

IN THE MATTER OF AN APPEAL PURSUANT TO SECTION 78 OF
THE TOWN AND COUNTRY PLANNING ACT 1990

LAND SOUTH OF CHISWELL GREEN LANE, CHISWELL GREEN,
ST ALBANS

OPENING STATEMENT ON BEHALF OF THE APPELLANTS

I. INTRODUCTION

1. The provision of an adequate supply and mix of housing (including both market and affordable) is a fundamental and longstanding requirement of all local planning authorities in England.¹ It is a requirement that pre-dates the NPPF, going back even to the early days of town and country planning, but which since 2012 has been at the heart of what our planning system seeks to achieve. For over 10 years now, it has been a central tenant of national policy to boost significantly the supply of housing.² Further, it is a continuing objective: even as the Government consults on further changes to the NPPF, nevertheless it has retained this objective unwaveringly.³
2. St Albans City & District Council ("**the Council**") has consistently failed to meet this objective. That failure can be – and will be – explained in numerical and technical terms at this inquiry. However, such descriptions can be beguiling. The need to boost the supply of housing is neither a mathematical exercise for its own sake nor a battle between "*Stalinist housing targets*" and localism. Rather, it is about meeting the basic human needs of the people and families who live in our communities: it is about ensuring that the most vulnerable in our communities have a secure roof over their heads; it is about making sure that our sons, daughters and grandchildren can leave home and build their own lives; it is about ensuring that families in our communities can live in accommodation that is big enough for them; and it is about ensuring that

¹ As well as the provision of custom and self build housing.

² See, for example, NPPF (2012) para. 47.

³ See the consultation version of the NPPF (CD 7.22) at para. 60.

our parents and grandparents can live with the right support later in life as well. These are the people who we must have in mind when considering the delivery of housing proposed by the Appellants in this appeal. These are the people who this Council is failing and these are the people who need the proposed development.

II. THE HOUSING EMERGENCY IN ST ALBANS

3. The housing crisis across the country is chronic and the housing crisis in St Albans is the foremost example of this malaise. The persistent under delivery of housing – in particular affordable housing – presents ‘*a critical situation*’ in the District, as previous Inspectors have found.⁴ Indeed, in 2018, some 5 years ago, the Council’s own Cabinet recognised that: ‘*There hasn’t been enough, or the right type of development of [...] housing [...] in this District for a generation.*’⁵
4. The Council’s housing land supply position is dire: it now sits at 2 years – less than half the minimum requirement – and it has got progressively worse over the last 5 years.⁶ Indeed, since the introduction of the NPPF in 2012, 10 years ago, the Council has only met its housing target in a single year.⁷ This is reflected in the fact that the Council has failed its Housing Delivery Test in every year since 2015, including against the artificially lower requirements following Covid.⁸ Worst of all, the Council has failed to deliver affordable housing for some 4,360 households.⁹
5. Far from offering a positive future, the outlook for the Council is bleak. The Council’s local plan was adopted in 1994. It is a plan from a different era, which is not fit for purpose and which is out of date in multiple respects. The Council has twice failed to adopt a replacement local plan and now, instead of responding to the housing emergency quickly, the Council is only planning to adopt a new local plan in 2025 at the earliest.¹⁰ The Council is operating in a policy vacuum. This is perhaps the worst failure in plan making in the country.
6. There is simply no evidence that the Council is taking the necessary steps to address the housing emergency. The Council is not a local planning authority that has any

⁴ CD 9.2 at DL 54 on p. 12.

⁵ CD 3.18a – Mr Kenworthy’s POE – at [3.15] on p. 13, PDF p. 16.

⁶ CD 3.18a – Mr Kenworthy’s POE – at [6.12].

⁷ Ibid.

⁸ CD 3.18a – Mr Kenworthy’s POE – at [10.12] on p. 92, PDF p. 95.

⁹ CD 3.22a – Mr Parker’s POE – at [8.13] on p. 46.

¹⁰ CD 5.4 – Mr Connell’s POE at [3.41] on p. 14.

idea – let alone a clear plan – about how it will turn things around: beyond a vague timeline for the new local plan Mr Connell has provided no evidence of any steps that the Council is taking to address the housing emergency. Further, the Council's Housing Action Plan only details steps that will deliver – at best – a further 160 homes; a fraction of the shortfall that it should be addressing. The only conclusion is that the Council has abdicated its responsibilities as local planning authority. This is where the appeal system must step in.

7. One of the key drivers of the housing emergency is the Council's failure to get to grips with the Green Belt in its area. However, assessed objectively, the issue is straightforward: there is insufficient land outside the Green Belt to meet housing need – at best, some 14% of housing need can be accommodated in urban areas.¹¹ Thus, it is inevitable that housing must be delivered in the Green Belt. The remaining 86% of housing need cannot be wished away by the Council: it is a need that must be met and it can only be met by delivering housing in the Green Belt. There is no other analysis: Mr Connell does not even address future housing delivery.
8. When it comes to development in the Green Belt, the land to the south of Chiswell Green Lane ("**the southern appeal site**") is **at the front of the queue**. This is not developer's hyperbole; rather it is the clear and unequivocal conclusion of the Council's own Green Belt assessment.¹² In the Council's own words, the southern appeal site is '**the most appropriate land**' for strategic residential development in this part of the Green Belt.¹³
9. As the Appellants will explain, the findings of the Council's Green Belt assessment remain valid and unimpeached by the failure of the draft local plan; there has been no material change in circumstances since the assessment; and there is no contrary analysis before this inquiry. In this regard, it is important to note that the Council has withdrawn the contrary allegation in paragraph 4.33 of Mr Connell's proof of evidence; so it is now accepted that the southern appeal site has the potential to be allocated in future. The Council's objection in this inquiry is thus a delay of what the Appellants say will be the ultimate outcome of the plan-making process. In the context of the Council making no objection to the development on grounds of prematurity.

¹¹ CD 8.11 – The Council's Draft HEELA (2021) at [11.4].

¹² CD 8.5 at [10.5.1] on p. 104, PDF p. 110.

¹³ Ibid.

10. In these circumstances, the need to deliver housing on the southern appeal site is clear and convincing. The Council's officers recognised this when recommending that planning permission be granted (a noticeable contrast to the officers' conclusion on the land to the north of Chiswell Green Lane). Yet despite this, the Council's members refused to grant planning permission.

III. THE CASE FOR THE APPELLANTS

11. Before turning to the case for the Appellants, it is important to sense check the case made by the Council. The Council has scraped around for any harm from the development of the southern appeal site that it can identify. The output of those efforts, before any interrogation, are distinctly underwhelming. The Council identifies moderate harm to Green Belt purposes;¹⁴ limited harm to the character and appearance of the area;¹⁵ and limited harm from the loss of agricultural land.¹⁶ The worst that it gets is the Council's allegation of '*very substantial*' harm to the openness of the Green Belt, but this conclusion is essentially a concern about spatial openness and the inevitable consequence of building the houses that the District needs.¹⁷ Accordingly, far from identifying any showstoppers, the Council's case against the development is meagre.

(1) Main issue 1: The effect on the Green Belt

12. The Appellants have assessed the effect of the proposed development on the Green Belt in detail. The effects on openness are restricted to the southern appeal site, with no effect on physical openness and a barely perceptible effect on visual openness outside of its boundaries. There would be limited harm to openness, at a much lower level than that asserted by the Council, with only limited harm to two of the purposes of including land in the Green Belt. Importantly, the proposed development will also have beneficial effects on the Green Belt by providing a new soft edge transition that will be a significant improvement over the existing boundary and which would be in line with best practice on design and placemaking. Overall, consistently with the

¹⁴ CD 5.4 – Mr Connell's POE at [4.27] on p. 26.

¹⁵ CD 5.4 – Mr Connell's POE at [4.31] on p. 27.

¹⁶ CD 5.4 – Mr Connell's POE at [4.34] on p. 27.

¹⁷ There is an apparent contradiction with the SOCG where Mr Connell agreed '*substantial*' harm – see CD 3.12 at p. 30, PDF p. 33.

Council's Green Belt review, the Appellants' evidence justifies the position of the southern appeal site at the front of the queue for development in the Green Belt.

(2) Main issue 2: Landscape and visual impacts

13. The Appellants have also assessed the effect of the development on the character and appearance of the area. There is no methodological dispute with the Council.¹⁸ Indeed, there is very little in the Appellants' LVIA that is disputed by the Council: there is a minor disagreement about two landscape receptors and a limited disagreement on visual effects. As the Appellants will explain, the approach of the LVIA is robust and should be preferred to the Council's unduly sensitive analysis. Overall, the proposed development is directly related to the existing settlement edge, is a rational rounding off of the existing built area and is a form of development that will reinforce the settlement pattern. At worst, there will be limited harm to the character and appearance of the area.

(3) Main issue 3: The effect on best and most versatile agricultural land

14. The Council's objection to the loss of agricultural land is inexplicable. The southern appeal site makes no contribution to the agricultural productivity of the district. It has not been in productive agricultural use for more than 20 years and there is no prospect of this changing. The southern appeal site is fundamentally unsuited to a modern, intensive, agricultural enterprise, being an isolated block of land, adjacent to the urban edge and severed from any wider agricultural land. Accordingly, the loss of this agricultural land would have no effect on the agricultural productivity of the District and there is, at most, limited harm arising from that loss.

(4) Main issue 4: Highways and transport

15. Neither the Council nor Hertfordshire County Council, the local highways authority, objects to the proposed development, either on an individual or cumulative basis. The objections by third parties are without merit and provide no good reason to take a different view to the Council and County Council. The transport effects of the proposed development have been robustly assessed on worst case basis. A safe and suitable access to the southern appeal site will be provided and there will be no highway safety issues or severe residual cumulative impacts on the wider highway

¹⁸ CD 5.33 at [3.1.2] on p. 7, PDF p. 8.

network. The cumulative effects of the two appeal schemes have been considered and appropriate mitigation identified through the introduction of signals at the Watford Road double mini roundabout. The southern appeal site is already in a sustainable location and the Appellants have committed to a package of off-site active travel and highway improvements, which will offer genuine sustainable transport options to future residents. Overall, there is no reason to refuse the development under NPPF para. 111.

(5) Main issue 6: The effect on education

16. The proposed development of the southern appeal site, in distinction to the other appeal scheme, will safeguard land for a new school. Following the agreed amendment to the description of development, the County Council, as local education authority, will have a wide discretion as to how it deploys the land. The benefit to local communities cannot be understated: this is a rare opportunity as school land is not easy to come by, especially unencumbered, remediated, of an appropriate size and without need for compulsory purchase. This benefit is especially significant in this case because of the opportunity to use the school land to meet the significant unmet need for places for children with profound neurological impairment. This is a benefit that the Council has either misunderstood or ignored. Overall, the proposed development will have significant effects on education provision.

(6) Main issue 7: Very special circumstances

17. The Appellants accept that it is necessary to demonstrate very special circumstances in order to justify the grant of planning permission. Those circumstances exist here. Of all the cases for development in the Green Belt, this could not be stronger: the harm is limited and is clearly outweighed by a package of very significant benefits. In particular:
- (a) The proposed development will help to meet the critical need for market and affordable homes, including the need for self-build and custom-build housing. It will provide an appropriate and needed mix in a form that is deliverable, making an immediate contribution to the housing supply shortfall.
 - (b) Land for a new school will be safeguarded, a rare and much needed opportunity to improve the education provision in the District. In particular,

it will offer a viable and important opportunity to address the unmet need for places for children with profound neurological impairment.

- (c) The proposed development will also deliver a series of on and off site benefits through the delivery of open space and children's play space, as well as ecological improvements including a minimum 10% BNG (despite the absence of any policy requirement). Overall, it will help to raise the standard of design in the area.
- (d) Finally, the proposed development will deliver a substantial package of economic benefits, including job creation and local economic revenue.

18. Taken together, these factors clearly and demonstrably outweigh the limited harm arising from the proposed development and very special circumstances are established. Once this hurdle is cleared, it is common ground that the proposed development benefits from the tilted balance and planning permission should be granted.¹⁹

IV. CONCLUSION

19. For these reasons, as will be explained through the Appellants' evidence and submissions to this inquiry, in due course the appeal should be allowed.

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¹⁹ CD 5.4 - Mr Connell's POE at [3.29] on pp. 11 - 12.