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## Appeal Decision

Inquiry Held on 16 March 2021 to 19 March 2021

Site visits made on 12 & 22 March 2021

**by Richard Aston BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26<sup>th</sup> May 2021**

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**Appeal Ref: APP/B1930/W/20/3260479**

**Smallford Works, Smallford Lane, Smallford, St Albans AL4 0SA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Stackbourne Limited against the decision of St Albans City & District Council.
  - The application Ref 5/19/3022, dated 18 December 2019, was refused by notice dated 16 July 2020.
  - The development proposed is described as *'redevelopment of site including demolition of existing buildings to provide up to 100 dwellings.'*
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The planning application was submitted in outline with all detailed matters reserved for subsequent approval. I have considered the proposal on that basis. An illustrative masterplan layout also accompanies the application, showing one way in which the appeal site could be developed for up to 100 dwellings. I return to this below.
3. Details in the banner heading above have been taken from the application form at Appendix PH1 of Mr. Hughes's evidence. The parties agreed this to be the correct version and it therefore supersedes the draft form submitted with the appeal and the slight variation in the wording of the description.
4. By the time the Inquiry opened reasons for refusal 3 (Biodiversity), 4 (Drainage), 5 (Infrastructure Contributions) and 6 (Affordable Housing) were no longer in dispute between the principal parties, subject to the submission of suitable planning obligations and a condition in relation to Drainage.
5. A draft legal agreement was presented to me at the Inquiry and due to the need for signatures I agreed a period of time for this to be submitted after the Inquiry closed. Due to delays with the signing of that agreement, a certified Unilateral Undertaking ('the UU') was submitted in its place and dated 29 March 2021.
6. The Council's CIL<sup>1</sup> compliance statement sets out the detailed background and justification for each of the obligations. The UU secures contributions and

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<sup>1</sup> Community Infrastructure Levy.

measures for ecological mitigation, libraries, education, sustainable transport, youth and childcare services, healthcare, play areas and affordable housing. I am satisfied that the provisions of the submitted agreement would meet the tests set out in Regulation 122 of the CIL Regulations 2010 (as amended) and the tests in the National Planning Policy Framework ('the Framework') and can be taken into account.

7. The Council has commenced work on a draft local plan for the period 2020 – 2036. It is in the early stages and therefore in accordance with the requirements of Paragraph 48 of the Framework it carries little weight in this appeal. The Colney Heath Neighbourhood Plan has been approved for designation, but it remains at a very early stage and carries no weight.
8. I carried out unaccompanied site visits, following agreed itineraries to specific and representative viewpoints on 12 and 22 March 2021.

### **Main Issues**

9. Given the above, the main issues in this appeal are:
  - Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies.
  - The effect of the proposal on the purposes of the Green Belt.
  - The effect of the proposal on the character and appearance of the appeal site and area.
  - The extent to which the site is accessible by a range of modes of transport and reliance on private vehicles for journeys.
  - If the development is inappropriate, whether the harm, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances necessary to justify the proposal.

### **Reasons**

#### Inappropriate Development

10. The Council's reason for refusal relies mainly on the Green Belt policy as set out in the Framework, but the starting point is the development plan. Policy 1 of the St. Albans District Local Plan Review 1994 ('the LP') pre-dates the Framework and is not fully consistent with it in that it does not recognise the full extent of exceptions to inappropriate development detailed at Paragraph 145. It 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<sup>2</sup>.
11. Paragraph 145 of the Framework states that the construction of new buildings is inappropriate in the Green Belt with certain limited exceptions. The second limb of 145 g requires development to not cause substantial harm to the openness of the Green Belt, where the development would re-use Previously

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<sup>2</sup> Page 17, paragraph 7.8 of Statement of Common Ground.

Developed Land ('PDL') and contribute to meeting an identified affordable housing need within the area of the local planning authority.

12. The appeal site is relatively flat and contains a number of yards that are used for storage and distribution of various items including scaffolding, building or construction materials, plant, containers, and vehicles. It is sub divided into plots, each containing hardstanding of either tarmac, concrete, or compacted earth, with fencing around the perimeter. Some of these plots include permanent buildings and other structures. Affordable housing would be secured, and I have no reason to disagree that the appeal site meets the definition in Annexe 2 of the Framework and should be regarded as PDL for the purposes of this appeal.

### *Openness*

13. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. The concept of openness was discussed in *Turner*<sup>3</sup> where it was found that:

*"The concept of "openness of the Green Belt" is not narrowly limited to the volumetric approach suggested by Mr Rudd. 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". (Paragraph 14). The Planning Practice Guidance acknowledges this approach and further guides that 'duration and remediability' and 'the degree of activity likely to be generated' are also relevant considerations<sup>4</sup>.*

14. It is necessary therefore to have regard to the existing development, uses and activities on the site when assessing whether the proposal would cause harm to openness and the visual effects in any particular case are matters of planning judgement. In this case, I consider that both spatial considerations, which include (but are not limited to) changes in footprint, floor space, height and volume, and matters relating to visual impact are relevant.
15. 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. This is also a site where the 100 units was indicated in previous 'calls for sites'. In combination with extensive public consultation via a dedicated marketing company and detailed scheme specific submissions and technical reports, 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.
16. The appellant's 'Openness Assessment' formed the basis of consideration of this issue by the witnesses at the Inquiry. Considerations of Site Coverage,

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<sup>3</sup> *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466.

<sup>4</sup> Para 001; ID 64-001-20190722.

Building Footprint and Heights, Remediability, Activity and Visual effects are therefore matters to which I now turn.

*Site Coverage, Building Footprint and Heights*

17. A small number of plots benefit from double height portacabins. A scaffolding yard in the north eastern corner had a similar albeit more bespoke arrangement of cabins and scaffolding structures to the approximate height of an existing telegraph pole. The Council considered the uses on the site as being immune from enforcement action, but I was told scaffold racking in Plot 11 is the subject of current enforcement investigations by the Council. As there is a question mark over the legality of this it should not be treated as part of the baseline of the site.
18. Plot 4 located centrally in the site had pallets stacked to approximately 5-6 metres and I observed a number of areas of storage within the confines of the plots within the site. This included plant, machinery, palettes, pipework, groundwork materials and vehicles being stored both in dedicated areas and more generally within the confines of each plot. Vehicle storage was evident in Plot 1a and b situated along the frontage with Smallford Lane. I also observed some medium height storage on Plot 1b and fairly low-level storage on Plots 1b and 10b.
19. There may well be no areas of green space, but it could not be reasonably said there are no open spaces within the site, formed by the internal roads and the wide new access road with its bell mouth junction. Areas of space are also inherent in the manner in which items are stored and moved around the majority of the plots, as can be clearly seen on the historic aerial photographs since 2000<sup>5</sup>. Naturally there will also be fluctuations in occupation of the plots, and I observed empty plots in the north western corner, vacant since November 2000 because of the COVID-19 Pandemic. Whilst I cannot be certain as to the likely longer-term effects, this indicates to me the natural ebb and flow of commercial uses and storage on the site.
20. In terms of permanent buildings there is a large building that forms part of Plots 2e, 3 and 3a to the rear. This is partly visible from the public open space to the immediate west and in longer distance views from footpaths to the east, although its effects are reduced by its colour, siting, and presence of landscaping to its rear boundary. Other than this building, there are low level and single storey additions attached to it and much smaller permanent structures such as the security booth of the new access and corrugated sheds and single storey structures on a few of the plots, including 1a, 4, 10b and 11.
21. The total floor area of the permanent buildings at present is 2673.45 sqm<sup>6</sup> GEA<sup>7</sup>, 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'*<sup>8</sup>.

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<sup>5</sup> Appendix A11 to Mr. Churchill's PoE – Historic Images.

<sup>6</sup> Square metres.

<sup>7</sup> Gross External Area.

<sup>8</sup> Section 7.20 of Statement of Common Ground.

22. I observed the height of the tallest items being stored to be somewhere in the region of approximately 5-6 metres. Whilst I appreciate that the extent of planning control on this site is limited, taking account of health and safety concerns, and internal plot circulation needs storage at this height is unlikely to occur across the site or individual plots as a whole. Whilst my visits were snapshots it seems to me that there is an inherent self-control for such uses on such sites in terms of the height of storage and not all storage uses are capable of being stored at height, for example plant equipment, vehicles and machinery.
23. In a limited number of locations heights would be comparable to a 2 storey dwelling but the existing site coverage, footprints and heights are not comparable to that of permanent dwellings in one location formed by up to 100 2 storey buildings with pitched roofs and their associated hard elements such as patios, parking areas and inevitable residential outbuildings. The fact that a residential scheme may be more 'orderly' would not therefore result in the openness benefits suggested by the appellant.

*Nature of existing uses – Duration and Remediability*

24. The appellant contends there would be an intensification of industrial operations to maximise commerciality, were permission to be refused. It may be that anyone with a commercial interest may look to lease out all of the plots, but the site has been used for broadly consistent storage uses and purposes in excess of 40 years.
25. The aerial images since 2000 show that some areas have undergone intensification at certain times but there is a clear transient nature to storage on this site. It clearly fluctuates within the plot as items are hired out and returned or users and their needs change. Overall, I am satisfied the site would remain broadly consistent in terms of its low-key presence and intensity of storage and the likelihood of any significant intensification by comparison with the existing use is not borne out in the evidence before me.

*Activity*

26. Openness may also be impacted by uses, activities and other elements that are moving or temporary in presence. From Smallford Lane and the footpath network to the north east I perceived sporadic activity from a low loader moving around within Plot 1a. On occasions cars in frontage plots would be moved along with materials being moved by machinery, including cranes and low loading equipment. Vehicles, including heavy and other goods vehicles can also be seen accessing the site from the new central access point.
27. Due to the proposed development there would be an overall decrease in vehicle trips during the AM and PM peak hours and a daily overall reduction of 38 vehicles. Within this some 21 OGV1<sup>9</sup> vehicles and 20 OGV2 vehicles<sup>10</sup> would also be removed from this location as counted over a 12-hour period. There would also be a reduction in movement of the heavy plant and machinery I observed operating in the frontage plots albeit this appeared to be sporadic.

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<sup>9</sup> Includes all rigid vehicles over 3.5 tonnes, including larger ambulances, tractors box and similar large vans. ID4.

<sup>10</sup> Includes all rigid vehicles with four or more axles and all articulated vehicles and OGV1 towing a trailer.

28. The overall frequency of 5 per 1.5 hours is not that significant however and Smallford Lane is already a busy link between Smallford and the A414. Such vehicles can only travel south, and I doubt that the reduction associated with the development would be perceptible. Any reduction in activity would also be replaced with activity associated with a residential development of up to 100 dwellings, including lighting to the upper floors, the use of gardens, streets, visitors and deliveries along with the general day to day activity. As a consequence, I doubt that there would be any significant perceptible reduction in activity.
29. The noise, dust, and pollutant effects in such a location should be considered but my observations on both occasions I visited the site were not of constant industrial noise or smells as suggested by the appellant. Some noises were audible close to the site, but they were scattered and not harmfully unpleasant. On certain days I expect there would be dust, smells, and emissions but not to the extent it is perceptible to any harmful degree other than within the site and perhaps along certain boundaries. My observations are supported by the lack of any notable concerns or complaints to the Council over the years about activities on the site.

### *Visual effects*

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.
31. The appeal site is the only developed site on the western side of the lane before the St. Albans Way. Its appearance and transient use with low key storage uses occupying the site and few permanent buildings provides a degree of visual permeability through and across the site, including views through the deciduous perimeter landscaping of the depth of the site and landscaping on the opposite site boundaries.
32. In wider views, although I visited at a time when the replacement landscaping scheme for the new access, had yet to be implemented, as one moves along the lane and footpath 22, the majority of the site is viewed and not perceived as an intensive, visually dominant storage use. The natural landscaped boundaries partly limit views to the west and north, but the site did not appear to me to be the rural eyesore that the appellant suggests.
33. Enclosed by what are likely to be long rows of terraced and semi-detached buildings at this density and quantum, with little space for sufficient gaps in-between, there would be narrow views into the site enclosed by substantial built form. The resultant 'Mews Courts' on the western side, incorporated to open up views into the site, would be highly likely to be terminated a short distance into the site by other 2 storey-built form and would be enclosed on both sides. Such an approach is unlikely to be effective in allowing views through and across the site and beyond as currently exists and would diminish visual permeability.



34. Internally the open space would be little more than a token gesture and in any layout at this quantum such a token space is likely to be surrounded and visually dominated by the hard elements of residential development including buildings, access roads, hard surfacing and parked vehicles. There is nothing substantive to suggest statutory parking controls would be effective or are a realistic option to limit on street parking. There would also be insufficient space within the development for any structural trees or landscaping to grow to the necessary size to mitigate this or allow the dwellings to be set or seen within an integrated landscape context.
35. Vegetation cover along the site boundary and additional landscaping could restrict some views of the proposed development but there is some uncertainty to my mind as to the extent of works necessary for the removal and maintenance of mature trees and groups within the site. Even in giving the appellant the benefit of the doubt that maintenance works would have a negligible effect, of an extra heavy standard<sup>11</sup> such large specimens as proposed for the frontage can often take longer to establish so can be less effective. Further, I doubt any existing or proposed planting would be effective in softening dominant rows of 2 storey terraced dwellings and their associated roofscape.

#### *Conclusion on openness*

36. 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.
37. 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.

#### Purposes of the Green Belt

38. The Council did not consider harm in terms of purposes due to the nature of the existing land but having found the development to be inappropriate, consideration of any effects on 5 purposes is a consideration in terms of identifying 'other' Green Belt harm.
39. The effect of development as encroachment on the countryside may also be in the form of loss of openness or intrusion and through that loss of openness, there can also be an intrusion or encroachment into the countryside<sup>12</sup>. The site clearly forms part of the countryside and the proposal would result in physical encroachment of development into and onto parts of the site that are currently free from development, other than hardstanding.
40. It would result in vertical and permanent encroachment of larger built form overall and across a much larger area of the site. Although this would be within the confines of this previously developed site, nevertheless the proposal would

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<sup>11</sup> Appellant's Appendix 12.

<sup>12</sup> *Summers Poultry Products Ltd v SSCLG* [2009] EWHC 533 (Admin).

have a significantly greater urbanising effect. The current predominance of openness, trees and vegetation with some intervening buildings and storage would be replaced by closely spaced permanent built form. In this location the proposal would not safeguard the countryside from encroachment, causing moderate harm.

41. The purpose of assisting in urban regeneration, by encouraging the recycling of derelict and other urban land was drawn to my attention by the appellant, but the land is not derelict. While it may be that every dwelling built in the countryside provides a housing opportunity that might otherwise be met within a settlement, no evidence of harm to urban regeneration was put before me.

#### Character and appearance

42. Given the visual dimension identified in *Turner* there is a significant overlap between this issue and my assessment of the effects on openness above. Nonetheless, as that judgement is clear this is a different exercise. The Council's reason for refusal refers to the effect on the wider countryside area and conflict with Policy 74 of the LP which relates to Landscaping and Tree Preservation. Concerns were raised in the Officer Report however regarding internal character and visual effects and proximity of development close to the boundaries.
43. It is clear that the Council had doubts whether up to 100 homes could be accommodated on the appeal site without harmful effects, albeit the wording in the reason for refusal does not accurately reflect this. At this outline stage the question I must ultimately consider is not whether the illustrative masterplan itself shows an acceptable detailed layout and design because those matters are reserved. The question is whether it, along with the submitted information is sufficient to show that an acceptable scheme of up to 100 dwellings at the density of 28 dwellings per hectare is likely to be achievable on the site at the Reserved Matters stage.
44. Whilst the quantitative measure of 28 dwellings per hectare provides a useful starting point, a design led approach also requires a number of other considerations and judgements. As such, the density figure per se is only one measure of indicating acceptability insofar as character and appearance is concerned.

#### *The effects of the proposal*

45. The parties agree that the intrinsic character and beauty of the countryside should be recognised. The Hertfordshire Landscape Character Assessment locates the site in LCA 30: Colney Heath Farmland, for which the strategy and guidelines for managing change are to 'Improve and Conserve'. Reference is made to reducing the visual impact of adjacent built areas.
46. There is largescale horticultural and industrial development to the north, set out along the A1057. I also observed residential development around Station Road and Wilkins Green Lane to the north but built form north of the St. Albans Way is not conspicuous or prominent given significant intervening landscaping along its boundaries and around Smallford Fishery.
47. The appellant's Landscape and Visual Impact Assessment ('LVIA') was undertaken in accordance with professional guidelines but before the trees and landscaping for the recently implemented access were removed. In wider



landscape terms, this is a medium scale landscape contained by adjacent urban areas which are visually concealed. The appellant suggests that the sensitivity of the overall landscape should be regarded as 'Medium' and the magnitude of change would be 'Small'. I find above that there would be insufficient space for integrated and successful landscaping and therefore given the quantum of development proposed I consider that the appellant's assessment of the significance of effect as being 'Minor Neutral' post-construction overestimates the likely success of the proposed planting.

48. Linear 2 storey housing exists in Sleafshyde to the south east, but I observed much longer rear gardens backing onto fields and a more informal historic layout of development on its eastern periphery. Fringe-built form of 1–2 storeys, included single storey bungalows opposite the southern tip of the site. The pattern and layout of residential development that is likely to come forward on the site would be of a distinctly different plot size and form to the prevailing residential properties within Sleafshyde. There would be a permanent effect and a consequent change in the appreciation of the immediate landscape by formation of a harder and unduly prominent edge to it.
49. Any pedestrian links to open space to the west would be for occupiers as the likely layout would not encourage any real sense of legibility and accessibility for recreational or other walkers who would be unlikely to choose to walk through a densely developed, visually enclosed housing estate with relatively narrow gaps, given more attractive and well sign posted PRow network around the site.
50. The design rationale in the masterplan for the approach along Smallford Lane is to allow for a more open frontage formed by rear gardens. However, such an approach provides no active frontages which are a prevailing characteristic of residential development in the locality with dwellings fronting onto and accessed from the highway. It has not been demonstrated there are no other design and layout approaches, not all properties would need to address the frontage and any ground floor effects from associated frontage activity on openness would be low level and capable of mitigation. There may well be implications in visual openness terms of dwellings fronting onto the lane, but this is an outdated approach to residential design.
51. Although the Council takes no issue with separation distances or provision of amenity space, I have found above that the restrained size of the majority of the planting spaces and likely close proximity to buildings means that there would be insufficient space to accommodate any meaningful landscaping that could grow to soften the effects. The proposal would rely almost entirely on existing planting outside the site boundary for screening and softening of the built elements, including the trees required as part of the access proposal.
52. Without sufficient green space, structural landscaping, boundary planting or gaps through the site this quantum of development would contrast starkly with the prevailing character of residential development in the area. Any scheme of up to 100 dwellings is highly likely to result in harmful enclosure of the site's prominent frontage and permeable boundaries.
53. Turning back to the LVIA, given the nature of the storage uses I have identified, the 'Very Low' sensitivity of the site to accommodate development seems too negative. The LVIA therefore underestimates the significance of

effects as being 'Moderate', there would be a lack of space for meaningful internal or external landscaping and I do not agree it would reduce over time to be 'Minor Beneficial'. For the same reason, the 'Moderate Adverse' effect on the setting of the site would also not reduce to a residual effect of 'Minor Neutral'. In addition the changes would not be fully mitigated and residual effects of 'Minor Neutral' are therefore overly optimistic.

54. It was common ground that some visual harm would occur with the appellant originally referring to '*significant negative weight to the potential visual impact harm*<sup>13</sup>', although this was amended to 'Moderate' by the close of the Inquiry.
55. The greatest visual effects would be from extensive public open space to west and from Footpaths and Bridleways in fields opposite the site. The most affected would be Footpaths 11 and 39 to the west and from Bridleway 2 and Footpath 19 opposite, as well as on approaches past the site along Smallford Lane. The existing buildings at the rear of the site are perceptible from Footpath 11 but are not particularly prominent. Closer to the site storage materials are visible through the boundary fencing and landscaping. The previous portable toilet storage use has ceased although views are available of the racking on Plot 11. Some of the other lower level storage items can also be seen.
56. I agree sensitivity of views from Footpath 19 and Bridleway 2 to be 'High'. In these views the resultant roofscape and the magnitude of change would not be 'Minor' as suggested by the appellant because the eye would be unacceptably drawn to the walls of 2 storey dwellings across the open field. Given the likely size of the plots and once patios and outbuildings are constructed this would not be mitigated by garden planting and it is doubtful the boundary with Smallford Lane would be able to recover to the verdancy it previously was<sup>14</sup>.
57. Taking account of the totality of the view, with the built-up area of the village only partly visible, in combination with the lack of built elements on the western side of the lane, from Bridleway 2 and Footpath 19 the magnitude of change should be more appropriately described as 'Medium' as opposed to 'Small' due to the introduction of more prominent elements. This would result in 'Major' visual effects which would not be mitigated sufficiently by existing or proposed landscaping.
58. There would also be direct and clear visual effects for users of Smallford Lane. Of a 'Medium' sensitivity, whilst not entirely uncharacteristic of the existing landscape, rows of houses would be entirely uncharacteristic of land on this western side of the lane. The magnitude of change would be more akin to 'Large' rather than 'Medium' along the frontage and in turn the visual effect would therefore be 'Major' and would not as suggested by the appellant, reduce to 'Minor Neutral' due to garden or boundary planting.
59. Seeking to optimise the use of land and in an area with an existing or anticipated shortage of land for meeting identified housing needs is important but Paragraph 117 of the Framework is also clear that the effective use of land in meeting the need for new homes, should safeguard and improve the environment. Achieving this should not be at the expense of the character and

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<sup>13</sup> Paragraph 6.11 of Mr. Churchill's PoE.

<sup>14</sup> Photograph on page 1 of Design and Access Statement.

appearance of the area or the creation of well-designed and attractive residential environments.

60. The proposed quantum could be physically accommodated on the site but would impose an overly dense and inward facing urban island of intensively developed residential dwellings that would cause harm to character and appearance. The appellant's solution in the form of the illustrative layout appears to me to more focused on internal density considerations rather than in ensuring that the development would be appropriately integrated into its landscape setting, of a high-quality design and visually appropriate in its context.
61. Whilst I do not doubt that the detailed submissions indicate the appellant has sought to demonstrate that a well-designed residential development can be achieved, even at that 'low' threshold as the appellant puts it, the quantum of development shown on the illustrative layout does not demonstrate to me that would be the case.
62. For these reasons, the proposal would cause significant harm to the character and appearance of the appeal site and area. It is clear that the Government has set a high design bar and in this particular context the proposal would not result in high quality design. The proposal would therefore conflict with Policies 1, 2, 69, 70 and 74 of the LP insofar as they require development to provide adequate space within developments for landscaping, have an adequately high standard of design having regard to the scale and character of its surroundings in terms of height, size, scale and density and massing and siting creates safe, attractive spaces. Further that development should not detract from the character and setting of settlements within the Green Belt and that new development integrates with the existing landscape.
63. Whilst acknowledging the existing nature of the site, the harm to the character and appearance of the surrounding area would be significantly greater than the existing use of the site to the extent that it would fail to respect the intrinsic character and beauty of the countryside at this point. Consequently, it would be inconsistent with national policy expressed by Paragraph 170(b) of the Framework.
64. The proposal would also conflict with the design objectives of the Framework, including the requirement that developments should add to the overall quality of an area, are visually attractive as a result of layout and appropriate and effective landscaping, are a high-quality standard of design that is sympathetic to local character including the surrounding built environment and landscape setting.

#### Accessibility

65. The parties disagree as to the extent to which the site is accessible by a range of modes of transport. The site is not isolated in terms of Paragraph 79 of the Framework due to the presence of neighbouring development. Up to 100 dwellings would however be a significant development and in accordance with Paragraph 103 of the Framework such development should be focused on locations which can be made sustainable, limiting the need to travel and offering genuine modal choice.

66. The proximity of other housing does not mean that it should be considered an accessible and suitable location for residential development. Suitability due to the inclusion of the site in a SHLAA<sup>15</sup> in 2009 is not a determinative factor given its Stage 1 Pro-Forma nature, with limited questions covering this topic. The guidance documents put before me by the Council<sup>16</sup> do not set fixed rules and consideration of this matter rests on the context, circumstances and to an extent, the individual.
67. Neither Sleafshyde nor Smallford provide the necessary facilities to serve the day to day needs for such a scale of development. The appeal site is somewhat remote from services and facilities in St Albans and Hatfield and is close to major vehicular highway routes. The appellant acknowledges reliance on the car and the Transport Assessment states 2% would travel by bus, 3% by bike, 12% on foot, and 14% by train.
68. All aspects of sustainability should be considered in planning decisions, local circumstances should be considered, and opportunities to maximise sustainable transport solutions will vary from urban to rural areas. I also accept that national policy, to a degree, requires choice to be provided but actively managing patterns of growth, including locating significant development in locations which are or can be made sustainable through limiting the need to travel and offering a genuine choice of transport modes are key considerations. Ultimately, this is to reduce the effects of congestion and emissions, mitigate and adapt to climate change and ensure air quality and public health is improved.
69. There are some opportunities for pedestrians and cyclists via the existing network of PRoW's, but the use of this network would only be suitable for accessing local facilities or for recreational leisure purposes. Cycling is also unlikely to be popular other than for experienced and enthusiastic cyclists, given the nature of the unlit narrow rural lanes and footpaths that criss-cross this rural landscape along with major road networks. Such a journey would also not appeal to all, especially in inclement weather and it would be difficult to access all the services required by a family by these modes alone.
70. Served by bus stops on Smallford Lane, 4 services operate every weekday in each direction to St. Albans City and railway station in one direction and Colney Heath in the other, reducing to 3 services on Saturdays with no service on a Sunday. Alternative bus stops are located on Hatfield Road, approximately 1.2km (approximately 12 minutes walking time) north of the site but even with pedestrian enhancement contributions secured in the UU they would still not be accessible for all and would only likely be used by a small number of future occupiers.
71. The primary school in London Colney would be a 10-15-minute walk. Engineering works have taken place on the A414 to improve pedestrian accessibility and it would be a realistic option for some future residents with children of primary school age.
72. Nonetheless, with limited public transport options, a significant number of future occupants would realistically have no choice but to rely on private vehicles in order to access day to day facilities, employment opportunities and

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<sup>15</sup> Strategic Housing Land Availability Assessment 2009.

<sup>16</sup> Manual for Streets as per Mr. Hughes PoE 5.76 onwards.

services further afield. A proposal of up to 100 dwellings would generate a considerable number of, perhaps short, car journeys but the impact is likely to be significant.

73. Further, if permission were to be granted and implemented the existing uses and their associated trips may not simply disappear. The operators would seek to locate elsewhere and even allowing for some natural cessation of some of the businesses, a number of existing trips associated with the uses and operations would remain albeit displaced elsewhere onto the network. I have nothing substantive to indicate where those businesses would relocate to, but any reduction in greenhouse gas and other emissions is unlikely to be completely removed.
74. It is too early to substantiate whether the impacts of the COVID-19 Pandemic will materially alter future shopping and retail habits to have any permanent effect on vehicle travel and environmental impacts and no substantive evidence was put before me. Electric vehicle charging points could also be secured by condition but whilst electric vehicle usage is increasing the wider infrastructure is not sufficient to make any determinative impact or demonstrate it would be taken up other than on a limited individual basis.
75. A Travel Plan is proposed and as such, there would be some promotion of sustainable transport modes but at this outline stage there is little for me to be confident in its likely coverage and uptake. Furthermore, it would be normal for any development of this nature anywhere to include such measures and they do not indicate to me such a location could be made sustainable.
76. Overall, the proposal would not be located where it would contribute to a cumulative reduction in harmful greenhouse gas emissions by maximising sustainable transport solutions in a way commensurate with the rural location. This would result in environmental harm from greenhouse gas emissions, a failure to mitigate climate change by locating significant developments which are or can be made sustainable, limiting the need to travel and offering a genuine transport choice to ultimately, improve air quality and public health. There would be conflict with the Framework in this regard, but in this case the weight must be balanced against any environmental benefits put forward by the appellant, to which I return to below.

#### Other considerations

77. For the purposes of this appeal there is no dispute that the Council's housing land supply is 2.4 years. The proposal would deliver up to 100 new homes in a District where 2 recent emerging local plans have been found unsound but this is also a heavily constrained District for housing with virtually all the undeveloped land in the District outside the built-up areas designated as Metropolitan Green Belt.
78. As noted by previous examining Inspectors<sup>17</sup> there are concerns regarding the Council's process in seeking to demonstrate 'exceptional circumstances' for removing areas from the Green Belt, noting the failure to prioritise PDL in the first instance. Nonetheless, the Green Belt boundary in the area of the appeal site was not proposed to be amended. Although such smaller sites may be expected to come forward through the planning application process to meet the

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<sup>17</sup> Appendix A5 to Mr Churchill's PoE.

District's housing requirement and the Council acknowledge that some will be 'approached differently'<sup>18</sup>, this is ultimately a Section 78 appeal where the decision maker has to carry out a balance of considerations.

79. In terms of the weight to the housing land supply situation, the greater the shortfall the greater the weight<sup>19</sup> and here the supply is categorised as '*appallingly low*' by the appellant. The Statement of Common Ground refers to significant weight for the '*provision of housing including 40% affordable housing*' amended to '*very substantial*' for both by the appellant at the close. My view is that this is just below half of the 5 year requirement and in such a context, mindful that the Framework seeks to boost significantly the supply of housing land, for this number of units I afford significant weight to the contribution to housing land supply.
80. Forty units of affordable housing would be secured, 5% above the existing LP requirement. As a proportion of new net dwellings, an average of 17.2% were affordable in the last 5 years – far below the Council's own adopted target of 35%. These affordable homes would be in an area where needs are considerable and these dwellings would allow those who cannot afford to buy or rent their own home, to settle in an area where housing demand and prices mean that is not possible for a significant number of people. Including a modest excess contribution in accordance with the emerging local plan, the totality of affordable housing is a public benefit that attracts very significant weight in favour.
81. Economic benefits arising primarily relate to direct and indirect jobs, and the longer-term boost to local spending power. This could arise from any similar development but that does not detract from the fact that this particular development would offer such benefits, some of which would be temporary and short term, but others would be longer lasting and permanent.
82. Balanced against this, although the Council do not object to the loss of the site on employment grounds, in attributing weight to any economic benefit the likely creation of jobs and categorisation of spending power has to be balanced against any likely loss of jobs from businesses failing to relocate elsewhere.
83. I received correspondence from an existing and long-term occupier of Unit 3a<sup>20</sup>, who considers commercial space for their use is not available and how critical storage sites such as the appeal site are for certain open storage uses. That occupier warns over 100 jobs could be lost alone from that business if forced to relocate elsewhere were I to allow the appeal. Similar concerns were also expressed in representations made at the application stage by other existing occupiers of the plots. I also heard that no assistance in terms of relocation has been given to occupiers by the Council, despite an apparent and long-standing ambition to relocate the uses and enhance the site.
84. Ultimately, on the evidence before me it is difficult to reach a definitive conclusion as to the scale of loss and associated economic effects but it is far from certain that all existing users would be able to relocate, and that their businesses would survive. Were they to do so the investment and spending during construction and future spending in the local economy tips this

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<sup>18</sup> Appendix A8 of Mr. Churchill's PoE.

<sup>19</sup> *Langton Homes Ltd v Secretary of State for Communities and Local Government* [2014] EWHC 487 (Admin)

<sup>20</sup> MET Medical Letter dated 10 March 2021.



consideration in favour of being a positive benefit but given the uncertainty I give any economic benefits no more than a moderate amount of weight.

85. There is nothing substantive to suggest the obligations are anything other than mitigation for the impacts of the development. The absence of harm in terms of other normal development management matters weighs neutrally in the planning balance.

*Environmental benefits*

86. I am referred to the remediation of the appeal site and the site presents a medium-high risk of contamination that could be mobilised during construction to pollute controlled waters in the vicinity of the site. The appeal is accompanied by a series of ground condition assessments which consider the likelihood of contamination, ground gases and the like. The conclusions and recommendations are agreed by both the Environment Agency and the Council but whilst monitoring is required, remediation would not appear to be needed if the existing use remained. Any remediation of the site would also have to be carried out to be policy compliant.
87. No expert or technical evidence was submitted or presented in relation to noise, air quality impacts or generation of dust or other nuisances. This site has been in operation for a number of years, with very few complaints<sup>21</sup>. Moreover, there was no significant level of local interest at the Inquiry which one could have reasonably expected if the site was indeed such a bad neighbour.
88. Overall, vehicle trips would be reduced in this location, including a reduction in OGV vehicles as set out above but on the evidence before me, existing trips may simply be displaced elsewhere. Trip rates are also fairly low to begin with and the lane does not appear to suffer from heavy congestion. The benefits in terms of highway capacity would not therefore be material and there is nothing to suggest road safety would be improved to any meaningful degree in this location. It should not be treated a significant positive benefit.
89. The appellant put a further benefit that the grant and implementation of planning permission would force a regulation of planning control. However, I disagree because if implemented, the unregulated use and its users are likely to be forced to relocate elsewhere. There is nothing substantive to indicate there are more suitable sites for such uses that would allow for planning controls to better mitigate their effects. I have already concluded it is not the bad neighbour the appellant suggests, and further non-planning controls are also available albeit they have never had to be used on this site. This consideration carries little weight.
90. There is evidence of occupiers (Plot 3a) being unable to carry out environmental improvements to the carbon footprint of their buildings and improve their efficiency because of uncertainty surrounding the future. It is therefore feasible that some small, albeit unknown at this stage enhancements could take place to this and other buildings if planning permission were to be refused.
91. For these reasons, the magnitude of purported environmental benefits is not borne out in the evidence before me to the extent they should be regarded as being a substantial positive benefit. There would also be no 'major

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<sup>21</sup> 2 reported complaints in the last 6 years.

environmental enhancement' of the site given the harm I have already identified.

92. I have found environmental harm and policy conflict due to the location of the site for residential development and future occupiers' reliance on vehicle journeys. However, taking account there would be a reduction in trips in this specific location and in combination with the remediation of the land, these partly offset that harm and conflict. Nonetheless, a significant number of trips associated with the site would be highly likely to be displaced elsewhere onto the network. Overall, it is highly likely there would still be some moderate environmental harm caused by granting permission for this proposal on this particular site.
93. The site itself is of negligible ecological value and some enhancement measures could occur through some limited enhanced connectivity with other wildlife and ecology resources. However, the site's density and likely layout, its token open space and lack of space for meaningful structural landscaping would restrict such opportunities. The benefits would be subject to a number of considerations at the detailed stage but in principle, I see no reason why some small biodiversity enhancement measures could not be secured to which I give a small amount of weight at this outline stage.

### **Other Matters**

94. My attention has been drawn to a number of appeal decisions<sup>22</sup> and whilst I have had regard to them I have not found it necessary to make specific comments on any of those conclusions. Each decision turned on their own evidence and merits, as has my conclusions.
95. I have considered all the other matters raised in the representations, including the suggested conditions which may be appropriate but do not find that they alter or are necessary to my conclusions on the main issues in this case.

### **Planning balance and conclusion**

96. The Framework, partly reflected in the requirement in Policy 1 to show very special circumstances, is clear that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In considering such a proposal, the Framework is clear that substantial weight should be given to any harm to the Green Belt.
97. I have found the proposal would be inappropriate development in the Green Belt, causing substantial harm to openness. I have also identified harm to one of the purposes of the Green Belt and non-Green Belt harm in terms of character and appearance and the site's accessibility, which add further weight against.
98. The weight I have given to those other considerations weighing in favour is set out above and I have considered the legal judgements put before me by both parties. The approach favoured by the appellant is supported by the judgment of the High Court in *R (River Club) v Secretary of State for Communities and Local Government* [2009] EWHC 2674 (Admin). It was noted in this case that there are no qualifying words in relation to the phrase 'any other harm' and

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<sup>22</sup> Appendix PH3, PH6, PH10 and PH11 of Mr. Hughes' PoE and Appendix A3 of Mr. Churchill's PoE.

there is no harm to openness that is additional to the harm caused through inappropriateness. The appellant essentially contends that it would be irrational double-counting to give separate weightings to the inappropriateness, on the one hand, and the substantial harm to openness on the other.

99. The Council contend that there are in effect 2 'substantial' harms to the Green Belt that, amongst other harms, need to be weighed and include both definitional harm and the harm to openness. It refers to *Doncaster MBC v SSETR* [2002] JPL 1509, at para. 70, where Sullivan J 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 emphases).
100. The approach in *Doncaster* was endorsed by Lord Justice Carnwath in the case of *Wychavon v SSCLG & Butler*, Court of Appeal EWCA Civ 692 June 2008. The facts in both of those cases however were obviously different to this case and they both pre-date the revised Framework.
101. I accept that a party to a planning appeal in advancing a Green Belt balance, will seek to apply separate, or not as the appellant's case is here, finely calibrated and carefully chosen weightings to any harm and other considerations they identify in order to seek to irrefutably demonstrate how tipped the weighting scales are in favour of their case.
102. In my view however, what is required is a single exercise of planning judgement about the totality of Green Belt and other harm, balanced against the combined weight of any other considerations. It is not a quasi-mathematical exercise of allocating finely calibrated and overstated weightings to each harm which, as in this case are then subject to change even after evidence is submitted and common ground established.
103. In this case there are clearly considerations that push and pull in both directions. There are considerations that weigh heavily in favour of this proposal in terms of the Government's objective of '*significantly*' boosting the supply of housing and providing affordable housing in an area with a significant undersupply. The proposed development would occupy PDL and there would also be other less significant economic and environmental benefits as set out above. Set against this, the Government also attaches great importance to Green Belts and the Framework requires substantial weight to be given to any Green Belt harm. The achievement of well-designed places is fundamental to what the planning and development process should achieve along with the need to improve air quality and public health and mitigating and adapting to climate change.
104. My judgement in this appeal is that the other considerations do not clearly outweigh the totality of harm to the Green Belt, by reason of inappropriateness, through its substantial harm to openness, encroachment into the countryside, the harm to the character and appearance of the appeal site and area and environmental harm caused by its location. Consequently, the very special circumstances necessary to justify the development do not exist.

105. As the Council cannot demonstrate a 5 year housing land supply Paragraph 11 (d) of the Framework indicates that permission should be granted, unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. The application of Green Belt policy provides that to be the case here. As such, the proposal would not be the sustainable development for which Paragraph 11 of the Framework indicates a presumption in favour.
106. Drawing my conclusions together, although the conflict with Policy 1 of the LP does not carry full weight as it is not entirely consistent with the Framework, as very special circumstances have not been demonstrated the proposal would be in conflict with its requirements. The proposal would also conflict with other policies of the LP as set out above and would be in conflict with the development plan, when read as a whole.
107. Material considerations, including the Framework do not indicate that a decision should be taken other than in accordance with the development plan. Having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

*Richard Aston*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Mr Gwion Lewis,  
of Queens Counsel

instructed by Stackbourne Limited

He called

Mr David Churchill  
MRTPI

Carter Jonas

### *Also present for the appellant:*

Karl Pitman  
Howard Scheider  
David Norman  
Jamie Stanley  
James Ellis  
Rob Murdoch

Pitman Associates  
Darlington Hardcastle  
Stackbourne Limited  
Carter Jonas  
Carter Jonas  
RMA Environmental

### FOR THE COUNCIL:

Mr Andrew Parkinson,  
of Counsel

instructed by St. Albans District Council

He called

Mr Phillip E Hughes  
BA (Hons) MRTPI FRGS PhD  
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### *Also present for the Council:*

Sarah Smith  
Gouda Vaitkeviciute  
David Edwards  
John Rumble  
Charlotte Kemp

St. Albans District Council  
St. Albans District Council  
St. Albans District Council  
Hertfordshire County Council  
Hertfordshire County Council

### INTERESTED PERSONS:

Mr Peter Cook  
Mike Rawins  
Lisa Chaplin  
Cllr Richard Curthoys  
Cllr David Yates  
Alison Metcalfe  
Lilly Ruddock  
Lee Stannard  
Bernard Fleming

Iain Macsween  
Ruth Ambrose  
Ruth Mitchell  
Jonathan Shreeves

Colney Heath Parish Council  
Colney Heath Parish Council  
Colney Heath Parish Council  
St. Albans District Council  
St. Albans District Council  
Duncan Murdoch  
Andrew Wright  
Michael Mould

## DOCUMENTS SUBMITTED AT AND AFTER THE INQUIRY

| Document Number    | Document name                                                                                                                                                                                                                                                                                                                                                                    | Submitted by      |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| <b>Document 1</b>  | Certified Unilateral Undertaking                                                                                                                                                                                                                                                                                                                                                 | Appellant         |
| <b>Document 2</b>  | Opening statement                                                                                                                                                                                                                                                                                                                                                                | Appellant         |
| <b>Document 3</b>  | Opening statement                                                                                                                                                                                                                                                                                                                                                                | Council           |
| <b>Document 4</b>  | Vehicle classification document                                                                                                                                                                                                                                                                                                                                                  | Appellant         |
| <b>Document 5</b>  | Stackbourne Ltd letter dated 16 March 2021                                                                                                                                                                                                                                                                                                                                       | Appellant         |
| <b>Document 6</b>  | Cllr Peter Cook's drainage response                                                                                                                                                                                                                                                                                                                                              | Colney Heath PC   |
| <b>Document 7</b>  | CIL Compliance Statement                                                                                                                                                                                                                                                                                                                                                         | Council           |
| <b>Document 8</b>  | Site visit map                                                                                                                                                                                                                                                                                                                                                                   | Appellant/Council |
| <b>Document 9</b>  | Additional planning conditions                                                                                                                                                                                                                                                                                                                                                   | Council           |
| <b>Document 10</b> | Draft S106 legal agreement and title                                                                                                                                                                                                                                                                                                                                             | Appellant         |
| <b>Document 11</b> | Appellant's amendments to suggested planning conditions                                                                                                                                                                                                                                                                                                                          | Appellant         |
| <b>Document 12</b> | Colney Heath Parish Council final statement                                                                                                                                                                                                                                                                                                                                      | Colney Heath PC   |
| <b>Document 13</b> | <p>Council's closing submissions including:</p> <p><b><i>Turner v Secretary of State for Communities and Local Government</i></b> [2016] EWCA Civ 466</p> <p><b><i>R. (on the application of Samuel Smith Old Brewery) v North Yorkshire CC</i></b> [2020] 2 P. &amp; C.R. 8.</p> <p><b><i>Doncaster MBC v Secretary of State for the Environment</i></b> [2002] J.P.L. 1509</p> | Council           |
| <b>Document 14</b> | <p>Appellant's closing including:</p> <p><b><i>Langton Homes Ltd v Secretary of State for Communities and Local Government</i></b> [2014] EWHC 487 (Admin)</p> <p><b><i>R (River Club) v Secretary of State for Communities and Local Government</i></b> [2009] EWHC 2674 (Admin).</p>                                                                                           | Appellant         |
| <b>Document 15</b> | Surface Water Statement of Karl Pitman                                                                                                                                                                                                                                                                                                                                           | Appellant         |
| <b>Document 16</b> | Email regarding S106 update                                                                                                                                                                                                                                                                                                                                                      | Appellant         |
| <b>Document 17</b> | Confirmation of oral closing submission exchange                                                                                                                                                                                                                                                                                                                                 | Appellant/Council |
| <b>Document 18</b> | Certified Unilateral Undertaking dated 29 March 2021                                                                                                                                                                                                                                                                                                                             | Appellant         |