

Planning Proof of Evidence of Russell Gray BA (Hons) DIP UP MRTPI

Appeal by Canton Ltd

Land off Bullens Green Lane, Colney Heath

WHBC Appeal Ref: APP/B1930/W/20/3265925

SADC Appeal Ref: APP/C1950/W/20/3265926



Woods Hardwick
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Issue

Final

Statement prepared by

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Date Issued

30/03/2020

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1 Introduction

Qualifications

- 1.1 My name is Russell Gray. I hold a BA (Hons) in Geography and Planning Studies, a Post-Graduate Diploma in Urban Planning and am a Member of the Royal Town Planning Institute. I am a Director of Woods Hardwick Planning Ltd, a position I have held since 2011. I have over 19 years' planning experience in the public and private sector. My experience includes providing planning advice in respect of residential, mixed-use and commercial schemes for a range of clients, including housebuilders, developers, land promoters and landowners.

Proof of Evidence

- 1.2 I am instructed by Canton Ltd (*"the Appellant"*) to provide evidence to this inquiry in respect of linked appeals against Welwyn Hatfield Borough Council's (*"WHBC"*) refusal of outline planning application (Ref: 6/2020/2248/OUTLINE) and St Albans City & District Council's (*"SADC"*) non-determination of an identical outline planning application (Ref: 5/2020/1992/LSM), this being a cross-boundary site, for a residential development of up to 100 dwellings, including 45% affordable and 10% self or custom build, together with all ancillary works (All matters are reserved except access).
- 1.3 Woods Hardwick Planning Ltd have been engaged by the Appellant to advise on this site since 2007. I have been periodically involved in the promotion of the site since then and consistently so since April 2020 in the formulation of the applications. I have visited the site on a number of occasions during that time.
- 1.4 My evidence addresses planning matters, including the framework of planning policy against which the appeal proposals should be judged at both a local and national level. I also deal with the 'very special circumstances' case for development in the Green Belt, relevant material considerations, the weight to be given to the benefits associated with and any harm arising from the scheme and the planning balance.
- 1.5 This proof of evidence should be read in conjunction with the Appellants' Statement of Case, the main Statement of Common Ground and the evidence provided by other expert witnesses named below.

Statement of Truth

- 1.6 I confirm the evidence which I have prepared for this appeal is true to the best of my knowledge and belief and has been prepared in accordance with the guidance of my

professional institution and that the opinions expressed are my true and professional opinions.

Other witnesses

- 1.7 My proof draws on the evidence of Gary Holliday on landscape and visual impact, including the visual aspect of openness of the Green Belt and impact on character and appearance, Andrew Crutchley on heritage matters, Andy Moger on the need for self and custom build housing and James Stacey on affordable housing and affordability generally.

Statements of Common Ground

- 1.8 The Appellant agreed a Statement of Common Ground (“SoCG”) with the Council on 5th March 2021. This follows the PINS template for the structure and contents of statements of common ground.
- 1.9 At the time of writing a further SoCG on highways matters is in the process of being agreed between the Appellant and the LPAs, following the Highway Authority’s review of further information submitted in respect of the vehicular and pedestrian accesses and confirmation that their outstanding concerns can be addressed via conditions.
- 1.10 As requested by the Inspector in the Case Management Conference, a Scott Schedule and a plan indicating the proximity of the site to local facilities, services and bus stops, is also being prepared and agreed between the parties to confirm further the extent of agreement and disagreement between them on the main issues relevant to these appeals.

Structure of this Proof

- 1.11 This proof is structured as follows:
 - Section 2 - The Appeal Site and Surroundings;
 - Section 3 - Development Plan;
 - Section 4 - Material Considerations; and
 - Section 5 - Planning Balance.
- 1.12 Appendix RG1 provides an explanation of the amended and new plans and documents the Appellant has prepared since the applications were considered, to address some of the reasons for refusal (RfR) and putative RfR, that it wishes to rely upon, demonstrating that the changes to the scheme are of a very minor nature. It also sets out the extent of consultation undertaken on these amended and new plans and documents with interested parties and how this was publicised.

2 The Appeal Site and Surroundings

Site Character

- 2.1 The Design and Access Statement (CD1.20), Planning Statement (CD1.15) and Landscape & Visual Appraisal (CD1.29) submitted with the applications all included a description of the appeal site and surroundings, with a further description included in the Appellant's Statement of Case.
- 2.2 The appeal site comprises a single, irregularly shaped arable field, approximately 5.25 ha in size. Vehicular access is currently provided via a field access from Bullens Green Lane in the north eastern corner of the appeal site.
- 2.3 A Public Right of Way (FP67/46) also enters the site at the same point as the vehicular field access, running along part of the northern boundary, before heading north west and connecting to FP23. It continues providing a non-vehicular connection to Roestock Lane. FP23 also continues south east running adjacent to the sites boundary, before joining FP44 and running south west through Roestock Park.
- 2.4 The Proof of Evidence of Gary Holliday provides a detailed description of the character of the site, including the boundary planting. This notes that the site is bordered by settlement related uses and development along the entirety of its northern and western boundaries and on part of its southern and eastern boundaries.
- 2.5 Residential properties on Roestock Lane, Roestock Gardens and no. 58 Bullens Green Lane adjoin the sites northern boundary. These properties largely back onto it, although 58 Bullens Green Lane has its side boundary facing the appeal site.
- 2.6 The western boundary of the site is adjoined by an Affinity Water facility that comprises a substantial building accommodating offices and other uses in connection with the operation of the facility, other smaller buildings, a large area of hardstanding and grass covered reservoirs. The buildings are functional in appearance, with a combination of pitched and flat roofs. Further south of this, adjacent to the western boundary and separated by a mature hedge/tree line, is Roestock Park, including play facilities and a single storey building that is used by a local Scout group, and beyond it are residential properties on Admirals Close, including terraces of 3 storey houses.
- 2.7 To the south, bungalows on Fellowes Lane adjoin part of the southern boundary of the appeal site, with two storey properties beyond them. The remainder of the southern boundary lies adjacent to the Fellowes Lane highway, with a further arable field on the opposite side of it.

- 2.8 The eastern boundary of the site fronts onto Bullens Green Lane with an intermittent hedgerow running along the frontage. Nos. 45 - 61 Bullens Green lane lie opposite the northern section of the site's western boundary and 2 - 4 Tollgate Cottages lie opposite the southern extent. The remainder of this boundary lies opposite fields, beyond which is Red Hall Wood and further east the A1(M).
- 2.9 No. 68 Roestock Lane, which backs onto to the northern boundary of the site at its westernmost extent, is a Grade II listed building. The evidence of Andrew Crutchley describes the physical relationship between the appeal site and this building in greater detail.

Locational Sustainability

- 2.10 WHBC's first RfR on its Decision Notice (CD4.01) and SADC's second putative RfR (CD4.02) allege that the appeal site is in an unsuitable and unsustainable location in regard to access to facilities and services by means other than private motor vehicle.
- 2.11 To assist the inquiry on this matter the Inspector requested during the Case Management Conference that the main parties prepare a plan ("*facilities plan*") and append it to the Scott Schedule, showing the location of local facilities and services, along with the location of bus stops and travel times/distances for pedestrians. At the time of preparing this evidence this facilities plan had been prepared by the Appellant and provided to the Local Planning Authorities (LPAs) and the Rule 6 Party for agreement, but comments had not been received.

Facilities and Services

- 2.12 The facilities plan indicates that the following facilities and services are located in and around Colney Heath:
- Colney Heath Junior Mixed Infant School and Nursery School;
 - Pre-School Nursery (Treasure Tots Pre-School Ltd);
 - St Marks Church and associated facilities;
 - Colney Heath Village Hall;
 - Convenience Store & Post Office (Colney Heath News);
 - Public House (The Crooked Billet);
 - Takeaway (The Rice Indian Takeaway);
 - Cake Shop (Hayley Jane's Cakes - currently shut);
 - Hair Salon (Colney Cuts - currently shut due to Covid-19);

- Roestock Park (including Scout and Guide hut);
- Colney Recreation Ground & Social Club;
- Colney Heath Common;
- Red Hall Wood; and
- Numerous Public Rights of Way across surrounding fields.

Accessibility by foot

2.13 The facilities plan includes details of walking distances and approximate walking times to each of these facilities from the farthest point of the appeal site (i.e. the longest distance) and is therefore a ‘worst case scenario’. For clarity, the assumed walking speed used to calculate these approximate walking times has been taken from the IHT Guidelines for Providing Journeys on Foot, which is referenced in Manual for Streets (MfS) (CD9.09).

2.14 The facilities plan also indicates both an 800m (10 minute) and a 2km walking radius, reflecting specific distances referred to in MfS (CD9.09). Paragraph 4.4.1 of MfS sets out:

“Walkable neighbourhoods are typically characterised by having a range of facilities within 10 minutes’ (up to about 800m) walking distance of residential areas which residents may access comfortably on foot. However, this is not an upper limit and PPS13 states that walking offers the greatest potential to replace short car trips, particularly those under 2km. MfS encourages a reduction in the need to travel by car through the creation of mixed-use neighbourhoods with interconnected street patterns, where daily needs are within walking distance of most residents”.

2.15 Paragraph 6.3.1 of MfS (CD9.09) explains:

“The propensity to walk is influenced not only by distance, but also by the quality of the walking experience. A 20-minute walk alongside a busy highway can seem endless, yet in a rich and stimulating street, such as in a town centre, it can pass without noticing. Residential areas can offer a pleasant walking experience if good quality landscaping, gardens or interesting architecture are present.....”

2.16 I consider the walk from the appeal site to the various facilities referred to above should be considered a rich and stimulating one, both in respect of the streets themselves and the numerous views of the surrounding countryside and Colney Heath Common experienced along the journey.

2.17 The facilities plan demonstrates that all of the aforementioned facilities within and alongside Colney Heath are located within the 2km walking distance, with many much nearer than that. In particular, Roestock Park and Red Hall Wood are indicated as being 4 minutes 29 seconds and 6 minutes 50 seconds from the furthest point of the site respectively.

2.18 The facilities plan also indicates that there are a number of other facilities in Hatfield that are accessible by foot via the A1(M) subway within 2km. These are as follows:

- University of Hertfordshire;
- Lighthouse Chapel International;
- The Hive @ Jim McDonald Centre (Community Centre);
- South Hatfield Post Office;
- St John's Church Hatfield;
- The Harrier (Public House); and
- Northdown Road Surgery.

2.19 The appeal scheme would also improve pedestrian connectivity locally through the provision of a new section of footpath within the landscaping around the eastern and southern perimeters of the site, linking Bullens Green Lane at the north eastern corner of the appeal site with Fellowes Lane through the new pedestrian access on the southern boundary.

Accessibility by Cycle

2.20 The submitted Travel Plan (CD1.24) notes that cycling has the potential to substitute for short car trips, particularly those of less than 5km. It demonstrates that, in addition to the whole of Colney Heath, the eastern extents of St Albans and the southern extents of Hatfield, are accessible within a 5km cycling distance of the appeal site.

2.21 It highlights that National Cycle Route 61 to the north west is approximately 3km from the appeal site along Smallford Lane, providing access to St Albans by cycle. National Cycle Route 12 is approximately 2km from the appeal site to the south east and provides access by cycle to both Welham Green and Hatfield. This provides those travelling by cycle with good access to a range of services and facilities. Table 5.3 in the Travel Plan (CD1.24) sets out a list of destinations accessible within 20 and 30 minutes cycle ride of

the appeal site, assuming an average cycling speed of 15.5kph. This is reproduced below for ease of reference.

Table 5.3: Destinations Accessible within a 30-minute Cycle from the Development Site

Destination	Journey Distance and Time
University of Hertfordshire, South Hatfield Post Office, Northdown Road Surgery, Evangelical Baptist Church, Hatfield Leisure Centre, Oak View Primary and Nursery School, Hatfield Community Free School, Co-Op Food, ALDI, McDonalds Hatfield, ASDA Hatfield Superstore, ASDA Pharmacy, Energie Fitness Gym, Boots, Cohens Chemist, Hatfield Library, Wrafton House Surgery NHS, Gracemead Church, The Galleria Outlet Shopping Centre, Bright Comets Day Nursery, Green Lanes Primary School, Ellenbrook Fields, Ellenbrook Recreation Ground & Play Area, Colney Fields Shopping Park.	Up to 5.0km Accessible within 20 minutes
Colney Medical Centre, Broad Colney Lakes Nature Reserve, Tesco Express, London Colney Primary School, London Colney Post Office, Highfield Park, St Albans Train Station, One Hatfield Hospital, Stanborough Park, Morrisons, The Odyssey Cinema, Hatfield House, Hatfield Park, Mill Green Museum and Mill, Stanborough Park Watersports Centre, Welwyn Garden City Train Station, Boots Pharmacy, Hatfield Business Park, Essendon Golf Club.	5.0km to 10km Accessible within 30 minutes

2.22 I note the local train stations of Welham Green and Hatfield are within a 20 minutes cycling distance, with available CCTV monitored and sheltered cycle parking; St Albans station is within 30 minutes by cycle, and also provides these facilities at a significantly higher capacity.

2.23 I am therefore of the view that there is a genuine choice for future residents of the appeal site to travel by cycle. I also note that HCC Highways response to WHBC (CD3.02) states:

“Cycling facilities are adequate with safe routes and access to the national cycle route network. No further information is required for this.”

Public Transport

2.24 The facilities plan also indicates the location of bus stops, of which there are 7 (2 of these are on the opposite sides of Tollgate Road) within 10 minutes' walk of the appeal site. In each case the plan indicates the name of the stop, the services that stop at it and their frequency.

- 2.25 The submitted Travel Plan (CD1.24) provides detailed commentary on local bus and train services and their existing patronage, with up to four different bus services running to Essendon, Brookmans Park, London Colney, Welwyn Garden City, St Albans, Potters Bar, Sandridge and Hatfield.
- 2.26 The closest railway station to the site is Welham Green Station, accessible within 3.5km of the appeal site, translating to a 12-minute cycle or 5-minute drive. Additionally, St Albans Station is accessible within 7.8km of the site, translating to a 29-minute cycle or 13-minute drive. It is also important to note that both of these stations are accessible via the aforementioned bus services. Rail services to popular destination include Moorgate, Welwyn Garden City, Bedford, and London - all within 45-minutues by train from either Welham Green or St. Albans stations.
- 2.27 I therefore consider the appeal site to be well-served by buses and in reasonable proximity to train services, particularly in the context of its rural location. Figure 5.7 of the Travel Plan shows destinations reachable within 30-minutes by use of the bus, whilst Figure 5.8 shows those reachable within 30-minutues by train and car.

Travel Plan

- 2.28 The comments on the Travel Plan included with the applications suggest some amendments are required to the document. It is my understanding that the Highway Authority and the two LPAs are content this can be secured by a suitable obligation in the S106 Agreement requiring an updated Travel Plan be submitted prior to occupation of the development.
- 2.29 The Draft S106 Agreement, which is in the process of being agreed between the parties, includes obligations in relation to the submission of a Travel Plan, requiring an annual review of its provisions for a period of 5 years from first occupation of the development, appointment of a Travel Plan Champion and a financial contribution to HCC towards monitoring the Travel Plan.

Conclusions on Locational Sustainability

- 2.30 Paragraph 103 of the Framework provides advice on locational sustainability and also confirms the need for this to be applied having regard to a site's particular context; i.e. whether it is urban or rural. It states:

“Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport mode. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan making and decision-making.” (Emphasis added)

2.31 I consider that far from being an isolated location, as suggested in SADC’s Committee Report (CD4.02), the facilities plan and commentary above, along with the submitted Transport Assessment (CD1.23), the Addendum to it (CD2.06) and the Travel Plan (CD1.24) all demonstrate that there is in fact a good level of local service provision within walking distance of the site given its rural setting, with a much greater range of services in the nearby centres of Hatfield, St Albans and Welham Green, that are accessible both by cycle and bus.

2.32 I also note that the HCC Highways response to SADC (CD3.26), acknowledges this position, suggesting the principle of development is considered acceptable subject to adequate provision of footways internal to the site, and appropriate linkages to the adjacent network through improvements. It states

“Subject to adequate provision of footways internal to the site, and appropriate linkages to the adjacent network with improvements, the HA would confirm that the principle of development is acceptable, recognising that whilst Colney Heath is not highly sustainable there are local bus stops and facilities, and that proposals may support greater viability of bus services as an alternative to private car use”.

2.33 As is set out in the Highways SoCG, which is the process of being agreed between the main parties, the Proposed Footpath Connection (CD2.01) linking the proposed pedestrian access to the existing footway network further along Fellowes Lane is considered acceptable in principle, providing the necessary linkage.

2.34 Whilst I come on to address compliance with the specific wording of the policies referred to in the RfR and putative RfR in the following section, having regard to all of the above, I disagree with the suggestion that this is an unsustainable location. There is in fact a good range of services within reasonable accessibility of the appeal site, and as I note later, the additional custom from new residents would provide a benefit to the existing facilities in Colney Heath and as noted by the Highway Authority, would also help support the viability of bus services for the same reason.

Extent of the Appeal Site's Contribution to the Green Belt Purposes

- 2.35 I turn now to the purposes of including land in the Green Belt at paragraph 134 of the Framework, taking each in turn.

a) to check the unrestricted sprawl of large built-up areas

- 2.36 WHBC's Stage 3 Green Belt Study (CD6.14) assesses parcel 54, within which the part of the appeal site in Welwyn Hatfield Borough lies, as making limited or no contribution to this purpose. Furthermore, the SADC Green Belt Review (CD7.04) that informed the Local Plan 2020 - 2036, whilst assessing a much wider parcel of land, also concluded it makes limited to no contribution to this purpose. I agree.

b) to prevent neighbouring towns merging into one another

- 2.37 Again, both WHBC's Stage 3 Green Belt Study (CD6.12) and SADC's Green Belt Review (CD7.04) assess the parts of the site they were considering as making limited or no contribution to this purpose. I agree that it makes no contribution to preventing neighbouring towns from merging into one another. It is a small field on the edge of Colney Heath, wrapped around by settlement on 2 sides and part of its southern boundary.

c) to assist in safeguarding the countryside from encroachment

- 2.38 SADC's Officer's Report to Committee (CD4.02) at paragraph 8.11.6 refers to and quotes the assessment of the site as part of parcel of land '34' in the SKM Green Belt Purposes Assessment November 2013 (CD6.17) suggesting it makes a significant contribution towards safeguarding the countryside. However, parcel 34 is a much wider parcel of land and these conclusions are therefore of limited value in assessing the true contribution from a much smaller field like the appeal site.
- 2.39 Indeed, it is of note that the Inspectors examining both the withdrawn St Albans Local Plan 2020-2036 and Inspector Middleton, who is examining the draft WHLP, criticised this Green Belt Assessment, which was prepared jointly between Dacorum Borough Council, SADC and WHBC.
- 2.40 At paragraph 32 of a letter dated 14 April 2020 setting out their concerns over the failings of the St Albans Local Plan 2020-2036 (CD7.01), the Inspectors stated:

“Whilst the Council indicated at the hearings that the 2013 Green Belt Review was not done with any level of development need or target in mind, it was prepared around the time the Council was working on the previous SLP [Strategic Local Plan]. At that time housing requirements were 8,720 (or 436 per annum) and so much lower than the current objectively assessed need (OAN) of 14,608 homes over the plan period. However, the Green Belt Review was not re-visited in the context of the much higher scale of unmet need which could only be met by Green Belt release that was subsequently identified in the Plan.”

- 2.41 The Inspectors continue at paragraphs 33 - 45, criticising the Council’s failure to investigate the contribution smaller releases from the Green Belt could have made to meeting the plan’s housing requirement, it having focused instead, entirely on a small number of the strategic scale allocations. At paragraph 37, they state:

“This approach raises a number of concerns. As part of the fundamental approach stemming from 2013/14, smaller sites (less than 500 dwellings or 14ha) have been excluded from the Green Belt selection process. Paragraph 8.1.5. of GB004 is clear that the small-scale sub areas identified in that study may not be exhaustive. It also recognises that it is possible that additional potential small-scale boundary changes that would also not compromise the overall function of the Green Belt might be identified through a more detailed survey. Thus, the capacity from such smaller sites could be much higher than estimated by the Council.” (Emphasis added)

- 2.42 At paragraph 39 they continue:

“The withdrawn SLP identified the potential for small scale Green Belt greenfield sites to be looked at in more detailed [Sic] in the then envisaged subsequent detailed Local Plan. Thus, at that time there was an anticipation that such sites would be included in the Council’s overall housing strategy, alongside the larger sites/Broad Locations. However, in developing the Plan now being examined, it seems that that [Sic] any consideration of the potential of such smaller sites has been overlooked.”

- 2.43 They add further at paragraph 41:

“In looking at Green Belt releases we have concerns about the narrow focus that has been placed on only strategic sites. This has ruled out a number of sites that have already been found to impact least on the purposes of the Green Belt. It may well also have ruled out other non-strategic sites with limited significant impacts on the Green Belt which may have arisen from a finer grained Green Belt Review.” (Emphasis added)

2.44 At paragraph 43 they state:

“Additionally, we see no reason why the identification of some smaller sites would unacceptably spread the adverse impacts of development on Green Belt purposes. Whilst this would extend the impact of development over a wider geographic area, the extent of the resultant impacts would be likely to be smaller given the more limited scale of the sites (in comparison to the cumulative impact on the Green Belt purposes of developing large adjoining strategic sites, such as to the east of Hemel Hempstead as proposed).”

2.45 The Inspectors also note the delivery benefits of smaller sites at paragraph 44, before concluding on this point at paragraph 45:

“Overall, although, previously recognised as a source of housing to be identified at some stage, smaller 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.”

2.46 Inspector Middleton’s comments on this Joint Green Belt Review were of a similar nature. In the 4th paragraph of his Green Belt Review Note of December 2017 (CD6.03) he states:

“The Council has suggested it is unable to meet its housing need because of Green Belt restrictions among other concerns. In my concluding remarks to the Hearing sessions into Strategic Matters, I pointed out that I did not consider the development strategy put forward in the plan to be sound, in part because there was insufficient justification for the failure to identify sufficient developable sites within the Green Belt. That is largely because the phase 1 Green Belt Review was at such a strategic level as to render its findings on the extent of the potential harm to the purposes of the Green Belt, caused by development within the large parcels considered as a whole, debatable when applied to smaller individual potential development sites adjacent to the urban areas. It goes without saying that a finer grained approach would better reveal the variations in how land performs against the purposes of the Green Belt. Such an approach is also more likely to reveal opportunities as well as localised constraints, both of which might reasonably be considered further.”

2.47 On the specific purpose of countryside encroachment, Inspector Middleton comments:

“In the context of assisting in the safeguarding of the countryside from encroachment, it is again openness that is the most important consideration. It is therefore not simply the countryside characteristics of a particular site but how that site contributes to the wider countryside with which it is a constituent part. The extent of that countryside is largely determined by topography, woodlands and major physical features that close off views. Whether or not a particular site has limited urban development on it now is not the critical consideration. Even if it has but it is experienced by users of the countryside in the context of a wider group of sites, its loss from the countryside to extensive built development may be more harmful than another site with no development but which because of topography etc. has no direct relationship with the rest of the nearby countryside. In this context the analysis of some of the larger potential development areas as single sites may not be appropriate. Parts of them may contribute more to the value of the surrounding countryside than the analysis to date suggests.”

- 2.48 WHBC has subsequently produced a Stage 3 Green Belt Review (CD6.12 - 6.15), the findings of which, I come onto discuss below.

- 2.49 To determine the contribution a site makes to assisting in safeguarding the countryside from encroachment it is necessary to consider how the land in question relates to the existing settlement and to the countryside. As noted above, the appeal site adjoins and is wrapped around by the existing settlement of Colney Heath to the north, west and partly to the south. Its relationship with Bullens Green Lane to the east and Fellowes Lane to the south, together with the presence of existing mature landscaping along these boundaries, gives the site a sense of containment and separation from the wider countryside beyond to the east, south east and south.

- 2.50 As a consequence, the site's contribution to safeguarding the countryside from encroachment is in fact relatively limited and thus the harm resulting from its development should be reflective.

- 2.51 The Green Belt section of WHBC's Officer's Report (Pages 8-10, CD4.02) adds little in the way of further commentary on this point, although it suggests that the site is read as part of open fields and countryside to the east and south. I disagree for the reasons outlined above, the appeal site is in fact highly contained by both its relationship with surrounding development, settlement uses wrapping around it to the north, west and on part of the southern boundary, and also by the juxtaposition with Bullens Green Lane and Fellowes Lane, along with the landscaping along the eastern and southern boundaries.

- 2.52 Following Inspector Middleton's comments on the Stage 1 and 2 Green Belt Review, WHBC produced a Green Belt Study Stage 3 (CD6.12 - 6.15). This considered much smaller parcels of land. Inspector Middleton commented upon this in his Interim Report (CD6.02), stating at paragraphs 42 - 44:

"42. The Council's stage 3 GB review provides additional information on the contribution that some of the proposed development sites make to the purposes of the GB. However, as pointed out and discussed at the hearing session, it has omissions and limitations.

43. Nevertheless, despite these, in tandem with the previous reviews, it is a useful starting point, when inputting GB considerations into the site selection process. It clearly identified land which is most essential GB and necessary to be retained while ever the current concept of GBs and their purposes remain. When this is combined with heritage and ecological assets, along with major flooding constraints, a significant proportion of the GB in the Borough has an absolute constraint against development.

44. Despite its shortcomings, I am confident that objective judgment can be used to supplement its findings and fill in the gaps when inputting the harm to the GB into the site selection process."

- 2.53 The part of the appeal site located within Welwyn Hatfield Borough is considered as part of a wider block land with the agricultural fields to the south, south east, east and a number of small fields also to the east and north east referred to as P54. Within the Appendices (CD6.14) there is an assessment of the contribution this wider parcel contributes to the Green Belt purposes. For purpose 3 (para 134 c) safeguarding the countryside from encroachment it finds a significant contribution:

"The land contains the characteristics of open countryside, comprising arable and grassland fields. It contains some very limited urbanising development, including a couple of isolated dwellings. Residential development within the adjacent settlement is visible across much of the parcel." (My emphasis).

- 2.54 As I have already covered, the overall appeal site (including that within SADC) lies adjacent to the settlement along much of its boundary, and is also separated from the other fields in the parcel P54 by Fellowes Lane and Bullens Green Lane, meaning its contribution is considered much more limited to this purpose.

- 2.55 The Assessment goes on to conclude that release of the overall parcel would cause moderate - high harm to the Green Belt. In the comments box however, it notes:

“The parcel is largely open and rural, therefore the release of it would lead to encroachment on the countryside. However, the parcel is contained to the east and southeast by thick woodland, some of which is protected and by the existing settlement of Bullens Green to the west (which lies partly within the neighbouring authority of St Albans). The impact upon the integrity of the wider Green Belt would therefore be limited. In isolation, the parcel would be weak as an inset area, and any revised Green Belt boundary would need to include the insetting of Bullens Green P53.” (My emphasis).

- 2.56 The passage underlined reinforces the points made above. Even the wider parcel P54 has been found to be contained and making limited contribution to the wider Green Belt. That position is even more the case when considering the appeal site in isolation given its relationship with the settlement of Colney Heath.

d) to preserve the setting and special character of historic towns

- 2.57 Colney Heath is not a historic town and the appeal site does not therefore make any contribution to this Green Belt purposes. This view is supported by WHBC’s Stage 3 Green Belt Study, which makes the same assessment.

e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

- 2.58 The site is currently an agricultural field and therefore makes a contribution towards this purpose. However, I note that the WHBC Green Belt Study assesses all Green Belt parcels equally as a making a significant contribution to this purpose.

- 2.59 The withdrawn St Albans Local Plan 2020-2036 proposed, and the draft WHLP is proposing, the release of hundreds of hectares of greenfield land from the Green Belt to meet housing need in the two LPA areas. It is therefore evident that opportunities for urban regeneration of ‘brownfield’ land are scarce in this part of Hertfordshire. If there were an abundance of such sites then the strategies of these Local Plans would have looked very different and the Councils would not have the dire housing shortages that currently exist and I discuss later in this proof, especially when you consider how high land and property values are in this area, which would be a persuasive incentive to landowners of such sites.

- 2.60 The WHLP Inspector’s Interim Report (CD6.02) confirms at paragraphs 45 and 46 that insufficient land within the existing developed areas of the district exists to meet housing

need and that there are exceptional circumstances for releasing Green Belt to meet housing need. At paragraph 46 specifically, he states:

“In the first instance land within the developed part of the district, together with other excluded land, has been forensically examined and I am satisfied that the potential for development within these areas, in the context of the development management policies contained in the plan, is being maximised. The imperative need to meet the FOAHN in full is driven by the plan’s economic strategy and the affordability crisis. If the housing needs are not met in full then the unacceptable state of in-commuting and house price affordability would be likely to worsen. Unfortunately, if the Borough’s FOAHN is to be met, then there is no alternative other than to remove some land from the GB.”

- 2.61 To conclude, then I consider the appeal site makes only a relatively limited contribution to the Green Belt purpose of safeguarding the countryside from encroachment. It also contributes to assisting urban regeneration by encouraging the recycling of derelict and other urban land, but that is diminished by the clear lack of supply of such sites in this area.

3 The Development Plan

- 3.1 Section 38(6) of the Planning Compulsory Purchase Act 2004 identifies that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise.
- 3.2 The SoCG confirms that the two LPAs and the Appellant are in agreement that the adopted Development Plans for the purpose of determining these appeals are:
- i) the “saved” policies in the Welwyn Hatfield District Plan 2005 (WHDP); and
 - ii) the “saved” policies in the St Albans District Local Plan Review 1994 (SADLPR).
- 3.3 I discuss each plan in turn below, including an analysis of the appeal schemes compliance with relevant and most important policies, setting out whether the weight to be given to policies (and any conflict with them) should be reduced as a consequence of their age and any conflicts between them and the NPPF.

Welwyn Hatfield District Plan 2005 (CD5.01)

Status of the Development Plan

- 3.4 The WHDP was adopted in 2005, some 16 years ago. It is therefore considerably dated, predating even the first version of the NPPF by many years.
- 3.5 Paragraph 1.11 of the Plan confirms that it was prepared to cover the period up to 2011. Paragraph 1.15 advises that:
- “..... The District Plan has been prepared in the context of both the 1994 and 2001 versions of regional guidance. However, with specific regard to its housing requirement, the reference point is the earlier RPG9 published in 1994, upon which the housing requirement in the adopted Structure Plan for the period 1991 - 2011 has been based. Until such time as the new RPG9 has been incorporated into a new Structure Plan, the District Plan cannot take into account its housing requirements.”*
- 3.6 Paragraph 1.16 adds that the Structure Plan it has been prepared in accordance with is the Hertfordshire Structure Plan Review 1991 - 2011, adopted in 1998.
- 3.7 Section 2 of the Plan is entitled ‘Overall Strategy - Sustainable Development’. Paragraph 2.17 of this confirms that the housing requirement, set out in the Structure Plan, is for WHBC to provide 5,600 dwellings between 1991 and 2011, and that taking account of

completions over the plan period to date, 3,500 dwellings are identified in the Plan to meet this.

- 3.8 This housing need is not actually incorporated in a specific policy. Policy H1 sets out a list of the sites allocated to meet this housing need and the supporting text above it, starting at paragraph 5.6, reaffirms the housing requirement. Policy GBSP2 sets out the spatial strategy and is discussed further below.
- 3.9 Notably then, the WHBP only planned for the delivery of housing up to 2011 and this was based on a Structure Plan housing requirement dating back to 1994. Consequently, for some 10 years now there has effectively been no strategy in place for meeting housing need in the Borough, which as I explain later in this proof, given the extent of Green Belt in the Borough, is the principal cause of the Council's appalling housing supply position.

The WHBP is Out-of-Date

- 3.10 It is common ground between the parties that the development plan policies that are "most important" for determining the appeals are deemed out-of-date as a consequence of footnote⁷ of the Framework. Neither LPA can demonstrate a five year supply of deliverable housing sites (with the appropriate buffer) even by their own figures; the Appellant's position is that the supplies are even worse (See Emery Planning's 5YHLS Report at Appendix RG2). Furthermore, the Housing Delivery Test results 2020 (CD9.18) confirm that the delivery of housing has been substantially (less than 75%) than the housing requirement over the previous three years. In the case of both LPAs it has been at only 63%, a considerable shortfall, which continues a worrying trend of under delivery of both market and affordable housing in this part of Hertfordshire. I discuss this in greater detail in the following sections of this proof.
- 3.11 A judgement therefore needs to be made as to the weight to be given to the most important policies for the determination of this appeal (and any conflict with them), with paragraph 213 of the Framework confirming:

"Due weight should be given to them according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."

- 3.12 This is a matter that has been considered by the courts in recent years. In *Suffolk Coastal District Council v Hopkins Homes Ltd: Richborough Estates Partnership LLP v Cheshire East Borough Council* [2017] UKSC 37 (CD12.05) Lord Carnwath considered a situation where a decision maker had to address environmental and other restrictive policies in the context of a plan based on an out-of-date housing requirement. At paragraph 63 of the

Judgement he states:

“It is convenient to begin with the Willaston appeal, where the issues are relatively straightforward. On any view, quite apart from paragraph 49, the current statutory development plan was out of date, in that its period extended only to 2011. On my understanding of paragraph 49, the council and the inspector both erred in treating policy NE.2 (“Countryside”) as “a policy for the supply of housing”. But that did not detract materially from the force of his reasoning (See summary in paras 44-45 above). He was clearly entitled to conclude that the weight to be given to the restrictive policies was reduced to the extent that they derived from “settlement boundaries that in turn reflect out-of-date housing requirements.” (My emphasis)

Compliance with and Weight to be given to Development Plan Policies

- 3.13 I set out below, my position on the appeal schemes compliance with relevant policies in the WHBP, including those most important in the determination of this appeal. For each, I also provide my assessment of the consistency of the policy with the Framework and whether or not it should be given reduced weight accordingly.
- 3.14 The SoCG sets out at paragraph 7.3, 15 policies in the WHBP that are considered relevant, all of which are referred to in the RfR in the decision notice (CD4.01). At 7.4 it confirms the parties agree that, of those, the following policies are most important policies for determining the appeal:
- SD1 - Sustainable Development;
 - R1 - Maximising the use of previously developed land;
 - H2 - Location of windfall development;
 - D2 - Character and context;
 - RA10 - Landscape Regions and Character Areas;
 - RA11 - Watling Chase Community Forest; and
 - GBSP2 - Towns and Specified Settlements.
- 3.15 Paragraph 7.5 confirms that WHBC also considers the policies listed below are also most important in the determination of this appeal, but this is disputed by the Appellant. The wording acknowledges that in the case of R11, M1, M5, M9 and IM2 the parties are working towards resolution on the relevant issues, which may lead to this list being refined.
- D1 - Quality of Design;

- R11 - Biodiversity and Development;
- M1 - Integrating Transport and Use;
- M5 - Pedestrian Facilities;
- M9 - Bus and Taxi Facilities; and
- IM2 - Planning Obligations.

Policy SD1 - Sustainable Development

- 3.16 The parties agree that this is a most important policy and it is referred to in RfR1 of the WHBC decision notice, which suggests the site is an unsuitable location for development as it fails to provide satisfactory access to services and facilities.
- 3.17 The first part of this policy is fairly generic suggesting development proposals will be permitted where it can be demonstrated that the principles of sustainable development are satisfied and whilst the supporting text refers to PPG1, which was replaced by the Framework nearly a decade ago, the Framework retains the fundamental principle of sustainable development at its heart.
- 3.18 As set in out in detail in the preceding section with reference to the facilities plan that is in the process of being agreed between the parties, I consider the appeal site to be a sustainable location for the development proposed.
- 3.19 The second part of Policy SD1 requires an assessment of development proposals against the Council's sustainability criteria in the checklist contained in the Supplementary Design Guidance 2005 (CD9.15). This checklist is split into subsections, with criteria dealing with: the siting of the proposal and the existing land use; the impact and use of the development once it is built; the operation of the site during the construction period. The criteria are categorised such that not all will be applicable to some types of development depending on their nature and scale. This appeal proposal falls under category A of large scale housing, and as such I address each of the relevant criteria for that category below.
- 3.20 With regard to 'Siting and Land Use' there are 6 criteria. I assess the schemes compliance with these in the table below.

Requirement	Scheme Compliance
<i>1. Use previously developed land as opposed to a greenfield site</i>	The site is greenfield, however, as noted above, the Council accepts, as does the Inspector examining the draft Local Plan,

	that there is nowhere near sufficient amount of previously developed land in the Borough to meet the local housing need and it will be necessary to develop greenfield sites to do so.
<i>2. Avoid the loss of urban open spaces and, designated sites for nature conservation, and damage to the Historic Environment.</i>	The site is neither an urban open space nor a designated site for nature conservation. As demonstrated in Andrew Crutchley's Proof of Evidence, the only impact to the historic environment is to the setting of the grade II listed 68 Roestock Lane and that this is at the very bottom end of the 'less than substantial harm' spectrum. I undertake the NPPF para 196 balance in Section 5 of this proof.
<i>3. Make use of any derelict, under-used, or vacant land or buildings.</i>	See the response to 1 above
<i>4. Encourage a maximum lifespan for the development with the use of durable construction unless there are extenuating circumstances requiring more flexibility.</i>	An assessment of compliance with this criteria can only be made at the detailed/technical design stage, however, there is no reason to suggest that compliance cannot be achieved.
<i>5. Avoid areas of high quality agricultural land and floodplains</i>	<p>The Agricultural Land Classification Report submitted with the appeal proposal (CD1.28) confirms that the site comprises 5.1 ha of Subgrade 3a agricultural land. I deal with its loss in the planning balance in Section 5.</p> <p>The Flood Risk Assessment (CD1.26) demonstrates this site is not within a floodplain and thus this criterion is accordingly met.</p>
<i>5a. Avoid the possible sterilisation of mineral resources identified in the</i>	The development would not result in the sterilisation of mineral resources, so there

<i>Adopted Minerals Local Plan.</i>	is no conflict.
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- 3.21 Part (b) of the checklist relates to the impact and future use of the development. Compliance with criteria 1 - 3 on minimisation of pollution can only properly be assessed at the detailed design stage, however, given the appeal proposal is for residential development, there is no reason they cannot be met.
- 3.22 In terms of management of water resources (4 - 6), the Design & Access Statement (CD1.20) and Drainage Strategy (CD1.26) demonstrate it will be possible for the development to use local sources of waste and disposal of waste, how water quality can be enhanced and pollution of ground water prevented and the manner in which the hydrology of the site is protected; the manner in which water consumption is to be minimised. The responses of technical consultees, including Affinity Water (CD3.03) and the Lead Local Flood Authority (CD3.12) demonstrate there is no issue in this regard.
- 3.23 In terms of energy efficiency, most of the criteria (8 -12) can only be assessed for compliance at the detail design stage, however, there is no reason an acceptable design cannot be achieved to meet the criteria.
- 3.24 Criterion 12 refers to encouraging energy efficient modes of transport, e.g. cycling, walking and buses. As set out in detail in Section 2, the appeal site is well located in respect of proximity to bus stops, railway stations and the national cycling network, which provides opportunities to cycle to larger settlements.
- 3.25 In respect of waste management (Criteria 12a - 15), again this is largely a matter for consideration at the detailed stage.
- 3.26 On habitats and species (Criteria 16 - 22), it is common ground that the updated Ecological Impact Assessment (CD2.10) addresses previous concerns. The parties are also now in agreement that biodiversity net gain at the site can be achieved through a planning obligation in the S106 Agreement addressing this aspect of the Sustainability Checklist.
- 3.27 In terms of community provision and equity, the SoCG sets out the agreed Heads of Terms for the S106 Agreement in respect of planning obligations necessary to offset the impact of the development. A draft of the S106 Agreement has been prepared and is being discussed in advance of the deadline for submission of 9th April confirmed in the Case Management Conference. This addresses the criteria under this subheading.

- 3.28 I have covered the points on accessibility already in Section 2 above and do not repeat these here.
- 3.29 Section C of the Checklist relates to during the construction period and covers items that would be typically secured through a Construction Environmental Management Plan. I see no reason why the construction of the scheme cannot meet these objectives and no conflict with this aspect.
- 3.30 I am of the view the proposal meets these requirements and can be considered sustainable development. I do not consider the appeal scheme to be in conflict with this policy therefore.
- 3.31 In terms of consistency with the Framework, as noted above, whilst the supporting text to the policy refers to PPG1, which has been superseded, the Framework retains the key principle of achieving sustainable development and I do not consider Policy SD1's aspirations to be inconsistent. I am therefore of the view it should be given full weight.

Policy R1 - Maximising the Use of Previously Developed Land

- 3.32 It is common ground that this is a most important policy. It is referred to in the first RfR in the WHBC decision notice (CD4.01), although I note that the wording of this reason does not relate to the policy requirement, relating to access to services and facilities and the need for there to be capacity in local infrastructure to absorb the development, whereas the policy requires development to take place on land which has been previously used or developed. It states:
- “Development will only be permitted on ‘greenfield’ land where it can be demonstrated that no suitable opportunities existing on previously used or developed land”.*
- 3.33 The Framework retains the principle of prioritising previously developed land and I therefore consider this policy to be generally consistent with it, and able to be given full weight as a consequence.
- 3.34 As I have already set out in the previous section when discussing the contribution the appeal makes to the Green Belt purposes, WHBC takes the position in the emerging WHLP that there is insufficient previously developed sites available to meet its housing need and therefore exceptional circumstances exist to justify releasing land from the Green Belt to do so. The Inspector examining the plan confirmed his agreement to this position at paragraphs 45 - 46 of his Interim Report (CD6.02). I therefore do not consider the appeal proposal is in conflict with this policy as there simply is not the brownfield land available

to meet the housing need of Welwyn Hatfield Borough. If there were it would not have such a dire housing delivery record and supply position.

- 3.35 I would also add that I do not consider a scheme of up to 100 dwellings would be of significant enough a size to prevent any potential previously developed sites that are available from coming forward, particularly given the substantial need for new homes in this area and the high value of land and property. As such, I consider the appeal scheme does not conflict with this policy.

H2 - Location of Windfall Development

- 3.36 This policy is included in the agreed list of most important policies and is again referred to in the first RfR, along with the eighth relating to the lack of a S106 Agreement. It applies to windfall developments, and is therefore applicable to the appeal application, with the first part of the policy setting a list of criteria to assess their suitability
- 3.37 In terms of compliance with the five criteria in the first part of the policy, the table below sets out my consideration of whether or not the scheme meets the requirement in each case.

Requirement of Policy	Does the appeal proposal comply?
<i>(i) The availability of previously developed sites and/or buildings</i>	As noted above, and in Section 2 of this proof, there is insufficient previously developed land to even come close to meeting the housing need for WHBC. The Council considers exceptional circumstances exist for releasing land from the Green Belt and this is supported by the Inspector examining the emerging Plan. Given the lack of available PDL I do not consider there is conflict with this criterion.
<i>(ii) The location and accessibility of the site to services and facilities by transport modes other than the car</i>	As I have already set out in Section 2 above and commented upon in respect of Policy SD1, I consider the site to have good access to facilities and services. This is demonstrated by the facilities plan being agreed between the main parties and the

	submitted Travel Plan, Transport Assessment and Transport Assessment Addendum.
<i>(iii) The capacity of existing and potential infrastructure to absorb further development</i>	Section 9 of the SoCG notes that the parties have agreed Heads of Terms for a S106 Agreement and are in discussion over the detailed provisions for this. It is common ground that provision of a satisfactory undertaking to secure delivery of the necessary infrastructure and affordable housing will address RfR 8. I therefore consider that criterion (iii) of Policy H2 can be satisfied and the scheme will not conflict with it.
<i>(iv) The ability to reinforce existing communities, including providing a demand for services and facilities</i>	The development would provide up to 100 new dwellings in Colney Heath, a settlement that has been constrained by the Green Belt for decades. This would make a beneficial contribution towards the vibrancy and vitality of the settlement, providing support for existing services there through additional custom. I see no conflict between the appeal scheme and this criterion.
<i>(v) The physical and environmental constraints on development of land</i>	This is a very general criterion, however, the appeal application was supported by an extensive set of technical documents that demonstrate the site is physically capable of accommodating the scale of development proposed. I therefore see no conflict.

- 3.38 The second part of Policy H2 does not apply as the appeal proposal would not result in a significant oversupply of housing. Far from it. It is common ground between the parties that WHBC cannot demonstrate a five year supply of deliverable housing and has failed

the Housing Delivery Test. As is demonstrated in Emery Planning Ltd's updated assessment of the land supply in WHBC at Appendix RG2 of this proof, the shortfall is extensive at 3,303 dwellings, meaning the Council has only 1.85 years supply.

- 3.39 I consider the criteria of Policy H2 to be generally in accordance with the requirements in the Framework and the policy can therefore be given full weight in my view. I have demonstrated above how the appeal proposal complies with Policy H2 and its various criteria.

Policy D2 - Character and Context

- 3.40 The parties agree that this is a most important policy and it is referred to in the fourth of WHBC's RfR. It sets out that:

"The Council will require all new development to respect and relate to the character and context of the area in which it is proposed. Development proposals should as a minimum maintain, and where possible, should enhance or improve the character of the existing area"

- 3.41 Mr Holliday's evidence addresses this policy requirement. I am of the view that as this is an outline application a full assessment of compliance with this policy can only be made at the reserved matters stage. That being said, Mr Holliday's evidence notes the site is predominantly surrounded by housing of relatively modern (post-war) design and character and the future design of the dwellings can respond to this accordingly. The site is well related to the settlement, being wrapped around by settlement uses and with the scope for considerable additional planting on its outer eastern and southern boundaries all meaning it can easily be integrated into the existing settlement pattern, whilst providing a sensitive transition to the countryside beyond. As such, there is no reason a scheme that meets the requirement of this policy cannot be achieved at reserved matters stage.

- 3.42 I consider this policy to be broadly consistent with the aims and aspirations of the Framework, and it can therefore be given full weight.

RA10 - Landscape Regions and Character Areas

- 3.43 It is common ground that this is a most important policy. Again, it is referred to in the fourth of WHBC's RfR. It requires that:

"Proposals for development in the rural areas will be expected to contribute, as appropriate, to the conservation, maintenance and enhancement of the local landscape character area in which they are located as defined in the Welwyn Hatfield Landscape

Character Assessment.”

- 3.44 Again, Gary Holliday’s evidence addresses compliance with this policy, although as landscaping is a reserved matter, conformity can only be fully assessed at the detailed stage. He notes the applications were supported by an indicative Landscape Strategy Plan (Updated version at CD2.04), providing indicative details of a landscape scheme, and a land use parameters plan (Updated version at CD2.02), that could be conditioned to ensure those areas currently identified as providing substantial open space and planting are included in the detailed scheme at reserved matters stage for that purpose.
- 3.45 Mr Holliday notes at paragraph 9.12 of his evidence that the appeal proposal would include new planting that would reinforce the boundary hedges along with new planting within the site.
- 3.46 At paragraphs 4.1 - 4.5 of his evidence, Mr Holliday sets out in detail the approach taken in the indicative landscape and green infrastructure proposals and how this can achieve the requirements of the Landscape Character Assessment. I therefore see no reason why a detailed landscape scheme that achieves the requirements of the LCA cannot be incorporated in the scheme at the reserved matters stage, meaning the appeal proposal is capable of complying with Policy RA10.
- 3.47 I consider this policy to be broadly consistent with Section 15 of the Framework and that it can therefore be given full weight.

Policy RA11 - Watling Chase Community Forest

- 3.48 Along with much of the south west of Welwyn Hatfield Borough, the appeal site lies within the boundary of the Watling Chase Community Forest, one of 12 Community Forests being established in the country. Consequently, it is common ground that this is a most important policy.
- 3.49 The policy states that:
- “..... Within the boundaries of the forest, the Council will seek to achieve the objectives of the Forest Plan in terms of planting, leisure and landscape improvement, where this accords with Green Belt policies. The Council will treat the Forest Plan as a material consideration in determining planning applications within its boundaries....”*
- 3.50 Again, Mr Holliday’s evidence considers compliance with this policy. At paragraph 9.13 he notes that the appeal scheme includes the provision of new accessible green spaces, which will include new tree cover. Whilst the detail of landscaping will be the subject of a future reserved matters application, the land use parameters plan (CD2.02) can be made the

subject of an appropriately worded condition providing a mechanism for ensuring those green spaces are part of the detailed scheme for the site. I therefore see no reason why the objectives of this policy cannot be achieved in the future landscaping proposals for the site and as such compliance with it is achievable, so there is no conflict.

- 3.51 Again, I do not find anything in its wording to conflict with the Framework and thus, it should be given full weight in decision-making.

GBSP2 - Towns and Specified Settlements

- 3.52 The SoCG confirms agreement that this is a most important policy, it being referred to in the first of WHBC's RfR. It sets out a settlement hierarchy, with the two towns of Welwyn Garden City and Hatfield in tier one, and a number of villages listed in a second tier of 'Selected Settlements'. The first part of the policy stipulates that this is where development will be located in accordance with the policies for urban areas in the Plan.
- 3.53 Bullen's Green is not included in the list of Specified Settlements, however, paragraphs 4.12 - 4.15 of the supporting text relate to '*Settlements within the Green Belt*'. Paragraph 4.12 confirms that Bullen's Green is one of a number of smaller settlements that are located within the Green Belt and as such are subject to the general presumption against inappropriate development in the Green Belt set out in PPG2, which has, of course, since been replaced by the Framework.
- 3.54 Paragraph 4.13 goes on to distinguish two categories of Green Belt Settlement to which the Plan applies different approaches. These are listed as a) rural villages supporting a number of facilities and b) other smaller settlements. Bullen's Green lies within the latter. Paragraph 4.15 states that within these latter settlements, the Council wishes to see existing facilities retained, with policies RA12 and RA13 setting out the circumstances where this is appropriate. RA12 relates to loss of shops, public houses and other services and is not relevant to this proposal. RA13 relates to the mixed use of existing buildings and is again not relevant.
- 3.55 The concept of identifying a hierarchy based on the scale of settlements in the Borough for distributing development as a general approach is consistent with the principles of sustainable development. However, in this case it was prepared in a Plan adopted in 2005 that is based on a Structure Plan housing requirement dating back to 1994 that only covered the period up to 2011, some 10 years ago. It is common ground between the parties that WHBC cannot demonstrate a five year housing land supply. The Appellant's position on the shortfall is set out at Appendix RG2, demonstrating that the Council has a shortfall of 3,303 dwellings and has only 1.85 years supply therefore. By the Council's own admission, it only has 2.58 years supply and therefore a considerable shortfall.

- 3.56 As I come on to discuss further in the following sections of this proof, the fact that the Council does not have an adopted Local Plan with an up-to-date housing requirement and spatial strategy for delivering it, is a principal reason for the substantial shortfall in housing supply in the Borough. It is therefore evident that Policy GBSP2 is not helping WHBC in maintaining a five year housing land supply. I consider it to conflict with the Framework and as a consequence should be given only limited weight.
- 3.57 That notwithstanding, whilst not part of the wording of the policy itself, paragraph 4.12 of the supporting text confirms that in other Settlements in the Green Belt, of which Bullen's Green is one, national policy in PPG2 applies. This has been superseded by the Framework, although the general thrust of Green Belt policy has not changed. It is common ground between the parties that the appeal proposal constitutes inappropriate development in the Green Belt, which should not be approved except in very special circumstances (NPPF para. 143).
- 3.58 In Section 5 of this proof I undertake the very special circumstances balance and set out my position that this supports the granting of planning permission for the development. If the Inspector agrees with this position on very special circumstances, then to my mind there is no conflict with GBSP2 when read with the supporting text to it, and particularly paragraph 4.12.

Policy D1 - Quality of Design

- 3.59 WHBC considers this to be a most important policy and it is referred to in their 4th and 5th RfR. For reasons I set out below, I disagree.
- 3.60 Policy D1 states:
- "The Council will require the standard of design in all new development to be of a high quality. The design of new development should incorporate the design principles and policies in the Plan and the guidance contained in the Supplementary Design Guide."*
- 3.61 The supporting text to the Policy advises the Council has adopted a design-led approach, in which it will seek to apply a number of design principle, which are then listed.
- 3.62 None of these criteria appear to relate to listed buildings or their settings, so I am unclear why this policy has been referred to in RfR 5.
- 3.63 That notwithstanding, the appeal relates to an outline application, with all matters reserved except access. Whilst an illustrative layout has been provided to demonstrate that the site is capable of accommodating 100 dwellings in an acceptable manner, it is just that, an illustrative layout. Only at the reserved matters stage, when matters of

layout, scale, appearance and landscaping are available can a proper assessment against this policy and the Supplementary Design Guidance take place. Therefore, as already stated, I do not consider this to be a most important policy in the determination of this appeal.

- 3.64 For completeness, I do consider the policy wording to be generally consistent with the Framework and it can therefore be given full weight. I am also of the view that the illustrative materials in support of the application demonstrate that an acceptable form of development is achievable at the detailed stage to meet the policy aspirations.

Policy R11 - Biodiversity and Development

- 3.65 The SoCG confirms that the updated Ecological Impact Assessment (CD2.10) has addressed the concerns in the first part of RfR 6 of WHBC's decision notice (CD4.01) and there would be no harm to biodiversity. As such it is now a matter of agreement that there is no conflict with this policy and I do not consider it to be one of the most important policies for the determination of this appeal.
- 3.66 Whilst the wording of the Policy does not require a net gain to biodiversity to be achieved, for completeness the parties are in agreement in principle that a mechanism can be included in the S106 to achieve this via an off-site contribution. It is my understanding that the LPAs will therefore no longer be inviting the Inspector to dismiss the appeal for this reason.

Policy M1 - Integrating Transport and Land Use

- 3.67 WHBC considers this to be a most important policy and it is included in RfR 3 of its decision notice. The main SoCG (Para. 7.6) noted the progress being made between the parties at that point and at the Case Management Conference it was requested that a Highways Statement of Common Ground (HSoCG) be agreed setting out the position reached and whether there are any outstanding matters between the parties. Whilst at the time of finalising this proof the final wording of this HSoCG was still to be agreed, following the submission of Stage 1 Road Safety Audits on both the vehicular access on Bullens Green Lane (CD2.12) and the footpath link on Fellowes Lane (CD2.13), the Highways Authority has confirmed that its outstanding concerns are now able to be addressed through conditions.
- 3.68 Policy M1 states that:

"Through the development process the Council will take every opportunity to integrate different modes of transport. Development proposals, except for those which are

necessary in rural areas, will be permitted only in locations with accessibility to pedestrian and cycle routes and passenger transport services, or where this can be created, and where the environment and infrastructure can accommodate the amount and type of transport movement likely to be generated. In considering development proposals, the Council will give priority to walking and more sustainable modes of travel.

Internal layouts in development schemes must demonstrate priority to non-car users. They must include safe and effective routes for pedestrian and cyclists, with appropriate facilities, as well as catering for people with mobility difficulties and making provision for passenger transport and where appropriate the needs of horseriders.”

- 3.69 The proposed footpath connection plan (CD2.01) demonstrates that through the creation of the new pedestrian access and a section of footway on Fellowes Lane, the southern part of the site would have good access to the bus stop on Hall Gardens, as is illustrated by the facilities plan showing the distance to facilities and bus stops to be agreed between the parties and attached to the Scott Schedule requested at the Case Management Call.

- 3.70 I commented in detail on the locational sustainability of the site in Section 2 above and do not repeat this here beyond reiterating that I consider the site to be a sustainable location with good access to services.

- 3.71 The illustrative layout and landscape strategy plan (CD2.03 and CD2.04) indicate the creation of a new informal walking route, running around the periphery of the site, from the point at which Public Footpath FP67 connects with Bullens Green Lane, south on the inside of the boundary planting along the Bullens Green Lane frontage and then along the inside of the Fellowes Lane frontage to the new pedestrian access proposed there. This would have a number of benefits, including improving the connectivity between the Bullens Green and the southern parts of Colney Heath, providing an alternative to walking along Bullens Green Lane and Fellowes Lane carriageways when travelling between those points and by providing a lengthy additional non-trafficked section of footpath within an area that would be landscaped, for use by future residents of the scheme and existing residents alike.

- 3.72 The land use parameters plan (CD2.02) can be made the subject of a condition to ensure that this perimeter section of landscaping is incorporated as intended in the scheme at reserved matters stage and not lost to development.

- 3.73 I therefore consider the development can comply with the requirements of this Policy and there is no conflict.

- 3.74 I am of the view this policy is generally in accordance with the Framework, albeit it does

not entirely reflect paragraph 103 in terms of the need recognise that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-taking. I therefore consider that it should only be given moderate weight.

Policy M5 - Pedestrian Facilities

3.75 This is also considered a most important policy by the Council. The policy seeks to secure improvements in facilities for the safe and convenient movement of pedestrians. It also requires priority to be given to pedestrian access in new developments through the provision of safe and direct routes linking to existing or proposed footpath networks. As I have already set out, I consider strongly that the appeal scheme is capable of meeting this objective through the provision of new sections of footpath within landscaped areas and that there is no conflict with this policy.

3.76 I am of the view it is generally consistent with the Framework in its requirements and suggest it be afforded full weight.

Policy M9 - Bus and Taxi Facilities

3.77 WHBC considers this a most important policy and it is again referred to in the third RfR, which suggests that the proposal fails to demonstrate that priority is given first to pedestrian movements and that access to public transport is appropriately facilitated.

3.78 Policy M9 requires that priority is given to bus over the car in the design and layout of new developments. It also requires additional infrastructure be provided in conjunction with developments that are likely to place significant additional demands on existing infrastructure.

3.79 As set out in detail in Section 2 above, with reference to the facilities plan that is being agreed between the parties, I consider the site to be well located in respect of both bus stops and train stations.

3.80 The Draft S106 Agreement, which is in the process of being finalised, includes an obligation requiring the submission of an updated Travel Plan seeking to encourage modal shift to more sustainable modes of travel, appointment of a Travel Plan Champion, a requirement for objectives to be reviewed annually for five years from first occupation of the development and a contribution to HCC for monitoring. This, along with the improvements to pedestrian access proposed, providing safe routes to bus stops from the site, means the scheme would meet the requirements of this policy.

3.81 I find the policy to be generally consistent with the Framework, although again, the

reference to requiring priority to be given to passenger transport over the car does not acknowledge that sustainable transport solutions will vary between urban and rural areas and that this should be taken into account in plan-making and decision-taking (NPPF 130). As such this policy should be given moderate weight in my view.

Policy IM2 - Planning Obligations

- 3.82 WHBC suggests this is a most important policy and it is referred to in RfR 8 of its decision notice. However, the SoCG notes that Heads of Terms for a S106 have now been agreed between the parties and the S106 Agreement is being discussed in detail to provide the required obligations. This will address the requirements of this policy and RfR8 and it is anticipated that WHBC will no longer be inviting the Inspector to refuse permission on this ground.
- 3.83 The requirement to provide infrastructure improvements to meet the needs arising from a development through planning obligations is consistent with the Framework and I consider this policy can be given full weight therefore.

Conclusion on compliance with the most important policies

- 3.84 I have set out above my position on which are the most important policies for the determination of this appeal. I have also provided my assessment of each policy in terms of its consistency with the Framework, and set out the weight I consider should be given to it accordingly.
- 3.85 I have demonstrated that the appeal proposals comply, or can be compliant at the reserved matters stage, with all of the most important policies in the WHBP, subject to the very special circumstances balance required by paragraph 144 of the Framework and referred to in the supporting text to Policy GBSP2 required due to the sites location in the Green Belt. I undertake that exercise in Section 5 of this proof.

St Albans District Local Plan Review 1994 (CD5.02)

Status of the Development Plan

- 3.86 The SADLPR was adopted in 1994, some 27 years ago, making it the oldest local plan in England adopted since the Town and Country Planning Act 1990 (The City of York Local Plan 1954 predates the 1990 Act). As with the WHBP, it predates even the first iteration of the NPPF, by some 18 years in fact.
- 3.87 Paragraph 4 of the SADLPR states:

“Most of the District Plan policies do not have a particular timescale, but some policies relate to 1981 - 96, as this is the period covered by the 1986 Structure Plan. However, as a result of the Local Plan Inspector’s recommendations and the Council’s modifications, the District Plan has now to a large extent taken account of the Structure Plan Alterations, Indeed, the County Council has confirmed that the District Plan is in general conformity with the Structure Plan Alterations apart from the different time horizon. Nevertheless, the District Council recognises that there is a need to prepare Alterations or a full Review of the District, looking to 2001 or beyond as a matter of urgency (See Policy Intention 35 in Chapter 21). (Emphasis added)

3.88 Paragraphs 1.16 - 1.18 set out further context to the SADLPR’s preparation:

“1.16 The County Structure Plan Review was prepared in the context of the 1986 version of the Secretary of State’s Regional Guidance which proposed 28,500 dwellings in Hertfordshire (1991 - 2001). By the time the Structure Plan was approved in 1988, it appeared that the dwelling figure would have to be increased to reflect new estimates of future household numbers. In approving the Plan, the Secretary of State decided that any new housing requirement should be considered by the County Council in the next review of the Structure Plan.

1.17 In the light of the increased estimates of household growth, the Secretary of State issued revised regional guidance which proposed 34,500 dwellings in Hertfordshire over the 1991-2001 period (see paragraphs 1.8 and 1.9). The Structure Plan Alterations 1991, covering the period to 2001, takes account of the revised Regional Guidance housing figure for Hertfordshire. The Secretary of State for the Environment approved the Alterations in June 1992.

1.18 Preparatory work on the District Plan Review was well advanced before the Structure Plan Alterations were finalised. Consequently the District Plan Review was prepared against the background of the County Structure Plan 1986 Review, rather than the Alterations 1991. The District Council recognises that there is a need to alter or review the District Plan as a matter of urgency (see Preface paragraph 4 and Policy Intention 35).” (Emphasis added)

3.89 Limb iii) of Policy 35 states that the Council will:

“(iii) prepare, as a matter of urgency, alterations or a full review of the Plan, taking account of the County Structure Plan Approved Alterations 1991 and looking to 2001 or beyond”.

3.90 That urgent need to review the 1994 Plan has not translated into a successful outcome.

In the 27 years since there have been two unsuccessful attempts to replace the adopted Plan, with both having failed to meet the Duty to Cooperate, resulting in their subsequent withdrawal. The Council has recently commenced work on a third go at bringing forward an up-to-date Local Plan.

- 3.91 In respect of housing requirement, paragraph 1.20 notes that the main differences between the Structure Plan 1986 Review and the Alterations 1991 is a dwelling increase of 57,000 across Hertfordshire for the 1986-2001 period, of which 7,200 were to be provided in St Albans.
- 3.92 Paragraph 1.22 confirms that the plan seeks to make housing provision for a 1981-96 dwelling increase of 6,400 and a 1986-2001 dwelling increase of 7,200. Policy 3, which is not saved, incorporated that requirement in a policy.
- 3.93 This tells us that the housing requirement the SADLPR was prepared to deliver time expired some 20 years ago! Therefore, for 2 decades there has been no strategy in place for meeting housing need in the District, a point I discuss further in the following section of this proof.

The SADLPR is out-of-date

- 3.94 Again, it is common ground between the parties that the policies in the SADLPR that are “most important” for determining the appeal are deemed out-of-date as a consequence of footnote⁷ of the Framework. SADC cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer) even by their own figures. The Appellant’s position is that the supplies are even worse (See Emery Planning’s 5YHLS Report at Appendix RG2). Furthermore, the Housing Delivery Test results 2020 (CD9.18) confirm that the delivery of housing has been substantially less than the housing requirement over the previous three years, which continues a worrying trend of under delivery of both market and affordable housing in this part of Hertfordshire. I discuss this in greater detail in the following sections of this proof.

Compliance with and Weight to be given to Development Plan Policies

- 3.95 Again, a judgement needs to be made as to the weight to be given to the relevant policies, including those that are most important for the determination of this appeal (and any conflict with them), in accordance with paragraph 213 of the Framework
- 3.96 The SoCG sets out at paragraph 7.8, 11 policies in the SADLPR that are considered relevant, all of which are referred to in the putative reasons for refusal in the minutes of the Officer’s Report to Committee (CD4.03). At 7.9 it confirms the parties agree that, of

those, the following policies are most important policies for determining the appeal

- Policy 1 - Metropolitan Green Belt;
- Policy 2 - Settlement Strategy;
- Policy 69 - General Design and Layout; and
- Policy 86 - Buildings of Special Architectural Interest.

3.97 Paragraph 7.10 confirms that SADC also considers the policies listed below are most important in the determination of this appeal, but this is disputed by the Appellant. Paragraph 7.11 acknowledges that the parties are working towards resolution on the relevant issues, which may lead to this list being refined.

- Policy 7a - Affordable Housing in Towns and Specified Settlements;
- Policy 34 - Highways Considerations in Development Control; and
- Policy 143b - Implementation.

3.98 The following paragraphs provide a detailed assessment of each of these policies in turn, following the approach identified in the court cases referred to above.

Policy 1 - Metropolitan Green Belt

3.99 The parties agree this is a most important policy and it is referred to in SADC's putative RfR 1. The wording of this policy is not entirely consistent with that in Section 13 of the Framework on Green Belt, including the list of exceptions to the general presumption against development, reflecting the date in which the policy was written. That being said, the general thrust is in keeping, referring to very special circumstances being required for development other than that listed at a) - e) or in Policy 2 (discussed below). The policy also requires new development within the Green Belt to integrate with landscaping and provide new landscaping, whilst also avoiding significant harm to the ecological value of the countryside. I therefore consider the policy can be given full weight.

3.100 In Section 5 of this proof I undertake the very special circumstances balance and set out my position that this supports the granting of planning permission for the development. If the Inspector agrees with this position on very special circumstances, then I am of the view there is no conflict with Policy 1 of SADLPR.

Policy 2 - Settlement Strategy

3.101 Again, it is common ground this is a most important policy, it is referred to in both the second and third putative RfR. Policy 2 sets out the settlement hierarchy and general

spatial strategy for meeting development needs over the plan period. The supporting text to the policy at paragraph 2.6 notes that this hierarchy responds to the Country Structure Plan 1986 Review. The first part of Policy 2 states:

“The District Council will seek to protect and enhance the essential character of existing settlements. Proposals contrary to the policies in the design and environment and the conservation and historic buildings chapters of this Plan (chapters 8 and 9) will not normally be permitted. The Council will have regard not only to the impact of individual developments but also to the cumulative effect. In particular the Council will seek to safeguard:

- (i) the character of specified settlements and Green belt settlements (See Policies 5 and 6);*
- (ii) green spaces within settlements (Policy 75);*
- (iii) Conservation areas (Policy 85)*

- 3.102 The policy then goes on to introduce the spatial strategy and settlement hierarchy, stating:

“The nature and intensity of development acceptable in particular locations will reflect the following settlement hierarchy (See figure 4) and statement of policy. More detailed policy guidance is provided in the remainder of the Plan.”

- 3.103 The towns of St Albans and Harpenden are listed in tier 1 of the hierarchy, tier 2 comprises a number of specified settlements that are excluded from the Green Belt and tier 3 comprises smaller Green Belt settlements, of which Colney Heath (3 parts) is one. For the tier 3 settlements the policy stipulates that:

“Apart from the exceptions in Policy 1, development will not normally be permitted except:

- a) the local housing needs described in ~~Policy 6~~; [Policy 6 is not saved]*
- b) the local facilities and service needs of the settlement in which the development is proposed.*

Development must not detract from the character and setting of these settlements within the Green Belt.”

- 3.104 The concept of identifying a hierarchy based on the scale of settlements in the District for distributing development as a general approach is consistent with the principles of

sustainable development. However, the issue here, as has already been noted above, is that the current settlement hierarchy was adopted in 1994, 27 years ago, to facilitate delivery of a housing requirement from the Structure Plan, which predates the imperative in the Framework to boost significantly the supply of housing (NPPF 59) and only covering the period to 2001, which expired 20 years ago. It is notable the policy translating that housing requirement was not saved under the transitional arrangements in 2007.

- 3.105 SADC cannot demonstrate a five year housing land supply by its own admission, the report of Emery Planning attached at Appendix RG2 demonstrates that the supply is in fact only 1.63 years. SADC has also failed the HDT. The evidence of Mr Stacey demonstrates the diabolic record of delivering affordable housing in the District and that the affordability issues are up there with the worst in whole country, which is primarily a consequence of the failures in plan-making and the huge under delivery of housing over the past 2 decades. It is highly likely that the spatial strategy would need to be different in order to accommodate the Local Housing Need that exists now and I therefore consider Policy 2 should be given only limited weight. It is based on a long since time expired housing requirement and is clearly preventing the Council from meeting its current housing need.
- 3.106 For completeness, I do not consider the sections of this policy relating to impact on character to be inconsistent with the Framework. I am of the view that a full assessment against the impact on character element of this policy can only be undertaken at the reserved matters stage, given only access is included for consideration as part of this appeal. However, as is demonstrated in the evidence of Mr Holliday and has already been discussed above in the context of the WHBP Policies D1 and R10, the site is predominantly surrounded by housing of relatively modern (post-war) design and character and the future design of the dwellings can respond to this accordingly. The site is well related to the settlement, being wrapped around by settlement uses and with the scope for considerable additional planting on its outer eastern and southern boundaries all meaning it can easily be integrated into the existing settlement pattern, whilst providing a sensitive transition to the countryside beyond. As such, there is no reason a scheme that meets the requirement of this policy cannot be achieved at reserved matters stage.
- 3.107 In regard to Colney Heath's status as a Green Belt settlement, the policy signposts to the exceptions in Policy 1 discussed above. As noted when I discussed that policy above, I go on to undertake the very special circumstances balance in Section 5 of this proof, setting out why planning permission should be granted. If that position is supported then the development would as a direct consequence, comply with that aspect of Policy 2. In my view it does.

Policy 69 - General Design and Layout

3.108 The parties agree this is a most important policy and it is referred to in putative RfR 3. This is a fairly generic design policy, requiring all development to have an ‘adequately high standard of design’ taking account of factors of i) context and ii) materials, along with iii) other policies within the plan. That in itself is not inconsistent with the aims of the Framework in respect of the design and I suggest it can be given full weight as a result.

3.109 Criterion ii) is not a matter for consideration given this is an outline application and is not relevant to the appeal. I discuss the other relevant policies and the schemes compliance with them above and below. That leaves i) context. The specific wording of the criterion explains that this is:

“The scale and character of its surroundings in terms of height, size, scale, density or plot to floorspace ratio”.

3.110 Again, full compliance with this criterion can only be properly judged at the reserved matters stage when matters of layout, scale, appearance and landscaping are for consideration, however, I do not consider that a development of up to 100 units based upon the illustrative layout submitted (CD2.03) would be out of character with the context of the site. I have noted above, Mr Holliday’s evidence makes reference to the site being wrapped around by the existing settlement on its northern, western and part of the southern boundary and on the site there is a clear appreciation of this, with numerous existing properties of modern construction visible and varying scale from bungalows on Roestock Gardens, to 3 storey properties on Admirals Court. This context has a suburban character, meaning the development would not be incongruous.

3.111 Mr Holliday argues that the self-contained nature of the site, created both by its relationship to the built form of Colney Heath and the presence of Bullens Green Lane and Fellowes Lane, with their landscaped frontages, on its outer boundaries assists in limiting any visual impact and effect on its character.

3.112 The Appellant has put forward a building heights parameters plan (CD2.09) which suggests limiting the height of buildings allowed at the reserved matters stage to 2 storeys on the sites southern and eastern perimeters and also at the closest point to the listed 68 Roestock Lane, with remaining properties to be no higher than 2.5 storeys. The parties are in agreement that a suitable condition could be imposed tying the development to these parameters at the reserved matters stage should the Inspector consider it necessary, which would ensure it is of an appropriate scale to its context and there could be a sensitive transition to the countryside beyond.

3.113 For the above reasons, I am of the view that the development is capable of complying with the requirements of this policy and does not conflict with it.

Policy 86 - Buildings of Special Architectural or Historic Interest

- 3.114 The parties agree that this is a most important policy. It is referred to in SADC's putative RfR 5. The policy sets out a number of criteria that apply to an application for listed building consent and for applications for planning permission for development which affects a listed building or its setting. Criteria (i) specifies that

"... the Council will have special regard to the desirability of preserving the building or its setting or any features of architectural or historic interest which it possesses".

- 3.115 This wording essentially replicates the thrust of the duty in S66(1) of the Planning (Listed Buildings and Conservations Area) Act 1990. What it does not do is guide the decision-maker on what to do in a particular circumstance, e.g. where there is a set level of harm, it simply requires that special regard is given to the desirability of preserving listed buildings at their settings.

- 3.116 The application achieves this, as included within it was a Heritage Assessment, and as a consequence of it, the land use parameters plan indicates a large area of open space immediately adjacent to the listed building. Regard has therefore been had to the desirability of preserving its setting.

- 3.117 Criterion (ii) is not relevant, as it relates to demolition of listed buildings, which is not applicable here.

- 3.118 Reference is made in criteria (iii) to the guidance in Appendix iv of the Department of the Environment Circular 8/87 (or successive Government advice).

- 3.119 Section 16 of the Framework goes further than Policy 86 by providing the decision-maker with a clear direction in both the scenarios where development would lead to substantial harm (para 195), which is not the case here and where development would lead to less than substantial harm (para 196), which is the case here. Whilst Policy 86 does not take the same approach, its requirement to have special regard to the desirability of preserving listed buildings and their settings, does not conflict with the Framework's more prescriptive guidance, and I therefore take the view it can still be given full weight.

- 3.120 The Proof of Evidence of Andrew Crutchley addresses heritage matters and specifically the potential harm to the significance of 68 Roestock Lane, which is a Grade II listed building that lies immediately adjacent, and backs onto, the northern boundary of the appeal site, through change to its wider setting that would lead to damage or a loss of significance.

3.121 Mr Crutchley concludes that, having assessed the appeal proposals against the relevant policy, guidance and legislation, there would be a very small loss of significance from the listed building derived from the reduction in contribution made by a peripheral element of its setting. He assesses that this would constitute the very lowest end of the broad spectrum of ‘less than substantial harm’.

3.122 In such circumstances, Paragraph 196 of the Framework states that:

“Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.”

3.123 SADC’s putative RfR (CD4.02) suggests that the development would cause ‘less than substantial’ harm to the significance of 68 Roestock Lane, a Grade II listed building adjoining the site and that the public benefits of the proposal would not outweigh this harm. However, I note that at paragraph 5.29 of the LPAs Statement of Case it confirms:

“... Within the scale of less than substantial harm the Councils will show that the level of harm will be low to moderate and in accordance with paragraph 196 NPPF the Councils conclude that the public benefits of providing more housing outweigh that harm. Therefore, if harm to the setting of this asset was the only harm identified it would not justify refusal, but as part of the overall assessment of other harm it weighs against the grant of planning permission in the planning balance”

3.124 The conclusion that the NPPF para. 196 balance does not justify a refusal in isolation contradicts the wording of this putative RfR (and WHBCs RfR5). I undertake my own para. 196 balance in Section 5 of this proof, however, I agree with the Councils’ revised position in its Statement of Case, which it makes on the basis of the higher assessment of low to moderate harm. Andrew Crutchley’s evidence demonstrates the harm is lower, and in fact, at the very lowest end of the spectrum, which only reinforces this conclusion.

3.125 As noted above, given all that Policy 86 requires, is that special regard be given to the desirability of preserving the setting of listed buildings, I see no conflict from the appeal proposal, which does that through the inclusion of the Heritage Assessment.

Policy 7a - Affordable Housing in Towns and Specified Settlements

3.126 SADC considers this to be a most important policy, having referred to it in its 8th putative RfR. This sets out that ‘the Council will normally seek to negotiate an element of

affordable housing on sites of over 0.4 ha’ or on ‘other sites that may be brought forward for development’. The policy does not set a specific requirement in terms of a percentage of housing from qualifying sites and given its age, does not reflect up-to-date evidence on the need for affordable housing, so could be argued to be out-of-date in its own terms.

- 3.127 I also note that SADC relies on its Affordable Housing SPG 2004 (CD9.05) to supplement Policy 7A although the SPG itself is now some 17 years old. This sets a requirement for 35% affordable housing and also a preferred tenure split.
- 3.128 As noted in the description of development for the application, the Appellant is proposing provision of 45% affordable housing, so above policy requirement in the SPG, in order to provide a meaningful contribution towards the significant shortfall of affordable housing in St Albans, which is outlined in detail in Mr Stacey’s evidence.
- 3.129 Putative RfR 8 refers to the lack of a Section 106 Agreement, however, as noted in the SoCG (Para 9.7) the parties have agreed the Heads of Terms for a S106 Agreement and have been holding discussions on the detailed provisions. This includes a mechanism for securing as a minimum 35% and up to 55% of the units that lie on the St Albans side of the boundary at reserved matters stage as affordable and the required tenure split for this part of the site. The anticipated completion of the S106 Agreement will not only meet the policy requirement for affordable housing in Policy 7A and the SPG, but will make an important contribution towards hugely needed affordable housing in St Albans District. I comment on the weight this should be given in the following section of this proof.

Policy 34 - Highways Considerations in Development Control

- 3.130 SADC considers this to be a most import important policy and they refer to it in their fourth putative RfR. It applies, amongst other things to development that involves the creation or improvement of an access onto the public highway and states that this will not normally be permitted unless it is acceptable in terms of a number of highways considerations, which are then list (i) - (vii).
- 3.131 In terms of compliance with the five criteria in the first part of the policy, the table below sets out my consideration of whether or not the scheme meets the requirement in each case.

<i>(i) <u>Road Safety</u>. Particular requirements are adequate visibility, turning radii and provision for pedestrians and cyclists and for disabled and other disadvantaged</i>	As noted above, at the time of finalising this proof the parties are in the process of agreeing a HSoCG confirming that following the submission of a Stage 1 Road Safety Audit on both the vehicular access
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<p>people;</p>	<p>(CD2.13) and the pedestrian footway link on Fellowes Lane (CD2.12) the Highway Authority has advised that its outstanding comments on these accesses can be dealt with through conditions.</p> <p>I have covered already in Section 2 above, provision for pedestrians and cyclists and do not repeat this here.</p>
<p>(ii) <u>Environmental impact of traffic.</u> Especially in residential areas;</p>	<p>I do not consider that the traffic resulting from a scheme of 100 dwellings would create unacceptable environmental impacts. My understanding is the Council is not alleging conflict with this criterion. Furthermore, a Travel Plan was submitted with the application and an updated version of this can be secured by obligation in the S106 Agreement to help ensure opportunities for modal shift away from the private car are maximised.</p>
<p>(iii) <u>Road capacity.</u> Including present and predicted future year assessments;</p>	<p>As will be confirmed by the HSoCG, the Transport Assessment Addendum (CD2.06) has addressed the previous concerns of the Highway Authority, which related to missing information in the original TA due to the inability to undertake the necessary modelling at the time it was prepared and the appeal proposal is considered acceptable in terms of road capacity.</p>
<p>(iv) <u>Road hierarchy.</u> New roads shall be of a design appropriate to their position in the hierarchy. New accesses to primary roads and main distributor roads (See figure 8) will normally be resisted, but where access is permitted a high standard of provision will be required;</p>	<p>In my opinion this is criterion can only be properly assessed at the reserved matters stage when details of the proposed layout are available. The proposed access is not onto a primary or distributor road, however.</p>

(v) <u>Car parking provision. See policies 39 - 50</u>	Again, this is a matters for assessment at the reserved matters stage. It is my understanding SADC does not allege conflict with this criterion.
(vi) <u>St Albans City Centre restraint on development.</u>	This criterion is not relevant to a development in Colney Heath
(vii) <u>Local rural roads. Particular regard will be had to increases in:</u> a) <i>the risk of accidents, especially to pedestrians and cyclists;</i> b) <i>the use of roads that are poor in terms of width, alignment or structural condition;</i> c) <i>adverse impact on the local environment, either to the rural character of the road or residential properties alongside it.</i>	As will be confirmed by the HSoCG, the Transport Assessment Addendum (CD2.06) has addressed the previous concerns of the Highway Authority and the appeal proposal is considered acceptable in highways terms, subject to conditions requiring the submission of further information in respect of the vehicular and pedestrian accesses.

3.132 As noted above, the appeal scheme has been demonstrated to meet the various criteria of this policy and is now considered acceptable by the Highways Authority, subject to conditions requiring further information to address outstanding comments in respect of the vehicular and pedestrian accesses. This will be confirmed in the HSoCG that is being agreed between the parties.

3.133 As with Policy 86, the wording of this policy does not guide the decision-maker on what to do in a particular circumstance, instead using phrases such as ‘particular regard should be had’. In that sense it does not reflect paragraphs 108 - 11 of the Framework, however, it does not conflict with it either, so I take the view it can be given full weight in decision making.

143B - Implementation

3.134 SADC suggests this is a most important policy and it is referred to in RfR 8 of its decision notice. However, the SoCG (Para. 9.7) notes that Heads of Terms for a S106 have now been agreed between the parties and the S106 Agreement is being discussed in detail to

provide the required obligations. This will address the requirements of this policy and RfR8 and it is anticipated that SADC will no longer be inviting the Inspector to refuse permission on this ground. A deadline of 9th April was set at the Case Management Conference.

Conclusion on the most important policies

- 3.135 I have set out above my position on which are the most important policies in the SADLPR for the determination of this appeal. I have also provided an assessment of the consistency of each policy with the Framework and ascribed them weight accordingly.
- 3.136 I have evidenced that the appeal proposals comply with, or can comply with at the reserved matters stage, all of the relevant policies and the Plan, read as a whole, subject to the very special circumstances balance required by paragraph 144 of the Framework and referred to in Policy 1. I undertake that exercise in Section 5.

4 Material Considerations

National Planning Policy Framework (CD9.30)

- 4.1 The NPPF 2019 includes numerous policies that are directly relevant to the determination of these appeals, including in respect of the weight to be attached to policies in both existing and emerging development plans (and the correlating weight be given to any conflict with them), which I discussed in the previous section, the need for development plans to be kept up to date, the need to meet housing need of different types, heritage, Green Belt and the planning balance.

- 4.2 I discuss below in greater detail relevant aspects of national policy to this appeal.

The need for up-to-date local plans

- 4.3 National policy in the NPPF and PPG is very clear on the need to keep local plans up-to-date. Paragraph 33 of the Framework, in particular, states:

“Policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary. Reviews should be completed no later than five years from the adoption date of a plan, and should take into account changes in national policy. Relevant strategic policies will need updating at least once every five years if their applicable local housing need figure has changed significantly; and they will require earlier review if local housing need is expected to change significantly in the near future” (Emphasis added).

- 4.4 This point is amplified in the PPG (Reference ID: 61-062-20190315; CD9.16), which states:

“To be effective plans need to be kept up-to-date. The National Planning Policy Framework states policies in local plans and spatial development strategies, should be reviewed to assess whether they need updating at least once every 5 years, and should then be updated as necessary.

Under regulation 10A of The Town and Country Planning (Local Planning England) Regulations 2012 (as amended) local planning authorities must review local plans, and Statement of Community Involvement at least once every 5 years from their adoption date to ensure that policies remain relevant and effectively address the need of the local community. Most plans are likely to require updating in whole or in part at least every 5 years. Reviews should be proportionate to the issues in hand. Plans may be found sound conditional upon a plan update in whole or in part within 5 years of the date of adoption. Where a review was undertaken prior to publication of the Framework (27 July 2018) but

within the last 5 years, then that plan will constitute the up-to-date plan policies unless there have been significant changes as outlined below.

There will be occasions where there are significant changes in circumstances which may mean it is necessary to review the relevant strategic policies earlier than the statutory minimum of 5 years, for example where new cross-boundary matters arise. Local housing need will be considered to have changed significantly where a plan has been adopted prior to the standard method being implemented, on the basis of a number that is significantly below the number generated using the standard method, or has been subject to a cap where the plan has been adopted using the standard method. This is to ensure that all housing need is planned for as quickly as reasonably possible.” (Emphasis added)

- 4.5 The Minister of State for Housing, Christopher Pincher, recently issued a Ministerial Statement (19th January 2021; CD9.01) in response to a number of LPAs having evidently slowed or stopped altogether their plan-making work as a consequence of the Government’s publication of the planning white paper ‘*Planning for the Future*’ which outlines a potential overhaul of the development plan system. In this he states:

“The country needs more, better and greener homes in the right places.

This Government’s ambition is to deliver 300,000 homes per year by the mid 2020s and one million homes over this Parliament. Increasing the number of up-to-date Local Plans across England is central to achieving that goal. Local Plans not only unlock land for development and ensure that the right number of homes are being built in the right places, they also provide local communities with an opportunity to have their say on how their local areas will change over the coming years, and how the local environment can be protected and enhanced.

91% of local planning authorities have now adopted a Local Plan, but we know that many of them are not being kept up to date. In March 2020, the Government set a clear deadline of December 2023 for all authorities to have up-to-date Local Plans in place.

It is critical that work should continue to advance Local Plans through to adoption by the end of 2023 to help ensure that the economy can rebound strongly from the COVID-19 pandemic. Completing Local Plans will help to ensure that we can build back better and continue to deliver the homes that are needed across England.....” (Emphasis added)

The position in Welwyn Hatfield

- 4.6 As noted in the preceding section of this proof, the WHBP was adopted in 2005. That is some 16 years ago, which is clearly contrary to the requirement in national policy to keep

development plans up-to-date.

- 4.7 The WHBP was prepared to deliver a housing requirement derived from Regional Planning Guidance 9 in 1994, that only sought to meet need to 2011. As a consequence, for a period of some 10 years now, there has not been an up-to-date plan in place in WHBC to meet housing need. I come on to discuss the dreadful housing delivery and supply position in the Borough below, but suffice to say, the failure to bring forward an up-to-date Plan is a fundamental reason for this, along with the application of Green Belt policy.
- 4.8 As I discuss in greater detail below, WHBC has prepared a new Local Plan for WHBC (CD6.01), but it is an understatement to suggest that progress on this has been both slow and problematic.
- 4.9 WHBC's websites confirms that work commenced on the evidence base to inform a review of the WHBC in 2005, immediately following adoption of the current Local Plan. Despite the lengthy passage of time since (16 years) the WHLP is not even close to being in a position whereby it can be adopted.
- 4.10 Indeed whilst the WHLP was eventually submitted for examination on 17th May 2017, nearly 4 years later the examination remains ongoing, with Stage 9 hearing sessions having taken place in February and March 2021. As I explain in further detail below, it is still far from a certainty that the WHLP will survive the process and be found sound, with the Inspector's Interim Report (IR; CD6.02) setting out that fundamental concerns over the soundness of the Plan remain, despite the length of time the examination has been ongoing. This seems at least in part down to a lack of action from WHBC.

The position in St Albans

- 4.11 The position in St Albans is even worse than in Welwyn Hatfield. As noted in Section 3 above, the SADLPR was adopted in 1994, some 27 years ago. Again, this is in clear conflict with the requirement in national policy to keep plans up-to-date.
- 4.12 The SADLPR was prepared to meet a housing requirement set out in the Structure Plan Alterations 1991 and which covered the period up to 2001. Consequently, there has not been an up-to-date plan in place to meet the housing needs of the District for some 20 years. As is the case in Welwyn Hatfield, this, along with the application of Green Belt policy, is the fundamental reason for the SADC's appalling housing delivery record and abysmal housing supply position.
- 4.13 Since the first iteration of the Framework was published in 2012, SADC has had two failed attempts at bringing forward an up-to-date development plan, those being, the Strategic

Local Plan 2011-2031 and the Local Plan 2020-2036. Both draft Local Plans were withdrawn following the examining Inspectors' conclusions the Council had failed to meet the 'Duty to Cooperate' in preparing them, with significant soundness concerns also raised.

- 4.14 The persistent failure of SADC to put in place an up-to-date Local Plan led to it being included in a list of 15 Councils identified by then Secretary of State for the Ministry of Housing Communities and Local Government, The Rt Hon Sajid Javid MP, threatened with intervention in plan-making (See letters dated 16 November 2017 and 23 March 2018 at CD13.01 and CD13.02). I noted that SADC's most recent Local Plan failure post-dates this correspondence.
- 4.15 SADC has recently commenced work on a third attempt to bring forward a new Local Plan and finished consulting on a Sustainability Appraisal Scoping Report and undertaking a 'Call for Sites' for development on 8th March 2021. The Appellant has made submissions accordingly, including promoting the site's release from the Green Belt and allocation for housing. Whilst I note the current Local Development Scheme suggests the new plan will be adopted before December 2023, this seems highly questionable given it is based on a timetable allowing only 6 months from submission to adoption, and when one considers the awful track record of plan-making of SADC.

Conclusions on plan-making

- 4.16 Plan-making appears to be broken in this area and unable to meet the challenge of delivery sufficient houses to meet the desperate need, with the direct consequence a dire housing supply and affordability position, as I come onto discuss below.

The Need for Market Housing

- 4.17 The introduction of the first iteration of the Framework in 2012 brought about a radical shift in national planning policy in respect of focusing on meeting housing need. This interpretation has been confirmed by the High Court in the case *Gallagher Estates Ltd & Lioncourt Homes Ltd v Solihull Metropolitan Borough Council* [2014] EWHC 1283 (Admin) (CD12.06). At paragraph 97 Mr Justice Hickinbottom explains:

"However, this fails to acknowledge the major policy changes in relation to housing supply brought into play by the NPPF. As I have emphasised, in terms of housing strategy, unlike its predecessor (which required a balancing exercise involving all material considerations, including need, demand and relevant policy factors), the NPPF requires plan-makers to focus on full objectively assessed need for housing, and to meet that need unless (and only to the extent that) other policy factors within the NPPF dictate otherwise. That, too, requires a balancing exercise - to see whether other policy factors

significantly and demonstrably outweigh the benefits of such housing provision - but that is a very different exercise from that required pre-NPPF. The change of emphasis in the NPPF clearly identified that paragraph 47 should on occasions, yield different results from earlier policy scheme; and it is clear that it may do so."

4.18 At paragraph 98 of the judgment, he states:

"..... because of the radical policy change in respect of housing provision effected by the NPPF....."

4.19 The current iteration of the Framework reinforces the objective of "significantly boosting the supply of housing". Paragraph 59 states:

"To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay."

4.20 Paragraph 60 confirms that:

"To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance - unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals...."

4.21 As noted above, both adopted local plans relevant to these appeals predate even the 2012 Framework by a considerable passage of time and are based on the housing requirements in the superseded Regional Plans, which as noted in the Gallagher vs Solihull decision referred to above, adopted a fundamentally different approach to calculating housing need.

4.22 Paragraph 73 of the Framework retains the requirement for LPAs to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing, including a buffer of 5%, 10% or 20%, depending on the circumstances of the LPA, against their housing requirement set out against the local housing need where strategic policies are more than five years old, as is this case in both WHBC and SADC.

- 4.23 It is common ground between the parties that neither LPA has a five year supply of deliverable housing land against their respective local housing need, calculated using the standard method (base date 21st March 2020) and with a 20% buffer applied. WHBC considers its housing land supply to be 2.58 years in its latest position statement (CD8.01). SADC considers its land supply to be 2.4 years in its position statement (CD8.02).
- 4.24 The Appellant submitted a Housing Land Supply Statement (CD1.16) with the applications. This suggests the supplies of both LPA are in fact worse still. As this Statement predated these latest position statements Emery Planning has produced an updated Five Year Housing Land Supply Statement on behalf of the Appellant, which is included at Appendix RG2 to this Proof of Evidence. This demonstrates that the five year housing supplies of both LPA are worse than recorded.
- 4.25 In WHBC, Emery Planning have assessed the deliverable supply as 1,947 dwellings, compared to the Council's figure of 2,706 dwellings, meaning the supply is 1.85 years, a shortfall of some 3,303 dwellings against the requirement.
- 4.26 In SADC, the assessed deliverable supply by Emery Planning is 1,746 dwellings compared to the Council's claimed supply of 2,612 dwellings. By Emery Planning's assessment then the supply is only 1.64 years, a shortfall of 3,612 dwellings against the requirement.
- 4.27 As has already been noted, the Housing Delivery Test 2020 results were published on 19th January 2021. Given how dated the LPAs' adopted local plans are it is no surprise that that they both only achieved 63% of the required delivery, meaning that the tilted balance to presumption in favour of sustainable development set out in paragraph 11d) of the Framework applies.

The weight to be given to market housing

- 4.28 Given the colossal shortfall in the deliverable supply of housing land in both LPA areas the weight to be given to the new market homes that would be delivered as part of the appeal applications (up to 55) should be reflective of the hugely desperate need for new homes in this part of Hertfordshire.
- 4.29 In allowing a called in application at land to the west of Burley-in-Wharfedale at Sun Lane and Ilkley Road on 3rd March 2021 (CD11.01), which is located in the Green Belt, the Secretary of State and the Inspector both gave a very substantial amount of weight to the provision of housing generally, noting also the significant shortfall that exists in the area.

4.30 In the planning balance section of the Inspector's Report, at paragraph 657, they state:

"In view of the fact that the Council's housing situation was described by the SoS in 2016 as "acute" "persistent" and "chronic", and has worsened since that time, with the Council only able to demonstrate a current supply of deliverable housing land of less than 2.06 years [201, 221], I give very substantial weight to the provision of 500 new houses in the current proposal, which would accord with LPCS Policy HO3. I also give very substantial weight to the proposed delivery of 30% affordable housing on this site, for reasons set out earlier." (Emphasis added)

4.31 At paragraph 24 of the decision letter, the Secretary of State supported this assessment, stating:

"For reasons given in IR530-534, the Secretary of State agrees with the Inspector that the proposed development would make a significant contribution towards addressing market and affordable housing need, and that it would be able to provide a wide range of high-quality housing (IR534). He concludes that this carries very substantial weight. As such, he considers that the proposal would accord with the requirements of the Framework in this regard, and with LPCS Policies HO8, HO9 and HO11, as well as Policy BW5 of the NP." (My emphasis)

4.32 He goes on to add at paragraph 44:

"The proposal would deliver a substantial number of homes which attracts very substantial weight, given the poor housing land supply position."

4.33 I note specifically the correlation the SoS makes between the land supply position and the weight he affords the contribution the site makes to the provision of new homes.

4.34 Similarly, Inspector Fagan, in allowing an appeal for a greenfield site in the Green Belt at Asher Lane, Ruddington (CD10.14) where there was only 3.1 years housing supply gave the provision of housing considerable weight, noting also the limited harm the development would have through loss of openness and incursion in the countryside in that case in weighing up the very special circumstances balance.

4.35 The main SoCG confirms that the LPAs consider the provision of market housing in these appeals should be given substantial weight. I consider that it should in fact be given very

substantial weight in the planning balance following the approach of the Secretary of State in above case and given the huge shortfall of housing in both WHBC and SADC.

The Need for Affordable Housing

The Housing Crisis

- 4.36 As is demonstrated in detail in the Proof of Evidence of James Stacey, which I do not repeat at length here, there is an irrefutable body of evidence that shows the UK is in the throes of a national housing crisis and that has invariably damaged the lives of millions across many generations and social strata, due to their being unable to meet their housing needs, with many many people and families continuing to experience a very real prospect of being subject to unaffordable housing costs.
- 4.37 Mr Stacey notes that despite very clear acknowledgement of this crisis by previous Governments, as a country we have continued to fail to build enough new homes, particularly affordable homes.
- 4.38 He points to the widely accepted requirement to build 300,000 homes a year, which is accepted by Government, to meet housing need nationally, a level of house-building output that was last achieved in 1969. He notes that whilst housebuilding rates have increased since around 2011, they are still a long way short of the 300,000 new homes per annum target that desperately needs to be met if the housing crisis is to be addressed.
- 4.39 In the forward to the recent Planning White Paper: *'Planning for the Future'* the Prime Minister lays the blame for the failure to build enough houses firmly at the door of the planning system, stating:
- 4.40 *"Thanks to our planning system, we have nowhere near enough homes in the right places. People cannot afford to move to where their talents can be matched with opportunity, Businesses cannot afford to grow and create jobs. The whole thing is beginning to crumble and the time has come to do what too many have for too long lack the courage to do - tear it down and start again."*
- 4.41 The Secretary of State for Housing, Communities and Local Government adds this in his own forward:

"The outbreak of COVID-19 has affected the economic and social lives of the entire nation. With so many people spending more time at home than ever before, we have

come to know our homes, gardens and local parks more intimately. For some this has been a welcome opportunity to spend more time in the place they call home with the people they love. For other - those in small, substandard homes, those unable to walk the distance to shops or parks, those struggling to pay the rent, or indeed for those who do not have a home of their own at all - this has been a moment where longstanding issues in our development and planning system have come to the fore.”

- 4.42 Mr Stacey’s evidence also points to the accumulated shortfall in housing provision since 2004, which ranges between -1,105,490 and 2,635,490 homes depending on the annual need figure utilised. What is telling is that in every scenario the extent of shortfall in housing delivery in England is catastrophic and continues to compound the acute affordability problems the country is facing.
- 4.43 He concludes on this matter by stressing that significantly boosting the supply of housing, and particularly affordable housing, is absolutely necessary if we as a nation are to address the housing crisis and prevent it worsening further.

Affordable housing provision in WHBC and SADC

- 4.44 In respect of affordable housing need in WHBC and SADC, the Proof of Evidence of James Stacey is compelling and demonstrates that there is an acute and pressing need for affordable housing LPA areas.
- 4.45 Within WHBC, in the five year period since the start of the 2017 SHMA Update period in 2015/16 Mr Stacey finds net affordable housing delivery represented just 4% of the overall housing delivery. This is equivalent to just 23 affordable homes per annum.
- 4.46 When comparative analysis is undertaken with net affordable housing delivery since the base date of the 2017 SHMA Update and the full affordable housing needs identified by the SHMA, Mr Stacey calculates a shortfall of -4,090 net affordable homes has accumulated in just five years.
- 4.47 Even when the ‘policy-on’ figure of 160 affordable dwellings per annum over the period is used, in that same period there is still a shortfall of -687 affordable dwellings.
- 4.48 The scale of the affordability problem that WHBC is facing is evident. Were the backlog to be addressed within the next five years (the ‘Sedgefield Method’) it would require delivery of 1,397 affordable homes per annum, yet delivery over the past five years has amounted to just 23 net affordable dwellings per annum.

- 4.49 Within St Albans, in the period since 2012/13 a total of 244 net affordable homes have been delivered at an average rate of just 35 net per annum. When compared with the objectively assessed need for a least 617 affordable dwellings per annum over the same period, a shortfall of some -4,075 affordable homes compared to the need has resulted.
- 4.50 Were this backlog to be addressed within the next five years using the Sedgefield approach, there would be a need for 1,185 affordable dwellings per annum. As noted this compares to an actual rate of delivery over the period since 2012/13.

The consequential impact on affordability

- 4.51 Unsurprisingly, given this dreadful performance in delivering both market and affordable homes, the affordability indicators in both LPA areas paint a depressing picture. Mr Stacey covers this in detail in his proof, however, I note some of the key findings in the following paragraphs.
- 4.52 Mr Stacey has found that the average house price to average income ratio in Welwyn Hatfield increased from 11.9 in 2015/16 to 15 in 2018/19 (a 26% increase) based on the National Housing Federation (NHF) Home Truths report. In St Albans the same ratio increased from 10.5 in 2013/14 to 13 in 2018/19.
- 4.53 He found the lower quartile affordability position (typically considered to be the 'more affordable' segment of the housing market) is similarly bleak in both LPA areas, but particularly so in St Albans. In WHBC the lower quartile house price to income ratio is shown to have increased by 27% from 9.08 in 2015/16 to 11.54 in 2019/20. In St Albans the lower quartile house price to income ratio has increased by 24%, from 13.23 in 2013/14 to 16.92 in 2019/20.
- 4.54 In terms of house prices, Mr Stacey notes the NHF report that in WHBC average house prices increased 14% between 2015/16 and 2018/19, rising from £394,636 to 4452,773. This has resulted in the income required to purchase an average priced home in the Borough with an 80% mortgage rising from £90,203 to £103,482 over the same period.
- 4.55 By way of comparison, average earnings in the borough saw an increase of just 7% from £29,104 to £31,252 over the same period.
- 4.56 Mr Stacey has found that median house price data shows that in Welwyn Hatfield prices consistently exceed both the national and regional average with a 43% increase in the

borough since 2013/14 compared to 43% regionally and 36% nationally.

- 4.57 In St Albans the NHF report indicates that the average house price increased 37% over the period between 2013/14 and 2018/19, rising from £444,919 to £609,744. Consequentially, the income required to purchase an average priced home with an 80% mortgage rose from £101,696 to £139,777 over the same period of just 4 years.
- 4.58 By comparison, Mr Stacey highlights that average earnings in St Albans have increased by just 12%, from £42,448 to £42,739 over the same period.
- 4.59 Median house price data demonstrates that in St Albans price increases also consistently exceed both the national and regional average, with a 50% increase within the district since 2013/14 compared to 48% regionally and 32% nationally.
- 4.60 Mr Stacey's evidence demonstrates that the picture for private renters is not much better. In Welwyn Hatfield the NHF report that average monthly rents increased 3% from £1098 per calendar month (pcm) to 1,130 pcm between 2015/16 and 2017/18. He also points to VOA data indicating that in the lower quartile private rental sector rents have increased by 3% over the period from 2015/16 to 2019/20, noting that a £25 increase from £825 pcm to £850 is a lot for those on low incomes. He also points out that monthly rents are significantly higher than both the regional average (£650) and the national figure (£425).
- 4.61 In St Albans the NHF report shows that average monthly rents increased 12% from £1,171 pcm to £1,310 pcm between 2013/14 and 2018/19. Valuation Office data shows indicates that median private rents increased by 25% between 2013/14 and 2019/20 from £998 pcm to £1,250 pcm. This compares to a 17% increase nationally. The situation is even worse in the lower quartile private rental sector in St Albans, where the VOA data indicates that rents have increased by 18% over the same period, from £825 pcm to £975 pcm, which is higher than the regional average of £650 pcm and the national average of £550 pcm.
- 4.62 Turning to the LPA's Housing Registers. Mr Stacey points out that at 1st April 2020 there were a total of 2,286 households on WHBC's Household Register and at February 2021 there were 532 households on St Albans. He also notes that since the changes introduced by the Localism Act 2011, which allow Local Housing Authorities to set their own Housing Register criteria, St Albans have published new Housing Allocations Policies, reducing eligibility so that fewer and fewer people are eligible to join the register. He adds that such an approach does not reduce the need for affordable housing, it simply makes it even harder for those unable to access open market housing to find a suitable place to live.

4.63 In Welwyn Hatfield, Mr Stacey's evidence shows that there were 98 households being housed in temporary accommodation within the Borough and a further 13 outside it at 1st April 2020, a 7% increase on the previous year.

4.64 Mr Stacey concludes by noting that by any measure of affordability, both St Albans and Welwyn Hatfield are authorities in the midst of an affordable housing crises, which requires urgent action. It should not be forgotten that all of these statistics relate to real people and families.

4.65 This issue in respect of the affordability of housing in Welwyn Borough has been referred to specifically by the Inspector examining the emerging Local Plan, including in the context of the Council putting forward lower FOAHN figures than previous suggested. In particular at paragraph 33 of his Interim Report (CD6.02) he states:

"Additionally, affordability has been getting worse for more than a decade. The mean quartile ratio rose from a little over 7 in 2009 to one of over 11 in 2017 (50%+). Although, in line with a national trend, it declined to 10.5 in 2019, there has nevertheless been a significant overall rise since at least 2009⁷. The submitted plan identifies a high need for affordable housing over the plan period. Policy SP7, which seeks between 25% and 35% affordable housing, from major development sites, has been viability tested. This will undoubtedly help towards meeting the affordable housing needs of the Borough if sufficient new homes are built. However, without a step change in the overall provision of housing, the unfulfilled needs of a significant group of local people will remain unmet. This gives added weight to the need to boost the supply of housing in Welwyn Hatfield."

4.66 In addition to the Burley-in-Wharfedale appeal, referred to in the preceding section, in a number of appeals for sites in the Green Belt in the past few years, the Secretary of State has given a considerable amount of weight to the provision of affordable housing in each case. I summarise these decisions here (Full copies are included in the Core Documents). I acknowledge that the very special circumstances case in each was distinct and unique, as is always the case, however, they are evidence of the weight the Secretary of State has afforded the provision of housing in the planning balance when allowing appeals for sites in the Green Belt.

Recovered Secretary of State Appeal - 160 Stanley Road, Cheadle Hulme, Stockport (22nd April 2020) - CD11.03

4.67 At paragraph 30 of the decision letter the Secretary of State confirmed:

“Taking into account that policy H-3 is out of date, along with the significant need for affordable housing in light of previous under-delivery (IR622 and IR627), the claw-back mechanism which may ultimately result in higher affordable housing provision (IR570 and IR657), and the 30% maximum viable amount of affordable housing that the development can support bearing in mind the need for cross-funding (IR629), the Secretary of State considers that the provision of affordable housing carries significant weight in favour of the proposal. Further taking into account that the proposal will deliver housing in an area with a maximum of 2.8 years supply of housing (IR33, IR655) the Secretary of State considers the housing benefits overall carry very significant weight.” (Emphasis added)

Recovered Secretary of State Appeal - Oxford Brookes University, Wheatley Campus, College Close, Wheatley (23 April 2020) - CD11.02

4.68 When undertaking the planning balance, the Inspector concluded on the weight to be given to housing at paragraph 13.111 of his report, referring particularly to the need for affordable housing, stating:

4.69 *“The Framework attaches great importance to housing delivery that meets the needs of groups with specific housing requirements. In that context and given the seriousness of the affordable housing shortage in South Oxfordshire, described as “acute” by the Council, the delivery of up to 500 homes, 173 of which would be affordable, has to be afforded very substantial weight irrespective of the fact that the Council can demonstrate a 3/5YHLS.”*

4.70 The Secretary of State confirmed his agreement on this point at paragraph 35 of the decision letter:

“While he has concluded that the council are able to demonstrate a 5 year supply of housing land, the Secretary of State agrees that, for the reasons given in IR13.97 to 13.102, the proposed development would contribute significantly towards the Council’s affordable housing shortfall. Given the seriousness of the affordable housing shortage in South Oxfordshire, described as “acute” by the Council, he agrees with the Inspector at IR13.111 that the delivery of up to 500 houses, 173 of which would be affordable, are considerations that carry very substantial weight.” (Emphasis added)

4.71 In undertaking the planning balance in the following section of my Proof of Evidence, having regard to significant shortfalls of market and affordable housing, Mr Stacey’s

evidence on the latter point and the Secretary of State decisions referred to above, I give the provision of both affordable housing that would result from the appeal proposal very substantial weight.

- 4.72 Paragraph 8.12.10 of the St Albans Committee Report (CD4.02) suggests that the weight to be given to the provision of affordable housing, whilst substantial, is diluted by the lack of clarity in respect of housing mix and tenure. In respect of tenure, this has been resolved through the provision of a clause in the S106 Agreement, which requires policy compliant tenure split in the requisite proportion of housing on each side of the district boundary line. In terms of mix of unit sizes, this is a point for reserved matters and I therefore dispute that the weight should be reduced at all as a consequence.

The Need for Self-Build

- 4.73 The appeal scheme includes provision for 10% of the dwellings to be in the form of plots for self and custom build, with this to be secured via the S106 Agreement.
- 4.74 The Proof of Evidence of Andy Moger covers in detail the evolution of national policy on self and custom build housing. He notes that paragraph 59 of the current Framework places a requirement on LPAs to make sufficient provision of land with permission without delay to meet the needs of different groups.
- 4.75 Paragraph 60 sets out that in determining the minimum number of homes needed, strategic policies should be informed by a local housing need assessment. Paragraph 61 goes on to state that within this context, the size, type and tenure of housing needed for different groups should be assessed and reflected in policy, including “*people wishing to commission or build their own homes*”. Footnote 26 states:

“Under Section 1 of the Self-Build and Custom Housebuilding Act 2015, local authorities are required to keep a Register of those seeking to acquire serviced plots in the area for their own Self-Build and Custom Housebuilding. They are also subject to duties under sections 2 and 2A of the Act to have regard to this and to give enough suitable development permissions to meet the identified demand. Self and Custom Build properties could provide market and affordable housing.”

- 4.76 Mr Moger’s proof goes on to draw attention to numerous national policy statements reinforcing the importance placed on self-build and custom housebuilding in terms of helping to diversify the housing market and deliver more homes.
- 4.77 Mr Moger notes that neither WHBC, nor SADC has an adopted policy specifically related to

the provision or delivery of self-build and custom housebuilding. Again, this is reflective of how dated both plans are. He also points out that the most recent assessments of housing need in both LPAs provide no evaluation of likely future demand for self-build in their areas.

- 4.78 In terms of performance in delivering the required number of self-build and custom building plots, Mr Moger's evidence demonstrates that WHBC has retrospectively removed entries from its Self-Build Register contrary to Section 2A(2) and 2A(6)(a) of the 2015 Act (as amended) which details that the Statutory Duty applies to the need arising within a Base Period and relates to the number of entries that were added during that Base Period rather than to retrospective revisions made to the that Base Period to reduce numbers.
- 4.79 Mr Moger demonstrates that when the primary legislative requirements of the Statutory Duty are assessed, WHBC has fallen short of meeting their Statutory Duty for Base Period 1 by 140 plots, a 96% shortfall, with only 6 plots consented in that period. In Base Period 2 the shortfall was 100% of the identified demand of 109 plots. Therefore, in totality WHBC has a shortfall of 249 plots in respect of Base Periods 1 and 2 against their Statutory Duty to have met the need arising within a Base Period in relation to the number of entries that were added during that Base Period by 30 October 2020.
- 4.80 As a consequence, WHBC now has until 30 October 2021 to address the shortfall from the Base Periods 1 and 2 of 249 plots, together with demand for a further 68 plots that arose within Base Period 3, meaning 317 plots are needed.
- 4.81 In St Albans City and District, Mr Moger demonstrates that on 43 consented plots that the Council are counting towards the need actually adhere to the regulatory requirements of Self-Build and Custom Housebuilding Time for Compliance and Fees Regulations (2016) and that there was consequently a shortfall of 65 plots against demand in Base Period 1. This is equivalent of a 40% shortfall. In Base Period 2, the shortfall amounts to 100% of the demand at 141 plots. Therefore, over Base Periods 1 and 2 there has been an accumulated shortfall of 176 plots.
- 4.82 As a consequence, SADC now has until 30 October 2021 to address the combined shortfall of 176 plots, together with demand for a further 104 plots that arose within Base Period 3, meaning a total of 280 plots are required.
- 4.83 Mr Moger notes, however, that secondary data sources indicate demand in both LPA areas is much higher.
- 4.84 Mr Moger concludes that the 10% provision of serviced plots for self-build and customhouse building included in the appeal proposals (up to 10 units) will contribute towards helping

to address the identified need and addressing the shortfalls in both LPA areas. The S106 Agreement includes a mechanism to ensure that are the reserved matters stage, 10% of the total units on each side of the district boundary line are for self-build and custom housebuilding plots. He therefore suggests that nothing less than **substantial weight** should be afforded to this provision.

- 4.85 I agree with him and afford the contribution of self-build and custom housebuilding plots substantial weight in the planning balance in the following section.

Green Belt

- 4.86 It is acknowledged that any harm to the Green Belt should be given substantial weight as mandated by paragraph 144 of the Framework. Before the very special circumstances balance can be undertaken it is necessary to understand the nature of the harm to the openness of the Green Belt and purposes of including land in it set out at paragraph 134 of the Framework, having regard to the contribution the site makes to those purposes in its current state, which I set in out Section 2.
- 4.87 Paragraph 133 of the Framework confirms that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. What is meant by the term “openness” is not defined in the NPPF.
- 4.88 The PPG provides some assistance (Paragraph 001 Reference ID: 64-001-20190722 - Copy at CD9.17), advising that:

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

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

- 4.89 The most recent court decision of relevance is that of the Supreme Court in R (Samuel Smith Old Brewery (Tadcaster) and others) v North Yorkshire County Council [2020] UKSC 3 (CD12.02), in which Lord Carnwath states at paragraph 39:

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

- 4.90 In *Turner v Secretary of State for Communities and Local Government and East Dorset Council* [2016] EWCA Civ 466 (CD12.03), which Lord Carnwath refers directly to in the above judgement, the Justices surmised on this matter:

“14. The concept of “openness of the Green Belt” is not narrowly limited to the volumetric approach suggested by Mr Rudd. The word “openness” is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt presents.

15. The question of visual impact is implicitly part of the concept of “openness of the Green Belt” as a matter of the natural meaning of the language used in para. 89 of the NPPF. I consider that this interpretation is also reinforced by the general guidance in paras. 79-81 of the NPPF, which introduce section 9 on the protection of Green Belt Land, There is an important visual dimension to checking “the unrestricted sprawl of large built-up areas” and the merging of neighbouring towns, as indeed the name “Green Belt” itself implies. Greenness is a visual quality: part of the idea of the Green Belt is that the eye and spirit should be relieved from the prospect of unrelenting urban sprawl. Openness of aspect is a characteristic quality of the countryside, and “safeguarding the countryside from encroachment” includes preservation of that quality of openness. The preservation of “the setting.... of historic towns” obviously refers in a material way to their visual setting, for instance when seen from a distance across open fields. Again, the reference in para. 81 to planning positively to “retain and enhance landscapes, visual amenity and biodiversity” in the Green Belt makes it clear that the visual dimension of the Green Belt is an important part of the point of designating land as Green Belt.

16. The visual dimension of the openness of the Green Belt does not exhaust all relevant planning factors relating to visual impact when a proposal for development in the Green Belt comes up for consideration. For example, there may be harm to visual amenity for neighbouring properties arising from the proposed development which needs to be taken into account as well. But it does not follow from the fact that there may be other harms with a visual dimension apart from harm to the openness of the Green Belt that the

concern of openness of the Green Belt has no visual dimension itself.”

- 4.91 This case confirms, then, that there can be a visual element to assessing openness, in addition to the spatial (footprint) or volumetric aspect. To my mind that is correct, as the extent to which a loss of openness can be appreciated logically contributes to the nature and extent of harm involved.

Extent of visual impact from loss of openness

- 4.92 Gary Holliday covers the visual aspect of the proposed development’s impact on openness in his Proof of Evidence. He acknowledges that within the site itself there will inevitably be a loss of openness in a visual sense as an agricultural field will be replaced by housing. However, he also notes that the scheme includes some mitigation measures, with the illustrative layout (CD2.03) and landscape strategy plan (CD2.04) indicating retained and new footpaths across the site, set within new landscaping and greenspace and kept free from development.
- 4.93 Mr Holliday suggests that to understand the visual impact on the aims and purposes of the Green Belt it is necessary to understand how the land relates to the existing settlement and the countryside. As I have already stated above, I share this position. He considers the site to be contained by the existing settlement to north, west and partly to the south. He also refers to Tollgate Wood, which lies to the east of the site and forms a strong boundary and feature in the landscape, separating Colney Heath from the A1 and Hatfield beyond.
- 4.94 Mr Holliday notes that the land to the south of the appeal site is slightly more open, but roadside hedges, trees and subtle changes in topography tend to limit open views of the site from this direction.
- 4.95 Overall Mr Holliday considers the site to be wrapped around by the existing settlement to a high degree and that it has a very limited role as part of the wider open countryside. I agree with this position.
- 4.96 Mr Holliday identifies that the effects on the wider area are much more limited, with the photo viewpoints in the LVA (CD1.29) and appended to his proof, demonstrating this. He concludes that in terms of impact on visual openness, there would be a limited effect beyond the boundaries of the site itself.
- 4.97 Therefore, whilst there would inevitably be a loss of openness in visual terms here, from the development of houses on an open agricultural field, the impact of that loss is

minimised to a very local area, thus limiting the extent of the harm involved.

Extent of spatial impact from loss of openness

- 4.98 In terms of the spatial dimension of openness, I acknowledge there would clearly be a loss of openness spatially from development on what is currently an open field, however, again I consider this to be limited by the appeal site's relationship with the existing settlement of Colney Heath. As has been described already, it is wrapped around by the settlement to the north, west and partly to the south, which gives it a sense of enclosure spatially. I also consider it to be highly contained by its relationship with both Bullens Green Lane and Fellowes Lane, with these roads forming the sites outer boundaries to the east and south, and therefore having the effect of physically containing the site, a sense that is furthered by the extent of landscaping along the site's frontages with these road. This also adds to the sites containment spatially.
- 4.99 This containment and relationship with the existing built form of Colney, along with the separation from wider open and non-developed land to the east, south east and south would limit the harm in terms of the spatial dimension of loss of openness, from development of the site. I also consider that the proposed landscaping along the site's eastern and southern boundary would assist with this by adding to the sites containment and by creating a soft transition to open Green Belt Land beyond.

Impact on the purposes of including land in the Green Belt

- 4.100 I turn now to impact on the purposes of including land in the Green Belt at paragraph 134 of the Framework. In assessing this regard needs to be had to the contribution that the site makes to the purposes of including land within the Green Belt. I set out my position on this in Section 2 of this proof, noting that I consider the site makes no real contribution to purposes, a), b) and d) and that this is corroborated by the LPAs' own evidence base prepared to support the WHLP and the withdrawn St Albans Local Plan.
- 4.101 Indeed, the Council accepts (Paras. 5.8 - 5.12 of its Statement of Case) that development of the site would not conflict with purpose a) '*to check unrestricted sprawl of large built-up areas*' b) '*to prevent neighbouring towns merging into one another*' or purpose d) '*to preserve the setting and special character of historic towns*'.

Assisting in safeguarding the countryside from encroachment

- 4.102 In terms of Green Belt purpose c) '*to assist in safeguarding the countryside from encroachment*' in Section 2 I again highlighted the appeal sites relationship with the

surrounding settlement, which wraps around it to the north, west and partly to the south, and also the level of containment created by Bullens Green Lane and Fellowes Lane, which help separate it from the wider countryside beyond. I set out my position, that the combined effect of this means that the site's contribution to this purpose is actually relatively limited.

- 4.103 Consequentially, I consider the harm from the loss of what is currently an agricultural field to residential development is reduced and I disagree with the LPAs' suggestion in the SoC that the encroachment is substantial when properly considered in context. Whilst I acknowledge there would clearly be encroachment, the impact of that is largely limited to the appeal site in terms of loss of openness both spatially and visually because of the site's physical relationship with Colney Heath, because of the extent of containment created by its relationship with Bullens Green Lane and Fellowes Lane, including the landscaping along their frontages, which separates the site from the open countryside beyond, giving the sense of containment both Mr Holliday and I have referred to and as is demonstrated by the evidence of Mr Holliday, because the visual appreciation of loss of openness is very much limited to the site and its immediate confines, rather than extending to wider views from a broader surrounding area.
- 4.104 I would point again to the comments of Inspector Middleton on this purpose in his Green Belt Review Note of December 2017 (CD6.03) referred to in Section 2 in which he notes the importance of how a site contributes to the wider countryside, which he considers is determined by topography, woodland and major physical features that close off views.
- 4.105 In commenting on the contribution the appeal site makes to this Green Belt purpose in Section 2, I pointed out that WHBC's Stage 3 Green Belt Study, in assessing the part of the appeal site within WHBC, along with a number of fields to the east and south, acknowledges that residential development within the adjacent settlement is visible across much of the parcel. Furthermore, it concludes that whilst the wider parcel is largely open and rural, it is contained to the east and southeast by thick woodland and the settlement of Bullens Green, so the impact of its development on the wider Green Belt would therefore be limited. Given the aforementioned comments about the appeal site's relationship with the existing settlement, I consider this is even more the case when it is considered in isolation.
- 4.106 Therefore, whilst there would be some encroachment into the countryside, that is inevitable from the development of a field that is currently in agricultural use, the particular relationship of the appeal site to the existing settlement, including its juxtaposition with Fellowes Lane and Bullens Green Lane, and the extent of existing

landscaping along their frontages, gives it a sense of containment and separation from the wider countryside to the south and west, the consequence of which is that its contribution in safeguarding the countryside is in fact relatively limited and thus the harm resulting from its development should be reflective.

To assist in urban regeneration, by encouraging the recycling of derelict and other urban land

- 4.107 In Section 2 above I acknowledge that the site is currently an open agricultural field and therefore by definition it makes a contribution to this purpose. I also pointed out that the WHBC Green Belt Study assessed all parcels equally as making a significant contribution towards this purpose.
- 4.108 Furthermore, the withdrawn St Albans Local Plan 2020-2036 had proposed prior to its withdrawal, and the draft WHLP is proposing, the release of hundreds of hectares of greenfield land from the Green Belt to meet a significant proportion of the housing need. It is therefore evident that opportunities for urban regeneration of ‘brownfield’ land are scarce in this part of Hertfordshire. Indeed, if they were in abundance then the strategies of these Local Plans would be very different and the Councils would not have the dire housing shortages that currently exist, especially given the high land and property values in this area, which are attractive incentive to the owners of such sites.
- 4.109 Therefore, I find that whilst development of the site would not assist urban regeneration by encouraging the recycling of derelict and urban land, the harm associated must be diminished by the lack of availability of such land in the area. The Inspector’s Interim Report on the WHLP (CD6.02) confirms at paragraphs 45 and 46 that insufficient land within the existing developed areas of the district exists to meet housing need and that there are exceptional circumstances for releasing Green Belt to meet housing need.
- 4.110 In addition, I would also point out that the scale of the site is such that its development is not large enough that it would have the effect of preventing the recycling of urban/brownfield and in the area, for example by saturating the housing market, particularly given the substantial shortfall in housing evidenced above. This further reduces the harm to this Green Belt purpose from development of the site in my view.

Draft Welwyn Hatfield Local Plan 2016 - 2036 (WHLP) (CD6.01)

- 4.111 Before coming onto the current stage of the WHLP, it is worth first reviewing its lengthy history to date.

- 4.112 According to WHBCs website, preparation on the evidence base for this Local Plan commenced in 2005 following adoption of the current Local Plan. That is some 16 years ago, an inordinate amount of time, even for plan-making in this country.
- 4.113 The plan originally took the form of a Core Strategy, but was subsequently amended to a Local Plan, following a change in Government direction on plan-making. It was eventually submitted for examination on 17th May 2017.
- 4.114 Despite this being nearly 4 years ago, the examination remains ongoing, with Stage 9 hearing sessions having taken place in February and March 2021. As detailed below, it is still far from a certainty that the WHLP will survive the process and be found sound.
- 4.115 As noted in Section 8 of the SoCG, the Inspector produced an Interim Report (IR; CD6.02) setting out his preliminary conclusions and advice.
- 4.116 This sets out that a number of questions and also fundamental concerns over the soundness of the Plan remain, despite the length of time the examination has been ongoing. This seems at least in part down to a lack of action from the WHBC, as noted at paragraph 2 of the Interim Report, where the Inspector states:
- “Among other things, in December 2017, I asked the Council to undertake work that would lead to the submission of additional housing sites to meet a housing requirement that would accord with the then Full Objectively Assessed Housing Need (FOAHN), that it had placed before the Examination in June of that year. Almost three years later, the Council has not submitted any such sites to the Examination. To assist it with this task, some time ago, the Council indicated that it would be helpful, if I could set out my conclusions, so far, on the Examination.”*
- 4.117 At Paragraph 10, the Inspector goes on to refer to his letter of 14th December 2017 (CD6.03) as follows:
- “My letter dated 14 December 2017, to the Council, which followed a discussion at the end of the Stage 2 Hearings (October 2017), set out the principle shortcomings which, on the evidence available to me at that time, I had identified in the submitted plan and its evidence base. In particular, I observed that there was a significant shortfall in the number of new dwellings (ds) proposed by the submitted plan, to meet the revised FOAHN that the Council had placed before the Examination, in June 2017 (3,200).”*
- 4.118 Paragraphs 11 - 13 of the IR provide further background, confirming that although the Council had undertaken some work on identifying further sites to meet the FOAHN, they had not been submitted to the Examination.

4.119 Paragraphs 16 - 33 raise concerns over the Plan's spatial strategy, particularly in respect of the potential for an imbalance between economic growth, Welwyn Hatfield being an area of high job growth and economic prosperity, and housing provision, which could lead to an increase in unsustainable commuting and worsening affordability (See paras 30 - 33 particularly).

4.120 At paragraphs 34 - 37 the Inspector summarises the uncertain position in respect of the changing FOAHN that the Plan is proposed to meet. He notes that the submitted Plan sought to provide 630 dwellings per annum (dpa) over the period 2013 to 2032, but the Council then replaced this with a revised assessment at the start of the Examination utilising the 2014 household projections. This suggested a need for 800 dpa, which the Inspector confirmed as consistent with national policy in January 2020 (See para 34 and CD6.05).

4.121 At the same time WHBC requested that the Plan period be amended to 2016 - 2036 to ensure it covers a 15 year time horizon, a consequence of the lengthy timescale of the Plan's preparation and examination at that stage.

4.122 Due to the publication of revised population and household projections based on the 2018 forecasts in March and June 2020, as required by national policy, the Council were requested to consider whether a meaningful change in the housing need had occurred. As noted at paragraph 36 of the Inspector's Interim Report (CD6.02), the Council submitted possible revisions to the FOAHN, suggesting that this could be reduced to between 715 and 800 dpa. He also notes that:

".... The consultant's report, accompanying this, also alerts the Examination to considerations, such as poor housing delivery performance in recent years, that could have affected the overall need assessment in a downward manner. I have written to the Council, asking for further clarification on this point and its interpretation of the range put forward, including its considered opinion on the precise actual need. I have also begun a consultation on the revised range of FOAHN put forward by the Council".

4.123 He continues at paragraph 37:

"Until this is completed, and the representations considered, along with the additional evidence sought from the Council, the matter cannot be moved forward. The additional evidence requested from the Council should be submitted to the Examination so that revisions to the FOAHN can be examined at an early date and greater clarity given to the Borough's housing need going forward. In the meantime, and for the purpose of this report, 16,000 ds (800 dpa) is still the FOAHN that is before the Examination for the plan area."

- 4.124 Paragraphs 39 - 41 of the IR relate to housing supply. At paragraph 39 the Inspector states:

“Since the end of 2017, it has been clear that there was a significant shortfall in the proposed housing supply and that the plan was fundamentally unsound on that count alone. The Council’s assessment of potential new sites in 2019 suggested that it had more than sufficient sites upon which the overall supply could be met. The Council should therefore quickly conclude, which of the additional sites that it favourably assessed in its 2019 update to its site selection process, are the most sustainable to meet that need, so as not to cause any further delay to the Examination.”

- 4.125 In commenting upon the latest housing trajectory before the Examination at that point, dated July 2020, the Inspector notes at paragraph 41:

“The trajectory suggests that there would not be a five-year supply of housing land on the plan’s adoption. The Framework, in discussing housing delivery, says that local planning authorities should ensure that their Local Plan meets the FOAHN for market and affordable housing. That includes identifying a supply of specific deliverable sites, sufficient to provide five years’ worth of housing against their housing requirements and with an appropriate buffer to ensure choice and competition in the market for land. This is not achieved in the trajectory now before Examination. In submitting additional sites to the Examination, the Council should give consideration to selecting sufficient new sites that would be deliverable in the short term, in order to achieve a five-year supply on adoption.”

- 4.126 The Inspector goes on to raise concerns over, or invite the submission of further justification for, a number of the proposed strategic and smaller allocations examined to date. In paragraphs 104 and 105, he also sets out his position that the current strategy for achieving a proportionate distribution of development between the villages excluded from the Green Belt is not sound.

- 4.127 Inspector Middleton sets out his conclusions (to date) on the submitted WHLP at paras 128 - 131, as set out below:

“128. Welwyn-Hatfield has developed a successful economy of at least sub-regional importance over the last quarter century. However, this importance and the success generates substantial housing need. Infrastructure constraints, which weigh against additional in-commuting by car and housing affordability issues within the Borough itself are documented in the Examination’s evidence base. It is important that, as well as ensuring that everyone has a decent home, economic growth should not be hampered because of a shortage of housing, a very expensive housing market and overloaded infrastructure. The strength of the local economic base and the problems of housing

affordability are persistent characteristics, having been well established during the plan's preparation and long before the plan was submitted.

129. The ability of householders to afford housing is an important challenge in Welwyn-Hatfield. In terms of market housing, the relationship of property prices to earnings has, overall, risen significantly over the last decade, to the detriment of low-income households in the Borough. The plan's housing requirement needs to address this serious issue of market housing supply and relative cost. This, if reflected in the housing need target and when combined with Policy SP7, which seeks to provide a quantum of affordable housing through private sector development, ought to contribute towards meeting the affordable housing need of the Borough, making housing overall more affordable.

130. My conclusion at this point therefore is that the housing requirement as currently proposed (16,000 homes from 2016 to 2036), or as could be modified in the light of the 2018 household forecasts, is justified. In my view, a fundamentally lower housing requirement would not support the national objective to boost the supply of housing, which is as relevant in Welwyn-Hatfield as anywhere. It would also fail to address housing affordability issues, affordable housing need and the housing impediments to the successful economic growth of the Borough.

131. Additionally, it would be likely to result in increased inward commuting, which would be inconsistent with the infrastructure constraints and would not be consistent with sustainable development. Moreover, the Council has not provided evidence that demonstrates that it has sought the help of neighbouring authorities through the Duty to Cooperate in providing for any unmet housing need”.

- 4.128 Inspector Middleton goes on to set out a potential way forward for the plan, prefacing this with the following warning to the Council:

“132. This Examination has now been in progress for nearly three and a half years. It is not acceptable for Examinations to continue indefinitely and I have serious concerns about the time the overall process is taking and the continued slippage of previously agreed timetables. Welwyn-Hatfield desperately needs an adopted Local Plan so that the development industry can get on with the job of building the additional homes that the Borough's citizens desperately need now. A prolonged examination is also not satisfactory from the perspective of the many individuals and organisations who are participating in the process.

133. The fundamental issues that relate to the soundness of this plan were discussed at length nearly three years ago and a way forward agreed shortly afterwards. Although

there was progress initially, that subsequently slowed and since the beginning of this year the resolution of the soundness issues appears to have moved into a state of statis. I have therefore concluded that it is imperative that this Examination is brought to a close without further delay.”

4.129 He went on to offer WHBC the following options, setting a deadline of 30th November for a response:

- *“To proposed additional housing sites, sufficient to meet the FOAHN, that could become MMs.*

Or

- *To withdraw the Plan from examination”*

4.130 At paragraph 135, Inspector Middleton set out a series of further deadlines for submission of additional information, on the assumption WHBC wished to continue with the examination. These were as follows:

- *“The position on the FOAHN figure, having taken account of the 2018 household forecast by Monday 15 November 2020;*
- *Details of the additional sites that will make up the supply of housing land to meet the FOAHN figure, along with any evidence that has been used in their selection that is not already before the Examination by 30 November 2020;*
- *A housing trajectory that illustrates the five-year housing land supply position. If the Council is unable to meet this without a stepped trajectory, then it should provide a full justification for this course of action by 31 December 2020.*
- *Additional evidence to demonstrate that the New Village at Symondshyde is the most sustainable and deliverable option to make up any perceived shortfall in the FOAHN, including because of a shortage of more sustainable and deliverable options, by 31 December 2020.*
- *Response to all of the other outstanding requests for additional information by 31 December 2020.”*

4.131 At paragraph 136 he gave the Council a further warning:

“If I do not hear from the Council/receive the information by any of the three deadlines above, then I will proceed to write a report confirming that the submitted plan is

unsound and so cannot be adopted. Also, it has not been possible to arrive at a position where MMs could be recommended to make it so within a reasonable timescale.”

- 4.132 On the subject of the FOAHN, taking account of the 2018 household forecasts, WHBC wrote to the Inspector on 18th November 2020 (CD6.06) advising of a further updated position following consideration of technical work by the Council’s Members. This suggests a requirement of 13,800 homes over the plan period 2016 - 2036, equating to 690 dpa, a figure below the previous range of 715 - 800 dpa.

- 4.133 Inspector Middleton responded on 30th November 2020 (CD6.07). As the extract below highlights, in this he does little to hide his frustration at the further delays this additional suggested FOAHN will create. I would invite the Inspector to read this letter in full.

“Your original response to my request for a revised position on the FOAHN has now been the subject of a consultation. My original intention was to assess the responses, along with the other evidence, following the close of the consultation and to move forward to a decision on that aspect of the plan, with or without a hearing as appropriate, as soon as practicable. We would then very likely have had a revised FOAHN before the final deadline for your submission of the material requested in paragraph 135 of my interim report.

Your decision to submit a further FOAHN assessment will postpone the completion of that work and necessitate yet another consultation and further delay the Examination’s timetable. Unfortunately, an implication of that delay will be an inability, on my part, to publish a revised FOAHN before January 2021 and on yours to submit sites that would meet that figure rather than the one that is currently before the Examination. Assuming that the requirements of the first two bullet points to paragraph 135 of my interim report are met, by 30 November, then I will proceed with the supplementary consultation into the FOAHN.”

- 4.134 WHBC also wrote to the Inspector on 30th November 2020 (CD6.08) submitting further evidence to support the allocation of additional sites, as had been requested. The letter also referred to updated capacity assessments for existing draft allocations and responded to the concerns raised in the IR (CD6.02) over the strategy for the villages. Section 5 reaffirmed the Council’s position on its FOAHN as 690 dpa, and as a consequence, proposes the deletion of a number of draft allocations, including the new settlement at Symondshyde.

- 4.135 Inspector Middleton responded on 22nd December 2020. On the submitted sites specifically, he notes at paragraph 1:

“.... Your submitted sites statistically meet the requirement to have deliverable housing proposals that would meet a Full Objectively Assessed Housing Need (FOAHN) of 16,000 dwellings and thereby comply with the requirement of paragraph 135 of my Interim Report. However, unless the FOAHN is substantially reduced, following further examination, I am not convinced that together these sites would meet the soundness requirements set out in my report.”

4.136 In paragraphs 2 - 5 he refers further to soundness matters, saying:

“2. Whilst that report was not intended to be a comprehensive response to the soundness issues that beset this Local Plan, it nevertheless sets out my thoughts on some significant matters of soundness that have a basis in the basket of sites that were before the Examination at that time and in the context of the plan’s strategy.

3. In particular, I referred you to the minimisation of the need to travel and in para. 32 to the unusually high reliance of the Borough on a workforce supply that resides elsewhere but largely commutes by car. I also referred to the on-going infrastructure requirements and movement inefficiencies associated with this. Paras. 33 and 130 help to explain why it is specifically desirable to boost the supply of housing within the Borough.

4. At paras. 102 - 105, in discussing the plan’s objective to maintain the existing settlement pattern and in consequence to direct a limited amount of new development to the excluded villages in a proportionate and movement sustainable way, I refer to an apparent but unjustified bias in the proposed distribution. At para 41 I also refer you to the requirement to provide a five-year supply of housing sites, upon adoption, unless there are very good reasons to justify an alternative approach.

5. Although inviting you to take these observations into account when submitting additional sites to the Examination (para. 106), that does not appear to have comprehensively happened.”

4.137 Paragraph 9 confirms the way forward, noting the Inspectors’ intention examine the new sites, along with the changes to the FOAHN.

4.138 Inspector Middleton wrote a further letter to WHBC on 4th February 2021 on the subject of the FOAHN (CD6.10). Again, I would encourage the Inspector to read this in its entirety, however, I note specifically, that he responds to WHBC’s previous argument for a lower FOAHN based on a potential change to the Standard Method figure for Welwyn Hatfield, which could have result in a requirement of 667 dpa, by pointing out that Government has published its conclusions following its consultation on changes to the Standard Method

and for WHBC the figure remains as 875 dpa.

4.139 He also goes on to point out that in the revised PPG, the Government's advice on assessing housing need continues to maintain the use of the 2014-based household projections in order to provide stability and to ensure that historic under-delivery and declining affordability are reflected.

4.140 Commenting additionally on the period of migration to be utilised and the Council's preference for the ten-year migration variant, he notes:

"However, whilst the first five years of the last ten years coincided with a period of recession and low levels of house building nationwide, in the following five years, when the economy did emerge from recession, unlike many parts of the country, house building in Welwyn-Hatfield was suppressed by a shortage of land and for the most part did not revert to its pre-recession levels. As this period progressed and as Turleys explain at paragraph 4.11 of their report, the provision of less than half of the homes previously evidenced to be needed, at least partially influenced the rate of inward migration and population growth at Welwyn-Hatfield during this period."

4.141 He continues by questioning the reduced FOAHN put forward by the Council:

"As you know, the strategy that you have advanced in the plan, seeks to further grow the amount of employment in the Borough, beyond what are already excessively high levels, for the size of the economically active population. Historically employment growth has been at a faster rate than the growth in the economically active population. This has undoubtedly led to the very high levels of inward commuting, much of which is unsustainable, that exist today. If this situation is not to get worse, then the likely levels of employment growth could only be sustained by corresponding levels of population growth. Forecasts based on migration rates that are reflective of a period of constrained delivery and inward migration may not appropriately reflect this."

The Examination is to discuss the matter of a meaningful change in the evidence base for the FOAHN in late February. As things stand, I am concerned that valuable time could be spent debating why your revised forecasts are inappropriate because of the changes that I have outlined above since 18 November. I am therefore writing to you to give you and your consultants an opportunity to revisit your evidence and conclusions and to consider whether or not you still consider there to have been a meaningful change. If you still do, then I would ask you to put further evidence and if appropriate revised objective assessments before the Examination. These could then form the basis of a more meaningful discussion at the Hearing."

4.142 Inspector Middleton concludes by making the point:

“In addition, at paragraph 6.2, Turleys point out that “it could be justified in principle to simply retain the previously evidenced OAN of 800 dwellings per annum in Welwyn Hatfield”. That being the case, it could legitimately be construed to mean that there has not been a meaningful change since the plan’s FOAHN was changed in 2017 and that the retention of a FOAHN of 800 d.p.a is not unsound and therefore does not require change. I would also welcome the thoughts of your consultants on this point.”

4.143 The Council’s response of 15th February is included at CD6.11 for completeness. The further hearings took place during week commencing 22nd February 2021 and it is understood that due to the forthcoming purdah period the Inspector is unlikely to publish his findings until after the local elections in May 2021.

4.144 It is evident from the above detailed review of progress on the Local Plan, however, that there remain fundamental questions over the soundness of the WHLP some three and a half years after it was submitted, and it is far from a certainty that these will be overcome leading to a sound verdict. The correspondence between the examining Inspector and WHBC, does suggest that that is in no small part down to the reluctance of the Council to address the former’s concerns.

4.145 The fact that a draft Plan that has been so long in the making and whose passage through examination has been so drawn-out already, remains seemingly so far from being in a position whereby the Inspector can conclude that it is sound does seem to epitomise the inability of plan-making in this area to address the acute challenges faced by the Council, particularly in respect of desperate need for new housing and the consequential affordability issues that are manifest and that I have documented above with reference to Mr Stacey’s evidence.

4.146 In respect of the weight to be given to WHLP, the SoCG confirms that the main parties are in agreement this should be “limited” due to the stage of the Plan and the fact that there remain outstanding concerns over such fundamental matters as the FOAHN and the housing supply.

4.147 The SoCG also sets out which of the emerging draft Policies are considered to be relevant. For completeness, I have set out my assessment of the scheme against each of these draft policies in the table below.

Draft Policy & summary	Compliance
<p>SP1 <i>Delivering Sustainable Development</i>: sets out five principles to bring about sustainable development as follows:</p> <ul style="list-style-type: none"> • Plan positively for growth whilst recognising environmental and infrastructure constraints; • Development should contribute to the creation of mixed and sustainable communities, health an active lifestyles; • The location of new development should deliver a sustainable pattern of development, which prioritises PDL and minimises the need to travel; • The natural and heritage assets of the Borough should be protected; and • Adaptation and mitigation principles relating to climate change should be incorporated in design. 	<p>The appeal proposal comprises much needed housing on a site with few constraints. It would include 45% affordable housing (up to 45 dwellings) and 10% self-build and custom housebuilding (up to 10 plots) contributing towards the shortfall for both and helping to provide a mixed and sustainable community.</p> <p>As demonstrated above, the appeal site is considered to be an accessible location with access to day to day services and public transport links.</p> <p>There would be no harm to natural assets within Borough and harm to the significance of a single heritage asset (the Grade II listed 68 Roestock Lane) is at the very bottom end of the less than substantial harm spectrum as demonstrated by the evidence of Andrew Crutchley.</p> <p>The requirements of the last bullet point in respect of design and construction can be achieved at the detailed design stage.</p> <p>Overall, I am of the position the appeal scheme complies with SP1.</p>
<p>Policy SP3 <i>Settlement Strategy and Green Belt Boundaries</i>: SP3 confirms the Green Belt boundaries as they are depicted on the draft Policies Map. It continues on to set out the spatial strategy for the District,</p>	<p>It should be noted that this spatial strategy relates solely to WHBC and that the appeal site relates to the wider settlement of Colney Heath that is located in SADC.</p>

<p>stating that development within villages within the Green Belt will be consistent with the types which are envisaged within national policy and other policies of the Plan.</p> <p>It also sets out a proposed new settlement hierarchy. Bullens Green is classified as ‘Small Green Belt village and settlement’ which are suggested as not being suitable for further development unless compatible with the Green Belt policy</p>	<p>As I come on to argue in the following section, undertaking the very special circumstances balance, as is required in this appeal, warrants the grant of planning permission here. If it is accepted that very special circumstances do exist, then development would be definition accord with this policy.</p>
<p><i>SADM1 Windfall Development:</i></p> <p>SADM1 states that planning permission for windfall residential schemes will be granted provided they meet five criteria. For sites in the Green Belt, these are: compliance with SADM34;</p> <p>good accessibility to facilities and services via sustainable transport modes;</p> <p>sufficient infrastructure capacity;</p> <p>proposals to not undermine the strategy or allocations within the draft Plan;</p> <p>and, proposals to not result in disproportionate growth taking into account the settlement hierarchy.</p>	<p>Whilst I address SADM34 further below, I nonetheless consider the appeal scheme to meet to these criteria for the reasons I have established in earlier in my Proof at Section 4, considered in the context to the supporting documents provided with the appeal scheme.</p>

<p>SP4 <i>Transport and Travel</i>: places an emphasis on supporting growth where the use of sustainable modes of transport are promoted and highway safety is improved.</p>	<p>I have addressed the sites accessibility to public transport in response to policies in the adopted WHBP in Section 4 above with reference to the plan to be appended to the Scott Schedule, setting out walking distances to bus stops and the frequency of services. I have also noted a contribution to sustainable transport is included in the S106 Agreement that is being prepared. I therefore consider the appeal proposal complies with this policy.</p>
<p>SADM15 <i>Heritage</i>: SADM15 relates to the protection, conservation and enhancement of heritage assets and their environment, and set outs that proposals that result in ‘less than substantial harm’ will be refused unless the need for and public benefits of the development in the specified location significantly outweigh that harm.</p>	<p>In my view this policy position is not consistent with paragraph 196 of the NPPF, which only requires public benefits to outweigh the less than substantial harm proposed to designated heritage assets, and not to <i>significantly</i> outweigh the harm proposed. Nonetheless, I am of the position that the appeal scheme presents very substantial public benefits which outweighs the less than substantial harm identified to No. 68 Roestock Lane. Accordingly, the appeal scheme is compliant with SADM15 in its current form and paragraph 196 of the NPPF.</p>
<p>SADM16 <i>Ecology and Landscape</i>: requires proposals to main, protect and where possible enhance biodiversity.</p> <p>It also requires proposals to help conserve and enhance the Borough’s natural and historic landscape, with</p>	<p>As I have already set out above, it is now common ground between the parties that previous concerns have been addressed by the updated EcIA (CD2.10) and the S106 Agreement will contain compensatory provision for the biodiversity units lost at the appeal site to make the development</p>

proposals assessed for their impact on landscape features.	<p>acceptable in this regard.</p> <p>In respect of landscape, as per the evidence in Mr. Holliday's proof on impact to the landscape quality, I consider that the appeal scheme complies wholly SADM16.</p>
SP13 <i>Infrastructure Delivery</i> : seeks to ensure that developers provide adequate financial contributions to support and enhance local infrastructure to enable development.	<p>The draft s.106 Agreement prepared jointly with the LPAs sets out the areas, to include highways, biodiversity, green spaces, education, health, etc., and levels of contributions to made that will make the development acceptable. Accordingly, the appeal proposal complies with SP13.</p>
SADM34 <i>Development within Green Belt</i> : refers to the NPPF in that planning permission will be granted for development within the Green Belt subject to national policy and other criteria. These other criteria are not applicable to this appeal scheme as it is a new proposal for housing not deemed as infill.	<p>I undertake the very special circumstances balance as is required by the NPPF (para. 144) needed to justify inappropriate development within the Green Belt in the following Section of this Proof. As such, I consider this scheme to be compliant with SADM34 and, by extension, SADM1.</p>

5. Planning Balance

Heritage Balance (NPPF Para. 196)

5.1 It is common ground that the appeal proposal would cause less than substantial harm to the significance of the grade II listed dwelling at no. 68 Roestock Lane due to a change to its wider setting, although the parties disagree on where on that spectrum the harm actually sits.

5.2 Paragraph 196 of the Framework states that:

“Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.”

5.3 The Proof of Evidence of Andrew Crutchley addresses this matter for the Appellant. He concludes that, having assessed the appeal proposals against the relevant policy, guidance and legislation, there would be a very small loss of significance from the listed building derived from the reduction in contribution made by a peripheral element of its setting. He assesses that this would constitute the very lowest end of the broad spectrum of ‘less than substantial harm’.

5.4 The fifth RfR on WHBC’s decision notice (CD4.01) and the fifth of SADC’s putative RfR (CD4.02) both suggest that the development would cause ‘less than substantial’ harm to the significance of 68 Roestock Lane and that the public benefits of the proposal would not outweigh this harm. However, I note that at paragraph 5.29 of the LPAs Statement of Case it states:

“... Within the scale of less than substantial harm the Councils will show that the level of harm will be low to moderate and in accordance with paragraph 196 NPPF the Councils conclude that the public benefits of providing more housing outweigh that harm. Therefore, if harm to the setting of this asset was the only harm identified it would not justify refusal, but as part of the overall assessment of other harm it weighs against the grant of planning permission in the planning balance”

5.5 Therefore, even the LPAs now seem to accept that the public benefits of the scheme outweigh the less-than-substantial harm to the listed building and that this issue on its own does not merit the refusal of the appeals. I agree with this conclusion, which the LPAs make on the basis of the higher assessment of low to moderate harm. Andrew

Crutchley's evidence demonstrates the harm is lower, and in fact, at the very lowest end of the spectrum, which only reinforces this conclusion.

- 5.6 The public benefits of the scheme, including the provision of much needed market and affordable housing, along with self and custom build plots, demonstrably outweigh the very limited harm to the significance of this heritage asset and the S196 balance is passed.

Very Special Circumstances Balance (NPPF Para. 144)

- 5.7 It is common ground that the appeal proposal constitutes inappropriate development in the Green Belt, which is by definition harmful. It therefore needs to be assessed using the very special circumstances balance at paragraph 144 of the Framework.

- 5.8 This states:

“When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations”.

- 5.9 My evidence in Section 2 above demonstrates that the appeal site only makes a limited contribution to Green Belt purpose of safeguarding the countryside from encroachment and whilst it contributes to the purpose of assisting in urban regeneration, by encouraging the recycling of derelict and other urban land, the scarcity of such land in this area is self-evident from the substantial and longstanding shortfall in housing land supply despite the huge demand for it. Both the WHLP and SADC's recent attempts to bring forward a replacement local plan have sought to release large amounts of greenfield land from the Green Belt because of the lack of available previously developed sites.

- 5.10 It is my understanding the Council accepts the appeal makes no contribution to Green Belt purposes a), b) and d). That is also my position.

- 5.11 In Section 4 above, I set out that the harm in terms of the loss of openness from development at the site, both in a visual sense, having regard to Mr Holliday's evidence, and spatially, would be limited. This is as a consequence of the site's relationship with the existing settlement of Colney Heath, which wraps around it to the north, west and partly to the south, and by virtue of the sites outer eastern and southern boundaries fronting onto the highways of Bullens Green Lane and Fellowes Lane respectively, with this and the extent of existing landscaping, giving the site a sense of containment and separating it from the wider open countryside beyond to the south and east.

- 5.12 Having regard to my assessment of the contribution the site currently makes to the Green Belt purposes, I also conclude that there would be limited harm to the purpose of safeguarding the countryside from encroachment, again due to its relationship to Colney Heath, its level of containment generally and the sense of separation from the wider countryside this gives. WHBC's Green Belt Study Stage 3 acknowledges in its assessment of the wider parcel of land that part of the site lies within, that the impact upon the integrity of the wider Green Belt from its development would be limited.
- 5.13 Whilst there would also be harm in terms of purpose e), I consider this should be reduced on account of the lack of available previously developed land in area and also as development of the appeal site is not of a scale that it would prejudice such sites from coming forward in the future if they do become available.
- 5.14 Therefore, whilst substantial harm must be given to inappropriate development in the Green Belt, that harm in this case is limited by the particular characteristics of the site and its relationship with the adjoining settlement and countryside.
- 5.15 To this harm then needs to be added any other harm resulting from the appeal proposal. I have acknowledged above, that there would be 'less than substantial harm' to the significance of a heritage asset and Mr Crutchley's evidence demonstrates that this harm is at the very bottom end of that spectrum. Mr Holliday's evidence demonstrates that there would be a moderate landscape impact at the year of completion, but this would reduce over time as proposed green infrastructure matures, strengthening existing tree belts and hedgerows along Bullens Green Lane and Fellowes Lane, to a moderate/minor landscape effect. There would also be limited economic impact to agricultural production from the loss of what is a small arable field.
- 5.16 In my view, this harm is clearly outweighed by other considerations in this case, which have been set out in detail in the preceding sections. These considerations include the fundamental failure in plan-making in this area and the inability of the two LPAs in question to bring forward an up-to-date plan to meet housing and other needs as required by the NPPF.
- 5.17 As has been documented, SADC has just commenced work on a third attempt at replacing its adopted Local Plan, which is the oldest in the country since the Town and Country Planning Act 1990, and which time expired 20 years ago.
- 5.18 The position in WHBC is not much better. Despite commencing work on a new Local Plan some 16 years ago and it having been submitted for examination 4 years ago, there remain

substantial outstanding concerns over its soundness and matters such as the FOAHN, that go to the heart of the plan, remain unresolved. It is evident from the correspondence between the examining Inspector and WHBC that there can be no certainty the Plan can be modified sufficiently to make it sound. This leaves the WHBP 2005, which only sought to plan for a housing requirement to 2011, as the adopted Local Plan for Welwyn Hatfield.

- 5.19 Whilst I acknowledge that each case had its own unique set of very special circumstances (as is always the case by the very nature of the balancing exercise required), the commonality in the Secretary of State decisions in the Green Belt referred to at Burley-in-Wharfedale (11.01), Oxford Brookes University Wheatley Campus (CD11.02), and Cheadle Hulme, Stockport (CD11.03) is that each case involved a LPA where plan-making had been either considerably delayed or was very problematic. The same was also the case in the York decision (CD10.05), which not a Secretary of State case, also involved development in the Green Belt where there was not an up-to-date plan. As I have outlined in detail, York aside, SADC has the oldest local plan in the country and has failed twice now in attempts to replace it. WHBC's attempt to replace its 2005 local plan shows no sign of being close to a sound verdict, despite its examination commencing nearly 4 years ago.
- 5.20 A direct consequence of this failure in plan-making is that both LPAs have appalling track-records in terms of delivering housing, achieving only 63% of the delivery required in the latest Housing Delivery Test results (CD9.18). Both also have substantial shortfalls in their respective 5 year housing land supplies by their own admission. The updated Report prepared by Emery Planning for the Appellant included at Appendix RG2 demonstrates that the position is worse even than that claimed by the LPAs, with WHBC having only 1.85 years supply and a current shortfall of some 3,303 dwellings and SADC only 1.64 years supply and a shortfall of 3,612 dwellings.
- 5.21 The aforementioned failures in plan-making mean that the only mechanism for resolving these supply positions in the foreseeable future is through applications for windfall developments such as this. As noted in the preceding Section, given the diabolical housing supply position that exists here, I consider that the provision of market housing at the site should be given very substantial weight, in doing so I referred to the fact that the Secretary of State afforded the contribution to market housing supply that level of weight in the Burley-in-Wharfedale appeal (CD11.01) where a similar shortfall existed.
- 5.22 We have a housing crisis nationally, which is the consequence of a failure, year on year extending back decades, to build enough homes in the places they are needed, a situation

that has been acknowledged by successive Governments (See paragraphs 4.36 - 4.43 above).

- 5.23 As is demonstrated unequivocally in Mr Stacey's proof of evidence and summarised at paragraphs 4.44 - 4.66 above, there are acute affordability issues in both of these LPA areas, which exhibit some of the worst affordability ratios anywhere in the country.
- 5.24 Again this is a situation that has come about directly from lack of delivery year after year and through a lack of deliverable supply. Mr Stacey demonstrates that in WHBC there is a net shortfall of 4,090 affordable homes and in SADC, the shortfall is 4,075 affordable home.
- 5.25 Given this local context, I have set out my position that the provision of up to 45 affordable homes (45%) as part of this scheme should also be given very substantial weight. I note that the Secretary of State gave the same amount of weight to the provision of affordable housing in allowing appeals in the Green Belt at Cheadle Hulme, Stockport (CD11.03), Oxford Brookes University Wheatley Campus (CD11.02) and most recently at Burley-in-Wharfedale (CD11.01).
- 5.26 Mr Moger's evidence demonstrates that there is also a pressing for self-build and custom housebuilding plots in both LPA areas to meet their statutory duty and that the contribution the appeal scheme would make should be attributed substantial weight.
- 5.27 There are other benefits to the scheme, such as the achievement of a net gain to biodiversity, as acknowledged by the County Ecologist (See Agreed Note of Meeting 21st January 2021 Appendix RG3), provision of additional footpaths and new landscaped areas and the economic boost to the local economy that would result both from the short term construction period and through the new custom residents would bring to the area.
- 5.28 In conclusion then, the other considerations in this case clearly outweigh the limited harm to the Green Belt that would result, together with the other harm identified above. Very special circumstances therefore exist and justify the granting of planning permission.

Para 11d(ii) - The tilted balance

- 5.29 It is common ground between the parties that the tilted balance at paragraph 11d) of the Framework is engaged in these appeals as neither LPA, by their own admission, can demonstrate a five year housing land supply. Furthermore, both only achieved 63% of the required housing delivery in the 2020 Housing Delivery Test.

- 5.30 I have demonstrated above that limb i. of paragraph 11d) does not apply as neither heritage nor Green Belt provides a clear reason for reusing the development proposed. In the case of heritage the public benefits far outweigh the harm. In the case of Green Belt, the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the appeal proposal, is clearly outweighed by other considerations.
- 5.31 Limb ii. under paragraph 11d) requires an assessment as to whether any adverse impacts of granting permission for the development, would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken together.
- 5.32 It follows from the very special circumstances balance already undertaken above that the harm resulting from the scheme (both to the Green Belt and other harm), which I have acknowledged and set above, and do not repeat here, is clearly outweighed by other circumstances here and therefore that harm does not significantly and demonstrably outweigh the benefits of the scheme, also outlined above and not repeated here.
- 5.33 Therefore, in accordance with the tilted balance, planning permission should be granted.

S.38(6) balance

- 5.34 Having regard to all of the above, if my position on the balance required by paragraph 144 of the Framework is supported, and it is accepted that very special circumstance exist for development in the Green Belt, then the conclusion should also be that the appeal proposals comply with the development plans when read as a whole. Both refer to the very special circumstances exception for development in the Green Belt.
- 5.35 In Section 3 above, I have demonstrated that the appeal proposal complies with the other most important policies for the determination of the appeals in the respective plans and the plans taken as a whole. There are no material considerations that warrant a decision other than in accordance with the development plans in these circumstances and planning permission should be granted.

Appendix RG1

Consultation Statement on Amended and Additional Plans and Documents

Appendix 1:

**Statement on public consultation
undertaken on amended and additional
information prepared in support of the
appeals upon which the Appellants wishes
to rely**

1 Introduction

- 1.1 As set out in Section 5 of the main Statement of Common Ground (SoCG), the Appellant is requesting that the appeals are determined on the basis of a number of amended and additional plans and documents that were not included in the planning applications for the site. These address matters that were raised by statutory consultees in their consultation responses and/or the reasons for refusal and putative reasons for refusal.
- 1.2 The SoCG confirms (para. 5.5) that the Local Planning Authorities do not object to the Inspector considering the appeal on the basis of these amended and additional plans and documents, which have been discussed with them, and that it is for the Inspector to determine whether their inclusion would not prejudice any parties having regard to the Wheatcroft principles.
- 1.3 A full list of the amendments and additional documents is detailed below, including, where applicable, confirmation of plan or documents that would be superseded. These plans and documents comprise Core Documents 2.01 - 2.11.

New/Revised Plan or Document	Plan or Document submitted with the applications to be superseded
18770-FELL-5-500 Rev B Site Revised	18770-FELL-5-500 A - Site Access
18770-FELL-5-501 Rev A - Proposed Footpath Connection	N/A
18770-FELL-5-502 - Refuse Vehicle Tracking	N/A
17981/1004 Rev E - Proposed Parameters/Schematic Plan	17981/1004 - Proposed Parameters/Schematic Plan
17981/1005 Rev F - Proposed Illustrative Layout	17981/1005 - Proposed Illustrative Layout
Landscape Strategy Plan Rev B	Landscape Strategy Plan
17981/1008 - Storey Height parameters plan	N/A
Arboricultural Assessment Version 2	Arboricultural Assessment July 2020
Ecological Impact Assessment February 2021	Ecological Impact Assessment July 2020

Archaeological Trial Trenching Report	N/A
Transport Assessment Addendum	N/A

- 1.4 The changes to the scheme comprise the inclusion of a pedestrian access onto Fellowes Lane on the southern boundary of the site (See drawing ref: 18770-FELL-5-501) to replace the previously shown connection proposed to Roestock Park on the western boundary of the site. A footpath connection is proposed along Fellowes Lane, by way of a 2m wide footway with a dropped kerb and tactile paving crossing, to facilitate pedestrian movements on either side of the carriageway. Consequently, the proposed Parameters Plan/Schematic Plan (drawing ref: 17981-1004 Rev E), proposed illustrative layout (drawing ref: 17981-1005 Rev F) and the landscape strategy plan (revision B) have also been amended to show this alternative pedestrian access.
- 1.5 A small part of the footpath link will pass close to an existing Oak Tree, and the submitted Arboricultural Assessment (AA) has therefore been updated to include consideration of the impact, which is considered acceptable, subject to specific measures that will be undertaken during construction.
- 1.6 A Transport Assessment Addendum (TAA) has been produced by Woods Hardwick Infrastructure LLP to address a number of points raised by the Local Highways Authority in their application response. The Site Access drawing has also been updated (See drawing no. 18770-FELL-5-500 Rev B) to show a reduction in the visibility splays at the junction with Bullens Green Lane in light of the results of the Speed Survey undertaken, the results of which are included in the TAA.
- 1.7 A Refuse Vehicle Tracking drawing (18770-FELL-5-502 - Refuse Vehicle Tracking) has also now been prepared in response to one of the other comments raised by the Highways Authority.
- 1.8 The revised pedestrian access and the amended visibility splays are the only changes proposed to the scheme itself. The Appellants considers these to be of a minor nature and they do not fundamentally alter the scheme from that considered as part of the original applications.
- 1.9 The amended Ecological Impact Assessment (EcIA) produced by FPCR Environment & Design Ltd. addresses comments made by Hertford Ecology during the course of the live application. This relates primarily to the format of the report, impact on bat species within the vicinity of the site as a result of the proposed development, and the need for the proposal to demonstrate net gains to biodiversity are achievable. Accordingly, the EcA has been revised to address concerns in relation to the format and the impact on bats enabling the parties to reach agreement on this matter.

- 1.10 An Archaeological Trial Trenching Report (ATTR) has been produced by The Environmental Dimension Partnership Ltd. following investigation works that were being undertaken during the course of the live application to determine the application's site's archaeological potential. It builds upon the Archaeology & Heritage Assessment, also produced by EDP, that was submitted to both local authorities as part of the planning application and confirms the limited archaeological potential of the site. The SoCG confirms that as a consequence, the LPAs will not be inviting the Inspector to dismiss the appeals on the ground of archaeology.
- 1.11 The building storey heights parameters plan has been produced voluntarily by the Appellant and would enable a condition to be imposed on any outline planning permission granted, should the Inspector consider it necessary, limiting the building storey heights as part of the detailed design of the scheme to as indicated on the building storey height plan.
- 1.12 As explained in further detail in the following Section, the Appellant has undertaken a detailed public consultation exercise on the additional and amended plan and documents to enable interested parties the opportunity to view and make comments on the above amendments, and additional information, in support of the appeal scheme.

2 Public Consultation

- 2.1. In order to allow members of the public and other interested parties the opportunity to view and comment upon the amended and additional supporting information the appellant set up a consultation website, <https://landoffbullensgreenlane.co.uk/>.
- 2.2. As well as containing copies of all of the amended and additional plans and documents to view, the website also included text explaining them and setting out which plans and document submitted with the applications would be superseded.
- 2.3. The website was launched on 19th February 2021, with interest parties given until 19th March 2021 to provide comments. The website made clear that comments could be made directly via the comments box on the website itself, or sent via e-mail or post, with addresses for both provided.
- 2.4. The website was widely publicised, with interested parties notified through the following methods of publicity:
 - Letters sent to all consultees (including technical consultees, Councillors and local residents) contacted by both LPAs in relation to the applications and all interested parties who commented upon the applications (Copy attached at Appendix A);
 - Letters sent to additional local residents at nos. 1 - 42 Fellowes Lane, who were not all consulted on the original applications due to the addition of the footway link on Fellowes Lane to the proposals;
 - Email to Colney Heath Parish Council;
 - Email to 4Colney Heath Resident's Association, the Rule 6 Party to be heard at the Inquiry;
 - Erection of three site notices in locations accessible to the public at Bullens Green Lane, Roestock Lane, and Fellowes Lane; and
 - Notice published in Herts Adviser on 4th March 2021.
- 2.5. At the close of the public consultation period, a total of 6 responses had been received. These were sent to Holly Dutton, the Case Manager for the appeals at the Planning Inspectorate, by e-mail on 23rd March 2021. Both Local Planning Authorities and the Rule 6 Party were copied in on the e-mail.

Appendix RG2

Updated Emery Planning 5 Year Housing Land Supply Statement



Five Year Housing Land Supply Statement

Residential development of up to 100 dwellings, including
45% affordable housing and 10% self-build homes,
together with all ancillary works at land off Bullens Green
Lane, Colney Heath

for Canton Ltd

Emery Planning project number: 20-235

PINS refs: 3265925 and 3265926

Project : 20-235
Site address : Land off Bullens Green
Lane, Colney Heath
Client : Canton Ltd

Date : 25 March 2021
Author : Ben Pycroft

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1. Introduction and summary

- 1.1 Emery Planning is instructed by Canton Ltd (the Appellant) to provide this statement in relation to the five year housing land supply position in St Albans and Welwyn Hatfield at 1st April 2020. It has been prepared in support of an appeal for outline planning permission for the residential development of up to 100 dwellings, including 45% affordable and 10% self-build homes, together with all ancillary works at land off Bullens Green Lane, Colney Heath, which is located within both St Albans and Welwyn Hatfield.
- 1.2 Emery Planning has extensive experience in dealing with housing supply matters and has prepared and presented evidence relating to five year housing land supply calculations at numerous Local Plan examinations and public inquiries across the country. We have also made submissions on draft Annual Position Statements. We provided an assessment of the five year housing land supply position in St Albans and Welwyn Hatfield at 1st April 2019, which was submitted in support of the appeal application.
- 1.3 This statement is based on the latest position statements set out in the St Albans Authority Monitoring Report (base date 31st March 2020) and the draft Welwyn Hatfield Authority Monitoring Report (base date 31st March 2020). For the avoidance of doubt, neither position statement is an “Annual Position Statement” as defined in the glossary on page 65 of the Framework. The position statements and the evidence to support them have not been consulted on or independently examined. Indeed, neither Councils’ housing land supply could be confirmed through an Annual Position Statement because they do not have a recently adopted plan as defined by footnote 38 of the Framework.
- 1.4 Neither authority can demonstrate a deliverable five year housing land supply against their local housing need and a 20% buffer by a significant margin. St Albans Council considers that it has a deliverable supply of 2,612 dwellings, which against its local housing need and a 20% buffer equates to 2.44 years. We consider that the deliverable supply is less than this and around 1,746 dwellings, equating to **1.64 years**.
- 1.5 Welwyn Hatfield considers that it has a deliverable supply of 2,706 dwellings, which against its local housing need and a 20% buffer equates to 2.58 years. We consider that the deliverable supply is less than this and around 1,947 dwellings, equating to **1.85 years**.

2. Planning Policy Context

- 2.1 Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (the Framework) is a material consideration, which is discussed below.

Development plan context

Existing development plans

- 2.2 The existing development plans are:

- The St Albans District Local Plan Review (adopted 1994); and
- The Welwyn Hatfield District Plan (adopted 2005).

- 2.3 The conformity of the application proposals to the development plan is addressed by Woods Hardwick. In terms of our statement, the fact that both plans are over five years old is relevant in terms of the housing requirement to be used for calculating housing land supply.

Emerging development plans

- 2.4 On 19th November 2020, St Alban withdrew its emerging Local Plan from examination. The Council will now start afresh on a new Local Plan which will cover the period 2020 to 2038. The latest Local Development Scheme (January 2021) sets out an ambitious timetable for the production of the new local plan. It states that a regulation 18 consultation will take place in January / February 2022, a regulation 19 consultation will take place in November / December 2022, the plan will be submitted in Spring / Summer 2023 and it will be adopted at the end of 2023.
- 2.5 The Welwyn Hatfield Local Plan (2013-32) was submitted for examination almost four years ago in May 2017. It is still being examined. The Inspector has not provided his final conclusions on the proposed housing requirement. In accordance with paragraph 214 of the Framework, the Local Plan is being examined within the context of the 2012 Framework, which is relevant in terms of the definition of "deliverable" set out in the 2019 Framework, which we set out below.

National planning policy and guidance

- 2.6 The definition of "deliverable" is set out on page 66 of the Framework states:

“Deliverable: To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).

b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.”

2.7 The PPG was most recently updated on 22nd July 2019. Paragraph 68-007 of the PPG¹ provides some examples of the types of evidence, which could be provided to support the inclusion of sites with outline planning permission for major development and allocated sites without planning permission. It states:

“In order to demonstrate 5 years’ worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions. Annex 2 of the National Planning Policy Framework defines a deliverable site. As well as sites which are considered to be deliverable in principle, this definition also sets out the sites which would require further evidence to be considered deliverable, namely those which:

- have outline planning permission for major development;*
- are allocated in a development plan;*
- have a grant of permission in principle; or*
- are identified on a brownfield register.*

Such evidence, to demonstrate deliverability, may include:

- current planning status – for example, on larger scale sites with outline or hybrid permission how much progress has been made towards approving reserved matters, or whether these link to a planning performance agreement*

¹ Paragraph 007 Reference ID: 68-007-20190722: “What constitutes a ‘deliverable’ housing site in the context of plan-making and decision-taking?”

that sets out the timescale for approval of reserved matters applications and discharge of conditions;

- firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rates;*
- firm progress with site assessment work; or*
- clear relevant information about site viability, ownership constraints or infrastructure provision, such as successful participation in bids for large-scale infrastructure funding or other similar projects.*

Plan-makers can use the Housing and Economic Land Availability Assessment in demonstrating the deliverability of sites."

2.8 Whilst the previous definition in the 2012 Framework considered that all sites with planning permission should be considered deliverable, the revised definition in the 2019 Framework is clear that only sites with detailed consent for major development should be considered deliverable and those with outline planning permission should only be considered deliverable where there is clear evidence that housing completions will begin in five years.

2.9 In our original assessment we referred to several appeal decisions, including those of the Secretary of State where the definition of "deliverable" and "clear evidence" have been considered.

2.10 In terms of a windfall allowance, paragraph 70 of the Framework states:

"Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends. Plans should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area."

2.11 The definition of "windfall sites" is provided on page 73 of the Framework as follows:

"Sites not specifically identified in the development plan".

3. Housing Delivery Test

3.1 The 2020 Housing Delivery Test (HDT) results were published on 19th January 2021. The results for St Albans and Welwyn Hatfield are summarised in the tables below:

Table 3.1 – Summary of the 2020 Housing Delivery Test Result for St Albans

	2017-18	2018-19	2019-20	Total
Number of homes required	649	902	820	2,372
Number of homes delivered	412	638	443	1,493
HDT measurement				63%

Table 3.2 – Summary of the 2020 Housing Delivery Test Result for Welwyn Hatfield

	2017-18	2018-19	2019-20	Total
Number of homes required	623	867	795	2,284
Number of homes delivered	314	463	673	1,450
HDT measurement				63%

3.2 As shown in the tables above, the result for each authority is 63%. This means the following applies:

- Firstly, as explained in footnote 7 of the Framework, because the results are substantially below the requirement (i.e. below 75%) **the tilted balance to the presumption in favour of sustainable development set out in paragraph 11(d) of the Framework applies;**
- Secondly, paragraph 73 and footnote 39 of the Framework explain that because the HDT results are below 85%, **the 20% buffer will apply for purposes of calculating the five year housing land supply;** and
- Thirdly, Paragraph 75 of the Framework explains that because the HDT results are below 95%, **the local planning authorities should prepare an action plan** to assess the causes of under delivery and identify actions to increase delivery in future years.

4. St Albans Housing Land Supply

Stage 1: Identifying the base date and five year period

- 4.1 The base date set out in the AMR is 1st April 2020 and the five year period is to 31st March 2025.

Stage 2: Identifying the housing requirement

- 4.2 The current Local Plan is more than five years old. In accordance with paragraph 73 and footnote 37 of the Framework, the five year housing land supply should be measured against the local housing need using the standard method set out in the PPG. Paragraph 2a-004 of the PPG² explains how local housing need is calculated. The local housing need for St Albans is currently 893 dwellings per annum. The five year housing requirement is therefore 4,465 dwellings (893 X 5 = 4,465).
- 4.3 The AMR sets out a second scenario where the housing land supply is measured against the household projections only. However, there is no support for this approach in national planning policy or guidance. The figure to be used is the local housing need set out in the standard method,

Stages 3 and 4: Identifying the past shortfall and how the past shortfall should be addressed

- 4.4 Paragraph 68-031 of the PPG³ explains that where the standard method for assessing local housing need is used, step 2 of the standard method factors in past under-delivery as part of the affordability ratio, so there is no requirement to specifically address under-delivery separately when establishing the minimum annual local housing need figure.

Stage 5: Applying the appropriate buffer

- 4.5 As a result of the latest Housing Delivery Test, the 20% buffer applies. The five year housing land supply to be demonstrated is therefore 5,358 dwellings (i.e. 4,465 + 20%).

² Paragraph: 004 Reference ID: 2a-004-20190220: "What is the standard method for assessing local housing need?"

³ Paragraph: 031 Reference ID: 68-031-20190722: "How can past shortfalls in housing completions against planned requirements be addressed?"

Stage 6: Identifying a Realistic and Deliverable Supply

- 4.6 St Albans claims to have a “deliverable” housing land supply at 1st April 2020 of 2,612 dwellings. This is notably significantly higher than its claimed deliverable supply of 2,012 dwellings at 1st April 2019. We consider that the deliverable supply is less than this for the reasons set out below.

Unit 2, St Peters House, 45 Victoria Street, St Albans

- 4.7 On 11th December 2017, the Council confirmed that prior approval was not required for the conversion of the building to 27 apartments (LPA ref: 5/2017/3081). However, since then on 23rd September 2019 planning permission was granted for a series of alterations to the building to as set out in the application documentation: *“enhance the building’s appearance and attractiveness to prospective tenants, ultimately with the aim of continuing the use of the building as offices”* (LPA ref: 5/2019/0146). The conditions for the improvements to the office building have since been discharged (LPA ref: 5/2019/0897) and the site has been marketed for office use. On the basis that there is clear evidence that the building will not be converted to residential use, **27 dwellings** should be removed from the supply.

62-72 Victoria Street, St Albans

- 4.8 On 16th January 2018, the Council confirmed that prior approval was not required for the conversion of the building to 19 apartments (LPA ref: 5/2017/3252). However, since then a planning application was made for an extension to the building and refurbishment of the office building, which were described in the planning application documents as representing *“the preferred viable option for the building’s use to ensure that it remains in employment generating use”* (LPA ref: 5/2019/1652). That application was withdrawn but confirms the preferred use of the building, which is occupied by Mid Hearts Probation Service. On the basis that there is clear evidence that the building will not be converted to residential use, **19 dwellings** should be removed from the supply.

Land at Three Cherry Trees Lane (Spencer’s Park Phase 2)

- 4.9 The site has outline planning permission for a mixed use scheme including 600 dwellings (LPA ref: 5/2016/2845, approved 30th April 2019). The whole site crosses the boundary with Dacorum. The Council includes 120 dwellings in the five year housing land supply based on 40 dwellings per annum in years 3 to 5. However, it has not provided any clear evidence that housing completions will begin within five years. A reserved matters application has not been made. We note that only

one application to discharge conditions has been made and that relates to archaeology (LPA ref: 6/2020/2468), which has been approved. In the absence of clear evidence, the site should not be considered deliverable, meaning **120 dwellings** should be removed from the Council's supply.

The Old Electricity Works, Campfield Road

- 4.10 This site has planning permission for 107 apartments (LPA ref: 5/2018/0095). However, a subsequent planning application was made in December 2019 for 107 apartments, which effectively sought to reduce the basement car parking (from 118 spaces to 78 spaces) and reduce the affordable housing (from 37 units to 7 units) (LPA ref: 5/2019/3164). The latest application explains that permission 5/2018/0095 is not viable. However, application 5/2019/3164 was refused due to a lack of daylight, sunlight and outlook and lack of car parking provision. An appeal has been lodged but is awaiting a start date. On the basis that the existing permission is not viable and the subsequent application has been refused, this site should be removed, meaning **107 dwellings** should be removed from the Council's supply.

Windfall allowance

- 4.11 The Council now includes a windfall allowance of 573 dwellings in the five year supply. This is notably higher than the windfall allowances of 493 dwellings in the 2019 AMR, 457 in the 2018 AMR and 409 dwellings in the 2016 AMR.
- 4.12 The Council has not provided compelling evidence to justify a windfall allowance of 573 dwellings in the five year supply. Firstly, there is no reference to the SHLAA. It is unknown where the sites are located or why they are expected to come forward and deliver dwellings in the five year period. Secondly, whilst no evidence is provided in the AMR, it appears the Council relies on past trends as this was referred to in the Council's matter 8 hearing statement for the Local Plan examination. However, that statement provided no figures to support the Council's assertions. We note that the Inspectors examining the submitted Local Plan did not consider the Council had provided compelling evidence for the inclusion of a windfall allowance. Paragraph 89 of the Inspectors' letter of 14th April 2020 states:

"It became apparent at the hearing session where we touched on the Council's reliance on windfalls as part of its housing strategy that the Council do not have the requisite historic windfall data available to support their reliance on them for future supply".

4.13 On this basis, as no compelling evidence has been provided for the inclusion of a windfall allowance **593 dwellings** should be removed from the Council's supply.

4.14 In summary, we have concluded that St Albans five year housing land supply is 1,746 dwellings (i.e. $2,612 - 27 - 19 - 120 - 107 - 593 = 1,746$). Against the local housing need and a 20% buffer, this equates to **1.6 years** as shown in the following table:

Table 4.1 – St Albans's Housing Land Supply at 1st April 2020

A	Local housing need	893
B	Five year requirement	4,465
C	Supply to be demonstrated (B + 20%)	5,358
D	Annual supply to be demonstrated (C / 5 years)	1,072
E	Five year supply at 1 st April 2020	1,746
F	Supply in years (E / D)	1.63
G	Shortfall (C – E)	3,612

5. Welwyn Hatfield's Housing Land Supply

Stage 1: Identifying the base date and five year period

- 5.1 The base date is 1st April 2020 and the five year period is to 31st March 2025.

Stage 2: Identifying the housing requirement

- 5.2 The current Local Plan is more than five years old. In accordance with paragraph 73 and footnote 37 of the Framework, the five year housing land supply should be measured against the local housing need using the standard method set out in the PPG. Paragraph 2a-004 of the PPG⁴ explains how local housing need is calculated. The local housing need for Welwyn Hatfield is currently 875 dwellings per annum. The five year housing requirement is therefore 4,465 dwellings ($875 \times 5 = 4,375$).
- 5.3 The submitted draft Local Plan proposed a housing requirement of 800 dwellings per annum. The Council has since sought to reduce this further to 715 dwellings and more recently to 690 dwellings per annum. As the plan is being examined within the context of the 2012 Framework under transitional arrangements, there is no requirement for it to meet the local housing need. However, the proposed housing requirement figure and the sites to meet the housing requirement are subject to unresolved objections and independent examination. The Inspector has not concluded on either the proposed housing requirement or the proposed allocations. Until the Local Plan is adopted, the five year housing land supply should be measured against the Local Housing Need.
- 5.4 In addition, because the Local Plan is being examined under the 2012 Framework, the five year housing land supply is not being considered with reference to the revised definition of "deliverable" as set out in the 2019 Framework.

⁴ Paragraph: 004 Reference ID: 2a-004-20190220: "What is the standard method for assessing local housing need?"

Stages 3 and 4: Identifying the past shortfall and how the past shortfall should be addressed

- 5.5 As above, paragraph 68-031 of the PPG⁵ explains that where the standard method for assessing local housing need is used, step 2 of the standard method factors in past under-delivery as part of the affordability ratio, so there is no requirement to specifically address under-delivery separately when establishing the minimum annual local housing need figure.

Stage 5: Applying the appropriate buffer

- 5.6 As a result of the latest Housing Delivery Test, the 20% buffer applies. The five year housing land supply to be demonstrated is therefore 5,250 dwellings (i.e. 4,375 + 20%).

Stage 6: Identifying a Realistic and Deliverable Supply

- 5.7 Welwyn Hatfield claims to have a "deliverable" housing land supply at 1st April 2020 of 2,706 dwellings. This is higher than its claimed deliverable supply of 2,435 dwellings at 1st April 2019. We consider that the deliverable supply is less than this for the reasons set out below.

Link Drive Car Park, Hatfield

- 5.8 The site is identified on the Brownfield Register but does not have planning permission. The onus is on the Council to provide clear evidence that housing completions will begin on this site within the next five years. Whilst a full planning application for 80 dwellings was made in November 2019 (LPA ref: 6/2019/2431/MAJ) and approved at committee in July 2020, the S106 has not been signed 8 months later and therefore the decision notice has still not been issued. In the absence of clear evidence for the inclusion of this site, it should be removed, meaning a deduction of **80 dwellings** in the five year supply.

Land south of Filbert Close, Hatfield

- 5.9 The site has outline planning permission for up to 39 no. dwellings (LPA ref: 6/2019/2162). The onus is on the Council to provide clear evidence that housing completions will begin on this site within the next five years. No evidence has been provided and we note that a reserved matters

⁵ Paragraph: 031 Reference ID: 68-031-20190722: "How can past shortfalls in housing completions against planned requirements be addressed?"

application has not been made. In the absence of clear evidence for the inclusion of this site, it should be removed, meaning a deduction of **39 dwellings** in the five year supply.

Garages at Hollyfield, Hatfield

- 5.10 The site is identified on the Brownfield Register but does not have planning permission. The onus is on the Council to provide clear evidence that housing completions will begin on this site within the next five years. A planning application has not been made. In the absence of clear evidence for the inclusion of this site, it should be removed, meaning a deduction of **13 dwellings** in the five year supply.

Broadwater Road West SPD Site, Welwyn Garden City

- 5.11 We discussed this very large site in our original assessment. The site has planning permission for a mixed use scheme including 1,340 dwellings. The Council now considers that 751 dwellings should be considered deliverable in the five year period with the first units delivered in year 3 (i.e. 2022/23) compared to the previous position which had a base date of 1st April 2019 where 670 dwellings were considered deliverable with the first units to be delivered in year 3 (i.e. 2021/22).
- 5.12 The site has planning permission. As set out on page 66 of the 2019 Framework, the site should be considered “deliverable”. However, the number of dwellings that should be considered “deliverable” within the five year period is disputed.
- 5.13 The AMR provides no detail in terms of how the site is expected to deliver 360 dwellings in 2022/23, 152 dwellings in 2023/24 and 239 dwellings in 2024/25. However, as we explained in our original assessment, permission 6/2018/0171 was granted subject to a phasing plan which shows that phase one will include 374 dwellings (114 dwellings in blocks 2A&B, 28 dwellings in block 6E, 131 dwellings in block 8 and 101 dwellings in block 11), civic building, healthcare, community and office (block 1), renovated production hall – bursary, leisure, office and conference (block 4), and renovated grain, silos, boiler house for art / museum, energy centre, restaurants and cafés (block 5). For the reasons set out in our original assessment, we include phase one in the deliverable supply but not the other phases as the details for those phases have not been submitted and approved by the Council in accordance with condition 44 of the permission.
- 5.14 Indeed we note that a new planning application has been submitted in January 2021 to replan the northern part of the site and that application is pending determination (LPA ref:

6/2021/0181/MAJ). The inclusion of 374 dwellings in the five year supply means a deduction of **377 dwellings**.

29 Broadwater Road, Welwyn Garden City

- 5.15 The site is identified on the Brownfield Register but does not have planning permission. The onus is on the Council to provide clear evidence that housing completions will begin on this site within the next five years. Whilst a full planning application for 128 dwellings was made in November 2019 (LPA ref: 6/2019/3024/MAJ) and approved at committee in July 2020, the S106 has not been signed 8 months later and therefore the decision notice has still not been issued. In the absence of clear evidence for the inclusion of this site, it should be removed, meaning a deduction of **128 dwellings** in the five year supply.

Norton Building, Bridge Road East, Welwyn Garden City

- 5.16 The site is identified on the Brownfield Register but does not have planning permission. The onus is on the Council to provide clear evidence that housing completions will begin on this site within the next five years. A number of planning applications and prior approval applications have been made and either withdrawn or refused. In the absence of clear evidence for the inclusion of this site, it should be removed, meaning a deduction of **122 dwellings** in the five year supply.
- 5.17 In summary, we have concluded that Welwyn Hatfield's five year housing land supply is 1,947 dwellings (i.e. $2,706 - 80 - 39 - 13 - 377 - 128 - 122 = 1,947$). Against the local housing need and a 20% buffer, this equates to **1.85 years** as shown in the following table:

Table 5.1 – Welwyn Hatfield's Housing Land Supply at 1st April 2020

A	Local housing need	875
B	Five year requirement	4,375
C	Supply to be demonstrated (B + 20%)	5,250
D	Annual supply to be demonstrated (C / 5 years)	1,050
E	Five year supply at 1 st April 2020	1,947
F	Supply in years (E / D)	1.85
G	Shortfall (C – E)	3,303

6. Conclusions

- 6.1 In summary, as explained in footnote 7 of the Framework, because the Housing Delivery Test results (63%) are substantially below the requirement (i.e. below 75%) the tilted balance to the presumption in favour of sustainable development set out in paragraph 11(d) of the Framework applies.
- 6.2 In addition, as is also explained in footnote 7 of the Framework, because neither authority can demonstrate a deliverable five year housing land supply against their local housing need and a 20% buffer, the presumption in favour of sustainable development set out in paragraph 11(d) of the Framework applies. Indeed, neither authority can demonstrate a deliverable five year housing land supply against their local housing need and a 20% buffer by a significant margin.
- 6.3 St Albans Council considers that it has a deliverable supply of 2,612 dwellings, which against its local housing need and a 20% buffer equates to 2.44 years. We consider that the deliverable supply is less than this and around 1,746 dwellings, equating to **1.64 years** and resulting in a shortfall of **3,612 dwellings**.
- 6.4 Welwyn Hatfield considers that it has a deliverable supply of 2,706 dwellings, which against its local housing need and a 20% buffer equates to 2.58 years. We consider that the deliverable supply is less than this and around 1,947 dwellings, equating to **1.85 years** and resulting in a shortfall of **3,303 dwellings**.

Appendix RG3

Ecological Matters - Agreed Meeting Note



Land Off Bullens Green Lane, AL4 0QQ – Ecology. Appeal Ref: APP/B1930/W/20/3265925 & 3265926.	
Meeting to Discuss Ecological Matters.	
Meeting Date:	16 February 2021.
Attendees:	Kurt Goodman (Director of Ecology, FPCR), Bernard Fleming (Ecological Advisor, Hertfordshire County Council) & Martin Hicks (Ecological Advisor, Hertfordshire County Council)
Agreed Meeting Notes:	1. First Issued by FPCR on 16 February 2021; 2. Amended by Hertfordshire Ecology 19 February 2021; and 3. Suggested Amendments accepted FPCR 22 February 2021 (and issued as final).

The following provide a resume of the discussion regarding ecological matters / agreements. Given the two main matters between the parties are (1) the report and (2) Biodiversity Impact Assessment (BIA), for clarity the following is split into these areas.

1 – The Report

From review of the updated report, it is Hertfordshire Ecology's (HE) view (as the ecological adviser to both local authorities) that the updated EclA provides all of the information on material considerations, including habitats and species comprising birds / bats, required to allow the LA to determine the application in a favourable manner. The update report addresses all of the LA comments provided on the consultation response dated 16 October 2020.

It was agreed that matters relating to BIA, could be dealt with as a separate matter to allow formal submission of the report to the case officer.

FPCR make no further comment on this matter.

2 - BIA

From an ecological perspective, HE has no issue with the principle of development at the site, as the site does not appear to provide significant ecological interest. HE acknowledge that currently, as the Environment Bill is not yet law, there is no legal mechanism by which the submission of a BIA metric can be required. However, it is HEs advice to the LPAs that a metric should be supplied to demonstrate that BNG can be achieved, consistent with the expectations of NPPF and to allow the statements made in the Planning Statement and DAS to be justified, that is, in the event development takes place, would deliver a biodiversity net gain. Currently, there is no evidence presented to demonstrate that this could be achieved. It is HEs opinion that in this context, the absence of a BIA weighs against a favourable outcome of the proposal's ability to achieve BNG. This would then become be a matter for the inspector to decide in respect of the overall planning balance.

FPCR explained that given the legal and policy support for net gain and the submission of a 'net gain metric', it was FPCR's opinion that the net gain could be secured by condition and the appellant is

willing to agree a condition which requires an increase in XX% (percentage to be agreed between both parties) either on or off site. This opinion is based on the fact the BIA will have to be repeated at the Reserved Matters (RM) stage, if planning permission is granted, and securing a XX% in biodiversity net gain by condition does provide security that a net gain of XX% will be provided. It is HEs view that a condition is not acceptable as outlined above.

FPCR agreed to discuss matters with the team and the appellant would confirm our position on this matter to the LA.

If a BIA metric was submitted by the appellant, it was agreed that the DEFRA 2.0 metric is the appropriate metric. In the event, the metric assessment confirmed a net loss of biodiversity and no gains, it is HEs opinion that this can be dealt with through a S106 contribution of £12K per unit or the submission of a suitable scheme covering any deficit at the RM stage. The use of this mechanism would demonstrate the net gain as requested by HE and would ensure benefits for biodiversity can be demonstrated in the overall planning balance.