

LAND OFF BULLENS GREEN LANE, COLNEY HEATH

Appellant's Closing Submissions

Introduction

1. For all the many documents before you, the issues in this appeal are now simple. Most of the important points are agreed. In particular, both Councils agree¹ with the Appellant that:
 - (i) If the scheme's benefits clearly outweigh its harms, you should allow the appeal and grant planning permission.²
 - (ii) The Councils accept that the scheme's benefits are **profound**.³ We explain why that is so below.
 - (iii) The Councils also concede that – on either side of the district boundary – important Government objectives are not being met. In particular, they accept that there is no effective plan-led system within the meaning of §15 NPPF – either in Welwyn Hatfield or St Albans. That means that there is no framework for addressing their needs for housing (which they accept are “*substantial and serious*”).⁴ In relation to affordable housing, Mr Hughes for the Councils called the position “*unacceptable*”, and the future “*bleak*”.

¹ See the cross-examination of Mr Hughes.

² §144 NPPF.

³ I put to Mr Hughes in cross-examination on Day 4 of the inquiry on 30.4.21 that “*some of the scheme's benefits in these two parts of the country are profoundly important*” and he responded “*they're profoundly important wherever you are*”.

⁴ PH PoE §6.12.

- (iv) We agree that for either Council to meet its needs for housing, the use of Green Belt land is **inevitable**. That is obviously right: outside the urban areas, almost all of both Councils is washed over by the Green Belt. 79% of Welwyn Hatfield is in the Green Belt,⁵ and 82% of St Albans.⁶
- (v) We agree that you have no way of knowing if and when either Council will ever adopt an up-to-date local plan.
- (vi) In consequence, the Appellant and the Councils agree that for *either* Council to actually start addressing its needs **now**, the challenge **cannot** be met through the plan-led system (which, again, Mr Hughes accepted has been and remains “*ineffective*” on both sides of the district line). Which means those needs must now be met through the development management process. Through planning applications just like this one. Which means that Green Belt approvals will **inevitably** be required applying the planning balance at §144 NPPF. Again, there really is no other option. That is a statement of the inevitable.
- (vii) And finally, both Councils now agree that our scheme’s impacts on its local landscape will be “*contained*”, that any effects on the wider integrity of the Green Belt would be no more than “*limited*”, that public benefits outweigh any harm to the significance of 68 Roestock Lane, and that there are no other technical constraints to the scheme’s delivery.
2. In the end, the appeal site is a pleasant but unremarkable, undesignated field on the edge of a sustainable settlement. The Councils now accept that if permission’s granted, our scheme

⁵ CD6.12, §2.13, p.5.

⁶ <https://www.gov.uk/government/statistics/local-authority-green-belt-statistics-for-england-2019-to-2020>

would then be – in the language of the NPPF – “*developable*”⁷, i.e. “*in a suitable location for housing development*”⁸. In the end, if they ever want to start meeting the shortfalls of not tens, or hundreds but **thousands** of homes on both sides of the district line, this is the kind of scheme these Councils must start approving. Its benefits clearly outweigh its harms, and for reasons we will explain below, the balance at §144 NPPF supports allowing the appeal and granting planning permission.

The plan-led system in both LPA areas is broken

3. This part of Hertfordshire has been persistently let down by the planning system.
4. Years go by – decades pass – national policies come and go. But through it all, these two Councils have managed to keep their heads buried firmly in the sand. There’s been no strategic review of Hertfordshire’s Green Belt in almost 40 years. New plan-making exercises have been tried. They have failed. The adopted plans for both Councils are from another era.

(i) St Albans

5. The St Albans local plan [CD5.02] was adopted in 1994. That makes it the oldest local plan in the country. 18 years even before the 1st NPPF.⁹
6. The parties agree that this plan is *deemed* out of date under national policy.¹⁰ And we also agree that it is *substantively* out of date. It sought to address the needs of a different generation,

⁷ See Inspector’s questions to PH.

⁸ See the definition of “*developable*” in “Annex 2: Glossary” to the NPPF.

⁹ And before one member of the appellant’s professional team was born.

¹⁰ §11(d) and footnote 7 NPPF.

i.e. from 1991 – 2001.¹¹ And it did that almost 2 decades before the “*radical*” shift brought about by the 2012 NPPF, which made meeting objectively assessed needs for housing “*not just a material consideration, but a consideration of particular standing*”.¹²

7. There have been two attempts to adopt a new plan in St Albans since 1994. Both have failed.
8. The reasons for the most recent failure emerge from the Inspectors’ April 2020 letter at [CD7.01]. It’s a familiar but depressing story. The failure to cooperate with neighbours (including, of course Welwyn Hatfield) on meeting housing needs in the Green Belt. No proper Green Belt evidence base: the 2013 review at [CD6.17] on which Mr Hughes put so much emphasis¹³ is deprecated as too high-level, insufficiently granular to pick up the capacity of smaller sites like this one, and of course was never re-visited to have regard to the District’s spiralling needs. In the end, the Inspectors rejected St Albans’ approach to only considering release of sites of at least 500 dwellings. They specifically required a new Green Belt review which moves beyond that narrow focus on “*strategic*” sites, and considers “*a range of smaller sites*”: see §41, §42, §58.
9. In passing, we note this is a good illustration of why a cross-boundary site of this scale faces such challenges in achieving an allocation on either side of the line. This kind of site simply hasn’t been thought big enough to warrant the challenges of these Councils working together on e.g. infrastructure or the difficult questions of what components of the scheme go into which district (for an example of the challenges of achieving cross-boundary working, see some of the difficulties of the conditions and s.106 session this morning in

¹¹ See p.6, §1.17 [CD5.02].

¹² See the *Gallagher v Solihull* case at [CD12.06], §31 and §97-§98. Hickinbottom J’s conclusions on these points were upheld by the Court of Appeal.

¹³ See PH’s proof e.g. from p.34.

trying to achieve unanimous views from the various Council representatives – obvious answers, like targeting a green space contribution at the green space literally next to our scheme are overlooked just because these Councils cannot get their heads together and reach basic, sensible solutions). And even when it comes to larger strategic-scale issues, time and again, the problem has been that these Councils have not been talking to one another about housing solutions in the Green Belt. The site wasn't put forward in the latest Welwyn call for sites, but that's irrelevant. This isn't a plan examination. It's an appeal. The relevance of the break down in the plan-led system here isn't that *we* won't be allocated. It's that *nobody* will be allocated because neither Council has a plan-led way out of this mess.

10. In any event, the St Albans plan was withdrawn last year. There's no new Green Belt review. There's no new draft plan. Right to back square 1. Still. 27 years later. Mr Hughes agreed in cross-examination that:

- (i) We have *no idea* **if** or **when** this Council will ever adopt another local plan;
- (ii) If sites are to come forward in St Albans to meet its very serious needs, it is inevitable that Green Belt land is required; and so
- (iii) It is inevitable that those needs will be addressed through the development management process, which means that permissions will need to be granted applying the balance at §144 NPPF.

(ii) Welwyn Hatfield

11. The position is just as bleak in Welwyn Hatfield. Its last plan was adopted in 2005 [CD5.01], but again Mr Hughes agreed that plan is both *deemed* out-of-date and *substantively* out-of-date. That too was designed in a totally different national policy context to meet the needs of a different era, in particular the requirement set by the Hertfordshire Structure Plan from

1991-2011. Many moons before the NPPF and its radical shift in approach to meeting housing needs.

12. The Council started preparing its evidence for the *next* local plan back in 2005. Alas. That journey continues.
13. The Welwyn Hatfield plan examination is now (by a considerable distance) the longest-running in the country.¹⁴
14. The plan was submitted in May 2017 – 4 years ago. Quite remarkably, it is *still* being examined. Under the 2012 NPPF which has now been superseded not once but twice. And even more remarkably, given all the time and effort which has gone into the plan's preparation and examination by officers and Inspector Middleton:
 - (i) We **still** do not know what housing target the plan will actually seek to meet. Inspector Middleton has endorsed the Turley figure of 800 dpa – substantially more than the plan as submitted – and repeatedly emphasised that the plan should contain enough sites to meet *at least* that figure. But at the end of 2020 [CD6.06], several years into the plan's examination, in a remarkable turn of events even for this Council, members now propose to reject the advice of their own expert consultants on this issue, and are supporting a lower figure. We await the Inspector's conclusions on this topic. One can only imagine that even his patience is starting to wear thin. In any event, the housing target to be met is, as Mr Hughes accepted, a point of **fundamental** importance to the soundness of the rest of the plan. It's the starting point on which the rest of the spatial

¹⁴ See the PINS database at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/968663/LPA_Strategic_Plan_Progress_-_1_March_2021_GOV.UK.ods

strategy hinges. And, as Inspector Middleton said last month, on this point “*we have almost run out of opportunities for making this plan sound*”¹⁵.

- (ii) We **still** do not know what sites will be in the plan to meet whatever the need figure turns out to be. This is a plan which has never actually set out to meet its objectively assessed needs.¹⁶ Almost 20% of the trajectory in the submitted plan was comprised of two strategic sites: 1,130 homes in a new village at Symondshyde, and 1,200 homes to the south-east of Welwyn Garden City in the “*Birchall Garden Suburb*”. However, we know that only 600 homes are now proposed in the BGS [CD6.33]. We also know that the Council’s members no longer supports the allocation at Symondshyde [CD6.34], albeit the Inspector has rejected their belated attempt to remove Symondshyde from the plan.¹⁷ We also know that the Council has *very* belatedly tried to rely on 700 units at Potters Bar, but that last-gasp attempt has also been rejected by the Inspector [CD6.09]. All of which means that (a) producing enough sites at this late stage in the plan’s examination will be, to put it mildly, a very considerable challenge, (b) unless the Council *can* produce enough sites to meet its OAN, Inspector Middleton has told us he “*will very likely proceed to find the plan unsound*”,¹⁸ and (c) even in the unlikely event the Council *can* find enough sites to meet whatever its OAN turns out to be, there’s a substantial risk councillors will vote not to adopt the plan because it would release the Symondshyde site for development which members no longer support.

¹⁵ CD6.32, §16.

¹⁶ CD6.01, p.37, §5.9.

¹⁷ CD6.32, §14.

¹⁸ CD6.32, §16.

(iii) On all of these topics, including the correct approach to Green Belt and a number of other fundamental matters, Inspector Middleton has noted that further hearing sessions may be required, which may run into 2022.¹⁹

15. So Mr Hughes was right to accept in cross-examination that (i) we do not know when and if the Welwyn Hatfield plan will ever be found sound, and that (ii) even if it were found sound, we have no idea whether the Council would vote to adopt a plan containing the Symondshyde allocation. Further, as Mr Gray explained in his oral evidence, even if it *were* adopted, given all of the fundamental issues still at large, we've no idea whether the spatial strategy in the current draft will actually resemble the strategy we end up with. So comments Mr Fraser's confidence that e.g. nothing will change for villages like Bullens Green is – with respect – totally unfounded. We just don't know.

(iii) The consequences of these failures to plan

16. Mr Hughes accepted in cross-examination that the plan-led system envisaged by the NPPF has been **ineffective** both in St Albans, and in Welwyn Hatfield. We agree. So the position is simple:

(i) The scale of the housing shortages on both sides of the district line are staggering. We return to them below. Mr Hughes agrees that they are both substantial and serious.

(ii) For both Councils, we cannot possibly know if there'll be a plan-led answers to this crisis in the short or medium term. Again, Mr Hughes agrees.

(iii) We know, and again Mr Hughes has agreed, that the use of Green Belt land is inevitable to meet these shortfalls. We also know, as Mr Hughes confirmed in cross-examination,

¹⁹ CD6.32, §19.

that Green Belt land will be required which has been graded by the Councils' consultants as making a significant contribution to the 3rd Green Belt purpose (i.e. countryside encroachment) – we return to that below.

- (iv) Which is why Mr Hughes was right to agree in cross-examination that if the Councils' needs are to be addressed in the short or medium terms, then (a) that must be done through the development management process on Green Belt land which has been assessed as making a significant contribution toward the 3rd purpose (encroachment) and (b) it is inevitable that the test at §144 NPPF will be engaged. Not just engaged. For needs to be met, the §144 balance will actually have to be *passed*. We return to how the balance should be struck in this case below.

17. The Councils' closings at §63-§68 give us 4 reasons said to “*respond*” to this disastrous failure to plan. Taking each one in turn:

- (i) First, it's said the failure to plan isn't a separate consideration from the general shortfalls in market or affordable housing. Quite wrong. There's a world of difference between authorities which (a) have a housing land supply shortfalls but also (b) have a plan-led way out of that shortfall, and the position here. Where there simply isn't a plan-led way out. The Councils tell us on p.11 that the “*exceptional circumstances*” test is “less demanding” than the balance at §144 NPPF. Of course it is. Because the NPPF works on the optimistic assumption that Green Belt will be dealt with properly through the plan-led system. Again, in this part of Hertfordshire, that assumption is wrong. And approving schemes through §144 isn't an option. It's a certainty.
- (ii) Second, it's said we cannot “complain” about these failures because the site wasn't put forward in the most recent Welwyn call for sites. That's a non-sequitur – our “complaint” about plan-making here district-wide, not site specific. It's a red herring.

And it doesn't help us because we know that even if this site had been put forward, and had been chosen for allocation, we'd still be in the same position because the plan remains so far from actually being adopted.

- (iii) Third, it's said we'll never be allocated. This may be right (at this rate, we're very unlikely every to find out). But even if it is right, that says more about the confused and unproductive way these Councils have set about their site selection processes than it does about the merits of a sustainable scheme on a sustainable site. On the St Albans side of the line, this myopic focus on 500+ home schemes and inadequate discussions with neighbouring authorities on addressing needs for housing. Mr Hughes thinks a finer-grained Green Belt review won't lead to our site being preferred but (obviously) without having done that district-wide exercise – which he hasn't – there's literally no way he can possibly give that evidence. In Welwyn, we know all about the long-standing determined reluctance to identify enough homes to meet needs. And again, if you're looking for an example of the challenges faced by a promoter of site which bounds both of these authority areas, look no further than today's s.106 session. The idea at §66(9) of the Councils' closings that the "fundamental issues" with the Welwyn plan couldn't impact our site is wrong. Those issues don't just relate to towns. Or villages. They relate to *all* sites in Welwyn Hatfield. Housing need. Housing trajectory. Green Belt boundaries. These points go to the heart of the spatial strategy.
- (iv) Fourth, the Councils quote the *Hunston* judgment. Another red herring. All it says is that planning decisions should be taken in the public interest. Obviously so. That's what §144 is all about. We return to how the balance should be struck below.

The scheme's benefits will be profound

(i) Affordable housing

18. In St Albans, the parties agree that:²⁰

- (i) Only **6%** of the Council's needs over the last 7 years have been met.
- (ii) The net shortfall during that period has been over 4,000 homes.
- (iii) Mr Hughes agreed that position was **acute**. He also agreed that the position was very unlikely to be remedied for many years.

19. In Welwyn Hatfield, the position is even worse. The parties agree that:²¹

- (i) Only **3%** of the Council's needs over the last 5 years have been met.
- (ii) The net shortfall is almost 4,000 homes – **almost 4,000 homes short in only 5 years.**
- (iii) Over 2,200 people are on the housing register. People are waiting – on average – between 10 months and 2 years for an affordable home. More and more people are being forced to rely on temporary accommodation.

20. As Mr Stacey's evidence shows, at the current rates of delivery, it is inconceivable that either Council will address these staggering shortfalls.

21. Mr Hughes agreed that this position is **unacceptable**. Mr Hughes called the future "*bleak*". He agreed that this acute situation is "*of the utmost seriousness*". And that it's a symptom of the plan-led system not doing its job.

²⁰ See Mr Stacey's Figure 5.4, p.27.

²¹ See Mr Stacey's Figure 6.3, p.34.

22. He was right to make those concessions. The numbers in Mr Stacey’s evidence tell a dreadful story. But in all the figures, it’s easy to lose sight of these simple truths:

- (i) The purpose of the planning system is to contribute to the achievement of sustainable development: §7 NPPF.
- (ii) That means ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations: §8 NPPF.
- (iii) As Inspector Harold Stephens said²² (in conclusions with which the Secretary of State agreed)²³:

“8.123 [...] Without adequate provision of affordable housing, these acute housing needs will be incapable of being met. In terms of the NPPF’s requirement to create inclusive and mixed communities [...] this is a very serious matter. Needless to say these socially disadvantaged people were unrepresented at this Inquiry.

8.124 [...] **These are real people in real need now.**”

- (iv) Last year, the Secretary of State gave “*very substantial weight*” to the delivery of affordable housing as part of his finding that the balance at §144 NPPF had been passed in the Green Belt in South Oxfordshire²⁴ in circumstances where the Council had described the shortage as “*acute*”. Of course, Mr Hughes agreed that the position is also acute here. Rightly so.
- (v) The Secretary of State reached the same view only last month – i.e. that “*very substantial weight*” should be afforded to the delivery of affordable housing in the context of major

²² CD11.06.

²³ CD11.06, DL:23.

²⁴ CD11.02, DL:35.

acknowledged shortfalls, and again those benefits were part of the justification for approving development in the Green Belt under §144 NPPF.²⁵

(vi) Similarly, in the Dylon appeal,²⁶ when finding that there were very special circumstances to justify development in Metropolitan Open Land in Bromley, Inspector George Baird gave the delivery of affordable homes “*very substantial weight*” – relying on very similar affordability indicators to those before this appeal (e.g. waiting list times, temporary accommodation, affordability, private rents and a “*bleak*” future position on delivery).

(vii) That the shortfalls are so large doesn’t somehow make the contribution from this scheme’s 45 units less important. On the contrary, in the context of net annual delivery figures of 23 affordable homes *across all of Welwyn Hatfield*,²⁷ and 35 *across all of St Albans*,²⁸ 45 affordable homes represents a substantial contribution to local supply.

23. How do we know the Councils aren’t addressing this issue with enough seriousness or urgency? Because their closings deal with weight to be given to this issue not in 2 pages or 2 paragraphs but 2 sentences at §58. And the first of those just describes what the offer actually is.

24. The position is clear. The shortfalls in delivery are *very* substantial. The needs are *very* substantial. The scale of the crisis in affordable housing and affordability is *very* substantial. These are real people in real need now. They were not represented at this inquiry. And the delivery of homes to meet their needs is a benefit which should attract *very* substantial weight.

²⁵ CD11.01, DL:24 and 44.

²⁶ CD10.19, DL:33-35.

²⁷ JS figure 6.2, p.33 – net 113/5.

²⁸ JS Figure 5.3, p.26 – net 244/7.

(ii) Market housing

25. On the Councils' best case, its shortfalls in housing delivery over the next 5 years will be 2,746 homes in St Albans and 2,544 homes in Welwyn Hatfield. On the appellant's case, the position is even starker: a 3,616 home shortfall in St Albans and a 3,303 shortfall in Welwyn Hatfield.²⁹ All of those numbers, of course, measured against minimum 5 year targets: §73 NPPF. Which should be a floor and not a ceiling to delivery. Of course, both Councils have also failed the most recent Housing Delivery test by hundreds and hundreds of homes.³⁰
26. Mr Hughes accepts these shortages are very substantial. They are severe. He agrees that significantly boosting supply has been an important objective of Government policy for many years, and was a major thrust of the 2012 NPPF. He agrees it's an important objective. And that it's being failed in both Council areas.
27. Mr Hughes also agreed that the imperative at §8 NPPF of ensuring enough homes are provided to meet the needs of present and future generations is being failed in both St Albans and Welwyn Hatfield. And he agreed that, at present, neither Council has a plan to correct these failures.
28. The position is bleak. The planning system is failing in its most basic task here. And those failures are having dire social, economic and environmental consequences: families unable to afford somewhere to live, unsustainable solutions with people being forced to find a home further away from where they work, shop and socialise. Economic growth which simply is not and cannot happen without sensible population growth. When it comes to this scale of failure to deliver housing, justice delayed is justice denied.

²⁹ Mr Gray's appendix RG2, p.14.

³⁰ Each Council scored only 63% which activates the tilted balance: see Mr Gray's appendix RG2, p.5.

29. Which is why Mr Gray is quite right to attribute very substantial weight to this scheme's delivery of market homes. In the end, albeit Mr Hughes started³¹ at the "*upper end of significant*" which he accepted could be described as "*significant to substantial*", he agreed the obvious in cross-examination: that the Inspector could reasonably attribute "*substantial*" weight to this scheme's delivery of market housing. And in fact, the scale requires very substantial weight to be given, as the Secretary of State has done in recent cases when applying the §144 NPPF balance³² - even, in the Oxford Brookes case, when the Council *could* demonstrate an overall 5 year supply of housing land.³³
30. Mr Hughes tried to rely on the 2015 Written Ministerial Statement³⁴ in his written evidence at §7.15 on whether unmet needs are likely to outweigh harm to the Green Belt. But as Inspector Wright noted in the Millfield Lane, York case³⁵ (yet a further case where market and affordable housing needs were found to clearly outweigh harms to the Green Belt) that provision had not been translated into the NPPF, and the relevant guidance had been **removed** from the PPG. In any event, in cross-examination Mr Hughes accepted the Inspector should give the WMS no more than limited weight. It is obvious that unmet housing needs not only *can* but regularly *do* clearly outweigh harm to the Green Belt from the raft of Inspector and Secretary of State decisions before this inquiry.
31. Yes of course, each case turns on its own facts. It's a planning balance exercise, so that each case is fact-sensitive is obvious. It's a truism. The Councils' closings spend (literally) pages going through the individual facts of some of recent cases where Inspectors and the

³¹ PH PoE §6.21.

³² See e.g. CD11.01 at DL:44,

³³ Albeit the affordable housing position was "*acute*" as here: CD11.02, DL:35.

³⁴ CD9.31.

³⁵ CD10.5, DL:39.

Secretary of State have allowed new homes in the Green Belt. Mr Fraser points to differences. *Of course* there are differences. Each case is different. Our case is different from the decisions in the Core Documents. Those decisions are all different from one another. We know that.

32. But what this wide range of successful and recent appeals applying the §144 NPPF balance really shows us is the *very wide* range of circumstances – including, of course, providing housing to meet profound needs – which can tip the balance at §144 NPPF in favour of development all over the country in a whole range of different circumstances. There is no magic formula. There are no pre-requisites. You don't *need* to be a proposed allocation.³⁶ You don't even need to show a lack of 5 year housing land supply.³⁷ Yes sometimes the cases are about sites in emerging allocations, but we can't hang around for that luxury here because – as we've explained – the plan-led system in both authorities is broken. And broken in a far more profound way than *all* of the examples in the Core Documents. Amongst all those cases, this case takes the biscuit. None of the others involves not *one* but *two* LPAs which have so profoundly failed the basic plan-making tasks set for them by the NPPF, such that the Councils acknowledge during the appeal that there is no effective plan-led system on either side of the boundary. That doesn't only make our case special. Among the appeal decisions, it's unique. And the idea that, as Mr Fraser put it, there's nothing "*very special*" about our scheme is both grossly unfair to the many people for whom a new home in Colney Heath would be a *very* special outcome indeed, and also misstates the policy test. The task is to undertake the §144 NPPF balance. If the benefits outweigh the harms, then permission

³⁶ See e.g. CD10.14 and CD10.19.

³⁷ CD11.02, DL:35.

should be granted. *By definition* very special circumstances exist. That's all you need to find, Madam, to allow this appeal.

(iii) Self-build and custom homes

33. Since the 2012 NPPF, the Government has required local authorities to plan for a mix of housing which includes those who wish to build their own homes. The PPG tells us³⁸ that self-build or custom build “*helps to diversify the housing market and increase consumer choice*”. And we’re specifically told to plan to meet the needs of self-builders: §61 of the 2019 NPPF.
34. Unlike most areas of housebuilding, this is fortified by a statutory duty. Section 2A(2) of the Self-build and Custom Housebuilding Act 2015 (which was inserted by section 10 of the Housing and Planning Act 2016) **requires** local authorities to “*give suitable development permission in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority’s area arising in each base period*”.
35. The Government is pulling every lever it can to support this initiative including – only last month – a self and custom build “*action plan*” which includes a £150m fund for self and custom builders.
36. Neither Council has a plan-led approach to meeting needs for self-build or custom housing. Neither has a robust assessment of what its current or future needs actually are. Mr Moger’s evidence – none of which is contested – shows that the need in each authority could be as high as around 2,000 plots.
37. But even simply focussing on the much lower numbers on the Councils’ registers:³⁹

³⁸ PPG on “*Self-build and custom housebuilding*”, §16a.

³⁹ See Mr Moger’s PoE pp. 39-45.

- (i) St Albans fell short by 65 plots in Base Period 1, and 135 plots in Base Period 2 (a 93% shortfall). A further 104 consents are required by the end of Base Period 3 in October 2021, or that will be a further failure in its statutory duty.
 - (ii) Welwyn Hatfield has fallen short by 140 plots in Base Period 1 (a 96% shortfall), and 253 plots in Base Period 2... a **100% shortfall**. What's the explanation? The Council tells us it hasn't "*received any applications for self-build schemes*".⁴⁰ Which obviously only enhances the importance of granting applications like this one when they are received.
38. So we have a specific kind of housing, subject to specific statutory duties for which there are specific needs. Those are needs this scheme would help to meet. So it's wrong of Mr Hughes to try to sweep that up as part of the general benefits of delivering market housing. The right approach was that taken by Inspector Middleton and the Secretary of State in the Winsford appeal,⁴¹ where the provision of 18 self-build plots was given substantial weight **in its own right**, and in addition to the weight given in that case to both market and affordable housing.
39. Given the dire shortfalls in delivery in both Councils, this scheme's contribution would be substantial. That contribution meets particular policy objectives. It should be afforded substantial weight.

The scheme's impacts on its local landscape are acceptable

40. As Mr Hughes agreed in cross-examination, we know that both Councils have accepted the need to put lots and lots of houses on what are (at present) fields. So, to state the obvious,

⁴⁰ Mr Moger PoE p.45.

⁴¹ CD11.05: see DL:27-28 and IR:412-414.

impacts one way or another on landscape character in this part of Hertfordshire are an **inevitable** consequence of trying to meet local needs. Which is why, as Mr Hughes agreed in cross-examination, what *really* matters is not whether there will be any impact at all (of course there will be – at least on the site itself and its immediate surroundings) but whether those impacts are or can be made acceptable.

41. And to reach a view on that, Mr Hughes agreed that the Inspector needs an **objective** appreciation of this landscape’s character.
42. That is where, with respect to Mr Hughes, the lack of any worked methodology in his landscape assessment began to fail him:
 - (i) The key premise of his evidence on this topic is that the existing site is “*rural*” – his proof uses the word over 30 times. He predicates his evidence on what he calls the site’s “*rural experience*”.⁴²
 - (ii) Now, of course, he’s entitled to his opinion about that. But he also accepts that the site is characteristic of its landscape area.⁴³ And when that area has been assessed **objectively** by expert landscape architects employed by the Councils over many years, the results have been consistent.
 - (iii) In 2005, the Landscape Partnership found that this area’s character is “*strongly influenced*” by surrounding settlements and transport routes, and that it has an “***urban edge, rather than a rural, character***”.⁴⁴ One of the area’s “key characteristics” is that “*urban*

⁴² PH PoE §5.76.

⁴³ PH PoE §5.69.

⁴⁴ CD9.23, p.17.

influence”.⁴⁵ And both the transport corridors and settlements are said to “*cause a significant impact on the character of the **entire area***”.⁴⁶ We agree. The Landscape Partnership also found that we’re in an area which lacks unity, distinctiveness or rarity of character. We agree with that too. And Mr Hughes accepted the consequence that looking at the GLVIA Figure 5.10,⁴⁷ that our impacts were toward the less significant end of the scale. Again, we agree.

- (iv) The 2019 study of LUC⁴⁸ – another expert firm of landscape architects – tells a consistent story – which is unsurprising because again these are objective experts following a transparent and rigorous methodology. Our area is recorded as being significantly influenced by settlements and the strategic transport network.⁴⁹ We agree. It is said to have no particularly distinctive landscape characteristics. We agree. And the area around Roestock is said to have only a low-moderate degree of sensitivity to new development because of its association with modern development.⁵⁰ Again, we agree. That’s exactly our case. Which makes our site, in the view of LUC, (a) the least sensitive part of Area 29, and (b) one of the less sensitive areas in landscape character terms across the whole district.
- (v) Mr Hughes agreed that the site isn’t subject to any national or local landscape designations, and it isn’t a “*valued landscape*” within the meaning of the NPPF. It isn’t

⁴⁵ CD9.23, p.17.

⁴⁶ CD9.23, p.19.

⁴⁷ Reproduced in the LVIA CD 1.29, p.4.

⁴⁸ CD6.30.

⁴⁹ CD6.30, p.29.

⁵⁰ CD6.30, p.34.

subject to what LUC identified as any “*absolute constraints*”. Mr Hughes ended up agreeing with Mr Holliday’s evidence that the landscape’s of medium value.

(vi) Mr Hughes’ written evidence was prepared on the basis that our site is “*prominent*”.⁵¹ He was obviously wrong about that, and withdrew that evidence during cross-examination. On the contrary: the site is, as he accepted, a “*contained*” site. In the Scott Schedule at p.9, he described its visual envelope as “*relatively limited*”. The Inspector has the “*visual envelope*” plan at Mr Holliday’s appendix 5 which shows quite how very contained this site is. In the end, unless you’re literally on the site, or in very close proximity (within a field or so), you just aren’t going to see it. Mr Holliday’s viewpoints 5 and 8 show the establishing planting around the site which provides visual screening, and serve to limit views over the site from outside.

(vii) Mr Hughes also suggested the idea of an important “gap” but, with respect, that takes us nowhere. We aren’t a designated gap. Welwyn Hatfield are actually proposing a series of gap policies⁵² - not us.

43. Mr Hughes accepted in his oral evidence that the site’s northern boundary is clearly influenced by built form. You have visited the site Madam and you’ll have your own opinion. But Mr Holliday’s evidence is that the site as a whole is characterised by views which contain edge of settlement features – rooftops, windows, chimneys, modern built form. And in some cases – e.g. the 3-storey blocks on Hall Gardens and Admirals Close – **substantial** blocks of modern built form. The viewpoints appended to Mr Holliday’s evidence tell their own story. Whichever way you look at this site, from wherever you stand, you see houses, rooftops, modern built development. And that is all consistent with the findings of both the

⁵¹ PH Proof of Evidence, §2.13, p.6.

⁵² CD6.31, p.131.

Landscape Partnership and LUC on an edge-of-settlement, rather than a rural, landscape character. And if you agree with us on that point, Mr Hughes' evidence on this issue cannot be relied on because it's predicated on the idea that the character of the site in landscape terms is rural. Which it isn't.

44. In the end, Mr Hughes alleges “*severe*” adverse effects on the landscape once our scheme is built.⁵³ But that is a very high bar indeed to reach absent a proper stepped methodology to support those conclusions, particularly in light of his agreement that the landscape’s only of moderate value, that the effects are likely to be toward the bottom end of the scale, and in the face of evidence from the Landscape Partnership and LUC which demonstrate this is an area with an edge-of-settlement character which is of only low-moderate sensitivity to new development. Also in the face of a transparent and clear LVIA [CD1.29] which Mr Hughes accepts is methodologically sound.
45. After all that though, in the end, once planting is established, Mr Hughes is at “*moderate*” landscape impacts and Mr Holliday is at “*moderate-minor*”.⁵⁴ Only half a step on the ladder of significance between them. Albeit the parties disagree on the scale of the visual impacts, and the Inspector will form her own view, we agree that they are limited to the site itself and its surrounding area.⁵⁵ And as the Inspector clarified with Mr Hughes, the Councils do **not** take any objection to this scheme on the basis of the amenity or living conditions of local residents.

⁵³ SoCG, §11.7.

⁵⁴ SoCG, §11.7.

⁵⁵ SoCG, §11.8.

The scheme's very low-level impact on the setting of 68 Roestock Lane are outweighed by public benefits

46. Of course, the parties now agree that both heritage reasons for refusal were not well founded, in that they alleged there is heritage harm which is not outweighed by public benefits. That position is reversed in Mr Hughes' evidence. So that parties now agree that the scheme's public benefits outweigh even the Council's higher assessment of the level harm to the setting of 68 Roestock Lane.
47. But the Council's assessment is unsafe. It is (literally) unevidenced. It is predicated on a historical associative relationship between 68 Roestock Lane and the appeal site for which there is (literally) no evidence whatsoever. As Mr Crutchley put it: they were rural cottages which happen to be next to fields. That's it. The workers living there could've worked anywhere. There is no evidence at all of any functional link.
48. When it comes to views, the Council asserted that open views over our site from the windows of 68 Roestock Lane were important, but – of course – none of the Council's team have actually *visited* the building. Which rather pulls the rug out from that argument.
49. In any event, the idea that our scheme would drain away up to ½ of the building's significance (the logical consequence of the Council's worst case of "moderate" less than substantial harm) is a nonsense. The building was listed first and foremost for its physical fabric. That is where most of its historic interest and significance resides. Beyond that, to the extent setting contributes to its significance, the more important parts of that setting are its fronting Roestock Lane to the north and its immediate curtilage. So at worst, we affect a residual part of this building's broader visual setting. But that part of its setting only makes a very small contribution to the building's significance.

50. In the end, Mr Crutchley’s clearly right that the less-than-substantial harm is at the lowest end of the scale. The Council’s case was exposed in the round-table for what it was: unevidenced speculation. But in any event, as we know the scheme’s public benefits outweigh even the Council’s inflated view of the harm to the building’s significance, we know this area cannot safely ground a refusal of planning permission.

The site is located within easy reach of a range of services and facilities

51. The facts are now essentially agreed: see the plan at Appendix A to the Scott Schedule.

52. Taking the points in turn:

- (i) Local bus routes are excellent (including taking residents into Hatfield, St Albans and Welwyn Garden city), as is the proximity of bus stops to our site. The frequency of bus services is – at present, anyway – limited. That is true. But we are told to make allowances for the site not being in urban area: §103 NPPF. Further, the busses link to train services at Hatfield, St Albans and Welham Green. We know from the Highways Authority that there’s a prospect of service enhancements.⁵⁶ We also know from the Highways Authority that prospect could be increased by bringing new residents into Colney Heath.⁵⁷ And we *also* know, in the view of the Highways Authority, that having reviewed the local bus position, there is **no** “*significant concern in respect of sustainability*”.⁵⁸ The Highways Authority also confirmed that:

⁵⁶ CD2.06, Appendix C, pdf p.42.

⁵⁷ CD3.26, p.3.

⁵⁸ CD2.06, Appendix C, pdf p.42.

“Subject to adequate provision of footways internal to the site, and appropriate linkages to the adjacent network with improvements, **the HA would confirm that the principle of development is acceptable**, recognising that whilst Colney Heath is not highly sustainable there are local bus stops and facilities, and that proposals may support greater viability of bus services as an alternative to private car use.”⁵⁹

- (ii) The Inspector has the list of local facilities – the school (where we now know there’s a *surplus* of spaces, not the shortage the Council suggested in their evidence), park, post office, village hall, church, common etc. These are within an easy walk. Mr Hughes didn’t seem to think parents would walk to the primary school, but as Mr Freeman explained our site is *well* under the preferred maximum walking distance to schools in Manual for Streets.

- (iii) The local footpath network is not – as Mr Hughes sometimes tried to imply – dangerous. It’s safe and very well used. Of course, there’s no highway safety objection. In addition, our site proposes a new footpath from the north-east of the site to our new pedestrian access to the south. That improves the footpath network’s connectivity, and offers a new “off-road” route. The only “*busy road*” Mr Hughes was concerned about turns out to be the High Street, but there are a number of safe crossings over that road.

- (iv) Within a 30 minute walk, the range of facilities is even wider, and includes the Colney Heath Football Club, Colney Heath Local Nature Reserve, Northdown Road Surgery, South Hatfield Post Office, and University of Hertfordshire Campus.⁶⁰

⁵⁹ CD3.26, p.3.

⁶⁰ CD1.24, p.35.

(v) Within a 20-30 minute cycle, the range of facilities is superb.⁶¹

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

Ms McCauley confirmed the position of the highways authority that the routes to access those facilities were perfectly safe, and can be accommodated on local highways, which also provide safe access onto national cycle routes 12 and 61.

53. So in the end, and again as the Highways Authority have confirmed, there is simply no in-principle issue with the scheme coming forward in terms of its locational sustainability.
54. And of course, the highways objections have now been formally withdrawn (along with the other points on ecology – we note that Mr Hicks confirmed today that even *without* mitigation, there'll be no significant ecological harm – archaeology and local infrastructure). Which means there are no technical constraints which prevent the scheme confirming forward.

⁶¹ CD1.24, p.40.

55. Which leaves us with the Green Belt.

The scheme's impact on the wider Green Belt will be very limited

56. As we know, and as Mr Hughes has now agreed repeatedly, both Councils require land which is currently in the Green Belt in order to meet the enormous and urgent needs we describe above. And neither Council has an effective plan-led solution to managing releases of the Green Belt. Which means that impact on the Green Belt one way or the other through development management decisions like this one isn't a choice. It's a necessity. It's inevitable. The *real* issue is where schemes can come forward which don't unacceptably impact on the Green Belt's wider integrity.

57. Of course, the site's a field. With not much on it. Which makes it, in the language of national Green Belt policy, relatively "*open*". And houses would make it less "*open*".

58. The site's also in the deemed "*open countryside*". But we should take care over that. The reason it finds itself still in the deemed "*open countryside*" is because it's *adjacent to but outside* Colney Heath's settlement boundary. But that boundary isn't just marginally out of date. It's the product of a totally different generation of plan-making. In any event, as the much-criticised 2013 Green Belt review showed us,⁶² the **vast majority** of areas across not only Welwyn Hatfield and St Albans but Dacorum too are thought to make a significant contribution to this 3rd Green Belt purpose, i.e. preventing "*encroachment*". That is, let's be clear, the **only** Green Belt purpose on which Mr Hughes puts any significant weight. But the problem is – it's a purpose which will **inevitably** be engaged one way or the other if the Council is going to come anywhere remotely close to meeting its needs. We know scoring high in relation to

⁶² CD6.17, p.47.

this purpose cannot rule sustainable sites out from bringing development forward. Or these Councils would have no sites left.

59. The 2019 LUC work⁶³ in Welwyn Hatfield tells the same story, i.e.:

- (i) Our site is not subject to any absolute spatial constraints, it isn't part of a fragile gap, it isn't within open land forming a distinctive urban edge, nor is it land important to a historic settlement setting.⁶⁴
- (ii) Again, the only Green Belt purpose we're said to make a significant contribution to is the 3rd (i.e. encroachment). But again, the **vast majority** of parcels are said to play a significant contribution to that purpose.⁶⁵
- (iii) For the release of the full parcel 54, LUC consider there would be moderate-high harm. But, of course, most of parcel 54 is not bounded by built development as we are. And in any event, as Figure 7.1 of CD6.13 shows, broad swathes of this area are marked out as causing *high* or even *very* high levels of harm. Indeed, LUC have told us where the most essential areas of Green Belt are – not us.⁶⁶
- (iv) And most important, LUC reached a judgment – with which it turns out Mr Hughes **agrees** – that a release of the entirety of parcel 54 would only have a limited impact on the integrity of the wider Green Belt.⁶⁷ Of course, the site before this inquiry is

⁶³ CDs 6.12-14.

⁶⁴ CD6.13, Figure 4.1.

⁶⁵ CD6.13, Figure 6.3.

⁶⁶ CD6.13, Figure 9.1.

⁶⁷ CD6.14, p.242.

considerably more modest than P54 as a whole, and – unlike most of P54 – it is bounded by built development.

60. Which means in the end, we know that:

(i) This site is **not** one of the most sensitive or important parts of the Green Belt in this area – and Mr Hughes agreed that; and

(ii) Allowing this appeal would have a *very* limited impact on the integrity of the Green Belt.

61. Yes, of course, there'll be houses where now there is a field. And in the end, that's Mr Hughes' big point – no more no less – both on openness and on encroachment. And yes, of course, we must give that impact substantial weight.

62. But on the other hand, as Mr Hughes agreed, you are Madam quite entitled to reach judgment calls on:

(i) The quality of this Green Belt site; and

(ii) The extent to which it really is making a valuable contribution to Green Belt purposes.

63. Because openness isn't just a spatial concept. It's visual too. And if you agree with the Landscape Partnership and LUC that this is a site with an "*edge of settlement*" character because of the nearby built development you are quite entitled to find that this mitigates the extent of harm associated with "*encroachment*" into the countryside. The same goes for the degree of the site's containment – if you find that it *is* a well contained site visually, and by its clear boundaries (i.e. a combination of built development and roads) you can weigh that in the balance in your approach to openness. For a worked example of that approach, see Inspector

Middleton's consideration of the visually prominent areas of the Birchall Garden Suburb allocation and the impact on openness,⁶⁸ and contrast it to the position here.

64. Finally, albeit Mr Hughes relied on decisions from the 1950s and 1970s in his proof, he seemed to back away from that in cross-examination and agreed they were taken in a “*different policy context*”. That’s, obviously, an understatement. The physical form of the settlement has changed dramatically since those decisions. As has, most importantly, the contents of national planning policy. They can be given next to no weight at all. Mr Hughes seemed to accept that in the end, telling the Inspector they were relied on simply for “*context*”. They aren’t mentioned in the Council’s closings.
65. In the end, national policy dictates that these impacts must be given substantial weight.⁶⁹ So what really matters in §144 NPPF case like this is how the final balance is struck.

Conclusions

66. The question for you, Madam, is simple:

Do the scheme’s benefits clearly outweigh its harms.

67. If they do, the parties agree you should then allow the appeal and grant planning permission.⁷⁰ As Mr Gray explained, this issue is determinative of (a) whether the scheme

⁶⁸ [CD6.02], pp.13-14, §70, §71 and §73.

⁶⁹ §144 NPPF.

⁷⁰ And for completeness, we agree with Mr Fraser’s comment that if the §144 NPPF balance is passed that by definition passes the tilted balance at §11(d) NPPF.

accords with the statutory development plan, and (b) whether the grant of permission is supported by the NPPF.

68. On the harms side of the scale, we know that there will be very-low harm to the setting of 68 Roestock Lane, but we agree that cannot substantiate a refusal of permission. We know there will be a low-moderate impact to the character of a perfectly pleasant but unremarkable edge-of-settlement field. We also know that the field will be less open as a result of our scheme, and that it will encroach into what is now deemed countryside. We must, as above, give those impacts on the Green Belt substantial weight, even though the parties agree that (i) harm to the integrity of the wider Green Belt would be no more limited, and (ii) planning permissions in the Green Belt are inevitable applying the §144 balance in this district absent an effective plan-led approach to meeting needs.

69. And remember, we know where the most important parts of the Green Belt are in this area⁷¹ – it’s not us. We know where the most valuable landscapes are⁷² – again, not here. In fact, the Councils’ own consultants have identified this site in one of the least sensitive parts of the area to accommodate new development.⁷³ We know where the important areas are for ecology and built heritage - not here.⁷⁴ We also know those areas where high or even *very* high levels of harm to the Green Belt would be caused by new development – again, not us.⁷⁵

70. On the benefits side of the scale:

⁷¹ See e.g. CD6.13, figure 9.1.

⁷² See e.g. CD6.17, appendix 4, FIGURE A4.1.

⁷³ See e.g. CD6.30, fig 3.1, p.19.

⁷⁴ See e.g. CD6.17, appendix 4, FIGURE A4.1.

⁷⁵ CD6.13, figure 7.1.

- (i) The break-down in the plan-led system in this part of Hertfordshire has had real consequences for real people. Most of all, and for many years, these Councils haven't come anywhere *remotely* close to meeting their needs – for market housing, for affordable housing, and more recently for self-build housing either.
- (ii) As we have shown you, these shortfalls aren't marginal. They're staggering. We aren't talking about missing the mark by tens or even hundreds of homes. We're talking about thousands. Many thousands. On both sides of the district line.
- (iii) In both of these authority areas, the plan-led system has broken. And our case is simple: there is no short or medium term prospect of it being fixed. The real issue before this inquiry is whether the many people in need now should have to wait another 3 years, 5 years, 10 years, or however long it takes, for one of these Councils to actually adopt a plan, and for sites to come forward in accordance with that plan. Or whether urgent problems require more urgent solutions.
- (iv) As we said in opening, over the last year, the Secretary of State has made his view on this issue clear. And, contrary to the Councils' closings, the gamut of decisions does assist us, because it shows us the range of different circumstances where housing schemes pass the §144 balance. As the Inspector now knows, a series of decisions in Green Belt authorities where the plan-led system has not delivered on time or at all (e.g. South Oxfordshire⁷⁶, Stockport,⁷⁷ and Bradford⁷⁸), the Secretary of State has given the delivery of market and affordable housing very substantial weight.

⁷⁶ CD11.02.

⁷⁷ CD11.03.

⁷⁸ CD11.01.

71. In the end, the same is true here. In the circumstances of our case, you should give the benefits we describe above and in the evidence of (in particular) Mr Gray, Mr Stacey and Mr Moger very substantial weight (in respect of market and affordable housing) and substantial weight (in respect of self-build housing). And remember, even on the *Councils'* case, you should give our benefits somewhere between “*the upper end of significant*” and “*substantial*” weight in relation to market housing, and “*substantial*” weight for affordable housing.⁷⁹ As Mr Gray explained, those benefits can *easily* be delivered within 5 years given the modest scale of the scheme and the lack of any technical constraints to delivery (and will inevitably be ahead of any sites coming forward through a plan-led process in either authority – assuming a plan ever materialises).
72. In the end, those benefits carry the §144 NPPF balance.
73. Our case is straightforward: these benefits are profound (and Mr Hughes accepted as much in cross-examination), the imperative to bring them forward is compelling, and they clearly outweigh what will only be a localised impact to this appeal site and its immediate surroundings.
74. For those reasons, the balance at §144 tilts clearly in favour of granting planning permission, and we will ask you to allow the appeal.

⁷⁹ PH PoE, pp.78-79.

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6th MAY 2021