

Town and County Planning Act 1990 (As Amended) - Section 78

Town and Country Planning (Inquiry Procedure) (England) Rules 2000

**Appeal by J D Rudkin Builders Limited against the refusal of St
Albans City and District Council, as Local Planning Authority,
to grant outline planning permission for residential
development of up to 115 dwellings, all matters reserved
except access**

at

Land to the east of Lye Lane, Bricket Wood, Herts, AL2 3TF

**PROOF OF EVIDENCE OF PHILLIP E HUGHES MRTPI
ON BEHALF OF ST ALBANS CITY & DISTRICT COUNCIL**

MAY 2024

PLANNING INSPECTORATE REF: APP/B1930/W/24/3338501

LOCAL PLANNING AUTHORITY REF: 5/2022/2443

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Phillip Eric Hughes will say:

I am a director of PHD Chartered Town Planners Limited, a town planning consultancy that I established in 1995. I have also worked at a senior level in local government for 10 years in both Planning Policy and Development Control.

I have a Bachelor of Arts Honours Degree (BA [Hons]) in Town and Country Planning and have been a corporate member of the Royal Town Planning Institute (MRTPI) since 1990 and I am a Fellow of the Royal Geographical Society (FRGS). I also have a Diploma in Management Science (Dip Man) and I am a Member of the Institute of Management (MCMI). I am also a member of the Town and Country Planning Association and an affiliate member of the RIBA.

I have represented a wide variety of clients at appeals ranging from Local Planning Authorities (including LB Camden, RB Kingston, Spelthorne, Hertsmere, Watford, Welwyn Hatfield and Walsall Boroughs and Central Bedfordshire, Uttlesford, Epping Forest, St Albans and Bassetlaw Districts), Parish Councils including Bovingdon, Hartlip, Loddington and Tetsworth to housebuilders (New Homes Estates Limited, MASMA Limited, Whittleworth Homes, Fusion Residential, Henry Homes plc. etc.), developers (MS Oaklands Ltd, Acre London Holdings Limited, Lanz Group, Mitre Property Management Limited, Mark Stephen Limited etc.), property companies (Acre LLP, Orb Estates, Property Matters LLP, Property Matters LLC, Albermarle Property Investments plc.), businesses (Super Toughened Glass Limited, Williams Tenders Limited, JIRWL, Hollywell Spring Limited), amenity groups (Anglefield Residents Association, Stopit Action Group, Paynes Lane Association, Hemley Hill Action Group, Birch Green Residents Group, Bury Gate Residents Association) and individual householders.

I have visited the appeal site and general locality on a number of occasions, and I am familiar with the policies applicable to the site. I was also the Council's witness in respect of the recent Tollgate Road appeal. I am familiar with the local, national and regional planning policies relevant to this appeal.

The evidence that I have prepared and provide for this appeal has been prepared and is given in accordance with the guidance of the Royal Town Planning Institute and I confirm that the opinions expressed are my true and professional opinions.

Phillip E Hughes BA(Hons) MRTPI FRGS Dip Man MCIM

1 Introduction

- 1.1 The proposal is for residential development of up to 115 dwellings on a site in the Green Belt ('the appeal site'). This appeal relates to an outline planning application with all matters, excluding access, reserved for future consideration ('the application') which was the subject of an appeal against non-determination. The application (Ref. 5/2022/2443) proposed:

"Outline application (access sought) - Demolition of existing buildings and construction of up to 115 dwellings and creation of new access."

- 1.2 The Council has determined that, had it been in a position to do so, it would have refused planning permission. A public inquiry into the appeal is scheduled to open on 11 June 2024.

- 1.3 The seven putative reasons for refusal are outlined in the Officer Report at **CD3.1** and are set out below:

- 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 2023. 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 and harm to Green Belt purposes. Harm is also identified in relation to site layout / design, open space provision and noise impacts on residential amenity, impact on the landscape character and appearance of the site and surrounding area, and to protected landscape features, sustainability of location in terms of transport, highway safety, flood risk / drainage and impact on nearby SSSIs. The benefits of the proposed development comprise the provision of up to 115 dwellings (82 net), including 35% affordable housing (up to 7 net) which could contribute significantly towards meeting an identified housing need in the District, and the delivery of 10% biodiversity net gain (through 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 Policies 1 and 74 of the St Albans District Local Plan Review 1994 and the National Planning Policy Framework 2023.*
- 2. By reason of its design, layout, on site landscaping and impacts on residential amenity (noise) the proposed development would not achieve an adequately high standard of design and would be detrimental to the character, appearance and visual amenity of the locality, and to the residential amenity of future occupiers. The proposal is therefore contrary to Policies 39, 69, 70 and 74 of the St Albans District Local Plan Review 1994 and the National Planning Policy Framework 2023.*
- 3. Insufficient information has been provided to demonstrate that a sustainable surface water drainage strategy can be delivered on the site and whether the proposed development will increase flood risk either onsite or elsewhere. The proposal is therefore contrary to Policy 84 of the St Albans District Local Plan Review 1994 and the National Planning Policy Framework 2023.*

4. *The applicant has failed to demonstrate that off-site highway improvements and public transport upgrades can be delivered or secured in order to render the site's location sustainable in terms of transport. The proposal is therefore contrary to Policies 34 and 35 of the St Albans District Local Plan Review 1994 and the National Planning Policy Framework 2023.*
5. *Inadequate space is available at the site access junction, the Lye Lane / West Riding junction and on the southern stretch of Lye Lane past the M25 overbridge to allow large vehicles to safely pass each other, to the detriment of highway safety, and insufficient information has been provided in respect of vehicle swept path analysis and a revised Stage 1 Road Safety Audit and associated Designer's Response, to demonstrate that there would not be further harm to highway safety, contrary to Policy 34 of the St Albans District Local Plan Review 1994 and the National Planning Policy Framework 2023.*
6. *It has not been demonstrated, to the satisfaction of the Local Planning Authority in consultation with Natural England, that the proposed development would not give rise to harmful impacts on two Sites of Special Scientific Interest near the site through recreational pressure. The proposal would therefore be contrary to para 186 (b) of the National Planning Policy Framework 2023 and Policy 106 of the St Albans District Local Plan Review 1994.*
7. *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; affordable housing provision; play space provision; biodiversity net gain; and 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 2023.*

- 1.4 The National Planning Policy Framework (NPPF) was updated in December 2023 but its approach to Green Belt harm and decision making, countryside character and beauty, highway harm, amenity and decision making remains materially unchanged from the previous version.
- 1.5 This is an outline application with only access to be considered at this stage. The application plans include a Proposed Site Plan Revision C, however this does not and cannot set the layout, scale or appearance of the proposed development or the landscaping of the site as these matters remain reserved.
- 1.6 No parameter plans or illustrative material, other than the Proposed Site Plan¹, was submitted with the application.

¹ Which despite its title is illustrative given layout is not for consideration at this stage and the plan only shows 109 dwellings

- 1.7 It is common ground, as agreed in the Statement of Common Ground, that the Council cannot demonstrate a five-year supply of deliverable housing land and their Housing Delivery Test Score is below 75%. As such it is my position that the so-called tilted balance pursuant to paragraph 11(d)(ii) of the NPPF is engaged in the first instance.
- 1.8 However, I will show that the site is in the Green Belt and the proposals lead to Green Belt harm and policies of the Framework indicate that permission should be refused. Therefore, the tilted balance is disengaged by virtue of paragraph 11(d)(i) having regard to footnote 7 of the NPPF..
- 1.9 Putative Reason for Refusal 6 relates to a failure to provide information to satisfy the Council and Natural England that the proposal will not have adverse impacts on two SSSIs by reason of increased recreational pressure. Natural England noted²:

“Housing development in this location triggers Natural England’s recreational pressure IRZ, for Bricket Wood Common SSSI <1km south of the site and Moor Mill Quarry West <500m to the east of the site. The increase in local population resulting from the proposed housing development as part of this outline application has the potential for additional recreational pressure to these sites.

Bricket Wood Common is a large remnant of a formerly extensive lowland heath that developed on heavy, base deficient soils of the Boulder Clay. Lowland heath has a limited distribution in south eastern England where it has declined markedly and the site represents an important example in the county. Part of the site is ancient woodland of the Pedunculate Oak/Hornbeam type.

Moor Mill Quarry West SSSI shows a complex sequence of Pleistocene (Pre-Anglian - Anglian) deposits overlying the chalk. This is the only site at which this sequence can be demonstrated, and as such is of fundamental importance in tracing the diversion of the River Thames from its pre- Anglian course.

This application has the potential to impact the above mentioned SSSI’s via recreational pressure. The submitted documents do not consider impacts arising from the increase in the local population, and potential recreational pressure on these SSSI’s. This further assessment is required before we can provide any advice.”

- 1.10 That was the up to date position at the time the Appellant appealed against non-determination and at no time between 8 November 2022 and the submission of this appeal did they contact Natural England or the Council to provide information to address the matters in NE’s letter or the putative reason for refusal. I understand that following submission of the appeal against non-determination the Appellant then sought to address the putative reason through correspondence directly with Natural England³.

² See NE letter of 8 November 2023 at **CD7.20**

³ Initiated on 5 February 2024

- 1.11 An email was then forwarded to the Council by the Appellant on 21 March 2023 attaching an email from NE⁴ indicating that information provided no longer leads them to object to “the application”.
- 1.12 The correspondence from NE has not involved the Council, therefore I have asked the Council is to obtain confirmation from NE of their formal position in respect of the application the subject of this appeal and will update the parties in due course.
- 1.13 Evidence to support the Council’s case is also being provided by:
- Mr Chris Carr – Highways
 - Ms Kathrine Waters – Flooding and Drainage
- 1.14 I adopt their conclusions insofar as they relate to harm to highways and flooding matters.
- 1.15 Where I refer to weight to harm or benefits I do so in accordance the following scale:
- Substantial
 - Significant
 - Moderate
 - Limited
 - None

⁴ Dated 23 February 2024

2 Site and Surroundings

- 2.1 The appeal site comprises land extending to a total of 3.2 hectares. Whilst having four irregular boundaries, it is broadly rectangular in shape with the long boundaries facing north and south.



The Appeal Site © Google 2020

- 2.2 Further aerial images are included at Appendix 1.
- 2.3 The appeal site is located to the east of the Lye Lane a narrow country lane east of the lane is open countryside mainly comprising woodland and scrubland. To the north lies the extensive and sylvan open garden land associated with Lye House. The southern boundary is to an area of Ancient and Semi Natural Woodland known as Blackgreen Wood and the eastern boundary is to the of Ancient and Semi Natural Woodland known as Home Wood. To the south within Blackgreen Wood (which extends beyond the cutting) is a cutting within which the M25 runs.
- 2.4 Blackgreen Wood is also a Local Wildlife Site.
- 2.5 Immediately to the south of the existing appeal site entrances onto Lye Lane is the bridge over the cutting containing the M25.
- 2.6 Lye Lane runs between the A405 (between the Noke and M25 roundabouts) to the north west and Park Street Lane/ Station Road in the south east is a narrow lane with some passing points has a rural country lane character.

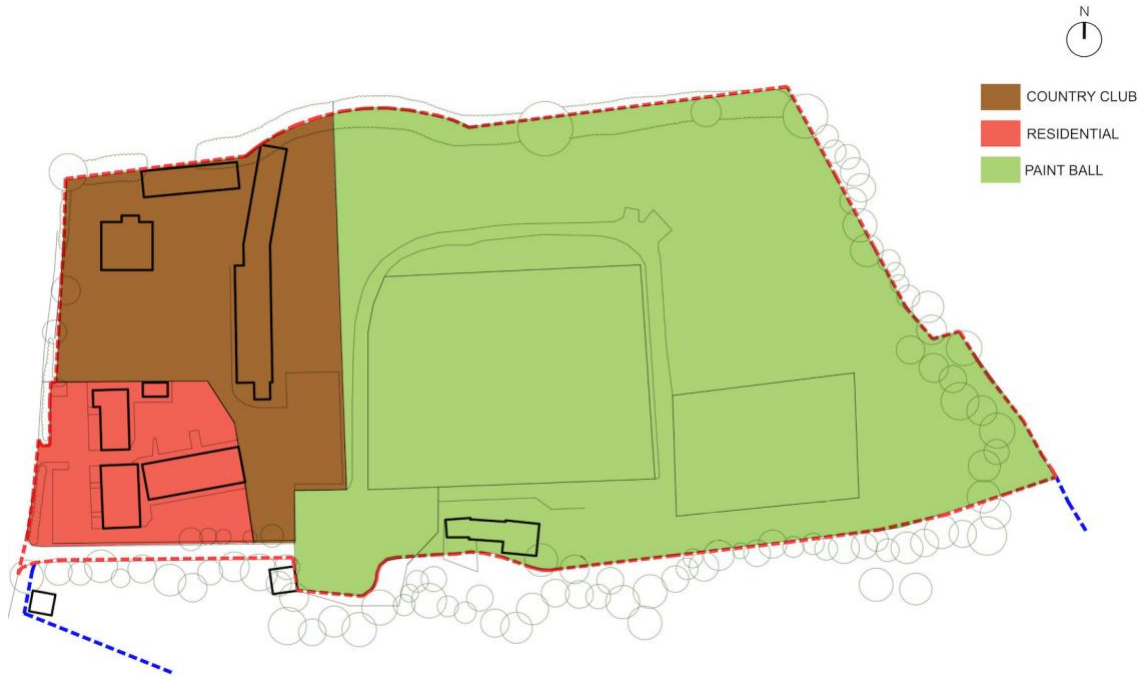


Lye Lane travelling north to M25 Bridge and Appeal Site



Lye Lane travelling south to Appeal Site and M25 Bridge

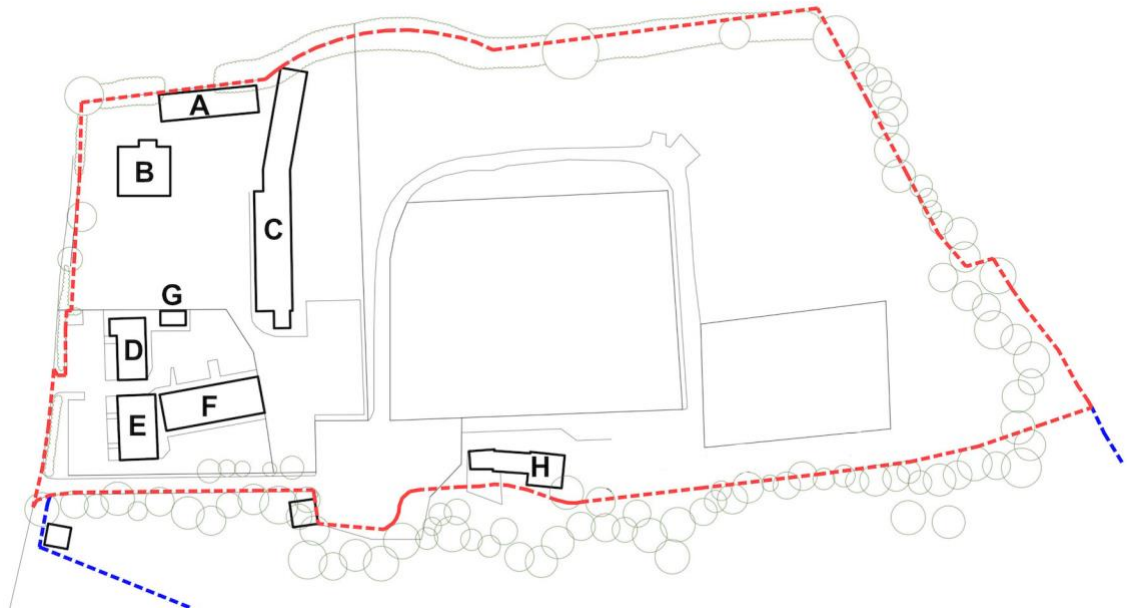
2.7 The appeal site lies outside and detached from any settlement within the countryside between Bricket Wood/ How Wood and Chiswell Green. To the north of the appeal site is the curtilage of Lye House which occupies the whole northern boundary. To the rear of the site is woodland unoccupied by any development and to the south of the appeal site is woodland. To the west of the appeal site lies Lye Lane and beyond it is woodland. The site is occupied by three “uses”.



Extract Appeal Site “Existing Uses” (see Appendix 3)

- 2.8 The first use of the site (shaded green) occurs in two areas at the rear of the site away from the Lye Lane frontage as well as to the south of the appeal site between it and the M25 within the woodland and comprises its use for paintball activities⁵.
- 2.9 The second use (shaded brown) is the vacant use of the northern part of the site as a former social club. This use has ceased and the building mainly associated with that use remains at site albeit no longer in use
- 2.10 A number of other buildings exist on this part of the site including a “gymnasium” building alongside the northern boundary (Building A). I note gym equipment remains within the building but it is not in any active use. I am not aware of by planning permission for a gymnasium use at the appeal site and my understanding is that it has no lawful use (either permitted or immune from enforcement) and the use has ceased.
- 2.11 The plan below identifies the main buildings at the appeal site for the purpose of this evidence.

⁵ The second area falls outside the appeal site but comprises land in the control of the Appellant (Blue Land)



Extract The Main Existing Buildings at the Appeal Site (see Appendix 4)



Building B

- 2.12 To the rear of the social club building (Building B) is a long building that spans the northern part of the site and separates the social club from the open use of the rear of the site for paintball activities (Building C).

- 2.13 My understanding is that Building C was built without permission. Once complete I understand that the Appellant intended to use the building for residential/ hotel/ hostel purposes. My understanding is that Building C has never been used and as such it has no lawful use (either permitted or immune from enforcement). I note Inspector Stevens refers to these buildings in her decision noting that they have no lawful use and that they were not built in accordance with any planning permission⁶.



Building C viewed from the Site Frontage

- 2.14 The final use (shaded red) is the residential use of buildings located to the south of the site on the Lye Lane frontage. I understand that these buildings (D, E, F and G) do not benefit from any express planning permission for the current residential use⁷ and Building D had previously been used for bed and breakfast type uses having established without the benefit of express planning permission and having been granted deemed planning permission in 2002 following enforcement action⁸.
- 2.15 The Council accepts that 31 (very small) dwellings were never permitted but are now immune from enforcement and acknowledge that these dwellings are the subject of Council Tax records.

⁶ DL6 at **CD5.10**

⁷ Although Building D, Bricket Lodge, was previously a single family dwellinghouse.

⁸ APP/B1930/C/02/1093494

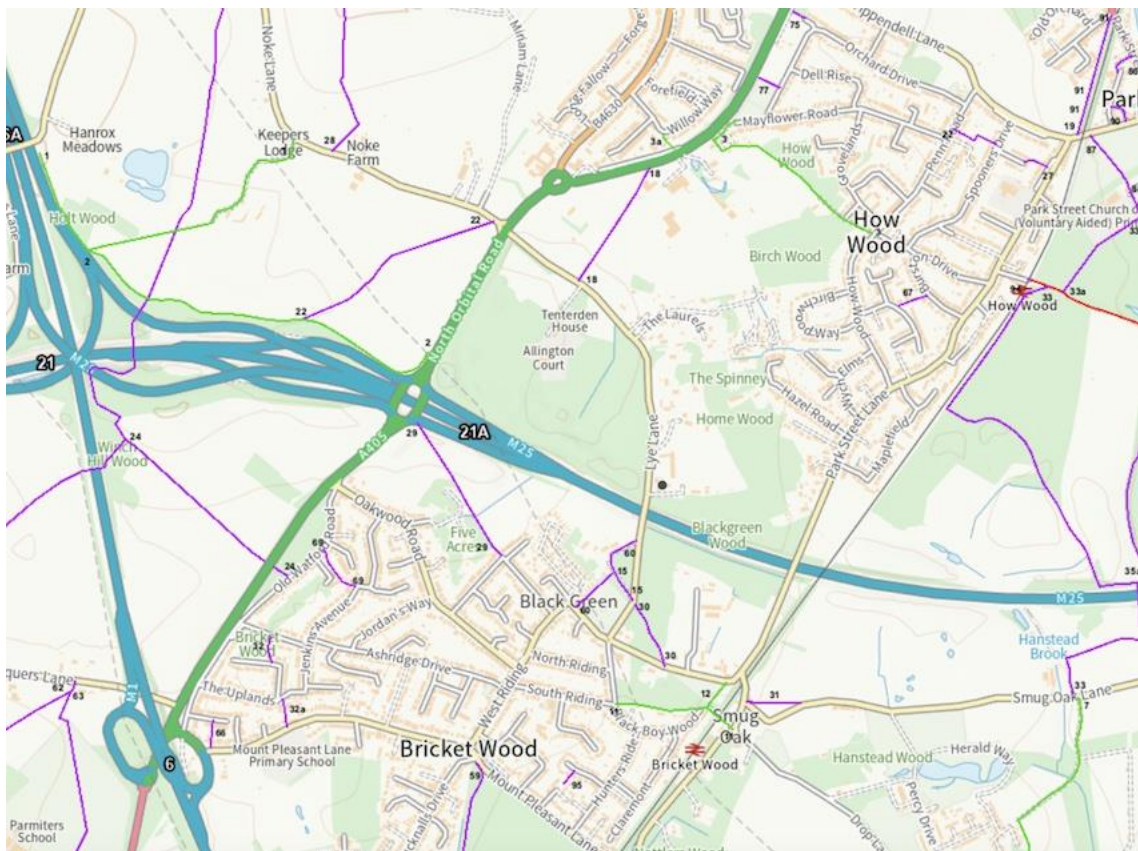


Building D and E (front looking east)

- 2.16 The location of the appeal site is outside any settlement and remote from most facilities necessary to support day to day occupation of dwellinghouses including schools, community facilities, leisure centres, supermarkets, libraries etc.
- 2.17 The closest primary school is Mount Pleasant Lane Primary School in Bricket Wood, followed by How Wood Primary School. Both are located around 1.35 kilometres from the appeal site. The closest non selective secondary is Francis Coombe Academy Garston at 2.75 kilometres from the appeal site or in St Albans administrative area Marlborough Academy 3.0 kilometres from the appeal site.
- 2.18 The closest doctor's surgery is Midway Surgery on Watford Road in St Albans some 3.1 kilometres from the appeal site with Watford General Hospital 13 kilometres from the site. The closest NHS dentist practice that is potentially accepting new patients⁹ is at Maltings Dental Surgery in St Albans some 5.6 kilometres from the appeal site.
- 2.19 Bricket Wood Railway Station is located 1.3 kilometres from the appeal site and it provides a once an hour service in each direction to Watford Junction mainline station and St Albans Abbey Station located on the outside of the town centre at the bottom of Holywell Hill.
- 2.20 The closest post office is located 1.3 kilometres from the appeal site and the closest supermarkets comprise Sainsburys 3.5 kilometres from the appeal site, Aldi 3.67 kilometres and Asda 4.1 kilometres away.

⁹ Bricket Wood Dental Practice is not accepting new patients.

- 2.21 A local parade of shops at How Wood includes a takeaway small convenience store (co-op), bakers, butcher and hairdressers and is some 2.6 kilometres from the appeal site.
- 2.22 The common denominator is that all the journeys rely on sections of the journey along currently unlit roads with no pavements.
- 2.23 The appeal site is situated within the administrative area of St Albans City and District Council.
- 2.24 As I have noted the site is surrounded on three sides by a proliferation of underdeveloped woodland and the relatively open garden boundary to Lye House to the north. There is a distinct lack of any estate type housing development along Lye Lane which is characterised by its rural character. Overall Lye Lane does not feature traditional in depth residential development instead accommodating a mix of open land and sporadic dwellings set in large sylvan grounds arranged in an informal arrangement along the east side of Lye Lane.
- 2.25 As well as providing a vehicular route along Lye Lane it also acts as a leisure route for cyclists and horse riders and links into a network of public rights of way and tracks. The plan extract below shows some of the local footpaths.



ProW Network

- 2.26 The site is located within the Metropolitan Green Belt.

- 2.27 Beyond the site to the south, west and east lies open countryside. To the north are a limited number of sporadic detached dwellings set in extensive sylvan grounds set within the countryside.
- 2.28 The topography of the site and immediate area is generally flat with a gentle undulation and the M25 set within a cutting to the south of the appeal site.
- 2.29 The site and area lies within National Character Area 111: Northern Thames Basin and Hertfordshire Landscape Character Area ('LCA') 18: Bricket Wood, which features an:
- "[...] area of mixed land uses and transitional character, including considerable woodland, unrestored mineral workings, educational, industrial, horticultural and arable land. The area has undergone significant change in the 20th century and is impinged upon by settlement at Bricket Wood and How Wood, together with a marked severance by the M25. The historic pattern is well preserved in Bricket Wood Common, but eroded in many other locations, showing poor management and some dereliction."*
- 2.30 The condition is assessed as Good and the strength of character is assessed as Strong. The overall guidelines for managing change in the LCA are 'Safeguard and Manage'.
- 2.31 I note the guidelines for managing change for Bricket Wood LCA include:
- *"Support the Watling Chase Community Forest in the realisation of its objectives for the area*
 - *Promote the creation of additional woodlands, particularly with a view to visually integrating the intrusive motorways, urban fringe development and former mineral sites*
 - *Promote both the creation of new ponds and the retention/enhancement for wildlife of existing ponds*
 - *Ensure that ancient lanes and their associated hedgerows, ditches and hedgebanks are retained, protected, enhanced and integrated into new development with due regard to their historic, ecological and landscape value"*
- 2.32 I will address the LVIA that accompanied the application the subject of this appeal in section 5 of my proof.
- 2.33 The appeal site, due to its containment by woodland to the east, south and west and sylvan grounds to the north, is not visible in any long range views it is only visible in local views predominately from Lye Lane.
- 2.34 The appeal site is detached from any settlement and falls in the open green space between St Albans and Watford as well as between the green space between Bricket Wood, How Wood and Chiswell Green.
- 2.35 The appeal site falls within the northern part of the Watling Chase Community Forest area.

3 The Application and Planning History

- 3.1 Outline planning permission is sought for the development of the land for up to 115 dwellings with revised road junctions, internal access roads, car parking and other related development. All matters are reserved, save for access. Access is proposed from Lye Lane.
- 3.2 A Proposed Site Plan Revision C (“the illustrative layout”) has been produced to show how the site may be laid out should permission be granted and to illustrate the impact of a development of this scale and character. It is notable that the illustrative layout only shows 109, and not 115 dwellings. No visualisations have been produced to accompany the application the subject of this appeal or the appeal.



Proposed Site Layout Plan (Illustrative)

- 3.3 I note the illustrative layout plan shows the proposals and the layout broadly indicates five rows of housing arranged north to south as terraced and detached houses with small gaps between them. The plan is intended to show how 109 dwellings (not 115) can be accommodated on site, and presumably represents the Appellant’s best case for disposing of houses throughout the site.
- 3.4 The proposal for up to 115 dwellings and includes the following housing tenures:
- Up to 40 affordable units (35%); and
 - Up to 75 market units (65%).
- 3.5 The mix and property sizes would be determined at reserved matters stage. Although the illustrative layout indicates the following mix, my final column details the maximum number of units if 115 are brought forward as per the description of development:

1 bed dwellings	20%	Up to 23 dwellings
2 bed dwellings	32%	Up to 37 dwellings
3 bed dwellings	31%	Up to 35 dwellings
4 bed dwellings	11%	Up to 13 dwellings
5 bed dwellings	6%	Up to 7 dwellings

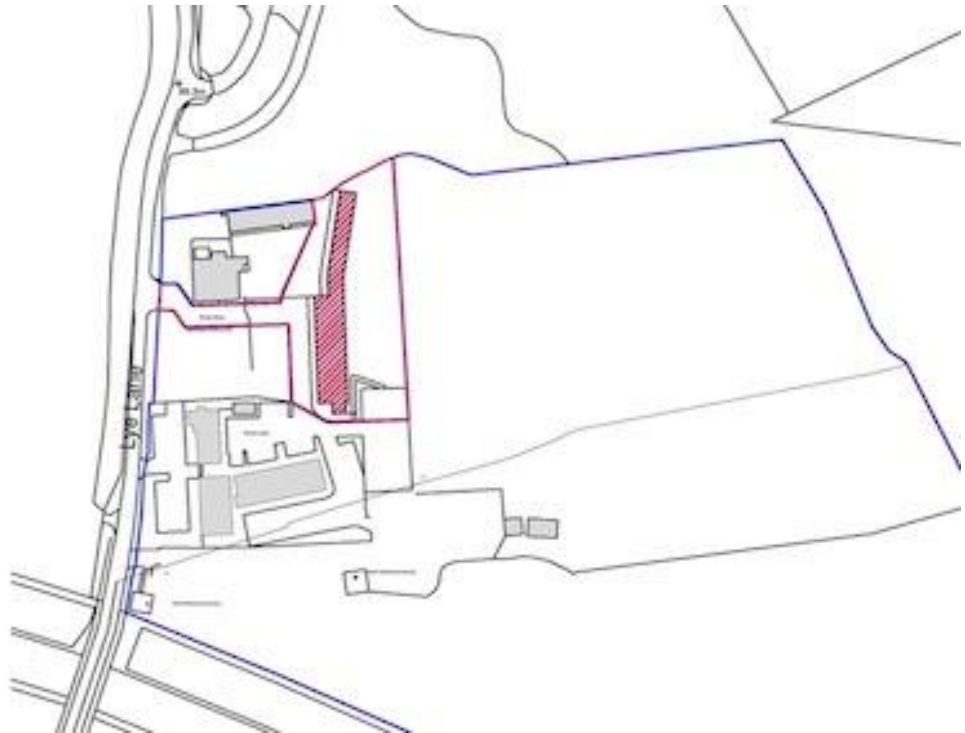
Table 1: Proposed Housing Mix (adjusted for 115 dwellings)

- 3.6 The Appellant has indicated that the proposal may include custom or self-build houses or plots. No details of these were available at the time of finalising this proof, however such provision can be secured via the section 106 undertaking.
- 3.7 The access drawing shows 2.0 metre wide footpaths aligning both sides of the 6.0 metre wide access road onto the site. The total access road corridor onto the appeal site would be a minimum of 10 metre wide. However, the proposals include 10 metre radii and therefore at its junction with Lye Lane the access road would be over 20 metres wide.
- 3.8 The proposals also include the provision of a pavement south along Lye Lane. Revised drawings showing amended details have been submitted two weeks before finalising this proof.
- 3.9 The details show a footpath with pinch points that narrow to 1.2 metres in parts. No details of lamp columns and lighting that could further reduce the width of the footpath have been provided.
- 3.10 They include sections showing the existing ditch (which may have been part of the ancient woodland) culverted and including a 900mm diameter pipe and the proposed engineering works including an elevated 1.2 metre wide footpath supported by a 1.0 metre tall supporting wall set within 500 metres of the trunk of the closest tree¹⁰. The foundations to the structure are dug 0.75 metres below the bottom of the ditch and come within 250mm of the above ground tree trunk.
- 3.11 In the other pinch point shown on section A, a 450 diameter pipe is utilised (it is unclear why is reduced to 450mm at this location), however the engineered 450 mm upstand is located within 150mm of the closest tree trunk with the foundations to the structure 200mm below the bottom of the ditch and coming within 100mm of the above ground trunk.
- 3.12 A letter and an Arboricultural Method Statement from a Landscape Architect were provided with the revised drawings.

¹⁰ See Section B on 231436-CON-XX-00-SK-C-0013-P02

Planning History

- 3.13 The committee report at **CD3.1** lists some of the relevant planning history.
- 3.14 I note that an appeal at the appeal site for the conversion of buildings to create 8 dwellings with internal and external alterations was dismissed in 2015¹¹. The building is the large building that spans the north south width of the former social club part of the appeal site (Building C).



Site Location Plan 2015 Appeal Decision

- 3.15 In her decision Inspector Stevens found the development to comprise inappropriate development but not to compromise openness but that it would further urbanise the site and lead to urban sprawl. However, she did find that¹²:

“[...] Although there are a few dwellings and other structures along the lane, the site is nevertheless within the countryside and clearly separated from any settlement.

Furthermore, the location of the site would result in the occupants of the dwellings being highly reliant on a car to access services and facilities. Lye Lane is narrow, unlit and has no footpath which makes it unattractive to pedestrians. [...]”

- 3.16 In assessing the harm associated with that application to re-use existing buildings for residential purposes the Inspector concludes:

11 APP/B1930/W/15/3003840 at **CD5.10**

12 DL24 – DL25

“[...] the proposal would represent isolated development in the countryside contrary to the provisions of the Framework. I do not consider the limited benefits significantly and demonstrably outweigh the harm identified, when assessed against the Framework taken as whole. I therefore conclude the proposal would not represent sustainable development and conflicts with LP Policy 2.”

3.17 Other appeal decisions at the site include an appeal that granted deemed planning permission for a bed and breakfast use of Bricket Lodge (Building D)¹³ and the 2020 decision of Inspector Jones in respect of the use of the land for paintballing wherein he allowed in part an appeal against the decision of the Council to refuse to grant a certificate of lawfulness for the use as he considered the ongoing use of the land for paintball activities to be immune from enforcement¹⁴.

3.18 In addition to the applications listed for the appeal site I am aware of an appeal at Land at Lye Lane for the creation of a community forest and the erection of 16 detached dwellings¹⁵. I acted for the Council at that appeal which was dismissed in September 2019. In describing Lye Lane the Inspector notes¹⁶:

“Lye Lane is a narrow country lane lacking in street lighting and footways. Along parts of the lane the canopies of existing trees and hedgerows on either side extend across the carriageway and meet overhead. These qualities give the lane a rural, wooded character, despite road noise from the nearby M25 and North Orbital Road.”

3.19 That application was made in outline with only details of access for consideration. It was common ground that the proposed development comprised inappropriate development¹⁷. The Inspector concludes that the proposals would be visible and cause harm to the visual component of openness as well as to the character of the area and that the visual harm would not be limited¹⁸. He then observes in respect of spatial openness and purposes¹⁹:

“[...] In terms of the spatial effect of the development on openness, the appeal scheme would extend built development into the appeal site. In this respect, the appeal scheme would result in encroachment into the countryside, in conflict with one of the purposes of the Green Belt.

The appellant considers that the site has a degraded nature and so is not typical of the wider countryside. Whilst this may be true for parts of the site, based on my observations and the information before me, I do not accept this is a true reflection of the entire site. Even if I am wrong in this regard, it does not mean that the site or part of it should be developed or that the site does not serve a legitimate purpose of providing relief from development.”

13 APP/B1930/C/02/1093494

14 APP/B1930/X/18/3202577

15 APP/B1930/W/18/3212658 at **CD5.4**

16 DL18

17 See DL7

18 See DL12- DL13

19 See DL14 and 15

3.20 Planning permission was granted at appeal²⁰ for the erection of 100 dwellings on a Green Belt site on the edge of Colney Heath Bullens Green that straddles the boundary with Welwyn Hatfield District Council. Since that decision, in January 2024, an appeal decision of Inspector Hayden at Tollgate Road Colney Heath was issued²¹. He dismissed an appeal for up to 150 dwellings on a site adjacent to the boundary of Colney Heath is previously developed land.

3.21 An existing industrial estate that comprised previously developed land in the Green Belt at Smallford Works was the subject of proposals for redevelopment for housing. The application the subject of that appeal was submitted in outline with details of access only included for consideration. Planning permission was refused and a subsequent appeal dismissed in 2021²².

3.22 In his decision Inspector Aston acknowledged that the site comprises previously developed land occupied as an industrial estate. He observes that there are buildings at the site some of two storey scale. In respect of the illustrative layout plan produced for that appeal Inspector Aston noted inter alia:

“I recognise that it may be possible to develop the site in a different manner to that shown on the illustrative layout. However, if permission were to be granted, then it would permit something at least close to 100 dwellings and a proposal for a lower number of dwellings could be materially different. [...], it is reasonable to take the illustrative layout as an indication of the likely quantum and form of development that would come forward at Reserved Matters stage.”

3.23 In terms of floorspace the Inspector noted:

“The total floor area of the permanent buildings at present is 2673.45 sqm GEA, and the development as shown on the illustrative masterplan has a total floor area of 11,448 sqm. The resultant increase in permanent floorspace of 325-328% is a considerable increase if the site were to be developed in accordance with the type of illustrated scheme for up to 100 units. The appellant considers this would be ‘a substantial increase in floorspace compared to the existing position’”

3.24 In concluding on the NPPF 154(g) (as it is now) test Inspector Aston noted that the scheme to redevelopment that industrial estate would not qualify as an exception concluding:

“By comparison with the existing site, the proposed development would be markedly taller and comprised of more solid permanent buildings and spread across the whole of the area of the appeal site. Taking everything together, the appeal proposal would give rise to an intensely developed site, with a considerably different and greater coverage, footprint, floorspace, height and overall extent of built form compared to the existing situation.

²⁰ APP/B1930/W/20/3265925 and APP/C1950/W/20/3265926 at **CD5.1**

²¹ APP/B1930/W/23/3323099 at **CD5.7**

²² APP/B1930/W/20/3260479 at **CD5.5**

For these reasons, the proposal would result in substantial harm to the openness of the Green Belt. It would not therefore constitute an exception as specified within Paragraph 145 g of the Framework and would be inappropriate development. Given the construction of Policy 1 of the LP I return to conflict with that policy in the balancing exercise below.”

- 3.25 An existing pumping station and previously developed site at Colney Heath, Roestock Pumping Station was the subject of an appeal wherein the appellant argued the site was previously developed and housing should be permitted²³. The appeal was dismissed in February 2016. In assessing the exception in 2016 the Inspector was considering whether the proposal would lead to a great impact on openness. In that regard the Inspector noted²⁴:

“It is clear from the above that the proposed development would result in a significant increase in the footprint and volume of buildings within the site. It is also accepted by the appellant that the development would not be confined to areas of the site that are currently occupied by buildings and that the proposed development would necessarily extend into the currently open grassland within the site.”

and

“The existing buildings on the site undoubtedly have an impact on openness but the likely increase in volume and spread of mass and bulk across the site into areas currently absent of buildings would result in a greater impact on openness. Therefore, the development would be at odds with the Green Belts essential characteristics, openness and permanence. Furthermore, it would be in conflict with its defined purposes, specifically to assist in safeguarding the countryside from encroachment.”

- 3.26 I acknowledge the recent Secretary of State appeal decisions at Chiswell Green Lane North and South where 720 dwellings have been permitted²⁵. My understanding is that the site north of Chiswell Green Lane was a site identified in the withdrawn Local Plan as a draft allocation site for housing. The site north of Chiswell Green Lane proposed 100% affordable housing for key workers and turns on its particular facts.
- 3.27 The appeal site is neither a former draft allocation site nor is it proposed to provide anything other than the minimum policy requirement for affordable housing.

²³ APP/B1930/W/15/3137409 at **CD5.11**

²⁴ See DL14 and DL17

²⁵ APP/B1930/W/23/3313110 & 3312277 at **CD5.2**

4 Planning Policy

- 4.1 The development plan comprises the St Albans District Local Plan 1994 (SADLP).
- 4.2 The following saved policies of the SADLP are relevant to consideration of the application the subject of this appeal.

POLICY 1 - Metropolitan Green Belt
POLICY 2 - Settlement Strategy
POLICY 8 - Affordable Housing in the Metropolitan Green Belt
POLICY 34 - Highways Considerations in Development Control
POLICY 35 - Highways Improvements in Association with Development
Policy 36a - Location of New development in relation to Public Transport Network
POLICY 39 - Parking Standards, General Requirements
POLICY 40 - Residential Development Parking Standards
POLICY 69 - General Design and Layout
POLICY 70 - Design and Layout of New Housing
POLICY 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 104 - Landscape Conservation
POLICY 106 - Nature Conservation
POLICY 143a - Watling Chase Community Forest
POLICY 143b - Implementation

- 4.3 Policy 1 identifies (along with the Proposals Map) the extent of the Green Belt and then 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.”*

- 4.4 Policy 2 sets out the settlement strategy looking to safeguard the character of Green Belt settlements including from the cumulative effect of development proposals. It then sets out a settlement hierarchy with St Albans sitting at the top of the hierarchy and then Harpenden as towns excluded from the Green Belt. Next are a series of seven specified settlements which are excluded from the Green Belt and include Bricket Wood and How Wood.

- 4.5 In the Roestock Depot appeal decision²³, the inspector concluded in respect of Policies 1 and 2:

“Policies 1 and 2 of the LP restrict development in the Green Belt other than for specified purposes. This general approach to Green Belt protection is consistent with that of the National Planning Policy Framework (the Framework) but I note that greater scope for exceptions are set out at paragraph 89 of the Framework and this is an important material consideration.”

- 4.6 Inspector Aston found in the Smallford Works appeal²² that Policy 1:

“[...] does require very special circumstances to justify inappropriate development and also requires new development to integrate with the existing landscape. I agree with the parties that although it is not entirely consistent with the Framework it is not out of date insofar as it relates to this appeal.”

- 4.7 In her decision at Bullens Green²⁰ the Inspector concluded in respect of Policy 1 inter alia:

“[...] The proposals would lead to conflict with policy 1 of the St Albans District Council Local Plan, 1994. This policy identifies the extent of Green Belt within the Borough, and outlines the developments which would be permitted which broadly align with the development identified by the Framework.”

- 4.8 Inspector Hayden²¹ found at DL154:

“I have established above that saved Policy 1 is consistent with the Framework ”

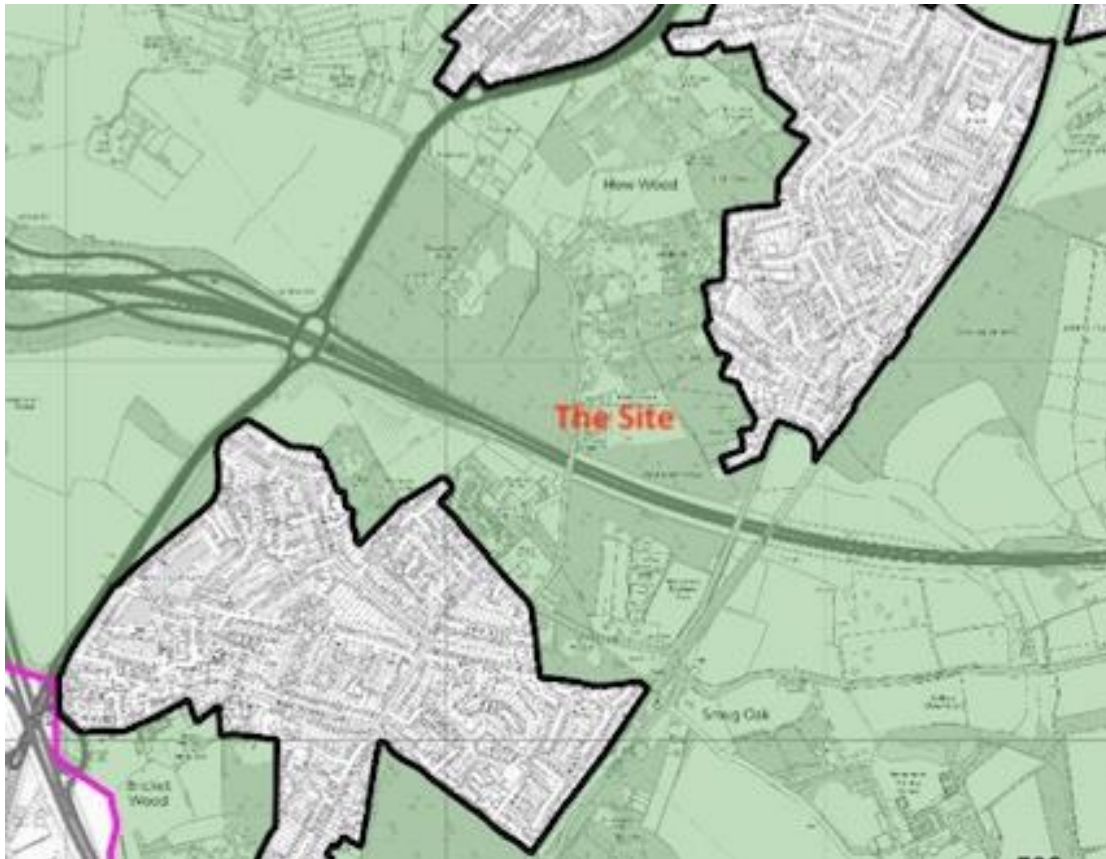
- 4.9 Policy 34 sets out Highway Considerations in Development Control decisions, Policy 34(viii) acknowledges the planning consideration of local rural roads (such as Lye Lane) and requires particular regard to be paid to:

- a) *“the risk of accidents, especially to pedestrians and cyclists;*
- b) *the use of roads that are poor in terms of width, alignment or structural condition;*
- c) *adverse impact on the local environment, either to the rural character of the road or residential properties along- side it.”*

- 4.10 Policy 35 relates to highway works associated with development to mitigate adverse impacts and also relates to funding improvements to highway improvements and / or public transport and Policy 39 relates to car parking standards.

- 4.11 Policy 69 relates to General Design and Layout of all new development and requires such development to have regard to context as well as having regard to Policy 2. I note that context is an important part of good design and is reflected in the National Design Guide (NDG) which identifies context as an important element of the design process. Policy 70 requires new housing to have regard to its setting and the character of its surroundings.

- 4.12 Policy 74 requires the decision maker to take account of existing landscaping and the ability to facilitate new landscaping.
- 4.13 Policy 84 relates to flooding and river management and seeks to reduce the risk of flooding and ensure proper management of river catchments and sets out the following principles:
- (i) *“in areas liable to flood, development or the intensification of existing development, will not normally be permitted. Appropriate flood protection will generally be required where the redevelopment of existing developed areas is permitted in areas at risk from flooding;*
 - (ii) *where appropriate, a condition will be attached to planning permissions to ensure that strips are provided alongside 'main river'(1) watercourses and kept free of development in order to allow access for dredging and discretionary maintenance;*
 - (iii) *all works in, under, over and adjacent to watercourses shall be appropriately designed and implemented and alternatives to culverting should be explored where possible;*
 - (iv) *proposals shall not increase flood risk in areas downstream due to additional surface water runoff. If development is permitted, it must include appropriate surface water runoff control measures.”*
- 4.14 Policy 106 relates to Nature Conservation and seeks to refuse development that could adversely affect sites such as Bricket Wood Common a SSSI
- 4.15 Policy 143a supports the establishment of the Watling Chase Community Forest which includes the location of the appeal site and also requires proposals to be consistent with Green Bet policy.
- 4.16 Policy 143b relates to infrastructure requirements where provision is required in the first instance on site and if off site provision is necessary it will need to be secured.
- 4.17 Policies 1, 2, 34, 35, 39, 69, 70, 74, 84, 106 and 143b are most important policies.
- 4.18 Following a 'YES' vote at referendum on 5 May 2022, the St Stephen Neighbourhood Plan was made at Full Council on 20 July 2022. The St Stephen Neighbourhood Plan now forms part of the Development Plan for St Albans City and District. The Statement of Common Ground identifies relevant policies of the Neighbourhood Plan. The plan identifies the importance of protecting the individual identifies of the three main settlements within the parish (How Wood, Bricket Wood and Chiswell Green). Policy S1 directs development within the settlement boundaries and resists development outside these boundaries. Where VSC can be demonstrated Policy S1 supports affordable housing, smaller housing for younger people, properties suitable for the ageing population and additional community benefits.



Extract Figure 4.1 St Stephens NP

4.19 SADC has adopted relevant supplementary planning documents including:

- Revised Parking Policies and Standards, January 2002
- Design Advice Leaflet No. 1: Design and Layout of New Housing, November 1998
- Affordable Housing March 2004

National Planning Policy Framework

4.20 The Framework was revised in December 2023 and sets out the Government’s economic, environmental and social planning policies for England. These policies articulate the Government’s vision of sustainable development, which should be interpreted and applied locally to meet local aspirations. In terms of the most relevant sections for this appeal, Section 9 promotes Sustainable Transport and Section 13 relates to Protection of the Green Belt. Section 2 includes the presumption in favour of Sustainable Development. Section 5 relates to the delivery of a sufficient supply of homes. Section 12 relates to achieving well-designed places and Section 15 relates to conserving and enhancing the Natural Environment.

4.21 Paragraph 11 sets out the approach to the presumption in favour of sustainable development. Paragraph 11d advises that the presumption means, for decision-making:

“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.”*

4.22 The NPPF has been revised and in the circumstances of SADC where a plan has reached regulation 18 stage with a policy map accompanying it the Council is tasked with demonstrating a four year supply of deliverable land. It is common ground that the Council cannot demonstrate a four-year supply of deliverable housing land and also via its HDT results the policies of the local plan are out of date.

4.23 Footnote 8 states that in the situation where a Local Planning Authority is unable to demonstrate a five-year supply of deliverable housing land and/ or the HDT results are below 75% then the policies which are most important for determining the application are deemed to be out of date.

4.24 Paragraph 11(d)(i) and Footnote 7 provides (so far as relevant) that the tilted balance is disengaged in circumstances policies of the Framework protect assets of importance and provide a clear reason for refusing permission. Footnote 7 clarifies that:

“The policies referred to are those in this Framework (rather than those in development plans) relating to: [...] land designated as Green Belt [...]; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 72); [...]”

4.25 As such, when considering planning decisions relating to land in the Green Belt it is necessary to determine whether the application of the Green Belt policies in the Framework provide a clear reason for refusal under paragraph 11(d)(i). If they do, the tilted balance in paragraph 11(d)(ii) of the Framework is disengaged.

4.26 Paragraph 154 of the Framework provides that “the construction of new buildings” is “inappropriate development” in the Green Belt, unless one of the stated exceptions applies. The proposal for up to 115 dwellings and access roads and other development to facilitate the proposed housing comprise inappropriate development. The Council will demonstrate that the development does not fall within any of the exceptions including 154(g) which states that an exception can comprise:

“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.”*

4.27 The Framework advises that inappropriate development is, by definition, harmful to the Green Belt should not be approved except in very special circumstances (paragraph 152). Paragraph 153 states:

“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 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.”

4.28 The appeal site comprises land outside any designated settlement and thus comprises part of the countryside. Although not a “footnote 7 policy”, paragraph 180(b) of the Framework directs that decisions on planning applications should contribute to and enhance the natural and local environment by:

“recognising the intrinsic character and beauty of the countryside ...”

4.29 The *Cawrey*²⁶ judgment accepts that the recognition of the intrinsic character and beauty and character of the countryside necessarily imparts a degree of protection to those matters.

4.30 The Framework seeks to achieve well designed places and as set out at paragraph 135(f) seeks to provide high standards of amenity for existing and future users and being sympathetic to context including landscape setting (135(c)).

4.31 Paragraph 175 requires major development to incorporate sustainable urban drainage systems. Section 15 requires the protection and enhancement of biodiversity (185 - 186).

The Emerging St Albans Local Plan

4.32 The Regulation 22 Submission version of the St Albans Local Plan was submitted in March 2019. The Examining Inspectors expressed concerns that the duty to co-operate had not been satisfied and the Council withdrew the plan.

4.33 However, it is material to note that the Green Belt boundary in the area of the appeal site was not proposed to be amended and thus the appeal site was proposed to be retained within the Green Belt (in accordance with the principles of permanence).

²⁶ i.e. paragraph 49 of *Cawrey Ltd and SoSCLG and Hinkley and Bosworth BC* [2016] EWHC 1198 (Admin)

- 4.34 The appeal site was promoted through the Call for Sites 2021 (site STS-47-21). The Housing and Economic Land Availability Assessment (HELAA) was undertaken without reference to the Green Belt Review which could change the suitability of sites. It found the appeal site to be subject to a number of absolute and non-absolute constraints being mitigated. The HELAA concluded that the site was potentially suitable, available and achievable subject to further assessment as part of the site selection process.
- 4.35 Furthermore, pursuant to the 2013 Green Belt Assessment, which comprised part of the evidence base for the now withdrawn draft Local Plan, no changes were proposed to the Green Belt boundaries around Bricket Wood. The appeal site was not identified as either a strategic site or a smaller scale site in the Green Belt Assessment. The Examining Inspectors described the Green Belt process as follows in a letter in April 2020²⁷ at para. 31:
- “The Green Belt Review Purposes Assessment (November 2013) was prepared jointly for the Council with Dacorum and Welwyn Hatfield Councils by SKM (GB004). This Stage 1 of the review identified large parcels of land across the three authorities. Those areas contributing least to the Green Belt were determined and a number of strategic sub areas in St Albans were identified for further investigation. These were taken forward to Stage 2 where SKM undertook a review and detailed assessment of those strategic sub areas in the Green Belt Review Sites and Boundaries Study (February 2014) (GB001).”*
- 4.36 In that letter the Inspectors raised concern that the GB Review process excluded consideration of sites of less than 500 dwellings (see paragraph 37) and that the capacity from smaller sites could be greater than estimated having regard to the smaller scale sites identified in the 2013 review not being an exhaustive list. The GB Review did not take forward the small scale sub areas assessed in 2013 *as making no or little contribution to the Green Belt purposes.*
- 4.37 The appeal site is not located in a sub area that was assessed in 2013 as making little or no contribution to the Green Belt purposes and in fact was considered to make a significant contribution toward safeguarding the countryside from encroachment (therefore the parcel was not considered to perform poorly against the purposes or warrant subdivision).
- 4.38 The Examining Inspectors’ concern is encapsulated at paragraph 41 wherein they state the following about the Council’s focus on strategic sites:

“This has ruled out a number of sites that have already been found to impact least on the purposes of the Green Belt. It may well also have ruled out other nonstrategic sites with limited significant impacts on the Green Belt which may have arisen from a finer grained Green Belt Review.”

²⁷ See Examining Inspector’s Post Hearing Letter of 14 April 2020

4.39 SADC commenced work on preparing a new draft Local Plan for the period to 2041. As part of the evidence base for the new Local Plan a revised Part 2 Green Belt Review was commissioned to assess a range of sites (both large and small) for release from the Green Belt. Figure 4.,7 identifies the appeal site as sub area SA-128 given it partially falls within 250 metres of the edge of settlement of Bricket Wood or How Wood. Table 4.11 sets out sub area characterisation and recommendations as below:

Meets purpose assessment criteria	Contribution to wider strategic green belt	Recommendation
Strongly	Important	Not recommended for further consideration
	Less important	Recommended for further consideration
	Part of sub-area less important	Part recommended for future consideration
Moderately	Important	Not recommended for further consideration
	Less important	Recommended for further consideration
	Part of sub-area less important	Part recommended for future consideration
Weakly	Important	Not recommended for further consideration
	Less important	Recommended for further consideration
	Part of sub-area less important	Recommended for further consideration

4.40 In terms of purpose b I note the sub area performs the function of purpose b but performs weakly, forming it is said a *'less essential' gap between settlements*. I note the land to the west of Lye Lane opposite the appeal site (SA-132) is said to perform more strongly against purpose b and land north of the appeal site also east of Lye Lane (SA-129) is said to perform strongly against this purpose²⁸.

4.41 In terms of safeguarding the countryside from encroachment the appeal site was held to perform against this purpose but scored 2 out of 5 due to it being considered to have a semi-rural character.

4.42 Overall the appeal site was found to meet the NPPF purposes and perform weakly against them. It was not one of the seven areas that did not meet the overall performance of the NPPF purposes²⁹. Land to the west of Lye Lane directly opposite the appeal site was found to perform moderately and land to the north also on the east of Lye Lane was found to perform strongly³⁰.

4.43 Section 5.7 then sets out a strategic Green Belt Assessment noting:

“Reflecting the granular focus of the Stage 2 GBR, additional qualitative assessment was undertaken to identify the role of sub-areas as part of the wider Green Belt. It is possible for a sub-area not to meet the NPPF purposes as assessed in section 5.6 but still perform an important strategic role.”

²⁸ See Figure 5.6

²⁹ See Table 5.6 Overall NPPF Performance Summary

³⁰ See Figure 5.12

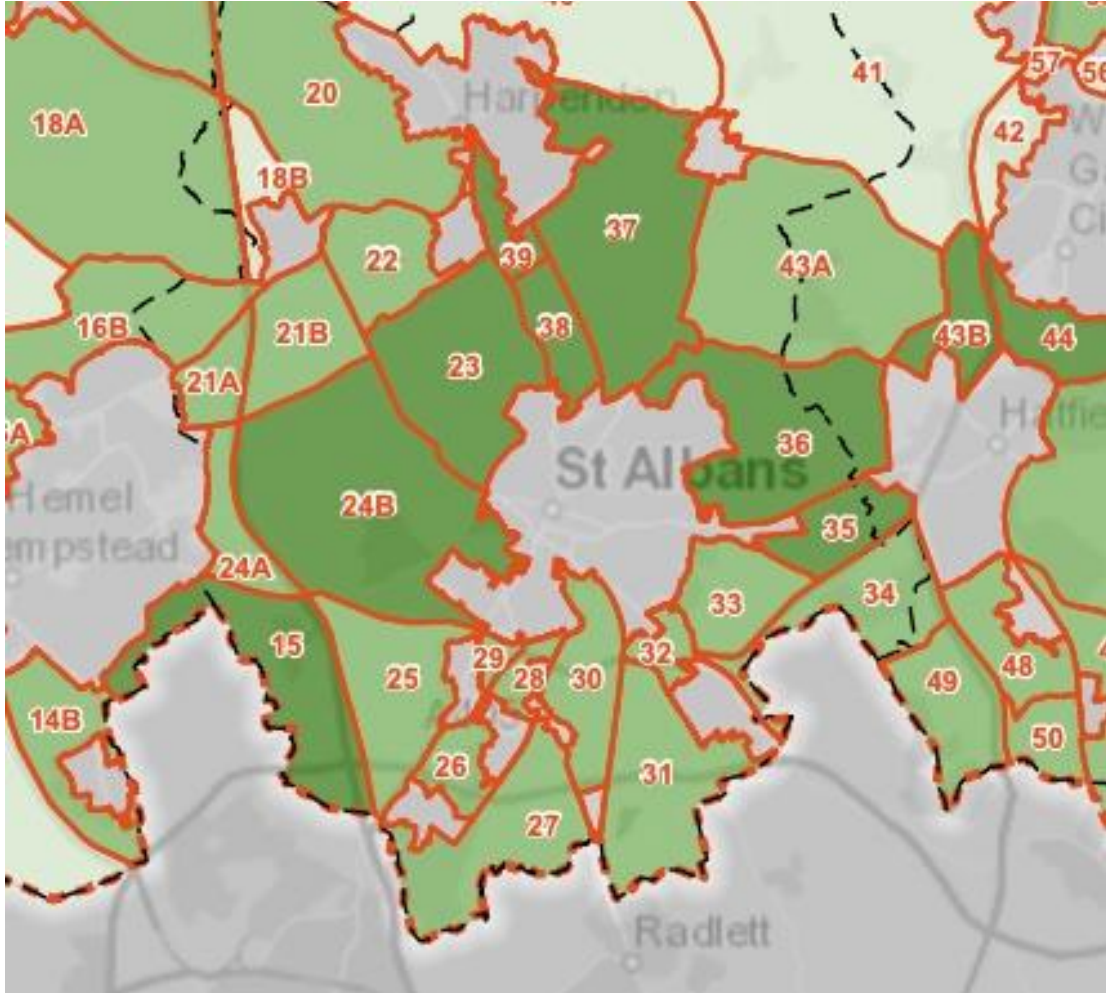
- 4.44 Table 5.7 then confirms that the appeal site performs an important contribution to wider Strategic Green Belt. Figure 5.14 confirms the important strategic contribution of the appeal site.
- 4.45 Table 5.8 then confirms that as a weak sub parcel with an important contribution to the purposes in the wider Green Belt area that the appeal site was not recommended for review of the Green Belt status and boundaries.
- 4.46 The Council has published the Regulation 18 First Draft Local Plan, the LDS sets a timetable for publication and adoption. The Regulation 18 Plan identifies the sites for release from the Green Belt and to be allocated for housing. It identifies a total of 102 sites of which 2 are large sites (100 – 249 dwellings), 29 are medium and small sites (capacity 5 – 99 dwellings) and two are previously developed land in the Green Belt³¹.
- 4.47 The plan includes a number of allocation sites within the general area of the appeal site within St Stephen’s Parish including in the large sites for release 180 dwellings at Burstons Nursery (site L1) and the small medium sites 98 dwellings at Miriam Way (M1), 74 dwellings at Oakwood Road (M4), 51 dwellings at Orchard Drive (M10), 44 dwellings at Bucknalls Drive (M15), 14 dwellings at Ashdale (M23). A number of small sites are also identified within the parish.
- 4.48 In addition the Inspector will be aware of the recent appeal decisions at Chiswell Green (also in the St Stephen’s Parish with Bricket Wood and How Wood) wherein 720 dwellings were permitted by the Secretary of State.
- 4.49 The appeal site does not comprise a site identified in the emerging plan as an allocation site for housing.
- 4.50 The Council considers that little weight can be placed on this emerging plan which is at an early stage of preparation for the purposes of this appeal.

31 See Table A1.1

5 The Council's Case

- 5.1 I present my evidence under the broad topic headings that are covered in the reasons for refusal, namely:
- a. Green Belt;
 - b. Character and Countryside;
 - c. Noise and Amenity for Future Residents;
 - d. Drainage;
 - e. Highway Matters;
 - f. The sustainability of the location for new housing;
 - g. Impact on Habitats including SSSIs and neighbouring wildlife sites and the ability to deliver BNG;
 - h. Infrastructure;
- 5.2 In respect of drainage (d) I rely on the evidence of Katherine Waters and in respect of highways matters and location (e) and (f) I draw on the evidence of Chris Carr.
- 5.3 I will demonstrate (consistent with the Appellant's position at the time they submitted their application) that the proposed development comprises inappropriate development. I will also outline the other harms including Green Belt harm before I then consider whether any *other considerations* raised by the Appellant clearly outweigh the harm by way of inappropriateness and any other harm such that very special circumstances exist.
- 5.4 The correct approach, should the Inspector agree with me that the proposed development comprises inappropriate development, is that the assessment to determine whether very special circumstances exist has to be undertaken in accordance with the Green Belt balance and not paragraph 11(d)(i) of the NPPF. In the context of inappropriate development it is only at the stage that the Green Belt balance has been undertaken and it has been demonstrated that very special circumstances exist that it can be concluded that policies in the Framework that protect the Green Belt do not provide a clear reason for refusing the development proposed.
- 5.5 Therefore, you cannot undertake the Green Belt balance having engaged paragraph 11(d)(i).
- 5.6 The Appellant has provided more amended plans and information following the submission of the appeal and following exchange of Statements of Case and just over 2 weeks ahead of the Proofs deadline. That information relates to details of the proposed footpath south from the site alongside Lye Lane and a Landscape Architect's letter and informal report in respect of the impact on trees. I pause to note there is no reason why that information should have been submitted so late in the process as it relates to the Council's reasons for refusal and not any subsequent changes in circumstances. Any implications from its submission relate to the Appellant's delay in submitting such information.

5.7 I will rely on written responses to this information in respect of arboricultural matters as well as the ecology impacts of these proposals. I will introduce them in my evidence and append them to this proof.



The Green Belt around St Albans (the site is in Parcel 26)³²

³² Green Belt Review Purposes Assessment Annex 1 Parcel Assessment Sheets for SADC 2013

Green Belt – Inappropriate Development

- 5.8 The NPPF confirms that the essential characteristics of the Green Belt include its openness and permanence.
- 5.9 The appeal site lies outside any existing settlement within the designated Green Belt as defined on the Proposals Maps of the adopted Local Plans. Consistent with the Framework (paragraph 154), Policy 1 SADLP does not define development of up to 115 residential dwellings, access roads etc. as an exception from the definition of inappropriate development.
- 5.10 The adopted development plan directs new housing development to the main settlements and applies a settlement hierarchy that does not identify the countryside between settlements as sustainable locations for new housing development.
- 5.11 The broad approach of policy in respect of the Green Belt is to designate areas of Green Belt land and then to consider development within the Green Belt to be inappropriate unless it is specifically identified as an exception³³.
- 5.12 Consistent with the Framework (paragraph 154), Policy 1 SADLP does not define development of up to 150 residential dwellings, access roads etc. as an exception from the definition of inappropriate development.
- 5.13 The erection of buildings is normally inappropriate development unless it meets an exception identified in NPPF paragraph 154. The Appellant accepted at application stage that the proposed development did not comprise one of those exceptions.
- 5.14 I note the Appellant now considers that the appeal site will benefit from the exemption under 154(g). NPPF 154 (g) states inter alia:

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

[...]

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

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

- 5.15 It is not asserted that the proposals comprise limited infilling or partial redevelopment of previously developed land. Therefore we are considering the complete redevelopment of previously developed land.

³³ See **Timmins and Anr and Gedling Borough Council** [2014] EWHC 654 (Admin) at **CD6.14**

5.16 The proposed complete redevelopment of the appeal site for up to 115 dwellings will lead to a substantially greater impact on the openness of the Green Belt when compared to the baseline position and will lead to substantial harm to the openness of the Green Belt as I demonstrate in respect of openness in the next section of this evidence.



The Baseline Site as Existing, Base © Google (Appendix 1)



Site as Proposed (illustrative), Base © Google (Appendix 2)

- 5.17 I note that the affordable housing element of the proposed scheme delivers only what is necessary to meet the policy requirement and had it not proposed such a level of affordable housing then absent any justification then the proposals would conflict with development plan policy, emerging local plan policy and the NPPF.
- 5.18 I therefore consider it first necessary to assess the proposals against the first bullet point in 154(g) and it is clear on its face that the proposals for up to 115 dwellings and access roads and acoustic fencing etc. would demonstrably have a greater impact on the openness of the Green Belt than the existing development.
- 5.19 With regard to the second bullet if the Inspector considers that the contribution of this scheme which only meets its policy requirement justifies a relaxed test in terms of Green Belt impact then the Inspector will note that the proposed development will cause substantial harm to openness and thus irrelevant of it meeting an identified housing need it does not comprise development that is not inappropriate.
- 5.20 The proposed development thus does not fall within the exception of 154(g) and therefore comprises inappropriate development.
- 5.21 Such a conclusion is evident when comparing the existing situation at site with the proposed quantum of development at site. In assessing such matters the existing aerial imagery is of assistance as is the illustrative site layout which is intended to show how this quantum of development can be accommodated at the appeal site.
- 5.22 Adding the caveats that the (illustrative) site layout plan only shows 109 units and not how 115 can be accommodated at site and acknowledging that a final layout may vary from the illustrative material it is clear from the site layout plan that the quantum, density and spread of development across the site will increase substantially should permission be granted. The loss of openness beyond the baseline would be substantial and the harm arising would be substantial as can be appreciated from the comparison images above.
- 5.23 The Appellant claims that the Maitland Lodge appeal decision³⁴ provides a Damascene moment in the interpretation of NPPG 154(g). That is simply not the case, it is an appeal decision that turn on its own facts.
- 5.24 The factual position is that the NPPF has not changed insofar as it relates to previously developed land and the Green Belt since the application was submitted, there has been no policy change.

³⁴ APP/V1505/W/22/3296116 at CD5.6

- 5.25 It is worth noting in respect of Maitland Lodge that not all of that appeal site was located in the Green Belt (DL8), that the site directly abutted the settlement boundary of the major settlement of Billericay along two of its boundaries, land to the east and west of the site was already built up (DL11), the proposal results in a 80% increase in footprint and a 124% increase in volume of built form (DL12), the scheme proposed 45% affordable housing against a policy requirement of 15 - 30% (DL33) and that application was made in full so the Inspector could be categoric in his conclusions on floorarea and volumetric increases.
- 5.26 The appeal proposals and those at Maitland Lodge are very easily distinguishable. On one level we simply do not have details of layout and design of the proposed dwellings so unlike in Maitland Lodge the Inspector is unable to definitively assess the impact of the proposed houses and conclude whether there would not be a substantial impact on openness.
- 5.27 By way of example the Appellant considers that the existing buildings³⁵ on site comprise a gross internal floorarea (GIA) of 1096m². I recognise that this is GIA not GEA but I am using it solely as a comparator. The proposal is for up to 115 dwellings and the mix is said to comprise that set out in section 3 of my proof. Below I estimate the approximate GIA of the proposed development having regard to the National Minimum Standards for two storey dwellings:

Dwelling size	Dwelling Mix (nos.)	GIA per dwelling	Total GIA
1 bed dwellings	Up to 23 dwellings	58	1334
2 bed dwellings	Up to 37 dwellings	79	2923
3 bed dwellings	Up to 35 dwellings	102	3750
4 bed dwellings	Up to 13 dwellings	124	1612
5 bed dwellings	Up to 7 dwellings	128	896
Total	Up to 115		10,515

- 5.28 Therefore excluding any ancillary building comprising garages, car ports, sheds, outbuildings etc. the appeal scheme proposes 10,515m² of GIA.
- 5.29 Given the existing GIA of buildings at the appeal site is 1096m², the proposal comprises an increase in GIA of 860%. In any rational and coherent sense that is of a completely different order to the proposed increase at Maitland Lodge.
- 5.30 Absent a footprint figure in evidence I have used 1260m² as a proxy for that figure³⁶. I have then sense checked that against measurements that are possible on some plans adding a caution regarding their accuracy and arrived at a figure of 1500m² for footprint of existing buildings at site, I intend to utilise this higher figure for my analysis.

³⁵ See application forms: All Types of Development: Non-Residential Floorspace

³⁶ I have used the Appellant's GIA of 1096 added 15% to include the thickness of external walls to convert to gross external floorarea to arrive at an approximate existing footprint figure.

- 5.31 In terms of the proposed footprint based on an identical methodology³⁷ I have arrived at a footprint of 6050m². That comprises a 304% increase in footprint.
- 5.32 The Maitland Lodge Inspector considered proposals that resulted in an 80% increase in footprint and that informed his conclusion that it did not result in substantial harm to the openness of the Green Belt. The Appellant relies on these findings specific to that case to support his contention that some change in circumstances have occurred on the appeal site in terms of the interpretation of Green Belt policy.
- 5.33 The appeal proposal comprises an almost four times greater proportionate increase in footprint than in the Maitland Lodge case (i.e. 304% is a 3.8 times greater increase than 80%).
- 5.34 On any rational and logical analysis increases in footprint of over 300% and an increase in GIA of 860% are of a completely different order to 80% (i.e. in Maitland Lodge the proposal did not even double the footprint of development at site).
- 5.35 It is clear that the circumstances of Maitland Lodge are not readily transferrable to the appeal scheme and I maintain that the proposal, whilst comprising pdl, leads to substantial harm to the openness of the Green Belt (over 8 times the quantum of development leads to substantial harm in my view). As such, it comprises inappropriate development and does not benefit from any of the exceptions to paragraph 154 NPPF.
- 5.36 Paragraph 153 of the NPPF confirms that harm by way of inappropriateness and any other Green Belt harm is harm that is attributed substantial weight.
- 5.37 Paragraph 152 NPPF states that inappropriate development should not be approved except in very special circumstances. Then paragraph 153 confirms 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. The test is to be “clearly outweighed” and not merely “outweighed”.
- 5.38 The application of NPPF paragraph 152 provides a clear reason to refuse planning permission under NPPF 11(d)(i), and it would only ever be through the exercise of the Green Belt planning balance in NPPF para. 153 wherein other considerations are demonstrated to clearly outweigh the harm by way of inappropriateness and any other harm that permission could be granted.
- 5.39 Therefore the decision will have to be taken with all the harm first identified and weighed and then the other considerations relied on by the Appellant considered and weighed and only if those other considerations “clearly outweigh” the harm by way of inappropriateness and all other harm do very special circumstances exist.

³⁷ i.e. adding 15% to the GIA and then dividing by two to arrive at footprint (10515 x1.15)/2

Green Belt - Openness

- 5.40 The Framework (para. 142) identifies openness and permanence as the essential characteristics of the Green Belt with the fundamental aim of Green Belt policy to keep land permanently open and thereby prevent urban sprawl.
- 5.41 The concept of openness means the state of being free from built development; the absence of built form as opposed to the absence of visual impact³⁸. However, the word “openness” is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if the proposed development occurs and factors relevant to the visual impact on the aspect of openness which the Green Belt presents³⁹.
- 5.42 In *Turner*, Sales, LJ stated as follows (so far as relevant):

- "14. [...] The word “openness” is open-textured, and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt presents
15. The question of visual impact is implicitly part of the concept of “openness of the Green Belt” as a matter of the natural meaning of the language used in para. 89 of the NPPF. I consider that this interpretation is also reinforced by the general guidance in paras. 79-81 of the NPPF, which introduce section 9 on the protection of Green Belt Land. There is an important visual dimension to checking “the unrestricted sprawl of large built-up areas” and the merging of neighbouring towns, as indeed the name “Green Belt” itself implies. [...]. Openness of aspect is a characteristic quality of the countryside, and “safeguarding the countryside from encroachment” includes preservation of that quality of openness. [...]
16. The visual dimension of the openness of the Green Belt does not exhaust all relevant planning factors relating to visual impact when a proposal for development in the Green Belt comes up for consideration. For example, there may be harm to visual amenity for neighbouring properties arising from the proposed development which needs to be taken into account as well. But it does not follow from the fact that there may be other harms with a visual dimension apart from harm to the openness of the Green Belt that the concept of openness of the Green Belt has no visual dimension itself.
25. The openness of the Green Belt has a spatial aspect as well as a visual aspect, and the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result of the location of a new or materially larger building there. But, as observed above, it does not follow that openness of the Green Belt has no visual dimension."

³⁸ *R (Lee Valley RPA) v Epping Forest DC* [2016] EWCA Civ 404, Treacy, Underhill, Lindblom LJ, para. 7 **CD6.2**

³⁹ *Turner v SSCLG* [2016] EWCA Civ 466, Arden, Floyd and Sales LJ **CD6.3**

5.43 In response to various judgements and case law including Turner the Government updated the Planning Practice Guide (PPG) in July 2019⁴⁰, it now states:

“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.”*

5.44 In **Samuel Smith**,⁴¹ a judgment of the Supreme Court (Lord Carnwath) issued the lead judgment (with which Lady Hale, Lord Hodge, Lord Kitchin and Lord Sales agreed) in respect of the interrelationship between visual impact and openness of the Green Belt, disagreeing with the judgment of Lindblom LJ in the Court of Appeal. The Judgment was handed down on 3 December 2019. Lord Carnwath said:

“22. The concept of “openness” in para 90 of the NPPF seems to me a good example of such a broad policy concept. It is naturally read as referring back to the underlying aim of Green Belt policy, stated at the beginning of this section: “to prevent urban sprawl by keeping land permanently open ...”. Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt. As PPG2 made clear, it is not necessarily a statement about the visual qualities of the land, though in some cases this may be an aspect of the planning judgement involved in applying this broad policy concept. Nor does it imply freedom from any form of development. Paragraph 90 shows that some forms of development, including mineral extraction, may in principle be appropriate, and compatible with the concept of openness. A large quarry may not be visually attractive while it lasts, but the minerals can only be extracted where they are found, and the impact is temporary and subject to restoration. Further, as a barrier to urban sprawl a quarry may be regarded in Green Belt policy terms as no less effective than a stretch of agricultural land.”

“39. [...] As explained in my discussion of the authorities, the matters relevant to openness in any particular case are a matter of planning judgement, not law.”

“40 Lindblom LJ criticised the officer’s comment that openness is “commonly” equated with “absence of built development”. I find that a little surprising, since it was very similar to Lindblom LJ’s own observation in the Lee Valley case (para 23 above). It is also consistent with the contrast drawn by the NPPF between openness and “urban sprawl”, and with the distinction between buildings, on the one hand, which are “inappropriate” subject only to certain closely defined exceptions, and other categories of development which are potentially appropriate. I do not read the officer as saying that visual impact can never be relevant to openness.”

⁴⁰ Para 001; ID 64-001-20190722

⁴¹ R (**Samuel Smith Old Brewery (Tadcaster) & Ors v N. Yorks CC** [2020] UKSC 3 at **CD6.4**)

- 5.45 In effect what the Supreme Court found was that the visual component of openness is capable of being a material consideration, but it is not necessarily a consideration in every case. Spatial openness is always a component of openness.
- 5.46 There is a difference between impacts on visual amenity, which are normally considered within the process of LVIA and the visual aspects of openness which are considered as part of Green Belt Assessment. In a LVIA an assessment is made on the effects of development on views available to people and their visual amenity and how this may affect character and scenic quality. In consideration of Green Belt, an assessment is made on the effects of development on the visual openness of the Green Belt including impacts on views and whether measures could be proposed that would restore the baseline aspects of openness.
- 5.47 In a Secretary of State decision of November 2021⁴² in dealing with visual openness on a site that has urban influences, paragraph 8.9 of the Inspector's conclusions, which were adopted by the Secretary of State, state:

*“In visual terms, external views of the site are relatively local and the M6 and A580, the Holiday Inn and the grandstands and other buildings of Haydock Park Racecourse lie close to its eastern, southern and northern boundaries respectively. Almost immediately west of the M6 is the extensive Haydock Industrial Estate (HIE). However, the proximity of these urban influences and features would do nothing to offset but, on the contrary, would serve to emphasise the permanent loss of openness, notwithstanding the relative containment of external views. **Moreover, the proposed landscape bunding and tree screening round the site, intended to soften the appearance of the buildings in the landscape, would aggravate the obvious loss of the essential and fundamental openness of the Green Belt. That loss carries substantial planning weight against the appeal.**” [4.17-22, 5.6] (emphasis added)*

- 5.48 With this in mind it is pertinent to look at the actual and the lawful baseline for the site (see **Appendix 1**). The appeal site comprises a limited number of existing predominately single storey buildings and an area of open land with no permanent development present. It is common ground that the appeal site comprises previously developed land.
- 5.49 The proposal is to develop the site for up to 115 dwellings and the Appellant has produced an illustrative site layout. Of note is that layout only includes 109 dwellings and as such fails to demonstrate that the site can accommodate satisfactorily 115 dwellings. However notwithstanding that observation it is clear that the result of the proposed development is a substantial increase in development across the site.

⁴² Haydock Point - Land at A580 / A49 - Ref: APP/H4315/W/20/3256871 at **CD5.12**



The Appellant's (Illustrative) Proposed Site Plan – Revision C

- 5.50 When compared to the existing development at site which largely comprises single storey scale development on the front third of the site the proposals comprise two and two and half storey development that runs the full width of the site and the full length of the site.
- 5.51 I consider the scale and disposition of the proposed development across the site would lead to a substantial loss of openness as well as an increased perception of the site and thus an appreciation of the scale and disposition of development throughout the site. The proposals lead to substantial harm to the openness of the Green Belt.
- 5.52 In assessing whether the proposals comprise inappropriate development I have started to analyse the quantum of development existing and proposed at site. I set out below in my Table the comparative existing and proposed footprint, gross external floorarea and volume of the existing and proposed buildings at site.
- 5.53 I have set out in the previous Green Belt section on inappropriate development my analysis of how I have calculated footprint and for GEA I have simply adopted the higher footprint figure and added the first floor of the lodge as well as the long building that straddles the width of the site to approximate the existing GEA.
- 5.54 In terms of existing volume I have measured eaves and ridge heights of existing buildings and calculated approximate overall volume. For proposed volume I note all the 1, 2, 3 and 4 bedroom houses are two storey (Footprint 5535m²). I have therefore allowed an eaves height of 5.5 metres and a ridge height of 8.5 metres to come to an estimate of volume for these houses. I note the 5 bedroom houses (footprint 515m²) are 2.5 storeys so I have applied an eaves height of 6.0 metres and a ridge height of 9 metres to estimate volume.

5.55 The intention of this exercise is not to provide accurate figures but to provide a reasonable estimate of the scale of the existing and proposed development to enable a comparison to be made and a proportionate change to be estimated.

	Existing	Proposed	Difference	% Difference
Footprint	1,500	6,050	+4550	+330%
Gross External Floorarea	2,100	12,100	+10000	+476%
Volume	6,700	42,600	+35,900	+536%

5.56 The substantial increases in the footprint of development, the spread of development across all parts of the site (including areas that are currently relatively free of built development) and the volume and three dimensional impacts of development is evident from the figures above.

5.57 To be added to the overall picture of impact is the height and scale of development at the appeal site. The existing buildings on site are largely of a single storey scale although I acknowledge Bricket Lodge is a chalet style building and the long building that runs north south across the site is two storey on its rear side due to level reductions, however it is single storey in scale on the elevation facing Lye Lane.

5.58 The average existing building height is c4 metres whereas the proposals would exceed 8 metres. Such an increase in height of the proposed buildings will increase the prominence of development on site as well as allowing passers-by to experience the development and the loss of openness.

5.59 As one travelled past the site before the Appellant chose to erect (without planning permission) a tall solid fence along the front boundary the experience would have included a front boundary hedgerow behind which you would perceive the single storey social club building, a gap that comprised a car parking area that was framed at the rear by a single storey scale building, then Bricket Lodge a chalet style one and a half storey scale building and then a low level single storey building barely visible above the hedgerow and then a gap to the boundary.



Existing Site Frontage in location of the proposed 3m tall acoustic fence © Google

- 5.60 It is proposed (according to the proposed block plan) to erect 109 dwellings on the site. Of these ten two and two and a half storey scale (c 9 metre tall) dwellings will be sited north to south across the whole site frontage. These dwellings would have a similar proximity to the road frontage to the existing Bricket Lodge and Social Club buildings. However because of the lack of space between the units and the height of these units they will have a significantly greater impact on the sense of enclosure passing along this section of Lye Lane. Whilst enclosure by way of landscape is not uncommon along Lye Lane the extent of enclosure shown on the illustrative plans is wholly out of character with this country lane.
- 5.61 I have to pause at this stage to note that the Appellant has not produced any material to demonstrate that the appeal site can accommodate satisfactorily 115 dwellings. The failure to produce such material calls into question the ability of the site to acceptably accommodate up to 115 dwellings
- 5.62 Added to the buildings that provide enclosure and visually reduce openness is the proposed 3 metre tall acoustic fence that will run along the entire southern site boundary as then wraps around the first 25 metres of the southern Lye Lane frontage.
- 5.63 That part of the site frontage currently is occupied by the site entrance to the paintball operation and a 1.5 – 2.0 metre tall hedgerow. Its replacement with a three metre tall solid fence will not only be out of character with the area but will demonstrably increase the visual appreciation of lost openness on and around the appeal site.

- 5.64 All the proposed dwellings are intended to be two or two and a half storeys in scale and thus increase the perception of development on the site.



Building F looking south

- 5.65 The proposed access arrangements include a 10 metre wide access corridor and 10 metre splays onto Lye Lane. This will further heighten the visibility of development on the site and the appreciation of the depth of and dispersal of tall development throughout the appeal site in terms of width and depth of the site.
- 5.66 In order to accommodate this number of dwellings the appeal site will be intensively and densely developed (36dph), the illustrative layout only shows 109 units and shows the regimented and dense nature of estate style development required to accommodate these numbers.
- 5.67 The appeal site is located in a wider area of countryside and attractive landscape. Lye Lane manifests rural country lane characteristics given its narrow carriageway, winding nature, passing points and sylvan character. Whilst dispersed development exists along the road it is not of a suburban scale and generally comprises individual dwellings set in generous grounds with a sylvan character. The exception to this is Spieltplatz which is set back from Lye Lane and comprises a leisure chalet site occupied as a naturalist's resort.
- 5.68 The proposed residential estate is manifestly out of character with the rest of Lye Lane and as such its dense nature and the substantial loss of openness will be evident to passers-by along Lye Lane.

- 5.69 This scale of development and the loss of openness will be perceived both spatially having regard to the openness of the existing appeal site and visually having regard to public and private views of the existing appeal site. I consider the appeal site and thus the loss of openness proposed to be visible from Lye Lane and within the appeal site⁴³.
- 5.70 Having regard to the baseline the proposal would lead to a substantial and permanent loss of openness in both a spatial and visual context. I consider a substantial adverse impact on openness will, arise. I consider the loss of openness in a spatial sense to be substantial.
- 5.71 I consider that in addition to the substantial increase in permanent development as proposed the scheme will significantly increase the visual perception of enclosure and reduce further the openness of the site and this part of the Green Belt.
- 5.72 As to duration, the development would be permanent, a further aggravating factor.
- 5.73 A high degree of year round day to day activity would be introduced onto the site, which presently involves a low level of day to day activity. I have visited the site and area on a number of occasions and on all of these occasions it was only possible to discern very limited activity on site.
- 5.74 The proposals would introduce regular vehicle movements deep into the site, noise and activity from residential occupation of up to 115 dwellings, parking and manoeuvring of vehicles, light from houses, streetlamps, security lighting and vehicle headlights. These would be further aggravating factors reducing openness through generated activity substantially in excess of the current levels of activity.
- 5.75 In coming to these views I am mindful that this is an outline application with all matters except access reserved but I am also aware that the Appellant has produced limited illustrative material designed to show how 109 dwellings (and not 115 dwellings) will impact on the appeal site. Whilst I have referred to the illustrative material (and I note that this is the Appellant's best effort to show how the site can accommodate 109 dwellings) my conclusions on harm apply to the quantum of development as the harm is an inevitable consequence of such a quantum regardless of layout, design, landscaping, appearance etc... Indeed it is fair to observe that the impact of up to 115 dwellings will necessitate the need to accommodate six more dwellings than the proposed site layout plan and thus will exacerbate the issues I have highlighted.
- 5.76 In conclusion I consider that in spatial terms the proposal would substantially erode openness and lead to substantial harm in that regard. I also consider it will have a substantial impact on the visual appreciation of openness and again such matters lead to substantial harm. In coming to this conclusion I rely on both my analysis above as well as the perception of the site from the adjacent country lane.

⁴³ See Photographs at section 2 and on previous pages in section 5

- 5.77 In addition to the substantial increase in permanent development as proposed the scheme will lead to significant degrees of activity across the site and impacts from light and noise that further reduce openness.
- 5.78 In assessing this matter I consider the impact of the development as a whole and do not seek to credit as open encapsulated space such as private gardens or verges noting the findings of Inspector McDonald in an appeal at Leverhulme⁴⁴:

“The appellant sought to suggest that elements of the schemes, such as the play areas, sports pitches and open spaces would not be inappropriate development, and this somehow reduced the effect of the proposals. Yet, whilst these elements would not be inappropriate development on their own, there would still be a requirement to preserve the openness of the Green Belt and not conflict with the purposes of including land within it. Furthermore, the open spaces, play areas and pitches would be clearly related to housing development.

Moreover, parallel with the above, arguments that significant amounts of land would remain undeveloped, and that would contribute to spatial openness are illogical. Private gardens, play areas and amenity spaces are included in the appellant’s calculations as ‘undeveloped’ land, but these areas would be contained or surrounded by housing.”

- 5.79 I am mindful that in dismissing an appeal for the redevelopment of an industrial estate in the Green Belt in St Albans Inspector Aston concluded, in the context of a proposal that resulted in a 325% increase in floorspace and replaced a site containing hardsurfaced yards with a range of buildings and some two storey portacabins, that⁴⁵:

“By comparison with the existing site, the proposed development would be markedly taller and comprised of more solid permanent buildings and spread across the whole of the area of the appeal site. Taking everything together, the appeal proposal would give rise to an intensely developed site, with a considerably different and greater coverage, footprint, floorspace, height and overall extent of built form compared to the existing situation.

For these reasons, the proposal would result in substantial harm to the openness of the Green Belt. It would not therefore constitute an exception as specified within Paragraph 145 g of the Framework and would be inappropriate development. Given the construction of Policy 1 of the LP I return to conflict with that policy in the balancing exercise below.”

- 5.80 I conclude that the harm arising from the substantial loss of openness of the Green Belt is substantial, given the scale of development and degree of harm to openness that is proposed.

44 DL64 - 65 at **CD5.13**

45 DL36 and DL37 at **CD5.5**

Green Belt - Purposes

5.81 The purposes of the Green Belt are set out in NPPF at paragraph 134:

- 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.”*

5.82 The Council, together with Welwyn Hatfield District Council and Dacorum Borough Council, commissioned SKM Consultants to carry out an independent Green Belt Review to inform future plan-making. The Green Belt Review Purposes Assessment (November 2013) sets out findings and identifies that a number of the areas reviewed were considered to contribute least toward the purposes of including land in the Green Belt.



The Appeal Site between How Wood and Bricket Wood (Base © Google)

5.83 The appeal site falls within parcel 26 which was not one of the areas that performed poorly in the review. In reviewing parcel 26 the review noted:

“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.”

5.84 In respect of maintaining existing settlement patterns the study notes:

“The parcel provides secondary local gaps between 2nd 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.”



The Gap Between Existing (red) and Proposed (yellow) Buildings at the Appeal Site and How Wood (Base © Google)

5.85 The development of the site as a housing estate would intensify the built development on the site, provide a pocket of incongruous estate development in the countryside and bring suburban development much closer to How Wood than existing. A pocket of such intensely developed land located in the middle of the narrow gaps between How Wood and Bricket Wood does not safeguard the open countryside, erodes the separate identity of the two settlements and thus contributes toward their merging toward one another.

- 5.86 The gaps between the existing buildings on the front third of the site and the proposed extent of development on the site would reduce in the north east corner from 325 metres to just 170 metres on the south east corner the gap would reduce from 375 to 175 metres
- 5.87 With respect to encroachment and safeguarding the countryside the Assessment grades the contribution of the parcel as limited noting the existence of urban influences and the presence of the M25. With regard to protecting neighbouring towns from merging it is found to have a partial contribution in the context of the gap between St Albans and Watford which it acknowledges contains the settlement so Chiswell Green, Bricket Wood, How Wood, Park Street and Frogmore and then concludes:
- “Therefore any reduction in the gap would have a limited impact on the overall separation of 1st tier settlements in physical or visual terms but would have a greater impact on 2nd tier settlements and local levels of visual openness.”*
- 5.88 The parcel is also considered to contribute significantly to the maintenance of existing settlement patterns in particular with regard to the separation of St Albans with Abbots Langley/ Garston/ Watford as well as smaller settlements such as How Wood, Bricket Wood and Chiswell Green. In this context the proposal leads to encroachment into the countryside that erodes existing settlement patterns.
- 5.89 The proposed development will lead to the erosion of open space between St Albans and Watford such that it will reduce the open space in the gap between these settlements. However, the development itself will not lead to urban sprawl of any large built up areas (rather the sprawl that will ensue is to the villages of Bricket Wood and How Wood) and thus would not conflict with the first purpose at para. 138(a) NPPF.
- 5.90 Having regard to the Assessment, the wider area within which the appeal site is located (i.e. parcel 26 as identified in the Assessment) performs a valuable role in containing the Green Belt settlements of Chiswell Green, Bricket Wood and How Wood and preventing towns such as St Albans, Abbots Langley, Garston and Watford merging.
- 5.91 The proposals will erode the degree of separate identity of Chiswell Green, Bricket Wood and How Wood. However, this harm is predominately to the character of the area and the development of the site itself does not lead to the physical merging of neighbouring towns, albeit parcel 26 contributes positively to this purpose. Therefore, the proposal itself would only conflict with para. 138(b) NPPF to a limited extent.

- 5.92 The proposals will encroach into that countryside with a two to two and a half storey residential estate development of up to 115 dwellings and incidental development such as access roads etc. The degree of encroachment both in terms of the spread of development and the quantum of development is substantial and leads to substantial harm. The site characteristics comprise a rectangular site that protrudes from the loose informal ribbon of houses that comprise the extent of the development alongside the appeal site and is visible from Lye Lane exacerbates and does not ameliorate the harm to this purpose.



Building H

- 5.93 The appeal site comprises part of the countryside outside any settlement and is not contained by Bricket Wood or How Wood. It is countryside that separates the two settlements and is legible as such.
- 5.94 The Council will invite the Inspector to conclude that the appeal site makes a strong contribution toward preventing second tier settlement from merging and also performs a valuable role in safeguarding the countryside from encroachment. The proposals would materially reduce the effectiveness of this part of the Green Belt in contributing toward these two purposes. There is therefore conflict with paragraph 138(b) and (c) NPPF and the harm by way of merging and encroachment carries substantial weight against the proposed development.

Other Harm – Countryside, Landscape and Character Harm

- 5.95 The development will be noticeable and result in the introduction of a highly urban form of development comprising up to 115 two and two and a half storey dwellinghouses on an existing site in the countryside.
- 5.96 The appeal site is set within areas of countryside and sporadic low density residential development set in sylvan grounds. The site itself is occupied by a limited number of buildings and open recreational uses. From the site frontage the existing buildings are single storey and part screened by the existing roadside hedgerow



Site Frontage in location of the proposed acoustic fence looking north © Google

- 5.97 The proposals is to development the site for up to 115 dwellings. The illustrative layout plan (albeit not titled illustrative) shows a dense estate style housing layout. In order to address other matters the proposal also includes a solid three metre tall acoustic fence or barrier along the entire southern appeal site boundary as well as it wrapping around the southern part of the western boundary fronting Lye Lane.



Site Frontage in location of the proposed acoustic fence looking south © Google

- 5.98 I acknowledge that the site is located within an area that exhibits elements of sporadic development including large detached dwellinghouses set in extensive grounds and the development at the appeal site as well as a Gypsy and traveller caravan site. However the site is also set within an area of open countryside including woodland and open scrubland. Lye Lane and the experience of travelling along it is one that is distinctly rural and is not influenced by suburban development. No residential estate development exists along Lye Lane. The proposed development of the site for up to 115 dwellings would manifest itself as an incongruous pocket of dense development in the countryside outside any settlement and without any direct relationship to any settlement. The proposed site layout is contrary to the current pattern of development in this narrow stretch of countryside that separates How Wood and Bricket Wood.
- 5.99 The site is located with local views that exhibit elements of development located alongside the road frontage, but these do not overwhelm the current tranquillity that is felt within the site (notwithstanding its proximity to the M25 cutting) or along Lye Lane. The landscape and visual impacts that occur would be in the context of an existing site that is influenced by some built form that is appreciated locally, but the proposals will be visible and will affect the current baseline adversely as they would be visually intrusive as well as incongruous in this context.
- 5.100 The illustrative layout plan demonstrate that to accommodate this quantum of development (109 dwellings and not 115) then development will need to be located across the site frontage with the same proximity to the road frontage as the existing buildings. The significant difference is that the existing buildings are predominately single storey with the exception being Bricket Lodge which is a 1.5 storey chalet building. The three existing buildings fronting Lye Lane have ridge heights of 4.25, 4.67 and 6.5 metres.

- 5.101 This compares to the illustrative layout which shows 10 dwellings on the site frontage that on my conservative estimate based on my experience would have eaves heights that all exceed the ridge height of two of the existing buildings and ridge heights of circa 9 metres. The buildings also fill the width of the site frontage and the small gaps between the buildings are infilled by long terraces of dwellings that span the north south width of the site.



Building C and part of Building B viewed from Lye Lane

- 5.102 In addition the proposed site layout also shows two long terraces of dwellings filling the majority of the east to west length of the site
- 5.103 The density of development and the form of development filling the north/ south width of the appeal site and the east/ west length of the appeal site is evident from the Proposed Site Plan. I appreciate this is an illustrative plan (despite not being annotated thus) but it is an illustration of the likely disposition of this quantum (109) of dwellings. 115 dwellings would necessitate a further six dwellings being added to the layout.
- 5.104 This is in marked contrast to the existing predominately single storey scale of buildings that are concentrated at the western part of the site and do not infill the site frontage or the depth of the site.
- 5.105 In addition, the proposals include the creation of a wide access corridor onto the appeal site. This comprises a 6 metre wide carriageway and two 2 metre wide pavement/ footpaths one either side of the carriageway. The access corridor would be 10 metres wide, which is significantly wider than Lye Lane itself.

- 5.106 As well as the ten metre wide access corridor the radii at the site entrance would mean that the bellmouth onto Lye Lane would be a total of 30 metres wide.
- 5.107 In terms of receptors the LVIA identifies the neighbouring dwellings as receptors and the occupiers of such dwellings and gardens are normally held to be highly sensitive to change. Lye Lane itself is used as a recreational route by cyclists and horse riders. All such leisure users are normally held to have a high sensitivity to change.
- 5.108 The change on the appeal site will be evident and impact significantly on passers-by (leisure users and residents) as well as neighbouring residents.
- 5.109 The impacts are proposed to extend beyond the appeal site itself and its new engineered and widened access and include widening of Lye Lane to incorporate pavements alongside the carriageway. These works will include removal of existing trees and vegetation and cutting back other plants, trees and shrubs to accommodate these proposed changes. Such changes would have significant adverse impacts for the perception of Lye Lane as a narrow country lane. Such change would be to the detriment of the rural character of Lye Lane.
- 5.110 Amended plans were received on the run up to preparing this proof and includes cross sections and details that show the pavements have pinch points of just 1.2 metres and are located extremely close to the trunks of existing trees and involve significant engineering works including retaining walls of up to 1 metre in height.
- 5.111 The LCA identifies a strong strength of character of the Brickwood LCA which it also identifies as having good condition and thus its strategy and guideline for managing change is to safeguard and manage the landscape including supporting the Watling Chase Community Forest; promoting the creation of additional woodlands, particularly with a view to visually integrating the intrusive motorways, urban fringe development; improving public access arrangements to heaths and woodlands; using ancient hedge and field boundaries to identify the most appropriate location for wood restoration and expansion; promoting hedgerow restoration through locally appropriate measures including coppicing, laying and replanting/gapping-up; ensure that ancient lanes and their associated hedgerows, ditches and hedgebanks are retained, protected, enhanced and integrated into new development with due regard to their historic, ecological and landscape value and promoting a clear strategy for the visual and noise mitigation of all motorways to positively integrate these corridors into the local landscape character.
- 5.112 The proposed illustrative layout shows the Appellant's best estimate at how 109 dwellings can be accommodated on the appeal site⁴⁶. As I have noted it shows a dense estate type layout of dwellings arranged in long terraces with little space around the buildings and site and a layout dominated by buildings, hardstanding and parked cars. We will contrast this with the prevailing character of the area.

⁴⁶ It is noted that the illustrative layout relied on by the Appellant does not attempt to show how up to 115 dwellings can be accommodated at site.

- 5.113 The proposed development would harm and not safeguard or manage the local landscape character in accordance with the guidelines for landscape change in the Bricket Wood Landscape Character Area.
- 5.114 I therefore consider that the proposal will not recognise the intrinsic character and beauty of the countryside.
- 5.115 Recognition of the intrinsic character and beauty of the countryside necessarily imparts a degree of protection to that countryside (after Cawrey) and the development of an estate of 115 dwellings would fail to recognise the character and beauty of the appeal site and wider countryside of which it forms part.
- 5.116 In that context the existence of some development at the appeal site is material in terms of an overall assessment but in the context that intrinsically the site has both a countryside character and is intrinsically beautiful as part of the countryside.
- 5.117 Whilst the site has been developed (to some extent as the result of development being undertaken without the benefit of planning permission) it is predominantly open in terms of the spread of built development and it is occupied where buildings exist on the whole by single storey development. Thus it retains countryside characteristics.
- 5.118 If developed in accordance with the application the subject of this appeal the Proposed Site layout Plan demonstrates that it will no longer exhibit any countryside characteristics, rather it will comprise a suburban housing estate. That suburban housing estate is not attached to any settlement and therefore will read as an island of suburban housing in the countryside.
- 5.119 This failure 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 landscape would also conflict with Policies 2 and 69 of the St Albans District Local Plan Review. Furthermore, it would not support the objectives of the Watling Chase Community Forest consistent with Policies 143A.
- 5.120 The proposal would not recognise the intrinsic character and beauty of the countryside nor would it make a positive contribution to local character and the identified harm would lead to conflict with 135 b), 135 c), 139 as well as 180(b) of the Framework.
- 5.121 Overall, in terms of the harm to the character and appearance occasioned by the development of the site for 115 dwellings the degree of harm would be permanent, substantial and irreversible and attracts significant weight in the planning balance.

Other Harm - Amenity

- 5.122 A Noise Assessment submitted in support of the application identifies that without mitigation, there is a medium level of noise risk across the site at night, and in the southern part of the site during the day, due to the site's proximity to the M25.
- 5.123 To mitigate the impacts of noise on the appeal site it is proposed to erect a three metre tall acoustic barrier running along the entire southern boundary and then wrapping around approximately 25 – 30 metres of the Lye Lane frontage to mitigate the noise impacts of the M25.
- 5.124 I have addressed issues of openness and visual impact in previous sections and address here the effectiveness of the barrier as mitigation.
- 5.125 The barrier is necessary to mitigate noise from the M25 to the proposed dwellings at site. However the illustrative layout plan shows three detached houses in the south west corner of the appeal site. Even with the proposed mitigation barrier (acoustic screen), night time noise levels in this area would be 50-60 dB(A). Appendix C of the Appellant's Assessment shows this area is marked as an 'Acoustic Barrier Zone' and not an area for housing.
- 5.126 Therefore, it has not been demonstrated that even with the presence of a 3m high acoustic screen, that an acceptable standard of environment can be achieved for all future occupiers.
- 5.127 The Appellant's Assessment identifies, and the Council accept, that further localised mitigation is likely to be required. However the nature of this mitigation is not specified and therefore there remains further uncertainty about the capacity of the site to accommodate the development proposed.
- 5.128 As I have established the proposed illustrative layout shows the Appellant's best estimate at how 109 dwellings can be accommodated on the appeal site. The fact that the layout cannot accommodate 109 units without leading to potential adverse impacts on amenity for future occupiers raises significant concerns about the capacity of the site to accommodate up to 115 dwellings.
- 5.129 The harm by way of adverse impacts on amenity due to the night time noise environment of the site will add to the harm by way of the impact of the 3 metre tall acoustic barrier at site on character and openness. Such matter attract further moderate adverse weight against the proposed development.
- 5.130 The proposed illustrative layout shows the Appellant's best estimate at how 109 dwellings can be accommodated on the appeal site It shows a dense estate type layout of dwellings arranged in long terraces with little space around the buildings or site.

- 5.131 I note the public open space provision proposed for the site appears to be located in left-over spaces, lacking in connectivity and clarity of function and character to be considered genuinely attractive and usable public spaces. The main area of open space is bounded on three sides by road, and on the fourth side is in the shadows of a 3m high acoustic screen and woodland beyond.
- 5.132 Other areas that the Appellant counts as open space are narrow strips peripheral to the site that also require a road to be crossed in order to be accessed.
- 5.133 Whilst I recognise this is an outline application with matters of layout reserved my concerns go to the ability of the site to accommodate this quantum of development in principle.
- 5.134 Failure to show how adequate open space to provide for the amenity of occupiers of the appeal site can be provided adds further moderate adverse weight to the basket of harm. Therefore, overall I consider the weight to the amenity shortcomings of this scheme should attract moderate to significant weight.

Other Harm – Flood Risk

- 5.135 I rely on the evidence of Katherine Waters in this matter.
- 5.136 The application the subject of this appeal was accompanied by a Flood Risk Assessment (FRA), and Sustainable Drainage Assessment report including the preliminary drainage layout and calculations.
- 5.137 The Lead Local Flood Authority (LLFA) raised an objection to the proposal due to the lack of suitable information being provided by the applicant. Further information was considered necessary in order to demonstrate that the proposed development would not increase flood risk onsite and elsewhere, and to demonstrate that appropriate surface water drainage techniques have been applied. I note that the Drainage Strategy submitted by the Appellant appears to be predicated on the Proposed Site layout Plan which is only illustrative and only accommodates 109 dwellings.
- 5.138 Whilst the Appellant initially indicated that they would submit such information , they failed to do so instead choosing to submit this appeal.
- 5.139 The site cannot accommodate infiltration for the reasons Ms Waters sets out and the Drainage Strategy acknowledges.
- 5.140 Ms Waters notes that the Appellant relies on discharge to a watercourse at a point 260 metres north west of the appeal site and that the discharge point is uphill from the appeal site. In order to access the discharge point the Appellant relies on crossing third party land part of which is dense woodland. I also understand that the watercourse serves a different catchment area to the appeal site.
- 5.141 Ms Waters demonstrates that the information sought is both proportionate and reasonable and necessary at this stage when the principle of developing the site for such a quantum of development is being considered
- 5.142 I also note that the Appellant’s proposals to culvert the ditch alongside Lye Lane to provide a footpath will have surface water impacts. Ms Waters notes:

“No assessment has been carried out to demonstrate the proposal will not increase flood risk to the surrounding area.

No assessment has been submitted that demonstrates how the increase in impermeable area for this proposal is to be attenuated to ensure flows are not increased from the area nor have any details been submitted on how the existing highway will be able to drain efficiently within this area.

As culverting of watercourses is only allowed for access and then it is only the minimum amount that would be consented, it is likely that Land Drainage Consent would be refused for this proposal by the Lead Local Flood Authority.”

5.143 Ms Waters concludes inter alia:

“The site-specific surface water drainage strategy and flood risk assessment are not sufficient to demonstrate the proposed development would not increase flood risk to the site or to others.

There is currently no acceptable or technically feasible surface water discharge location identified for the site within the current information submitted.

The proposed surface water drainage strategy currently underestimates the volume of storage required on site and it is unclear if the proposed discharge rate will increase flood risk to others.

The additional proposal for a footpath south of the M25 along Lye Lane fails to assess the impact on Flood Risk to the surrounding area and Land Drainage Consent will likely be refused as the proposal is contrary to the Land Drainage Act 1991.

It is therefore my opinion that the submitted information fails to meet the requirements of NPPF paragraph 165, 173 and 175, it does not meet the requirements of the NPPF practice guide and is contrary to local planning policy L29.”

- 5.144 Insufficient information has been provided in accordance with NPPF (December 2023), the NPPF Flood Risk and Coastal Change PPG (update August 2022) and the Hertfordshire County Council policies to enable a technical assessment of the proposal to be undertaken. As such, it is not possible to establish whether a sustainable surface water drainage strategy can be delivered on the site or whether the proposed development will increase flood risk either onsite or elsewhere.
- 5.145 This is a matter that weighs against the grant of planning permission and should be attributed moderate adverse weight.

Other Harm – Ecology On Site

- 5.146 The application site includes areas of grassland with boundary hedgerows and some perimeter trees. The site is adjacent to the ancient woodland of Blackgreen Wood, which is also designated as a Local Wildlife Site (LWS). Also nearby are two Sites of Special Scientific Interest (SSSIs). These features are protected either in policy or law, and the potential risks to them from the proposed development must be taken into account.
- 5.147 The application was accompanied by an Ecological Appraisal, Emergence and Activity Bat Survey and Full Common Reptile Survey. Further information in response to an objection from Natural England was also submitted on 5 February 2024.
- 5.148 Initial concerns were raised due to omissions from the reports, but these omissions were not sufficient to sustain a reason for refusal. Nevertheless, there remain concerns that the 15m buffer for built development around the ancient woodland of the local wildlife site must be secured at reserved matters stage, as at present it is not clear that the indicative layout does (or could) deliver this and the quantum of development proposed (up to 115 dwellings).
- 5.149 This is a matter that goes to the principle of the site being able to accommodate the development proposed and insofar as it is not demonstrated that the site can satisfactorily accommodate this quantum of development it is a matter that weighs against the grant of planning permission.

Other Harm – Ecology Off Site

- 5.150 The Appellant is proposing off site works including a footpath that aligns with the east side of Lye Lane travelling south from the appeal site before crossing the road to the west side of the carriageway. Additional plans were submitted just before proofs were to be finalised.
- 5.151 The route south includes land that comprises part of an ancient woodland. I address arboricultural impacts later but the woodland and area provides a rich tapestry of habitats.
- 5.152 The proposals include culverting existing open ditches, erecting an elevated footpath alongside the woodland, building very close to existing trees, erecting retaining structures and lighting the route of the footpath.
- 5.153 No ecological impact assessment is provided to address the impacts of this element of the proposal.
- 5.154 Blackgreen Wood is a Local Wildlife Site and ancient woodland and NPPF 186(c) notes in respect of ancient woodland that development:

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

- 5.155 I attach at **Appendix 5** a note from Mr Bernard Fleming of Hertfordshire Ecology and he observes:

“I understand the proposed footpath has not been subject to any ecological or biodiversity net gain assessment or even any survey. Further, I am not aware of any mitigation or consideration of alternatives. Accordingly, there is no evidence to show that the mitigation hierarchy has been considered or harm justified.”

- 5.156 Mr Flemings position is set out in his note and I know that he was additionally concerned about the impact of proposed lighting along Lye Lane (not shown on the plans) as this would have implications not only in the neighbouring woodland but also along Lye Lane which I understand to be a bat route wherein lighting could have implications for these routes.
- 5.157 I adopt his findings and consider that these off site harms that arise to ecological interest have simply not been assessed and applying a precautionary approach such harm should be attributed significant weight.

Other Harm - Recreational Pressure on SSSIs

- 5.158 Natural England maintain a formal objection in respect of the potential impact of the development on two SSSIs. The first Bricket Wood Common lies less than 1km to the south of the site, and the second Moor Mill Quarry West lies less than 500m to the east. The increase in local population resulting from the proposed housing development as part of this outline application has the potential for additional recreational pressure to these sites.
- 5.159 The proposed development has the potential to impact the SSSI's via recreational pressure. The documents submitted with the application the subject of this appeal do not consider impacts arising from the increase in the local population, and potential recreational pressure on these SSSI's.
- 5.160 Post determination of the application the subject of this appeal information was submitted direct to Natural England by the Appellant to attempt to address their objections. The Council has contacted Natural England for a formal response, to date none has been forthcoming.
- 5.161 Until NE withdraw their objection the decision maker cannot be sure that the proposed development would not give rise to harmful impacts on the two SSSIs through recreational pressure. In those circumstances the proposal would be contrary to para 186 (b) of the NPPF and Policy 106 of the Local Plan.

- 5.162 However having seen the correspondence I do not invite the Inspector to withhold planning permission on this ground and consider this a neutral matter. I will update the Inspector on any response received from Natural England.

Biodiversity Net Gains

- 5.163 The supporting documents offer 10% Biodiversity Net Gain (BNG) as a benefit of the development. However, it is noted that the BNG is not achieved on site, rather off site. The NPPF at paragraph 180(d) requires a net gain in biodiversity and the mandatory 10% BNG requirement for major development has now come into effect under the Environment Act 2021. As such, if the application was submitted now, the provision of 10% BNG would be an automatic condition on the grant of planning permission. However, due to the transitional arrangements BNG is not mandatory for this development. Therefore, limited positive weight is given to the provision of 10% BNG. If provided on site this should be secured by condition in the event of planning permission being granted. However I understand off site compensation is proposed and a suitable mechanism to identify and secure the off-site provision if it is to be taken into account

Other Harm – Highways

- 5.164 I adopt the evidence of Mr Carr in respect of this matter.
- 5.165 The drawings submitted with the application the subject of this appeal show that the available space at the site access junction and the Lye Lane / West Riding junction is inadequate for a refuse collection vehicle and a large car to safely pass each other during entry or exit. Furthermore, the drawings do not address the potential scenario of two larger vehicles (such as two service delivery vehicles or a service delivery vehicle alongside a refuse collection vehicle) needing to manoeuvre past each other safely.
- 5.166 I also understand there to be issues associated with the desire line for vehicles to travel north along Lye Lane where the lane is narrow and winding and two vehicles are unable to pass one another.
- 5.167 On this basis, the proposal would be contrary to the provisions of the NPPF, and to Policy 34 of the Local Plan, which requires development to be acceptable in terms of road safety. The Appellant has failed to demonstrate that safe highway access to the site can be achieved, contrary to Policy 34 of the St Albans District Local Plan Review 1994.
- 5.168 Such matters attract significant adverse weight in the planning balance.

Other Harm - Sustainable Transport

- 5.169 I draw on the evidence of Mr Carr in respect of this matter.
- 5.170 The appeal site is located beyond the eastern extent of Bricket Wood and the western extent of How Wood. The villages are small settlements with a limited range of facilities.
- 5.171 The site does not offer safe opportunities for pedestrians and other non-car users to reach Bricket Wood. This was raised by the Highway Authority both at pre- application stage and in all consultation responses. Lye Lane comprises a narrow unlit country lane that whilst used as a leisure route for ramblers and cyclists is not suitable as an access to a residential housing estate involving trips by school children and others at all times of day and night.
- 5.172 The development includes proposals for off-site highway works involving pedestrian footways alongside Lye Lane to the south of the site, to give a pedestrian link between the application site and West Riding to the south. The Council has already commented on this in respect of character concerns and we also have ecological and arboricultural concerns with the late evidence submitted in support of this element of the scheme. Such a pedestrian link would be an essential component of any residential development to enable access to the closest settlement and Bricket Wood Railway Station (on the Abbey Flyer line).

- 5.173 The Appellant failed to undertake a walking and cycling audit to detail routes to local facilities. The Council will detail the limited range of local facilities in Bricket Wood and How Wood and the routes to access them.
- 5.174 The Council will note that alternative non-car travel options would also be needed for people uncomfortable with using Lye Lane due to security concerns such measures would need to be incorporated and agreed as part of a robust Full Travel Plan.
- 5.175 The Council consider that (in addition to environmental challenges) implementation of the proposed off site footway may be a significant engineering challenge due to the presence of ditches, gullies and trees (including designated Ancient Woodland and Common Land) located along Lye Lane where the footway is proposed. This may impinge on its feasibility and deliverability and any compromises would reduce the effectiveness of the footway and would not then meet the necessary requirements for assisting in providing safe and convenient travel to and from the site for all users, at all times of day and year and in all conditions. I am concerned to note that in places the back edge of the footpath is within centimetres of tree trunks and is elevated up to 1 metre above ground levels.
- 5.176 The NPPF (December 2023) sets out that opportunities to promote walking, cycling and public transport use are to be identified and pursued. Applications for development should 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.
- 5.177 The proposed measures for pedestrian access have significant shortfalls and implications as identified by Mr Carr and the Arboriculturalist (**Appendix 6**) and Ecologist (**Appendix 5**).
- 5.178 I understand that no cycling measures are proposed.
- 5.179 Given the site's proximity to major roads, as well as the current lack of safe, convenient pedestrian and cycle provision, the site does not comprise a sustainable location for new residential development. Such matters go the heart of being able to develop this site in principle. I note Mr Carr's conclusion:
- "[...] the evidence I brought forward has identified the development proposals fail the tests set out in the NPPF (CD1.1) and LTP4 (CD17.1), and should the development be granted upon appeal the lack of a safe walking and cycling access from the development site and high quality public transport network available to all users shall lead to a high reliance in car based trips."*
- 5.180 I have set out at section 2 the distance to day to day facilities.

- 5.181 This element is critical to the sustainable access of this site and in its absence the site would not offer adequate transport sustainability. Furthermore, the site is in an area with modest levels of public transport accessibility. It has not been demonstrated that adequate opportunities exist to promote walking, cycling and public transport use. This is contrary to the relevant provisions of Local and National policy and significant negative weight is given to this matter.

Other Harm - Arboricultural

- 5.182 The plans of the proposed footpath submitted just ahead of proof exchange have been considered in principle by the Council. I have already outlined the issues arising in respect of the character of Lye Lane, ecological impacts and the shortcomings of the footpath itself in terms of width etc..
- 5.183 The proposals were accompanied by a letter (24 April 2024) from a Landscape Architect and Arboriculturist attaching an Arboricultural Method Statement. I note the letter makes plain that a full survey of trees was not undertaken to support the AMS. I am surprised given the nature of this development alongside an ancient woodland and in such close proximity to the trunks of existing trees in the ancient woodland that a full survey of the trees did not accompany the AMS submitted by the Appellant.
- 5.184 Having viewed the plans and in particular the cross section plans that showed retaining walls, culverting and development very close to trees I asked my client to consult an Arboriculturalist.
- 5.185 I attach at **Appendix 6** a copy of the response from the Council's Tree Officer.
- 5.186 I note the Council's Tree Officer raises significant concerns about the impact of the proposed footpath and culvert immediately on the health and retention of trees and in the longer terms of the well-being and retention of trees.
- 5.187 Given my concerns about the impact of this footpath on the character and appearance of the area I consider the impact on and potential impact on the health and retention of trees in the ancient woodland are extremely concerning. I therefore attribute significant weight to this matter as a harm arising from the proposals.

Harm Conclusions

5.188 The impacts of the proposed development are substantial and negative and I set out below the weight I have attributed to the harm I have identified.

Green Belt - Inappropriateness	Substantial
Green Belt - Openness	Substantial
Green Belt - Purposes	Substantial
Other – Character	Significant
Other - Amenity	Moderate to Significant
Other – Highways	Significant
Other – Location	Significant
Other – Drainage	Moderate
Other – Arboricultural Off Site	Significant
Other – Ecological On and Off Site	Moderate to Significant
Other – Recreational Pressure on SSIs	Neutral

Other issues

5.189 The failure to provide a satisfactory mechanism to deliver necessary infrastructure to service the proposed development, secure Biodiversity Net Gain and also secure the proposed affordable housing, was an issue at the application stage.

5.190 However, it is anticipated that a section 106 obligation can address the provision of necessary infrastructure, the securing of affordable housing, and the provision of off-site biodiversity enhancements.

5.191 The Heads of Terms would include:

- Affordable Housing
- Biodiversity Net Gain
- Provision of Play Space and its management
- Healthcare General Medical contributions
- Healthcare Ambulance Contributions
- Education (Primary, Secondary and tertiary) contributions
- Education (SEND) contributions
- Library Services Contribution
- Youth Services contribution
- Highway Improvement and Sustainable Transport measures
- Monitoring fees
- Travel Plan monitoring fee

5.192 The Council will demonstrate that the contributions sought meet the Regulation 122(2) tests as well as those set out in the NPPF in a CIL Compliance Statement.

- 5.193 I understand that the appellant will present a suitable obligation at the Inquiry and in those circumstances I will not be inviting the Inspector to dismiss the appeal for the reason set out in putative reason for refusal 7.
- 5.194 I have carried out my planning balance on this assumption. However a failure to provide a satisfactory section 106 obligation would provide an additional harm that weighs against the grant of planning permission as well as diluting any benefits the Appellant relies upon in support of the scheme.

6 The Appellant's "Other Considerations" under NPPF para. 148

6.1 In this section I assess the other considerations relied on by the Appellant and consider whether they are capable of clearly outweighing the harm I have identified. I also comment on whether certain matters, relied on by the Appellant, comprise benefits of this scheme.

6.2 The Appellant relies on a number of factors⁴⁷ which can be summarised as:

- The provision of housing in an area of housing need (including affordable housing and custom self-build if proposed)
- The use of PDL
- The provision of footpaths on Lye Lane
- Delivering 10% BNG

6.3 I do not set out the dispute between the parties on the impact of the proposal on the Green Belt in terms of openness and purposes. I do not consider such arguments comprise "other considerations" that weigh in favour of the grant of permission. Instead, if supported (and I do not consider they should be), they would go to the degree of weight attributed to harm.

6.4 It is well established that it is for the Appellant to demonstrate that very special circumstances exist to warrant overriding normal Green Belt presumptions. Such circumstances will not exist unless the harm by reason of inappropriateness and any other harm⁴⁸ is clearly outweighed by other considerations. In addition, substantial weight must be given to Green Belt harm.

6.5 In these circumstances, I have already established that the development is inappropriate and will lead to an erosion of openness as well as conflicting with the purposes of the Green Belt. Additional harm by way of harm to character and the countryside, poor living conditions for future occupiers, highway harm, unsustainable location for new housing, potential flooding or increased risk of flooding, adverse impacts on trees on site and on the neighbouring ancient woodland from the housing and proposed footpath and potential harm to habitats add to the weight of factors against the proposed development. Therefore, the circumstances relied on by the Appellant will need to be of sufficient calibre to **clearly** outweigh these components of harm that cumulatively amount to greater harm than just that of inappropriateness.

6.6 In this regard, I am mindful of the stringent test articulated by Sullivan, J (as he then was) in **Draper**⁴⁹, which concerned national Green Belt policy in Planning Policy Guidance Note 2 ("PPG2"). Although PPG2 was replaced by the Framework, for present purposes, current national Green Belt planning policy has not changed. In paragraph 58 of his judgment, Sullivan, J states:

⁴⁷ See Statement of Case in particular at paragraph 49

⁴⁸ **SoS CLG, Reigate and Banstead BC, Tandridge DC and Redhill Aerodrome Ltd** [2014] EWCA Civ 1386 at **CD6.15**

⁴⁹ **R (Chelmsford) v First Secretary of State and Draper** [2003] EWHC 2978 at **CD6.16**

"The combined effect of paragraphs 3.1 and 3.2 [of PPG2] is that, in order to justify inappropriate development in the Green Belt, (a) there must be circumstances which can reasonably be described not merely as special but as very special, and (b) the harm to the Green Belt by reason of inappropriateness and any other harm must be clearly outweighed by other considerations. Those other considerations must be capable of being reasonably described as very special circumstances. If they are capable of being so described, whether they are very special in the context of the particular case will be a matter for the decision maker's judgment."

- 6.7 In **Temple**⁵⁰, Sullivan, J (as he then was) clarified the test for demonstrating very special circumstances by confirming that it was not necessary for each factor, of itself, to be 'very special' and that factors which individually were otherwise quite ordinary could cumulatively become very special circumstances. This supports my view that very special circumstances are the outcome of the balancing exercise (and not the inputs to such an exercise) and only exist at the point when the other considerations clearly outweigh the harm by reason of inappropriateness and any other harm.
- 6.8 Further guidance was provided by the Court of Appeal⁵¹, in which Carnwath, LJ (as he then was) stated inter alia that:

"21. [...] The word "special" in PPG2 connotes not a quantitative test, but a qualitative judgment as to the weight to be given to the particular factor for planning purposes. [...]"

and

"26 [...] I see no reason, in terms of policy or common sense, why the factors which make a case "very special" should not be the same as, or at least overlap with, those which justify holding that Green Belt considerations are "clearly outweighed". To my mind, the wording of para 3.2 ("will not exist unless") reinforces that view. I prefer the formulation used by Sullivan J himself in a judgment the previous year on somewhat similar facts, Doncaster Metropolitan Borough Council v Secretary of State for the Environment, Transport and the Regions [2002] JPL 1509, para 70, where (also in the context of para 3.2 of PPG2) he said:

"Given that inappropriate development is by definition harmful, the proper approach was whether the harm by reason of inappropriateness and the further harm, albeit limited, caused to the openness and purpose of the Green Belt was clearly outweighed by the benefit to the appellant's family and particularly to the children so as to amount to very special circumstances justifying an exception to Green Belt policy." (Original emphasis.)"

⁵⁰ **R (Basildon District Council) v First Secretary of State and Temple** [2004] EWHC 2759 (Admin) at **CD 6.13**

⁵¹ **Wychavon District Council v Secretary of State and Butler** [2008] EWCA Civ 692 at **CD6.17**

The provision of housing in an area of need

- 6.9 It is common ground that there is a substantial and serious housing land supply shortfall in St Albans. The proposal would provide housing in an area of current need and thus is a benefit of the scheme. Overall it is common ground that the provision of housing carries very substantial weight.
- 6.10 The emerging plan (which I acknowledge is at an early stage of preparation) does not allocate the appeal site to meet the housing requirement of the plan over the plan period. The Plan will have to meet its housing requirement to be considered sound and the appeal site will not be allocated as part of the current plan process. As I detail in section 5 the plan defines the settlement hierarchy and Bricket Wood and How Wood are medium sized village in the settlement hierarchy that comprise part of the fifth of seven tiers of settlements.
- 6.11 Emerging Policy SP1 sets the spatial strategy for St Albans and confirms that the City of St Albans will continue to be the pre-eminent focus in the District for housing, and that the Settlement Hierarchy (Table 1.3) provides the basis for allocation and location of growth, locating most growth generally within and adjacent to the larger and most sustainable urban centres that are Tier 1 -3 (noting that Bricket Wood and How Wood are lies in Tier 5).
- 6.12 Emerging Policy SP2 requires new development to be located in the most sustainable locations in order to minimise the need to travel through encouragement of walking, cycling and public transport. Policy SP3 allocates 15,096 homes in the district up to 2041. It requires growth to be supported by suitable infrastructure including schools, transport including walking cycling and public transport and sports and leisure facilities.
- 6.13 It is my view that the Appellant's reliance on housing need and supply are important considerations that weigh in favour. It is common ground that the provision of up to 27 market and 18 affordable houses carry very substantial weight in the planning balance. I am mindful of the judgement in *Hunston*⁵² where it was stated:
- "[...] the weight to be given to such a housing shortfall (and whether it constituted 'very special circumstances' for the purposes of the NPPF) is a matter of planning judgment. The weight to be attached to the shortfall may, as a matter of planning judgment, be reduced where a shortfall is inevitable due to a district being subject to policies which restrict development."*
- 6.14 I note that in concluding that permission should be refused at Tollgate Road Inspector Hayden attributed very substantial weight to the provision of 150 dwellings of which 90 were market dwellings.

52 **St Albans v Hunston Properties Ltd and Anor** EWCA Civ. 1610 at **CD6.18**

- 6.15 Inspector Hayden had adopted the weight to housing agreed between the parties in light of the Bullens Green appeal decision for 100 dwellings.
- 6.16 The proposal is for up to 115 dwellings (net 84 new dwellings). My understanding is that the 31 existing dwellings at site⁵³ are all market dwellings⁵⁴. Therefore given the proposal is for 35% affordable housing that would leave 74 market houses (net 43). For the purposes of my assessment I am assuming the Appellant is offering to provide Custom Self Build plots as part of their market housing offer and these are included in my weighting.
- 6.17 It is common ground that the provision of housing carries very substantial weight in the planning balance.

Affordable Housing

- 6.18 On the back of an under-delivery of housing generally, significant shortfalls in affordable housing provision have occurred. The appeal scheme proposes 35% of the proposed housing to be affordable. That equates to up to 41 affordable dwellings. If the Appellant is correct and the existing housing is 33 units at site and it is affordable then that equates to net 8 affordable housing units.
- 6.19 Subject to the affordable provision being secured by way of an obligation (which is necessary) it is common ground that it is a benefit of the scheme that should carry very substantial weight.
- 6.20 I note that at Bullens Green the Appellant offered 45% of the total housing as affordable housing (thus exceeding the emerging Policy requirement) and on that basis the Inspector agreed that very substantial weight should be given to such matters⁵⁵.
- 6.21 It is logical that whilst it is agreed that very substantial weight applies to affordable housing given the lower offer than Bullens Green the weight in this case must be lower on the spectrum of very substantial than at Bullens Green especially in the circumstances that the existing dwellings at site are affordable housing units.
- 6.22 I note that in concluding that permission should be refused at Tollgate Road Inspector Hayden attributed very substantial weight to the provision of 40% affordable housing.
- 6.23 I note that Inspector Masters concluded very substantial weight should be applied to the provision of 45% affordable units at Bullens Green and Inspector Hayden applied the same weight in terms of the 60 affordable units at Tollgate Road which amounted to 40%.

⁵³ There are 31 dwellings on site that are immune from enforcement and registered for Council Tax

⁵⁴ Contrary to the assertion on the planning application form that they are affordable housing units

⁵⁵ See DL 53 – 54 at **CD5.1**

The Use of Previously Developed Land

- 6.24 The Appellant's case on the use of pdl is related in the first instance to their content that the development proposed is not inappropriate. I have demonstrated that it is inappropriate.
- 6.25 The case in respect of other considerations in the context of the development being inappropriate is far from clear and is encapsulated in one sentence which sets out the other consideration:
- "The use of a brownfield site, particularly as the Council has chosen to exclude PDL sites in the Green Belt from its brownfield register"*
- 6.26 I acknowledge that normally the use of pdl is preferable to greenfield sites. However that does not equate (as acknowledged even in the glossary definition) that all parts of all pdl sites should be developed.
- 6.27 I acknowledge that using pdl means less greenfield sites are developed and in principle that can have advantages. However large proportions of the appeal site are free of lawful built development and I have demonstrated the harm arising from the proposed development.
- 6.28 Notwithstanding my concerns I do acknowledge that the NPPF⁵⁶ encourages making as much use as possible of pdl and as such I attach moderate weight to this as a benefit of the proposal.

Inevitable Harm

- 6.29 Should it be suggested that the harm that arises is inevitable and as such the weight to such harm should be reduced or its inevitability comprise a benefit of the scheme I reject such an approach as I do not consider the harm I have identified as inevitable.
- 6.30 In any event, as the High Court noted in ***Goodman Logistics***⁵⁷, it would be illogical to suggest the "inevitable harm" caused by meeting the need for inappropriate development in the Green Belt *"somehow enhanced the weight to be given to the [applicant's] case on need and lack of any alternative site, or could otherwise affect the striking of the balance between benefit and disbenefit."* (per Holgate, J at paragraph 37).

⁵⁶ Para. 123

⁵⁷ **Goodman Logistics Dev (UK Ltd and SoSCLG and Slough BC** [2017] EWHC 947 (Admin) at CD6.19

Footpath on Lye Lane

- 6.31 As matters stand and some 20 months after the application the subject of this appeal was submitted no satisfactory scheme to provide a footpath link has been submitted for consideration.
- 6.32 Mr Carr has outlined the technical highway objections to the scheme proposed and Ms waters has clearly articulated the unlikelihood of regulatory approval for culverting the ditches in addition to the harm that would arise to the health and retention of trees in an ancient woodland and local habitats.
- 6.33 Put simply there is no tenable footpath scheme and thus no benefits which can be realised. I therefore attribute no weight to a footpath as a benefit of this scheme.
- 6.34 Should, the Inspector disagree and consider some benefits arises it is manifestly a benefit that arises mostly for future occupiers of the appeal site. A limited number of other dwellings south of the appeal site would need to utilise the footpath. Therefore even if it is a benefit (which we say it is not) then it can only carry limited weight.

Biodiversity Net Gains

- 6.35 Hedgerow/ trees align the boundaries of the appeal site.
- 6.36 The application proposes the provision of 10% biodiversity net gain (BNG), which is welcomed. My understanding is that it will not be possible to provide the 10% net again on site because the quantum of development proposed does not allow adequate opportunities for gains. As such off site provision is necessary.
- 6.37 The development plan for St Albans does not currently require provision of BNG but the NPPF does require BNG from all development schemes. I acknowledge that the Environment Act 2021 mandates at least 10% BNG for sites. The only reason that does not apply to this scheme is that the application the subject of this appeal was submitted prior to February 2024. Had the application been submitted after February 2024 at least 10% BNG would be required to meet the requirements of the Act. I do consider 10% BNG, to be a benefit of the scheme.
- 6.38 As such, it is a quirk of timing that the scheme delivers more than is required, I attribute moderate weight to such matters consistent with the findings of Inspector Hayden in the Tollgate Road appeal decision⁵⁸.

58 DL104 at CD5.7

Economic Benefits

- 6.39 I note the Appellant does not rely on economic benefits of the scheme and I understand why given the remote countryside location of the appeal site. However I do attribute some positive weight to such matters.
- 6.40 The economic benefits of providing more housing at this location away from the main settlements of St Albans District are limited given the limited range of facilities within reach of the site.
- 6.41 Residents will need to travel to neighbouring towns or cities (St Albans and Watford) to access supermarket shopping, employment, services, comparison shopping and other main economic activity and can access some limited local shopping in Bricket Wood and How Wood as well as local primary schools. Therefore, development consistent with the emerging Local Plan allocations and spatial strategy as well as the adopted spatial strategy would also achieve such economic benefits and be located closer to such facilities.
- 6.42 However fundamentally household spend is not necessarily all new spend as those households already exist (at least 31 exist on the appeal site), some within St Albans administrative area, and currently spend money in the local economy.
- 6.43 I acknowledge the benefits that arise during the build phase of the development, but these are generic benefits that would arise anywhere in St Albans District and the draft allocation sites provide the most sustainable way to crystallise such economic benefits close to the areas of greatest economic activity, accessibility and access to facilities.
- 6.44 In assessing whether the proposals comprise sustainable development generic economic benefits of the proposed housing scheme are not unique to this scheme and the Council Tax spending and infrastructure spending will only contribute toward the needs emanating from this development and are not a benefit of the scheme. The construction employment and spend associated with up to 115 houses gross is temporary and modest in scale. Any economic benefits are tempered by the location of the proposed housing being contrary to the adopted and emerging spatial strategy and the lack of local facilities to benefit from additional local spend as well as the fact that not all that household spend is new spending in the economy. Overall the position on economic impact is positive but carries limited positive weight.
- 6.45 I acknowledge that the proposed development would generate economic benefits, however, the scale of any economic benefit would be limited.
- 6.46 For those reason I attribute limited weight to the economic benefits of providing housing in this Green Belt location.

7 Planning Balance and Summary

- 7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2 By reason of the local plan policy conflict identified above, the proposed development does not accord with the development plan taken as a whole given it introduces inappropriate development into the Green Belt that erodes openness and conflicts with the purposes of the Green Belt, fails to have proper regard to the character and appearance of the area having regard to its countryside context, locates housing in an unsustainable location, fails to provide safe access and fails to demonstrate a satisfactory drainage strategy as well as harming an ancient woodland and erodes habitat.
- 7.3 The Framework is a material consideration in the determination of these appeals. Under paragraph 11(d), the policies most important for the determination of the appeals are deemed to be out of date by reason of the HDT results and housing land supply shortfall: see footnote 8. This requires the decision-maker to consider whether the application of policies in the Framework provide a clear reason for refusing the proposal. One of the key sets of policies in the Framework are the policies protecting Green Belt land.⁵⁹
- 7.4 As I have already demonstrated the application of policies in the Framework relating to the Green Belt provide a clear reason for refusing the proposal. Thus the tilted balance, otherwise engaged by the HDT and 5YHLS position, is disengaged in this case.
- 7.5 The proposed development constitutes “inappropriate development” in the Green Belt. This is, by definition, harmful, and should not be approved except in “very special circumstances”. Substantial weight must be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is “clearly outweighed” by other considerations.
- 7.6 As explained above in section 5, the other Green Belt harm by loss of openness leads to substantial harm and must carry substantial weight. The appeal site and area contribute significantly to safeguarding the countryside from encroachment and maintain settlement patterns. The proposals would lead to encroachment into the countryside and would erode settlement patterns. Such harm to the purposes of Green Belt carries substantial weight
- 7.7 Added to this is a significant range of “any other harm” arising from the other matters considered above.

⁵⁹ i.e. section 13 and footnote 7 of the National Planning Policy Framework 2023

- 7.8 In that respect, the failure to recognise the intrinsic character and beauty of the countryside and adverse impact on the character of the area carries significant weight against the appeal scheme, the shortcomings of the access arrangements and location of the site comprise harms carrying significant weight, the failure to secure a satisfactory surface water drainage strategy carries moderate adverse weight, the ecological impacts of the proposals on and off site carry moderate to significant weight and off site arboricultural impacts on trees in an ancient woodland carry significant adverse weight, the failure to demonstrate satisfactory standards of amenity can be provided for future residents carries moderate to significant weight against the appeal scheme and all comprise additional harms that add to the harm to Green Belt matters.
- 7.9 The Council carry out its Green Belt balancing exercise assuming that a satisfactory obligation is presented to the appeal and thus there is no infrastructure objection (otherwise the weight of harm would increase yet further) and that the appellant's other considerations such as affordable housing and BNG are secured.
- 7.10 The weight of factors against the grant of permission present a high hurdle for the Appellant to demonstrate that these harms, taken together, are "clearly outweighed" by other considerations such that "very special circumstances" exist. This high bar is illustrated in an appeal decision in St Albans⁶⁰ wherein the Inspector noted:
- "The determination of whether very special circumstances exist is a matter of planning judgement based on a consideration of all relevant matters. However, very special circumstances cannot exist unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations. Consequently, for the appeal to succeed, the overall balance would have to favour the appellants case, not just marginally, but **decisively**."* Emphasis added
- 7.11 The factors relied on by the Appellant comprise the contribution to housing (including affordable housing and custom build houses) which collectively carry very substantial weight.
- 7.12 In assessing the appropriate weight to be given to the delivery of housing in the circumstances of a current deficient housing land supply position I am mindful that housing land supply position is a snapshot in time. Whilst it may endure for some time it is not expected to comprise a permanent state of affairs (as the adoption of a local plan would likely be unsound in those circumstances). In contrast permanence is one of the essential characteristics of the Green Belt together with openness and the proposals would lead to the permanent loss of the openness of this part of the Green Belt. The permanent loss of land that positively contributes to the openness of the Green Belt would not change and the adverse impacts would endure.

⁶⁰ APP/ B1930/W/19/3235642 at Burstons Garden Centre

- 7.13 The biodiversity scheme to be secured by the obligation will ensure biodiversity losses and net gains are compensated but they are achieved off site. Therefore, subject to such matters being secured, this comprises a benefit overall in any planning balance, I attribute such matters moderate weight in favour of the grant of permission. The economic benefits attract limited weight and the use of pdl moderate weight.
- 7.14 Overall, notwithstanding the benefits of the scheme taken together, I do not consider that they do not “clearly outweigh” the harms and demonstrate “very special circumstances” to justify inappropriate development in the Green Belt for the purposes of paragraph 153 of the Framework.
- 7.15 I am cognisant of the Written Ministerial Statement of July 2015, which sets out the Secretary of State’s own view that need is unlikely to clearly outweigh harm to the Green Belt to justify the loss of Green Belt land and the grant of planning permission. I recognise that the WMS was not incorporated into policy and carries only limited weight but the principle remains good and is consistent with the decision of Inspector Hayden at Tollgate Road (as well as others). I consider part of the rationale behind such an approach must lie in one of the two essential characteristics of the Green Belt being their permanence.
- 7.16 I consider that the proposal will lead to very substantial environmental harm such as the loss of openness, encroachment into the countryside and significant permanent built development in the Green Belt countryside which adversely affect the character of the area. The impact on the environment is substantially negative and notwithstanding some modest economic benefits the housing proposed is not in the right location and overall the proposals do not comprise sustainable development.
- 7.17 I do not consider that the housing land supply position in St Albans means that permission should be granted for residential development in the circumstances of this case. In that regard I note the conclusions of other Inspectors in recent Green Belt cases (including Tollgate Road and Smallford Works appeals I have referred to earlier) where the appeals were dismissed in despite the Council’s deficient HLS.
- 7.18 In her recent decision of July 2023 at Little Bushey Lane⁶¹ (in Hertsmere Borough Council area) Inspector Gilbert attributed very substantial weight for the provision of both market and affordable housing; substantial weight for self and custom-build housing; significant weight for economic benefits; moderate weight for biodiversity net gain, the provision of land for the primary school, the package of sustainable transport measures, the mobility hub, and significant levels of accessible open space; limited weight to enhanced access to the countryside, the enrichment of blue/green infrastructure, and sustainable building measures⁶². Having weighted these other considerations and noted the lack of a five year housing land supply the Inspector concluded⁶³:

⁶¹ APP/N1920/W/23/3314268 - See **CD5.14**

⁶² See DL129 at **CD5.14**

⁶³ See DL130 at **CD5.14**

“I have had regard to the other considerations. However, these do not clearly outweigh the harms that I have identified. Consequently, the very special circumstances necessary to justify the proposed development do not exist. [...]”

7.19 I recognise that the circumstances of each case are different but rely on this for the overall approach taken.

7.20 In her decision of 21 July 2023 Inspector Board considered an outline scheme for 125 dwellings and a 60 bed care facility on Green Belt in Brookmans Park which is part of Welwyn Hatfield District⁶⁴. In her decision she refers to the Bullens Green appeal decision and distinguishes the two sites⁶⁵. Having determined that the provision of market and affordable homes carry very substantial weight at the top end of the spectrum and 10 self-build plots carries substantial weight and the proposed care home was given significant positive weight, a new scout hut as part of the scheme was given moderate weight, 15% BNG carried moderate weight, economic benefits carried very minor weight and despite being located within walking distance of a range of facilities and a railway station the location of that site carried very minor weight. In that context Inspector Broad concluded:

“The determination of whether very special circumstances exist is a matter of planning judgement based on a consideration of all relevant matters. However, very special circumstances cannot exist unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations. Consequently, for the appeal to be allowed, the overall balance would have to favour the Appellant’s case, not just marginally, but decisively.

Overall, I have considered the totality of the other considerations of the provision of market housing, self-build, affordable housing, care home, scale of Green Belt release, ELP (including findings of the Local Plan Inspector) and there are other factors which add to this weight. Even so, the totality of the other considerations do not clearly outweigh the combined weight of the harm to the Green belt, harm to character and appearance and conflict with the development plan in this regard. Therefore, I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.”

7.21 I therefore consider that in this case, where the benefits/ other considerations are less compelling, the application of the Green Belt policy provides a “clear reason for refusing” the development proposal under NPPF paragraph 11(d)(i) and therefore the so called tilted balance is disengaged.

⁶⁴ APP/C1950/W/22/3307844 – See **CD5.15**

⁶⁵ DL64 at **CD5.15**

- 7.22 The proposed development conflicts with the most important development plan policies, and as such conflicts with the development plan taken as a whole. In addition, the policies of the Framework provide clear reasons to refuse permission, and material or other considerations would not amount to very special circumstances or otherwise justify the grant of permission. As such, I invite the Inspector to dismiss the appeal.
- 7.23 Given my conclusion it is not necessary to undertake the decision making process in the context of the tilted balance.
- 7.24 If the Inspector was to conclude that very special circumstances did exist (a view I do not share) then the outcome of that process is that permission should be granted and it would not be necessary to go further than undertaking the conventional Green Belt planning balance exercise (which is necessary given the common ground that the proposed development is inappropriate and erodes openness).
- 7.25 If the Inspector is minded to allow this appeal, I would request that the conditions that have been provided are imposed. In addition, a section 106 obligation to deliver necessary infrastructure and affordable housing is necessary.
- 7.26 Therefore, in conclusion, I invite the Inspector to dismiss the appeal.