

CD 3.18a

**Land south of Chiswell Green Lane,
Chiswell Green, St Albans**

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

SECTION 78 APPEAL REF: APP/B1930/W/22/3313110

Proof of Evidence – Planning

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**On behalf of
Alban Developments Limited and Alban Peter Pearson, CALA
Homes (Chiltern) Ltd and Redington Capital Ltd**

March 2023

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

SECTION 78 APPEAL REF: APP/B1930/W/22/3313110

TOWN AND COUNTRY PLANNING (INQUIRIES PROCEDURE) (ENGLAND) RULES
2000

APPEAL AGAINST THE REFUSAL OF PLANNING APPLICATION BY ST ALBANS CITY
AND DISTRICT COUNCIL - PLANNING APPLICATION REFERENCE: 5/2022/0927

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

PROOF OF EVIDENCE – PLANNING

JUSTIN MATTEW KENWORTHY

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1.0 INTRODUCTION

1.1 My name is Justin Matthew Kenworthy. I am instructed by the Appellants, Alban Developments Limited and Alban Peter Pearson, CALA Homes (Chiltern) Ltd and Redington Capital Ltd ("the Appellants"). I am a Planning Director at Barton Willmore, now Stantec, which is a specialist planning and design practice¹ with over twenty-four offices² in the UK. I am based in our Practice's Soho Square office in London.

1.2 After graduating from Heriot-Watt University with an MA (Hons) in Town Planning in 1998 and from the University of Westminster with an MA in Urban Design in 1999, I became a Member of the Royal Institute of Town Planning (MRTPI) in 2002.

1.3 My professional experience as a town planner began in 2000 and includes experience as a Graduate Planning Officer to Senior Planning Officer with the London Borough of Brent (LBB); as a Senior Planner with Planning Perspectives in London; over 20-years' experience as Senior Planner, Associate, Director and as a Partner at Barton Willmore LLP; 12-months' experience as a Director at Stantec UK Ltd.

1.4 I have acted as the Planning Officer on a range of projects ranging from house extensions and small-redevelopment proposals as a Senior Planning Officer at LBB and for clients on substantial mixed-use redevelopment projects, appeals and Local Development Framework (LDF) and policy representations. I have assisted clients (individually or as part of a project team) in securing planning permission and listed building consent for the following development proposals:

- A variety of planning permissions across London at:
 - St George Wharf (LB Lambeth), Chelsea Creek (LB Hammersmith & Fulham), Battersea Reach (LB Wandsworth), Fulham Reach (LB Hammersmith & Fulham), One Tower Bridge (LB Southwark), Alton Estate (LB Wandsworth), the Havelock Estate, Friary Park Estate, Kings House, Merrick Place, Esso and Honda sites, St Bernard's Gate (LB Ealing), resulted in a major mixed-use developments, including the construction of a 50-storey tower.

¹ Including Town Planners, Architects, Masterplanners, Urban Designers, Environmental Scientists, Transport Planners and other Infrastructure-related disciplines

- My most recent major planning permissions include:
 - Thameside West (ref: 18/03557/OUT) in LB Newham for 5,000 new market sale and affordable homes, 15,000sqm of industrial floorspace, 19,400 sqm of flexible employment floorspace, a new local centre, primary school, 4-acre public park and riverside walk: and
 - Twyford Abbey (ref: 222341FUL &) in LB Ealing for the construction of 326 self-contained residential units, including the conversion of Twyford Abbey (Grade II Listed) into flats (Use Class C3), retention and repair of the Grade II listed walled garden and attached cottage to provide ancillary facilities management accommodation and residents facilities, comprehensive landscaping works including removal and works to trees and groups of trees protected by a Tree Preservation Order, provision of permissive publicly accessible open space and grow gardens, provision of gated cycle and pedestrian access onto North Circular (A406) and new access onto Twyford Abbey Road.

1.5 I have successfully given town planning-related evidence at public inquiry procedure appeals, including:

- Planning permission (LPA Ref. 5/14/2917 and Appeal Ref. APP/B1930/W/15/3004758) following a public inquiry for the site at James Marshall House, Harpenden in the District of St Albans for the demolition of existing buildings and the erection of Later Living Accommodation with communal facilities including a publicly accessible restaurant / cafe, a replacement day centre, and associated landscaping (including alterations to boundary treatment) and vehicle / pedestrian access arrangements;
- Planning permission (LPA Ref. 10/00820 and Appeal Ref. APP/T0355/A/10/2134960) following a public inquiry for the site at Imperial House, 67 Alma Road in the Royal Borough of Windsor and Maidenhead for demolition of existing building and erection of five buildings of between one and five-storeys and a three-storey car park to provide 25,464 sqm (GIA) of office floorspace (Use Class B1(a)), 152 sqm (GIA) of cafe/restaurant

² Including Reading, London, Bristol, Cambridge, Ashford, Kings Hill, Manchester, Solihull, Leeds, Newcastle, Cardiff, Southampton, Glasgow, Edinburgh, Belfast, Brighton, Exeter, High Wycombe, Northampton, Oxford, Redditch, Shrewbury, Taunton and Warrington

floorspace (Use Class A3) and 169 sqm (GIA) of ancillary security/substation floorspace, as well as associated car parking/delivery drop off spaces, landscaping/publicly accessible open space provision, improved access arrangements, service bay provision and cycle parking/motorcycle parking provision; and

- Planning permission (LPA Ref. 172559FUL) and Appeal Ref. APP/A5270/W/20/3264195) following a public inquiry for the site at 92 to 100 Warwick Road in the LB Ealing for Demolition of existing buildings and redevelopment to provide a mixed-use development extending to 5 storeys in part, comprising of 20 residential units and 5 mews houses (Class C3), 95 sqm of commercial floorspace (flexible Class A1, A2, B1 and D1 use), with associated landscaping, cycle and refuse storage, parking and new access arrangements.

1.6 As explained in Section 2.0 of the Appellant's SOC (**CD 3.8**), I have been part of the team that has been promoting development on the Appeal Site for more than 10-years through various iterations of emerging local plans, and their associated evidence base. I am therefore very familiar with the merits of the Appeal Site and the Council's policy context, as well as the guidance set out in the NPPF.

1.7 The evidence contained in this proof of evidence for this appeal (appeal reference APP/B1930/W/22/3313110) is true and has been prepared in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinion. I will also draw upon the evidence of the following expert witnesses in my evidence:

- Miss Toyne – Green Belt and landscape character and appearance (**CD 3.19**);
- Mrs Tindale – Agricultural Land (**CD 3.20**);
- Mr Hunter – Education (**CD 3.21**);
- Mr Parker – Affordable Housing and self-build / custom build (**CD 3.22**); and
- Mr Jones – Transport (**CD 3.23**).

2.0 BACKGROUND INFORMATION & SCOPE OF EVIDENCE

2.1 I have prepared this Proof of Evidence (PoE) on behalf of the Appellants in respect of the appeal lodged under Section 78 of the Town and Country Planning Act 1990 (as amended) ('the 1990 Act') against St Albans City and District Council's ('the Council') refusal of outline planning application reference 5/2022/0927 for the following development:

"Outline application (access sought) - Demolition of existing structures and construction of up to 391 dwellings (Use Class C3); the provision of land for a new school, open space provision and associated landscaping, internal roads, parking, footpaths, cycleways, drainage, utilities and service infrastructure and new access arrangements" ("the Appeal Proposals").

2.2 The Council refused the outline application on 6th December 2022, against the officer's advice, for the following reasons:

1. The proposed development comprises inappropriate development, for which permission can only be granted in very special circumstances, these being if the harm to the Green Belt and any other harm is clearly outweighed by other considerations (paragraph 148 NPPF 2021). We do not consider that the benefits outweigh the harm caused by this proposed development due to the harm to the Green Belt openness and purposes relating to encroachment to the countryside, urban sprawl and merging of towns. The harm also relates to landscape character and the loss of agricultural land. The proposal is therefore contrary to the National Planning Policy Framework 2021, Policy S1 of the St Stephen Parish Neighbourhood Plan 2019-2036 and Policy 1 of the St Albans District Local Plan Review 1994.
2. In the absence of a completed and signed S106 legal agreement or other suitable mechanism to secure the provision of 40% affordable housing provision; 3% self-build dwellings; 10% biodiversity new gain; provision of open space and play space; health contributions (towards ambulance services and GP provision); education contributions (primary, secondary and Special Education Needs and Disabilities); library service contribution; youth service contribution; leisure and cultural centres contribution; provision of highways improvements and sustainable transport measures; and safeguarding of land at the site for a new two form entry primary school, the infrastructure needs of the development and benefits put forward to justify Very Special Circumstances would not be met and the impacts of the proposal would not be sufficiently mitigated. The proposal is therefore contrary to the National Planning Policy Framework 2021, the St Stephen Parish Neighbourhood Plan 2019-2036 and Policy 143B (Implementation) of the St. Albans District Local Plan Review 1994.

2.3 Article 35(1)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 requires that where a local planning authority

refuse planning permission, their decision notice "*must state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision*". It follows from this that, save to the extent expressly indicated by the above reasons for refusal, there are no other reasons for refusal to consider at the public inquiry (because if there are the Council were legally bound to say so in the reasons for refusal).

Co-Joining

2.4 Following the validation of the Appellants' appeal application by the Planning Inspectorate (PINS) on 17th January 2023, PINS asked if the Appellants would agree to have their appeal considered by the same Inspector and at the same public inquiry with another appeal application (reference APP/ B1930/W/22/3312277) by Headlands Way Limited in relation to the Council's refusal of outline planning permissions on Land North of Chiswell Green Land, Chiswell Green, St Albans, AL2 3AJ ("the Polo School site"). Although the reasons for refusal are similar to the Appellants' reasons for refusal, however this is in the context that:

- Each scheme is proposed independently from each other;
- The planning officer's recommendation was to approve the Appeal Proposals; and
- The planning officer's recommendation was to refuse the Polo School scheme.

2.5 As a point of clarity, the evidence I have prepared only relates to appeal reference APP/B1930/W/22/3313110.

2.6 As a second point of clarity, the Appellants wrote to the Council on 17th December 2021 to object to Headlands Way Limited's planning application. The application was amended and additional information submitted that largely overcame the Appellants' objections. Consequently, the only matter that remained unresolved related to the principle of development. This is a point that will be debated at the Public Inquiry.

2.7 As part of my evidence I consider the two cases cumulatively. Section 9.0 of my evidence explains that when comparing the merits of each site on a cumulative basis and the cumulative assessments from the Appellants' other expert witnesses, the land south of Chiswell Green Lane is the better site because it benefits from a more compelling and readily distinguishable VSC / planning balance case. However, due to

the chronic housing and infrastructure delivery situation in the district and eye-watering need to deliver market sale homes, affordable homes and SB/CB plots, I conclude that there is a clear and substantial VSC case to support both schemes.

Core Documents

- 2.8 A list of Core Documents (CDs) has been agreed by the Appellants, the Council, the Polo School team and the Rule 6 Party to reduce duplication and assist the efficient running of the inquiry. Where appropriate, my evidence cross refers to the relevant CDs.

Statement of Common Ground (SOCG)

- 2.9 In the interest of assisting the Inspector in being able to identify the key matters relevant to the determination of the appeal (reference APP/B1930/W/22/3313110), an overarching SOCG (**CD 3.12**) has been prepared by the Appellants and the Council. It has been prepared to address matters of fact, and not the opinions of either party.

- 2.10 I will refer to the contents of this overarching SOCG throughout my evidence and do not propose to recreate these agreed matters in my evidence. At the time of submitting my evidence, the following matters are described in the overarching SOCG:

- The Appeal Site and its surroundings;
- The pre-application and application process;
- The Appeal Proposals;
- Planning Policy Context relevant to the Appeal Site; and
- Areas of Agreement and Disagreement.

- 2.11 The overarching SOCG (**CD 3.12**) is to confirm that agreement has been reached in respect of most matters, including the agreed heads of terms and conditions. At the time of submitting my evidence, the only matters of disagreement are:

- a. The degree to which the Appeal Proposals would cause harm to the openness of the Green Belt and the purposes of including land in the Green Belt;
- b. The degree to which the Appeal Proposals would cause harm to the local landscape character and appearance;

- c. The degree to which the Appeal Proposal will cause harm by way of loss of agricultural land;
- d. The degree of benefits and harm of the Appeal Proposals and weight to be given;
- e. The weight to be given to conclusions of the Council's evidence base; and
- f. Whether, overall, very special circumstances exist so as to justify the grant of planning permission.

2.12 Two other topic specific SOCG are being prepared and these comprise³:

- SOCG2: To agree education related common ground between the Appellants' education expert witness, Mr Hunter, and HCC's education team (**CD 3.16**); and
- SOCG3: To agree transport related common ground between the Appellants' transport expert witness, Mr Jones, and HCC's transport team (**CD 3.17**).

2.13 I respectfully ask the Inspector to review these SOCG alongside my evidence.

Conditions

2.14 If the appeal is allowed, the draft conditions are to be set out in the overarching SOCG (**CD 3.12**). A list of drawings, reports and statements to be approved is set out in draft Condition no.4.

Legal Obligation

2.15 A Section 106 Agreement (**CD 3.13**) between the Appellants, Hertfordshire County Council (HCC) and the Council in relation to all site-specific and County-related financial and non-financial planning obligations offered by the Appellants is at an advanced stage and the latest draft has been submitted alongside the Proofs of Evidence. The signed agreement will be presented to the Inspector during the Public Inquiry.

Scope of My Evidence

2.16 As a consequence of the expected agreement of the above-mentioned legal agreement, the Council's second reason for refusal is not expected to be relevant to

the determination of this appeal. Therefore, my evidence will focus specifically on the first reason for refusal and any other matters of relevance.

2.17 I will provide evidence in support of the Appeal Proposals in relation to:

- The background to the Appeal Site and Appeal Proposals (Section 3.0);
- The planning policy, guidance and other material considerations which I consider relevant to the determination of the appeal (Section 4.0);
- Responding to the Reasons for Refusal (Section 5.0);
- The VSC case and planning balance (Section 6.0);
- Rebutting Rule 6 Party comments (Section 7.0);
- Rebutting third party comments (Section 8.0);
- Cumulative considerations (Section 9.0); and
- Summary and conclusion (Section 10.0).

2.18 Set out below is the hierarchy of language that I am using in my evidence when considering harms and benefits and follows, in my view, the consistent terminology used by the Planning Inspectorate:

- Very substantial weight;
- Substantial weight;
- Significant weight;
- Moderate weight;
- Limited weight; and
- No weight.

³ The Appellants are seek to agree with the Council if other topic specific SOCG can be agreed in relation to landscape, agricultural land, affordable housing and SB/CB.

3.0 BACKGROUND TO THE APPEAL SITE & APPEAL PROPOSALS

3.1 At the outset, I consider it helpful for the Inspector to understand the Appellant's position which forms the background to this Appeal.

The Appeal Site

3.2 The Appeal Site is described in Section 2.0 of the overarching SOCG (**CD 3.12**). In the meantime, set out below is a summary of the most relevant information to provide the background context.

3.3 The Appeal Site is located within the Metropolitan Green Belt, on the western edge of Chiswell Green and to the southwest of St. Albans City which includes a derelict farmhouse and outbuildings. The illustration found in **Appendix JK1** explains which parts of the Appeal Site are regarded to be previously developed land (PDL). Paragraph 6.2 of the Council's SOC (**CD 5.2**) also acknowledges that the Appeal Site include PDL.

3.4 The Inspector will note during the site visit that the Appeal Site includes:

- A vacant farmhouse, yard and garden (including a swimming pool) and outbuildings;
- Horse stables and livery used for training horses and horse riding⁴;
- Horse grazing fields that are split up by fences and gates;
- A builder's compound that is used for storage purposes; and
- Other fields that are split up by timber stakes and wires.

3.5 The Appeal Site is not, therefore, 'open countryside' in its purest form. Local views across the Appeal Site are dominated by buildings and structures, fences and debris, as well as the rear elevations of the properties that front onto Forge End and Long Fallow. It displays particular urban fringe characteristics, as highlighted in the Council's Green Belt Review (2014) (**CD 8.5**).

3.6 The Appeal Site is adjoined on all four sides by:

- Chiswell Green (a specified settlement⁵) to the east, south and partially to

⁴ I have been informed that horse riding school and the stables will be relocated to the area between Luton and St Albans. No specific land has been identified at this time.

⁵ In accordance with Policy 2 of the adopted Local Plan Review 1994 (saved and deleted policies version (July 2020)) (**CD 8.1**)

the north;

- The former Butterfly World site, its car parking areas, landscape bunds and its access road to the west (Miriam Lane);
- Chiswell Green Lane with residential properties and a travellers' site to the north; and
- Mature hedging and mature trees that screen the Site from views from the wider countryside along parts of its northern and western boundaries which are reinforced by the landscape bunding along the western boundary that is used to screen the Butterfly World car park.

3.7 According to the St Albans Green Belt Review (2014) (**CD 8.5**) prepared by Sinclair Knight Merz (SKM) on behalf of the Council, the Appeal Site is located within Sub-Area 8 within a large Strategic Parcel referred to as GB25 (see Figure 3.1 below).

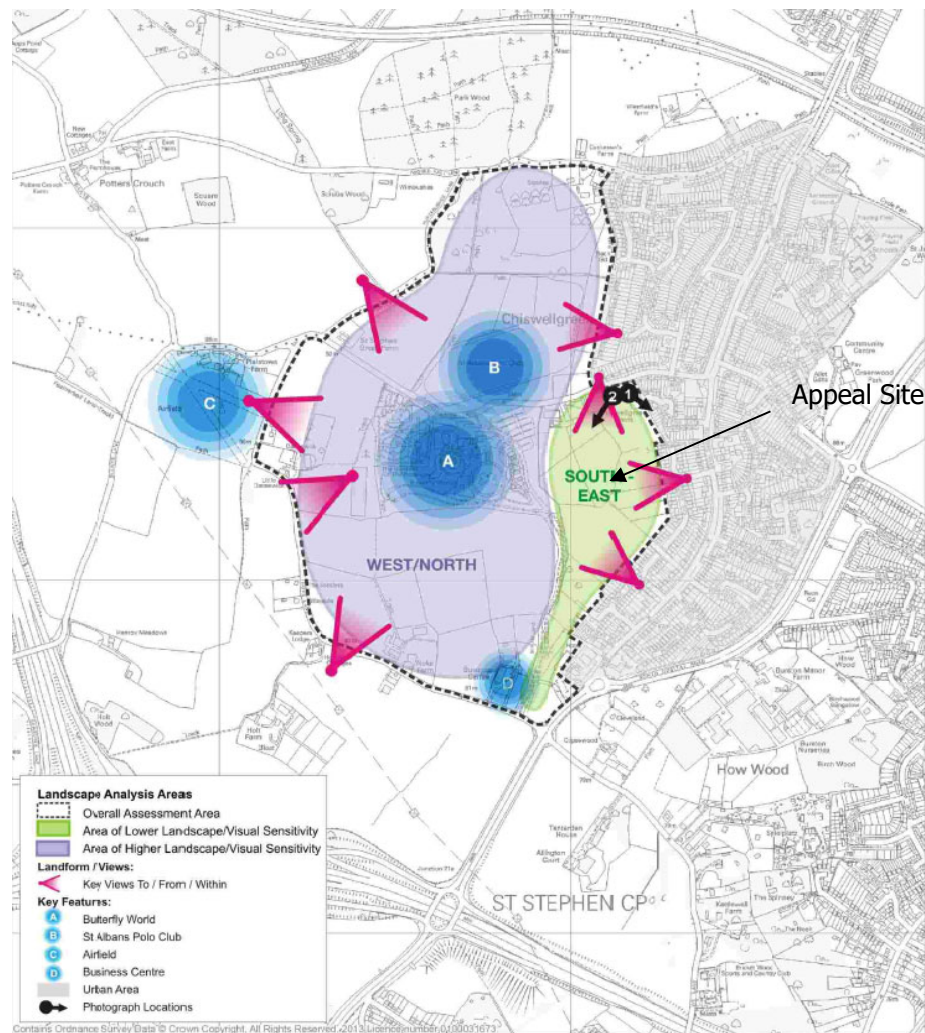


Figure 3.1: Sub-Area 8

- 3.8 The Green Belt Review explains that Strategic Parcel GB25 significantly contributes towards two of the five Green Belt Purposes: it safeguards the countryside and maintains the existing settlement pattern (providing a gap between St Albans and Chiswell Green). However, the Inspector will note that St Albans is located to the east of Chiswell Green, but the Appeal Site is located on the west boundary of Chiswell Green. In terms of Sub-Area 8, within which the Appeal Site is located, the Green Belt Review explains that the land:

"...displays particular urban fringe characteristics due to its proximity to the settlement edge and Butterfly World along Miriam Road to the west. This development bounds the outer extent of the pasture land and creates a physical barrier to the open countryside"; and

"This creates potential to integrate development into the landscape with lower impact on views from the wider countryside and surroundings. At the strategic level, a reduction in the size of the parcel would not significantly compromise the overall role of the Green Belt or compromise the separation of settlements. Assessed in isolation, the land makes a limited or no contribution towards all Green Belt purposes".

"...the most appropriate land for potential release from Green Belt for residential led development is the eastern part of the sub-area". [my emphasis]

- 3.9 It is therefore clear from the report, critically, that Sub-Area 8 within which the Appeal Site is located was considered by the Green Belt Review to be at the 'front of the queue' amongst all candidate green belt release sites, for the reasons summarised in the above passage. As Ms Toyne explains in her evidence (**CD 3.19**), and as the officer's report to Committee (**CD 3.4**) on the application under appeal also made clear, those conclusions still hold good. This provides fundamental context for considering the issues in this appeal.
- 3.10 Parts of the Appeal Site are classified as Grade 3A and 3B land by the Provisional Agricultural Land Classification (ALC) post-1988 ALC surveys⁶, where Grade 1, 2 and 3a are Best and Most Versatile (BMV) Agricultural Land and grade five is poorest quality. Further details can be found in the Appellants' Agricultural Land Classification Report (**CD2.23**) and the evidence prepared by Mrs Tindale (**CD 3.20**) on behalf of the Appellants. For the sake of clarity, the Appeal Site is not used for agricultural purposes.

⁶ The Agricultural Land Classification system established by the Ministry of Agriculture, Fisheries and Food (Agricultural Land Classification of England and Wales - Revised guidelines and criteria for the grading of the quality of agricultural land (1988), accessed online: <http://publications.naturalengland.org.uk/file/5526580165083136>) classifies agricultural land into five categories to establish the best and most versatile agricultural land.

- 3.11 The constructed homes that front onto the Long Fallow and Forge End appear to have been designed and constructed in the early-1980s. The rear gardens that abut the Appeal Site were not designed to include a softened landscape edge or landscaping to integrate this development into the Green Belt. The current edge to the settlement is therefore a 'hard edge'. This, when combined with the urban fringe characteristic, represent the baseline position when considering the effect of the Appeal Proposals on the Green Belt and the character of the landscape.
- 3.12 The Inspector will note that access points were deliberately left in place onto the Appeal Site from Long Fallow and Forge End, to enable another phase of homes to be constructed in the future.
- 3.13 The Appeal Proposals will deliver the soft edge transition into the countryside that is currently missing from the existing settlement boundary, which would be significantly more in keeping with current principles of urban design and placemaking. I consider the Appeal Proposals would therefore be a logical extension of the existing settlement that would in-fill between the settlement and the former Butterfly World site and Miriam Lane, whilst providing a soft edge transition into the countryside thus improving the boundary relationship with the settlement in views from the wider Green Belt. This should be given significant weight, as discussed in Section 5.0 of my evidence.

Development Plan Context

- 3.14 The Council has one of the oldest Local Plans (**CD 8.1**) in the country. The first new local plan (Strategic Local Plan 2011 – 2031), published in 2016, failed the Duty to Cooperate test and was found unsound and subsequently withdrawn by the Council.
- 3.15 During a Cabinet meeting held on 11th September 2018, the Chairperson of the Planning Policy Committee (Councillor Maynard) explained the following – see extract below from the Council's public report:

5. NOTIFICATION OF OTHER BUSINESS

The Chairman made the following announcement:

This is scheduled to be the last meeting of this Committee before the Local Plan is presented to Cabinet. I think it is important at this stage to remind ourselves why we desperately need a new Local Plan. There hasn't been enough, or the right type of development of either housing or commercial premises in this District for a generation.

- Over the last 20-30 years, our population has grown very significantly. Many local people have been priced out of living in the District.
- Young people cannot afford to rent or buy so have to remain in their parents homes.
- If they can afford to rent, they cannot afford to buy and struggle when they start families.
- People on lower incomes are particularly badly hit. They cannot afford market rents and affordable or social homes are not available.
- Children are being brought up in tiny flats that are completely unsuitable for their needs, with parents made ill by the overcrowded conditions they are living in.

There are around 1,000 families on the Council list seeking more suitable homes. Many are in despair at the conditions they have to live in.

This Local Plan is a big part of our solution. We will build homes for our young people. We will make sure many are affordable. We will build smaller first family homes that ordinary people can afford to live in.

To members, when considering the Plan tonight and in Council, please remember why we need to deliver it.

To developers, residents and land owners, some of you may have your own views about the housing needs of the District and the way in which housing development should be planned. A number of you have made your views known to me and officers over the last few weeks including Segro, Fairview Homes, Tarmac, the Football Club. The time for everyone to make representations on the content of the plan is during the full public consultation. This is due to take place in September / October this year.

My response is that as far as the Council is concerned it is essential to fully deliver the affordable housing and the housing mix set out in the policies we are considering tonight. We look forward to the potential developers of the Broad Locations further confirmation that the position is fully understood and will be fully delivered along with the infrastructure requirements.

3.16 The above announcement was made at the Council's Cabinet meeting convened to secure support for the new local plan's progress. This was the Council's second attempt to adopt a new local plan (the St Albans City & District Local Plan 2020-2036) (**CD 8.2**). This makes a clear statement about the Council's reliance on, and its full intention of, delivering the broad location sites (including the Appeal Site). Unfortunately, this attempt to adopt a new local plan was also found to be unsound by PINS and was subsequently withdrawn by the Council.

3.17 The reasons⁷ why the draft local plan was deemed unsound do not undermine the

⁷ The Inspector's post hearing letter (14th April 2020) confirms that the points of unsoundness related to: 1) Failure to engage constructively and actively with neighbouring authorities on the strategic matters of (a) the Radlett Strategic Rail Freight Interchange proposal and (b) their ability to accommodate St Alban's housing needs outside of the Green Belt; 2) Plan preparation not in accordance with the Council's Statement of Community Involvement; 3) Inadequate evidence to support the Council's contention that exceptional circumstances exist to alter the boundaries of the Green Belt – that planning authority hasn't been able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for development to justify changes to the green belt boundary (including smaller GB sites); 4) Failure of the Sustainability

Appeal Site. For example, the baseline analysis contained within the Green Belt Review, undertaken as part of the evidence base for the draft local plan, was not highlighted as a reason why the draft local plan was found to be unsound.

3.18 Since 2018, the housing delivery situation has continued to deteriorate. For example, paragraph 11.4 of Appendix B (Urban Capacity Study) of the Council's Draft HELAA (2021) (**CD 8.11**) confirms that there is not enough capacity on urban sites to meet the district's housing needs. The study estimates that potential exists for approximately 2,100 residential units on the sites identified within the urban capacity study [The AMR (2022) (**CD 8.7**) now confirms this is 2,145 units]. This is only 14% of the district's housing need over the plan period, meaning that the Council must build in the Green Belt to meet its own identified need.

3.19 The points I am making here are:

- i. The Council has squandered its chances to resolve its local plan situation on a number of occasions [even after clear warnings were raised by Inspectors], now resulting in a policy vacuum and a situation where the Council has continued to not adequately provide for its own market housing and affordable housing needs for the past 20 to 30 years (as expressed in Councillor Maynard's announcement above). The Council's latest attempt to prepare a new local plan is at its earliest stages and the reality is that the preparation, consultation and examination of a new emerging local plan is some considerable way off with adoption not expected until the end of 2025 at the earliest;
- ii. In the meantime, the identified local housing need figure for the Council is 1,068 dwellings per annum (890 dpa plus a 20% Buffer) and need is required across the market sale, social rented, intermediate, first homes, elderly, self-build and custom build sectors. The Council is significantly failing to meet its housing needs in all these sector groups (as explained in Section 6.0 of my evidence). Positive action is desperately needed now to bolster market housing, affordable housing and self-build / custom-build plots supply and to deliver other infrastructure needs; and
- iii. The Council's failure of plan making, which has been evidence for many years in this district, is 'material consideration' in its own right that should be given 'considered weight', for the reasons explained below:

- In the appeal decision at Brayfield Stable in Windsor the Inspector concluded that failure to deliver homes for 13 years (in that case) was regarded as a 'serious failure' on the part of the Council (paragraphs 24 to 26, **CD 9.21**); and
- In the appeal decision at Land to the rear of Palm House Nurseries in Guildford the SOS and Inspector highlight the Council's failure to find and progress the delivery of the 'necessary sites' (gypsy and traveller (GAT) sites in that case) but the Council were fully aware that its green belt policy would not typically allow for GAT sites suggested by the Council may be delivered in the Green Belt. The SOS and Inspector conclude that is a matter of 'considerable weight' in favour of the appeal (see paragraphs 21 of DL and IR115, **CD 9.22**). In this case, St Albans Council is failing to find and progress the necessary sites to meet its housing needs; is fully aware that its urban capacity will not deliver its need; is fully aware that its adopted Green Belt policy will not typically allow for development (thus requiring Green Belt release); however, the Council failed to deliver a new up-to-date plan and is unlikely to have a new local plan in place by 2025. This is a serious failure of the part of the Council and this should be given '**considerable weight**' in the determination of this appeal.

3.20 The opportunity to demonstrate 'very special circumstances' (VSC) in the NPPF is particularly important when failures in the plan-making process occur, which is exactly what has happened in this district, and considerable weight can be given to this failure. This has been recognised in decisions made by the Planning Inspectorate (PINS) and the Council, as discussed in sections 5.0 and 6.0 and **Appendix JK5** of my evidence. Some of these decisions (the Roundhouse Farm, Orchard Drive and Sewell Park decisions) share a similar context to the Appeal Proposals - the same local planning authority, the same housing crisis, the same out-of-date local plan context. I conclude that unlike the Council's Planning Officer, the Council's Planning Committee did not apply a consistent approach to determining this VSC case when compared to the abovementioned St. Albans cases when overturning the Planning Officer's recommendation to approve the Appeal Proposals.

Appellants' Context

3.21 The Appeal Site has been promoted for development purposes for more than 10-years through various iterations of emerging local plans, and their associated evidence base. It was identified by the Council proposed as a strategic site

allocation (Broad Location S6x) in the now withdrawn Publication Draft St Albans Local Plan (Sept 2018) (**CD 8.2**). An extract for Broad Location S6x) is set out below:

Policy S6 x) – West of Chiswell Green Broad Location

Objective

To provide an urban extension of Chiswell Green.

Proposals

The development will be required to deliver:

- 1 Masterplanned development led by the Council in collaboration with local communities, landowners and other stakeholders
- 2 Minimum capacity 365 dwellings
- 3 Minimum 40% Affordable Housing in accordance with Policy L3
- 4 Minimum overall net density 40 dwellings per hectare
- 5 Housing size, type and mix as set out in Policy L1 and Appendix 6.
- 6 Retention of important trees and landscape features

- 7 Recreation space and public open space
- 8 A site for and appropriate contributions towards a 2 Fe primary school, including Early Years provision
- 9 Transport network (including walking and cycling links) and public transport services upgrades/improvements
- 10 3% of homes provided to be self-build housing
- 11 Sufficient assets to provide sustainable management of community facilities, open spaces and parklands
- 12 Excellence in design, energy efficiency and water management
- 13 Appropriate renewable energy production and supply mechanisms

3.22 The Appellants have continued to promote the Appeal Site as a strategic allocation and have offered the Council full support in progressing this. The Appellants offered to agree a Planning Performance Agreement (PPA) in 2020 to assist the Council in preparing a Masterplan for the Appeal Site which would eventually be adopted as supplementary planning guidance by the Council. This offer was declined by the Council on the basis that the Council's resources were to be focused on two of the other strategic sites. However, having patiently waited for a further two years without any progress by the Council and in the context of:

- The chronic need for the delivery of market sale homes, affordable homes and self-build / custom-build plots and the Council currently confirming it only has a housing land supply of 2.2 years⁸ [now 2.0 years⁹] and only achieving a score of 69% on the Housing Delivery Test;
- The ongoing delays in bringing forward a new local plan that adequately

⁸ Source: Paragraph 8.6.2 of the Officer's Committee Report (CD 3.4) and paragraph 5.17 of the Council's SOC (CD 5.2)

⁹ The Council's AMR 2022 (base date of 31/03/2022) (CD 8.7)

provides for the district's full objectively assessed housing and infrastructure needs (including the delivery of new schools and open space provisions) and job creation; and

- The approval of other Green Belt sites elsewhere in the district for housing both locally and at appeal

3.23 The Appellants took the decision to undertake pre-application discussions with HCC, the Council, St Stephen Parish Council and general public between August 2021 and March 2022, before submitting the outline planning application to the Council on 5th April 2022.

3.24 The Appellants thought the Council would see that the Appeal Proposals would come forward within the next five years (likely to be year three) which would help it address its eye-watering chronic housing under-delivery issues and deliver other benefits.

Appeal Proposals

3.25 Section 3 of the overarching SOCG (**CD 3.12**) will provide the Inspector with a detailed description for the Appeal Proposals. The summary below provides information that is of most relevance.

3.26 The Appellants seek outline planning permission for a landscape-led housing development that comprises:

- Demolition of existing structures and construction of up to 391 homes;
- 40% affordable homes provision, of which:
 - 30% Social Rent;
 - 19% Affordable Rent;
 - 26% Intermediate;
 - 25% First Homes¹⁰
- 3% self-build and custom-build plots;
- The provision of land for a new school;
- 2.92 ha of publicly accessible amenity space;
- 0.82 ha of formal play space for children of all ages and 295sqm for playspace for toddlers;
- New access arrangements into the Appeal Site from Chiswell Green Lane,

¹⁰ As defined by the Government

Long Fallow and Forge End, including the provision of new public rights of way (PROW) through the Appeal Site;

- Adjustments to existing car parking, footpath, cycle path and highway arrangements along Chiswell Green Lane, Watford Road, Long Fallow, Forge End, Farringford Close; and
- New on-site habitat and a financial contribution¹¹ of £256,800.00 to enhance habitat off-site (to achieve a 10% biodiversity net gain).

1.8 The Other financial¹² and non-financial obligations agreed comprise:

- Primary Education (including Nursery and Childcare) - £4,031,284.00 (Index linked to BCIS 1Q2020) towards the expansion of Killigrew Primary and Nursery School or any primary school with expansion potential in the area;
- Secondary Education (including post-16 education) - £3,796,425.00 (Index linked to BCIS 1Q2020) towards the expansion of Marlborough Science Academy/ Samuel Ryder Academy or any secondary school with expansion in the area;
- Specialist Education (Primary & Secondary) - £436,248.00 (Index linked to BCIS 1Q2020) towards the delivery of new Severe Learning Difficulty (SLD) special school places (WEST);
- Transport - £2,668,966.00 towards the cost of any highway works;
- Youth Facilities - £110,387.00 (Index linked to BCIS 1Q2020) towards re-provision of the St Albans Young People's Centre in a new facility to accommodate larger numbers of young people;
- NHS Herts Valley CCG (Healthcare) - £504,921.00 to extend the Midway Surgery, Chiswell Green, to accommodate an increase in patient population;
- Library Facilities - £128,368.00 (Index linked to BCIS 1Q2020) towards increasing the capacity of community spaces in St Albans Central Library;
- Local Sport Facilities and Parks - £298,355.00 towards Greenwood Park Community Centre and Pavilion improvements
- Additional Ambulance Capacity - £95,013.00 towards East of England Ambulance Service;
- Waste Collection – £23,014.00 towards HCC's waste collection services; and
- HCC monitoring fees - £3,060.00

3.27 The illustrative masterplan for the Appeal Proposals can be found at **CD 2.27**.

¹¹ The financial contributions quoted in my evidence are initial costs based on the outline proposals and will be subject to review at the reserved matters stage through formula that form part of the S106 Agreement

¹² As above

3.28 The Appeal Proposals will deliver the 'full spectrum'¹³ of housing tenures to meet identified needs and other infrastructure requirements (school land, open space and children's playspace) that will benefit the local community.

Deliverability

3.29 The Council's Draft Housing and Economic Land Availability Assessment (HELAA) (**CD 8.9 to 8.11**) includes all the sites and broad locations within the district capable of delivering 5 or more dwellings or 0.25ha/500 sqm of economic development and falling into the following categories:

- Existing Local Plan allocations without planning permission;
- Sites submitted through the Council's 'Call for Sites' process undertaken in 2021;
- Sites from previous Strategic Housing Land Availability Assessment (SHLAA) (**CD 8.8**) from 2016 onwards; and
- The Council's Urban Capacity Study (**CD 8.11**).

3.30 These Sites were assessed for their suitability, availability and achievability, in line with paragraph: 017 Reference ID: 3-017-20190722 of the NPPG. These sites were then considered in the context of their deliverability¹⁴ and developability¹⁵.

3.31 The sites identified were then estimated to have housing capacity based on the following:

- 60% of the site area (for sites over 2 ha) will be considered usable for residential use, with 40% required to provide infrastructure, main roads, open space and public facilities; and
- Using 40 dwellings per hectare (dph) for the 60% site area, which was deemed by the Council to be a relatively safer and robust assumption¹⁶.

3.32 In terms of the timing for delivery of homes on sites, the Council has assumed¹⁷ that

¹³ Except for elder housing

¹⁴ Sites are deemed to be 'deliverable' when they are: "...available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years" (NPPF Glossary, page 66)

¹⁵ Sites are deemed to be 'developable' when they are: "...in a suitable location for housing development with a reasonable prospect that they will be available and could be viably developed at the point envisaged" (NPPF Glossary, page 66)

¹⁶ As explained in the Council's Residential Density Report (2014). Also, paragraph 10.6.11 of the Council's Green Belt review explains that the Appeal Site could yield between 270 dwellings (at 30dph) and 450 dwellings (50dph) (CD 8.5).

¹⁷ Source: The Council's Draft HELAA Master Report (CD 8.9)

for housing sites of 100-499 dwellings, the following scenario:

- An estimated average planning approval period of 2 years, followed by;
- An average 'planning to delivery' period of 2 years, followed by; and
- An average build out rate of 55 dwellings per year (in years 5 to 14).

3.33 The Appellants have adopted the Council's housing capacity and scenario assumptions (as described above) and the development parameters set out in the previous draft site allocation (Policy S6 x)) when designing the Appeal Proposals. The Appellants' submitted a Joint Delivery Statement to the Council in February 2018 and in March 2021 (see **Appendix JK2**) to explain that the landowners have a common interest in bringing the Appeal Site forward for development and they will continue to co-ordinate in the delivery of the wider site and promote its identification as an allocation in the emerging Local Plan. The Appellants also wrote to the Council on 8th March 2021 (see **Appendix JK3**) to explain that the Appeal Site is immediately available for development. This letter was supported by several documents, including a HELAA 'Call for Site 2021 Site Identification Form' which explained that the Appeal Site is available for delivery within the 1-5 years category.

3.34 I consider the Appeal Site to be 'available', it is free from constraint with development being 'achievable' and 'deliverable' (at the density proposed within less than 5-years) and is sustainably located close to existing facilities and infrastructure within the settlement of Chiswell Green. I therefore conclude that the Appeal Proposals meet the requirements of 017 Reference ID: 3-017-20190722 of the NPPG.

3.35 I note that the Council's Committee Report (**CD 3.4**) explains that there is no reason to think that the Appeal Site cannot come forward immediately following the submission of reserved matters application(s) after the grant of outline planning permission thereby significantly boost local housing supply. Accordingly, the officer gave 'very substantial weight' to the delivery of market sale and affordable housing, and 'substantial weight' to the delivery of self-build plots on the basis that they would make a clear contribution to Council's shortfall in supply within the next five years, as discussed in Section 5.0 of my evidence.

Quality of Design

3.36 The northern part of the Appeal Site will be delivered by Taylor Wimpey (TW). The southern part of the Appeal Site will be delivered by CALA Homes. Having spoken with CALA Homes' Strategic Land Director (England) and with TW's Land and

Planning Director (North Thames), I am confident that their homes will be of the highest quality and a beautiful place will be delivered on the Appeal Site. I explain in Section 6.0 of my POE how this would be achieved in accordance with the relevant national guidance and why the proposals should be looked upon more favourably.

- 3.37 Computer Generated Images (CGIs) and a photograph of high-quality development constructed by TW and CALA Homes on other sites can be found in **Appendix JK4**.
- 3.38 The final design quality of the development will be the subject of Reserved Matters Applications (RMAs) to be determined by the Council. It is therefore within the Council's control to ensure that beautiful, high-quality development is delivered on the Appeal Site consistently with the National Design Guide and Section 12 of the NPPF.

4.0 PLANNING POLICY, GUIDANCE & OTHER CONSIDERATIONS

4.1 This section of my evidence sets out the high-level planning policy context within which I consider the Appeal Proposals should be determined. A more detailed policy context summary is set out in the overarching SOCG (**CD 3.12**) and the Planning Statement (including Affordable Housing Statement) submitted in support of the outline planning application (**CD 2.2**).

Statutory provisions

4.2 Section 70(2) of the Town & Country Planning Act (1990) and Section 38(6) of the Planning and Compulsory Purchase Act (2004) (“the Act”) make it clear that decisions should be made in accordance with the development plan unless material considerations indicate otherwise.

4.3 Under Section 1 of the Self Build and Custom Housebuilding Act 2015, local authorities are required to keep a register of those seeking to acquire serviced plots in their area for their own self-build and custom house building. They are also subject to duties under Sections 2 and 2A of the Act to have regard to this and to give enough suitable development permissions to meet the identified demand. Self and custom-build plots could provide market or affordable housing.

Adopted Policy

4.4 The development plan documents relevant to the Appeal Site comprise:

- The saved policies of the Council’s District Local Plan Review 1994 (including its associated adopted Proposals Maps) (hereafter referred to as the “Local Plan Review”) (**CD 8.1**);
- St Stephen Neighbourhood Plan (2019-2036) (**CD 8.12**);
- HCC’s Waste Core Strategy & Development Management Policies DPD (2012);
and
- HCC’s Hertfordshire Minerals Local Plan 2007.

4.5 The Council determined the Appeal Proposals against the objectives of the policies of the Local Plan Review (**CD 8.1**) and St Stephens Neighbourhood Plan (**CD 8.12**), as listed in Section 5.0 of the overarching SOCG (**CD 3.12**).

4.6 The policies listed in the Council’s first reason for refusal are:

- Policy 1 (Metropolitan Green Belt) of the Local Plan Review (**CD 8.1**); and
- Policy S1 (Location of Development) of the St Stephens Neighbourhood Plan (**CD 8.12**)

4.7 Policy 1 (Metropolitan Green Belt) of the Local Plan Review (**CD 8.1**) states as follows:

**POLICY 1
METROPOLITAN GREEN BELT**

The whole of St. Albans District lies within the Metropolitan Green Belt except for the following areas:

- (i) the towns and specified settlements listed in Policy 2;
- (ii) land North of Buncefield, Hemel Hempstead (proposed warehousing, *see Policy 20, ref: EMP. 7*);
- (iii) Colney Street Industrial/Warehousing Estate (*see Policy 20, ref: EMP.22*);
- (iv) North-East Hemel Hempstead (land west of Cherry Tree Lane - *see Policy 26*).

The boundaries of the Green Belt around these areas (as shown on the Proposals Map) have been defined by reference to the degree of long term expansion of the built-up areas acceptable in the context of the stated purpose of the Green Belt.

Within the Green Belt, except for development in Green Belt settlements referred to in Policy 2 or in very special circumstances, permission will not be given for development for purposes other than that required for:

- a) mineral extraction;
- b) agriculture;
- c) small scale facilities for participatory sport and recreation;
- d) other uses appropriate to a rural area;
- e) conversion of existing buildings to appropriate new uses, where this can be achieved without substantial rebuilding works or harm to the character and appearance of the countryside.

New development within the Green Belt shall integrate with the existing landscape. Siting, design and external appearance are particularly important and additional landscaping will normally be required. Significant harm to the ecological value of the countryside must be avoided.

The circumstances and locations in which development will be permitted will also have regard to the ensuing policies, particularly:

Chapter	Subject	Policies
2	Key structuring policies	2
3	Housing	6, 8, 10-18
4	Employment	24
5	Transportation	36, 39-50
6	Shopping and service uses	55-60
7	Social and community services	60B, 61, 63-67
8	Design and environment	70,72-80, 84
9	Conservation and historic buildings	85-90
10	Leisure	91, 93, 95-98
11	Tourism	99, 101
12	Countryside	102-106
14	Archaeology	109-111
15	St. Albans City Centre	114
17	Highfield Oval site, Harpenden	132
18	Fleetville	137
19	London Colney	139
20	Upper Colne Valley	143, 143A

4.8 I highlight that paragraph 3 of Policy 1 (Metropolitan Green Belt) of the Local Plan Review (**CD 8.1**) refers to development in the Green Belt being allowed if 'very

special circumstances' (VSC) exist.

4.9 There is no statutory definition of what constitutes VSC, nor is there a default list set out in national or local policy. VSC is matter of planning judgement and each case is taken on its own site-specific circumstances and merits. Paragraph 148 of the NPPF explains that VSC will not exist unless the potential harm to the Green Belt, by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

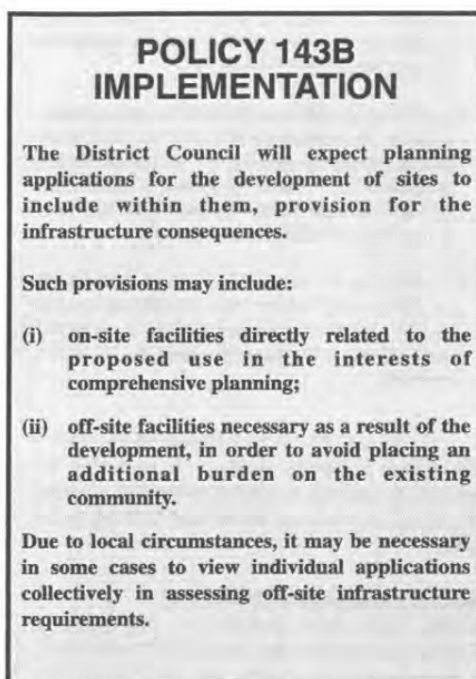
4.10 Policy S1 (Location of Development) of the St Stephens Neighbourhood Plan (**CD 8.12**) states as follows:

<p>POLICY S1: LOCATION OF DEVELOPMENT</p> <ol style="list-style-type: none">1. Development proposals in St Stephen Parish will be supported within the Built-up Area Boundaries of Bricket Wood, Chiswell Green and Park Street, identified on the Policies Map. Development proposals that would preserve or enhance the character or appearance of the area and achieve a net gain in biodiversity will be particularly supported.2. Development proposals outside the Built-Up Area Boundary will not be supported unless:<ol style="list-style-type: none">i. it is on sites allocated for those uses in the St Albans District Local Plan or in any successor; orii. it relates to necessary utilities infrastructure and where no reasonable alternative location is available; oriii. it relates to uses that are appropriate in the Green Belt.3. Residential development which meets either the exceptions to inappropriate development in the Green Belt as set out in paragraphs 145 and 146 of the National Planning Policy Framework, or demonstrates very special circumstances, as set out in paragraph 147 of the National Planning Policy Framework, will be supported. Where very special circumstances can be demonstrated, development of the following types will be supported:<ol style="list-style-type: none">i. affordable housing; orii. smaller units for younger people; oriii. properties tailored to the ageing population; oriv. provision of additional community benefit4. Development that would be visually intrusive when viewed from publicly accessible locations will not be supported unless it can be appropriately mitigated with landscape screening.5. In determining development proposals substantial weight will be given to the value of using suitable brownfield land within the built-up boundaries for either homes and/or other identified needs, or to support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land.

(Conformity Reference: SSNP Objectives: 1, 4; Saved Policies of District Plan Review 1994: 8; NPPF: 29, 119, 120, 147 to 151)

4.11 I highlight that paragraph 3 of Policy S1 (Location of Development) of the St Stephens Neighbourhood Plan (**CD 8.12**) refers to supporting residential development in the Green Belt if VSC can be demonstrated in accordance with paragraph 147 of the NPPF. However, the VSC case is not required to include the delivery of items 3 (i. to iv.) as this would be inconsistent with the NPPF.

- 4.12 The policy listed in the Council's second reason for refusal is Policy 143b (Implementation) of the Local Plan Review (**CD 8.1**) which states as follows:



- 4.13 I note that paragraph 6.14 of the Council's SOC (**CD 5.2**) suggests that Policy 1 of the Local Plan Review was also included in the second reason for refusal. This is not the case.

Weight to be given to the adopted development plan

- 4.14 The Local Plan Review (**CD 8.1**) was adopted in November 1994. The Local Plan Review policies were reviewed by the Secretary of State (SOS) and a Direction under Planning and Compulsory Purchase Act 2004 made on the 14 September 2007 saving policies.
- 4.15 Paragraph 8.6.2 of the Council's Committee Report (**CD 3.4**) and paragraph 5.17 of the Council's SOC (**CD 5.2**) confirm that the Council only benefits from a future housing land supply of 2.2 years. However, page 18 of the Council's AMR (2022) (**CD 8.7**) confirms that this has now dropped to 2.0 years – a shortfall of 3,195 homes¹⁸ (or a 60% shortfall) between 2022/23 to 2026/27. The Council has only

¹⁸ Page 18, AMR (2022) (CD 8.7): 1,068 dwellings per annum (890 dwellings + 20% buffer) for 2022/23 to 2026/27 = 5,340, minus current supply of dwelling (2,145) = a shortfall of 3,195 dwellings (60% shortfall)

delivered 69%¹⁹ of its housing requirement over the previous three years.

4.16 This chronic and persistent shortfall in the district's housing land delivery and supply position is made worse when considering that:

- Past Delivery – Figure 20 of the Council's AMR (2022) (**CD 8.7**) explains that between 2019/20 and 2021/22 the Council's completions totalled 1,267 new homes. When compared to the annual target over the same period (2,908 homes), the actual delivery rate is 46.4%²⁰ of the annual target; and
- Future Delivery – The 2022/21 target was reduced to the equivalent of 7 months to take account of the COVID-19 pandemic. If this target had not been reduced then HDT figure for the period 2018/19 to 2020/21 would have been 58.2%²¹ (and even with the COVID-reduction in the HDT requirement the Council's performance was still very considerably below the expectations of national planning policy).

4.17 Paragraph 8.2.11 of the Council's Committee Report (**CD 3.4**) and paragraph 5.17 of the Council's SOC (**CD 5.2**) explain that the policies which are most important for determining the application (now the Appeal Proposals) are regarded to be out-of-date on the basis of the guidance set out in paragraph 11, footnote 8 of the NPPF (**CD 7.1**). Indeed this is the case for multiple reasons:

- a. The lack of a 5-year housing land supply;
- b. The Council's chronic under-delivery of market sale homes, affordable homes and SB/CB homes;
- c. The Council's failure to meet the Housing Delivery Test since 2015/16;
- d. The most important policies in the development plan, the centrepiece of which is the Local Plan Review, is now nearly 30 years old (including Policy 1). It is not the age of plan that is the issue, it is the inconsistency²² with the NPPF that is the issue. For example, the Local Plan Review was prepared and reviewed at points in time when housing need levels and targets were much lower and when more urban capacity was greater to accommodate housing

¹⁹ Source: 2021 Housing Delivery Test Final Results - Jan 2022: Need for the period 2018/19 to 2020/21 = 2,317 homes. Delivery for the same period = 1,596 homes (CD 4.2).

²⁰ Required 820 (2019/21) + 1,020 (21/22) + 890 (22/23) = 2,730; Supply 1,267 (AMR, Fig. 20); 46.4%

²¹ HDT (2021): Required 2,742; Supply 1,596; 58.2%

²² In the Court of Appeal judgement (dated 3rd Sept 2020) relating to *Peel Investments (North) Ltd v Secretary of State for Housing, Communities & Local Government* [2020] EWCA Civ 1175, it was explained that policies are "out-of-date" for the purposes of para. 11d of the NPPF if they have been overtaken by things that have happened since the plan was adopted, either on the ground or through a change in national policy, or for some other reason. *Peel Investments (North) Ltd v Secretary of State for Housing, Communities And Local Government & Anor* [2020] EWCA Civ 1175 (03 September 2020) (bailii.org)

and infrastructure needs. Consequently, the boundaries around its settlements (drawn to reflect its needs at the time of preparation and review) now prevent its current housing needs from being met. Therefore, the Local Plan Review does take into account that 'things have changed' since it was adopted and reviewed and the application of Policy 1 serves to constrain economic growth in the district and does not support the Government's objective of significantly boost the supply of homes, thereby being 'inconsistent' with the NPPF, including the objectives of paragraphs 60, 81 and 82 of the NPPF.

- 4.18 Put simply, the Local Plan Review is out of date in multiple respects and inconsistent with the NPPF, and St Albans is currently a paradigm of failed plan-making. It is now left with one of the oldest development plans in the Country, with a chronic and severe under-supply of homes to meet its needs.
- 4.19 I highlight that the draft version of the St Stephen Neighbourhood Plan initially included a strategic housing development on the Appeal Site and was prepared on the assumption that the Council's previously prepared Draft Local Plan (**CD 8.2**) would have been adopted. However, once it was confirmed that the Draft Local Plan had been withdrawn by the Council, the St Stephen Neighbourhood Plan was adjusted to accord with the policies contained within the Local Plan Review (**CD 8.1**) which is regarded by the Council to be out-of-date, as explained above. It must be the case therefore that policies of the St Stephen Neighbourhood Plan (**CD 8.12**) are to be regarded as out-of-date as they are directly reliant on out-of-date local plan policy that is inconstant with the NPPF.
- 4.20 I therefore conclude that in accordance with paragraph 219 of the NPPF (**CD 7.1**), the policies referred to in the Council's first reason for refusal²³ carry 'limited weight' in the determination of the Appeal Proposals. That said, acknowledging that these policies do confirm that VSC can exist. This is the only element of this policies that is consistent with paragraph 147 of the NPPF and carries 'significant weight' in the determination of the Appeal Proposals. The Appeal Proposals benefits from a compelling VSC, as discussed in section 5.0 and 6.0 of my evidence.

²³ Policy 1 (Metropolitan Green Belt) of the Local Plan Review (CD 8.1) and Policy S1 (Location of Development) of the St Stephens Neighbourhood Plan (CD 8.12)

Tilted Balance

4.21 In accordance with paragraph 11d) and Footnote 8 of the NPPF (**CD 7.1**), in an authority where there exists an out-of-date plan (and in this case where the production of a new and sound local plan to meet up to date identified needs has been severely delayed), the 'presumption in favour of sustainable development' applies when:

- i. The application of policies in the NPPF that protect areas or assets of particular importance do not provide a clear reason for refusing the proposed development; or
- ii. Any adverse impacts of doing so would not significantly and demonstrably outweigh the benefits.

4.22 I note that when the Council determined the application at Land off Orchard Drive, How Wood, St Albans (SACDC Ref: 5/2021/2730) (**CD 9.5**) in 2021, the Council's Planning Committee agreed with the Planning Officer that:

"Para 8.1.3. The Council cannot demonstrate a 5 yr supply of land for housing. This means that policies which are most important for determining the application are out of date, and paragraph 11(d) of the NPPF is engaged."

4.23 I note that when reaching a decision on the Oaklands College, St Albans Campus, St Albans ('Oaklands College') application (PINS Ref: APP/B1930/W/15/3051164) (**CD 3.8**), the SOS considered the Inspector's reasoning and agreed with his overall conclusions that:

"Paragraph 114: Given that the Council cannot demonstrate a five-year supply of deliverable housing, and the contribution the proposal would make to meeting the significant shortfall, he considered that Local Plan Policies 1 and 2 that directly related to the supply of housing must be deemed as out of date. In accordance with Framework, he therefore considered that paragraph 14 of the Framework [2019] was engaged even if local plan policies were discounted."

4.24 The Council's Planning Officer considered that the titled balance was engaged when its Planning Committee determined the Orchard Drive application in 2021 (**CD 9.5**).

4.25 I note that paragraph 3.13 of the Council's Annual Monitoring Report (2022) (**CD 8.7**) also explains that:

"Therefore, the Council cannot demonstrate a 5-year housing land supply as set out in the NPPF 2021 Paragraph 74. Paragraph 11 of the NPPF 2021 is therefore engaged."

4.26 However, I note that the Council's expert witness, Mr Connell, concludes in the Council's SOC that paragraph 11 (or the tilted balance) is not engaged. Although this is a matter to be discussed during the Inquiry, I disagree with this conclusion for the following two reasons:

- The tilted balance is engaged provided that there are no clear reasons for refusing the Appeal Proposals, within the meaning of para. 11(d)(i) of the NPPF (**CD 7.1**). Since, for the reasons I elaborate below, very special circumstances exist so that the grant of permission is consistent with NPPF policies relating to the green belt, there are indeed no clear reasons for refusing permission and therefore (green belt issues aside) the tilted balance is engaged; and
- The impacts of approving the Appeal Proposal would not significantly and demonstrably outweigh the benefits, in accordance with paragraph 11d)(ii) and Footnote 8 of the NPPF (**CD 7.1**).

4.27 Moreover:

- The Council's failure of plan making, which has been evidence for many years in this district, is 'material consideration' in its own right that should be given 'considerable weight', as explained in Section 5.0 of my evidence; and
- The benefits of the Appeal Proposals are also supported by other legislation. For example:
 - Under Sections 2 and 2A of the Self Build and Custom Housing Building Act 2015, a local authority is required to give enough suitable development permissions to meet the identified demand for such properties. The Appeal Proposals include Self-Build / Custom-Building homes, which also 'tilts the balance' in favour of the Appeal Proposals.
 - Under the Environment Act 2021²⁴, from November 2023 (yet to be confirmed) all planning permissions granted in England (with a few exemptions) will have to deliver at least 10% BNG. The delivery of a

²⁴ [Environment Act 2021 \(legislation.gov.uk\)](https://legislation.gov.uk)

10% BNG²⁵ earlier, before this obligation is required, and without the policy basis to require this also 'tilts the balance' in favour of the Appeal Proposals.

4.28 Accordingly, the 'presumption in favour' is engaged which 'tilts the balance' in favour of the Appeal Proposals, in accordance with paragraph 11(d)(ii) of the NPPF (subject to prior consideration of the very special circumstances test).

National Guidance

National Planning Policy Framework (NPPF, 2021)

4.29 Section 5.0 of the agreed overarching SOCG (**CD 3.12**) confirms the sections and paragraphs of the NPPF that are relevant to the determination of the Appeal Proposals. The first reason for refusal refers to the NPPF (**CD 7.1**), without reference to specific sections or paragraphs.

4.30 I consider the following paragraphs of the NPPF are relevant to the first reason for refusal and should be given 'significant weight' in the determination of the Appeal Proposals:

- Paragraph 8
- Paragraph 10
- Paragraph 11
- Paragraph 14
- Paragraph 47
- Paragraph 48
- Paragraph 60
- Paragraph 62
- Paragraph 73
- Paragraph 74
- Paragraph 81
- Paragraph 92
- Paragraph 95
- Paragraph 98
- Paragraph 119
- Paragraph 124
- Paragraph 126
- Paragraph 132
- Paragraph 130
- Paragraph 134
- Paragraph 137
- Paragraph 138
- Paragraph 147
- Paragraph 148
- Paragraph 180
- Paragraph 219

4.31 The guidance contained within the following paragraphs and footnotes are of particular relevance:

- Paragraph 8 of the NPPF – seeking to achieve sustainable development which secure economic, social and environmental gains.
- Paragraph 10 – a presumption in favour of sustainable development.

²⁵ Source: Appellant's Biodiversity Net Gain Assessment (CD 2.18)

- Paragraph 11d) – where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date ^[Footnote 8], granting permission unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed ^[Footnote 7]; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Footnotes 7 - The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 181) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 68); and areas at risk of flooding or coastal change.

Footnotes 8 - This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.

- Paragraph 60 – Government’s objective of significantly boost the supply of homes.
- Paragraph 138 – Green Belt serves five purposes:
 - a) to check the unrestricted sprawl of large built-up areas;
 - b) to prevent neighbouring towns merging into one another;
 - c) to assist in safeguarding the countryside from encroachment;
 - d) to preserve the setting and special character of historic towns; and
 - e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
- Paragraph 147 - Inappropriate development should not be approved except in Very Special Circumstances (VSC).
- Paragraph 148 - VSC will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
- Paragraph 81 - ‘Significant weight’ should be placed on the need to support economic growth and productivity.

- Paragraph 95 - It is important that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. Give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications.
- Paragraph 134 – ‘significant weight’ should be given to development proposals that helps raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.
- Paragraphs 8, 73, 92²⁶, 126²⁷ and 130 of the NPPF seek to ensure that development will deliver a well-designed, beautiful and safe places that are sympathetic to local character, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being.

National Planning Policy Guidance (NPPG)

4.32 Reference ID 64-001-20190722 of the NPPG explains what can be taken into account when considering the potential ‘impact’ of development on the openness of the Green Belt. This includes, but not limited to:

- Openness - which can have both spatial and visual aspects (the visual impact of the proposal may be relevant as could its volume);
- The duration of the development, and its remediability – taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness; and
- The degree of activity likely to be generated, such as traffic generation.

Other Material Considerations

Emerging Local Plan & Council’s evidence base documents

4.33 As explained in paragraph 5.14 of the Council’s SOC (**CD 5.2**), work is being undertaken on a new Local Plan, but at this stage no weight can be attributed to it in the decision-making process.

4.34 The Publication Draft Local Plan (**CD 8.2**) was withdrawn following concerns raised

²⁶ Now paragraph 94 in the Consultation Draft NPPF (2022)

²⁷ Now paragraph 128 in the Consultation Draft NPPF (2022)

by the Examining Inspectors. It therefore carries no weight in the determination of the Appeal Proposals. However, I consider the conclusions set out in the Council's current set of evidence base documents, as summarised below, are a material consideration in the determination of the Appeal Proposals. This evidence will carry weight because of their provenance, as their findings still hold good as confirmed in paragraph 8.3.15 of the Council's Committee Report (**CD 3.4**) and the evidence of Ms Toyne (**CD 3.19**). This is particularly relevant in relation to the Council's Green Belt Review which I give 'significant weight' on the basis that it contains findings of fact that remain unchanged and having used an accepted standard methodology. The evidence base of relevance is summarised below:

- The Council's Green Belt Review: Sites and Boundaries Study (December 2013) and Green Belt Review Sites & Boundaries Study (February 2014) (**CD 8.5**) explains that:
 - This area of land does not significantly contribute towards any of the five Green Belt purposes. It makes a partial contribution towards safeguarding the countryside from encroachment. It makes a limited or no contribution towards checking sprawl, preventing merging, preserving setting and maintaining the existing settlement pattern (paragraph 10.5.4);
 - Out of all the Broad Locations, the Appeal Site would result in the least harm to the five-purposes of the Green Belt (Table 9.1, page 113 & paragraphs 11.1.15, 11.2.2 and 11.2.4); and
 - The Appeal Site lies within the St Stephen's Plateau landscape character area (paragraph 10.1.2) and identifies the Appeal Site as within an area of:
 - 'Lower Landscape Sensitivity' (table on page 101, Figure 10.1 & paragraphs 10.4.12 and 10.6.5); and
 - as 'Land for potential Green Belt release' (paragraphs 10.5.1, 10.6.1, 10.6.3, 10.6.4, 12.1.1 & 11.1.2).
 - It is a 'potential urban development area, infrastructure & POS' (Figure 10.3); and
 - 60% of the Appeal Site will be developed for housing and the remaining 40% would provide supporting infrastructure including public open space, road, service and facilities for education or health activities (paragraphs 10.6.8 and 10.6.9).
- Appendix 1 (no.39, page 5) of the Council's Draft Strategic Housing Land Availability Assessment (Draft SHLAA, updated in May 2018) (**CD 8.8**)

identifies the Appeal Site as a potential strategic housing development site. On page 11 of Appendix 3 of the Draft SHLAA explains that:

"...the sub-area identified on pasture land at Chiswell Green Lane displays urban fringe characteristics due to its proximity to the settlement edge and Butterfly World along Miriam Road to the west. This development bounds the outer extent of the pasture land and creates a physical barrier to the open countryside. The pasture land also displays greater levels of landscape enclosure due to localised planting along field boundaries. This creates potential to integrate development into the landscape with lower impact on views from the wider countryside and surroundings. At the strategic level, a reduction in the size of the parcel would not significantly compromise the overall role of the Green Belt or compromise the separation of settlements. Assessed in isolation the land makes a limited or no contribution towards all Green Belt purposes".

- Paragraph 5.6 of the Council's Draft Housing and Economic Land Availability Assessment 2021 (Draft HELAA) (**CD 8.9 to 8.11**) concludes that the new Local Plan will need to accommodate approximately 15,000 homes over a 15-year period i.e., approx. 1,000 dwellings per annum (dpa). The Appeal Site is identified as a potential site for housing in the HELAA; and
- Paragraph 11.4 of Appendix B (Urban Capacity Study) of the Council's Draft HELAA (2021) (**CD 8.11**) confirms that there is not enough capacity on urban sites to meet the district's housing needs. The study estimates that potential exists for approximately 2,100 residential units on the sites identified within the urban capacity study. This is only 14% of the district's housing need over the plan period.

4.35 I will refer to these evidence base documents in Section 5 of my evidence where appropriate.

4.36 I note that the Council has accepted that some weight can be given to the Green Belt Review when determining the Sewell Park (**CD 9.3**) application. When determining the appeal at Land between Lodge Lane and Burtons Lane in Litte Chalfont, Amersham (APP/X0415/W/22/3303868) (the "Litte Chalfont decision") (**CD 9.11**) the Inspector concluded that:

"The site's allocation (SP BP6), within the withdrawn joint local plan carries no weight. However, I recognise that the Green Belt assessments which informed the allocation do carry significant weight." (Paragraph 18) [my emphasis]

4.37 There are very close similarities between the Sewell Park, the Little Chalfont decision (**CD 9.11**) and the Appeal Proposals – they include sites that were the

subject of site allocations within withdrawn plans and the subject of robust Green Belt Reviews. The Sewell Park decision relates to the same local planning authority as this Appeal Site with the same housing crisis and the same out-of-date local plan context.

4.38 As explained above, I also attribute 'significant weight' to the Council's Green Belt Review (**CD 8.5**) as well as the findings of the Council's latest Annual Monitoring Report (AMR) (**CD 8.7**). I also attribute 'some weight' to the Draft SHLAA (**CD 8.8**) Draft HELAA (**CD 8.9 to 8.11**).

Other Key Decisions

4.39 There are several recent appeal decisions and Council decisions in relation to other green belt proposals that have demonstrated 'very special circumstances' (VSC). As explained in greater detail in Appendix 5 of the Appellants' Planning Statement (**CD 2.2**), these decisions highlight how much weight would typically be afforded to harm and the benefits when considering each VSC case.

4.40 I conclude that the St. Albans decisions are a 'material consideration' in this case because there are similarities behind the context of these decisions and the Appeal Site's circumstances. For example, it's the same local planning authority, the same housing crisis and the same out-of-date local plan context. Accordingly, I have prepared a table, found at **Appendix JK5**, as part of my evidence which:

- Identifies the most recent and relevant appeal decisions and Council decisions relating to Green Belt sites located within the St Albans District and in other local planning authority areas;
- Compares the weighting given to the harm and the benefits of each of the appeal proposal; and
- Compares the weighting given to the harm and the benefits of the Appeal Proposals applied by me, the Planning Officer and the Council's expert planning witness.

4.41 I will refer to these decisions in Sections 5.0 to 10.0 of my evidence where appropriate.

4.42 I highlight these decisions for the following reasons:

- As a way of identifying a consistent approach to applying weight to the relevant subject matters considered in the planning balance of each case; and
- Because it helps to demonstrate that:
 - The Appellants and the Council's Officers Report have applied a consistent approach to the weighting applied to harm and benefits when recommending the Appeal Proposals and other applications in the district;
 - The Council's Planning Committee adopted an inconsistent approach to weighting in this case when compared to decisions made in relation to other planning applications in the district; and
 - The Council's SOC has now adopted an even more inconsistent approach to weighting in this case when compared to decisions made in relation to other planning applications in the district. This will be discussed in greater detail in my evidence.

SOS's WMS & Consultation Amendments to the NPPF (Dec 2022)

4.43 I wish to make it clear that only 'limited weight' (at best) can be given to the Written Ministerial Statement (WMS) published on Rt Hon Michael Gove MP²⁸ dated 6th December 2022 (**CD 7.20**) in the decision-making process. This is made clear in the PINS Note 14/2022 dated 8th December 2022 (**CD 7.21**) which explains at paragraphs 3 and 5:

"3. A WMS is an expression of government policy and, therefore, capable of being a material consideration (or important and relevant) in all casework and local plan examinations. It should be noted, however, that this WMS states that further details of the intended changes are yet to be published and consulted upon.

5. No action is required in any casework areas, at present, as the WMS sets out proposals for consultation rather than immediate changes to government policy. Consequently, the starting point for decision making remains extant policy, which we will continue to implement and to work to until such time as it may change."

4.44 However, in this particular case, I do not consider the WMS guidance nor the potential amendments to the NPPF to carry any weight in the determination of the Appeal Proposals. A clear explanation of my conclusion is provided in **Appendix**

²⁸ SOS for Levelling Up Housing & Communities and Minister for Intergovernmental Relations

JK6. More specifically, I do not consider the 'presumption in favour' will potentially be switched off in this case in the future because of WMS or potential amendments to the NPPF.

4.45 Even if the amendments to the NPPF are considered to carry some 'limited weight' in the determination of planning applications, this does not mean that time must standstill and that the 'tap' relating to VSC cases is to be turned off. This appeal case is one of those cases that should continue be allowed, as demonstrated in the remainder of my evidence.

5.0 RESPONSE TO THE REASONS FOR REFUSAL

5.1 This section of my evidence focuses on responding to the Council's reasons for refusal.

A) Reasons for Refusal No.1

5.2 The five key matters to consider in Council's first reasons for refusal and in guidance contained within the NPPF (**CD 7.1**) are:

- i. Will the Appeal Proposals result in harm to the Green Belt?
- ii. Will the Appeal Proposals result in harm to landscape character and appearance?
- iii. Will the Appeal Proposals result in harm to agricultural land?
- iv. Will the Appeal Proposals result in any other harm (or impacts) that cannot be mitigated?
- v. If the conclusions to the above are 'yes', will the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the Appeal Proposals, be clearly outweighed by other considerations in order to justify very special circumstances (VSC)?

5.3 Matters i. to v. are considered in turn below. Matter v. will also be discussed in greater detail in section 6.0 of my evidence.

i) Harm to the Green Belt

Definitional Harm

5.4 I conclude that the Appeal Proposals which relate to the non-PDL part of the Appeal Site do not fall into the exceptions category and is inappropriate development (as set out in paragraphs 148 and 149 of the NPPF) that would result in definitional harm that should be given '**substantial weight**'.

Openness

5.5 In terms of the purported impact on the openness (in spatial and visual terms) of the Green Belt, the evidence of Lisa Toyne (**CD 3.19**) explains there would be some loss of physical and perceptual openness on the Appeal Site, as would be inevitable on the development of any greenfield site, but this would be restricted to the

Appeal Site itself, with no effect on the physical openness and a barely perceptible to no effect on the visual openness of the remaining Green Belt to the south-west and west. This accords with the opinion of the Council's Officer, regarding the effect on the openness of the Green Belt, as set out in Paragraphs 8.3.7 to 8.3.9, Page 94 (**CD 3.4**).

5.6 Miss Toyne concludes that the Appeal Proposals would result in limited harm to 'openness' (in spatial and visual terms) of the Green Belt.

Purposes

5.7 The purposes of the Green Belt are:

1. To check the unrestricted sprawl of large built-up areas;
2. To prevent neighbouring towns merging into one another;
3. To assist in safeguarding the countryside from encroachment;
4. To preserve the setting and special character of historic towns; and
5. To assist in urban regeneration, by encouraging the recycling of derelict.

5.8 The evidence of Lisa Toyne (**CD 3.19**) explains that:

- The Appeal Site currently makes:
 - No contribution to Purposes 1, 4 and 5;
 - Very limited to no contribution to Purpose 2; and
 - A partial contribution to Purpose 3.
- The above is validated by the Council's Green Belt Review (**CD's 5.4 to 5.6**).

5.9 In terms of the purported impact of the Appeal Proposals on the purposes of the Green Belt, the evidence of Miss Toyne (**CD 3.19**) explains that the Appeal Proposals would:

- Not contribute to unrestricted sprawl and would not be harmful of Purpose 1 of the Green Belt, but instead would constitute a well-planned, contained and logical rounding off of the existing settlement of Chiswell Green. This

accords with the opinion of the Council's officers as set out in the Committee Report at Paragraph 8.3.22 (a), Page 96 (**CD 3.4**);

- Result in limited harm to Purpose 2 within the Appeal Site and no harm to the remaining Green Belt beyond the Appeal Site. This accords with the opinion of the Council's Officer as set out in the Committee Report at Paragraph 8.3. 22 (b), Pages 96 and 97 (**CD 3.4**);
- Result in very limited harm to Purpose 3 and is contained to the Appeal Site itself. This broadly correlates with the opinion of the Council's Officer as set out in the Committee Report at Paragraph 8.3. 22 (c), Page 97 (**CD 3.4**);
- Not result in any harm to Purpose 4. This accords with the opinion of the Council Officer as set out in the Committee Report at Paragraph 8.3.22 (d), Page 97 (**CD 3.4**); and
- Not result in any harm to Purpose 5. This accords with the opinion of the Council Officer as set out in the Committee Report at Paragraph 8.3.22 (e), Page 97 (**CD 3.4**).

Conclusion (Openness & Purpose)

5.10 Miss Toyne's overall conclusion is that the Appeal Proposals would result in limited harm to 'openness' (in spatial and visual terms) and limited harm to two of the 'purposes' of the Green Belt. However, this harm is confined to the Appeal Site and not beyond.

5.11 I concur with Miss Toyne's overall conclusion. The definitional harm, harm to the 'openness' (in spatial and visual terms) and harm to two of the 'purposes' of the Green Belt is collectively to be given 'substantial weight' (as set out in paragraph 148 of the NPPF) in the determination of the VSC in favour of the Appeal Proposals. However, I also conclude in part v) below that:

- The harm to the Green Belt resulting from the Appeal Proposals is as limited as it gets, hence why the Council's Green Belt Review: Sites and Boundaries Study (December 2013) and Green Belt Review Sites & Boundaries Study (February 2014) (**CD 8.5**), which carries significant weight, confirm that:
 - The Appeal Site is in the least sensitive part of the wider Green Belt parcel; and
 - Out of all the Broad Locations considered by the Council, the Appeal Site would result in the least harm to the five-purposes of the Green Belt (Table 9.1, page 113 & paragraphs 11.1.15 and 11.2.4);

- If the chronic shortfalls of unmet housing need in St Albans (as identified in the AMR 2022) are to be addressed in any meaningful way during the ongoing failure of the plan-making process in the district, such levels of harm to the Green Belt are going to have to be tolerated in the public interest; and
- VSC exist in this case that justify granting planning permission for the Appeal Proposals. The VSC case is discussed in greater detail in Section 6.0 of my evidence.

5.12 I also draw reference to paragraph 134 of the NPPF which explains that:

"...significant weight should be given to ...outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings" [my emphasis]

5.13 The Appeal Proposals will deliver a soft edge transition in between the potentially new Green Belt boundary and the settlement. This transition is currently missing from the existing settlement boundary. I consider the Appeal Proposals would deliver a new soft edge transition into the Green Belt thus improving the boundary relationship with the settlement in views within the Green Belt, bringing it considerably more in line with current principles of good design and placemaking and the 'integration' objectives of Policy 1 of the Council's Local Plan Review. This should be given '**significant weight**' in accordance with paragraph 134 of the NPPF and helps to mitigate the harm resulting from the Appeal Proposals on Green Belt.

ii) **Harm to landscape character and appearance**

5.14 In terms of the purported impact on landscape character and appearance, the evidence of Lisa Toyne (**CD 3.19**) explains:

- The Appeal Proposals would introduce housing to an area of land on the western edge of Chiswell Green, which would result in a pronounced change to the character of the Appeal Site. This would result in limited harm to the landscape character and appearance within the Appeal Site;
- However, the Appeal Proposals would directly relate to the existing settlement edge and reinforce the settlement pattern by rationally rounding it off. It would also provide an opportunity to create a robust and permanent boundary to the settlement, and thus assimilate it into the immediate and

wider context with limited detrimental effects on landscape character or appearance of the landscape beyond the Appeal Site, and therefore very limited harm to the wider landscape character beyond the Appeal Site.

- 5.15 Miss Toyne's overall conclusion is that the Appeal Proposals would result in a limited amount of harm to landscape character and appearance of the Appeal Site and very limited harm to the wider landscape or the setting of Chiswell Green.
- 5.16 Paragraph 174 of the NPPF seeks to recognise the intrinsic character and beauty of the countryside and protect and enhance valued landscape. Miss Toyne's evidence and the Council's Green Belt Review (**CD 8.5**) explain that the Appeal Site has 'particular urban fringe characteristics'. Other than its green belt designation the site does not possess any significant intrinsic landscape or character value taking it out of the ordinary.
- 5.17 In accordance with the objectives of the MWP on 'Building Better, Building Beautiful Commission (Jan 2021)' and paragraphs 8, 73, 92²⁹ and 126³⁰ of the NPPF the Appeal Proposals will deliver a well-designed, beautiful and safe place, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being. It does this, in accordance with paragraph 73, by extending an existing settlement.
- 5.18 In accordance with the guidance contained within paragraph 130 of the NPPF, the Appeal Proposals:
- Will add to the overall quality and aesthetic of the Chiswell Green area;
 - Will deliver good architecture as well as appropriate and effective landscaping (see **Appendix JK4**);
 - Will be sympathetic to local character, in terms of the surrounding built environment and landscape setting;
 - Will establish a strong sense of place, using the arrangement of streets, spaces, building types and materials to create an attractive, welcoming and distinctive place to live;
 - Will optimise the potential of the Appeal Site to accommodate and sustain an appropriate amount and mix of development (including green and other public space); and

²⁹ Now paragraph 94 in the Consultation Draft NPPF (2022)

³⁰ Now paragraph 128 in the Consultation Draft NPPF (2022)

- Will create a safe, inclusive and accessible place which promotes health and well-being, with a high standard of amenity for existing residents within Chiswell Green and future occupiers of the Appeal Site.

5.19 In accordance with guidance set out in paragraph 132 of the NPPF, early discussion between the Appellant, the Council and the local community were undertaken regarding the Appeal Proposals. The Appeal Proposals were also evolved to accommodate the additional landscape mitigations suggested by HCC's Landscape Officer and other consultees response. Therefore, the Appellant can demonstrate early, proactive and effective engagement and the Appeal Proposals should be looked upon more favourably.

5.20 I note that paragraph 8.5.17 of the Council's The Committee Report (**CD 3.4**) concludes that:

"In light of the above discussion [with the HCC Landscape Officer], the landscape and visual impact of the proposed development is considered acceptable. Nevertheless, it is considered that the introduction of built form across the existing fields would cause some harm to the local landscape character, to which some limited weight is given."

5.21 Based on the conclusions of Lisa Toyne and my understanding of the design evolution behind the Appeal Proposals, I conclude that the Appeal Proposals will result in a limited amount of harm to landscape character and appearance of the Appeal Site and a very limited amount of harm to the wider landscape or the setting of Chiswell Green. This level of harm is to be given '**limited weight**' in the determination of the appeal on the basis that it is limited to the confines of the Appeal Site. In addition, as explained, above:

- When it comes to building on greenfield land, the limited amount of harm resulting from the Appeal Proposals as good as it gets; and
- If the chronic shortfalls of unmet housing need in St Albans are to be addressed in any meaningful way during the ongoing failure of the plan-making process in the district, such levels of limited harm to landscape character and appearance are also going to have to be tolerated in the public interest; and
- I consider the Appeal Proposals would deliver a soft edge transition into the countryside thus improving the boundary relationship with the settlement in views within the Green Belt. This should also be given '**significant positive weight**' in accordance with paragraph 134 of the NPPF and helps to

mitigates the harm resulting from the Appeal Proposals on local landscape and character.

iii) Harm to agricultural land

5.22 In terms of the purported detrimental impact on agricultural land, the evidence of Mrs Tindale (**CD 3.20**) explains:

- The Appeal Site does not contribute to the agricultural productivity of the district, which has been considered as a relevant consideration by the Council in relation to the decision on Harpenden Road [Sewell Park, **CD 9.3**], where it was noted that the site had not been productive for more than 20 years. Similarly, the northern part of the Appeal Site has been used mainly for recreational equestrian use for over 20 years. Based on the location of the well-established equestrian based enterprise there the strong likelihood is that this type of land use would continue on the northern part of the Appeal Site in the absence of the proposed development and on this basis the land would remain agriculturally unproductive in the long term;
- The loss of this land would therefore have no effect on the framework of agricultural productivity or farming land use in the district; and
- At most, limited weight should be attached to the loss of Subgrade 3a land on the Appeal Site, taking into account the insignificant area of loss, the inevitability of the loss of some best and most versatile land within the district for future development and the fact that the land has been and will continue to be agriculturally unproductive.

5.23 Based on the conclusions of Mrs Tindale, I conclude that the Appeal Proposals will result in a limited amount of harm (at most) to agricultural land, but this harm carries only a **'limited weight'** (at most) in the determination of the appeal largely because the harm would not constitute an unacceptable impact on the availability and useability of agricultural land in this part of the district. The harm is certainly no more, and in fact less (given the lack of any realistic prospect of the site being returned to agricultural use from its current uses) than on other greenfield sites in the district.

5.24 Once again, if the chronic shortfalls of unmet housing need in St Albans are to be addressed in any meaningful way during the ongoing failure of the plan-making process in the district, small losses to agricultural land are going to have to be

tolerated in the public interest.

iv) Any other harm resulting from the Appeal Proposals that cannot be mitigated?

5.25 The conclusions of the extensive technical work and additional information prepared on behalf of the Appellants and submitted to the Council (see **CD's 1.1 to 2.40**) explain that the Appeal Site is not the subject of any constraint that would undermine the acceptability of the Appeal Proposals nor fall within the category of 'any other harm' referred to in paragraph 148 of the NPPF.

5.26 Section 6 and paragraphs 8.4.19, 8.9.7, 8.12.4, 8.13.50, 8.17.1 to 8.17.17 and 8.19.7 of the Council's Committee Report (**CD 3.4**), Sections 6.0 to 8.0 of my POE and part B below) all confirm that the Appeal Proposals will not result in additional harm that cannot be adequately mitigated by way of a planning obligation or condition. If there is any residual harm, this is considered to '**weigh neutrally**' in the planning balance.

5.27 Paragraphs 6.9.1 to 6.9.4 and 8.15.1 to 8.15.14 of the Council's Committee Report (**CD 3.4**) and part B) below confirm that the Council and HCC are satisfied that the financial contributions set out in the Section 106 Legal Agreement (**CD 3.13**) are necessary to make the development acceptable in planning terms, in accordance with Regulation 122³¹ of the CIL Regulations 2010 (as amended).

v) Will the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the Appeal Proposals, be clearly outweighed by other considerations?

5.28 Paragraphs 5.4 to 5.26 above demonstrate that:

- The Appeal Proposals will result in a limited amount of harm to Green Belt;
- The Appeal Proposals will result in a limited amount of harm to landscape character;
- The Appeal Proposals will result in a limited amount of harm (at most) to agricultural land; and
- The Appeal Proposals will not result in any other harm that cannot be mitigated.

5.29 Because of this harm, it will be necessary to demonstrate that VSC exist in this case (in the form of benefits) that outweigh this harm.

5.30 I conclude in Section 6.0 of my evidence that there is a very strong VSC case in this case (in the form of benefits) to justify granting planning permission. I also conclude that the harm to the Green Belt, by reason of inappropriateness, and any other harm resulting from the Appeal Proposals, will be clearly outweighed by other considerations in accordance with paragraph 148 of the NPPF (**CD 7.1**), Policy 1 of SACDC's Local Plan (1994) (**CD 8.1**) and Policy S1 of the St Stephen Neighbourhood Plan (2022) (**CD 8.12**). The Council's Planning Officer also came to the same conclusion (see paragraph 8.16.4 of **CD 3.4**).

B) Reasons for Refusal No.2

5.31 Paragraph 55 of the NPPF sets out the position in terms of the use of planning obligations. This states that:

"Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition."

5.32 Paragraph 57 of the NPPF sets out the tests associated with planning obligations. This states that:

"Planning obligations must only be sought where they meet all of the following tests:

- a) Necessary to make the development acceptable in planning terms;*
- b) Directly related to the development; and*
- c) Fairly and reasonably related in scale and kind to the development."*

5.33 This paragraph reflects Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 which came into force in April 2010 and were subsequently amended in September 2019.

5.34 The need for financial contributions and to secure appropriate mitigation is currently required under Policy 143B of the St Albans City and District Local Plan (adopted November 1994) and HCC's Planning Obligations Toolkit.

³¹ A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is— (a) necessary to make the development acceptable in planning terms; (b) directly related to

- 5.35 The Statements (**CD 2.41a** and **2.41b**) prepared by HCC's Growth Area Team Leader explains why the financial contributions being sought by HCC are required to mitigate the impact of the Appeal Proposals. HCC conclude that these contributions meet the tests set out within Regulation 122 of the CIL Regulations (as amended) and paragraph 57 of the NPPF. I have no reason to disagree with this conclusion.
- 5.36 Based on the above, and the fact that the S106 Agreement (**CD 3.13**) is expected to be agreed and signed by HCC, the Council and the Appellants, it is expected that the Appeal Proposals will fully mitigate its impact on local infrastructure, in accordance with Policy 143B of the Local Plan Review and paragraphs 55 and 57 of the NPPF.
- 5.37 At the point of submitting my evidence, the drafted overarching SOCG (**CD 3.12**) has been drafted to confirm that reason for refusal no.2 is not expected to be relevant to the determination of the appeal.

6.0 VSC & PLANNING BALANCE

6.1 I have already set out in Section 4 of my evidence the planning policy, guidance and material considerations against which the Appeal Proposals should be determined. I do not restate them in this section of my evidence but I will refer to them where appropriate.

6.2 As stated in Section 5.0 of my evidence, this section of my evidence focuses on answering the following question:

Will the potential harm to the Green Belt, by reason of inappropriateness, and any other harm resulting from the Appeal Proposals, be clearly outweighed by other considerations in order justify VSC?

6.3 I conclude that:

- The harm to the Green Belt, by reason of inappropriateness, and any other harm resulting from the Appeal Proposals, will be clearly outweighed by other considerations; and
- Any adverse impact of granting permission would not significantly and demonstrably outweigh the numerous benefits when assessed against the NPPF taken as a whole.

6.4 This conclusion is discussed in greater detail below.

VSC case & planning balance

6.5 The Appeal Proposals seeks to bring forward 'inappropriate development' in the Green Belt and limited harm to the openness and purposes of the Green Belt requiring very special circumstances (VCS) to be demonstrated.

6.6 There are several strands to the VSC and planning balance case which directly link to the requirements of the policies and guidance highlighted in reason for refusal no. 1 - Policy 1 of SACDC's Local Plan (1994) (**CD 8.1**), Policy S1 of the St Stephen Neighbourhood Plan (2022) (**CD 8.12**) and paragraphs 137, 147 and 148 of the NPPF (**CD 7.1**). I conclude that the Appeal Proposals will result in limited harm (beyond the definitional harm by reason of inappropriateness), which will be clearly outweighed by the benefits that would accrue, as discussed below.

Limited Harm

6.7 The policies and paragraphs set out in section 4.0 highlight the purposes of the Green Belt and explain that 'inappropriate development' can only be secured under VSC, but VSC will not exist unless the potential harm to the purpose of the Green Belt, by reason of inappropriateness, and any other harm resulting from the Proposals, is clearly outweighed by other considerations.

6.8 I have already concluded in section 5.0 that there is:

- Definitional harm and limited harm to the openness and purposes of the Green Belt, which is to be given '**substantial weight**' in its own right;
- Limited harm to landscape character and appearance, which is to be given '**limited weight**' in its own right;
- At most Limited harm to Agricultural Land, which is to be given '**limited weight**' (at most) in its own right; and
- No other harm that cannot be mitigated that would need to be weighed in the balance.

6.9 However, the above harm should be in the context that:

- Sub-Area 8 of the Green Belt Review (2014) (**CD 8.5**) confirms that the Appeal Site is part of an area that displays particular 'urban fringe characteristics' and the landscape has lower impact on views from the wider countryside and surroundings. The Green Belt Review also concludes that:
 - At the strategic level, a reduction in the size of the parcel would not significantly compromise the overall role of the Green Belt or compromise the separation of settlements;
 - Assessed in isolation, the land makes a limited or no contribution towards all Green Belt purposes; and
 - The Appeal Site is:

"...the most appropriate land for potential release from Green Belt for residential led development is the eastern part of the sub-area".

- It is therefore clear from the report that Sub-Area 8 within which the Appeal Site is located was considered by the Green Belt Review to be at the 'front of the queue' amongst all candidate green belt release sites, for the reasons

summarised in the above passage. As Ms Toyne explains in her evidence (**CD 3.19**), and as the officer's report to Committee (**CD 3.4**) on the application under appeal also made clear, those conclusions still hold good. This provides fundamental context for considering the issues in this appeal.

- If the chronic shortfalls of unmet housing need in St Albans are to be addressed in any meaningful way during the ongoing failure of the plan-making process in the district, such levels of harm are going to have to be tolerated in the public interest;
- The Appeal Proposals will deliver a number of benefits that outweigh any harm and justify the grant of planning permission, as discussed below.

Benefits

1. Market Housing Delivery

6.10 Paragraphs 60 to 62 of the NPPF:

- Includes the clear objective of 'significantly boosting the supply of homes';
- Confirms that the 'minimum number of homes needed' should be informed by a local housing need assessment; and
- Explains that the need for different types, sizes and tenures of housing should be assessed and policy should reflect this.

6.11 The evidence presented by Mr Parker (**CD 3.22**) explains that nationally, we remain in the middle of a national housing crisis. A total of 1,151,550 net additional dwellings are reported by Government data to have been provided between 2017/18 and 2021/22, which against the Government's own 300,000 target for this period results in a c.49,000 shortfall in homes.

6.12 The Council's own evidence base and recent decisions demonstrate there exists a chronic and persistent shortfall in the district's housing land supply position which, in the absence of an up-to-date local plan, will not be resolved anytime soon and is getting worse year on year. For example:

- Table 2 on Page 28 of the Council's AMR (2022) (**CD 8.7**) sets out the annual completions in the district since 1994/95. I have recreated this table below alongside the housing targets for those years. It confirms that the Council has only met or exceeded its housing target in 8 of the past 28-years

and has significantly under-delivered since 2014/2015. This demonstrates a woeful track-record and persistent shortfall in housing delivery for the past 7 years.

Monitoring Year	Net Dwelling Completions Annual Total	Housing Target³²
1994/95	418	480
95/96	474	480
96/97	238	480
97/98	415	480
98/99	529	480
99/2000	600	480
20/01	415	480
01/02	356	360
02/03	301	360
03/04	248	360
04/05	601	360
05/06	329	360
06/07	377	360
07/08	293	360
08/09	398	360
09/10	272	360
10/11	382	360
11/12	380	360
12/13	320	360
13/14	375	360
14/15	313	637
15/16	396	637
16/17	340	619
17/18	385	902
18/19	624	896
19/20	437	893
20/21	516	892
21/22	314	890
TOTAL	11,046	14,406

- In terms of the five-year housing land supply, the following has been confirmed to date:
 - The Inspector's Report (**CD 9.1**) prepared in relation to the Oaklands College site in 2017 explains that the Council benefits from 3.49 years housing land supply;
 - The planning committee report (**CD 9.3**) prepared in relation to the Sewell Park application in 2020 confirms that the Council, at that point in time, benefited from a 2.5yr housing land supply using a based date of 1st April 2020 (para 8.7.2). It goes on to explain that *"...It is acknowledged that 2.5 years is substantially below the required 5 years"*;
 - Paragraph 6.4.1 of the Council's Committee Report (**CD 9.5**) for the Orchard Drive site in December 2021 explains that the Council now only benefits from 2.2 years housing land supply;
 - Paragraph 8.6.2 of the Council's Committee Report (**CD 3.4**) for the Appeal Proposals in explains that the Council now only benefits from 2.2 years housing land supply; and
 - Page 18 of the Council's AMR (2022) (**CD 8.7**) now confirms that this has now dropped to 2.0 years - a shortfall of 3,195 homes³³ (or a 60% shortfall).

6.13 This chronic and persistent shortfall in the district's housing land supply position is further evidenced by the Council's failure to meet the Housing Delivery Test (HDT) since 2016/17. The 2016/17 to 2018/19 result concluded that the Council delivered 63% of its HDT target.

6.14 The 2018/19 to 2020/21 results concluded that the Council delivered 69%³⁴ of its HDT target, which was substantially below (less than 75%) the housing requirement over the previous three years. However, as explained in Section 4.0 of my evidence:

- If the HDT target had not been reduced to take account of slow-down in delivery during the COVID-19 pandemic, then the HDT figure for the period

³² Based on figures provided by the Council in their AMRs 2015 to 2022

³³ Page 18, AMR (2022) (CD 8.7): 1,068 dwellings per annum (890 dwellings + 20% buffer) for 2022/23 to 2026/27 = 5,340, minus current supply of dwelling (2,145) = a shortfall of 3,195 dwellings (60% shortfall). Also see paragraph 3.12.

³⁴ HDT (2021): Required 2,317; Supply 1,596; 69%

2018/19 to 2020/21 would have been 58.2%³⁵; and

- Figure 20 of the Council's AMR (2022) (**CD 8.7**) explains that between 2019/20 and 2021/22 the Council's completions totalled 1,267 new homes. When compared to the annual target over the same period (2,908 homes), the actual delivery rate is 46.4%³⁶ of the annual target.

6.15 If the Council continues this trajectory of chronic under-delivery, it will hypothetically reach 0 years housing land supply in 2027/28 (in five years' time).

Year	Supply ³⁷	Expected completions ³⁸	HLS Remaining (Years)
2022/23	2,145	561	2.0
2023/24	1,584	436	1.48
2024/25	1,148	522	1.07
2025/26	626	379	0.59
2026/27	247	247	0.23
2027/28	0	0	0

6.16 Using the current standard methodology calculations, the Council is expected to deliver 5,340 new homes over the five-year period of 2022/23 to 2026/27. However, the Council's expected delivery of completions over the same five-year period is 2,145 new homes. This is only 40% of its target, thereby exacerbating an already chronic and persistent shortfall in the district's housing land supply position.

6.17 I have reviewed the Council's Housing Delivery Test Action Plan (2022) (**CD 7.2**) and am unable to see a clear programme of delivery of specific sites (other than seven local authority owned sites (Section 5.4) that are to deliver approximately 160 homes at some point between 2022 and 2027) that would rectify the chronic delivery shortfall.

6.18 The Appeal Proposals will deliver up to 391 new homes to help address the Council's 5-YHLS shortfall and will include a range of different typologies, including market sale, affordable homes, first homes and self-build / custom-built plots.

³⁵ HDT (2021): Required 2,742; Supply 1,596; 58.2%

³⁶ Required 820 (2019/21) + 1,020 (21/22) + 890 (22/23) = 2,730; Supply 1,267 (AMR, Fig. 20); 46.4% (CD 8.7)

³⁷ Source: Page 32, Table 3 of the AMR (2022) (CD 8.7)

³⁸ Using the current AMR figures (2022), page 28, Table 2 (CD 8.7)

6.19 In this regard, the recent appeal decision at Roundhouse Farm, Bullens Green Lane (5/2020/1992) (APP/ B1930/W/20/3265925) is a relevant consideration (**CD 9.2**). This decision was issued on 14 June 2021 and therefore considers a very similar housing and affordable housing position in the district to the one that currently exists. The Inspector concluded in that case as follows:

"Paragraph 49. There is therefore no dispute that given the existing position in both local authority areas, the delivery of housing represents a benefit. Even if the site is not developed within the timeframe envisaged by the appellant, and I can see no compelling reason this would not be achieved, it would nevertheless, when delivered, positively boost the supply within both local authority areas. From the evidence presented in relation to the emerging planning policy position for both authorities, this is not a position on which I would envisage there would be any marked improvement on in the short to medium term. I afford very substantial weight to the provision of market housing which would make a positive contribution to the supply of market housing in both local authority areas."

6.20 Paragraph 8.6.6 of the Council's Committee Report (**CD 3.4**) explains that "*The housing situation and the emerging plan situation are materially the same...*" when the above case was determined. The paragraph also explains that "*there is no material reason for officers to apply a different weighting to the proposals*".

6.21 There is no reason to think that the Appeal Site cannot come forward immediately following the submission of reserved matters application(s) and significantly boost local housing supply. In this case, we have landowners that are willing to sell the land with option agreements in place (as demonstrated by **Appendix JK2**) and two housebuilders (Taylor Wimpey and CALA Homes) that:

- Have been involved in the outline process;
- Wish to proceed with reserved matters application as soon as possible; and
- Are happy to deliver the homes quickly in the short term.

6.22 The Inspector can be confident that this Appeal Site can make a meaningful and instant contribution to addressing the housing and infrastructure shortfall.

6.23 I consider that '**very substantial weight**' can be attributed to delivery of the Appeal Proposals' market housing on the basis of:

- The importance of significantly boosting the supply of homes in accordance with paragraph 60 of the NPPF which reflects the national shortage of homes;

- The chronic and persistent under-delivery of homes in the district;
- The lack of any meaningful strategy by the Council to address the current housing need;
- The lack of land available in the urban areas to delivery housing needs over the next five-years; and
- The quick delivery of the homes proposed.

6.24 A similar level of weight was given in the Council's Sewell Park and Orchard Drive decisions and in the Roundhouse Farm, Burston Gardens, Sun Lane, Codicote (**CD 9.7**) and Maitland Lodge appeal decisions (see **Appendix JK5**).

6.25 I note the officer applied very substantial weight to the delivery of market housing as part of the Appeal Proposals. I also note that paragraph 6.16 of the Council's SOC (**CD 5.2**) downgrades the weight to be given to market housing provision from 'very substantial' to 'substantial' weight (when considered alongside affordable housing delivery and the socio-economic benefits) without any justification.

2. Affordable Housing Delivery

6.26 I have set out NPPF (paragraphs 60 to 62) context above. I would add that paragraph 62 explains that the need for different types, sizes and tenures of housing, specifically in respect of Affordable Housing where a need for it is established.

6.27 The planning committee report prepared in relation to the Sewell Park application (**CD 9.3**) in July 2021 confirms that there is "...a clear and pressing need for affordable housing within the District" (para 8.7.2). This clear and pressing need is discussed further in the Roundhouse Farm Decision (**CD 9.2**):

"Paragraph 53. The uncontested evidence presented by the appellant on affordable housing for both local authorities illustrates some serious shortcomings in terms of past delivery trends... In SADC, the position is equally as serious. Since the period 2012/13, a total of 244 net affordable homes have been delivered at an average of 35 net dwellings per annum. Again, this equates to a shortfall also in the region of 4000 dwellings (94%) which, if to be addressed in the next 5 years, would require the delivery of 1185 affordable dwellings per annum.

Paragraph 54. The persistent under delivery of affordable housing in both local authority areas presents a critical situation. Taking into account the extremely acute affordable housing position in both SADC and WHBC, I attach very substantial weight to the delivery of up to 45 affordable homes in this location in favour of the proposals."

- 6.28 Paragraph 8.6.6 of the Council's Committee Report (**CD 3.4**) explains that "*The housing situation and the emerging plan situation are materially the same...*" when the above case was determined. The paragraph also explains that "*there is no material reason for officers to apply a different weighting to the proposals*".
- 6.29 The Council's AMR (2022) (**CD 8.7**) explains at paragraph 3.22 that 71 affordable dwellings were completed in 2021/22. Paragraph 3.23 of the AMR explains that a total of 395 affordable dwellings have been granted planning permission and are yet to be completed. Given the size of the shortfall (-4000 dwellings), recent completions (71 homes) and future completions (395 homes³⁹) from historic decisions will not materially alter the position in the district.
- 6.30 The evidence presented by Mr Parker (**CD 3.22**) reaffirms the above chronic shortfall in affordable housing delivery in the district. Mr Parker explains:
- Research commissioned by Crisis and the National Housing Federation states that there is 'a backlog of housing need of 4.75 million households across Great Britain (4 million in England)' and concludes nearer c.340,000 homes (of all tenures) need to be built annually in England if a 'meaningful levelling of affordability differences' is to be achieved;
 - SOS and appeal decisions confirm that affordable housing is an important 'material consideration', that the need to address affordable housing requirements is acute and urgent, and that the SOS has routinely attached 'significant weight' and 'substantial weight' to the provision of affordable housing. Even when a five-year housing land supply exists, when Plans are up to date, when affordable housing proposals do not exceed or are below policy requirements and when on Green Belt land, the material benefits of affordable housing proposals have still been concluded within the current planning framework to be able to weigh substantially in favour of development proposals;
 - Crucially, in addition to the above, specifically in respect of St Albans a recent 2021 planning appeals at Roundhouse Farm (paragraph 54, **CD 9.2**) reports a 'persistent under delivery of Affordable Housing' in St Albans and the Inspector attaches 'very substantial weight' to the provision of Affordable Housing in the district. In another 2021 planning appeal decision at the Old Electricity Works in St Albans (paragraph 23, **CD 9.23**) the district is referred to as an area of "affordable housing stress";

- The prioritisation of the provision of additional Affordable Housing in the district is a primary objective within both Development Plan and supplementary adopted planning policy in St Albans;
- In terms of delivery and future supply figures:

Past-delivery:

- The Council is failing to deliver enough affordable homes to meet the needs of households across the district is evidenced by the shortfalls in Affordable Housing which have accumulated against the SHMA16 / LHNA assessed need for such Housing when compared to the Council's own Affordable Housing delivery data;
- These shortfalls have resulted in between 3,576 to 4,360 households not having their affordable housing needs met in the district during 2017/18 to 2021/22;

Future-delivery:

- Looking ahead the situation is suggested to remain bleak; when compared with committed Affordable Housing supply the assessed Affordable Housing need is estimated to result in further shortfalls of between 5,065 to 5,507 Affordable Homes in the district during 2022/23 to 2026/27;
 - Unless significant additional Affordable Housing supply sources are identified in the 2022/23 to 2026/27 five-year period a shortfall of 8,641 affordable homes will accrue in the district. This increases further to 10,254 across the district if existing shortfalls in unmet Affordable Housing need are assumed to be addressed over a 5-year period as opposed to over 16 to 23 years (as in the LHNA and SHMA16 respectively);
- In the context of the Council's consistent failure to deliver sufficient Affordable Housing to meet housing need, combined with the significant shortfalls that will continue to accumulate against the planned Affordable Housing supply, given the overall housing land supply shortfall (at just 2 years according to the Council), in line recent planning appeal decisions, and as per the Sewell Park planning application Committee Report (**CD 9.3**) and the Appeal Site planning application Committee Report (**CD 3.4**), the benefits associated with the affordable housing proposed on the application

³⁹ Including the approval of the Roundhouse Farm application on appeal (45 affordable homes – apportioned equally with

site should be given 'very substantial weight'.

6.31 The Appeal Proposals will deliver new affordable homes (40%, up to 156 affordable homes) to address the Council's significant shortfall. These will comprise:

- 19% affordable rent [up to 29 homes];
- 25% first homes [up to 39 homes];
- 30% social rented homes [up to 47 homes]; and
- 26% intermediate/shared ownership homes [up to 41 homes].

6.32 As explained earlier in my evidence, there is no reason to think that the Appeal Site cannot come forward immediately and the Inspector can be confident that the affordable homes will make a meaningful contribution to significantly boosting the local affordable housing supply. This affordable housing provision will be 'pepper-potted' throughout the development and, therefore, will be distributed across the phases.

6.33 I conclude that '**very substantial weight**' should be attributed to delivery of the Appeal Proposals' affordable housing on the basis of:

- The importance of significantly boosting the supply of homes (including affordable homes) in accordance with paragraph 60 of the NPPF which reflects the national shortage of homes;
- The chronic and persistent under-delivery of affordable housing in the district since 2016;
- The local plan review delays and lack of any meaningful strategy by the Council to address the current need; and
- The provision proposed (40%) exceeds the target (35%) target set out in Policy 70 of the Local Plan Review and the Council's Affordable Housing SPG (2004) (**CD 8.17**); and
- The amount, range and quick delivery of the affordable homes proposed.

6.34 A similar level of weight was given in the Council's Sewell Park and Orchard Drive decisions and in the Roundhouse Farm, Sun Lane, Codicote, Maitland Lodge appeal and Kennel Lane decisions (**CD 9.9**) (see **Appendix JK5**).

6.35 I note the planning officer applied 'very substantial weight' to the delivery of

Welwyn Hatfield BC) and the Sewell Park resolution to approve (60 affordable homes)

affordable housing as part of the Appeal Proposals. I also note that paragraph 6.16 of the Council's SOC (**CD 5.2**) downgrades the weight to be given to affordable housing provision from 'very substantial' to 'substantial' weight (when considered alongside market housing delivery and the socio-economic benefits) without any sound justification.

3. Self-Build or Custom-Build Delivery

- 6.36 In accordance with paragraph 62 of the NPPF (**CD 7.1**) and Sections 2 and 2A of the Self Build and Custom Housing Building Act 2015, a local authority is required to grant enough suitable development permissions to meet the identified demand for such properties⁴⁰. The NPPG explains how need for Self-building and Custom-built (SB/CB) plots is to be registered and delivered⁴¹
- 6.37 Paragraph 62 of the NPPF confirms that the size, type and tenure for different groups in the community for SB/CB plots should be assessed and reflected in planning policies. The Council does not benefit from policy relating to the provision of SB/CB plots.
- 6.38 Although the Council's Committee Report (**CD 3.4**) confirmed that by October 2021 SB/CB registrations had increased to 658, Paragraph 7.14 and Table 57 of the Council's AMR (2022) (**CD 8.7**) confirms that there has been a total of 748 entries on the Council's Self-build and Custom Housebuilding Register between October 2016 and October 2022. However, paragraph 7.13 and Table 56 of the AMR confirm that only 152 services plots have been granted planning permission during the same period. This leaves a deficit of 596 plots and delivery rate of just 20%.
- 6.39 The evidence presented by Mr Parker (**CD 3.22**) explains:
- It also seems likely that the Council's SB/CB Build Register may underestimate the level of demand for such plots significantly. Data obtained from Buildstore⁴² and referred to within evidence prepared in

⁴⁰ The NPPF (**CD 7.1**) Annex 2 defines Self-build and Custom Build homes as: "*Housing built by an individual, a group of individuals, or persons working with or for them, to be occupied by that individual. Such housing can be either market or affordable housing. A legal definition, for the purpose of applying the Self-build and Custom Housebuilding Act 2015 (as amended), is contained in section 1(A1) and (A2) of that Act*

⁴¹ NPPG, paragraph: 011 Reference ID: 57-011-20210208 and NPPG, paragraph: 023 Reference ID: 57-023-201760728

⁴² the largest national database of demand for self-build and custom build plots

support of the recent Roundhouse Farm Planning Appeal in St Albans⁴³ (Appendix DP39) suggests a total of 314 Custom Build registrations and 984 Plot-Search registrations (the latter reflecting those seeking a serviced plot to build out themselves or by someone else on their behalf) as at August 2020;

- By any measure it is apparent that the demand recorded by the Council is far outstripping the supply of SB/CB permissions in St Albans; and
- The SB/CB benefits associated within the proposals should be accorded 'substantial weight'.

6.40 The provision of 10 self-build plots on the Roundhouse Farm site and a further 5 self-build plots on the Sewell Park site will not have materially changed the situation in the district. The provision of 3% self-build plots (up to 12 plots) as part of the Appeal Proposals will help the Council meet its need for this type of home and accord with its statutory duty.

6.41 As explained in section 3.0 of my evidence, there is no reason to think that the Appeal Site cannot come forward immediately and the Inspector can be confident that the self-build and custom-build (SB/CB) plots will make a meaningful contribution to significantly boosting the SB/CB plot supply.

6.42 I conclude that '**substantial weight**' can be attached to the delivery of the SB/CB plots as part of the Appeal Proposals on the basis of:

- The importance of significantly boosting the supply of homes (including SB/CB) in accordance with paragraph 60 of the NPPF which reflects the national shortage of homes;
- The current under-delivery of SB/CB plots within the district;
- The lack of local policy to secure SB/CB plots;
- The quick delivery on the Appeal Site; and
- The duty applied on local authorities to give enough suitable permissions to meet the identified need under the SB/CB Housebuilding Act 2015.

6.43 A similar level of weight was given in the Council's Sewell Park and Orchard Drive decisions and in the Roundhouse Farm and Little Chalfont appeal decision (see **Appendix JK5**). The planning committee report prepared in relation to the Sewell

⁴³ Land off Bullens Green Lane, Colney Heath APP/B1930/W/20/3265925 and 3265926, Self-Build and Custom Housebuilding Proof of Evidence of Andrew Moger BA (Hons) MA MRTPI Statement, Appendix

Park application confirms that "...the Council is currently failing to meet its statutory duty for the provision of plots for self-build housing" (para 8.7.1). This situation is discussed in further detail in the in the Roundhouse Farm Decision (**CD 9.2**):

"51. In the case of these appeals, there are no development plan policies which relate specifically to the provision or delivery of self-building housing in either authority... Furthermore, neither authority has an up-to-date assessment of likely future demand for this type of housing in line with the Planning Practice Guidance. The appellant provided detailed evidence in relation to the Custom Build Register, none of which was disputed. Evidence also presented demonstrated that the statutory duty to provide for base period plot provision has also not been met in either authority, in some periods by a significant margin. Taking into account other secondary data sources, these shortfalls may well be on the conservative side.

52. In common with both market housing and affordable housing, the situation in the context of provision of sites and past completions is a particularly poor one. To conclude, I am of the view that the provision of 10 self-build service plots at the appeal site will make a positive contribution to the supply of self-build plots in both local planning authority areas. I am attaching substantial weight to this element of housing supply. "

- 6.44 The planning officer applied substantial weight to the delivery of SB/CB plots as part of the Appeal Proposals. I also note that paragraph 6.16 of the Council's SOC (**CD 5.2**) reaffirms this level of weight.

4. Land for New School

- 6.45 In accordance with paragraph 95 of the NPPF (**CD 7.1**), education authorities are to ensure that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. Paragraph 95 goes on to explain that '**great weight**' should be given to the need to create schools through decisions on application.
- 6.46 The Appeal Proposals include land for a new School, which is a benefit in favour of the Appeal and supported by the education authority (HCC), as explained below.
- 6.47 The evidence prepared by the Appellants' Education Witness, Mr Hunter (**CD 3.21**), explains that:

Primary School Education

- There is currently one school in Chiswell Green itself – Killigrew Primary School (KPS) – that as of the previous academic year accepted a full 60 pupils into Reception Year, meaning that this Year Group was full. Four of the seven Year Groups were at practical capacity;
- Should it be deemed the best solution, HCC has confirmed that KPS can likely be expanded to accommodate the child yield of the Appeal Proposals. However, this expansion is only likely to be able to accommodate the pupil yield of the Appeal Proposals, and would not allow for any additional capacity to be provided in the area;
- HCC and the Appellants have agreed that the best form of development mitigation is the reservation of school land on the Appeal Site that would have the ability to provide a new 2FE Primary School. This would accommodate the pupils of the Appeal Proposals, whilst also safeguarding provision for future growth, should additional sites come forward in the area, which HCC confirmed is likely (and which I consider is highly likely if the Council is to ensure an adequate supply of housing);
- New Primary School provision on the Appeal Site would provide additional Primary and Early Years provision for the surrounding areas, would help ensure that HCC is able to fulfil its statutory duty of providing sufficient pupil places for their area, and will increase the options for the wider community during the annual admissions window. On that basis, this offers a genuine and demonstrable benefit to the people of Chiswell Green and wider population of St Albans;
- The school site is well placed, and of sufficient size to be able to deliver the full 2FE school provision plus nursery provision without any compromises on space standards; and
- Funding towards the build programme, which other developments coming forward that would utilise the school will pay for commensurate to their impact, as well as Government Funding through Basic Need, has been agreed with HCC, who have ten years to draw down the land once the need for the provision has been established.

Special Education Needs and Disabilities (SEND) Provision

- There is a demonstrable shortfall of SEND places currently across Hertfordshire, especially with regards to Profound Neurological Impairment

(PNI) provision;

- There is no site of strategy agreed to accommodate the demand for new PNI pupil places;
- The Appeal site is suitable in principle for new PNI provision; and
- The funding is being collected from every development expected to generate children with SEND requirements in Hertfordshire through pooled Section 106 contributions; and the land could accommodate a standalone SEND facility or in combination with mainstream provision, without having to compromise on space standards;

6.48 I note that HCC is to agree a SOCG2 (**CD 3.16**) on this matter confirming Mr Hunter findings. It confirms that it is highly likely that the land for a new school facility on the Appeal Site is required, it's just a question of when (not if) and what format of school.

6.49 Mr Hunter explains that the Appellants, in consultation with HCC, have therefore agreed to allow a broad range of choice of Education provision that could be utilised on the Appeal Site. He also explains that:

- In his professional opinion, the inclusion of a school site in the Appeal Proposals (for primary / early years or PNI provision) should be given 'substantial weight'; and
- This is a rare opportunity, as school land is not easy to come by especially unencumbered, remediated, of an appropriate size, and without the need for Compulsory Purchase Order.

6.50 The Council's Planning Officer was aware of this rare opportunity⁴⁴ when preparing paragraph 8.7.9 of the Council's Committee Report (**CD 3.4**) which explains that:

"... the provision of land for a new 2FE primary school is a benefit of the application. The provision of 1.89ha of land for a 2FE primary school meets the size requirements of BB103 and HCC has stated that the size of the site may be acceptable subject to further feasibility work, whilst it complies with a number of other education land specification requirements. The provision of land for a new 2FE primary school is therefore afforded substantial positive weight.

6.51 I conclude that '**substantial weight**' should be attached to the school land as part of the Appeal Proposals for the following reasons (individually and cumulatively):

- There is a lack of land available in the district for education-related infrastructure;
- Support for the provision for education land within the Appeal Site is given by HCC's which is to be agreed in SOCG2 (**CD 3.16**);
- There is need for the provision of the education land to help deliver education for primary and/or SEND facilities in the district, as explained in Mr Hunter's evidence (**CD 3.21**);
- The availability and quick delivery of the land; and
- There is no evidence, and it is obviously improbable, that the provision of new primary and/or SEND facilities in the district could be met within the necessary timescale within the settlement boundaries and therefore the clear likelihood is that the use of Green Belt land for such provision is inevitable.

6.52 This is a higher level of weight than that given in the Huntington (**CD 9.15**) and Codicote appeal decisions (significant) but a lower level of weight than that given in the Sun Lane appeal decision (very substantial) (see **Appendix JK5**) and is appropriate in this case.

6.53 In relation to the appeal decision at Oaklands College (APP/B1930/W/15/3051164) (**CD 9.1**), the Inspector concluded in that case as follows:

"Paragraph 201. The delivery of significant improvements to the College weighs heavily in favour of the proposals."

6.54 The planning officer applied substantial weight to the delivery of the education-related land as part of the Appeal Proposals. I also note that paragraph 6.18 of the Council's SOC (**CD 5.2**) downgrades the weight to be given to education land provision from 'substantial' to 'moderate' weight without any sound justification.

5. Socio-Economic Benefits Delivery

6.55 The Appeal Proposals would deliver positive economic benefits for the district and its labour market through the creation of new jobs. These benefits are set out in the Appellants' Socio-Economics Statement (**CD 2.7**) and section 8.0 of my evidence.

⁴⁴ The planning officer was not aware of the potential for using the Appeal Site PNI provision. Even if the officer was aware I would expect the same weighting would have been applied.

6.56 Paragraph 81 of the NPPF indicates that 'significant weight' should be placed on the need to support economic growth and productivity. This is a similar level of weight given in the Clappers Lane, Rectory Farm (**CD 9.12**), Sun Lane, and Codicote appeal decisions (see **Appendix JK5**).

6.57 In relation to the Clappers Lane appeal decision (APP/L3815/W/3291160) (**CD 9.10**), the Inspector concluded in that case as follows:

"The appellant has given an indication of the significant input into the local economy that the development would make. Therefore, even though the economic benefits associated with the construction would only be short term and most residential development would result in additional expenditure in the local area, I have given significant weight to the resulting support to economic growth and productivity from the development." (Paragraph 95)

6.58 In relation to the Rectory Farm appeal decision (APP/D0121/W/21/3286677) (**CD 9.12**), the Inspector concluded in that case as follows:

"The proposal would also deliver significant economic benefits both during construction and as a result of increased spending from new residents, which should be given significant weight." (Paragraph 149)

6.59 I note that paragraph 8.14.3 of the Council's Committee Report (**CD 3.4**) explains that:

"...it is considered that substantial weight should be afforded to the socio-economic benefits associated with the proposed development."

6.60 I also conclude that '**substantial weight**' can be attached to the socio-economic benefits of the Appeal Proposals due to the quantity and range of socio-economic benefits being delivered in this case.

6.61 I also note that paragraph 6.16 of the Council's SOC (**CD 5.2**) re-affirms this weight to be given to the socio-economic benefits, however this weight is only given when considered alongside market sale and affordable housing delivery, without sound justification.

6. Open Space & Play Space Delivery

6.62 In accordance with paragraph 98 of the NPPF (**CD 7.1**), a local authority is encouraged to secure access to high-quality open spaces and opportunities for physical activity because it is important for the health and well-being of

communities, and it can deliver wider benefits for nature and support efforts to address climate change.

6.63 The Appeal Proposals include substantial areas of open space and play spaces (including new rights of way) for local residents to use, including:

- 2.92 ha of publicly accessible amenity space;
- 0.82 ha of formal play space for children of all ages;
- 295sqm for play space for toddlers; and
- New access arrangements into the Appeal Site from Chiswell Green Lane, Long Fallow and Forge End, including the provision of new public rights of way (ROW) through the Appeal Site.

6.64 Paragraph 8.8.4 of the Council's Committee Report (**CD 3.4**) explains that:

"As open space and play space provision exceeds the requirements of Policy 70, this is a benefit of the proposed development which is afforded some limited positive weight in the planning balance."

6.65 I conclude that '**moderate weight**' can be attached to the delivery of open space and children's play space on the Appeal Site on the basis of this provision exceeding the normal requirements of policy, the lack of open space and playspace in the immediate vicinity and the provision of access for local residents to connecting PROW.

6.66 A similar weighting given by the Inspector determining the Huntington appeal (APP/C2741/W/21/3282969) (see **Appendix JK5**). I also note that in the Codicote appeal decision, significant weight was given to the provision of open space.

7. BNG Delivery

6.67 In accordance with paragraph 180 of the NPPF (**CD 7.1**), local authorities are to seek mitigation of harm to biodiversity resulting from a development and, if possible, seek opportunities to improve biodiversity in and around developments, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.

6.68 The Appeal Proposals are supported by the following biodiversity related documents:

- Preliminary Ecological Appraisal (PEA) (Sept 2021) (**CD 2.14**);
- Reptile Survey (Oct 2021) (**CD 2.15**);
- Bat Emergence Surveys -Interim Report (Oct 2021) (**CD 2.16**);
- Ecological Impact Assessment (EcIA) (Feb 2022) (**CD 2.17**);
- Biodiversity Net Gain (BNG) Assessment (March 2022) (**CD 2.18**); and
- Bat Emergence Survey – Full Report (May 2022) (**CD 2.28**).

6.69 The EcIA draws reliance on the findings of the PEA, Reptile Survey and Interim Bat Survey. The EcIA is supplemented by the BNG Assessment and the Bat Emergence Surveys.

6.70 Section 5.0 of the EcIA discusses the effects of the Appeal Proposals (during construction and operations phases) and concludes:

- Features within the red line that require an impact assessment are those determined as important, namely:
 - Mature broad-leaved boundary treelines (wildlife corridor)
 - Hedgerow (priority habitat)
 - Bats (roosts and foraging and commuting habitat);
 - Breeding birds; and
 - Other important features outside the Appeal Site's Boundary (Chilterns Beechwoods SAC, Bricket Wood Common SSSI, 21 x Local Wildlife Sites (LWS's) within 2km of the site; and adjacent priority deciduous woodland).
- In terms of effects, the EcIA concludes that the Appeal Proposals will:
 - Result in a neutral effect on the function of the boundary treelines as a wildlife corridor;
 - Result in a neutral effect on hedgerows;
 - Result in a neutral effect for foraging and commuting bats;
 - Result in a minor negative effect of Breeding Birds site importance, and further compensation is required;
 - Result in no residual effect on the Chilterns Beechwoods SAC, Bricket Wood Common SSSI, 21 x Local Wildlife Sites (LWS's) within 2km of the site and adjacent priority deciduous woodland); and
 - Following the implementation of compensation methods for breeding birds (new planting, bird boxes) and habitat improvements on-site, the cumulative impact of the Appeal Proposals would be 'insignificant'.

- In terms of effects, the Bat Emergence Surveys (May 2022) concludes that bat roosts were absent from all building on the Appeal Site and that no further survey is required for two years. It also recommended enhancements (Eco Rocket Bat Boxes, Bat Tubes and Habitat 001 bat boxes) to be put in place along green corridors through the Appeal Site.

6.71 I concur with the above conclusions. I do not consider the impact of the Appeal Proposals on existing biodiversity (during construction and operational phases) to be a justified reason for refusing the Appeal Proposals on its individual merits or cumulatively.

6.72 The BNG Calculations (**CD 3.21**) submitted to the Council on 26th August 2022, explains that the Appeal Site currently benefits from 54.34 habitat units, 6.42 hedgerow units and 0.00 river units. Based on the illustrative proposals submitted with the outline planning application, following construction the Appeal Site is anticipated to offer 38.37 habitat units, 9.14 hedgerow units and 0.00 river units. The Appeal Proposals will achieve a 10% BNG using on-site and off-site mitigation measures, comprising:

- On-site: an increase in the amount of hedgerow planting, new tree planting, flowering lawns, native wildlife grasslands, native scrub mix, traditional orchards, integrated bate features and bird boxes; and
- Off-site: a financial contribution that will be used to deliver a sufficient number Biodiversity Units (BU) off-site so to achieve, in combination with the on-site enhancements, an overall 10% BNG. The Appellants propose to deliver this off-site provision by either:
 - Paying the contribution to one of the following to implement the BNG improvements:
 - the Council; or
 - the "Environment Bank"; or
 - another approved body who will.
 - or
 - Delivering the BNG units on land within the Appellants' or Developers ownership.

6.73 This is set out in the draft S106 Agreement (**CD 3.13**) and the Appellants. The following biodiversity obligations are proposed in this case:

- An Onsite Compensation Certificate is to be submitted to the Council prior to

the occupation of 75% of the dwellings; and

- Not to Occupy or permit Occupation or use of the development unless and until the Biodiversity Offsetting Contribution has been paid to the Council or another approved body.

6.74 This approach is adopted because the most appropriate time to assess biodiversity loss and gain, and to determine the most appropriate compensation, is when the full details of the proposed development area known, following approval of the reserved matters and the completion of a revised biodiversity metric.

6.75 This approach is supported by HCC's Ecology team and supports the objectives of paragraphs 8c), 174 and 180 of the NPPF and was accepted in the allowed appeals at Roundhouse Farm (see paragraph 64 of **CD 9.2**) and accepted by the Council when determining the Sewell Park application (see paragraph 8.12.3 of **CD 9.3**) – *"the Applicant has committed to providing 10% BNG, either through on-site, or off-site compensation, the details of which to be confirmed at the reserved matter stage and secured through a s106 Agreement"*.

6.76 Regarding the Roundhouse Farm appeal, the Inspector concluded:

"...the biodiversity offsetting scheme, by definition, requires a scheme to be approved by both Councils to include but not limited to identification of an appropriate receptor site(s). As a result, I consider that this matter is adequately addressed by the obligation and the concerns are unfounded."
(paragraph 68)

6.77 Furthermore, the impacts of the Appeal Proposals on biodiversity during construction of the Appeal Proposals will be controlled, in accordance with the Landscape and Ecological Management Plan (LEMP) required to be approved by the Council via Condition 6. The details of this condition are set out in Appendix 1 of the overarching SOCG (**CD 3.12**) and require the submission of the following:

- a) *A description of the objectives;*
- b) *Habitat/feature creation measures proposed, including a methodology translocation of habitats, such as the existing topsoil, grassland and timeframes for completion*
- c) *Maintenance of habitat/feature creation measures in the long term and those responsible for delivery;*
- d) *Lighting strategy (aim to ensure that illumination of the existing hedgerows does not exceed 0.5 lux); and*
- e) *A monitoring programme and the measures required to adapt the LEMP should objectives fail to be met"*.

6.78 This means that the Council, working in the interests of the local community and

biodiversity, will have an invested interest in the implementation of the ecology enhancements. The intention is that the Appeal Proposals integrates habitat throughout the development and will pay a significant contribution towards off-site habitat improvements, which would result in an overall 10% Biodiversity Net Gain (BNG).

6.79 The delivery of a 10% BNG⁴⁵ as part of the Appeal Site should be given at least '**moderate weight**' on the basis that:

- There is no current requirement in national and local policy terms to secure any 'net gain' (let alone 10%) in biodiversity from development proposals;
- The Appeal Proposals will deliver a 10% BNG early, ahead of the requirements that are expected to be introduced in November 2023 under the Environment Act 2021⁴⁶; and
- It will deliver enhancements (Eco Rocket Bat Boxes, Bat Tubes and Habitat 001 bat boxes) that will be in place along green corridors through the Appeal Site which are not included on the BNG calculations.

6.80 I note that in the Maitland Lodge (**CD 9.8**) and Sun Lane (**CD 9.6**) appeal decisions that the delivery of up to 10% BNG can be afforded 'significant weight'. I also note that in the appeal decision at Little Chalfont Inspector confirms that the 20% BNG can attract 'substantial' weight in planning balance, as explained in **Appendix JK5**.

8. Design Improvements

6.81 In accordance with Paragraph 134 of the NPPF I concluded that '**significant weight**' should be given to Appeal Proposals on the basis that:

- It helps raise the standard of design more generally in an area and fits in with the overall form and layout of their surroundings, as illustrated in the Design and Access Statement (**CD 1.3**);
- The Appeal Proposals will deliver a mixed-use development which includes homes, land for a potential new school and open spaces for the local community to access. This form of development has been well planned through pre-application discussions with the Council and HCC's Landscape Officer and will not only deliver a sense of place, it will also integrate into

⁴⁵ Source: Appellant's Biodiversity Net Gain Assessment (CD 2.18)

⁴⁶ [Environment Act 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

the existing settlement rather than being 'bolted on'; and

- The Appeal Proposals will deliver the soft edge transition into the countryside that is currently missing from the existing settlement boundary, thus improving the boundary relationship with the settlement in views within the Green Belt, in accordance with Policy 1 of the Local Plan Review.

Consideration in Context

6.82 Set out below is a summary table of the benefits and harms and their associated weighting that I have given in the consideration of this appeal:

Harm (Reason for refusal no.1)	Degree	Weight
Definitional, openness and purposes of the Green Belt	Limited (at most)	Substantial
Local landscape character	Limited (at most)	Limited
Loss of agricultural land	Limited (at most)	Limited
Benefits	Weight	
Land for new school	Substantial	
Delivery of market sale homes	Very substantial	
Delivery of affordable homes (Social Rent, Intermediate & First Homes)	Very substantial	
Delivery of Self-build and Custom-build homes	Substantial	
Delivery of Open space and Children's play space (including ROW through the Appeal Site)	Moderate	
Ecology improvements (10% BNG)	Moderate (at least)	
Socio-economic benefits: <ul style="list-style-type: none"> ○ Job creation (construction and permanent); ○ Local economic revenue 	Substantial	
Helping to raise the standard of design more generally in the area	Significant	

6.83 I consider that this appeal case and the weighting behind the benefits of the Appeal Proposals is to be considered in the context of:

- **A national housing crisis:** Which continues to get worse as not enough homes are constructed annually to meet England's need and its NPPF objective of significantly boosting the supply of homes. However, the recent draft changes to the Fire Regulations currently means that delivery from a large number of proposals over 18 metres tall will be delayed, which will slow the delivery rate of new homes over the next 12-months;
- **The Council now has one of the oldest plan in the country:** Which expired in 2007, and no draft local plan being published for consultation purposes until the 'Summer' this year at the earliest;
- **An out-of-date plan and the absence of a 5-year housing land supply:** In these circumstances the application of NPPF policies that protect areas or assets of particular importance such as Green Belt do not provide a clear reason for refusing the development;
- **A chronic and increasing housing shortage in the district:** The Council's evidence, the evidence of Mr Parker and the published HDT figures demonstrate that the Council has persistently under-deliver its annual housing needs for all tenures and the evidence concludes that this will continue for the foreseeable future; and
- **Need of School Land:** HCC has confirmed need for education land for the future;
- **Urban Capacity Issues:** The Council's evidence demonstrates that only 14% of its housing need can be delivered on urban land and this land will be used up within the next two to five years (depending on rate of housing delivery);
- **The need for Green Belt release:** The Council's own evidence demonstrates there is a recognised need for Green Belt land to be released if the current housing and infrastructure needs of the district are to be met;
- **Time to act:** In the context of a failed plan and a rapidly reducing 2-year housing land supply, some intervention is needed now – it has got to that stage where this Council must pick its Green Belt battles to meet its housing and infrastructure needs. In this case, the Council's Committee Report (**CD 3.4**) did just that by recommending permission for the Appeal Site;
- **Limited harm to the Green Belt:** The Council's own evidence demonstrates that the Appeal Site is has urban fringe characteristics and of all the potential strategic sites it has tested, the Appeal Proposals would

have the least harm to the Green Belt;

- **VSC:** National and local level policy supports Green Belt site development if VSC can be demonstrated [which my evidence does]. The purpose of including the VSC in the NPPF is for when this type of situation occurs;
- **Benefits:** The benefits of the Appeal Proposals significantly outweigh its harm;
- **Suitability of the Appeal Site:** The evidence base produced by the Council has consistently shown the Appeal Site to be an appropriate location for new housing and education facilities;
- **High-Quality Development:** The Appeal Proposals will deliver a high-quality mixed-use development that will integrate with the existing settlement whilst including a soft landscaped edge that will help it transition back into the Green Belt / countryside; and
- **Deliverability / Availability:** The entirety of the Appeal Site is under the control of two controlling parties, working with two national house builders, and there are no land ownership issues or legal obstacles to delivery. It represents a suitable, available, achievable site that is a deliverable source of housing land that can start delivering much needed new housing in the short term in response to local identified needs, particularly for smaller family dwellings and affordable housing.

6.84 In my opinion, the Council continues to 'bury its head in the sand', but in the meantime the chronic eye-watering under-delivery of homes will continue to get worse. It must start addressing its own issues at local level by approving sites that it has previously identified using robust evidence as being appropriate for development purposes and supported by a strong officer's recommendation.

6.85 I also conclude that the cumulative benefits of the Appeal Proposals will help the Council immensely to cater for its needs. In my opinion:

- The harm to the Green Belt, by reason of inappropriateness, and any other harm resulting from the Appeal Proposals, will be clearly outweighed by other considerations in accordance with paragraph 148 of the NPPF (**CD 7.1**), Policy 1 of SACDC's Local Plan (1994) (**CD 8.1**) and Policy S1 of the St Stephen Neighbourhood Plan (2022) (**CD 8.12**) – meaning that there is no Green Belt related clear reason for refusal within the meaning of NPPF paragraph 11(d)(i); and
- Turning then to the tilted balance under NPPF paragraph 11(d)(ii), any

adverse impact of granting permission would not significantly and demonstrably outweigh these substantial benefits when assessed against the NPPF taken as a whole. A similar conclusion was reached in relation to all the other decisions listed in **Appendix JK5**.

- 6.86 The Council's Planning Officer also concluded that VSC exists in this case because other considerations outweigh harm (see paragraph 8.16.4 of **CD 3.4**). I note that in Section 6.28 of the Council's Committee Report (**CD 3.4**), the Council's Spatial Planning Team did not object to the Appeal Proposals – it adopted a 'neutral' recommendation. However, the Spatial Planning Team objected to the Polo School scheme.
- 6.87 If this Appeal Site is not brought forward, then this is a clear sign that the 'trickle' of housing and education provision from the Green Belt 'tap' has been firmly turned off in St Albans District. I note that the Huntington and Chalfont decisions (**CD 9.15** & **CD 9.11**), which included VSC housing delivery cases in the Green Belt, were issued after the WMS was published by the SOS (**CD 7.4**). This clearly shows that the 'tap' has not been turned off by the SOS and that a truly deserving VSC cases, like this one, can be supported by the NPPF, PINS and the Government.

7.0 REBUTTING RULE 6 PARTY COMMENTS

7.1 This section of my evidence specifically provides my response to the Rule 6 Party comments from Keep Chiswell Green (KCG), as set out in its SOC (**CD 5.2**).

7.2 KCG's case focuses on six key areas:

- i. Harm to the Green Belt;
- ii. Gateway Development;
- iii. Benefits of the Appeal Proposals;
- iv. Traffic and Transport as a Material Consideration;
- v. Committed development;
- vi. Prematurity.

7.3 These matters are discussed in greater detail below.

Harm to the Green Belt

7.4 I have already discussed this matter in Section 5.0 my evidence. I conclude that the harm to the Green Belt, by reason of inappropriateness, and any other harm resulting from the Appeal Proposals, will be clearly outweighed by other considerations in accordance with paragraph 148 of the NPPF (**CD 7.1**), Policy 1 of SACDC's Local Plan (1994) (**CD 8.1**) and Policy S1 of the St Stephen Neighbourhood Plan (2022) (**CD 8.12**).

7.5 In addition, contrary to the statements made in KCG's SOC:

- The site is 'contained', as explained in Miss Toyne's evidence (**CD 3.19**);
- The Green Belt Review and Boundary Study 2014 is a material consideration for the reasons outlined in my evidence; and
- Butterfly World does benefit from an extant permission (reference 5/2003/1343) for a 10,000sqm building, 405 car parking spaces, 12 coach parking spaces and a new access road (via Miriam Lane), as explained in the information published in relation to an enforcement appeal lodged by the representatives of Butterfly World attached as **Appendix JK8**. This information explains that the permission was implemented in 2008, the attraction opened in 2009 and the site constitutes previously developed land (PDL) which means that this site will not revert to open countryside in the Green Belt.

7.6 I therefore question foundations of the above comments made by KCG in its SOC and conclude that no weight can be given to KCG's unsubstantiated comments.

Gateway Development

7.7 KCG are concerned that the Appeal Site will expose the wider parcel of Green Belt land to pressure from further development. KCG inferred 'very substantial harm' from this speculative development.

7.8 Other than the Appeal Proposals and the Polo School proposals, I am not aware of any no other development proposals in this parcel within the Green Belt. Therefore, KCG's speculation carries no weight to the determination of the Appeal Proposals.

Benefits of the Appeal Proposals

The Provision of Housing

7.9 I note that KCG have accepted that there is a need for housing provision.

7.10 I have explained in section 6.0 of my evidence that the chronic and persistent under-delivery of homes in the district. Mr Parker also concludes a similar point in relation to the chronically low level of affordable housing delivery and SB/CB plots in the district.

7.11 KCG have suggested that "*...there are still brownfield sites available for development and not all permitted development has been undertaken*". KCG have not submitted any robust evidence to explain which brownfield sites are available to deliver the Council's full 5-YHLS (plus 20% buffer) to justify refusing VSC cases on Green Belt sites.

7.12 I have explained in my evidence that:

- The Council can only demonstrate a 2.0 housing land supply (**CD 8.7**);
- Paragraph 11.4 of Appendix B (Urban Capacity Study) of the Council's Draft HELAA (2021) (**CD 8.11**) confirms that there is not enough capacity on urban sites to meet the district's housing needs. The study estimates that potential exists for approximately 2,100 residential units on the sites identified within the urban capacity study [The AMR (2022) (**CD 8.7**) now

confirms this is 2,145 units]. This is only 14% of the district's housing need over the plan period, meaning that the Council must build in the Green Belt to meet its own identified need;

- The Council has a chronic housing delivery issue and this situation will continue to deteriorate. At its current persistent low delivery rate, the Council will have used up all its 2,100 potential units on existing brownfield land within the next 5 years (or 2 years if it meets its annual housing delivery target); and
- The Council's Cabinet meeting statement confirms its reliance the board location Green Belt sites (including the Appeal Site) to meet the Council's housing need.

7.13 In this context, the Council is not realistically able to only deliver its homes on brownfield land. It must allow Green Belts sites to be used to deliver the market sale housing, affordable housing, self-build / custom-build plots and infrastructure that the local community so desperately needs. KCG have not submitted any robust evidence to counter this conclusion.

7.14 Section 6.0 of my evidence explains why I conclude that 'very substantial weight' should be given to the proposed market sale and affordable housing individually and on their own right. KCG have not submitted any robust evidence to counter this conclusion.

7.15 Section 6.0 of my evidence explains why I conclude that 'substantial weight' can be attached to the delivery of the self/custom-build plots. KCG have not submitted any robust evidence to counter this conclusion.

New School

7.16 Section 6.0 of my evidence explains why I conclude that 'substantial weight' can be attached to the school land as part of the Appeal Proposals. KCG have not submitted any robust evidence to counter this conclusion.

10% Biodiversity Net Gain

7.17 Section 6.0 of my evidence explains why I conclude that 'moderate weight' can be attached to the delivery of 10% BNG. KCG have not submitted any robust evidence to counter this conclusion. I also note that no objection has been raised by from HCC Ecology nor Natural England and condition requested by Herts and Middlesex

Wildlife Trust has been included in the list of proposed conditions.

Open Space and Play Space

7.18 I disagree with KCG's suggestion that the Appeal Site is "*...open to the general public and offered welcome benefits to local residents*". KCG have not submitted any robust evidence to substantiate this statement.

7.19 To the contrary, the owners of the Appeal Site have confirmed to me that:

- Local residents and the general public are not allowed to freely access the Appeal Site. Access is only given on a permissive basis; and
- None of the local residents of Chiswell Green currently use the riding school on the Appeal Site.

7.20 It is therefore clear that the Appeal Site is not open to the general public, nor does it benefit the local residents.

7.21 The Appeal Proposals will, however, provide access into the Appeal Site for local residents and the general public to use the open space, play spaces and gain access to PROW into the countryside. Section 6.0 of my evidence explains why I conclude that 'moderate weight' can be attached to these benefits. KCG have not submitted any robust evidence to counter this conclusion.

Socio-Economic Benefits

7.22 Section 6.0 of my evidence explains why I conclude that substantial weight can be attached to the socio-economic benefits of the Appeal Proposals. KCG have not submitted any robust evidence to counter this conclusion.

Traffic and Transport as a Material Consideration

7.23 The planning application was supported by a Transport Assessment (TA) (**CD 2.9**) and TA Addendum (**CD 2.35a**). The TA Addendum concludes as follows:

- *The site access junction on Chiswell Green Lane has been updated to ensure that the junction would operate in conjunction with the site access associated with the development to the north of Chiswell Green Lane in the event that both developments receive planning consent;*

- *The advisory cycle lane proposed on Chiswell Green Lane has been replaced with a 3m footway / cycleway on the northern side of the road providing a link to an upgraded pedestrian and cycle crossing on Watford Road.*
- *The applicant is willing to deliver pedestrian and cycle improvements on Watford Road, between the Chiswell Green Lane junction and the A405 North Orbital Road in line with the objectives of a scheme proposed by HCC, either via S106 funding or a S278 agreement, provided the developer's total financial liability in terms of sustainable transport improvements does not exceed £2.6m (£6,826 per dwelling). This will provide a connection to the existing cycle route to Watford.*
- *HCC has confirmed that its preference is to increase the frequency of the existing bus routes on Watford Road rather than divert / provide a new bus service into the development.*
- *The cost of the above sustainable travel improvements would be deducted from the total transport related Section 106 contribution of around £2.6m based on £6,826 per dwelling for the development of 391 dwellings proposed.*
- *Given the above, and the additional information provided within this Transport Assessment Addendum, it is considered that the proposed sustainable transport improvements will encourage a modal shift away from the private car and towards sustainable travel modes to reduce the vehicular impacts of the development on the surrounding road network in accordance with the NPPF and Hertfordshire's Local Transport Plan 4. It is therefore considered that the development proposals are acceptable in transport terms and that the Highway Authority should be able to make a positive recommendation to the Local Planning Authority in respect of the Outline application for the proposed development.*

7.24 Paragraphs 6.11.1 to 6.11.5 of the Council's Committee Report (**CD 3.4**) sets out the background discussions with HCC's Highways Team, resulting in HCC concluding that:

"...the fundamental principle of accepting a sustainable transport scheme over and above a highway capacity solution (which the report majors on), is one that we remain content with".

7.25 Paragraphs 6.23.1 to 6.24.1 of the Council's Committee Report (**CD 3.4**) sets out the background discussions with National Highways' (NH), resulting in NH concluding that they *"...have no further objection to the Application Scheme"*.

7.26 Paragraph 8.13.50 of the Council's Committee Report (**CD3.4**) concludes that taking the discussions with HCC and the mitigation proposed as part of the Appeal Proposals, the Appeal Proposals would:

"...be in line with the aims of the relevant parts of the NPPF, Local Plan and Neighbourhood Plan. As such, no additional harm is identified in this regard, this matter is considered to weigh neutrally in the planning balance in this case,

and it is given neither positive nor negative weight."

7.27 The evidence of Mr Jones (**CD 3.23**) concludes:

- The Appeal Site is accessibly located and provides opportunity for both future and existing residents to travel to amenities and facilities required on a daily basis by sustainable transport modes other than single occupancy car travel. This is because:
 - Chiswell Green and the neighbouring Parishes are served by a good mix of services, facilities and amenities, including for both frequent bus services and How Wood, Park Street, St Albans City and Watford Junction railway stations;
 - This is because the available public transport facilities offers both existing and future residents with a real choice to use these services to travel to education, employment, shops and services in other nearby settlements including How Wood, Park Street, St Albans and Watford as a genuine alternative to journey by car;
 - All facilities within Chiswell Green and the neighbouring Parishes are located within reasonable walking and / or cycling distance of the site; and
 - The package of measures proposed will further enhance the accessibility the Appeal Site and encourage sustainable travel, as benefitting existing residents on Chiswell Green Lane, Forge End, Long Fallow and the residential areas access of both Chiswell Green Lane and Watford Road.
- The sustainable transport mitigation package agreed with HCC's Highways Team (the 'Highway Authority') is comprehensive and commensurate with the scale of the Appeal Proposals.
- Based on its local knowledge of the operation of the local highway network including the Watford Road double mini-roundabout, the highway authority:
 - Does not consider that impact of the Appeal Proposals on highway capacity is sufficiently material that could not be mitigated by way of a sustainable transport mitigation package in accordance with its wider aspirations to improve connectivity between Chiswell Green, Part Street and St Albans and reduce through traffic on the Watford Road corridor as part of the Chiswell Green Corridor Active Travel Improvements as identified in the South Central Hertfordshire Growth and Transport Plan document;
 - Following receipt of objection reports submitted by KCG that it did

not consider it needed additional mitigation by means of creating additional highway capacity; and

- Considers that the substantial investment in off-site active travel mode infrastructure associated with the delivery of development on the Appeal Site is fully in alignment with the objectives embodied within LTP 4 Policy 1 and the NPPF and delivers a more balanced travel demand for future households and visitors.

7.28 I concur with the conclusions of the TA Assessment, Council's Committee Report, NH's response, HCC's response and Mr Jones' evidence. I do not consider the impact of the Appeal Proposals on the local highway network (during construction and operational phases) to be a justified reason for refusing the Appeal Proposals on its individual merits or cumulatively.

Committed Development

7.29 KCG focuses the traffic movements of the Appeal Proposals on Tippendell Lane, Watford Road and Watling Street, when considered in context of Polo School scheme, the Strategic rail Freight Interchange and Retirement scheme at Burston Nurseries.

7.30 The evidence of Mr Jones (**CD 3.23**) concludes that the impact of the committed development on the double mini-roundabout has been reviewed in conjunction with the Appeal Proposals. The Burston Nursery flows have been assessed and when applied to Watford Road are so low (1 vehicle in the peak hour), it is considered that this would not have a material impact on the operation of the double mini-roundabouts. Similarly, the Rail Freight terminal and the new hotel at the A405 / Watford Road were assessed as part of the work undertaken for National Highways and the former would not impact Watford Road, whilst the new hotel trips would be negligible and again would not have a material impact on the operation of the mini-roundabouts.

7.31 I concur with the conclusions of Mr Jones' evidence. I do not consider the impact of the Appeal Proposals on the local highway network (during construction and operational phases) to be a justified reason for refusing the Appeal Proposals on its individual merits or cumulatively in the context of other committed development such as the Rail Freight Interchange or the retirement development at Burston Nurseries.

Prematurity

7.32 I note that KCG acknowledge in their SOC that “...*there is clearly no emerging local plan at a sufficiently advanced stage*” to engage the matter of prematurity to be relevant in this case. This is consistent with paragraph 50 of the NPPF which explains that prematurity will seldom be justified where a draft plan has yet to be submitted for examination.

7.33 Regarding the KCG’s reference to the Draft NPPF (**CD 7.21**) changes and exemption from housing targets, I explain in section 4.0 and **Appendix JK6** of my evidence that, I do not consider the WMS guidance nor the potential amendments to the NPPF to carry any influence (or weight) on the determination of the Appeal Proposals, for the following reasons:

- The amendments to the NPPF are current in the initial consultation stage and response / comments on the amendments to the NPPF are still be considered. I therefore conclude that the existence of potential changes to the NPPF cannot automatically deem the Appeal Proposals to be premature. The Appeal Proposals must be determined under the current planning policy context and not held in abeyance until the changes to the NPPF have been confirmed and published by the Government; and
- The amendments will not justify any reason for refusal in their own right. For example:
 - VSC remains in place in the context of decision-making;
 - Draft paragraph 61 explains that the outcome of the ‘standard method⁴⁷’ is an advisory starting-point for establishing a housing requirement for an area. This is a point of clarity on a matter that has always been accepted. I note that the standard method will still be used to determine the housing delivery targets in the St Albans area (currently requiring 1,070 new homes per annum⁴⁸) and in the Housing Delivery Test (currently at 69%⁴⁹) and the Council would be required by draft paragraph 61 to determine the minimum number of homes needed and strategic policies should be informed by the local housing need assessment, conducted using the current standard method in the NPPF; and
 - Draft paragraph 75 will potentially remove the need for a ‘buffer’ in addition to the 5-year housing land supply target where the strategic

⁴⁷ Based on the 2014 household projections

⁴⁸ Source: paragraphs 5.2 and 6.2 of the Appellant’s Five-Year Housing Supply Study (**CD 2.3**)

⁴⁹ Source: paragraph 5.5 of the Appellant’s Five-Year Housing Supply Study (**CD 2.3**)

policies are more than five years old. I note that even if the Council can reduce its housing need to exclude its current 20% buffer, the resulting figure would be 892 new dwellings per annum⁵⁰ which is significantly more than the Council's average annual delivery rate (460 homes per annum⁵¹).

Conclusion

- 7.34 I conclude that there are no sound technical reasons raised by KCG that can be used to justify refusing the Appeal Proposals.
- 7.35 Section 6 and paragraphs 8.4.19, 8.9.7, 8.12.4, 8.13.50, 8.17.1 to 8.17.17 and 8.19.7 of the Council's Committee Report (**CD 3.4**) confirm that the Appeal Proposals will not result in additional harm purported by third party comments, including KCG's comment, and this is considered to weigh 'neutrally' in the planning balance. I also agree with this neutral weighting (no weight).
- 7.36 The matters raised by KCG will be addressed in greater detail, if necessary, once the KCG's evidence has been provided.
- 7.37 At the time of preparing my evidence only one Rule 6 Party (KCG) has registered to give evidence at the Inquiry. I reserve the right to provide further verbal evidence at the Inquiry should any other party given Rule 6 status wish to appear at the Inquiry.

⁵⁰ Source: paragraphs 5.2 and 6.2 of the Appellant's Five-Year Housing Supply Study (**CD 2.3**)

⁵¹ Source: paragraphs 5.6 of the Appellant's Five-Year Housing Supply Study (**CD 2.3**)

8.0 REBUTTING OTHER THIRD PARTY COMMENTS

- 8.1 Sections 5 and 6 of the Council's Committee Report (**CD 3.4**) summarises the third party and statutory consultee comments relating to the Appeal Proposals.
- 8.2 **Appendix JK7** of my evidence summarises the topics raised in third party comments submitted to the Council during the determination process and explains how these matters are not relevant or have been addressed, by way of a technical report, condition or obligation.
- 8.3 I confirm that I concur with the Council's conclusions, as set out in Section 6 and paragraphs 8.4.19, 8.9.7, 8.12.4, 8.13.50, 8.17.1 to 8.17.17 and 8.19.7 of the Council's Committee Report (**CD 3.4**), which explain that the Appeal Proposals will not result in additional harm purported by third party comments and this is considered to weigh neutrally in the planning balance.
- 8.4 I therefore conclude that there are no technical reasons currently raised by third parties that can be used to not allow the appeal. I anticipate that my Rebuttal POE will respond to any third-party comments received by the Planning Inspectorate in relation to the appeal application.
- 8.5 The comments made by third parties should be considered in the context that there will always be objections to development from local communities. It is human nature to be concerned about change. However, the Appeal Proposals will deliver a sustainable form of development (in accordance with paragraph 8 of the NPPF) which will respect the local communities and deliver local benefits, as summarised below and in the Appellants' Socio-Economic Statement (**CD 2.7**):

Social Benefits:

- Much needed market sale homes;
- Much needed affordable homes (including social rent, intermediate, first homes);
- Much needed self-build and custom-build homes;
- Much needed land for a new education facility;
- New publicly accessible open space and playspace on the Appeal Site;
- New rights of way (ROW) across the Appeal Site to link up to other existing ROW; and
- Financial contributions that will not only mitigate the impact of the Appeal

Proposals but will also benefit the local community⁵²:

- Expanding / improving existing local primary and nursery school facilities;
- Expanding / improving existing SEN facilities;
- Improving young facilities;
- Expanding / improving existing health care facilities;
- Library facility improvements;
- Improving existing local sports and parks facilities;
- Expanding / improving existing local ambulance capacity and services; and
- Improving existing waste services.

Economic Benefits:

- 214 direct construction jobs each month over the four-year building programme (resulting in £68.6m of GVA over the construction period);
- 207 indirect jobs resulting from the construction of the Appeal Proposals (resulting in £45.8m of GVA over the construction period);
- The Appeal Proposals will accommodate approximately 1,010 additional residents, resulting in around £25.5m of economic output (GVA) per annum;
- 391 homes will generate £2.9m of convenience good expenditure, £4.5m in comparison good expenditure and £3.5m on leisure good and services per annum; and
- 391 homes will generate a New Homes Bonus for the Council of £796,904 and approximately £920,00 in Council Tax per annum⁵³

Environmental Benefits:

- Improving the amount of biodiversity found on the Appeal Site and improving the diversity and quality of habitat;
- Using off-site mitigation measures to achieve an overall 10% BNG;
- The use of SuDS technology; and
- Delivery of homes that are energy efficient and use less energy in accordance with the relevant building regulation standards.

8.6 I consider that these benefits outweigh any concerns of raised by third parties.

8.7 At the time of preparing my evidence no third-party parties had registered to give

⁵² S106 contributions have not been taken into consideration in my planning balance / VSC case.

evidence at the Inquiry. I reserve the right to provide further verbal evidence at the Inquiry should a third party wish to appear at the Inquiry.

⁵³ Council Tax and NHB receipts have not been taken into consideration in my planning balance / VSC case.

9.0 CUMULATIVE CONSIDERATIONS

9.1 Section 6.0 of my evidence considers the benefits and harms resulting from the Appeal Proposals and their associated weighting to be given in the consideration of this appeal.

9.2 The Inspector has asked that the Appellants of this appeal provide confirmation of the harms and benefits in the 'cumulative development' context, if the Appeal Proposals are allowed alongside the Polo School scheme. I have set out overleaf in Table 9.1 my opinion on this matter.

9.3 When comparing the merits of each site in Table 9.1 on a cumulative basis and the cumulative assessment from the Appellants' other expert witnesses. I conclude that the land south of Chiswell Green Lane is the better site because:

- In spatial terms, it is the preferable site;
- In Green Belt terms, it is the preferable site;
- In landscape character terms, there is less harm;
- It has a wider education benefit (which the Polo School scheme does not);
- In agricultural land terms, there is less harm; and
- It will deliver a broader range of benefits.

2.19 My judgment in that respect is consistent with that of the Council's professional officers who recommended approval for the Appeal Proposals but recommended refusal for the Polo School scheme.

2.20 However, due to the chronic housing and infrastructure delivery situation in the district and eye-watering need to deliver market sale homes, affordable homes and SB/CB plots, I conclude that there is a clear and substantial VSC case to support both schemes.

2.21 If, however, the Inspector considers the cumulative impact of the two schemes is unacceptable, then my clients' Appeal Proposals should be approved as it benefits from a more compelling and readily distinguishable VSC / planning balance case.

Table 9.1:	Appeal Proposals		Polo School scheme		Cumulative	
Harm (Reason for refusal no.1)	Degree	Weight	Degree	Weight	Degree	Weight
Openness and purposes of the Green Belt	Limited (at most)	Substantial	Limited	Substantial	Limited	Substantial
Local landscape character	Limited (at most)	Limited	Limited	Moderate	Limited	Moderate
Loss of agricultural land	Limited (at most)	Limited	Limited	Limited	Limited	Limited
Benefits	Weight		Weight		Weight	
Land for new school	Substantial		No weight		Substantial	
Delivery of market sale homes	Very substantial		No weight		Very substantial	
Delivery of affordable homes	Very substantial		Very substantial		Very substantial	
Delivery of Self-build and Custom-build homes	Substantial		Substantial		Very Substantial	
Delivery of Open space and Children's play space (including ROW through the Appeal Site)	Moderate		Moderate		Moderate	
Ecology improvements	Moderate (at least)		Moderate (at least)		Moderate (at least)	
Socio-economic benefits	Substantial		Substantial		Very substantial	
Helping to raise the standard of design more generally in the area	Significant		Significant		Significant	

10.0 SUMMARY & CONCLUSION

10.1 The Council has one of the oldest Local Plans in the country. Following a failed attempt to adopt a new local plan in 2016 and following a clear statement made about the Council's reliance on (and full intention of) delivering the board location sites (including the Appeal Site and other Green Belt sites), the Council's second attempt to adopt a new local plan failed in 2018.

10.2 Since 2018, the situation in the district has continued to deteriorate resulting in:

- The Council failing to meet its identified local housing need figure (1,070 dwellings per annum) across the market sale, social rented, intermediate, first homes, elderly, self-build and custom build sectors for the past 20 to 30 years;
- The Council now only benefitting from a housing land supply of 2.0 years⁵⁴ and is not meeting the Housing Delivery Test targets; and
- Only 14% of the district's housing need over the plan period can be constructed on urban land, meaning that the Council must build in the Green Belt to meet its own identified housing and infrastructure needs.

10.3 There is a critical need to deliver market housing, affordable homes and SB/CB plots in the District and the Council has already demonstrated that it can't deliver its housing and infrastructure need through urban sites alone.

10.4 The Council has squandered its chances to resolve its local plan situation on several occasions, now resulting in a policy vacuum. The Council's latest attempt to prepare a new local plan is at its earliest stages and the reality is that the preparation, consultation and examination of a new emerging local plan is some way off. It is not a realistic solution for the Council to continue to 'bury its head in the sand' expect that all of its problems will go away when a new local plan is finally put in place in no less than 2-years' time! History has demonstrated that a more pragmatic approach is required in this particular district – it must pick its Green Belt battles.

10.5 Not allowing the development on sites in the Green Belt is no longer an option, particularly on sites like the Appeal Site which have been identified in the Council's Green Belt Review (and as a Broad Location site in the Publication Draft Local Plan,

Sept 2018) to be the most appropriate site for development in the Green Belt and it would cause the least harm to the Green Belt.

10.6 The Appellants seek outline planning permission for a landscape-led housing development on the Appeal Site that comprises:

- Demolition of existing structures and construction of up to 391 homes;
- 40% affordable homes provision, of which:
 - 30% Social Rent;
 - 19% Affordable Rent;
 - 26% Intermediate;
 - 25% First Homes⁵⁵
- 3% self-build and custom-build plots;
- The provision of land for a new school;
- 2.92 ha of publicly accessible amenity space;
- 0.82 ha of formal play space for children of all ages and 295sqm for playspace for toddlers;
- New access arrangements into the Site from Chiswell Green Lane, Long Fallow and Forge End;
- Adjustments to existing car parking, footpath, cycle path and highway arrangements along Chiswell Green Lane, Watford Road, Long Fallow, Forge End, Farringford Close;
- New on-site habitat and a financial contribution to enhance habitats off-site (to achieve a 10% biodiversity net gain); and
- Other financial and non-financial obligations to help mitigate the impact of the Appeal Proposals on local infrastructure.

10.7 The Appeal Site to be 'available', is free from constraint with development being 'achievable', 'deliverable' and is sustainably located close to existing facilities and infrastructure within the settlement of Chiswell Green. I am confident that homes will be of the highest quality and a beautiful place will be delivered on the Appeal Site.

10.8 The Council's Planning Committee refused planning permission on the basis that it considers the harm resulting to the Appeal Proposals (on the Green Belt, landscape

⁵⁴ Page 18, AMR (2022) (CD 8.7): 1,068 dwellings per annum (890 dwellings + 20% buffer) for 2022/23 to 2026/27 = 5,340, minus current supply of dwelling (2,145) = a shortfall of 3,195 dwellings (60% shortfall)

⁵⁵ as defined by the Government

character and agricultural land) is not outweighed by the benefits of the Appeal Proposals. However, I conclude that the existence very special circumstances (VSC) set out in the NPPF is for when this type of failure in the plan-making situation occurs in districts, like St Albans, where:

- The Council has failed to 'plan make', which has been evidence for many years in this district, and is 'material consideration' in its own right that should be given 'considered weight', as explained in Section 5.0 of my evidence;
- The Council's development plan is out-of-date and is in-constant with the NPPF; and
- The Council has persistently failed to deliver the homes and infrastructure it so desperately needs.

10.9 I conclude that the Appeal Proposals constitute inappropriate development that would result in:

- Definitional harm, and limited harm to openness and purposes of the Green Belt (**substantial weight**);
- Limited harm to local landscape character (**limited weight**);
- Limited harm to agricultural land (**limited weight**) (at most); and
- No other harm that cannot be mitigated that would need to be weighed in the balance.

10.10 However, I also conclude that VSC exist in this case, in the form of benefits, that outweigh the abovementioned harm(s), justify granting planning permission for the Appeal Proposals in accordance with:

- Policy 1 of SACDC's Local Plan (1994);
- Policy S1 of the St Stephen Neighbourhood Plan (2022); and
- Paragraphs 137, 147 and 148 of the NPPF.

10.11 The cumulative benefits arising from the Appeal Proposals include:

- Delivery of market sale homes (**very substantial weight**);
- Delivery of affordable homes, including social rent, intermediate and first homes tenures (**very substantial weight**);
- Delivery of self-build or custom-build homes (**substantial weight**);

- Delivery of land for a new School (**substantial weight**);
- Delivery of open space, children's play space and access to PROW (**moderate weight**);
- Delivery of ecology improvements (10% BNG) (**moderate weight**) (at least);
- Delivery of socio-economic improvements (**substantial weight**); and
- Helping to raise the standard of design more generally in the area (**significant weight**).

10.12 This appeal case and the weighting behind the benefits of the Appeal Proposals is to be considered in the context of matters listed below:

- The need to significant boost the supply of homes nationally;
- The Council's development plan is one of the oldest plans in the Country;
- The local plan is out-of-date (and inconsistent with the NPPF) and the Council only benefits from a 2-year housing land supply;
- The Council has failed its Housing Delivery Test since 2015/16 and the presumption in favour is engages (via the HDT and paragraph 11 of the NPPF);
- A chronic and persistent under-delivery of market homes and affordable homes;
- A chronic under-delivery of SB/CB homes for which there is a statutory duty to deliver in the district but a lack of policy basis to secure;
- The Council's acknowledged lack of urban land and recognised need for Green Belt release to meet its housing needs;
- The Council's own Green Belt Review evidence confirming that the Appeal Site displays urban fringe characteristics and would have the least harm to the Green Belt if released for housing;
- The Council had previously identified the Appeal Site for development, albeit in its unsound draft local plan;
- The need by HCC to deliver primary and SEND school facilities;
- The suitability, availability and immediate deliverability of the Appeal Site; and
- The planning officer's recommended that the outline application should be approved.

10.13 I conclude that there is a clear and compelling VSC case. When considering the 'planning balance' there are overwhelming reasons to support this Appeal Proposals.

In my opinion:

- The harm to the Green Belt, by reason of inappropriateness, and any other harm resulting from the Appeal Proposals, will be clearly outweighed by other considerations in accordance with paragraph 148 of the NPPF, Policy 1 of SACDC's Local Plan (1994) and Policy S1 of the St Stephen Neighbourhood Plan (2022); and
- Any adverse impact of granting permission would not significantly and demonstrably outweigh these numerous benefits when assessed against the NPPF taken as a whole.

10.14 The Council's Planning Officer also makes the same conclusion. Very similar conclusions have been reached in decisions made by the Planning Inspectorate and the Council on other Green Belt sites in St Albans, which share a similar context to the Appeal Proposals - the same local planning authority, the same housing delivery crisis and the same out-of-date local plan context. These decisions help to demonstrate that whilst the Council's Planning Officer did apply a consistent approach in the level of weighting and his recommendation in this case, the Council's Planning Committee (and now its expert planning witness) have not applied a consistent approach to that applied in other St. Albans decisions when overturning the Planning Officer's recommendation to approve the Appeal Proposals.

10.15 The Council has got to stop 'bury its head in the sand' and start addressing its eye-watering and chronic housing delivery issues by approving sites that it has previously identified using robust evidence as being appropriate for development purposes. The Appeal Site is one of these sites.

10.16 The recently allowed Huntington and Chalfont decisions demonstrate that housing and education infrastructure delivery in the Green Belt is still supported and this supply 'tap' has not been turned off by the SOS and that a truly deserving VSC cases, like this one, can be supported by the NPPF, PINS and the Government.

10.17 Having had regard to the above and the compelling benefits associated with the Appeal Proposals, I respectfully request that outline planning permission is allowed by the Inspector for the Appeal Proposals on the basis that it accords with the objectives of national and local planning policies and Appeal Site can make an instant and meaningful contribution to addressing the housing and infrastructure shortfall.