WHBC Appeal Ref: APP/B1930/W/20/3265925
SADC Appeal Ref: APP/C1950/W/20/3265926

LAND OFF BULLENS GREEN LANE, COLNEY HEATH

CLOSING STATEMENT BY THE LOCAL PLANNING AUTHORITIES

Introduction

1. The Appellant seeks outline planning permission for up to 100 homes, including 45% affordable and 10% self or custom build, on land off Bullens Green Lane, Colney Heath ("**the Site**"). The Site is partly within the area of St Albans City and District Council ("**SADC**") and partly within the area of Welwyn Hatfield Borough Council ("**WHBC**") (together, "**the Councils**").

Main issues

2. The main issues in this appeal are[1]:

   (1) The effect of the proposal on the openness of the Green Belt and the purposes of including land within it;

   (2) The effect of the proposal on the character and appearance of the area;

   (3) The effect of the proposed development on the setting of the nearby listed building 68 Roestock Lane;

   (4) Whether the site is in an accessible location with regards to local services and facilities;

   (5) 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.

Effect of the proposal on the openness of the Green Belt and the purposes of including land within it

Openness

3. It is common ground that the loss of the existing open agricultural field to a development of up to 100 dwellings would comprise a loss of openness in both a visual and spatial context[2].

[1] Inspector's Case Management Conference Summary, 16 March 2021
[2] SoCG para. 10.2.

4. The dispute concerns the extent of the harm.

5. The Planning Practice Guidance provides as follows[3]:

> "Assessing the impact of a proposal on the openness of the Green Belt … requires a judgment based on the circumstances of the case. By way of example, the courts have identified a number of matters which may need to be taken into account in making this assessment. These include, but are not limited to:
>
> - Openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume;
> - The duration of the development, and its remediability – taking into account any provisions to return land to its original state … and
> - The degree of activity likely to be generated, such as traffic generation".

6. The Inspector is invited to prefer the evidence of Mr Hughes for the Councils, who explained that the proposal would cause substantial harm in terms of a loss of openness, both in visual and spatial terms[4]. The Site is currently a completely open arable field. It has a public footpath (48) running through it. Openness means "the state of being free of built development, the absence of buildings"[5]. The construction of 100 houses on the Site would substantially change this.

7. It is central to the Appellant's case on the spatial aspect of openness that the Site is "wrapped around" or "contained" by the settlement of Colney Heath. This is plainly not the case. Leaving aside the various analogies, in terms of the Site's development parcel, Mr Hughes' undisputed calculation finds that 70% of it is bounded by open land[6]. In terms of the Site generally, Mr Gray accepted that a "majority" of the Site, albeit not a "substantial majority", is bounded by open land. Taking the borders of the Site in turn:

   (1) **East**: Other than a few cottages on the other side of Bullens Green Lane at the north-east corner of the Site, and the Tollgate Cottages at the south-east corner, most of the eastern border opens onto another fields, with woodland beyond;

   (2) **South**: Similarly, other than a few houses on the other side of Fellowes Lane at the south-west corner of the Site, the southern border backs onto open fields to the south;

   (3) **West**: The western border of the Site is shared by Roestock Park and the relatively open Roestock Depot site.

[3] CD9.17, PPG section on "Green Belt" para. 001
[4] PH PoE 5.20-5.34
[5] *R (Lee Valley RPA) v Epping Forest DC* [2016] EWCA Civ 404 at [7] per Lindblom LJ.
[6] PH PoE para. 5.74

(4) **North**: It is only the northern border of the Site that bounds fully onto built development, and even then the residential properties are separated from the Site by "relatively long" gardens.

8. Relevant to the assessment of openness, the Inspector is invited to agree with the evidence of Mr Hughes and the Inspector in the Roestock Deport appeal[7] that the Site forms part of a "gap between two distinctly separate built-up areas (Bullen's Green and Roestock)".

9. Insofar as the Appellant sought to suggest[8] that the "spatial containment" of the Site is strengthened by being bounded by Bullens Green Lane and Fellowes Lane, and the landscaping along these road frontages, Mr Hughes strongly disagreed in XIC. He explained that the roads and landscaping do not contain or reduce the spatial openness of the Site. Having regard to the fact that "openness is the counterpart of urban sprawl"[9], these features do not reduce the Site's openness. Mr Gray accepted that the factors which indicate the strength of a Green Belt boundary[10] is a different exercise to the assessment of openness[11].

10. As to the visual aspect of openness, the views looking south from the footpath that crosses the Site east-to-west, the houses and gardens along Roestock Lane and Roestock Gardens, Roestock Park looking east, from public footpath 23 running south from Roestock Lane, and south along Bullens Green Lane, are of open countryside, giving a strong sense of openness. As Mr Hughes explained in XIC, the change to the view of a 100-home development would be profound and substantial, and is only mitigated "to a very small degree" by the retained footpaths and landscaped areas. Mr Gray accepted that the landscaping mitigation in the scheme was nothing more than would normally be expected from any well-designed scheme[12].

Purposes

11. It is common ground that the development of open countryside for 100 dwellings would lead to encroachment into the countryside, contrary to the third Green Belt purpose in NPPF para. 134[13].

12. Mr Hughes' evidence is that the contribution of the Site to the third Green Belt purpose is "significant".

[7] CD10.21, para. 10.
[8] RG PoE para. 4.98
[9] CD12.02, *R (Samuel Smith Old Brewery (Tadcaster) and others) v North Yorkshire County Council* [2020] UKSC 3, para. 22 per Lord Carnwath
[10] By reference to Table 8.1 in CD6.23
[11] RG XX
[12] RG XX
[13] SoCG para. 10.3, RG XX

13. His view is consistent with the Welwyn Hatfield Green Belt Study Stage 3, which forms part of the evidence base to the emerging Welwyn Hatfield Local Plan. In this study, the Borough's land around the towns, inset villages and washed-over villages with the potential for insetting was divided into 95 parcels and assessed in terms of contribution to Green Belt purposes and harm to the Green Belt if released. The Welwyn Hatfield part of the Site comprised part of Parcel 54[14], together with the open fields to the south and south-east of the Site. The "parcel description" for Parcel 54, with which both Mr Hughes[15] and Mr Gray[16] agreed, notes that "open views of the wider countryside across the parcel are still visible across most of the parcel". The assessment concludes that Parcel 54 makes a "significant contribution" to the third Green Belt purpose, stating:

> "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."

14. Mr Gray agreed with this conclusion and the commentary[17].

15. The assessment concluded that the harm to the Green Belt that would arise from the release of the whole parcel was "moderate-high" (the third highest category of harm, out of six), with the following comments:

> "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."

16. Mr Gray again accepted this conclusion on harm and the commentary[18].

17. Mr Hughes explained in XIC that if Parcel 54 had been extended to cover the whole of the Site (i.e. to include the St Albans part of the Site), this would not have affected the conclusions of the assessment. Mr Gray would not go that far, but did accept that the contribution to the third purpose would remain "significant" and the harm level would remain "moderate-high", because the change was only a "small step" or "slightly diluting one" by the inclusion of the remainder of the Site[19].

[14] CD6.14, Appendix 6.1, p.240-242
[15] PH XiC
[16] RG XX
[17] RG XX
[18] RG XX
[19] RG XX

18. As to the comparison between the Site and Parcel 54 as a whole, Mr Gray accepted that the latter was "bigger" but not "much bigger"[20]. Parcel 54 comprises three fields in addition to the Welwyn Hatfield part of the Site. Although Mr Gray did not accept this, the Stage 3 assessment is, in reality, very fine grained indeed, and allows the conclusions reached in respect of Parcel 54 to be relied on in respect of the Site.

19. A "significant" contribution to the third Green Belt purpose was also the conclusion reached in respect of Parcel 34 in the Stage 1 Green Belt Review Purposes Assessment in November 2013[21], a conclusion with which Mr Gray agreed[22]. Parcel 34 contains the Site, but is a much larger area of land (419 hectares). But the Appellant is wrong to suggest that this renders the assessment of "limited value". Mr Hughes explained that the Site was in no sense an "outlier" or "exception" to the conclusions reached in respect of Parcel 34 as a whole, namely that the parcel is "predominantly arable farmland and heathland" that "displays typical rural and countryside characteristics, … in medium sized arable fields with hedgerow boundaries … and areas of heath and semi natural grassland which are locally important at Colney Heath". "Levels of openness are generally high …". Although Mr Gray accepted that different parts of Parcel 34 contributed differently to the third purpose, he accepted in XX that:

    (1) The Site was not an "outlier" or "exception" in Parcel 34;

    (2) The November 2013 Green Belt Assessment had identified a number of parcels which should be sub-divided because different sub-areas performed differently than other sub-areas, but Parcel 34 was not among them[23].

    (3) The November 2013 Green Belt Assessment also identified for further consideration the areas where the land contributed least to Green Belt purposes, and Parcel 34 was not among those areas.

20. The Appellant's suggestion that there would only be "limited harm"[24] to the third Green Belt purpose, again on account of the "level of containment", is rejected. The degree of containment is significantly and consistently overstated by the Appellant. As noted above Mr Gray conceded that a majority of the Site is in fact bounded by open land[25]. The suggestion that the country lanes and their landscaped frontages "separates the site from the open countryside beyond"[26] is flawed. The Site is <u>part of</u> that open countryside, not separate.

[20] RG XX
[21] CD7.06
[22] RG XX
[23] CD6.17, para. 6.1.3
[24] Russell Gray PoE, paras. 4.103 and 5.12
[25] RG XX
[26] RG PoE para. 4.103

21. Finally, it is common ground[27] that there is also harm to the fifth Green Belt purpose, in that the Site by being an agricultural field currently contributes to assisting urban regeneration by encouraging the recycling of derelict and other urban land. Albeit of limited weight, Mr Gray accepted that this is a material consideration in the balance[28].

22. The Inspector is therefore invited to conclude that:

    (1) The harm caused by loss of openness, both in visual and spatial terms, would be substantial, albeit limited to the Site and the immediate surroundings rather than the wider Green Belt;

    (2) The contribution of the Site to the third Green Belt purpose, preventing encroachment into the countryside, is substantial;

    (3) The Site also makes a contribution to the fifth Green Belt purpose.

<u>The effect of the proposal on the character and appearance of the area</u>

23. The Appellant's flawed assumption that the Site is "wrapped around" by the settlement has caused the Appellant to downplay the character and appearance impact. The Appellant exaggerates the extent to which the character and appearance of the area is defined by the settlement of Colney Heath rather than the open land bordering much of the Site. By building 100 homes on an agricultural field, the development would severely detract from the character of the area, with harm in both landscape and visual terms.

24. The proposal does not respect and relate to the character and context of the area, and will not conserve or enhance the local landscape character of Hertfordshire Landscape Character Area 29: Mimmshall Valley[29]. The Appellant understandably emphasises that, of the six "key characteristics" of Area 29, one of them is "major transport corridor" and another is "urban influence". But Mr Holliday in XX accepted that the area has both urban and rural characteristics. The study notes that "mixed farming" is another key characteristic, and the "landscape character" section notes the "wooded farmland character". Although the "visual impact" section notes that "the site (sic) and sound of the A1(M), railway line and the surrounding settlements of Potters Bar and Hatfield cause a significant impact on the character of the entire area", Mr Holliday accepted in XX that:

    (1) The A1(M) cannot be seen from the Site due to the presence of the woodland;

    (2) The railway line cannot be seen from the Site;

[27] Russell Gray PoE, para. 5.13
[28] RG XX
[29] See CD9.23 p. 17

(3) The settlements of Potters Bar and Hatfield cannot be seen from the Site.

25. Moving from the wider local landscape character area to the Site itself and the immediate surrounds, Mr Hughes and Mr Holliday agreed that the Site and the immediate landscape has "medium landscape value"[30]. It is also Mr Holliday's own evidence[31] that:

(1) The site and its immediate context has been assessed as having a medium sensitivity to change;

(2) The scheme would result in a medium magnitude of landscape change on the area;

(3) Overall, there would be a "moderate" landscape effect at the year of completion, turning to "moderate/minor" over time as the green infrastructure establishes.

26. Turning to visual impacts, it is acknowledged that the visual envelope of the Site is relatively limited in comparison with other sites. However the impact of the development within that envelope is substantial. There are a number of viewpoints both within and near the Site, including along the country lanes, public footpaths, permissive footpaths in the woodland to the east of the Site, and from nearby houses, where the visual impact arising from the proposed development will be harmful in effect. The impacts are significantly underestimated by the Appellant.

27. The suggestion by Mr Holliday, for example, that the scheme will only have "moderate visual effect"[32] for users of the public footpath crossing the Site east-west is plainly unrealistic. At present, it is a pleasant walk across an open arable field, with long views to the south of open countryside. The notion that the change is only "moderate" due to existing awareness of the houses to the north, and the continued presence of "green space" in the scheme ignores the fact that:

(1) Presently, the important views are those looking south to the open countryside;

(2) With the scheme in place, the housing and access roads will begin only a couple of metres from the edge of the footpath, leaving very little space with which to mitigate the visual impacts[33].

28. Similarly, Mr Holliday in XX conceded that the views of the proposed scheme from the edge of the woodland to the east of the Site would be more than the "glimpses" he identified in his Proof[34].

[30] GH para. 3.24 and PH in XX.
[31] GH PoE para. 5.3
[32] GH PoE paras. 6.13-6.14
[33] GH Appx 3, Figure 1, Landscape Strategy Plan.
[34] GH PoE para. 6.15

29. Overall, the Inspector is invited to endorse Mr Hughes' conclusion that, with respect to character and appearance, the degree of harm is "permanent, substantial and irreversible"[35]. The scheme would conflict with the following policies:

(1) WHBC:

(a) Policy D2 – "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"[36].

(b) Policy RA10 – "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 WH LCA"[37].

(c) Policy RA11 – This policy concerns the Watling Chase Community Forest, within which the Site is situated. The policy provides that "[w]ithin 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...."[38].

(2) SADC:

(a) Policy 2 – SADC will seek to "protect and enhance the essential character of existing settlements" and "safeguard the character of … Green Belt settlements". In Tier 3 settlements like Colney Heath, "development must not detract from the character and setting of these settlements within the Green Belt"[39].

(b) Policy 69 – "All development shall have an adequately high standard of design taking into account … the scale and character of its surroundings …"[40].

(c) Policy 70 – "The design of new housing development should have regard to its setting and the character of its surroundings …".

[35] PH PoE para. 5.138
[36] CD5.01, p.79
[37] CD5.01, p.193
[38] CD5.01, p.194
[39] CD5.02, p.13
[40] CD5.02, p.112

(d) Policy 74, in relation to the retention of existing landscaping.

The effect of the proposed development on the setting of the nearby listed building 68 Roestock Lane

30. This main issue can be taken shortly. Although there is a dispute as to the precise extent of the harm, it is common ground that the proposal will cause "less than substantial" harm to the setting of 68 Roestock Lane, a Grade II listed timber framed building dated to the late 17th century.

31. It is agreed that the Site forms part of the setting of this listed building. As explained by Ms Mitchell and Mr Hughes during the roundtable session, the listed building has an association with the surrounding agricultural land, including the Site, as part of its historical context. A likely historical association between the property and Site, and the view from the listed building to the south east, contribute to the significance of the listed building.

32. The Appellant suggests the harm is at the "very lowest end" of the category of less than substantial harm. The Councils invite the Inspector to agree with the assessment of Ms Mitchell and Mr Hughes that the harm would be "low to moderate" within the bracket of "less than substantial". Which ever position is preferred, there is still harm to some degree, which must be given "considerable importance and weight"[41] in the balance under main issue (5) (see below).

Whether the site is in an accessible location with regards to local services and facilities

33. By reference to the agreed Facilities Plan[42] and the roundtable discussion, the Councils invite the Inspector to conclude the Site is not in an accessible location with regards to local services and facilities.

34. "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"[43]. Although the Appellant was eager to emphasise that 800m is not an "upper limit" and "walking offers the greatest potential to replace short car trips, particularly those under 2km"[44], the "typical" 800m marker is an important indicator of how genuinely walkable the area actually is. The focus of the Appellant on the 2km "maximum" is revealing.

35. The only "facilities" within 800m of the Site are Roestock Park and Bullens Green / Red Hall Wood. It is only just possible to reach a bus stop within 800m of the Site. The facilities in Table 1 of the Facilities Plan, accessible only by the A1(M) underpass and by navigating the Bullens Green Lane / Roestock Lane junction with no footpath, are all more than double (or in some cases

[41] *Barnwell Manor Wind Energy Ltd v East Northamptonshire DC* [2014] EWCA Civ 137, para. 22 per Sullivan LJ.
[42] Appendix 1, Scott Schedule
[43] CD9.9, Manual for Streets, para. 4.4.1.
[44] Ibid.

nearly four times) the typical 800m walking distance. The nearest convenience store / post office is over 1km away. Mr Clemow during the roundtable discussion explained on behalf of the Rule 6 Party that "the underpass" is not a popular route to use because it can be subject to flooding, is "extremely unpleasant in the dark", and is said to be a location for "drug dealing and muggings". He said he himself would "certainly not use it unless armed", and that a lot of other people feel very uncomfortable about using it.

36. The nearest school is 1,661m away, around double the typical distance, and significantly in excess of the "acceptable" 1km walking distance for a school[45]. The walking pace of parents with children is typically lower than the average. As Mr Hughes explained, it is simply not realistic to expect families to walk their children to and from school each day with such a distance to travel, especially if those families also have a child at the local nursery too. In addition, he said that the footpaths are narrow in places and the journey involves crossing busy roads a number of times.

37. Even assuming distances in excess of 800m can reasonably be walked, the availability of services and facilities in Colney Heath is very poor. The Inspector would only need to spend some time walking from the Site to the school to appreciate the inaccessibility of the Site to local services and facilities.

38. In terms of cycling, many of the facilities thought by the Appellant to be accessible by cycling – e.g. doctor surgeries, supermarkets, day nurseries and schools – are unlikely to be visited by bike. The Appellant does not have regard to the quality and safety of the roads that need to be used to access the National Cycle Routes and facilities they rely on. Mr Hughes, a cyclist himself, said that nobody but "the most experienced cyclists" would contemplate cycling along roads like Tollgate Road and Coursers Road. Cycling to Welham Green Station along Tollgate Road is hazardous given the width of the road and the speed of traffic, especially at rush hour. St Albans Station, if you can cycle there through the congestion crossing the A405 and along the unlit Alban Way, presents only limited available cycle spaces given high demand.

39. Turning finally to buses, the circa 800m walk to the nearest bus stop is only the beginning. The bus stops within Colney Heath largely serve the same buses. The frequency is very poor, even by rural standards. The timetables[46] are alarmingly sparse, with three of the buses (200, 312 and 230) only coming once a week. The only bus to run a Monday – Saturday service, the 305, is still extremely limited, with hours between each bus and no bus late enough for a homeward commute. Mr Clemow's anecdotal evidence was that the limited bus services were not very reliable either.

[45] Phillip Hughes PoE Appendix 6, Guidelines for Providing For Journeys on Foot, p.52, Table 3.2.
[46] Scott Schedule, Appendix B

40. Overall, the suggestion by the Appellant that the Site is in a sustainable location is demonstrably flawed. Although it is right that the NPPF requires account to be taken of the more limited opportunities for sustainable transport modes in rural locations (paras. 103 and 108(a)), it is clear that the appeal scheme is in an unsustainable location even by rural standards. As Mr Hughes explain in the roundtable session, the scheme would be contrary to the requirement in NPPF para. 103 that "significant development should be focused on locations which are or can be made sustainable". Residents of the scheme would predominantly rely on the private car to access services and facilities.

41. In respect of the local plan policies:

    (1) Policy H2 of the WH District Plan requires applications for windfall development to be assessed against a number of criteria including "the location and accessibility of the site to services and facilities by transport modes other than car", "the capacity of existing and potential infrastructure to absorb further development" and "the ability to build new communities to support infrastructure and provide demand for services and facilities". This policy would be breached by the proposal given the above evidence in relation to the sustainability of the location.

    (2) SADC's plan does not have a specific policy on the accessibility of a site's location to services and facilities, and SADC instead rely on Policy 2 (which directs development towards the most sustainable locations, i.e. cities, towns and to a lesser extent larger villages), and NPPF para. 103.

<u>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</u>

42. The Government attaches "great importance" to the Green Belt under NPPF para. 133. The "fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open", and "the essential characteristics of Green Belts are their openness and their permanence": para. 133.

43. To alter the boundaries of the Green Belt through the preparation and updating of local plans, "exceptional circumstances" need to be "fully evidenced and justified": para. 136.

44. "Exceptional circumstances" is a "less demanding test"[47] than the test for permitting "inappropriate development" in the Green Belt on an individual planning application, namely the "stringent"[48] requirement to demonstrate "very special circumstances".

[47] *Compton Parish Council v Guildford BC* [2019] EWHC 3242, at [70] per Sir Duncan Ouseley.
[48] *R (Luton BC) v Central Bedfordshire Council* [2015] EWCA Civ 537, at [56] per Sales LJ.

45. It is common ground that the proposal constitutes "inappropriate development" for the purposes of NPPF para. 143[49]. Para. 144 provides the central test which the Appellant must overcome in this case:

> "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."

46. In considering this appeal scheme, it is instructive to look at other appeal decisions where the Secretary of State has found very special circumstances to exist. In opening[50], the Appellant stated that "the Secretary of State has made his view on this issue clear", with a "series of decisions in Green Belt authorities where the plan-led system has not delivered on time or at all". It is further said that "he's given the delivery of market and affordable housing very substantial weight, and has found that it clearly outweighs the harm to the Green Belt …".

47. The Appellant's submission that the mere delivery of housing to meet an identified shortfall is what "clearly outweighs" the harm to the Green Belt reflects a gross misunderstanding of these other decisions. Once these decisions are properly understood, it is astonishing that the Appellant is seeking to rely on them, because they serve to demonstrate just how demanding the "very special circumstances" test actually is. The facts of those decisions could not be more different from those of this case. The Secretary of State has indeed "made his view on this issue clear", but not in a way that helps the Appellant.

48. In re-examination of Mr Gray, it was asked why he thought the Councils were directing the Inspector's attention to these other appeal decisions. It was the Appellant (both in opening, and in Mr Gray's evidence[51]) who has sought to rely on these decisions in the first place. It is important for the Inspector to have an accurate understanding of how radically different those cases were from the present facts, and for her to get a flavour for what "very special circumstances" actually involve.

49. Taking these cases in turn, the Appellant's evidence referring to them neglects to mention the following[52]:

(1) <u>Burley-in-Wharfdale (CD11.01):</u>

(a) The proposed development was for up to 500 dwellings in Burley-in-Wharfdale.

[49] SoCG para. 10.1.
[50] Para. 12
[51] RG PoE para. 5.19
[52] All of these points were accepted by Mr Gray in XX.

(b) The application was called-in and had the local planning authority's support.

(c) The emerging plan contained a preferred allocation for the site: para. 18.

(d) In the adopted plan dated July 2017, the settlement of Burley-in-Wharfdale had Local Grown Centre status, with requirement to accommodate 700 new homes, which was also reflected in the recently made neighbourhood plan: para. 19;

(e) Core Strategy policies specifically confirmed that the provision of 700 homes will require a significant contribution from Green Belt land, with these policies being promoted, examined and adopted on the specific basis of the availability of the application site to provide the required land for the delivery of 500 dwellings: para. 19.

(f) There was recognition in the adopted local plan that (i) there were exceptional circumstances for using the GB to accommodate growth in the settlement, (ii) a significant contribution is necessary from Green Belt land, and (iii) this must involve the appeal site: para. 20;

(g) There were no unacceptable effects on landscape character, or visual effects: para. 28;

(h) There were heritage benefits of "significant value": para. 33.

(i) Moderate weight was given to new recreational facilities: para. 38.

(2) Oxford Brookes University Wheatley Campus (CD11.02):

(a) This was an application for up to 500 dwellings at the Wheatley Campus of Oxford Brookes University (Mr Gray's *alma mater*).

(b) The draft Neighbourhood Plan was given significant weight despite being pre-referendum due to new PPG guidance arising as a result of the Covid-19 pandemic: para. 16.

(c) There was a specific policy in the draft neighbourhood plan giving support for comprehensive redevelopment of the site in the way proposed, provided there was conformity with certain development principles: para. 14.

(d) In the emerging local plan, the site was proposed to be removed from the Green Belt and allocated for development: para. 19.

(e) Significant parts of the site were previously developed land and not inappropriate development under NPPF para. 145(g): paras. 20 & 22.

(f) The "inappropriate development" within the scheme was limited to only 14% of the site. para. 21.

(g) For the previously developed land part, there would be "significant visual benefit" to a "wide area" of the Green Belt resulting from the removal of the tower[53] (the subject of painful memories for Mr Gray) and other large unsightly structures, a consideration given "very substantial weight in favour of the scheme": paras. 22 & 46.

(h) There was "overall net gain in landscape and visual terms", and therefore no harm to character and appearance: para. 26.

(i) Heritage benefits of the scheme were given significant weight: paras. 28 and 29.

(j) The site was "well located to services and facilities in Wheatley", with offsite highway works and a bus service contribution given significant weight: para. 31.

(k) There was a net benefit to biodiversity given moderate weight: para. 38.

(l) It was concluded that the overall benefit to the openness of the Green Belt would alone be enough to outweigh the harm by reason of inappropriateness: para. 39.

(m) The reinvestment of proceeds arising from the sale of land into the education sector was afforded "significant weight": para. 49.

(3) Cheadle Hulme (CD11.03):

(a) A new school was the main focus of the development, but with up to 325 homes as enabling development.

(b) In the emerging plan, the housing part of appeal site was proposed for release from the Green Belt for residential development: paras. 12-13.

(c) The need case for the school, which would be for students with complex and multiple needs, was compelling: para. 24.

(d) The project underlying the scheme had multiple interlinked objectives, with a long term masterplan to meet charitable objectives of the Trust, and no element of the scheme (including housing) would not provide benefit to Seashell Trust and the

[53] The subject of painful memories for Mr Gray …

school's students. The proposed development was no more than the minimum necessary: para. 26.

(e) The provision of the school would be impossible without cross-funding by residential development: para. 27.

(f) The special needs education could not be met elsewhere, and carried "substantial weight": para. 28.

(4) South of Millfield Lane, York (CD10.05)

(a) This was a scheme for 266 dwellings.

(b) The emerging plan was found to be at an advanced stage, and proposed to remove the site from the Green Belt and allocate it for residential development. There were unresolved objections but not to the principle of the development, instead going to matters of detail that could be resolved by conditions "Moderate weight" to the emerging plan was given: para. 37.

(c) The Inspector found no harm to any of the Green Belt purposes. There was no encroachment into the countryside because of the separation of the site from nearby countryside by the outer ring road and an A road, and existing built form. There was therefore containment of the appeal site, which was found to not spatially or visually form part of the countryside: para. 29. This lack of any contribution to Green Belt purposes carried significant weight: para. 45. This conclusion was consistent with the evidence base in the emerging plan.

(d) The site was found to be "located in a sustainable location, accessible to everyday local facilities and services": para. 40.

(5) Land North of Asher Lane, Ruddington (CD10.14):

(a) This was a scheme for 175 dwellings in Ruddington.

(b) Ruddington is a village that is inset from the Green Belt: para. 50.

(c) The adopted plan required that a minimum of 250 homes be provided in or adjoining Ruddington, and that a majority of this will have to be on Green Belt land: para. 51.

(d) The Council's own assessment of the site was that it had the lowest Green Belt value of all the Green Belt land assessed on the edge of Ruddington: para. 52.

(e) There was a commitment in the adopted plan to review the Green Belt inset boundaries: para. 53.

(f) The only reason the Council did not express a preference for the allocation of this site related to the highway impacts, which the Inspector concluded were not a bar to development: para. 54.

(g) There was no heritage harm: para. 56.

(h) The Council agreed that the site was well contained: para. 56.

(i) The Inspector was critical of the Council's preferred sites and found that they performed less well than the appeal site in a number of respects: paras. 57-58.

(j) In reviewing the "other considerations" under NPPF para. 144, the Inspector noted that Ruddington is a "Key settlement" in the adopted plan, one of six large villages in the second tier of the spatial strategy, second only to main built up area of Nottingham. He noted that there was a policy expectation of a significant contribution from Ruddington, which will need to involve development of greenfield sites in the Green Belt: para. 62.

(k) There was "minimal" harm to the Green Belt, and less than the harm that would be caused by the developments of the preferred sites for allocation: para. 63.

(l) There were no "other harms" for the purposes of NPPF para. 144: para. 63.

(m) There was compliance with the adopted spatial strategy: para. 64.

50. It is self-evident that these cases are markedly different from the present case. Some of the key differences will be highlighted below.

51. As to the appeal scheme itself, it is necessary to consider the harms, followed by the "other considerations" in favour of the scheme.

52. First, there is the harm to the Green Belt. As Mr Gray accepted[54], there are three elements to this:

(1) First, inappropriate development is "by definition, harmful to the Green Belt" (NPPF para. 143), even before one considers harm due to loss of openness and harm to Green Belt purposes.

[54] RG XX

(2) On top of the definitional harm, the proposal will cause, on the Councils' case, substantial harm in terms of the loss of openness of the Green Belt, having regard to both visual and spatial aspects.

(3) In addition, the proposal will cause harm due to conflict with two Green Belt purposes. On the Councils' case, the contribution of the Site to the third purpose is significant and the harm by way of failing to safeguard from encroachment would be substantial and lead to substantial harm[55].

53. Mr Gray accepted[56] that NPPF para. 144 requires the Inspector to give all of this harm to the Green Belt "substantial weight".

54. Added to the Green Belt harm are the following "other harms" for the purposes of NPPF para. 144:

(1) Substantial harm to the character and appearance of the area (see main issue 2);

(2) Low to moderate "less than substantial" harm to the setting of a listed building, to which "considerable importance and weight" must be given[57] (see main issue 3);

(3) Harm by reason of the Site's unsustainable location with regard to local services and facilities (see main issue 4).

55. Set against this, the Inspector must consider the "other considerations" said by the Appellant to "clearly outweigh" the harms as required by NPPF para. 144.

56. The Councils accept that their housing land supplies are at 2.4 years (SADC) and 2.58 years (WHDC). The Appellant puts these figures at 1.64 and 1.85 respectively, but on account of the Appellant's acceptance that the difference does not make a material difference in the "very special circumstances" balance[58], it has been agreed that it is not necessary for the Inspector to determine which side is right.

57. In recognition of these significant shortfalls, the Councils accept that the provision of market housing in this case is a matter to which significant to substantial weight should be given[59].

[55] PH PoE para. 5.44
[56] RG XX
[57] *Barnwell Manor Wind Energy Ltd v East Northamptonshire DC* [2014] EWCA Civ 137, para. 22 per Sullivan LJ.
[58] Confirmed by Zack Simons on behalf of the Appellant at the CMC, and by RG in XX.
[59] Phillip Hughes PoE para. 6.21.

58. The scheme also provides that 45% of the 100 homes are to be affordable homes. Given the significant under-provision of affordable housing in both areas, this is a benefit which should carry substantial weight[60].

59. It is further recognised that the provision of 10 self-build homes accords with the requirement in NPPF para. 61 to ensure the provision of housing for different groups in the community, including people wishing to commission or build their own homes. For that reason, this is a benefit of the scheme, but Mr Hughes explained[61] that the provision of 10 self-build homes is a component of the provision of the 55 market homes, which already carries significant to substantial weight in the balance.

60. As Mr Hughes explained in oral evidence[62], the weight the Inspector gives to the provision of housing needs to reflect the uncertainty which arises from the pre-commencement Grampian conditions relating to off-site highway works, in particular the 1-2 year delay[63] that can occur in the process of making a Traffic Regulation Order. Mr Hughes has rightly expressed "considerable doubts" about the ability of the scheme to contribute to the five-year housing land supply[64].

61. Finally, Mr Hughes was rightly mindful – in giving weight to the housing shortfall – of the following passage in *St Albans v Hunston Properties Limited* [2013] EWCA Civ 1610 at para. 29 about the "planning context" of a shortfall:

> "The context may be that the district in question is subject on a considerable scale to policies protecting much or most of the undeveloped land from development except in exceptional or very special circumstances, whether because such land is an Area of Outstanding Natural Beauty, National Park or Green Belt. If that is the case, then it may be wholly unsurprising that there is not a five year supply of housing land when measured simply against the unvarnished figures of household projections. A decision-maker would then be entitled to conclude, if such were the planning judgment, that some degree of shortfall in housing land supply, as measured simply by household formation rates, was inevitable. That may well affect the weight to be attached to the shortfall."

62. The Appellant also relies on "the fundamental failure of 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"[65].

63. Four points can be made in response.

64. First, the delays in plan-makings in both areas are the background context and underlying cause of the significant shortfalls in the provision of market (inc. self-build) and affordable housing. If

[60] Phillip Hughes PoE para. 6.30.
[61] PH PoE para. 6.26-6.28.
[62] And in his PoE para. 6.39
[63] Lindsay McCauley in the highways roundtable
[64] PH PoE para. 6.39.
[65] Russell Gray PoE para. 5.16

there were no shortfall, there could be no complaint about any failure in plan-making to deliver sufficient housing to meet needs. The plan-making failures and the consequent shortfall is the justification for the significant to substantial weight being given to the delivery of market housing, and the substantial weight being given to the delivery of affordable housing. The plan-making delays are therefore part and parcel of the positive consideration in favour of the scheme, namely the provision of housing. It is not a separate and distinct "other consideration" under NPPF para. 144 weighing in favour of the scheme. Mr Gray in XX was unable to point to any appeal decision where this approach of separate consideration is adopted. If the plan-making delays were to be treated as separate consideration, it would amount to double-counting, because this is already factored in to the weight to be attached to the provision of housing. Therefore, the Inspector should not give weight to this issue as an "other consideration" distinct from the benefits brought about by the provision of market and affordable housing.

65. Second, it is all very well for the Appellant to complain about the failures of plan-making and the absence of a "plan-led" solution for the Site, but Mr Gray admitted in XIC that, due to an "oversight", the Site was not even promoted for allocation in the emerging WHBC plan. It is an unattractive argument to criticise the plan-making process when the Appellant itself failed to engage with that process in respect of the WHBC plan. The same can be said for Mr Gray's concerns about the "complications" for plan-making that arise from the Site being cross-border – there was no attempt by the Appellant to even try to get the Site allocated on both sides of the border.

66. Third, it is necessary to consider the relevance of the delays in plan-making in both areas in the context of this specific appeal site. This, after all, is a s.78 appeal about this scheme on this site, not a plan examination. As Mr Hughes explained[66], there has never been any real prospect of the Site getting allocated for housing in the development plan for either area. Taking the plans in turn, the position in WHBC is as follows:

    (1) In WHBC's emerging plan, there is planned to be significant Green Belt release (around two thirds of the proposed allocations are Green Belt sites – 49 out of 77[67]).

    (2) These allocations arise from a comprehensive site selection process, carried out consistently with the settlement strategy and hierarchy in draft policy SP3[68], according to which the primary focus for development will be in and around the two towns of Welwyn

[66] PH XiC
[67] See Site Selection Background Paper CD6.23 para. 6.23.
[68] CD6.01 p.41-42

Garden City and Hatfield, reflecting the accessibility of these centres to services and facilities.

(3) Policy SP3 further provides that the secondary focus will be in and around the excluded villages "at a more limited scale".

(4) Policy SP3 also states: "*In villages and other rural areas of the borough that lie within the Green Belt, development will be restricted so as to be consistent with the type of development envisaged in national planning policy and other policies of this plan*".

(5) In the settlement hierarchy, Bullens Green is a "small Green Belt village / settlement", the bottom of the six-tier hierarchy. The "description and function" provides that "[s]*mall villages and hamlets in rural areas or other areas of development all located within the Green Belt. Typically residential, communities must look towards larger settlements for services and facilities. Accessibility is mainly car dependant. Not generally suitable for further development unless it is compatible with Green Belt policy*."

(6) In the Stage 3 Green Belt Report[69], which assessed the 95 parcels (including Parcel 54 containing the WH part of the Site), there were 184 different "scenarios" of release (multiple different scenarios of release arose for some parcels). Of those 184, 62 scenarios had a harm rating or "low", "low-moderate" or "moderate". In other words, Mr Gray accepted[70] that around a third of the scenarios were assessed as resulting in greater Green Belt harm than the release of Parcel 54 (assessed at "moderate-high" harm). That is before one even considers the problems of suitability of the Site from the perspective of accessibility to local services and facilities.

(7) On any view, the Site is a long way down the list of potential sites for allocation.

(8) It is therefore no surprise that when the examining inspector published his Interim Report in October 2020[71], he was critical of the distribution of development among the excluded villages (tiers 3 and 4 of the hierarchy), but did not criticise WHBC in respect of their consideration of tier 6 settlements like Bullens Green.

(9) While there are therefore some fundamental issues requiring resolution in the WHBC emerging plan, those issues do not concern the Site in this particular appeal. Mr Hughes said in REX that if WHBC had written to the examining inspector in response to the interim

[69] See CD6.12, p.56, Table 7.1
[70] RG XX
[71] CD6.02 paras. 101-104

report, and proposed the allocation of the Site as suitable for Green Belt release and housing, the inspector would have been "astonished".

67. Turning next to SADC:

(1) In SADC's now withdrawn plan, the SADC part of the Site had been assessed and rejected in the SHLAA 2009, as updated in 2016, 2017 and 2018[72]. The assessment form stated that the site should not be given further consideration for housing development for the following reasons:

> "No. The site comprises agricultural land which is rural in character. Its development would constitute visual intrusion and encroachment into open countryside. Development of this relatively large site (approx 5 ha) could have a significant adverse effect on the size and character of Colney Heath village, where infrastructure is already stretched. Development would also be likely to have an adverse effect on the setting of No. 68 Roestock Lane, a Grade II listed house, which lies to the north of the site and could prevent the land from making a positive contribution to the Watling Chase Community Forest. NB: Part of the site lies within Welwyn Hatfield District."

(2) As noted above, the Site was also not identified for further consideration in the Stage 1 Green Belt Review Purposes Assessment (November 2013).

(3) The Green Belt review process in SADC was criticised by the Examining Inspectors for excluding consideration of sites with a capacity of fewer than 500 homes. However, the evidence of Mr Hughes[73] is that, even if a finer grained review of non-strategic sites had taken place, and the SADC part of the Site had been considered, in his view it would have been rejected on account of the contribution it makes to the Green Belt's purposes, and the significant impact on openness that would result from release for development. Like with WHBC's part, Mr Hughes said there was never any real prospect of the SADC part being considered suitable for allocation, regardless of the failings in the GB assessment.

68. The fourth and final point to make in relation to the "failure of plan-making" argument by the Appellant is to note what Sir David Keene said in *Hunston* at [31]:

> "There seemed to be some suggestion by Hunston in the course of argument that a local planning authority, which did not produce a local plan as rapidly as it should, would only have itself to blame if the objectively-assessed housing need figures produced a shortfall and led to permission being granted on protected land, such as Green Belt, when that would not have happened if there had been a new-style local plan in existence. That is not a proper approach. Planning decisions are ones to be arrived at in the public interest, balancing all the relevant factors and are not to be used as some form of sanction on local councils. It is the community which may suffer from a bad decision, not just the local council or its officers."

[72] Phillip Hughes PoE para. 4.51 and CD7.07.
[73] Phillip Hughes PoE para. 4.56 and XiC.

69. The alleged benefits of "additional footpaths and new landscaped areas"[74] need to be seen in the context of the loss of an open arable field that already has a public footpath running through it, and the economic benefits from construction and new residents contributing to the local economy are noted but should only carry limited weight, especially having regard to the inaccessibility of the Site in relation to services and facilities[75].

70. Finally, the Appellant argues that, although the biodiversity provisions of the section 106 agreement only secure no net loss to biodiversity (rather than net gain), the separate Green Space Contribution in the section 106 agreement will have the consequence of securing an overall net gain to biodiversity through the provision of "a wildflower meadow also with spring bulb planting at Angerland public open space off of Bishops Rise, South Hatfield". This issue was explored in the section 106 session. In sum, the Councils have two concerns:

    (1) Although it is accepted that the two contributions are dealt with separately, there is nothing in the section 106 agreement to prevent the Appellant from relying on any biodiversity gain arising from the Green Space Contribution as part of their Biodiversity Offsetting Scheme and Biodiversity Offsetting Contribution, which the s.106 (see the definition of the Biodiversity Offsetting Contribution on p.5) limits to a contribution to "offset the loss of habitats on the Site". In other words, if so relied on, the Green Space Contribution would have the effect of reducing what else needs to be provided by way of the Biodiversity Offsetting Contribution, with the end result that there is still no net gain. There is only no net loss. Although the Councils have the power to reject or approve the Biodiversity Offsetting Scheme, it is not clear on what basis they could do so if the Appellant can provide evidence of biodiversity gain through the Green Space Contribution. As Mrs Ambrose put it, there is nothing in the section 106 to secure the biodiversity net gain.

    (2) Even if this is not right and the Green Space Contribution is treated separately and cannot be factored in to the Biodiversity Offsetting Contribution, with the result that there is potential for net gain, Mr Martin Hicks in the s.106 roundtable session explained that the biodiversity gains of the Green Space Contribution (i.e. the wildflower meadow) are unquantified, and no detail on such alleged gains has been provided by the Appellant. There is also no information about monitoring, and it is notable that the wildflower meadow is in public open space, with no information about how the Appellant suggests it might be protected from members of the public.

[74] Russell Gray PoE para. 5.27
[75] Phillip Hughes PoE para. 7.18

71. Taking stock of the appeal scheme, in comparison with the other appeal decisions set out above, Mr Gray in XX accepted the following points:

(1) Common among all of them, there is a significant market and affordable housing shortfall. The provision of market (including self-build) and affordable housing is clearly an important consideration in favour of the scheme in this case.

(2) It is common ground that two Green Belt purposes will be harmed, as opposed to the York case where was no harm to the Green Belt purposes.

(3) It is common ground there will be harm to openness from a visual and spatial perspective, in contrast with the Wheatley case where there was an overall benefit in terms of openness.

(4) It is common ground there will be less than substantial heritage harm. This is in contrast with Wheatley and Burley-in-Wharfdale, where there were heritage benefits.

(5) It is common ground there will be negative visual and landscape effects, as opposed to Wheatley, where there was an overall gain in landscape and visual terms.

(6) Accessibility of location is a point of dispute, but if the Councils are right that the Site is not in a sustainable location, this is in contrast to Wheatley where it was found to be "well located" regarding facilities and services, and similarly in the York decision.

(7) Unlike in all five of the appeal decisions, there is no draft allocation in an emerging plan, and/or no support for an allocation in an adopted plan.

(8) The profits will all go to the landowner and the developer, unlike in the Cheadle Hulme case where all the profits went to the charitable trust, or in the Wheatley case where the profits would be reinvested in the education sector (both of which were given significant weight by the Secretary of State).

72. Mr Hughes explained his view in XIC that, even if the Appellant were to succeed with their arguments on main issues (1)-(4), and with their arguments as to the weighting of the provision of housing in main issue (5), the Appellant would still not succeed in demonstrating very special circumstances. He said in XIC that this was not a "marginal" or "borderline" case.

73. The reality is that the "other considerations" of this scheme fall cumulatively far short of "outweighing" the harms, let alone "clearly outweighing" them as required by NPPF para. 144. In short, there is nothing "very special" about the circumstances of this case.

Conclusion

74. The proposal must be determined in accordance with the development plans unless material considerations indicate otherwise: s.38(6) of the Planning & Compulsory Purchase Act 2004.

75. Mr Gray in XX accepted that the very special circumstances balance in NPPF para. 144 is determinative of this appeal.

76. In the case of WHBC, the Welwyn Hatfield District Plan 2005 originally had a policy (Policy RA1[76]) which effectively replicated the "very special circumstances" test in national policy. As a result of this replication, it was not "saved". However, as the Appellant recognises[77], the supporting text to Policy GBSP2, "Towns and Specified Settlements"[78] makes reference to Bullen's Green as being among a number of settlements that are located within the Green Belt and thereby subject to national Green Belt policy. The Proposals Map also confirms its status as a washed over settlement within the Green Belt. A proposal which breaches national policy, principally NPPF para. 144, will accordingly breach this policy of the development plan.

77. In the case of SADC, the St Albans District Local Plan Review 1994 contains Policy 1, entitled "Metropolitan Green Belt", which consistently with national policy precludes this form of development in the Green Belt save in "very special circumstances".

78. For the reasons given above, the proposal does not pass the "very special circumstances" test and is therefore contrary to the relevant policies of both development plans. Also for the reasons given above, the proposal breaches those policies identified in the reasons for refusal and Mr Hughes' Proof of Evidence that relate to locational sustainability, harm to the setting of a heritage asset and character and appearance.

79. Accordingly, it is submitted that the proposal does not accord with either development plan.

80. As to material considerations, NPPF para. 11 and footnote 7 provide that the most important policies for determining the application are deemed to be out-of-date in the absence of a five year housing land supply. That is the case here. NPPF para. 11 provides that permission should be granted unless "the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed". Among these policies are those protecting designated heritage assets, and those protecting the Green Belt: see footnote 6.

[76] CD5.01, p.185
[77] Russell Gray PoE para. 3.53-3.54.
[78] CD5.01, p.29, para. 4.12.

81. Although it is not considered that the application of NPPF para. 196 (the heritage balance) provides of itself a clear reason for refusing the development (because the public benefits do outweigh the heritage harm in isolation), the Councils have demonstrated that the application of NPPF para. 144 (the "very special circumstances" test) does provide a clear reason for refusing the development.

82. For these reasons, the proposal conflicts with the development plans and no material considerations justify a departure from those plans. The Councils accordingly invite the Inspector to refuse permission and dismiss the appeals.

MATTHEW FRASER
Landmark Chambers
180 Fleet Street
London

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