

**TOWN AND COUNTRY PLANNING ACT 1990 (as amended)**  
**Town and Country Planning (Inquiry Procedure) (England) Rules 2000**

**STATEMENT OF CASE OF ST. ALBANS CITY AND  
DISTRICT COUNCIL**

**APPEAL BY CASTLEOAK CARE DEVELOPMENTS LTD**

**LAND TO THE REAR OF BURSTON GARDEN CENTRE, NORTH ORBITAL  
ROAD, CHISWELL GREEN, ST. ALBANS, HERTFORDSHIRE AL2 2DS**

**September 2021**

**PLANNING INSPECTORATE REFERENCE: APP/B1930/W/21/3279463**

**LPA REFERENCE: 5/2020/3022**

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## **1.0 INTRODUCTION AND BACKGROUND**

1.1 This Statement of Case is submitted on behalf of the Local Planning Authority, St. Albans City and District Council (“the Council”). The appeal is against the decision of the Council to refuse an application for full planning permission for: *“demolition of the site to provide a new retirement community comprising 80 assisted living apartments with community facilities and 44 bungalows together with associated access, bridleway extension, landscaping, amenity space, car parking and associated and ancillary works”* (**“Appeal Proposals”**) on a site that lies outside the settlement limits of Chiswell Green, within the open countryside designated as Green Belt.

1.2 The application dated the 11<sup>th</sup> December 2020 was validated by the Council on the 15 December 2020 and given the reference 5/2020/3022. The application was reported to the Council’s Planning Referrals Committee on the 24<sup>th</sup> May 2021 which resolved to accept the recommendation of Officers to refuse planning permission. The decision notice was issued on the 26<sup>th</sup> May 2021 refusing Planning permission the proposed development for the following three reasons:

1. *The proposed development would comprise inappropriate development in the Green Belt which would cause in principle and actual harm to the openness of the Green Belt. The proposed development by reason of the quantum of development, together with the size of the assisted living building would be harmful to the character of the wider area. The case made for very special circumstances, together with the contribution towards the provision of housing is not considered to overcome this harm. As such the proposal is contrary to the NPPF 2019 and to Policies 1, 69, and 70 of the St Albans District Local Plan Review 1994.*

2. *The development would cause less than substantial harm to the grade II\* listed Burston Manor and the grade II listed outbuildings. The urbanisation of the application site would sever the last tangible link between the Manor groups and its historic landscape setting. This would cause harm to its significance. The creation of the houses along the southern boundary of the Manor group, with the 3 storey blocks visible beyond together with the amount and scale of built form, would result in the complete reduction in Burston Manor's visual prominent in the surrounding land from the south and the east. This would result in the complete loss of the perception that the Grade II\* listed Manor house a historic and important house, set in a wider agricultural setting. The formality of the proposed landscaping would completely erode the designed juxtaposition between the gardens around the Manor Group and the farmland around the site. The development would result in the severing of the last tangible link between the assets and their original setting. The historic relationship between the Burston Manor grouping and How Wood and Birchwood would be all but lost. The proposed screening in itself would be a harmful addition as this further blocks the long range views from and to the Manor group, in particular those between the Manor group and land which it is associated with. Overall the proposals would result in less than substantial harm to the significance of the grade II\* and grade II listed buildings forming the Burston Manor group which is not outweighed by public benefits, including the provision of additional dwellings. In accordance with the Framework and the statutory obligations imposed, great weight is given to this harm. As a result, the development would conflict with Local Plan Policy 86 and the NPPF 2019.*
3. *In the absence of a legal agreement to secure contributions towards: community facilities, Travel Plan, bridleway improvements, footpath improvements, NHS Services, Highway projects, affordable housing, occupancy limitation, first marketing limitation the development fails to*

*adequately mitigate its effect upon local services and infrastructure and secure the identified 'very special circumstances'. As such the development fails to comply with Policies 1 and 143B of the Local Plan and the NPPF 2019.*

- 1.3 A copy of the Committee Report is attached at **Appendix 1** and a copy of the Decision Notice at **Appendix 2**. The site lies within the Metropolitan Green Belt and within the setting of a Grade II\* and a Grade II listed building. It is the effect of the Appeal Proposals upon these that are of concern to the Local Planning Authority and considers these to be the main issues in this appeal.
- 1.4 This appeal follows a previous application for planning permission (application No. 5/2018/1324) for a care village, which was dismissed on appeal on the 9<sup>th</sup> January 2020 (PINS ref. APP/B1930/W/19/3235642).
- 1.5 This appeal proposal differs from the previous scheme, including the removal of the previously proposed 64-bed care home.

## **2.0 THE SITE AND ITS SURROUNDINGS AND PLANNING HISTORY**

- 2.1 The appeal site is located south of the A406 North Orbital Road about 3.6 km south of St Albans City Centre within the Green Belt to the south of the village of Chiswell Green and west of the village of How Wood.
- 2.2 The site has been used for the growing of plants associated with horticultural use at Burston Nurseries. There are several buildings on the site associated with the nursery including cold store and glass houses. Burston Garden Centre is to the southwest.
- 2.3 To the north and northwest of the site is Burston Manor, which is a Grade II\* Listed Building and the Grade II listed Dovecote. To the south is woodland. A telecoms mast is located on the southern boundary and Birchwood Bungalow adjacent to the southeastern corner of the site. To the east there is a footpath and bridleway that leads to How Wood.
- 2.4 Access to the site is from the A405 North Orbital Road.
- 2.5 The Council will seek to agree a full description of the site and its surroundings in the Statement of Common Ground.

### **Planning History**

- 2.6 There have been many applications received in the past for developments at the garden centre including sales area, extensions, glasshouses, storage buildings, and the siting of caravans for seasonal agricultural workers.
- 2.7 The following applications relate to land that is the subject of the Appeal Proposals:

- 5/2018/1324 - Demolition of all existing horticultural structure and redevelopment of the site to provide a new retirement community comprising a 64 bedroom care home. 125 assisted living bungalows and apartments, a community clubhouse together with associated access and pedestrian/bridleway improvements, landscaping, amenity space and car parking – refused and dismissed on appeal
- 5/2013/0360 – Insertion of an automated gate (resubmission following refusal of 5/2012/2860) - Approved;
- 5/2012/2860 – Installation of automated gate and erection of fencing – Refused;
- 5/2007/2951 - Display of one non-illuminated triangular advertising board (retrospective) – Approved;
- 5/2006/0774 – 30m Telecommunications lattice tower, three dishes and ancillary equipment - Approved;
- 5/1996/1475 – Deemed application on appeal against an Enforcement Notice for the erection of a 2m high fence – Withdrawn;
- 5/1995/0496 – Glasshouse – Conditional permission; and
- 5/1987/1655 – Erection of glasshouse – Conditional permission.

2.8 The previous application (Ref 5/2018/1324) and Appeal Decision (Ref: APP/B1930/W/19/3235642) are relevant and important material considerations. The Appeal Decision is attached at **Appendix 3**. The appeal proposal is a revised scheme that seeks to address the previous reasons for dismissal. The previous proposal was for a 64-bedroom care home and 125 assisted living bungalows and apartments. In that decision, the Inspector addressed the Green Belt and heritage harm and considered the benefits and the weight to be attached to them and whether this clearly outweighed the identified harm.

2.9 The Inspector identified the main issues as:

- (i) The extent to which the development would harm the openness of the Green Belt and/or conflict with its purposes;
- (ii) The effect of the proposal on the character and appearance of the area;
- (iii) The effect of the proposal on the significance of the grade II\* listed Burston Manor and grade II listed outbuildings, as derived from their setting; and
- (iv) Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

2.10 In her reasoning the Inspector commenced with considering Green Belt Openness and Purposes. The Inspector confirmed at paragraph 23 that the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open; the essential characteristics of the Green Belt are their openness and their permanence, and that openness has both a visual and spatial element. She agreed that the site should not be regarded as previously developed land and as such the proposals would constitute inappropriate development, which by definition is harmful to the Green Belt, substantial weight should be accorded to that harm and such development should not be approved except in very special circumstances whereby inappropriateness and any other harm is clearly outweighed by other considerations.

2.11 At paragraph 30 the Inspector found the development would result in substantial loss of openness in spatial and visual terms and would therefore constitute significant harm to the Green Belt in addition to inappropriateness.

2.12 Regarding the purposes of the Green Belt the Inspector found conflict with three of the five purposes of the Green Belt: (a) to check the unrestricted sprawl of large built-up areas; (b) to prevent neighbouring towns merging



into one another; and (c) to assist in safeguarding the countryside from encroachment.

- 2.13 The Inspector concludes on Green Belt openness and purposes at paragraph 39:

*“The development would therefore result in a substantial loss of openness and would conflict with the purposes of the Green Belt. The development would not accord with the Framework nor LP Policy 1. I attach substantial weight to this conflict and the harm arising to the Green Belt and its purposes by virtue of the development’s inappropriateness and the effect of openness.”*

- 2.14 In considering the effect of that development upon character and appearance the Inspector found that the site is visually contained, and that there were positive aspects to the development relating to legibility, design and landscaping, but the resulting effect would be of an urbanised site which would be out of step with its wider surroundings and that the development would give rise to a moderately harmful impact on the character and appearance of the area in the vicinity of the site in conflict with LP Policies 69 and 70, which are LP Policy objectives consistent with those of the Framework.

- 2.15 Regarding designated Heritage Assets the Inspector agreed with the Council that the development would amount to the severing of the last tangible link between the grade II\* listed Burston Manor and the associated grade II listed outbuilding and their original setting and that the historic relationship with How Wood and Birchwood would be all but lost. The inspector indicated at paragraph 65 that she was mindful that grade II\* listed buildings represent the top 7% of England’s most significant designated heritage assets and that in combination with the grade II listed building, moat and archaeological potential, the development would be firmly within the realms of ‘less than substantial harm’. The Inspector confirmed that she was of the clear view that

this would be to a moderate degree when applying the spectrum or scale put to her at the Inquiry, as opposed to the limited harm attested by the appellant.

2.16 The Inspector concludes at paragraph 66 that the development would cause harm to the significance of the grade II\* and grade II listed building forming the Burston Manor group and as a result the development would conflict with LP Policy 86. In accordance with the Framework and the statutory obligations imposed, she gave great weight to that harm.

2.17 The Inspector considered the range of considerations put to her by the appellant. The weight given by the Inspector to these were:

- **Very significant weight** to the meeting the needs of housing for older people;
- **Substantial weight** to the contribution towards general housing needs;
- **Very significant weight** to the release of under-occupied family housing;
- **Substantial weight** to the health and wellbeing benefits;
- **Significant weight** to the employment benefits;
- **Moderate weight** to the lack of alternative sites/alternative site assessment
- **Some weight** to the benefits of the site access improvements; and
- **Some weight** to the development being able to be delivered now

2.18 The previous appeal decision has been given full and proper weight by the Council.

### **3.0 THE PROPOSAL**

3.1 The application the subject of this appeal seeks full planning permission for the redevelopment of the site for a retirement community.

3.2 There are 12 existing structures on the site relating to horticultural use that are proposed to be demolished.

3.3 The proposed large-scale development would include the following:

- 80 assisted living apartments
- 44 assisted living bungalows
- A central building providing care and communal facilities including a restaurant, café/bar, library, gym, treatment room and cinema.
- Support facilities including offices, storage, laundry, electric scooter/buggy storage and car parking.
- Total floor space of around 15,807m<sup>2</sup>
- 140 car parking spaces.
- 54 cycle spaces
- 15 mobility buggy spaces

3.4 The existing site access junction off the A405 North Orbital Road would be replaced with a new signalised junction.

#### **4.0 PLANNING POLICY CONTEXT**

- 4.1 The development plan for St. Albans comprises the saved policies of the St Albans Local Plan (1994).
- 4.2 Other relevant planning policies that are material considerations in the determination of this appeal those within the National Planning Policy Framework recently revised in July 2021. There is also relevant guidance within the National Planning Practice Guidance.

#### **St Albans District Local Plan Review 1994 (LP)**

- 4.3 Relevant policies are listed below:

Policy 1 – Metropolitan Green Belt;

Policy 34 – Highways Considerations in Development Control;

Policy 35 – Highways Improvements In Association with Development

Policy 39 – Parking Standards, General Requirements;

Policy 43 – Elderly Persons Dwellings and Residential Homes Hostels, Parking Standards;

Policy 69 – General Design and Layout;

Policy 70 – Design and Layout of New Housing;

Policy 74 – Landscaping and Trees Preservation;

Policy 84a Drainage Infrastructure;

Policy 86 – Buildings of Special Architectural or Historic Interest;

Policy 97 – Existing Footpaths, Bridleways and Cycleways;

Policy 102 – Loss of Agricultural Land

Policy 106 – Nature Conservation;

Policy 111 – Archaeological Sites;

Policy 143b – Implementation; and

Revised Parking Policies and Standards, January 2002.

- 4.4 The Council considers that the proposed development conflicts with the following policies:

Policy 1 – Metropolitan Green Belt;

Policy 69 – General Design and Layout of New Housing;

Policy 70 – Design and Layout of New Housing; and

Policy 86 – Buildings of Special Architectural and Historic Interest.

Policy 143B - Implementation

### **National Planning Policy Framework**

- 4.5 Subject to completion of a satisfactory planning obligation the list of policies may be refined in evidence. In addition, the Council has adopted relevant supplementary planning documents including:

- Revised Parking Policies and Standards, January 2002

- 4.6 This document sets out the Government's policies for the delivery of sustainable development.

- 4.7 The following sections of the Framework are of relevance to the appeal proposal.

- Section 1 – Introduction
- Section 2 - Achieving sustainable development
- Section 5 – Delivering a sufficient supply of homes
- Section 12 – Achieving well-designed places
- Section 13 – Protecting Green Belt land
- Section 15 – Conserving and enhancing the natural environment
- Section 16 – Conserving and enhancing the historic environment

- 4.8 Paragraph 11 sets out the presumption in favour of sustainable development. Paragraph 11d indicates that the presumption means for decision making:

*“where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>8</sup>, granting permission unless:*

- i. The application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>7</sup>; or*
- ii. Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework taken as a whole.”*

4.9 Footnote 8 states that in the situation where the local planning authority is unable to demonstrate a five-year supply of deliverable housing land then the policies which are most important for determining the application are deemed to be out of date. Footnote 7 indicates, where relevant:

*“the policies referred to are those in this Framework (rather than those in development plans) relating to... land designated as Green Belt...designated heritage assets...”*

4.10 Therefore, for decision-taking relating to land the Green Belt or affecting a designated heritage asset, it is first necessary to determine whether the application of Green Belt policies and heritage policies in the Framework provide a clear reason for refusal under paragraph 11 (d) (i). If they do, the application is not assessed against the tilted balance set out in paragraph 11(d)(ii) of the Framework.

4.11 The Framework stipulates at paragraph 147 that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 confirms that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances (**“VSC”**) 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.

- 4.12 It is the Council's case, that less than substantial harm arises to the setting of a listed building and consequently paragraph 202 of the Framework requires the harm to be weighed against the public benefits of the proposal. As part of this exercise, paragraph 199 confirms that great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be).

### **National Planning Practice Guidance**

#### Heritage

- 4.13 ID: 18a-001-20190723 – what is the main legislative framework for the historic environment?
- 4.14 ID: 18a-002-20190723 – what is meant by the conservation of the historic environment?
- 4.15 ID: 18a-006-20190723 – what is significance?
- 4.16 ID: 18a-007-20190723 – why is significance important to decision-making?
- 4.17 ID: 18a-008-20190723 – How can proposals avoid or minimise harm to the significance of a heritage asset?
- 4.18 ID: 18a-013-20190723 – what is setting of a heritage asset and how can it be taken into account?
- 4.19 ID: 18a-018-20190723 – How can the possibility of harm to a heritage asset be assessed?
- 4.20 ID: 18a-020-20190723 – What is meant by the term public benefits?

Housing for older and disabled people

- 4.21 ID: 63-010-20190626- what are the different types of specialist housing for older people?
- 4.22 ID: 63-012-20190626 – Do plans need to make specific provision for specialist housing for older people?
- 4.23 ID: 63-016-20190626 – What factors should decision makers consider when assessing planning applications for specialist housing for older people?
- 4.24 ID 63-16a-20190626 – How should plan-making authorities count specialist housing for older people against their housing requirement?

Green Belt

- 4.25 ID 64-001-20190722 – what factors can be taken into account when considering the potential impact of development on the openness of the Green Belt – 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.

**Emerging Local Plan**

- 4.26 The Framework identifies the weight that may be attributed to emerging Local Plan policies by decision-takers at Paragraph 213. Weight is attributed to the stage of preparation of the emerging plan; the more advanced the



preparation, the greater the weight that may be given. The extent to which there are unresolved objections to relevant policies is also a consideration; the less significant the unresolved objections, the greater weight that may be given. Finally, the degree of consistency of the relevant policies in the emerging plan to policies in the Framework is another consideration; the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given.

- 4.27 The previous submission local plan was withdrawn following concerns raised by the Examining Inspectors.
- 4.28 Work is being undertaken on a new Local Plan, but a draft has not yet been produced and therefore no weight can be attributed to it in the making of planning decisions.

#### **Emerging St. Stephen Neighbourhood Plan (SSNP)**

- 4.29 The SSNP was recently the subject of Regulation 16 consultation from 3<sup>rd</sup> June to 15<sup>th</sup> July 2021. The withdrawal of the emerging St. Albans Local Plan will directly impact several proposed policies in the Pre-Submission SSNP, including Policy S20: Retirement and Care Home Facilities.

#### **Housing Land Supply**

- 4.30 The Council accept that they are unable to demonstrate a five-year supply of deliverable housing land. The Council can demonstrate a supply of 2.4 years of deliverable housing land.<sup>1</sup> Therefore the policies which are most important for determining the application are deemed out of date by virtue of Footnote 8 of the Framework. The Council position is that the application of Green Belt and Heritage policies provide a clear reason for refusal and per Footnote 7 of the Framework and therefore the 'tilted balance' in paragraph 11 (d)(ii) is not engaged. In addition, heritage harm is a material

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<sup>1</sup> St Albans Annual Monitoring Report 2019/20 (December 2020)

consideration that must be taken into account within the category of “any other harm” in paragraph 144 of the Framework.

## **5.0 THE COUNCIL’S CASE**

### Development in this Location

- 5.1 The site lies outside the city of St. Albans between the villages of Chiswell Green and How Wood. The site is located on land outside the settlements of Chiswell Green and How Wood and is therefore within the open countryside and the Metropolitan Green Belt.
- 5.2 The Council will present evidence to show that the Appeal Site is not previously developed land.
- 5.3 It is noted that the Appellant accepts that under the provisions of paragraph 149 (previously paragraph 145 of the 2019 Framework) the proposed development would be inappropriate in the Green Belt<sup>2</sup>.

### Effect upon Green Belt Openness and Purposes

- 5.4 It is noted that the Appellant accepts that the proposed development would be inappropriate within the Green Belt. Nevertheless, the Council will set out the policy position relating to development within the Green Belt and will demonstrate that the Appeal Proposals should be regarded as inappropriate development in the Green Belt. It will be shown that the proposed development would not meet any of the exceptions to the definition of inappropriate development in the Green Belt as set out at paragraph 149 of the Framework.
- 5.5 Evidence will be presented at the Inquiry to show that in addition to harm that would be caused to the Green Belt by reason of inappropriateness there would be other harm resulting from the Appeal Proposal, including:

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<sup>2</sup> Paragraph 6.21 of the Appellant's Statement of Case

- Impact of the proposed urban form upon the openness of the area in special and visual terms;
- Conflict with several purposes of the Green Belt;
- Harm to designated heritage assets through development within their setting.

#### Openness

- 5.6 The Council will show that the Appeal Proposals would result in a significant increase in the amount of built form when compared to the existing situation. Whilst the quantum of development has been reduced compared to the previous scheme that was dismissed on appeal through the removal of the previously proposed care home, and thereby provides more space within the site, the proposal would still introduce a substantial amount of built form that would be urban in character and appearance which would lead to a substantial loss of openness in spatial terms.
- 5.7 In visual terms there would be greater depth of perimeter landscaping in this revised scheme with a resulting improvement in the quality of the setting for the development including improved soft landscaping buffer along the northern boundary with Burston Manor and the eastern boundary with the existing bridleway and How Wood. The reductions in the amount of built form, the increased separation and landscaping would result in visual improvements compared to the previous scheme. Nevertheless, there would be a substantive loss in openness of the site and the Council will show that this would still constitute significant harm to the Green Belt in addition to inappropriateness and that the changes made have not overcome the harm to the openness of the Green Belt.

#### Purposes

- 5.8 It will be demonstrated that the Appeal Proposals would constitute urban encroachment into the countryside designated as Green Belt, would result in the significant erosion of the open gap between the settlements of Chiswell Green with How Wood to the extent that the Appeal Proposals would

contribute towards the merger of these two settlements thereby also contributing towards urban sprawl in this part of the Green Belt.

- 5.9 Therefore, it will be demonstrated that the Appeal Proposals would conflict with several purposes of the Green Belt as set out at Paragraph 138 of the Framework: (a) to check the unrestricted sprawl of large built-up areas, (b) to prevent neighbouring towns from merging with one another, and (c) to assist in safeguarding the countryside from encroachment.

#### Other Harm

#### Character and Appearance

- 5.10 In assessing the existing appearance of the site at the previous appeal, the Inspector considered that the buildings on the Appeal Site are modest in their scale, utilitarian in appeal, of poor quality and dilapidated. The Council accepts this assessment.
- 5.11 The formality of the layout would not be out of place with the general layout of the built form in the wider area. There would be improvements over the previous scheme resulting from reductions in the amount of built development. However, the Assisted Living elements and community facilities remain and would appear as large imposing buildings within the site and despite the improvements to landscape the Council will show that the proposed development would still have a moderately harm impact upon the character and appearance of the area in the vicinity of the site and as such will conflict with Policies 69 and 70 of the Local Plan Review 1994 and the aims of the Framework.
- 5.12 The Council remains of the view and will demonstrate that very special circumstances do not exist to the extent that they would clearly outweigh the harm to the Green Belt by reason of inappropriateness and other harm that would result from the Appeal Proposals and that the Appeal Proposals would

conflict with Policies 1, 69 and 70 of the St. Albans District Local Plan Review 1994 and relevant policies of the Framework

Effect upon designated Heritage Assets

- 5.13 Paragraph 199 of the Framework requires great weight to be given to the conservation of heritage assets. Paragraph 200 confirms that the significance of a designated heritage asset can be lost through development within its setting and that any harm to significance requires clear and convincing justification.
- 5.14 The Council considers that the Burston Manor as a Grade II\* listed building is a designated heritage asset of highest significance and as a separately Grade II listed building a former dovecote/granary outbuilding is a designated heritage asset of high significance. The Council will show that the appeal site forms part of the setting of these listed buildings.
- 5.15 Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that when considering whether to grant planning permission for development which affects a listed building, or its setting special regard shall be had to the desirability of preserving the building or its setting.
- 5.16 Evidence will be adduced to demonstrate that the Appeal Proposals would not preserve the setting of the adjacent listed buildings. It will be shown that the Appeal Proposals would result in a significant change to the character and appearance of the appeal site and consequently the setting of Burston Manor and Dovecote. This change to the setting of these buildings would cause less than substantial harm to their significance as designated heritage assets. Paragraph 202 of the Framework stipulates that where there is less than substantial harm to a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

5.17 It will be demonstrated that due to the scale and intensity of the proposed development, including boundary planting the presence of Burston Manor House within its setting would be diminished and the perception that the Grade II\* listed building as an important house, set in a wider agricultural setting would be lost. Evidence will also be adduced to show that the Appeal Proposals would result in the loss of the last tangible link of the manor house and dovecote/granary (“Manor Group”) to their original agricultural and woodland setting as a consequence of the creation of an urban environment that would fully encase the Manor Group. It will be shown that this would lead to less than substantial harm to heritage significance of the Manor Group through the proposed development within the Group’s setting. Whilst the relationship of the Appeal Proposal with the listed buildings is better than the previous scheme, the Council considers that the impact remains moderate within the spectrum of less than substantial harm and that great weight should be given to that harm.

5.18 The balance required by Paragraphs 199 and 202 of the Framework needs to be undertaken and the Council will show that the public benefits of the development would not outweigh the harm to the significance of the identified heritage assets. As such the Appeal Proposals would also conflict with Policy 86 of the St. Albans District Local Plan Review 1994, which requires special regard to be had to the desirability of preserving the setting of buildings of special architectural or historic interest.

#### Infrastructure

5.19 The third reason for refusal of planning permission relates to the absence of a legal agreement to secure contributions towards Community Facilities, Travel Plan, bridleway improvements, footpath improvements, NHS Services, Highway projects, affordable housing, occupancy limitation, first marketing limitation. The Council will present evidence to show that in the absence of a S106 agreement the development would fail to adequately mitigate its effect upon local services and infrastructure and secure identified VSC. As such the

proposal would fail to comply with Policies 1 and 143B of the Local Plan and the Framework 2021.

- 5.20 The Council will work with the Appellant to ensure a satisfactory delivery mechanism within a Section 106 agreement for services, facilities, infrastructure and affordable housing.

### **Planning Balance**

#### **Benefits**

##### *General Housing Supply*

- 5.21 The Council accepts that it cannot demonstrate a five-year supply of housing. The Council's most recent published figure is that it has 2.4 years housing land supply.
- 5.22 The Council considers that the delivery of 124 assisted living bungalows and apartments is a benefit of the scheme that would contribute to the five-year housing shortfall if it were delivered within five years. At the previous appeal it was common ground that the Council had 2.2 years supply.<sup>3</sup> Based upon this the Inspector gave substantial weight to the contribution of that proposed development towards this housing need and the delivery of a range of specialist housing options for older people. Whilst there has been a modest improvement in supply since then, there remains a shortfall in housing land supply and although the Appeal Proposal does not include the previously proposed care home, in terms of the contribution to general housing supply the Council considers that it is a benefit to which significant weight should be attached.

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<sup>3</sup> Appendix 3 para. 68



*Specialist Housing Supply*

5.23 Part of the overall housing need is specialist housing for older people. There is an identified need for such housing, which form part of the overall need for housing within the district and therefore weight should be given to the delivery of older peoples housing. The Inspector found that the previous scheme could make a very significant contribution towards meeting local needs for C2 accommodation<sup>4</sup> and that related to this point she considered that the occupation of such housing is likely to free up existing housing stock, thereby assisting the wider market. The Inspector gave very significant weight to the contribution the development would make to meeting the need for general housing and specialist housing in the area for older people. The Appeal Proposal does not include the previously proposed care home, which formed part of the Inspector's weighing of the benefits of the previous proposal and therefore reduces the supply of C2 accommodation compared to the previous proposal. Nevertheless, the Council considers that significant weight can still be given to this as a planning benefit in this appeal.

*Availability of other sites*

5.24 In considering the previous appeal proposals, the Inspector moderated the weight attributed to the lack of alternative sites outside the Green Belt on the basis of flaws relating to the availability of three identified sites on the basis that they were not being actively marketed and, in her view, this was a fundamental flaw of what was otherwise a robust exercise. Nevertheless, the Inspector attributed moderate weight to the lack of suitable sequentially preferable alternative sites to accommodate that proposal.<sup>5</sup> The Appellant submitted an assessment of alternative sites (dated October 2020) with the application the subject of this appeal and to respond to the concerns of the previous Inspector. The updated report demonstrates that there are still no alternative sites available including the three sites the subject of the

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<sup>4</sup> Appendix 3, para.72

<sup>5</sup> Appendix 3, paragraph 93

Inspector's concerns. However, the Council will show that there are other forms of development that can contribute towards delivering the need for older persons housing on smaller sites. Accordingly, the Council considers that moderate weight should be attached to the fact that there are no suitable sequentially preferable alternative sites to accommodate a proposal of the scale proposed.

*Affordable housing and marketing commitment*

- 5.25 The Appellant is proposing a local marketing commitment for a proportion of units, to recognise the need for care accommodation for existing residents and those with ties to St. Albans as well as a financial contribution towards the provision of affordable housing. There is no policy requirement to provide any form of affordable housing. However, a £750,000 contribution to affordable housing is proposed. Therefore, weight should be attributed to this matter as part of the case for VSC. There is some uncertainty relating to what the contribution would deliver. However, the Council considers that this contribution would help deliver less than 3 affordable units elsewhere within the Borough. The affordable housing contribution and first marketing limitation would be benefits to which limited weight should be given in the planning balance.

*Existing family housing stock*

- 5.26 The previous Inspector considered that the occupation of specialist housing for older people would be likely to free up existing housing stock, thereby assisting the wider market. The Inspector considered this matter along with the supply of general and C2 housing<sup>6</sup> and found that these considerations weighed substantially in favour of that development. Having regard to the Inspector's decision, and notwithstanding the removal of the care home from the current scheme the Council considers that this lends further weight in support of the Appeal Proposal.

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<sup>6</sup> Appendix 3, paragraphs 72 and 92

*Health and wellbeing*

- 5.27 It was accepted by the previous Inspector that the care village concept would benefit the health and wellbeing of people residing at the site through the provision of dedicated services and facilities, and care support based upon varying individual needs. The Council accepts the view of the previous Inspector that substantial weight can be given to the health and wellbeing aspects of the proposed development through provision of care to future residents.

*Employment and economic benefits*

- 5.28 The Inspector considered the employment and economic benefits of the previous proposal and found that this added further weight to the case for the appeal<sup>7</sup> but that this was moderated by high levels of employment and low unemployment. The Council considers that the Appeal Proposal would bring about economic benefits, and that this matter adds further weight to the case for the appeal, moderated by high levels of employment, low levels of unemployment and removal of the care home from this revised scheme.

*Local support*

- 5.29 The Council is conscious of significant local support for this scheme, which is reflected in the proposed allocation of the site for C2 development within the SSNP. The previous Inspector acknowledged that there were question marks around whether a Neighbourhood Plan can alter the boundaries of the Green Belt. The site remains within the Green Belt and the Council considers that the weight that can be attached to the SSNP is limited at this point.

*Access improvements*

- 5.30 The proposal would deliver site access improvements to the wider Burston Garden Centre. However, such improvements are necessary to address the

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<sup>7</sup> Appendix 3, para. 82

highway impacts of the proposed development and therefore the Council accepts that some weight should be attached to this matter as a planning benefit.

Balancing exercise and very special circumstances

- 5.31 The Council accepts that as it cannot demonstrate a five-year supply of deliverable housing land and that development plan policies which are most important for determining the application are out-of-date. The Council considers that significant weight can be given to the contribution that the proposed development would make to general housing need and that significant weight can be given to the delivery of specialist housing for older people. The benefits arising from the combination of general housing and specialist housing supply for older people, including the resulting freeing-up of existing housing stock, is attributed substantial weight by the Council.
- 5.32 However, the Council will demonstrate that the tilted balance advocated by Paragraph 11(d) of The Framework, which would normally apply, does not apply in this case because there are specific policies in the Framework (identified at Footnote 7) that mean in this case that planning permission should be refused. The Council will show that in this case policies of the Framework relating to land designated as Green Belt and designated heritage assets apply in this instance and indicate that the Appeal Proposals should be restricted.
- 5.33 The Council will demonstrate that the Appeal Site is not previously developed land. The Appeal Site is currently unused and comprises open grassland, sheds, polytunnels, glasshouses and planting beds which were formerly used for Rose propagation. As such, they were used for horticultural purposes, which falls with the definition of agriculture<sup>8</sup>. The Framework confirms at Annex 2 that land that is or was last occupied by agricultural buildings is excluded from the definition of previously developed land, and at paragraph

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<sup>8</sup> Section 336 of the Town and Country Planning Act 1990 (as amended)

149 the Framework stipulates that buildings for agriculture are not inappropriate development in the Green Belt.

5.34 It is common ground that the Appeal Proposals are inappropriate development in the Green Belt and that, by definition, the proposed development would be harmful to the Green Belt and should not be approved except in very special circumstances. The Appeal Proposal would also result in loss of openness and conflict with three of the five purposes of the Green Belt set out at paragraph 138 of the Framework. This would be contrary to LP Policy 1. Substantial weight should be given to the harm to the Green Belt.

5.35 The Appeal Proposal by reason of the quantum of development, together with the size of the assisted living building would also result in harm to the character and appearance of the area contrary to LP Policies 69 and 70. In addition, there would be less than substantial harm, to a moderate degree, to the significance of designated heritage assets, including the grade II\* listed Burston Manor, which is of highest heritage significance. This harm should be given great weight.

5.36 The Council will present evidence to show that the acknowledged benefits of the proposed development, which are material considerations, would not constitute very special circumstances that would clearly outweigh the harm to the Green Belt by reason of inappropriateness and other harm, including less than substantial harm to the significance of adjacent designated heritage assets.

5.37 It will be submitted by the Council that the benefits of the proposed development would not clearly outweigh the identified harm and that the application of the Planning Balance should lead to the refusal of planning permission.

## **6.0 Documents**

6.1 The following documents may be referred to by the Council:

- St Albans Local Plan 1994
- St Albans Revised Parking Policies and Standards (2002)
- St Albans Annual Monitoring Report 2019/20 (December 2020)
- Housing Delivery Test Action Plan December 2020
- South West Herts – Local Housing Need Assessment (September 2020)
- Planning obligations guidance – toolkit for Hertfordshire January 2008
- National Planning Policy Framework 2021
- Conservation Principles, Policies and Guidance (Historic England, 2008)
- Good Practice Advice in Planning Note 2 – Managing Significance in Decision-Taking in the Historic Environment (Historic England, 2015)
- Good Practice Advice in Planning Note 3 – The Setting of Heritage Assets (Historic England, 2017)
- Planning application files
- Photographs and images of the site and area
- Relevant Planning Appeal Decisions & judgements of the courts

### **APPENDICES**

- 1) Decision Notice for Application 5/2020/3022
- 2) Committee Report
- 3) Appeal Decision APP/B1930/W/19/3235642