

## Spatial Planning Policy Consultation Response

<b>Planning Application No.</b>	5/2022/2443
<b>Site:</b>	Bricket Wood Sports And Country Club, Paintball Site & Bricket Lodge Lye Lane Bricket Wood Hertfordshire AL2 3TF
<b>Description of development:</b>	Outline application (access sought) - Demolition of existing buildings and construction of up to 115 dwellings and creation of new access
<b>Recommendation:</b>	<u>Refuse</u>
<b>Officer Contact:</b>	James Gummery

### ADVICE/ COMMENTS

The following advice and comments relate to principle of development, very special circumstances, and housing land supply/ proposed housing mix. It also provides update on relevant case law and appeal decisions.

#### Principle of Development

##### Relevant Policy

The proposed development would be located in the Metropolitan Green Belt.

Local Plan (Saved 2009) Policy 1 'Metropolitan Green Belt' states:

*"Within the Green Belt, except for development in Green Belt settlements referred to in Policy 2 or in very special circumstances, permission will not be given for development for purposes other than that required for:*

- a) mineral extraction;*
- b) agriculture;*
- c) small scale facilities for participatory sport and recreation;*
- d) other uses appropriate to a rural area;*
- e) conversion of existing buildings to appropriate new uses, where this can be achieved without substantial rebuilding works or harm to the character and appearance of the countryside.*

*New development within the Green Belt shall integrate with the existing landscape. Siting, design and external appearance are particularly important and additional landscaping will normally be required. Significant harm to the ecological value of the countryside must be avoided."*

NPPF states:

*“147. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.*

*148. 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.”*

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

*“What factors can be taken into account when considering the potential impact of development on the openness of the Green Belt?*

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

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

Evidence Base and previous Local Plan work

SKM Green Belt Review

The SKM Green Belt Review comprises:

- Part 1: Green Belt Review Purposes Assessment (Prepared for Dacorum Borough Council, St Albans City and District Council and Welwyn Hatfield Borough Council) – 2013
- Part 2: Green Belt Review Sites & Boundaries Study – Prepared for St Albans City and District Council only – February 2014

Part 1: Green Belt Review Purposes Assessment (Prepared for Dacorum Borough Council, St Albans City and District Council and Welwyn Hatfield Borough Council) – November 2013

The site is identified as part of GB26 in the Green Belt Review.

GB 26:

*“Significant contribution towards maintaining the existing settlement pattern (providing gaps between Chiswell Green, How Wood and Bricket Wood). Partial contribution towards preventing merging. Overall the parcel contributes significantly towards 1 of the 5 Green Belt purposes.”*

The extract of this assessment is provided at Appendix 1 of this report.

Call for Sites - 2021

The site was submitted via the Call for Sites process which ran from January to March 2021. It is identified as being the westerly part of site STS-47-21 in the HELAA and is considered to be potentially suitable subject to absolute and non-absolute constraints being reasonably mitigated. It should be noted that the HELAA process has not taken into account Green Belt constraints.

## Housing

The proposal is for up to 115 residential dwellings.

### Housing Land Supply

SADC currently has a housing land supply of 2.2 years from a base date 1 April 2021. It is acknowledged that 2.2 years is substantially below the required 5 years.

### Housing and Affordable Housing Need

GL Hearn South West Herts – Local Housing Need Assessment (LHNA) (September 2020). The following table on page 141 of the LHNA sets out the required need for different sized homes.

- Recommendation: The following mix of homes size by tenure is suggested as a strategic mix across the 2020-2036 period. As there are only modest changes at a local authority level this mix can be applied across the HMA and at a local level.**

Size	Market	Affordable Homes to Buy	Affordable Homes to Rent
1-bedroom	5%	25%	30%
2-bedrooms	20%	40%	35%
3-bedrooms	45%	25%	25%
4+-bedrooms	30%	10%	10%
- The mix identified above could inform strategic policies although a flexible approach should be adopted. In applying the mix to individual development sites, regard should be had to the nature of the site and character of the area, and to up-to-date evidence of need as well as the existing mix and turnover of properties at the local level. The Councils should also monitor the mix of housing delivered.
- It will ultimately be for the Council(s) to write into policy the approach which best meets their local circumstance. This could be, for example, a desire for further downsizing or a pragmatic approach to a constrained housing supply both of which would see a greater proportion of smaller homes being built.

The LHNA does not recommend an affordable housing percentage, as it is up to the Council to decide with considering viability. Below sets out the range of affordable housing need.

**Table 37: Estimated Annual Level of Affordable/Social Rental Housing Need (2020-2036)**

	Dacorum	Hertsmere	St. Albans	Three Rivers	Watford	SW Herts
Current need (divided across 16 year period)	70	71	63	45	101	350
Newly forming households	570	380	486	360	448	2,243
Existing households falling into need	353	133	197	77	163	924
Total Gross Need	993	585	745	483	712	3,517
Supply	630	228	303	133	230	1,523
Net Need	363	356	443	350	482	1,994

Source: Census/CoRe/Projection Modelling and affordability analysis

- 5.99 For authorities with a plan period other than 2020-2036, the current need as stated in the final column of Table 33 should be divided by the number of years in the plan period. This will impact the total gross need, but the other numbers are calculated on a per annum basis so will not change.

**Table 42: Estimated Annual Need for Affordable Home Ownership (2020-2036)**

	Dacorum	Hertsmere	St. Albans	Three Rivers	Watford	SW Herts
Current need	25	18	34	14	26	118
Newly forming households	410	260	512	259	303	1,743
Existing households falling into need	76	55	103	41	79	355
Total Gross Need	511	333	649	315	408	2,217
Supply	263	186	265	153	156	1,023
Net Need	248	147	385	162	252	1,194

Source: Range of data sources as described

- 5.143 As per the analysis for affordable homes to buy, for those authorities whose plan period differs from the 2020 to 2036 period, the current need should be divided by the number of years in the plan period being used. This will also impact the calculation of the gross and net need. All the other factors are shown on a per annum basis.

The application is for 35% affordable housing, with 25% of these as First Homes.

### Housing Summary

It is clear that there is no 5 year land supply and that substantial weight should be given to the delivery of housing. It also clear that there is a need for affordable housing and substantial weight should be given to delivery of affordable housing.

### **Other Relevant Case Law**

A review of case law has been undertaken, including recent appeals, in the district, related to Very Special Circumstances. These are in Appendix 2.

## **Overall Conclusion**

It is considered clear that a number of significant harms and significant benefits would result from this proposed development. A recent appeal decision in the District allowing permission for residential development in the Green Belt is also significant. The SKM Green Belt Review considered that overall parcel GB 26 does partially contribute to preventing neighbouring towns from merging, and in addition makes a significant contribution to maintaining the existing settlement pattern.


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This note is focussed on key policy evidence and issues but recognises that considerable other evidence is relevant. In totality it is considered that this recommendation is to refuse.

## Appendix 1

### Part 1: Green Belt Review Purposes Assessment (Prepared for Dacorum Borough Council, St Albans City and District Council and Welwyn Hatfield Borough Council) – November 2013

Green Belt Review Purposes Assessment – Parcel Assessment Sheets for St Albans City and District Council

<b>GB26 –Green Belt Land to North of Bricket Wood</b>	
<p><b>Description</b> The parcel is located to the north of Bricket Wood and the south of Chiswell Green / How Wood. The boundary to the west follows the North Orbital Road (A405) and to the east follows the railway line. The parcel is very small at 156 ha and comprises a gently undulating chalk plateau rising gently to the southeast.</p>	
<p><b>Land use</b> Predominantly arable farmland, plus inactive, unrestored, tipped areas, education, industrial, horticultural uses, Bricket Wood Sports and Country Club and Burston Garden Centre.</p>	

Land northeast of Bricket Wood showing enclosed and neglected characteristics



Narrow enclosed Green Belt gap between Chiswell Green and How Wood



#### **Principal Function / Summary**

Significant contribution towards maintaining the existing settlement pattern (providing gaps between Chiswell Green, How Wood and Bricket Wood). Partial contribution towards preventing merging. Overall the parcel contributes significantly towards 1 of the 5 Green Belt purposes.

<b>GB26 – Green Belt Purposes Assessment</b>		<b>Contribution</b>
<b>To check the unrestricted sprawl of large built-up areas</b>		<b>LIMITED OR NO</b>
The parcel is located away from large built-up areas of London, Luton and Dunstable and Stevenage. It does not form a connection with a wider network of parcels to restrict sprawl.		
<b>To prevent neighbouring towns from merging</b>		<b>PARTIAL</b>
The parcel does not fully separate neighbouring 1 <sup>st</sup> tier settlements however (with GB27, 28, 29 & 30) it provides the strategic gap between St Albans and Watford (Abbots Langley) to the south of the study area. This gap is 4.8km and contains the settlements of Chiswell Green, How Wood, Bricket Wood, Park Street / Frogmore and Radlett Road. Therefore any reduction in the gap would have a limited impact on the overall separation of 1 <sup>st</sup> tier settlements in physical or visual terms but would have a greater impact on 2 <sup>nd</sup> tier settlements and local levels of visual openness.		
<b>To assist in safeguarding the countryside from encroachment</b>		<b>LIMITED OR NO</b>
<b>Partial contribution.</b> The parcel displays a mix of urban and rural characteristics. It contains arable land often bound by tall poorly managed hedgerows and there are a few pasture fields in addition to woodland to the east including ancient woodland. Open scrubland is found on the tipped site to the north of the M25. There is scattered built development including the garden centre, and single large dwellings. The M25 is also a key urban influence which dissects the parcel and is predominantly well concealed by planting but is highly audibly intrusive. Therefore urban influences are evident and the mix of built activities results in variable levels of visual openness.		
<b>To preserve the setting and special character of historic towns</b>		<b>LIMITED OR NO</b>
The parcel does not provide setting for any historic places.		
<b>To maintain existing settlement pattern</b>		<b>SIGNIFICANT</b>
The parcel provides secondary local gaps between 2 <sup>nd</sup> tier settlements of Chiswell Green, How Wood and Bricket Wood. The gap between Chiswell Green and How Wood is extremely narrow at 0.1km, whereby at the north and south edges of the settlements it is the width of the North Orbital Road (A405). The central section of this gap acts as a green finger between settlements. The secondary local gap between Chiswell Green / How Wood to Bricket Wood ranges from 0.6km to 1km and contains the M25. There is limited perception of the gap or settlements from the M25 due to planting and tree cover which screens the motorway. The motorway corridor itself also contributes something to the general openness of the gap from other viewpoints within it. Any small scale reduction in the gaps would be likely to compromise the separation of settlements in physical and visual terms, as well as overall visual openness.		
<b>Level of openness and countryside character</b>		
<b>Existence of built development</b> The level of built development is very high at 2.2%. The area has undergone significant change in the 20 <sup>th</sup> century and contains built development especially in the north of the parcel at urban edges in addition to the M25.		
<b>Visual Openness</b> Views are relatively contained both from outside and within the parcel with the widest vistas along the motorway corridor which is generally well screened by planting and woodland.		
<b>Countryside Character</b> Contains a mix of land uses, displays urban fringe characteristics and woodland. The countryside has been eroded by built uses and exhibits some areas of poor management and dereliction.		

## Appendix 2

### Roundhouse Farm, Land Off Bullen Green Lane, Colney Heath – Appeal - 2021

Paragraph 12 -13:

*“The parties agree that the site is not a valued landscape under the Framework paragraph 170 definition and that no other landscape designations are applicable to the appeal site. The Hertfordshire Landscape Strategy, 2005 notes the site is located within the Mimms Hall Valley, where the landscape character is described, amongst other things, as being strongly influenced by the major transport routes and the surrounding settlement which give it an urban-edge rather than rural character.*

13. *The A1 and railway line do not have any visual impact on the appeal site.*

*From what I saw on the site visits, the character of the area is a mix of edge of settlement and countryside. Walking along the footpaths which traverse the site, the experience is one of being on the edge of a settlement rather than a wholly rural context. Whilst the open countryside to the south and east is clearly visible, the surrounding residential properties either facing the site or their rear gardens and associated boundary treatment is also clearly visible. These range in scale and form from bungalows fronting Fellowes Lane, glimpsed views of the 3 storey dwellings within Admiral Close and Hall Gardens and the rear elevations and gardens of properties along Roestock Gardens. Bullens Green Lane and Fellowes Lane serve to enclose the appeal site and provide a degree of containment from the wider countryside and beyond. My judgement leads me to conclude that the site strongly resonates with this urban edge definition provided by the 2005 Landscape Strategy.*

14. *Turning to consider the area beyond the appeal site itself, the sense of countryside prevails via the public footpath network and road network. These public footpaths continue within Bullens Green Wood and further beyond the appeal site at Tollgate Farm. Contrary to the views expressed by the Council, my experience of the views to the appeal site within Bullens Green Wood are of glimpse views of the appeal site. From the south and in the wider landscape context, the appeal site appears against the backdrop of the existing dwellings as a relatively self contained parcel of land on the edge of the settlement. These longer distance views of the appeal site reinforce the urban edge definition.”*

Safeguarding the countryside from encroachment:

*“24. It was generally agreed that the impact of the appeal proposal would be limited in terms of the impact on the wider integrity of the Green Belt. This is a view that I share. In terms of the impact of the development on the purpose of safeguarding the countryside from encroachment, my attention has been drawn to a number of background evidence documents including Green Belt studies. These include a report prepared by SKM Consultants in 2013 which included an assessment of Green Belt in both WHBC, SADC and Dacorum Borough Council. Here, the appeal site is assessed as part of parcel 34, a 419ha parcel of land. Reflective of the size and scale of the parcel of land, the report sets out a number of key characteristics of the land. With reference to the gap between Hatfield and London Colney, preventing the merger of St Albans and Hatfield, and preserving the setting of London Colney, Sleepshyde and Tyttenhanger Park, the report states that the parcel makes a significant contribution towards safeguarding the countryside and settlement pattern and gaps between settlements. These characteristics bear little or no relationship to the appeal site, and given the sheer size and scale of the land identified within the report when*



*compared to the appeal site, I place only very limited correlation between the conclusions drawn here in relation to the function of the land or assessment of its function relative to the purposes of the Green Belt when compared to the appeal site.*

*25. The most recent Green Belt Assessment which was prepared in relation to the WHBC Local Plan review is noted as a Stage 3 review and was prepared by LUC in March 2019. Only the part of the appeal site which falls within Welwyn Hatfield forms part of the assessment, and is included within the much wider site area known as parcel 54. The report notes that whilst residential development is visible across much of the parcel, the parcel as a whole makes a significant contribution to the safeguarding of the countryside from encroachment. The report notes that the impact of the release of the parcel as a whole from the Green Belt would be moderate-high, however the impact on the integrity of the wider Green Belt would be limited. Again, I place only limited weight on the findings of this report relative to the appeal site as the assessment and conclusions drawn relate specifically to parcel 54 as a whole which includes a much wider area and excludes part of the appeal site in any event.*

*26. I have already set out in my assessment of character and appearance above that the appeal site has an urban edge/ edge of settlement character. I have made a clear distinction between the appeal site and its separation from the countryside beyond to the south and east of the appeal site. In this way, the appeal site is influenced by the surrounding residential development. As a result of these locational characteristics and influences, the consequences of the development at the appeal site would mean that the proposals would have only a localised effect on the Green Belt. The 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."*

Compton Parish Council v Guildford Borough Council – 2020

*"70. "Exceptional circumstances" is a less demanding test than the development control test for permitting inappropriate development in the Green Belt, which requires "very special circumstances."*

Peel Investments V SoS [September 2020] (Appeal)

Paragraph 65:

*"I agree with Sir Duncan Ouseley's observations in Paul Newman New Homes that a policy is not out-of-date simply because it is in a time-expired plan and that, if the Framework had intended to treat as out-of-date all saved but time-expired policies, it would not have used the phrase "out-of-date" but rather the language of time-expired policies or policies in a time-expired plan."*

Paragraph 68:

*"With regard to the second ground of appeal, I do not accept the appellant's submission that a plan without strategic housing policies is automatically out-of-date for the purposes of paragraph 11d so as to engage the tilted balance."*

Paragraph 11 & the Tilted Balance: Monkhill Ltd v SoSCLG [2019] EWHC 1993 (Admin)

*"1) The presumption in favour of sustainable development in paragraph 11 does not displace s.38(6) of the 2004 Act. A planning application or appeal should be determined in*

*accordance with the relevant policies of the development plan unless material considerations indicate otherwise;*

*2) Subject to s.38(6), where a proposal accords with an up-to-date development plan, taken as a whole, then, unless other material considerations indicate otherwise planning permission should be granted without delay (paragraph 11(c));*

*3) Where a proposal does not accord with an up-to-date development plan, taken as a whole, planning permission should be refused unless material considerations indicate otherwise (see also paragraph 12);*

*4) Where there are no relevant development plan policies, planning permission should be granted unless either limb (i) or limb (ii) is satisfied;*

*5) Where there are relevant development plan policies, but the most important or determining the application are out-of-date, planning permission should be granted(subject to section 38(6)) unless either limb (i) or limb (ii) is satisfied;*

*6) Because paragraph 11(d) states that planning permission should be granted unless the requirements of either alternative is met, it follows that if either limb (i) or limb (ii) is satisfied, the presumption in favour of sustainable development ceases to apply. The application of each limb is essentially a matter of planning judgment for the decision-maker;*

*7) Where more than one "Footnote 6" policy is engaged, limb (i) is satisfied, and the presumption in favour of sustainable development overcome, where the individual or cumulative application of those policies produces a clear reason for refusal;*

*8) The object of expressing limbs (i) and (ii) as two alternative means by which the presumption in favour of granting permission is overcome (or disapplied) is that the tilted balance in limb (ii) may not be relied upon to support the grant of permission where a proposal should be refused permission by the application of one or more "Footnote 6" policies. In this way paragraph 11(d) prioritises the application of "Footnote 6" policies for the protection of the relevant "areas or assets of particular importance";*

*9) It follows that where limb (i) is engaged, it should generally be applied first before going on to consider whether limb (ii) should be applied;*

*10) Under limb (i) the test is whether the application of one or more "Footnote 6 policies "provides a clear reason for refusing planning permission. The mere fact that such a policy is engaged is insufficient to satisfy limb (i). Whether or not limb (i) is met depends upon the outcome of applying the relevant "Footnote 6" policies (addressing the issue on paragraph 14 of NPPF 2012 which was left open in R (Watermead Parish Council) v Aylesbury District Council [2018] PTSR 43 at [45] and subsequently resolved in East Staffordshire at [22(2)];*

*11) Limb (i) is applied by taking into account only those factors which fall within the ambit of the relevant "Footnote 6" policy. Development plan policies and other policies of the NPPF are not to be taken into account in the application of limb (i) (see Footnote 6). (I note that this is a narrower approach than under the corresponding limb in paragraph 14 of the NPPF 2012 - see eg. Lord Gill in Hopkins at [85]);*

*12) The application of some "Footnote 6" policies (e.g. Green Belt) requires all relevant planning considerations to be weighed in the balance. In those cases because the out come of that assessment determines whether planning should be granted or refused, there is no justification for applying limb (ii) in addition to limb (i). The same applies where the application of a legal code for the protection of a particular area or asset determines the*

outcome of a planning application (see, for example, the Habitats Regulations in relation to European protected sites);

13) In other cases under limb (ii), the relevant "Footnote 6 policy" may not require all relevant considerations to be taken into account. For example, paragraph 196 of the NPPF requires the decision-maker to weigh only "the less than substantial harm" to a heritage asset against the "public benefits" of the proposal. Where the application of such a policy provides a clear reason for refusing planning permission, it is still necessary for the decision-maker to have regard to all other relevant considerations before determining the application or appeal (s. 70(2) of the 1990 Act and s. 38(6) of the 2004 Act). But that exercise must be carried out without applying the tilted balance in limb (ii), because the presumption in favour of granting permission has already been disapplied by the outcome of applying limb (i). That is the consequence of the decision-making structure laid down in paragraph 11(d) of the NPPF;

14) There remains the situation where the application of limb (i) to a policy of the kind referred to in (13) does not provide a clear reason for refusal. The presumption in favour of sustainable development will not so far have been disapplied under limb (i) and it remains necessary to strike an overall planning balance (applying also s.38(6)). Because the presumption in favour of granting planning permission still remains in play, it is relevant, indeed necessary, to apply the alternative means of overcoming that presumption, namely limb (ii). This is one situation where the applicant for permission is entitled to rely upon the "tilted balance";

15) The other situation where the applicant has the benefit of the "tilted" balance is where no "Footnote 6" policies are engaged and therefore the decision-maker proceeds directly to limb (ii).

40. Applicants for planning permission may object that under this analysis of paragraph 11(d), the availability of the tilted balance is asymmetric. Where a proposal fails the test in limb (i), the tilted balance in limb (ii) is not applied at all. In other words, the tilted balance in limb (ii) may only be applied where the proposal either passes the test in limb (i) (and there still remain other considerations to be taken into account), or where limb (i) is not engaged at all. This analysis is wholly unobjectionable as a matter of law. It is simply the ineluctable consequence of the Secretary of State's policy expressed through the language and structure of paragraph 11(d).

...

43. Any suggestion that because limb (ii) falls to be applied where a development passes limb (i), it follows that limb (ii) should also be applied where a proposal fails limb (i) involves false logic. It has nothing to do with the way in which paragraph 11(d) of the NPPF 2018 has been structured and drafted"

Wavedon Properties Ltd v SoS [June 2019]

Paragraph 56:

"...It needs to be remembered, in accordance with the principles of interpretation set out above, that this is a policy designed to shape and direct the exercise of planning judgment. It is neither a rule nor a tick box instruction. The language does not warrant the conclusion that it requires every one of the most important policies to be up-of-date before the tilted balance is not to be engaged. In my view the plain words of the policy clearly require that having established which are the policies most important for determining the application, and having

*examined each of them in relation to the question of whether or not they are out of date applying the current Framework and the approach set out in the Bloor case, an overall judgment must be formed as to whether or not taken as a whole these policies are to be regarded as out-of-date for the purpose of the decision. This approach is also consistent with the Framework's emphasis (consonant with the statutory framework) that the decision-taking process should be plan-led, and the question of consistency with the development plan is to be determined against the policies of the development plan taken as a whole. A similar holistic approach to the consideration of whether the most important policies in relation to the decision are out-of-date is consistent with the purpose of the policy to put up-to-date plans and plan-led decision-taking at the heart of the development control process. The application of the tilted balance in cases where only one policy of several of those most important for the decision was out-of-date and, several others were up-to-date and did not support the grant of consent, would be inconsistent with that purpose."*

Paul Newman v SoS CLG [2019] (Admin)

*"32. I start by construing paragraph 11d in its context in the Framework, as a document on its own. The phrase "where there are no relevant development plan policies" is quite clear. Where one or more relevant development plan policies exist, that trigger for the application of the "tilted balance" cannot be applied. One relevant development plan policy is sufficient to prevent it. Although that policy may exist in a time-expired plan as a saved policy, it is a development plan policy. This trigger contains no requirement that the policy be up to date rather than out of date. "Relevant" can only mean relevant to determining the application. There is, however, no adjective qualifying the degree of relevance it should have for that purpose, for example that it should be decisive or of high importance. "Relevance" connotes no more than some real role in the determination of the application. A fanciful connection would not suffice, and a policy of wholly tangential significance may be "irrelevant". There is also no requirement in this first trigger that the one or more relevant development plan policies should comprise one or more development plan policies important for determining the application, let alone that they should constitute a body of policy or policies sufficient for determining the acceptability of the application in principle."*

*"34. In my judgment, the key part of the second trigger, the phrase "where the policies which are most important for determining the application are out-of-date", is reasonably clear. A policy is not out of date simply because it is in a time-expired plan; that is the point which the Inspector appears to have been addressing in DL27, though it appears not to have been an issue before her. I agree with what Dove J said in Wavendon Properties in this respect. It is the correct interpretation. If the 2018 Framework had intended to treat as out of date all saved but time-expired policies, it would not have used the phrase "out-of-date", which has different or wider connotations, and would have used instead the language of time-expired policies or policies in a time-expired plan. The Inspector's comment in DL27 is apposite in that context. Although the earlier jurisprudence in Bloor Homes and Hopkins Homes related to that same phrase in the 2012 Framework, I see no reason to discount it here where its role is not materially different."*

*35. I also agree with the analysis of the phraseology of the second trigger as a whole in Wavendon Properties. The first task is to identify the basket of policies from the development plan which constitute those most important for determining the application. The second task is to decide whether that basket, viewed overall, is out of date; the fact that one or more of the policies in the basket might themselves be out of date would be relevant to but not necessarily determinative of whether the basket of most important policies was itself overall out of date. This second trigger contains no requirement that the up to date basket of the*

most important policies in the development plan for determining the application should itself also constitute a body of policies sufficient for the determination of the acceptability of the application in principle.

36. I do not consider that the plural "policies" means that a single up to date policy, even if plainly by itself the most important for determining the application, cannot suffice to block the second trigger; the plural encompasses the singular, as is a commonplace construction. Otherwise even an up to date, self-contained, site and development specific policy, the crucial policy, the sole survivor, could lead to the application of the "tilted balance" and to the grant of permission unless the provisos in (i) and (ii) applied. The alternative construction focuses unduly on what is mere linguistic awkwardness, accepted for convenience. The plural "policies" avoids the somewhat legalistic "policy or policies", with "is or are" to follow, at the price of the slightly awkward language seen in DL 26, last sentence. On the basis of her interpretation of GP.35, and on that interpretation of the second trigger, the Inspector's conclusion that the "tilted balance" did not apply is correct."

Very special circumstances (VSC)

Suffolk Coastal DC v Hopkins Homes Ltd: 2017 UKSC 37

"61. There is nothing in the statute which enables the Secretary of State to create such a fiction, nor to distort what would otherwise be the ordinary consideration of the policies in the statutory development plan; nor is there anything in the NPPF which suggests an intention to do so. Such an approach seems particularly inappropriate as applied to fundamental policies like those in relation to the Green Belt or Areas of Outstanding Natural Beauty. No-one would naturally describe a recently approved Green Belt policy in a local plan as "out of date", merely because the housing policies in another part of the plan fail to meet the NPPF objectives. Nor does it serve any purpose to do so, given that it is to be brought back into paragraph 14 as a specific policy under footnote 9. It is not "out of date", but the weight to be given to it alongside other material considerations, within the balance set by paragraph 14, remains a matter for the decision-maker in accordance with ordinary principles."

SoS Decision – At Land Off Glebelands, Thundersley, Essex (June 2013)

In the decision the SoS concluded:

"30. The Secretary of State concludes that the appeal proposals are inappropriate development in the Green Belt. Additionally he has identified harm to the GB's openness and harm to the GB's purposes of preventing urban sprawl, preventing encroachment on the countryside and preventing the merging of neighbouring settlements and, furthermore, harm to GB's character and appearance. He considers that, together, this represents considerable harm, to which he attributes substantial weight. The Secretary of State has found that there are factors in favour of the appeal including a severe lack of a forward housing land supply and that, setting aside GB considerations, development of the appeal site would not cause demonstrable harm. He also wishes to emphasise that national policy is very clear that GB reviews should be undertaken as part of the Local Plan process. In light of all material considerations in this case the Secretary of State is concerned that a decision to allow this appeal for housing in the GB risks setting an undesirable precedent for similar developments which would seriously undermine national GB policy.

31. Having weighed up all material considerations, he is satisfied that the factors which weigh in favour of the proposal do not clearly outweigh the harm to the Green Belt that would

*arise from the proposal. The Secretary of State therefore concludes that the appeal should be dismissed.”*