 2020.
- 5.8 The most recent Local Development Scheme (September 2022) (CD3.3) sets out that the Council is preparing a new Local Plan and adoption of the new Local Plan targeted for December 2025. The Regulation 18 Local Plan to 2041 has now been published and the consultation period runs from 12th July to 25th September 2023.
- 5.9 It is common ground that the emerging Local Plan can only be afforded limited weight in the determination of this Appeal and that the evidence underpinning it is a material consideration. Notwithstanding this, I would make the following key observations in relation to the Regulation 18 Local Plan:
- The Local Housing Need calculated by the Standard Method is 888 units per annum, or 15,096 over the plan period.
 - Over 81% of the District’s area is classified as Green Belt.
 - At paragraph 3.2 it states “*the Plan is taking the approach of identifying and allocating Previously Developed Land/ Brownfield sites first for development so that growth is as sustainable as possible.*”
 - At paragraph 3.13 it states that “*the Local Plan seeks to make the most efficient use of land in the District and has undertaken an extensive and rigorous search for Previously Developed Land (PDL) (also known as ‘Brownfield land’ in national policy) within existing built-up areas. The approach has been underlain by the concept of ‘leaving no stone unturned’ in the search for appropriate sites on brownfield land.*” It goes on to say at paragraph 3.14 that “*This extensive search also included potential PDL opportunities in the Green Belt*”.
 - Despite this, large amounts of Green Belt land are proposed for removal as shown in Appendix 1 of the Emerging Local Plan – Local Plan Sites (CD3.1) and draft policies map (CD3.2). This includes draft allocations of approximately 10,767 dwellings on non-PDL Green Belt land and 237 dwellings on Green Belt PDL land.
 - Table 3.2 outlines the Council’s proposed trajectory and shows the Council won’t start meeting its annual housing need until at least 2028/29, even with an up to date local plan.
 - The emerging Local Plan proposes the retention of Colney Heath as a settlement washed over by the Green Belt, with no allocations proposed at the Appeal Site or the settlement.
- 5.10 This appeal is clearly not the forum to consider the soundness of the emerging Local Plan but having regard to the above, I am clear the vast majority of the Council’s development needs will have to be accommodated within the Green Belt and even with a new Local Plan, the Council will not start meeting its development needs for at least another 5 years at best. It is also apparent the Council has failed to consider the merits of the Appeal Site as PDL

⁵ Paragraph 6.5 of the Statement of Common Ground (CD8.3)

and in the view of Mr Self (which I agree with) incorrectly concluded Colney Heath should continue to be washed over by Green Belt and as a result, failed to consider the release of any sites on the edge of the settlement.

Making Effective Use of Land

5.11 Paragraph 119 of the Framework outlines “that strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or ‘brownfield’ land”.

5.12 Furthermore, paragraph 120d of the Framework states that planning decisions should:

“promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively (for example converting space above shops, and building on or above service yards, car parks, lock-ups and railway infrastructure)”

5.13 It is common ground that the existing residential dwelling on site and its garden comprise PDL, being outside a defined settlement boundary⁶ (see para 6.11 of the SoCG).

5.14 With regard to the rest of the Appeal Site, I refer to drawing 3925/126 of Appendix 2 of my evidence which demonstrates the extent of the site I consider to be PDL.

5.15 I understand the Council accept that the equestrian facilities at the Appeal Site, namely the single storey 12-bay stable building, all-weather manège, equestrian storage containers and associated hardstanding comprise PDL. However, I understand that the Council question whether the associated paddocks fall within the same curtilage as these equestrian facilities, and therefore also comprises PDL.

5.16 I understand that the approach of assessing curtilage is set out in *Methuen-Campbell v Walters [1979] 2 QB 525* which was recently endorsed in the Court of Appeal⁷. My understanding of these judgements is that land must be so intimately associated with a building it forms *part and parcel* of the building.

5.17 The owner of the Appeal Site has provided a statement in relation to the use of the site for equestrian purposes (Appendix 3 of my evidence). This is illustrated in plan form at drawing ref. 3925/127A (Appendix 2 of my evidence). It is clear from these two documents that the fields form an essential part of the use of the stables and ménage, with the fields used throughout the year on rotation.

5.18 It is for these reasons, combined with my site visit, that I am of the opinion the paddocks have a clear intimate association with the stable buildings and ménage, such that they form part and parcel of the same curtilage.

5.19 I am aware of appeal decisions at Clover Court, Clanfield⁸, Lavendon, Olney⁹ and Maitland Lodge, Billericay¹⁰ where the Inspectors found equestrian uses not to be agricultural use and therefore constituted PDL. In respect of the Lavendon, Olney appeal, the Inspector stated the following at paragraph 13:

⁶ Dartford Borough Council v Secretary of State for Communities & Local Government (CO/4129/2015) (CD13.7)

⁷ R (Hampshire County Council) v Secretary of State for Environment, Food and Rural Affairs [2021] EWCA Civ 398 (CD13.13)

⁸ Appeal ref: APP/D3125/W/19/3235474 (CD14.33)

⁹ Appeal Ref: APP/Y0435/W/17/3178790 (CD14.34)

¹⁰ Appeal Ref: APP/V1505/W/22/3296116 (CD14.20)

“From my visit it is clear that although only the northern part of the site contains development, the paddocks that extends to the south is part of the use of the site for equestrian purposes. I find this to be an integral part of the site that is within the curtilage of the manege and stable building. Thus, the site is considered previously developed land.”

5.20 Given the above, and noting the definition of PDL at Annex 2 of the Framework, I consider that the entire extent of the Appeal Site comprises PDL. The Site is therefore generally a sequentially preferable location for development over other greenfield Green Belt sites, particularly in the highly constrained context of St Albans District. This approach aligns with the findings of the Inspector at paragraph 39 of the aforementioned Maitland Lodge appeal¹⁰.

5.21 I place significant weight on the effective use of PDL to provide homes, which accords with paragraph 119 of the Framework and again aligns with the weight given by the Inspector at paragraph 35 of the Maitland Lodge appeal¹⁰.

The Need for Market Housing

5.22 The Housing Land Supply evidence at Appendix 1 of my evidence addresses matters of housing land supply generally in the context of the agreement that the Council is unable to demonstrate a 5 year housing land supply, contrary to the requirements of paragraph 74 of the Framework. This section of my evidence focuses on the importance of, and need for, housing generally in the District.

5.23 The Local Plan was adopted well before even the 2012 Framework, is devoid of a housing requirement and is based upon a strategy to meet development needs which had regard to a policy framework outlining a fundamentally different approach to calculating housing need.

5.24 This interpretation is supported by the courts in the case of Gallagher Estates Ltd & Lioncourt Homes Ltd v Solihull Metropolitan Borough Council¹¹ where at paragraph 97, Mr Justice Hickinbottom explains the significance of the Framework coming into force:

“However, this fails to acknowledge the major policy changes in relation to housing supply brought into play by the NPPF. As I have emphasised, in terms of housing strategy, unlike its predecessor (which required a balancing exercise involving all material considerations, including need, demand and relevant policy factors), the NPPF requires plan-makers to focus on full objectively assessed need for housing, and to meet that need unless (and only to the extent that) other policy factors within the NPPF dictate otherwise. That, too, requires a balancing exercise – to see whether other policy factors significantly and demonstrably outweigh the benefits of such housing provision – but that is a very different exercise from that required pre-NPPF. The change of emphasis in the NPPF clearly identified that paragraph 47 should on occasions, yield different results from earlier policy scheme; and it is clear that it may do so.”

5.25 The Framework 2021 maintains this radical change where at paragraph 8 it outlines the three overarching objectives to secure sustainable development and paragraph 8b states that to achieve the ‘social objective’ it is necessary to:

“to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations...”

5.26 Paragraph 60 of the Framework then states that:

¹¹ Gallagher Estates Ltd & Lioncourt Homes Ltd v Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin) (CD13.14)

“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, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.”

5.27 Furthermore, paragraph 74 of the Framework states:

“Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old.”

5.28 It is common ground between the parties that the Council cannot demonstrate a five year housing land supply against its local housing need figure calculated using the standard method with a 20% buffer applied. The SoCG confirms that the Council considers its housing land supply is 2.0 years at best, whilst the Appellant considers this to be 1.97 years, as detailed in the Housing Land Supply Statement at Appendix 1. It is common ground between the parties that this is a substantial shortfall, and the difference between housing land supply figures is not determinative. I agree.

5.29 Furthermore, the HDT 2021 results (CD16.1) show the Council having a result of 69% triggering the presumption in favour of sustainable development irrespective of the housing land supply position¹². In the absence of an up-to-date local plan, I cannot see this figure materially improving, indeed it is quite probable it will continue to worsen until a new local plan is adopted (the Council consider this to be more than 2 years away).

5.30 The Appeal Scheme, at 150 dwellings, would be delivered in full over the next five years, thus making a material contribution towards the five year supply. Furthermore, the Appellant is proposing to agree to a condition which shortens the standard time limit for implementation from three years to two years for the submission of reserved matters and reducing the time limit for commencement from two years to one year from the date of the approval of the last reserved matters. In reality, the Appellant, as a national housebuilder, would seek to implement the scheme much quicker if the necessary planning approvals are obtained.

5.31 The weight given to the delivery of market housing must, in my view, be given in the context of the agreed substantial housing land supply shortfall, the woeful HDT results and fact that there is no strategy in place, nor will there be for more than 2 years, to rectify this crisis. Indeed, I find it difficult to imagine a more severe situation in respect of housing delivery than that found in St Albans District.

5.32 The Appeal Scheme would make a meaningful contribution towards meeting that need, a benefit that is common ground between the Council and Appellant must be afforded very substantial weight. This is consistent with other decisions in the District, also at Colney Heath¹³ and was applied by the Council in their own decision to approve the application at Sewell Park in St Albans¹⁴.

The Need for Affordable Housing

5.33 Paragraph 60 of the Framework clearly sets out the Government’s objective of “significantly boosting the supply of homes”. To address the needs of the whole community, paragraph 62 confirms that:

“Within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing,

¹² Footnote 8 of the Framework

¹³ Paragraph 10 of Appeal ref. APP/B1930/W/20/3265925

¹⁴ Paragraph 8.7.3 of Committee Report relating to Application ref. 5/2021/0423/LSM

families with children, older people, students, people with disabilities, service families, travellers, people who rent their homes and people wishing to commission or build their own homes)". (my emphasis)

- 5.34 The need for affordable housing, and the importance of its provision, is emphasised in many Government publications as outlined in the evidence of Ms Gingell (CD9.1).
- 5.35 It is agreed in the SoCG that Policy 7A of the Local Plan is not relevant to the Appeal Scheme due its location outside a Town or Specified Settlement.
- 5.36 In March 2004, the St. Albans Affordable Housing SPD was adopted as a material consideration in the determination of planning applications. This document sets out the Council is applying the threshold of Circular 6/98, that being affordable housing is required on all sites of 1ha or more, or of 25+ dwellings, the Council will seek an on-site affordable housing provision equivalent to 35% of the dwellings on the site. Circular 6/98 is no longer relevant and SADC therefore applies the threshold that affordable housing is required on sites where 15 or more dwellings are proposed, as set out in Policy 7A, across the entire District.
- 5.37 Paragraph 6.50 of the SoCG records that:

"It is agreed there is an acute need for more affordable housing within St. Albans, and the delivery of 60 much needed affordable units (40%), which exceeds the minimum SPD requirement of 35% and reflects the emerging Policy requirement in the Regulation 18 Local Plan, represents a social benefit to which very substantial weight should be given."

- 5.38 The evidence of Ms Gingell (CD9.1) further addresses affordable housing need, which I do not propose to repeat at length. However, in terms of affordability of housing within the District Ms Gingell sets out that:

"12.29 ...there is an acute housing crisis in St Albans, with a lower quartile house price to average income ratio of 16.53. Mortgage lending is typically offered on the basis of up to 4.5 times earnings (subject to individual circumstances). Here, the affordability ratio is some 267% higher than that and rising."

- 5.39 With respect to the need for affordable housing, Ms Gingell outlines:

"5.15 ...the 2020 LHNA, identified an objectively assessed need for 13,248 net affordable homes between 2020 and 2036, equivalent to an estimated annual need of 828 affordable homes across St Albans"

- 5.40 In regard to the delivery of affordable homes she states:

"6.22 Against the most recent assessment of affordable housing need in St Albans, a shortfall of -1,428 affordable dwellings has arisen in the two first years of the 2020 LHNA period,"

"8.33 ...even if every single dwelling included in the Council's latest 5YHLS i.e., 2,145 , were to be delivered over the five year period as affordable dwellings, this would not come close to meeting the minimum affordable housing need of 4,140 dwellings¹⁵. The situation is even worse when compared to the backlog need figure of 5,570 dwellings for the period."

¹⁵ 828 x 5

5.41 To put this in further context, the emerging Local Plan is proposing to meet the Council’s standard method figure of 888 dwellings per year, 40% of which will be affordable housing meaning even with a new plan in place, affordable housing needs will not come close to being met in full.

5.42 I further note that in a number of recent appeals Inspectors have, in particular, offered considerable weight to the provision of affordable housing. In the case of the appeal at Bullens Green Lane, also within Colney Heath¹⁶, the Inspector states the following in her report:

“53. The uncontested evidence presented by the appellant on affordable housing for both local authorities illustrates some serious shortcomings in terms of past delivery trends. In relation to WHBC, the affordable housing delivery which has taken place since 2015/16 is equivalent to a rate of 23 homes per annum. The appellant calculates that the shortfall stands in the region of 4000 net affordable homes since the 2017 SHMA Update, a 97% shortfall in affordable housing delivery. If the shortfall is to be addressed within the next 5 years, it would required the delivery of 1397 affordable homes per annum. In SADC, the position is equally as serious. Since the period 2012/13, a total of 244 net affordable homes have been delivered at an average of 35 net dwellings per annum. Again, this equates to a shortfall also in the region of 4000 dwellings (94%) which, if to be addressed in the next 5 years, would require the delivery of 1185 affordable dwellings per annum.

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

5.43 Ms Gingell concludes her evidence by stating:

“12.32 Considering the authority’s past poor and lamentable record of affordable housing delivery and high and rising numbers of households on the housing register, it is my view (and the Councils) that the provision of up to 60 affordable dwellings on this site should be afforded very substantial weight in the determination of this appeal.”

5.44 Having regard to the national policy context I have referred to, the dire affordable housing situation portrayed by Ms Gingell in her evidence and fact that the Appeal Scheme provides 40% affordable housing, materially exceeding the 35% required by the St. Albans Affordable Housing SPD, which I add is guidance rather than policy, I agree with her that very substantial weight should be given to the delivery of affordable housing in this appeal – a matter that is agreed between the main parties.

The Need for Self & Custom Build Housing

5.45 The SoCG at paragraphs 6.54-6.56 summarises the relevant legal and policy considerations in relation to the provision of self-build and custom build housing. I note that the adopted Local Plan is silent in relation to self-build and custom build housing.

5.46 It is agreed that the Council is not meeting its statutory duty to meet Self-build Register demand and that there is an unmet demand for serviced plots for self- build and custom housebuilding in St Albans.

5.47 It is further agreed that the provision of 9 custom and/or self-build plots weighs in favour of the Appeal Scheme, but parties do not agree on the weight to be afforded in this regard.

¹⁶ Appeal ref. APP/B1930/W/20/3265925 (CD14.6)

5.48 The evidence of Mr Moger (CD9.2) addresses custom and self-build housing need. In terms of the need of custom and self-build housing within the District, Mr Moger sets out that:

“4.29 True demand for Self-Build and Custom Housebuilding can therefore be expected to lie between the 732 individuals and three associations of individuals currently registered on the Council’s Self-Build Register and could be as high as 977 people when using national data as a proxy, 1,292 when AMA Market Research data is utilised, and 1,353 when analysis of secondary data sources such as building plot search websites is undertaken in line with the provisions of the PPG.”

5.49 With regard to supply Mr Moger identifies that:

“6.76 There is a cumulative unmet need for at least 488 serviced plots across Base Periods 1, 2, 3, 4 and 5 of the Council’s self-build register;”

“5.18 The Council now have until 30 October 2023 to deliver 488 plots otherwise it will fail in its statutory duty for the fifth year running”.

5.50 I also note that Mr Moger identifies that the emerging Local Plan (which covers the period until 2041) only makes specific provision for 306 serviced plots. He then outlines at paragraph 7.23 onwards that:

“6.71 The emerging Plan strategy would only address 62% of the shortfall that already exists, and that is before one even considers the need for a further 226 plots arising from Base Periods 6 and 7.

6.72 The emerging Plan strategy appears destined to fail to meet both existing unmet needs as well as future needs for this type of housing.”

5.51 It is agreed that the emerging Local Plan can only be afforded limited weight¹⁷ but it is nevertheless relevant to note that Policy HOU5 of the Emerging Local Plan “requires” Broad Locations and sites of 100+ dwellings to make provision for 3% serviced plots provision and merely “encourages” such provision on sites of 10 or more dwellings. I agree with Mr Moger that it is highly unlikely that such a form of wording would result in any meaningful increase in supply above that ‘required’ to be provided on the Broad Locations and Large Sites.

5.52 Notwithstanding this, the Appeal Scheme includes 9 self-build / custom build plots which amounts to 6% of total units proposed and is therefore double that of the Council’s emerging policy.

5.53 In the appeal decision at Bullens Green Lane, Colney Heath¹⁸, the Inspector states the following in her report:

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

5.54 The Inspector attributed substantial weight to custom and self-build housing in this Appeal Decision but as Mr Moger identifies, the shortfall has increased by 160% since this appeal was determined (para 5.18 of CD9.2).

5.55 Given the above, I am in full agreement with Mr Moger that there is a very substantial level of unmet need within St Albans for this type of housing. I note the adopted Local Plan is silent in relation to self-build and custom build

¹⁷ Para 5.12 of the SoCG (CD8.3)

¹⁸ Appeal ref. APP/B1930/W/20/3265925 (CD14.6)

housing, with the Appeal Scheme proposing double that required through the emerging Local Plan. Accordingly, I agree with Mr Moger very substantial weight should be afforded to the provision the 9 custom and self-build plots.

Building a Strong, Competitive Economy

5.56 The Appeal Scheme will result in a number of economic benefits, including:

- The direct creation of construction jobs;
- The creation of other jobs in construction related activities such as brick manufacturing; and
- Additional household expenditure in the local area.

5.57 Page 13 of the document entitled ‘The Economic Footprint of UK House Building’ published in March 2018 by the House Builders Federation (CD16.2) confirms that the scale of employment supported by house building is equivalent to between 2.4 and 3.1 direct, indirect and induced jobs per new dwelling built. As such, the Appeal Scheme would create between 360 and 465 direct, indirect and induced jobs.

5.58 In addition to construction phase employment and related expenditure, the new residents would help to support local businesses and communities in the longer-term by way of additional disposable income expenditure and usage.

5.59 The Office for National Statistics (“ONS”) family spending in the UK statistics for April 2020-March 2021 identifies that total average weekly household expenditure was £481.50. In total, the direct expenditure for 150 households would amount to £3,755,700 per annum (£481.50 x 150 homes x 52 weeks).

5.60 This additional spend is significant, and would help support the long-term vitality and viability of the District’s economy, services and facilities.

5.61 Paragraph 81 of the Framework advises that significant weight should be placed on the need to support economic growth and productivity. Taking into account both local business needs and wider opportunities for development, I therefore attach significant weight to the economic benefits associated with the Appeal Scheme. This approach follows that taken by the Inspector in the Maitland Lodge, Billericay¹⁹ appeal which was for 47 new homes and therefore resulted in materially lower economic benefits than the Appeal Scheme.

Green Belt

5.62 It is agreed the Appeal Scheme would amount to inappropriate development in the Green Belt. Paragraph 147 of the Framework states that such development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances (“VSC”). Paragraph 148 then explains that substantial weight should be given to any harm to the Green Belt and that VSC will not exist unless the potential harm to the Green Belt by reason of the inappropriateness, and any other harm arising from the proposal, is clearly outweighed by other considerations.

Impact on openness

5.63 The Framework does not define openness, however the PPG²⁰ includes a non-exhaustive list of matters that should be taken into account when assessing Green Belt openness, which are as follows:

- *“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;*

¹⁹ Paragraph 41 of Appeal ref. APP/V1505/W/22/3296116 (CD14.20)

²⁰ Paragraph: 001 Reference ID: 64-001-2019072

- *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.”*

Spatial impact on openness

5.64 With regard to the spatial impact on openness Mr Self sets out that:

“5.52 In the previous section I have identified that approximately half of the Site will remain undeveloped and that the open land will primarily be used for ecological enhancements. The balance of the Site will be developed for housing and supporting infrastructure and that will clearly have a significant impact on the spatial openness of the greater part of the Site”.

“5.53 For the reasons set out below, the loss of openness that the Appeal Scheme will give rise to, will only be experienced, for the most part, from the near distance and as such the impact on the wider Green Belt will be strictly limited”.

Visual impact on openness

5.65 Mr Self comments the following in respect to the visual impact on openness as a result of the Appeal Scheme:

“5.55 Given that the majority of the external boundaries of the Site already have built development, or established planting, alongside them, then the Appeal Scheme will benefit from a good degree of physical and visual containment from day 1.

5.56 As the hedgerow on the north eastern Site boundary matures and as the additional planting on the field boundaries becomes established, the greater part of the development will be screened from the wider landscape.

5.57 Whilst there is currently no public access onto the Site, views from within it, will inevitably change. The impact on the wider Green Belt will however be localised and will reduce over time as the planting matures.”

5.66 In relation to the degree of activity, it is possible that the Appeal Scheme may, at times, be more noticeable during the construction phase, for example before planting has been established, but the construction period will be relatively short-lived – I would anticipate circa 3 years. As I have outlined earlier in my evidence, the PPG allows a consideration of the duration of effects and thus this limits the weight given to any such impacts to my mind.

5.67 During the operational phase, there will be increased movements of vehicles and pedestrians within the site and at the site entrance on Tollgate Road, as compared with the existing baseline. However, movements associated with the Appeal Scheme would all route to and from Tollgate Road which is a busy road with a fairly high volume of traffic moving along it each day and I note that the Committee Report (CD6.1) states the following at paragraph 8.12.23:

“The modelling results indicate that the proposed development would have minimal impact on the operation of Tollgate Road in the morning and evening peak periods.”

5.68 Given the above, I conclude that traffic travelling to and from the Appeal Site would not have any discernible impact upon any perception of openness of the Green Belt.

5.69 Finally, the PPG indicates that consideration can be given to the duration and remediability of effects. Plainly the Appeal Scheme, in its operational phase, is permanent and thus not remediable.

Conclusions on impacts on openness

5.70 Given the above, I am in agreement with Mr Self, that whilst the Appeal Scheme would result in a significant harm to openness at a Site level, the impact of the development on the Green Belt would be strictly localised.

Impact on the purposes of including land in the Green Belt

5.71 In terms of assessing ‘any other harm’, I first turn to impact on the five purposes of including land in the Green Belt which are set out a paragraph 138 of the Framework.

5.72 It is common ground with the Council that the Appeal Scheme does not conflict with purposes a) and b), whilst it is also agreed that purposes d) and e) are not relevant to the Appeal. I do not need to consider these purposes further in my evidence.

c) to assist in safeguarding the countryside from encroachment;

5.73 The evidence of Mr Self finds the following in respect of impacts upon Green Belt purpose c):

“5.46 the Appeal Scheme will, as a matter of fact, encroach onto the greater part of the Site, it will have only a strictly limited effect on the wider countryside due to the relationship of the Site to Colney Heath and the established Site boundaries which will be strengthened with new planting.

5.48 The Site is therefore considered to make a relatively weak contribution to this Green Belt purpose.”

5.74 I am in full agreement that whilst the Appeal Scheme would encroach into the countryside, this would be a minor incursion given the Site itself performs weakly against this purpose.

Summary of Green Belt Harm

5.75 Overall and having regard to the evidence of Mr Self, he identifies that the impacts on the Green Belt are as follows:

- Significant impact on the openness of the Green Belt at a site level, and a strictly limited impact on the wider Green Belt;
- Minor impact against purpose c) noting the Site makes a relatively weak contribution to this Green Belt purpose already

5.76 I agree with this analysis.

Landscape, Character and Appearance

5.77 It is common ground between the parties that the Site does not carry any landscape designations and is not a valued landscape in the terms of Paragraph 174 of the Framework. The site is however located within the Countryside where the Framework at paragraph 174(b) states planning decisions should recognise the intrinsic character and beauty of the countryside.

5.78 The evidence of Mr Self (CD9.5) has assessed the existing site and its contribution to the countryside it is situated within:

“6.10 The Site itself is of limited intrinsic landscape quality. I say that because there are no landscape features within the Site of particular value e.g. veteran or TPO trees; the underlying landform is relatively flat; and the land is intensively grazed and is sub divided by post and wire fences. There are also a number of detracting features, such as the areas of hardstanding; the manège, stables, and outbuildings, all of which are of a utilitarian appearance.”

“4.24 Given the overall character of the Site, the intervisibility with neighbouring housing and the lack of distinctive landscape features within the Site, it is considered to be of medium to low landscape sensitivity to the proposed development”.

5.79 Mr Self also considers the merits of the appeal scheme and how it will contribute to character and appearance as follows:

“6.14 Approximately 48% of the Site will be remain as green open space. This will include Colney Heath Farm Meadows, new areas of planting, SuDS features and informal areas of open space. In addition, there will be incidental areas of open space within the development envelope, street trees and there will also be the gardens of the properties. Overall these will provide significant landscape benefits.”.

5.80 Mr Self concludes on the impact on the landscape as follows:

“6.22 The character of the greater part of the Site will change from equestrian use to housing with associated green infrastructure. The key feature of value within the Site is the Colney Heath Farm Meadows Wildlife Site which will be retained and enhanced. The existing field pattern will also be respected with the external field boundaries retained and enhanced. The Appeal Scheme will therefore respond to the prevailing pattern of the countryside in an appropriate manner.”

“7.3 From my observations on Site and from the wider area I believe that there will be a negligible adverse impact on the character of the wider landscape.”

5.81 Mr Self also considers the Appeal Scheme’s impact on the settlement pattern of Colney Heath itself. In this regard, Mr Self identifies that:

“5.10 The Appeal Scheme will complement the nucleated pattern of development in the southern part of Colney Heath and will be of a similar scale to the neighbouring development”.

5.82 Having walked the site and surrounding settlement of Colney Heath myself I am in agreement with Mr Self that the Appeal Scheme will complement the nucleated pattern of development and result in negligible impacts on the character of the countryside.

5.83 Overall, I am in full agreement with Mr Self that the Appeal Scheme appropriately responds to the prevailing character of the area and conclude that the Appeal Scheme is consistent with the Framework in respect of landscape, character and appearance, effectively limiting effects to a site level through a change from equestrian use to a housing development.

Location and Sustainability

5.84 Paragraph 105 of the Framework states that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.

5.85 Paragraph 110a of the Framework seeks to ensure that “appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location.”

5.86 The evidence of Mr Dimbylow (CD9.4) considers that:

“3.43 I consider the walking accessibility of the site to be good, with day-to-day facilities available within reasonable walking distance. A local shop and pub are within walking distance as are the bus stops. The village hall which has a pre-school is also close. The proximity of the site to the primary school, and secondary school bus services mean education trips have a realistic alternative to travel by private car”.

“3.47 In terms of sustainability, I consider that the location of the site is conducive to providing future residents with a realistic choice to the private car for many day-to-day journeys”.

5.87 This is a position I wholly agree with Mr Dimbylow on, and it is my view that there is an appropriate choice of sustainable transport modes available to future residents that would not mean that they are wholly reliant on a car to meet daily needs. Furthermore, as Mr Dimbylow refers to in his evidence, the sustainability credentials of Colney Heath have recently been subject scrutiny under the Inquiry for the Bullens Green Lane Appeal (CD14.6), where the Council were unable to substantiate their assertion Colney Heath was an unsustainable location.

5.88 At paragraphs 40 and 41 of this Appeal Decision, the Inspector states:

“To my mind, the facilities and services available within Colney Heath and the accessibility of these facilities both on foot and by cycle mean that a number of day to day needs could be met without reliance on the private car. As a result, the location of the appeal site cannot be described as isolated. These factors weigh in favour of the appeal proposals.

Overall and to conclude, taking into account the essence of the Framework test as to whether a genuine choice of transport modes is on offer, the appeal proposals would in my view represent a sustainable location for new residential development.” (my emphasis)

5.89 As Mr Dimbylow records, there has been no material change in circumstances since the granting of this appeal decision that would lead to an alternative conclusion, one which is highly relevant to the Appeal Scheme noting its proximity to the Appeal Site.

5.90 Accordingly, it is my opinion that the Appeal Site represents an appropriately sustainable location for the development proposed and this weighs neutrally in the planning balance.

Access

5.91 Paragraph 109 of the NPPF stipulates that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual impacts on the road network would be ‘severe’.

5.92 It is common ground between the appellant and the Council that safe access and egress can be achieved to and from the Site.

Biodiversity and Ecological Enhancements

5.93 Paragraph 179b of the Framework states that plans should:

“promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.”

5.94 Paragraph 180a then states that when determining planning applications, local planning authorities should apply the following principles:

“a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;”

5.95 The Environment Act requires a 10% net gain in biodiversity but this does not become mandatory until the Biodiversity Net Gain Regulations come in to effect in November 2023 and in any event, this will not apply to the Appeal Scheme having regard to transitional measures²¹.

5.96 The submitted Ecological Impact Assessment (CD4.8) demonstrates a range of biodiversity enhancements are proposed as part of the Appeal Scheme. A planning condition can be attached to secure a biodiversity net gain which will include off-site improvements on land owned by the Appellant. The Appellant is willing to deliver an off-site contribution equating to a 10% increase of the Appeal Site’s existing value. This is materially higher than a ‘measurable net gain’ referenced in the Framework.

5.97 There is nothing in the Framework to suggest that reduced weight should be given to biodiversity enhancements achieved off-site and overall, I attach significant weight to this benefit.

²¹ DEFRA Land use: Policies and Framework – BNG: What’s happened and what’s coming next (20/07/2023)

6. Rule 6 Party Comments

6.1 Colney Heath Parish Council (“CHPC”) has been granted Rule 6 status for the appeal. They have produced a Statement of Case (CD7.3) which raises a number of matters. The following matters raised in CHPC’s SoC has already been dealt within my evidence which I do not propose to repeat.

- Housing land supply;
- Locational sustainability and sustainable modes of transport;
- Green Belt harm;
- Heritage harm;
- Landscape and character impacts; and
- Extent of PDL.

6.2 Other matters raised by CHPC but not already addressed in my evidence are as follows:

- The definition of affordable housing and affordable housing mix;
- Coursers Road has been omitted from road safety assessment. They will provide evidence on the importance of this route and that of the Bell roundabout as well as its road traffic accident history;
- That cars have to park on key roads due to historic layout of village – therefore dropping roads capacity;
- Lack of existing school spaces;
- Car emissions;
- Evidence on the current projects aiming to improve the River Colne.

Affordable Housing Definition and Mix

6.3 The evidence of Ms Gingell covers the appropriateness of the affordable housing definition in the context of Colney Heath, in line with the Framework and whether this will provide truly affordable housing for the area. In summary following an analysis of Colney Heath, Ms Gingell concludes:

“10.8 ...the following analysis demonstrates that each of the proposed affordable housing tenures at the appeal site are in fact affordable to a range of household types on lower quartile incomes”.

6.4 Given that the affordable units are available to those on lower quartile incomes, I would agree the affordable housing is genuinely affordable.

6.5 With regards to the appropriateness of the affordable housing mix, which includes smaller one and two bed units which CHPC states are unacceptable within Colney Heath as:

“3.09 Rural locations are not suitable sites for one or two bedroom dwellings due to the lack of public transport and social facilities. Building large numbers of smaller starter homes in this rural location will permanently embed carbon emissions.”

- 6.6 The matter of the Site being a sustainable location that offers a variety of modes of transport is a matter that I have already covered through the evidence of Mr Dimbylow, so will not re-address this matter specifically. However, importantly Ms Gingell notes in her evidence with regards to the CHPC’s comments:

“10.7 This issue has no bearing on the need for affordable housing in St Albans District nor Colney Heath and does not diminish the weight attributed to the proposed affordable units.”

- 6.7 Accordingly, my view in relation to the weight to be given to the provision of affordable housing remains.

Exclusion of Coursers Road and Historic Layout of the Village

- 6.8 With regards to the impact of traffic on the roads of the village Mr Dimbylow sets out within his evidence (CD9.4):

6.2 “Whilst I recognise that new housing will inherently generate some traffic movements, I consider that these have been quantified and assessed in the Transport Assessment using an agreed methodology.”

6.6 “The Transport Assessment undertook traffic surveys and considered the impact of the development including traffic growth and concluded the impact will not be severe, this is common ground with the highway authority.”

- 6.9 Based on the methodology of the highway safety work undertaken I am satisfied that the circumstances of Colney Heath have been adequately considered. It is also of note that the approach to assessing the impact of the Appeal Scheme on the wider highway network and conclusions of the Transport Assessment and Road Safety Audit have been agreed with the County Highway Authority through the Highways SoCG (CD8.2 paragraph 3.3 and 3.14).

- 6.10 With regards to the comment about Coursers Road being excluded from the highway safety work supporting the application, this is simply incorrect. As Mr Dimbylow sets out in paragraphs 6.24 of his proof of evidence, the Transport Assessment (CD5.12) submitted by RPS in support of the application includes Coursers Road and the roundabout junction the CHPC also refer to.

- 6.11 I am therefore in agreement with Mr Dimbylow that safe and suitable access to the site can be achieved by all users as demonstrated through the Road Safety Audit, and that the impacts of additional movements associated with the site has been adequately assessed through the Transport Assessment, the methodology of both of which have been agreed with the County Highways Authority.

Car Emissions

- 6.12 The SoCG outlines at paragraphs 6.74-6.76 that the Appeal Scheme is acceptable in relation matters relating to air quality.

Impact on the River Colne and Flood Zone Designation

- 6.13 The Appeal Scheme is supported by a Flood Risk Assessment, Surface Water and Foul Water Drainage Strategy (CD4.9) and Drainage Letter from Stantec (CD5.1). The Environment Agency, Affinity Water and the Council’s Drainage Consultant have confirmed no objection to the Appeal Scheme, subject to the imposition of conditions. Furthermore, no housing is proposed to be located in the areas outside of Flood Zone 1. A technical note has also been prepared by Stantec to address this and other related matters which can be found at Appendix 4 of my evidence.

6.14 I am therefore of the view that the Appeal Scheme will not materially impact the River Colne nor will future residents be at risk from flooding or will the Appeal Scheme increase flooding elsewhere.

7. Third Party Comments

7.1 A number of comments are raised by third parties. The majority of matters are addressed within this SoC, SoCG or the topic based SoCGs, however below is a response to the specific points:

- **Public transport** – The evidence of Mr Dimylow demonstrates that the Appeal Site will have suitable access to public transport modes
- **Pedestrian and cycle connections** – The evidence of Mr Dimylow demonstrates that the Appeal Site will have suitable access to pedestrian and cycle connections such that a reliance upon the private motor vehicle can be avoided.
- **Traffic impacts in the local area** – It is agreed with the Council that the Appeal Scheme is acceptable in relation to highway safety and capacity.
- **Heritage impacts** – The Appeal Scheme is supported by an Archaeology and Heritage Assessment and a Heritage Setting Addendum. It is common ground that whilst less substantial harm is identified to the designated heritage assets, the public benefits outweigh the harm.
- **Development within the Green Belt** – My evidence, along with the evidence of Mr Self addresses this matter.
- **Character of development** – It is common ground that the landscape impacts will not be significant on the character of the landscape / townscape in the immediate vicinity of the Appeal Site and there will be no material effects on the wider, rural landscape character around Colney Heath.
- **Flood risk / drainage concerns** – the Appeal Scheme is supported by a Flood Risk Assessment, Surface Water and Foul Water Drainage Strategy (CD4.9) and Drainage Letter from Stantec (CD5.1). The Environment Agency and the Councils Drainage Consultant have confirmed no objection subject to the imposition of conditions.
- **Flooding Sequential Test** – It is common ground between the main parties that a sequential test does not need to be applied. The Flood Risk Assessment that accompanied the application (CD4.9) confirms that the sequential test is not required. However, for clarity I address each potential source of flooding below through reference to the Flood Risk Assessment.

Fluvial Flood Risk

All built development is located in Flood Zone 1 (low risk) with minimum finished floor levels proposed at 72.45m. The EA modelled maximum flood level including climate change adjacent to the site is 71.84m AOD, providing a minimum freeboard of 600mm, in the southern most corner of the site, increasing to 770mm in the eastern most corner of the site. The area adjacent to the River Colne is located in Flood Zone 2 and 3 (medium to high risk), however there is no development proposed in this area. As all built development is within Flood Zone 1 the Flood Risk assessment identifies that the overall fluvial flood risk to the Appeal Scheme is low. As such, this does not trigger the need for the sequential test.

Surface Water Flood Risk

The majority of the site is shown to be at very low risk of surface water flooding. A small area of surface water flood risk is shown along the northern boundary, behind the existing properties fronting Tollgate Road. Based on the topographical survey, the Flood Risk Assessment outlines this area of flood risk is considered to be as a

result from surface water runoff ponding in localised low spots on soil with impeded drainage characteristics, based on the clay soil conditions below. Given that this is the case the FRA confirms that there is a low surface water flood risk where the built development is to be situated, thereby not triggering the sequential test.

It is also noted that there is a corridor of medium to high probability of pluvial flooding in the lowest parts of the site, immediately adjacent to the watercourse and with a similar extent to the fluvial floodplain. However, as with the fluvial flood risk, no built development is proposed within this section of the site thereby making the pluvial flood risk to the Appeal Scheme low. As such, this does not trigger the need for the sequential test.

Groundwater Flood Risk

The FRA confirms that the water table is closer to the ground level to the south and west of the Site. When the water table is high, groundwater will emerge first in the lowest lying areas of the site, closest to the channel, with a similar extent to the fluvial and pluvial flood extents, in the well-defined corridor. Looking at topographic information, the built development is located several metres above that corridor and therefore will be at low probability of groundwater flooding

Reservoir and Sewer Flood Risk

As confirmed by the FRA, there would be low flood risk from reservoir and sewer flood risk.

Given the above, I consider the Appellant has sufficiently demonstrated that the development would be steered to areas of the lowest risk of flooding from any source, as required by paragraph 162 of the Framework. Given that this is the case, the sequential test is not required to be applied to the Appeal Scheme.

- **Chalk stream** – the Appeal Scheme is supported by a Flood Risk Assessment, Surface Water and Foul Water Drainage Strategy (CD4.9) and Drainage Letter from Stantec (CD5.1). The Environment Agency, Affinity and the Council’s Drainage Consultant have confirmed no objection subject to the imposition of conditions.
- **Underground Chalk Stream** – Unfortunately third-party comments have mis-interpreted some technical information and there is no underground chalk stream to the north of the Site. A technical note has been prepared by Stantec addressing this and can be found at Appendix 4 of my evidence.
- **Previously Developed Land** – My evidence outlines the justification for identifying all parts of the Appeal Site comprise PDL.
- **Impacts on wildlife** – Natural England confirmed no objection and Hertfordshire Ecology confirmed that the Appeal Scheme is considered acceptable subject to the imposition of conditions. It is common ground that the Appeal Scheme is satisfactory in respect of its ecological impact.
- **Impacts on services and facilities** – The Appeal Scheme will make financial contributions to mitigate impacts upon a range of existing infrastructure providers. This will be secured by a Section 106 legal agreement.
- **Noise** – Environmental Compliance confirmed that the Appeal Scheme is acceptable in terms of noise pollution. This is also common ground with the Council.
- **Air Quality** – Environmental Compliance confirmed that the Appeal Scheme is acceptable in terms of air pollution. This is also common ground with the Council.

- **Contamination** – Environmental Compliance confirmed that the Appeal Scheme is acceptable in terms of contamination. This is also common ground with the Council.
- **Affordability** – This is addressed by the evidence of Ms Gingell and highlighted in my evidence.

8. Planning Balance

Heritage Balance (paragraph 202 of the Framework)

8.1 It is common ground the Appeal Scheme would cause less than substantial harm to the setting of the Grade I listed North Mymms Park House as well as the Grade II listed Colney Heath Farmhouse and Barn.

8.2 Paragraph 202 of the Framework states:

“Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.”

8.3 It is common ground the impact on the designated heritage assets sits on the lowermost spectrum of less than substantial harm spectrum²² and that the public benefits of the Appeal Scheme outweigh this harm²³. I agree that the public benefits of the Appeal Scheme, namely the provision of market, affordable and self build and custom build plots outweighs this harm and therefore the balance expressed at paragraph 202 of the Framework is passed.

Very Special Circumstances Balance (paragraph 148 of the Framework)

8.4 It is common ground that the Appeal Scheme would comprise inappropriate Green Belt development and should only be allowed if the potential harm to the Green Belt and any other harms is clearly outweighed by other considerations (paragraph 148 of the Framework)

8.5 I have already outlined, through reference to the evidence of Mr Self, that the Appeal Scheme would result in a significant loss of openness at a site level with a strictly limited impact on the wider Green Belt namely due to the contained nature of the site, existing urban influences and built form on site.

8.6 It is agreed that in relation to Green Belt purposes, the only harm arising is in respect of purpose c) – preventing encroachment. Drawing again on the evidence of Mr Self, the site performs weakly against this purpose and as such the conflict with this purpose would result in “negligible impact” on the function of the wider Green Belt.

8.7 Whilst substantial weight must be given to inappropriate development in the Green Belt, the harm to openness is significant and the harm to Green Belt purpose c) is limited, albeit that does not diminish the weight to be given to such harms.

8.8 The Framework also requires ‘any other harms’ arising as a result of the Appeal Scheme to be taken into account.

8.9 In relation to character and appearance, the SoCG confirms at paragraph 6.22 that landscape impacts will not be significant and limited to impacts on the Site and its immediate vicinity, with no material effects on the wider landscape. The evidence of Mr Self concludes the Appeal Scheme will respond to the prevailing pattern of the countryside in an appropriate manner.

8.10 There would be the less than substantial harm to the setting of designated heritage assets and it is agreed this is at the lowermost end of that spectrum. Whilst I have demonstrated the Appeal Scheme passes the heritage balance expressed at paragraph 202 of the Framework, this harm must still be considered as part of the overall balance.

²² Heritage Statement of Common Ground paragraph 2.1 (CD8.4)

²³Statement of Common Ground paragraph 6.72 (CD8.3)

- 8.11 The agreed position between the Council and Appellant concludes a ‘very minor’ impact upon the setting of the North Mymms Parkland and Tollgate Farm, both of which are non-designated heritage assets. The Framework states “*a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.*”
- 8.12 I consider matters relating to locational sustainability weigh neutrally in the planning balance.
- 8.13 In my view, these harms are clearly outweighed by other considerations as outlined in my evidence and summarised below.
- 8.14 I consider that the entire extent of the Appeal Site to comprise PDL. The Site is therefore generally a sequentially preferable location for development over other greenfield Green Belt sites, particularly in the highly constrained context of St Albans District. I place significant weight on the effective use of PDL to provide homes, which accords with paragraph 119 of the Framework and aligns with the weight given by the Inspector at paragraph 35 of the Maitland Lodge appeal⁷
- 8.15 I have outlined that the weight given to the delivery of market housing must, in my view, be given in the context of the agreed substantial housing land supply shortfall, the woeful HDT results and fact that there is no Local Plan strategy in place, nor will there be for more than 2 years, to rectify this crisis. Indeed, I have outlined that I find it difficult to imagine a more severe situation in respect of housing delivery than that found in the District of St Albans. The Council’s failures in plan-making means that the only mechanism for resolving the supply positions is through applications for windfall developments such as this. Accordingly, I afford very substantial weight to the supply of market housing, which is agreed with the Council, and in line with the weight applied in a variety of recent decisions made by both the Council and Planning Inspectorate within the District as previously referred to in my evidence.
- 8.16 Having regard to the dire affordable housing situation portrayed by Ms Gingell in her evidence and fact that the Appeal Scheme provides 40% affordable housing, materially exceeding the 35% required by St. Albans Affordable Housing SPD (2004) (CD2.4) which does not carry the same status as policies within the development plan, I conclude that very substantial weight should be given to the delivery of affordable housing in this appeal. This level of weight is agreed with the Council, and in line with a variety of recent decisions made by the Council and Planning Inspectorate within the District as previously referred to in my evidence.
- 8.17 Having regard to the woeful self build and custom build position outlined in the evidence of Mr Moger, the fact that the adopted Local Plan is silent in relation to the provision of self-build and custom build housing and that the Appeal Scheme proposes double that required through the emerging Local Plan, I conclude that very substantial weight should be given to the provision of 9 serviced custom and self-build plots.
- 8.18 The Written Ministerial Statement of December 2015 (CD16.12) indicated that unmet need is unlikely to clearly outweigh harm to Green Belt and any other harm so as to establish very special circumstances. However, my evidence has made clear that this is not the basis upon which it is suggested the appeal should be allowed and in any event I note that the Inspector dealing with the aforementioned Colney Heath appeal succinctly dealt with this matter where at paragraph 47 she said:

“I am aware of the Written Ministerial Statement of December 2015 which indicates that unmet need is unlikely to clearly outweigh harm to Green Belt and any other harm so as to establish very special circumstances. However, in common with the appeal decision referred to, I note that this provision has not been incorporated within the Framework which has subsequently been updated and similar guidance within the Planning Practice Guidance has been removed. I can therefore see no reason to give this anything other than little weight as a material consideration.”

- 8.19 I raise this matter as the Council were unwilling to include it within the SoCG and I wholly agree with the above conclusion.
- 8.20 Significant weight should be given the economic benefits during the construction and operational phase of the development, in line with paragraph 81 of the Framework.
- 8.21 Significant weight should be given to the biodiversity enhancements associated with the Appeal Scheme. This is justified on the basis the development plan is silent on this matter, the Framework only requires a measurable gain and whilst the Environment Act requires a 10% net gain, this does not become mandatory until the Biodiversity Net Gain Regulations come in to effect in November 2023, which in any event will not apply to the Appeal Scheme having regard to transitional measures.
- 8.22 These factors, when considered collectively, demonstrate that the benefits of the Appeal Scheme *clearly* outweigh the harm and therefore VSC exists to justify the grant of planning permission.

The Tilted Balance (paragraph 11d of the Framework)

- 8.23 It is common ground with the Council that it cannot demonstrate a five year housing land supply and that it only achieved a HDT of 69% in 2021. In such circumstances the ‘tilted balance’ expressed at paragraph 11d of the Framework is engaged.
- 8.24 As I have found VSC exists, Green Belt policies within the Framework do not provide a clear reason for refusing the development proposed and limb i of paragraph 11d of the Framework does not apply. The Appeal scheme should therefore be determined in accordance with limb ii of paragraph 11d which requires an assessment of whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As I have established that VSC exists, it is clear that the adverse impacts of the Appeal Scheme do not come close to significantly and demonstrably outweighing the benefits.
- 8.25 Given the above, planning permission should be granted in accordance with paragraph 11d of the Framework.

Section 38(6) Balance

- 8.26 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, where regard is to be had to the statutory development plan in determining an application for planning permission, the determination shall be made in accordance with the development plan, unless material considerations indicate otherwise.
- 8.27 Relevant case law²⁴ confirms that in applying Section 38(6) it is necessary to have regard to the accordance of the proposals with the development plan as a whole.
- 8.28 I have applied paragraph 148 of the Framework and found that VSC exists, meaning the Appeal Scheme does not conflict with Policy 1 of the Local Plan.
- 8.29 I have then assessed compliance with all other disputed policies and found the Appeal Scheme to comply or is capable of complying at the reserved matters stage. There is no other alleged conflict with relevant development plan policies. On this basis, I consider the Appeal Scheme to comply with the development plan taken as a whole.

²⁴ R. v. ROCHDALE METROPOLITAN BOROUGH COUNCIL ex p. MILNE 31st July 2000 (CO/292/2000) at paragraphs 49 and 50 (CD13.1)

8.30 Given the above, material considerations do not indicate determining the Appeal Scheme other than in accordance with development plan and therefore I respectfully urge the Inspector to allow the appeal.

9. Summary Proof

9.1 My name is Oliver Bell and I am a Chartered Town Planner and a member of the Royal Town Planning Institute. I appear at this Inquiry on behalf of Vistry Homes and have been directly involved in the project since January 2022.

9.2 It is common ground with the Council that:

- a. The development plan is more than five years old and therefore the Council's housing land supply should be measured against the local housing need figure calculated using the Government's standard method.
- b. The Council identifies a five year housing land supply of 2.0 years, whereas the Appellant considers the position to be lower at 1.97. It is in any event agreed that the housing land supply shortfall is substantial.
- c. The emerging Local Plan should be afforded limited weight in the determination of this appeal.
- d. The Council has a severe and acute shortfall in the delivery of market housing. The Appeal Scheme, at 81 market dwellings, could be delivered in full over the next five years and would make a material contribution towards supply to which very substantial weight should be given.
- e. There is an acute need for affordable housing within St Albans, and the provision of 60 much needed affordable units (40%), which exceeds the minimum SPD requirement of 35%, represents a social benefit to which very substantial weight should be given.
- f. The Appeal Scheme would not conflict with Green Belt purposes a) and b), whilst d) and e) would not be relevant to the Appeal.
- g. The Appeal Scheme is acceptable in terms of highway capacity and safety considerations.
- h. The proposed development is satisfactory in respect of its impacts upon ecology, trees, flooding/drainage and air quality subject to conditions.

9.3 I now address the main issues identified in the Inspector's Post CMC note.

Main Issue - The effect on the openness and purposes of the Green Belt;

Openness

9.4 Drawing on the evidence of Mr Self, I agree that there would be a significant impact upon openness of the Green Belt, importantly this would be at site level and strictly limited in the wider Green Belt. From a visual perspective Mr Self identifies that the impact on the wider Green Belt would be localised and will reduce over time as planting matures.

9.5 Accordingly, I agree with Mr Self that the Appeal scheme would result in a significant impact on the openness of the Green Belt which would be strictly localised.

Purposes

- 9.6 It is common ground between the Council and Appellant that the Appeal Scheme does not conflict with purposes a) and b), whilst it is further agreed purposes d) and e) would not be relevant to the appeal.
- 9.7 Mr Self identifies that the Appeal Scheme whilst conflicting with purpose c) *to assist in safeguarding the countryside from encroachment*, the Appeal Scheme would only have a strictly limited effect on the wider countryside due to the relationship of the Site to Colney Heath and the established Site boundaries which will be strengthened with new planting. I agree with Mr Self that the Site is therefore considered to make a relatively weak contribution to this Green Belt purpose.

Conclusion on Green Belt

- 9.8 In considering both the Appeal Schemes impact on openness and on the purposes of the Appeal Scheme, on the basis of Mr Self's evidence I consider that the totality of harm would be:
- Significant impact on the openness of the Green Belt at a site level with localised visual harm and a negligible impact on the wider Green Belt;
 - Minor impact against purpose c) noting the Site makes a relatively weak contribution to this Green Belt purpose already

Main Issue - The effect on the landscape character and appearance of the site and surrounding countryside

- 9.9 The evidence of Mr Self concludes that the Appeal Scheme would complement the nucleated pattern of development and result in negligible impacts on the wider character of the countryside. Furthermore, that the Appeal Scheme appropriately responds to the prevailing character of the area. I therefore agree with Mr Self that that the visual impacts of the Appeal Scheme would be effectively limited to a site level through a change from equestrian use to a housing development.

Main Issue – The effect on the setting and significance of nearby heritage assets

- 9.10 Through the work conducted through the Heritage SoCG, there are no significant areas of disagreement in relation to the impact on heritage assets. The following is agreed through section 3 of the heritage SoCG (CD8.4) between the Council and Appellant:
- Grade II Listed Colney Heath Farmhouse and Barn - less than substantial harm and at the lowermost end of the spectrum
 - Grade I Listed North Mymms Park House - less than substantial harm and at the lowermost end of the spectrum
 - Non-designated North Mymms Park Parkland - very minor harm
 - Non-designated Tollgate Farm – very minor harm

9.11 It is also common ground between the appellant and Council that, in line with paragraph 202 of the Framework, the public benefits of the Appeal Scheme outweigh the less than substantial harm identified to heritage assets²⁵. The Appeal Scheme therefore does not conflict with Policy 86 of the Local Plan. I agree.

Main Issue - Whether the appeal site is in a location which is or can be made sustainable in transport terms

9.12 Drawing upon the evidence of Mr Dimbylow, I consider that due to the close proximity of the Appeal Site to a variety of services and facilities, future residents would have a realistic alternative to the private car for travel to meet their daily needs. I therefore consider that the Appeal Site is situated in a sustainable location and complies with paragraph 105 of the Framework.

9.13 Furthermore, the sustainability credentials of Colney Heath have recently been subject scrutiny under the Inquiry for the Bullens Green Lane Appeal (CD14.6), where the Council were unable to substantiate their assertion Colney Heath was an unsustainable location. There have been no material changes in circumstances since this decision.

Main Issue - Whether or not the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

9.14 I accept that the Appeal Scheme would be inappropriate Green Belt development. In such circumstances, Paragraph 148 of the Framework requires the potential harm to the Green Belt by reason of inappropriateness, and any other harms resulting from the proposal, to be clearly outweighed by other considerations in order for VSC to exist.

9.15 I have outlined, through reference to the evidence of Mr Self, that the Appeal Scheme would result in a significant impact on the openness of the Green Belt, however this would be limited primarily to the Site itself given its relationship to the settlement of Colney Heath.

9.16 The Appeal Scheme only conflicts with purpose c) as expressed at paragraph 138 of the Framework. However, I have found through reference to the evidence of Mr Self, that the increase in encroachment will be minor noting the Site makes a relatively weak contribution to this Green Belt purpose already.

9.17 Therefore, whilst substantial weight must be given to inappropriate development in the Green Belt and any other harm to the Green Belt, the harm to openness is tempered to some degree owing to the particular characteristics of the Appeal Site. Furthermore, only minor harm to one purpose of including land within the Green Belt arises, thus overall any harm to the Green Belt beyond inappropriateness is, in my view, significant albeit that does not diminish the substantial weight to be given to it.

9.18 The Framework requires 'any other harm' resulting from the Appeal Scheme to be taken into account.

9.19 In relation to character and appearance, the SoCG (CD8.3) confirms at paragraph 6.22 that landscape impacts will not be significant and limited to impacts on the Site and its immediate vicinity, with no material effects on the wider landscape. The evidence of Mr Self concludes the Appeal Scheme will respond to the prevailing pattern of the countryside in an appropriate manner and due to the Site being visually well contained and its rural fringe character, the Appeal Scheme will not result in any significant effects to the character of the wider landscape.

²⁵ Paragraph 6.72 of the SoCG (CD8.3)

9.20 There would be the less than substantial harm to the setting of designated heritage assets and it is agreed this is at the lowermost end of that spectrum. Whilst I have demonstrated the Appeal Scheme passes the heritage balance expressed at paragraph 202 of the Framework, this harm must still be considered as part of the overall balance.

9.21 The evidence of Ms Stoten (CD9.3) also concludes a ‘very minor’ impact upon the setting of the North Mymms Parkland (paragraph 5.6) and Tollgate Farm (paragraph 5.7), both of which are non-designated heritage asset. The Framework states “a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”

9.22 In my view, these harms are clearly outweighed by other considerations as outlined in my evidence, which are summarised below.

Benefits of the Appeal Scheme

9.23 I am of the opinion the paddocks have a clear intimate association with the stable buildings and menage, such that they form part and parcel of the same curtilage. It is therefore the case that the Appeal Site meets the definition of previously developed land and is a sequentially preferable location for development over other non PDL Green Belt sites, particularly in the context of St Albans District. I place significant weight on the effective use of PDL to provide homes, which accords with paragraph 119 of the Framework.

9.24 I have outlined that the weight given to the delivery of market housing should be given in the context of the agreed substantial housing land supply shortfall, the woeful HDT results and fact that there is no Local Plan strategy in place, nor will there be for many years, to rectify this crisis. Indeed, I have outlined that I find it difficult to imagine a more severe situation in respect of housing delivery than that found in St Albans District, and the Council’s failures in plan-making means that the only mechanism for resolving the supply positions in at least the next few years is through applications for windfall developments, such as this. Accordingly, I afford very substantial weight to the supply of market housing which is common ground with the Council.

9.25 Having regard to the dire affordable housing situation portrayed by Ms Gingell in her evidence and fact that the Appeal Scheme provides 40% affordable housing, materially exceeding the 35% required by the Council’s Affordable Housing SPD, I conclude that very substantial weight should be given to the delivery of affordable housing in this appeal.

9.26 Noting the similarly abysmal custom and self-build housing situation in St Albans portrayed by Mr Moger in his evidence, in relation to the 9 serviced plots provided by the Appeal Scheme I afford very substantial weight to the provision of custom and self-build housing.

9.27 Significant weight should be given the economic benefits during the construction and operational phase of the development, in line with paragraph 81 of the Framework.

9.28 Significant weight should be given to the biodiversity enhancements associated with the Appeal Scheme, which materially exceed national planning policy.

9.29 These factors, when considered collectively, demonstrate that the benefits of the Appeal Scheme clearly outweigh the harms and therefore VSC exists to justify the grant of planning permission.

Planning Balance

9.30 Having addressed the Inspector’s main issues, I now address the planning balance.

Very Special Circumstances Balance (paragraph 148 of the Framework)

- 9.31 It is common ground that the Appeal Scheme would comprise inappropriate Green Belt development and should only be allowed if the potential harm to the Green Belt and any other harms is clearly outweighed by other considerations (paragraph 148 of the Framework).
- 9.32 In considering the Inspector's main issues, I have already identified the harms that would arise as a result of the Appeal Scheme and the weight to be prescribed to these. However, having regard to the benefits of the Appeal Scheme outlined above, I have found that these clearly outweigh the harm through inappropriateness and other harms, and therefore VSC exists to justify the grant of planning permission.

The Tilted Balance (paragraph 11d of the Framework)

- 9.33 It is common ground with the Council that it cannot demonstrate a five year housing land supply and that it only achieved a HDT of 69% in 2021. In such circumstances the 'tilted balance' expressed at paragraph 11d of the Framework is engaged.
- 9.34 As I have found VSC exists, Green Belt policies within the Framework do not provide a clear reason for refusing the development proposed and limb i of paragraph 11d of the Framework does not apply. The Appeal scheme should therefore be determined in accordance with limb ii of paragraph 11d which requires an assessment of whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As I have established that VSC exists, it is clear that the adverse impacts of the Appeal Scheme do not come close to significantly and demonstrably outweighing the benefits.
- 9.35 Given the above, planning permission should be granted in accordance with paragraph 11d of the Framework.

Section 38(6) Balance

- 9.36 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, where regard is to be had to the statutory development plan in determining an application for planning permission, the determination shall be made in accordance with the development plan, unless material considerations indicate otherwise.
- 9.37 Relevant case law²⁶ confirms that in applying Section 38(6) it is necessary to have regard to the accordance of the proposals with the development plan as a whole.
- 9.38 I have applied paragraph 148 of the Framework and found that VSC exists, meaning the Appeal Scheme does not conflict with Policy 1 of the Local Plan.
- 9.39 I have then assessed compliance with all other disputed policies and found the Appeal Scheme to comply or is capable of complying at the reserved matters stage. There is no other alleged conflict with relevant development plan policies. On this basis, I consider the Appeal Scheme to comply with the development plan taken as a whole.
- 9.40 Given the above, material considerations do not indicate determining the Appeal Scheme other than in accordance with development plan and therefore I respectfully urge the Inspector to allow the appeal.

²⁶ R. v. ROCHDALE METROPOLITAN BOROUGH COUNCIL ex p. MILNE 31st July 2000 (CO/292/2000) at paragraphs 49 and 50 (CD13.1)

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LAND TO REAR OF TOLLGATE ROAD, COLNEY HEATH

Appellant's Closing Submissions

Introduction

1. For all the documents before you, the decisive question in this appeal is simple. And it is agreed. The question is:

Do this scheme's benefits clearly outweigh its harms?

2. If they do, then we agree that the appeal is supported both by local and national policy, and should be allowed.
3. In answering that decisive question, most of the important points are agreed. In particular, the Council agrees¹ with the Appellant that:
 - (i) The proposal is acceptable in terms of air quality, living conditions, noise, flood risk and highways safety/capacity.²
 - (ii) The Council also accepts that critical Government objectives are not being met in this area. In particular, as we explain below, the “plan-led” system in St Albans has collapsed. The delivery of housing – market, affordable, self and custom-build – has collapsed.

¹ See the cross-examination of Mr Hughes.

² While the Parish Council seeks to revive these issues, we emphasise again, there is no objection on these grounds from the relevant statutory consultees, nor any of the in-house experts at the Council, in areas that relate to the Rule 6 party's evidence. On the contrary, the relevant consultees are satisfied with the scheme subject to various conditions. In those circumstances, you are (i) bound to attach considerable weight to the views of statutory consultees, and would therefore (ii) need cogent and compelling reasons to depart from the conclusions of those technical experts: *R (Akester) v DEFRA* [2010] EWHC 232 (Admin), at [112]. That sets a very high bar for the Rule 6 party's evidence, and it does not meet it.

Needs are spiralling. The Council accepts they are “*substantial and serious*”.³ In relation to affordable housing, Mr Hughes described “*very acute needs*” and the manner in which the shortfall was further accumulating was a “*grave matter*”. Overall, as another Inspector recently found in this area, the diagnosis is “*bleak*”.⁴ Things are only getting worse. And there is, as we will explain, no prospect of a plan-led solution for many years to come.

- (iii) We agree that for the Council to meet its needs for housing, the use of Green Belt land is not a choice. It is **inevitable**. That is obviously right: over 81% of St Albans is washed over by the Green Belt,⁵ i.e. everything outside the urban areas.
- (iv) Of course, in a properly functioning local planning authority area, national policy would expect those releases of Green Belt land to be managed at least every 5 years through a local plan process. But the last plan in St Albans was adopted almost 30 years ago. And as we will explore, as we close this inquiry, we still have no idea **if** and **when** St Albans will adopt an up-to-date local plan, or **what** that new plan might actually include.
- (v) That leads to a catch-22. Housing needs are spiralling. It is inevitable that Green Belt land will be required to meet them. The Council tells us that can only be achieved through the “plan-led” system. But there is no “plan-led” system in St Albans to manage those releases.
- (vi) That is why, if we are actually to begin to meet needs in St Albans **now**, we **cannot** – at least in the short-medium term – rely on the “plan-led” system. If urgent and critical needs are to be met not in 5 years, not in 10 years, but **now**, a solution must be found

³ PH PoE §6.9.

⁴ [CD14.6], §48.

⁵ [CD3.1]; §3.15.

through the development management process. Through planning applications (and appeals) just like this one. Which will inevitably involve the use of land that is currently washed over by the Metropolitan Green Belt. That means that approvals – both at the local level, and at appeals like this one – will **inevitably** be required to meet these needs in the shorter term applying the planning balance at §148 NPPF, and the decisive test we have set out above. Again, there really is no other option. That is a statement of the inevitable.

(vii) Further, the Council agrees that:

- (a) None of its objections on heritage, landscape character or locational sustainability form stand-alone reasons which could justify dismissing the appeal. The only reason that stands on its own merits, so the Council says, is the objection over Green Belt issues. The same objection which will arise for almost every new proposal of this type in this district. We consider it below.
- (b) Our scheme would not have any significant impacts on the character of the landscape or townscape in the immediate vicinity of the site, and there will be no significant effects on the wider rural landscape character around Colney Heath.⁶
- (c) The scheme's profound public benefits outweigh any harm to the significance of heritage assets under paragraph 202 of the NPPF.⁷

⁶ Main SoCG; §6.22 [CD8.3].

⁷ Mr Hughes in cross-examination.

(d) That there are no other technical constraints to the scheme's delivery.

4. In the end, the appeal site is a relatively flat, pleasant but unremarkable collection of equestrian fields surrounded by houses and stables to the north and east, and dense planting to the west. If St Albans ever want to start meeting the shortfalls of not tens, or hundreds but **thousands** of homes within the district, this is the kind of scheme that must be approved. Its benefits clearly outweigh its harms, and for reasons we will explain below, the balance at §148 NPPF and in Policy 1 of the District Plan support allowing the appeal and granting planning permission.

The plan-led system in St Albans is broken

(i) The historical position

5. For decades, this part of Hertfordshire has been let down by the planning system.
6. Years go by – decades pass – national policies come and go. But through it all this Council has managed to keep its head buried firmly in the sand. There's been no strategic review of Hertfordshire's Green Belt in almost 40 years. New plan-making exercises have been tried. They have failed. As Mr Hughes rightly accepted in cross examination, the statutory development plan for the district relates to a completely different era.
7. The St Albans local plan [**CD3.1**] was adopted in 1994 - 18 years even before the 1st NPPF. That makes it the oldest local plan in the country.

8. The main parties agree that this plan is *deemed* out of date under national policy.⁸ And we also agree that it is *substantively* out of date. Indeed, it could not be any *more* out of date. This plan became time-expired over 2 decades ago. It sought to accommodate the needs of a different generation, i.e. from 1981 – 2001. Those needs were identified in the Hertfordshire County Structure Plan 1986 Review, and the 1991 Alterations – in a totally different legal and policy context for plan-making in England. Of course, neither of those structure plans was predicated on a requirement to identify – let alone *meet* – objectively assessed needs for housing or anything else. Neither of the Structure Plans engaged with any strategic review of the St Albans Green Belt boundaries. Indeed, the Green Belt boundaries in this district have *never* been amended in light of a need to accommodate objectively assessed needs. Never.
9. That matters. Because this local plan was adopted almost 2 decades before the “*radical*” shift brought about by the 2012 NPPF, which made meeting objectively assessed needs for housing “*not just a material consideration, but a consideration of **particular standing***”.⁹ Mr Hughes agreed that this has a bearing on the weight we should attribute to the plan.
10. Remarkably, even in 1994 it was accepted that there was a need to review the District Plan “*as a matter of urgency*”.¹⁰ Of course, almost 30 years on and we are still waiting.

⁸ §11(d) and footnote 8 NPPF.

⁹ See the *Gallagher v Solihull* case at [CD13.14], §31 and §97-§98. Hickinbottom J’s conclusions on these points were upheld by the Court of Appeal.

¹⁰ [CD2.1], para 1.18.

(ii) The Regulation 18 consultation

11. There have been two attempts to adopt a new plan in St Albans since 1994. Both failed. The most recent attempt failed in 2020 both because of issues around the duty to cooperate, but also the soundness of the Council's approach to assessing its Green Belt.¹¹

12. Just this week¹², the consultation period closed on the Regulation 18 consultation period, which – so the Council promise – is to be followed by a further Regulation 19 consultation next year. The Council is proposing that it will be able to move from the point it has reached now to adoption in just over two years.¹³ As Mr Hughes accepted in cross examination, this is a considerably more optimistic timetable than the Council's previous attempt was able to achieve (i.e. two years from Regulation 18 consultation not to adoption, but to abortive EiP hearings). There are, unfortunately, good reasons to think the latest timetable far too optimistic. Considering next steps:

(i) The Council now has to analyse the consultation responses and make any necessary changes to the emerging plan.

(ii) Then it has to draft the Regulation 19 consultation. That draft has to be consulted on. The responses must be analysed and again any changes will have to be made.

(iii) Next, the Council will have to draft a submission version of its plan. That will be submitted to the Secretary of State for examination. The examining inspector will, in due course, hold hearings and reach views on matters of soundness and legal

¹¹ [CD9.26]; App B.

¹² See the cross examination of Mr Hughes.

¹³ [CD3.3]; p.6.

compliance. Further modifications may be required. It is simply too early to say. The Council's LDS accepts that several of the steps in its timetable are outside the Council's control.

- (iv) The timetable is further complicated by the fact that central Government promises imminent changes to the legal structure of and policy framework for plan-making – changes which would inevitably have implications for the Council's timetable.
- (v) In this light, adopting a plan by 2025 errs considerably on the side of optimism.
- (vi) But even if the plan were adopted in 2025, Mr Hughes was right to accept that its effects in terms of delivery and meeting needs will not be immediate. On the contrary, even on that optimistic timetable the Council does not expect any material increase in housebuilding until at least 2028/29¹⁴ - 5-6 years away. At best.

13. That matters because Mr Hughes agreed in cross-examination that:

- (i) The adoption of a new plan is essential in order to address the district's dire housing shortfalls.
- (ii) The release of significant areas of Green Belt land is inevitable as a consequence of any reasonable strategy to meet the district's needs. Indeed the emerging plan currently proposes more than 10,000 homes on greenfield Green Belt land.¹⁵
- (iii) But for now, we cannot know **if** or **when** the Council will ever adopt another local plan or **what** that final plan is going to say.

¹⁴ [CD3.1], p.27.

¹⁵ [CD3.1]; p.27.

14. Again, that is the Catch-22. In the meantime, in the years until a plan is adopted, assuming a plan will eventually be adopted, if needs are to be met at all, it is inevitable that meeting them will depend on the development management process. Again, given the inevitability of using land that is now within the Green Belt to accommodate new homes, meeting those needs will require permissions to be granted applying the test at §148 NPPF. Again, that is not a choice. It is inevitable.

(iii) The consequences of these failures to plan

15. Mr Hughes accepted in cross-examination that the plan-led system envisaged by the NPPF has failed to deliver sufficient housing in St Albans. We agree. So the position is simple:

(i) The scale of the housing shortages within the district are staggering. We return to them below. Mr Hughes agrees that they are both “*substantial and serious.*”¹⁶

(ii) We cannot possibly know if there’ll be a plan-led answer to this crisis in the short or medium term.

(iii) We know, and again Mr Hughes has agreed, that the use of Green Belt land is inevitable to meet these shortfalls.

16. Which is why if the Council’s needs are to be addressed in the short or medium terms, then (a) that must be done through the development management process on Green Belt land where there is an impact on the 3rd Green Belt purpose (encroachment) and (b) it is inevitable that the test at §148 NPPF will be engaged. Not just engaged. For needs to be met, the §148

¹⁶ PH PoE §6.9 [CD9.10].

balance will actually have to be *passed*. We return to how the balance should be struck in this case below.

The scheme's benefits will be profound ¹⁷

(i) Affordable housing

18. The scale of shortfall in affordable housing delivery in St Albans could not be much worse.

It is catastrophic. The parties agree that in St Albans:

- (i) 91% of the district's needs over the last 9 years remained unmet;¹⁸
- (ii) The net shortfall during that period has been over 5,000 homes, with projected further shortfalls over the *next* 5 years alone set to exceed 5,000 homes;¹⁹
- (iii) Those languishing on the housing register in St Albans are waiting on average not weeks or months but **years** to find an appropriate affordable home. Each and every property which becomes available in Colney Heath parish is subject to between 34-95 bids.
- (iv) This is the least affordable district of all local authorities in the East of England²⁰ – including for those on lower incomes²¹.

¹⁷ OB PoE; §5.56-5.61 [CD9.6].

¹⁸ AH SoCG; p.9; Figure 4 [CD8.1].

¹⁹ AH SoCG; p.9, Figure 4 [CD8.1].

²⁰ AG PoE, p.38. Figure 7.7 [CD9.1]; See also the cross-examination of Mr Hughes.

²¹ AG PoE, p.41. Figure 7.10 [CD9.1]; See also the cross-examination of Mr Hughes.

- (v) Mr Hughes agreed that position is **acute**. He also agreed that the position was very unlikely to be remedied for many years. On the contrary, as Ms Gingell explained, the position is likely to get much, much worse.
19. Mr Hughes rightly accepted in cross-examination that the enormous shortfall **should** be dealt with within the next five years – indeed this was the approach taken in the Roundhouse Farm appeal.²² However, the parties agree that at the current rates of delivery, it is inconceivable that this will actually happen. In fact, the situation over the next five years is projected to get much worse.²³
20. The position is simple and stark: supply of affordable housing in this district has collapsed. Totally collapsed. And it is only getting worse.
21. In all the numbers, one could be forgiven for losing sight of what really matters. We are talking about housing some of the most vulnerable in our society. These are, as the Secretary of State has put it in other appeals, real people in real need **now**. Their voices have not been heard at this inquiry. But these are people in real and urgent needs. People of all backgrounds: key workers, parents and children. All united by one thing: they need a safe, warm and dry place to call home. They would wish to make that home here if only there was somewhere affordable for them go. And they are relying on the floundering planning system in St Albans to provide a home for them.
22. The most invidious consequence of this Council’s chronic failure to plan is that the needs of this segment of the community have gone unheeded and unmet for so many generations. The socio-economic costs of failing properly to house this segment of the population for so

²² [CD14.6]; DL:53.

²³ See p.13, Figure 7 [CD8.1].

long can never be tallied. But what we can say is that this failure represents a fundamental conflict with national planning policy:

- (i) The purpose of the planning system is to contribute to the achievement of sustainable development: §7 NPPF.
- (ii) That means ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations: §8(b) NPPF.
- (iii) As Inspector Masters said in 2021 in the Roundhouse Farm decision:²⁴

“In SADC, **the position is...serious**. Since the period 2012/13, a total of 244 net affordable homes have been delivered at an average of 35 net dwellings per annum. Again, this equates to a shortfall also in the region of 4000 dwellings (94%) which, if to be addressed in the next 5 years, would require the delivery of 1185 affordable dwellings per annum.

The persistent under delivery of affordable housing in [this district and Welwyn Hatfield] presents **a critical situation**. Taking into account the **extremely acute** affordable housing position in both SADC and WHBC, I attach very substantial weight to the delivery of up to 45 affordable homes in this location in favour of the proposals” [emphasis added].

- (iv) That the shortfalls are so large and growing doesn’t make the contribution from this scheme’s 60 units less important. On the contrary, in the context of net annual delivery figures of 56 affordable homes over the last decade, projected delivery of 35 affordable homes a year over the next 5 years, and worsening affordability²⁵ **across all of St Albans**,²⁶ an offer of 60 affordable homes²⁷ represents a very substantial contribution to local supply.

²⁴ [CD14.6]; DL:53-4.

²⁵ AG PoE, p.38. Figure 7.7 [CD9.1].

²⁶ AH SoCG; p.13; Figure 7 [CD8.1].

²⁷ In excess of the the adopted policy requirement of 35% in Policy 7A.

(v) The proposal is for a mix of tenures all of which meet the NPPF definition of affordable housing²⁸. The tenures are designed to respond to a mix of needs which arise in this district. Different parts of that mix will be accessible to a range of households of different sizes and incomes. All of them will be affordable – both by definition, and in reality. All of this will, as Ms Gingell explained, make an important contribution to the delivery of mixed and balanced communities in this district.

23. The position is clear. The shortfalls in the delivery of affordable housing are *very* substantial. The needs are *very* substantial. The scale of the crisis in affordable housing and affordability is *very* substantial. The delivery of homes to meet needs is a benefit which both parties agree should attract **very substantial weight**.^{29 30}

(ii) Market housing

24. The position on the delivery of market housing in this district is no better.

25. Looking backward, i.e. over the last 3 years of the housing delivery test, the Council accepts its shortfalls are **substantial**.

²⁸ Annex 2, NPPF

²⁹ AH SoCG §10.17 [CD8.1].

³⁰ Despite the Council throughout this application and appeal process consistently attributing very substantial weight to the affordable homes proposed, Mr Hughes has subsequently sought to introduce a scale within the scale in an attempt to attribute a lower level of very substantial weight to the scheme's affordable housing offer. Ms Gingell explained in examination in chief why such an approach was problematic. Indeed, the Appellant has not been able to identify any other case where a Committee or Inspector has endorsed such an approach and you, Sir, are invited to reject it.

26. Looking forward, the parties agree the housing land supply shortfall is **substantial**,³¹ that the Council has a **severe** and **acute** shortfall in the delivery of market housing.³² On the Council's case it has a 2 year housing land supply set against a requirement of 1,066 homes per year.³³ On the Appellant's calculation, the position is more acute still, i.e. there will be shortfall in housing delivery over the next five years of 3,195 homes.³⁴
27. All of those numbers, of course, measured against minimum 5 year targets: §74 NPPF. Which should be a floor and not a ceiling to delivery. Of course, St Albans has also failed the most recent Housing Delivery test by hundreds and hundreds of homes.³⁵
25. Inspector Masters considered this issue in the Roundhouse Farm decision³⁶:

“It is common ground that neither SADC or WHBC can demonstrate a five year supply of deliverable homes. Whilst there is disagreement between the parties regarding the extent of this shortfall, the parties also agreed that this is not a matter upon which the appeals would turn. I agree with this position. Even taking the Councils supply positions of WHBC 2.58 years and SADC at 2.4 years, the position is a **bleak** one and the shortfall in both local authorities is **considerable and significant**” [emphasis added].

26. Mr Hughes accepted that the situation since 2021 has further deteriorated and the diagnosis remains “*bleak, considerable and significant*”. He agrees that significantly boosting supply has been an important objective of Government policy for many years, and was a major thrust of the 2012 NPPF. He agrees it's an important objective. However, even on the Council's

³¹ Main SoCG, §6.6 [CD8.3].

³² Main SoCG, §6.52 [CD8.3].

³³ [CD10.3]; p.31.

³⁴ OB PoE; App 1, p.6 [CD9.6]

³⁵ The Council scored only 69% which activates the tilted balance: see Main SoCG; §6.7 [CD8.3].

³⁶ [CD14.6]; DL:48-9.

most optimistic projections, it will be another 5-6 years before there is any significant increase in housing provision.³⁷

27. Again, the imperative at §8 NPPF of ensuring enough homes are provided to meet the needs of present and future generations is being failed in St Albans. The planning system is failing in its most basic task here. And those failures are having dire social, economic and environmental consequences: families unable to afford somewhere to live, unsustainable solutions with people being forced to find a home further away from where they work, shop and socialise. Economic growth which simply is not and cannot happen without sensible population growth. When it comes to this scale of failure to deliver housing, justice delayed is justice denied.
28. Which is why the parties are agreed that the appeal scheme, at 81 market dwellings, could be delivered over the next five years and this would make a material contribution towards supply to which **very substantial weight** should be given.³⁸

(iii) Self-build and custom homes

33. Since the 2012 NPPF, the Government has required local authorities to plan for a mix of housing which includes those who wish to build their own homes. The PPG tells us³⁹ that self-build or custom build “*helps to diversify the housing market and increase consumer choice*”. And we’re specifically told to plan to meet the needs of self-builders: §62 of the 2023 NPPF.

³⁷ [CD3.1]; p.27.

³⁸Main SoCG; §6.53 [CD8.3]. This is also aligned with the approach of Inspector Masters in the Roundhouse Farm Decision at §49 [CD14.6].

³⁹ PPG on “*Self-build and custom housebuilding*”, §16a.

34. Unlike most areas of housebuilding, this is fortified by a statutory duty. Section 2A(2) of the Self-build and Custom Housebuilding Act 2015 (which was inserted by section 10 of the Housing and Planning Act 2016) **requires** local authorities to “*give suitable development permission in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority’s area arising in each base period*”.
35. Despite this, as Mr Hughes agreed, the development plan is completely silent in relation to self-build or custom housing. We agree that the Council is not meeting its statutory duty to meet demand identified on its Self-build Register.⁴⁰ Mr Moger’s evidence – none of which is contested – shows that there were 735 entries on St Albans Self-Build register,⁴¹ although true need is likely to be substantially higher when one considers secondary data sources.⁴²
36. But even simply focusing on the much lower numbers on the Council’s register:
- (i) St Albans fell short by 95 plots in Base Period 1, 137 plots in Base Period 2, 100 plots in Base Period 3 and 80 plots in Base Period 4. A further 76 consents are required by the end of Base Period 5 in October 2023⁴³, or that will be a further failure to comply with its statutory duty.

⁴⁰ Main SoCG; §6.57 [CD8.3]

⁴¹ AM PoE; p.44, Figure 4.1 [CD9.2].

⁴² AM PoE; §4.12-4.30 [CD9.2].

⁴³ AM PoE; p.53, Figure 5.2 [CD9.2].

(ii) Analysis of supply now against the criteria listed at paragraph 038 of the PPG has found a total supply of only 31 plots within the district⁴⁴ - less than half of that counted in Roundhouse Farm appeal.⁴⁵ That supply position is uncontested.⁴⁶

(iii) Finally, the emerging plan strategy would make provision for a total of just 306 serviced plots across the emerging Plan period to 2041.⁴⁷ The problem - as Mr Hughes rightly accepted - is that this strategy is destined to fail to meet both existing unmet needs as well as future needs for this type of housing.

37. So we have a specific kind of housing, subject to specific statutory duties for which there are specific needs. Those are important needs this scheme makes a material contribution toward meeting.

38. Inspector Masters considered St Albans' self-build housing position in the Roundhouse Farm decision in 2021 and concluded that:

“In common with both market housing and affordable housing, the situation in the context of provision of sites and past completions is a **particularly poor one**. To conclude, I am of the view that the provision of 10 self build service plots at the appeal site will make a positive contribution to the supply of self build plots in both local planning authority areas. I am attaching substantial weight to this element of housing supply.”⁴⁸

39. That poor situation has since worsened. This scheme's offer of 6% (9 plots) should be afforded **very substantial weight** on the basis of: (a) an 80% increase on the number of units secured in St Albans compared to Roundhouse Farm; (b) a 160% increase in the

⁴⁴ AM PoE; §5.8 – this is during the relevant period of the last five years.

⁴⁵ Albeit this detailed assessment against PPG wasn't undertaken in the Roundhouse Farm decision.

⁴⁶ See cross examination of Mr Hughes.

⁴⁷ AM PoE; §5.22 [CD9.2].

⁴⁸ [CD14.6], para 52.

shortfall in St Albans since the Roundhouse Farm decision which continues to increase; (c) a lack of an adopted plan policy to resolve that shortfall; (d) an emerging plan strategy that is bound to fail; and (e) an offer which is double that proposed in that emerging plan's draft policy.

(iv) Sustainable location

40. The appeal site is in a sustainable location where residents will have a genuine choice of transport modes, including public transport, walking and cycling options. Again, the main parties agree that:⁴⁹

- (i) In light of the Appellant's contribution towards an enhanced bus service – dealt with further below – the highway authority's objection on public transport grounds is not maintained.⁵⁰
- (ii) There is no objection from the LPA or the Highways Authority in relation to walking routes to and from the site to local services and facilities.
- (iii) This is not a case in which there would be an unacceptable impact on safety so as to justify refusal on highways grounds within the meaning of §111 NPPF.
- (iv) The site access is safe and appropriate.

41. So far as the highways authority's case goes, we are left with an objection in relation to certain cycling routes. Albeit the LPA accepts this objection does not amount to a reason for refusal on its own.

⁴⁹ See the cross-examination of Mr Carr.

⁵⁰ Transport SoCG; §3.13 [CD8.2].

42. The starting point is §105 NPPF which requires:
- (i) Significant development to be focused on locations which are or can be made sustainable, through offering a **genuine choice** of transport modes; noting that:
 - (ii) Opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
43. Further, §110(a) NPPF requires decisionmakers to ensure that appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location.
44. These are not 1 size fits all policy prescriptions. They require careful judgment. On the nature of the site and its location, and the nature of the relevant scheme. In the end, national policy seeks a **genuine choice** of opportunities which are **appropriate** to the site and the scheme. That does not import a requirement for every service or facility to be accessible to every user by every mode of transport – i.e. the approach adopted by Mr Carr, who confirmed in cross-examination that he had adopted this absolutist approach to the policy without any reference e.g. to the nature this site.
45. To take each mode in turn:
46. First, walking. The District and County Councils accept that there is a good range of services and facilities accessible to our site on foot. The Parish Council disagrees.⁵¹ They have relied on the Welsh Tool to assess walking routes⁵² and Mr Dimbylow explained in his evidence in

⁵¹ JC PoE; p.35; Appendix 5, [CD9.14].

⁵² [CD9.18].

chief that the assessment was flawed in at least two ways: (a) the Parish has failed to assess routes that residents of the scheme would actually use⁵³; and (b) it lacks objectivity.⁵⁴

47. You have, sir, already walked many of these routes. Mr Dimbylow has explained that⁵⁵:

- (i) From the site, you can walk safely and easily to the shop, to the bus stops, to the primary school, the pre-school and to the pub.⁵⁶
- (ii) There are a few locations where the walking audit identified improvements to pedestrian facilities would be beneficial. These are identified as part of the mitigation measures suggested by the draft proposed conditions.⁵⁷

48. Second, public transport. Again, both the District and County Councils now agree that the site offers good accessibility to services and facilities in the wider area by public transport. Again, the Parish disagrees. But Mr Dimbylow's evidence shows that:

- (i) Bus stops for a range of routes are only a short walk from the site.⁵⁸
- (ii) Buses from those stops can be used to access a wide range of services and facilities, including all of the amenities of St Albans. That, of course, includes a wide range of local secondary schools – including Samuel Ryder Academy⁵⁹ – to which we will return.

⁵³ The Inspector is directed again to Mr Dimbylow's audit at **[CD5.12]** which is more appropriate.

⁵⁴ See for example, **[CD9.18]**; p. 6 and unsurprisingly, all of the assessed routes failed.

⁵⁵ This is not contested by the Council.

⁵⁶ ID PoE; p5 - Figure 3.1; p.39 – App ID1 **[CD9.4]**.

⁵⁷ ID PoE; §3.5 **[CD9.4]**.

⁵⁸ ID PoE; p.12-13; Tables 3.3 and 3.4 **[CD9.4]**.

⁵⁹ ID PoE; §3.38-3.42 **[CD9.4]**.

(iii) Existing and new residents will benefit from improved bus connectivity in light of the Appellant's providing a contribution of nearly £1.3m (over three years)⁶⁰ to enable HCC to provide an enhanced bus service similar to the 305, but with two services per hour weekdays and Saturday, with the introduction of a Sunday service.⁶¹ On the Council's own definition,⁶² this will become a "*key strategic bus route*".

49. What all of this means is that bus services available to new residents of the development offer the opportunity to make use of bus travel as a sustainable route choice to and from the development.⁶³

50. Of course, in 2021, Inspector Masters considered the issue of locational sustainability of a site around a 10-15 minute walk to the north-east of this site. In that appeal, "*the Councils contended that the site was in an unsuitable and isolated location as a result, it would fail to provide satisfactory access to services and facilities by means other than the private motor car.*" This is similar to the case run by the Parish Council before you. In finding that location to be sustainable, Inspector Masters decided that:⁶⁴

⁶⁰One of the Parish Council's key concerns is what happens after three years? The Inspector is directed to [CD17.1], which refers to recent national research demonstrating the value for money of supporting local bus markets: at pg. 65. It also refers to a 2020 updated report also by KPMG with information on case studies of increased frequencies and increases in patronage following that initial investment. The purpose of the contribution is to assist the County Council with establishing an additional viable bus service in the long run.

⁶¹ Transport SoCG, §3.13 [CD8.2]

⁶² [CD3.6]; p.28; §6.22

⁶³ ID PoE; §3.42 [CD9.4].

⁶⁴ [CD14.6], DL:37-40.

- (i) there are bus services within close proximity, which “*provide an alternative mode of transport to the private car and could provide an important alternative to those sectors of the community who do not have access to a private car*”;
- (ii) “*taking into account average cycle times and distances to facilities outside of Colney Heath as set out within the facilities plan...**cycling provides a reasonable alternative** in this location to the private car*” [emphasis added] – we return to cycling below; and
- (iii) “*the facilities and services available within Colney Heath and the accessibility of these facilities both on foot and by cycle mean that a number of day to day needs could be met without reliance on the private car. As a result, the location of the appeal site cannot be described as isolated.*”

51. In cross-examination, Mr Carr accepted the appeal site is preferable to the Roundhouse Farm site from a locational sustainability standpoint in every respect (proximity to bus services and other facilities, pedestrian access and the provision of the bus service enhancement) **save for cycling**, where he felt unable to pick one site over the other.

52. On cycling, of course, Mr Carr points to no material changes e.g. in local, regional or national policy or guidance which should lead you to take a different view to that of Inspector Masters. There isn’t any. He relies on only explanation for this change appears to be the reliance he places on Department for Transport Local Transport Note 1/20,⁶⁵⁶ which he rightly accepted⁶⁷:

⁶⁵ [CD16.4].

⁶⁶In examination in chief, Mr Dimbylow also considered the assessments undertaken by the Parish Council in relation to LTN 1/20 within [CD9.17] and explained that he did not consider the assessment process used to be applicable for the purpose relied on. Unsurprisingly again, every route assessed failed.

⁶⁷ See the cross-examination of Mr Carr.

- (i) Was a document that came out a year before the Roundhouse Farm decision; and
- (ii) Includes nothing within its body to support using it to judge the acceptability of **existing** cycle routes for the purposes of §105 NPPF. To the extent this is what the highways authority have been doing, there is no support for this from the authors of the guidance. Indeed, that point was expressly recognised by WSP – the consultants instructed by both Hertfordshire and St Albans to prepare the St Albans District “*Local Cycling and Walking Infrastructure Plan*” July 2023 (the “LCWIP”), which noted at para 4.6.5 that the vast majority of local primary and secondary cycle routes will **fail** LTN1/20.

53. As Mr Dimbylow explained in examination in chief, the Council’s approach is flawed in the following ways:

- (i) LTN 1/20 represents a major change in the approach to designing cycling routes in that it requires – at all times – the segregation of cyclists from motor vehicles and pedestrians from cyclists. This will take some time to work through the network.
- (ii) There is no requirement for roads around a development site to all achieve LTN 1/20 compliance for a development to be acceptable.
- (iii) This level of segregation required by LTN 1/20 will never be suitable in places like Colney Heath High Street. This is also true for many of the routes in LCWIP, which would fail LTN 1/20 assessments, given the number of urban shared routes in St Albans. This is exactly why national policy requires decisionmakers to consider the type of development and its location.

54. Much of Mr Carr’s analysis is focused on the ability to cycle to one of the at least seven⁶⁸ secondary schools in the area – Samuel Ryder Academy. There are several ways of cycling from the appeal site to the academy in around 20 minutes. The best route, as Mr Dimbylow explained, involves crossing from Colney Heath high street at grade onto the north side of the A414 North Orbital Road which takes you almost all the way to the academy on a flat, straight road which is segregated from vehicular traffic. Other routes are available too – Mr Carr accepted in cross examination that it was possible to travel to Samuel Ryder Academy using primary and secondary routes identified by the Council in the recently (Feb ’23) consulted on emerging LCWIP.
55. Mr Carr accepted in cross examination that this ultimately comes down to whether you, Sir, accept his view that the fact that **all** residents will not be able to access Samuel Ryder Academy by cycle renders this an unsustainable location as a whole within the meaning of para 105 NPPF. It obviously does not:
- (i) There is a genuine choice of routes to the Academy by cycle and by bus.
 - (ii) Mr Carr provides no analysis of travel options to the range of *other* secondary schools in the area that are accessible to residents of the scheme by bus and bike;⁶⁹
 - (iii) The scheme would lead to improvement works on alternative routes such as the A1(m) underpass⁷⁰ in order to make them more attractive to cyclists and pedestrians;⁷¹

⁶⁸ [CD19.9]

⁶⁹ [CD19.9]

⁷⁰ Transport SoCG, §3.21 [CD8.2]

⁷¹ Transport SoCG, §3.21 [CD8.2]

- (iv) Mr Carr has conducted no analysis of the travel plan requirement,⁷² which would furnish residents with details of the range of improved travel options in order to increase their propensity to use alternatives both to the Academy and to other places.
56. Similarly, albeit some cyclists will no doubt travel south to Welham Green station from the appeal site along Tollgate Road to meet the regular connections into central London, less confident cyclists have a perfectly safe and acceptable route under the A1 underpass into Hatfield, and then south along a national cycle route. The Council calls these routes convoluted. But again, with respect, we are not here designing new purpose-built cycling infrastructure. We are taking up *appropriate* opportunities to enable the new residents to have a *genuine choice* of modes. Which they will.
57. To conclude, the position in respect of cycling and otherwise remains as Inspector Masters concluded just over two years ago – *“taking into account the essence of the Framework test as to whether a genuine choice of transport modes is on offer here, the appeal proposals would represent a sustainable location for new residential development.”*⁷³ The same is true here.
58. The Parish Council criticises the Appellant for not undertaking an LTP 1/20 audit of the proposed cycle routes. As above, that would not have been an appropriate exercise to undertake. Which explains why in the years of negotiation and discussion with the highways authority, such an audit was never requested. It is not only inappropriate, it is unnecessary for a scheme of this scale. Which is proposed along a long-recognised cycle route in the St

⁷²Transport SoCG, §3.16 [CD8.2]. It should be noted that the Appellant will also be making a contribution to HCC to monitor the plan.

⁷³ [CD14.6], DL:41.

Albans cycle map which WSP has proposed to upgrade from a secondary route to a primary route in the emerging LCWIP exercise.

59. A residual point raised by the Parish Council in respect of locational sustainability is potential concern about cumulative effects, particularly related to the Roundhouse Farm site. We note: (a) that this is not an issue that arises in the Council's evidence; (b) the Transportation Assessment includes consideration of the impact of the Roundhouse Farm site; and (c) the highways authority has raised no objection in respect of highways safety/capacity.⁷⁴
60. Beyond locational sustainability, the Parish Council has also raised cumulative impact concerns in respect of settlement character, heritage and infrastructure – concerns which are raised by neither the Council nor relevant consultees. To be clear, there is no evidence before the inquiry of *any* material cumulative effects between this scheme and any others. On the third of these, it is important to note that the Appellant is committing to a planning obligation which includes, amongst other things, substantial contributions to (a) the local primary school (approx. £1.2m)⁷⁵ and (b) the already mentioned Samuel Ryder Academy (approx. £1.3m).⁷⁶

⁷⁴In those circumstances, you are (i) bound to attach considerable weight to the views of statutory consultees, and would therefore (ii) need cogent and compelling reasons to depart from the conclusions of those technical experts: *R (Akester) v DEFRA* [2010] EWHC 232 (Admin), at [112].

⁷⁵ [CD19.11.2], p.12.

⁷⁶ [CD19.11.2], p.13.

(v) Previously developed land (“PDL”)

61. Mr Hughes accepted in cross examination that:

- (i) The appeal site as a whole meets the definition of PDL in national policy;⁷⁷ and
- (ii) This appeal engages the objective in §119 NPPF to promote an effective use of land by making as much use as possible of PDL.

62. Mr Hughes was correct to make this admission. There is nothing “mechanistic” or “overly technical” about it. Of course, as Mr Wilcox has repeatedly said, the NPPF is not a statute or a contract. But its policies have been drafted carefully – just as Mr Wilcox says in his closings. They mean what they say and they say what they mean. It is our job to apply them, not to re-write them. The Council’s position is that it would be “*absurd*” to treat a site which meets the definition of PDL as if it were PDL. But of course, it *is* PDL. Whether the Council likes it or not. That is not “mechanistic” or “literalistic”. It is applying the clear terms of national policy. What certainly *is* surprising is the Council’s failure to address its status as PDL anywhere in any of its written evidence, or indeed in Mr Hughes’ evidence in chief. The admission was made for the first time during cross-examination.

63. Overall, of course, there is a strategic imperative at the local level (e.g. in the Council’s emerging plan) and at the national level to prioritise the use of land which meets the definition of PDL over other kinds of e.g. Green Belt land. As Inspector Woodward put it in the Maitland Lodge appeal, where the Inspector determined this would make a site such as the appeal site “*sequentially preferable to non-PDL sites in the GB, which make up the majority of*

⁷⁷ NPPF; p.71 Glossary

*GB land in the Borough.*⁷⁸ Indeed, this is the approach taken by the Council in the emerging local plan.⁷⁹

64. Contrary to this, Mr Hughes, in cross-examination, accepted as an ‘initial filter’ the site was “*sequentially preferable*” but overall gave PDL status no weight due to the lack of built form on site and proposed extent of uplift in development. We will return to that weighting issue shortly.

65. The Parish Council does not accept this is PDL on the basis:

- (i) First, that the equestrian use is not lawful as the site has not been used continuously in that way for 10 years. However, this is the wrong test. The 1996 permission permitted stables, grooming and storage facilities⁸⁰ – plainly for an equestrian use and this related to the entire site.⁸¹ Indeed this is consistent with the agreed position with the Council.⁸²
- (ii) In any event, the Appellant has presented reams of evidence to demonstrate that the fields are used on a rotational basis as part of equestrian land management⁸³. Pausing a use on part of a site (e.g. through rotation) for weeks or even months does not amount to an abandonment of that use.
- (iii) Further, they argue that the fields are only used for grazing such that they should be considered to be in agricultural use. Again, the position agreed with the Council is that these fields are in lawful equestrian use. In any event, the Appellant has provided evidence of

⁷⁸ [CD14.20]; DL39.

⁷⁹ [CD3.1]; §3.13-14.

⁸⁰ Main SoCG; §3.1 [CD8.3].

⁸¹ OB Rebuttal; Appendix 2 [CD9.24].

⁸² Main SoCG; §6.12 [CD8.3].

⁸³ OB PoE; ; §5.217 [CD9.6].

additional food being given to horses, over and above any grazing which naturally takes place when they are within a field⁸⁴ as well as additional equestrian activities occurring on the site.⁸⁵

(iv) Further still, the parish questions the curtilage. But the position is really simple:

(a) That the fields form an essential part of the use of the stables and ménage, with the fields used throughout the year on rotation.⁸⁶

(b) They are in the same ownership.

(c) That the paddocks have a clear intimate association with the stable buildings and ménage, such that they form part and parcel and of the same curtilage.⁸⁷

66. In the end, the position is simple. The Council and Appellant agree that the appeal site falls within the NPPF's definition of PDL. That is not the end of the story: it is important to note that the Appellant's case is not that the site comprises appropriate development in the Green Belt nor that its PDL status somehow circumvents the requirements of §148 of the NPPF.

67. Instead, we invite you to reflect on Inspector Woodward's point in Maitland Lodge, i.e. that the optimisation of an equestrian PDL site to promote homes is a *“significant positive benefit of the proposal in the context of a [district] where GB release is accepted as being inevitable to meet its housing*

⁸⁴ OB Rebuttal; §9.23 [CD9.24].

⁸⁵ OB Rebuttal; App 2, para 7, Appendix 3 [CD9.24].

⁸⁶ OB PoE; Appendix 2 and 3 [CD9.6].

⁸⁷ Para 8.4.5 of the committee report [CD6.1] also confirms structures are associated with equestrian use.

needs.”⁸⁸ That was the case in Basildon district in that appeal, and the position is the same here.

68. On §119 NPPF:

- (i) That policy is only one expression of a thread which runs throughout local and national policy which prioritises the use of PDL over and above other kinds of e.g. Green Belt land. That is a strong and repeated focus of this Council’s strategy in its emerging Regulation 18 consultation. And that is why – consistent with the first sentence in §119 NPPF – our case remains that this is a benefit to be weighed in the ultimate planning balance and one that should attract **significant** weight.⁸⁹
- (ii) That said, we acknowledge the Inspector’s point on the second sentence of para 119 that there risks being a circularity in the relationship between that clause, footnote 47 and para 148 (i.e. because you cannot tell until all the benefits of the scheme have been weighed whether making use of the relevant PDL would “*conflict with other policies in the Framework*”). Albeit the focus of 119 is on plan-making rather than decision-taking. But of course, that too becomes circular because as Mr Bell explained St Albans has not adopted a plan in 30 years. That chronic failure to plan should not immunise the Council from the consequences of this important thrust of national policy.
- (iii) In the end, either way – i.e. whether the benefits of developing PDL are weighed as part of the para 148 balance, or are introduced into the analysis only after that balance has been struck – the outcome is the same. As Mr Bell explained, given the range of benefits

⁸⁸ [CD14.20]; DL39.

⁸⁹ OB PoE; §9.23 [CD9.6].

that flow from this appeal scheme, the benefits clearly outweigh the harms in this case whether the site is PDL or not⁹⁰ - a point we return to below.

69. Mr Wilcox's closings refer the *Dartford* case – which preceded and so does not consider para 149(g) or para 119 NPPF – to make the point that making effective PDL cannot be a free-standing material consideration in a Green Belt case. That is not what the case says. Nor is it how the position has been interpreted by (i) other inspectors, e.g. at Maitland Lodge, or indeed (ii) *this Council* which, as we have explained, is proposing in its Regulation 18 consultation to exhaust all of its Green Belt PDL supply before turning to other sources of Green Belt land. NB Mr Wilcox tries to distinguish those other decisions on the basis that the sites were smaller, but that has nothing to do with the relevant issues of *principle*, i.e. on how PDL is to be determined, and its weight as a free-standing material consideration.
70. 149(g) is a particular policy threshold to determine whether development is appropriate or not. If development is inappropriate, 149 does not seek to restrict what factors feed into the 148 balance. This is not re-introducing anything “by the back door”. The test at 148 NPPF is comprehensive. It is intended to accommodate within it all of a scheme's benefits against all of its harms including harm to the Green Belt. There is no basis for excluding any relevant material considerations from that balance, still less one as important as the strategic imperative to make efficient use of PDL. The analogy is to matters like e.g. less than substantial heritage impacts under 202. Once we have decided that such impacts are clearly outweighed by public benefits – as they are here – that does not mean that the impacts are excluded from the wider 148 balance. That is because, again, the 148 balance requires a

⁹⁰ See the re-examination of Mr Bell.

comprehensive assessment of **all** material considerations. And there is no policy basis for excluding the use of PDL from that assessment.

(vi) Other benefits

71. The parties agree that the appeal scheme will result in a number of economic benefits⁹¹. The Appellant considers these should be given **significant weight** consistent with §81 NPPF, particularly given the depressed economic activity which has endured in this district for so many years as a consequence of the Council's failure to plan. So, contrary to the Council's case, the impact of these benefits is far greater than the level of generic benefits that would be expected from an ordinary housing development.
72. Further, the parties agree the appeal scheme will lead to biodiversity enhancements.⁹² The dispute again is in respect of weight. Mr Hughes offers moderate weight on the basis that the gain is achieved off-site. However there is nothing in policy, guidance or legislation to support such an approach and the enhancements will indeed be maximised on site, with only residual improvements dealt with off-site. The delivery of 10% BNG should be given **significant weight**⁹³ on the basis that: (a) the development plan is silent on this matter; and (b) the offer will materially exceed national planning policy.

⁹¹ Main SoCG; §6.25 [CD8.3].

⁹² Main SoCG; §6.39 [CD8.3].

⁹³ OB PoE, §8.21 [CD9.6].

The scheme's impacts on its local landscape are limited

73. To set the scene: as we have explained, this Council has accepted the need to put lots and lots of houses on what are (at present) fields. So, to state the obvious, impacts one way or another on landscape character in this part of Hertfordshire are an **inevitable** consequence of the Council's strategy to meet its needs. Which is why, what *really* matters is not whether there will be any impact at all (of course there will be – at least on the site itself and its immediate surroundings) but whether those impacts are or can be made acceptable. As Mr Hughes agreed, if impacts are to occur, it is better that they are located away from designated landscapes, “valued” landscapes within the meaning of the NPPF, in areas where – like this one – we agree there will be no significant impacts on the character of the landscape or townscape in the appeal site's immediate vicinity, or on the wider rural landscape that surrounds the settlement.

74. The Council and the Appellant are agreed that:

- (i) The appeal site is not subject to any statutory or non-statutory designations for landscape or heritage value.⁹⁴
- (ii) Given the overall character of the site (readily visible housing, dense belt of woodland providing physical and visual containment, etc.), we agree that the site is of medium to low landscape sensitivity to the proposed development.⁹⁵

⁹⁴ Main SoCG, §6.21 [CD8.3]

⁹⁵ Landscape SoCG; p.6.

(iii) The landscape impacts will not be significant on the character of the landscape / townscape in the immediate vicinity of the appeal site, and there will be no significant⁹⁶ effects on the wider, rural landscape character around Colney Heath.⁹⁷

75. This is a case where built development is proposed on equestrian fields. Impacts on the site itself are inevitable (albeit you will have appreciated on-site the extent to which its character is already influenced by the suburbanising relationship with the backs of the row of houses along Tollgate Road, and other detracting features on and around the site).

76. What is notable is that the main parties have identified only three important views for you to consider on one of those, it is agreed the effect is negligible-moderate/slight adverse.⁹⁸

77. As to the other views:⁹⁹

(i) There will of course be changes which can be seen from viewpoints near the site, and those changes will be significant – particularly in Year 1, albeit somewhat less so in Year 15. However, the site is visually well contained. The extent of visibility is curtailed. While the change in character is assessed as adverse, this does not mean the development will be unattractive. The site’s containment is not – to respond to Mr Wilcox’s closing – a feature of the scheme. It is a feature of the *site*.

(ii) Albeit the scheme is at outline, its parameters and illustrative masterplan have been designed to complement both the established pattern of the settlement and that of the wider

⁹⁶ This was amended from “material” to “significant” in the landscape RT session.

⁹⁷ Main SoCG, §6.22.

⁹⁸ Landscape SoCG; p.6.

⁹⁹ Landscape SoCG; p.6.

landscape.¹⁰⁰ Mr Self drew attention to the substantial set-backs from the river corridor and how the parameters plan and illustrative masterplan adapt and respond to the site's features.

78. Overall it is quite clear that this is the sort of limited and localised impact on local character which is inevitable if St Albans is to meet its housing needs. The Council does not rely on landscape and visual harm, or harm to character and appearance as a free-standing reason for refusal. As Mr Bell explained, the extent of harm should attract **moderate weight**.¹⁰¹

The scheme's public benefits outweigh any heritage harm

79. The position on built heritage is almost completely agreed with the Council and its advisers. The scheme would be within the setting of 3 listed buildings. But, as Ms Stoten explained, the issue to consider is whether there is any harm – and if so, how much – to the *significance* of those assets. And in every case, the appeal site makes only a very minor contribution to the significance of the relevant assets through their setting. Which is why the proposed scheme – the parties agree would cause¹⁰²:

- (i) With regards to North Mymms Park Grade I Listed House, the Grade II Listed Colney Heath Farmhouse and Grade II Listed Barn **less than substantial harm** within the lowermost end of the spectrum.

¹⁰⁰ CS PoE; §1.22 [CD9.26].

¹⁰¹ See the examination in chief of Mr Bell.

¹⁰² Heritage SoCG; §2.1 [CD8.4].

- (ii) With regards to Tollgate Farm, it is agreed that this holds minimal heritage significance, at most and the harm to the heritage significance of Tollgate Farm would be **minimal**.

80. The parties agree that **the public benefits outweigh the harm** to designated heritage assets under para 202 of the NPPF.¹⁰³ Nonetheless, even though the extent of harm is – we agree – small, that harm must be given great weight in the overall balancing exercise under para 148 to which we return.

The scheme directs development to areas with lowest risk of flooding

81. The Council, the LLFA and the Appellant are agreed that the appeal scheme is acceptable in terms of flood risk and drainage considerations, subject to the imposition of conditions.¹⁰⁴

82. However, the Parish Council has raised an issue in respect of the failure to apply the sequential test in §162 NPPF, which notes that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source.

83. On that, the Council and the Appellant are agreed.¹⁰⁵

- (i) The Appellant's decision not to carry out the sequential test has been informed by the Strategic Flood Risk Assessment for the area and a site-specific flood risk assessment. There is no requirement to carry out the sequential test in respect of surface water flood risk because the built development will be restricted to areas of no or low flood risk. The Parish

¹⁰³ Main SoCG; §6.72.

¹⁰⁴ Main SoCG; §6.65-7.

¹⁰⁵ Main SoCG; §6.63-67.

referred to an underground chalk stream which, as Mr Henry explained in his rebuttal after intrusive ground investigation, simply doesn't exist.

- (ii) Finally, as the Inspector identified in the Flood Risk roundtable, the appeal scheme does steer development into Flood Zone 1 and no part of it proposes any development into areas of the site within Flood Zones 2 and 3. Flood risk from all other sources of flooding was found to be low. So, there was no need to carry out a sequential test.
- (iii) The scheme accords with the core aim of §162 NPPF of steering new development to areas with the lowest risk of flooding from any source. That position is agreed with the LPA. There is no relevant objection from the EA or the LLFA. All of the relevant statutory consultees are satisfied in relation to flood risk and sequential test matters. In those circumstances, you would need clear and compelling evidence to warrant casting all of that expertise aside. With respect, the Parish's case on this issue does not even come close to meeting that very high bar.

The scheme's impact on the wider Green Belt will be limited

- 84. In the end, if this site were not (as is all of Colney Heath and 81% of the district as a whole) washed over by the Metropolitan Green Belt, we would not be here. Because the Council has confirmed that none of the other issues it identifies are weighty enough to warrant refusal on their own.
- 85. Of course, the Green Belt designation has nothing to do with landscape quality. It is not about protecting landscapes or townscapes. Or even protecting the open countryside in general – as Mr Wilcox implies in his closings. Still less, individual views around particular villages. Indeed, the Green Belt is not a policy mechanism which is concerned with

preserving villages or their settings. We have a wide range of other policies for those things. The Green Belt is for something much more specific. It is a spatial strategic policy designation which is fundamentally concerned with curtailing the post-war “sprawl” of Greater London.

86. To set the scene for the assessment of impact on the Metropolitan Green Belt in this case, as Mr Hughes has now agreed repeatedly, St Albans requires land which is currently in the Green Belt in order to meet the enormous and urgent needs we have described above. As we have explained, there is no adopted effective plan-led solution to managing releases of the Green Belt. Which means – in the medium to short term – that impact on the Green Belt one way or the other through development management decisions like this one isn’t a choice. It’s a necessity. It’s inevitable. The *real* issue is where schemes can come forward which don’t unacceptably impact on the Green Belt’s wider integrity, i.e. its ability to perform its strategic spatial purposes, those things for which the Green Belt was designated in the first place.
87. Of course, the site comprises some buildings, but it largely made up of equestrian fields. Which makes it, in the language of national Green Belt policy, relatively “*open*”. And albeit the scheme involves the provision of substantial areas of open space, adding the appeal scheme would make this site much less “*open*”. That is inevitable, at least so far as the spatial component of openness goes.
88. The visual component of openness is more nuanced. We are there concerned not only with the fact of buildings on a site. But how, from where and by whom those buildings can be perceived. This is when the site’s enclosure, its relatively limited field of visibility and lack of wider more distant views becomes important. Those features have a bearing on the extent of harm associated with the visual component of openness.

89. The site's also in the deemed "*open countryside*". But we must take care over that. The reason it finds itself still in the deemed "*open countryside*" is because it's *adjacent to but outside* Colney Heath. But that boundary isn't just marginally out of date. It's the product of a totally different generation of plan-making. In any event, as the 2023 ARUP Green Belt Review shows us, the **largest proportion** of sub areas across St Albans are thought to make a significant contribution to this 3rd Green Belt purpose, i.e. preventing "*encroachment*".¹⁰⁶ That is, let's be clear, the **only** Green Belt purpose in play here. But that purpose which will **inevitably** be engaged one way or the other all over the district if the Council is going to come anywhere remotely close to meeting its needs. We know scoring in relation to this purpose cannot rule sustainable sites out from bringing development forward. Or St Albans would never come anywhere close to finding enough sites to meet its needs.
90. It's no answer that the site has not been identified as suitable for release in the 2023 ARUP St Albans Stage 2 Green Belt Review. Because, as Mr Hughes accepted in cross examination, this site has not been looked at for release as a consequence of ARUP's methodology for reasons that have nothing to do with Green Belt purposes.
91. The Council has made much of the Arup Washed Over Villages Study. Pages of its closings are devoted to this untested, unexamined part of the evidence base to local plan, which it is agreed can only be afforded limited weight. Further, and in any event, the assessment of Colney Heath (and Area B in particular) did not score more than "moderate" for any of the assessment's categories, as against lots of other settlements which scored "high". Mr Wilcox is wrong to suggest that this is "overall" score of moderate for Colney Heath as a whole is

¹⁰⁶ [CD3.4]; p.57.

dragged up by the appeal site to compensate for lower scores elsewhere. Arup consider that each of Areas A, B and C score moderate for all of the relevant criteria.

92. In any event, albeit the Council focuses on a particular sentence in a particular sub-section of this untested, unexamined assessment which references views from the southern boundary of “Area B”, remember – the purpose of this assessment was to consider whether to inset Colney Heath from the Green Belt. It is not an assessment of e.g. the extent to which our site contributes to the purposes of the Green Belt. Again, our site was excluded from assessment as a consequence of Arup’s methodology (a problem which may itself, in due course, be something with which the examining inspectors have to grapple).
93. The Council putting such weight on a particular viewpoint mentioned in the Arup work in this way conflates an assessment of Colney Heath’s Green Belt functions – which as above are spatial and strategic – with particular visual considerations arising from local viewpoints.
94. The appeal site is located to the south of the Roundhouse Farm appeal site. In this appeal, Mr Hughes’ evidence is that the former “*comprises a more rural site*” than the latter. Turning back to Mr Hughes’ evidence in the Roundhouse Farm appeal, his view there was that the site comprised of a rural experience/character.¹⁰⁷ As with this case, he relied on the same parcel 34 analysis from the now overtaken 2013 Green Belt Review and argued substantial harm to purpose (c) of the Green Belt.¹⁰⁸

¹⁰⁷ CS Rebuttal; p.42; App 1 §5.76; see also p.45; §5.81 and §5.84.

¹⁰⁸ CS Rebuttal; p.42; App 1; §5.76; see also p.45; §5.81 and §5.84.

95. However, as he accepted in cross examination, Inspector Masters rejected that analysis and found¹⁰⁹:

“[t]he broad thrust of, function and purpose of the Green Belt in this location would remain and there would be no significant encroachment into the countryside. I therefore conclude that the appeal proposal would not result in harm in term of the encroachment of the Green Belt in this location. This is a **neutral factor** which weighs neither in favour nor against the appeal proposals” [emphasis added.]

96. The same is true here. We accept there will be at least some harm to the third Green Belt purpose. However, the appeal scheme has responded to this in a number of ways: (a) limiting development to approximately ½ of site; (b) planning the appeal scheme in such a way as not to breach any recognisable and clearly defined boundaries; (c) not extending beyond the linear development on Tollgate Road and (d) maintaining a significant swathe (over 100m) of open land alongside the River Colne. The broad thrust of the function and purpose of the Green Belt in this location would remain. The strategic and spatial functions of this part of the Metropolitan Green Belt would be preserved.

97. Mr Wilcox both in his opening and in his closing referred to the appeal site as “*an important Green Belt site*”. Indeed, he now calls it a “*highly*” important Green Belt site. With respect, there is no evidence to support the idea that there is anything of particular importance about this site to the wider Green Belt’s ability to perform its functions. Nowhere in the Council’s proofs of evidence did they suggest this site has any particular importance to the Green Belt. This idea is a new one, and it has not emerged from any of the Council’s proofs. It is totally unsupported.

¹⁰⁹ CD14.6; DL26.

98. In any event, of course, this scheme will bring houses where now there are equestrian fields. And that change will have a localised impact both on openness and on countryside encroachment. The NPPF requires us to attribute substantial weight to those impacts. The key point between us and the Council then under §148 NPPF is how the final balance is to be struck.

Striking the balance

99. S.38(6) of the Planning and Compulsory Purchase Act 2004 that planning applications should be determined in accordance with the development plan taken as a whole, unless material considerations indicate otherwise (including the NPPF).

100. The parties are agreed that Policy 1 – the Green Belt policy – is the most important development plan policy in this appeal.¹¹⁰ That is so even though Policy 1, the boundaries it secures and all the other important policies in the adopted plan are deemed out of date and are also substantively out of date for the reasons we examine above.

101. In any event, Policy 1 incorporates the at para 148 NPPF. Which is why the parties agree that the key question for determining this scheme's accordance both with the statutory development plan read as a whole and also the NPPF is to ask whether its benefits clear outweigh its harms.

¹¹⁰ [CD19.1]; §14; See the examination in chief of Mr Bell.

102. If they do, the parties agree you should then allow the appeal and grant planning permission.¹¹¹

103. On the harms side of the scale:

- (i) There will be less than substantial harm to the significance of 3 listed buildings which should receive great weight, and very minor harm to non-designated assets which should receive limited weight.¹¹²
- (ii) Impacts in relation to landscape and character considerations should, as Mr Bell explained, receive moderate weight.¹¹³ It should be noted that the Council accepts this is not a free-standing reason for refusal. And remember, we agree with the Council that it is better to avoid development which would cause significant effect on the wider landscape – just as we do. We also know it’s better that any development avoids any designated or valued landscapes – again as we do.
- (iii) We also know that the fields will be less open as a result of our scheme, and that it will encroach to some degree into what is now deemed countryside. We must, as above, give those localised impacts on the Green Belt substantial weight, even though the parties agree that planning permissions in the Green Belt are inevitable applying the §148 balance in this district absent an effective plan-led approach to meeting needs.

104. On the benefits side of the scale:

¹¹¹ And for completeness, the parties are agreed that if the §148 NPPF balance is passed, the scheme would inevitably pass the balance at §11(d)(ii) NPPF.

¹¹² See the examination in chief of Mr Bell.

¹¹³ See the examination in chief of Mr Bell.

- (i) The break-down in the plan-led system in this part of Hertfordshire has had real consequences for real people. As we have explained, most of all, and for many years, this Council has not come anywhere *remotely* close to meeting its needs – for market housing, for affordable housing, and more recently for self-build housing either.
- (ii) As we have shown you, these shortfalls aren't marginal. They're staggering. We aren't talking about missing the mark by tens or even hundreds of homes. We're talking about thousands. Many thousands within the district.
- (iii) In St Albans, the plan-led system has broken. And our case is simple: there is no short or medium term prospect of it being fixed. And given what has happened in the recent past, we cannot rely on the hope of the adoption of the emerging plan. The real issue before this inquiry is whether the many people in need now should have to wait another 3 years, 5 years, 10 years, or however long it takes, St Albans to actually adopt a plan, and for sites to come forward in accordance with that plan. Or whether urgent problems require more urgent solutions.

105. In the end, you should give the benefits we describe above and in the evidence of (in particular) Mr Bell, Ms Gingell and Mr Moger **very substantial weight**.

106. As Mr Bell explained, those benefits can *easily* be delivered in full within 5 years¹¹⁴ given that this site already in control of a major national housebuilder which has already begun initial work on reserved matters submissions, there is a commitment through condition to an abbreviated timescale for the submission of those reserved matters, the scheme's relatively modest scale, the lack of any technical constraints to delivery (and will of course inevitably

¹¹⁴OB PoE; §5.30 [CD9.6].

come far ahead of any sites which will be delivered through a plan-led process in St Albans – assuming a plan *ever* materialises).

107. Vistry is the country’s largest housebuilder, and the country’s largest provider of affordable housing. For a developer of this scale, particularly given the acute and chronic scale of demand in this area for more houses, Mr Bell’s projection of delivering 50 homes a year on this site is not ambitious. It is conservative.

108. On top of that, we have:

- (i) the fact the appeal proposals would represent a sustainable location for new residential development¹¹⁵;
- (ii) a number of economic benefits and biodiversity enhancements, which the Appellant considers should be given **significant** weight¹¹⁶¹¹⁷;
- (iv) the optimisation of the use of the site as PDL to promote homes, which the Appellant considers should be given **significant** weight.¹¹⁸

109. The Council has repeatedly accepted the inevitability of and the need for an enormous amount new development in the Green Belt. Just not *here*. Indeed, when we push at the reasons for refusal, every single one apart from the Green Belt issue recedes on the Council’s case. And there is, it accepts, no free-standing objection to this scheme beyond the in-principle objection on the Green Belt (which will occur everywhere). Which shows us one

¹¹⁵ OB PoE; §5.90 [CD9.6].

¹¹⁶ OB PoE, §8.20 [CD9.6].

¹¹⁷ OB PoE, §8.21 [CD9.6].

¹¹⁸ OB PoE; §9.23 [CD9.6].

thing: this is exactly the kind of sustainably located, well-enclosed, edge-of-settlement site which *should* be brought forward for development.

110. In the end, all of those benefits – with or without weighing the site’s status as PDL¹¹⁹ – carry the §148 NPPF balance. Which means that allowing the appeal is also the decision which accords with the statutory development plan.
111. Our case is straightforward: these benefits are profound (and Mr Hughes accepted as much in cross-examination), the imperative to bring them forward is compelling, and they clearly outweigh what will only be a localised impact to this appeal site and its immediate surroundings.
112. For those reasons, the balance at §148 tilts clearly in favour of granting planning permission, and we will ask you to allow the appeal.

ZACK SIMONS

JOEL SEMAKULA

Landmark Chambers
180 Fleet Street
London EC4A 2HG

28 September 2023

¹¹⁹ See the re-examination of Mr Bell.



Appeal Decision

Inquiry held on 20 to 23 September 2022

Site visit made on 22 September 2022

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2022

Appeal Ref: APP/V1505/W/22/3296116

Land at Maitland Lodge, Southend Road, Billericay CM11 2PT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Inland Homes against Basildon Borough Council.
 - The application Ref 21/01687/FULL, is dated 17 November 2021.
 - The development proposed is the demolition of Maitland Lodge and the construction of 47 new homes (Class C3) with vehicular access onto Southend Road, together with associated infrastructure and landscaping works.
-

Decision

1. The appeal is allowed, and planning permission is granted for the demolition of Maitland Lodge and the construction of 47 new homes (Class C3) with vehicular access onto Southend Road, together with associated infrastructure and landscaping works, in accordance with the terms of the application Ref 21/01687/FULL, dated 17 November 2021, subject to the conditions at Annex C of this Decision.

Preliminary Matters

Planning policy

2. The Development Plan for the area includes the Basildon District Local Plan Saved Policies September 2007 (the LP). The emerging Basildon Borough Local Plan 2014-2034 was withdrawn in March 2022. Its policies, therefore, have no weight, although the plan and its evidence base remain material considerations in the determination of the appeal.

Documents and evidence

3. A number of submissions were received during the inquiry, as set out in Annex B. I am satisfied that in all cases the material was directly relevant to, and necessary for, my Decision. All parties were given opportunities to comment as required and there would be no prejudice to any party from my consideration of these documents. The appeal is therefore determined on the basis of the revised and additional documents and drawings.

Putative Reasons for Refusal

4. The proposal was taken to planning committee in June 2022, where the Council agreed two putative reasons for refusal. The first reason is that the proposal

represents inappropriate development in the Green Belt (GB) and that 'very special circumstances' do not exist. It states that the proposal would cause substantial harm to openness and that its poor design would exacerbate this harm and would fail to provide a high quality beautiful place.

5. The second reason is in relation to securing adequate provision for on and off-site infrastructure, effects on the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (Essex Coast RAMS), and the provision of affordable housing. Subsequent to the planning committee, a s106 planning obligation, dated 7 October 2022, has been submitted. It secures:
 - a healthcare contribution to expand South Green Surgery;
 - an employment and skills contribution to broker job opportunities;
 - an open space, culture, play and sports provision contribution;
 - a contribution in respect of the Essex Coast RAMS;
 - a County Council monitoring fee and a Council monitoring fee;
 - a primary education contribution towards primary education facilities within three miles of the development and/or within Basildon Primary Group 1 (Billericay);
 - a secondary education contribution towards secondary education facilities within three miles of the development and/or within Basildon Secondary Group 2 (Billericay);
 - 16 of the proposed dwellings to be affordable housing, of which 15 would be affordable rented units at least 20% below local open market rent, and one would be shared ownership where the purchaser would have an initial equity share of not less than 25% and not more than 75%;
 - an Affordable Housing Scheme, requiring details of the location of the proposed affordable housing, and a Shared Ownership Marketing Strategy;
 - a further five of the dwellings to be First Homes, allocated to first time buyers at a discount to the market rate of 30%;
 - an Employment and Skills Plan;
 - a management company to carry out the long term management and maintenance of the on-site Open Space; and,
 - an Open Space Specification and the Management Plan regarding the open space.
6. The Council and Essex County Council's joint CIL Compliance Statement sets out the detailed background and justification for each of the obligations. I am satisfied that the provisions of the submitted agreement would meet the tests set out in Regulation 122 of the CIL Regulations 2010 (the CIL Regulations) and the tests at paragraph 57 of the National Planning Policy Framework (the Framework), and I have taken them into account. The s106 therefore responds to these concerns and this putative reason for refusal is not a main issue for the appeal. I return to matters of weight and detail of the s106 throughout my Decision as appropriate.

Main Issues

7. The main issues are:
 - whether or not the proposal would be inappropriate development in the GB, including assessment of the effect of the proposal on the openness of the GB; and,
 - the effect of the proposal on the character and appearance of the area, in particular on landscape character.

Reasons

Green Belt

Inappropriate development

8. The majority of the appeal site lies in the GB. The area of the site outside the GB is Maitland Lodge and its garden and a thin sliver of land to the north east corner running along the back of the properties to the west of Southend Road. It is proposed to construct a number of new buildings within the GB land.
9. The GB land provides 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. The Framework states that the curtilage of developed land can be considered as, but is not necessarily, previously developed land (PDL). In this instance, the functional relationship of the paddocks to the developed stables and other buildings on the site is clear. The paddocks themselves include some built form and are a human intervention on the site. It is also common ground, and I agree, that none of the appeal site is in agricultural use. The residential garden areas to Maitland Lodge are within the part of the appeal site that is within the built-up area of Billericay. These are not, therefore PDL, as defined by the Framework. However, these areas are outside of the GB. I therefore agree with the appellant and the Council, who under cross-examination conceded this position, that all of the GB land within the appeal site is PDL.
10. It is also common ground, and I agree, that the proposal would include affordable housing that would meet an identified need within the Borough. This is expanded upon later in this Decision. Paragraph 149 of the Framework states that new buildings are inappropriate development in the GB, subject to a number of exceptions. Part g), second bullet point, relates to the redevelopment of PDL where the proposal would contribute to meeting an identified affordable housing need, and is therefore relevant to the appeal proposal. The bullet point states that, in such circumstances, development would not be 'inappropriate' if it would not cause substantial harm to the openness of the GB. I therefore assess the effect of the proposal on openness below.

Openness

11. The GB element of the appeal site is within a wider parcel of land in the GB called 'Area 25' as identified in the Basildon Borough Green Belt Topic Paper, October 2018 (the Topic Paper 2018). The appeal site is a small area of land within this wider parcel. There is open countryside to the west and the south, however there is extensive, mature boundary planting to the west, and lesser, but still significant, boundary planting to the south. The land to the east and west of the site is already built-up. The site is therefore highly visually constrained and makes only a limited contribution to the openness of the GB. This is a view shared by the Topic Paper 2018.
12. The GB element of the appeal site contains a number of buildings and structures associated with its equestrian and other uses. These are largely single storey. The proposal would be for 28 buildings, including a mix of houses and two blocks of flats, at up to three storeys but mostly either two or two and a half storeys in height. Overall, the proposal would result in an 80% increase

- in footprint and a 124% increase in volume of built-form on the GB element of the appeal site. The level of the proposed increase in built-form would therefore be relatively significant.
13. The proposed garages would link several of the buildings. The layout would be relatively dense, there would be runs of rooflines that would be fairly close together and prominent, and relatively limited landscaping, save for incidental street trees and an area of open space to the south west corner. These design detail considerations influence the harm to openness of the proposal but only to a limited degree, as was accepted by the Council under cross-examination.
 14. In addition, the proposal would spread built form across the whole site, rather than being concentrated to the eastern edge adjacent to the existing housing. There would also be a significant increase in activity on the site in comparison to the existing use for equestrian purposes and the gardens of the proposed dwellings would likely also be the subject of residential paraphernalia once occupied, further negatively affecting openness on the site.
 15. However, the appeal site is largely visually self-contained by the mature planting to the west and existing development to the north and east. The southern boundary also has a relatively mature hedgerow but is more open. The proposed landscaping scheme, including some trees, would lessen this openness but the proposal would still be more visible from the south through this boundary than the existing built form. Importantly, though, as viewed from the south the proposed development would be seen in the context of the existing housing of Billericay. The existing housing rises slightly up the hill as viewed from the south and is clearly visible and fairly prominent.
 16. 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.
 17. 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 and the proposal clearly falls below it. The proposal is therefore 'not inappropriate' development in the GB. I do not, therefore, need to further consider issues in relation to GB development or make a determination on 'very special circumstances'.

Character and appearance

18. The Council's case with regard to character and appearance relates primarily to the effect of the proposal on landscape character, which I assess in this section. The Council also raised matters regarding detailed design that fall outside the above, which I turn to in the Other Matters section later in my Decision.

Existing

19. The appeal site includes a detached house along the western side of Southend Road, with the majority of the site lying behind this house. The area behind comprises a number of buildings and stables and associated hardstanding, fences and other ancillary development. There are also two grass paddocks which take up the western and central part of the site. The existing buildings have an equestrian use character and are single storey apart from Maitland Lodge. Some buildings are in poor condition and the site has grown organically with no discernible pattern to the layout.
20. To the east and north of the rear part of the site lies the existing edge of Billericay, with a mix of houses lining Mill Road, Homefield Close and Southend Road. The Maitland Lodge house is one of the properties on Southend Road. The surrounding properties are of a variety of architectural styles, being either detached or semi-detached houses or bungalows, and there is little to unify the architectural character. It is a typical, unremarkable, suburb. To the south and west are fields with mostly open countryside beyond. The site sits within Landscape Character Area 12¹, defined as an area of sloping farmland. However, it is only a small part of this wider area, which includes the extensive open farmland surrounding Billericay. The appeal site does not contain most of the key characteristics of the area, such as large fields.
21. Other than the entrance element where Maitland Lodge sits, the appeal site is mostly visually self-contained. The dwellings to the north and east only afford glimpsed views through to the site. There is a very mature hedgerow including substantial trees to the western boundary and a less mature and lower hedgerow, but which is still relatively substantial, to the southern boundary. Even views from neighbouring properties are at least partially screened by existing vegetation and boundary features. The appeal site is, however, visible from the south, largely to drivers approaching Billericay along Southend Road, but there are also some footpaths at mid-distance from the site to the south and west. However, where the site is visible, it is seen in the context of the urban edge of Billericay. The existing properties are clearly visible, set on rising land towards the north.
22. The wider landscape to the south and west is largely open farmland and is of higher quality. However, whilst pleasant countryside, this is also largely unremarkable agricultural fields. It is common ground, and I agree, that the wider landscape is not a 'valued landscape' within the meaning of paragraph 174 of the Framework. I assess the wider area to have moderate sensitivity to change. The appeal site itself, however, is of low sensitivity, through a combination of the partly-urbanising effect of the existing buildings and ancillary structures and hard standing, the edge-of-settlement character and the visual containment.

Proposed

23. It is proposed to demolish all the existing buildings and structures on the site and comprehensively redevelop to provide 47 dwellings. The proposed layout includes an access road from Southend Road which turns into a circle within the main/rear part of the site. A building, containing two houses, is proposed to the Southend Road frontage, adjacent to the proposed access road. A variety

¹ As set out in the Landscape Character and Green Belt Landscape Capacity Study December 2014

of dwellings are proposed within the site, including detached and semi-detached houses at two or two and a half storeys, and two blocks of flats at two and three storeys. Many of the proposed houses are also provided with car ports and there would be additional off and on-street car parking, including on driveways and in small car parks. An area of communal open space is proposed to the south west corner, which would also incorporate a balancing pond drainage feature. Some new planting is proposed, including trees, to the southern boundary.

Assessment

24. There would be a fair degree of consistency in the proposed architectural style of the buildings in terms of scale and layout but a certain amount of variety through different fenestration patterns and materials. The Essex Design Guide 2018 advises to avoid or conceal wide gable ends to roofs. Some relatively wide gable ends are proposed, but these are largely to side elevations not viewed directly from the proposed street. These side elevations often also would have car ports, adding articulation. There would be a variety of roof forms, silhouettes and detailing which is a positive factor which contributes to the architectural interest of the proposal. Overall, the architectural approach achieves a successful balance and would be in-keeping with the varied detailed design but consistent suburban character and appearance of the wider area.
25. The proposal is relatively dense and the proposed car ports would visually and physically link many of the buildings. However, these would be set back and would be lower than the host buildings and would remain subservient to them. The density would be similar to the surrounding area. The proposed open space would be relatively limited, but it is in the location of the site that would most benefit from visual softening, in the south west corner surrounded by open fields, and as stated in the Basildon Outline Landscape Appraisals of Potential Strategic Development Sites 2017. Paragraphs 119 and 124 of the Framework promote the effective and efficient use of land to provide homes. In this physical and policy context, the proposal would be of an acceptable density.
26. Nevertheless, the proposal would undeniably result in a change in character and appearance to the appeal site from the current equestrian use and building styles, and an increase in density and built form across the site, particularly to the currently open paddocks to the west and centre of the site. However, the overall density and detailed design of the proposal would be in-keeping with the character and appearance of the area. The appeal site is also of low sensitivity, is highly visually self-contained and, where more visible from the south, would be seen in the context of the existing housing of Billericay to the north, limiting any effects on the wider area.
27. Consequently, the proposal would not result in material harm to the character and appearance of the area, with regard to landscape effects. The proposal would therefore comply with Policy BE12(i) of the LP, which resists residential development that would harm the character of the surrounding area.

Other Matters

Housing

Market housing

28. A housing land supply range has been agreed between the parties, of between 1.6 and 2.33 years. Anywhere within this range is a very substantial shortfall against the target to identify a five year supply of housing land as set out in paragraph 68 of the Framework. In numerical terms, the shortfall equates to between 3,345 and 4,200 homes. There is also an under-delivery of housing in the Borough. The Government's 2021 Housing Delivery Test figures confirm a delivery rate of 41% against the housing requirement. Footnote 8 of the Framework states that even a delivery rate of 75% should be considered as substantially below the requirement. 41% is therefore a very substantial under-delivery. The delivery is also on a downward trend, with the most recent results being 45% in 2020, 44% in 2019 and 75% in 2018.
29. Under cross-examination, the Council accepted that housing delivery has been persistently poor over several years. This is also stated at paragraph 2.4 of the Council's Draft Housing Delivery Test Action Plan July 2021 (the Action Plan 2021). It would be difficult to come to any other conclusion on the basis of the above evidence. The shortfalls in housing land supply and housing delivery are stark. There is also no evidence before me that there is likely to be a marked improvement in the delivery of housing in the short to medium term. The Council's Action Plan 2021 states that the level of supply is not expected to significantly improve until a new Local Plan is adopted. In this regard, the Council's emerging Local Plan was recently withdrawn and its tentative timetable for the production of a new Local Plan would result in adoption, at best, in 2027.
30. It is important to remember that there are real world implications from the under-delivery of homes, including increased house prices, decreased affordability and an increasing number of individuals and families being forced to remain in unsuitable accommodation for their current needs. I therefore place very substantial positive weight on the proposed 26 open market homes.

Affordable housing

31. The Council's affordable housing need is agreed between the main parties to be 860 dwellings per annum (dpa), based on removing the backlog in addition to ongoing requirements. The current overall shortfall is 2,494 homes. Over the past seven years, the net delivery of affordable housing, ie after accounting for Right to Buy sales, is just 5 dpa. Affordable housing delivery is abysmal. The shortfall is acute and persistent. As with market housing, there is no evidence before me that there is likely to be a marked improvement in the delivery of affordable housing in the short to medium term.
32. The length of the waiting list on the housing register is up by 44% in the past year. The multiple of the income of people on lower quartile incomes necessary to buy a home in the Borough is 32% higher than seven years ago. These statistics sit in the middle of a much wider socio-economic and political conversation, not all which, I accept, will have been driven by the lack of affordable housing delivery. However, the persistent extremely low affordable housing delivery in the past years has contributed towards this real-world

harm. Each of the 2,494 affordable homes that should have been built, but have not, represent a missed opportunity to help alleviate the housing concerns of individuals and families. The situation represents a significant conflict with the economic and social overarching objectives set out in paragraph 8 of the Framework.

33. Policy BAS S5 of the LP sets a requirement for affordable housing of between 15 to 30% of the total number of units on a development site. The 'split' of the affordable housing between different affordable tenure types is not prescribed in policy and all tenures of affordable housing contribute to the affordable housing supply for the Borough. The proposed provision of 45% of total units, at 21 homes, is in excess of the policy requirements. However, given the critical situation regarding affordable housing delivery in the Borough, I place very substantial positive weight on all of the proposed affordable homes, not just those over and above policy requirements.

Appeal site location and nature

Previously Developed Land (PDL)

34. As established above, the element of the appeal site in the GB is PDL. Most of the remainder of the appeal site is also PDL, as it is land with existing built form and associated hard standing. However, there are two small residential garden areas associated with Maitland Lodge that lie outside of the GB, both of which do not constitute PDL, as defined by the Framework. Nevertheless, a significant majority of the site is PDL. Despite this, the site is not particularly intensively used, with large relatively open spaces for the paddocks. The proposed development to provide 47 houses would therefore represent an efficient use of land for homes, on a mostly brownfield site, partly within and partly directly adjacent to an existing settlement.
35. In light of the above, and as directed by paragraph 120(c) of the Framework, I place substantial positive weight on the proposed dwellings on the part of the appeal site within Billericay. I also place significant positive weight on the remainder of the development in this regard, which accords with the promotion of the effective use of land to provide homes at paragraph 119 of the Framework.

Sequential preference

36. The Council's Development Plan is out-of-date. The Local Plan was adopted in 1998, based on the period 1991-2001, with a housing requirement based on a previous Structure Plan adopted in 1982. The GB boundaries are therefore based on very old housing requirements and a completely different planning policy and political backdrop. Most of the Borough outside the three main towns is GB. It is common ground, and I agree, that due to the significantly higher housing requirements that the Council now faces, and that it cannot demonstrate a five year supply of housing land, significant GB release is inevitable.
37. It would be preferable if the GB release could be managed through the emerging Local Plan process, as set out at paragraphs 15 and 140 of the Framework. However, as set out above, a new Local Plan is at least five, and potentially many more, years from being adopted. It is therefore necessary to

consider proposals that come forward in the GB ahead of adoption of the new Local Plan.

38. In this regard, the now withdrawn Local Plan and its evidence base is still a material consideration. The evidence base allocated the site for development² and the withdrawn Plan carried this through to a site allocation (Site H21b), albeit for around 20 self-build homes rather than the 47 dwellings proposed as part of the appeal proposal³. However, the important consideration is that the site was found to be suitable for development and to be removed from the GB. In addition, this inquiry has established that the GB element of the appeal site is all PDL.
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. In any event, as established above, the specific appeal proposal is 'not inappropriate' development in the GB. I therefore find no harm from the location of the proposal in the GB in addition to its sequential preference over non-PDL GB sites. This is a significant positive benefit of the proposal in the context of a Borough where GB release is accepted as being inevitable to meet its housing needs.

Accessibility

40. The appeal site is directly adjacent to Billericay and accessible to its large range of services and facilities, and also easily accessible to a range of bus routes and also Billericay train station. It is common ground, and I agree, that the appeal site is in a highly accessible location. I place significant positive weight on this factor.

Economic

41. The proposal would create short term employment during construction and would result in long term economic benefits from expenditure from the future occupants on goods and services in the area. Some of the future occupants would potentially have only moved a short distance and already be in the local area, but many are likely to be from further afield. As required by paragraph 81 of the Framework, I place significant positive weight on the economic benefits.

Biodiversity

42. A package of mitigation measures, such as tree protection fencing or sensitive site clearance, is set out in the Ecological Impact Assessment May 2022 and could also be secured by condition. Compensation is also proposed, for example through the contribution towards the Essex Coast RAMS. It is therefore proposed to follow the hierarchy set out at paragraph 180 of the Framework by first mitigating ecological effects and only then compensating for them. In addition, a biodiversity net gain of 10% is proposed and could be secured by condition. The Framework only requires 'a' net gain, rather than a gain of 10%. The proposal therefore goes beyond policy requirements in this regard. I place significant positive weight on this benefit.

² Housing and Economic Land Availability Assessment (HELAA) Review 2018, September 2018 (Site SS0189)

³ Basildon Borough Revised Publication Local Plan 2014 – 2034, October 2018 (Site H21b) and Housing Options Topic Paper November 2018 (New Site 3)

Detailed design

43. The proposed layout with a circular road leading to a single access point logically responds to the square shape of the rear part of the site and the narrow access area to Southend Road. The proposed building along Southend Road retains a building fronting onto the road, in-keeping with the established character of the road. Nevertheless, there would be limited harm to the character and appearance of this frontage through the proposed relatively wide access road.
44. The proposed three storey block of flats would be slightly taller and more bulky than the proposed and existing semi-detached properties in the area. However, it would be relatively small, towards the centre of the site and not readily visible from public or private views. The proposed public open space would be relatively small but is proposed in the south west corner of the site which is the most appropriate location for open space as it is furthest away from Billericay and one of the most visible parts of the appeal site. The open space would also incorporate a drainage feature but the detail of this could be controlled by condition to be attractive and there would be sufficient remaining space for recreational use by the future residents. The proposed shared surface approach to the internal road would work well in the context of the relatively small scale of the proposal. The Highways Authority raises no objection to this approach in terms of highway safety.
45. Matters of detailed design of the proposed buildings and the proposed hard and soft landscaping could be controlled by condition(s). Overall, the detailed design of the proposal would be in-keeping with the character and appearance of the area and would be acceptable. This weighs neutrally in the planning balance.

Appropriate Assessment

46. The appeal site falls within the Zone of Influence (ZoI) for the Blackwater Estuary Special Protection Area and Ramsar (the SPA). The proposal is for residential development and the future occupants are likely to travel to the SPA for recreation purposes, due to the proximity and as established by the appeal site falling within the ZoI. Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 indicates the requirement for an Appropriate Assessment (AA) in such circumstances. As the Competent Authority, I have therefore undertaken an AA.
47. The conservation objectives for the SPA include maintaining or restoring the habitats for a number of breeding and non-breeding birds. The specific qualifying features likely to be affected by the potential increase in recreational pressure include the mudflat habitat that supports internationally and nationally important numbers of overwintering waterfowl, and semi-improved grassland that includes nationally scarce plants and rare invertebrates. The proposal would therefore likely result in adverse effects on the SPA, by itself and in combination with other development projects.
48. Consequently, I am satisfied that a mitigation payment is required to avoid an adverse effect on the integrity of the SPA. In this regard, the s106 secures a financial contribution, proportionate to the number of dwellings proposed, towards mitigating the effects of the likely increased recreational pressure. The payment has been calculated in accordance with the Essex Coast RAMS, which

applies to a number of protected areas include the SPA relevant to this appeal. The RAMS is a detailed strategy which has carefully considered the mitigation measures necessary to protect the designated sites. Natural England has confirmed that the contribution is appropriate and proportionate, and that, subject to the contribution, the proposal would not have an adverse effect on the integrity of the site. I am therefore satisfied that the mitigation would be effective. I am also satisfied that the planning obligation meets the tests set out in Regulation 122(2) of the CIL Regulations and paragraph 56 of the Framework.

49. Consequently, I consider that, subject to the s106, there would be no adverse effect on the integrity of the protected site, both on its own and in combination with other developments.

Interested parties

50. Several objections have been submitted, including from the Billericay District Residents Association, Great Burstead and South Green Village Council and the Campaign to Protect Rural England. The objections have commented on the issues covered above and also on drainage, flooding, highway safety, free-flow of traffic, harm to living conditions of neighbouring occupiers through lack of light and noise and outlook, contamination of groundwater, impact on local infrastructure eg schools and doctors, disruption during construction, and deterioration in air quality. Some neutral comments were also submitted requesting a horticultural scheme.
51. I have taken all of these factors into consideration. Most are not in dispute between the main parties. The Council concluded that there would be no material harm in these regards and I also note that both the Local Lead Flood Authority and Highways Authority have no objection to the proposal. No substantiated evidence has been submitted that leads me to any different view. Other concerns are addressed in my reasoning above, can be addressed by conditions or are dealt with by the planning obligations secured.

Conditions

52. A schedule of conditions was agreed between the parties ahead of the inquiry. This was discussed through a round-table session at the inquiry. I have considered the conditions against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents and in the interests of clarity, precision, and simplicity. The appellant has confirmed acceptance of the pre-commencement conditions. I set out below specific reasons for each condition:
- In addition to the standard time limit condition, a condition specifying the relevant drawings provides certainty;
 - Construction Management Plan (CMP) and Site Waste Management Plan (SWMP) and Construction Environmental Management Plan (CEMP) conditions are necessary to protect the living conditions of neighbours, biodiversity, highway safety and the free-flow of traffic during construction;
 - The Biodiversity Survey and Biodiversity Enhancement Strategy, Landscape and Ecological Management Plan (LEMP), lighting design, Arboricultural Impact Assessment, and Ecological Impact Assessment conditions are necessary to protect existing biodiversity, to secure the proposed 10% biodiversity net gain, and to ensure maintenance of the relevant measures;

- Land contamination and remediation, archaeology, Secured by Design and waste and recycling conditions are necessary to ensure the proposal would have acceptable effects with regard to these technical considerations;
 - Tree protection, hard landscaping, soft landscaping, waste and recycling conditions, and Arboricultural Impact Assessment conditions are necessary to ensure a satisfactory standard of development protect and to protect and enhance biodiversity;
 - The materials and finished floor levels conditions are necessary to ensure a satisfactory standard of development;
 - The surface water drainage systems, maintenance of surface water drainage systems and finished floor levels conditions are necessary to ensure that suitable mitigation is provided regarding surface water drainage and flooding;
 - An Energy and Sustainability Strategy condition is necessary to ensure that the proposal reduces carbon dioxide emissions and therefore to mitigate climate change and assist in moving to a low carbon economy as set out in paragraph 8 of the Framework;
 - The visibility splays, access junction details and internal road and footway layout condition is necessary to protect highway safety and the free-flow of traffic;
 - The cycle parking and Residential Travel Information Pack conditions are necessary to encourage the use of a range of modes of transport other than the car; and,
 - The condition requiring details of upgrade works to nearby bus stops and pedestrian crossings is necessary to encourage the use of a range of modes of transport other than the car and to partially mitigate the increased pressure on public transport from the future occupiers of the development. It is necessarily worded as a Grampian type condition, since it relates to land outwith the control of the appellant.
53. A condition requiring electric vehicle charging points for all the proposed car parking spaces was requested by the Council but it is unnecessary because this provision is already set out in Requirement S1 of The Building Regulations 2010, Approved Document S 2021 Edition.
54. The CMP/SWMP, CEMP, Biodiversity Survey, land contamination and remediation, archaeology, tree protection, and hard and soft landscaping conditions are necessarily worded as pre-commencement conditions, as a later trigger for their submission and/or implementation would limit their effectiveness or the scope of measure which could be used.

Planning Balance

55. The proposal would not conflict with any Development Plan policies, including the four identified as most relevant to the appeal in the Statement of Common Ground, namely Policy BAS GB1 which sets the GB boundaries but has no specific control over GB development, Policy BAS S5 which sets affordable housing thresholds which the proposal exceeds, Policy BAS BE12 which requires proposals to conserve the character of the area, and Policy BAS BE24 which is in relation to crime prevention which could be adequately controlled by condition.
56. The proposal would not harm the character and appearance of the area, either with regard to landscape or detailed design. It would be 'not inappropriate'

development in the Green Belt. The s106 secures appropriate mitigation against any harms from the proposal on the SPA. These factors all weigh neutrally in the planning balance.

57. The proposed open market housing and affordable housing would be very substantial benefits of the proposal. The part of the proposal outside of the GB to be developed for housing would be a substantial benefit due to the use of suitable brownfield land within settlements for homes.
58. The remainder of 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. The appeal site is easily accessible to public transport, services and facilities, a biodiversity net gain over and above minimum policy requirements is proposed, and there would be both short term and long term economic benefits. These are all significant benefits.

Conclusion

59. The Council cannot demonstrate a five year supply of housing land and there is no clear reason for refusing the proposal related to areas or assets of particular importance. Having regard to paragraph 11d of the Framework, I have found no conflict with the Development Plan and a number of weighty benefits. Therefore, for the reasons above, the appeal is allowed.

O S Woodward
INSPECTOR

ANNEX A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Giles Atkinson, of Counsel. He called:

Emily Beavan ARB	Principal Urban Design Officer, Basildon Borough Council (BBC)
Louise Cook MRTPI	Principal Planning Officer, BBC
Christine Lyons MRTPI	Head of Planning, BBC
Adeola Pilgrim MRTPI	Principal Planner, BBC
Lisa Richardson	Principal Planner, BBC
Charlotte McKay cFILEX	Principal Lawyer, BBC
Anne Cook	Principal Infrastructure Planning Officer, Essex County Council

FOR THE APPELLANT:

Zack Simons, of Counsel. He called:

Colin Pullan	Head of Urban Design and Masterplanning, Lambert Smith Hampton
Charles Crawford CMLI	Director, LDA Design
Hywel James MRTPI	Associate, Nexus Planning
Oliver Bell MRTPI	Director, Nexus Planning
James Stacey MRTPI	Senior Director, Tetlow King Planning Ltd
Ben Standing	Partner, Browne Jackson
Dominick Veasey MRTPI	Director, Nexus Planning
Hywel James MRTPI	Associate, Nexus Planning

ANNEX B: DOCUMENTS SUBMITTED DURING THE INQUIRY

- 1 Addendum to Statement of Common Ground – Housing Issues, dated 20 September 2022
- 2 Affordable Housing Proof of Evidence Addendum and Errata Note of James Stacey BA (Hons) Dip TP MRTPI
- 3 *Herbert Hiley and The Secretary of State for Levelling Up, Housing and Communities vs East Lindsey District Council* [2022] EWHC 1289 (Admin)
- 4 Appellant’s Opening and List of Appearances
- 5 Opening Statement on behalf of the LPA
- 6 Site Visit Routes, dated September 2022
- 7 Email regarding conditions 27 and 28 from Hywel James, dated 23 September 2022
- 8 Open Space Plan/Management Plan Ref 1760/L/02
- 9 Closing submissions on behalf of the LPA, by Giles Atkinson, dated 23 September 2022
- 10 Appellant’s Closing Submissions, by Zack Simons and Isabella Buono, dated 23 September 2022

ANNEX C: CONDITIONS SCHEDULE

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Refs 16007/400; 1760/P/01 Rev B; 16007-10, 11 Rev B, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 Rev A, 35, 36, 37, 38, 39, 100, 101.

Pre-commencement

- 3) No development shall commence, including any works of demolition, until a Construction Environmental Management Plan (CEMP) and Site Waste Management Plan (SWMP) for the proposed development has been submitted to and approved in writing by the Local Planning Authority. The Plans shall incorporate details of:
 - a) the parking of vehicles of site operatives and visitors (construction traffic management);
 - b) loading and unloading and the storage of plant and materials used in constructing the development;
 - c) the erection and maintenance of security hoardings including decorative displays and facilities for public viewing, where appropriate;
 - d) wheel and underbody washing facilities;
 - e) measures to control the emission of noise, dust and dirt during construction;
 - f) a scheme for recycling/disposing of waste resulting from demolition and construction works; and,
 - g) details of a nominated developer/resident liaison representative with an address and contact telephone number to be circulated to those residents consulted on the application by the developer's representatives. This person will act as first point of contact for residents who have any problems or questions related to the ongoing development.

The approved CEMP and SWMP shall be implemented for the entire period of the construction works.

No materials produced as a result of the site development or clearance shall be burned on site.

- 4) Prior to the commencement of development, a construction environmental management plan (CEMP: Biodiversity) shall be submitted to and approved in writing by the Local Planning Authority following the recommendations made within the Ecological Impact Assessment ref. INL20854_EcIA dated 17.05.2022. The CEMP: Biodiversity shall include the following:
 - a) Risk assessment of potentially damaging construction activities;
 - b) Identification of "biodiversity protection zones";

- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- d) The location and timing of sensitive works to avoid harm to biodiversity features;
- e) The times during construction when specialist ecologists need to be present on site to oversee works;
- f) Responsible persons and lines of communication;
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person; and,
- h) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP: Biodiversity shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 5) A. No above ground new development, including demolition, shall commence until an updated Biodiversity Survey has been submitted to and approved in writing by the Local Planning Authority.
B. A Biodiversity Enhancement Strategy for any identified protected and priority species in accordance with the Biodiversity Survey approved at A., shall be submitted to and approved in writing by the Local Planning Authority, prior to the commencement of the relevant part of the development. The content of the Strategy shall include the following:
 - a) measures equivalent to a 10% net gain in biodiversity;
 - b) purpose and conservation objectives for the proposed enhancement measures;
 - c) detailed designs to achieve stated objectives;
 - d) timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
 - e) locations of proposed enhancement measures by appropriate maps and plans;
 - f) persons responsible for implementing the enhancement measures; and,
 - g) details of initial aftercare and long-term maintenance (where relevant).C. The Strategy shall be implemented in accordance with the approved details and timetable and, where appropriate, shall be retained in that manner thereafter.
- 6) No development shall commence, including any works of demolition, until an updated desk-top study has been submitted to and approved in writing by the Local Planning Authority, to identify and evaluate all potential sources of contamination and the impacts on land and/or controlled waters, relevant to the proposed development.
- 7) If identified as being required following the completion of the desk-top study required pursuant to condition 6, a site investigation shall be carried out prior to commencement of development and effectively characterise the nature and extent of any land contamination and/or pollution of controlled waters. It shall specifically include a risk

assessment that adopts the Source-Pathway-Receptor principle, in order that any potential risks are adequately assessed, taking into account the sites existing status and proposed new use. The site investigation and findings shall be submitted to and approved in writing by the Local Planning Authority within three months of their completion.

- 8) If identified as being required following the completion of the site investigation pursuant to condition 7, a written method statement detailing the remediation requirements for land contamination and/or pollution of controlled waters affecting the site, shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of development. Development shall be carried out in accordance with the written method statement. If, during redevelopment, contamination not previously considered is identified, then the Local Planning Authority shall be notified immediately, and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspected contamination has been submitted to and approved in writing by the Local Planning Authority and all requirements shall be implemented and completed in accordance with the approved method statement.
- 9) Following completion of measures identified in the remediation scheme pursuant to condition 8, a full closure report shall be submitted to and approved in writing by the Local Planning Authority. The report shall provide verification that the required works regarding contamination have been carried out in accordance with the approved method statement(s).
- 10) A. No development shall commence until:
 - i. A programme of archaeological investigation has been secured in accordance with a Written Scheme of Investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority; and,
 - ii. Any fieldwork required in accordance with the submitted WSI has been completed.

B. A Final Archaeological Report shall be submitted to and approved in writing by the Local Planning Authority, prior to occupation of the development.

C. The deposition of a digital archive with the Archaeological Data Service must be submitted within six months of the completion of any fieldwork required.
- 11) No development shall commence, including any works of demolition, until all trees to be retained have been protected by secure, stout exclusion fencing erected at a minimum distance equivalent to the branch spread of the trees and in accordance with BS5837:2012 Trees in relation to design, demolition and construction – Recommendations. The protective fencing shall be retained for the duration of the construction process.
- 12) The hard landscaping scheme set out in drawing Ref INL20854-12-Sheets 1, 2 and 3 and drawing Ref INL20854_10 shall be updated to accord with the additional landscaping features shown on drawing Ref 1760/P/01 Rev B. The updated hard landscaping scheme shall be submitted to and

approved in writing by the Local Planning Authority prior to the commencement of development. The approved hard landscaping scheme shall be implemented prior to occupation of the development in accordance with the approved details.

- 13) The soft landscaping scheme set out in drawing Ref INL20854-11-Sheets 1, 2 and 3 and drawing Ref INL20854_10 shall be updated to accord with the additional landscaping features shown on drawing Ref 1760/P/01 Rev B. The revised soft landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The approved landscaping scheme shall be carried out in the first planting and seeding seasons following the occupation or completion of the development, whichever is the sooner. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

Specific triggers

- 14) Prior to installation of external façade surfaces, full details, including samples, specifications, annotated plans and fire safety ratings, of all materials to be used in the construction of the external surfaces shall be submitted to and approved in writing by the Local Planning Authority. The external façade surfaces shall only be implemented in accordance with the approved details and shall be retained at all times thereafter.
- 15) No above ground new development shall commence, until an updated and detailed surface water drainage scheme for the proposed development, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following:
- a) Demonstrate that all storage features can half empty within 24 hours for the 1 in 30 plus 40% climate change critical storm event;
 - b) Final modelling and calculations for all areas of the drainage systems for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change; and,
 - c) A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.

The approved scheme shall be implemented prior to occupation of the development.

- 16) No above ground new development shall commence until an Energy and Sustainability Strategy has been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to occupation of the development and shall be maintained at all times thereafter.
- 17) No above ground new development shall take place until details of the existing and finished site levels and the finished floor and ridge levels of the proposed development have been submitted to and approved in

writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Pre-occupation

- 18) Prior to occupation of the development, a Landscape and Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority. This must include details of management of trees on site. The content of the LEMP shall include the following:
- a) Description and evaluation of landscape and ecology to be managed to include all woodland;
 - b) Ecological trends and constraints on site that might influence management;
 - c) Aims and objectives of management (The southern and western boundary hedgerows will be protected from the development with garden fences, to prevent inappropriate management by the residents. The hedgerows will be appropriately managed long term by a management company);
 - d) Appropriate management options for achieving aims and objectives;
 - e) Prescriptions for management actions;
 - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
 - g) Details of the body or organisation responsible for implementation of the plan; and,
 - h) Ongoing monitoring and remedial measures.

The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The approved LEMP shall be implemented in accordance with the approved details.

- 19) A. Prior to occupation of the development, the access at its centre line shall be provided with a visibility splay with dimensions of 2.4 metres by 63 metres to the north and 2.4 metres by 64 metres to the south, as measured from and along the nearside edge of the carriageway to a 1 metre offset, as shown in principle on planning application drawing Ref 151883/PD02 rev A prepared by Vectos. Such vehicular visibility splays shall be retained free of any obstruction at all times.
- B. The width of the access at its junction with the highway shall not be less than 6 metres and shall be provided with two appropriate kerbed radii as shown in principle on planning application drawing Ref 1760/P/01 rev B prepared by Archtech.
- C. Prior to occupation of the development, footways a minimum of two metres wide shall be provided on both sides of the vehicular access. The footways shall extend from the site around the bellmouth junction, include a dropped kerb pedestrian crossing point and tie in with the existing footways on Southend Road.

- D. Prior to occupation of the development the internal estate road and footways shall be constructed as shown in principle on planning application drawing Ref 1760/P/01 rev B prepared by Archtech.
- E. Prior to occupation of the development, vehicular turning facilities, as shown on planning application drawing Ref 1760/P/01 rev B prepared by Archtech shall be constructed, surfaced and maintained free from obstruction within the site at all times for that sole purpose.
- 20) Prior to first occupation of the flats, details of the proposed secure and covered cycle parking for future occupiers of these units shall be submitted to and approved in writing by the Local Planning Authority. The cycle parking shall be made available prior to first occupation of the flats in accordance with the approved details and thereafter permanently retained.
- 21) No dwelling shall be occupied unless and until the existing bus stops known as Factory Site located on Southend Road adjacent to the site have been upgraded to provide raised Kassel kerbs, associated footway reprofiling, installation of bus stop clearway markings for both northbound and southbound stops, and a dropped kerb pedestrian crossing point provided on both sides of Southend Road in the vicinity of the northbound and southbound bus stops, in accordance with details that shall have previously been submitted to and approved in writing by the Local Planning Authority.
- 22) Prior to the first occupation of the relevant dwelling, a Residential Travel Information Pack (RTIP) for sustainable transport shall be submitted to and approved in writing by the Local Planning Authority. The RTIP shall subsequently be provided to the first occupant(s) of the relevant dwelling prior to first occupation of that dwelling. The RTIP shall include six one day travel vouchers for use with the relevant local public transport operator.
- 23) Prior to the first occupation of the proposed development, a lighting design scheme for biodiversity shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate technical specification) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. No external lighting shall be installed other than in accordance with the specifications and locations set out in the approved scheme and maintained thereafter in accordance with the scheme.
- 24) Prior to occupation of the development, a Maintenance Plan detailing the maintenance arrangements, including who is responsible for different elements of the surface water drainage system, and the maintenance activities / frequencies, shall be submitted to and approved writing by the Local Planning Authority. Should any part be maintainable by a maintenance company, details of long-term funding arrangements should also be provided. Drainage maintenance shall be carried out thereafter in accordance with the approved details. The applicant(s) or any successor(s) in title must maintain yearly Drainage Logs of maintenance which should be carried out in accordance with any approved

Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.

- 25) Prior to occupation a detailed residential refuse and recycling strategy for the development, including the design and location of the refuse and recycling stores, shall be submitted to and approved in writing by the Local Planning Authority. The approved refuse and recycling stores shall be provided before the occupation of the development and thereafter permanently retained.

Pre-completion

- 26) A. The development hereby permitted shall use reasonable endeavours to achieve a Gold award of the Secured by Design for Homes (2019 Guide) or any equivalent document superseding this Guide.
- B. A certificated Post Construction Review, or other verification process agreed with the Local Planning Authority, shall be provided upon completion of the development confirming that the agreed standards at A. have been met.
- C. In the event that the agreed standards at A. are not achievable then prior to completion of the development the applicant shall submit to the Local Planning Authority for approval in writing justification for this and details of the highest award of the Secured by Design for Homes (2019 Guide) or any equivalent document superseding this Guide which is achievable for the development.
- D. A certificated Post Construction Review, or other verification process agreed with the Local Planning Authority, shall be provided upon completion of the relevant Phase of the development, confirming that the agreed standards at C., as relevant, have been met.

For observation

- 27) All works shall take place in accordance with the recommendations set out in the approved Arboricultural Impact Assessment and Method Statement Ref INL20854aia-amsA Rev A dated 10/02/2022 and the associated Tree Protection Plan Ref INL-20854-03 Rev B. Any works connected with the approved scheme within the branch spread of the trees shall be by hand only. No materials, supplies, plant or machinery shall be stored, parked or allowed access beneath the branch spread or within the exclusion fencing. Any trees that are damaged or felled during construction work must be replaced with semi-mature trees of the same or similar species in the next planting season, if not sooner.
- 28) All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the updated Ecological Impact Assessment (May 2022).

=====**END OF SCHEDULE**=====

Appeal ref: APP/B1930/W/23/3323099
Local Authority Planning Application ref: 5/2022/1988
Land at Tollgate Road, Colney Heath

CLOSING STATEMENT ON BEHALF OF THE LOCAL PLANNING AUTHORITY

Introduction¹

1. At the outset of the inquiry, the LPA and the Appellant agreed that the outcome of the appeal turned on a single question: do the benefits of the Proposal outweigh its harms clearly and decisively enough to amount to VSC?
2. After two weeks of evidence, it is clear that the Proposal's benefits, substantial though they are, do not reach the level of VSC. The evidence has established that there is no justification for the permanent loss of this important Green Belt site at this time.
3. There is no doubt that the housing position in St Albans is dire. I do not hide from that fact. But housing need, even serious housing need, does not justify any housing development anywhere. Housing is not the only important planning consideration. The protection of the Green Belt another very weighty consideration, to which the Government itself attaches "great importance" (NPPF para 137).
4. In opening the inquiry, Mr Simons and Mr Semakula stressed the reality – families in need – that lies behind housing numbers. They were right to do so.
5. But there is an equally compelling reality behind Green Belt policy.
6. The open, undeveloped countryside is an invaluable, and finite, natural resource in this country. The encroachment of development into that countryside is not just a matter of red lines on plans: it is the erosion of open countryside. And that open countryside is something that so many people find so very important. Once lost to housing, that openness

¹ I have adopted the same abbreviated terms in this closing statement as in my opening statement.

can never be recovered. It is gone forever, to the detriment of us all. Such a loss should not occur lightly.

The policy context, and the central question in the appeal

7. I set out the detail of the relevant development plan and national policies in opening. I adopt that analysis in closing and do not repeat it.
8. Happily, the Appellant and the LPA are in agreement that, under both the development plan and the NPPF, the success or failure of the appeal turns on the Green Belt VSC test.
9. As articulated in the NPPF, VSC for a proposal 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 (para 148).
10. If the Proposal can show VSC, then there is no reason in NPPF terms not to apply the para 11 tilted balance, and if the VSC test is passed, the para 11 tilted balance must also be passed. Conversely, if the VSC test is failed, the para 11 tilted balance is disengaged by footnote 7 and the NPPF points clearly to refusal.
11. The planning witnesses agree that the VSC test in Policy 1 of the development plan is the same as that in the NPPF. The planning witnesses also agreed that, if Policy 1 is breached by a failure of the VSC test, the result is non-compliance with the development plan overall. Conversely, they agreed that if Policy 1 is met, then the development plan overall is supportive of the Proposal.
12. If the Appellant can establish that the benefits of the Proposal clearly outweigh the harms, then the appeal succeeds. If not, the appeal fails. It is in that context that the main issues are to be understood and approached.

Main issue 1: openness and purposes of the Green Belt

13. The first issue relates to the impact of the Proposal on the openness and purposes of the Green Belt.

14. It is common ground that the Proposal is inappropriate development in the Green Belt. It is also common ground that the PDL exceptions in NPPF para 148(g), which permit otherwise inappropriate development in the Green Belt, are not satisfied in this case.
15. The NPPF makes plain that inappropriate development is harmful by definition, and that that in-principle harm carries substantial weight against the Proposal.
16. That in-principle harm is not the only harm arising under this head though. The Proposal will also result in major harms both to the openness of the Green Belt, and to its purposes.
17. I begin with openness.
18. Openness is one of the two essential characteristics of the Green Belt. The other one is its permanence; and Mr Self agreed in XX that the impact of the Proposal would be permanent. This is not a case of temporary or remediable loss.
19. Both Mr Hughes and Mr Self recognised that, as a matter of principle, openness has two main dimensions. The first, and more important, is the spatial element, which is concerned with the built form which is actually to be introduced. The spatial element is the more important because, as Mr Self agreed, Green Belt policy is a form of strategic spatial policy. Furthermore, openness is the opposite of urban sprawl, which is itself a spatial concept.
20. The second dimension of openness is the visual element: how the development is experienced or perceived. Mr Hughes explained, and Mr Self accepted, that both public and private views are relevant to this analysis.
21. In order to understand the harm arising to those elements of openness, it is first necessary to understand the baseline character of the Site at present.
22. Perhaps the best evidence we have as to the Site's character and contribution to openness comes from the 2023 Washed Over Villages Study (CD 3.5), which is part of the evidence base for the ELP. That document contains a detailed, granular analysis of the washed over settlements in St Albans, including Colney Heath. Indeed, it is the most up to date, detailed Green Belt analysis available to the inquiry, as Mr Bell accepted.

23. The following key points emerge:

- a. Colney Heath is identified as a settlement with an open character (p. 10);
- b. Colney Heath is assessed in three “areas”, reflecting the nucleated clusters which comprise the settlement. The appeal Site abuts the southern boundary of area B;
- c. The settlement scores moderate overall against the “key views to/from settlement” criterion. Within that criterion, however, it is clear that the views to and from the southern boundary of area B are some of the most important for the whole of Colney Heath. The Study says that views from the southern boundary of area B have “*very strong connections to the wider landscape with open arable fields and wooded blocks in the background as there is a visually permeable boundary with no adjacent development along Tollgate Road*” (page 11). That can only be talking about the part of area B which adjoins the appeal Site: the appeal Site is in fact to the south, rather than the south-west, of area B, and the area of the appeal Site is the only part of the area B boundary that has no adjacent development along Tollgate Road. That the views in question are from a private land boundary and predominantly private is nothing to the point: private views as well as public ones are relevant to the exercise, and the Study does not distinguish between the two.
- d. In other words, the Proposal would introduce development right into the area which gives rise to the “very strong connection”.
- e. Similarly, in respect of the settlement edge characteristics and setting, the part of area B along Tollgate Road (i.e. the area with which we are concerned) is again singled out for its strong relationship with the wider landscape (page 12).
- f. The study overall concludes that Colney Heath should remain a washed over settlement, and none of it is proposed for release from the Green Belt.
- g. Mr Self made the point, in re-examination, that Colney Heath overall was assessed as moderate for its openness contribution. That is true. But that does

not alter the fact that the specific area of the appeal Site performed very strongly against more than one criterion. The fact that Colney Heath overall scored moderate simply emphasises the importance of the Site’s contribution compared to the remainder of the settlement: in essence, the moderate overall score is the result of the high performance around the appeal Site and lower performance elsewhere. The moderate score demonstrates just how important this Site is to Colney Heath.

24. It is also worth recalling that, whatever its deemed status under the NPPF, the Site consists, as a matter of fact, overwhelmingly of undeveloped green fields. That is a matter to which I will return. For now, suffice to say that is highly relevant to the level of spatial and visual change which the Proposal would introduce.
25. Given that Site context, the impact of the Proposal on openness would be very great.
26. Beginning with spatial impact, Mr Hughes observed in unchallenged evidence that the Proposal will, if permitted, result in a 2,000% increase in the footprint of built form, and an astonishing 5,000% increase in the volume of built development. On any view, that is a very serious loss of openness on what is currently an almost entirely open site.
27. Mr Self noted that the spatial impact of the Proposal was significant. He sought to reduce that impact, however, by reference to how the Proposal would be experienced. Such an approach is logically flawed and illegitimate: the spatial impact can only be assessed by reference to spatial considerations, and the experience of the Proposal – in other words, how it appears and from where it can be seen – is not a spatial matter at all, but a visual one. Mr Hughes’ more logical approach to spatial impact is plainly to be preferred.
28. Turning to the visual impact of the Proposal, Mr Self placed considerable emphasis on the “containment” of the Proposal, and sought to present it as a good thing in Green Belt openness terms. Again, however, his approach is flawed – containment is the opposite of permeability (as Mr Hughes accepted in XX), and the 2023 Villages Study makes clear more than once that it is the visual permeability of the southern boundary of area B that gives it its value in Green Belt openness terms.

29. Put simply, the “containment” effect of the Proposal is something that increases the harm to openness. A point which Mr Self failed to recognise.
30. Similarly, Mr Self’s assessment failed properly to recognise that the Site sits right in the middle of the swathe of open green land which runs along the River Colne. The Proposal, if permitted, would take a large bite out of that swathe, depriving it of much of its spatial and visual value as an open area.
31. Another visual impact of the Proposal on openness arises from vehicular movement and light. Surprisingly, this did not form any part of Mr Self’s analysis, but was instead dealt with by Mr Bell. Mr Bell suggested that such movement would not have any discernible impact on the perception of openness, because all such traffic would route via the Tollgate Road. That however is a bad point: the visual impact of traffic is not confined to the Site access, but will occur throughout the area of the Site with built form, and that area of the Site currently has no or minimal such light or movement. Further, the presence of traffic movement and light in the land to the south of area B of Colney Heath would represent visual disruption to one of the most important parts of the Green Belt around Colney Heath, as I have already explained. This is another respect in which the Appellant has underestimated the openness impact of its Proposal.
32. In all the circumstances, Mr Hughes was right to identify a substantial adverse visual impact as well as an adverse spatial one.
33. Turning to the purposes of the Green Belt, it is common ground that the only purpose which is impacted is the third one: to assist in safeguarding the countryside from encroachment.
34. As an initial point, the word “encroachment”, as a matter of plain English, implies a “creeping in” from the outside. Conceptually, therefore, it is at settlement edges that encroachment issues are most likely to arise. So it is strange to reduce the weight given to the encroachment of the Proposal, as Mr Self did, on the basis that it occurs from a settlement edge. That rather misses the point of this purpose.
35. Again, in seeking to reduce the impact of the Proposal’s encroachment, Mr Self relied heavily on the containment effect of the Proposal. Once again, however, his approach

misses the point: a contained encroachment is still an encroachment. The open space of the Site will be no less lost because it has a solid, visually impermeable boundary around it. Indeed, in the particular context of the appeal Site, the containment makes the encroachment worse, not better, as I have already explained.

36. Mr Hughes was correct, in the circumstances, to identify a substantial harm to the purposes of the Green Belt.

37. A word here about Bullens Green. The Appellant has relied on the Bullens Green decision as a comparator for the approach which this inquiry should take. The two cases, however, are not alike in respect of Green Belt. Inspector Masters, in deciding the Bullens Green appeal, did not have the benefit of the 2023 Villages study. More importantly, the Bullens Green site is in a part of the Green Belt which makes a lesser contribution to openness than does the appeal Site – the Villages Study makes clear that the focus of interest in Colney Heath is the area to the south of area B – i.e. our Site – whereas there is no equivalent interest identified for the Bullens Green site. And all witnesses agreed that each case must be assessed on its own merits.

38. Drawing the threads together, therefore, there are three independent, free-standing substantial harms here: the in-principle harm from inappropriate development; the harm to openness in both its components; and the harm to Green Belt purposes. The circumstances required to outweigh such a set of harms need to be very special indeed.

Main issue 2: landscape character and appearance

39. The next main issue concerns the impact of the Proposal on the landscape character and appearance of the Site.

40. There was a large amount of agreement between Mr Friend and Mr Self here. Where they differed was on the magnitude of several of the agreed impacts.

41. Beginning with landscape impact, the parties were agreed that the impact was at its greatest on the Site itself, reducing as the neighbouring landscape is considered, and reducing yet

further at the level of the wider landscape, so as to be less than significant in terms of weight.²

42. Whereas Mr Self begins, at the most impactful level of the Site itself, at moderate weight, falling to negligible weight at the wider landscape level, Mr Friend begins with an assessment of substantial adverse Site-level impact, moderate impact at the neighbouring landscape level (moderate to slight at year 15), and moderate impact on the wider landscape (reducing to slight adverse at this level by year 15) (CD 8.5, app 2).
43. Mr Friend's assessment of the impact of the Proposal better reflects the underlying landscape sensitivities. As he explained, the qualities and sensitivities of the various landscape receptors at the Site vary from medium to low, save for the heritage receptors which are highly sensitive (Friend PoE para 4.1.4). It is the combination of the medium to low sensitivities at the Site, taken with the substantial magnitude of change which the Proposal would make to the land use, that results in a starting point of a substantial adverse direct effect in year 1.
44. As for the indirect landscape effects, the Proposal would, Mr Friend explained, result in a moderate adverse effect at year 15 even with mitigation planting in place: the sheer extent and permanent nature of the change from pasture fields to residential housing drives such a conclusion. Even the year 15 impact of the Proposal on the wider landscape is more than neutral: Mr Friend confirmed that the extension of the existing Tollgate Road ribbon development into the fields to the south of the settlement leaves a residual slight adverse impact even at year 15 and after mitigation.
45. Turning to visual impact, the key dispute between Mr Friend and Mr Self related to the view from Tollgate Road to the north west of the appeal Site (CD 5,25, photo 13). Mr Self considered that the year 1 impact of the Proposal on that view would be moderate adverse; a clear underrepresentation of the impact even on the basis of his own firm's visualisations. The year 1 impact is plainly higher, within the substantial to moderate range, as explained by Mr Friend.

² The main statement of common ground (CD 8.3) suggests, at para 6.22, that there would be no "material effects" on the wider landscape. The parties agreed in the LVIA round table that the word "material" here should be replaced with the word "significant", so as to capture more accurately the meaning of the signatories.

46. Similarly, while the adverse impact on this view would be reduced by year 15, because of the effect of planting, that reduction would not be such as to warrant Mr Self's slight adverse assessment. At least a moderate impact remains.

Main issue 3: heritage

47. The heritage impact of the Proposal is agreed between Mr Collins and Ms Stoten.

48. Since the position is agreed, I do not propose to dwell on it overmuch, though that should not be taken as diminishing its importance to the inquiry.

49. The parties have agreed that less than substantial harm, at the lowermost end of the spectrum, will apply to each of the Grade II Listed Colney Heath Farmhouse and the associated Grade II Listed Barn. That harm arises from the loss of the agricultural character of the Site, and the resultant loss of an illustrative part of the historic setting of the assets. It also alters the character of the field between the assets and the Site, which goes from being part of a continuous stretch of open agricultural land to a stand-alone field.

50. Similarly, less than substantial harm at the lowermost end of the spectrum is identified to the Grade I Listed North Mymms Park house. The urbanising effect of the Proposal would have an impact, albeit a small one, on the appreciation of the significance of the Grade I Listed asset, and would impact on its relationship with its historic agricultural estate. While the Site's contribution to the setting of the house is a very minor one, its loss is nevertheless a form of harm and more than de minimis.

51. A very minor harm is also identified to the non-designated Tollgate Farm historic asset.

52. None of these harms is sufficient to justify the refusal of the application on heritage grounds alone. Nevertheless, the identified and agreed heritage impacts are matters which carry great weight against the Proposal in the VSC balancing exercise, as both Mr Bell and Mr Hughes agreed in their planning evidence.

Main issue 4: sustainable transport

53. The fourth main issue relates to the Appellant's ability to demonstrate the sustainability of the Site and the Proposal in transport terms.
54. As things have developed, this issue is now a narrow one, at least as between the Appellant and the LPA. It is concerned solely with cycling provision.
55. But it is no less important for that.
56. Both Mr Carr and Mr Dimbylow recognised that the county council's LTP4 policy document (CD 17.1) gives high priority to cycling, as one of the most sustainable and healthy modes of travel: see in particular policies 1, 5 and 8 of LTP4. The NPPF also recognises the importance of cycling, placing it (along with walking) at the top the priority list for sustainable transport modes (para 112(a)).
57. Mr Carr and Mr Dimbylow agreed that, when considering the needs of cyclists, it was fair to consider the core principles contained in LTN 1/20 (CD 16.4).
58. LTN 1/20 was developed for the purpose of informing the design of new cycle infrastructure. But as Mr Carr explained, it is nevertheless an important source of guidance in assessing the suitability of potential cycling routes on existing roads. The core principles established by LTN 1/20 are based on the needs of cyclists, and those needs are exactly the same whether the route in question is a new one or an existing one. Mr Dimbylow agreed with that proposition in cross examination, and accepted that the county council acted properly in having regard to LTN 1/20 to inform its assessments.
59. Section 4 of LTN 1/20 establishes five core things which cyclists need from a route: coherence; directness; safety; comfort; and attractiveness.
60. In that regard, the LPA and LHA have concerns about two destinations in particular.
61. The first is the Samuel Ryder Academy. As Mr Carr explained, that is the only secondary school in the vicinity of the Site which has any current vacancies, and is in any event one of the nearest schools to the Site.

62. Mr Carr considered the routes which the cyclist could take to get from the Site to the academy. When I say the “cyclist”, we must keep in mind who we are talking about here – children. In that context, Mr Carr was unable to identify a route that a child could use to get from the Site to the academy which did not involve the breach of at least one of the LTN 1/20 core principles.
63. The first route Mr Carr identified involved crossing the A414 North Orbital at its junction with Colney Heath Lane, and travelling south-west from there using Barley Mow Lane. As Mr Carr noted in his proof (para 54; Mr Dimbylow was wrong in XX to say that the route was identified for the first time in Mr Carr’s oral evidence), Barley Mow Lane is for the most part a single-track route, unlit, and without road markings. Such a route gives rise to a risk of conflict between cyclists and cars; and such a risk is unlikely to be acceptable to the parents of child cyclists, as Mr Carr noted.
64. The second route involved crossing the A414 and heading north, away from the Academy, to arrive at the Hatfield Road, and thereby to approach the academy from the north-east. Such a route is very obviously indirect, and thus contrary to LTN 1/20.
65. In his oral evidence, for the first time, Mr Dimbylow identified an alternative means of getting from the Site to the academy, using the A414 and Nightingale Lane. Since that route emerged for the first time in oral evidence and after Mr Carr’s evidence, we have had a limited opportunity to consider it. Mr Dimbylow accepted however that Nightingale Lane is unlit along its length; that too introduces safety concerns for the child cyclist, especially in the winter months when a child may well find him or herself cycling in the dark or the gloaming. As to its width and overgrown nature, the inspector has indicated that he will see the route for himself before reaching his decision.
66. It follows, we say, that there is no LTN 1/20 compliant route from the Site to the Samuel Ryder Academy. Every option is either unsafe or indirect.
67. The second area of concern relates to cycling access from the Site to Welham Green railway station.
68. The Appellant’s Transport Assessment identifies two options to get to the station from the Site (CD 5.12; page 383). The more direct route is labelled C3, and involves passing along

Tollgate Road to the East of the Site. As Mr Carr explained, and as Mr Dimbylow agreed, Tollgate Road to the East is not for everyone: only confident cyclists can safely use it.

69. For the less confident or more vulnerable cyclist, the alternative route is labelled C2 in the TA. That route, however, fails the LTN 1/20 test of directness – Mr Dimbylow accepted it was a “less direct” route. It also fails the coherence test – the number of changes of direction and switchbacks on the route is plainly undesirable.

70. Thus, the cyclist has a choice between a fast and unsafe route, or an indirect and incoherent one. In those circumstances, and as Mr Carr identified, there is likely to be an increased use of the private car, or some other less sustainable option, to reach the train station.

71. While none of these points justify the dismissal of the appeal on their own, they are nevertheless matters which carry at least some adverse weight against the Proposal.

Main issue 5: VSC

72. The final main issue is the VSC balance itself.

73. On the harm side, the NPPF requires consideration of both Green Belt harms, and all other harms.

Green Belt harm

74. Beginning with the Green Belt, as I’ve already explained, the Proposal gives rise to three free-standing forms of Green Belt harm: the in-principle harm from inappropriate development; the harm to openness in both the spatial and visual dimension; and the harm to the third Green Belt purpose. Each of those harms attracts substantial weight against the Proposal, for the reasons I gave earlier.

Other harms

75. There are other harms arising from the Proposal as well, which need to be taken into consideration.

76. Beginning with heritage impact, Mr Hughes and Mr Bell agreed that, though the impact on the three designated assets is at the lowermost end of the less than substantial scale, the harm nevertheless attracted great weight because of the effect of policy.
77. Some limited weight is also to be attached to the minor harm to the non-designated assets, as the planning witnesses agreed.
78. Turning to landscape harm, Mr Bell attached moderate weight to the identified harm. Mr Hughes by contrast attached moderate to significant harm to this factor. Their views rest on the evidence of Mr Self and Mr Friend, respectively. As I have explained above, Mr Friend's approach is preferable, and it follows that Mr Hughes' higher adverse weight is the correct level for this harm.
79. On the sustainable transport issue, Mr Hughes attached limited to moderate harm to the absence of LTN 1/20-compliant cycling routes from the Site to Samuel Ryder School, and to Welham Green railway station. He was right to do so. The absence of compliant routes to locations like this may not be enough to amount to a breach of the NPPF para 105 test; but as a matter of principle, they remain material considerations which are adverse to the Proposal.

Benefits: housing

80. Turning to the benefits side of the equation, the main benefit which the appeal scheme would provide is the provision of housing.
81. As Mr Hughes explained, the weight to be given to housing can be approached in two ways: an overall assessment of weight to housing can be made; or each of the three components of that housing can be assessed and weighed separately. It is important, however, to recall Mr Hughes' point that the method adopted should not change the overall weighting to the element: the weight to all housing must be the sum of its parts; no less, but certainly no more either.
82. On the Appellant's approach of assessing the elements of housing separately, we agree that the weight to be attached to the market and affordable components is very substantial, in each case.

83. Where we disagree is in respect of self-build custom housing. The Appellant attaches very substantial weight to this component of the housing delivery. As Mr Hughes explained, however, that is too great a provision. The Bullens Green decision³ is instructive here. In that case, Inspector Masters assigned substantial weight to the provision of 10 self-build plots, which comprised 10% of the overall housing provision under that proposal. That is more, in both absolute and percentage terms, than the provision proposed by the Appellant in this appeal. The substantial weight assigned by Inspector Masters was in a context where she had two authorities' worth of need to consider, and where St Albans had no emerging policy at all to address the self-build issue to any extent.

84. We accept that the need for self-build plots in St Albans is greater now than it was at the time of Bullens Green. But the number of units on offer here is lower, and the emerging plan position is better, than it was at the time of the Bullens Green decision. And we do not know, because it is not in evidence, how the Welwyn Hatfield position was quantified by Inspector Masters.

85. Both Ms Gingell and Mr Moger attempted to disaggregate the Bullens Green decision, and to suggest that the appropriate comparator is just the St Alban's "half" of what was on offer in that case. That is a flawed approach. Inspector Masters was concerned with the proposal as a whole, assessed against the combined needs of the two areas: she did not attempt to break it down area by area. Nor should she have done: she was deciding one appeal, not two.

86. The result, we say, is that the weight to the self-build element should be in the same bracket now as it was in Bullens Green. Substantial weight is the correct assignment to this factor.

Other benefits

87. A number of other benefits are identified for the Proposal.

88. Beginning with PDL, Mr Bell assigned significant weight to the use of PDL land, on the basis that NPPF para 119 adopts such an approach at the strategic level, and on the basis that the Proposal meets the strict terms of the PDL definition in the NPPF's annex.

³ CD 14.6.

89. His approach, in this regard, is flawed. That is for three reasons.

90. First, the approach which should be taken to PDL in the Green Belt in the development control context is set out in NPPF para 149. That paragraph contains an exception from the concept of inappropriate development which is directly targeted at PDL – sub-para (g). That sub-paragraph tells you how to deal with PDL in the Green Belt. And it is common ground that the Proposal does not fall within the sub-para (g) exception (CD 8.3 para 6.13). To re-introduce PDL as a weighty benefit in the VSC stage is to undermine the para 149 approach, and to re-introduce PDL by the back door. There is no basis to do so.

91. In this regard, it is relevant to note the observations of the Court of Appela in *Dartford BC v SSCLG* (CD 13.7). In that case, it was alleged that the NPPF contained a conflict between the policies for the protection of the Green Belt, on the one hand, and policies encouraging the re-use of PDL, on the other. The Court of Appeal held that no such conflict exists. It did so in this way (para 11):

“There is in truth no conflict between these two core principles, as is demonstrated by the more detailed policies about the Green Belt. Paragraph 87 of the NPPF states: “As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.”

12 Paragraph 89 goes on to say that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. But that general policy is immediately qualified by exclusions, one of which is: “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.” (Emphasis added.)

13 Accordingly, the NPPF accommodates the definition of previously developed land within the general policy about development in the Green Belt. If a new building is a partial redevelopment of a previously developed site it is not to be regarded as inappropriate redevelopment in the Green Belt, provided that it has no greater impact on the openness of the Green Belt than the existing development. The proviso also means that the encouragement of development on brownfield land is not, at least in the Green Belt, unqualified. So any possible tension is resolved.”

92. In other words, the appropriate place to address the role of PDL in the Green Belt context is through what is now the para 149(g) exception, and not as a general material consideration in the VSC balance.
93. Secondly, in any case, NPPF para 119, insofar as it deals with PDL, is concerned with strategic plan-making, not with development control decisions. Furthermore, para 119 is subject to footnote 47, which disapplies the policy where it would conflict with other policies of the Framework – which of course includes Green Belt. To add PDL weight to the VSC balance in these circumstances is to pull yourself up by your own bootstraps, and is another form of re-introducing the relevance of PDL despite the failure of the para 149(g) test.
94. Thirdly, and perhaps most importantly, the vast majority of the Site – well over 90% of it – comprises undeveloped green fields. There is no meaningful sense in which the Proposal involves a re-use of the Site at all. The terms used in the NPPF are not chosen at random. PDL is, as its name suggests, aimed at land which is previously developed. The NPPF treats PDL as synonymous with “brownfield”, which is itself telling. Those terms are apt for only a tiny fraction of our site: overwhelmingly, the Site is green fields (literally). To treat the Site as though it were not green fields but brownfield is plainly contrary to the spirit and purpose of the NPPF, and defeats the whole point of the policy preference given to brownfield land. The Site is PDL only on the most mechanistic, legalistic and literalistic reading of the NPPF; and Mr Bell and Mr Hughes both gave evidence that a mechanistic approach to the NPPF is unsuitable.
95. It is notable in this regard that, where previous inspectors have applied the PDL definition to pastureland in the curtilage of equestrian facilities, the proportion of developed land vs undeveloped green fields is not remotely comparable to the balance here. Thus in Lavendon Olney (CD 14.35), the proposal was for only 14 houses; Clover Court Clanfield (CD 14.34) concerned only four dwellings; and Maitland Lodge (CD 14.20) involved a 124% volumetric increase and an 80% footprint increase in built development, compared to 5,000% and 2,000% respectively for the Proposal here.

96. In short, none of those inspectors had to grapple with a Site with the sheer extent of green fields as this one. Nor did they have to grapple with the policy implications of such a site being treated as if it were entirely brownfield.
97. The PDL issue is therefore one which should carry no weight in the planning balance.
98. Turning to the economic benefits, Mr Hughes attached moderate weight to this matter, whereas Mr Bell assigned significant weight.
99. From his proof, it appeared that Mr Bell initially contended that the grant of significant weight was something which flowed from para 81 of the NPPF. Happily, there is no need now to decide on whether it has that effect, because Mr Bell accepted in evidence that NPPF para 81 does not in fact mandate the level of weight to be applied to this benefit. It is therefore a matter in the inspector's unfettered judgment.
100. In forming that judgment, I commend Mr Hughes' approach to the inquiry. The scheme will indeed have economic benefits; but these are nothing out of the ordinary, and are simply those that would be expected from any housing development of this scale. Furthermore, the benefits arise in a location which is low down in the settlement hierarchy, so that the benefits would crystallise in a location which is removed from the key areas of economic activity. Those are considerations which warrant the assignment of moderate weight only.
101. The next issue is biodiversity net gain. There is no dispute that the Proposal delivers 10% BNG, and that that is a benefit of the Proposal. The delivery of BNG, however, arises off-site. That is relevant because, as Mr Bell accepted, off-site BNG provision is in the nature of compensation, whereas on-site BNG is in the nature of mitigation. NPPF para 180(a) makes clear that mitigation is sequentially preferable to compensation; it follows that on-site BNG is sequentially preferable, and thus more beneficial, than off-site BNG.
102. For that reason, Mr Hughes was correct to reduce the weight to the BNG because it arises off-site. His assignment of moderate weight is preferable to Mr Bell's significant weight in the circumstances.

The planning balance

103. How, then, are these various threads to be drawn together into a conclusion?
104. The test, it is agreed, is the VSC test. That is not a flat balance, but a tilted one; and it is heavily tilted against the development. It is not enough for the benefits to outweigh the harms; they must clearly outweigh them if the Proposal is to meet the policy tests for permission.
105. The Proposal's benefits are not weighty enough to pass that test.
106. I fully accept that the need for housing, of all kinds, is acute in this district. There is no doubt but that St Alban's needs more homes. The ELP itself recognises that Green Belt land will need to be released to meet that need.
107. But as Mr Hughes, Mr Self and Mr Bell all agreed, it does not follow that this Green Belt site is required for housing. That depends on the importance of the Site and its contribution to the Green Belt.
108. And the Site is highly important to the Green Belt. It makes a major contribution to the function of the Green Belt around Colney Heath – indeed, it is one of the most important parts of the Green Belt in the whole of the village. The Appellant, unfortunately, has misunderstood and underestimated that importance.
109. The Appellant has also underestimated the other harms which its Proposal would cause.
110. On the other side of the balance, the Appellant has included assignments of weight to benefits which are not borne out by the evidence. In particular, the Appellant has overassessed the economic, BNG, and self-build benefits, and has misunderstood and misapplied PDL policy and incorrectly assigned a positive weight to it as a factor.
111. While the need for housing in St Alban's is undoubtedly acute, this is simply not the right place for those houses. The harms which would result are just too great to justify the loss of this part of the Green belt forever.
112. In those circumstances, the VSC balance resolves against the Proposal.

113. And all the parties to the inquiry agree that, if the VSC balance is failed, then the appeal fails too.

114. On that basis, I invite the inspector to dismiss the appeal and refuse permission for this inappropriate development.

Luke Wilcox

Landmark Chambers

28 September 2023

THIS DEED is dated

11th October

2023

- (1) **HERTFORDSHIRE COUNTY COUNCIL** of County Hall Hertford Hertfordshire SG13 8DE (“**the County Council**”)
- (2) **ST ALBANS CITY AND DISTRICT COUNCIL** of Civic Centre St Peters Street, St Albans, Hertfordshire, AL1 3JE (“**the Council**”)
- (3) **SIMON CHARLES EVANS and SUSAN JANE EVANS** of 42 Tollgate Road, Colney Heath, St Albans, AL4 0PY (**together “the First Owner”**)
- (4) **SIMON CHARLES EVANS, SUSAN JANE EVANS, BRIAN JOHN HUMMEL and MARION HUMMEL** of 42 Tollgate Road, Colney Heath, St Albans, AL4 0PY (**together “the Second Owner”**)
- (5) **NATIONAL WESTMINSTER BANK PLC** incorporated and registered in England and Wales with company number 929027 whose registered office is at Mortgage Centre, P.O. Box 123, Greenock PA15 1EF (“**the Mortgagee**”)
- (6) **VISTRY HOMES LIMITED** (Company Number: 00397634) and whose registered office is 11 Tower View, Kings Hill, West Malling, ME19 4UY (“**the Developer**”)

Whereas

- 1 The County Council and the Council are local planning authorities for the purposes of the 1990 Act for the area in which the Site is situate and as such are the local planning authorities entitled to enforce the planning obligations hereinafter recited
- 2 The County Council is the Highway Authority the Education Authority the Library Authority the Social Services Authority the Waste Disposal Authority and the Fire and Rescue Authority for Hertfordshire
- 3 The First Owner is the freehold owner of that part of the Site registered at land registry with title number HD111757
- 4 The Second Owner is the freehold owner of that part of the Site registered at land registry with title number HD266436
- 5 The First Owner and the Second Owner shall together be known as the Owner
- 6 The Mortgagee has the benefit of the charge referred to in the charges registered recital C3 of the title register HD111757 and the Developer has the benefit referred to in recital 5 of the title register of HD266436
- 7 The Council refused the grant of the Planning Permission
- 8 The Owner has appealed the refusal to the Secretary of State and the Appeal is to be determined by an Inspector appointed by the Secretary of State

9 This Deed is entered into to make provision for regulating the Development and securing the matters hereinafter referred to which are required in order to enable the Development to go ahead

NOW THIS DEED WITNESSETH as follows:

Operative Part

1 **Definitions and Interpretation**

1.1 The following definitions and rules of interpretation apply in this deed:

Definitions:

1990 Act: means the Town and Country Planning Act 1990 (as amended)

2015 Act: means the Self Build and Custom Housebuilding Act 2015 (as amended)

Additional First Homes Contribution: means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 6.8, 6.9 or 8 of Part 2 of Schedule 2, the lower of the following two amounts:

- (a) 30% of the proceeds of sale; and
- (b) the proceeds of sale less the amount due and outstanding to any First Homes Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the First Homes Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home

and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home.

Affordable Housing: means 40% of the Dwellings which are to be managed or owned by an AHP and which are to be provided for people who cannot afford to rent or purchase housing appropriate to their needs on the private market within the same area and "Affordable Housing Units" shall be construed accordingly

Affordable Housing Mix: means the following mix:

- (a) 25% First Homes;
- (b) 67% Affordable Rent Units; and
- (c) 8% Shared Ownership Units

Or such other mix as may be agreed by the Council in writing (such agreement not to be unreasonably withheld or withdrawn).

Affordable Housing Scheme: means a scheme identifying the size, tenure, types, location, and phasing proposal of all Affordable Housing Units,

Affordable Rent: means a unit of Affordable Housing let by a local authority or private registered provider of social housing to households who are eligible for social rented housing in accordance with the definition of affordable rented housing contained in Annex 2 to the NPPF (or any subsequent replacement or modification thereof) but for the avoidance of doubt must be at an affordable rent which is subject to rent controls that require a rent of no more than 80% of the equivalent local Market Rent (including service charges, where applicable) and "Affordable Rent Units" shall be construed accordingly

AHP: means an organisation that is involved in the delivery and management and ownership of Affordable Housing which is registered or eligible for registration under chapter 3 part 2 of the Housing and Regeneration Act 2008 as shall be approved in writing by the Council which is capable of managing Affordable Housing and receiving grant from the Homes England

AT: means an Assured Tenancy or an Assured Shorthold Tenancy within the meaning of the Housing Act 1988

Appeal: means appeal reference number APP/B1930/W/23/3323099 submitted to the Secretary of State and given a start date of 12 June 2023

Armed Services Member: means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service

BCIS Index means the Building Cost Information Service All-in Tender Price Index published from time to time

Biodiversity Metric: means the metric published by Natural England from time to time to measure and account for biodiversity losses and gains resulting from development or land management change (or in the absence of any metric published by Natural England, such other metric as may be agreed by the Owner and the Council)

Biodiversity Offsetting Scheme: means a scheme to be approved by the Council which shall offset the loss of habitats on the Site and provide a net gain of 10% on the Biodiversity Pre-Development Site Value and which for the avoidance of doubt may include offsite measures and which shall include the following details:

- (a) The identity of an appropriate receptor site(s) at which the Biodiversity Offsetting Scheme is to be implemented if a 10% net gain on the Biodiversity Pre-Development Site Value cannot be delivered onsite;
- (b) a description and evaluation of habitat parcels to be managed, cross referenced to individual lines in the Biodiversity Metric;
- (c) Maps of all habitat parcels, cross-referenced to corresponding lines in the Biodiversity Metric.
- (d) Appropriate management options for achieving target condition for habitats as described in the approved Biodiversity Metric;
- (e) Preparation of an annual work schedule for each habitat parcel (to be applied as a 30 year work plan capable of being rolled forward in perpetuity);
- (f) Details of the body or organisation responsible for implementation of the plan;
- (g) Ongoing monitoring plan and remedial measures to ensure habitat condition targets are met;
- (h) Reporting plan and schedule for informing LPA of condition of habitat parcels for 30 years; and
- (i) If the Biodiversity Offsetting Scheme involves a financial contribution to a third party, this shall be in accordance with any applicable guidance from DEFRA and/or Natural England (or any other successor organisation responsible for monitoring and publishing guidance on biodiversity losses and gains resulting from development or land management change) at the date of the Biodiversity Offsetting Scheme as agreed by the Owner and the Council.

Biodiversity Post-Development Site Value: means the number of Biodiversity Units that shall be achieved as part of the Development (calculated in accordance with the Biodiversity Metric) such score to be approved by the Council as part of the Biodiversity Offsetting Scheme

Biodiversity Pre-Development Site Value: means 39.47 Habitat Units and 19.27 Hedgerow Units, being the biodiversity value of the Site prior to the Development and calculated as part of the Planning Application in accordance the Biodiversity Metric

Biodiversity Units: means the measure of biodiversity resource to be quantified and assessed in accordance with the Biodiversity Metric

Charge: means the mortgage dated 24th October 2016 and made between the First Owner (1) and the Mortgagee (2)

Chargee: means any mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any

administrator (howsoever appointed) including a housing administrator) of the whole or any part of the Affordable Housing Units (excluding any First Homes)

Childcare Contribution: means the sum of £1,619 (one thousand six hundred and nineteen pounds) calculated in accordance with Development Mix or should the Development Mix change to be recalculated using the table at Schedule 9 (indexed linked as hereinafter provided) as a contribution towards increasing the capacity of 5-11 year old childcare facilities at Colney Heath school and/or provision serving the Development

Cluster: shall mean a group of Affordable Housing Units which does not have contiguous boundaries with another group of Affordable Housing Units

Commencement Date: means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the expressions "Commence", "Commences", "Commencement", "Commencement of Development" and "Commenced" shall be construed accordingly

Compliance Certificate: means the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 6.2 of Part 2 of Schedule 2 applies the Eligibility Criteria (Local)

Completion: means when a certificate of practical completion has been issued by the appointed architect, engineer or project manager or other suitably qualified party to the Owner confirming that the Development or the relevant part of the Development is complete to be put into use

Construction: the construction of any building forming part of the Development including footings or foundations and "Construct" and "Constructed" shall be construed accordingly

County Council Contributions: means the Childcare Contribution the Library Contribution the Primary Education Contribution the Secondary Education Contribution the Special Educational Needs and Disabilities Contribution the Sustainable Transport Contribution the Youth Contribution the Waste Service Recycling Contribution and the Waste Service Transfer Station Contribution

CPT Index means the Confederation of Passenger Transport Index published by the Confederation of Public Transport

Decision Letter: means the decision letter issued by the Secretary of State confirming whether or not the Appeal is allowed

"DEFRA" means the HM Government Department for Environment, Food and Rural Affairs (or any successor Government Department from time to time)

Development: means the development of the Site with the demolition of existing house and stables and the construction of up to 150 dwellings including affordable and self-build and custom-housebuilding dwellings together with all ancillary works as permitted by the Planning Permission

Development Mix: means the following illustrative mix submitted with the Planning Application:

Size	Market*		Affordable homes to buy*		Affordable homes to rent**		Total
	%	Number	%	Number	%	Number	
1 bed	5%	5	25%	5	30%	10	20
2 bed	20%	19	40%	7	35%	12	38
3 bed	45%	44	25%	5	25%	9	58
4+ bed	30%	29	10%	2	10%	3	34
Total	-	97	-	19	-	34	150

The tenure terms set out in the table above reflect the terminology used with the submitted Application. Should alternative definitions/types of tenure of units be applicable in the future (e.g. at such time that Reserved Matters applications are submitted and/or as reflected in updated Hertfordshire County Council guidance) then they should be characterised and included as follows:

* Tenure characteristics similar to open market dwellings and dwellings provided for sale that offers a route to ownership for those who could not achieve home ownership through the market (or other tenures which display these types of characteristics)

** Tenure characteristics of 100% rented, reflecting needs assessed dwellings for which the rent is set below local market rents (or other tenures which display these types of characteristics)

Development Standard: means a standard to fully comply with the following:-

- (a) "Technical housing standards – nationally described space standards" published by the Department for Communities and Local Government in March 2015
- (b) all national construction standards and planning policy relating to design which may be published by the Secretary of State or by the Council from time to time
- (c) Part 2 of Secured by Design standards published by Police Crime Prevention Initiatives Limited

- (d) Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings)
- (e) and the same may be amended by written agreement of the parties in accordance with paragraph 5.1 of Part 2 of Schedule 2

Discount Market Price: means a sum which is the Market Value discounted by at least 30%

Disposal: means sale, transfer, option, gift exchange, declaration of trust, assignment lease and including a contract for any such disposal and “Disposals” “Dispose” and “Disposed of” shall be construed accordingly and in the case of First Homes means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:

- a letting or sub-letting in accordance with paragraph 7 of Part 2 of Schedule 2
- a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner
- an Exempt Disposal

and “Disposed” and “Disposing” shall be construed accordingly

Dwelling: means a dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission

East of England Ambulance Service Trust Contribution: means the sum calculated in accordance with the following formula:

$$A = B \times C \times D$$

Where A = EEAST Contribution

Where B = Population yield of the Development, calculated assuming 2.4 persons per Dwelling.

Where C = Rate of 0.19 (calculated using per head of population in Hertfordshire and West Essex 2020 of 1.5m and emergency activity volume in 2021/22 (288,262)).

Where D = Ambulance callout cost of £675 (calculated using EEAST 2021 data).

(indexed linked as hereinafter provided) as a contribution towards the creation of additional ambulance services to support the population arising from the Development

Eligibility Criteria (National): means criteria which are met in respect of a purchase of a First Home if:

- (a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and

- (b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National).

Eligibility Criteria (Local): means criteria (if any) published by the Council at the date of the relevant disposal of a First Home which are met in respect of a disposal of a First Home if:

- (a) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (Local) (if any); and
- (b) any or all of criteria (i) (ii) and (iii) below are met:
 - (i) the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria); and/or
 - (ii) The purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member and/or
 - (iii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a Key Worker

it being acknowledged that at the date of this agreement the Council has not prescribed any Eligibility Criteria (Local) in respect of the disposal of a First Home.

Exempt Disposal: means the Disposal of a First Home in one of the following circumstances:

- (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner
- (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner
- (c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order
- (d) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 8 of Part 2 of Schedule 2 shall apply to such sale)

Provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 7 of Part 2 of Schedule 2

First Home: means a Dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price Cap.

First Homes Mortgagee: means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home

First Homes Owner: means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:

- (a) the Owner; or
- (b) another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or
- (c) the freehold a tenant or sub-tenant of a permitted letting under paragraph 7 of Part 2 of Schedule 2

First Time Buyer: means a first-time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003

Head of Housing: means the Council's Head of Housing for the time being and his agents

Housing Allocations Policy: means the housing allocation policy choice-based lettings of St Albans District City & District Council dated December 2021 or any housing allocations policy or scheme as shall supersede the aforementioned policy after the date of this Deed

General Medical Services and General Practitioner Services Contribution: means a contribution of £1,292 per Dwelling (indexed linked as hereinafter provided) to be used towards the expansion, reconfiguration, refurbishment, relocation, digitisation, or offsite storage of patient records of Burvill House Surgery and Northdown Road Surgery

Income Cap (Local): means a local income cap as may be published from time to time by the Council and is in force at the time of the relevant disposal of the First Home it being acknowledged that at the date of this agreement the Council has not set an Income Cap (Local)

Income Cap (National): means eighty thousand pounds (£80,000) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home

Interest: means interest at two percent above the base lending rate of HSBC Bank Plc from time to time

Key Worker: means such categories of employment as may be designated and published by the Council from time to time as the "First Homes Key Worker criteria" and is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Key Worker" criteria which shall apply to that disposal it being acknowledged that at the date of this agreement the Council has not designated any categories of employment as Key Worker

Leisure Contribution: means the sum calculated in accordance with the following formula:

$$(A \times B) / 1,000 = C \times \text{Occupancy} = D$$

Where A = Local Standard of Provision – 82.58sqm per 1,000 population. This figure is based on the Councils Sport & Recreation Facilities Strategy (page 133, section 9, point 9.25).

Where B = Cost per sqm – £3,908. This figure is based on the re-development of Westminster Lodge Leisure Centre in 2012. The centre is 4862sqm in size and cost £19million to build under a tender process.

Where C = Contribution per person – £322.72.

Where D = Total contribution.

Occupancy – The Council will base its calculations for the net increase in on-site population on the following occupancy rates, which are taken from the latest available information from Hertfordshire County Council:

- 1 bed – 1.5 people
- 2 bed – 1.7 people
- 3 bed – 2.3 people
- 4 bed – 3 people
- 5+ bed – 4 people

(indexed linked as hereinafter provided) towards Roestock Scout Hut Improvements

Library Contribution: means the sum of £32,687 (thirty-two thousand six hundred and eighty-seven pounds) calculated in accordance with Development Mix or should the Development Mix change to be recalculated using the table at Schedule 9 (index linked as hereinafter provided) as a contribution towards increasing the capacity of Marshalswick Library and/or provision serving the Development

Local Connection: shall have the meaning given to it by the Housing Allocations Policy and in the case of First Homes means such local connection criteria as may be designated and published by the Council from time to time as its "First Homes Local Connection Criteria" and which is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such criteria or replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Local Connection Criteria" which shall apply to that disposal it

being acknowledged that at the date of this agreement the Council has not designated any criteria as Local Connection Criteria and "Local Connection Criteria" shall be construed accordingly

Market Rent: means the estimated amount for which the relevant Dwelling should be let on the date of valuation between a willing lessor and willing lessee on appropriate lease terms in an arm's length transaction after proper marketing wherein the parties had acted knowledgeably, prudently and without compulsion

Market Value: means the open market value as assessed by a Valuer of Dwelling as confirmed to the Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 30% discount in the valuation

Marketing Period: means a period of at least 12 months commencing on the date on which marketing commences in accordance with the Self-Build and Custom Housebuilding Scheme

Monitoring Contribution means the sum of six hundred and eighty pounds (£680) (index-linked) as hereinafter provided

Natural England" means the executive non-departmental public body sponsored by DEFRA (including any successor organisation)

Occupy: means occupation for the purposes of the Planning Permission but not including occupation by personnel engaged in the construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and the expressions "Occupation" and "Occupied" shall be construed accordingly

Open Market Units: means Dwellings which are not Affordable Housing Units

Open Space: means a minimum of 1.84ha of public open space and which for the avoidance of doubt shall include a minimum of 270m² of formal children's play space

Open Space Certificate: means a certificate or certificates in writing relating to the Open Space Land issued by a Chartered Landscape Architect and in relation to any equipped play area(s) issued by an inspector registered on the Register of Play Inspectors International that confirms that the Open Space Land has been laid out in accordance with the approved Open Space Scheme

Open Space Land: means that part of the Site which is to be provided as Open Space

Open Space Management Company: means a private limited company established or appointed for inter alia the purpose of managing the Open Space Land in accordance with the approved Open Space Management Scheme

Open Space Management Scheme: means the scheme for the long-term management and maintenance of the Open Space by a Open Space Management Company to be approved by

the Council pursuant to paragraph 1.3 of Schedule 7 or such variation thereof as may be agreed by the Owner and the Council

Open Space Programme: means a programme for the provision of Open Space at the Development

Open Space Scheme: means the scheme for the laying out, landscaping, construction, installation and maintenance of the Open Space Land as Open Space to be approved by the Council pursuant to paragraph 1.1 of Schedule 7 or such variation thereof as may be agreed by the Owner and the Council

Permitted Closure: means the closure of the Open Space Land by the Management Company for the purposes of public safety, land management, special events or activities, maintenance and repair or such other closures as agreed in writing by the Council

Plan: means the plan annexed to this Deed

Planning Application: means the application for outline planning permission validated by the Council on 23 August 2022 and bearing the Council's reference number 5/2022/1988

Planning Permission: means the permission to be granted by way of approval of the Planning Application whether on appeal or otherwise or from any reserved matters submissions (including those granted by variation) PROVIDED THAT if any form of development within the Site which individually or in combination with any other permission for development would lead to levels of development exceeding those set out in the Planning Application that development may be subject to additional planning obligations

Practical Completion: means the stage reached when the construction of a First Home is sufficiently complete that, where necessary, a certificate of practical completion can be issued and it can be Occupied

Price Cap: means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State

Primary Education Contribution: means the sum £1,157,013 (one million one hundred and fifty-seven thousand and thirteen pounds) calculated in accordance with Development Mix or should the Development Mix change to be recalculated using the table at Schedule 9 (index linked as hereinafter provided) as a contribution towards the expansion of Colney Heath Primary School and/or provision serving the Development

Qualifying Person: means a person or household in need of Affordable Housing identified in accordance with the provisions below:



Site Boundary: 7.82ha

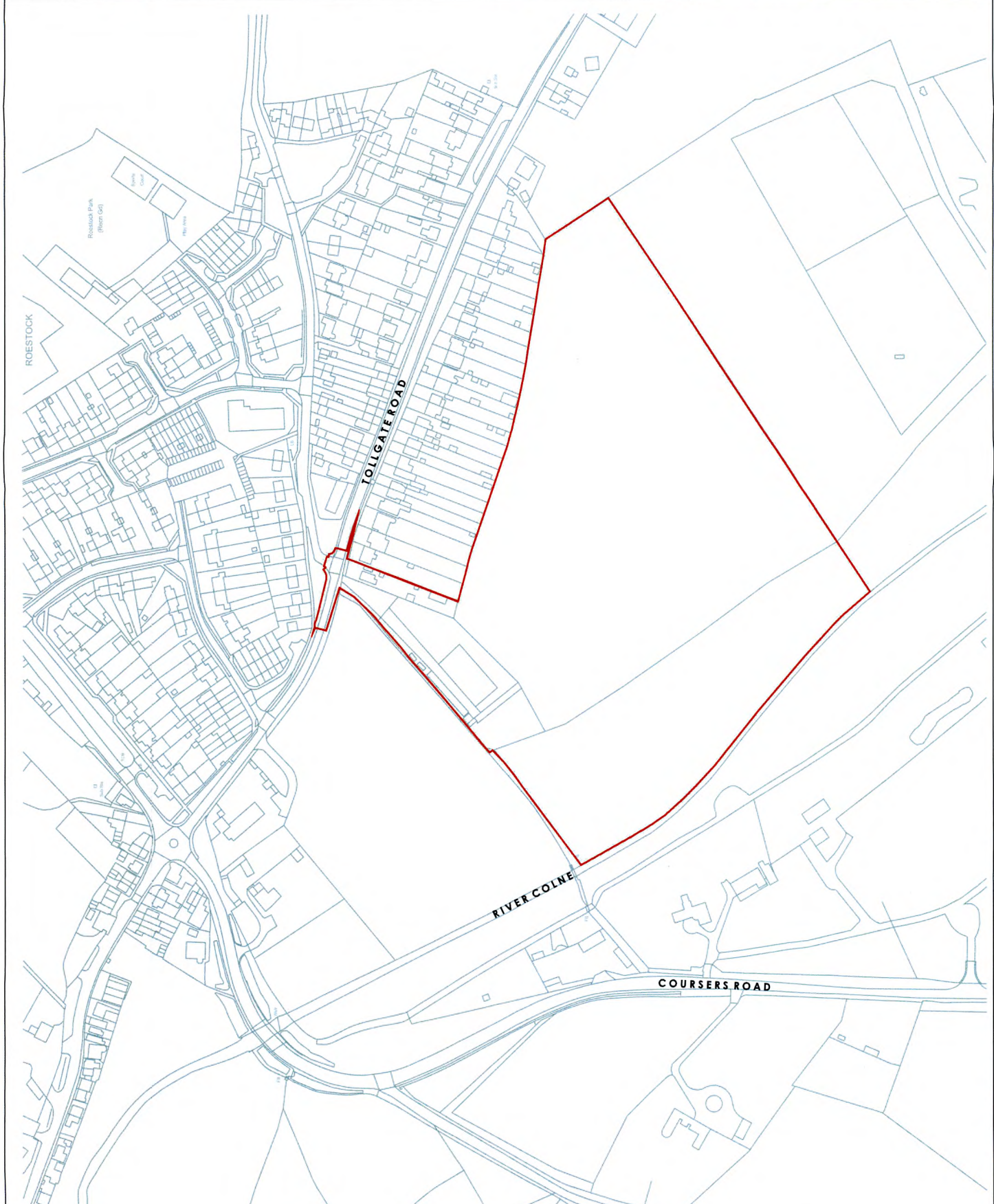
JH.
V.T.
J.R.
V.C.
N.A.
R.D.
M.H.
S.F.
S.E.
I.A.
J.H.
S.F.

Rev	Date	By	Description
E	28.06.2022	JC	Minor amendment
D	24.06.2022	JC	project name update
C	21.06.2022	JC	Minor Red Line Update
B	21.06.2022	JC	Highways land included
A	08.02.2022	JC	Additional land included



Dukes Barns, High Street,
Ainwell, Hertfordshire SG7 5NT
01462 743647
ashwell@csaenvironmental.co.uk
csaenvironmental.co.uk

Project	Land at Tollgate Road COLNEY HEATH
Title	Site Location Plan
Client	Vislry Group
Scale	1:2500 @ A3
Date	March 2021
Drawing No.	CSA/3925/109
Rev	E



- in the case of an Affordable Rented Unit a person accepted on to the St Albans Housing Register (from time to time) in accordance with the Housing Allocations Policy;
- in the case of a Shared Ownership Unit, a person who meets the eligibility criteria for shared ownership housing set by the Government from time to time and who is approved by the relevant Help to Buy Agency appointed by the Homes England for the area in which the Shared Ownership Unit is located

Qualifying Self Build and Custom Housebuilding Developer: means an individual or association of individuals (including bodies corporate that exercise functions on behalf of associations of individuals who satisfy all of the following criteria:

- a. Aged 18 or older
- b. A British citizen, a national of an EEA State other than the United Kingdom or a national of Switzerland; and
- c. Seeking (either alone or with others) to acquire a serviced plot of land in the Council's area to commission or build a house to occupy as that individual's sole or main residence

Reserved Matters Approvals: means the approval of reserved matters pursuant to the Planning Permission

RPI: means the Retail Price Index being a price index calculated and published by the UK's Office of National Statistics which measures the change in the prices charged for goods and services bought for consumption in the UK

SDLT: means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect

Secondary Education Contribution: means the sum of £1,266,848 (one million two hundred and sixty-six thousand eight hundred and forty eight pounds) calculated in accordance with Development Mix or should the Development Mix change to be recalculated using the table at Schedule 9 (index linked as hereinafter provided) as a contribution towards the expansion of Samuel Ryder Academy and/or provision serving the Development

Secretary of State: means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function

Self-Build and Custom Housebuilding: means a Dwelling which meets the definition in the 2015 Act (as amended by the 2016 Housing and Planning Act) and constructed on a Self-Build and Custom Housebuilding Plot

Self-Build and Custom Housebuilding Plots: means those parts of the Site to be provided pursuant to the provisions of Schedule 6 of this Deed to enable construction of up to 10% (or such other percentage or number as is agreed in writing between the Owner and the Council) of the Open Market Units as Self-Build and/or Custom Housebuilding and "Self-Build and Custom Housebuilding Plot" shall be construed accordingly

Self-Build and Custom Housebuilding Register: means the Council's self- build and custom-build register maintained pursuant to section 1 of the 2015 Act

Self-Build and Custom Housebuilding Scheme: means a scheme to be prepared by the Owner for the provision of Self-Build and/or Custom Housebuilding on the Self-Build and Custom Housebuilding Plots to include:

- (i) The indicative location of the individual Self-Build and/or Custom Housebuilding Plots which shall, subject to paragraph 1.5 of Schedule 6 of this Deed, secure that up to 10% of the Open Market Units shall be Self-Build and/or Custom Housebuilding Plots, (unless otherwise agreed with the Council);
- (ii) Details of the servicing arrangements for the Self-Build and/or Custom Housebuilding and how they shall be provided in a Serviced Condition;
- (iii) Details of how the Self-Build and/or Custom Housebuilding Plots shall be marketed and made available to those on the Self-Build and/or Custom Housebuilding Register

and which FOR THE AVOIDANCE OF DOUBT shall include provisions which allow the Self-Build and/or Custom Housebuilding Plots to be sold as Open Market Units in the event that the Self-Build and/or Custom Housebuilding Plots are not disposed of to those on the Self-Build and/or Custom Housebuilding Register within the Marketing Period

Serviced Condition: means having access from the relevant Self-Build and Custom-Housebuilding Plot to public highway or private accessway to an adoptable standard is provided along with utilities/services connection (including electricity, water and waste water) to the relevant Self-Build and Custom-Housebuilding Plot boundary

Shared Ownership Lease: means a lease in the form of the Homes England's model shared ownership lease and on terms that permit part purchase of the open market value of the equity in a unit together with rent payable for the open market rack rental value of the un-purchased percentage of the equity in the unit (or such other rent or form of lease approved in writing by the Council)

Shared Ownership Unit: means a unit of Affordable Housing to be made available by an AHP under a Shared Ownership Lease

Site: means the freehold property to the rear of 42 to 100 Tollgate Road Hertfordshire registered at the Land Registry with Title Absolute under the Title Numbers HD111757 and HD266436 all of which land is shown for identification purposes only edged red on the Plan

Special Educational Needs and Disabilities Contribution: means the sum of £158,171 (one hundred and fifty eight thousand one hundred and seventy one pounds) calculated in accordance with Development Mix or should the Development Mix change to be recalculated using the table at Schedule 9 (index linked as hereinafter provided) as a contribution towards providing additional Severe Learning Difficulty school places (West) through the relocation and expansion of Breakspeare School and/or provision serving the Development

Sustainable Transport Contribution: means the sum of £1,299,000 (one million two hundred and ninety nine thousand pounds) which shall be used towards public transport service improvements over a period of three years to provide for a 2 Peak hour Vehicle Requirement and the implementation of a Sunday Service by supporting the existing service 305 and which shall include frequency enhancements) (indexed linked as hereinafter provided)

Valuer: means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity

Waste Service Recycling Centre Contribution: means the sum of £46,062 (forty-six thousand and sixty two pounds) calculated in accordance with Development Mix or should the development mix change to be recalculated using the table at Schedule 9 (index linked as hereinafter provided) as a contribution towards increasing the capacity of the Recycling Centre at Potters Bar and/or provision serving the Development

Waste Service Transfer Station Contribution: means the sum of £8,829 (eight thousand eight hundred and twenty-nine pounds) (index linked as hereinafter provided) as a contribution towards increasing the capacity of Waterdale Transfer Station and/or provision serving the Development

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England

Youth Contribution: means the sum of £40,927 (forty thousand nine hundred and twenty-seven pounds) calculated in accordance with Development Mix or should the Development Mix change to be recalculated using the table at Schedule 9 (index linked as hereinafter provided) as a contribution towards the re-provision of the St Albans Young People's Centre in a new facility and/or provision serving the Development

- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 Words of the masculine gender shall incorporate the feminine and neuter genders and words of the singular shall include the plural and vice versa.
- 1.4 The reference to any statute or section of a statute includes any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans

regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it.

- 1.5 Any reference to a clause, a paragraph or a schedule is unless the context otherwise requires a reference to a clause, a paragraph or a schedule of this Deed and any reference to a sub clause is a reference to a sub clause of the clause in which the reference appears.
- 1.6 Reference to the Site includes any part of it.
- 1.7 Where two or more people form a party to this Deed the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 1.8 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council and the County Council the successors to their respective functions.
- 1.9 Any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing and words denoting an obligation on the Owner to do any act matter or thing include an obligation to procure that it be done.

2 Effect of this Deed

- 2.1 This Deed is entered into pursuant to Section 106 of the 1990 Act. To the extent that they fall within the terms of Section 106 of the 1990 Act the obligations contained in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council and the County Council.
- 2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in Section 111 Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.
- 2.3 The Owner enters into the obligations for itself and its successors in title with the Council and the County Council to the intent that the obligations hereunder shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Site or any part thereof.

3 Conditionality

- 3.1 This Deed is conditional upon:-

3.1.1 the Secretary of State (through his Inspector or otherwise) granting the Planning Permission; and

3.1.2 the Commencement of Development

save for the provisions of Clauses 4.3.5 (Costs), 9.2 (Local Land Charge) and 9.11 (Change of Ownership) which shall come into effect immediately upon completion of this Deed

3.2 If the Secretary of State or his Inspector expressly states in the Decision Letter that a particular obligation contained in this Agreement does not satisfy the tests of Regulation 122 of the Community Infrastructure Levy Regulations 2010 then such obligation shall not be enforceable by the Council or the County Council but for the avoidance of doubt all other obligations shall remain enforceable by the Council and County Council as applicable.

4 **Owners covenants**

4.1 The Owner covenants with the County Council to observe and perform the covenants restrictions stipulations and obligations contained in Schedules 1 and 4 hereto:-

4.2 The Owner covenants with the Council to observe and perform the covenants restrictions stipulations and obligations contained in Schedule 2, 3, 5 and 6 hereto

4.3 The Owner covenants with the Council and the County Council:

4.3.1 to give the County Council and the Council no less than five (5) Working Days notice of the Commencement Date such notice to be given prior to the Commencement Date in writing using the proforma set out in Schedule 8 hereto

4.3.2 to give the County Council and the Council no less than five (5) Working Days notice of the Occupation of the Development such notice to be in writing using the proforma set out in Schedule 8 hereto

4.3.3 to give the County Council and the Council no less than five (5) Working Days notice of the Occupation of 50% of the Development or of the 75th Dwelling, whichever is sooner, such notice to be in writing using the proforma set out in Schedule 8 hereto

4.3.4 to give the County Council and the Council no less than five (5) Working Days notice of Completion such notice to be in writing using the proforma set out in Schedule 8 hereto

4.3.5 upon completion of this Deed pay to the Council and the County Council their costs in connection with the preparation negotiation and completion of this Deed.

5 **County Council Covenants**

5.1 The County Council hereby covenants with the Owner to use the County Council Contributions for the purpose(s) specified in this Deed.

5.2 The County Council further covenants that it will pay to the party who paid the County Council Contributions a sum equal to the amount of any payment made to the County Council under this Deed which has not been expended allocated and/or approved in accordance with the provisions of this Deed within ten years of the date of receipt by the County Council of notice of Completion pursuant to clause 4.3.4

6 Council covenants

- 6.1 The Council hereby covenants with the Owner to use the Leisure Contribution, East of England Ambulance Services Trust Contribution and General Medical Services and General Practitioner Services Contribution for the purpose(s) specified in this Deed.
- 6.2 The Council further covenants with the Owner that it will pay to the party who paid the Leisure Contribution, East of England Ambulance Services Trust Contribution and General Medical Services and General Practitioner Services Contribution a sum equal to the amount of the Leisure Contribution, East of England Ambulance Services Trust Contribution and General Medical Services and General Practitioner Services Contribution which has not been expended in accordance with the provisions of this Deed within ten (10) years of the date of receipt by the Council of such payment together with Interest on such unexpended sum from the date of receipt to the date of payment.
- 6.3 The Council covenants with the Owner that within 20 Working Days of receipt of the East of England Ambulance Service Trust Contribution from the Owner the Council shall seek a binding commitment from the East of England Ambulance Service (or an equivalent body) to use the East of England Ambulance Service Trust Contribution for the purposes set out in this Deed and upon receipt of such binding commitment the Council shall pay the East of England Ambulance Service Trust Contribution to the East of England Ambulance Service (or an equivalent body) that have provided such binding commitment as the Council in its discretion determines suitable and for the avoidance of doubt if any or all of the East of England Ambulance Service Trust Contribution is not paid to the East of England Ambulance Service (or an equivalent body) referred to above it shall be returned to the payer of the East of England Ambulance Service Trust Contribution
- 6.4 The Council covenants with the Owner that within 20 Working Days of receipt of the General Medical Services and General Practitioner Services Contribution from the Owner the Council shall seek a binding commitment from NHS Hertfordshire and West Essex ICB (or an equivalent body) to use the General Medical Services and General Practitioner Services Contribution for the purposes set out in this Deed and upon receipt of such binding commitment the Council shall pay the General Medical Services and General Practitioner Services Contribution to the NHS Hertfordshire and West Essex ICB (or an equivalent body) that have provided such binding commitment as the Council in its discretion determines suitable and for the avoidance of doubt if any or all of the General Medical Services and General Practitioner Services Contribution is not paid to the NHS Hertfordshire and West Essex ICB (or an equivalent body) referred to above it shall be returned to the payer of the General Medical Services and General Practitioner Services Contribution

7 Expenditure in advance of receipt of contributions

- 7.1 If prior to the receipt of any of the County Council Contributions the County Council incurs any expenditure in providing additional childcare education libraries youth highways and waste facilities as the case may be the need for which arises from or in anticipation of the Development

then the County Council as the case may be may immediately following receipt of relevant contribution deduct from that contribution such expenditure incurred.

8 **Indexation**

8.1 The Leisure Contribution, the East of England Ambulance Service Trust Contribution and General Medical Services and General Practitioner Services Contribution and the County Council Contributions save for the Waste Service Transfer Station Contribution and Sustainable Transport Contribution shall each be index linked by reference to the BCIS Index figure for the first quarter of 2022 to the figure applicable to the quarter in which the contribution is paid.

8.2 The County Council Contributions save for the Waste Service Transfer Station Contribution and Sustainable Transport Contribution shall be increased in accordance with any change in the BCIS Index by the application of the formula $A = B \times (C \div D)$ where:-

A is the total amount to be paid;

B is the principal sum stated in this deed;

C is the BCIS Index for the date upon which the interim payment described below is actually paid and;

D D is the BCIS figure specified in clause 8.1

Where $C \div D$ is equal to or greater than 1

8.3 The Waste Service Transfer Station Contribution shall be increased in accordance with any change in the BCIS Index by the application of the formula $A = B \times (C \div D)$ where:-

A is the total amount to be paid;

B is the principal sum stated in this deed;

C is the BCIS Index for the date upon which the interim payment described below is actually paid and;

D D is the BCIS figure for the third quarter of 2022

Where $C \div D$ is equal to or greater than 1

8.4 The Sustainable Transport Contribution shall be index-linked to increases in the CPT Index from April 2023 to the date on which the Sustainable Transport Contribution is paid.

8.5 The Travel Plan Evaluation and Support Contribution and Sustainable Travel Voucher shall be index-linked to increases in the RPI Index from May 2014 to the date on which the Travel Plan Evaluation and Support Contribution is paid.

- 8.6 The Monitoring Contribution shall be index-linked by reference to any increase in the RPI Index from the RPI Index figure of July 2021 to the finalised figure applicable to the month in which the Monitoring Contribution is paid
- 8.7 Where any sum to be paid to the Council or the County Council under the terms of this Deed is required to be indexed then an interim payment shall initially be made based on the latest available forecast figure (or figures as the case may be) at the date of payment and any payment or payments by way of adjustment shall be made within ten (10) Working Days of written demand by the Council or County Council or the payer of the interim payment (as the case may be) once the relevant indices have been finalised.
- 8.8 Any money payable to the County Council under this Deed shall be paid in full without deduction or set-off and if not paid on the date due shall in every case bear Interest on so much thereof as shall from time to time be due and owing from the date the payment was due to the date of actual payment.

9 Miscellaneous

- 9.1 The Owner hereby warrants that it is the owner of the freehold of the Site and that no other party has an interest in the legal title to the Site save as disclosed at the Land Registry or in writing to the Council and the Chief Legal Officer of the County Council prior to completion of this Deed.
- 9.2 This Deed shall be registered as a local land charge by the Council.
- 9.3 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title or a member of a group company or a statutory successor to a party hereto.
- 9.4 Any notice to the parties hereto under this Deed shall be deemed to be sufficiently served if delivered personally or sent by recorded delivery service to the following officials/persons at the respective addresses hereinafter specified:

In respect of the Owner:	In respect of the Council:	In respect of the County Council:	In respect of the Developer:	In respect of the Mortgagee:
The Blanche Lane Farm Cottage, Blanche Lane Farm, Blanche Lane, South Mimms, Potters Bar EN6 3LF	Strategic Director: Community and Place Delivery, St Albans City and District Council, The Council Offices, Civic Centre, St Peter's Street, St	The Chief Legal Officer, Hertfordshire County Council, County Hall, Pegs Lane, Hertford (ref: 020668)	Vistry Homes Limited, 11 Tower View, Kings Hill, West Malling, ME19 4UY	Mortgage Centre, P.O. Box 123, Greenock PA15 1EF.

	Albans, Hertfordshire, AL1 3JE (5/2022/1988)			
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- 9.5 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provision of this Deed.
- 9.6 Nothing in this Deed shall be construed as imposing a contractual obligation upon the Council as to the issue of the Planning Permission or as restricting the exercise by the Council or the County Council of any powers exercisable by them respectively under the 1990 Act or under any other Act or authority.
- 9.7 No waiver whether express or implied by the County Council or Council of any breach or default by the Owner in performing or observing any of the obligations contained herein shall constitute a continuing waiver and no such waiver shall prevent the County Council or the Council from enforcing the relevant obligations or from acting upon any subsequent breach or default.
- 9.8 This Deed shall cease to have any effect (insofar only as it has not been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or if the Commencement Date has not occurred in accordance with section 56 of the 1990 Act before the expiration of the period specified in the Planning Permission.
- 9.9 Where the approval, consent, expression of satisfaction, agreement, confirmation or certification of the Council or County Council or any officer of the Council or County Council is required for any purpose under or in connection with the terms of this Deed such approval, consent, expression of satisfaction, agreement, confirmation or certification shall not be unreasonably withheld or delayed.
- 9.10 Without prejudice to the Council's and the County Council's statutory rights the Owner hereby grants until such time as all of the obligations contained here have been complied with the Council and/or the County Council or any person duly authorised or instructed by it an irrevocable licence at all reasonable times to enter the such parts of the Site to inspect any of the works to be carried out for the purposes of the Development and any materials to be used in carrying out those works for any purpose directly or indirectly connected with or contemplated by this Deed PROVIDED THAT the Council and the County Council and any person duly authorised or instructed by them shall comply with all on-site health and safety requirements at all times
- 9.11 Save for disposals of individual Dwellings the Owner shall give the Council written notice within 15 Working Days of such disposal of any change of interests in the Site occurring before all of the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan.

- 9.12 The obligations in this Deed (other than those set out in Schedules 1 and 4 which shall remain enforceable until fully complied with) will not be enforceable against owners or occupiers of individual Dwellings nor against those deriving title from them nor their mortgagees or charges save for where there are restrictions on the Occupation of the Dwellings then such restrictions on Occupation shall bind the owners occupiers or tenants of the Dwellings who shall not Occupy any Dwelling in breach of such restrictions
- 9.13 No planning obligations contained in this Deed shall be binding on any part of the Site held by any statutory utilities for their operational purposes
- 9.14 Any future mortgagee or chargee agrees that the security of the charge over the Site shall take effect subject to this Deed PROVIDED THAT the mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.
- 9.15 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission or any approval of reserved matters pursuant to the Planning Permission) granted (whether or not on appeal) after the date of this Deed

10 **Mortgagee's Consent**

The Mortgagee hereby consents to the Owner entering into this Deed and agrees that the security of the Charge over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

11 **Developer Consent**

The Developer hereby consents to the execution of this DEED by the Owner and agrees that the Site shall be bound by the restrictions and obligations contained in this Deed and the Developer agrees to observe and perform the restrictions and obligations contained in this Deed provided that the Developer shall have no liability under this Agreement unless it becomes an Owner of the Site.

12 **Release**

No person shall be liable for any breach of a covenant, restriction or obligation contained in this deed after parting with all of its interest in the Site, except in respect of any breach subsisting before parting with that interest.

13 **Determination of Disputes**

In the event of there being a dispute arising out of this Deed or the subject matter thereof the following provisions may apply:

- 13.1 The parties shall use their reasonable endeavours to resolve the dispute by agreement

- 13.2 If agreement cannot be reached the matter in dispute may be referred to and settled by some independent and fit person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the president of the Royal Institution of Chartered Surveyors (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications and such person shall act as an expert on the application of either party after giving notice in writing to the other party to this Deed
- 13.3 The person to be appointed pursuant to clause 13.2 shall be a person having ten years or more post qualification experience of projects comprising works of the scale and nature of the Development
- 13.4 Reference to the expert shall be on terms that determination shall take place within 28 working days of the expert accepting his instructions
- 13.5 The expert shall have the power to award costs of the determination in favour of either party to the dispute at the expense of the other party and failing such determination such costs shall be borne by the parties in equal shares
- 13.6 The expert shall be limited in his findings to the matter in dispute referred to him and shall provide written reasons for his decision
- 13.7 The findings of the expert shall (other than in the case of a manifest material error) be final and binding on the parties to the dispute
- 13.8 For the avoidance of doubt references to 'party' or 'parties' in this clause 13 exclude the County Council and the County Council shall not be required to submit to or be bound by the provisions of Clauses 13.1 – 13.7
- 14 **Planning Consents Granted Pursuant to Section 73 of the 1990 Act**
- 14.1 In the event that any new planning permission(s) are granted by the Council pursuant to Section 73 of the 1990 Act (as amended) and unless otherwise agreed between the Council and the County Council, with effect from the date that any new planning permission is granted pursuant to Section 73 of the 1990 Act (as amended):
- 14.2 The obligations in this Agreement shall (in addition to continuing to bind the Site in respect of the Planning Permission) relate to and bind all subsequent planning permission(s) in respect of the Site granted pursuant to Section 73 of the 1990 Act and the Site itself without the automatic need to enter into any subsequent deed of variation or new agreement pursuant to Section 106 of the 1990 Act;
- 14.3 The definitions of Planning Application, Development and Planning Permission in this Agreement shall be construed to include references to any applications under Section 73 of the 1990 Act, the planning permission(s) granted thereunder and the development permitted by such subsequent planning permission(s); and

- 14.4 This Agreement shall be endorsed with the following words in respect of any future Section 73 application:

“The obligations in this Agreement relate to and bind the Site in respect of which a new planning permission referenced [] has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)”

provided that nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the 1990 Act or of the Council or the County the appropriate nature and/or quantum of Section 106 obligations in so far as they are materially different to those contained in this Agreement and required pursuant to a determination under Section 73 of the 1990 Act whether by way of a new deed or supplemental deed pursuant to Section 106A of the 1990 Act

15 **Value Added Tax**

- 15.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any valued added tax properly payable.

16 **Jurisdiction**

This Deed is governed by and interpreted in accordance with the law of England

IN WITNESS whereof the parties hereto have executed this Deed by the same remains undelivered until the day and year first before written

Schedule 1

County Council Contributions

The Owner covenants with the County Council as follows:

1 Childcare contribution

- 1.1 To pay the Childcare Contribution to the County Council prior to the Commencement Date.
- 1.2 Not to Commence the Development until the Childcare Contribution has been paid in accordance with paragraph 1.1 of this Schedule.

2 Library Contribution

- 2.1 To pay the Library Contribution to the County Council prior to the Commencement Date.
- 2.2 Not to Commence the Development until the Library Contribution has been paid in accordance with paragraph 2.1 of this Schedule.

3 Monitoring Contribution

- 3.1 To pay the Monitoring Contribution to the County Council prior to the Commencement Date as a contribution to be allocated to and spent by the County Council towards the costs of monitoring and administering any obligations required pursuant to the Planning Permission
- 3.2 Not to Commence nor cause nor permit Commencement until the Monitoring Contribution has been paid to the County Council in accordance with paragraph 3.1 of this Schedule

4 Primary Education Contribution

- 4.1 To pay 50% of the Primary Education Contribution to the County Council prior to the Commencement Date
- 4.2 Not to Commence the Development until 50% of the Primary Education Contribution has been paid in accordance with paragraph 4.1 of this Schedule.
- 4.3 To pay the remaining 50% of the Primary Education Contribution to the County Council prior to the Occupation of 50% the Dwellings.
- 4.4 Not to Occupy more than 50% of the Dwellings until the Primary Education Contribution has been paid in accordance with paragraph 4.3 of this Schedule.

5 Secondary Education Contribution

- 5.1 To pay 50% of the Secondary Education Contribution to the County Council prior to the Commencement Date
- 5.2 Not to Commence the Development until 50% of the Secondary Education Contribution has been paid in accordance with paragraph 5.1 of this Schedule.

5.3 To pay the remaining 50% of the Secondary Education Contribution to the County Council prior to the Occupation of more than 50% of the Dwellings

5.4 Not to Occupy more than 50% of the Dwellings until the Secondary Education Contribution has been paid in accordance with paragraph 5.3 of this Schedule

6 **Special Educational Needs and Disabilities Contribution**

6.1 To pay the Special Educational Needs and Disabilities Contribution to the County Council prior to the Commencement Date.

6.2 Not to Commence the Development until the Special Educational Needs and Disabilities Contribution has been paid in accordance with paragraph 6.1 of this Schedule.

7 **Sustainable Transport Contribution**

7.1 To pay 50% of the Sustainable Transport Contribution to the County Council prior to the Commencement Date

7.2 Not to Commence Development until 50% of the Sustainable Transport Contribution has been paid in accordance with paragraph 7.1 of this Schedule.

7.3 To pay 50% of the Sustainable Transport Contribution to the County Council prior to Occupation

7.4 Not to Occupy until the Sustainable Transport Contribution has been paid in accordance with paragraph 7.3 of this Schedule.

8 **Waste Service Recycling Centre Contribution**

8.1 To pay the Waste Service Recycling Centre Contribution to the County Council prior to the Commencement Date

8.2 Not to Commence nor cause nor permit Commencement until the Waste Service Recycling Centre Contribution has been paid to the County Council in accordance with paragraph 8.1 of this Schedule

9 **Waste Service Transfer Station Contribution**

9.1 To pay the Waste Service Transfer Station Contribution to the County Council prior to the Commencement Date

9.2 Not to Commence nor cause nor permit Commencement until the Waste Service Transfer Station Contribution has been paid to the County Council in accordance with paragraph 9.1 of this Schedule

10 **Youth Contribution**

10.1 To pay the Youth Contribution to the Council prior to the Commencement Date.

10.2 Not to Commence the Development until the Youth Contribution has been paid in accordance with paragraph 10.1 of this Schedule.

Schedule 2 - Affordable Housing

Part 1

The Owner covenants with the Council as follows:

1 Affordable Housing Scheme

- 1.1 To submit an Affordable Housing Scheme to the Council for approval prior to the Commencement Date and not to Commence Development until the Affordable Housing Scheme has been approved by the Council in writing such approval not to be unreasonably withheld or delayed and PROVIDED THAT in the event that the Council does not approve the Affordable Housing Scheme within 20 Working Days of receipt the Affordable Housing Scheme shall be deemed approved

2 Construction

- 2.1 To construct the Affordable Housing Units in accordance with the approved Affordable Housing Scheme and Affordable Housing Mix and to meet the standards contained in the Technical Housing Standards -Nationally Described Space Standard.
- 2.2 To keep the Council informed of all key stages in the construction of the Affordable Housing and in particular shall forthwith provide the Council with written confirmation of the practical completion of the Affordable Housing.

3 Occupation

- 3.1 No more than 50% of the Open Market Units shall be Occupied until:
- 3.1.1 all of the Affordable Housing Units have been constructed in accordance with the Planning Permission and made ready for Occupation and written notification of such has been received by the Council; and
- 3.1.2 those Affordable Housing Units (save for the First Home) have been transferred to an AHP.
- 3.2 Subject to paragraph 4 below the Owner shall not Occupy or permit each Shared Ownership Unit to be Occupied unless and until in respect of that Shared Ownership Unit the AHP referred to in paragraph 3.1.2 above has entered into a Shared Ownership Lease to a Qualifying Person with a Local Connection.
- 3.3 Subject to paragraph 4 below the Affordable Rent Units shall not be Occupied otherwise than using an AT (or other approved tenancy agreement as agreed in writing by the Council)
- 3.4 the Owner agrees with the Council to use reasonable endeavours to ensure that within 12 weeks of practical completion of any Affordable Rent Unit or within 12 weeks of any Affordable Rent Unit becoming vacant (whatever the reason for the vacancy) ATs (or other approved

tenancies) are completed with either existing tenants or persons that have been approved by the AHP or nominated by the Head of Housing

- 3.5 if there are more applicants than Affordable Rent Units available, the available Affordable Rent Units will be allocated in accordance with the Housing Allocation Policy.

4 Chargee provision

- 4.1 The Affordable Housing (save for First Homes) shall not be used for any purpose other than for Affordable Housing PROVIDED ALWAYS THAT the provisions in this Schedule 2:

4.1.1 shall not bind any Chargee or any persons or bodies deriving title through such Chargee PROVIDED THAT:

- (a) such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- (b) if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing obligations in this Schedule 2 which shall determine absolutely

4.1.2 shall cease to bind an Affordable Housing Unit where any person acquires the freehold or leasehold interest in respect of that Affordable Housing Unit pursuant to a right to buy or right to acquires or equivalent right; or

4.1.3 shall cease to bind an Affordable Housing Unit where any person acquires 100% of the equity in that Affordable Housing Unit

and for the avoidance of doubt, this paragraph shall extend to include the mortgagees, chargees and successors in title to those set out in paragraphs 4.1.1 to 4.1.3 above.

Part 2 – First Homes

1 Obligations

1.1 Unless otherwise agreed in writing by the Council, the Owner for and on behalf of itself and its successors in title to the Site with the intention that the following provisions shall bind the Site and every part of it into whosoever's hands it may come covenants with the Council as below save that

1.2 paragraphs 2, 3, 4 and 5 of this Part 2 shall not apply to a First Homes Owner;

1.3 paragraphs 6 and 7 of this Part 2 apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner; and

1.4 Paragraph 8 of this Part 2 applies as set out therein

2 Quantum of First Homes

2.1 25% of the Affordable Housing Units on the Site (rounded up or down to the nearest whole Dwelling) shall be identified reserved and set aside as First Homes in accordance with the approved Affordable Housing Scheme and shall be provided and retained as First Homes in perpetuity subject to the terms of this Schedule.

2.2 Unless otherwise agreed in writing by the Council 25% of the total number of the Affordable Housing Units in each residential phase (rounded up or down to the nearest whole Dwelling) shall be identified reserved and set aside as First Homes and shall be provided and retained as First Homes in perpetuity subject to the terms of this Part 2 of this Schedule in accordance with the approved Affordable Housing Scheme relevant to that residential phase.

3 Clustering

3.1 The First Homes shall not be visually distinguishable from the Open Market Units based upon their external appearance;

3.2 The internal specification of the First Homes shall not by reason of their being First Homes be inferior to the internal specification of the equivalent Open Market Units but, subject to that requirement, variations to the internal specifications of the First Homes shall be permitted

3.3 Clusters of houses shall not exceed 15 Affordable Housing Units;

3.4 Clusters of flats in blocks shall not exceed 15 Affordable Housing Units;

4 Type and Distribution

The mix of First Homes provided within the Site shall be in accordance with

4.1 the Affordable Housing Mix; and

4.2 the distribution in the Affordable Housing Scheme

5 Development Standard

All First Homes shall be constructed to:-

5.1 the Development Standard current at the time of the relevant Reserved Matters Approval; and

5.2 no less than the standard applied to the Open Market Units.

6 Delivery Mechanism

6.1 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:

6.1.1 the Eligibility Criteria (National); and

6.1.2 the Eligibility Criteria (Local) (if any).

6.2 If after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 6.1.2 above shall cease to apply.

6.3 Subject to paragraphs 6.6 to 6.10 below, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a First Homes Mortgagee

6.4 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:

6.4.1 The Council has been provided with evidence that:

6.4.1.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 6.2 applies meets the Eligibility Criteria (Local) (if any)

6.4.1.2 the Dwelling is being Disposed of as a First Home at the Discount Market Price and

6.4.1.3 the transfer of the First Home includes:

(a) a definition of the "Council" which shall be

(b) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in Part 2 of Schedule 2 of the S106 Agreement a copy of which is attached hereto as the Annexure."

(c) A definition of "S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [] made between (1) Hertfordshire County Council (2) the Council (3) Simon Charles and Susan Jane Evans (4) National Westminster Bank PLC and (5) Vistry Homes Limited

(d) a provision that the Property is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the Property or any part of it other than in accordance with the First Homes Provisions

(e) a copy of the First Homes Provisions in an Annexure

6.4.2 The Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 6.3 and 6.4.1 have been met

6.5 On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by [Local Authority] of [address] or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

6.6 The owner of a First Home (which for the purposes of this clause shall include the Developer and any First Homes Owner) may apply to the Council to Dispose of it other than as a First Home on the grounds that either:

6.6.1 the Dwelling has been actively marketed as a First Home for six (6) months in accordance with Clauses 6.1 and 6.2 above (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 6.3 and 6.4.1 above; or

6.6.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 6.6.1 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship

6.7 Upon receipt of an application served in accordance with paragraph 6.6 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price

6.8 If the Council is satisfied that either of the grounds in paragraph 6.6 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 6.6 that the relevant Dwelling may be Disposed of:

6.8.1 to the Council at the Discount Market Price; or

6.8.2 (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 6.10 which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is disposed of other than as a First Home

- 6.9 If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 6.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 6.6 serve notice on the owner setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 6.6 following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home
- 6.10 Where a Dwelling is Disposed of other than as a First Home or to the Council at the Discount Market Price in accordance with paragraphs 6.8 or 6.9 above the Owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution
- 6.11 Upon receipt of the Additional First Homes Contribution the Council shall:
- 6.11.1 within twenty (20) Working Days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 6.5 where such restriction has previously been registered against the relevant title
 - 6.11.2 apply all monies received towards the provision of Affordable Housing
- 6.12 Any person who purchases a First Home free of the restrictions in this Schedule 2 of this Deed pursuant to the provisions in paragraphs 6.9 and 6.10 shall not be liable to pay the Additional First Homes Contribution to the Council.

7 Use

Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 7.1 – 7.4 below.

- 7.1 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.

7.2 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:

- (a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
- (b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the duration of the letting or sub-letting;
- (c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
- (d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
- (e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
- (f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.

7.3 A letting or sub-letting permitted pursuant to paragraph 7.1 or 7.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.

7.4 Nothing in this paragraph 7 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence

8 First Homes Mortgagee Exclusion

The obligations in paragraphs 1-7 of this Part 2 of Schedule 2 in relation to First Homes shall not apply to any First Homes Mortgagee or any receiver (including an administrative receiver appointed by such First Homes Mortgagee or any other person appointed under any security documentation to enable such First Homes Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such First Homes Mortgagee or Receiver PROVIDED THAT:

8.1 Such First Homes Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Home; and

8.2 once notice of intention to Dispose of the relevant First Home has been given by the First Homes Mortgagee or Receiver to the Council the First Homes Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 8.3

- 8.3 following the Disposal of the relevant First Home the First Homes Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution.
- 8.4 following receipt of notification of the Disposal of the relevant First Home the Council shall:
- 8.4.1 forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 6.5; and
- 8.4.2 apply all such monies received towards the provision of Affordable Housing

Schedule 3-- Council Contributions

The Owner covenants with the Council as follows:

1 Leisure Contribution

- 1.1 To pay the Leisure Contribution to the Council prior to the Commencement Date.
- 1.2 Not to Commence the Development until the Leisure Contribution has been paid in accordance with paragraph 1.1 of this Schedule.

2 East of England Ambulance Service Trust Contribution and General Medical Services and General Practitioner Services Contribution

- 2.1 To pay the East of England Ambulance Service Trust Contribution and General Medical Services and General Practitioner Services Contribution to the Council prior to the Commencement Date
- 2.2 Not to Commence the Development until the East of England Ambulance Service Trust Contribution and General Medical Services and General Practitioner Services Contribution have been paid to the Council in accordance with paragraph 2.1 of this Schedule

Schedule 4 – Travel Plan

In this Schedule the following definitions shall have the following meanings:

“Baseline Survey Collection Date” means the date on which baseline surveys are collected pursuant to paragraph 2.3

“Resident Travel Pack” means a welcome pack for occupants of the Dwellings containing all of the details of sustainable travel options in the local area;

“Sustainable Travel Voucher” means a voucher incentive tangible or web hosted for the value of fifty pounds (£50) per flat unit or one hundred pounds (£100) per house unit forming part of the Development (index linked as hereinafter provided) to incentivise the uptake of public transport cycling or walking as appropriate to the Development;

“Travel Plan” means the travel plan to be submitted by the Owner pursuant to paragraph 2.1.1 of this Schedule and approved by the County Council;

“Travel Plan Annual Review” means a data collection study reviewing and monitoring the provisions of the Travel Plan (as more fully set out therein) carried out annually in accordance with the provisions of paragraph 2.9.4. All monitoring that forms part of the Travel Plan Annual Review to be carried out in accordance with the provisions of the County Council’s Travel Plan Guidance (such version current as at the date of commencement of the development);

“Travel Plan Coordinator” means the person appointed by the Owners and approved by the County Council who shall be responsible for managing on behalf of the Owners the implementation monitoring progression reporting and review of the Travel Plan in order to achieve its objectives and targets;

“Travel Plan Evaluation and Support Contribution” means the sum of £10,200 (ten thousand and two hundred pounds) (index-linked) as hereinafter provided to be paid to the County Council for evaluating administering and monitoring the objectives of the Travel Plan

“Travel Plan Guidance” means the County Council’s document entitled ‘Travel Plan Guidance’ (as current at the time of application) which can be found at <https://www.hertfordshire.gov.uk/travelplans>;

“Travel Plan Remedial Measures Notice” means a notice in writing served on the Owner via the Travel Plan Co-ordinator by the County Council where the Owner has failed to meet one or more of the targets identified in the Travel Plan specifying the remedial measures and/or actions required to be taken by the Owner to remedy the failed implementation towards the agreed targets with a reasonable time provision.

1 Travel Plan Evaluation and Support Contribution

- 1.1 To pay the Travel Plan Evaluation and Support Contribution to the County Council prior to the Commencement Date as a contribution to be allocated to and spent by the local highway authority for Hertfordshire towards the costs of monitoring and administering any travel plan required pursuant to the Planning Permission
- 1.2 Not to Commence nor cause nor permit Commencement until the Travel Plan Evaluation and Support Contribution has been paid to the County Council in accordance with paragraph 1.1 of this Schedule

2 Travel Plan

- 2.1 Prior to first Occupation of the Development:
 - 2.1.1 To submit a draft Travel Plan for written approval to the County Council and obtain such approval such approval not to be unreasonably withheld or delayed by the County Council; and
 - 2.1.2 To nominate a Travel Plan Coordinator for written approval of the County Council and obtain such approval such approval not to be unreasonably withheld or delayed by the County Council and such nomination shall include contact details for the proposed Travel Plan Coordinator and the nature of their relationship to the Owners
- 2.2 Not to Occupy nor cause nor permit Occupation of the Development until the Travel Plan has been submitted to and approved by the County Council such approval not to be unreasonably withheld or delayed
- 2.3 To carry out baseline surveys and submit an updated Travel Plan to the County Council to be approved, including amended targets where relevant, within 3 months of first Occupation of the Development
- 2.4 To carry out baseline surveys upon the Occupation of the 75th Dwelling and submit an updated Travel Plan to be approved by the County Council, including amended targets where relevant, within 3 months of Occupation of the 75th Dwelling
- 2.5 To submit a draft Resident Travel Pack and the Sustainable Travel Voucher to the County Council for written approval by the County Council no less than three months prior to first Occupation
- 2.6 not to Occupy or permit or allow Occupation of any Dwelling until the draft Resident Travel Pack and Sustainable Travel Voucher have been approved in writing by the County Council such approval not to be unreasonably withheld or delayed by the County Council
- 2.7 to provide a Resident Travel Pack to each Dwelling forming part of the Development within one (1) month of the first Occupation of each Dwelling and of the first subsequent Occupation of each Dwelling AND FOR THE AVOIDANCE of doubt the Owner shall not be required to provide more than two Resident Travel Packs in respect of each Dwelling

- 2.8 to provide a Sustainable Travel Voucher to each Dwelling forming part of the Development within one (1) month of the first Occupation of each Dwelling AND FOR THE AVOIDANCE OF doubt the Owner shall not be required to provide more than one Sustainable Travel Voucher in respect of each Dwelling
- 2.9 To at all times during Occupation of the Development
- 2.9.1 comply with the terms of the Travel Plan including but not limited to implementing any actions by the specified dates in the Travel Plan.
- 2.9.2 promote and publicise the agreed Travel Plan to all owners occupiers and visitors to the Development
- 2.9.3 implement the Travel Plan by the dates or within the time limits set out in the Action Plan section of the Travel Plan
- 2.9.4 carry out the Travel Plan Annual Review annually on the corresponding calendar month from first Occupation to final Occupation and then or a period of 5 years from Occupation of the final Dwelling and submit a written report setting out the findings of such review to the County Council within three (3) calendar months from the date of each Travel Plan Annual Review such report shall include (but shall not be limited to) recommendations for amendments or improvements to the approved Travel Plan whether or not the objectives of the Travel Plan have been achieved.
- 2.9.5 comply with any variations or amendments to the Travel Plan permitted by this Deed which shall in addition include any reasonable amendments or improvements required by the County Council following review of the report submitted in sub paragraph (d) above and notified in writing to the Owners within three (3) calendar months from the date of receipt of such report.
- 2.9.6 that it will in relation to the Site include in any tenant's lease or occupier's licence of any part or parts of the Site a covenant that the purchaser tenant or occupier will comply with the approved Travel Plan for such part or parts of the Site once it has been approved by the County Council and further that it will use all reasonable endeavours to enforce such obligation against any such purchaser tenant or occupier
- 2.9.7 Within twenty (20) Working Days of the letting of the Site or any part or parts thereof it will procure the delivery to the County Council of a notice giving the following details:
- (i) the name and address of the purchaser and/or tenant;
 - (ii) a description of the premises demised;
 - (iii) the length of the term; and
 - (iv) a sufficient extract of the lease setting out the terms of the covenant expressed in favour of the County Council in relation to the Travel Plan

3 Travel Plan Remedial Notice

- 3.1 If a Travel Plan Remedial Measures Notice is served upon the Owner by the County Council the Owner shall carry out the measures and actions specified in the Travel Plan Remedial Measures Notice in accordance with the timescales set out within it
- 3.2 If in the reasonable opinion of the County Council the Owner has failed to comply with the Travel Plan Remedial Measures Notice within the timescales specified therein the Owner acknowledges that they will be in breach of this Agreement and that the County Council may take such further action in respect of that breach or breaches as it considers appropriate without further recourse to the Owner

Schedule 5 – Biodiversity Offsetting

The Owner covenants with the Council:

- 1.1 Prior to Commencement of Development to submit a Biodiversity Offsetting Scheme to the Council for approval.
- 1.2 Not to undertake any Development above damp-proof course until the Biodiversity Offsetting Scheme has been approved in writing by the Council such approval not to be unreasonably withheld or delayed
- 1.3 To fully implement the approved Biodiversity Offsetting Scheme prior to Occupation of the Development and thereafter to comply with the approved Biodiversity Offsetting Scheme (or any variations thereto agreed in writing between the Owner and the Council from time to time)
- 1.4 To pay the Council's reasonable and proper costs incurred in evaluating and approving the Biodiversity Offsetting Scheme within 10 Working Days of receipt by the Owner of a written invoice in respect thereof from the Council

Schedule 6 - Self-Build and Custom-Building Plots

The Owner covenants with the Council as follows:

- 1.1 Not to Commence the Development or permit Commencement until the Self-Build and Custom Housebuilding Scheme has been submitted to and approved by the Council such approval not to be unreasonably withheld or delayed
- 1.2 Unless otherwise agreed with the Council in writing not to permit more than 50% of the Open Market Units to be Occupied until the Self-Build and Custom Housebuilding Plots are made available in accordance with the approved Self-Build and Custom Housebuilding Scheme and have been provided in a Serviced Condition
- 1.3 Unless otherwise agreed with the Council in writing (as part of the Self-Build and Custom Housebuilding Scheme or otherwise) the Self-Build and Custom Housebuilding Plots shall only be provided and transferred for the provision of Self-Build and Custom Housebuilding to either:
 - (a) Those on the Self-Build and Custom Housebuilding Register;
 - (b) A Qualifying Self-Build and Custom Housebuilder Developer; or
 - (c) Such other person or persons approved in writing by the Council (such approval not to be unreasonably delayed or withheld) prior to any disposal of the Self-Build and Custom Housebuilding Plot in question
- 1.4 To give notice to the Council of the date of commencement of the date of marketing of each individual Self-Build and Custom Housebuilding Plot not later than 14 Working Days after that date
- 1.5 If after 12 months from the date of the commencement of marketing of the Self-Build and Custom Housebuilding Plots transfers of any of the Self-Build and Custom Housebuilding Plots have not completed then:
 - (a) the restrictions and obligations in this Schedule shall be released in relation to the relevant Self-Build and Custom Housebuilding Plot(s) and shall no longer apply to those Self Build and Custom Housebuilding Plot(s); and
 - (b) a dwelling may be built on the relevant Self- Build and Custom Housebuilding Plot(s), which may be sold on the open market free from the provision of this Schedule

Schedule 7 – Open Space

The Owner covenants with the Council:

1. Prior to Commencement of Development, the Owner shall submit to the Council for approval (such approval not to be unreasonably withheld or delayed):
 - 1.1 The Open Space Scheme;
 - 1.2 The Open Space Programme; and
 - 1.3 The Open Space Management Scheme
2. The Owner shall not Commence Development until it has submitted to and obtained the Council's written approval (such approval not to be unreasonably withheld or delayed) of:
 - 2.1 The Open Space Scheme;
 - 2.2 The Open Space Programme; and
 - 2.3 The Open Space Management Scheme
3. The Owner shall implement and fully comply with the approved Open Space Scheme, and the approved Open Space Programme
4. The Owner shall not Occupy or permit the Occupation of more than 75% of the Dwellings until the Open Space has been provided in accordance with the approved Open Space Scheme and the Council have received the appropriate Open Space Certificates
5. The Owner further covenants with the Council to maintain the Open Space Land in accordance with the approved Open Space Management Scheme until the date upon which the transfer described in paragraph 6 has been completed and until the relevant transfer has been completed if any tree or shrub or other planting seeding or turfing dies or becomes diseased or for any reason fails to become established during that period to reinstate or replace it as necessary with a tree or shrub or other plant or turfing of same size and species
6. The Owner further covenants with the Council that prior to the Occupation of 90% of the Dwellings it shall transfer the Open Space Land to the Open Space Management Company
7. The Owner shall not Occupy or permit the Occupation of more than 90% of the Dwellings until the Open Space Land has been transferred to the Open Space Management Company
8. The Owner further covenants with the Council to include in the transfers of the Open Space Land as appropriate to the Open Space Management Company;
 - 8.1 a covenant by the Open Space Management Company only to permit Open Space Land to be utilised as grassed areas and/or play areas and/or parking areas and/or roads and/or open areas for recreation in accordance with this Deed
 - 8.2 a covenant by the Open Space Management Company to maintain the Open Space Land in perpetuity in accordance with the approved Open Space Management Scheme and to allow public access to the Open Space 24 hours a day for 365 days a year save for any Permitted Closure and it being agreed between the parties that there is no intention to create any public rights of way over the Open Space Land in

addition to those parts of the Open Space Land which already benefit from public rights of way at the date of this Deed;

- 8.3 a covenant by the Open Space Management Company not to transfer the Open Space Land into the individual ownership of the owners of the Dwellings; and
 - 8.4 an obligation on the Open Space Management Company that should the Council so require the Open Space Management Company to enter into a direct covenant with the Council to perform the obligations set out in paragraphs 7.1 to 7.2 of this Schedule
9. The Owner shall furnish to the Council a copy of the completed transfer of the Open Space Land and shall inform the Council in writing of the contract details of the Open Space Management Company
10. The Owner shall;
- 10.1 include in each transfer or lease of a Dwelling an obligation to contribute an annual amount to the Open Space Management Company which together with fair contributions from other purchasers or lessees of the Dwellings shall be sufficient to enable the Open Space Management Company to discharge its obligations under this Deed in relation to the Open Space Land; and
 - 10.2 procure that the buyer or lessee of each Dwelling upon any subsequent sale or letting of such Dwelling they will procure that the incoming buyer or lessee shall enter into direct covenants with the Open Space Management Company in the form of paragraph 10.1 and 10.2 of this Schedule

Schedule 8 -Proforma

PURSUANT TO SECTION 106 AGREEMENT/UNILATERAL UNDERTAKING

DATED

MADE BETWEEN

PLANNING PERMISSION REFERENCE

HCC DU REFERENCE

SITE ADDRESS

SITE OWNER DETAILS

Name

Contact name

Address

Telephone nos

Main

Mobile

E-mail

EVENTS BEING NOTIFIED

Commencement Date – date:

Occupation of Development (Number if relevant) – date:

Completion of Development – date:

COMPLIANCE WITH OBLIGATION(S)

Schedule

Paragraph

Details of obligation and compliance

135633652-1

45

PAYMENT OF S106 CONTRIBUTIONS

Payment Type	Amount	Interim Indexation	Final Indexation	Total	Payable to
Example Education (primary)	X £	Y £	Z £	X + Y £	Herts County Council

Payment of S106 contributions can be made by BACS, CHAPS or cheque. In any event the form should be completed to ensure the payment is identified correctly and forward to:

The Chief Legal Officer
Hertfordshire County Council
County Hall
Pegs Lane
Hertford
Hertfordshire
SG13 8DE
(Ref: 020668)

To Strategic Director: Community and Place Delivery
St Albans City and District Council
Civic Centre
St Peter's Street
St Albans
Hertfordshire
AL1 3JE (Ref: 5/2022/1988)

Schedule 9 – HCC planning obligations contributions table

- 1 if the Development mix approved pursuant to the Reserved Matters Approval varies to the Development Mix set out in this Deed the County Council Contributions are to be recalculated in accordance with the following table
- 2 For the avoidance of doubt the Waste Service Transfer Station contribution is not included in the table and is not to be recalculated.

Figures are subject to indexation and are to be indexed using the BCIS Index from 1Q2022.

Service	Type	Tenure	Number of Bedrooms			
			1	2	3	≥ 4
Childcare Contribution	Flat	Affordable Rent**	£0	£5	£16	£17
Childcare Contribution	House	Affordable Rent**	£0	£7	£29	£44
Childcare Contribution	Flat	Open Market, First Homes or Shared Ownership*	£1	£3	£7	£10
Childcare Contribution	House	Open Market, First Homes or Shared Ownership*	£1	£3	£11	£18
Libraries Contribution	Flat	Affordable Rent**	£110	£198	£257	£274
Libraries Contribution	House	Affordable Rent**	£118	£204	£268	£362
Libraries Contribution	Flat	Open Market, First Homes or Shared Ownership*	£126	£167	£221	£301
Libraries Contribution	House	Open Market, First Homes or Shared Ownership*	£141	£173	£229	£284
Primary Education Contribution	Flat	Affordable Rent**	£1,540	£9,852	£9,290	£10,307
Primary Education Contribution	House	Affordable Rent**	£812	£11,250	£15,690	£18,590
Primary Education Contribution	Flat	Open Market, First Homes or Shared Ownership*	£1,621	£3,649	£3,440	£3,972
Primary Education Contribution	House	Open Market, First Homes or Shared Ownership*	£2,530	£4,995	£8,034	£9,849
Secondary Education Contribution	Flat	Affordable Rent**	£1,645	£10,686	£9,627	£10,698
Secondary Education Contribution	House	Affordable Rent**	£976	£12,756	£17,345	£19,367
Secondary Education Contribution	Flat	Open Market, First Homes or Shared Ownership*	£1,752	£3,823	£3,531	£4,265
Secondary Education Contribution	House	Open Market, First Homes or Shared Ownership*	£2,870	£5,495	£8,867	£10,804
Special Educational Needs and Disabilities Contribution	Flat	NA	£194	£194	£194	£194
Special Educational Needs and Disabilities Contribution	House	NA	£654	£654	£654	£654
Special Educational Needs and Disabilities Contribution	Flat	NA	£66	£66	£66	£66
Special Educational Needs and Disabilities Contribution	House	NA	£752	£752	£752	£752
Youth Contribution	Flat	Affordable Rent**	£29	£167	£499	£592
Youth Contribution	House	Affordable Rent**	£28	£249	£586	£1,015
Youth Contribution	Flat	Open Market, First Homes or Shared Ownership*	£23	£70	£213	£317
Youth Contribution	House	Open Market, First Homes or Shared Ownership*	£52	£81	£259	£488
Waste Service Recycling Centre Contribution	Flat	Affordable Rent**	£156	£278	£362	£386
Waste Service Recycling Centre Contribution	House	Affordable Rent**	£166	£287	£378	£510
Waste Service Recycling Centre Contribution	Flat	Open Market, First Homes or Shared Ownership*	£178	£235	£311	£424
Waste Service Recycling Centre Contribution	House	Open Market, First Homes or Shared Ownership*	£199	£244	£323	£400

The tenure terms set out in the tables reflect the terminology used with the submitted Application. Should alternative definitions/types of tenure of units be applicable in the future (e.g. at such time that Reserved Matters applications are submitted and/or as reflected in updated Hertfordshire County Council guidance) then they should be characterised and included as follows:

* Tenure characteristics similar to open market dwellings and dwellings provided for sale that offers a route to ownership for those who could not achieve home ownership through the market (or other tenures which display these types of characteristics)

** Tenure characteristics of 100% rented, reflecting needs assessed dwellings for which the rent is set below local market rents (or other tenures which display these types of characteristics)

EXECUTED and DELIVERED as a DEED on the date of this document

EXECUTED under the Common Seal of
ST ALBANS CITY AND DISTRICT COUNCIL

in the presence of:

J. Hutton
JACQUELINE HUTTON.

Sally C. Fisher



Duly Authorised Officer

EXECUTED under the Common Seal of
HERTFORDSHIRE COUNTY COUNCIL

in the presence of:

Luis Andrade
Luis Andrade
Principal Solicitor



Authorised Signatory

EXECUTED AS A DEED by
SIMON CHARLES EVANS

in the presence of

Witness
Signature
Address

) *Simon Charles Evans*
)
)
James Khankhour-Smith
JAMES KHANKHOUR-SMITH
SOLICITOR

TAYLOR WALTON
THORNYCROFT HOUSE
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HERTS AL1 1HQ

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SUSAN JANE EVANS
in the presence of

Witness
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James
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BRIAN JOHN HUMMEL
in the presence of

Witness
Signature
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B. Hummel
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MARION HUMMEL
in the presence of

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EXECUTED under the Common Seal of

NATIONAL WESTMINSTER BANK PLC
in the presence of:

<p><i>Joanne Ralph</i> EXECUTED AS A DEED BY: Joanne Ralph Authorised Signature Operations Analyst Mortgage Operations As the attorney for and On behalf of National Westminster Bank PLC</p>	<p>In the Presence of: <i>Nadia Ahmed</i> Nadia Ahmed Date: Company Official National Westminster Bank PLC Mortgage Centre PO Box 123 Greenock PA15 1EF</p>
--	--

Director
clerical level services & operations
analyst, mortgage operations
Secretary

EXECUTED AS A DEED by **VISTRY HOMES LIMITED**

Acting by [**JAMES HARKIN**]

and [**VICTORIA TROTMAN**]

as Attorneys for and on behalf of **VISTRY HOMES LIMITED** under a

Power of Attorney dated 30 June 2023

in the presence of:

[Signature of Witness]

Name: **DAVID FREER**

Address: **145 HEWLETT ROAD CHELTENHAM**

Occupation: **SURVEYOR**

[Signature of Attorney]

Name:

JAMES HARKIN

[Signature of Witness]

Name: **DAVID FREER**

Address: **145 HEWLETT ROAD CHELTENHAM**

Occupation: **SURVEYOR**

[Signature of Attorney]

Name:

VICTORIA TROTMAN

Date 16th October 2023

ST ALBANS CITY and DISTRICT COUNCIL

- and -

HERTFORDSHIRE COUNTY COUNCIL

- and -

SIMON CHARLES and SUSAN JANE EVANS

- and -

NATIONAL WESTMINSTER BANK PLC

- and -

VISTRY HOMES LIMITED

Deed of Agreement pursuant to S.106 Town and
Country Planning Act 1990 (as amended) in relation to
Land To The Rear Of 42-100 Tollgate Road & 42
Tollgate Road Colney Heath St Albans

Legal Services

St Albans City and District Council

Civic Centre St Peter's Street St Albans Hertfordshire
AL1 3JE REF: 5 / 2 0 2 2 / 1 9 8 8

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98 Biodiversity gain as condition of planning permission

Schedule 14 makes provision for biodiversity gain to be a condition of planning permission in England.

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SCHEDULE 14

Section 98

BIODIVERSITY GAIN AS CONDITION OF PLANNING PERMISSION

PART 1

BIODIVERSITY GAIN CONDITION

1 In the Town and Country Planning Act 1990, after section 90 insert—

"Biodiversity gain

90A Biodiversity gain in England

Schedule 7A (biodiversity gain in England) has effect."

2 In that Act, after Schedule 7 insert—

"SCHEDULE 7A

Section 90A

BIODIVERSITY GAIN IN ENGLAND

PART 1

OVERVIEW AND INTERPRETATION

Overview

1 (1) This Schedule makes provision for grants of planning permission in England to be subject to a condition to secure that the biodiversity gain objective is met.

(2) Paragraphs 2 to 12 have effect for the purposes of this Schedule.

Biodiversity gain objective

- 2 (1) The biodiversity gain objective is met in relation to development for which planning permission is granted if the biodiversity value attributable to the development exceeds the pre-development biodiversity value of the onsite habitat by at least the relevant percentage.
- (2) The biodiversity value attributable to the development is the total of—
- (a) the post-development biodiversity value of the onsite habitat,
 - (b) the biodiversity value, in relation to the development, of any registered offsite biodiversity gain allocated to the development, and
 - (c) the biodiversity value of any biodiversity credits purchased for the development.
- (3) The relevant percentage is 10%.
- (4) The Secretary of State may by regulations amend this paragraph so as to change the relevant percentage.

Biodiversity value and the biodiversity metric

- 3 References to the biodiversity value of any habitat or habitat enhancement are to its value as calculated in accordance with the biodiversity metric.
- 4 (1) The biodiversity metric is a document for measuring, for the purposes of this Schedule, the biodiversity value or relative biodiversity value of habitat or habitat enhancement.
- (2) The biodiversity metric is to be produced and published by the Secretary of State.
- (3) The Secretary of State may from time to time revise and republish the biodiversity metric.
- (4) Before publishing or republishing the biodiversity metric the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (5) The Secretary of State may by regulations make transitional provision in relation to the revision and republication of the biodiversity metric.
- (6) The Secretary of State must lay the biodiversity metric, and any revised biodiversity metric, before Parliament.

Pre-development biodiversity value

- 5 (1) In relation to any development for which planning permission is granted, the pre-development biodiversity value of the onsite habitat is the biodiversity value of the onsite habitat on the relevant date.
- (2) The relevant date is—
- (a) in a case in which planning permission is granted on application, the date of the application, and
 - (b) in any other case, the date on which the planning permission is granted.
- (3) But the person submitting the biodiversity gain plan for approval and the planning authority may agree that the relevant date is to be a date earlier than that specified in sub-paragraph (2)(a) or (b) (but not a date which is before the day on which this Schedule comes into force in relation to the development).
- (4) This paragraph is subject to paragraphs 6 and 7.
- 6 If—
- (a) a person carries on activities on land on or after 30 January 2020 otherwise than in accordance with—
 - (i) planning permission, or
 - (ii)

any other permission of a kind specified by the Secretary of State by regulations, and

- (b) as a result of the activities the biodiversity value of the onsite habitat referred to in paragraph 5(1) is lower on the relevant date than it would otherwise have been,

the pre-development biodiversity value of the onsite habitat is to be taken to be its biodiversity value immediately before the carrying on of the activities.

- 7 Where planning permission is granted in respect of land which is registered in the biodiversity gain site register under section 100 of the Environment Act 2021, the pre-development biodiversity value of the land is the total of—
- (a) the biodiversity value of the onsite habitat on the relevant date, and
 - (b) to the extent that it is not included within that value, the biodiversity value of the habitat enhancement which is, on that date, recorded in the register as habitat enhancement to be achieved on the land.

Post-development biodiversity value

- 8 (1) In relation to any development for which planning permission is granted, the post-development biodiversity value of the onsite habitat is the projected value of the onsite habitat as at the time the development is completed.
- (2) That value is to be calculated by taking the pre-development biodiversity value and—
- (a) if at the time the development is completed the development will, taken as a whole, have increased the biodiversity value of the onsite habitat, adding the amount of that increase, or
 - (b) if at the time the development is completed the development will, taken as a whole, have decreased the biodiversity value of the onsite habitat, subtracting the amount of that decrease.

This is subject to paragraph 9.

- 9 (1) This paragraph applies in relation to any development for which planning permission is granted where—
- (a) the person submitting the biodiversity gain plan for approval proposes to carry out works in the course of the development that increase the biodiversity value of the onsite habitat, and
 - (b) the planning authority considers that the increase is significant in relation to the pre-development biodiversity value.
- (2) The increase in biodiversity value referred to in sub-paragraph (1) is to be taken into account in calculating the post-development biodiversity value of the onsite habitat only if the planning authority is satisfied that the condition in sub-paragraph (3) is met.
- (3) The condition is that any habitat enhancement resulting from the works referred to in sub-paragraph (1)(a) will, by virtue of—
- (a) a condition subject to which the planning permission is granted,
 - (b) a planning obligation, or
 - (c) a conservation covenant,
- be maintained for at least 30 years after the development is completed.
- (4) The Secretary of State may by regulations amend sub-paragraph (3) so as to substitute for the period for the time being specified there a different period of at least 30 years.

Registered offsite biodiversity gains

- 10 (1) “Registered offsite biodiversity gain” means any habitat enhancement, where—
- (a) the enhancement is required to be carried out under a conservation covenant or planning obligation, and
 - (b) the enhancement is recorded in the biodiversity gain site register (as to which, see section 100 of the Environment Act 2021).
- (2) References to the allocation of registered offsite biodiversity gain are to its allocation in accordance with the terms of the conservation covenant or planning obligation referred to in sub-paragraph (1)(a).
- (3) The biodiversity value of registered offsite biodiversity gain is measured, under the biodiversity metric, in relation to development to which it is allocated.

Biodiversity credits

- 11 “Biodiversity credits” means credits under section 101 of the Environment Act 2021.

General

- 12 (1) In relation to development for which planning permission is granted—
- “onsite habitat” means habitat on the land to which the planning permission relates;
 - “planning authority” means the local planning authority, except that—
 - (a) in a case where the planning permission is granted by Mayoral development order under section 61DB, “planning authority” means such of the Mayor of London or the local planning authority as may be specified in the order;
 - (b) in a case where the planning permission is granted by the Secretary of State under section 62A, 76A or 77, “planning authority” means such of the Secretary of State or the local planning authority as the Secretary of State may determine;
 - (c) in a case where the planning permission is granted on an appeal under section 78, “planning authority” means such of the person determining the appeal or the local planning authority as that person may direct.
- (2) “Habitat enhancement” means enhancement of the biodiversity of habitat.
- (3) References to the grant of planning permission include the deemed grant of planning permission.

PART 2

CONDITION OF PLANNING PERMISSION RELATING TO BIODIVERSITY GAIN

General condition of planning permission

- 13 (1) Every planning permission granted for the development of land in England shall be deemed to have been granted subject to the condition in sub-paragraph (2).
- (2) The condition is that the development may not be begun unless—
- (a) a biodiversity gain plan has been submitted to the planning authority (see paragraph 14), and
 - (b) the planning authority has approved the plan (see paragraph 15).

Biodiversity gain plan

- 14 (1) For the purposes of paragraph 13(2)(a), a biodiversity gain plan is a plan which—

- (a) relates to development for which planning permission is granted, and
 - (b) specifies the matters referred to in sub-paragraph (2).
- (2) The matters are—
- (a) information about the steps taken or to be taken to minimise the adverse effect of the development on the biodiversity of the onsite habitat and any other habitat,
 - (b) the pre-development biodiversity value of the onsite habitat,
 - (c) the post-development biodiversity value of the onsite habitat,
 - (d) any registered offsite biodiversity gain allocated to the development and the biodiversity value of that gain in relation to the development,
 - (e) any biodiversity credits purchased for the development, and
 - (f) such other matters as the Secretary of State may by regulations specify.
- (3) The Secretary of State may by regulations make provision about—
- (a) any other matters to be included in a biodiversity gain plan;
 - (b) the form of a biodiversity gain plan;
 - (c) the procedure to be followed in relation to the submission of a biodiversity gain plan (including the time by which a plan must be submitted);
 - (d) persons who may or must submit a biodiversity gain plan.

Approval of biodiversity gain plan

- 15 (1) For the purposes of paragraph 13(2)(b) a planning authority to which a biodiversity gain plan is submitted must approve the plan if, and only if, it is satisfied as to the matters specified in sub-paragraph (2).
- (2) The matters are—
- (a) that the pre-development biodiversity value of the onsite habitat is as specified in the plan,
 - (b) that the post-development biodiversity value of the onsite habitat is at least the value specified in the plan,
 - (c) that, in a case where any registered offsite biodiversity gain is specified in the plan as allocated to the development—
 - (i) the registered offsite biodiversity gain is so allocated (and, if the allocation is conditional, that any conditions attaching to the allocation have been met or will be met by the time the development begins), and
 - (ii) the registered offsite biodiversity gain has the biodiversity value specified in the plan in relation to the development,
 - (d) that any biodiversity credits specified in the plan as purchased for the development have been so purchased,
 - (e) that the biodiversity gain objective is met, and
 - (f) any other matters specified in the plan under paragraph 14(2)(f).

Regulations about determinations

- 16 The Secretary of State may make regulations as to—
- (a) the procedure which a planning authority is to follow in determining whether to approve a biodiversity gain plan (including the time by which a determination must be made);
 - (b)

factors which may or must be taken into account in making such a determination;

- (c) appeals relating to such a determination.

Exceptions

- 17 Paragraph 13 does not apply in relation to—
- (a) development for which planning permission is granted—
 - (i) by a development order, or
 - (ii) under section 293A (urgent Crown development), or
 - (b) development of such other description as the Secretary of State may by regulations specify.

Modifications for irreplaceable habitat

- 18 (1) The Secretary of State may by regulations make provision modifying or excluding the application of this Part of this Schedule in relation to any development for which planning permission is granted where the onsite habitat is “irreplaceable habitat” as defined in the regulations.
- (2) Regulations under this paragraph must make provision requiring, in relation to any such development, the making of arrangements for the purpose of minimising the adverse effect of the development on the biodiversity of the onsite habitat.
- (3) Regulations under this paragraph may confer powers and duties, including powers and duties in relation to the giving of guidance, on Natural England.

Modifications for particular kinds of planning permission

- 19 (1) The Secretary of State may by regulations make provision modifying the application of this Part of this Schedule in relation to—
- (a) the grant of outline planning permission, where the reservation of matters for subsequent approval has the effect of requiring or permitting development to proceed in phases, or
 - (b) the grant of any kind of planning permission, where the grant is subject to conditions (whether requiring the subsequent approval of any matters or otherwise) having that effect.
- (2) Regulations under this paragraph may include provision for a grant of planning permission referred to in sub-paragraph (1)(a) or (b) to be subject to conditions relating to meeting the biodiversity gain objective referred to in paragraph 2.
- 20 (1) The Secretary of State may by regulations make provision modifying or excluding the application of this Part of this Schedule in relation to development for which—
- (a) planning permission is granted under section 73A (planning permission for development already carried out), or
 - (b) planning permission is granted by an order under section 102 (orders requiring discontinuance of use etc).
- (2) Regulations under this paragraph may in particular include provision—
- (a) for paragraph 13 not to apply in relation to the grant of planning permission referred to in sub-paragraph (1)(a) or (b);
 - (b) for the grant of any such planning permission to be subject to other conditions relating to meeting the biodiversity gain objective.
- (3) The conditions referred to in sub-paragraph (2)(b) may include conditions requiring—
- (a)

habitat enhancement on the land to which the planning permission relates;

- (b) the allocation of registered offsite biodiversity gain to any development for which the planning permission is granted;
- (c) the purchase of biodiversity credits for any such development.

Further application of this Part

21 The Secretary of State may by regulations make provision to apply this Part of this Schedule in relation to development for which planning permission is granted under section 141 or 177(1), with such modifications or exclusions as may be specified in the regulations.”

PART 2

CONSEQUENTIAL AMENDMENTS

- 3 (1) The Town and Country Planning Act 1990 is amended as follows.
- (2) In section 56 (time when development begins), in subsection (3), at the end insert “and paragraph 13 of Schedule 7A”.
 - (3) In section 69 (register of applications etc)—
 - (a) in subsection (1), at the end insert—
 - “(e) applications for approval of biodiversity gain plans under Part 2 of Schedule 7A.”;
 - (b) in subsection (2)(a), for “and (aza)” substitute “, (aza) and (e)”.
 - (4) In section 70 (determination of applications: general considerations), in subsection (1)(a), after “section 62D(5)” insert “, paragraph 13 of Schedule 7A”.
 - (5) In section 73 (determination of applications to develop land after non-compliance), after subsection (2A) insert—
 - “(2B) Nothing in this section authorises the disapplication of the condition under paragraph 13 of Schedule 7A (biodiversity gain condition).”
 - (2C) Subsection (2D) applies where—
 - (a) for the purposes of paragraph 13 of Schedule 7A a biodiversity gain plan was approved in relation to the previous planning permission (“the earlier biodiversity gain plan”),
 - (b) planning permission is granted under this section, and
 - (c) the conditions subject to which the planning permission is granted under this section do not affect the post-development biodiversity value of the onsite habitat as specified in the earlier biodiversity gain plan.
 - (2D) Where this subsection applies, the earlier biodiversity gain plan is regarded as approved for the purposes of paragraph 13 of Schedule 7A in relation to the planning permission granted under this section.”
 - (6) In section 74A (deemed discharge of planning permission conditions), after subsection (2) insert—
 - “(2A) But this section does not apply to the condition under paragraph 13 of Schedule 7A (biodiversity gain condition).”
 - (7) In section 76C (provisions applying to applications made under section 62A), in subsection (2), after “Schedule 1” insert “, or by regulations under paragraph 14(3) or 16 of Schedule 7A,”.
 - (8) In section 84 (simplified planning zone schemes: conditions and limitations on planning permission), at the end insert—
 - “(5) A simplified planning zone scheme may not disapply the condition under paragraph 13 of Schedule 7A (biodiversity gain condition).”

- (9) In section 88 (enterprise zones), after subsection (3) insert—
- “(3A) Subsection (3) is subject to paragraph 13 of Schedule 7A (biodiversity gain condition).”
- (10) In section 96A (power to make non-material changes to planning permission), after subsection (3) insert—
- “(3A) The conditions referred to in subsection (3)(b) do not include the condition under paragraph 13 of Schedule 7A (biodiversity gain condition).”
- (11) In section 97 (revocation or modification of planning permission), at the end insert—
- “(7) Subsection (1) does not permit the revocation or modification of the condition under paragraph 13 of Schedule 7A (the biodiversity gain condition), subject as follows.
- (8) The Secretary of State may by regulations make provision—
- (a) for the condition under paragraph 13 of Schedule 7A to apply in relation to the modification of planning permission under this section, subject to such modifications as may be specified in the regulations;
- (b) for planning permission modified under this section to be subject to other conditions relating to meeting the biodiversity gain objective referred to in paragraph 2 of Schedule 7A (including conditions of a kind referred to in paragraph 20(3) of that Schedule).”
- (12) In section 100ZA (restriction on power to impose planning conditions in England), in subsection (13)(c), after “limitation” insert “but do not include the condition under paragraph 13 of Schedule 7A (biodiversity gain condition)”.
- (13) In section 106 (planning obligations), in subsection (1), in the words before paragraph (a), after “106C” insert “, Schedule 7A”.
- (14) In section 106A (modification and discharge of planning obligations), after subsection (6) insert—
- “(6A) Except in such cases as may be prescribed, the authority may not under subsection (6) discharge or modify the planning obligation if the authority considers that doing so would—
- (a) prevent the biodiversity gain objective referred to in paragraph 2 of Schedule 7A from being met in relation to any development, or
- (b) give rise to a significant risk of that objective not being met in relation to any development.”
- (15) In section 333 (regulations and orders), after subsection (3A) insert—
- “(3AA) No regulations may be made under paragraph 2(4) of Schedule 7A (biodiversity gain condition) unless a draft of the instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.”

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STATUTORY INSTRUMENTS

2024 No. 44 (C. 4)

ENVIRONMENTAL PROTECTION

**The Environment Act 2021 (Commencement No. 8
and Transitional Provisions) Regulations 2024**

Made - - - - 17th January 2024

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 147(3) and (10) and 148(1) of the Environment Act 2021⁽¹⁾.

Citation and interpretation

1.—(1) These Regulations may be cited as the Environment Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations 2024.

(2) In these Regulations—

“the Act” means the Environment Act 2021;

“the 1990 Act” means the Town and Country Planning Act 1990⁽²⁾;

“biodiversity gain planning condition” means the condition referred to in paragraph 13 (general condition of planning permission) of Schedule 7A to the 1990 Act.

Provisions coming into force on 12th February 2024

2.—(1) The following provisions of the Act come into force on 12th February 2024—

(a) section 98 (biodiversity gain as condition of planning permission) in so far as it relates to the provisions commenced by sub-paragraph (d) of this paragraph;

(b) section 100 (biodiversity gain site register), for all remaining purposes;

(c) section 101 (biodiversity credits);

(d) paragraphs 1 and 2 of Schedule 14 (biodiversity gain as condition of planning permission) in so far as they insert the following provisions of Schedule 7A into the 1990 Act, for the purposes mentioned in paragraph (2) of this regulation—

(i) paragraphs 1 and 2;

(ii) paragraphs 5 to 11;

(iii) paragraph 12(1), except paragraph (a) in the definition of “planning authority”;

(1) 2021 c. 30.

(2) 1990 c. 8.

- (iv) paragraph 12(3);
- (v) paragraphs 13 to 21;
- (e) paragraph 3 of Schedule 14 (biodiversity gain as condition of planning permission: consequential amendments).

(2) The purposes referred to in paragraph (1)(d) of this regulation relate to planning permission granted on an application made under Part 3 of the 1990 Act, other than planning permission relating to development to which section 73A of the 1990 Act (planning permission for development already carried out)(3) applies.

Transitional provision: planning permission applied for before 12th February 2024

3. The biodiversity gain planning condition does not apply in relation to a planning permission within the scope of regulation 2(2) of these Regulations, where the application for planning permission was made before 12th February 2024.

Transitional provision: section 73 planning permissions

4.—(1) The biodiversity gain planning condition does not apply in relation to a section 73 planning permission where—

- (a) the original planning permission to which the section 73 planning permission relates was granted before 12th February 2024; or
- (b) the application for the original planning permission to which the section 73 planning permission relates was made before 12th February 2024.

(2) For the purposes of this regulation—

- (a) “section 73 planning permission” means a planning permission granted on an application made under section 73 of the 1990 Act (determination of applications to develop land without compliance with conditions previously attached);
- (b) “the original planning permission to which the section 73 planning permission relates” means a planning permission which is the first in a sequence of two or more planning permissions, where the second and any subsequent planning permissions are section 73 planning permissions.

Rebecca Pow
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

17th January 2024

(3) Section 73A was inserted by paragraph 16(1) of Schedule 7 of the Planning and Compensation Act 1991 (c. 34).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring into force provisions of the Environment Act 2021 (c. 30) (“the Act”). These are the eighth commencement regulations made by the Secretary of State under the Act. These Regulations also make transitional provision in connection with the coming into force of certain provisions brought into force by these Regulations.

Regulation 2 brings into force on 12th February 2024 specified sections of the Act.

Section 98 of, and paragraphs 1 and 2 of Schedule 14 to, the Act insert Schedule 7A into the Town and Country Planning Act 1990 (c. 8) (“the 1990 Act”) (together with section 90A, which introduces it). Schedule 7A to the 1990 Act makes provision for a statutory condition to apply to all planning permissions granted in England, subject to a power to grant exceptions. The condition is intended to ensure the biodiversity gain objective is met. The provisions in Schedule 7A to the 1990 Act are commenced so far as they relate to planning permissions granted on application made under Part 3 of the 1990 Act, other than planning permissions relating to development to which section 73A of the 1990 Act (planning permission for development already carried out) applies.

Section 100 of the Act, which is already partially commenced, makes provision for a public register to record off-site biodiversity gain sites and the allocation of any habitat enhancement from that site to any development.

Section 101 of the Act provides for the creation of a system to sell a supply of statutory biodiversity credits to the habitat compensation market.

Paragraph 3 of Schedule 14 to the Act makes consequential amendments to the 1990 Act.

Regulations 3 and 4 make transitional provision in respect of the biodiversity gain requirement brought into force by these Regulations. The transitional provision in regulation 3 provides that the biodiversity gain planning condition does not apply to planning permissions where the application for planning permission was made before 12th February 2024. The transitional provision in regulation 4 provides that where the application for planning permission was made, or planning permission was granted, for a development before 12th February 2024 the biodiversity gain planning condition also does not apply to any subsequent planning permission for that development granted on an application made under section 73 of the 1990 Act (determination of applications to develop land without compliance with conditions previously attached).

An impact assessment has not been published for these Regulations as they have no impact on cost to business, the public or voluntary sectors independent of the provisions these Regulations bring into force. A full impact assessment has been published in relation to the Act and copies can be obtained from the website of the Department for Environment, Food and Rural Affairs at www.gov.uk/defra or from the Department for Environment, Food and Rural Affairs at 2 Marsham Steet, London, SW1P 4DF, United Kingdom.

NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

(This note is not part of the Regulations)

The following provisions of the Environment Act 2021 (c. 30) have been brought into force by commencement regulations and orders made before the date of these Regulations:

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<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Sections 1 to 7	24th January 2022	S.I. 2022/48 (C. 2)
Sections 8 to 15	24th January 2022	S.I. 2022/48 (C. 2)
Section 16	24th January 2022	S.I. 2022/48 (C. 2)
Sections 17 and 18	10th May 2022	S.I. 2022/518 (C. 21)
Section 19	10th May 2022 (partially)	S.I. 2022/518 (C. 21)
	1st November 2023 (for all remaining purposes)	S.I. 2023/381 (C. 18)
Section 20	10th May 2022	S.I. 2022/518 (C. 21)
Section 21	1st April 2022	S.I. 2022/48 (C. 2)
Sections 22 to 24	17th November 2021	S.I. 2021/1274 (C. 72)
Section 25	24th January 2022	S.I. 2022/48 (C. 2)
Section 26	17th November 2021	S.I. 2021/1274 (C. 72)
Section 27	24th January 2022	S.I. 2022/48 (C. 2)
Sections 28 to 30	24th January 2022	S.I. 2022/48 (C. 2)
Sections 31 to 41	24th January 2022	S.I. 2022/48 (C. 2)
Sections 42 and 43	24th January 2022	S.I. 2022/48 (C. 2)
Sections 44 to 47	17th November 2021	S.I. 2021/1274 (C. 72)
Section 48	25th July 2022	S.R. 2022 No. 54 (C. 5)
Section 49	28th February 2022	S.R. 2022 No. 54 (C. 5)
Section 50	24th January 2022 (partially)	S.I. 2022/48 (C. 2)
	28th February 2022 (partially)	S.R. 2022 No.54 (C. 5)
	7th March 2022 (partially)	S.I. 2022/223 (W. 71) (C. 10)
	9th November 2022 (for all remaining purposes)	S.S.I. 2022/305 (C. 18)
Section 51	28th February 2022 (for all remaining purposes)	S.R. 2022 No. 54 (C. 5)
Section 52	28th February 2022 (for all remaining purposes)	S.R. 2022 No. 54 (C. 5)
Section 53	28th February 2022 (for all remaining purposes)	S.R. 2022 No. 54 (C. 5)
Section 54	28th February 2022 (for all remaining purposes)	S.R. 2022 No. 54 (C. 5)
Section 55	28th February 2022 (for all remaining purposes)	S.R. 2022 No. 54 (C. 5)
Section 56	28th February 2022 (for all remaining purposes)	S.R. 2022 No. 54 (C. 5)
Section 59	28th February 2022	S.R. 2022 No. 54 (C. 5)

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 60	24th January 2022 (partially)	S.I. 2022/48 (C. 2)
	7th March 2022 (for all remaining purposes)	S.I. 2022 No. 223 (W. 71) (C. 10)
Section 61	28th February 2022	S.R. 2022 No. 54 (C. 5)
Section 62	24th January 2022	S.I. 2022/48 (C. 2)
Section 64	24th January 2022 (partially)	S.I. 2022/48 (C. 2)
	7th March 2022 (partially)	S.I. 2022 No. 223 (W. 71) (C. 10)
	9th November 2022 (partially)	S.S.I. 2022/305 (C. 18)
Section 65	28th February 2022	S.R. 2022 No. 54 (C. 5)
Section 67	28th February 2022	S.R. 2022 No. 54 (C. 5)
Section 68	1st April 2023 (partially)	S.I. 2023/381 (C. 18)
Section 69	1st April 2023 (partially)	S.I. 2023/381 (C. 18)
Section 71	28th February 2022	S.R. 2022 No. 54 (C. 5)
Section 72	1st May 2022	S.I. 2022/48 (C. 2)
Section 73	1st May 2022 (partially)	S.I. 2022/48 (C. 2)
Section 82	3rd November 2023 (partially)	S.I. 2023/1170 (C. 77)
Section 85	10th May 2022 (partially)	S.I. 2022/518 (C. 21)
Section 86	24th January 2022	S.I. 2022/48 (C. 2)
Section 87	10th May 2022 (partially)	S.I. 2022/518 (C. 21)
Section 89	28th February 2022 (for all remaining purposes)	S.R. 2022 No. 54 (C. 5)
Section 91	28th February 2022	S.R. 2022 No. 54 (C. 5)
Section 94	29th September 2022	S.I. 2022/988 (C. 75)
Section 96	29th September 2022 (partially)	S.I. 2022/988 (C. 75)
Section 98	3rd November 2023 (partially)	S.I. 2023/1170 (C. 77)
Section 100	3rd November 2023 (partially)	S.I. 2023/1170 (C. 77)
Sections 102 and 103	1st January 2023	S.I. 2022/1266 (C. 100)
Sections 104 to 108	24th January 2022	S.I. 2022/48 (C. 2)
Section 109	30th September 2022	S.I. 2022/518 (C. 21)
Section 110	24th January 2022	S.I. 2022/48 (C. 2)
Section 111	30th September 2022	S.I. 2022/518 (C. 21)
Sections 112 and 113	24th January 2022	S.I. 2022/48 (C. 2)
Section 114	1st January 2023	S.I. 2022/1266 (C. 100)
Section 115	30th November 2023	S.I. 2023/1170 (C. 77)

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<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 116	30th September 2022 (partially)	S.I. 2022/518 (C. 21)
Part 7	30th September 2022	S.I. 2022/48 (C. 2)
Section 140	28th February 2022 (for all remaining purposes)	S.R. 2022 No. 54 (C. 5)
Schedule 1	17th November 2021	S.I. 2021/1274 (C. 72)
Schedule 2	25th July 2022 (partially)	S.R. 2022 No. 54 (C. 5)
Schedule 3	28th February 2022	S.R. 2022 No. 54 (C. 5)
Schedule 4	24th January 2022 (partially)	S.I. 2022/48 (C. 2)
	28th February 2022 (partially)	S.R. 2022 No. 54 (C. 5)
	7th March 2022 (partially)	S.I. 2022 No. 223 (W. 71) (C. 10)
	9th November 2022 (for all remaining purposes)	S.S.I. 2022/305 (C. 18)
Schedule 5	28th February 2022 (for all remaining purposes)	S.R. 2022 No. 54 (C. 5)
Schedule 6	28th February 2022 (for all remaining purposes)	S.R. 2022 No. 54 (C. 5)
Schedule 7	28th February 2022 (for all remaining purposes)	S.R. 2022 No. 54 (C. 5)
Schedule 8	28th February 2022 (for all remaining purposes)	S.R. 2022 No. 54 (C. 5)
Schedule 9	28th February 2022 (for all remaining purposes)	S.R. 2022 No. 54 (C. 5)
Schedule 11	1st May 2022	S.I. 2022/48 (C. 2)
Schedule 12, Part 1	1st May 2022	S.I. 2022/48 (C. 2)
Schedule 12, Part 3	1st May 2022	S.I. 2022/48 (C. 2)
Schedule 13	24th January 2022	S.I. 2022/48 (C. 2)
Schedule 14	3rd November 2023 (partially)	S.I. 2023/1170 (C. 77)
Schedule 16	1st January 2023	S.I. 2022/1266 (C. 100)
Schedule 17	30th September 2022 (partially)	S.I. 2022/518 (C. 21)
Schedule 18	30th September 2022	S.I. 2022/48 (C. 2)
Schedule 19	30th September 2022	S.I. 2022/48 (C. 2)
Schedule 20	30th September 2022	S.I. 2022/48 (C. 2)
Schedule 21	28th February 2022 (for all remaining purposes)	S.R. 2022 No. 54 (C. 5)

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