

BRICKET WOOD SPORT & COUNTRY CLUB / PAINTBALL

SITE

LYE LANE, BRICKET WOOD, AL2 3TF

Planning Inspectorate Ref: APP/B1930/W/24/3338501

LPA Ref: 5/2022/2443

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

INTRODUCTION

1. As Mr Hughes agreed (**Hughes XX, Day 4**), St Albans desperately needs more housing, so much so that only a few months ago, in the Chiswell Green decision letter (**CD 5.2**), the Secretary of State agreed with an Inspector that the situation here was so “dire”¹ that he granted permission for 721 homes on the open countryside and in the Green Belt.
2. And yet here we are again, at another St Albans Planning Inquiry, after the Council once again refused permission for the housing it so desperately needs, this time on land which is previously developed and presents as anything but open countryside. Far from contributing to the “the intrinsic character and beauty of the countryside”, in the words of paragraph 180(b) of the National Planning Policy Framework (“NPPF”), this Appeal Site is an eye-sore which seriously detracts from it. As Ms Williams explained, today’s proposal for much-needed housing will actually improve the character and appearance of the Green Belt, rather than harm it².
3. And those are not the only benefits of this Appeal Proposal either, for alongside the housing (and the social and economic contributions towards sustainability that

¹ (CD 5.2 [IR 588]; [DL29]).

² (CD 1.11 [7.3]; CD 2.9 [4.10]).

housing always brings³), and the improvement to character and appearance that I just mentioned, the 115 homes now proposed will bring the following three benefits as well:

- a. First, an environmentally sensitive, carefully designed, footpath will be delivered along Lye Lane, giving pedestrian access to nearby Bricket Wood to both future residents of the proposed development and extant residents on Lye Lane who, currently, have to risk walking along an unlit lane or choose to get in the car – a clear benefit, then, in terms of both safety and sustainability.
- b. Second, the paintballing activities in Ancient Woodland, against which the Council previously attempted to enforce, will cease and all of the associated and unsightly paraphernalia will be removed – unquestionably, a very clear environmental benefit in light of NPPF paragraph 186(c); and
- c. Third, one less open field site will need to be released from the Green Belt for housing development when, as Mr Hughes agreed (**Hughes XX, Day 4**), in policy terms it is – as a matter of principle - sequentially preferable to build on previously developed, brownfield, land rather than open green fields, and especially in the Green Belt where openness is an “essential characteristic”⁴, as is apparent from all of the following references in the NPPF:
 - i. NPPF paragraph 89: “The use of previously developed land ... should be encouraged where suitable opportunities exist”;
 - ii. NPPF paragraph 123: “Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or ‘brownfield’ land”;

³ See: NPPF paragraphs 7 and 8.

⁴ See: NPPF paragraph 142: “... the essential characteristics of Green Belts are their openness and their permanence.”

- iii. NPPF paragraph 124(c): “Planning policies and decisions should ... give substantial weight to the value of using suitable brownfield land”;
- iv. NPPF paragraph 146(a): “... the strategic policy-making authority should be able to demonstrate that it ... makes as much use as possible of suitable brownfield sites ...”;
- v. NPPF paragraph 147: “Where it has been concluded that it is necessary to release Green Belt land for development, plans should give first consideration to land which has been previously-developed”;
- vi. NPPF footnote 27: “... strategic policies should ... prioritise brownfield ... sites”); and
- vii. NPPF paragraph 154(g), which is immediately relevant to this Appeal Application, and to which I return a little later.

4. And, of course, the benefit of developing on previously developed land in preference to green fields has assumed even greater importance since we adjourned and with the publication, on 30th July, of a new NPPF which, whilst only a draft, has a direction of travel which is indisputable, as is made clear in the consultation document published alongside it:

“Chapter 5 – Brownfield, grey belt and the Green Belt

1. We have been clear that development must look to brownfield first, prioritising the development of previously used land wherever possible. To support this, we will make the targeted changes set out below, including making clear that **the default answer to brownfield development should be “yes”, as the first step on the way to delivering brownfield passports.**

...

Being clear that brownfield development is acceptable in principle

5. We have been clear that brownfield land must be the first port of call. We want to make clear that the principle of development should not be in question on brownfield land, and so we are consulting on an amendment to paragraph 124c out of the current NPPF, reinforcing the expectation that development proposals on previously developed land are viewed positively. This makes clear that the default answer to brownfield development should be yes.”

[Emphasis in the original]

5. This is what positive and creative planning, which is what the NPPF calls for⁵, should be all about – building on previously developed land rather than green fields; and simultaneously remedying a blot on the landscape whilst helping the Council out of the housing hole in which it finds itself.

6. However, far from addressing these problems, finding solutions, planning to improve, St Albans Council has an entirely negative mindset - which is why it is where it is, and why we are all here. Apart from everything else, and as I will come on to a little later, this Council appears not to understand that:
 - a. An application for Outline Planning Permission seeks only a decision as to whether the development proposed is acceptable “in principle”, when the true “in principle” issue at stake in the present case is simply whether, given that housing must take place somewhere in the Green Belt if St Albans’ housing needs are to be met, this previously developed Appeal Site is a suitable candidate; or that

⁵ See: NPPF paragraph 38 (“Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.”)

- b. When determining that “in principle” issue, the decision-maker can lawfully cut down the scope of any Outline Planning Permission by imposing *Grampian* conditions; or that
 - c. The evidential threshold required for imposing *Grampian* condition is as low as it could possibly be – there only has to be some prospect, however little, that the action in question can be performed within the time-limit⁶.
7. And one consequence of that series of misunderstandings is that this Council is delaying much-needed housing development by requiring landowners to spend fortunes on resolving details before they even know whether or not their proposed development will be accepted or rejected as a matter of principle - which is just one of the reasons St Albans is in housing crisis.

ST ALBANS' PLANNING AND HOUSING CRISES

The Planning Crisis

8. However, before I address you on the full extent of that housing crisis, I need to remind you of an antecedent planning crisis because, as Mr Hughes readily agreed (**Hughes XX, Day 4**), St Albans is not only failing to deliver the right homes for the right people and in the right places, but is failing even to deliver an up-to-date Local Plan in what is meant to be a system that is genuinely Plan-led⁷.
9. The facts are stark:
- a. When paragraph 33 of the NPPF requires Local Plans to be reviewed every 5 Years, none of St Albans' policies have been reviewed since they were adopted in 1994 – that is to say 20 years before the Planning Practice Guidance (“PPG”) went online (**Hughes XX, Day 4**); 23 years before the Government published

⁶ See: PPG Paragraph: 009 Reference ID: 21a-009-20140306.

⁷ See: NPPF paragraph 15.

“Fixing Our Broken Housing Market” (Hughes XX, Day 4); and 29 years before the current version of the NPPF was issued (Hughes XX, Day 4);

- b. The Council’s housing policies expired 23 years ago (CD 2.4 [3.6]) (Hughes XX, Day 4), and there are no up-to-date housing targets or undeveloped allocations to meet housing needs (Hughes XX, Day 4); and
- c. The Green Belt, where these needs must be met, has not been revised since 1985 - some 39 years ago (Hughes XX, Day 4).

The Housing Crisis

- 10. And the direct consequence of all of this is, quite predictably, a massive shortfall of housing, so much so that the Council has long-since acknowledged that their unmet needs amount to “exceptional circumstances” requiring land to be removed from the Green Belt, in accordance with paragraphs 145-146 of the NPPF (Hughes XX, Day 4).
- 11. Once again, the facts are stark:
 - a. From 2013 onwards, more than a decade, the Council has been unable to demonstrate the 5-year housing land supply (“5YHLS”) ordinarily required by paragraph 69 of the NPPF⁸ (Hughes XX, Day 4); and
 - b. In its latest (January 2024) Authority Monitoring Report (CD 8.7), the Council acknowledge that they can demonstrate just 1.7 YHLS, which is the worst housing land supply position since the extant Local Plan was adopted three decades ago (Hughes XX, Day 4).
- 12. And with that housing shortfall comes critical affordability issues also because, inevitably, as demand increasingly outstrips supply, the house price to earnings affordability ratio grows higher and higher. In St Albans it now stands at 18.44, which

⁸ Or the 4YHLS now required by paragraphs 77 and 226 of the NPPF.

means that individuals on median incomes in St Albans need to find more than 18 times their annual salary to buy a median priced property here⁹.

13. And because St Albans only seeks affordable housing as a minority partner to market housing, alongside that undersupply in market housing comes a massive shortfall in affordable housing also, and an additional crisis in that regard (**Hughes XX, Day 4**). In these regards, I invite you to read again the detailed evidence of Ms Gingell (**CD 2.6**), all of which is agreed by the Council¹⁰.

14. For present purposes, however, let me just highlight some headline points:

a. The 2016 SHMA identified an objectively assessed annual need of 617 affordable homes for the years 2013-2036 (**CD 2.6 [4.41]**);

b. More recently, the 2020 South West Hertfordshire Local Housing Need Assessment ("2020 LHNA"), increased this to an annual need for 828 affordable homes (**CD 2.6 [4.42]**);

c. However, in the ten-year period since the start of the 2016 SHMA period in 2013/14, there has been a net delivery in St Albans of just 56 affordable homes a year (**CD 2.6 [5.7]**); and

15. That adds up to:

a. A shortfall of 5,615 affordable homes against the needs identified in the 2016 SHMA (**CD 2.6 [5.8]**); and

⁹ And, as Ms Gingell explained (**Ms Gingell CD 2.6 [6.12]**), is a 25% increase since the start of the South West Hertfordshire Strategic Housing Market Assessment (2016) ("the 2016 SHMA") period in 2013, when it stood at 13.92; more than double the national median of 8.28 (+123%); and significantly above the East of England median of 10.08 (+83%).

¹⁰ See: letter to PINS dated 31st May 2024.

- b. A further shortfall of 2,201 affordable homes in just the first three years of the 2020 LHNA period **(CD 2.6 [5.12])**.

16. There is not just an “identified need”¹¹ for affordable housing in St Albans, therefore. Rather, a “substantial increase in affordable housing provision is urgently required”, as Ms Gingell explained **(CD 2.6 [5,26])**. That is undeniable, which is why the Council called no housing evidence.

THE NECESSARY CONSEQUENCES FOR DECISION-MAKERS

17. These planning and housing crises have, of course, important consequences for decision-makers on housing proposals in St Albans:

- a. First, they mean that paragraph 11(d) of the NPPF is engaged, so that unless a relevant ‘Footnote 7’ policy (in this case Green Belt) provides not just a reason to refuse permission, but a “clear” reason, the ‘tilted balance’ in favour of development must be applied¹² **(Hughes XX, Day 4)**; and
- b. Second, they also mean that, when considering whether Green Belt policies do provide a clear reason to refuse permission, until March 2026 at the earliest (when the Emerging Local Plan might be adopted), the shortfalls in both housing must be met in the Green Belt – the only question is where.

18. And as you will also fully appreciate, there are two bases upon which new homes can properly be approved in the Green Belt as fully policy-compliant **(CD 2.4 [8.1])**:

- a. First, the housing may fall within one of the exceptions provided for by paragraph 154 of the NPPF, so as to be “appropriate” Green Belt development;
or

¹¹ In the benign words of paragraph 154(g) of the NPPF.

¹² See: *Monkhill Ltd v Secretary of State for Housing, Communities and Local Government & Anor* [2019] EWHC 1993 (Admin), per Holgate J., at [39] and [45].

- b. Second, “very special circumstances” may be demonstrated, as provided for by paragraphs 152 and 153 of the NPPF¹³.

19. As for the first possibility, paragraph 154 of the NPPF provides *inter alia* as follows:

“154. 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 cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.”

[Emphasis Added]

20. Quite rightly, it is accepted by the Council that the second part of NPPF paragraph 154(g) applies in this case: the Appeal site is previously developed land; there is an identified affordable housing need; and the development does propose 35% affordable housing to meet that need, fully in accordance with the Council’s Affordable Housing Supplementary Planning Guidance (“SPG”) (CD 4.4 [7.13]). The test to be applied is, therefore, whether the proposed redevelopment of the Appeal Site would cause “substantial harm” to the openness of the Green Belt. That test of “substantial harm” is a high one, of course, and it is so by reference to both words used.

- a. First, there has to be not just an “impact” on openness but “harm”. In these regards, and as I shall come onto a little later, “openness” invokes both

¹³ Meaning that “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”, as the Secretary of State recently decided was the case on two Green Belt sites in nearby Chiswell Green (CD 5.2).

“spatial” and “visual” considerations¹⁴; and whilst new and additional housing will always have a “spatial impact”, that spatial impact may be far from “visually harmful”, if, for example, the housing is well-designed and well-landscaped; or replaces an unsightly extant development; or could not be seen in the wider Green Belt because the site is so well-screened.

- b. Second, the extent of that harm, if any, must be “substantial”, which read consistently with the PPG’s explanation of the same concept with regard to archaeological impacts¹⁵, necessarily must be read as a “high test ... which may not arise in many cases.”

21. Indeed, all of this has recently been confirmed in the Maitland Lodge decision letter (CD 5.6 [17]), in which the Inspector which expressly explains as follows:

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

[Emphasis Added]

22. Anything less than a finding of “substantial harm” to openness would mean that the proposed development is appropriate in the Green Belt which, given the “great importance” attached by national planning policy to Green Belts¹⁶, tells us all we need to know about the even greater planning importance attributed to meeting affordable housing needs; doing so on previously developed land if the opportunity arises; and all the more so in St Albans, given the extent of affordable housing shortfall here.

THE APPELLANT’S ALTERNATIVE CASES

23. I have already identified the two bases upon which new housing can be policy-compliant in the Green Belt, and, as you have heard, both of them apply in this case:

¹⁴ PPG Paragraph:001 Reference ID: 64-001-20190722.

¹⁵ Paragraph: 018 Reference ID: 18a-018-20190723.

¹⁶ NPPF paragraph 142.

- a. The Appellant’s principal case, of course, is that the high bar of substantial harm is not remotely reached, not the least because the very extensive screening which surrounds the site means that it does not present as open countryside at all;
 - b. If, however, you were to consider that the high bar of substantial harm to openness was reached, then very special circumstances are here demonstrated in any event, given the dire housing situation in St Albans - as the Secretary of State himself decided just a few months ago¹⁷ when, unlike here, the Appeal Sites then in issue were open fields not a previously developed eyesore.
24. However, I must first set out the legal and policy framework within which this appeal falls to be determined, and then briefly revisit the Appeal Site and Appeal Proposal, before making certain preliminary comments about the putative Reasons for Refusal.

LEGAL AND POLICY FRAMEWORK

25. As we all know, section 38(6) of the Town and Country Planning Housing Act 1990 (“TCPA 1990”) requires planning decisions to be made in accordance with the Development Plan unless material considerations indicate otherwise. In these regards:
- a. The Development Plan for St Albans comprises the saved policies of the 1994 Local Plan Review (**CD 4.1**) and the St Stephens Neighbourhood Plan (2022) (**CD 4.2**); and
 - b. The “material considerations” include national planning policies as set out in the NPPF and PPG, and the Council’s Affordable Housing SPG.

The Local Plan

26. As I have already explained, the Local Plan is 30 years old and its housing land supply policies expired in 2001. Notably, however, whilst all attempts to replace the Plan have

¹⁷ In his Chiswell Green decision letter (CD 5.2).

ended in failure, each of those draft Plans, like the currently emerging Local Plan, have concluded that the need for housing was such that “exceptional circumstances” required the release of Green Belt land. Those needs include affordable housing, in respect of which there is – as you have heard - no extant Local Plan policy target for contributions¹⁸ (**Hughes XX, Day 4**). However, the Council’s Affordable Housing SPG seeks to fill this gap by applying Policy 7A’s requirement for a 35% affordable housing contribution across the district (**CD 4.4 [7.13]**).

The St Stephen’s Neighbourhood Plan

27. As for the St Stephen’s Neighbourhood Plan (**CD 4.2**), and as Cllr Pryce readily agreed (**Pryce XX, Day 3**), it supports key elements of the Appeal Proposal:

a. The first bullet point in the “Vision and Objectives” section states, at (**CD 4.2 [3.1 bullet point 1]**), that:

“The high cost of property in the local area makes it increasingly difficult for first-time buyers to move into and for younger inhabitants to remain in the area. Additionally, developers’ preference for building larger houses in the area restricts the opportunity for older people to release property by downsizing. This is already having an impact on St Stephen where the numbers of working-age residents is (sic) falling, despite the Parish’s location being within easy reach of London.”

b. Under “Housing, Character and Design of development”, at (**CD 4.2 [3.3]**), the first Objective of the Neighbourhood Plan is to: “Encourage the development of housing that meets an identified need”.

c. Policy 1 of the Neighbourhood Plan expressly welcomes new housing development which (**CD 4.2 [p.19]**) “... meets either the exceptions to inappropriate development in the Green Belt ... of the National Planning Policy Framework, or demonstrates very special circumstances, as set out in

¹⁸ Neither Policy 8 (Affordable Housing in the Metropolitan Green Belt) nor Policy 7A (Affordable Housing in Towns and Specified Settlements) applies to sites in the Green Belt outside settlements.

paragraph 147 of the National Planning Policy Framework". Those are the very bases upon which, in the alternative, the Appellant seeks permission in this case. In both regards, therefore, the Appeal Proposal is fully compliant with the Neighbourhood Plan.

National Planning Policy

28. As for national planning policy, I have already referenced the following:
- a. The application of the 'tilted balance' when, as here, a Council cannot demonstrate a sufficient housing land supply;
 - b. The sequential preference for developing previously developed land over open green fields, and especially in the Green Belt;
 - c. The related policy afforded by NPPF paragraph 154(g), whereby, as an exception to the normal rule, the development of previously developed land to meet an identified need for affordable housing is appropriate Green Belt development; and
 - d. The test of very special circumstances which has to be applied, where housebuilding in the Green Belt falls outwith that exception and is inappropriate.
29. However, it will be useful to highlight three additional policy matters at this stage:
- a. First, as readily agreed by Mr Hughes (**Hughes XX, Day 4**), the NPPF strongly emphasises the importance of delivering sufficient housing, including affordable housing:
 - i. Paragraph 8 of the NPPF confirms that providing a sufficient number and range of homes to "meet the needs of present and future generations," is

fundamental to achieving the social objective of sustainable development;

- ii. Paragraph 60 confirms the Government's objective of "significantly boosting the supply of homes";
- iii. Paragraph 65 makes it clear that Local Authorities should deliver a mix of housing sizes, types, and tenures for different groups, including "those who require affordable housing"; and
- iv. As explained already, this is also a policy consideration underpinning NPPF paragraph 154(g).

b. Second, and so far as highways and sustainable transport are concerned:

- i. Paragraph 108(c) of the NPPF requires opportunities to promote walking and cycling to be identified and pursued;
- ii. Paragraph 109 specifically notes that the opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and that this should be taken into account when making decisions; and
- iii. Paragraph 115 provides that development should only be refused on highways grounds if there would be an "unacceptable impact on highway safety", or if the "residual cumulative impacts on the road network would be severe", both of which are very high thresholds indeed, reflecting the urgent need to build more homes.

c. Finally, the Appeal Application is in outline, with all matters reserved except for access, and in these regards the PPG explains¹⁹ that:

¹⁹ PPG Paragraph: 005 Reference ID: 14-005-20140306.

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

Accordingly, whilst you are being asked to approve the access arrangements and the proposed footpath, you need only address “general principles” with regard to all other matters.

Outline Planning Permissions and *Grampian* Conditions

30. The statutory facility to seek an early decision as to whether development is acceptable in principle is, or should be at least, one of the ways in which St Albans could more speedily get out of the housing crisis in which it finds itself. In particular, and in circumstances in which it is agreed that housing needs can only be met in the Green Belt, it enables landowners to ask whether their particular site is acceptable in principle, pursuant to which (if answered positively) the landowner will have greater confidence in incurring the expenditure necessary to promote a detailed scheme.
31. However, and as I have already touched upon, St Albans completely fail to avail themselves of this opportunity²⁰:
 - a. First, they misunderstand the case law regarding the scope of Outline Planning Permissions, and how they work together with Reserved Matters, by reference to *Grampian* conditions; and
 - b. Second, they misunderstand the threshold required to justify the grant of an Outline Planning Permission subject to a *Grampian* condition.

²⁰ Indeed, Mr Hughes expressly counselled a precautionary approach in this regard (Hughes XIC, Day 4), even though the whole point of *Grampian* conditions is that they can have no downside – they ensure that the Local Planning Authority can prevent unacceptable harm resulting by reference to the matter which has been conditioned.

Scope of an Outline Permission subject to a *Grampian* Condition

32. As for the first of those matters, the Council rely upon the case of *R (Village Concerns) v Wealden DC* [2022] EWHC 2039 (Admin) (CD 6.20) to argue that, because Reserved Matters cannot take away from the scope of an Outline Planning Permission, it is impossible to impose a *Grampian* condition requiring agreement to a SuDS Strategy if that subsequent agreement may, ultimately, entail a reduction in housing from the upper limit for which application is made (in this case “up to 115”).
33. That, however, is wrong and a misunderstanding of case law. In particular:
 - a. As made absolutely clear in *Village Concerns* at [46]:

“The principle which obviously flows from these legal provisions is that a reserved matters application must be within the scope of the outline planning permission which was granted, and must provide for reserved matters details consistent with the grant of outline planning permission.”
 - b. If Outline Planning Permission is granted for “up to” any number of houses, but expressly subject to a condition requiring agreement of, and compliance with, a SuDS strategy, that requirement defines “the scope of the outline permission” in the words of *Village Concerns* at [46] - the houses are acceptable in principle, only to the extent that they can properly be accommodated in terms of flood risk and drainage.
 - c. Accordingly, a Reserved Matters Application for subsequent approval of a SuDS strategy would not just be “within the scope of” and “consistent with the grant of outline planning permission”, again in the words of *Village Concerns* at [46], but positively required by it:
 - i. A Reserved Matters application “must provide for [these] reserved matters details”; and

- ii. The Outline Permission cannot be implemented until the SuDS strategy is approved.

 - d. If that approval is only forthcoming on a scheme accommodating less than the maximum number of dwellings for which the “up to” application was made, so be it: that would be because of, not in spite of, the “scope” of the Outline Permission (noting that *Village Concerns* makes it very clear, at [47], that “it is open to the applicant for Reserved Matters to provide details for a smaller number of dwellings”).
34. And do not be misled, either, by My Learned Friend’s reliance on *R (Hillingdon London Borough Council) v Secretary of State for Transport* [2020] EWCA Civ 1005 (ID 14) either, because that reliance is misguided and would also lead to an error in law. *Hillingdon* is about a completely different statutory regime²¹ and addresses a completely different issue – whether the duty imposed on certain Local Authorities to evaluate the effect of proposed HS2 works in an Archaeological Protection Zone could be delegated to HS2 itself. Unsurprisingly the Court of Appeal rejected that proposition, stating as follows, at [82]: “Parliament did not, in our view, intend to set up a scheme which gave the appearance that HS2 Ltd was judge in its own cause”.
35. The mischief at which the *ratio decidendi* in *Hillingdon* is directed is, therefore, entirely different to that at issue here (or, indeed, any *Grampian* condition):
- a. That mischief was to prevent a developer from being judge in its own cause on matters which needed external and independent consideration;

 - b. However, the purpose and effect of the *Grampian* conditions is to the opposite effect – positively requiring external and independent approval of relevant matters before development can take place.

²¹ Schedule 17 of the High Speed Rail (London-West Midlands) Act 2017.

Threshold for Imposing a *Grampian* Condition

36. As for the evidential burden which must be discharged before a *Grampian* condition can be imposed, that is as low as it could possibly be - as a matter of both authoritative case law and national planning policy:

a. As for case law, in *British Railways Board v Secretary of State for the Environment* [1993] 3 PLR 125, the Secretary of State refused permission on the basis that a *Grampian* condition would be void because there was “no reasonable prospect” of it being fulfilled, but the House of Lords disagreed - there was no rule that the existence of even insuperable difficulties must lead to the refusal of permission for a desirable development; and

b. This is reflected in PPG Paragraph: 009 Reference ID: 21a-009-20140306:

“... a *Grampian* condition ... prohibiting development authorised by the planning permission ... until a specified action has been taken ... should not be used where *there are no prospects at all* of the action in question being performed within the time-limit imposed by the permission”.

[Emphasis Added]

THE APPEAL SITE

37. With all of the above in mind, let me return, then, to the Appeal Site itself, and the Appeal Proposal for that site, to underline some key characteristics of what is being proposed, and where: much needed housing (including affordable); and on previously developed land which is almost completely screened from the wider Green Belt and in a location which can, through this Appeal Proposal, be made highly sustainable.

Location

38. As for location, the Appeal Site is on the eastern side of Lye Lane, the narrow country road running south towards Bricket Wood, which is identified as a “large village” in Policy 2 of the Local Plan and provides a wide range of local amenities - including a

food store, a pharmacy, cafés, restaurants, public houses, a GP surgery, a library and schools (CD 2.4 [2.8a])). Helpfully, Mr Ferguson gave you the distances to these, and the travel times on foot and by bike (CD 2.11 [3.21]-[3.22]):

| | | | |
|----------------------|------------|----------------|----------------|
| Costcutter Store | 800-metres | 12-minute walk | 2-minute cycle |
| Fish and Chips | 800-metres | 12-minute walk | 2-minute cycle |
| Pharmacy | 965-metres | 13-minute walk | 3-minute cycle |
| Post Office | 965-metres | 13-minute walk | 3-minute cycle |
| Londis Store | 965-metres | 13-minute walk | 3-minute cycle |
| Fruiterers | 965-metres | 13-minute walk | 3-minute cycle |
| Butchers | 965-metres | 13-minute walk | 3-minute cycle |
| Hairdresser | 965-metres | 13-minute walk | 3-minute cycle |
| Barber | 965-metres | 13-minute walk | 3-minute cycle |
| Nursery School | 980-metres | 14-minute walk | 4-minute cycle |
| Infant/Junior School | 1.77 km | 24-minute walk | 5-minute cycle |

39. Bricket Wood also has public transport links through both the Nos. 361 and 635 buses, and the ‘Abbey Flyer’ railway line (CD 2.4 [2.8b]):

- a. Just 560-metres to the south of the Appeal Site, on West Riding, are bus stops going to St Albans, Watford, and other towns - a summary of bus services is set out in Table 2 of Mr Ferguson’s Proof of Evidence (CD 2.11 [3.18]); and
- b. Around 1-kilometre south of the Appeal Site is Bricket Wood Railway Station which, by changing at Watford Junction, provides direct services to large parts of the country - a summary of rail services is set out in Mr Ferguson’s Table 3 (CD 2.11 [3.19]).

40. Accordingly, once connected to the Bricket Wood by a safe and suitable footpath, the Appeal Site is a very sustainable location for residential development.

Previously Developed Land

41. It has been expressly acknowledged by the Council (CD 2.1 [33]) that the entirety of the Appeal Site is previously developed land, comprised of three sections:

- a. A number of redundant, vacant, and dilapidated buildings around a large area of hardstanding, built over the years to accommodate, variously, a cricket clubhouse, a country club, and a gymnasium;
 - b. A residential area comprising 31 dwellings and car parking spaces; and
 - c. A paintball operation with numerous outbuildings, containers, and *ad hoc* structures, again with substantial areas of hardstanding.
42. As you will have seen on your site visit, so developed the Appeal Site contributes absolutely nothing to “the intrinsic character and beauty of the countryside”, in the words of NPPF paragraph 180(b). Indeed, and as Mr Parker pointed out in his Rebuttal Proof (CD 2.13 [3.1]-[3.2]), Mr Hughes’ claim to the contrary (“the site has both a countryside character and is intrinsically beautiful as part of the countryside” (CD 9.2 [5.116])) simply serves to undermine the credibility of the rest of his evidence. The Appeal Site presents as nothing of the kind; it is an unsightly mess.

Zone of Visibility

43. As you will have also seen on your site visit, the Appeal Site is located in a mature woodland setting and is entirely screened from view on three boundaries. Its zone of visibility is absolutely tiny. It is barely visible other than from Lye Lane and, even then, only when pretty much immediately in front (CD 2.4 [9.6]). From a distance, the Appeal Site cannot be seen at all: indeed, its general location can only be identified by the two telecommunications masts beyond its southern boundary (CD 2.9 [5.8]).

THE PROPOSED DEVELOPMENT

Outline

44. As I have already noted, the application is in outline, with all matters reserved except for access. Two Layout Plans have been provided (CD 1.4; CD 2.4.5). Critically,

however, these are illustrative only, and all detailed consideration of scale, layout, landscaping, and appearance will be for subsequent applications.

The Footpath

45. Since approval is sought for access, however, the footpath has been worked up in some detail in order to reassure you that it can provide a safe and sustainable pedestrian route to the facilities and amenities in Bricket Wood, without narrowing the carriage way of Lye Lane; without encroaching into the Ancient Woodland; and without harming any adjacent trees that need to be retained.

46. As such, and as a matter of both planning principle and common sense, that footpath is something which should be welcomed, as it was by Cllr Pryce on behalf of St Stephens Parish Council:
 - a. It plainly accords with paragraph 108(c) of the NPPF, through providing an opportunity to promote walking; and

 - b. As Mr Ferguson pointed out (**CD 2.12 [0.9]**), it is not just a benefit but is needed, and needed now - many households (far more than identified by Mr Hughes) already live on Lye Lane and, as matters stand, they can only walk to the shops and facilities in Bricket Wood along an unlit lane; and

 - c. That unacceptable situation can be remedied as a direct consequence of the Appeal Proposal and through the delivery of a carefully designed footpath, which is precisely what is shown in the plans prepared by Conisbee, Civil and Structural Engineers (**CD 2.11.2**), supported by the expert arboricultural evidence of Mr David Clarke (**CD 2.4.3**); **CD 2.13.2**).

47. As for the concerns raised by Mr Carr with respect to the deliverability and acceptability of that footpath (**CD 9.4 [31]**), these were all addressed in the Rebuttal Proofs of Mr Ferguson (**CD 2.16**), Mr Parker (and its Appendices) (**CD 2.13**; **CD 2.12.1**;

CD 2.13.2), and Mr Hartfree (CD 2.17). I can take them briefly, noting that a *Grampian* condition requiring the footpath to be provided can be properly imposed so long as there are some prospects²² of the footpath being delivered.

Physical Implementation

48. Mr Carr's concern as to whether the footpath can physically be implemented (CD 9.4 [31] bullet point 1) is addressed in the Rebuttal Evidence of Mr. Hartfree (CD 2.17). He confirms that, with careful engineering, the footpath can be delivered and the culverting of the ditch achieved without detrimental impact to the surrounding areas. The Council have adduced no engineering evidence to contradict Mr Hartfree, and you simply cannot conclude, therefore, that "there are no prospects at all"²³ of the footpath being implementable in engineering terms.

Tree Protection

49. As for Mr Carr's concern regarding the tree protection (CD 9.4 [31] bullet point 2), this is addressed in the expert evidence of Mr Clarke (CD 2.4.3); CD 2.13.2), who confirms that whilst there will be areas where the footpath will be in close proximity to trees, the methodology and specification has been, and will continue to be, adapted to address these potential issues.
50. In these regards, whilst the Council seek to make much of recent, minor, corrections to engineering plans, the truth is that we are at a remarkably advanced stage, especially noting that Mr Clarke has always been clear that there will be ongoing fine-tuning in dialogue with Council Tree Officers (CD 2.4.3 [1.2]; [10.6]):

"1.2 A standard construction specification(s) has been designed in consultation with Drainage and Highway Consultants but these may need to be modified (where required) to be tailored to the protection of trees on site."

"10.6 All variations to the Tree Protection Measures will be agreed with the Arboricultural Consultant and sent to the Local Planning Authority before being enacted. All incidents will be noted by the Site Foreman within their report. The

²² PPG Paragraph: 009 Reference ID: 21a-009-20140306.

²³ *Ibid.*

Arboricultural Consultant and Local Planning Authority will be made aware of each incident, their impact on the trees and any remedial action required to correct any damage.”

51. Once again, you simply cannot conclude that “there are no prospects at all”²⁴ of the footpath being delivered without harming protected trees or the Ancient Woodland.

Culverting

52. As for the concern, raised both by Ms Waters (CD 9.3 [6.1.5]) and Mr Carr (CD 9.4 [31] **bullet point 3**) that culverting is likely to be refused, that concern is both mis-informed and misplaced. True it is that a separate application will need to be made under the Land Drainage Act to the Lead Local Flood Authority (“LLFA”) under section 23(1) of the Land Drainage Act 1991 (“LDA 1991”), and a *Grampian* condition attached to cover that²⁵, but consent cannot be unreasonably withheld and any refusal can be appealed under section 23(5) LDA 1991.
53. Moreover, whilst Ms Waters states that “culverting of watercourses is only allowed for access ...” (CD 9.3 [6.1.5]), there is absolutely no basis for that assertion, as Mr Parker correctly pointed out (CD 2.14 [4.4]-[4.9]):
- a. Section 23(1) LDA 1991 states only that culverting requires “the consent of the drainage board” - it does not limit culverting to the purpose of access only; and
 - b. Policy 84 of the 1994 Local Plan²⁶ states that “... all works in, under, over and adjacent to watercourses shall be appropriately designed and implemented

²⁴ *Ibid.*

²⁵ The fact that the land needed is also Common Land, is no inhibition on the grant of planning permission either, but merely means that a *Grampian* condition should be applied in that regard also, requiring pre-commencement consent for the footpath’s construction from the Planning Inspectorate, acting on behalf of the Secretary of State for Environment, Food and Rural Affairs (CD 2.4 [2.26]).

²⁶ In terms of policy, Ms Waters cites Policy L29 as the relevant Local Plan policy (CD 9.3 [3.1.24-3.1.25]). It is not. Policy L29 is an unadopted policy in a draft Plan that carries very limited weight in decision-making.

and alternatives to culverting should be explored where possible” (CD 4.1 [p.125]) - again, there is no restriction on culverting for access only.

54. Rather, the requirements of the policy are two-fold: first, and entirely reasonably, alternatives to culverting are to be explored wherever possible; and second, all works potentially affecting watercourses are to be appropriately designed and implemented. So understood, the proposal to culvert can plainly be approved in accordance with policy, noting that not only is there a compelling public interest in providing a safe pedestrian access to Bricket Wood, for both current residents of Lye Lane and future residents of the Appeal Site, but that:
- a. There is no engineering alternative to culverting if that footpath is to be delivered; and
 - b. That footpath can be delivered without narrowing the highway or impacting any protected trees, and so that footpath, including the culverting, has been “appropriately designed” and can be successfully “implemented”.
55. Once again, you simply cannot conclude that “there are no prospects at all”²⁷ of the footpath being delivered by reference to the required culverting. Indeed, any suggestion by Ms Waters’ that the LFFA would refuse consent should be dismissed as nothing less than an unlawful and premature fettering of discretion.

Width

56. As for Mr Carr’s concern that sections of the footpath will be narrower than 2m (CD 9.4 [31] bullet point 4), true it is that there are seven small pinch-points along the full extent of the proposed footpath where it narrows, quite properly, to provide protection around tree trunks. However, none of these pinch-points reduce the width of the footpath to less than 1.5m which, as Mr Ferguson explained (Ferguson XIC, Day

²⁷ PPG Paragraph: 009 Reference ID: 21a-009-20140306.

3), allows for a person to walk alongside a wheelchair user (as is confirmed in the Department for Transport's "Inclusive Mobility Guidance" (CD 10.4 [4.2])).

Cycle Path

57. As for Mr Carr's concern that segregated cycle provision has not been proposed (CD 9.4 [31] bullet point 5), that is simply because there is insufficient room in this rural location to accommodate one; and in demanding unachievable transport solutions along a rural country lane, both Mr Carr and Mr Hughes are simply ignoring the final sentence of NPPF paragraph 109. A scheme which provides a safe footpath where none presently exists, should not be criticised because it cannot also provide a shared cycling lane where none can be accommodated (CD 2.13 [6.9]).

Lighting

58. As for lighting, a feasibility scheme of low-level lighting is set out in the Conisbee proposals (CD 2.11.2 Appendix B), and an acceptable lighting strategy can be secured by way of a S278 Agreement.

Ecology

59. Finally, at (CD 9.2 [5.155]) Mr Hughes references a letter from Bernard Fleming of Hertfordshire Ecology, dated 6th May 2024, which raised ecological concerns about the proposed footpath. Mr Fleming's submission (CD 9.2.1 [Appendix 5]) focuses primarily on its impact on the Ancient Woodland, but contains numerous inaccurate assumptions, including that the "... proposed footpath will encroach to a greater or lesser extent upon this woodland (or even lie completely within it)", whereas it lies entirely outside the Ancient Woodland. He repeated this error in his later representation (CD 10.7), as Mr Parker corrected in the document he submitted in response (ID 15).
60. You have, in any event, now seen (CD 2.13.1), the Report by Cherryfield Ecology, dated 22nd May 2024, in answer to Mr Fleming's concerns:

- a. It explains that no bats or other protected species were present, but that the presence of some reptiles was likely (CD 2.13.1 [3.3]), and recommends a cautious approach in respect of the construction of the footpath, including accounting for the potential for Great Crested Newts; and
- b. These recommendations can be fully addressed in the Environmental Assessment which will inform the application for Ordinary Watercourse Land Drainage Consent, required to allow the culverting to take place.

Conclusion

61. For all these reasons, you can be reassured that a safe and suitable footpath can be delivered on land under the control of the Highways Authority and outside land identified as Ancient Woodland. The existing carriageway width will not be reduced and no trees will be lost. This is not a reason to refuse permission. Quite to the contrary. It is an obvious benefit and one of the reasons that the Appeal Proposal should have been warmly welcomed by St Albans.

THE DEEMED REFUSAL OF PERMISSION

62. But welcomed it was not. Seven putative Reasons for Refusal were originally proposed to be put to this Inquiry, albeit two have now gone²⁸ and all but the first of the remaining five go absolutely nowhere. I deal with them, briefly, immediately below and in reverse order²⁹.

Passing of Vehicles and Road Safety

63. As for the passing of vehicles and road safety, far from being a reason to refuse permission, the Appeal Proposal actually represents a betterment over the existing situation on Lye Lane. As Mr Ferguson explained, and Mr Carr agreed (XX, Day 3), the frequency of refuse and recycling trips on Lye Lane will not increase because of

²⁸ You have the Section 106 and the Council has withdrawn its SSSI objection (CD 12.2 [6.5]).

²⁹ Although I shall return to some aspects of the issues to which they relate when addressing the final planning balance that falls to be struck.

the development (CD 2.11 [6.33]) and neither will the frequency of other HGV traffic (CD 2.11 [6.33]). In respect of accommodating the same number of larger vehicles, therefore, the provision of new passing-bay on the east side of Lye Lane around 75-metres north of the junction with West Riding (CD 2.11 [6.40]) is an obvious improvement. This, then, is yet another reason to approve the Appeal Proposals, not to refuse.

Sustainability of Location

64. As for the sustainability of the location, I have already explained that the provision of the footpath along Lye Lane is a positive benefit and yet another reason to approve the Appeal Proposal:

- a. First, the footpath not only makes the Bicket Wood facilities safely accessible by foot, but also bus services and a railway station - the latter of which is no small benefit (not many residential developments have that locational advantage); and
- b. Second, the Appeal Proposal also brings with it substantial sustainable transport contributions towards active travel (CD 1.32) (CD2.11 [6.26]-[28]).

Drainage

65. As for Ms Waters' concern regarding drainage, they are completely misplaced given that this is an Outline Application. Put shortly:

- a. Matters of layout, scale, and landscaping are all for the future;
- b. It is these details (together with certainty over infiltration rates across the Appeal Site) which will determine the amount of attenuation needed and the most appropriate drainage strategy to pursue; and

- c. None of this can therefore be finalised until the design is complete at the Reserved Matters stage³⁰.

66. In these regards, the PPG acknowledges this 2-stage process but Ms Waters appears to misunderstand the stage at which the Appeal Scheme is. In particular, at **(CD 9.3 [3.1.8])**, Ms Waters quotes from PPG³¹, and explains that the drainage systems need to be considered “at the start of the design process for new development...”. However, in respect of scale, layout and landscaping, the design process is yet to begin.
67. Furthermore, whilst Ms Waters confirms, at **(CD 9.3 [3.1.21])**, that the PPG expects the design strategy to contain “proportionate information” for Outline Applications³², this is precisely what GeoSmart submitted: a 62-page Flood Risk Assessment (“FRA”) **(CD 1.8)**; and a 101-page Sustainable Drainage Assessment (“SDA”) **(CD 1.9)**, setting out strategies that could be pursued at the Reserved Matters stage which, with the imposition of suitable Conditions, would provide the assurance required.
68. On the first page of the FRA **(CD 1.8)**, we see the confirmation that the risk of flooding is “Very Low” to “Low:” Under the sequential approach mandated by NPPF paragraphs 165-168, this is precisely where housing development should be directed; and it simply cannot be said that there are no prospects at all³³ of a SuDS strategy being agreed and delivered, dealing appropriately with any flood risk concerns in such a location. If you turn up the SDA **(CD 1.9)**, for example, we are told at the outset and in its “Executive Summary”, that the proposed SuDS strategy:

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

³⁰ This is made obvious by the alternative indicative proposed layout (CD 2.4.5), which would require an entirely different Proposed SuDS Scheme Layout than that submitted by GeoSmart (CD 1.9 [p.6]).

³¹ Paragraph: 055 Reference ID: 7-055-20220825.

³² Paragraph: 059 Reference ID: 7-059-20220825.

³³ PPG Paragraph: 009 Reference ID: 21a-009-20140306.

69. In the next 8 Chapters, all of the data and analysis underpinning that is set out, before, in Chapter 9 and under the title “Proposed SuDS Strategy”, two strategies were originally proposed:
- a. The Primary SuDS Strategy, with run off managed with the SuDS features all set out; and
 - b. A Secondary SuDs Strategy, should surface water discharge be unfeasible, and discharge to the public sewer network be required.
70. And now, of course, a third possibility has been identified – “Option C” - the potential to drain into a formal watercourse on Park Street Lane in land under the control of HCC³⁴. In particular:
- a. The surveys which were facilitated following the recent adjournment clearly demonstrate, as was anticipated when we raised Mr Rudkin’s late intervention with you, that there was a formal drainage system, including a catchpit and drainage ditches, from the land which formerly hosted a cricket pitch and through the woodland to the south;
 - b. The Council’s suggestion, in their response to that evidence (**ID 19 [4]**), that the Appellant failed “to identify any drainage pipe of the kind which Mr Rudkin believed to exist, or any evidence of a drainage system associated with a cricket pitch”, simply flies in the face of the obvious evidence before the Inquiry; and
 - c. The Council, or HCC (as the LLFA), could have seen this for themselves, but made no request to visit the Appeal Site during the 4-week window.

³⁴ The surveyed ditches can be found in Appendix D to GeoSmart’s “Update” (**ID 18 [97]**); and a potential discharge map to the River Ver in Appendix E (**ID 18 [99]**).

71. When judging the adequacy of all that information, and the three alternatives, we need to remind ourselves that:
- a. This is an Outline Appeal Proposal only and conditions can require approval of specific details at the Reserved Matters stage – as GeoSmart made clear in their “Addendum” (CD 2.4.6);
 - b. Conditions 19-24 (as proposed (CD 9.1.1)) would prevent development from occurring until a SuDS strategy has been approved in writing by the Council, which is precisely how the Secretary of State addressed the same issue in his recent Chiswell Green decision letter (CD 5.2 condition 20));
 - c. For such conditions to be imposed, there only has to be some prospect that a SuDS strategy can be agreed, and there is every prospect; and
 - d. If imposed, those conditions will absolutely “ensure that flood risk is not increased elsewhere”, in the words of NPPF paragraph 173
72. Finally, lest the Council argue otherwise, the fact that the Appellant has demonstrated the presence of the former drainage network is not an amendment to the scheme at all, just an additional off-site option to be considered at the Reserved Matters stage.

Design, Layout, Landscaping and Impact on Residential Amenity

73. As for the Council’s make-weight concerns about design, layout, landscaping and impact on residential amenity, they go nowhere. This is an Outline Application and all matters related to these issues are for determination at the Reserved Matters stage.

Green Belt

74. That leaves, then, the only man standing - putative Reason for Refusal 1 – the Green Belt objection, to which (as I have already made clear) there are two answers:

- a. First, the Appeal Proposal is appropriate Green Belt development, falling within the exception provided by the second limb of NPPF paragraph 154(g); and
- b. Second, the same very special circumstances as were identified by the Secretary of State in the Chiswell Green decision letter (CD 5.2) still apply, only even more emphatically given that the Appeal Site is a previously developed eyesore not an open green field.

APPROPRIATE DEVELOPMENT (PARAGRAPH 154(G) OF THE NPPF)

Introduction

75. I have already set out, and described, the relevant test which arises under paragraph 154(g) of the NPPF – *viz.*, whether the proposed redevelopment of the Appeal Site would cause “substantial harm” to the openness of the Green Belt. If the harm to the openness does not reach this “high bar” threshold³⁵, the Appeal Proposal is entirely appropriate Green Belt development and very special circumstances are not required.

The Correct Approach to Openness

76. The PPG³⁶ advises as follows with regard to the factors to be taken into account when considering the potential impact of development on the openness of the Green Belt:

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

- 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;

³⁵ (CD 5.6 [17]).

³⁶ PPG Paragraph: 001 Reference ID: 64-001-20190722.

- 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.”

77. Accordingly, and as Mr Parker explained (**CD 2.4 [8.9]**), one must ordinarily consider:

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

78. In these regards, however, and as Mr Parker further explained (**CD 2.4 [8.10]**), all housing development in the Green Belt will have a “spatial” impact on openness simply through being built, and will both be permanent and generate traffic also. Accordingly, it is principally the “visual aspects” of openness which paragraph 154(g) of the NPPF is inviting the decision-maker to consider.

The Maitland Lodge Decision Letter

79. This was made clear, moreover, in the Maitland Lodge decision letter (**CD 5.6**), in which the high bar was not reached, *inter alia* because the Appeal Site was so well-screened that it was “visually constrained” (**CD 5.6 [11]**):

“There is open countryside to the west and the south, however there is extensive, mature boundary planting to the west, and lesser, but still significant, boundary planting to the south. ... The site is therefore highly visually constrained and makes only a limited contribution to the openness of the GB.”

80. Indeed, the importance properly attached to that site being visually constrained by boundary planting was such that the high bar of substantial harm was not reached even though there would be obvious, and permanent, spatial impacts on openness, and increased activity also, in all of the following regards:

- a. The development would result in an 80% increase in footprint and a 124% increase in the volume of built form on the Green Belt element of the Appeal Site, an increase in built form which was “relatively significant” (CD 5.6 [12]);
- b. The development would be “relatively dense”, with “runs of rooflines ... fairly close together and prominent, and relatively limited landscaping development” (CD 5.6 [13]);
- c. The development would “spread built form across the whole site, rather than being concentrated to the eastern edge adjacent to the existing housing” (CD 5.6 [14]);
- d. There would be a significant increase in activity on the site in comparison to the existing use for equestrian purposes” (CD 5.6 [14]); and
- e. The gardens of the proposed dwellings would likely be the subject of residential paraphernalia once occupied, further negatively affecting openness” (CD 5.6 [14]).

81. However, notwithstanding the above increase in built form on the site, and because the site was so visually self-contained, the Inspector concluded that the impact on the openness of the wider Green Belt would be limited (CD 5.6 [16]):

“The proposal would result in an increase in built form on the site both in overall footprint and volume and spread across the site. *However, the appeal site is largely visually self-contained, ... The harm to openness on the appeal site itself would therefore have limited effect on the wider GB.*”

[Emphasis Added]

82. Whilst all cases are decided on their own merits, and no two sites are the same, these are matters of principle and approach, and there should be consistency in both regards.

Smallford Works

83. On the other hand, the Smallford Works decision letter (**CD 5.5**) is to be distinguished in that, unlike the situation at Maitland Lodge and the current Appeal Site, the Inspector stated as follows regarding that site's prominent visibility (**CD 5.5 [30]**):

"I found the site to be conspicuous from a number of points of the extensive Public Rights of Way Network ('PRoW') that criss-cross this countryside area of the Green Belt between Hatfield and St. Albans. This is a well-used and relatively open recreational landscape with numerous footpaths, bridleways, and the St. Albans Way to the north, a popular trail for cyclists and walkers along a disused section of the Great Northern Railway between those settlements."

The Impact of the Appeal Proposal on the Openness of the Wider Green Belt

84. In light of the recent clarification of the correct approach to NPPF paragraph 154(g) given in the Maitland Lodge decision letter (**CD 5.6**), the Appellant's principal case is that, as with that development:

- a. The Appeal Proposal is entirely appropriate Green Belt development - it also contributes to meeting an identified affordable housing need on previously developed land without causing substantial harm to the openness of the wider Green Belt; and
- b. Accordingly, the same conclusion as was reached in the Maitland Lodge decision letter, at (**CD 5.6 [17]**), is therefore required here also - there is no need "to further consider issues in relation to GB development or make a determination on 'very special circumstances'".

The Evidence

85. I will come on to Ms Williams' expert evidence on the impact of the Appeal Proposal on openness in just a little while. Suffice it to say at the outset, however, that Mr Hughes' planning judgements relating to such matters is undermined by two obvious errors:

- a. First, and as I have mentioned already, Mr Hughes' claims that the Appeal contributes anything to the character and intrinsic beauty of the countryside (CD 9.2 [5.114]; 5.116)), are simply wrong as you will have seen on your site visit; and
- b. Second, as Mr Parker explained (CD 2.13 [4.8]-[4.12]), Mr Hughes' approach to the calibration of harm attributable to the Appeal Proposal's impact on openness is also wrong.

86. So far as the latter error is concerned:

- a. As Mr Parker stated (CD 2.4 [8.11]), the same amount of development as would cause "substantial" harm to the openness of the Green Belt on a site which is open and exposed would cause less harm on a site where openness is already compromised through having been previously developed and/or because it is extensively screened and/or through a combination of the two.
- b. In our case, the compromise to the openness of the Appeal Site falls into the latter category, being a result of both the dilapidated buildings on site (CD 2.4 [8.11a)-d])) and the extensive screening by mature woodland (CD 2.4 [8.11e))), such that it is barely visible from the wider Green Belt.
- c. However, having applied a scale in which "substantial" harm is at the very top (CD 9.2 [1.15]), Mr Hughes concluded that the harm caused by the Appeal Proposal would, indeed, reach the very highest level of harm to openness he could apply (CD 9.2 [5.16; 5.35; 5.51]).
- d. That position, however, is completely untenable - the harm caused to openness of this previously developed, extensively screened, Appeal Site which is no longer part of the open countryside at all (CD 2.4 [8.11]), must be less than the

very highest level of harm that would be caused, for instance, at an undeveloped, unscreened, site which is still part of the open countryside.

87. Mr Parker's alternative conclusion that the harm to the openness of the Green Belt is less than Mr Hughes' "substantial" (CD 2.4 [8.15b]) is, therefore, far more realistic and necessarily means that the NPPF paragraph 154(g), second limb, exception test is satisfied.

88. Furthermore, that conclusion is reinforced by Ms Williams' expert evidence, in which she explained, at (CD 2.15 [1.6]-[1.12]), why Mr Hughes was simply wrong when he stated that (CD 9.2 [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 on site as well as allowing passers-by to experience the development and the loss of openness."

89. In particular:

- a. As Ms Williams' section clearly illustrates (CD 2.15 [1.8]), and because the proposed frontage buildings are set back further than the existing frontage buildings, the two-storey proposed development will not increase the sense of enclosure from Lye Lane at all; and
- b. The new greenspace alongside the front boundary will allow for the incorporation of a planted buffer across the site frontage, providing a more vegetated boundary which will further filter views of development on the site from Lye Lane (CD 2.15 [1.9]).

Conclusions on Appropriateness

90. Accordingly, when the correct Maitland Lodge approach is applied to the Appeal Proposal, the same conclusions must be reached:

- a. The harm to the openness of Green Belt is not substantial;
- b. The Appeal Proposal is appropriate Green Belt development;
- c. Very special circumstances are not required; and
- d. The Appeal Proposal conforms with both national and local Green Belt policy.

91. The comments below are therefore made entirely on a without prejudice basis, and on the unaccepted assumption that, notwithstanding its virtual enclosure by mature woodland and very limited (albeit beneficial) visual impact, the Appeal Proposal is nonetheless considered to be inappropriate development in the Green Belt. In that event, very special circumstances will need to be demonstrated in accordance with paragraphs 152 and 153 of the NPPF.

VERY SPECIAL CIRCUMSTANCES

Introduction

92. Whilst the very special circumstances Green Belt test requires matters to be looked at in the round, and not artificially sequenced into a two-stage process³⁷, there are nonetheless two sides to the planning balance which have to be weighed - harms and benefits - and it is those to which I therefore turn.

The Harms

Green Belt Harms

In Principle / Definitional Harm

93. If, contrary to the Appellant's primary case, the proposed development is decided to be inappropriate, then the definitional harm by reason of that inappropriateness must be given "substantial weight" - see: paragraph 153 of the NPPF. That is accepted (CD

³⁷ See: *Sefton Metropolitan Borough Council v Secretary of State for Housing Communities and Local Government & Jerry Doherty* [2021] EWHC 1082 (Admin), at [34].

2.4 [9.1]). However, it is nonetheless important to remember that:

- a. The Council has acknowledged that the housing shortage in St Albans is so severe that there are “exceptional circumstances” to justify removal of land from the Green Belt in accordance with paragraphs 145 and 146 of the NPPF;
- b. Until it can renew its Local Plan, and its record thus far is pretty lamentable, those needs must be met somewhere in the Green Belt; and
- c. That means that this definitional harm will be caused in any event if housing needs are to be met.

Openness

94. Likewise with any harm to “openness”. In particular, if the proposed development is decided to be “inappropriate”, then that can only be because, contrary to the Appellant’s primary case, it is decided that the development would cause substantial harm to the openness of the Green Belt by reference to paragraph 154(g) of the NPPF. However, given the Appeal Site’s very limited zone of visibility, and Ms Williams’ evidence on views from Lye Lane, that can only be by reference to the impact on openness in spatial terms, not visual; and that spatial impact on openness is, like the definitional Green Belt harm, inherent to the housebuilding which must take place on open field Green Belt sites if housing needs are to be met.

Green Belt Purposes

95. As for the five purposes of the Green Belt set out in paragraph 143 of the NPPF, none will be harmed:
- a. The proposed development will be contained by the mature trees that enclose the Appeal Site and no sprawl can take place (**CD 2.4 [9.12]**);
 - b. No merger will occur (**CD 2.4 [9.13]**; **CD 2.13 [5.2]**):

- i. The settlements cited by Mr Hughes (How Wood and Brocket Wood) are not even towns: and
- ii. Given that the Appeal Site is already developed, the proposed housing will bring development no nearer to either towns or villages.
- c. As above, since the Appeal Site is already developed, no encroachment into the countryside will occur **(CD 2.4 [9.14]; CD 2.13 [5.2])**;
- d. Given the distance from St Albans, it is agreed that the Appeal Scheme will have no impact on its setting or character **(CD 2.4 [9.15])**;
- e. It is also agreed that this purpose is not affected by the Appeal Proposal.

96. The Green Belt harms are therefore limited to the harms inherent to the development of housing in the Green Belt, and in circumstances in which it is agreed by the Council that Green Belt development must take place if housing needs are to be met, so that these Green Belt harms are going to be occasioned in any event if St Albans' "dire" housing situation **(CD 5.2 [IR 588])** is to be remedied³⁸.

Non-Green Belt Harms

97. As for Non-Green Belt harms, the Officer's Report stated as follows when summarising this part of the Council's case **(SADC Statement of Case Appendix 1 [8.15.5])**:

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

³⁸ The Secretary of State will have recognised this, of course, when granting planning permission for 721 dwellings on open fields in the Green Belt at Chiswell Green, expressly finding that the harms to the Green Belt by reference to inappropriateness, openness, and (in that case) three Green Belt purposes, was clearly outweighed by the need for housing (CD 5.2 [DL37]-[42]).

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

98. I will deal with these Non-Green Belt issues in the above order.

Site Layout / Design

99. As for the first, as already explained, this is an Outline Application with all matters save for access reserved. Accordingly, site layout/design, the location and extent of open space provision, and all matters related to the mitigation of noise impacts on residential amenity, will be for detailed consideration at the Reserved Matters stage.

Landscape / Visual Amenity

100. As for the concerns regarding site landscape impacts, this is addressed in the landscape evidence of Ms Williams (CD 2.9; CD 2.15) and the Landscape and Visual Impact Assessment (CD 1.11) which she authored. Suffice it to say that:

- a. The Appeal Site is not subject to any landscape designation in the Local Plan;
- b. The Appeal Site is not in the setting of any such designated land;
- c. The Appeal Site is not within a “valued landscape”, as provided for by paragraph 180(a) of the NPPF;
- d. The Appeal Site is not within the setting of any such valued landscape either;
- e. The Appeal Site is so enclosed by mature woodland that its zone of visibility is minimal and any visual impact on the wider landscape negligible; and

- f. The Appeal Proposal will actually bring improvements in terms of landscape character and appearance (CD 1.11 [7.3]).

Sustainability of Location

- 101. As earlier explained, once a footpath has been constructed, the Appeal Site is just a brief walking distance to a wide variety of local facilities and services in the village of Bricket Wood, including not just bus stops but a railway station. Moreover, that footpath is needed now; far from a harm of the proposed development, it is an undoubted planning and safety benefit that should be weighed in favour of the Appeal Application, not against. Furthermore, as also previously explained, the Appeal Proposal brings with it substantial sustainable transport contributions towards active travel, and an improvement to Lye Lane through the provision of a passing bay for HGVs. Once again, improvements, not harms.

Flood Risk / Drainage

- 102. Returning, briefly, to these issues, the Conditions we propose will absolutely ensure that flood risk is not “increased elsewhere”, in the words of NPPF paragraph 173.

Highway Safety

- 103. A Road Safety Audit has been submitted and there is no evidence whatsoever that road safety will in any way be compromised.

Impact on SSSIs

- 104. As for the impact on SSSIs, the Council have, as noted above, withdrawn their concern (CD 12.2 [6.5]).

Conclusion on Harms

- 105. For all of the above reasons, even if the Appeal Proposal were considered to be inappropriate Green Belt development (which it should not):

- a. It will occasion no harm at all beyond being inappropriate *per se* and harmful to openness in spatial terms only;
- b. Both of these harms will be occasioned by any of the housing development necessarily required to be on Green Belt land if St Albans' housing needs are to be met, as the Government is increasingly demanding they must be; and
- c. It is in the light of that reality that the benefits of the Appeal Proposal fall to be considered.

The Benefits

106. In Mr Parker's Proof of Evidence (CD 2.4 [10.1]-[10.22]), he concentrated on the following benefits³⁹:

- a. The contribution towards both market and affordable housing;
- b. The use of a brownfield site;
- c. The economic benefits of the Appeal Proposal; and
- d. The increased bio-diversity; and
- e. The provision of a safe and sustainable footpath to Bricket Wood.

Meeting Unmet Housing Needs

107. As for the first, this is considered in detail in the Ms Gingell's evidence on housing need and I have already summarised the key points. However, to set that evidence in its appropriate planning context, it is to be noted as follows:

³⁹ Although you will also have to weigh in favour of the Appeal Proposal the other benefits I have already touched: improvements in terms of character and appearance to this part of the Green Belt; and the improvements for larger vehicles passing along Lye Lane.

- a. First, whilst earlier Ministerial Statements⁴⁰ indicated that the single issue of unmet demand for conventional housing was unlikely to satisfy the very special circumstances test, national planning policy has since changed. The policy approach of those Ministerial Statements was deleted from the PPG and not translated into the 2019, 2021, or 2023 versions of the NPPF. Accordingly, and as a matter of up-to-date national planning policy, meeting unmet housing needs can amount to very special circumstances justifying otherwise inappropriate development in the Green Belt.

- b. Second, this has been recently been confirmed with regard to housing proposals in St Albans, both on appeal and by the Council itself, in all of the following decisions⁴¹:
 - i. Inspector Masters' decision letter, dated 14th June 2021, allowing 100 dwellings on Green Belt land off Bullens Green Lane, Colney Heath [APP/B1930/W/20/3265925] **(CD 5.1)**;

 - ii. The Council's own grant of permission, on 12th January 2022, for 150 dwellings on Green Belt land to rear of 112-156b Harpenden Road [REF: 5/2021/0423] **(CD 3.2; CD 3.3)**; and

 - iii. The Secretary of State's very recent decisions, dated 22nd March 2024, to grant planning permission for both 721 dwellings on two Green Belt sites north and south of Chiswell Green Lane **(CD 5.2)**.

⁴⁰ Made by Brandon Lewis MP on 2nd July 2013, 17th January 2014, and 17th December 2015.

⁴¹ Noting that consistency in planning decisions is highly important. The seminal case is *North Wiltshire v Secretary of State for the Environment* [1993] 65 P&CR 13, in which Mann LJ gave his reasons, as follows: "One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency in the appellate process. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system."

108. These decisions are addressed in turn below.

The Colney Heath Decision Letter

109. As for the Colney Heath decision letter, Inspector Masters held as follows:

- a. For the reasons I have just given, the earlier Ministerial Statements to the effect that meeting unmet needs was unlikely to establish very special circumstances should be given little weight (CD 5.1 [47]);
- b. The housing land supply position in St Albans was bleak - the shortfall was considerable and significant (CD 5.1 [48]) and “very substantial weight was to be afforded to the provision of market housing (CD 5.1 [49]; and
- c. The uncontested evidence on affordable housing presented as a “critical situation” and “extremely acute”, such that “very substantial weight” should additionally be attached to the delivery of 45 affordable homes (CD 5.1 [53]-[54].

The Council’s Decision on Land to Rear of Harpenden Road

110. As for the Council’s decision to permit housing on land to rear of Harpenden Road, the Officer’s Report stated, explicitly, that there was no reason to apply a different weighting than had been applied by Inspector Masters (CD3.2 [8.7.4]).

The Chiswell Green Decisions of the Secretary of State

111. Finally, in deciding to permit 721 dwellings on two Green Belt sites near Chiswell Green, agreeing with the recommendation of Inspector Boniface (CD 5.2 IR [585]-[588]), the Secretary of State’s decision letter made it clear, at (CD 5.2 DL [28]-[29]), that the housing and planning situation in St Albans was “dire”:

- a. There was a “very substantial need” for housing in St Albans which was

persistently going unmet;

- b. The extant Local Plan in St Albans was “hopelessly out of date”, and did not even attempt to deliver anywhere near the amount of housing that is now required;
- c. Against the requirement for a deliverable 4YHLS, the Council had demonstrated just a 2YHLS at best (it has since fallen further to 1.7YHLS);
- d. The latest Housing Delivery Test had also been failed by some margin;
- e. There was an acute need for affordable housing; and
- f. There was no early prospect of the housing land supply deficit being addressed.

112. Indeed, the Secretary of State’s agreement that there was no early prospect of the housing land supply deficit being addressed by the Council is amply demonstrated by this particular Inquiry, given that the Council have refused permission for much-needed housing, even when it was proposed to be developed on previously developed land that can be made sustainable; and when the character and appearance of that land would be improved by the housing.

Use of Brownfield Site

113. As for the second benefit, use of a brownfield site, I have set out already the multiple paragraphs in the NPPF which make it clear that building on previously developed land is – generally - sequentially preferable to building on open fields⁴², and especially

⁴² NPPF paragraph 65; NPPF paragraph 89; NPPF paragraph 123; NPPF paragraph 124(c); NPPF paragraph 146(a); NPPF paragraph 147; NPPF footnote 27; and NPPF paragraph 154(g).

in the Green Belt⁴³. This was correctly recognised in the Maitland decision letter, at [39], where the Inspector stated as follows:

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

114. It is appreciated, in these regards, that in a recent St Albans decision letter for a site off Tollgate Road in Colney Heath [APP/B1930/W/23/3323099] (CD 5.7), an Inspector disagreed with this (CD 5.7 [110]-[113]). However, when that was challenged under section 288 TCPA 1990, Mr Justice Holgate made it clear, at paragraphs 104 and 111 of his judgment⁴⁴, that this was simply the Inspector dealing with a question of weight with regard to a site which was almost entirely (96%) "green, open pasture land". As Mr Parker said of the Tollgate Road site in his Proof of Evidence (CD 2.4 [7.31]), whilst it technically met the definition of PDL it was, in the Inspector's words "patently not 'brownfield' in character or appearance" [DL108]. That decision is of no precedential value, therefore, for today's Appeal Site, which, in stark contrast, is patently brownfield.

Economic Benefits

115. As for the economic benefits of the Appeal Scheme, on any view these are considerable⁴⁵:
- a. First, the lack of access to housing is a key factor hampering economic performance, and by providing more housing to meet local needs, this improves overall economic conditions;

⁴³ NPPF paragraph 142.

⁴⁴[2024] EWHC 2088 (Admin).

⁴⁵ And please note NPPF paragraph 85: "Planning policies ... decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth ..."

- b. Second, the development of up to 115 homes also brings with it direct and indirect economic benefit, as set out by Mr Parker at (CD 2.4 [10.19]-10.20)), to which, substantial weight must be attached.

Increased Bio-diversity

116. And as for increased bio-diversity, given the paucity of flora at the Appeal Site, there is considerable opportunity significantly to increase biodiversity through tree planting, open spaces and the landscaping of over 100 residential gardens. These net gains in biodiversity can be guaranteed through the S106 Agreement. In addition, the Appeal Proposal will also deliver a positive benefit to local ecology by removing buildings and activity from the Ancient Woodland.

The Provision of a Safe and Sustainable Footpath to Bricket Wood

117. Finally, and importantly, the provision of a safe pedestrian footpath along Lye Lane to the facilities in Bricket Wood is much-needed and an obvious planning gain for all of the existing residents in the locality of the Appeal Site; and a clear planning benefit, also, in terms of releasing previously developed land for sustainable housing development in accordance with paragraph 89 of the NPPF.

PLANNING BALANCE AND OVERALL CONCLUSION

118. As I have been at pains to underline, an application for Outline Planning Permission seeks only a decision as to whether the development proposed is acceptable in principle, and in this particular case, that issue is whether, given that housing must take place somewhere in the Green Belt if St Albans' housing needs are to be met, this Appeal Site is acceptable in principle. And the reason my client appealed against non-determination was because, in its email dated 14th July 2023, the Council advised that it would be refusing this Appeal Proposal, as a matter of principle, on Green Belt grounds (CD 2.1 [33])⁴⁶.

⁴⁶ And irrespective of any 'make weight' drainage or highways issues.

119. However, the Council were plainly looking, then, at wrong part of NPPF paragraph 154(g), as is apparent from its comment that the “development would have a greater impact on the openness of the Green Belt than the existing development”; and, for all of the above reasons, when the correct limb of sub-paragraph 154(g) is applied, it is quite that the Appeal Proposal is entirely appropriate Green Belt development, such that very special circumstances do not need to be demonstrated at all. Moreover, even if they did, it is plain beyond doubt that the benefits of the Appeal Scheme demonstrably and clearly outweigh the harms to the Green Belt and all other harm.
120. On either view, therefore, the Appeal Proposal accords with national and local Green Belt policy and should be approved.

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25th October 2024