



Department for Levelling Up,  
Housing & Communities

A. John Boyd  
Carter Jonas  
[REDACTED]

B. Brian Parker  
MRP Planning  
[REDACTED]

Our refs:

A. APP/B1930/W/22/3313110 &  
B. APP/B1930/W/22/3312277

Your refs:

A. 5/22/0927 &  
B. 5/21/3194

By email only

22 March 2024

Dear Sir/Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEALS MADE BY A: ALBAN DEVELOPMENTS LTD AND ALBAN PETER  
PEARSON, CALA HOMES (CHILTERN) LTD AND REDINGTON CAPITAL LTD and B:  
HEADLANDS WAY LTD**

**A. LAND SOUTH OF CHISWELL GREEN LANE, CHISWELL GREEN, ST. ALBANS &**

**B. LAND NORTH OF CHISWELL GREEN LANE, CHISWELL GREEN, ST. ALBANS**

**APPLICATION REFS: A. 5/22/0927 and B. 5/21/3194**

*This decision was made by the Minister for Housing and Homelessness, on behalf of the Secretary of State*

1. I am directed by the Secretary of State to say that consideration has been given to the report of Michael Boniface MSc MRTPI, who held a public local inquiry between 17 April and 9 May 2023 into your clients' appeals against the decisions of St Albans City and District Council (the Council) to refuse your clients' applications for planning permission for the following developments:
  - A. Outline application for the demolition of existing structures and construction of up to 391 dwellings (Use Class C3); the provision of land for a new school, open space provision and associated landscaping, internal roads, parking, footpaths, cycleways, drainage, utilities and service infrastructure and new access arrangements ('Appeal A') in accordance with application Ref. 5/22/0927, dated 29 April 2022.
  - B. Outline application for the demolition of existing buildings and the construction of up to 330 discounted affordable homes for key workers, including military personnel, the creation of open space and the construction of new accesses and highway works including new foot and cycle path and works to junctions ('Appeal B'), in accordance with application Ref. 5/21/3194, dated 12 November 2021.

2. On 1 June 2023, these appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act (TCPA) 1990.

### **Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeals be allowed.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. He has decided to allow the appeals and grant planning permission. The Inspector's Report (IR) is attached. All references to paragraph numbers, unless otherwise stated, are to this report.

### **Procedural matters**

5. The Secretary of State notes that, as explained in IR5 and IR6 in advance of the Inquiry the appellants for Appeal A sought to remove "2FE primary" from the description of development and annotations on the parameters plan and the appellant for Appeal B identified some minor land ownership discrepancies within the red line site boundary and requested that an alternative location plan be submitted. The result was to remove a small section of land on the eastern boundary, making the site area slightly smaller. However, he does not consider that the change to the description of development for Appeal A or site boundary amendments for Appeal B raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced.

### **Matters arising since the close of the inquiry**

6. Mandatory biodiversity net gain (BNG) has only been commenced for planning permissions granted in respect to an application made on or after 12 February 2024. Permissions granted for applications made before this date are not subject to mandatory BNG.
7. On 18 January 2024 the Secretary of State wrote to the main parties to afford them an opportunity to comment on:
  - The revised National Planning Policy Framework (the Framework) which was published on 20 December 2023; and
  - The 2022 Housing Delivery Test figures which were published on 19 December 2023.
8. A list of representations received in response to this letter is at Annex A. These representations, and responses to them, were circulated to the main parties. The Council's response noted that as its emerging plan has reached Regulation 18 stage the Council is required to only demonstrate a 4-year housing land supply. The Council has however confirmed that its housing land supply is now 1.7 years (down from 2 years at the time of the inquiry), and that its Housing Delivery Test (HDT) figure is now 55% (down from 69% at the time of the inquiry). The appellants for both sites draw attention to the worsening housing position. The Secretary of State has taken these representations into account when reaching his decision. Conclusions on specific matters are set out below. The IR contains paragraph references to the previous version of the Framework; this decision letter refers to both the old and the new paragraph numbers, where these are different.

9. A list of other representations which have been received since the inquiry is also at Annex A. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. Copies of these letters may be obtained on request to the email address at the foot of the first page of this letter.

### **Policy and statutory considerations**

10. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act (PCPA) 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
11. In this case the development plan consists of the Saved Policies of the Council's District Local Plan Review (1994) and the St. Stephen Neighbourhood Plan (2019-2036) (made 2022), the Waste Core Strategy and Development Management Policies DPD (Adopted 2012) and Hertfordshire Minerals Local Plan (Adopted 2007).
12. The Secretary of State considers that relevant development plan policies include those set out at IR19-20. He agrees with the Inspector's assessment that the most important policies for determining the applications are deemed out of date as the Council does not have a five-year housing land supply (IR585). With regards to the Local Plan Policy regarding the Green Belt (Policy 1), the Secretary of State considers that this is not out of date due to its consistency with the Framework (IR529).
13. Other material considerations which the Secretary of State has taken into account include the Framework and associated planning guidance (the Guidance), and the materials identified at IR21. A new version of the Framework was issued on 20 December 2023; this is dealt with above.

### ***Emerging plan***

14. The previous emerging plan was withdrawn in 2020. The Council is in the early stages of preparing a new Local Plan. It completed Regulation 18 consultation in September 2023 on a Draft Local Plan, Draft Site Allocations, Draft Policies Map and Evidence Base and Supporting Documents. On 19 December 2023, when the revised Framework was published, the Secretary of State wrote to the Council stating that it must update its Local Development Scheme (a plan for the production of the new Local Plan) within 12 weeks. An updated Local Development Scheme was received by the Secretary of State from the Council in February 2024. The Secretary of State does not consider that this raises any additional issues that necessitate any referral back to parties.
15. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State considers that the emerging Local Plan is at an early stage and therefore carries limited weight.

### **Main issues**

16. The Secretary of State agrees that the main issues are those set out by the Inspector at IR525-526.

## *Green Belt*

17. The Secretary of State agrees with the Inspector that both proposals represent inappropriate development in the Green Belt (IR528). For the reasons given in IR530-534, the Secretary of State agrees with the Inspector that the Green Belt Review is a material consideration relevant in considering Green Belt matters in the district, and that the relative suitability of strategic sub-area S8 (which both appeal sites fall within), as defined by the Green Belt Review, is an important consideration.
18. *Appeal A*: For the reasons given at IR534 the Secretary of State agrees that Appeal site A is largely undeveloped and open at present, and that the introduction of 391 dwellings, a school and associated works would introduce a great deal of built volume to the Green Belt. For the reasons given in IR535-542, the Secretary of State agrees with the Inspector that the Appeal A scheme would result in definitional harm to the Green Belt, as well as harm to its openness and purposes (moderate harm to checking unrestricted sprawl, very limited harm to preventing neighbouring towns merging into one another, and moderate harm to safeguarding the countryside from encroachment). Like the Inspector he attaches substantial weight to this harm.
19. *Appeal B*: For the reasons given at IR543 the Secretary of State agrees that Appeal site B is largely open and undeveloped, and that the 330 dwellings sought would have a considerable and permanent impact on openness in both a spatial and visual sense. The Secretary of State agrees with the Inspector for the reasons given in IR544 that the development would result in substantial harm to Green Belt openness. For the reasons given at IR546-548 the Secretary of State agrees with the Inspector that there would be significant harm to the purpose of checking unrestricted sprawl, very limited harm to preventing neighbouring towns merging into one another, and significant harm to safeguarding the countryside from encroachment. Like the Inspector at IR550, the Secretary of State concludes that the development would result in definitional harm to the Green Belt, as well as harm to its openness and purposes, and he attaches substantial weight to this harm.
20. *Both Appeals*: The Secretary of State has gone on to apply national Green Belt policy. Paragraphs 152-153 (formerly 147-148) of the Framework state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. 'Very special circumstances' will not exist unless the potential harm to the Green Belt and any other harm resulting from the proposal, is clearly outweighed by other considerations. The Secretary of State has gone on to consider these matters. His conclusion on whether very special circumstances exist is set out in para 42 below.

## *Landscape and Visual Impacts*

21. *Appeal A*: For the reasons given at IR551-552, the Secretary of State agrees that the character of the site would change significantly as a result of development, and although the scheme would incorporate areas of open space and landscaping that would mature and soften the development over time, the residual effect would remain Minor Adverse (IR552). With regard to the visual effects, he agrees that whilst the effects would be greater in the early years of the development, they would reduce over time as landscaping matured and the development became assimilated into the settlement (IR553). Overall, taking into account that there is scope for a well-designed and sensitive scheme (IR553), he agrees with the Inspector that whilst there would be adverse landscape and visual impacts, this should be afforded limited weight (IR554).

22. *Appeal B*: For the reasons given at IR556, the Secretary of State agrees that there is opportunity to deliver a suitable scheme with no more than Moderate Adverse landscape impacts. However, as explained in IR557-561, there would be a number of significant visual effects arising from the development due to the views towards the site from Footpaths 082, 039, 080, 021 and 012, as well as from long views towards the site from elevated positions. Nevertheless, he agrees that the proposed development would be seen in the context of the distant Chiswell Green and filtered by both existing and proposed landscaping on the site boundaries (IR561). The Secretary of State agrees that the Appeal B development would result in significant landscape and visual impacts (IR563), and that cumulatively these impacts attract significant weight.
23. *Both Appeals*: Overall, the Secretary of State agrees with the Inspector at IR564 that if both schemes were to come forward the harms identified would result cumulatively. The Secretary of State considers that cumulatively the proposals would attract significant weight, given that there would be very limited opportunities to experience the two developments together beyond Chiswell Green Lane.

#### *Loss of agricultural land*

24. *Both Appeals*: The Secretary of State notes at IR565 that the Inspector states that the two proposals would result in a loss of 17.9ha of Best and Most Versatile (BMV) agricultural land. However, the Secretary of State also notes that south site (Appeal A) has not been used for agriculture for a number of years (IR566). For the reasons given at IR567, the Secretary of State agrees that given much of the greenfield land in the district is BMV agricultural land, then it is inevitable that some will be lost if housing needs are to be met. The Secretary of State agrees at IR567 that the proposal does not conflict with LP Policy 102, given the overriding need for housing in the district. The Inspector considers that the loss of BMV land in both appeals carries limited weight, with which the Secretary of State agrees.
25. Footnote 62 of the Framework, concerning the importance of the availability of agricultural land used for food production has been given consideration in relation to this application. The Secretary of State upholds his opinion that the proposed development would be consistent with paragraph 180(b) (formerly 174) of the Framework and finds the updated Footnote 62 to have limited bearing on the application.

#### *Highways and Transportation*

26. *Both Appeals*: The Secretary of State has carefully considered concerns raised locally regarding the effects of the proposal upon the highway network. The Secretary of State agrees with the Inspector's conclusion on the matter of the additional pressure to the highway network that would result from the two appeals (IR568-571). He also agrees with the Inspector that there are no highway safety issues that indicate against the proposals (IR574). The Secretary of State agrees with the Inspector and the Local Highway Authority that, subject to detailed design, a scheme to signalise the junction would mitigate the cumulative travel impact caused by the proposals if both schemes were to come forward (IR571) and considers that the cumulative impacts on the road network would therefore not be severe and would therefore accord with paragraph 115 (formerly 111) of the Framework.

#### *Education*

27. *Both Appeals*: For the reasons given at IR580—584, the Secretary of State agrees that the proposal would generate need for additional education provision in the locality given

the likelihood that a significant number of future occupants would be children (IR580). The Secretary of State agrees that the contributions to education through planning obligations for both Appeals will be sufficient to mitigate the education impact of the schemes individually, and further agrees that the land to be secured through Appeal A would be a significant benefit.

## **Other Issues**

### *Housing*

28. The Secretary of State agrees with the Inspector that there is a very substantial need for housing in the district which is persistently going unmet, that the Local Plan housing requirement is hopelessly out of date, and that, using the standard method, the Council can demonstrate just a two-year housing land supply at best. He also notes that the latest HDT has been failed by some margin. Therefore, the presumption in favour of sustainable development is triggered, in accordance with footnote 8 to paragraph 11(d) of the Framework.

29. For the reasons given in IR586-591, the Secretary of State agrees with the Inspector that in the context of such a great housing need, very substantial weight should be attached to the proposed housing.

### *Precedent and Ecology*

30. For the reasons given in IR595-596, the Secretary of State agrees with the Inspector that, whatever the decision in these cases, they would not necessarily provide any additional support for future schemes, and that no significant ecological impacts would result and both schemes would deliver a BNG, and he considers that this carries limited weight in favour of the proposals.

### *Air Quality, Open Space & Recreation, Flooding and Drainage, Climate Change and Infrastructure*

31. For reasons given at IR597-604, the Secretary of State agrees with the Inspector that very limited weight be attached to the harm arising in terms of air quality, and that issues of open space and recreation, neighbouring living conditions, flooding and drainage, climate change, and infrastructure are all broadly neutral in the determination of these appeals. He further agrees with the Inspector for the reasons given in IR605 that the significant local economic benefits generated by the appeal proposals are likely to extend beyond Chiswell Green and weigh in favour of the proposals. He attributes moderate weight to these benefits.

## **Planning conditions**

32. The Secretary of State had regard to the Inspector's analysis at IR506-508, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 56 of the Framework and that the conditions set out, at Annex B for Appeal A and Annex C for Appeal B should form part of his decision. Furthermore, for the reasons set out at IR507, the Secretary of State agrees with the Inspector's recommendation that a noise condition is not necessary.

## **Planning obligations**

33. Appeal A: The Secretary of State has had regard to the Inspector's analysis at IR509-519, and the two separate planning obligations dated 19 May 2023, one with the Council and one with the County Council. For the reasons given at IR510 and IR512 with regard to the Council, and IR510 and 513 with regard to the County Council, he agrees with the Inspector's conclusion that the obligations comply with Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and the tests at paragraph 57 of the Framework. With respect to the Inspector's analysis at IR514-518, the Secretary of State agrees with the Inspector that the agreement with the County Council is satisfactory without invoking the potential alternative clauses at 12.2.1, 12.2.2 and 12.2.3.
34. Appeal B: The Secretary of State has had regard to the Inspector's analysis at IR510 and IR520, the planning obligation dated 18 May 2023, paragraph 57 of the Framework, the Guidance and the CIL Regulations 2010, as amended (including the subsequent handwritten amendments). He agrees with the Inspector's conclusion that the obligations comply with Regulation 122 of the CIL Regulations 2010 and the tests at paragraph 57 of the Framework. For the reasons given in IR521-523, and for clarity, the Secretary of State agrees with the Inspector that it is appropriate to make a proportionate contribution to the cost of land for a new school should this be required to meet the need for education, in accordance with Clause 13.1. He further agrees for the reasons given in IR524 that Clause 9.13 should apply, as opposed to 9.12.
35. With regard to the Appeal B obligation, following the close of the inquiry, a series of handwritten amendments were made to the Agreement and initialled by representatives of all the parties. It was confirmed that the amendments related to simple administrative errors in the creation of the final version for execution. All parties agreed to the insertion of corrective manuscript amendments, and the approach taken was with the agreement of all parties. All parties confirmed that they considered the amended version to be a valid and binding agreement, and the Secretary of State has considered it as such.

### **Planning balance and overall conclusion**

36. For the reasons given above, and in the light of his findings set out at Paragraphs 17-31 of this letter, the Secretary of State considers that the appeal schemes are in accordance with Policies 1 and 102 of the St Albans District Local Plan, and Policy S1 of the St Stephen Neighbourhood Plan, and in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in line with the development plan.
37. As the Council is unable to demonstrate a five-year supply of housing land, paragraph 11(d) of the Framework indicates that planning permission should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.
38. Appeal A: Weighing in favour of the proposal is the provision of housing which carries very substantial weight; the provision of land for a primary school which carries significant weight; economic benefits which carry moderate weight; open space/recreation provision which carries limited weight; BNG provision which carries limited weight; and improved bus/cycleway provision which also carries limited weight.
39. Appeal A: Weighing against the proposal is the harm to the Green Belt from inappropriateness, harm to openness, and harm to three of the purposes of the Green

Belt, which carries substantial weight. Landscape and visual harm, and the loss of BMV land each carry limited weight, and the impact on air quality which carries very limited weight.

40. Appeal B: Weighing in favour of Appeal B is the provision of 100% affordable housing which carries very substantial weight; economic benefits which carry moderate weight; open space/recreation provision which carries limited weight; BNG provision which carries limited weight; and improved bus/cycleway provision which also carries limited weight.
41. Appeal B: Weighing against Appeal B is the harm to the Green Belt from inappropriateness, harm to openness, and harm to three of the purposes of the Green Belt, which carries substantial weight. Landscape and visual harm carries significant weight; the loss of BMV land carries limited weight; and the impact on air quality which carries very limited weight.
42. The Secretary of State has considered whether the harm to the Green Belt by reason of inappropriateness, and the other harms he has identified, are clearly outweighed by other considerations. He considers that they are, and therefore very special circumstances exist to justify permitting the development. As such, the proposed development accords with Policy S1 of the St Stephen Parish Neighbourhood Plan 2019-2036 and Policy 1 of the St Albans District Local Plan Review 1994, and national planning policy on Green Belt.
43. The Secretary of State considers that there are no protective policies which provide a clear reason for refusing the development proposed. He further considers that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits. The presumption in favour of sustainable development therefore applies.
44. The Secretary of State therefore concludes that planning permission should be granted for both Appeal A and Appeal B.

### **Formal decision**

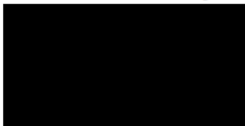
45. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your clients' appeals and grants planning permission subject to the conditions set out in Annex B and C of this decision letter for the following developments: Outline application for the demolition of existing structures and construction of up to 391 dwellings (Use Class C3); the provision of land for a new school, open space provision and associated landscaping, internal roads, parking, footpaths, cycleways, drainage, utilities and service infrastructure and new access arrangements in accordance with application Ref. 5/22/0927, dated 29 April 2022 (Appeal A) and Outline application for the demolition of existing structures and the construction of up to 330 discounted affordable homes for key workers, including military personnel, the creation of open space and the construction of new accesses and highway works including new foot and cycle path and works to junctions (Appeal B), in accordance with application Ref. 5/21/3194, dated 12 November 2021.
46. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the TCPA 1990.



## **Right to challenge the decision**

47. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the TCPA 1990.
48. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of its decision within the prescribed period.
49. A copy of this letter has been sent to St. Albans District Council, Daisy Cooper MP, Sport England, CPRE Hertfordshire and Keep Chiswell Green, the Combined Objectors' Group, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

A black rectangular box redacting the signature of the decision officer.

Decision officer

*This decision was made by the Minister for Housing and Homelessness, on behalf of the Secretary of State and signed on her behalf*

## **Annex A Schedule of representations**

### **Representations received in response to the Secretary of State's reference back letter of 18 January 2024**

<b>Party</b>	<b>Date</b>
St. Alban's LPA	31 January 2024
Appeal A Agent – Carter Jonas	31 January 2024
Appeal B Agent – MRP Planning	1 February 2024

### **Representations received in response to the Secretary of State's recirculation letter of 2 February 2024**

<b>Party</b>	<b>Date</b>
St. Alban's LPA	12 February 2024
Appeal B Agent – MRP Planning	12 February 2024
Combined Objector's Group – Keep Chiswell Green	13 February 2024
Appeal A Agent – Carter Jonas	16 February 2024

### **General representations**

<b>Party</b>	<b>Date</b>
Redington Capital Limited	23 February 2024

## **Annex B Appeal A List of conditions**

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") for each phase of the development as defined by the Phasing Plan agreed as part of condition 16, shall be submitted to and approved in writing by the Local Planning Authority before any development in that phase begins, and the development shall be carried out as approved.

REASON: To comply with Section 92(1) of the Town and Country Planning Act 1990.

- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.

REASON: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.

REASON: To comply with the requirements of Section 92 (2) of the Town and Country Planning Act 1990.

- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan (REDC01-MCB-ZZ-ZZ-DR-A-0201-D5-P7), Access and Movement Parameter Plan (REDC01-MCB-ZZ-ZZ-DR-A-0221-D5-P3), Building Height Parameter Plan (REDC01-MCB-ZZ-ZZ-DR-A-0222-D5-P6), Land Use Parameter Plan (REDC01-MCB-ZZ-ZZ-DR-A-0223-D5-P5), Proposed Northern Access Junctions (8210856-1001 Rev I9), Proposed Southern Access Junction (8210856\_1002 Rev I6), Proposed Forge End & Long Fallow Pedestrian / Cycle Accesses (8210856\_1021 Rev I5).

REASON: To ensure that the development is carried out in accordance with the approved plans and details.

- 5) Full details of both soft and hard landscape works for each phase, shall be submitted as part of application(s) for reserved matters approval for that phase, as required by Condition 1. The landscaping details to be submitted shall include:

- a) existing and proposed finished levels and contours;
- b) trees and hedgerow to be retained;
- c) planting plans, including specifications of species, sizes, planting centres, number and percentage;
- d) mix, and details of seeding or turfing;
- e) hard surfacing;
- f) means of enclosure and boundary treatments; and
- g) structures (such as furniture, play equipment, refuse or other storage units, signs, lighting).

REASON: To ensure satisfactory landscape treatment of the site and a suitable appearance in accordance with Policies 70 and 74 of the LP.

- 6) A landscape and ecological management plan (LEMP) for each phase, shall be submitted as part of application(s) for reserved matters approval for that phase, as required by Condition 1 and include:
- a) A description of the objectives;
  - b) Habitat/feature creation measures proposed, including a methodology for translocation of habitats, such as the existing topsoil, grassland and timeframes for completion;
  - c) Maintenance of habitat/feature creation measures in the long term and those responsible for delivery;
  - d) Lighting strategy (aiming to ensure that illumination of the existing hedgerows does not exceed 0.5 lux); and
  - e) A monitoring programme and the measures required to adapt the LEMP should objectives fail to be met. The LEMP shall cover all landscape areas within the site, other than privately owned domestic gardens.

REASON: To maximise the on-site mitigation for biodiversity impact.

- 7) Full details of the proposed housing mix, including a breakdown of unit sizes and tenure, shall be submitted as part of application(s) for reserved matters approval as required by Condition 1.

REASON: To ensure a suitable dwelling mix at the site in accordance with Policy 70 of the LP.

- 8) Notwithstanding the submitted 'Arboricultural Impact Assessment' – JSL4258\_770 (by RPS, 30 March 2022), no development shall commence in each phase unless a method statement has been submitted to and approved in writing by the Local Planning Authority for that phase, to cover the protection of trees during demolition and construction phases based on guidelines set out in BS5837. Thereafter the development shall be carried out in accordance with these approved details.

REASON: To protect existing trees during the construction works in the interest of the character and appearance of the area and in accordance with Policy 74 of the LP.

- 9) No trees shall be damaged or destroyed, or uprooted, felled, lopped or topped without the previous written consent of the Local Planning Authority until at least 5 years following the practical completion of the permitted development. Any trees removed without such consent or dying or being severely damaged or becoming seriously diseased before the end of that period shall be replaced by trees of such size and species as may be agreed with the Local Planning Authority.

REASON: To ensure satisfactory landscape treatment of the site in the interests of character and appearance and to comply with Policy 74 of the LP.

- 10) All existing hedges or hedgerows shall be retained, unless shown on the approved drawings as being removed or with the written consent of the LPA. All hedges and hedgerows on and immediately adjoining the site shall be protected from damage for the duration of works on the site. This shall be to the satisfaction of the Local Planning Authority in accordance with relevant British Standards BS 5837 (2005). Any parts of hedges or hedgerows removed without the Local Planning Authority's consent or which die or become, in the opinion of the Local Planning Authority, seriously diseased or otherwise damaged within five years following practical completion of the approved development shall be replaced as soon as is reasonably practicable and, in

any case, by not later than the end of the first available planting season, with plants of such size and species and in such positions as may be agreed with the Local Planning Authority.

REASON: In the interests of ecology, character and appearance and to comply with Policy 74 of the LP.

- 11) No phase of the development hereby permitted shall be occupied unless and until the vehicular accesses for the phase in question have been provided and thereafter retained at the position shown on the approved plan drawing numbers 8210856-1001 Rev I9, 8210856-1002 Rev I6 and 8210856-1021 Rev I5 (as may be amended through detailed technical drawings agreed through the Section 278 process). Arrangement shall be made for surface water drainage to be intercepted and disposed of separately so that it does not discharge from or onto the highway carriageway.

REASON: To ensure satisfactory access into the site and avoid carriage of extraneous material or surface water from or onto the highway in the interests of highway safety.

- 12) Prior to the commencement of development in each phase, full details in relation to the design of estate roads (in the form of scaled plans and / or written specifications for each phase) shall be submitted to and approved in writing by the Local Planning Authority to detail the following:

- a) Roads;
- b) Footways;
- c) Cycleways (compliant with LTN 1/20);
- d) Minor artefacts, structures and functional services;
- e) Foul and surface water drainage;
- f) Visibility splays;
- g) Access arrangements including temporary construction access;
- h) Hard surfacing materials;
- i) Parking areas for vehicles and cycles;
- j) Loading areas; and
- k) Turning and circulation areas.

The development shall be implemented in accordance with those approved plans.

REASON: To ensure suitable, safe and satisfactory planning and development of the site in accordance with Policies 34, 69 and 70 of the LP and Policy 5 of Hertfordshire's Local Transport Plan (adopted 2018).

- 13) No phase of the development hereby permitted shall be occupied unless and until full details have been submitted to and approved in writing by the Local Planning Authority for that phase, in relation to the proposed arrangements for future management and maintenance of the proposed streets within the development. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under Section 38 of the Highways Act 1980 or a Private Management and Maintenance Company has been established and approved by the LPA).

REASON: To ensure satisfactory development and to ensure estate roads are managed and maintained thereafter to a suitable and safe standard in accordance

with Policies 34, 69 and 70 of the LP and Policies 5 and 22 of Hertfordshire's Local Transport Plan (adopted 2018).

- 14) Notwithstanding the details indicated on the submitted drawings, no on-site works above slab level shall commence until a detailed scheme for the offsite improvement works as indicated on the drawing numbers set out below have been submitted to and approved in writing by the Local Planning Authority:
- a) Chiswell Green Lane - drawing 8210856-1012 Rev I5 or where planning permission for the development pursuant to appeal APP/B1930/W22/331227 is granted, drawing 8230258-1001 Rev I2 and drawing 8230258-1002 Rev I4;
  - b) Watford Road / Chiswell Green Lane public realm improvements drawing 8210856-1013 Rev I4, or where planning permission for the development pursuant to appeal APP/B1930/W22/331227 is granted, drawing 8230258 1007 Rev I3 showing the signalised junction;
  - c) Hertfordshire County Council's Watford Road Cycle Improvements drawing 8210856-1028 Rev I1 (Sheet 1 of 6) or where planning permission for the development pursuant to appeal APP/B1930/W22/331227 is granted, drawing 8230258-1008 Rev I1;
  - d) Hertfordshire County Council's Watford Road Cycle Improvements drawing 8210856-1029 Rev I1 - (Sheet 2 of 6);
  - e) Hertfordshire County Council's Watford Road Cycle Improvements drawing 8210856-1030 Rev I1 - (Sheet 3 of 6);
  - f) Hertfordshire County Council's Watford Road Cycle Improvements drawing 8210856-1031 Rev I1 - (Sheet 4 of 6);
  - g) Hertfordshire County Council's Watford Road Cycle Improvements drawing 8210856-1032 Rev I1 - (Sheet 5 of 6);
  - h) Hertfordshire County Council's Watford Road Cycle Improvements drawing 8210856-1033 Rev I1 - (Sheet 6 of 6).

Where planning permission for the development pursuant to appeal APP/B1930/W22/331227 is granted, details shall only be required to be submitted in respect of those works listed in a, b and/or c above if at the date of submission those said works have not already been approved pursuant to the planning permission granted pursuant to appeal APP/B1930/W22/331227.

Prior to first Occupation of the development hereby permitted, the offsite highway improvement works set out above shall be completed in accordance with the approved details.

REASON: To ensure delivery of the necessary highway improvements.

- 15) No development shall commence in each phase unless and until a detailed Construction Environmental Management Plan relating to that phase has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the construction of the development in that phase shall only be carried out in accordance with the approved CEMP unless otherwise agreed in writing by the Local Planning Authority. The plan shall be prepared in accordance with the Construction Logistics and Community Safety (CLOCS) Standard.

The plan shall include the following:

- a) The construction programme;
- b) Clear access strategy for construction vehicles that avoids conflicts with pedestrians, cyclists, public transport and existing and future residents;
- c) Hours of operation;

- d) Phasing of the development of the site, including all highway works;
- e) Construction vehicle numbers, type, routing;
- f) Traffic management requirements;
- g) Cleaning of site entrances, site tracks and the adjacent public highway;
- h) Provision of sufficient on-site parking prior to commencement of construction activities;
- i) Details of any highway works necessary to enable construction to take place, including temporary access works;
- j) Details of any works to or affecting Public Rights of Way within and in the vicinity of the site. These shall demonstrate how safe and unobstructed access will be maintained at all times or be temporarily closed or extinguished.
- k) Details of servicing and delivery, including details of site access, compound, welfare facilities, hoarding, construction related parking, loading, unloading, turning areas and materials storage areas;
- l) Where works cannot be wholly contained within the site, a plan shall be submitted showing the site layout on the highway, including extent of hoarding, pedestrian routes and remaining road width for vehicle movements and proposed traffic management;
- m) Management of construction traffic and deliveries to reduce congestion and avoid school pick up/drop off times, including numbers, type and routing;
- n) Control of dust and dirt on the public highway, including details of wheel washing facilities and cleaning of site entrance adjacent to the public highway;
- o) Details of public contact arrangements and complaint management;
- p) Construction waste management proposals;
- q) Mechanisms to deal with environmental impacts such as noise and vibration, air quality and dust, light and odour;
- r) Post construction restoration/reinstatement of the working areas and temporary access to the public highway; and
- s) Measures to be implemented to ensure wayfinding for both occupiers of the site and or those travelling through it.

REASON: In order to protect highway safety and convenience, and to protect living conditions, in accordance with Policies 5, 12, 17 and 22 of Hertfordshire's Local Transport Plan (adopted 2018).

- 16) Notwithstanding the information contained in the Transport Assessment, no development shall commence in respect of any Development Parcel or Strategic Engineering Element until a Site Wide Phasing Plan which accords with agreed s106 triggers has been submitted to the local planning authority for approval. The Phasing Plan shall include the sequence of providing the following elements:
- a) Development parcels;
  - b) Major distributor roads/routes within the site, including timing of provision and opening of access points into the site;
  - c) Strategic foul surface water features and SUDS;
  - d) Open space;
  - e) Strategic electricity and telecommunications networks; and
  - f) Environmental mitigation measures.

No development shall commence apart from enabling works and strategic engineering elements, unless agreed in writing by the Local Planning Authority, until such time as the phasing plan has been approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved

phasing contained within the phasing plan unless otherwise agreed in writing by the Local Planning Authority.

REASON: To ensure suitable, safe and satisfactory planning and development of the site in accordance with Policy 5 of Hertfordshire's Local Transport Plan 2018.

- 17) No part of the development hereby permitted shall be occupied prior to the implementation of the approved Travel Plan and dated (March 2022) (or implementation of those parts identified in the approved Travel Plan as capable of being implemented prior to occupation). Those parts of the approved Travel Plan that are identified therein as being capable of implementation after occupation shall be implemented in accordance with the timetable contained therein and shall continue to be implemented as long as any part of the development is occupied.

REASON: To ensure that sustainable travel options are promoted and maximised to be in accordance with Policies 3, 5, 7, 8, 9 and 10 of Hertfordshire's Local Transport Plan (adopted 2018).

- 18) Within three months of the first use of a school, a Modeshift STARS School Travel Plan shall be prepared and submitted to the local planning authority for approval. Thereafter the Travel Plan shall be implemented in full throughout the life of the school.

REASON: To ensure that sustainable travel options are promoted and maximised to be in accordance with Policies 3, 5, 7, 8, 9 and 10 of Hertfordshire's Local Transport Plan (adopted 2018).

- 19) No phase of the development hereby permitted shall be occupied unless and until a scheme for the parking of cycles including details of the design, level and siting of the proposed parking for that phase has been submitted to and approved in writing by the Local Planning Authority.

The approved scheme shall be fully implemented before the phase is first occupied or brought into use and thereafter retained for this purpose.

REASON: To ensure the provision of adequate cycle parking that meets the needs of occupiers of the proposed development and in the interests of encouraging the use of sustainable modes of transport in accordance with Policies 1, 5 and 8 of Hertfordshire's Local Transport Plan (adopted 2018).

- 20) No development shall commence in each phase unless and until a detailed surface water drainage scheme for that phase has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include the utilisation of above ground attenuation and conveyance sustainable drainage techniques (SuDS), with the incorporation of sufficient treatment trains to maintain or improve the existing groundwater quality, as per the Flood Risk Assessment produced by Glanville (dated March 2022) and updated submission information. The scheme shall also include the following:

- a) a detailed drawing demonstrating the management of surface water runoff during events that may temporarily exceed the capacity of the drainage system has been submitted to, and approved in writing by, the Local Planning Authority.



- b) detailed hydraulic modelling calculations of the proposed surface water drainage scheme that demonstrate there will be no increased risk of flooding as a result of development between the 1 in 1 year return period event and up to the 1 in 100 year return period event (including the correct allowance for climate change) have been submitted to, and approved in writing by, the Local Planning Authority.
- c) full details of the proposed methods of treating surface water runoff to ensure no risk of pollution is introduced to groundwater both locally and downstream of the site, especially from proposed parking and vehicular areas have been submitted to, and approved in writing by, the Local Planning Authority. Surface water treatment techniques shall include both natural SuDS structures and also proprietary devices, such as advanced vortex separators.
- d) detailed construction drawings of all proposed SuDS features, including details of flow controls and piped network, have been submitted to and approved in writing by the Local Planning Authority.
- e) detailed construction drawings of the proposed deep bore soakaway structures have been submitted to, and approved in writing by, the Local Planning Authority.
- f) a management and maintenance plan for the lifetime of the development has been submitted to and approved in writing by the Local Planning Authority. This plan shall include the arrangements for adoption by an appropriate public body or statutory undertaker, management company or maintenance by a Residents' Management Company and/or any other arrangements to secure the operation and maintenance to an approved standard and working condition throughout the lifetime of the development.
- g) details for the provision of any temporary drainage during construction has been submitted to and approved in writing by the Local Planning Authority. This shall include details to demonstrate that during the construction phase measures will be in place to prevent unrestricted discharge, and pollution to the receiving system.
- h) detailed construction drawings of the proposed foul water drainage network have been submitted to and approved in writing by the Local Planning Authority.

The development shall be carried out in accordance with the approved details.

REASON: To prevent the increased risk of flooding, both on and off site.

- 21) No above ground works shall take place for each phase until a scheme for the provision of adequate water supplies and fire hydrants, necessary for firefighting purposes at the site, has been submitted to and approved in writing by the Local Planning Authority for that phase. The development shall not be occupied until the scheme has been implemented in accordance with the approved details.

REASON: To ensure adequate water infrastructure provision is made on site for the local fire service to discharge its statutory firefighting duties.

- 22) Prior to the commencement of ground works in each phase of the development a minerals recovery strategy for the sustainable extraction of minerals on an opportunistic basis shall be submitted to and approved in writing by the Local Planning Authority, in accordance with the submitted Minerals Resource Assessment dated 15 August 2022. Thereafter, the relevant phase or phases of the development

must not be carried out other than in accordance with the approved minerals strategy. The minerals strategy must include the following:

- a) An evaluation of the opportunities to extract minerals (sand and gravel, hoggin and other soils with engineering properties); and
- b) A proposal for maximising the extraction of minerals, providing targets and methods for the appropriate recovery and beneficial use of the minerals (where feasible without the need for processing); and
- c) A method to record the quantity of recovered mineral for re-use on site.

REASON: In order to prevent mineral sterilisation, contribute to resource efficiency, promote sustainable construction practices and reduce the need to import primary materials in accordance with Policy 5 of the adopted Hertfordshire Minerals Local Plan Review.

23) The development shall not be occupied until confirmation has been provided that either:

- a) All foul water network upgrades required to accommodate the additional flows from the development have been completed; or
- b) A development and infrastructure phasing plan has been agreed with the Local Planning Authority to allow development to be occupied.

Where a development and infrastructure phasing plan is agreed, no occupation shall take place other than in accordance with the agreed development and infrastructure phasing plan.

REASON: To ensure that the development can be accommodated by suitable drainage infrastructure.

24) The No development-related works shall take place until the implementation of a programme of archaeological evaluation and excavation has been secured, and undertaken in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the Local Planning Authority. The Written scheme of investigation shall include an archaeological programme including:

- a) The programme and methodology of site investigation and recording.
- b) The programme for post investigation assessment.
- c) Provision to be made for publication and dissemination of the analysis and records of the site investigation.
- d) Provision to be made for archive deposition of the analysis and records of the site investigation.
- e) Nomination of a registered archaeological contractor to undertake the works set out within the Written Scheme of Investigation.
- f) The site investigation shall be completed prior to development, or in such other phased arrangement, as agreed and approved in writing by the Local Planning Authority.

REASON: To ensure the appropriate identification, recording and publication of archaeological and historic remains affected by the development in accordance with Policy 111 of the LP.

25) Other than the demolition of buildings and structures down to ground level and site clearance works, including tree felling, no development shall take place in each phase until an investigation and risk assessment in relation to contamination on site (in addition to the phase I assessment provided with the planning application) has been

submitted to and approved in writing by the Local Planning Authority for that phase. The assessment shall investigate the nature and extent of any contamination on the site (whether or not it originates on the site). The assessment shall be undertaken by competent persons and a written report of the findings submitted to and approved in writing by the Local Planning Authority before any development takes place other than the excluded works listed above. The submitted report shall include:

- a) a survey of the extent, scale and nature of contamination; and
- b) an assessment of the potential risks to human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland, and service lines and pipes, adjoining land, ground waters and surface waters, ecological systems, archaeological sites and ancient monuments.

REASON: To ensure that adequate protection of human health is maintained and the quality of groundwater is protected in accordance with Policy 84 of the LP.

- 26) The results of the site investigations set out in condition 25 and the detailed risk assessment undertaken at the site shall be used to prepare an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken for each phase. The remediation strategy shall contain a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy are complete and identify any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. The options appraisal and remediation strategy shall be approved in writing by the Local Planning Authority prior to commencement of construction works and all requirements shall be implemented and completed to the satisfaction of the Local Planning Authority by a competent person.

REASON: To ensure that adequate protection of human health is maintained and the quality of groundwater is protected in accordance with Policy 84 of the LP.

- 27) Before any dwelling is occupied, verification report(s) demonstrating completion of the works set out in the remediation strategy and the effectiveness of the remediation shall be submitted in writing and approved by the LPA. The reports shall include results of validation sampling and monitoring carried out in accordance with the approved remediation strategy to demonstrate that the site remediation criteria have been met. It shall also include any plan for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.

REASON: To ensure that adequate protection of human health is maintained and the quality of groundwater is protected in accordance with Policy 84 of the LP.

- 28) No dwelling hereby permitted shall be occupied unless and until the internal sound level requirements and insulation proposals outlined in the Noise Assessment (reference RP01- 21618-R2) prepared by Cass Allen have been fully implemented.

REASON: To ensure suitable living conditions for future occupiers.

- 29) Open space shall be provided on site in accordance with the approved parameter plans. No development in each phase shall commence unless details of all play spaces in that phase are submitted to and approved in writing by the Local Planning

Authority. The approved play space scheme for each phase shall be completed prior to occupation of 50% of the dwellings hereby permitted in that phase and thereafter the approved play space shall be retained.

Such scheme shall indicate but not be limited to:

- a) Details of types of equipment to be installed.
- b) Surfaces including details of materials and finishes.
- c) The location of any proposed signage linked to the play areas.

REASON: To ensure suitable open space and play facilities in accordance with Policy 70 of the LP.

30) No development in each phase, shall take place until a Site Waste Management Plan (SWMP) for the construction of that phase of the site has been submitted to and approved in writing by the Local Planning Authority. The SWMP shall aim to reduce the amount of waste being produced on site and shall contain information including estimated and actual types and amounts of waste removed from the site and where that waste is being taken to. The development shall be carried out in accordance with the approved SWMP.

REASON: To promote sustainable development and to ensure measures are in place to minimise waste generation and maximise the on-site and offsite reuse and recycling of waste materials, in accordance with Policy 12 of the Hertfordshire Waste Core Strategy and Development Management Policies.

## **Annex C Appeal B List of conditions**

- 1) The Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.

REASON: To comply with Section 92(1) of the Town and Country Planning Act 1990.

- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.

REASON: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.

REASON: To comply with the requirements of Section 92 (2) of the Town and Country Planning Act 1990.

- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan (Revision E), Proposed Access Arrangements (21086 001 Rev B), Proposed Foot/Cycle Amendments – Chiswell Green Lane, Stanley Avenue, Watford Road (21086/002), Proposed Foot/Cycle Enhancements (Stanley Avenue) (21086/002/1), Proposed Highway Amendments (Watford Road) (21086/002/2), Proposed PRow Improvements (St Stephens 082) (21086/003), Proposed PRow Upgrades (St Stephens FP080) (22185/004 Revision A) and Proposed Pedestrian/Cycling Upgrades - Toucan Crossing (21086/006).

REASON: To ensure that the development is carried out in accordance with the approved plans and details.

- 5) Full details of both soft and hard landscape works shall be submitted as part of application(s) for reserved matters approval as required by Condition 1. The landscaping details to be submitted shall include:

- a) existing and proposed finished levels and contours;
- b) trees and hedgerow to be retained;
- c) planting plans, including specifications of species, sizes, planting centres, number and percentage;
- d) mix, and details of seeding or turfing;
- e) hard surfacing;
- f) means of enclosure and boundary treatments; and
- g) Structures (such as furniture, play equipment, refuse or other storage units, signs, lighting).

REASON: To ensure satisfactory landscape treatment of the site in the interests of character and appearance, in accordance with Policies 70 and 74 of the LP.

- 6) A landscape and ecological management plan (LEMP) shall be submitted as part of application(s) for reserved matters approval as required by Condition 1 and shall include:

- a) A description of the objectives;
- b) Habitat/feature creation measures proposed, including a methodology translocation of habitats, such as the existing topsoil, grassland and timeframes for completion;
- c) Maintenance of habitat/feature creation measures in the long term and those responsible for delivery;
- d) Lighting strategy (aiming to ensure that illumination of the existing hedgerows does not exceed 0.5 lux); and
- e) A monitoring programme and the measures required to adapt the LEMP should objectives fail to be met.

The LEMP shall cover all landscape areas within the site, other than small privately owned domestic gardens.

REASON: To maximise the on-site mitigation for biodiversity impact.

- 7) Full details of the proposed housing mix, including a breakdown of unit sizes and tenure, shall be submitted as part of application(s) for reserved matters approval as required by Condition 1.

REASON: To ensure a suitable dwelling mix at the site in accordance with Policy 70 the LP.

- 8) Notwithstanding the submitted Arboricultural Impact Assessment and Arboricultural Method Statement (October 2021), a detailed tree protection plan and method statement shall be submitted as part of application(s) for reserved matters approval as required by Condition 1.

REASON: To ensure the protection of trees at the site and to comply with the requirements of Policy 74 of the LP.

- 9) No trees shall be damaged or destroyed, or uprooted, felled, lopped or topped without the previous written consent of the Local Planning Authority until at least 5 years following the completion of the approved development. Any trees removed without such consent or dying or being severely damaged or becoming seriously diseased before the end of that period shall be replaced by trees of such size and species as may be agreed with the Local Planning Authority.

REASON: To ensure satisfactory landscape treatment of the site in the interests of character and appearance, in accordance with Policy 74 of the LP.

- 10) All existing hedges or hedgerows shall be retained, unless shown on the approved drawings as being removed. All hedges and hedgerows on and immediately adjoining the site shall be protected from damage for the duration of works on the site. This shall be to the satisfaction of the Local Planning Authority in accordance with relevant British Standards BS 5837 (2005). Any parts of hedges or hedgerows removed without the Local Planning Authority's consent or which die or become, in the opinion of the Local Planning Authority, seriously diseased or otherwise damaged within five years following completion of the approved development shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with plants of such size and species and in such positions as may be agreed with the Authority.

REASON: In the interests of ecology, character and appearance and to comply with Policy 74 of the LP.

- 11) Prior to the first occupation of the development hereby permitted, the vehicular access shall be provided and thereafter retained at the position shown on the approved plan drawing number 21086 001 Rev B. Arrangement shall be made for surface water drainage to be intercepted and disposed of separately so that it does not discharge from or onto the highway carriageway.

REASON: To ensure satisfactory access into the site and avoid carriage of extraneous material or surface water from or onto the highway in the interests of highway safety.

- 12) Prior to the commencement of the development, full details in relation to the design of estate roads (in the form of scaled plans and / or written specifications for each phase) shall be submitted to and approved in writing by the Local Planning Authority to detail the following:

- a) Roads;
- b) Footways;
- c) Cycleways (compliant with LTN 1/20);
- d) Minor artefacts, structures and functional services;
- e) Foul and surface water drainage;
- f) Visibility splays;
- g) Access arrangements including temporary construction access;
- h) Hard surfacing materials;
- i) Parking areas for vehicles and cycles;
- j) Loading areas; and
- k) Turning and circulation areas.

The development shall be implemented in accordance with those approved plans.

REASON: To ensure suitable, safe and satisfactory planning and development of the site in accordance with Policies 34, 69 and 70 of the LP and Policy 5 of Hertfordshire's Local Transport Plan (adopted 2018).

- 13) The development hereby permitted shall not be occupied unless and until full details have been submitted to and approved in writing by the Local Planning Authority in relation to the proposed arrangements for future management and maintenance of the proposed streets within the development. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under Section 38 of the Highways Act 1980 or a Private Management and Maintenance Company has been established.

REASON: To ensure satisfactory development and to ensure estate roads are managed and maintained thereafter to a suitable and safe standard in accordance with Policies 34, 69 and 70 of the LP and Policies 5 and 22 of Hertfordshire's Local Transport Plan (adopted 2018).

- 14) Notwithstanding the details indicated on the submitted drawings, no on-site works above slab level shall commence until a detailed scheme for the offsite improvement works as indicated on the drawing numbers set out below have been submitted to and approved in writing by the Local Planning Authority:

- a) Proposed Foot/Cycle Enhancements Chiswell Green Lane / Stanley Avenue - drawing 22185/006 or where planning permission for the development pursuant to appeal APP/B1930/W/22/3313110 is granted, drawings 8230258-1001 I2 and 8230258-1002 I4.
- b) Watford Road / Chiswell Green Lane Foot / Cycle Enhancements and Highway Amendments drawing 21086/002/2, or where planning permission for the development pursuant to appeal APP/B1930/W/22/3313110 is granted, drawing 22185/007 showing the signalised junction.
- c) Proposed Memorial Car Parking Allocation (22185/005 Rev B).
- d) Proposed Pedestrian/Cycling Upgrades - Toucan Crossing (21086/006).
- e) Proposed footpath improvements (21086/003 and 22185/004 Rev A).

Where planning permission for the development pursuant to appeal APP/B1930/W/22/3313110 is granted, details shall only be required to be submitted in respect of those works listed in a and b above if at the date of submission those said works have not already been approved pursuant to the planning permission granted pursuant to appeal APP/B1930/W/22/3313110.

Prior to first Occupation of the development hereby permitted, the offsite highway improvement works approved in accordance with the above shall be completed in accordance with the approved details.

REASON: To ensure delivery of the necessary highway improvements.

- 15) No development shall commence unless and until a detailed Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the construction of the development for which planning permission has been granted shall only be carried out in accordance with the approved CEMP unless otherwise agreed in writing by the local planning authority. The plan shall be prepared in accordance with the Construction Logistics and Community Safety (CLOCS) Standard.

The plan shall include the following:

- a) The construction programme;
- b) Clear access strategy for construction vehicles that avoids conflicts with pedestrians, cyclists, public transport and existing and future residents;
- c) Hours of operation;
- d) Phasing of the development of the site, including all highway works;
- e) Construction vehicle numbers, type, routing;
- f) Traffic management requirements;
- g) Cleaning of site entrances, site tracks and the adjacent public highway;
- h) Provision of sufficient on-site parking prior to commencement of construction activities;
- i) Details of any highway works necessary to enable construction to take place, including temporary access works;
- j) Details of any works to or affecting Public Rights of Way within and in the vicinity of the site. These shall demonstrate how safe and unobstructed access will be maintained at all times or be temporarily closed or extinguished.
- k) Details of servicing and delivery, including details of site access, compound, welfare facilities, hoarding, construction related parking, loading, unloading, turning areas and materials storage areas;
- l) Where works cannot be wholly contained within the site, a plan shall be submitted showing the site layout on the highway, including extent of hoarding,



- pedestrian routes and remaining road width for vehicle movements and proposed traffic management;
- m) Management of construction traffic and deliveries to reduce congestion and avoid school pick up/drop off times, including numbers, type and routing;
  - n) Control of dust and dirt on the public highway, including details of wheel washing facilities and cleaning of site entrance adjacent to the public highway;
  - o) Details of public contact arrangements and complaint management;
  - p) Construction waste management proposals;
  - q) Mechanisms to deal with environmental impacts such as noise and vibration, air quality and dust, light and odour;
  - r) Post construction restoration/reinstatement of the working areas and temporary access to the public highway; and
  - s) Measures to be implemented to ensure wayfinding for both occupiers of the site and or those travelling through it.

REASON: In order to protect highway safety and convenience, and to protect living conditions, in accordance with Policies 5, 12, 17 and 22 of Hertfordshire's Local Transport Plan (adopted 2018).

- 16) Notwithstanding the information contained in the Transport Assessment, no development shall commence in respect of any development parcel or strategic engineering element listed below until a Site Wide Phasing Plan, which accords with agreed s106 triggers has been submitted to the Local Planning Authority for approval. The Phasing Plan shall include the sequence of providing the following elements:
- a) Development parcels;
  - b) Major distributor roads/routes within the site, including timing of provision and opening of access points into the site;
  - c) Strategic foul surface water features and SUDS;
  - d) Open space;
  - e) Strategic electricity and telecommunications networks;
  - f) Environmental mitigation measures.

No development shall commence apart from enabling works and strategic engineering elements, unless, agreed in writing by the Local Planning Authority until such time as the phasing plan has been approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved phasing contained within the phasing plan unless otherwise agreed in writing by the Local Planning Authority.

REASON: To ensure suitable, safe and satisfactory planning and development of the site in accordance with Policy 5 of Hertfordshire's Local Transport Plan 2018.

- 17) No part of the development hereby permitted shall be occupied prior to the implementation of the approved Travel Plan dated (November 2021) (or implementation of those parts identified in the approved Travel Plan as capable of being implemented prior to occupation). Those parts of the approved Travel Plan that are identified therein as being capable of implementation after occupation shall be implemented in accordance with the timetable contained therein and shall continue to be implemented as long as any part of the development is occupied.

REASON: To ensure that sustainable travel options associated with the development are promoted and maximised to be in accordance with Policies 3, 5, 7, 8, 9 and 10 of Hertfordshire's Local Transport Plan (adopted 2018).

- 18) Prior to the first occupation/use of the development hereby permitted a scheme for the parking of cycles including details of the design, level and siting of the proposed parking shall be submitted to and approved in writing by the Local Planning Authority.

The approved scheme shall be fully implemented before the development is first occupied or brought into use and thereafter retained for this purpose.

REASON: To ensure the provision of adequate cycle parking that meets the needs of occupiers of the proposed development and in the interests of encouraging the use of sustainable modes of transport in accordance with Policies 1, 5 and 8 of Hertfordshire's Local Transport Plan (adopted 2018).

- 19) No development shall be commenced until details of the surface water drainage scheme, based on sustainable drainage principles together with a programme of implementation and maintenance for the lifetime of the development, have been submitted to and approved in writing by the Local Planning Authority, which must include the following:

- a) A fully detailed surface water drainage scheme has been submitted to, and approved in writing, by the Local Planning Authority. The scheme shall include the utilisation of contemporary and appropriate sustainable drainage (SuDS) techniques, with reference to the 'Sustainable Drainage Assessment' by GeoSmart Information Ltd and dated 5th July 2022.
- b) Accompanying hydraulic modelling calculations for the entire surface water drainage scheme have been submitted and approved. These detailed calculations shall demonstrate that both the site and surrounding area will not flood from surface water as a result of the development for a full range of summer and winter storm durations, up to the 1 in 100 year return period event including an appropriate allowance for climate change.
- c) The maximum permissible flow controlled discharge rate shall no more than 10l/s for all events up to and including the 1 in 100 year return period event plus an appropriate allowance for climate change, as currently agreed in principle with Thames Water. This 'in principle' discharge agreement must be formally confirmed in writing with Thames Water and submitted in support of this condition, which shall also include full details of the point of connection, including cover and invert level(s).
- d) Submission of final detailed drainage layout plan(s) including the location and provided volumes of all storage and sustainable drainage (SuDS) features, pipe runs, invert levels and discharge points. If there are areas to be designated for informal flooding these shall also be shown on a detailed site plan. The volume, size, inlet and outlet features, long-sections and cross sections of the proposed storage and SuDS features shall also be provided.
- e) The surface water drainage plan(s) shall include hydraulic modelling pipe label numbers that correspond with the hydraulic modelling calculations submitted, to allow for accurate cross-checking and review.
- f) If any infiltration drainage is proposed on the final drainage layout, this shall be supported with appropriate infiltration testing carried out to the BRE Digest 365 Soakaway Design standard. This would also require confirmation of groundwater levels to demonstrate that the invert level of any soakaways or unlined attenuation features can be located a minimum of 1m above maximum groundwater levels.

- g) A detailed assessment of the proposed SuDS treatment train and water quality management stages, for all surface water runoff from the entire development site.
- h) The provision of a detailed plan showing the management of exceedance flow paths for surface water for events greater than the 1 in 100 year return period plus climate change event.
- i) A construction management plan to address all surface water runoff and any flooding issues during the construction stage is submitted and approved.
- j) If access or works to third party land is required, confirmation that an agreement has been made with the necessary landowners/consenting authorities to cross third party land and/or make a connection to the proposed sewer chamber location.
- k) A detailed management and maintenance plan for the lifetime of the development has been submitted and approved, which shall include the arrangements for adoption by an appropriate public body or water company, management company or maintenance by a Residents' Management Company and/or any other arrangements to secure the operation and maintenance to an approved standard and working condition throughout the lifetime of the development.

The development shall be carried out in accordance with the approved details.

REASON: To ensure that the development is served by a satisfactory system of sustainable surface water drainage and that the approved system is retained, managed and maintained throughout the lifetime of the development, in accordance with Policy 84 of the LP.

- 20) No above ground works shall take place until a scheme for the provision of adequate water supplies and fire hydrants, necessary for firefighting purposes at the site, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the scheme has been implemented in accordance with the approved details.

REASON: To ensure adequate water infrastructure provision is made on site for the local fire service to discharge its statutory firefighting duties.

- 21) Prior to the commencement of development/excavation or ground works in each phase of the development a minerals recovery strategy for the sustainable extraction of minerals shall be submitted to and approved in writing by the Local Planning Authority, in accordance with the submitted Minerals Resource Assessment dated 15 August 2022. Thereafter, the relevant phase or phases of the development must not be carried out other than in accordance with the approved minerals strategy. The minerals strategy must include the following:

- a) An evaluation of the opportunities to extract minerals (sand and gravel, hoggin and other soils with engineering properties); and
- b) A proposal for maximising the extraction of minerals, providing targets and methods for the recovery and beneficial use of the minerals; and
- c) A method to record the quantity of recovered mineral (re-use on site or off-site).

REASON: In order to prevent mineral sterilisation, contribute to resource efficiency, promote sustainable construction practices and reduce the need to import primary materials in accordance with Policy 5 of the adopted Hertfordshire Minerals Local Plan Review.

22) The development shall not be occupied until confirmation has been provided that either:

- a) All foul water network upgrades required to accommodate the additional flows from the development have been completed; or
- b) A development and infrastructure phasing plan has been agreed with the Local Planning Authority to allow development to be occupied.

Where a development and infrastructure phasing plan is agreed, no occupation shall take place other than in accordance with the agreed development and infrastructure phasing plan.

REASON: To ensure that the development can be accommodated by suitable drainage infrastructure.

23) No development-related works shall take place until the implementation of a programme of archaeological evaluation and excavation has been secured and undertaken in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the Local Planning Authority.

The Written scheme of investigation shall include an archaeological programme including:

- a) The programme and methodology of site investigation and recording.
- b) The programme for post investigation assessment.
- c) Provision to be made for publication and dissemination of the analysis and records of the site investigation.
- d) Provision to be made for archive deposition of the analysis and records of the site investigation.
- e) Nomination of a registered archaeological contractor to undertake the works set out within the Written Scheme of Investigation.
- f) The site investigation shall be completed prior to development, or in such other phased arrangement, as agreed and approved in writing by the Local Planning Authority.

REASON: To ensure the appropriate identification, recording and publication of archaeological and historic remains affected by the development in accordance with Policy 111 of the LP.

24) No works involving excavations (e.g. piling or the implementation of a geothermal open/closed loop system) shall be carried until the following has been submitted to and approved in writing by the Local Planning Authority:

- a) An Intrusive Ground Investigation to identify the current state of the site and appropriate techniques to avoid displacing any shallow contamination to a greater depth.
- b) A Risk Assessment identifying both the aquifer and the abstraction point(s) as potential receptor(s) of contamination.
- c) A Method Statement detailing the depth and type of excavations (e.g. piling) to be undertaken including mitigation measures (e.g. appropriate piling design, off site monitoring boreholes etc.) to prevent and/or minimise any potential migration of pollutants to public water supply. Any excavations must be undertaken in accordance with the terms of the approved method statement.

REASON: To avoid displacing any shallow contamination to a greater depth and to prevent and/or minimise any potential migration of pollutants to a public water supply abstraction.

- 25) If, during development, contamination not previously identified is found to be present at the site, then no further development shall be carried out until a Remediation Strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved with a robust pre and post monitoring plan to determine its effectiveness.

REASON: To ensure that the development does not contribute to unacceptable concentrations of pollution posing a risk to public water supply from previously unidentified contamination sources at the development site and to prevent deterioration of groundwater and/or surface water.

- 26) Prior to the commencement of development, details of a Surface Water Drainage Scheme that considers ground contamination and public water supply as a receptor of that contamination shall be submitted to and approved in writing by the Local Planning Authority.

REASON: To ensure that adequate protection of human health is maintained and the quality of groundwater is protected in accordance with Policy 84 of the LP.

- 27) No development shall take place until a Site Waste Management Plan (SWMP) for construction waste arising from the site has been submitted to and approved in writing by the Local Planning Authority. The SWMP shall aim to reduce the amount of waste being produced on site and shall contain information including estimated and actual types and amounts of waste removed from the site and where that waste is being taken to. The development shall be carried out in accordance with the approved SWMP.

REASON: To promote sustainable development and to ensure measures are in place to minimise waste generation and maximise the on-site and offsite reuse and recycling of waste materials, in accordance with Policy 12 of the Hertfordshire Waste Core Strategy and Development Management Policies.



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# Report to the Secretary of State

**by Michael Boniface MSc MRTPI**

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

**Date 24 October 2023**

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## **Town and Country Planning Act 1990**

### **St Albans City & District Council**

**Appeal A: Land south of Chiswell Green Lane, Chiswell Green, St Albans**

**Appeal by Alban Developments Ltd and Alban Peter Pearson, CALA Homes (Chiltern) Ltd and Redington Capital Ltd**

**Appeal B: Land north of Chiswell Green Lane, Chiswell Green, St Albans**

**Appeal by Headlands Way Ltd**

Inquiry held over 8 days between 17 April 2023 – 9 May 2023  
Site visit made on 10 May 2023

File Refs: APP/B1930/W/22/3313110 and APP/B1930/W/22/3312277

## **APPEAL A**

**File Ref: APP/B1930/W/22/3313110**

### **Land south of Chiswell Green Lane, Chiswell Green, St Albans**

- 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 Alban Developments Ltd and Alban Peter Pearson, CALA Homes (Chiltern) Ltd and Redington Capital Ltd against the decision of St Albans City & District Council.
- The application Ref. 5/22/0927, dated 29 April 2022, was refused by notice dated 6 December 2022.
- The development proposed is demolition of existing structures and construction of up to 391 dwellings (Use Class C3); the provision of land for a new school, open space provision and associated landscaping, internal roads, parking, footpaths, cycleways, drainage, utilities and service infrastructure and new access arrangements.

**Summary of Recommendation: That the appeal be allowed.**

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## **APPEAL B**

**File Ref: APP/B1930/W/22/3312277**

### **Land north of Chiswell Green Lane, Chiswell Green, St Albans**

- 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 Headlands Way Ltd against the decision of St Albans City & District Council.
- The application Ref. 5/21/3194, dated 12 November 2021, was refused by notice dated 25 October 2022.
- The development proposed is demolition of existing buildings and the construction of up to 330 discounted affordable homes for key workers, including military personnel, the creation of open space and the construction of new accesses and highway works including new foot and cycle path and works to junctions.

**Summary of Recommendation: That the appeal be allowed.**

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## **Procedural Matters**

1. The appeals were recovered by the Secretary of State (SoS) following a direction made under S79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, on 1 June 2023. The appeals were recovered for determination by the SoS as they involve proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities, and proposals for significant development in the Green Belt.
2. The two appeals are made by different appellants and are independent of one another. However, they were considered at the same Inquiry given the close proximity of the sites and the inevitable mutual considerations between the two. Similarly, whilst I have considered each proposal on its own individual merits, I have dealt with them both in this report to avoid unnecessary duplication.
3. Both applications were for outline planning permission with details of the means of access for consideration. Matters of appearance, landscaping, layout and scale were reserved for subsequent consideration. I have considered the appeals on the same basis.

4. Keep Chiswell Green (KCG), a local community group, were granted Rule 6 status in both appeals and participated as a main party to the proceedings throughout.
5. In advance of the Inquiry, the appellants for Appeal A sought to remove "2FE primary" from the description of development and annotations on the parameters plan. This was apparently to allow more flexibility about the type of school that could be considered, having had further discussions with the Local Education Authority. Comments were invited from the main parties at the Case Management Conference (CMC) and no objections were raised. I subsequently accepted the minor alterations, having been satisfied that no party would be prejudiced, and the appeal proceeded on that basis.
6. In advance of the Inquiry, the appellant for Appeal B identified some minor land ownership discrepancies within the red line site boundary and requested that an alternative location plan be submitted. The result was to remove a small section of land on the eastern boundary, making the site area slightly smaller. Again, the main parties were given the opportunity to comment during the CMC and no objections were raised. I subsequently accepted the minor alterations, having been satisfied that no party would be prejudiced, and the appeal proceeded on that basis.
7. Both appeals were screened by the Council and subsequently by the Planning Inspectorate on behalf of the SoS in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. The appeals were found not to be EIA development either alone or in combination.
8. I was asked by interested parties not to progress these cases and to hold them in abeyance until potential changes to the planning system are enacted. However, such an approach would be firmly at odds with the purpose of the appeals process to efficiently adjudicate on planning matters and ensure that suitable development is not unnecessarily delayed. Appeals must be determined having regard to planning policy at the time.
9. I received executed legal agreements from both appellants after the Inquiry had closed, in accordance with an agreed timetable. These secure planning obligations pursuant to S106 of the Town and Country Planning Act 1990 in the event that the appeals are allowed and planning permission is granted.
10. The Council hosted an Inquiry Website, containing the core documents and other evidence submitted in relation to the appeals. This can be accessed at: <https://www.stalbans.gov.uk/chiswell-green-inquiry>.

## **The Site and Surroundings**

11. The sites are located adjacent to the relatively large village of Chiswell Green, which is very close to the city of St Albans. The sites are located on the western edge of the village, around 3.5km to the south-west of the city centre. The M1 and M25 are located a little over 1km southeast of the sites beyond agricultural fields.

## **Appeal A**

12. The northern boundary is formed by Chiswell Green Lane, a residential street adjoining the main through-route in the village, which narrows to a rural country lane as it reaches the open countryside to the west. The eastern and south-



eastern boundaries are directly adjacent to the residential area of Chiswell Green with the site bordered by the gardens of residential properties.

13. There is a small woodland, subject to a Tree Preservation Order (TPO), to the east which is not included in the site boundary and sits between the site and residential properties. Beyond the western boundary of the site is Miriam Lane, leading to Butterfly World, a former tourist attraction that has now closed.
14. The site itself measures around 14ha and comprises an area of four fields separated by tree lines and hedgerows. Fields in the northern part of the site are currently grazed by horses. In the north-west corner sits a livery yard and riding school, with its stables and riding facilities. The fields in the southern part of the site largely comprise grassland. Two lines of hybrid poplar in the south of the site, again subject to TPO, bound a small triangle of scattered scrub, trees and grassland, along with some small buildings and containers.

### Appeal B

15. The site is approximately 14.2 hectares in size and is located to the north of Chiswell Green Lane, partly adjoining the settlement edge created by properties on Chiswell Green Lane and The Croft but with an intervening paddock for much of the length of the eastern boundary.
16. Chiswell Green Lane, lined with hedgerows and tree planting, marks the boundary of the site to the south and The Croft, a residential street, stands close to part of the eastern boundary. Public rights of way surround the east, north and west boundaries of the site. An area of woodland stands beyond the footpath to the north and a tall hedgerow screens the western edge of the footpath to the west, beyond which is a farmstead and wider countryside.
17. The site comprises a small paddock with stables and a rarely used polo field within a larger area of grazing land, incorporating an agricultural barn.

### **Planning Policy**

18. The development plan includes the saved policies of the Council's District Local Plan Review (1994) (LP); the St Stephen Neighbourhood Plan (2019-2036) (NP); the Waste Core Strategy & Development Management Policies DPD (2012); and Hertfordshire Minerals Local Plan (2007).
19. The following LP policies are of particular relevance to the appeal proposals:
  - Policy 1 - Metropolitan Green Belt;
  - Policy 2 - Settlement Strategy;
  - Policy 8 - Affordable Housing in Metropolitan Green Belt;
  - Policy 34 - Highways Consideration in Development Control;
  - Policy 35 - Highway Improvements in Association with Development;
  - Policy 39 - Parking Standards, General Requirements;
  - Policy 40 - Residential Development Parking Standards;
  - Policy 65 - Educational Facilities;

- Policy 69 - General Design and Layout;
- Policy 70 – Design and Layout of New Housing;
- Policy 74 - Landscaping and Tree Preservation;
- Policy 84 - Flooding and River Catchment Management;
- Policy 84A - Drainage Infrastructure;
- Policy 97 – Existing Footpaths, Bridleways and Cycleways;
- Policy 102 – Loss of Agricultural Land;
- Policy 104 – Landscape Conservation;
- Policy 106 – Nature Conservation;
- Policy 111 – Archaeological Sites;
- Policy 143A – Watling Chase Community Forest; and
- Policy 143B – Implementation.

20. The following NP policies are of particular relevance to the appeal proposals:

- Policy S1 - Location of development;
- Policy S2 - Housing Mix;
- Policy S3 - Character of Development;
- Policy S5 - Design of Development;
- Policy S6 - Minimising the Environmental Impact of Development;
- Policy S7 - Protecting Natural Habitats and Species;
- Policy S10 - Green Infrastructure and Development;
- Policy S11 - Improvements to Key Local Junctions And Pinch Points;
- Policy S12 - Off-street Car Parking;
- Policy S13 - Bus services and Community Transport;
- Policy S14 - Provision for Walking, Cycling and Horse-Riding;
- Policy S15 – Improving the Bridleway Network;
- Policy S16 – Community Facilities;
- Policy S17 - Leisure Facilities for Children and Teenagers; and
- Policy S24 – Broadband Communications.

21. The following guidance is of relevance:

- Design Advice Leaflet No 1 – Design and Layout of New Housing (1998);
- Affordable Housing SPG (2004); and

- Revised Parking Policies and Standards (2002).

## **Planning History**

22. No planning history of relevance to Appeal A was identified during the Inquiry.

23. The following planning history relates to the site subject of Appeal B:

- 5/2021/2520 – Screening Opinion for mixed use development comprising 330 dwellings, open spaces and a memorial park – ES NOT REQUIRED 30/09/2021.
- 5/2020/2245 – Variation of Condition 4 of planning permission 5/2016/3787 to allow partial change of use to repair of commercial vehicles with a particular focus on agricultural machinery and equipment – REFUSED 22/04/2021.
- 5/2016/3787 – Agricultural barn – GRANTED 10/02/2017.
- 05/2018/1324 – Change of use from Sui Generis (agriculture) to Class D2 (assembly and leisure) to create school playing fields and changing rooms with associated access, car parking and landscaping – REFUSED 17/01/2012.

## **The Proposals**

24. The description of development proposed in each case is set out above.

25. For Appeal A, the appellant expands on the description as follows:

- Demolition of existing structures and construction of up to 391 homes;
- 40% affordable homes provision, of which (subject to final approval):
  - 30% Social Rent;
  - 19% Affordable Rent;
  - 26% Intermediate;
  - 25% First Homes.
- 3% self-build and custom-build plots;
- The provision of land (1.89 ha) for a new school;
- 2.92 ha of publicly accessible amenity space
- 0.82 ha of formal play space for children of all ages and 295sqm for playspace for toddlers;
- New access arrangements into the Site from Chiswell Green Lane, Long Fallow and Forge End;
- Adjustments to existing car parking, footpath, cycle path and highway arrangements along Chiswell Green Lane, Watford Road, Long Fallow, Forge End, Farringford Close; and

- New on-site habitat and a financial contribution to enhance habitats off-site (to achieve a 10% biodiversity net gain).

26. Appeal B is seeking up to 330 Affordable Homes and to create extensive open space, part of which could be a Memorial Park. Existing buildings would be removed, and a new vehicular access would be created from Chiswell Green Lane. An existing access from The Croft would be retained for use by emergency vehicles only. The scheme would provide 100% affordable housing which would be secured for essential local workers.

## **Refusal Reasons**

27. Appeal A was refused planning permission by the Council for the following reasons:

- 1) The proposed development comprises inappropriate development, for which permission can only be granted in very special circumstances, these being if the harm to the Green Belt and any other harm is clearly outweighed by other considerations (paragraph 148 NPPF 2021). We do not consider that the benefits outweigh the harm caused by this proposed development due to the harm to the Green Belt openness and purposes relating to encroachment to the countryside, urban sprawl and merging of towns. The harm also relates to landscape character and the loss of agricultural land. The proposal is therefore contrary to the National Planning Policy Framework 2021, Policy S1 of the St Stephen Parish Neighbourhood Plan 2019-2036 and Policy 1 of the St Albans District Local Plan Review 1994.
- 2) In the absence of a completed and signed S106 legal agreement or other suitable mechanism to secure the provision of 40% affordable housing provision; 3% self-build dwellings; 10% biodiversity new gain; provision of open space and play space; health contributions (towards ambulance services and GP provision); education contributions (primary, secondary and Special Education Needs and Disabilities); library service contribution; youth service contribution; leisure and cultural centres contribution; provision of highways improvements and sustainable transport measures; and safeguarding of land at the site for a new two form entry primary school, the infrastructure needs of the development and benefits put forward to justify Very Special Circumstances would not be met and the impacts of the proposal would not be sufficiently mitigated. The proposal is therefore contrary to the National Planning Policy Framework 2021, the St Stephen Parish Neighbourhood Plan 2019-2036 and Policy 143B (Implementation) of the St. Albans District Local Plan Review 1994.

28. Appeal B was refused planning permission by the Council for the following reasons:

- 1) The site is within the Metropolitan Green Belt and the proposed development represents inappropriate development within the Green Belt, as set out in the National Planning Policy Framework 2021. In addition to the in-principle harm to the Green Belt by reason of inappropriateness, other harm is identified as a result of the proposed development in terms of: its detrimental impact on the openness of the Green Belt, harm to Green Belt purposes, harm to landscape character and appearance, loss of high quality agricultural land, and impacts on social and physical infrastructure. The benefits comprise the provision of

up to 330 affordable housing units including potential for self-build units at the site which would contribute significantly towards meeting an identified housing need in the District, and potential for provision of a significant area of public open space and a new public footpath. The potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is not clearly outweighed by other considerations; and as a result the Very Special Circumstances required to allow for approval of inappropriate development in the Green Belt do not exist in this case. The proposal is therefore contrary to the National Planning Policy Framework 2021, Policy S1 of the St Stephen Parish Neighbourhood Plan 2019-2036 and Policy 1 of the St Albans District Local Plan Review 1994.

- 2) In the absence of a completed and signed S106 legal agreement or other suitable mechanism to secure: Additional Health services provision; Education provision in the form of new primary school, secondary school, and childcare provision; Special Educational Needs and Disabilities provision; Library service provision; Youth Service provision; Play Areas, Parks and Open Spaces and Leisure and Cultural Services provision; Affordable Housing provision; Open Space and recreation provision, Highway Works including provision for Sustainable Transport and Travel Plan; the infrastructure needs of the development would not be met and the impacts of the proposal would not be sufficiently mitigated. The proposal is therefore contrary to the National Planning Policy Framework 2021, the St Stephen Parish Neighbourhood Plan 2019-2036 and Policy 143B (Implementation) of the St. Albans District Local Plan Review 1994.

### **Matters of Agreement**

29. Several statements of common ground were signed between the parties. These included:

- General SoCG between Appeal A Appellant and the Council;
- General SoCG between Appeal B Appellant and the Council;
- Highways SoCG between Appeal A Appellant and the Local Highway Authority;
- Highways SoCG between the Appeal B Appellant and the Local Highway Authority;
- Affordable Housing SoCG between both appellants and the Council;
- Landscape SoCG between Appeal A Appellant and the Council;
- Landscape SoCG between Appeal B Appellant and the Council;
- Education SoCG between Appeal A Appellant and the Local Education Authority.

30. An additional letter (ID21) of clarification was sent by the Local Highway Authority, dated 25 April 2023, confirming its consideration of both schemes in combination and raising no objection subject to suitable mitigation measures being secured. In particular, this should include signalisation of the Chiswell Green Lane and B4630 Watford Road junction, in addition to environmental style improvements to pedestrian and cycle infrastructure.

## **The Case for the Appellants (Appeal A)**

*The summary below is largely taken from the appellants closing submissions, which set out the key points, as they saw them, at the end of the Inquiry.*

### *Housing in St Albans*

31. Nowhere is the national housing crisis more acutely evident than St Albans. Mr Kenworthy and Mr Parker have detailed the true extent of the crisis in St Albans, without any challenge in XX from the Council or any contrary evidence from Mr Connell. Indeed, the Council expressly agrees with much of the Appellants' evidence on this issue in the SOCG.

### *Supply of market housing*

32. The Council's supply of market homes has collapsed. The best-case scenario for the Council is a housing land supply of 2 years. This is less than half the required minimum and equates to a shortfall of 3,195 homes. At best, the Council will be able to deliver only 40% of its local housing need over the next five years. Further, the Council's housing supply is in freefall: it has fallen from 3.49 years in 2017 and since the introduction of the NPPF in 2012 the Council has met its annual housing target on only a single occasion (at the start of that period in 2013/14).
33. The collapse of the Council's housing supply has caused an inevitable under delivery of homes in the District. The Council has failed to meet the Housing Delivery Test ("HDT") since 2016/17, even when the targets were artificially reduced due to Coronavirus. Moreover, these failures have not been near misses: the Council has not even achieved 75% on the HDT in the period since 2016/17.

### *Supply of affordable housing*

34. The Council's supply of affordable homes is even more precarious. In the period 2017/18 – 2021/22 the Council has an accumulated delivery shortfall of 4,360 affordable homes. This extreme level of need is the inevitable product of the Council's chronic failure to deliver affordable housing: in the last 28 years the Council has delivered only 18% of all housing completions (net) as affordable housing and in the most recent five-year period, the Council has averaged only 92 affordable dwellings per annum.
35. Looking forward, the Council is only able to demonstrate a supply of 395 affordable homes over the next five years: an equivalent of 79 affordable homes per annum – even less than it has delivered over the last five years. Just like the Council's supply of market housing, the position is going from bad to worse. The ultimate position is that the Council has a shortfall of 5,507 affordable homes over the next five years. This is a staggering shortfall, made all the worse by the fact that the affordability of homes in the District is getting worse, both when looked at in isolation and by comparison to England as a whole. The real-life position is that almost half of households in the District are unable to afford to access the lower quartile private rented housing.

### *Supply of self-build/custom housing*

36. The Council's development plan is entirely silent on the provision of self-build housing. This is unsurprising, given the age of the Local Plan, but the inevitable



consequence is that the Council is significantly failing to deliver the necessary supply of self-build housing. The Council's own data indicates a shortfall of 171 self-build homes. This is an overall delivery rate of only 20%. However, these figures are likely to be unduly optimistic, with need being significantly greater than the Council's records indicate.

#### *Plan-making in St Albans*

37. One of the most striking aspects of the housing crisis in St Albans is the absence of any meaningful response from the Council.
38. The Council has published a HDT Action Plan in 2022, but this only contains measures to deliver approximately 160 homes in the period to 2027. This is not even a meaningful start in tackling the shortfall of over 3,000 homes in the same period.
39. The only additional evidence presented by Mr Connell was the Council's Local Development Scheme, indicating a best-case adoption of a new local plan in 2025. However, as Mr Connell confirmed in XX, this was simply a date that he had been presented with by the Council's officers: Mr Connell had taken no steps to interrogate that date or to consider whether it was realistic. Of course, when the LDS is interrogated, it is obviously optimistic. For example, it proposes 18 months from publication of the reg. 19 plan to adoption. In the context of a Green Belt Authority with multiple previous failures at adopting a local plan, this is unrealistic (especially given the potential further disruption from revisions to the NPPF). Ultimately, not only is there potential for delay at all stages of the plan-making process, as Mr Connell accepted, but in fact such delay is likely and quite possibly inevitable.
40. The Local Plan is almost 30 years old. It is from a different era and it is not fit for purpose. It is out of date in multiple respects: first, because of the absence of a 5YHLS; secondly, because of the persistent HDT failures; and thirdly, because the most important policies are out of date - those policies are inconsistent with the NPPF and, taken as a whole, the Local Plan does not plan for the up to date needs in its district, instead persisting with a failing and unjustifiable spatial strategy. Worse still, the Council has repeatedly failed to remedy this situation: the Council has failed to adopt a new local plan on at least two previous occasions and is currently operating in a policy vacuum.
41. Stepping back and looking at matters in the round, there is quite obviously a sustained and significant failure of plan making in the District. This is a significant material consideration in its own right, as Mr Kenworthy explained without challenge.
42. This is not a position that can be allowed to continue: it is contrary to the established national objective of significantly boosting the supply of housing and it is having severe consequences for the families living in the District.

#### *The need for houses in the Green Belt*

43. The root cause of the housing emergency in the District is the Council's failure to get to grips with plan-making, and in particular the Green Belt in its area. However, assessed objectively, the issue is straightforward: there is insufficient land outside the Green Belt to meet housing need and thus it is inevitable that housing must be delivered in the Green Belt.

44. Mr Kenworthy's unchallenged analysis (based on the Council's own data) is that at best 14% of the District's housing need can be accommodated within urban areas. It follows that on any reasonable view, it will be necessary for the Council to deliver housing in the Green Belt. The Council cannot wish away the remaining 86% of need. Indeed, as Mr Connell accepted in XX, the Council's latest published position within its most recent HDT action plan is that it will seek to meet all of its housing need in the next Local Plan. However, even if housing need was slashed in half, as Daisy Cooper MP speculated, it will remain necessary to deliver housing on the Green Belt, as Mr Connell accepted in XX (and importantly he was not re-examined on this point).
45. Further, it is necessary to deliver housing on the Green Belt now. There is no moratorium on development in the Green Belt, as Mr Connell accepted in XX (he was not re-examined on this point either). In the absence of any moratorium and in the absence of any prematurity argument, good planning requires the delivery of housing in the Green Belt now. More than that, there needs to be the delivery of a range of houses on a range of sites. Any other approach would not be in the interests of good planning in the District and it would be callous to ignore the very real needs of the people living in the District.

#### Effect of the development on the Green Belt

##### *The appropriateness of the southern appeal site*

46. Through the Green Belt Review Sites and Boundaries Study the Council has comprehensively assessed the potential for strategic sites in the Green Belt. The output of that assessment is clear: sub-area 8 is the most suitable strategic parcel for development; the eastern part of sub-area 8 is the most suitable part of that strategic parcel; and the southern appeal site is the most suitable site within that eastern part. The southern appeal site is at the very top when it comes to development in the Green Belt. The fact that its relative size compared to other sites may have contributed to this is beside the point: what matters is that as a means of delivering a development of the scale proposed by the appeal scheme somewhere in the St Albans Green Belt, the appeal site and appeal scheme can do so at the lowest possible cost to the Green Belt. Indeed, this is clearly corroborated by the Council's own acceptance at the inquiry that the appeal scheme would cause no more than inevitable harm for a development of this scale in the Green Belt.
47. This analysis is consistent with the earlier allocation in the emerging local plan. It is agreed that the emerging local plan cannot be given any weight now, but it is relevant to consider the prospect of allocation. As to this, the Council has withdrawn Mr Connell's suggestion that the southern appeal site will not be allocated in the next Local Plan – in XX he accepted "it's a likelihood" that the site would indeed be allocated.
48. This concession was rightly made given (i) the acceptance that there is a need for at least some Green Belt release, including on strategic sites, which Mr Connell acknowledged would be necessary even with a new local plan requirement figure that sought to meet just a quarter of currently identified housing need given the findings of the Urban Capacity Study; (ii) the findings of the Green Belt Review which still hold good today; and (iii) the common ground with the Council that the proposed development would cause no more than the



- minimum inevitable level of harm associated with developing 391 homes in the Green Belt.
49. There can be a high degree of confidence that the southern appeal site would be allocated in due course for residential development of this scale (likely including the provision of land for a school as well, given HCC's clear statement that such land is required for further development in Chiswell Green) if and when the Council gets a new local plan in place.
50. The Council and the Appellants are agreed that significant weight should be given to the Green Belt Review. However, belatedly, the Council has sought to caveat this agreement on the basis that there has been a material change of circumstances with the closure of Butterfly World. This is incorrect for the following reasons.
51. First, the unauthorised development against which the Council has taken enforcement action (the unauthorised change of use and the failure to remove the temporary toilet block) occurred after Butterfly World closed in 2015 and post-dates the Green Belt Review. Therefore, the enforcement action even if successfully defended on appeal would revert the position back to that at the time of the Green Belt Review. Accordingly, this unauthorised development (including its subsequent removal, if enforcement action is successful) is not a change of circumstances which materially changes the baseline from that which was assessed in the Green Belt Review. Insofar as there is any other unauthorised development within Butterfly World, it is now too late for the Council to take enforcement action against that development, as Mr Connell accepted in XX.
52. Secondly, there is no indication that the Green Belt Review was based on the assumption that the permitted dome within Butterfly World would be built out in full. To the contrary, it is clear that the Green Belt Review assessed the Green Belt as it existed in 2014: all of the descriptions are in the present tense without any suggestion of future development. Further, there would be no basis for that assumption. Planning permission for the dome was granted in 2005, some nine years previously, with development commenced before 2010 with the ground works, hard standing and pouring of concrete base of the dome. Accordingly, the development was already delayed at the date of the Green Belt Review, as the assessors would have appreciated, and thus there would have been no basis for them to base their assessment on the assumption of completion.
53. Thirdly, it is important to read the Green Belt Review's reference to Butterfly World in context. The full passage (CD 8.5, para. 10.1.4) reads as follows: "However, the sub-area identified on pasture land at Chiswell Green Lane displays particular urban fringe characteristics due to its proximity to the settlement edge and Butterfly World along Miriam Road to the west. This development bounds the outer extent of the pasture land and creates a physical barrier to the open countryside."
54. As Mr Friend accepted in XX from his landscape and visual perspective, this observation remains good. The Green Belt Review's identification of urban fringe characteristics of the site were due to both the settlement edge (which has not changed since) and Butterfly World, which on any view in its lawful state would be a previously developed site with significant hardstanding and other physical development (as the aerial image in the Keep Chiswell Green presentation made

abundantly clear) – containing development which at the time it was authorised was recognised as inappropriate development in the Green Belt. Mr Friend accepted in XX that these two factors continue to contribute to the site having urban fringe characteristics from a landscape and visual perspective. He also accepted that in its lawful state (i.e. discounting the matters which are the subject of the ongoing enforcement action) the site continues to separate the appeal site from the open countryside. The observations of the Green Belt Review in this respect therefore remain fully valid.

55. The Appellant on the northern appeal site has argued that the Green Belt Review should be afforded less weight because of the Examining Inspector's comments on the withdrawn local plan. This argument is incorrect. The Inspector's concern was that the Council had failed to assess small scale sub areas i.e. non-strategic small sites. The Inspector did not have any concerns about the assessment of strategic sites. It follows that this is not a basis to reduce the weight to be afforded to the Green Belt Review.
56. In the Council's closing submissions, Mr Parkinson advanced a new point against the Green Belt review, not made in evidence or otherwise previously foreshadowed: namely that "the GBR did not assess the cumulative effect of both the North and the South sites coming forward at the same time". This new point is a bad one given that Ms Toyne's cumulative assessment for the Appellant was not challenged in XX or otherwise contradicted at the inquiry. In any event it does not affect the standalone merits of the southern appeal site and the appeal scheme.
57. Accordingly, the conclusions of the Green Belt Review in relation to the site continue to hold good today without caveat, and there is no good basis for departing from them. On this basis, the only proper conclusion is that the southern appeal site is the most appropriate site for strategic residential development. There is no alternative analysis.

#### *Green Belt – baseline analysis*

58. In the baseline analysis, the southern appeal site makes a limited contribution to the openness of the Green Belt.
59. In respect of parcel S8, the Green Belt Review explains that there is a 'sense of enclosure' in the parcel and that 'urban fringe elements are prominent, particularly [...] [the] built edge of settlements'. This is especially the case 'at a local level [where] Butterfly World forms a distinctive feature to the west of Chiswell Green'. Further, the Green Belt Review highlights that the land around Chiswell Green Lane, including the southern appeal site, 'displays particular urban fringe characteristics due to its proximity to the settlement edge and Butterfly World along Miriam Road to the west. This development bounds the outer extent of the pasture land and creates a physical barrier to the open countryside. The pasture land displays greater levels of landscape enclosure due to localised planting along field boundaries. This creates potential to integrate development into the landscape with lower impact on views from the wider countryside and surroundings.' On this basis, the Green Belt Review concludes that the land immediately adjacent to Chiswell Green, including the southern appeal site, 'makes a limited or no contribution towards all Green Belt Purposes'.

60. Ms Toyne's analysis – in particular through the BWNS Green Belt Review - was consistent with these findings. As to openness, Ms Toyne explained through her evidence that the principal contribution to openness is in the spatial dimension, because the appeal site is largely undeveloped, but there is no meaningful contribution to the visual aspect of openness: the existing vegetated boundaries truncate views, limiting intervisibility between the southern appeal site and the remaining Green Belt to the west; views from the settlement edge towards the appeal site are also interrupted in part by the existing field boundary vegetation; and as such any appreciation of openness is limited to the immediate locality of the Appeal Site, with no perception of openness beyond the roads and residential properties that immediately adjoin the Site.
61. Further, as to the purposes of including land within the Green Belt, Ms Toyne found that the appeal site made only a partial contribution to a single Green Belt purpose, namely preventing encroachment into the countryside. This is entirely in accordance with the Green Belt Review.
62. The Council's challenge to Ms Toyne's assessment of the baseline was limited. As to openness, the Council did not identify any deficiencies in Ms Toyne's analysis. In particular: The largely undeveloped nature of the southern appeal site is agreed and was expressly part of Ms Toyne's analysis. There was no omission in her analysis in this regard. The Council's case in XX focussed in on very close distance views from private residential properties. Again, these had been taken into account by Ms Toyne and there was no omission in her analysis. There was a suggestion that longer views from outside the Green Belt looking west were relevant. Aside from the fact that Mr Friend provides little if any analysis of these views in Green Belt terms, there is only a very limited extent of visibility as Ms Toyne explained, consistently with the Green Belt Review. The extent of activity from the existing riding school was acknowledged expressly by Ms Toyne in her evidence and there was no omission in this regard.
63. In respect of Green Belt purposes, the Council's case at inquiry evolved beyond its earlier written analysis. In particular, on the first Green Belt purpose, checking the unrestricted sprawl of built up areas, Mr Connell advanced the contention for the first time in XiC that Chiswell Green was a large built up area. This was not foreshadowed in his POE. The absence of earlier analysis only underscored the weakness of this argument and Ms Toyne was right to reject it. Neither the Council's own Green Belt Review nor the BWNS Green Belt review considered Chiswell Green to be a large built up area for this purpose. That is the right analysis, reflecting the Council's own assessment of the different tiers of settlements, where Chiswell Green is not in the top tier as a large built up area.
64. The Council based its case in XX on the appeal decision relating to Burston Garden Centre (another argument not in Mr Connell's evidence). This is a site on the other side of St Albans, beyond the North Orbital Road. The Council sought to argue that a finding of harm to the first Green Belt purpose in that case meant that there was also harm to the same Green Belt purpose in this case. This is flawed in multiple respects. First, the comparison of two different sites on different sides of Chiswell Green is simplistic. A site specific and scheme specific analysis is required. Secondly, on closer examination, it is apparent that the Inspector's concerns in that case – which was about the separation between Chiswell Green and How Wood Village – is not a concern in this case, given (1) the location of How Wood Village; and (2) the close relationship between the

southern appeal site and Chiswell Green in this case, which was not replicated in the other appeal decision where the Inspector noted 'a degree of separation' from Chiswell Green. Thirdly, there is no supporting reasoning which explains either: (1) how (or if) the Inspector grappled with the Green Belt Review; and/or (2) how Chiswell Green and How Wood Village are large built up areas for the purposes of the first Green Belt purpose (in particular, in the face of the Green Belt Review). Ultimately, this appeal decision provides no tenable basis for reaching a different view to Ms Toyne and the Green Belt Review in this case.

65. On the second Green Belt purpose, the Council pinned its case on a simplistic recitation of the "thousand cuts" argument. The deficiency with this argument is that it requires site by site appraisal, not broad brush statements of principle. As Ms Toyne explained in response, when one focuses in on the southern appeal site, it is clear that the development of this parcel will not contribute to the merging of neighbouring towns, given its high levels of enclosure and relationship with Chiswell Green, being wrapped around by existing development from residential properties and Butterfly World. Accordingly, there is no merging effect. It follows that Ms Toyne's assessment of the baseline is to be preferred.

*Effect on Green Belt openness and purposes*

66. As to the effect of the proposed development, although the parties differed on their precise assessments, it was agreed by both of the Council's witnesses that the harm to the Green Belt from the proposed development was no more than that which would inevitably arise from a residential development of this scale within the Green Belt in this District. There is no excess or egregious harm; rather that harm has been minimised to the lowest possible extent.
67. Ultimately, this is fatal to the Council's case (given the acceptance that some Green Belt release is needed to address the massive unmet needs and that there should be no moratorium on that until such time as a new local plan is finally adopted). It is possible to argue – as the Council sought to do in XX of Mr Kenworthy as to whether or not the substantial weight to the Green Belt harm should be graduated or calibrated to the extent of effect, but in this case such an argument is arid because it makes no difference. The parties are agreed that nothing more than the minimum, inevitable, harm to the Green Belt is caused by the proposed development and thus, when paragraph 148 of the NPPF is applied, the substantial weight to be afforded to that harm is the same on either parties' analysis – it is substantial weight reflecting a minimum level of harm.
68. Insofar as it is necessary to go beyond this analysis, the Appellant submits that Ms Toyne's assessment of effects is to be preferred. Overall, she concluded that there was limited harm to the Green Belt, having regard to both the impact on openness and Green Belt purposes. Mr Kenworthy struck his planning balance on this basis. There was no inconsistency as the Council suggested in XX: that inconsistency was illusory because it was based on individual component parts of Ms Toyne's analysis, not her overall conclusion on the degree of harm.
69. Further, in XX of Mr Kenworthy and Ms Toyne the Council sought to adopt a mathematical approach, taking the assessment of different elements and adding them up to create a higher level of harm. This approach is wrong as a matter of principle: the assessment of harm is not a mathematical exercise, but instead requires a holistic overall conclusion. That was Ms Toyne's approach and she was correct to do so.

70. As to spatial openness, Ms Toyne acknowledged that there would be harm to this dimension, but in so doing she also, rightly, had regard to the proposed development in its entirety, in particular the substantial areas that would not be developed. The Council challenged the precise figure in this regard on the basis that the school should be included, but even on this basis, the increase in the percentage of developed area would not be significant, as Ms Toyne explained in XX.
71. As to visual openness, the Council reiterated its arguments about adjacent residential properties, but the more that this argument was reiterated, the clearer it became that the effects on visual openness were very limited – these were the only views that the Council could point to in support of its case. Ms Toyne took these matters into account, but they did not materially increase her assessment of harm. This was the same conclusion as the Council’s officers who were of the view that ‘there is no additional harm to openness as a result of the limited visual impact on openness of the Green Belt’.
72. As to Green Belt purposes, the proposed development would only cause very limited harm to the third Green Belt purpose and that harm would be confined to the southern appeal site itself. Although the southern appeal site makes a partial contribution to this purpose and there would be development within the countryside, the level of harm is significantly mitigated by (1) the existing urban fringe influences in the baseline position; and (2) the fact that following the development there will be a strong, defensible, Green Belt boundary, enclosing the development with Chiswell Green.
73. In respect of this purpose, the Council focussed in XX of Ms Toyne on the fact that the urban influences could be stronger if Butterfly World had been completely built out. That might be right, but it is of no consequence: as the Green Belt review has found, the current form of Butterfly World (and the other existing development) already imposes a substantial urban fringe influence on the appeal site. Ms Toyne’s assessment was based on what is on the ground today, not what might have been. Therefore, the Council’s argument goes nowhere.
74. There has been no challenge to Ms Toyne’s assessment of cumulative impacts. Indeed, this is a matter to which Mr Friend devotes three, essentially inconsequential, paragraphs in his POE. Accordingly, for the reasons that Ms Toyne gives, there is no basis for refusing to grant planning permission because of the cumulative impacts of the development but, even if this was a concern, the clear – and undisputed – preference must be for the development of the southern appeal site with its lower levels of harm. No party has challenged the Appellant’s evidence on the comparative impacts of the South and North schemes.
75. Finally, an important gap in the Council’s assessment was its failure to take proper account of the positive effects that the proposed development will have on the Green Belt through the formation of a strong boundary on the western edge. The boundary features already exist there, with Miriam Lane and Butterfly World, but at present the urban edge is raw. Following the proposed development, there will be substantial landscaping on the western side, softening the impact of the urban form, reinforcing the existing boundary features and reducing the urban fringe impacts on the Green Belt. This is an important factor that tempers the harm to the Green Belt.



### *Conclusion on Green Belt effects*

76. The southern appeal site represents the most appropriate site for strategic residential development within the Green Belt. As the Green Belt Review rightly concludes, the site is the most suitable part of area S8, that area as a whole being ranked No1 within the Tier 1 of the strategic sites that were assessed.
77. Notwithstanding the Council's concerns as to the extent of Green Belt effects, the ultimate position is that any harm arising from the proposed development is only that which would arise inevitably from any strategic residential-led development within the District's Green Belt. This was accepted by the Council's witnesses.
78. Once it is accepted – as the Council's witnesses have – that development in the Green Belt is necessary and there is no moratorium on Green Belt development, then it follows from the above that there can be no tenable objection to the proposed development on Green Belt grounds. There is no better way of meeting the need for strategic residential development: it is the most appropriate site and any harm arising is only that which would inevitably arise from any such development in the District's Green Belt.

### Landscape and visual impacts

#### *Impact on landscape character*

79. The starting point – and end point – is the agreement between the Council and the Appellants that there is only a limited degree of harm to landscape character and that only limited weight should be afforded to that harm. Mr Friend also agreed in XX that the level of harm was no more than that inevitable for development of this scale on a green field site in the district. This agreement reflects the fact that there were only two – very minor and ultimately immaterial – points of dispute between Mr Friend and Ms Toyne.
80. The first point of dispute relates to the effect on the character of the site in year 15. Ms Toyne's evidence is to be preferred and the proper conclusion is that at year 15 there will be a neutral on site effect. Although the character of the site would change, the proposed development would establish positive characteristic features across the southern appeal site, thus responding to the published landscape guidance and policy, as well as mitigating the adverse effects of the proposed development itself. This would ensure the sensitive assimilation into the settlement and an overall improvement to the edge of Chiswell Green. Mr Friend's analysis erroneously focussed on the adverse effects in isolation, rather than balancing both the landscape character harms and benefits.
81. The second point of dispute concerns the effect on native hedgerows in year 15. Both Ms Toyne and Mr Friend agree that there will be a beneficial effect on this receptor and the dispute is only one of extent. As to this, Mr Friend based his position on the fact that some hedgerow would be removed for the creation of accesses. However, this is an incomplete assessment because the proposed structural planting will result in an overall net gain in native hedgerow length and quality. This justifies the moderate beneficial effect described by Ms Toyne.

#### *Visual effects*

82. The reason for refusal only refers to harm to landscape character. There is no allegation of adverse visual effects. Mr Friend's decision to allege such effects

was thus contrary to art. 35 of the Development Management Procedure Order and unreasonable. This was all the more the case given the alleged adverse visual effects were unjustified.

83. There was no methodological dispute between Mr Friend and Ms Toyne. Instead, Mr Friend purported to dispute the value of the receptors in residential properties on the settlement edge of Chiswell Green. There was no justification for these receptors to be given a high value. The agreed methodology ascribed a high value to a 'view of/from a location that is likely to be of national importance, either designated or with national cultural associations'. Plainly these views do not have national cultural associations. Further, they are not designated for their visual value. Mr Friend's reliance on the Green Belt designation was in error: that is a spatial designation, not a landscape designation, and the visual component of openness does not change this because it is concerned with the extent of visibility, not the quality or value of a view. Mr Friend's error is all the more apparent given the protection of views from private properties is not a purpose of including land in the Green Belt.
84. It follows that Ms Toyne's assessment of visual effects is to be preferred. In any event, Mr Friend's criticisms had no consequence because Mr Connell did not depart from his limited weighting on this issue (and did not add any additional component of harm to his planning balance).

#### *Conclusion on landscape and visual matters*

85. Ultimately, the proposed development would only give rise to a limited adverse effect on landscape character. That level of harm does not give rise to any policy conflict, even on Mr Friend's case. This is not an immaterial point as the Council suggested in XX of Mr Kenworthy. Neither the NPPF nor the Local Plan impose a no harm test. Rather, they seek to consider whether the effects are acceptable. A limited adverse effect when delivering a strategic residential development is an acceptable, policy compliant, effect, as the Officer Report and the Appellants' witnesses concluded.

#### The effect on best and most versatile agricultural land

86. The Council's objection to the loss of agricultural land is inexplicable for multiple reasons.
87. First, over 90% of the land within the District is classified as Grade 3, like the southern appeal site. It follows that if strategic residential sites are to come forward – as they must – then it is inevitable that sites with the same agricultural land classification will be lost.
88. Secondly, the southern appeal site makes no contribution to the agricultural productivity of the district. It has not been in productive agricultural use for more than 20 years and there is no prospect of this changing. The southern appeal site is fundamentally unsuited to a modern, intensive, agricultural enterprise, being an isolated block of land, adjacent to the urban edge and severed from any wider agricultural land. Accordingly, the loss of this agricultural land would have no effect on the agricultural productivity of the District. In none of these respects was the Appellant's evidence challenged.
89. Thirdly, the loss of agricultural land does not give rise to any policy conflict. The Council's reasons for refusal do not allege any conflict with the Local Plan on this

issue. Further, there is no conflict with NPPF para. 174(b), as Mr Connell accepted in XX. That paragraph simply requires the benefits of best and most versatile agricultural land to be taken into account – it does not seek a particular outcome. But in any event, the land in this case does not give rise to any agricultural or economic benefit, given the enduring absence of productive agriculture.

90. It follows that there is, at worst, limited harm arising from the loss of agricultural land and this should be afforded limited weight. This is agreed between the Appellants and the Council.

### Highways and transport

91. Neither the Council nor the Hertfordshire County Council, the local highways authority, objects to the proposed development, either on an individual or cumulative basis. This has been reaffirmed during the inquiry. The objections by third parties are without merit and provide no good reason to take a different view to the Council and County Council.

### *Impact on the highway network*

92. The proposed development will not give rise to a severe residual cumulative impact on the highway network either in isolation or in combination with the development on the northern appeal site.
93. Mr Jones has undertaken detailed modelling of the impact on the highway network on a worst case basis. This approach is robust and is not disputed by any party, including Keep Chiswell Green ("KCG"). Instead, the dispute is as to what form of mitigation is necessary.
94. Mr Jones explained his view that for the proposed development in isolation, the modal shift arising from the Travel Plan was sufficient mitigation, but for the developments in combination it would be necessary to introduce traffic signals at the double mini-roundabout. The County Council agrees with this analysis.
95. Mr Walpole accepted the principle of signalisation, subject to detailed design, but contested the efficacy of the Travel Plan. This objection cannot give rise to a refusal of planning permission, given the introduction of traffic signals is offered as a fallback (although it is not considered necessary). But in any event, it is an objection which is unjustified. The Travel Plan proposes a 16% decrease in single occupancy vehicle movements. This is agreed by the County Council to be realistic. That 16% decrease is made up of two components. The first component is a 10% reduction in car driver mode share as a result of active travel improvements. Mr Walpole agreed in XX that he did not contest that element and he agreed that it was realistic. The second component is a 6% increase in people working from home: more specifically, a shift from 9% to 15%. Mr Walpole contended that this was unrealistic, but that is wholly unsustainable, given on KCG's own evidence some 24% of people in Chiswell Green work from home. Given this, achieving the lesser figure of 15% is eminently realistic and achievable, as both Mr Jones and the County Council have concluded.
96. It follows that the impacts of the proposed development will be appropriately mitigated and there is no basis for concluding that the proposed development will give rise to a severe residual cumulative impact on the highway network.



### *Impact on highway safety*

97. Only Mr Walpole has raised an objection on the basis of highway safety. That objection was narrow in scope and only related to the proposed shared pedestrian/cycle way on Chiswell Green Lane. Further, the objection was unfounded in multiple respects.
98. First, as Mr Walpole explained in XX, his analysis was based on the shared way being the only point of access. This was in error. There will be two points of access for all modes of travel into the southern appeal site at Chiswell Green Lane in addition to the access at Forge End and the pedestrian/cycle/emergency access at Long Fallow. Importantly, the most easterly of these access points (and thus the access point that is most likely to be used by school children walking from the centre of Chiswell Green) will be served by footways on both sides of Chiswell Green Lane, contrary to Mr Walpole's understanding. From that access way, school children will be able to follow the footway around the internal access road to the school site. In addition, there is likely to be an internal footpath across the northern part of the site, providing a further alternative access to the school site.
99. Secondly, the proposed shared way has been assessed in the Road Safety Audit and Mr Walpole's concerns were not corroborated. This is consistent with the conclusion of the County Council who also found the shared way to be acceptable.
100. Thirdly, and in any event, the proposed shared way has been designed in accordance with LTN1/20 and it will have a capacity of 300 pedestrians/cyclists per hour. This will be more than adequate, as Mr Jones explained in XiC, in particular when the unchallenged forecasts only identify 40 cycling trips per day on that route. It follows that the proposed development is acceptable in terms of highway safety.

### *The locational accessibility of the proposed development*

101. The issue of locational sustainability must be put in perspective. The Council has consistently assessed Chiswell Green as an appropriate location for development, both in the adopted local plan and in the aborted replacement local plan.
102. The first difficulty with Mr Walpole's evidence was his erroneous approach to national policy. Mr Walpole assessed locational sustainability on the basis that walking, cycling and public transport had to be 'the first choice for journeys by new residents'. This is incorrect. Mr Walpole based this test on a Government policy paper from July 2020. That policy paper predates the NPPF. Given this, it cannot be taken as an expression of the Government's current approach to assessing the locational accessibility of developments; rather, that should be assessed by reference to the NPPF, in its current form.
103. Properly understood, the NPPF requires opportunities to promote walking, cycling and public transport use are 'identified and pursued'; and it seeks to ensure that 'appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location'. Further, the NPPF recognises that opportunities to maximise sustainable transport solutions will vary depending on the location of the development.

104. Mr Walpole did not recognise the contextual judgement that the NPPF requires. Instead Mr Walpole formulated arbitrary lists of required facilities, for which there is no policy or guidance support.
105. The second difficulty with Mr Walpole's evidence was that he assessed the accessibility of the development on foot by the rigid application of an 800m walking distance. This approach is flatly contrary to the relevant guidance. Manual For Streets recognises that whilst 800m represents a 'comfortable' walking distance, it is not an upper limit and that walking is a realistic option to replace car trips at distances up to 2 km. This is also consistent with the WYG research which found that walking up to 1.95 km was realistic as a main mode of travel outside of London. Further, the National Design Guide does not lead to a different conclusion: that discusses how new developments can be laid out so as to be walkable (based on an 800m distance), but it does not dictate or provide guidance on the location of development relative to existing facilities. Mr Walpole did not appreciate this in his evidence.
106. The third difficulty was that Mr Walpole failed to consider the full range of sustainable transport options. In particular, Mr Walpole made no reference at all to the possibility of train travel, despite the appeal site being in close proximity to four train stations, offering the possibility to travel to central London in under an hour by bus and train alone.
107. Given these obvious errors in Mr Walpole's analysis, the Appellants submit that Mr Jones' evidence should be preferred. As he explained, Chiswell Green is served by a good range of facilities, including retail and employment, that are within convenient walking and cycling distance of the southern appeal site. Further, Chiswell Green is well located for the wider use of sustainable transport, in particular by cycle or bus into St Albans or one of the four nearby rail stations, with plentiful opportunities for onward travel, especially to London and Watford. In short, applying the NPPF, it is clear that appropriate opportunities for sustainable transport exist and can be taken up. Mr Walpole was unable to identify any opportunities that had been overlooked.
108. It follows that the southern appeal site is in a sustainable location.

#### The effect on education

109. The Council do not dispute that the provision of the school land is a benefit, but instead they contest the weight to be given to it as a benefit. Mr Connell agreed that if planning permission is granted for both the northern and southern developments, then substantial weight should be afforded to the provision of the school land. Accordingly, the dispute is narrow, namely the weight to be afforded to the school land if planning permission is granted for the southern appeal site alone.
110. The starting point is to recognise that both the Council (and the County Council) consider that the obligation to provide the school land complies with reg. 122 of the Community Infrastructure Levy Regulations 2010. It follows that the Council (and the County Council) has concluded that the provision of the school land is necessary to make the development acceptable in planning terms. The Appellants agree.

111. Mr Connell's evidence – and the XX of Mr Kenworthy – must be seen in this context. The more that the Council suggested the delivery of the school land was uncertain, the further it strayed from the agreed position that the school land was necessary. Ultimately, it became clear that the Council's position was a contrived attempt to avoid giving the provision of a school land substantial weight, consistently with Mr Kenworthy's evidence and the officer's report.
112. The Appellants submit that substantial weight should be afforded to the provision of the school land for the following reasons.
113. First, there is no dispute that the school land is required. The SOCG with the County Council states so in terms. More than that, the school land is the ideal response to that requirement. As Mr Hunter explained in his evidence, the school site is a rare opportunity because school land is not easy to come by, especially unencumbered, remediated and of an appropriate size without the need for compulsory purchase.
114. Secondly, following discussions with the County Council, the description of development was amended to allow the County Council the maximum flexibility when bringing forward the school land, in particular to allow the County Council to develop the school land for a SEND school (either alone or in combination with primary provision). This is important because there is a significant unmet need for school places for children with profound neurological impairments ("PNI") and the school land will provide the County Council with the opportunity to address that need.
115. Mr Connell has sought to contest this analysis. He was wrong to do so in multiple respects.
116. The County Council's Statement of Case is clear: there is a shortfall in places for children with both PNI and Severe Learning Difficulties ("SLD"), but the County Council only has a plan to accommodate the SLD need. The County Council does not have a plan to accommodate PNI. There is no contrary evidence and Mr Connell was not able to point to any before the inquiry.
117. The email correspondence between Mr Hunter and Mr Wells in January 2023 does not alter this analysis. Mr Wells email deals only (and specifically) with SLD needs. Mr Wells does not deal with PNI. Further, contrary to XX of Mr Hunter, there is nothing in the fact that Mr Hunter did not ask about PNI specifically because the County Council only disclosed that need to the Appellants in its subsequent statement of case, in February 2023.
118. Similarly, the email to the case officer from the County Council in March 2023 does not alter the analysis. Again, the only pertinent information in that correspondence is concerned with SLD provision (and specifically the size of school required). That email does not deal with PNI. Further and importantly, as Mr Hunter has explained in his evidence, the school land is big enough for a PNI school (or PNI provision in combination with primary provision).
119. The remaining concern of the Council is the fact that the County Council has indicated a feasibility study would be needed prior to going ahead with a PNI school on the site. However, Mr Hunter explained in XX and RX that there is nothing unusual about that: the requirement for a feasibility study is standard process. His expert opinion was that there were no foreseeable or likely

showstoppers that would arise out of any such feasibility study in future. He was the only education expert who appeared before the inquiry; there is no evidential basis in support of a different analysis. His evidence was obviously credible and well informed. The fact that no issues had arisen out of the feasibility study already undertaken for a primary school underscores the confidence that can be had in his judgment in this respect.

120. It follows that all the available evidence before this inquiry shows that there is an unmet need for school places for children with PNI and the school land is suitable to accommodate that need.
121. Thirdly, although it is theoretically possible to conceive of meeting the need for school places in a different way, the use of the school land is very obviously the best – and thus most likely – solution. Enabling it is markedly advantageous in planning terms. More particularly:
122. If planning permission is granted for both the north and the south sites, it is inconceivable that the County Council would seek to expand Killigrew Primary School to a 4FE. As Mr Hunter explained, there are no 4FE primary schools in Hertfordshire and such schools form less than 1% of the school stock across the country. Such an approach is so rare that DfE does not have baseline designs for 4FE. There is an obvious reason for this, given the qualitative benefits of smaller schools. Mr Connell accepted in XX that if permission is granted for both sites, an immediate need for the new school would arise and that substantial weight should in that situation be accorded to this benefit.
123. There is insufficient surplus space at Killigrew Primary School to accommodate the pupil yield from the southern appeal site alone. The small (but insufficiently large) surplus that currently exists is necessary to ensure the smooth operation of the school, as Mr Hunter explained in XX. It is possible that the existing school could be expanded by 1FE to accommodate the need from the southern appeal site alone, but this is unlikely given: (1) 98% of the primary schools in Hertfordshire are 2FE; and (2) the requirement identified by the County Council is for a 2FE school, not for a 1FE extension. In XX the Council suggested that expansion to a 3FE school would build resilience, but this point goes nowhere, given the County Council has not raised any concern about the resilience of the existing school and the current levels of up take indicate that it is well used.
124. Given these matters, the most likely approach is that the County Council will draw down the primary school land, at the very least to deliver a 1FE school, with the ability to expand that in future, given the likelihood of future development in Chiswell Green (having regard to the extent of need, the ability of urban sites to meet only 14% of the need, and Chiswell Green's comparative sustainability relative to much of the District).
125. Ultimately, there are four possible options: (1) the County Council do not draw down the school land; (2) a primary school is constructed; (3) a SEND school is constructed; or (4) a primary school with SEND provision is constructed. The least likely of these four options is the first, given the County Council's stated requirement for the land; the unmet need for PNI school places; and the low likelihood of an alternative solution.
126. Fourthly, paragraph 95 of the NPPF requires local planning authorities to take 'a proactive, positive and collaborative approach' to ensure that a sufficient

choice of school places is available to meet the needs of existing and new communities. Further, local planning authorities are required to take the same approach 'to development that will widen the choice in education'. The approach of Mr Connell and that put to Mr Kenworthy in XX is inconsistent with this clear policy. On the Council's approach, local planning authorities should sit around until schools are at capacity and there are no other options before recognising the importance of new school delivery. This is wrong. A proactive approach is that proposed by the Appellants: delivering a school now, with capacity for the southern appeal site and future growth in Chiswell Green. In addition, this approach will widen the choice in education, providing an alternative to the existing primary school (indeed, an alternative which KCG appeared to consider would be at least, if not more, attractive).

127. It follows that the provision of the school land is a benefit of the proposed development to which substantial weight should be afforded, consistently with the officer's report. (This is equivalent on the parties' weight scales to the "great weight" provided for by NPPF para. 95(a)).

#### Other matters

128. KCG and third parties have raised a number of other matters, outside of the reasons for refusal. The Appellants have responded to those matters through their evidence. Further, in XX Ms St Ledger McCarthy accepted that KCG had not presented evidence on the other matters raised in its SOC and/or that those matters did not give rise to a basis for refusing to grant planning permission.
129. Notwithstanding this, given the volume of representations made on the issue of precedent, it is necessary to deal with it briefly. The grant of planning permission will not give rise to any precedent. KCG's evidence has concentrated on Colney Heath. That is entirely irrelevant to precedent in this case. In addition, KCG's evidence about Chiswell Green has focussed on the potential for further applications to be made; not for further grants of planning permission. Further, it was based on the mistaken understanding that the grant of planning permission in this appeal would alter the Green Belt boundary and/or lessen the policy protection for land within the Green Belt.
130. In short, there is no evidence that the grant of planning permission in this case would render it more difficult for the Council to refuse to grant planning permission on another site. The absence of such evidence is readily explicable: the test of very special circumstances is inherently fact sensitive and thus not readily amenable – if at all – to arguments based on precedent. Further, the Council's own conduct – with different recommendations on each development – demonstrates the lack of any precedent, with the Council considering each site independently.
131. Accordingly, the representations based on precedent are nothing more than a generalised fear or concern. That is insufficient to found a precedent argument and it should be dismissed.

#### Very special circumstances

132. The Appellants accept that it is necessary to demonstrate very special circumstances in order to justify the grant of planning permission. Those circumstances exist here. Of all the cases for development in the Green Belt, this

could not be stronger: the harm is limited and is clearly outweighed by a package of very significant benefits.

*Components of harm to be weighed in the planning balance*

133. As to the harm arising from the proposed development, there are only three components.
134. First, the harm to the Green Belt. Mr Connell clarified in XX that he attributed a single value to this harm and treated it as a single factor (not multiple factors with the potential for double counting, as the SOCG suggested). That harm is to be afforded substantial weight, consistently with the NPPF, as the parties have both identified. For the reasons already explained, the Council is wrong to allege a greater scale of harm to the Green Belt, and in any event, the differences in the scale of harm are not material in this case, given the common ground that the harm is only that which is inevitable – the minimum harm, not justifying any increase in the weight, even on the Council’s approach.
135. Secondly, there is an agreed position on the harm to landscape character: this is limited in scale and should be attributed limited weight. This too is accepted to be the minimum inevitable for a development of this scale.
136. Thirdly and similarly, there is an agreed position on the loss of agricultural land: at most, this is limited in scale and should be attributed limited weight. This too is accepted to be the minimum inevitable for a development of this scale.
137. Overall, therefore, on the evidence of the Council’s own witnesses at this inquiry, the “harm to the Green Belt and any other harm” for the purposes of NPPF para. 148 is the minimum possible harm for a Green Belt development of this scale in the District - in the context that such developments need to come forward and there should be no moratorium pending the new local plan. The substantial package of benefits which the appeal scheme would deliver comes at the least possible cost to the Green Belt.

*Benefits to be weighed in the balance*

138. The Council and the Appellants are agreed that very substantial weight should be given to the delivery of market housing. This is consistent with the Inspector’s conclusion in the Roundhouse Farm appeal (on a materially smaller scheme, but in the same District, with the same chronic housing delivery issues).
139. Secondly, there is agreement that delivery of affordable homes should also attract very substantial weight.
140. Thirdly, there is agreement that the delivery of self-build and custom-build homes should attract substantial weight.
141. Fourthly, for the reasons already explained, the Appellants’ position on the school land should be preferred and this should be afforded substantial weight.
142. Fifthly, it is agreed that the provision of open space and children’s play space is a benefit, but there is a dispute as to the weight to be afforded to this delivery. The Council seeks to justify a lesser weighting on the basis that there is no identified deficiency. This is perverse. An identified deficiency is a factor that might increase the weight to be afforded to this benefit, but it is not a necessary precondition. The nature, quality and quantity of the provision must be assessed



in its own right, as Mr Kenworthy did. On this basis, he concluded that the new provision was larger than that required by policy and represented an improvement because it integrated the open and play space into the development, allowing "doorstep" provision for the local community to use which is an improvement over the existing situation. Mr Kenworthy also highlighted that the local community would also be able to secure new bridleway access through the site to gain easier access to PROW beyond. This improvement in the baseline position and the overall quality of the development as a result justifies moderate weight, as the Council's officers also concluded.

143. Sixthly, the provision of ecological improvements is a benefit to which moderate weight should be afforded. Mr Connell struggled to give this any weight, seemingly on the basis that he thought it was a policy requirement. This is wrong in multiple respects. The policy requirement is that found in the NPPF which does not specify a target percentage. A 1% uplift would suffice. Accordingly, when, as here a greater uplift is provided, that should be attributed greater weight. The fact that this may be mandatory in the future does not change the analysis: as at the date of determination, the policy requirement is being exceeded. In any event, as a matter of principle, the fact that the policy requirement is met is not a reason to reduce its weight. Affordable housing is a prime example: no reduction is made because "only" a policy compliant level is provided. So too with ecological improvements: weight should be attributed based on the quality of the provision, without reduction for it being policy compliant. Similarly, the fact that some of the provision is off site does not reduce the weight: the off site provision is permissible under both current and emerging policy, and the off site provision is within the District or within the same Northern Thames Basin National Character Area within Hertfordshire. It follows that at least moderate weight should be attributed to this benefit.
144. Seventhly, the socio economic benefits of the proposed development are significant. The Council accepts that this is a benefit, but seeks to contest the weight to be afforded to it, despite no issue being taken with this aspect in the Reason for Refusal.
145. The BWNS analysis in this respect has not been disputed. The proposed development will give rise to 214 direct jobs and 207 indirect jobs during construction with a combined GVA during construction of £114.6 million. Following occupation, the GVA from the residents will amount to £25.5m per year with an additional £10.9m per year of commercial expenditure. This leaves out of account the council tax and new homes bonus (and therefore the Council's arguments about these latter two items are de minimis in the overall conclusion – even if they are left out of account, that does not alter the order of magnitude of the economic benefits or the weight to be afforded to them). Further, the fact that some of this spend might not be within the District does not alter the weight to be afforded to it. These benefits are not to be assessed on a parochial basis: they are economic benefits to be realised. It follows that even looked at in isolation, divorced from the policy framework, the socio economic benefits justify substantial weight, as the Council's officers concluded.
146. This analysis is also consistent with paragraph 81 of the NPPF which mandates that significant weight to be given to the need to support economic growth and productivity (irrespective of whether that support is at a local or national level and irrespective of whether it is permanent or temporary). The appeal scheme

would, as Mr Connell accepted in XX, support economic growth and productivity and accordingly significant weight flows automatically from NPPF para. 81 to these benefits. There are a string of recent appeal decisions which confirm this approach, all considering considerably lesser schemes. The Council has pointed to other appeal decisions but these do not assist because in none of them has the Inspector grappled with (or referred to) paragraph 81 of the NPPF, and most of them pre-date the appeal decisions upon which the Appellant relies. It follows that the Appellants' analysis is to be preferred.

147. Eighthly, as already explained, the development of the southern appeal site will improve the urban edge by incorporating substantial planting, assisting in the creation of a strong Green Belt boundary and giving rise to positive effects both on the Green Belt and the character and appearance of the area. This is a matter to which significant weight should be afforded in accordance with para. 134 of the NPPF.

*The very special circumstances balance*

148. Before turning to the balance, there are two important preliminary considerations.
149. First, the Council founds its judgment on the assertion that, as Mr Parkinson put it in Opening: 'There is nothing "very special" about the circumstances of either case'. This approach is wrong as a matter of principle and law. The question is not whether the individual circumstances are "very special"; rather the question is whether, cumulatively, the benefits clearly outweigh the harms. If this is so, then very special circumstances have been demonstrated, even if on an individual basis, the benefits were to be considered unremarkable (which in any case they are not).
150. Secondly, the difference in the parties' positions is small. Mr Connell explained in XX that in his view it was "very finely balanced" as to whether very special circumstances exist in this case. He then accepted that the proposed development only failed to demonstrate very special circumstances by a very fine margin. Consistently, with this, Mr Connell accepted that if the officer's weightings were adopted, then very special circumstances would be demonstrated. Accordingly, only a very small number of changes to Mr Connell's weightings are required before the benefits clearly outweigh the harms and very special circumstances are demonstrated even on the Council's own case.
151. Thirdly, even on Mr Connell's weightings, the clear and obvious conclusion is that very special circumstances have been demonstrated. Critical to this consideration are, first, the cumulative force of the weightings he has ascribed to the various benefits, and secondly – and fundamentally, his (and in the absence of any RX on these points the Council's ) acceptance that (a) the only harm the appeal scheme would cause would be the inevitable harm of building 391 homes and a new school on a greenfield Green Belt site in St Albans (b) some greenfield Green Belt sites will necessarily have to be developed to meet housing and education needs (given the vast difference between the extent of needs and the identified urban capacity) and (c) that there should not be a moratorium on meeting needs in the Green Belt pending the adoption of a new emerging plan at some indeterminate point in the future. These three points are necessarily fatal to the Council's case.



152. There is a hint of a previously unpleaded precedent argument at para. 9 of the Council's closing submissions, where reference is made to the risk of the death of the Green Belt by "a thousand cuts". In fact, the precedent risk in relation to the south site and appeal scheme runs the other way. If a VSC case cannot be made out in relation to a development which is agreed to cause the minimum inevitable "harm to the Green Belt and any other harm" for a development of this scale, which is top-ranked in the Green Belt review, then what prospect is there for VSC to be made out anywhere else? The consequences of dismissing this appeal would be in practice to bring about the very moratorium on pre-Local Plan Green Belt permissions that the Council has explicitly disavowed in evidence.
153. Overall, and having regard to the foregoing matters, the Appellants submit that the benefits of the proposed development are compelling, as officers recognised, and that as a package, the harm arising from the proposed development is clearly outweighed. It follows that very special circumstances exist. Once this hurdle has been cleared, the Council accepts that there is accordance with the development plan read as a whole, the proposed development benefits from the tilted balance in NPPF para. 11(d)(ii) and planning permission should be granted.

### **The Case for the Appellant (Appeal B)**

*The summary below is largely taken from the appellant's closing submissions, which set out the key points, as it saw them, at the end of the Inquiry.*

154. In 1919, the first Housing and Town Planning Act received Royal Assent, a direct response to the nation's demand for "homes fit for heroes" following the Great War. A century later, millions stood outside their homes to applaud our own, modern-day, "heroes", those who had been fighting on the frontline against the Covid pandemic. It is a bitter irony that, in St Albans, many of the local heroes being applauded could not afford homes of their own to stand outside.
155. The appeal proposal, "Addison Park" is an equally direct response to the affordable housing crisis made manifest by that sad truth. Named after the Minister for Health who brought in the 1919 Act, it will deliver 330 homes – all of them affordable, and all for Key Workers – offering a route to home ownership for the nurses at St Albans, Watford, and Hemel Hempstead Hospitals; the teachers in the town's Primary and Secondary Schools; the police officers who keep the streets of St Albans safe; and the firefighters who rush to the rescue of local residents.
156. That is, of course, precisely what national planning policy anticipates: the only people specifically identified in the definition of "affordable housing" in the NPPF are "essential local workers"; and they are identified, moreover, in the particular context of providing them with a subsidised route to home ownership. "Affordable housing is ... housing for sale or rent, for those whose needs are not met by the market ... including housing that provides a subsidised route to home ownership and/or is for essential local workers."

### *Plan-making in St Albans*

157. The extant Local Plan in St Albans, the District Local Plan Review 1994, is the oldest Local Plan in the country – no older plan was identified during the inquiry. When paragraph 33 of the NPPF states that Local Plans are meant to be reviewed

every 5 Years, the St Albans Local Plan effectively expired 22 years ago. It is comprised of policies which have been un-reviewed since they were adopted in 1994 – that is to say: 27 years before the current version of the NPPF was issued; 23 years before the Government published “Fixing Our Broken Housing Market”; and 20 years before the Planning Practice Guidance (“PPG”) went online. Most important of all, the Green Belt boundaries in St Albans have not been revised since 1985, and there are no up-to-date housing targets or undeveloped allocations to meet unmet housing needs.

158. And so, when paragraph 15 of the NPPF states that the Local Plan should “provide a positive vision for the future of each area; a framework for addressing housing needs and other ... social ... priorities; and a platform for local people to shape their surroundings”, in St Albans the Local Plan fails to deliver in all of these regards. It provides no sort of vision for the future; it contains no framework for addressing current housing needs, still less those needs looking forward; and it has not acted as a platform for local people to shape their surroundings since it was consulted upon in the early 1990s.
159. More worrying still for the future of planning in St Albans, however, are the reasons which lie behind the repeat failures of the Council to fulfil its statutory duty to adopt a replacement Local Plan: An unwillingness to undertake necessary planning assessments on obviously important issues; an unwillingness to accept independent advice when, eventually, it is commissioned; an unwillingness promptly to make the hard, potentially unpopular, decisions which that advice compels, when decisions are urgently needed; and a failure to co-operate on matters of strategic importance across the wider, local area.
160. The facts speak for themselves. As Mr Parker explained, four attempts have been made to replace the extant, out-of-date, Local Plan and none of them have come to anything.
161. The Local Development Framework Core Strategy 2006-2021 was withdrawn in January 2010 after the Council rejected an Inspector’s advice that it had to confront the need to find sites in the Green Belt.
162. The Strategic Local Plan 2011-2031 (Version 1) was voted down by Members in 2013 after the Council received a petition from a Residents Association that demanded the Plan be paused for a Housing Needs Assessment and Green Belt Review, studies that any competent Plan-making Authority would already have commissioned.
163. The Strategic Local Plan 2011-2031 (Version 2) was found unlawful by the Examining Inspector in 2016 because of the Council’s failure to comply with the duty to co-operate. In addition to this, however, the Plan also had a flawed evidence-base - whilst, unlike Version 1, it was at least ‘informed’ by a Housing Needs Assessment 5 and a Green Belt Review, the Council saw fit flatly to reject key recommendations of both of them:
  - The Council dismissed the recommendation that the “Objectively Assessed Housing Needs” (“OAN”) in St Albans was 586 dwellings per annum (“dpa”), deciding instead that the Council’s housing target should be 450 dpa, meaning that the Council was knowingly planning for an accumulative shortfall of 2,700 dwellings over the 20-year Plan period, a planned shortfall which rose to just under 3,000 (2,700 + (14x20)), when the

Council reduced its proposed housing target yet further, to just 436 dpa; and

- The Council also rejected the advice of the SKM Green Belt Review to assess not just larger, strategic sites, but smaller-scale sites also, which ultimately meant that sites which were less than 14ha in extent and/or accommodated less than 500 dwellings were excluded from the Local Plan process.

164. Finally, the Council's most recent attempt at a replacement, the Local Plan 2020-2036, was withdrawn in 2020 on the invitation of Examining Inspectors following their findings that:

- The Council had once again failed to comply with the duty to co-operate;
- The Plan prevented delivery of a Strategic Rail Freight Interchange which the Secretary of State had personally permitted; and
- The Plan's spatial strategy was premised upon a flawed Green Belt Review, stating as follows (in terms which directly reflect the concerns earlier expressed by SKM, but ignored by the Council): "45. ... [S]maller sites have been disregarded as part of the plan making process. It is our view that this approach has ruled out an important potential source of housing that may have been found to have a lesser impact on the purposes of the Green Belt than the sites selected without sufficient justification."

165. There has now been further slippage in the timeline to the adoption of the next version of a proposed replacement Local Plan. The Council's December 2020 Local Development Scheme ("LDS") promised a Regulation 18 consultation in January/February 2022, and adoption in 2023. However, the Council's September 2022 LDS put back the Regulation 18 consultation to July/September 2023, with adoption in late 2025.

166. That means there will be no new housing allocations in St Albans until the end of 2025 at the very earliest, with the delivery of actual houses to live in some years later still. And that is if the Plan does not fail like all of those that preceded it; and that it is not further delayed either, which is a real risk - whilst a Regulation 18 Local Plan is due to be published in July 2023, just two months' time, no documents relating to the new evidence have yet been published. Little wonder that Mr Connell accepted further delay was possible.

### *The Housing Crisis*

167. All the while, from 2001 onwards, the Council has had no up-to-date Local Plan; no up-to-date housing target; and no up-to-date housing allocations. And the direct consequence of the Council's failure to adopt new housing allocations in line with the NPPF is nothing less than a housing crisis in St Albans - so much so that the Council has long-since 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 paragraph 140 of the NPPF.

168. Put shortly, and as agreed by Mr Connell, from 2013 onwards, a whole decade, the Council has been unable to demonstrate the 5-year housing land supply ("5 YHLS") required by paragraph 74 of the NPPF; and the Council can currently demonstrate just 2.0 YHLS, the worst housing land supply position since the

extant Local Plan was adopted. And with the housing shortfall growing bigger and bigger, and demand increasingly outstripping supply, the house price to earnings affordability ratio in St Albans has, of course, grown higher and higher also: In 2003, it was 10.28 – already the highest in the East of England; By 2010, it had grown to 12.36; By 2012, it had grown yet further to 12.47; By 2017, it was 16.62; and in July 2021, it was 17.32.

169. To put that into context, it means that individuals on median incomes now need to find more than 17 times their annual salary to buy a median priced property in St Albans. That is the housing reality facing ordinary people on ordinary earnings, hoping to buy a home of their own in St Albans today.

#### *The Affordable Housing Crisis*

170. Moreover, and as again agreed by Mr Connel, given that the only model St Albans has for the delivery of affordable housing is for it to come alongside, and parasitic upon, open market housing on an aspirational, albeit undelivered, 60:40 split, it necessarily follows that, with a massive undersupply of market housing, comes a massive shortfall in affordable housing too, and an additional crisis in that regard also – one which was recently described, on appeal, as a “critical situation” and an “extremely acute affordable housing position”. Ms Gingell’s terminology was even more emphatic – she described the situation in St Albans as an “affordable housing emergency”.

#### *Consequences of the Housing Crisis*

171. These planning and housing crises have, of course, necessary consequences for decision-making on housing proposals in St Albans. In particular, until the end of 2025 at the earliest, the shortfalls in both housing land supply and affordable housing can only be met through decision-makers accepting that very special circumstances exist, in accordance with paragraph 147 of the NPPF. In the past, of course, there were Ministerial Statements which indicated that the single issue of unmet demand for conventional housing was unlikely to satisfy this test. However, and importantly, not only is the Appeal Scheme far from for “conventional” housing in any event, but a unique scheme comprising 100% affordable housing for Key Workers, national planning policy has also changed since those early Ministerial Statements were made, as Daisy Cooper MP openly recognised in her evidence to this Inquiry (ID12). The critical need significantly to boost the supply of housing, expressly recognised in paragraph 60 of the NPPF, is such that the policy approach of those Ministerial Statements, made as long ago as 2013-2015, was not translated into either the 2019 or 2021 NPPF; has not appeared in the consultation version of the new NPPF; and all associated guidance in the PPG has been removed.
172. Accordingly, and as a matter of up-to-date national planning policy, meeting unmet housing needs, and especially affordable housing needs, can now amount to very special circumstances justifying otherwise inappropriate development in the Green Belt. Furthermore, this is not just the view of Mr Fidgett, it has all recently been confirmed, both on Appeal in St Albans and by the Council itself.
173. In the Bullens Green Lane appeal decision letter it was held that the earlier Ministerial Statements which indicated that meeting unmet needs was unlikely to establish very special circumstances had not been incorporated in the NPPF, had been removed from the PPG, and should be given little weight; that the Council

could not demonstrate a 5 YHLS, and even if the Council's asserted supply of 2.4 YHLS was accepted (it is now even lower at 2.0 YHLS), the position was a bleak one and the shortfall considerable and significant; very substantial weight was to be afforded to the provision of market housing; as referred to already, the uncontested evidence on affordable housing presented as a "critical situation" and an "extremely acute" position, such that "very substantial weight" should additionally be attached to the delivery of up to 45 affordable homes; and substantial weight should also be afforded to self-build plots as a discrete element of housing supply.

174. In the Council's decision to permit housing on land to rear of Harpenden Road, the Officer's Report stated, explicitly, that there was no material reason to apply a different weighting to those proposals than had been applied by the Inspector at Bullens Green Lane and therefore: "very substantial weight" for affordable housing; and "substantial weight" for self-build plots was appropriate. Other decisions in the District have reached similar conclusions.
175. Notably, all of these decisions were sites of fewer than 14 hectares/500 dwellings, which underlines that SKM's advice, and the Examining Inspectors' criticisms of the Council's rejection of that advice, were both valid. More importantly, however, they all properly understand that if housing needs are to be met in St Albans, including affordable housing needs, there will have to be substantial development on open land in the Green Belt. As agreed by Mr Connell there is, quite simply, no alternative. The only questions are: Where and How?

#### *National Policy on Affordable Housing*

176. So far as national planning policy is concerned, it is agreed by Mr Connell that nothing in the NPPF definition of affordable housing ranks one form of affordable housing over any other. That is plain from the PPG and has been confirmed by appeal decisions. There is, therefore, no national planning policy which favours affordable rented accommodation over affordable home ownership. Far from it, indeed. The only group of people specifically identified in the NPPF definition of affordable housing are "essential local workers", and in terms which expressly reference a need to provide them with a subsidised route to home ownership. That wording is deliberate, and it tells us: who to house (amongst others in housing need) - Key Workers whose needs are not met by the market; how to house them - affordably, including through housing that provides a subsidised route to home ownership; the priority to be attached to housing them affordably - essential; and where they need to be housed - locally.
177. Consistent with all of this, of course, and as Mr Connell again agreed, for the last 22 years the Government has promoted policies which are explicitly aimed at helping Key Workers achieve local home ownership - from the 'Starter Home' Initiative in 2001 to the 'First Homes' policy of today. The reason for this special treatment for essential local workers - both as a matter of definition in the NPPF and in a succession of bespoke national Government policy initiatives directed at them - is obvious. The essential services which Key Workers deliver are themselves put at risk if they are priced out of local housing and have to live elsewhere.
178. As Mr Parker pointed out, this was correctly understood, and expressly stated, in the Conclusions and Recommendations of the House of Commons' Health and Social Care Committee in its July 2022 Report, "Workforce: Recruitment, Training



and Retention in Health and Social Care”, in terms which were equally applicable to all categories of Key Workers; and given the high house prices in St Albans, the struggle to recruit and retain Key Workers will be at least as severe here as it is anywhere in the country.

179. It is against the backdrop of all of this, that the substantive national planning policy for affordable housing, set out in NPPF, falls to be considered: Paragraph 20(a) states that strategic Local Plan policies should make sufficient provision to meet housing needs, including for affordable housing; Paragraph 34 states that Local Plans should set out the levels and types of the affordable housing required; and Paragraph 63 states that where a need for affordable housing is identified, Local Plan policies should specify the type of affordable housing required.
180. However, despite these imperatives, the out-of-date Local Plan in St Albans makes manifestly insufficient provision for affordable housing; and contains no policy at all specifying the type of affordable housing required.

#### *Local Plan Policy on Affordable Housing*

181. Policies 7a and 8 of the St Albans District Local Plan Review 1994 support low-cost housing for sale but the Plan seeks to deliver a total of just 200 affordable homes per annum, which paragraph 3.36 of the supporting text recognised (even then) “... probably represents a considerable under-estimation of the total need for affordable housing”. Some 17 years ago, the 2006 DCA “St Albans City & District Housing Needs Survey Update”, identified an annual affordable housing shortfall of 822 units a year.
182. The 1994 Local Plan target for affordable housing is obviously out-of-date, therefore, and no weight can be attached to it. Moreover, that Local Plan also contains no reference to Key Workers, an omission which of itself demonstrates the age of the Local Plan, given the specific inclusion since 2018 of “essential local workers” in the NPPF definition of “affordable housing”; and given, also, the consideration of these needs in both the Council’s Affordable Housing Supplementary Planning Guidance 2004 (“SPG”) and DCA’s 2006 District Housing Needs Survey Update.

#### *St Albans Affordable Housing SPG (2004)*

183. As long ago as 2004, the Council’s Affordable Housing SPG identified both a growing problem with regard to Key Worker housing and the need to devise a strategy to address that: “3.12 - There are growing difficulties in the provision of housing for workers on lower incomes necessary for the economic health of the County. Hertfordshire County Council has concluded that if nothing is done then the most likely scenario is one of growing polarisation, more and longer commuting, and poorer personal and public service sectors. A specific research study of the housing needs of Key Workers across the County has been undertaken. Housing problems are predicted to worsen both in terms of affordability and access. 3.13 - A strategy to provide affordable housing will increasingly have to address the provision of housing for these Key Workers.”
184. Furthermore, the Affordable Homes SPG both defined “Key Workers”; and expanded upon what the “strategy to provide affordable housing ... for these Key Workers” potentially entailed. So far as the SPG’s definition is concerned, that

has been adopted in the S106 with the addition of military personnel, an addition which accords with both the Council signing up to the Armed Forces Covenant, and national planning policy.

185. The Ministerial Statement of 24th April 2021, referred to in the PPG's explanation of the eligibility criteria for First Homes, states as follows: "In recognition of the unique nature of their circumstances, members of the Armed Forces, the divorced or separated spouse or civil partner of a member of the Armed Forces, the spouse or civil partner of a deceased member of the Armed Forces (if their death was caused wholly or partly by their service) or veterans within five years of leaving the Armed Forces should be exempt from any local connection testing restrictions."
186. Given this express recognition of the importance of providing affordable housing to military personnel and their families, including those without a local connection, it was highly disappointing (to say the least) that Mr Connell called into question the undoubted benefit of Addison Park addressing these needs. He was quite wrong to do so.
187. Further, and so far as the called-for "strategy" to provide Key Workers with affordable housing is concerned, paragraph 5.13 of the SPG went on expressly to anticipate that this could include the provision of housing for low-cost sale, exactly as Addison Park proposes.

#### *DCA's Housing Needs Survey (2006)*

188. As for DCA's 2006 Housing Needs Survey Update this also defined Key Workers, and it did so in terms which made their importance to the maintenance of a balanced community quite clear: "A Key Worker is "any person who directly provides services that are essential for the balanced and sustainable development of the local community and local economy, where recruitment or retention difficulties apply', and includes teachers, nurses, other public sector workers and employees of businesses considered vital to sustaining the economy of an area"".

#### *St Stephen Neighbourhood Plan*

189. The St Stephen Neighbourhood Plan is also part of the Development Plan for St Albans. Moreover, it is not only much more up to date than the Local Plan, it directly addresses housing needs in the immediate vicinity of the Appeal Site. The first bullet point in its "Vision and Objectives" section expressly recognises that the high cost of property makes it increasingly difficult to move into and remain in the area; and the first objective under the theme of "Housing, Character and Design of Development" is to encourage the development of housing that meets an identified local need, including through housing which is affordable to local workers.
190. Given that "essential local workers" are the only group specified in the NPPF definition of "affordable housing, that must mean that the Neighbourhood Plan positively encourages affordable housing for them. Indeed: Cllr Parry of the Parish Council expressed "sympathy with the stated objectives of the proposal"; the Opening Statement of Keep Chiswell Green ("KCG") fairly recognised "the altruistic motives" of the Appellants; and Mr Moreland also acknowledged that "Addison Park is an applaudable concept".

### *Affordable Housing Needs in St Albans*

191. As already noted, the Local Plan policy target of 200 affordable dwellings per annum is considerably out-of-date. For the purposes of these appeals, however, all of the assessments in Ms Gingell's Proof of Evidence have been agreed in the Statement of Common Ground on Affordable Housing and it is this which provides the up-to-date evidence of affordable housing needs for St Albans.
192. GL Hearn's 2020 LHNA assessed that, in St Albans and over the 16- year period 2020-2036, there is a need for 13,248 affordable dwellings, equivalent to 828 per annum.
193. Over the nine-year period between 2013/14 and 2021/22, there was a shortfall against that need of 5,053 affordable dwellings, equivalent to 561 per annum.
194. In the first two years of the 2020 LHNA period since 2020/21, there has been an additional shortfall of 1,428 affordable dwellings, equivalent to 714 per annum.
195. The agreed approach is that any shortfall in delivery should be dealt with in the next five years.
196. When the 1,428 dwelling affordable housing shortfall which has accumulated since 2020/21 is factored into the need of 828 affordable dwellings per annum for the period 2020 to 2036, the number of affordable homes that the Council needs to deliver in the 5-year period from 2022/23 to 2026/27 is 5,570, or 1,114 per annum.
197. The Council's current supply figure for the next five years is, however, just 39 affordable dwellings per annum.
198. That means there will be a shortfall of 1,075 affordable dwellings per annum, and a total shortfall of 5,375 affordable dwellings over the next five years.
199. These conclusions are absolutely irrefutable. In St Albans, the delivery of affordable housing has collapsed. Worse still, in refusing permission for the Appeal application, 330 affordable homes in one quick hit, the Council has given up on even attempting to address this affordable housing emergency.

### *Home Ownership Affordability in St Albans*

200. Ms Gingell's evidence confirms that: The median house price across St Albans as a whole has risen by 63%, from £362,500 to £590,000, since the start of the 2016 SHMA period in 2013; the median affordability ratio in St Albans is currently 17.32, and stands significantly above the East of England average of 10.53 (+64%), and very substantially above the national average of 9.05 (+91%); and this is at a time when mortgage lending is typically offered on the basis of up to just 4.5 times household earnings, an assumption which both Ms Gingell and GL Hearn have adopted.
201. Put shortly, the prospect of home ownership for those on average, or less than average, earnings is becoming a very distant dream in St Albans, as is quite apparent from the evidence upon which the Council itself relies, the September 2020 GL Hearn LHNA: Table 29 tells us that a household income of £75,400 is required to buy in St Albans. However, Table 28 tells us that the median



household income in St Albans is just £51,400. Accordingly, on GL Hearn's data, home ownership in St Albans is currently out of reach for households with median earnings of £51,400 all the way up to household earnings of £75,400.

202. Moreover, the brutal reality of all of this has to be seen in the context of the thresholds for eligibility to seek affordable rented accommodation in St Albans: For a 1-Bed Property, the limit is £36,295; For a 2-Bed Property, it is £48,173; For a 3-Bed Property, it is £56,152; and for a 4-Bed Property, the limit is £69,608.
203. It follows that if household income exceeds £70,000 in St Albans, that household has no access to affordable housing for rent in St Albans at all; and household income of just £50,000 excludes access to even 2-bed housing. However, such a household, one earning between £50,000 and £70,000, would be unable to buy as well - it would be excluded from social rented housing in St Albans, but could not afford to purchase an open market family home either. The only choices are to move away, out of St Albans altogether - as recommended by paragraph 3.4 of the Council's Housing Allocations Policy; pay high market rents in St Albans; or try to access affordable home ownership in St Albans - if any is available, that is.
204. Unfortunately, however, the Council's failure to deliver affordable housing extends to affordable home ownership also: Table 42 of the GL Hearn 2020 LHNA identifies a need for 385 net affordable home ownership homes per annum over the period 2020 to 2036; The Council's 2021 and 2022 AMR breaks down the Council's gross affordable housing completions figure by tenure; Ms Gingell's Figure 7.5 shows that in the first two years of the 2020 period, between 2020/21 and 2021/22, gross affordable home ownership completions averaged just 29 dwellings per annum, against the need of 385 per annum, a shortfall of 356 affordable home ownership dwellings per annum; a shortfall of 712 affordable home ownership dwellings has therefore arisen in just the first two years of the 2020 LHNA period (a shortfall which would be even higher if demolitions were taken into account).
205. At present, therefore, there is simply not a supply of affordable home ownership dwellings in St Albans to meet the needs of such a household. Moreover, that will include many Key Worker households. However, because the Council refuses not only to address these needs, but to assess them at all, the Appellants have had to do the Council's work for them.

#### *Home Ownership Needs of Key Workers in St Albans*

206. Despite the role that Key Workers play in the delivery of essential local services to the communities of St Albans, the Council has never endeavoured even to assess the extent of their housing needs, or the consequences of not meeting them; and they have failed to do so even though the need to develop a strategy to provide affordable housing for Key Workers is expressly acknowledged in its own Affordable Housing SPG.
207. Other Local Planning Authorities have, of course, done what this Council has failed to do. The Housing Needs Assessment by Fordham Research for Haringey Council is an example which is before us. It contains a "needs assessment model" for Key Workers, which looks at the number of Key Workers in the Borough; their housing and household characteristics; the income and affordability of those Key

Worker households; and their housing preferences. Notably, the Haringey HNA demonstrated owner occupation to be the clear preference for 83.8% of them, a conclusion similarly reached in a 2003 study by DCA for Dacorum Borough Council. Mr Connell readily accepted that the same would be true for St Albans.

208. Mr Connell also agreed that St Albans could have commissioned a similar Assessment to Haringey's had it wanted to. St Albans Council has, however, refused to do so. Whilst the Council's Local Plan Advisory Group ("LPAG") were told at a meeting on 1st March 2022 that a report on housing for Key Workers was due in September 2022, and this was confirmed in the June 2022 LPAG Work Programme, no report was ever produced. The issue was simply dropped by the Council.
209. Mr Connell sought to justify this upon the basis that "there is no requirement to carry out a separate assessment for key workers in national policy or guidance". That, however, is both extraordinary, and extraordinarily complacent. Paragraph 62 of the NPPF requires Councils to assess the housing needs of different groups and Mr Connell agreed that the list of examples in paragraph 62 is open not closed, and expressly includes "service families". Mr Connell also agreed that it was perfectly open, therefore, to the Council to measure the need of essential local workers, including military personnel and their families, but that the Council simply chose not to.
210. Mr Connell also agreed that the Council chose not to: despite the fact that essential local workers are singled out in the NPPF definition of affordable housing; despite the fact that essential local services in St Albans depend upon them; despite the Council's SPG on Affordable Housing stating that "a strategy to provide affordable housing will increasingly have to address the provision of housing for these Key Workers"; and despite the fact that the Council cannot devise any strategy to address the provision of affordable housing for Key Workers without attempting to assess the extent of their housing needs.
211. Ms Gingell's Proof of Evidence and Rebuttal Proof is, then, not only the best and most up-to-date evidence on Key Worker housing needs in St Albans but, as Mr Connell agreed, it is the only evidence on those needs available at this Inquiry. Moreover, it has been prepared by the expert witness whose other evidence on affordable housing has been readily agreed by all parties.

#### *The Appellants' Key Worker Housing Needs Evidence*

212. The starting-point is the ONS Data (2021), which shows that there are c.27,000 Key Workers in St Albans; and c.250,000 in Hertfordshire as a whole. That is the potential catchment of Key Worker households for Addison Park and it is a very substantial number and a sizeable proportion of the local population.
213. As for the earnings of Key Workers, Ms Gingell set out sample pay scales in her Figure 11.1. Importantly, because many Key Worker households will have more than one salary income and seek mortgages on that basis, Ms Gingell included the 'combined' Key Worker household earnings of a Key Worker together with another median income-earner, and the mortgage to which such households will be entitled. Upon this basis, her Figure 11.1 indicates, as Mr Connell agreed: Key Worker household earnings ranging from, broadly, £55,000 to £80,000; and a corresponding range of mortgage entitlement from, broadly, £245,000 to £350,000.

214. The first point to take from Ms Gingell's Figure 11.1 is the limited eligibility of any of those households for social rented accommodation in St Albans. It is readily apparent that in every scenario set out in Ms Gingell's Figure 11.1, the combined incomes exceed the gross household incomes limit for 1 and 2-bed properties. Indeed, the majority exceed the gross household limit for 3 and 4-bed properties also.
215. The second point to take from Ms Gingell's Figure 11.1 is the unaffordability of open market homes in St Albans to Key Worker households: to purchase a median priced property in St Albans at £590,000, a minimum household income of £118,000 is required (so as to obtain a mortgage of c.£530,000 to supplement a 10% deposit of c.£60,000); to purchase a lower quartile priced property at £415,000, the required household income is £83,000 (to obtain a mortgage of c£375,000 plus a 10% deposit of c.£40,000); and it is quite obvious from Ms Gingell's Figure 11.1, therefore, that an alarming number of Key Worker households are priced out of home ownership altogether.
216. In the St Albans Local Authority area alone, there are as many as 27,000 Key Workers, and up to 250,000 in the County, falling in this gap – ineligible for social rented housing and yet unable to buy as well. These Key Workers represent "the hidden middle", those whose needs have been ignored by the Council, and they are among the most valuable members of the local community. It is precisely to fill the gap into which many Key Workers fall that Addison Park has been promoted.

#### *The Concept and Business Model*

217. To qualify as affordable housing in the terms of the Framework, First Homes and Discounted Market Sales Housing must be discounted by at least 30% and 20%, respectively, but Shared Ownership Housing is not subject to a specific discount. However, because of Mr Collins' insistence on providing something genuinely affordable in the context of the high house prices in St Albans, all of the dwellings at Addison Park, including Shared Ownership, will be discounted by at least a third, and against the median price of comparable properties in St Albans as a whole rather than the more expensive St Stephen Ward. Furthermore, all of those homes will be dedicated to local Key Workers (Save that, in the highly unlikely event that any Key Worker housing remains unsold 12 months after completion, sale as Discounted Market Homes without the Key Worker restriction will be permitted, in order to ensure that there will be no empty homes in the Green Belt, only affordable ones).
218. As both Mr Collins and Mr Parker explained, this heavy discounting is possible because Addison Park does not follow the traditional business model, whereby an owner sells land to a national housebuilder which recoups its costs by selling the majority of them at the open market prices. Under that model, the national housebuilder must pay for the land, pay for the build, make S106 contributions, and also make a profit (typically 15-20%), all of which will be reflected in the ultimate sale price of the dwellings. However, because Mr Collins already owns the land, and will commission the build of the houses himself, the land costs are nil. It is that simple model which enables prices to be discounted by at least a third without threatening viability. That will make home ownership possible in St Albans for many of the Key Worker households who are currently unable to access the property ladder in the community that they serve.

### *Key Worker Home Ownership Affordability in St Albans with a 33% Discount*

219. There are very many essential local worker households who are simply unable to buy a home of their own in St Albans. However, the picture changes dramatically when the Addison Park discount is taken into account. With a 33% discount from the median priced property in St Albans: The median house price falls from £590,000 to £395,300 and now requires a household income of £80,000 for the mortgage, with a 10% deposit; the lower quartile house price falls to £275,000, and now requires a household income of £55,000 for the mortgage, with a 10% deposit. As Mr Connell agreed, all of those Key Worker households with an income range of £55,000-£80,000 in Ms Gingell's Figure 11.1, would, therefore, potentially have access to an affordable home of their own at Addison Park.
220. One gets to the same conclusion from the evidence upon which Mr Connell himself relies. As already noted, GL Hearn's Table 29 states that a household income of £75,400 is required to buy in St Albans, and GL Hearn's Table 28 gives a median household income in St Albans of just £51,400, so the above property, at open market, is out of reach. However, that all changes with a 33% discount: a household earnings' requirement of £75,400 to purchase a property indicates a house price of £377,000. Discounted by 33%, that house price of £377,000 falls to £251,333 which, minus a 10% deposit of £25,133, requires a mortgage of just £226,200; and to obtain that mortgage requires a household income of £50,267, which is lower than the median GL Hearn household income in St Albans of £51,400.
221. In Ms Gingell's Rebuttal, she directly addresses Mr Connell's questioning of the affordability of Addison Park to Key Workers noting that, unlike the Jubilee Square scheme which the Council are trumpeting, the Appeal Scheme not only discounts the affordable housing proposed, but does so by at least a third against the median price of housing in St Albans as a whole, not the particularly expensive part of St Albans in which the Appeal Site is located.
222. When a 33% discount is deducted from the median house price for properties in St Albans as a whole (£590,000), the sales price at Addison Park becomes £395,300, which is £119,700 (£23%) lower than the median house price in St Peters Ward, where Jubilee Square is located.
223. Applying the mortgages available to the household incomes for the range of Key Worker occupations Ms Gingell has listed in paragraph 2.42 of her Rebuttal Proof, once the assumption of a 10% deposit is applied, each of those Key Worker households would be able to afford a property costing £395,300.
224. As for Ms Gingell's evidence in chief, that is to be seen against the backcloth of paragraphs 5.150 and 5.158 of the GL Hearn LHNA, which make it clear that it will be for the developer to choose the mix of subsidised routes to home ownership they wished to provide from the wide range listed Annex 2 of the NPPF.

### *First Homes*

225. As for 'First Homes', the sale price is capped at £250,000 (including discount). Assuming 10% deposit, a minimum income of £50,000 would be required to

obtain the resultant £225,000 mortgage. All of the Key Worker household incomes in Ms Gingell's Figure 11.1 exceed £50,000.

### *Shared Ownership Homes*

226. As for 'Shared Ownership Homes', the minimum purchase share is 10%, with a minimum deposit of 5% of that share. Using Mr Connell's figures in his Rebuttal, the cost of a 10% share would be £39,530. Once the 5% minimum deposit is deducted, all of the Key Worker households in Ms Gingell's Figure 11.1 could secure a mortgage for the remaining sum of £37,553.

227. Moreover, purchasing the minimum share would not mean unaffordable rents on the remaining share. If one deducts the 10% minimum purchase from the overall house prices this gives a remaining share of £355,770. The rent to be paid is usually 2.75% of the property value per year, which gives an annual rent of £9,783.68 and a monthly rent of £815.31; and this is considerably below both the median private rent of £1,250 for St Albans in 2021/22 and the lower quartile rent of £995.

### *Discounted Market Sale Homes*

228. So far as the 'Discount Market Sale' properties are concerned, all of the households in Figure 2.4 of Ms Gingell's Rebuttal could obtain a mortgage sufficient to buy at the indicative District house price of £355,770 set out in Mr Connell's Rebuttal Proof, as could NHS Bands 7 and 8 in Figure 11.1 of her main Proof.

### *Mr Connell's Rebuttal*

229. The remaining contents of Mr Connell's Rebuttal get the Council absolutely nowhere, for three principal reasons: Firstly, Mr Connell seeks to demonstrate the unaffordability of the discounted housing proposed at Addison Park by applying the discount to prices in the expensive St Stephens Ward in which the Appeal Site is located, when the S106 ties the open market valuation of the Shared Ownership and Discount Market Sale properties to the median house prices of St Albans as a whole, which is considerably lower than the Ward price; Secondly, what Mr Connell does highlight by pointing out the expensive location in which the Appeal Site is located, is the added benefit of providing heavily discounted homes in a high value area; and thirdly, insofar as Mr Connell still seeks to argue that the homes proposed at Addison Park will not be affordable to Key Workers, he ignores entirely that the Council have trumpeted the affordability of the homes at Jubilee Square to Key Workers when those homes are not discounted by a penny and will be considerably more expensive than at Addison Park.

### *Conclusions on the Affordability of Addison Park*

230. In the end, the sums speak for themselves. For very many Key Worker households, home ownership in St Albans is, currently, not only a distant dream, but an impossibility. Addison Park would, however, give very many of them access to the property ladder and a chance to buy a home of their own – something which all of the available survey data indicates is their clear preference. Moreover, the recent announcement by the Council with regard to Jubilee Square, positively celebrating a scheme that offers Key Workers routes to home ownership, proves the merit of the current Appeal Scheme also. Put



shortly, Addison Park is a comprehensive offer, providing a mix of tenures affordably to meet a wide range of housing need; and it should be applauded for its unique approach, responding to those needs in such an innovative and imaginative way.

### *A Balanced Community*

231. Moreover, far from creating an imbalanced community as the Council allege, through offering home ownership to Key Workers at these high discounts, Addison Park will begin to redress some of the imbalance inherent to the current situation - one in which large numbers of essential local workers are priced out of home ownership in St Albans, whilst being ineligible for affordable rented accommodation also.
232. It will do so by building the right homes for the right people in the right place: The "right homes" for the "right people" are those which, by definition, provide "affordable housing" for "essential local workers"; and the "right place" to house essential local workers, again by definition, must be "locally".
233. These are wholly uncontroversial conclusions that have been drawn by others – as demonstrated by the following statement in "Key Issues for Key Workers - affordable housing in London", published by the Greater London Authority: "Another important strand in the vision relates to the benefits of maintaining key workers in the local community. This was not just about ensuring that those working shifts or unsocial hours could live near their work but focused on the wider benefits of ensuring balanced communities and the long-term maintenance of mixed neighbourhoods."
234. And yet, Mr Connell asserts the opposite, stating that the Appeal Scheme leads to an unbalanced community, saying so in words lifted verbatim from the Officer's Report: "It is considered that a mixture of general market housing and affordable rent, plus the proposed discounted Key Worker dwellings, would be more likely to lead to a mixed and balanced community as sought in policy."
235. However, the Council's approach omits multiple critical matters (quite apart from the simple point that 100% affordable housing schemes are positively contemplated by national planning policy through paragraph 65 d) of the NPPF.
236. First, as made clear in the definition in the DCA 2006 Housing Needs Study, Key Workers "... are essential for the balanced and sustainable development of the local community". Nurses, teachers, police officers, fire fighters, local government officers and the like are not just part of a balanced community, they provide the local services upon which a properly balanced community actually depends.
237. Second, insofar as the Officer Report expresses support for a mixed scheme comprising social rented accommodation as the affordable element, that entirely ignores: That part of the NPPF definition of affordable housing which expressly refers to "housing that provides a subsidised route to home ownership ... for essential local workers"; the findings of both Fordham Research in Haringey and DCA in Dacorum, that the overwhelming majority of Key Workers want to own their own home if that can be made affordable for them; and that part of the Council's Affordable Homes SPG which expressly recognises that affordable housing for Key Workers "could be for ... low-cost sale".

238. Third, there is no support in policy, either nationally or locally, for the extraordinary approach the Council has taken. Mr Connell agreed that nothing in the NPPF definition of affordable housing ranks one form of affordable housing over any other. Furthermore, and unlike the Former Imperial College Private Ground decision letter which Mr Parkinson put to Ms Gingell in cross-examination, nothing in the Local Plan ranks one form of affordable housing over any other either.
239. Fourth, insofar as Mr Connell sought to rely on the GL Hearn LHNA, that is not policy at all, as the LHNA itself made clear, and it also leaves to the developer the choice as to the mix of affordable home ownership housing which is proposed. Paragraph 2.5 expressly states "To be clear this Local Housing Needs Assessment does not set housing targets. It provides an assessment of the need for housing, making no judgements regarding future policy decisions which the Councils may take". Paragraph 6.51 reiterates "Within the 40% affordable/affordable home ownership a split of 75:25 has been used; this means an estimated total of 30% of completions as affordable housing (rented) and 10% as affordable home ownership. It should be stressed that these figures are not policy targets". Moreover, paragraphs 5.150 and 5.158 of the GL Hearn LHNA makes it very clear that it will be for the developer to choose the mix of subsidised routes to home ownership they provide.
240. Fifth, the mix proposed in this Appeal Scheme will provide for a balanced development in any event: It includes a range of types of property - detached, semi-detached and terraced dwellings and small apartment blocks, and a range of dwelling size also - 1-bed, 2-bed, and 3-bed properties; it is a mixed tenure scheme also, comprising a combination of First Homes, Shared Ownership Homes, Discount Market Sale, and Self-Build properties, all discounted by at least a third of open market value; and that mix comprises a broad offer, one which is affordable to different households on different incomes.
241. Sixth, and most important of all, the existing community in St Albans is already unbalanced because many Key Workers cannot afford to live there – they are priced out of owning a home and ineligible for affordable rented accommodation as well.
242. The Key Worker households at whom Addison Park is directed will not, for example, be able to live in the Cala Homes development, should it be permitted: they could not afford the open market housing; and they would not be able to access the affordable housing either. It is a peculiar view to consider that a development which cannot readily accommodate nurses, teachers, police officers, firefighters – the very workers upon which we all depend – affords a social balance to aspire to; and one that meets their needs is somehow imbalanced. That simply cannot be right - essential local workers should be able to live locally, in the very heart of the place they serve.

### *The Right Location*

243. If the housing needs in St Albans are to be met, there will have to be very substantial development in open Green Belt land – the only question is 'How' and 'Where'.
244. Council Officers have already assessed the broad location of land on the west side of Chiswell Green as a sustainable and acceptable location for development

through the recommendation to approve the Cala Homes scheme and the current Appeal Site, on the other side of Chiswell Green Lane, is in an equally sustainable location.

245. Nearby Chiswell Green is served by a good mix of services, facilities, and amenities within easy walking and cycling distance. There are 5 bus stops within a 10-minute walk, offering access to nearby settlements, including How Wood, Park Street, St Albans and Watford. The package of sustainable transport mitigation measures agreed with the Highway Authority is comprehensive and will further encourage sustainable travel, benefitting both existing and future residents.
246. For good reasons of sustainability, Council Officers have already identified the settlement of Chiswell Green as appropriate for expansion in order to address the Council's chronic, and serious, unmet housing needs. Neither the Local Planning Authority nor the Highway Authority has any highways objection to the Appeal Scheme itself, or the Appeal Scheme coming forward together with the Cala Homes proposal.
247. A number of points are relevant to landscape. First, whilst the Appeal Site lies in the Green Belt, this is a spatial designation only - not a landscape designation at all.
248. Second, whilst any reliance on the SKM Green Belt Review has to be seen against the backcloth of the examining Inspectors' conclusion that it was seriously flawed, to the extent that it is to be attributed weight, that Review identified the whole of Sub-Area SA8, including the Appeal Site, as the least sensitive in the District in terms of its contribution to Green Belt purposes, and the Appeal Site is therefore part of the best Sub-Area, sitting top of the league table in the SKM Review.
249. Third, it is agreed that the Appeal Site is not in any nationally protected designated landscape area and is neither part of, nor contributes to, a "valued" landscape for the purposes of paragraph 174(a) of the NPPF.
250. Fourth, given that the Council has accepted that housing needs can only be met through development on open Green Belt land, there will be an unavoidable detrimental impact, somewhere, on the openness of the Green Belt and encroachment into the countryside, and a consequential impact on landscape character and appearance as well. Mr Friend confirmed his understanding that this was the case.
251. Fifth, whilst Mr Friend comes to marginally different judgements to Mr Gray on the impacts on landscape character and appearance, the differences of opinion are all at the lowest end of the scale: in terms of landscape sensitivity and condition, from low to medium; the change in landscape character in the Landscape Character Area is agreed to be small, and it reduces to slight as planting matures. The height of Mr Friend's criticisms is that, at landscape scale, the effects are localised and slight; at site level, moderate; and with regard to setting, moderate also - that is hardly damning in a District which needs to build in the Green Belt to meet urgent housing needs.
252. Sixth, if those detrimental impacts are going to be occasioned somewhere in any event, it must be an advantage that this particular Appeal Site can be



developed without breaching any landscape policy at all – national or local - and no such allegation has even been made.

253. Moreover, it is worth noting that to deliver 330 affordable homes in accordance with the Council's model of a 40:60 split, would require an additional 495 open market houses on top of the 330 affordable units which are proposed. At the Council's preferred density of 24 dwellings per hectare, 34 hectares of Green Belt land would be needed to achieve that, when the Addison Park model of 100% affordable homes, delivers 330 on just 14 hectares – that is a very considerable Green Belt saving in terms of openness and represents an extremely efficient use of greenfield land.

### Third Party Representations

#### *Precedent*

254. KCG (and others) reference the risk of precedent for the release of adjoining land. However, this application must be determined on its own merits and the question as to whether very special circumstances exist with regard to this unique proposal. Furthermore, in *Poundstretcher Ltd v Secretary of State for the Environment* [1988] 3 PLR 69, it was held that for precedent to be material, more than the "mere fear or a generalised concern" upon which KGC (and others) exclusively rely, is required.

#### *Green Belt and 'Gateway Development'*

255. The question over the need to release Green Belt land for housing is a consistent theme among the representations. However: as Mr Fidgett explained, the Council has long-since acknowledged that exceptional circumstances exist to justify the release of Green Belt to meet housing needs; this has been reflected in recent decisions which have acknowledged that very special circumstances justify development of Green Belt sites in order to contribute to meeting housing needs; and the majority of homes delivered in the last year have been on Green Belt sites, underlining the reliance on this source, even for the low levels of supply currently being achieved.

#### *Affordable Housing Uncertainty*

256. While the significant benefit of affordable housing is acknowledged by KCG, questions have been raised over the financial model to deliver this. However: both Mr Collins and Mr Parker have fully explained how the business model of Addison Park comprehensively secures delivery; and in any event, the S106 Planning Obligation sets out the terms of the affordable housing proposal, and the delivery of the affordable homes is, therefore, certain and can be relied upon.

#### *Integration*

257. KCG are concerned that the new residents are likely not to integrate well into the existing population. However, Key Workers are an essential part of our society, not excluded from it. They are no different than anyone else; and our education, police, healthcare, and other services could not run without them.

#### *Transport Impacts*

258. So far as the transport issues are raised, the following points fall to be made. First, as Mr Fidgett explained, paragraph 111 of the NPPF states 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 network would be “severe”.

259. Second, the height of this latter threshold is significant. It is Government policy significantly to boost the supply of housing, a policy objective which necessarily will add traffic to the road network, and planning policy plainly prioritises the delivery of housing over the risk of sitting a little longer than is comfortable in a traffic queue.
260. Third, so far as highway safety is concerned, as agreed with the Highway Authority, there is no evidence to suggest that any increased traffic demand attributable to the Appeal Scheme, with or without the Cala Homes proposal proceeding, will cause a road safety problem. Further, insofar as Mr Walpole has any residual concern that relates exclusively to the shared pedestrian/cycle way which is suitable to accommodate up to 300 pedestrians and 300 cyclists per hour and, even together with the Cala Homes proposal, there is more than sufficient capacity safely to cater for prospective trips.
261. Fourth, based on the Transport Assessment submitted in support of the Appeal application, the Highway Authority concluded that the impacts arising from the Appeal Scheme on the operational characteristics of the Chiswell Green Lane double mini roundabout, were not “severe” and did not warrant a refusal of permission.
262. Fifth, and finally, the cumulative impacts of the two Appeal Schemes together have also been addressed by both Mr Stevens and Mr Jones for Cala Homes and, now, by Red Wilson Associates (ID 16.1-2) and the Highway Authority (ID 21). All agree that mitigation to an acceptable level is readily possible through a staggered, signalised junction. Indeed, even Mr Walpole agreed that this was possible.

### *Prematurity*

263. Whilst “prematurity” has also been raised as an issue, this is not in the context of an emerging Local Plan (since no such plan exists), but as a point about potential future changes in Government policy. However, this decision must be made on extant planning policy. Besides, it cannot be right to sit back and watch the dwindling supply position become even worse, with a consequential worsening of both access to and the affordability of housing.

### Planning Overview and Balance

#### *The Correct Approach*

264. Paragraph 74 of the NPPF sets out the requirement to maintain a minimum 5 YHLS of deliverable housing sites assessed against housing need. Footnote 8 to paragraph 11 d) of the NPPF makes it clear that where, as here, there is not a 5 YHLS, the “tilted balance” is engaged.
265. The NPPF identifies the Green Belt as one of the policies which may indicate that development should be restricted and, therefore, it is necessary to consider whether very special circumstances exist, sufficient clearly to outweigh the definitional harm to the Green Belt by reason of inappropriateness and any other harm.

266. In these regards, however: the past Ministerial Statements which indicated that the single issue of unmet demand for conventional housing was unlikely to constitute very special circumstances is no longer policy, and meeting unmet housing needs, and especially affordable housing needs, can now amount to very special circumstances; given that the Council has long-since concluded that there needs to be development on open land in the Green Belt if its housing needs are to be met, it necessarily follows that there is bound to be a considerable impact on openness (and an encroachment into the countryside) wherever that necessary development takes place; and pending any fresh allocations in a replacement Local Plan – and none will be possible till the end of 2025 at the earliest – the only way in which any of the Council’s considerable housing shortfall can be addressed is through very special circumstances being accepted.

### Green Belt Harms

#### *In Principle Harm*

267. As Mr Fidgett accepted, inappropriate development in the Green Belt is by definition harmful, and Substantial Weight should be given to this harm.

#### *Openness*

268. Given that there will have to be considerable housing development on open Green Belt sites to meet the Council’s housing needs, a considerable impact on openness is inevitable. That said, however, the Appeal Site is relatively well contained in visual terms, and while there are locations where views would be gained, these are localised and limited in nature. As a result, Mr Fidgett considered that there is harm to openness which attracts Moderate to Substantial Weight.

#### *Checking the Unrestricted Sprawl of Large Built-Up Areas*

269. As for checking unrestricted sprawl, the Appeal Site adjoins a medium sized village only, not a large built-up area. Further, the Appeal Scheme plainly has the potential, subject to the masterplanning and design at the Reserved Matters stage, to form a well-contained extension to the existing settlement. The Appeal Site relates well to the notion of a westward area of growth for Chiswell Green, something supported by the Council in its proposed allocation of land south of Chiswell Green Lane; and whilst separated by a strip of paddock land from the existing settlement edge, the Appeal Scheme would both function, and be perceived as, a western addition to Chiswell Green, joined by a series of pedestrian and cycle connections through the landscape buffers.

270. Furthermore, the Appeal Site is already contained by strong landscape boundaries and given the provision of an additional green buffer of open space, the Appeal Scheme would not pose any risk of urban sprawl. As a result, Mr Fidgett considered there to be no harm in respect of checking the sprawl of large built-up area, such that No Weight falls to be attached.

#### *Preventing Neighbouring Towns Merging into One Another*

271. Mr Connell openly conceded that “a significant gap” would be maintained between Chiswell Green and Hemel Hempstead, which is over 4 km northwest of the site, beyond the M1, and that the Appeal Scheme would not lead to any merger of the two. Mr Fidgett’s conclusion that there would be no harm in

respect of towns merging is plainly right. No Weight should therefore be attached.

#### *Assisting in Safeguarding the Countryside from Encroachment*

272. Mr Fidgett accepted that whilst this arises in result of any release of land from the Green Belt for housing, it is unavoidable if housing needs are to be met. In the instant case, however, the character of the site is relatively contained by strong boundary landscaping and any perception of the wider countryside is limited until you pass beyond the site into more open farmland.

273. Furthermore, whilst the Appeal Site can be seen from the footpaths adjoining the site, these are relatively close-range views and, with a combination of landscape buffers and a Memorial Park framing the housing, the visual impact of its development would be limited to localised views, without significantly impacting the countryside extending to the west or north. As a result, Mr Fidgett considered there to be only moderate harm in respect of safeguarding the countryside from encroachment and that only Moderate Weight be attached.

#### Non-Green Belt Harms

##### *Agricultural Land*

274. As Mr Fidgett explained, the Council attributes only limited weight to harm arising from the development of agricultural land. In these regards, moreover, all of the options for the release of land to meet housing needs outside of the urban area considered in previous versions of the Local Plan review involved the loss of Grade 2 and/or 3 agricultural land. The NPPF only requires consideration of whether land of lesser quality is available, and that is not the case here. Accordingly, Mr Fidgett attributed No Weight or Very Limited Weight to this issue.

##### *Highways and Transport*

275. Development should only be restricted or refused on highways grounds if there would be an unacceptable impact on highway safety or if the residual cumulative impacts on the network would be severe and that is not the judgement made by the Highway Authority. Accordingly, and correctly, Mr Fidgett recorded this as is neutral matter carrying No Weight.

#### Benefits

##### *Housing Delivery*

276. The Council is in housing crisis: it has just 2.0 YHLS. The Appeal Scheme proposals are for 330 dwellings that will contribute, significantly and positively, to the choice of housing available in the local market, appealing to a wide range of people - first time buyers, individuals, couples, and families, offering each a different route to home ownership. Mr Fidgett attributed Very Substantial Weight to this contribution to housing supply.

##### *Affordable Housing*

277. There is also a very clear, and additional, benefit in addressing the affordable home crisis in St Albans through the provision of 330 affordable units (100%). Mr Fidgett accorded Very Substantial Weight to this benefit, which is precisely the

weight attributed to considerably smaller amounts of affordable housing other sites in the district. Consistency in planning decisions is highly important.

### *Key Worker Affordable Housing*

278. As Mr Fidgett further explained, there is a particular problem with the supply of housing to meet the needs of Key Workers - being unable to buy at open market prices, but at the same time above the income thresholds for the limited supply of affordable rental homes. Given that the Appeal Scheme would offer 330 affordable homes exclusively for Key Workers, and in such an unaffordable locality, Mr Fidgett, accorded this benefit Very Substantial Weight.
279. Mr Connell's approach, for the Council, is in essence, to attach "very substantial" weight to the benefit of delivering housing to the wealthiest in the nation, those who can afford open market housing in St Albans, even with a new homes' premium; and then to reduce that weight to the lowest part of "substantial", simply because all of the housing at Addison Park is considerably cheaper and for Key Workers. That is obviously wrong.
280. It is completely absurd to attach less weight to housing because it is cheaper and meets the needs of the most valuable members of the local community. It would mean that the only way in which the Appeal Scheme would gain equivalent weight to that of Cala Homes, would be to replace affordable housing for essential local workers with expensive market homes which Key Workers cannot afford, or social rented houses for which they do not qualify.
281. Indeed, not even the Officer's Report agrees with Mr Connell: the weight attached to that benefit was expressly stated to be "very substantial".

### *Self-Build Housing Plots*

282. The Appeal Scheme also includes a contribution to the provision of self-build plots, giving the land away for all but nothing, and locking that discount in for future qualifying purchasers. Mr Fidgett accorded this benefit Substantial Weight, which accords precisely with the Inspector's decision in the Bullens Green Lane appeal and the Council's own decision regarding the development off Harpenden Lane. Mr Fidgett's judgement in this regard is plainly correct and supported by recent precedent, save that these self-build plots will make for affordable homes for Key Workers in perpetuity.

### *Economic Benefits*

283. On any view the economic benefits would be considerable (albeit Mr Connell completely ignores them in his Proof of Evidence for the Appeal Scheme, whilst attributing moderate weight to them for the Cala Homes proposal).
284. As Mr Fidgett explained, the lack of access to housing is a key factor hampering economic performance. By providing more housing to meet local needs, this improves overall economic conditions.
285. Furthermore, the development of 330 homes also brings with it direct and indirect economic benefit, which, calculated by reference to work undertaken by the Home Builders Federation, represents a gross development value of nearly £100m, much of which will stay within the local economy, supporting up to 1,000

jobs, providing 11 apprenticeships/trainees, and generating approximately £3.9m in tax revenue and £372,000 in local Council Tax revenue.

286. For all these reasons, Mr Fidgett correctly accorded the wider economic benefits Substantial Weight.

#### *Public Access*

287. In addition, the Appeal Scheme will make a contribution to public access to the Green Belt, in the form of the Memorial Park, the areas of landscape buffer, and the footpath network that connects with the existing public footpath network to create both a circular route without having to walk along Chiswell Green Lane. Mr Fidgett correctly attributed these benefits Moderate Weight.

#### *Accessibility Improvements*

288. The Appeal Scheme will also contribute to the improvement of local bus services, enhancing wider access to public transport for the community. Quite correctly, Mr Fidgett accorded these benefits Moderate Weight.

#### *Net Biodiversity Gain*

289. The Appeal Site comprises predominantly improved grassland that has been grazed by horses over an extended period. While no BNG metric has been undertaken, as this must clearly respond to the detail of any landscape and biodiversity scheme at Reserved Matters stage, it is reasonably anticipated that a 10% BNG can be achieved on site through the inclusion of native woodland, hedgerow, and meadow as part of that landscape scheme. Even if it cannot be achieved on site, however, the S106 requires a 10% BNG gain in any event – an additional benefit of the Appeal Scheme to which Moderate Weight should be attached.

#### Overall Planning Balance

290. It has long been accepted by the Council that exceptional circumstances exist that necessitate the release of Green Belt land in order to meet housing needs in St Albans. The Council has, however, failed to deliver a new Local Plan. The end result is one of both crisis and emergency: a Plan-making crisis; a housing crisis; and an affordable housing emergency, especially for the Key Workers unable to access social rented housing, but unable to afford a home of their own either. Worse still, the Council has no intention of addressing their needs in the future; indeed, they have no intention even to assess their specific needs in any ongoing Plan-making.
291. It is precisely because the Appeal Scheme addresses all of these unmet needs, ones which the Council have ignored, and propose to continue to ignore, that, in Mr Fidgett's overall planning judgement, the substantial benefits of this Appeal Scheme clearly outweigh the harm to the Green Belt and all other harms and compel that this Appeal is allowed. Mr Fidgett maintains this view, even if Mr Friend's views are accepted on the impact of the Appeal Scheme on the unvalued, ordinary, landscape in which the Appeal Site is located.

#### Compatibility with Appeal A

292. Each scheme must, of course, be decided on its own merits, and for all of the above reasons the merits of the Appeal Scheme are overwhelming. It is not



necessary to choose between the Appeal A and Appeal B schemes: both can be approved without giving rise to a severe impact on the operation of the local highway network. Moreover, the housing needs of St Albans are such that, together, the two schemes will go a considerable way towards addressing planning and housing crises.

293. Indeed, whilst the Appellants emphatically assert that the Appeal Scheme, of itself, not only represents a balanced community, but addresses a fundamental imbalance in St Albans as it currently is, it is beyond any doubt whatsoever that, together, the two Appeal Schemes will not only mark the step change in housing delivery, across all tenures, that St Albans needs, but do so in a balanced way - a total of 721 homes, comprised of 486 affordable housing units (67%), with a variety of affordable tenures - affordable home ownership for Key Workers, social rental housing, affordable rental housing, intermediate housing, First Homes housing, and self-build and custom-build plots; and 235 market housing units (33%) on top of that.

### **The Case for the Local Planning Authority**

*The summary below is largely taken from the Council's closing submissions, which set out the key points, as it saw them, at the end of the Inquiry.*

294. The principal main issue in both appeals is whether the Appellants can demonstrate the Very Special Circumstances ("VSC") necessary to justify their proposed inappropriate developments in the Green Belt. The conclusions that are reached on the other main issues ultimately feed into this overall VSC planning balance.

### **Planning Framework**

295. Planning permission for either development should be refused unless VSC exist: paragraph 147 of the National Planning Policy Framework ("NPPF"). Such circumstances will not exist unless the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations (see paragraph 148 of the NPPF). If – as is the Council's position - VSC do not exist for either development, then the developments will be contrary to the development plan taken as a whole because there would be a breach of Policy 1 of the Local Plan.
296. That is the case regardless of the weight that is given to the relevant policies of the Local Plan. In this respect, it is common ground that the most important policies for determining the applications are out of date because the Council does not have a five-year housing land supply ("5YHLS") and due to its housing delivery test ("HDT") results. However, if VSC do not exist, this provides a "clear reason" for refusing the applications. In those circumstances, the tilted balance in paragraph 11(d)(ii) of the NPPF is not engaged and the appeal proposals would represent unjustified inappropriate development in the Green Belt.

### ***Correct approach to paragraph 148 of the NPPF***

297. In carrying out the balance under paragraph 148, the NPPF expressly advises that substantial weight must be given to any Green Belt harm. That weighting is mandated by policy irrespective of the circumstances (and remains the same regardless of whether or not a local planning authority has a 5YHLS). This reflects the importance of the protection of the Green Belt in national policy as a

designation of national importance. Indeed, the NPPF states in terms that the Government attaches “great importance to Green Belts” (paragraph 137).

298. Further, the requirement for something “very special” is deliberately framed in national policy. Needless to say, it is a high bar to meet. It requires more than the “exceptional circumstances” required to release land from the Green Belt – already a stringent test. Further, for VSC to exist, it is not enough for the benefits to merely outweigh the harm – they must clearly outweigh the identified harm. Imposing a very high bar before inappropriate development is permitted in the Green Belt is key to ensuring permanence and avoiding the death of the Green Belt by “a thousand cuts”.

#### *Emerging policy*

299. Finally, it is worth at this point addressing the question of emerging policy. It is agreed that the emerging Local Plan should be given no weight, since there is no document to give any weight to. That said, work on the new Local Plan is progressing with vigour and regulation 18 consultation is scheduled shortly (between July-September 2023). There is no positive evidence before the Inquiry to suggest that the overall timetable towards adoption is unachievable.
300. The housing requirement under the new Local Plan is unknown, and whether the standard method calculation for local housing need is to be used is a decision to be made through the local plan process. The spatial strategy in the new Local Plan – i.e. how that housing requirement will be distributed across the District – is also unknown. We do not know whether the requirement will be met through a small number of broad locations for growth (as in the withdrawn plan); a large number of smaller sites; or a combination of both. Further, a new Green Belt Review is due to be published shortly.
301. Therefore, whilst there has been a lot of reference to the South Site (which was allocated in the withdrawn Local Plan) as being “at the front of the queue” for allocation in the emerging Local Plan, we simply cannot say today that it is likely that it will be allocated in the new Local Plan (the North Site, of course, was not allocated in the withdrawn Local Plan). And in any event, we are applying a different, and more stringent, test in this Inquiry (VSC) compared with the test that is applied when deciding to release land from the Green Belt through a Local Plan review.

#### Green Belt Harm

##### *Approach to assessing Green Belt harm*

302. Both schemes constitute “inappropriate development” in the Green Belt. Inappropriate development is “by definition, harmful to the Green Belt” (NPPF para. 147). This is even before one considers harm due to loss of openness and harm to Green Belt purposes. Any harm to openness or purposes is in addition to the definitional harm. So far as openness is concerned, the Planning Practice Guidance (“PPG”) sets out the factors that may be relevant when assessing openness and it is common ground that all factors are relevant here.
303. In terms of the spatial aspect of openness, this is generally understood to mean the absence of built development. It is not the same as openness in a landscape character sense and is not influenced by what we can visually discern. Therefore, there can be harm to the spatial aspects of openness without there



being a visual impact. On that basis, visual mitigation will not mitigate spatial impacts. Further, even if spatial harm is “inevitable” and cannot be avoided or further minimised, that is not a basis to reduce the degree of harm.

304. When looking at visual aspects we are considering whether development would have an adverse effect on the perception of openness. The ability to see built form where previously there was none will result in a visual harm to openness. This is a different approach to assessing visual effects in accordance with Guidelines for Landscape and Visual Impact Assessment (“GLVIA”), which is concerned with how pleasant a view is to visual receptors, and therefore takes into account factors such as the attractiveness of new development and green space rather than the simple question of whether the Green Belt will appear more built up than before. Therefore, both landscape witnesses agreed that it would be impermissible to automatically read across the conclusions on visual effects from a Landscape and Visual Impact Assessment (“LVIA”) when reaching a conclusion on openness – although, the landscape witness for the North Site in fact adopted the approach that he agreed was wrong.
305. It is important to take care when considering the combined spatial and visual effects of a development on openness. Visual impacts on openness can fall into three categories: (i) they can be neutral – i.e., visually the site may be no more or less visually open following the development; (ii) they can offer an improvement to openness; thereby reducing any harm arising from the spatial impacts of the development; (iii) they can in of themselves be harmful; thereby increasing any harm arising from the spatial impacts of the development.
306. There is no dispute that both developments will result in harmful visual impacts on openness. Therefore, the third category above is relevant – and this visual harm to openness can only increase the degree of harm to openness over and above that which follows from their spatial harm. There is no basis in national planning policy or guidance to support “netting off” spatial and visual harm; or to suggest that harm from visual effects can reduce the overall degree of harm to openness. As it was put in *Turner v SSCLG* [2016] EWCA Civ 466 (at paragraph 25), “...the absence of visual intrusion does not in of itself mean that there is no impact on the openness of the Green Belt as a result of the location of a new or materially larger building there”.
307. In terms of the Green Belt Review (GBR), whilst all parties agree that no weight should be given to the withdrawn draft Local Plan (2020-2036), there is a disagreement on the weight to be attached to the St Albans Green Belt Review prepared by Sinclair Knight Merz on behalf of the Council (“GBR”). Both sites are located within Strategic Sub-Area 8 (“SSA 8”) within Parcel GB25 within the GBR.
308. The Council and the Appellant on the South Site agree that the GBR should be given significant weight. However, that does not mean that the findings of the GBR can simply be applied wholesale to the development proposals.
309. There have been changes in circumstance on the ground since the GBR was published. The closure of Butterfly World, to the immediate west of the South Site, after Part 2 of the GBR was published in February 2014, represents a change in circumstance and affects the findings of the GBR insofar as it relates to the South Site. Whilst the South Site was the top ranked site out of the eight strategic sites identified for potential release in the GBR, it was also one of the smallest strategic sites. Ms. Toyne accepted that it was inevitable that smaller

sites, such as this, will achieve a higher ranking than the larger Green Belt sites in the ranking of sites at the end of the February 2014 Green Belt Review. The GBR did not assess the cumulative effect of both the North and the South sites coming forward at the same time.

310. The Appellant on the North Site on the other hand, contends that the GBR should be given "no weight" at all. This position was never adequately explained at the Inquiry, but is in any event fundamentally flawed. It is agreed that conceptually a decision-maker can give no weight to an emerging or withdrawn plan but give weight to an evidence base document. The weight to be given to the evidence base document will depend on whether the evidence base document was subject to criticism by those examining the plan.
311. The position of Mr. Parker appears to be that the Inspectors who examined the Council's withdrawn Local Plan concluded that the GBR was "seriously flawed". However, when one actually looks at what the examining Inspectors said, it is clear that their criticisms do not have any bearing on the GBR assessment of the northern part of SSA 8. For a start, the Inspectors did not criticise the substantive findings reached by the GBR in relation to the individual parcels or strategic sub-areas assessed. Instead, there were two main procedural criticisms, neither of which has any relevance here.
312. First, there was a criticism that the small-scale sub-areas identified in the Stage 1 Report (November 2013) were not investigated in the Stage 2 Report (February 2014). However, that is irrelevant here, because the North Site was not part of a small-scale sub-area identified for potential release in the Stage 1 Report. Second, the Inspectors noted that the list of small-scale sub-areas identified in the Stage 1 Report may not be exhaustive, and that by only considering eight areas in detail in the Stage 2 report, the Council may have missed out on other potential small-scale sub-areas. However, that criticism also does not apply here because SSA 8 was considered at a fine grain in the Stage 2 Report, and the part of the area within which the North Site falls was not found to be suitable for release.
313. In this respect, (i) there was nothing to prevent the Stage 2 Report from identifying more than one suitable site in SSA 8 and (ii) nor was the North Site ruled out from consideration on the basis that it had a capacity of less than 500 units. The GBR itself did not impose a 500-unit cap when considering sites – after all, the South Site had a maximum potential capacity of only 450 units, and despite being given several opportunities, none of the witnesses for the North Site were able to point to any part of the GBR where this cap was imposed. Rather, as Mr. Connell explained, the 500-unit threshold post-dated the GBR during the subsequent site-selection progress in 2018 - and therefore is not a sound basis to reduce the weight to be attached to the GBR itself.
314. Therefore, the criticisms raised by the examining Inspectors do not affect the findings of the GBR so far as they relate to the North Site. Nor is there any other basis for departing from the findings of the GBR. Mr Gray had not considered the GBR in any detail, despite accepting that it was relevant to his evidence, but said that the visual findings in relation to the North/West part of SSA8 "seemed right". There was a faint suggestion raised by Mr. Fidgett for the first time in cross-examination on the last day of the evidence that circumstances may have changed since the GBR was published (potentially because Mr. Collins had

planted some new trees around the North Site) but it was difficult to understand what had changed and why this would affect the findings of the GBR.

#### North Site: harm to Green Belt Openness and Purposes

##### *Openness*

315. The Site comprises approximately 14ha of undeveloped countryside. There is only a very small amount of existing built development on the site, and such built form that there is would not be regarded as inappropriate in Green Belt policy terms. It is therefore spatially completely open. Whilst there is some screening of views into the North Site from existing vegetation (on the north and east boundaries) there remains views into the open areas of the North Site from these locations. More open views into the North Site can be obtained from the west, particularly from Public Right of Way ("PROW") St Michael Rural Footpath 12 where, as Mr. Gray acknowledges, "the full sense of openness of the Green Belt" can currently be experienced. Therefore, to a great extent, the North Site is also visually open.
316. The North Site does not immediately adjoin the existing settlement edge of Chiswell Green, being separated from the western edge of the settlement by an open paddock and an evergreen hedge. This prevents the existing settlement edge of Chiswell Green from exerting any significant influence on the open character of the Site. Further, given the vegetation on Chiswell Green Lane, Butterfly World provides very limited urban influence on the Site. Both Mr. Friend and Ms. Toyne are right that the Site is not integrated with Chiswell Green. Rather, there is a strong connection with the wider countryside to the west, which ensures that the Site reads as part of a tract of open countryside beyond the settlement. Indeed, Mr. Gray agreed that the Site "absolutely" has a strong relationship with the open countryside to the western side of the Site.
317. Unsurprisingly, therefore, the GBR identified that the northern part of SSA 8, within which the North Site sits, "has a very open character and development would completely change this" and that "the openness of the landscape means development would be conspicuous from the surrounding landscape". Mr Gray did not dispute that finding saying that it "seemed right", and nor did he volunteer any explanation for why they did not also apply to the North Site. The GBR also acknowledges that the site falls within an area that "is separate from the edge of the settlement and relates more to the wider countryside".
318. Spatially, the development would result in a very substantial loss of openness on the North Site. Fields which are currently predominantly open would be replaced by a significant amount of urban development comprising buildings, roads and other associated infrastructure. Based on the indicative layout, over 10ha of this 14ha site would be covered with built form. The existing built form on site has a footprint of c. 560 sqm; this would be replaced with a developed area of c. 100,000 sqm - a 18,000% increase. There would also be a very substantial increase in volumetric terms, with proposed buildings of 2-3 storeys high. Even Mr. Fidgett acknowledged that there would be a substantial to very substantial loss of spatial openness. The impact is plainly very substantial.
319. This harm would be irreversible and cannot be mitigated. A substantial area of presently open Green Belt land would no longer be characterised by an absence of built development. The impact would also not be restricted to a loss of spatial

openness: in addition to this very substantial loss of spatial openness, there would be a significant loss of visual openness.

320. In his written evidence, Mr. Gray contended that the visual impact on openness would be "very localised and marginal". However, as he acknowledged, he had assessed the impact of the development on visual openness in a similar way to how he had judged the impact on visual appearance – taking into account exactly the same considerations. This is agreed to be the wrong approach, and this fundamental error infected his assessment of the harm to visual openness. For example, the view from Footpath 12, previously assessed as having a "negligible" effect on openness, was revised to "moderate" – even on Mr. Gray's own analysis. Similarly, the view from residential properties to the east, previously assessed as "moderate" was upgraded to "major adverse". As a consequence, his written evidence is largely worthless as an analysis of Green Belt visual harm.
321. These key errors were compounded by a failure to take into account or understand the appeal proposals – which means that even these revised effects underplay its true impact. As set out below, Mr. Gray had not taken into account the gaps in the boundary screening which would enable "clear views" into the site at places on the eastern and western boundaries. Further, the GBR – agreed to be a relevant document when assessing the effect of the proposals on visual openness – had not been considered in any detail by Mr. Gray.
322. The correct position, as explained by Mr. Friend, is that there are a number of viewpoints, immediately adjacent to, and further away, from the North Site where the visual impact from the proposed development would be substantially harmful to openness.
323. The development would be clearly visible from more elevated land to the west of the site, such as Footpath 12; reducing the openness that can currently be experienced in this sensitive location. The harm to visual openness from this location is agreed by Mr. Gray to be moderate (at least). In truth, it is greater than this as there would be clear views into the site from the west, as opposed to the "glimpsed" views claimed by Mr. Gray. The reduction in visual openness would also be visually perceived from the footpaths that run adjacent to the Site on the northern (Footpath 80) and western (Footpath 21) boundaries where built form would be visible in place of existing views into an open site. Further, from the east, the existing clear views across an open site from the residential properties on Cherry Hill and The Croft would be foreshortened leading to a now agreed major adverse impact on visual openness.
324. Overall, the development would be perceived as a significant incursion of the settlement into the wider open countryside. Mr. Gray expressly agreed that the development will have significant effects on openness which are more than localised.
325. On top of this, it is necessary to consider the impact of the development on activity. Whilst this is also agreed to be material, it is not something that had been considered by any of the North Site's witnesses in their written evidence. Currently, there is very little activity on or from the North Site. The increase in internal movements; vehicular trips on Chiswell Green Lane, noise etc, would all result in a significant increase in activity on the Site that would add further harm to openness.

326. For all of these reasons, the North Site Appellant was right to accept – in the original Statement of Common Ground – that there would be substantial harm to openness. That is plainly a reference to the degree of harm (not its weight). For the reasons set out above, this harm is at the highest end of the scale – very substantial. The overall effects go beyond those which would inevitably arise from development of this quantum. This is a Site with a very open baseline; separated from the existing settlement edge; surrounded on all sides by PROWs, and clearly visible from the more elevated land to the west. It is not surprising that inserting major residential development into this highly sensitive area would give rise to harm to Green Belt openness at the highest end of the scale.
327. In the course of the Inquiry, the North Site Appellant – perhaps worried that it had been too realistic about the effects of the development in its written evidence – sought to further downplay the level of harm. In a document entitled “Statement of Common Ground 2”, Mr. Fidgett sought to record his evidence as noting only a “moderate” degree of harm to openness. This late attempt to minimise the harm caused should be rejected.
328. For a start, it departs from the agreed original Statement of Common Ground, without any explanation; and nor was the basis for a moderate degree of harm explained in Mr. Fidgett’s written evidence. In any event, that written evidence (and the subsequent “SOCG2”) was prepared a time when (as set out above) Mr. Gray considered the visual effects to be “very localised and marginal”. However, Mr. Gray had applied the wrong test and it is now common ground that, assessed on the correct basis, the development has significant visual effects on openness that are more than localised.
329. In addition, as set out above, the undoubted visual harm that results from the development can only add to the spatial harm to openness. Therefore, even if the visual harm to openness here is only limited (which it is not, and this is now agreed), it would drive a coach and horses through the protection afforded to the Green Belt in national planning policy if this level of harm could be said to somehow reduce the agreed substantial harm to spatial openness to somehow an overall degree of moderate harm to openness.
330. Overall, the development on the North Site would result in very substantial harm to Green Belt openness.

### Green Belt Purposes

331. The starting point is the GBR. The North Site is located in an area of “higher sensitivity” and was not recommended for release in the GBR; indeed, in light of the findings of the GBR in relation to this part of SSA 8, the North Site is very far from being at the front of the queue for release.
332. Whilst Mr. Fidgett sought to rely on the fact that SSA 8 itself had performed comparatively well within the GBR; this is based on a misreading of the GBR. The “sub-area identified on pasture land at Chiswell Green Lane” identified in the Stage 1 Report as contributing least to Green Belt purposes is plainly the South Site and not the whole of SSA 8. That is clear both from the description used in the Stage 1 Report (e.g. the reference to the Butterfly World being located “along Miriam Road to the west”) and the fact that the Stage 2 Report clearly considered that development within the remainder of the sub-area would result in an unacceptable level of harm to Green Belt purposes. In any event, the findings of



the GBR are borne out by the detailed appraisal of the North Site's performance against Green Belt purposes carried out at this Inquiry.

*To check the unrestricted sprawl of large built-up areas*

333. The GBR found that this parcel made no contribution to this purpose. However, that is because – for the purposes of its strategic review – it treated “large built-up areas” as being London, Luton & Dunstable and Stevenage. Therefore, following the methodology in GBR, there would be no large built-up areas in the District – even St. Albans would not be defined as a large built-up area. It was inevitable, applying that approach, that the parcels around St. Albans and Chiswell Green would be found to make no contribution to preventing unrestricted sprawl. Plainly, for the purposes of this appeal, Chiswell Green should be considered to be a large-built up area. It is a settlement identified in the Local Plan; and as the Appellants are keen to emphasise elsewhere, has a range of services and facilities. Indeed, it was treated as a large built-up area by the Inspectors at both appeals into the Burston Nurseries development, and there is no reason for departing from that approach here.
334. The development would plainly result in harm to this purpose. The Site is in open countryside and not directly adjacent to the built edge of Chiswell Green. It reads as detached from the existing built settlement edge, and extends westwards beyond the former Butterfly World site. This is why neither the GBR nor the withdrawn Local Plan suggested that a westward expansion here.
335. Importantly, there is also no defensible boundary to the western edge of the site. The existing trees on the western boundary are limited in depth and would form a weak boundary even with additional buffer planting – especially since this boundary would be punctured by the proposed connections into Footpath 21. However, the effect would be most apparent at a distance from the North Site to the west. From these elevated views (such as Footpath 12), it is agreed that the settlement of Chiswell Green will visibly extend to the west towards the viewer by about 650 metres – or a third of a mile. As extended, it is agreed that the new settlement edge of Chiswell Green will appear to be surrounded by open countryside to the north, south and west. Importantly, there is no obvious physical boundary or feature separating the site on the western edge from the remaining open countryside. The nearest road to the west is Furzebushes Lane – which lies beyond the land to the west of the site.
336. When asked whether there was a physical boundary to the west which meant that someone looking at this settlement extension would say to themselves “I know why it has stopped there”, Mr. Gray readily agreed that there was none.
337. If that is not harm to this purpose, it is hard to know what would be. Post-development, Chiswell Green would be perceived to be sprawling into the open countryside with no obvious connection to the existing settlement or limit on its expansion. Mr. Fidgett's assessment that there would be no harm at all to this purpose is clearly wrong and, in the circumstances, Mr. Connell's assessment of moderate harm to this purpose is in fact generous to the North Site.

*To prevent neighbouring towns merging into one another*

338. There is also harm to this purpose (albeit limited). As found in the GBR, the wider Parcel forms part of a network of parcels which form the Strategic Gap

between St Albans and Hemel Hempstead. Whilst the development clearly would not result in coalescence with Hemel Hempstead, towns tend to merge incrementally over time, and therefore it is unlikely that one single development will result in towns merging. In other words, this purpose can be offended incrementally. The development of this site (especially if it was together with the South Site) would result in ribbon development along both sides of Chiswell Green Lane, physically reducing the separation with Hemel Hempstead, albeit to a limited extent given the gap that would remain. Mr. Connell was right to find limited harm to this purpose.

*To assist in safeguarding the countryside from encroachment*

339. It is common ground that there is at least moderate harm to this purpose. This level of agreed (minimum) harm to this purpose is far from inevitable. It also must involve a recognition that the Site is currently perceived as countryside, and would no longer be post-development. However, the North Site Appellant has again underplayed the effect of the development – which would in fact result in very substantial harm to this purpose.
340. Mr. Fidgett's assessment of only a moderate degree of harm relied on two key components of Mr. Gray's evidence that no longer stand up to scrutiny. First, Mr. Fidgett's claim that the North Site's "connection [with] and perception of the wider countryside is limited" is wholly inconsistent with both how the Site is perceived on the ground and with Mr. Gray's acknowledgment that the North Site "absolutely" has a strong relationship with the open countryside to the western side of the North Site. Second, the suggestion that the visual impact would be "limited to localised views without significantly impacting the countryside extending to the west or north" no longer reflects Mr. Gray's position that there would be a significant effect on visual openness from the Footpath 12 to the west.
341. In truth, the harm to this purpose would be very substantial – a function of the development very substantially reducing openness on a site that is currently visually perceived as open countryside. In this respect, it is important to remember that there is an inherent connection between a loss of openness and harm to this purpose. As it was put by the Court of Appeal in *Turner*: "Openness of aspect is a characteristic quality of the countryside, and 'safeguarding the countryside from encroachment' includes preservation of that quality of openness".
342. Overall, the significant level of harm to Green Belt purposes counts very substantially against the grant of planning permission for the North Site.

South Site: harm to Green Belt Openness and Purposes

*Openness*

343. Whilst influenced to a degree by the existing settlement edge of Chiswell Green, the vast majority of the South Site is spatially open. 96% of the site is currently free from built development, and the built development that does exist on the South Site is restricted to its northern end. To the extent that reliance was placed in the written evidence on the fact that the South Site is internally divided into parcels defined by hedgerows with trees and small woodlands, Ms. Toyne agreed that those features do not limit its sense of spatial openness. In a spatial

sense, the site is currently positively contributing to the fundamental aim of Green Belt policy of keeping land permanently open. Further, whilst the South Site is currently influenced to a degree by the current activities on Butterfly World (storage of construction materials, vehicle parts, household items, vehicle sales), it is important to note that these activities are subject to enforcement action.

344. Ms Toyne agrees that, as is stated in the LVIA, the development proposal will result in a substantial increase in built form on the Site. As set out in the Officer's Report, the built-up area would comprise c. 10.62ha of a c. 13.96ha site. As spatial openness is concerned with the absence of built development – a substantial increase in built form must result in substantial harm to spatial openness.
345. Whilst Ms. Toyne relied on the fact that 41% of the site would not be covered with built development, that figure must be treated with considerable caution. For a start, it assumes that the school land is undeveloped and therefore Ms. Toyne agreed that the 41% figure would reduce if the school came forward. In any event, the 41% figure includes within it elements that will undoubtedly impact on spatial openness (such as children's play areas; cycleways; drainage, utilities and service infrastructure; and roads). Further, the urban influence of the new built form will extend far beyond its footprint; as the undeveloped parts of the South Site will be perceived in its context. Almost the entirety of the South Site will be deprived of its open character.
346. In any event, the extent of site coverage only tells part of the story. As the PPG recognises, the volume of the built form is highly relevant – which requires consideration of height. Here, the height of the new buildings ranges from 2.5 up to 3 stories. In comparison with the baseline position, there will be a massive increase in volume of built form on the site and the volume of built form proposed as part of the development is very substantial (even Ms. Toyne accepted that there would be substantial volume of built form on the South Site and a substantial increase above the baseline).
347. There is no prospect of remediation – the change will be irreversible. The footprint and volume of built form would be a permanent feature and its spatial impact will not reduce over time.
348. The fact that the spatial harm would be restricted to the appeal site itself, as noted by Ms. Toyne, is an irrelevant consideration: development will never have a spatial or physical impact on openness on land outside of the boundaries of the site, since development will never take place outside the red-line boundary. Having regard to this consideration as a factor to reduce the degree of spatial harm would mean that the spatial impacts of the development would be unduly minimised.
349. The loss of openness would be visually perceived by the many who have views across it – in particular, from Chiswell Green Lane; from residential properties on Long Fallow, Forge End and Woodlea; and from pedestrians on PROW 82, 28 and 22. These are local views but the fact that the loss of openness may be only locally perceived does not lessen the conflict with the fundamental aim of Green Belt policy. As such, whilst the South Site is fairly visually contained, the impact of the development within that area is substantial.



350. For example, residential properties along the settlement edge (such as those on Long Fallow, Forge End and Hammers Gate) currently have open views over the site. Far from being “a very few” properties, as claimed by Ms. Toyne, there are in fact a significant number of properties. It is common ground that post-construction, residents of houses will have open, close range, frontal views of new built form in place of views of an open field. That will result in a large magnitude of change (i.e. a pronounced change to the existing view, resulting in the loss or addition of features that will substantially alter the composition of the view). This arises from being able to see built form in place of views of an open field – i.e. harm to visual openness. The factors that reduce the impact to visual appearance to negligible in Year 15 (in the LVIA) will do nothing to reduce the impact on visual openness. The visual openness of the South Site for these visual receptors will be completely lost.
351. Similar effects will be experienced elsewhere. The LVIA records adverse effects at Year 1 to varying degrees at seven visual receptors: (i) Residential properties on the settlement edge; (ii) Users of Chiswell Green Lane; (iii) Users of Long Fallow, Forge End and Woodlea; (iv) Pedestrians on PROW 82, 28 and 22; (v) Workers at the commercial estate on Miriam Lane. These adverse effects all arise from the visibility of additional built form into the view. That is a visual harm to openness which would be compounded by the high degree of activity that would be introduced onto a site where presently there is almost none.
352. Overall, the suggestion that inserting 391 new homes and associated development onto a spatially open site would only result in a “limited” degree of harm to openness, as suggested by Mr. Kenworthy, is plainly wrong. It is not even supported by the Appellant’s own evidence (Ms. Toyne referred on a number of occasions to the moderate harm that would be caused to the openness of the South Site).

### Green Belt Purposes

#### *To check the unrestricted sprawl of large built-up areas*

353. The South Site currently performs a role in fulfilling this purpose as there is a clear boundary, and contrast, between the residential properties at the settlement edge of Chiswell Green and the open undeveloped nature of the South Site. Despite attempts to argue that there is “clutter” on the Site, in truth this is minimal and to the extent that it is present it is confined to the very northern boundary of the South Site adjacent to Chiswell Green Lane. The appeal proposals would extend the settlement of Chiswell Green in a westerly direction and built development would be spread across the full extent of the South Site.
354. Further, as agreed by Ms. Toyne, it is relevant when considering whether or not development amounts to urban sprawl to consider the extent to which it has defensible boundaries – and in particular, whether every boundary is defensible. As Mr. Connell observed, the south-western part of the Site, which borders onto Miriam Lane, does not have a strong defensible boundary. There is no landscape bunding in this location and limited visual screening. There is very little to physically separate the South Site from the open countryside beyond to the south-west. Further, Miriam Lane is essentially an access road to the (now closed) Butterfly World. It is not a major transport corridor. In fact, it is now not even possible to travel up Miriam Lane – since it is blocked by closed gates. The GBR had placed a lot of weight on Butterfly World as providing a physical barrier.

Now that Butterfly World is closed, the extent to which Miriam Lane provides a permanent physical boundary at the south-western corner of the South Site is reduced.

355. The proposed development introduces built form close to the edge of the site in this sensitive location. This will increase the perception of urban sprawl, resulting in a moderate degree of harm to this purpose – as correctly assessed by Mr. Connell.

*To prevent neighbouring towns merging into one another*

356. Similar considerations apply to the South Site as they do to the North Site (see above). For the reasons set out there, there is a degree of harm to this purpose (albeit limited).

*To assist in safeguarding the countryside from encroachment*

357. It is common ground that there is some harm to this purpose. That finding of harm must include an acceptance that the Site is currently countryside. Post-development, however well-designed the scheme is, the South Site will no longer be perceived as countryside.
358. However, the harm to this purpose is greater than that assessed by Ms. Toyne (moderate as opposed to limited). In particular, the extent to which the South Site is influenced by the urbanising effect of Butterfly World has reduced since Stage 2 of the GBR was published in February 2014. There can be no doubt that the dome that was permitted under the original Butterfly World planning permission would have been a significant feature in the landscape – at 23 metres in height and 100 metres in diameter.
359. It would have contributed significantly to a perception of the appeal site as an urban fringe location. If constructed, the dome would have had more of an effect on the openness of the Green Belt in this location than the base of the dome – which is what is currently on site at the moment. At the time that the GBR was published, Butterfly World was open and there was no reason to suppose that the dome would not eventually be built once sufficient funding had been obtained. Now, as Mr. Connell explained, there is no prospect of that occurring.
360. Therefore, circumstances have changed since the GBR was published. Whilst the South Site is influenced by the existing urban edge to the east; there is less influence to the west. In simple terms, the South Site reads more as countryside now than it did before. That countryside would be encroached upon by the westward expansion of Chiswell Green resulting in moderate harm to this purpose.

#### Conclusion on Green Belt Harm

361. Substantial weight must be given to the harm identified on both sites.
362. It is important to recognise that this involves giving substantial weight to a degree of harm. Whilst Mr. Kenworthy refused to agree, giving substantial weight to a substantial level of harm is a weightier consideration under paragraph 148 of the NPPF compared to giving substantial weight to a limited level of harm. That must be the case otherwise the overall weight that would be given to (say) the harm to openness arising from a larger replacement house in the Green Belt

would be the same as that given to major warehouse development. The fact that he failed to recognise this calls into doubt his overall planning balance.

363. On the North Site, Mr. Fidgett's approach is even harder to understand. Whilst substantial weight is given to the definitional harm, the other Green Belt harm he identifies is given less than substantial weight (either moderate or moderate to substantial). Again, it is impossible to understand why, since there is no explanation for this in his written evidence. However, it is plainly inconsistent with the NPPF which states that substantial weight should be given to "any harm to the Green Belt" (paragraph 148). The only element of harm that substantial weight has been given to is the definitional harm. Therefore, not only has the North Site underplayed the degree of Green Belt harm caused by the development, this is compounded by impermissibly reducing the weight to be given to this harm. The overall conclusions reached by Mr. Fidgett should be treated with considerable caution in the light of this.

#### Non-Green Belt Harm

364. It is then necessary to consider any other non-Green Belt harm in respect of both sites. This includes, for both sites, (i) harm to landscape character and appearance and (ii) loss of best and most versatile ("BMV") agricultural land.

365. In this respect, it is important to remember that any other harm must be weighed into the balance under paragraph 148 of the NPPF. Therefore, the fact that the reasons for refusal do not indicate a freestanding breach of either agricultural land or landscape policies does not make any difference to the balance under paragraph 148 of the NPPF. If there is harm, which there is, it must be weighed into that overall balance and the degree of harm is the same whether or not it is said to separately breach the relevant local plan policies.

#### *Character and appearance*

366. There is harm to landscape character and appearance on both sites, although to different degrees. Harm to the intrinsic character and beauty of the countryside is harm to be weighed against the grant of planning permission. Unlike a non-Green Belt case, there is no need to decide whether this harm would be "unacceptable" in its own right. As set out above, all that is needed is to assess the level of harm caused and add it to the balance of harm arising.

#### North Site

367. The starting point is the weight to be given to the LVIA submitted with the application, and indeed the evidence of Mr. Gray more generally. Unfortunately, that evidence can be given very limited weight and nor can there be any confidence that the LVIA accurately sets out the effects of the development.

368. It was rightly accepted that the LVIA is an important document in the determination both of the application and of this appeal. However, it is riddled with errors. To take just one example, Mr. Gray acknowledged that the conclusion it reached on the effect of the development on the landscape features of the Site was "plainly wrong" and needed to be "re-written" – not least because it showed that the landscape effects of the development got worse, not better, over time. For some reason, the North Site Appellant did not take the opportunity to correct these errors before the Inquiry began even though they were pointed out by Mr. Friend over a month before on the exchange of proofs. As a result, the

LVIA was effectively re-written in the course of the Inquiry through a "Statement of Common Ground" that Mr. Gray acknowledged was itself "rushed" and did not fully correct the LVIA.

369. This is a point that goes well beyond the credibility of the judgments reached in the LVIA and subsequently. As Mr Gray accepted, assessing the nature and significance of effect is an important part of LVIA process and for an LVIA to be fit for purpose, it is important that the assessment of effects is transparent and understandable. It was also (rightly) agreed that it is important to know why effects are adverse both to know whether and to what extent they will reduce, but also to design effective mitigation for the development. The LVIA (even as re-written through the "SOCG") does not fulfil this function. For example, Mr. Gray accepted that there was nothing in the LVIA which records why there are major adverse effects on the features of the Site post-construction. The LVIA does not transparently set out the nature of the effects from the development and is therefore not fit for purpose; and nor is it of any assistance in designing effective mitigation (even at the outline stage) – or in providing any confidence that the effects can be acceptably mitigated.
370. That can then be seen in the proposals we have in front of us. There are no parameter plans addressing matters such as building height, or site layout (unlike on the South Site); nor any landscape strategy to inform the consideration of landscaping at reserved matters stage (again, unlike the South Site). Further, for all that the North Site Appellant waxed lyrical in its evidence about how the development was "landscape-led", the indicative masterplan was obviously fixed at a very early stage in the process and had not been informed by the LVIA in any meaningful sense at all. Mr. Gray had not even spoken to the design team. Whilst Mr. Friend has taken into account the potential for mitigation in his assessment of effects, even for an outline proposal it is uncommon for there to be so much uncertainty about how the development could actually acceptably come forward at this stage and what the residual effects would actually be.
371. The assessment of visual effects was similarly flawed. There is agreed to be no GLVIA compliant assessment of the effects of the development on Footpath 82 in the LVIA, notwithstanding the fact that it runs in close proximity to the Site to the east. Further, at times in his evidence, Mr. Gray appeared to be making up the visual effects of the development on the spot (for example, in the space of under a minute, Mr. Gray said that there would be "no harm" to visual receptors on Footpaths 80 and 21; then minor harm; then no harm; then beneficial effects; before eventually settling on no harm).
372. These key errors were then compounded by a failure to take into account important elements of the appeal proposals. For example, the effects of the footpath connections onto Footpath 21 on the north and south-west corners of the North Site had not been assessed. Further, Mr. Gray had not assessed the impact of the emergency access to the east of the North Site which would result in a break in the existing boundary hedgerow. As a result, his assessment of effects was revised on the hoof in cross-examination.
373. None of these errors can be wished away on the basis that this is an outline proposal. Of course it is, but changing the indicative masterplan will have other and different consequences. For example, strengthening the buffer to the west,

or moving built form away from the western boundary will simply move built former closer to the northern or eastern boundaries. These consequences have not been assessed at any point, both because the LVIA is so flawed and also because the indicative masterplan was never truly landscape-led in the first place.

374. Finally, the attempt to give new landscape evidence through Mr. Fidgett should be given short shrift. Mr. Fidgett is not a qualified landscape architect and had expressly relied on the findings of Mr. Gray on landscape and visual matters in his written evidence. He agreed that on matters falling within Mr. Gray's expertise the latter's evidence should be preferred.
375. For all these reasons, there is a very real doubt about whether there is sufficient information before the Inquiry to properly assess the landscape and visual effects of this development. Even if that is not accepted, and working on the basis of the material that we have, it is clear that the North Site Appellant has significantly understated the effects of the development on landscape character and appearance.

#### *Landscape character*

376. It is common ground that the North Site and its features has a medium sensitivity; that there would be a large magnitude of change at Year 1, and a medium magnitude at Year 15; and that there would be a major adverse effect at Year 1 and a moderate significance of effect at Year 15. Unusually, the dispute is as to the nature of effect at Year 15 – since Mr. Gray contends that the development would have a residual beneficial (rather than adverse) effect on the landscape character of the North Site itself.
377. There is no basis for this conclusion which falls apart on the most cursory examination. It is common ground that post-construction there will be a "large" magnitude of change – defined in the LVIA as "Permanent removal of, or a significant change to, the characteristics of the landscape element in question. Limited scope for replacement, reinstatement or other mitigation". Not only does that finding in of itself suggest that there would be limited scope for mitigation but the significant change to the characteristics of the North Site which is adverse in Year 1 is agreed to be the introduction of built form onto the site. That harmful effect of the development, which covers 74% of the Site, remains there at Year 15.
378. Rather, it is agreed that the main change that has happened in the 15 years post-construction is that the landscaping will have matured. However, whilst this might help soften and integrate the new built form (which is why Mr Friend reduces his adverse effects from major to moderate) it is agreed that the new green infrastructure will still be perceived in the context of a new housing estate – the very thing that was causing the major harm in the first place. It is therefore very hard to understand why the adverse effects do not merely reduce, but (on Mr. Gray's approach) are in fact offset to such an extent that the net effect is beneficial.
379. The only substantive answer he could give was that the landscaping would be "exemplary". However, as he agreed, achieving well-designed landscaping is a requirement of national planning policy, and therefore any scheme; and there is simply no detail as to what this supposedly exemplary landscaping would involve;



whether it could be provided whilst still delivering the required quantum of development; and why it shifts the effects all the way to beneficial. Anyone can turn up to an Inquiry, claim that their scheme will be “exemplary” and then say (without more) that the overall effect will be beneficial. We rightly adopt a more rigorous approach than this.

380. In truth, as Mr. Friend finds, the residual effect of the development (with mitigation) on the landscape character of the Site and its surroundings would be to irreversibly change the character of the agricultural field from arable field to one with built form, associated managed open space, infrastructure and activity. Whilst the maturation of the primary and secondary mitigation measures, in particular the planting within the open space, will result in a softening and filtering the built form, the rural character of the North Site will have been lost. The effect would be a moderate residual adverse effect to its landscape character. That is a sensible, balanced, and reasoned view.

381. For similar reasons, the harm to the setting of the Site would also be moderate adverse. It is common ground that there would be no material impact on the wider St Stephens Plateau Landscape Character Area.

#### *Visual effects*

382. Turning next to visual effects. These would be experienced primarily from the north, east and west of the Site and the adverse effects on visual appearance would be significant from a number of PROWs, including three which run along the North Sites’ boundaries. The suggestion in the LVIA that the overall adverse visual effects are negligible seriously misjudges the effects of the development; and in any event was revised during the course of the Inquiry.

#### *Views from PROW to the immediate north and west of the site*

383. There are two PROWs that border the North Site: (i) Footpath 80, which runs to the north of the site and (ii) Footpath 21, which runs to the west.

384. Mr. Gray assesses the residual significance of effect as being “neutral”. There are two main reasons for this. First, the sensitivity of visual receptors using the footpath is recorded as being “low”. Second, the residual magnitude of change is recorded as being “very small”.

385. So far as sensitivity is concerned, Mr. Gray has severely underestimated the sensitivity of views from these footpaths. His assessment of “low sensitivity” is equated with a “small number of private views visible from principal living spaces” under his LVIA methodology which is clearly not relevant to views from a PROW. These are publicly accessible views; available to receptors likely to be using the PROWs for the purposes of recreation; by users likely to have the expectation of a rural outlook. The sensitivity should therefore be “high” under his own methodology – as assessed by Mr. Friend. In cross-examination, Mr. Gray agreed that, in accordance with GLVIA, the susceptibility of visual receptors using these footpaths was “high”. In those circumstances, an overall “low” sensitivity is plainly wrong.

386. So far as magnitude is concerned, Mr. Gray’s assessment is that there would be only a “very minor loss or alteration to a key feature or characteristic of the existing view”. Along both footpaths, residential built form is not characteristic of the existing landscape for much of their length as they run around the site. Even

post-mitigation, built form will be visible above the hedgerow from Footpath 80 and through the existing planting from Footpath 21. Mr. Gray agreed that built form on the northern boundary "will be visible and evident". Further, as Mr. Gray accepted, at all points along the footpaths, people will be aware that they are walking next to a housing estate. Further, at the two points where there will be a break in the hedgerow on the western boundary of the site, "clear views" will be available into the North Site. This is not acknowledged anywhere in the assessment of effects in the LVIA.

387. Overall, there would be a substantial adverse effect on visual receptors along both footpaths.

*PRoW St Michael Rural Footpath 12*

388. This footpath is adjacent to Square Wood, at an elevated position to the west of the North Site. It is agreed not to be a localised view of the North Site. It is common ground that the view is currently over open countryside; that housing development is not a characteristic component of the view; and that the existing settlement edge of Chiswell Green is not a prominent or detracting feature in the view. It is also agreed that housing on the North Site will be evident post-construction. Mr. Friend is right that there will be clear views into parts of the North Site from this location. Further, there is little that can be done by mitigation to prevent views into the site – because the site is visible by virtue of Footpath 12 being at a higher elevation than the site. The resultant harm to visual receptors at this location would be significant.

*Views from the east*

389. These views are from residential properties on Cherry Hill/The Croft and from Footpath 82 which runs north/south to the east of the site from Chiswell Green Lane. It is common ground that the upper storeys of the development will be visible from both residential properties and also from Footpath 82 even at Year 15. Further, Mr. Gray had assessed the visual effects from this location on the basis that "The existing evergreen hedge that defines the eastern boundary of the appeal site and the paddocks will remain unchanged". This is completely wrong as there will be a break in the hedgerow to allow for a tarmacked access of 5 metres in width and 55 metres in length. This break is agreed to enable clear views into the site and Mr. Gray agreed that the magnitude of change will increase for both residential properties and also receptors on Footpath 82 beyond that assessed in the LVIA.

390. It was agreed that there will be a large magnitude of change from the residential properties and also from part of Footpath 82 (whereas the LVIA assessed this as only being medium for the properties and the magnitude of change for the PROW had not been assessed in the LVIA). It was also agreed that there would be major (as opposed to moderate) adverse effect on residential properties – this is a significant effect under Mr. Gray's methodology.

391. Overall, therefore, the North Site Appellant's suggestion that the adverse visual effects are negligible seriously misjudges the visual effects of the development. The effect from all of the receptors set out above would be significant; and there would be a level of additional harm that would be significant in views from Chiswell Green Lane and from Footpath 39.



392. Mr Connell is right to give substantial weight to the overall harm from the North Site to landscape character and appearance. Mr. Fidgett's suggestion that the degree of harm is "limited" is impossible to reconcile with Mr. Gray's evidence. Mr. Fidgett's further suggestion that the harm (which is common ground, if not its extent) should be given "no weight" (i.e., effectively disregarded) is, with respect, a nonsense. The idea that the now acknowledged landscape character and appearance effects of the development should be given no weight is yet further evidence that the overall planning balance carried out by the North Site Appellant is partial and inadequate and ultimately unsound.

#### South Site

393. On the South Site there is significant agreement between the landscape witnesses. It is common ground that there is some harm, both to landscape character and in terms of its visual effects. However, this is ultimately given limited weight by Mr. Connell in the overall balance. Given this, it would not be proportionate to address in detail the few points of difference between Mr. Friend and Ms. Toyne in this closing – the details of which are addressed in Mr. Friend's written evidence.

394. Nevertheless, this harm (albeit limited) must be taken into account under paragraph 148 of the NPPF, since this paragraph requires all harms to be taken into account, not just those effects which are deemed to be of significance under the relevant LVIA methodology.

#### *Agricultural Land*

395. Both developments would result in the loss of BMV agricultural land. On the North Site, 10.9ha of Grade 3a land is lost from a total site area of 14.2ha; on the South Site it is 7ha from a total site area of 13.9ha. This results in additional harm (albeit limited) in respect of both sites, that must be weighed into the balance.

#### Other Considerations

396. The nature and level of benefits is very different on the North Site compared to the South Site. However, on both sites, the benefits fail to clearly outweigh the harm identified. Further, in considering the benefits of each proposal, a careful judgment is required – rather than merely regurgitating the findings of other Inspectors, often involving different circumstances and contexts, but in any event reflecting no doubt the evidence and arguments that were put before them which almost certainly also differed from here.

#### Benefits on the North Site

##### *Affordable housing for key workers*

397. This is the only truly substantive benefit that the North Site delivers. That said (i) it is important that the decision here is made based on planning, rather than emotive, considerations; and (ii) the delivery of key worker housing, which is clearly an important benefit of this proposal, is just one component of the wider planning balance that must be carried out in accordance with national planning policy.

398. Whilst Mr. Fidgett has divided this into three apparently separate benefits (Housing; Key Worker Housing; and Affordable Housing), in truth there is one substantive benefit since the "Housing" is "Affordable Housing" and it is only for "Key Workers". Indeed, he agreed that, whilst the benefits had been disaggregated, cumulatively they amounted to very substantial weight to the benefit arising from the new housing provided by the development. Whilst splitting up this benefit into three may superficially appear to increase the "number" of benefits that arise on the North Site; it is well-established that the planning balance under paragraph 148 of the NPPF is not a mathematical exercise.
399. The Council agrees that the delivery of key worker affordable housing is not only a benefit of the proposal but one which ought to be afforded substantial weight. The Council fully supports the provision of key worker housing.
400. The only difference relates to whether this should be substantial weight at the very highest end of the scale (i.e., very substantial) or not. This is important context. There is no suggestion by the Council that the proposed homes will "sit empty" or that the option to buy a home on the North Site would not be a profound benefit for those able to do so. Clearly, it would be. Increasing home ownership is, rightly, a key national policy objective.
401. However – when considering whether this benefit of the proposal ought to be given the very highest weighting - the Council is right to challenge the extent to which the reduction in prices will make the housing on the site materially more affordable than existing market housing elsewhere in the District and whether the proposal meets the priority need for housing in the District. These are factors that go to the degree of substantial weight; not whether this is a benefit in the first place.
402. Perhaps most importantly, even if very substantial weight is given to this benefit, ultimately it does not affect the overall planning balance. Given the level of harm to the Green Belt (combined with the degree of landscape and visual harm), this benefit cannot be said to clearly outweigh the harm (even in combination with the other fairly generic benefits relied on by the North Site Appellant).
403. It is suggested by the North Site Appellant that the LHNA ought to be given limited weight. However, it is agreed to be the most up to date assessment of affordable housing need in the District before the Inspector. It has been tested at the examination into the Watford Local Plan and was not the subject of criticism in the Inspector's Report. There is no criticism by the North Site Appellant of the methodology that sits behind the assessment, and nor are alternative figures offered. Indeed, the affordable Housing Statement of Common Ground is based on figures from the LHNA. Plainly, it can be given material weight for the purposes of this appeal.
404. Numerous attacks have been made on the Council, in particular by Mr. Parker. He has sought to characterise the Council's approach to key worker housing as being "tardy", "unambitious" and "indifferent". These accusations are unfair, and many fall apart upon objective scrutiny.
405. For example, far from being "entirely excluded from the Council's evidence base on housing needs" (as Mr. Parker claims) the South West Hertfordshire

Local Housing Needs Assessment (2020) ("the LHNA") includes key workers within its assessment of the need for affordable housing for rent and for affordable home ownership ("AHO"). The true complaint is that the needs for key workers have not been separately assessed. However, it is agreed that there is no requirement in national planning policy to do so; and the approach taken in the LHNA was not the subject of any criticism by the Inspector who examined the Watford Local Plan; Mr. Parker has put forward no evidence of any local authority post-NPPF separately measuring Key Worker housing need; and it is agreed that this is not common-place.

406. There are numerous other examples of Mr. Parker's criticisms of the Council being overblown and his evidence should be read with some caution. As should the repeated references to "Jubilee Square" as if this somehow proved that the Council was acting inconsistently in its approach to this appeal, notwithstanding, as Mr. Connell pointed out, Jubilee Square is not a scheme designed solely for key workers. Ultimately, Mr. Parker accepted that a fair characterisation of the position was his own words – before permission was refused – namely that the Council is genuinely committed to delivering more affordable housing through an up-to-date plan but like many Councils has found it difficult. Given this, it is regrettable that rather than simply focussing on the benefits of the proposed development for key workers, the North Site Appellant has decided to spend a considerable amount of time seeking to unfairly run-down the Council's approach to this issue.

407. Another distraction is the repeated reference throughout the Inquiry to many key workers earning more than the income threshold under the Council's Allocation Policy. However, the purpose of the Council's allocation policy is to allocate households on the housing register for social and affordable rented housing. There is no criticism of the levels set in the Allocations Policy, which are set at that level because, above that threshold, households have sufficient income to meet need for rented accommodation on the private market and therefore do not have a need for rented affordable housing– which is what the allocations policy is designed to allocate. Key worker households who earn less than the threshold (and therefore do have a need for rented affordable housing) are, of course, fully entitled to affordable rented accommodation.

408. This scheme is designed to meet a different need – i.e. those who are able to afford to rent in the private sector, but not to buy at all on the open market. For those in the gap between renting and buying that need will be met once they are able to afford a lower quartile home of a suitable size. That is because a lower quartile home is seen as "entry-level" market housing. That is the approach taken in the PPG for the purposes of assessing affordable housing need. Whilst as Ms. Gingell pointed out, the PPG does not require discounts to be set in relation to a lower-quartile price, it would be surprising if did. Whether or not this is needed will depend on the disparity between lower and median prices in any particular area; and (as set out above) the Council's concerns here go to weight not whether the proposed development amounts to affordable housing. Consistent with the PPG, this is also the approach taken by the LHNA which has used "lower quartile prices...to reflect the entry-level point into the market" (and remembering that this approach albeit not tested at examination in St. Albans has been considered in the Watford Local Plan examination).

409. It is also consistent with common-sense. If the housing that is provided at the development is in fact more expensive than entry-level housing elsewhere in the District, that will obviously reduce the extent of its benefit because those purchasing a home in the development would have been able to purchase an (undiscounted) home elsewhere.
410. With that in mind, it is necessary to consider the discount that is being offered here and whether it would result in properties that are more affordable than the entry-level price of housing elsewhere in the District. As it is put in the LHNA "...The problem with having a percentage discount is that it is possible in some locations or types of property that such a discount still means that AHO housing is more expensive than that typically available in the open market (i.e. lower quartile homes). This is particularly the case when this discount is applied to new homes which already attract a new-build premium".
411. The key issue here is that the discount for all tenures being offered (First Homes, Shared Ownership and Discounted Market Sale) is applied to the median house price district-wide of a similar property (assuming that this is lower than the open-market value of the property itself given the disparity in house prices between St. Stephen's ward and the District as a whole).
412. Discounted Market Sale properties: according to ONS data, the price of an entry-level home in the District is £415,000 – without a discount. That requires a household salary of £83,000 to purchase. The same data shows that a median-quartile home in the District – with a 33% discount is c. £395,000. That requires a household salary of £79,000 to purchase. This is a difference of about 5%. However, this data comes from the ONS data-sets and therefore includes all properties sold. It is agreed that the properties at Addison Park would attract a new-build premium of around 15%. Applying this to the ONS data, even with a discount of 33% and even applying that discount to the district-wide median price, the sale price of properties at the development would be more expensive than an entry-level home elsewhere.
413. That can only serve to reduce, at least to some extent, the benefit of this development. It is no answer to say that the discount is "at least" 33% since there is no obligation on the owner to sell at a greater discount; and why would it if there is a purchaser who is willing to purchase at that price (for example, someone able to afford an entry-level home in the District but who would prefer to purchase a new-build property at Addison Park). The point is that linking the discount to the median (rather than entry-level) price severely limits the benefit of this proposal in genuinely enabling key workers to enter into the housing market who would not otherwise be able to do so.
414. First Homes: exactly the same issue arises. We know that the capped price for First Homes, with the discount, is £250,000. But that is largely meaningless without knowing whether a similar entry-level home could be purchased for the same price, without any discount.
415. Shared Ownership: The position here is slightly different, as the key consideration is whether the rent that must be paid (applying the North Site's discount to a median-priced property of a similar size) is higher than a lower-quartile rent. Even on the basis of purchasing a 10% share in the property (the lowest amount possible), any properties sold above £482,500 would result in a rent that exceeds the lower-quartile rent. And this calculation excludes other

outgoings that could affect the affordability of a purchase (which is taken into account by mortgage providers) – for example, the monthly cost of the mortgage, service charge, loans, monthly outgoings. Notably, these are factors that the LHNA considered were relevant when assessing whether shared ownership products offered a genuine ability to purchase a property in the District for those that were otherwise unable to do so.

416. Therefore, the position is not as straightforward as being able to point to key worker households (often on high incomes) who may be able to afford the properties on the development. That really is only half of the picture – it leaves unanswered the big question namely whether those households are being given an opportunity to purchase in St. Albans which they would otherwise not have had.

417. On top of this is the fact that the development would not be meeting the priority need for affordable housing. That is self-evidently for affordable and social rented properties. Indeed, the LHNA is clear that this should be given priority over AHO “as it makes provision for those that are more in need”. Of course, there is not a policy requirement for a specific tenure split for affordable housing. But that rather misses the point. This is inappropriate development that is sought to be justified in the Green Belt on the basis that VSC exist – a high bar. It is clearly relevant in that context, when judging the weight to be given to this central benefit of the proposal, to take into account that it would do nothing to address the priority need for affordable housing in the District.

418. Overall, Mr. Connell was fully entitled to give this benefit substantial weight. Yes, it is a substantive benefit, but ultimately given how the North Site Appellant has chosen to price the properties at the scheme against a district wide median price, not one that should be given the very highest degree of weight.

#### *Self-build affordable housing*

419. The self-build provisions in the section 106 agreement have undergone considerable revisions in the course of the Inquiry – and indeed after all of the evidence had been heard (notwithstanding that Mr. Connell’s concerns about the self-build housing, as originally proposed, were raised a month before in the Inquiry in his Proof of Evidence).

420. The Council still has concerns about this element of the proposal. The discount on the original purchase of the plot will be no more than £20,000 and, as Mr. Connell explained, a purchaser will then need to construct their home with no discount on the construction costs; before selling at a 33% discount on market value. There remains a risk for any initial purchaser that this will not be a viable proposition. In any event, there is no evidence of the actual demand for affordable self-build properties by key workers, in circumstances where any purchaser of the plot would require a significant capital sum in order to self-build – this is not a question of the plots remaining empty but rather goes to the extent to which this development will help meet the District-wide need for self-build plots as set out on the register. These concerns do remain unresolved, even with the agreed provisions in the section 106, and they are matters that go to the weight to be afforded to this benefit.

421. In any event, even if substantial weight is given to the self-build element of the proposal it should be recognised that just 5% of the units are self-build (i.e.



16). As with the harms caused by the proposal, this substantial weight is being applied to this particular degree of benefit. The fact that the weight that is given to this benefit is the same as that afforded to the Green Belt harm (i.e. considerable harm to a designation of national importance) obviously does not mean that the two considerations somehow cancel each other out.

### *Economic benefits*

422. The economic benefits claimed fall into three main categories: (i) construction employment and spend (ii) support for local facilities and services and (iii) "revenue benefits" – such as contributions through section 106 contributions and tax revenues. Taken collectively, they should be given moderate weight.

423. The job creation during the construction stage is relatively low in real terms, and only temporary during the construction period.

424. The benefits from Council Tax revenue and New Home Bonus receipts should not be taken into account as there is no evidence that they will be used to help make this development acceptable in planning terms and therefore in accordance with the PPG should be disregarded (as agreed by Mr. Kenworthy). Council Tax receipts merely cover the cost of public services which are required to be delivered to residents in the Council's area and there is no evidence that the New Homes Bonus would be spent in a way so as to make the effects of this particular development acceptable in planning terms. The section 106 contributions are put forward as mitigation for the development.

425. Therefore, the only real economic benefit here is the support the development would provide for local facilities and services, which is moderate given the size of the development and taking into account the fact that not all of the anticipated spend would be spent within the District itself. The benefits that arise here would arise from any scheme of a similar size within the District. There is nothing unique or special about the economic benefits that would arise from this development.

426. Whilst the North Site has never directly subscribed to the argument that paragraph 81 of the NPPF mandates that significant weight be given to the economic benefits of a proposal – whatever their extent – I deal with that argument here. It is plainly wrong. In truth, it is a clever "lawyer's argument" that fails to read the words used in paragraph 81 of the NPPF in full and in their context: paragraph 81 states that significant weight is placed on the need to support economic growth and productivity; not that significant weight should be given to any economic benefit of development. The paragraph could quite easily have said: "local authorities should ensure that significant weight is given to any economic benefits of a proposal" – in the same way in which that instruction is given in respect of Green Belt harm. It is therefore entirely consistent with paragraph 81 of the NPPF to give significant weight to that general need, but only moderate weight to the actual economic benefits delivered by this proposal taking into account the factors set out above.

427. This is why Inspectors do not simply give significant weight to the economic benefits accruing from every scheme. Simply because the Inspectors in those decisions did not expressly reference paragraph 81 in their appeal decisions does not mean that they did not take it not account.

428. In any event, an approach that paragraph 81 requires significant weight to be given to all economic benefits is not one taken by Mr. Fidgett (or Mr Kenworthy for that matter) in their evidence, since they gave even more than the supposedly mandated weight. Whilst Mr. Kenworthy sought to argue that the reference to "significant" in the NPPF was merely a "starting point" this leads to absurd consequences, because at the same time he was quick to emphasise that the NPPF imposes a "cap" on the weight to be afforded to Green Belt harm of "substantial" – ruling out very substantial weight being given. There is no obvious reason why the NPPF should take this approach; and many reasons why it would not.

#### *Public access and recreation*

429. The provision of public access to additional open space is recognised to be a benefit of the proposal. However, the weight to be afforded is limited. Significant areas of public open space already exist in the local area (including a children's play area right next to the north-east corner of the North Site), and there is no evidence of any identified shortfall in local open space in the vicinity. Whilst the open space on the development may be on the "doorstep" of the new residents, it is unlikely to be extensively used by other residents in the area given the existing provision. There would be additional access provided to the PROW network, however there are already a number of connections to this network (and on the North Site in particular, there is already a safe east-west route along Footpath 80 which avoids the need to walk along Chiswell Green Lane).

430. It is also important to remember that the development would (i) be providing additional access to PROWs that would themselves be harmed by the development through adverse visual effects and (ii) the "exemplary" open space, and the recreational opportunities it provides, has already been taken into account by the North Site Appellant in reducing the landscape harm caused by the proposals. It is double counting to separately count it as a free-standing benefit of the proposals. No additional weight should be given to this "benefit".

#### *Biodiversity Net Gain*

431. This was raised as a benefit for the first time by Mr. Fidgett in his evidence in chief. It had not previously been referred to as a benefit in his proof, rebuttal proof, SOCG1 or even SOCG2. Nor was Mr. Connell asked about it.

432. It is suggested that weight should be given to it as a benefit to ensure consistency with the South Site. However, the circumstances there are entirely different. For a start, no BNG calculations were submitted with the application; therefore, we do not know whether there will be an "on-site" net gain or loss, and the degree of this; as such, we do not know how much of the 10% net gain will need to be delivered off-site; further no potential receptor site for the off-site net gain has been identified; and therefore at this stage, there is no detail at all as to how the net gain will be delivered. The reverse is true on every count on the South Site.

433. Mr. Fidgett was originally right to have given this no material weight as a benefit. Even if weight should be given to "ensure consistency", it should be limited. There is already a policy requirement to achieve a net gain in the NPPF, and it is expected that the mandatory 10% requirement will come into effect in November this year. If we were here in 6 months time, what is secured through



the section 106 would be an automatic condition on any grant of planning permission by virtue of the Environment Act. Reflecting this, and the fact that the net gain achieved is modest in any event, Mr. Connell was right to give only limited weight to this benefit.

#### Benefits on the South Site

434. The Council accepts that there are a number of benefits which weigh in favour of the grant of planning permission on the South Site. However, they do not clearly outweigh the identified harm.

#### *Housing Need*

435. There is no material dispute as to the extent of the general housing need. The Council does not have a 5YHLS. For the five-year period (2021/2 to 2025/26) there is just a 2- year supply of deliverable housing sites and no early prospect of that deficit being addressed. There is also accepted to be an acute affordable housing need in the District. The provision of up to 156 affordable housing units as part of the development, with a mix of tenures (affordable rent, first homes, social rented homes and intermediate/shared ownership) would be a very substantial benefit. In consequence, both in relation to housing and affordable housing the Council has afforded the very highest weighting level to the contribution which the appeal proposals would make towards meeting the unmet needs (very substantial weight). The delivery of shared ownership units is also agreed between the parties to have substantial positive weight.

#### *Education*

436. The Council accepts that there is a benefit from the school land – the issue is the weight to be attached to that benefit: either substantial (Mr. Hunter) or limited (Mr. Connell).
437. The description of development seeks permission for “the provision of land for new school”. It is plainly relevant when considering the extent to which this land is a benefit, to have regard to the likelihood of whether a school will come forward on the site or not. In this respect, there is no suggestion that there is any need for a secondary school on the site – the two options are a primary school or a SEND school.

#### SEND school

438. The views of Hertfordshire County Council (“HCC”) – as Education Authority and as the organisation who would ultimately decide whether to build a SEND school on this site – should obviously be given very significant weight. In this respect, HCC did not request that land be available for a potential SEND school. Indeed, there is no agreement with HCC that the site would be suitable for a SEND school; HCC consider that further feasibility work is required. The need for further feasibility work plainly introduces some uncertainty about whether a SEND school will come forward on the site. Further, whilst Mr. Hunter concludes that the size of the site is suitable to accommodate at least 80 PNI children, he also agreed that size isn’t the only factor when deciding whether a site is suitable for a PNI school – hence the need for further feasibility work.
439. This alone is sufficient basis to only afford limited weight to the potential for a SEND school coming forward on the South Site.

440. In addition, there is the question of whether or not there is a need for a SEND school here. It is agreed that there is no need for a Severe Learning Difficulties ("SLD") school on the site – however, Mr. Hunter says that there is a need for a Profound Neurological Impairment ("PNI") school on the basis that HCC does not have a strategy for meeting a supposedly unmet need for those places. The sole basis for this is a close and forensic reading of the text in HCC's Statement of Case. However, the organisation best placed to know whether or not there is a strategy for PNI places is HCC. There is nothing from them to suggest there is real need for such a school, even when it was directly asked by the Appellant "whether there is a deficit in provision". Indeed, HCC considers that its School Place Planning Strategy shows that the education land is unlikely to be considered as an option for a new SEND School – including for a PNI school.

441. Ultimately, HCC's position is that the potential for a SEND school "was an accepted offer on the basis that it does not prejudice HCC" – i.e. providing the option of a SEND school on the land would not cause any harm. Hardly a ringing endorsement for a benefit to which the South Site Appellant gives substantial weight.

#### *Primary School*

442. The South Site sits within the St Michael's Primary Planning Area – where there are two primary schools – Killigrew Primary and Prae Wood School. The current forecast, without either development, is that there would be a surplus of places in the St Michael's Primary Planning Area up to 2026-27.

443. Importantly, Killigrew Primary School has the potential to be expanded from 2 forms of entry ("FE") to 3FE. That expansion from 2FE to 3FE would accommodate the likely pupil yield from this development - on the agreed basis that development in this location will generate a need for an additional 1FE per 400 dwellings. That option of expanding Killigrew Primary School to meet the additional demand as a result of the development would bring some advantages to Killigrew School. Having a school with three forms of entry would help the financial viability of the school since larger schools are more able to cope with future fluctuations in roll numbers.

444. HCC's position is that if the South Site is the only site to come forward, it may be appropriate for the additional primary school capacity required to be delivered through an expansion of Killigrew Primary School since, if just the South Site is approved, that would not generate enough pupils to support opening a new primary school. So, the probability of a new school being needed (as opposed to meeting the need arising from the development through an expansion of Killigrew) is inherently linked to level of future growth. To provide a critical mass to support delivery of a new primary school would require in the region of 800 new homes to come forward – beyond those originally forecast (i.e., the South Site plus 400 others).

445. HCC's position is that there is currently uncertainty surrounding the levels of growth in the local area. That is plainly right given the stage that the emerging Local Plan is at. There is nothing from HCC that says that a new primary school on the site is likely. Therefore, whilst the provision of land is clearly a benefit, not least in providing some flexibility – as recognised by HCC (and as recognised by the fact that HCC considers it meets the tests under regulation 122 of the CIL Regulations) – it is not a benefit to which substantial weight should be afforded.

### *Other Benefits*

446. Economic benefits; open space, children's play space and access to PROW; and Biodiversity Net Gain have all been considered above in relation to the North Site. The weight afforded to each is the same in respect of the South Site as given to the North Site. Whilst there are of course some nuances in the position on each site (as reflected in the written evidence) a similar overall approach should be adopted in respect of the South Site.

### *Design*

447. It is said by Mr. Kenworthy that significant weight should be given to the design of the development on the basis that it would help soften and improve the existing "hard" settlement edge and therefore "help raise the standard of design more generally in an area". The Council's position is that this benefit is exaggerated.

448. However, in any event, delivering a development of high-quality design is a policy expectation under national planning policy. Paragraph 134 of the NPPF which tells us that development that is not well designed should be refused. If the development was not capable of providing a well-designed development at reserved matters stage, it would be contrary to national policy.

449. To be well-designed, development must comply with the elements of paragraph 130 of the NPPF - including that it adds to the overall quality of the area and establishes or maintains a strong sense of place. Therefore, to achieve significant weight under paragraph 134 of the NPPF a development must be more than well designed (which is a minimum expectation in any event) - it must help raise the standard of design more generally in an area. In other words, it is not enough simply to (for example) add to the overall quality of the area. Therefore, even if there would be an improvement to the settlement edge, the development does no more than what would be required of it under national planning policy in any event, and no weight should be afforded to this as a benefit of the proposal.

### Overall Planning Balance

450. On the North Site, the cumulative harms which the development would give rise to are very substantial indeed. The development would constitute a very significant encroachment into the Green Belt resulting in very substantial harm to its openness in conflict with its fundamental aim and causing harm to three of its purposes. In addition, there would be a high degree of harm to landscape character and visual appearance.

451. The benefits said to outweigh that harm are in the main generic - new open space provision, economic benefits and the like (although that of course does not mean that they should not be weighed into the overall balance). It does mean, however, that the main benefit put forward is the provision of affordable housing for key workers. However, if unmet housing need (whether for market or affordable housing) was given decisive weight in the overall planning balance, and used to permit a proposal that resulted in considerable Green Belt and landscape harm, then it is difficult to see where VSC would not exist for edge of settlement Green Belt development in the District. In other words, the set of circumstances here are far from being very special; the adverse effects in fact clearly outweigh the benefits.

452. As Mr. Connell fairly acknowledged, the balance is more marginal on the South Site – a function of the reduced level of harm to Green Belt openness and purposes; a limited degree of harm to landscape character and appearance; and a wider range of benefits. However, as tempting as it may be to simply say “well St. Albans needs to build on the Green Belt to meet its housing need; the harm here is “inevitable” if it is going to meet its need; and therefore, permission should be granted” that is not the exercise required by paragraph 148 of the NPPF. All harm (inevitable or not) must be properly weighed – and not reduced on that basis; further decisions about how the District’s housing need should be met, and where, are for the Local Plan process; and the NPPF has deliberately set a higher threshold that must be met when considering individual planning applications. Applying that high threshold test, the benefits may just outweigh the harm, but do not clearly do so, and therefore permission should be refused on the South Site.
453. Overall, VSC have not been demonstrated on either site. There is nothing “very special” about the circumstances of either case. The “other considerations” cumulatively fall far short of “clearly outweighing” the harms. As a result, both appeals should be dismissed.

### **The Case for Keep Chiswell Green (KCG) (Rule 6)**

*The summary below is largely taken from Keep Chiswell Green’s closing submissions, which set out the key points, as it saw them, at the end of the Inquiry.*

454. It seems clear to us that the crux of this Inquiry is a planning balance decision: does the harm that will be caused to the Green Belt, and the other harms that will result from the appeal applications, outweigh any benefits that the appeal applications may bring? We firmly believe that the benefits do not outweigh the harm that will be caused, even by each development individually, but we believe there is one further aspect to this decision which requires equal attention: with the worldwide climate crisis and commitment from our Government to decarbonise the transport system to meet climate ambitions, if these developments were to be granted, do they satisfy the criteria as sustainable developments? We do not see conclusive evidence that they do and so both appeals should be dismissed.

#### Harm to the Green Belt

##### *Developer led impositions on the landscape*

455. These speculative applications would each destroy 14 hectares of Metropolitan Green Belt – a total of 70 acres – and each represents a developer-led urban extension, each an incongruous “blot on the landscape” equivalent to 30% of the existing village. In combination, a gargantuan 60% extension to the village would be completely overwhelming and change not just the character of the village but also the character of the Green Belt in this area.

##### *Precedent*

456. The 2021 appeal decision in favour of 2 developments at Roundhouse Farm, Land off Bullens Green Lane in nearby Colney Heath (APP/B1930/W/20/3265925) and the subsequent decision at Sewell Park, known as “Land to the rear of 112-

156b Harpenden Road” to the north of St Albans (LPA 5/2021/0423/LSM) have demonstrated the extent to which a precedent can be set.

457. Since the Roundhouse Farm decision, there have been a further 4 applications in Colney Heath, totalling 460 new dwellings, in a village of only 750 inhabitants currently. Each application has cited multiple aspects of the Roundhouse Farm decision to add weight to and to justify their application.
458. It seems de rigueur since then, where a local planning authority has unmet housing need, to cite the Bullens Green Lane and the Sewell Park decisions as having established unmet housing need as the “very special circumstances” required to obtain permission for speculative development and to destroy many hectares of prime Green Belt land.
459. We already know that we can expect the same in Chiswell Green if the two appeal applications the subject of this Inquiry are granted. Within the immediate area, within a mile of these application sites, we expect 10 applications to follow in quick succession for a total of 2,892 new dwellings. If these are granted under the guise of “consistency”, the combined effect would be a near trebling of the size of the village of Chiswell Green, inverting the current sensitive balance between the village settlement and the Green Belt, and teetering, poised to take over the remaining ribbons of greenery within the tract of land bounded by the M1, A414, M25 and A405. This will be the death of the Green Belt by 1,000 cuts.
460. Given the nationwide scale of under-delivery of housing targets, the steady march of the precedent set by the Bullens Green Lane and the Sewell Park decisions must be halted, until the appropriate measures are in place for a truly plan-led system.

#### Harm through loss of the Green Belt

461. The loss of any part of this Green Belt would be harmful. Local residents and many more benefit from the beautiful views of the Green Belt extending for 2 miles and more from the numerous public rights of way that cross the Green Belt in this area, and from the rural lanes that provide scenic routes to other local hamlets and villages.
462. The lanes around the appeal sites are widely used by local groups including walkers, horse-riders and cyclists, light aircraft and microlite enthusiasts, Scouts and runners, as well as local residents and dog-walkers. The annual St Albans Half Marathon, which attracts runners from across the country, is routed through this area of Green Belt, which is described as “stunning” in independent reviews of the course. Participants benefit from the “intrinsic character and beauty of the countryside” (NPPF para 174b).
463. Harm will result from development on these sites in the loss of visual amenity to a significant number of local residents and the wider general public using the area, as well as to the visitors to St Albans.
464. Comparatively, the appellants have produced no evidence to say that they have examined other possible sites - brownfield sites in urban areas, other green belt sites where the harm may potentially be less impactful. Data from CPRE Herts (CD 6.9) shows that 373 brownfield sites are available for development in Hertfordshire covering 442 hectares of land. Furthermore, 179 of these sites have planning permission for 7,557 dwellings.

### *Loss of open space*

465. Mr Day confirmed when he gave evidence as an interested party (ID #8), which supports the evidence in our Statement of Case (CD 6.1 - Open and Play Space), the land to the South of Chiswell Green Lane was used "for decades" for walking and exercising dogs and children. Mr Kenworthy's evidence is correct that the general public is no longer allowed to freely access the appeal site (CD 3.18a para 7.18, 7.19) and it seems more than coincidental that the land was closed off around 2014 which is about the time that Mr Kenworthy testified that the Barton Willmore, now Stantec team started to promote the Land South of Chiswell Green Lane for development. We therefore consider it disingenuous that the appellant for the Land to the South of Chiswell Green Lane claims a benefit of moderate weight for re-opening up land that had been available to local residents until the project to promote this parcel of land for development was initiated.

### *Loss of agricultural land*

466. While the two sites are not currently being used for agricultural production, a 21-page proof of evidence from Mrs Tindale (CD 3.2a) on behalf of the appellant for the Land South of Chiswell Green Lane, and a 26-page assessment by ADAS (CD 4.3) on behalf of the appellant for the Land North of Chiswell Green Lane, each considering the suitability of the their site for agricultural production, can be summarised in one sentence which I quote from the ADAS Executive Summary (CD 4.3 page 9) : "the land retains its agricultural potential and could be reverted to agricultural production with minimal effort".

### *Loss of biodiversity and disregard for wildlife*

467. The southern parcel in particular of the appeal sites is rich in wildlife with badgers, bats and owls, as well as deer, small blue butterflies and other protected or rare bird and insect species, all of which have been evidenced by local residents.
468. Far from contributing to and enhancing the natural and local environment, and "protecting and enhancing valued landscapes, sites of biodiversity" as guided by the NPPF (para 174), these developments will turn 70 acres of green into concrete while Mr Kenworthy asserts in his evidence (CD 3.18a para 7.17) that the delivery of 10% biodiversity net gain should attract a moderate weight in favour of the development.
469. He accedes that Herts and Middlesex Wildlife Trust have asked for conditions to be added to any grant of permission for the development but fails to point out that HMWT were initially critical of the appellant's biodiversity assessments during the initial application process and required further assessments to be carried out. In fact, it is only as a result of pressure applied by HMWT that the appellant eventually completed the biometric assessment, and as the metric shows, and was confirmed to Mr Parkinson in questioning, development on the land to the South of Chiswell Green Lane would result in a 29% biodiversity net loss – that is to say that the site will lose nearly a third of its habitat for wildlife.
470. KCG is disappointed that, despite raising these issues in our Planning Statement (CD 6.3 para 56-59), the appellant for Land to the South of Chiswell Green Lane continues to ignore evidence of protected species on the site. Mr Kenworthy, under questioning declared the badger's sett "was in the wood" but,



despite photographic evidence from KCG to demonstrate the badger's existence and foraging on the appeal site, the appellant for the Land to the South of Chiswell Green Lane has not investigated the location of the badger's sett, insisting, without evidence, that it is located in the wood. However, this is negligent speculation and could lead to the badger becoming land-locked by the appeal development. As badgers typically have a foraging territory of 50 hectares, a badger locked into a 2 acre woodland could quickly fail to thrive.

471. Equally, despite evidence of their presence from KCG, the appellant has not provided evidence that other protected species have been investigated, that the dubious reptile survey has been repeated, nor assessments carried out of owls, bees, and other rare species, including bat foraging sites given the evidence of bats. It is therefore impossible to know accurately what the baseline level of wildlife is on the site. KCG believes that the appellant for the Land to the South of Chiswell Green Lane should, in the spirit of the law, have investigated the wildlife of the site more thoroughly.
472. The appellant, however, appears more interested in adhering to the letter of the law, and while it may be strictly accurate that the appellant is not obliged to demonstrate any net gain in biodiversity until the November deadline, the appellant has not been mindful of the stipulation in the NPPF (para 174b) to recognise "the wider benefits from natural capital and ecosystem services".
473. Furthermore, given that there will be an obligation to provide a 10% BNG for all major developments from November of this year, and Mr Kenworthy elaborated in questioning that the development would yet take over a year before full construction could start, it seems illogical that benefit might be claimed for an obligation that has not even been accurately or conscientiously fulfilled.

#### Other harms

##### *Traffic and transport/transport sustainability*

474. We acknowledge that the local highways authority have not objected to either of the appeal developments on highways grounds. However, there have been other appeal decisions where the highways authority did not offer any objection and the inspector involved determined that the highways concerns constituted grounds enough to dismiss the appeal. A lack of objection from the highways authority is therefore not always enough for the highways case to be convincing.
475. These appeals are of nationwide importance for the precedent that a grant of permission for either appeal would set. This precedent primarily relates to the distances considered acceptable to be walked or cycled to school, employment and daily activities from a new major development in the Metropolitan Green Belt for the development to be considered "sustainable" in transport terms.
476. In Mr Stevens' proof of evidence for the appeal for the Land North of Chiswell Green Lane, he states that "It is accepted that, for the foreseeable future and with any existing and future development proposal, the car is and will remain the primary mode of transport".
477. This reflects the evidence of our own witness, Mr Walpole, who states in his evidence that "the car is, and will remain, the primary mode of transport for most people, most of the time".



478. Cross-examination of Mr Stevens' evidence confirmed that, following a successful implementation of the agreed Residential Travel Plans, car usage from the developments – and it was likely to be the same for both developments – would only have reduced to 67% after 5 years.
479. Evidence by Mr Jones for the Land to the South of Chiswell Green Lane is less clear; at paragraph 3.1 of his proof of evidence, Mr Jones states that there are four railway stations between 1.6 km and 7.3km away, and at paragraph 3.9, he names How Wood as the nearest train station at 2.8 km from the centroid of any new development. This is inconsistent.
480. At paragraph 3.3, Mr Jones tells us there are local employment opportunities and community facilities. He cites Burston Garden Centre and the Noke Hotel, and goes on in paragraph 3.4 to list other local businesses. He then acknowledged in his evidence that the Noke Hotel closed for the first Covid-19 lockdown and has not since re-opened to the public.
481. We also heard from interested party, Emma Smith, the owner of The Walk in Closet, whose statement was read out for the Inquiry by Alan Moreland (ID #9). She informed us that The Walk in Closet, listed by Mr Jones as a local business, does not employ anyone.
482. In conclusion, Mr Jones' evidence does not seem reliable, and KCG is persuaded from our own evidence, which is essentially in line with that of Mr Stevens, that the two appeal developments cannot be considered sustainable in transport terms.
483. Combining information from our Planning Statements, and from the evidence of Mr Stevens and Mr Jones, the distances from the two appeal sites to the local amenities are as follows.
- Local primary school: 1.5km
  - Nearest train station: 2.8km
  - Nearest bus stop: 700m
  - Nearest supermarket: 3.3km
484. These distances are in conflict with the January 2021 MHCLG National Design Guide which defines a walkable distance as "generally considered to be no more than a 10-minute walk (800m radius)".
485. The outcome of this Inquiry is of great significance to the Transport and Development industries. It is accepted by Hertfordshire Highways and by the appellants that the developments will start as 75% car-dependent and will still be 67% car-dependent 5-years after the assumed successful implementation of a Residential Travel Plan as agreed with Hertfordshire Highways.
486. This is in conflict with the March 2023 DoT and Active Travel England policy paper, The Second Cycling and Walking Investment Strategy (Foreword), which details the Government's aim for 50% of all journeys in towns and cities to be walked or cycled by 2030. Therefore, a determination in favour of either of these two developments will establish a 67% car-dependency rate, 3, 4 or 5 travel stages in a single trip, and walking distances in excess of 1.5km as acceptable

parameters for new developments in the Metropolitan Green Belt and elsewhere throughout England.

487. Furthermore, neither development will contribute to the Government's stated target to decarbonise the UK economy to net-zero by 2050, nor to the local council's net-zero target by 2030. In this respect again, the two appeal applications are in conflict with Government policy and do not meet the necessary criteria to be considered sustainable.

#### *Traffic in Chiswell Green*

488. The Watford Road is already the busiest B-road in the county, and the 18th busiest road in county which includes M1, M25, A1(M), A414, A405, and the A10. The proposed signalised traffic junction will not reduce traffic flows – it will merely cope with them in a different way to the existing roundabouts.
489. As is identified by the Department of Transport and Active Travel England, road transport remains a major source of PM2.5, the air pollutant with the greatest harm to human health. Evidence by Mr Fray highlighted that the levels of PM2.5 at the centre of Chiswell Green were already more than double the World Health Organisation recommended limits. Adding to the traffic volumes at this junction can only exacerbate the situation. However, implementing a signalised junction with mandatory wait schedules will inevitably cause a further deterioration in the air quality in the village.
490. Furthermore, despite "insistent" questioning from Mr Henderson, Mr Walpole did not concede that the signalised junction provided a solution to the congestion at the double mini-roundabout and we remain concerned that the complications of this particular junction will result in long wait times for each phase, will result in impatient behaviour from drivers, and still does not resolve the issue of safety for children crossing Tippendell Lane on their way to and from school. We also firmly believe that it will cause an increase in numbers of drivers using Stanley Avenue as a "rat run".

#### Purported benefits

##### *Affordability*

491. While the concept of all affordable houses for key workers is an admirable one, we still have significant concerns over its viability. Our primary concern is that the calculations offered by Ms Gingell only include one model of mortgage lending – 4.5 times base salary, with no consideration for age, mortgage term, or financial commitments – which is a model that is not realistic in these economic times, nor for those on lower salaries who cannot expect to be offered 4.5 times base as lending.
492. Furthermore, once benefitting from the at least one third discount, buyers will find themselves trapped when they want to move on and as they try to move back into the general market. Although they may have benefitted from an increase in house prices during their ownership, it is not percentage increases, but real cash that will be important in buying their next property, and benefitting from only a small proportion of the increase will mean they will not be able to afford to move. This will create employment immobility in a population of key workers for whom mobility is important.

493. There is also a substantial risk that control of tenants will be lost through sub-letting as a means of increasing mobility or as an investment for those who meet the criteria. This may over time result in a resident population that does not fit the criteria.
494. We also remain unconvinced that it will be possible to release the entire development under the terms envisaged and that the remaining properties will be offered on the open market, eliminating the USP of the development.

#### *Land for a school*

495. The appellant for the Land to the South of Chiswell Green Lane realised prior to this Inquiry that a 2FE primary school was really not needed and changed the application to land for a school.
496. Mr Hunter confirmed that he has no evidence or experience to determine that this parcel of land would be in any way suitable for a PNI school as was suggested might be needed.
497. The land being offered by the appellant for a school cannot be considered to be a benefit when there is no need for a primary school, and it is unsuitable for a PNI school.

#### Conclusion

498. Starting from NPPF paragraph 147 and the clarity that inappropriate development is, by definition, harmful to the Green Belt, we assert that no "very special circumstances" have been demonstrated that would justify a grant of permission for these two developments – that the harms to the Green Belt, and the other harms that would result from the two developments, do not outweigh the benefits.
499. It is our opinion, and the opinion of the Leader of St Albans City and District Council, that the standard methodology of calculating housing targets is not appropriate for the St Albans District as the district is "wholly within the Green Belt", as is true or largely true for its neighbours. As a result of decisions regarding local appeals by speculative developers, the St Albans District has struggled for a number of years with the obligation to find space to put 10,000+ new houses in the Metropolitan Green Belt and to produce a local plan. However, a decision in favour of the appellants in this Inquiry will unfairly punish local residents for the failure of their district council to have produced a local plan, while not resolving the very real issues around balance between housing need and Green Belt.
500. The appeal applications will not deliver the purported benefits they claim, other than a number of housing units which will still not address the need in this district for genuinely affordable and social rented houses. On the other hand, they will cause very significant harm to the Green Belt and other harms in addition.
501. The Covid-19 pandemic has shown us all the significant benefit that being in green spaces gives to our well-being and mental health and the Green Belt in Chiswell Green has been very much appreciated both during the pandemic and since for the tranquillity, access to nature and sense of well-being it has contributed to local residents in difficult times.

502. Permission to develop these two sites will replace beautiful, tranquil views with years of construction noise, dust and traffic, and leave behind imposing structures which will result in the local residents having their sense of space and openness replaced by a sense of being closed in, cut off from nature.
503. Ms Toyne for the South Site appellant told the Inquiry that “only a few” households would be impacted by the South Site development as they viewed the site from their homes. As she had to agree under questioning, over 100 is not “a few” and the site visit will demonstrate that it is in the region of 150 local households that have expansive views over the wider area of Green Belt.
504. These developments would irrevocably change the character of the village and, in today’s fast-paced, time-poor lifestyle, integration of the new residents into the existing community would be more than challenging. 98% of local residents support this view, not because they are unwelcoming or NIMBY’s, but because they can foresee the undesirable changes that even one of these enormous developments would force onto our village, to the detriment of our health, infrastructure and quality of life.

### **Written Representations**

505. A large number of interested parties made representations at the time of the planning applications and during the appeal, the majority of which oppose the developments. The grounds for objection are summarised in the Council’s Committee Reports (CD 3.4 for Appeal A and CD 4.48 for Appeal B). Matters raised by interested parties are addressed by the appellant for Appeal A at Appendix JK7 of CD 3.18a, and for Appeal B at Section 12 of CD 4.81. I have had regard to them in reaching my conclusions below.

### **Conditions**

506. Both appellants agreed a list of conditions with the Council in the event that planning permission is granted. These were updated following discussions during the Inquiry. The attached Schedules set out the conditions that I recommend should the Secretary of State approve one or both appeals. These are largely in the form agreed between the Council and the respective appellant but I have altered them where necessary to improve their precision or otherwise ensure compliance with the tests contained in the Framework.
507. The only condition in dispute by the end of the Inquiry related to a requirement for noise assessment and subsequent mitigation to protect the living conditions of future occupants (Appeal B only). I do not recommend this condition because no particular noise source representing a concern was identified by the Council and there is no reason to expect that noise should be problematic in this location, necessitating measures beyond normal building standards. As such, the condition is not necessary and would not be reasonable.
508. Should the Secretary of State disagree and conclude that a noise condition would meet the relevant tests, the suggested condition is set out in Schedule 3.

### **Obligations**

509. Completed legal agreements pursuant to S106 of the Town and Country Planning Act 1990 have been provided, securing planning obligations in the event that planning permission is granted.

510. Both the Council and the County Council provided CIL Compliance Statements setting out the justification for each obligation having regard to Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL Regulations).

#### Appeal A

511. Two separate legal agreements were submitted, one between the appellants and the Council, and the other between the appellants and the County Council.

512. All matters are agreed between the appellant and the Council. The obligations include, amongst other detailed provisions and requirements, contributions towards/provision of local medical facilities, leisure and cultural centres, 40% affordable housing, self-build and custom housing, open space provision and management, and measures to ensure a biodiversity net gain. I am satisfied that all the obligations are necessary to make the development acceptable and are otherwise in accordance with the CIL Regulations. I have taken them into account in making my recommendation.

513. The obligations pursuant to the agreement with the County Council include, amongst other detailed provisions and requirements, provisions for a Travel Plan and its ongoing review and implementation, libraries, education (including land), youth provision, waste disposal, bus services, sustainable travel and highway improvements. There is no disagreement between the parties in relation to the substance of the obligations. I am satisfied that all the obligations are necessary to make the development acceptable and are otherwise in accordance with the CIL Regulations. I have taken them into account in reaching my recommendation.

514. Notwithstanding the above, the detailed wording of certain provisions was not agreed between the appellants and the County Council and so Clause 12 of the agreement allows the Secretary of State to determine which wording should apply.

515. I have had regard to the submissions made by both parties but note that, whilst a representative of the County Council attended the Inquiry, he was not the legal officer responsible for the matters in dispute and no opportunity was available to test the authority's position on the disputed legal provisions. I also note that there was some inconsistency in the position taken by the County Council between Appeal A and Appeal B.

516. I am not persuaded that there are any reasonable grounds for refusing to exclude demolition from the definition of commencement. Any obligations secured are to mitigate the impacts of the development only. In any case, there is very little demolition required on the site and the likely impacts in advance of other works constituting commencement would be very small.

517. The inclusion of "or as may be amended as agreed in writing by the County Council from time to time" within the Definition of Serviced Land Specification is entirely reasonable and does not put the County Council at any risk. It provides a degree of flexibility without impacting the clarity of the obligation. The desirability or acceptability of any subsequent amendment would be entirely at the discretion of the County Council.

518. Finally, I do not accept the County Council's position that individual house owners should become liable for site-wide obligations, which would be

disproportionate, unreasonable and unrealistic. The legal agreement specifies triggers for each obligation and prevents occupations until such time as payments are made or obligations are otherwise met. I take this view, notwithstanding the position set out in the County Council's Guide to Developer Infrastructure Contributions, which is not part of the development plan.

519. It is unfortunate that the parties were not able to work more constructively in resolving these points of detail, which are not matters that should generally be left for determination by an Inspector or the Secretary of State. Nevertheless, it seems to me that the wording of the agreement is satisfactory without invoking the potential alternative clauses at 12.2.1, 12.2.2 and 12.2.3. I have considered the planning obligations on that basis and recommend that the Secretary of State takes the same approach.

### Appeal B

520. A tripartite legal agreement between the appellant, Council and County Council has been submitted. The obligations include, amongst other detailed provisions and requirements, contributions towards/provision of 100% affordable housing, self-build and custom build housing, measures to achieve a biodiversity net gain, bus service improvements, education provision, local medical facilities, leisure and cultural centres, libraries, open space and play area provision, Travel Plan and its ongoing review and implementation, e-bike provision, sustainable travel and highway improvements, waste contribution and youth provision. There is no disagreement between the parties in relation to the substance of the obligations. I am satisfied that all the obligations are necessary to make the development acceptable and are otherwise in accordance with the CIL Regulations. I have taken them into account in making my recommendation.
521. Notwithstanding the above, as with Appeal A, the detailed wording of certain provisions was not agreed between the appellant and the County Council and so Clause 12 within the agreement allows the Secretary of State to determine which wording should apply to ensure that obligations are suitably secured.
522. I have had regard to the submissions made by both parties but again, whilst a representative of the County Council attended the Inquiry, he was not the legal officer responsible for the matters in dispute and no opportunity was available to test the authority's position on the disputed legal provisions.
523. The appellant accepts that the Primary Education (Land Purchase) Contribution is necessary in the event that both appeals are allowed. I agree that it is appropriate to make a proportionate contribution to the cost of land for a new school should this be required to meet the need for education, in accordance with Clause 13.1.
524. The second area of dispute mirrors that of Appeal A, in that the County Council seeks to make individual homeowners liable for site-wide obligations. For the same reasons as above, I do not consider this to be appropriate, and Clause 9.13 should apply, as opposed to 9.12. I have considered the planning obligations on this basis and recommend this approach to the Secretary of State.

### **Inspector's Conclusions**

*From the evidence before me at the Inquiry, the written representations, and my inspection of the application site and its surroundings, I have reached the*



*following conclusions. The references in square brackets [] are to earlier paragraphs in this report, from which these conclusions are drawn.*

525. Having regard to the evidence submitted, the main issues common to both appeals, are:

- a) The effect on the Green Belt;
- b) Landscape and visual impacts;
- c) The effect on best and most versatile agricultural land;
- d) Highways and transportation;
- e) Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

526. For Appeal A only, the effect on education provision is also a main issue.

### *Green Belt*

527. Both appeal sites are located wholly within the Metropolitan Green Belt. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

528. There is no dispute between the parties that the appeal proposals constitute inappropriate development in the Green Belt and that such development would be, by definition, harmful to it. Such proposals should not be approved except in very special circumstances. These will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

529. Consistent with the National Planning Policy Framework (the Framework), Policy 1 of the District Local Plan Review (1994) (LP) restricts development in the Green Belt other than in very special circumstances.

530. In preparing for a new Local Plan, the Council commissioned a Green Belt Review (GB Review) comprising the Green Belt Review Purposes Assessment (November 2013) (GBR Purposes Assessment) and the Green Belt Review Sites & Boundaries Study (February 2014). The first is said to be an independent and comprehensive Green Belt review that seeks to advise on the role different areas play in fulfilling the fundamental aim of the Green Belt and its five purposes as defined within the Framework, ranking and scoring their performance. The second, reviews the eight strategic sub-areas found to contribute the least towards the five Green Belt purposes against which all Green Belt land in St Albans was assessed in the GBR Purposes Assessment. [46-57, 248, 307-314]

531. The GB Review looks at the district on a large and strategic scale, rather than on a site-by-site basis and is now some years old, such that some circumstances may have changed. It also makes assessments in the context of a potential release of land from the Green Belt through the plan making process, which is not the purpose of these appeals. For these reasons, its conclusions cannot be directly applied to the appeal proposals. However, the GB Review is clearly a material consideration relevant in considering Green Belt matters in the district, notwithstanding that the Local Plan they were intended to support has been



withdrawn by the Council and attracts no weight in and of itself. I have had regard to the GB Review in reaching my own conclusions. This is notwithstanding the reservations expressed about the GB Review by the Inspectors examining the formerly emerging LP, which have no bearing on the issues in these appeals or on the purposes for which I have had regard to the GB Review. [55-57, 310-314]

532. Both appeals fall within strategic sub-area 'S8: Land at Chiswell Green'. It is a 'Tier 1' site, which includes sites that do not significantly contribute towards any of the five Green Belt purposes and are classified as exhibiting 'higher' suitability for at least two of the three categories relating to constraints, integration and landscape sensitivity. Out of the strategic sub-areas considered, it is ranked in first position, the most suitable area in the district. [59, 76]

533. The Council accepts that there will need to be a significant amount of development in the Green Belt if its housing requirement is to be met. That being the case, the relative suitability of sub-area S8 is an important consideration. [248, 307, 532]

#### Appeal A

534. The site is largely undeveloped and open at present, with few structures, notably the existing stable block to the northwest and an unoccupied dwelling to the northeast. As such, there would undoubtedly be a significant and permanent impact to openness in a spatial sense. The introduction of 391 dwellings, a school and associated works would introduce a great deal of built volume to the Green Belt.

535. There would also be significant harm to openness in a visual sense in that the development would be seen from surrounding properties, highways and public rights of way, albeit that areas of open space would also be delivered. Activity within the site would also increase greatly with the comings and goings of residents, visitors, school pupils and staff. [62, 325, 351, 380]

536. That said, the development would not become a prominent part of the wider Green Belt and would only be visually harmful in relatively close proximity to the site. It is visually contained by existing built form on the eastern side, and this partially wraps around the site to the north and south. To the west, is Miriam Lane, which follows the western boundary of the site with thick landscaping along much of its length. This leads to the former Butterfly World site where significant development exists, such as building slabs, earth bunds, fencing and other built form associated with the former use. Even bearing in mind that some structures and uses within the site are apparently unauthorised and may be removed, development is visible and provides a good degree of screening, along with a definitive boundary to the west of the site. [50-54, 59, 65, 73-75, 309, 316, 332, 334, 343, 354-360]

537. Nevertheless, it is clear that the development would result in significant harm to Green Belt openness and I attach this harm substantial weight.

538. So far as the Green Belt purposes are concerned, the first seeks to check the unrestricted sprawl of large built-up areas. The proposed development would extend the urban edge of Chiswell Green, expanding the settlement into countryside. However, as I have described above, the site is relatively well contained by Miriam Lane, its landscaping (including some earth bunds) and the

remaining development associated with Butterfly World, which is now closed. These defensible boundaries would define the extent of the site and separate it from the wider countryside, minimising any perception of uncontrolled sprawl. There would be moderate harm to this Green Belt purpose.

539. The second purpose is to prevent neighbouring towns merging into one another. The development would extend the settlement edge of Chiswell Green, which is located in close proximity to St Albans. The urban edge would be brought marginally closer to Hemel Hempstead but the size of the site, in the context of the vast gap between St Albans and Hemel Hempstead, is such that there would be little contribution to any perceived merging of the towns. The harm to this purpose would be very limited.
540. The third purpose is to assist in safeguarding the countryside from encroachment. The development would obviously encroach on the countryside, albeit contained by Butterfly World and Miriam Lane. Having regard to the considerations I have set out above, the development would result in moderate harm to this purpose.
541. No party argues that there would be any harm to the remaining Green Belt purposes, as contained in the Framework. [68, 72-75, 331-342, 353-360]
542. It is notable that the Council's GB Review found the part of sub-area S8, within which the appeal site falls, to be the least sensitive part of the sub-area. Nevertheless, the Appeal A scheme would result in definitional harm to the Green Belt, as well as harm to its openness and purposes. I attach substantial weight to this harm. [76-78, 267-273, 309, 361-363, 532]

### Appeal B

543. The appeal site is again largely open and undeveloped, albeit with a modest agricultural style building close to Chiswell Green Lane. Appeal B proposes less development than Appeal A, but the 330 dwellings sought would nevertheless have a considerable and permanent impact on openness in both a spatial and visual sense. This would result from the volume of built form to be introduced and the visibility of buildings from surroundings properties, highways and public rights of way. Again, activity within the site would increase greatly.
544. Unlike Appeal A, more open and longer-range views towards the site are available and the development would be seen more readily in the context of the wider Green Belt from the west, including from public rights of way. Conversely, views from Chiswell Green in the immediate locality of the site would be curtailed or filtered to a large extent by the boundary hedgerows and other landscaping, which includes thick evergreen hedges along the north and east boundaries that would largely be retained. It is likely that the upper parts of the buildings would still be visible however, even after further landscaping the site. The fact that the site is separated from the edge of Chiswell Green by a thick hedgerow and an intervening paddock gives a strong perception that it is part of the countryside beyond the settlement edge. The established urban edge has little impact on the visual openness of the site, though houses on Cherry Hill and The Croft are a notable backdrop from the west.
545. In light of the above, the development would result in substantial harm to Green Belt openness and I attach this harm substantial weight.

546. Having regard to the purposes of Green Belt, the development would significantly harm the first purpose. It would introduce development well beyond the established settlement edge and would remain separated from built form on the edge of Chiswell Green by a paddock. It would, to some extent, have the appearance of unrestricted sprawl, clearly protruding into the wider rolling countryside. This appearance might be reduced if the intervening paddock were subsequently developed as KCG anticipate, but that cannot be guaranteed. Public right of way 21 would provide the only form of defensible boundary to the west of the site, with its established hedgerow and tree planting, though additional landscaping could be introduced to reinforce this.
547. The effect on the second Green Belt purpose would be similar to that for Appeal A. The development would protrude in the general direction of Hemel Hempstead but there is no evidence of a proliferation of development in the separating gap that leads to any meaningful perception of coalescence, even on an incremental basis. To the extent that the gap would be marginally reduced, very limited harm would result to the second purpose.
548. There is no disagreement between the parties that the third Green Belt purpose would also be harmed by the development and, having regard to my conclusions above, it is obvious that the development would encroach on the countryside. The quantum of development, its separation from the established settlement edge and visibility from the wider Green Belt are such that significant harm would result to the third purpose.
549. As with Appeal A, no party argues that there would be any harm to the remaining Green Belt purposes, as contained in the Framework.
550. The GB Review draws a distinction between the east and west parts of sub-area S8, noting that the western area, within which Appeal B is located, is more sensitive. This accords with my own findings that the Green Belt impacts would be much greater from Appeal B. The development would result in definitional harm to the Green Belt, as well as harm to its openness and purposes. I attach substantial weight to this harm. [76-78, 267-273, 309, 361-363, 532]

### *Landscape and visual impacts*

#### Appeal A

551. The application is supported by a detailed and comprehensive Landscape and Visual Impact Assessment that accords with the principles contained in GLVIA3<sup>1</sup>, and this was further supplemented during the course of the appeal. Many of the judgements reached by the appellant are accepted by the Council and there is little between the parties as to the impacts that would result from the development.
552. From a landscape perspective, there would be a need to remove some sections of hedgerow to accommodate the development, particularly the access points. However, the vast majority would be retained, reinforced and new sections would be planted. The parties agree that a beneficial effect would arise by year 15, once new hedgerow had established. The character of the site would change significantly as a result of development, and although the scheme would

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<sup>1</sup> Guidelines for Landscape and Visual Impact Assessment, Third Edition

incorporate areas of open space and landscaping that would mature and soften the development over time, the residual effect would remain Minor Adverse.

553. In relation to visual effects, the Council's case is that some Minor Adverse impacts would remain by year 15 for residents on the edge of Chiswell Green and users of Chiswell Green Lane. Obviously, the effects would be greater in the early years of the development, particularly for residents that currently enjoy views over the site, but they would reduce over time as landscaping matured and the development became assimilated into the settlement. There is no right to a private view of open fields and these types of effects are inevitable for development of this scale on a greenfield site. The detailed design of the development would be for a subsequent reserved matters application but there is clearly scope for a well-designed and sensitive scheme.

554. Overall, there would be adverse landscape and visual impacts and I attach this limited weight, consistent with the Council's assessment. [79-85, 393-394]

#### Appeal B

555. The application is accompanied by a Landscape and Visual Impact Assessment, which was supplemented during the course of the appeal, including a statement of common ground. The judgements offered by the appellant were not always consistent, were changeable and were not always convincingly explained when tested at the Inquiry. This undermined the credibility of the appellant's landscape and visual evidence, in contrast with the more consistent and reasoned judgments put forward by the Council, though that is not to say that I agree with all the conclusions reached. Having regard to the totality of the evidence available, I am satisfied that sufficient information is available to reach my own judgement in this case. [367-375]

556. As with Appeal A, there would be adverse impacts on site features and character through the recontouring of the site and removal of hedgerow sections to accommodate the proposed dwellings and associated works. However, large amounts of green space would be incorporated into the scheme and there is potential for significant landscaping to occur. At present there is little detail as to how this would be achieved but I am satisfied that there is sufficient space and opportunity to deliver a suitable scheme with no more than Moderate Adverse landscape impacts.

557. There would be a number of significant visual effects arising from the development given that public rights of way surround three sides of the site and longer-range views are available from the countryside in the west. Whilst the appellant's judgements are not sufficiently explained, the Council has tended to assess the visual impacts too highly in my view.

558. Footpath 082 is short in length with houses on one side and a close boarded fence for much of its length on the other side, before opening to a paddock. The appeal site is beyond the paddock and behind a thick evergreen hedgerow that blocks much of the view. It provides less significant public views and housing would not be entirely uncharacteristic in this edge of settlement location. A Moderate residual significance of effect would result, notwithstanding that a small section of hedgerow would need to be removed to accommodate an emergency access. A similar experience and significance of effect results from footpath 039 which continues northwards from 082.

559. Footpath 080 is located to the north of the site. Views are drawn westwards towards the open countryside but are funnelled between the existing evergreen hedgerow on the site boundary and a woodland. Very little visibility is available into the site itself and countryside views are only expected in a westerly direction. When looking back towards the settlement, to the extent that the upper stories of development would be visible over the hedgerow, development would be seen in the context of housing on Cherry Hill and The Croft. A Moderate residual significance of effect would result.
560. Footpath 021, to the west of the site, is heavily screened from the wider countryside by a thick evergreen hedge but filtered views are available into the site itself, creating an expectation of countryside for footpath users, though in the context of houses on the edge of the settlement. The development would be prominent to start with but as a suitable landscaping scheme matured and the development became assimilated into the settlement the significance of effect would lessen to Moderate.
561. Footpath 012 provides a rural route through arable fields to the west of the site, well beyond the settlement and where there is a very clear sense of being in the countryside. Long views towards the site are possible from elevated positions on the route but it is a very small part of a wider panoramic view and glimpsed views of the existing settlement edge are already possible. The proposed development would become more conspicuous but would be seen in the context of the distant Chiswell Green and filtered by both existing and proposed landscaping on the site boundaries. The Council assesses a residual Moderate significance of effect, with which I agree.
562. Occupants living on the edge of Chiswell Green would have private views towards the development, as with Appeal A. For the same reason as above, the residual adverse effects would be Moderate.
563. Overall, it is clear that the development would result in significant landscape and visual impacts and that these would be more widespread than those identified for Appeal A. Cumulatively, these impacts attract significant weight. [251-252, 375-392]
564. If both schemes were to come forward, the harms I have identified would result cumulatively, but the effects would remain as I have set out. There would be very limited opportunities to meaningfully experience the two developments together beyond Chiswell Green Lane.

#### *Agricultural Land*

565. Both developments would result in a loss of best and most versatile agricultural land (BMV agricultural land). 7ha would be lost as a result of Appeal A and 10.9ha from Appeal B, along with their economic and other benefits.
566. The south site is not currently being used for agriculture and so there would be no loss of agricultural productivity, though that does not mean that the land could not be put to an agricultural use. That said, the appellant for the south site suggests that it is not particularly suitable for modern agricultural purposes being isolated from a wider farmstead and close to the settlement edge. This was not



challenged by the Council and it seems to be a reasonable observation – the site has not been used for arable purposes for many years.

567. Much of the greenfield land in the district is BMV agricultural land and if housing needs are to be met, it is inevitable that some will be lost – the Council accepts that only a small proportion of its requirements can be met in the urban area. Overall, I attach limited weight to the loss of BMV agricultural land in both appeals, though there would be no conflict with Policy 102 of the LP given the overriding need for housing in the district. [86-90, 274, 395, 466]

### *Highways and Transportation*

568. Both schemes have been subject to detailed transport assessments that seek to demonstrate the likely impacts of the development in accordance with industry standards. They have regard to development in the area that has already been granted planning permission. The proposals are sizeable and would generate a significant amount of additional traffic. Individually, each development would put pressure on the local highway network, particularly the double mini-roundabout arrangement at Chiswell Green Lane/Watford Road/Tippendell Lane. This junction is already under strain at peak times, resulting in some localised congestion and it would be made worse, requiring road users to wait longer.
569. However, the Framework sets a high bar for resisting development on such grounds and planning permission should only be refused if the residual cumulative impacts on the road network would be severe. In these cases, the Local Highway Authority does not consider that this would be the case and has worked with the appellants to mitigate the impacts as far as possible through sustainable travel improvements.
570. Both schemes would be subject to a Travel Plan that would seek to influence the travel choices of future residents. To support this approach, an improved bus service would be funded and highway improvements would be made to deliver a cycleway. This is a reasonable approach that would support sustainable travel objectives, in favour of private car usage. Having regard to the modal shift targets contained within the Travel Plans, which would be monitored to ensure they were achieved, I am satisfied that both schemes, individually, would be acceptable in highway capacity terms.
571. Should both schemes come forward, the cumulative traffic impact could not be satisfactorily mitigated by sustainable travel measures alone as the double mini-roundabout junction would be pushed unacceptably beyond its operational capacity. This is accepted by the appellants and a suitable scheme to signalise the junction has been put forward. Provision is also made to mitigate any potential consequences from 'rat running' on Stanley Avenue. The Local Highway Authority is satisfied that, subject to the detailed design, such a scheme would sufficiently mitigate the impacts of the developments and I am minded to agree. The proposed sustainable travel measures would be secured nonetheless.
572. In terms of highway safety, the developments would be accessed from Chiswell Green Lane, which is a wide residential street in parts, narrowing to a rural lane. Existing footpaths are present on either side for most of the road's length leading up to the sites and these would be improved. This would include the provision of a 3m wide shared footway and cycleway, which has been subject to a Road Safety Audit and designed to accommodate a capacity of 300

pedestrians/cyclists per hour. The existing and proposed routes would provide ample safe capacity for pedestrians and cyclists, particularly bearing in mind that alternative routes are also to be provided into the southern section of the site for Appeal A.

573. Particular reference was made to existing cottages opposite the proposed access for Appeal B, which currently have no access to footpaths, requiring residents to walk on the carriageway. It seems to me that the provision of footpaths as part of the developments would improve this situation, notwithstanding any additional traffic, delivering improved access to a safe walking route.
574. I have had regard to concerns about parking in existing residential areas where the new emergency accesses or pedestrian routes are proposed, and to dissatisfaction with driver behaviour on other parts of the existing highway network. However, no detail of any existing accident patterns or significant parking stress have been provided. New routes would be suitably designed and identified, and it should be expected that drivers will behave safely and in accordance with the highway code. There are no highway safety issues that indicate against the proposals.
575. Chiswell Green is a large village that benefits from a wide range of services and facilities, including but not limited to, a public house, shops, cafe, post office, doctors' surgery, primary school and places of worship. All of these provide opportunities to meet some of the day to day needs of future residents and potential employment. Furthermore, many would be within a comfortable walking or cycling distance from the appeal sites.
576. In addition, there are numerous bus stops (including stops within 800m) that provide frequent services to larger settlements, with their greater range of services, facilities and employment opportunities, notably close by is St Albans. From St Albans, the mainline railway can be accessed for those wishing to travel further afield. There are also three further train stations in close proximity, increasing the variety of destinations that are accessible by train.
577. Not all day-to-day needs would be met within Chiswell Green itself and the walking distances to some of the bus stops and facilities would exceed those considered to be ideal by some publications. However, the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
578. Chiswell Green is a village, where such opportunities are likely to be fewer, but there are numerous opportunities for sustainable travel, including a vast array of services and facilities within the 2km walking distance recognised to be realistic by Manual for Streets. Whilst shorter distances might be preferable, the 800m walking distance referenced in the National Design Guide should not be imposed rigidly without regard to the function and opportunities available within different settlements, or without analysis of relative accessibility in the round. In these cases, the appellants have sought to maximise sustainable transport opportunities as far as reasonably possible, improving footways, introducing cycleways and through the proposed Travel Plans.
579. Overall, I consider that Chiswell Green is an eminently suitable location for the proposed developments, with access to a good range of services and facilities



and providing plentiful opportunities for sustainable travel. There is no doubt that some private car usage would continue, but alternative options are available and are likely to be taken up by many, reducing reliance on private vehicles. [91-108, 244-246, 258-262, 275, 474-490]

### *Education*

580. Both appeal schemes would generate the need for additional education provision in the locality given the likelihood that a significant number of future occupants would be children. The additional capacity required could be created by expanding existing primary schools, using a contribution secured as a planning obligation from either development. This would mitigate the education impact of either scheme individually.
581. Nevertheless, after discussions with the Local Education Authority (LEA), the Appeal A scheme would additionally secure land for a new primary school in recognition that existing provision would subsequently be reaching capacity and in anticipation of further development in the area. Additionally, the LEA is required to meet SEND (Special Educational Needs and Disability) needs and there is also potential for making some provision on the reserved school land.
582. The Framework makes clear the importance that a sufficient choice of school places is available to meet the needs of existing and new communities. A proactive, positive and collaborative approach to meeting this requirement, and to development that will widen the choice in education, is required.
583. The Council accepts that the provision would be a benefit of the scheme and that would certainly be the case if both appeals were allowed, since the pupil yield might justify a new school in and of itself, allowing some capacity for flexibility or additional development in the area.
584. It seems to me, in the context of the great need for additional housing in St Albans, that the provision of school land is a significant benefit, allowing for the education contribution to be used towards delivery on-site should this become desirable to the LEA. Should both schemes be allowed, the provision of land on which a new school could be built locally would be a substantial benefit indeed. [109-127, 436-445, 495-497]

### *Other Considerations*

#### Housing

585. There is a very substantial need for housing in the district which is persistently going unmet. The LP is one of the oldest in the country and its housing requirement is hopelessly out of date, such that it does not attempt to deliver anywhere near the amount of housing that is now required. Against the requirement for a deliverable five-year housing land supply, using the standard method, the Council can demonstrate just a two-year supply at best. The latest Housing Delivery Test (HDT) has been failed by some margin. Consequently, the Framework dictates that the policies which are most important for determining the applications are out-of-date.
586. The Council further accepts that there is an acute need for affordable housing. The most recent Local Housing Needs Assessment (2020) identified a need for 13,248 affordable dwellings during the period of 2020-2036, equivalent to 828

per annum. Since the beginning of that period, a shortfall of 1,428 affordable dwellings has arisen. The Council's estimated supply of affordable housing up to 2027 is just 39 dwellings per annum. This position follows years of under delivery, a substantial shortfall having accumulated against the requirement identified in the earlier Strategic Housing Market Assessment (2016).

587. There is also a sizeable shortfall, in the order of 171 homes, against the necessary supply of self-build/custom housing, and a delivery rate of just 20% against registrations.
588. Various attempts have been made to replace the existing LP but all have failed to date and whilst a further attempt is now being made, it is at the early stages of preparation and provides little certainty that the situation will improve at present. Even the Council accepts that there is no early prospect of the housing land supply deficit being addressed. The situation is dire.
589. Appeal A would deliver up to 391 dwellings, 40% of which would be affordable housing (up to 156 units). A small proportion would also be self-build/custom housing plots. The scheme would make sizeable contributions towards the identified needs, and I attach very substantial weight to the proposed housing.
590. Appeal B would deliver 330 dwellings, 100% of which would be for affordable housing. Again, a small proportion would be self-build/custom housing plots. The properties would be secured for local key worker accommodation and military personnel, specifically seeking to provide for people that are ineligible for social and affordable rented housing in accordance with the Council's Allocation Policy but unable to afford to buy private market housing in an area with increasing unaffordability. In short, it provides a subsidised route to home ownership for essential local workers that would otherwise be unable to afford to buy.
591. In these respects, the scheme is unusual, but is facilitated by the appellant's desire to meet these particular needs by offering the land for free and discounting all properties by at least 33%, in excess of that required to qualify as affordable housing. Such a scheme is unquestionably a positive aspiration that would go a long way towards boosting the Council's supply of affordable housing. In the context of such a great housing need, I attach very substantial weight to the proposed housing.
592. This weight is not diminished by the Council's assertion that some key workers would be unable to afford the properties, even after discount. The evidence presented by the appellant shows clearly that many would, and if a situation arose where there was an insufficient number of eligible buyers, the legal agreement makes provision for key workers to become eligible from further afield, or ultimately for the housing to be released towards meeting the Council's general affordable housing needs. As such, there are no circumstances where the scheme would fail to contribute to an identified affordable housing need. The scheme might not contribute to those most in need of affordable housing, as identified by the Council, but the Framework does not rank different types of affordable housing or suggest that some types are less important than others.
593. It is often desirable to spread affordable housing amongst market housing to ensure social integration and to create balanced communities. However, I do not share the Council's concern in relation to this scheme given that a range of

dwelling types and tenures are proposed and key workers cover a broad section of society from all walks of life, where there would inherently be a diverse mix of people and circumstances. [231-242]

594. Those buying self-build/custom housing plots would receive at least a 33% discount on the plot. The subsequent building costs would fall to them and the property would be required to be sold at a discounted rate if sold on. The desirability of this arrangement is a matter of individual choice which would likely have regard to the intended length of occupation and expectations for the local property market. Nonetheless, the Council does not suggest that the plots are likely to remain empty and so I see no reason why they should not make a useful contribution to housing need. [31-36, 167-216, 397-421, 435, 491-494]

#### Precedent

595. Much of KCG's case focused on concerns that, if allowed, the proposals might provide a precedent for further development in the area. However, each planning application is to be considered on its own merits and there is a particularly high bar for proposals in the Green Belt, which require the demonstration of very special circumstances. As such, whatever the decision in these cases, they would not necessarily provide any additional support for future schemes. [456-460]

#### Ecology

596. Both appeals have been subject to ecological assessments that identify the sensitivities and seek to mitigate the impacts of the development. Subject to appropriate conditions, no significant ecological impacts would result and both schemes would deliver a biodiversity net gain, weighing in favour of the proposals. [143, 289, 446, 467-473]

#### Air quality

597. Neither site is located within a designated Air Quality Management Area, though there are three within the district. Both appeals are supported by professional air quality assessments that comprehensively consider the potential impacts of the schemes. Pollutant concentrations are predicted to be well within the relevant health-based air quality objectives at the facades of both existing and proposed receptors. The operational impact of the developments is expected to be negligible, having regard to changes in pollutant concentrations and absolute levels. As such, I attach very limited weight to the harm arising. [489]

#### Open space and recreation

598. The sites are not currently publicly accessible, but both would create new areas of public open space, including children's play areas. This would be a benefit to future residents but would also widen the availability and choice for existing residents in the vicinity, notwithstanding that there is already a good level of provision in Chiswell Green. [142, 429-430, 465]

#### Neighbouring living conditions

599. The appeals relate to outline planning applications with matters of appearance, landscaping, layout and scale reserved for subsequent consideration. As such, there is currently limited detail available regarding the ultimate layout and design

of the development or how it would relate to neighbouring properties. Nevertheless, the indicative information is sufficient to demonstrate that a suitable scheme could be delivered on the sites without unacceptably harming neighbour's living conditions.

600. Although there would be some inevitable noise and disruption during construction, these would be temporary effects and would not result in any long-term harm.

#### Flooding and drainage

601. Both appeal schemes have been subject to flood risk and drainage assessments which indicate that the sites could be drained using sustainable drainage techniques. Subject to appropriate mitigation, the developments would not be at risk of flooding or cause flooding elsewhere.
602. The local sewerage undertaker is obliged to accept foul water flows generated by the developments and undertake any network improvements that may be required to provide the necessary capacity. Conditions could be used to ensure that capacity is available in advance of properties being occupied.

#### Climate change

603. A strategic approach to addressing climate change is important and the Government is taking action to ensure that the country's obligations are met, implementing policies and strategies across various sectors. Notwithstanding these obligations, the Government's objective is to boost significantly the supply of homes. The proposals are not in conflict with any national or local policies in relation to climate change. [454]

#### Infrastructure

604. The developments would significantly increase the local population and the additional people would need to be served by infrastructure, services and facilities. Where insufficient capacity has been identified by the Council, it has sought financial contributions or other obligations to mitigate the impacts of the developments. Both appellants undertake to deliver necessary planning obligations through legal agreements with the Council.

#### Economic impact

605. Both developments would support economic growth and productivity, generating significant local economic benefits, including jobs during construction, investment in the area and expenditure by future residents that would support local services and facilities. These benefits are likely to extend beyond Chiswell Green and weigh in favour of the proposals. [144-146, 283-286, 422-428]

### **Very Special Circumstances**

#### Appeal A

606. I attach substantial weight to the harm that would arise to the Green Belt; limited weight to landscape and visual harms and the loss of BMV agricultural land; and very limited weight to air quality harms.

607. There would be very substantial benefits from the scheme in terms of housing provision. Added to this, there would be benefits in terms of ecology, open space and recreation provision, land for education provision, improved bus services and cycleway provision that would be accessible to existing residents, and economic benefits.

608. Overall, the harm by reason of inappropriateness, and any other harm, is very clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

#### Appeal B

609. I attach substantial weight to the harm that would arise to the Green Belt; significant weight to landscape and visual harms; limited weight to the loss of BMV agricultural land; and very limited weight to air quality harms.

610. There would be very substantial benefits from the scheme in terms of housing provision. Added to this, there would be benefits in terms of ecology, open space and recreation provision, improved bus services and cycleway provision that would be accessible to existing residents, and economic benefits.

611. Overall, the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

#### Both appeals

612. As very special circumstances have been demonstrated in both cases, there would be no conflict with Policy 1 of the LP or Policy S1 of the St Stephen Parish Neighbourhood Plan. The appeal proposals would be in accordance with the development plan, taken as a whole, and there are no material considerations that indicate that planning permission should be refused. The adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole and planning permission should be granted.

#### **Recommendation**

613. I recommend that both appeals be allowed and that planning permission is granted subject to the conditions set out in the respective Schedules and the planning obligations discussed above.

*Michael Boniface*

INSPECTOR

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

Andrew Parkinson, Counsel

He called:

John-Paul Friend HND (LGD) BA (Hons) Dip LA CMLI	Director, LVIA Ltd
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Stephen Connell BA (Hons) Dip TP MRTPI	Director, GC Planning Partnership Ltd
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### **FOR THE APPELLANT (APPEAL A):**

Charles Banner KC and  
Matthew Henderson, Counsel

They called:

Ben Hunter BA DipMS	Associate Director, EFM Ltd
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Anthony Jones BSc MCIHT	Technical Director, Glanville Consultants
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Lisa Toyne BA (Hons) DipLA DipTP CMLI	Associate Director, Barton Wilmore, now Stantec
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Justin Kenworthy MA (Hons) MA MRTPI	Planning Director, Barton Wilmore, now Stantec
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### **FOR THE APPELLANT (APPEAL B):**

Paul Stinchcombe KC

He called:

Steve Collins	Landowner
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Brian Parker BA (Hons) MSc MRTPI	MRP Planning
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Annie Gingell BSc (Hons) MSc MRTPI	Tetlow King Planning
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Paul Gray BA (Hons) BLA CMLI	Consultant, UBU Landscape Architects
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Matt Stevens MIHT	Director, Milestone Transport Planning Ltd
Steven Fidgett BSc (Hons) DipTP MRTPI	Director, Union4 Planning Ltd

FOR KEEP CHISWELL GREEN (RULE 6 PARTY):

Shirani St Ledger McCarthy

She called:

David Walpole BSc (Hons) CivEng MCIHT	Partner, THaT Consultancy
Stuart Fray BSc	Local resident
John Clemow BA (Hons Arch) Dip. Arch	Secretary, 4ColneyHeath Residents Association
Shirani St Ledger McCarthy BA (Hons) <sup>2</sup>	Local resident

INTERESTED PERSONS:

Cllr David Parry	Parish Councillor
Clare De Silva	Conservative Parliamentary Spokesperson
Chris Berry	Campaign to Protect Rural England
Hugh Day	Local resident
Emma Smith	Local resident and business owner
Alan Moreland	Local resident
Victoria Prever	Local resident
Daisy Cooper MP	Member of Parliament
Cllr Giles Fry	Ward Councillor
Benjamin Brassett	Local resident

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<sup>2</sup> Examination in Chief undertaken by John Clemow



## **DOCUMENTS SUBMITTED DURING THE INQUIRY**

- 1 Appellant's opening statement (Appeal A)
- 2 Appellant's opening statement (Appeal B)
- 3 Council's opening statement
- 4 Keep Chiswell Green's opening statement
- 5 Speaking notes of Cllr David Parry
- 6 Speaking notes of Clare De Silva
- 7 Speaking notes of Chris Berry
- 8 Speaking notes of Hugh Day
- 9 Speaking notes of Emma Smith
- 10 Speaking notes of Alan Moreland
- 11 Speaking notes of Victoria Prever
- 12 Speaking notes of Daisy Cooper MP with attachment
- 13 Speaking notes of Cllr Giles Fry
- 14 House Price and Mortgage Calculations
- 15 Appeal decision - APP/B1930/A/09/2109433
- 16 RWA Technical Note
- 17 Affordability calculations
- 18 E-mail submissions from CLASH dated 22 April 2023
- 19 Planning Statement of Common Ground 2 (Appeal B)
- 20 Landscape Statement of Common Ground (Appeal B)
- 21 Letter from Local Highway Authority dated 25 April 2023
- 22 Speaking notes of Benjamin Brassett
- 23 Draft conditions (Appeal A), dated 3 May 2023, V3
- 24 Second Rebuttal Proof by Justin Kenworthy (Appeal A)
- 25 Note to the Inspector: Affordable Housing, by Annie Gingell
- 26 Revised conditions (Appeal A)
- 27 Draft conditions (Appeal B)
- 28 Draft site visit itinerary agreed by parties
- 29 Revised conditions (Appeal B)
- 30 Revised conditions (Appeal A), dated 3 May 2023, V3
- 31 Summary Notes on S106, Version 2 (Appeal B)
- 32 HCC Position Statement Responding to Outstanding S106 Matters
- 33 Revised draft S106 as at 8 May 2023 (Appeal A)
- 34 Optional walking or cycling route from KCG
- 35 Council's closing submissions
- 36 Keep Chiswell Green's closing submission
- 37 Appellant's closing submissions (Appeal A)
- 38 Appellant's closing submissions (Appeal B)

## **DOCUMENTS SUBMITTED AFTER THE INQUIRY**

- 1 Executed S106 agreement (Appeal B)
- 2 Executed S106 agreements (Appeal A)
- 3 Appellant's submissions on HCC's S106 Position Station

## **SCHEDULE 1 - RECOMMENDED CONDITIONS (APPEAL A)**

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") for each phase of the development as defined by the Phasing Plan agreed as part of condition 16, shall be submitted to and approved in writing by the Local Planning Authority before any development in that phase begins, and the development shall be carried out as approved.

REASON: To comply with Section 92(1) of the Town and Country Planning Act 1990.

- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.

REASON: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.

REASON: To comply with the requirements of Section 92 (2) of the Town and Country Planning Act 1990.

- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan (REDC01-MCB-ZZ-ZZ-DR-A-0201-D5-P7), Access and Movement Parameter Plan (REDC01-MCB-ZZ-ZZ-DR-A-0221-D5-P3), Building Height Parameter Plan (REDC01-MCB-ZZ-ZZ-DR-A-0222-D5-P6), Land Use Parameter Plan (REDC01-MCB-ZZ-ZZ-DR-A-0223-D5-P5), Proposed Northern Access Junctions (8210856-1001 Rev I9), Proposed Southern Access Junction (8210856\_1002 Rev I6), Proposed Forge End & Long Fallow Pedestrian / Cycle Accesses (8210856\_1021 Rev I5).

REASON: To ensure that the development is carried out in accordance with the approved plans and details.

- 5) Full details of both soft and hard landscape works for each phase, shall be submitted as part of application(s) for reserved matters approval for that phase, as required by Condition 1. The landscaping details to be submitted shall include:
  - a) existing and proposed finished levels and contours;
  - b) trees and hedgerow to be retained;
  - c) planting plans, including specifications of species, sizes, planting centres, number and percentage;
  - d) mix, and details of seeding or turfing;
  - e) hard surfacing;
  - f) means of enclosure and boundary treatments; and
  - g) structures (such as furniture, play equipment, refuse or other storage units, signs, lighting).

REASON: To ensure satisfactory landscape treatment of the site and a suitable appearance in accordance with Policies 70 and 74 of the LP.

- 6) A landscape and ecological management plan (LEMP) for each phase, shall be submitted as part of application(s) for reserved matters approval for that phase, as required by Condition 1 and include:
- a) A description of the objectives;
  - b) Habitat/feature creation measures proposed, including a methodology for translocation of habitats, such as the existing topsoil, grassland and timeframes for completion;
  - c) Maintenance of habitat/feature creation measures in the long term and those responsible for delivery;
  - d) Lighting strategy (aiming to ensure that illumination of the existing hedgerows does not exceed 0.5 lux); and
  - e) A monitoring programme and the measures required to adapt the LEMP should objectives fail to be met. The LEMP shall cover all landscape areas within the site, other than privately owned domestic gardens.

REASON: To maximise the on-site mitigation for biodiversity impact.

- 7) Full details of the proposed housing mix, including a breakdown of unit sizes and tenure, shall be submitted as part of application(s) for reserved matters approval as required by Condition 1.

REASON: To ensure a suitable dwelling mix at the site in accordance with Policy 70 the LP.

- 8) Notwithstanding the submitted 'Arboricultural Impact Assessment' – JSL4258\_770 (by RPS, 30 March 2022), no development shall commence in each phase unless a method statement has been submitted to and approved in writing by the Local Planning Authority for that phase, to cover the protection of trees during demolition and construction phases based on guidelines set out in BS5837. Thereafter the development shall be carried out in accordance with these approved details.

REASON: To protect existing trees during the construction works in the interest of the character and appearance of the area and in accordance with Policy 74 of the LP.

- 9) No trees shall be damaged or destroyed, or uprooted, felled, lopped or topped without the previous written consent of the Local Planning Authority until at least 5 years following the practical completion of the permitted development. Any trees removed without such consent or dying or being severely damaged or becoming seriously diseased before the end of that period shall be replaced by trees of such size and species as may be agreed with the Local Planning Authority.

REASON: To ensure satisfactory landscape treatment of the site in the interests of character and appearance and to comply with Policy 74 of the LP.

- 10) All existing hedges or hedgerows shall be retained, unless shown on the approved drawings as being removed or with the written consent of the LPA. All hedges and hedgerows on and immediately adjoining the site shall

be protected from damage for the duration of works on the site. This shall be to the satisfaction of the Local Planning Authority in accordance with relevant British Standards BS 5837 (2005). Any parts of hedges or hedgerows removed without the Local Planning Authority's consent or which die or become, in the opinion of the Local Planning Authority, seriously diseased or otherwise damaged within five years following practical completion of the approved development shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with plants of such size and species and in such positions as may be agreed with the Local Planning Authority.

REASON: In the interests of ecology, character and appearance and to comply with Policy 74 of the LP.

- 11) No phase of the development hereby permitted shall be occupied unless and until the vehicular accesses for the phase in question have been provided and thereafter retained at the position shown on the approved plan drawing numbers 8210856-1001 Rev I9, 8210856-1002 Rev I6 and 8210856-1021 Rev I5 (as may be amended through detailed technical drawings agreed through the Section 278 process). Arrangement shall be made for surface water drainage to be intercepted and disposed of separately so that it does not discharge from or onto the highway carriageway.

REASON: To ensure satisfactory access into the site and avoid carriage of extraneous material or surface water from or onto the highway in the interests of highway safety.

- 12) Prior to the commencement of development in each phase, full details in relation to the design of estate roads (in the form of scaled plans and / or written specifications for each phase) shall be submitted to and approved in writing by the Local Planning Authority to detail the following:

- a) Roads;
- b) Footways;
- c) Cycleways (compliant with LTN 1/20);
- d) Minor artefacts, structures and functional services;
- e) Foul and surface water drainage;
- f) Visibility splays;
- g) Access arrangements including temporary construction access;
- h) Hard surfacing materials;
- i) Parking areas for vehicles and cycles;
- j) Loading areas; and
- k) Turning and circulation areas.

The development shall be implemented in accordance with those approved plans.

REASON: To ensure suitable, safe and satisfactory planning and development of the site in accordance with Policies 34, 69 and 70 of the LP and Policy 5 of Hertfordshire's Local Transport Plan (adopted 2018).

- 13) No phase of the development hereby permitted shall be occupied unless and until full details have been submitted to and approved in writing by the Local Planning Authority for that phase, in relation to the proposed arrangements for future management and maintenance of the proposed streets within the development. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under Section 38 of the Highways Act 1980 or a Private Management and Maintenance Company has been established and approved by the LPA).

REASON: To ensure satisfactory development and to ensure estate roads are managed and maintained thereafter to a suitable and safe standard in accordance with Policies 34, 69 and 70 of the LP and Policies 5 and 22 of Hertfordshire's Local Transport Plan (adopted 2018).

- 14) Notwithstanding the details indicated on the submitted drawings, no on-site works above slab level shall commence until a detailed scheme for the offsite improvement works as indicated on the drawing numbers set out below have been submitted to and approved in writing by the Local Planning Authority:

- a) Chiswell Green Lane - drawing 8210856-1012 Rev I5 or where planning permission for the development pursuant to appeal APP/B1930/W22/331227 is granted, drawing 8230258-1001 Rev I2 and drawing 8230258-1002 Rev I4;
- b) Watford Road / Chiswell Green Lane public realm improvements drawing 8210856-1013 Rev I4, or where planning permission for the development pursuant to appeal APP/B1930/W22/331227 is granted, drawing 8230258 1007 Rev I3 showing the signalised junction;
- c) Hertfordshire County Council's Watford Road Cycle Improvements drawing 8210856-1028 Rev I1 (Sheet 1 of 6) or where planning permission for the development pursuant to appeal APP/B1930/W22/331227 is granted, drawing 8230258-1008 Rev I1;
- d) Hertfordshire County Council's Watford Road Cycle Improvements drawing 8210856-1029 Rev I1 - (Sheet 2 of 6);
- e) Hertfordshire County Council's Watford Road Cycle Improvements drawing 8210856-1030 Rev I1 - (Sheet 3 of 6);
- f) Hertfordshire County Council's Watford Road Cycle Improvements drawing 8210856-1031 Rev I1 - (Sheet 4 of 6);
- g) Hertfordshire County Council's Watford Road Cycle Improvements drawing 8210856-1032 Rev I1 - (Sheet 5 of 6);
- h) Hertfordshire County Council's Watford Road Cycle Improvements drawing 8210856-1033 Rev I1 - (Sheet 6 of 6).

Where planning permission for the development pursuant to appeal APP/B1930/W22/331227 is granted, details shall only be required to be submitted in respect of those works listed in a, b and/or c above if at the date of submission those said works have not already been approved pursuant to the planning permission granted pursuant to appeal APP/B1930/W22/331227.

Prior to first Occupation of the development hereby permitted, the offsite highway improvement works set out above shall be completed in accordance with the approved details.

REASON: To ensure delivery of the necessary highway improvements.

- 15) No development shall commence in each phase unless and until a detailed Construction Environmental Management Plan relating to that phase has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the construction of the development in that phase shall only be carried out in accordance with the approved CEMP unless otherwise agreed in writing by the Local Planning Authority. The plan shall be prepared in accordance with the Construction Logistics and Community Safety (CLOCS) Standard.

The plan shall include the following:

- a) The construction programme;
- b) Clear access strategy for construction vehicles that avoids conflicts with pedestrians, cyclists, public transport and existing and future residents;
- c) Hours of operation;
- d) Phasing of the development of the site, including all highway works;
- e) Construction vehicle numbers, type, routing;
- f) Traffic management requirements;
- g) Cleaning of site entrances, site tracks and the adjacent public highway;
- h) Provision of sufficient on-site parking prior to commencement of construction activities;
- i) Details of any highway works necessary to enable construction to take place, including temporary access works;
- j) Details of any works to or affecting Public Rights of Way within and in the vicinity of the site. These shall demonstrate how safe and unobstructed access will be maintained at all times or be temporarily closed or extinguished.
- k) Details of servicing and delivery, including details of site access, compound, welfare facilities, hoarding, construction related parking, loading, unloading, turning areas and materials storage areas;
- l) Where works cannot be wholly contained within the site, a plan shall be submitted showing the site layout on the highway, including extent of hoarding, pedestrian routes and remaining road width for vehicle movements and proposed traffic management;
- m) Management of construction traffic and deliveries to reduce congestion and avoid school pick up/drop off times, including numbers, type and routing;
- n) Control of dust and dirt on the public highway, including details of wheel washing facilities and cleaning of site entrance adjacent to the public highway;



- o) Details of public contact arrangements and complaint management;
- p) Construction waste management proposals;
- q) Mechanisms to deal with environmental impacts such as noise and vibration, air quality and dust, light and odour;
- r) Post construction restoration/reinstatement of the working areas and temporary access to the public highway; and
- s) Measures to be implemented to ensure wayfinding for both occupiers of the site and or those travelling through it.

REASON: In order to protect highway safety and convenience, and to protect living conditions, in accordance with Policies 5, 12, 17 and 22 of Hertfordshire's Local Transport Plan (adopted 2018).

- 16) Notwithstanding the information contained in the Transport Assessment, no development shall commence in respect of any Development Parcel or Strategic Engineering Element until a Site Wide Phasing Plan which accords with agreed s106 triggers has been submitted to the local planning authority for approval. The Phasing Plan shall include the sequence of providing the following elements:
- a) Development parcels;
  - b) Major distributor roads/routes within the site, including timing of provision and opening of access points into the site;
  - c) Strategic foul surface water features and SUDS;
  - d) Open space;
  - e) Strategic electricity and telecommunications networks; and
  - f) Environmental mitigation measures.

No development shall commence apart from enabling works and strategic engineering elements, unless agreed in writing by the Local Planning Authority, until such time as the phasing plan has been approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved phasing contained within the phasing plan unless otherwise agreed in writing by the Local Planning Authority.

REASON: To ensure suitable, safe and satisfactory planning and development of the site in accordance with Policy 5 of Hertfordshire's Local Transport Plan 2018.

- 17) No part of the development hereby permitted shall be occupied prior to the implementation of the approved Travel Plan and dated (March 2022) (or implementation of those parts identified in the approved Travel Plan as capable of being implemented prior to occupation). Those parts of the approved Travel Plan that are identified therein as being capable of implementation after occupation shall be implemented in accordance with the timetable contained therein and shall continue to be implemented as long as any part of the development is occupied.

REASON: To ensure that sustainable travel options are promoted and maximised to be in accordance with Policies 3, 5, 7, 8, 9 and 10 of Hertfordshire's Local Transport Plan (adopted 2018).

- 18) Within three months of the first use of a school, a Modeshift STARS School Travel Plan shall be prepared and submitted to the local planning authority for approval. Thereafter the Travel Plan shall be implemented in full throughout the life of the school.

REASON: To ensure that sustainable travel options are promoted and maximised to be in accordance with Policies 3, 5, 7, 8, 9 and 10 of Hertfordshire's Local Transport Plan (adopted 2018).

- 19) No phase of the development hereby permitted shall be occupied unless and until a scheme for the parking of cycles including details of the design, level and siting of the proposed parking for that phase has been submitted to and approved in writing by the Local Planning Authority.

The approved scheme shall be fully implemented before the phase is first occupied or brought into use and thereafter retained for this purpose.

REASON: To ensure the provision of adequate cycle parking that meets the needs of occupiers of the proposed development and in the interests of encouraging the use of sustainable modes of transport in accordance with Policies 1, 5 and 8 of Hertfordshire's Local Transport Plan (adopted 2018).

- 20) No development shall commence in each phase unless and until a detailed surface water drainage scheme for that phase has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include the utilisation of above ground attenuation and conveyance sustainable drainage techniques (SuDS), with the incorporation of sufficient treatment trains to maintain or improve the existing groundwater quality, as per the Flood Risk Assessment produced by Glanville (dated March 2022) and updated submission information. The scheme shall also include the following:

- a) a detailed drawing demonstrating the management of surface water runoff during events that may temporarily exceed the capacity of the drainage system has been submitted to, and approved in writing by, the Local Planning Authority.
- b) detailed hydraulic modelling calculations of the proposed surface water drainage scheme that demonstrate there will be no increased risk of flooding as a result of development between the 1 in 1 year return period event and up to the 1 in 100 year return period event (including the correct allowance for climate change) have been submitted to, and approved in writing by, the Local Planning Authority.
- c) full details of the proposed methods of treating surface water runoff to ensure no risk of pollution is introduced to groundwater both locally and downstream of the site, especially from proposed parking and vehicular areas have been submitted to, and approved in writing by, the Local Planning Authority. Surface water treatment techniques shall include both natural SuDS structures and also proprietary devices, such as advanced vortex separators.
- d) detailed construction drawings of all proposed SuDS features, including details of flow controls and piped network, have been submitted to and approved in writing by the Local Planning Authority.

- e) detailed construction drawings of the proposed deep bore soakaway structures have been submitted to, and approved in writing by, the Local Planning Authority.
- f) a management and maintenance plan for the lifetime of the development has been submitted to and approved in writing by the Local Planning Authority. This plan shall include the arrangements for adoption by an appropriate public body or statutory undertaker, management company or maintenance by a Residents' Management Company and/or any other arrangements to secure the operation and maintenance to an approved standard and working condition throughout the lifetime of the development.
- g) details for the provision of any temporary drainage during construction has been submitted to and approved in writing by the Local Planning Authority. This shall include details to demonstrate that during the construction phase measures will be in place to prevent unrestricted discharge, and pollution to the receiving system.
- h) detailed construction drawings of the proposed foul water drainage network have been submitted to and approved in writing by the Local Planning Authority.

The development shall be carried out in accordance with the approved details.

REASON: To prevent the increased risk of flooding, both on and off site.

- 21) No above ground works shall take place for each phase until a scheme for the provision of adequate water supplies and fire hydrants, necessary for firefighting purposes at the site, has been submitted to and approved in writing by the Local Planning Authority for that phase. The development shall not be occupied until the scheme has been implemented in accordance with the approved details.

REASON: To ensure adequate water infrastructure provision is made on site for the local fire service to discharge its statutory firefighting duties.

- 22) Prior to the commencement of ground works in each phase of the development a minerals recovery strategy for the sustainable extraction of minerals on an opportunistic basis shall be submitted to and approved in writing by the Local Planning Authority, in accordance with the submitted Minerals Resource Assessment dated 15 August 2022. Thereafter, the relevant phase or phases of the development must not be carried out other than in accordance with the approved minerals strategy. The minerals strategy must include the following:
- a) An evaluation of the opportunities to extract minerals (sand and gravel, hoggin and other soils with engineering properties); and
  - b) A proposal for maximising the extraction of minerals, providing targets and methods for the appropriate recovery and beneficial use of the minerals (where feasible without the need for processing); and
  - c) A method to record the quantity of recovered mineral for re-use on site.

REASON: In order to prevent mineral sterilisation, contribute to resource efficiency, promote sustainable construction practices and reduce the need to import primary materials in accordance with Policy 5 of the adopted Hertfordshire Minerals Local Plan Review.

- 23) The development shall not be occupied until confirmation has been provided that either:
- a) All foul water network upgrades required to accommodate the additional flows from the development have been completed; or
  - b) A development and infrastructure phasing plan has been agreed with the Local Planning Authority to allow development to be occupied.

Where a development and infrastructure phasing plan is agreed, no occupation shall take place other than in accordance with the agreed development and infrastructure phasing plan.

REASON: To ensure that the development can be accommodated by suitable drainage infrastructure.

- 24) The No development-related works shall take place until the implementation of a programme of archaeological evaluation and excavation has been secured, and undertaken in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the Local Planning Authority. The Written scheme of investigation shall include an archaeological programme including:
- a) The programme and methodology of site investigation and recording.
  - b) The programme for post investigation assessment.
  - c) Provision to be made for publication and dissemination of the analysis and records of the site investigation.
  - d) Provision to be made for archive deposition of the analysis and records of the site investigation.
  - e) Nomination of a registered archaeological contractor to undertake the works set out within the Written Scheme of Investigation.
  - f) The site investigation shall be completed prior to development, or in such other phased arrangement, as agreed and approved in writing by the Local Planning Authority.

REASON: To ensure the appropriate identification, recording and publication of archaeological and historic remains affected by the development in accordance with Policy 111 of the LP.

- 25) Other than the demolition of buildings and structures down to ground level and site clearance works, including tree felling, no development shall take place in each phase until an investigation and risk assessment in relation to contamination on site (in addition to the phase I assessment provided with the planning application) has been submitted to and approved in writing by the Local Planning Authority for that phase. The assessment shall investigate the nature and extent of any contamination on the site (whether or not it originates on the site). The assessment shall be undertaken by competent persons and a written report of the findings submitted to and approved in writing by the Local Planning Authority before

any development takes place other than the excluded works listed above. The submitted report shall include:

- a) a survey of the extent, scale and nature of contamination; and
- b) an assessment of the potential risks to human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland, and service lines and pipes, adjoining land, ground waters and surface waters, ecological systems, archaeological sites and ancient monuments.

REASON: To ensure that adequate protection of human health is maintained and the quality of groundwater is protected in accordance with Policy 84 of the LP.

- 26) The results of the site investigations set out in condition 25 and the detailed risk assessment undertaken at the site shall be used to prepare an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken for each phase. The remediation strategy shall contain a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy are complete and identify any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. The options appraisal and remediation strategy shall be approved in writing by the Local Planning Authority prior to commencement of construction works and all requirements shall be implemented and completed to the satisfaction of the Local Planning Authority by a competent person.

REASON: To ensure that adequate protection of human health is maintained and the quality of groundwater is protected in accordance with Policy 84 of the LP.

- 27) Before any dwelling is occupied, verification report(s) demonstrating completion of the works set out in the remediation strategy and the effectiveness of the remediation shall be submitted in writing and approved by the LPA. The reports shall include results of validation sampling and monitoring carried out in accordance with the approved remediation strategy to demonstrate that the site remediation criteria have been met. It shall also include any plan for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.

REASON: To ensure that adequate protection of human health is maintained and the quality of groundwater is protected in accordance with Policy 84 of the LP.

- 28) No dwelling hereby permitted shall be occupied unless and until the internal sound level requirements and insulation proposals outlined in the Noise Assessment (reference RP01- 21618-R2) prepared by Cass Allen have been fully implemented.

REASON: To ensure suitable living conditions for future occupiers.

- 29) Open space shall be provided on site in accordance with the approved parameter plans. No development in each phase shall commence unless

details of all play spaces in that phase are submitted to and approved in writing by the Local Planning Authority. The approved play space scheme for each phase shall be completed prior to occupation of 50% of the dwellings hereby permitted in that phase and thereafter the approved play space shall be retained.

Such scheme shall indicate but not be limited to:

- a) Details of types of equipment to be installed.
- b) Surfaces including details of materials and finishes.
- c) The location of any proposed signage linked to the play areas.

REASON: To ensure suitable open space and play facilities in accordance with Policy 70 of the LP.

- 30) No development in each phase, shall take place until a Site Waste Management Plan (SWMP) for the construction of that phase of the site has been submitted to and approved in writing by the Local Planning Authority. The SWMP shall aim to reduce the amount of waste being produced on site and shall contain information including estimated and actual types and amounts of waste removed from the site and where that waste is being taken to. The development shall be carried out in accordance with the approved SWMP.

REASON: To promote sustainable development and to ensure measures are in place to minimise waste generation and maximise the on-site and offsite reuse and recycling of waste materials, in accordance with Policy 12 of the Hertfordshire Waste Core Strategy and Development Management Policies.

## **End of Schedule 1 - Conditions for Appeal A**



## **SCHEDULE 2 - RECOMMENDED CONDITIONS (APPEAL B)**

- 1) The Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.

REASON: To comply with Section 92(1) of the Town and Country Planning Act 1990.

- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.

REASON: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.

REASON: To comply with the requirements of Section 92 (2) of the Town and Country Planning Act 1990.

- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan (Revision E), Proposed Access Arrangements (21086 001 Rev B), Proposed Foot/Cycle Amendments – Chiswell Green Lane, Stanley Avenue, Watford Road (21086/002), Proposed Foot/Cycle Enhancements (Stanley Avenue) (21086/002/1), Proposed Highway Amendments (Watford Road) (21086/002/2), Proposed PRow Improvements (St Stephens 082) (21086/003), Proposed PRow Upgrades (St Stephens FP080) (22185/004 Revision A) and Proposed Pedestrian/Cycling Upgrades - Toucan Crossing (21086/006).

REASON: To ensure that the development is carried out in accordance with the approved plans and details.

- 5) Full details of both soft and hard landscape works shall be submitted as part of application(s) for reserved matters approval as required by Condition 1. The landscaping details to be submitted shall include:

- a) existing and proposed finished levels and contours;
- b) trees and hedgerow to be retained;
- c) planting plans, including specifications of species, sizes, planting centres, number and percentage;
- d) mix, and details of seeding or turfing;
- e) hard surfacing;
- f) means of enclosure and boundary treatments; and
- g) Structures (such as furniture, play equipment, refuse or other storage units, signs, lighting).

REASON: To ensure satisfactory landscape treatment of the site in the interests of character and appearance, in accordance with Policies 70 and 74 of the LP.

- 6) A landscape and ecological management plan (LEMP) shall be submitted as part of application(s) for reserved matters approval as required by Condition 1 and shall include:
- a) A description of the objectives;
  - b) Habitat/feature creation measures proposed, including a methodology translocation of habitats, such as the existing topsoil, grassland and timeframes for completion;
  - c) Maintenance of habitat/feature creation measures in the long term and those responsible for delivery;
  - d) Lighting strategy (aiming to ensure that illumination of the existing hedgerows does not exceed 0.5 lux); and
  - e) A monitoring programme and the measures required to adapt the LEMP should objectives fail to be met.

The LEMP shall cover all landscape areas within the site, other than small privately owned domestic gardens.

REASON: To maximise the on-site mitigation for biodiversity impact.

- 7) Full details of the proposed housing mix, including a breakdown of unit sizes and tenure, shall be submitted as part of application(s) for reserved matters approval as required by Condition 1.

REASON: To ensure a suitable dwelling mix at the site in accordance with Policy 70 the LP.

- 8) Notwithstanding the submitted Arboricultural Impact Assessment and Arboricultural Method Statement (October 2021), a detailed tree protection plan and method statement shall be submitted as part of application(s) for reserved matters approval as required by Condition 1.

REASON: To ensure the protection of trees at the site and to comply with the requirements of Policy 74 of the LP.

- 9) No trees shall be damaged or destroyed, or uprooted, felled, lopped or topped without the previous written consent of the Local Planning Authority until at least 5 years following the completion of the approved development. Any trees removed without such consent or dying or being severely damaged or becoming seriously diseased before the end of that period shall be replaced by trees of such size and species as may be agreed with the Local Planning Authority.

REASON: To ensure satisfactory landscape treatment of the site in the interests of character and appearance, in accordance with Policy 74 of the LP.

- 10) All existing hedges or hedgerows shall be retained, unless shown on the approved drawings as being removed. All hedges and hedgerows on and immediately adjoining the site shall be protected from damage for the duration of works on the site. This shall be to the satisfaction of the Local Planning Authority in accordance with relevant British Standards BS 5837 (2005). Any parts of hedges or hedgerows removed without the Local Planning Authority's consent or which die or become, in the opinion of the Local Planning Authority, seriously diseased or otherwise damaged within five years following completion of the approved development shall be

replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with plants of such size and species and in such positions as may be agreed with the Authority.

REASON: In the interests of ecology, character and appearance and to comply with Policy 74 of the LP.

- 11) Prior to the first occupation of the development hereby permitted, the vehicular access shall be provided and thereafter retained at the position shown on the approved plan drawing number 21086 001 Rev B. Arrangement shall be made for surface water drainage to be intercepted and disposed of separately so that it does not discharge from or onto the highway carriageway.

REASON: To ensure satisfactory access into the site and avoid carriage of extraneous material or surface water from or onto the highway in the interests of highway safety.

- 12) Prior to the commencement of the development, full details in relation to the design of estate roads (in the form of scaled plans and / or written specifications for each phase) shall be submitted to and approved in writing by the Local Planning Authority to detail the following:
- a) Roads;
  - b) Footways;
  - c) Cycleways (compliant with LTN 1/20);
  - d) Minor artefacts, structures and functional services;
  - e) Foul and surface water drainage;
  - f) Visibility splays;
  - g) Access arrangements including temporary construction access;
  - h) Hard surfacing materials;
  - i) Parking areas for vehicles and cycles;
  - j) Loading areas; and
  - k) Turning and circulation areas.

The development shall be implemented in accordance with those approved plans.

REASON: To ensure suitable, safe and satisfactory planning and development of the site in accordance with Policies 34, 69 and 70 of the LP and Policy 5 of Hertfordshire's Local Transport Plan (adopted 2018).

- 13) The development hereby permitted shall not be occupied unless and until full details have been submitted to and approved in writing by the Local Planning Authority in relation to the proposed arrangements for future management and maintenance of the proposed streets within the development. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under Section 38 of the Highways Act 1980 or a Private Management and Maintenance Company has been established.

REASON: To ensure satisfactory development and to ensure estate roads are managed and maintained thereafter to a suitable and safe standard in accordance with Policies 34, 69 and 70 of the LP and Policies 5 and 22 of Hertfordshire's Local Transport Plan (adopted 2018).

- 14) Notwithstanding the details indicated on the submitted drawings, no on-site works above slab level shall commence until a detailed scheme for the offsite improvement works as indicated on the drawing numbers set out below have been submitted to and approved in writing by the Local Planning Authority:
- a) Proposed Foot/Cycle Enhancements Chiswell Green Lane / Stanley Avenue - drawing 22185/006 or where planning permission for the development pursuant to appeal APP/B1930/W/22/3313110 is granted, drawings 8230258-1001 I2 and 8230258-1002 I4.
  - b) Watford Road / Chiswell Green Lane Foot / Cycle Enhancements and Highway Amendments drawing 21086/002/2, or where planning permission for the development pursuant to appeal APP/B1930/W/22/3313110 is granted, drawing 22185/007 showing the signalised junction.
  - c) Proposed Memorial Car Parking Allocation (22185/005 Rev B).
  - d) Proposed Pedestrian/Cycling Upgrades - Toucan Crossing (21086/006).
  - e) Proposed footpath improvements (21086/003 and 22185/004 Rev A).

Where planning permission for the development pursuant to appeal APP/B1930/W/22/3313110 is granted, details shall only be required to be submitted in respect of those works listed in a and b above if at the date of submission those said works have not already been approved pursuant to the planning permission granted pursuant to appeal APP/B1930/W/22/3313110.

Prior to first Occupation of the development hereby permitted, the offsite highway improvement works approved in accordance with the above shall be completed in accordance with the approved details.

REASON: To ensure delivery of the necessary highway improvements.

- 15) No development shall commence unless and until a detailed Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the construction of the development for which planning permission has been granted shall only be carried out in accordance with the approved CEMP unless otherwise agreed in writing by the local planning authority. The plan shall be prepared in accordance with the Construction Logistics and Community Safety (CLOCS) Standard.

The plan shall include the following:

- a) The construction programme;
- b) Clear access strategy for construction vehicles that avoids conflicts with pedestrians, cyclists, public transport and existing and future residents;

- c) Hours of operation;
- d) Phasing of the development of the site, including all highway works;
- e) Construction vehicle numbers, type, routing;
- f) Traffic management requirements;
- g) Cleaning of site entrances, site tracks and the adjacent public highway;
- h) Provision of sufficient on-site parking prior to commencement of construction activities;
- i) Details of any highway works necessary to enable construction to take place, including temporary access works;
- j) Details of any works to or affecting Public Rights of Way within and in the vicinity of the site. These shall demonstrate how safe and unobstructed access will be maintained at all times or be temporarily closed or extinguished.
- k) Details of servicing and delivery, including details of site access, compound, welfare facilities, hoarding, construction related parking, loading, unloading, turning areas and materials storage areas;
- l) Where works cannot be wholly contained within the site, a plan shall be submitted showing the site layout on the highway, including extent of hoarding, pedestrian routes and remaining road width for vehicle movements and proposed traffic management;
- m) Management of construction traffic and deliveries to reduce congestion and avoid school pick up/drop off times, including numbers, type and routing;
- n) Control of dust and dirt on the public highway, including details of wheel washing facilities and cleaning of site entrance adjacent to the public highway;
- o) Details of public contact arrangements and complaint management;
- p) Construction waste management proposals;
- q) Mechanisms to deal with environmental impacts such as noise and vibration, air quality and dust, light and odour;
- r) Post construction restoration/reinstatement of the working areas and temporary access to the public highway; and
- s) Measures to be implemented to ensure wayfinding for both occupiers of the site and or those travelling through it.

REASON: In order to protect highway safety and convenience, and to protect living conditions, in accordance with Policies 5, 12, 17 and 22 of Hertfordshire's Local Transport Plan (adopted 2018).

- 16) Notwithstanding the information contained in the Transport Assessment, no development shall commence in respect of any development parcel or strategic engineering element listed below until a Site Wide Phasing Plan, which accords with agreed s106 triggers has been submitted to the Local Planning Authority for approval. The Phasing Plan shall include the sequence of providing the following elements:

- a) Development parcels;
- b) Major distributor roads/routes within the site, including timing of provision and opening of access points into the site;
- c) Strategic foul surface water features and SUDS;
- d) Open space;
- e) Strategic electricity and telecommunications networks;
- f) Environmental mitigation measures.

No development shall commence apart from enabling works and strategic engineering elements, unless, agreed in writing by the Local Planning Authority until such time as the phasing plan has been approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved phasing contained within the phasing plan unless otherwise agreed in writing by the Local Planning Authority.

REASON: To ensure suitable, safe and satisfactory planning and development of the site in accordance with Policy 5 of Hertfordshire's Local Transport Plan 2018.

- 17) No part of the development hereby permitted shall be occupied prior to the implementation of the approved Travel Plan dated (November 2021) (or implementation of those parts identified in the approved Travel Plan as capable of being implemented prior to occupation). Those parts of the approved Travel Plan that are identified therein as being capable of implementation after occupation shall be implemented in accordance with the timetable contained therein and shall continue to be implemented as long as any part of the development is occupied.

REASON: To ensure that sustainable travel options associated with the development are promoted and maximised to be in accordance with Policies 3, 5, 7, 8, 9 and 10 of Hertfordshire's Local Transport Plan (adopted 2018).

- 18) Prior to the first occupation/use of the development hereby permitted a scheme for the parking of cycles including details of the design, level and siting of the proposed parking shall be submitted to and approved in writing by the Local Planning Authority.

The approved scheme shall be fully implemented before the development is first occupied or brought into use and thereafter retained for this purpose.

REASON: To ensure the provision of adequate cycle parking that meets the needs of occupiers of the proposed development and in the interests of encouraging the use of sustainable modes of transport in accordance with Policies 1, 5 and 8 of Hertfordshire's Local Transport Plan (adopted 2018).

- 19) No development shall be commenced until details of the surface water drainage scheme, based on sustainable drainage principles together with a programme of implementation and maintenance for the lifetime of the development, have been submitted to and approved in writing by the Local Planning Authority, which must include the following:

- a) A fully detailed surface water drainage scheme has been submitted to, and approved in writing, by the Local Planning Authority. The scheme shall include the utilisation of contemporary and appropriate sustainable drainage (SuDS) techniques, with reference to the



'Sustainable Drainage Assessment' by GeoSmart Information Ltd and dated 5th July 2022.

- b) Accompanying hydraulic modelling calculations for the entire surface water drainage scheme have been submitted and approved. These detailed calculations shall demonstrate that both the site and surrounding area will not flood from surface water as a result of the development for a full range of summer and winter storm durations, up to the 1 in 100 year return period event including an appropriate allowance for climate change.
- c) The maximum permissible flow controlled discharge rate shall no more than 10l/s for all events up to and including the 1 in 100 year return period event plus an appropriate allowance for climate change, as currently agreed in principle with Thames Water. This 'in principle' discharge agreement must be formally confirmed in writing with Thames Water and submitted in support of this condition, which shall also include full details of the point of connection, including cover and invert level(s).
- d) Submission of final detailed drainage layout plan(s) including the location and provided volumes of all storage and sustainable drainage (SuDS) features, pipe runs, invert levels and discharge points. If there are areas to be designated for informal flooding these shall also be shown on a detailed site plan. The volume, size, inlet and outlet features, long-sections and cross sections of the proposed storage and SuDS features shall also be provided.
- e) The surface water drainage plan(s) shall include hydraulic modelling pipe label numbers that correspond with the hydraulic modelling calculations submitted, to allow for accurate cross-checking and review.
- f) If any infiltration drainage is proposed on the final drainage layout, this shall be supported with appropriate infiltration testing carried out to the BRE Digest 365 Soakaway Design standard. This would also require confirmation of groundwater levels to demonstrate that the invert level of any soakaways or unlined attenuation features can be located a minimum of 1m above maximum groundwater levels.
- g) A detailed assessment of the proposed SuDS treatment train and water quality management stages, for all surface water runoff from the entire development site.
- h) The provision of a detailed plan showing the management of exceedance flow paths for surface water for events greater than the 1 in 100 year return period plus climate change event.
- i) A construction management plan to address all surface water runoff and any flooding issues during the construction stage is submitted and approved.
- j) If access or works to third party land is required, confirmation that an agreement has been made with the necessary landowners/consenting authorities to cross third party land and/or make a connection to the proposed sewer chamber location.

- k) A detailed management and maintenance plan for the lifetime of the development has been submitted and approved, which shall include the arrangements for adoption by an appropriate public body or water company, management company or maintenance by a Residents' Management Company and/or any other arrangements to secure the operation and maintenance to an approved standard and working condition throughout the lifetime of the development.

The development shall be carried out in accordance with the approved details.

REASON: To ensure that the development is served by a satisfactory system of sustainable surface water drainage and that the approved system is retained, managed and maintained throughout the lifetime of the development, in accordance with Policy 84 of the LP.

- 20) No above ground works shall take place until a scheme for the provision of adequate water supplies and fire hydrants, necessary for firefighting purposes at the site, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the scheme has been implemented in accordance with the approved details.

REASON: To ensure adequate water infrastructure provision is made on site for the local fire service to discharge its statutory firefighting duties.

- 21) Prior to the commencement of development/excavation or ground works in each phase of the development a minerals recovery strategy for the sustainable extraction of minerals shall be submitted to and approved in writing by the Local Planning Authority, in accordance with the submitted Minerals Resource Assessment dated 15 August 2022. Thereafter, the relevant phase or phases of the development must not be carried out other than in accordance with the approved minerals strategy. The minerals strategy must include the following:

- a) An evaluation of the opportunities to extract minerals (sand and gravel, hoggins and other soils with engineering properties); and
- b) A proposal for maximising the extraction of minerals, providing targets and methods for the recovery and beneficial use of the minerals; and
- c) A method to record the quantity of recovered mineral (re-use on site or off-site).

REASON: In order to prevent mineral sterilisation, contribute to resource efficiency, promote sustainable construction practices and reduce the need to import primary materials in accordance with Policy 5 of the adopted Hertfordshire Minerals Local Plan Review.

- 22) The development shall not be occupied until confirmation has been provided that either:
  - a) All foul water network upgrades required to accommodate the additional flows from the development have been completed; or
  - b) A development and infrastructure phasing plan has been agreed with the Local Planning Authority to allow development to be occupied.

Where a development and infrastructure phasing plan is agreed, no occupation shall take place other than in accordance with the agreed development and infrastructure phasing plan.

REASON: To ensure that the development can be accommodated by suitable drainage infrastructure.

- 23) No development-related works shall take place until the implementation of a programme of archaeological evaluation and excavation has been secured and undertaken in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the Local Planning Authority.

The Written scheme of investigation shall include an archaeological programme including:

- a) The programme and methodology of site investigation and recording.
- b) The programme for post investigation assessment.
- c) Provision to be made for publication and dissemination of the analysis and records of the site investigation.
- d) Provision to be made for archive deposition of the analysis and records of the site investigation.
- e) Nomination of a registered archaeological contractor to undertake the works set out within the Written Scheme of Investigation.
- f) The site investigation shall be completed prior to development, or in such other phased arrangement, as agreed and approved in writing by the Local Planning Authority.

REASON: To ensure the appropriate identification, recording and publication of archaeological and historic remains affected by the development in accordance with Policy 111 of the LP.

- 24) No works involving excavations (e.g. piling or the implementation of a geothermal open/closed loop system) shall be carried until the following has been submitted to and approved in writing by the Local Planning Authority:

- a) An Intrusive Ground Investigation to identify the current state of the site and appropriate techniques to avoid displacing any shallow contamination to a greater depth.
- b) A Risk Assessment identifying both the aquifer and the abstraction point(s) as potential receptor(s) of contamination.
- c) A Method Statement detailing the depth and type of excavations (e.g. piling) to be undertaken including mitigation measures (e.g. appropriate piling design, off site monitoring boreholes etc.) to prevent and/or minimise any potential migration of pollutants to public water supply. Any excavations must be undertaken in accordance with the terms of the approved method statement.

REASON: To avoid displacing any shallow contamination to a greater depth and to prevent and/or minimise any potential migration of pollutants to a public water supply abstraction.

- 25) If, during development, contamination not previously identified is found to be present at the site, then no further development shall be carried out until a Remediation Strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved with a robust pre and post monitoring plan to determine its effectiveness.

REASON: To ensure that the development does not contribute to unacceptable concentrations of pollution posing a risk to public water supply from previously unidentified contamination sources at the development site and to prevent deterioration of groundwater and/or surface water.

- 26) Prior to the commencement of development, details of a Surface Water Drainage Scheme that considers ground contamination and public water supply as a receptor of that contamination shall be submitted to and approved in writing by the Local Planning Authority.

REASON: To ensure that adequate protection of human health is maintained and the quality of groundwater is protected in accordance with Policy 84 of the LP.

- 27) No development shall take place until a Site Waste Management Plan (SWMP) for construction waste arising from the site has been submitted to and approved in writing by the Local Planning Authority. The SWMP shall aim to reduce the amount of waste being produced on site and shall contain information including estimated and actual types and amounts of waste removed from the site and where that waste is being taken to. The development shall be carried out in accordance with the approved SWMP.

REASON: To promote sustainable development and to ensure measures are in place to minimise waste generation and maximise the on-site and offsite reuse and recycling of waste materials, in accordance with Policy 12 of the Hertfordshire Waste Core Strategy and Development Management Policies.

## **End of Schedule 2 - Conditions for Appeal B**

**Schedule 3 – Noise condition suggested by the Council for Appeal B only  
(only to be applied if the Secretary of State considers it would meet the  
tests for conditions, contrary to the recommendation of the Inspector)**

No development above ground level shall take place until a noise assessment has been carried out in accordance with BS8233:2014 Guidance on sound insulation and noise reduction for buildings to establish the potential impact of noise from road traffic, railways, commercial activity, on the proposed development.

Where identified by the noise assessment, to be necessary, a scheme for noise mitigation including sound insulation measures to be incorporated into the design of the proposed development so that the indoor ambient noise criteria described in BS8233:2014 are achieved within all habitable rooms, shall be submitted to and approved in writing by the Local Planning Authority, and implemented prior to the occupation of any of the units.

In general, for steady external noise sources, it is desirable that the internal ambient noise level does not exceed the guideline values set out below:

Internal ambient noise levels for dwellings

Activity Location 0700 to 2300 2300 to 0700

Resting Living room 35 dB Laeq, 16 hour

Dining Dining room/area 40 dB Laeq, 16 hour

Sleeping (daytime resting) Bedroom 35 dB Laeq, 16 hour 30 dB Laeq, 8 hour

The levels shown above are based on the existing guidelines issued by the World Health Organisation.

The L<sub>Amax,f</sub> for night time noise in bedrooms should not exceed 45dBA more than 10 times a night in bedrooms; this is not included in the 2014 standard but note 4 allows an L<sub>Amax,f</sub> to be set. 45dBA and over is recognised by the World Health Organisation to be noise that is likely to cause disturbance to sleep.

REASON: To protect the amenities of future occupants of the development and to comply with the requirements of the NPPF.

**End of Schedule 3**



# Department for Levelling Up, Housing & Communities

[www.gov.uk/dluhc](https://www.gov.uk/dluhc)

## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

## SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

### Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

## SECTION 2: ENFORCEMENT APPEALS

### Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

## SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

## SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.