

Statement of Case

Bricket Wood Sports and Country Club, Paintball Site and Bricket Lodge, Lye Lane, St Albans AL2 3TF

SADC Ref: 5/2022/2443

Outline application (access sought) for the demolition of existing buildings, the construction of up to 115 dwellings, the creation of a new access and associated highways improvements.

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February 2024



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Personal Statement

I have a BA (Hons) in Geography and an MSc in Urban and Rural Planning and am a Member of the Royal Town Planning Institute. I am familiar with the St Albans District and its 1994 Local Plan and, since 2009, with the Council's attempts to adopt a new Local Plan.

The evidence in this Statement has been prepared and is given in accordance with the guidance of the RTPI and I confirm that the views expressed are my genuine professional opinions.

Brian Parker

February 2024



INTRODUCTION

1. MRP Planning has been instructed by the Appellant, JK Rudkin Builders Limited, to submit an Appeal under section 78 of the Town and Country Planning Act 1990, in respect of:
 - a) Planning Application, Ref: 5/2022/2443 (“the Appeal Application”);
 - b) Made to St Albans City and District Council (“the Council”);
 - c) Whereby Outline Planning Permission was sought, with all matters reserved except for access, for up to 115 dwellings, including 35% affordable housing (“the Appeal Proposal”);
 - d) On land at the eastern side of Lye Lane, Bricket Wood, St Albans AL2 3TF (“the Appeal Site”).
2. The Appeal Application was submitted to the Council on 4th October 2022 and validated on 12th October 2022. The parties agreed an extension until 20th December 2023. However, the Council have failed to determine the Appeal Application by that time and it was not extended further. Accordingly, on 31st January 2024, a Notification of Intent to Submit an Appeal was sent to the Planning Inspectorate and the Council on the basis of Non-Determination.
3. This Statement of Case sets out why the Council’s putative Reasons for Refusal are flawed and why planning permission should be granted for the Appeal Proposal, a scheme of development which entails a net increase of up to 82 dwellings on Previously Developed Land (“PDL”) in the Green Belt.
4. As required by the *Procedural Guide for Planning Appeals – England*, January 2024 (“the Guide”), a Draft Statement of Common Ground (“SCG”) has been submitted and the Appellant will work with the Council to progress an Agreed SCG with Core Documents.
5. A revised National Planning Policy Framework (“NPPF”) was published in December 2023. This Statement quotes current paragraph numbers. Where appropriate, differences in paragraph number or text to those used in Application documents will be made clear.

THE APPEAL SITE

6. The Appeal Site is in the Green Belt, located on the eastern side of Lye Lane, Bricket Wood, immediately to the north of Blackgreen Wood and the M25 (the motorway is inaccessible from Lye Lane) - see Fig. 1 below. It is PDL, as is clear from its history: first as a cricket ground; then

as a sports and social facility; and more recently through housing development. In July 2023, the Council expressly acknowledged that “the site can be regarded as previously developed land ...”.



Fig. 1 Site Location Map, Rev A

7. As set out above, the Appeal Site was originally developed as a cricket sports ground served by a pavilion and several outbuildings. Today it comprises three distinct sections:
 - a) A number of redundant and vacant buildings around a large area of hardstanding, built over the years to accommodate, variously, a cricket club house, country club and gymnasium;
 - b) A residential area comprising 33 dwellings and car parking spaces; and
 - c) A paintball operation with numerous outbuildings, containers and *ad hoc* structures, together with substantial areas of hardstanding.
8. The Appeal Site is heavily-screened: by mature trees on its northern and eastern boundaries and, on the south, by the northernmost part of Blackgreen Wood (the wood was bisected when the M25 was constructed). The western boundary of the Appeal Site is formed by Lye Lane, a

narrow country road which runs north/north-west to the A405 North Orbital Road and from there to J21a of the M25 (1.5km from the Appeal Site); and south towards Bricket Wood.

9. The Appeal Site is close to the village of Bricket Wood which is identified as a “large village” in Policy 2 of the St Albans District Local Plan Review 1994 (“the Local Plan”). The following are to be noted with regard to the proximity of the Appeal Site to this “large village”:
 - a) First, as set out at [3.16] of the Transport Assessment submitted in support of the Appeal Application: Bricket Wood provides a wide range of local amenities including a food store, a pharmacy, cafes, restaurants and public houses, a library and schools within a short distance of the Appeal Site via Lye Lane, albeit that sustainable access to these facilities would require improvements to footpaths / pedestrian routes; and
 - b) Secondly, as noted at [3.12-3.15] of the Transport Assessment, Bricket Wood is itself linked by public transport to St Albans and Watford (and other towns) via the 361 and 635 buses and by the Abbey Flyer railway line.
10. Accordingly, once connected to the junction of Lye Lane and West Riding by a suitable footpath, the brownfield Appeal Site is a very sustainable location for new residential development.
11. Further details of the Appeal Site are set out in the Design & Access Statement (“DAS”) and the Landscape and Visual Impact Assessment (“LVIA”).

THE APPEAL PROPOSAL

12. As noted above, the Appeal Application is for Outline Planning Permission¹. In these regards, whilst detailed approval of “Access” is sought now, all other details of “scale”, “layout”, “landscaping” and “appearance” will be dealt subsequently through one or more Applications for the Approval of Reserved Matters.
13. On this point, the Planning Practice Guidance (“PPG”) explains that:

*“An application for outline planning permission allows for a decision on the **general principles** of how a site can be developed. Outline planning permission is granted subject to*

¹ As provided for by Section 92 the Town and Country Planning Act 1990.

conditions requiring the subsequent approval of one or more ‘reserved matters’.” (emphasis added)

14. Thus, statute and Government guidance allow for the general principles of a scheme’s acceptability to be established at the Outline Stage, without the Applicant/Appellant having to submit detailed information which do not speak to the ‘principles’ of a scheme and are more appropriate for the Reserved Matters Stage, when matters such as detailed “scale” and “layout” are to be approved.
15. The Appeal Proposal is to demolish all the existing buildings and structures on the Appeal Site, including 33 existing dwellings, and build up to 115 new dwellings – offering, therefore, a net gain of up to 82 family homes in a District with a chronic and worsening housing crisis, particularly with regard to affordable housing.
16. The maximum number of 115 dwellings represents a density of 36 dwellings per hectare, which is considered an appropriate balance between making the most effective use of land whilst according with Policy 70 of the Council’s 1994 Local Plan, and particularly criteria (ix) ‘Amenity space around dwellings’ and (xi) ‘Open space’.
17. The Indicative Proposed Site Layout Rev. C shows how the Appeal Site might accommodate a development of up to 109 dwellings comprising: 21 x 1-bed; 35 x 2-bed; 34 x 3-bed, 12 x 4-bed; and 7 x 5-bed (see Fig. 2 below).



Fig. 2 Indicative Proposed Site Layout

18. An alternative scheme of 115 dwellings, which may, at the Reserved Matters Stage be considered to better reflect the loss of the existing dwellings, could comprise: 32 x 1-bed; 35 x 2-bed; 34 x 3-bed, 9 x 4-bed; and 5 x 5-bed.
19. The actual mix of dwellings and, consequently, the quantum (of 115 or fewer) may change at the Reserved Matters Stage.
20. As explained by Hertfordshire County Council’s Growth and Infrastructure Unit in respect of an Outline scheme for “up to 330 dwellings” at a site in Chiswell Green (Ref: 5/2021/3194), (Officer Report, paragraph 6.9.3):

“Outline applications will require the ability for an applicant to recalculate contributions at the point of a reserved matters application and as such a calculation table will be provided as part of the Section 106 drafting process. This approach provides the certainty of identified contribution figures with the flexibility for an applicant/developer to amend the dwelling mix at a later stage and the financial contribution to be calculated accordingly.”

21. Accordingly, the text of that completed and signed agreement for that Outline scheme explicitly states (in respect of, for example, Secondary Education Contribution):

“... should the size type tenure and/or number of Dwellings differ from the Development Mix the amount of contribution due will be calculated in accordance with (a specific formula) ...”

22. Access is a matter for approval and is set out in detail in the Transport Assessment, Travel Plan and accompanying highways plans and reports.

THE CORRECT PLANNING APPROACH

23. The Proposals Map of the Local Plan shows that the Appeal Site is in the Green Belt. However:
- a) that Plan will be 30 years old later this year and is considerably out-of-date, especially noting that [33] of the NPPF requires policies in Local Plans be reviewed at least once every five years;
 - b) Furthermore, the Council cannot demonstrate a 4-year supply of land for housing (“4YHLS”), but only 1.7YHLS, which means that the most important policies for determining the Appeal Application are out-of-date for this reason also (see: fn8, [77] and [226] of the NPPF);
 - c) For both these reasons, [11d] of the NPPF is engaged for the purposes of Decision-Making;
 - d) Accordingly, planning permission is to be granted unless, *inter alia*, the policies in the NPPF that “*protect areas or assets of particular importance*” provide a clear reason for refusing (see: NPPF [11d (i)] and fn7);
 - e) In respect of the Green Belt, fn 7 applies only if a proposal is deemed to be “*inappropriate development*” in the Green Belt, in which case permission is only to be granted if “*very special circumstances*” exist, such that 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 (see: NPPF [153]);
 - f) However, as elaborated on in paragraphs 24 -28 below, “*very special circumstances*” do not need to be demonstrated if the proposal is for “*appropriate*” Green Belt development, which includes the redevelopment of PDL in the Green Belt where the proposal:

- i. Will not cause substantial harm to the openness of the Green Belt; and
 - ii. Will contribute to meeting an identified affordable housing need within the area of the Local Planning Authority (see NPPF [154(g), second possibility]).
24. The Planning Statement, submitted in support of the Appeal Application, originally considered the scheme to be *“inappropriate development”* and made the case, accordingly, that *“very special circumstances”* existed. However, a subsequent Appeal Decision published in November 2022 and concerning Maitland Lodge in Billericay [Ref: APP/V1505/W/22/3296116], clarified the correct approach to [154(g)] of the NPPF (previously [149(g)] of the 2021 version of the NPPF). Following this clarification, a Supplementary Planning Statement (“SPS”) was submitted to the Council which concluded, for reasons summarised below, that the scheme was *“appropriate development”* for which *“very special circumstances”* were not, therefore required.
25. In these regards, [154(g)] of the NPPF provides as follows:

“154. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:

g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:

 - *not have a greater impact on the openness of the Green Belt than the existing development; or*
 - *not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.”*
26. There are, accordingly, two possible exceptions to normally applicable Green Belt policy, whereby new housing development can be appropriate Green Belt development if it is on PDL:
 - a) The first is where the proposal does not have a greater impact on openness than that which is already on site; and

b) The second is where the proposal will “contribute to meeting an identified affordable housing need” without causing “substantial harm to the openness of the Green Belt”.

27. In the Maitland Lodge Decision Letter [Ref: APP/V1505/W/22/3296116], Inspector Woodward BA (Hons) MA MRTPI, stated *inter alia* as follows with regards to the approach required in respect of the second possibility above, before concluding at [DL17] that the scheme was “not inappropriate” and, therefore, there was no need: “... to further consider issues in relation to GB development or make a determination on ‘very special circumstances’.”

“9. ... I ...agree with the appellant and the Council, who under cross-examination conceded this position, that all of the GB land within the appeal site is PDL.

10. It is also common ground, and I agree, that the proposal would include affordable housing that would meet an identified need within the Borough ... Paragraph 149 of the Framework states that new buildings are inappropriate development in the GB, subject to a number of exceptions. Part g), second bullet point, relates to the redevelopment of PDL where the proposal would contribute to meeting an identified affordable housing need, and is therefore relevant to the appeal proposal. The bullet point states that, in such circumstances, development would not be ‘inappropriate’ if it would not cause substantial harm to the openness of the GB. I therefore assess the effect of the proposal on openness below.

Openness

11. The GB element of the appeal site is within a wider parcel of land in the GB called ‘Area 25’ as identified in the Basildon Borough Green Belt Topic Paper, October 2018 (the Topic Paper 2018). The appeal site is a small area of land within this wider parcel. There is open countryside to the west and the south, however there is extensive, mature boundary planting to the west, and lesser, but still significant, boundary planting to the south. The land to the east and west of the site is already built-up. The site is therefore highly visually constrained and makes only a limited contribution to the openness of the GB. This is a view shared by the Topic Paper 2018.

12. The GB element of the appeal site contains a number of buildings and structures associated with its equestrian and other uses. These are largely single storey. The proposal

would be for 28 buildings, including a mix of houses and two blocks of flats, at up to three storeys but mostly either two or two and a half storeys in height. Overall, the proposal would result in an 80% increase in footprint and a 124% increase in volume of built-form on the GB element of the appeal site. The level of the proposed increase in built-form would therefore be relatively significant.

13. The proposed garages would link several of the buildings. The layout would be relatively dense, there would be runs of rooflines that would be fairly close together and prominent, and relatively limited landscaping, save for incidental street trees and an area of open space to the south west corner. These design detail considerations influence the harm to openness of the proposal but only to a limited degree, as was accepted by the Council under cross-examination.

14. In addition, the proposal would spread built form across the whole site, rather than being concentrated to the eastern edge adjacent to the existing housing. There would also be a significant increase in activity on the site in comparison to the existing use for equestrian purposes and the gardens of the proposed dwellings would likely also be the subject of residential paraphernalia once occupied, further negatively affecting openness on the site.

15. However, the appeal site is largely visually self-contained by the mature planting to the west and existing development to the north and east. The southern boundary also has a relatively mature hedgerow but is more open. The proposed landscaping scheme, including some trees, would lessen this openness but the proposal would still be more visible from the south through this boundary than the existing built form. Importantly, though, as viewed from the south the proposed development would be seen in the context of the existing housing of Billericay. The existing housing rises slightly up the hill as viewed from the south and is clearly visible and fairly prominent.

16. Overall, there is relatively significant existing built form and the GB element of the appeal site is only a small part of a much wider parcel of GB land. The proposal would result in an increase in built form on the site both in overall footprint and volume and spread across the site. However, the appeal site is largely visually self-contained, with existing housing to Billericay to two sides of the site and the extensive existing and

proposed boundary landscaping to the other two sides. Where the boundary planting would be more open the proposal would be seen in the context of the existing housing to Billericay. The harm to openness on the appeal site itself would therefore have limited effect on the wider GB. Allowing for the slightly greater harm to openness of the appeal site itself, the overall harm to the openness of the GB would be moderate.

17. It is important to note that the threshold for the proposal to be considered as inappropriate development is substantial harm. This is a high bar and the proposal clearly falls below it. The proposal is therefore 'not inappropriate' development in the GB. I do not, therefore, need to further consider issues in relation to GB development or make a determination on 'very special circumstances'."

28. Accordingly, Inspector Woodward correctly determined, at [DL10] and DL17] of the Maitland Lodge Decision Letter, that so far as the second possibility of NPPF [154(g)] was concerned, the redevelopment of PDL, so that it could contribute to meeting an affordable housing need in the area, is entirely appropriate Green Belt development provided only that it does not cause "substantial harm to the openness of the Green Belt" which is a "high bar".
29. Indeed, the height of that "high bar" is clear from the Maitland Lodge Decision Letter itself, where it was not reached (largely because that appeal site was sufficiently well-screened) even though:
- a) The proposed development would result in a "relatively significant" increase in built form on the Green Belt element of the site [see DL12]);
 - b) The layout of that proposed development would be "relatively dense", with "runs of rooflines ... fairly close together and prominent, and relatively limited landscaping development" (see [DL13]);
 - c) The proposed development would "spread built form across the whole site, rather than being concentrated to the eastern edge adjacent to the existing housing" (see [DL14]);
 - d) There would be a significant increase in activity on the site in comparison to the existing use for equestrian purposes (see [DL14]); and

- e) The gardens of the proposed development would likely be the subject of residential paraphernalia once occupied, further negatively affecting openness (see [DL14]).
30. The Appellant’s principal case as to the required approach to take to this Appeal is, in light of the recent clarification of the second possibility of [154(g)] of the NPPF, that:
- a) The Appeal Proposal, likewise, qualifies as appropriate Green Belt development for the same reasons as applied in the Maitland Lodge Decision Letter – because it is a proposal which contributes and affordable housing need in St Albans without causing substantial harm to the openness of the Green Belt; and
- b) Accordingly, the same conclusion as was reached in the Maitland Lodge Decision Letter, at [17], is required here also – that there is no need “*to further consider issues in relation to GB development or make a determination on ‘very special circumstances’*”.
31. The Appellant’s alternative and secondary case – one which is engaged only if (contrary to the Appellant’s primary case), the harm caused to the openness of the Green Belt is found to be substantial – is that “*very special circumstances*” exist to justify inappropriate development. This is because the meeting of unmet housing needs, and especially affordable housing needs, and the provision of a safe pedestrian route for existing residents using Lye Lane to access Bricket Wood, when taken together in the context of a PDL site, clearly outweigh the harm caused to the Green Belt by inappropriateness and all other harm (see [153] of the NPPF).
32. Finally in these regards, the NPPF provides Local Planning Authorities with the option of reviewing their Green Belt boundaries when replacement plans are being prepared [145]. Whilst it is uncertain that the Council will seek to alter the District’s Green Belt boundaries, the best predictor of future behaviour is past behaviour. In its 1994 Local Plan, and in every subsequent attempt to replace it, including the Regulation 18 version of its current Emerging Local Plan, the Council has concluded that “*exceptional circumstances*” justified alterations to its Green Belt boundaries to meet at least some of the housing need of its local communities.

EVENTS LEADING TO THE APPEAL AGAINST NON-DETERMINATION

33. In its email dated 14th July 2023, the Council wrote:

“Dear Brian,

I email by way of update, and in response to your email below.

Following receipt of the updated RSA (Road Safety Audit) last week, a further consultation exercise with HCC Highways is now being carried out. I have this week added consultation responses from Spatial Planning and Environmental Compliance to the file and these should now be available to view on the website.

I note that the site can be regarded as previously developed land; however permanent buildings are limited to relatively small areas of the site and the development proposals would have a greater impact on the openness of the Green Belt than the existing development.

Reviewing the balance of harm and benefits, and taking into account other appeal decisions, it is not considered that very special circumstances exist such that officers could justify a recommendation for approval so at this stage I am unlikely to make a positive recommendation to committee. There remain some outstanding consultation responses, and these will also need to feed in to the balance.

As you know, we have been working positively to eliminate technical issues relating to the application, including the repeated National Highways holding direction (now lifted) together with issues raised by HCC Highways and LLFA. On both 12/01/23 and 13/03/23 I have requested an EOT but this has not been agreed. As you are no doubt aware, this puts the local planning authority at financial risk. We are happy to continue to work positively to resolve these technical issues but would request that if we are to do this, an EOT is agreed to give certainty to all parties.”

34. However, it is to be noted that:

a) Through its comment that the “*development would have a greater impact on the openness of the Green Belt than the existing development*”, the Council was focussed on the wrong possibility of [154(g)] of the NPPF (see paragraphs 24-28 above and the SPS); and because

b) None of the outstanding issues related to what could reasonably be seen as ‘benefits’;
then

c) The Council’s opposition to the Appeal Proposal was clear.

35. Notwithstanding this, from July to December 2023, efforts were made to engage with Hertfordshire County Council Highways (“HCC Highways”), whilst an ecology consultant was engaged in anticipation of changes to Government policy in respect of Biodiversity Net Gain (“BNG”). However, in December 2023, the deadline of 20th December was not extended as there was no point in further delay, given that:

a) There had been an inability to engage effectively with HCC Highways²;

b) Certainty had been provided by the Government in respect of BNG; and

c) The Council’s opposition to the proposal remained clear.

36. Accordingly, the Appeal was made on the basis of Non-Determination.

PUTATIVE REASONS FOR REFUSAL

37. In accordance with the Guide [12.2.3], this Statement addresses “*the areas that the appellant considers most likely to comprise the LPA’s objections to the development proposed*”. As presently informed, the most likely areas of objection appear to be as follows:

38. Putative Reason for Refusal 1 (Green Belt)

“The site is within the Metropolitan Green Belt and the proposed development represents inappropriate development within the Green Belt. The potential harm to the Green Belt by reason of inappropriateness and any other harm is not clearly outweighed by other considerations and, as a result, the Very Special Circumstances do not exist.”

39. Putative Reason for Refusal 2 (Highways)

² In an email dated 18th December 2023, the Council confirmed that it, too, had difficulty engaging with HCC Highways.

“The site is an unsustainable location and the footpath is a compromised solution that would change the nature of Lye Lane.”

“The lack of certainty that a suitable footpath can be created along Lye Lane southwards to the junction with West Riding, including engineering issues, the presence of common land and the proximity of ancient woodland.”

“Concern that the footpath would narrow the carriageway and adversely affect the ability of vehicles to pass each other.”

40. Putative Reason for Refusal 3 (Flood Risk and Drainage)

“Insufficient information has been provided to establish whether a sustainable surface water drainage strategy can be delivered on the site or whether the proposed development will increase flood risk either onsite or elsewhere.”

41. Putative Reason for Refusal 4 (Section 106)

“The absence of a completed and signed S106 legal agreement or other suitable mechanism to secure sufficient mitigation.”

THE CASE FOR THE APPELLANT

Putative Reason for Refusal 1 – Inappropriate Development

The Correct Application of NPPF (154(g))

42. In November 2022, the SPS explained by reference to the Maitland Lodge Appeal Decision of Inspector Woodward, the correct approach to the Appeal Proposal. In particular, and as summarised in paragraph 30 above:

- a) It would contribute to an identified affordable housing need on PDL without causing substantial harm to the openness of the Green Belt;
- b) Accordingly, there was no need to further consider issues in relation to GB development or make a determination on “very special circumstances”.

43. However, in its email of July 2023 (see paragraph 33 above), and by referring to “*a greater impact on openness*”, the Council either ignored or rejected the SPS and relied, instead, on the first possibility of [154(g)] of the NPPF.
44. Furthermore, evidence will be provided to demonstrate, even more compellingly than at Maitland Lodge, that because of the extensive screening on three sides, the existing buildings and the unattractive visual amenity of the Appeal Site, the harm to openness caused by a modern, landscaped, housing scheme will be “*moderate*” only, and nowhere near “*substantial*”, such that the Appeal Proposal is an entirely appropriate” Green Belt development.

Very Special Circumstances

45. If, however, the Inspector concludes that the harm to the Green Belt exceeds what Inspector Woodward called “*a high bar*”³, it will be submitted, with evidence to support it, that “*very special circumstances*” exist to allow for inappropriate development on the Green Belt.
46. In addition to the case set out in Section 7-9 of the Planning Statement, evidence will be provided to demonstrate that, consistent with other Decisions made by the Council and the Planning Inspectorate in St Albans, the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations [NPPF, 152 and 153]. The inputs into that Green Belt balancing exercise, and the conclusions reached, are summarised below.

Harm to the Green Belt

47. As stated above, the Appellant’s principal argument is that there is only “*moderate*” harm to openness and no definitional harm to the Green Belt by inappropriateness and, consequently, no need to further consider issues in relation to GB development.
48. However, appreciating that the Inspector may consider otherwise, as far as harm to the purposes of the NPPF are concerned [138]:

- a) The Appeal proposal will be contained and screened by the mature trees that border the brownfield site on three sides and no sprawl of a large built-up area will take place;

³ “*It is important to note that the threshold for the proposal to be considered as inappropriate development is substantial harm. This is a high bar ...*” (Supplementary Planning Statement, Appendix 1 [17])

- b) The Appeal Site is already developed and the Appeal Proposal will bring development no nearer to Park Street or St Albans – no merging will occur;
- c) As above, the Appeal Site is already developed and, so, no encroachment into the countryside will occur;
- d) Given the distance from St Albans, the scheme will have no impact on its setting or character; and
- e) There are few opportunities to recycle derelict and other urban land in the District where the Council has long-since acknowledged that development in the Green Belt is unavoidable and necessary. (It must be noted that the Appeal Proposal involves the recycling of a substantial volume of redundant buildings and derelict land.)

Key Benefits

49. The key benefits to be considered in the Green Belt planning balance are:

- a) The delivery of up to 115 dwellings (net 82) of which 35% will be affordable, which is fully compliant with the Council’s guidance, and 10% of which will be self-build, all in a District with a chronic housing crisis which has deepened since the Appeal Application was submitted:
 - i. In December 2023, the Government published the latest Housing Delivery Test which confirmed the delivery of housing in St Albans has worsened, standing at just 55% against a minimum target of 75% [NPPF 79(c)]; and
 - ii. In January 2024, the Council confirmed it could only deliver 1.7 years supply of deliverable housing sites;
- b) The use of a brownfield site, particularly as the Council has chosen to exclude PDL sites in the Green Belt from its brownfield register; and
- c) The upgrading of Lye Lane to provide a safe walking route where one should already exist for current residents (including those of Woodview Lodge and the households of Woodbury Manor, Black Green Cottage, Pandora Cottage and Hoofprints Cottage).

The Weight Attributed by Other Considerations

50. In the Officer Report to the Planning (Development Management) Committee, 15th January 2024, in respect of a proposal to deliver 95 new dwellings on a greenfield Green Belt site, the Council wrote at [8.6.6]: “Accordingly, very substantial weight is attached to the delivery of market and affordable housing, and substantial weight to the delivery of self-build plots.” Given the acknowledged importance of consistency in Decision-Making in planning, the same weight must be applied to the Appeal Proposal.
51. Substantial weight must also be given to the creation of a safe footpath linking existing households not at the Appeal Site, to the village and its facilities. In particular, there are already residents of nearby dwellings who access Bricket Wood via Lye Lane but along an unlit roadway with no pavement (see paragraphs 53-54 below).

Planning Balance

52. The Appellant’s position is that the Green Belt planning balance is to be weighed firmly in favour of allowing the Appeal: either because:
- a) the Appeal Proposal is “*appropriate*” Green Belt development; or because
 - b) “*very special circumstances*” exist to allow inappropriate development to proceed.

Reason for Refusal 2 – Highways

53. The need for a safe pedestrian footpath from the Appeal Site south along Lye Lane to the junction with West Riding is obvious. In fact, it is needed now. Dozens of households already live on the Appeal Site and at Woodview Lodge and must walk in an unlit road to reach the social club, the shops, the bus stops, the train station, the school etc. This unacceptable state of affairs can be changed through the introduction of a carefully-designed footpath as set out in the Transport Assessment (PMA, July 2022 [5.13-5.17 and Appendix G]).
54. Evidence will be provided that once a footpath has been constructed, the Appeal Site is clearly a sustainable location and just a brief walking distance to a wide variety of local facilities and services. Said footpath will be of a design that is appropriate for the nature of the c.360-metre stretch of Lye Lane from the M25 to the village.

55. Evidence, including detailed engineering drawings, will be provided to demonstrate that a safe and suitable footpath can be delivered on land under the control of HCC as the Highways Authority and outside land identified as Ancient Woodland. As the land needed is also Common Land, a “Grampian Condition” should be applied which would require pre-commencement consent for the footpath’s construction from the Planning Inspectorate acting on behalf of the Secretary of State for Environment, Food and Rural Affairs⁴.
56. Evidence will be provided to demonstrate that the existing carriageway width will not be reduced by the introduction of the footpath.
57. The Appellant will seek to work constructively with HCC Highways on a Statement of Common Ground to address their concerns and, so, deliver a safe pedestrian route for existing and future households.

Putative Reason for Refusal 3 – Drainage and Flood Risk

58. Paragraph 193 of the NPPF states, in part:

“When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment.”

59. The site-specific Flood Risk Assessment (the FRA) (GeoSmart, Feb 2022), explained:

“In accordance with paragraphs 161, 168 and footnote 56 of the NPPF (2021), as the development proposals are for construction of residential buildings within Flood Zone 1, the Sequential Test is not required.”

and concluded:

“The Site is located within fluvial Flood Zone 1 (low probability). Taking into consideration the presence of defences, the risk of flooding from rivers and sea is classed as Very Low. The Site is at a Very Low to Low risk of pluvial flooding and a Negligible risk of groundwater flooding.” (front page)

⁴ Planning Practice Guidance “Carrying out works on common land”.

60. A Sustainable Drainage Assessment (the SDA) (GeoSmart, Feb 2022), concluded (cover):

“The proposed Sustainable Drainage Scheme (SuDS) strategy is comprised of permeable paving, swales and an attenuation basin for surface water runoff. Surface water is proposed to be discharged to watercourse, subject to any ground level re-profiling required to achieve gravity drainage, confirmation of the capacity and connectivity of nearby watercourses and agreement from landowners.”

Explaining: (p.39):

“Additional SuDS options that may be considered for the Site are as follows:

- *Providing rainwater harvesting butts for each dwelling would allow the re-use of surface water runoff for non-potable purposes within the development;*
- *Having part/all of the roof as a green roof covered in vegetation intercepts up to 30mm of rain before any runoff is generated from the structure.”*

61. It has, therefore, been established that this Outline scheme is at a Very Low or Negligible risk of flooding and that options exist to mitigate on-site drainage. When neither Scale (the size of the dwellings) nor Layout or Landscaping (the potential for larger/additional swales and attenuation basins) nor Appearance (water butts, rain garden planters, green roofs etc.) have been fully explored, the level of detail provided by the FDA and the SDA is considered sufficient.

62. However, as a developer must provide information to support the Lead Local Flood Authority’s (“LLFA”) “technical assessment” of this scheme at the Reserved Matters Stage, it is appropriate for the Inspector to apply a suitable Condition, such as:

Surface Water Drainage

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

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

- i. A construction management plan to address all surface water runoff and any flooding issues during the construction stage is submitted and approved.
- j. If access or works to third party land is required, confirmation that an agreement has been made with the necessary landowners/consenting authorities to cross third party land and/or make a connection to the proposed sewer chamber location.
- k. A detailed management and maintenance plan for the lifetime of the development has been submitted and approved, which shall include the arrangements for adoption by an appropriate public body or water company, management company or maintenance by a Residents' Management Company and/or any other arrangements to secure the operation and maintenance to an approved standard and working condition throughout the lifetime of the development.

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

REASON: To ensure that the development is served by a satisfactory system of sustainable surface water drainage and that the approved system is retained, managed and maintained throughout the lifetime of the development. In compliance with Policy 84 of the St Albans District Local Plan Review 1994, the National Planning Policy Framework 2023 and the Planning Practice Guidance.

- 63. Consequently, the Appellant will work with HCC as the LLFA on the wording of a suitable Condition and, thus, address putative Reason for Refusal 3.

Reason for Refusal 4 – S106

- 64. The Appellant will work with St Albans Council and Hertfordshire County Council to expedite a Section 106 agreement and, thus, address Reason for Refusal 4.

Conclusion

- 65. There are four putative Reasons for Refusal:
 - a) **Inappropriate development in the Green Belt for which “*very special circumstances*” have not been demonstrated.** In fact, the Appeal Scheme can be seen to be “*appropriate*” development in the Green Belt for which “*very special circumstances*” are not required. Even if the Inspector finds the Appeal Scheme to be inappropriate

development, evidence will be provided to demonstrate why the benefits and other considerations clearly outweigh the harm by way of inappropriateness and other harm.

- b) **Uncertainty over the delivery of a footpath south along Lye Lane.** The footpath will not encroach on land designated as Ancient Woodland and whilst it will require development on Common Land, the use of a Grampian Condition requiring an application to the Secretary of State via the Planning Inspectorate is appropriate. The design of the footpath will be appropriate for this stretch of Lye Lane and will not reduce the carriageway width of the road.
- c) **Insufficient information in respect of sustainable drainage.** Detailed Conditions are capable of addressing the LLFA's concerns in full.
- d) **The lack for a Section 106 Agreement.** The Appellant will work positively with the Council and HCC to complete a S106 as quickly as possible.

66. For all the reasons set out above, this Appeal for Conditional Outline Permission to deliver new housing on brownfield land in a District with a chronic housing crisis, should be allowed.

Brian Parker

February 2024

List of Documents

Application Documents and Plan:

Application Form

Plans © Tom Gristwood ...

Site Location Map

Existing Site Plan Rev. B

Indicative Proposed Site Layout Rev C

Ecology Appraisal © Cherryfield Ecology

Emergence and Activity Bat Survey © Cherryfield Ecology

Full Common Reptile Survey © Cherryfield Ecology

Flood Risk Assessment © GeoSmart Information

Sustainable Drainage Assessment © GeoSmart Information

Thames Water Confirmation of Capacity

Landscape and Visual Impact Assessment © UBU Design

Noise Assessment © Spectrum Acoustic Consultants

Utilities Assessment © Mewies Engineering Consultants Ltd

Highways Report and Plans © Paul Mew Associates ...

Transport Assessment

Travel Plan

Highways Response

Road Safety Audit Response Report

Proposed Site Access Junction Layout

Proposed Site Access Lye Lane

Proposed New Footpath on Lye Lane (4 pages)

Swept Path Analysis 29/06/22 © Paul Mew Associates

and © MRP Planning ...

Design & Access Statement

Planning Statement

Affordable Housing Needs Statement

Local Requirements Checklist

Site Photos

Draft S106 Heads of Terms

Additional/Amended Reports and/or Plans

Plans © Tom Gristwood ...

Amended Site Location Plan Rev A

Amended Existing Site Plan Rev. B

Final Full Reptile Survey © Cherryfield Ecology

Topographical Survey Ref: TMA-23-2269/201 and 202 © Tower Surveys

Highways Plans © Milestone Transport Planning

Proposed Active Travel Improvements Ref 23051/001 (7 sheets)

Proposed Lye Lane Cross Sections Ref 23051/002 Rev A

Swept Path Analysis Large Refuse Vehicle Ref 23051/TK01 (4 sheets)

Swept Path Analysis Large Refuse Vehicle Ref 23051/TK02 (4 sheets)

Swept Path Analysis Large 7.5t Box Van Ref 23051/TK03 (4 sheets)

Swept Path Analysis Large 7.5t Box Van Ref 23051/TK04 (4 sheets)

And © MRP Planning ...

Supplementary Planning Statement

Appendix 1 – Appeal Decision Nov 2022

Plus © MRP Planning

SSSI Statement, Feb 2024

SSSI Appendix 1 – NE Letter

SSSI Appendix 2 – Bricket Wood Common Citation

SSSI Appendix 3 – Moor Mill Citation