

**CD 6.1**

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

**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)**

**SECTION 78 APPEAL**

**Appellants' Statement of Case**

**Prepared by Barton Willmore, now Stantec & Carter Jonas**

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

**December 2022**

**Carter Jonas**

**BARTON  
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now



**Stantec**

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED) – SECTION 78  
APPEAL

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

**APPELLANT'S STATEMENT OF CASE**

<b>Project Ref:</b>	23536/A5/JK
<b>Status:</b>	Final
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## 1.0 INTRODUCTION

1.1 Barton Willmore, now Stantec, and Carter Jonas act on behalf of Alban Developments Limited and Alban Peter Pearson, CALA Homes (Chiltern) Ltd and Redington Capital Ltd ("the Appellants").

1.2 The Appeal is 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 the following planning application.

- LPA Ref:5/2022/0927
- Appeal Site Address: Land south of Chiswell Green Lane, Chiswell Green, St Albans ("Appeal Site")
- Description of 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 2FE primary school, open space provision and associated landscaping. Internal roads, parking, footpaths, cycleways, drainage, utilities and service infrastructure and new access arrangements ("the Appeal Proposals")."*
- Decision: Refused planning permission on 6<sup>th</sup> December 2022

1.3 The Appellants ask for the Appeal to be heard by way of the public inquiry procedure.

1.4 This Statement of Case ("SOC") (**CD 6.1**) will form the basis for the Appellant's Evidence and the documents that the Appellant intends to refer to when making its case.

### **Structure & Scope of this SOC**

1.5 This SOC contains information that is relevant to the appeal application and Appeal Site and sets out the Appellant's case.

1.6 This SOC should be read in conjunction with a draft Statement of Common Ground (SOCG) that has been prepared in support of the appeal application. The final version of the SOCG, as agreed by the Appellants and the Council, will be submitted in accordance with the Inspector's agreed inquiry timetable.

- 1.7 As the Council has yet to formally present their case in full, the Appellants reserve the right to review and adjust their grounds for appeal and the evidence to be presented as required.

## 2.0 APPEAL SITE & BACKGROUND INFORMATION

- 2.1 The SOCG will provide the Inspector with a full description of the Appeal Site and its surroundings. In the meantime, set out below is a summary of the most relevant information to provide the background context.
- 2.2 The Appeal Site is located within the Metropolitan Green Belt, on the western edge of Chiswell Green and to the southeast of St. Albans City. A site location plan that illustrates the extent of the Appeal Site can be found at **CD 1.21**.
- 2.3 The Appeal Site comprises a riding school and stables, horse grazing fields and a derelict farmhouse and outbuildings and is surrounded on all four sides by:
- Chiswell Green (a specified settlement<sup>1</sup>) to the east, south and partially to the north;
  - Butterfly World, its car parking areas and its access road to the west; and
  - Chiswell Green Lane with residential properties and a traveller's site to the north.
- 2.4 Parts of the northern and western boundaries of the Appeal Site comprise hedging and mature trees that screen the Site from views from the wider countryside. This is reinforced by the landscape bunding along the western boundary that is used to screen the Butterfly World car park. The Appeal Site is relatively well contained, is partially screened from views from within the wider area by mature vegetation, separating it from the open countryside.
- 2.5 There are no nationally designated sites (e.g. National Park or Area of Outstanding Natural Beauty (AONB), Special Area of Conservation (SAC)) on or within close proximity of the Site, nor is it within an Area of High Landscape Value<sup>2</sup>.

### Background Information

- 2.6 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. More recently, having been identified through the Green Belt

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<sup>1</sup> In accordance with Policy 2 of the adopted Local Plan Review 1994 (saved and deleted policies version (July 2020) (**CD 5.1**))

<sup>2</sup> The Site is not part of any of the designated landscapes described in paragraph 174 of the NPPF (**CD 4.1**)

Review<sup>3</sup> process as one of eight strategic sites that would cause the least harm to the purposes of the Green Belt, the Appeal Site was proposed as a strategic site allocation (Broad Location S6x) in the now withdrawn Publication Draft St Albans Local Plan (Sept 2018) (**CD 5.2**) . An extract for board location 6x) 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

2.7 The Appellants have promoted the Appeal Site as a strategic allocation and has offered the Council full support in progressing this. However, in the context of:

- The pressing need for the delivery of market sale homes, affordable homes and self-building homes and the Council currently confirming it only has a housing land supply of 2.2 years<sup>4</sup>; and
- The ongoing delays in bringing forward a new local plan that adequately provides for the District’s full objectively assessed housing needs;

...the Appellants took the decision to:

- i. Undertake pre-application discussions with Hertfordshire County Council (HCC) between August and March 2022;

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<sup>3</sup> Green Belt Review: Purposes Assessment (2013) & Green Belt Review Sites and Boundaries Study (February 2014)

<sup>4</sup> Source: Paragraph 8.6.2 of the Officer’s Committee Report (CD 3.4)

- ii. Undertake pre-application discussions with SACDC between October 2021 and January 2022 (a copy of SACDC's pre-application response letter, dated 21<sup>st</sup> Jan 2022, can be found at **CD 3.3**;
- iii. Undertake pre-application discussions with St Stephen Parish Council on 13<sup>th</sup> Jan 2022 (SSPC did not issue a pre-application response);
- iv. Undertake community consultation events on 1<sup>st</sup> March 2022 (Webinar event) and 2<sup>nd</sup> March 2022 (in-person exhibition);
- v. Complete an EIA Screen Request process in Oct / Nov 2021 (Note: the Council does not consider the Proposal to be EIA development); and
- vi. Submit the Outline Planning Application (ref:5/2022/0927) to the Council on 5<sup>th</sup> April 2022.

2.8 The outline planning application was validated by the Council on 3<sup>rd</sup> May 2022. Following validation, revised drawings and additional information was submitted to the Council on 22<sup>nd</sup> June, 11<sup>th</sup> August, 29<sup>th</sup> August, 31<sup>st</sup> August, 1<sup>st</sup> September, 17<sup>th</sup> October and 25<sup>th</sup> October 2022.

2.9 The Council recommended that the application be approved at its Planning Committee on 28<sup>th</sup> November 2022. A copy of the Officer's Report can be found at **CD 3.4**. The Planning Committee overturned the Officer's recommendation.

2.10 The application was refused on 6<sup>th</sup> December 2022 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.

- 2.11 A copy of the Council's decision notice can be found at **CD 3.7**.
- 2.12 Reason for Refusal 2 is capable of being resolved subject to the submission of a completed and signed s.106 agreement securing the planning obligations referred to in that reason (which would have likely followed if Members had resolved to grant planning permission). There is no inconsistency between Reason for Refusal 2 and the case officer's recommendation to grant planning permission, because that recommendation was expressed to be subject to satisfactory completion of a s.106 agreement.
- 2.13 Article 35(1)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 requires that where a LPA refuses 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 Reason for Refusal 1, the Planning Committee can be taken to have accepted the advice in the case officer's report (because if they had any other objections they were legally bound to say so in the reasons for refusal).

### **3.0 APPEAL PROPOSALS**

3.1 The SOCG will provide the Inspector with a detailed description for the Appeal Proposals. In the meantime, the summary below provides information that is of most relevance at this stage.

3.2 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 Homes<sup>5</sup>
- 3% self-build and custom-build plots;
- The provision of land for a new 2FE primary 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 of £256,800.00 to enhance habitats off-site (to achieve a 10% biodiversity net gain);
- Other financial and non-financial obligations to help mitigate the impact of the Appeal Proposals on local infrastructure, comprising:
  - Primary Education (including Nursery and Child care) - £3,024,011.00 (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) - £3,312,434.00 (Index linked to BCIS 1Q2020) towards the expansion of Marlborough Science Academy/ Samuel Ryder Academy or any secondary school with expansion in the area;

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<sup>5</sup> as defined by the Government

- Specialist Education (Primary & Secondary) - £378,030.00 (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 (Any work carried out by the developer pursuant to a S278 agreement will be deducted from this figure);
- Youth Facilities - £105,959.00 (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, in order to accommodate an increase in patient population;
- Library Facilities - £38,000.00 (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; and
- HCC monitoring fees - £3,060.00

3.3 An extract of the illustrative masterplan for the proposals can be found in Figure 1 overleaf.



Figure 1

## 4.0 PLANNING POLICY CONTEXT

4.1 The adopted planning policy context for the Site is set out below, including its materiality in the decision-making process.

### Adopted Policy

4.2 Section 38(6) of the Planning and Compulsory Purchase Act (2004) makes it clear that regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

4.3 The development plan documents relevant to the Appeal Site consist of:

- 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") (**CD 5.1**);
- St Stephen Neighbourhood Plan (2019-2036) (**CD 5.12**);
- HCC's Waste Core Strategy & Development Management Policies DPD (2012);  
and
- HCC's Hertfordshire Minerals Local Plan 2007.

4.4 The Council determined the Appeal Proposals against the objectives of the policies of the Local Plan Review (**CD 5.1**) and St Stephens Neighbourhood Plan (**CD 5.12**), as listed in Section 5.0 of the SOCG.

4.5 The policies listed in the Council's reasons for refusal are:

#### Reason for Refusal No. 1:

- Policy 1 (Metropolitan Green Belt) of the Local Plan Review (**CD 5.1**)
- Policy S1 (Location of Development) of the St Stephens Neighbourhood Plan (**CD 5.12**)

#### Reason for Refusal No. 2:

- Policy 143B (Implementation) of the Local Plan Review (**CD 5.1**)

- There is no policy of the St Stephens Neighbourhood Plan (**CD 5.12**) specified in the reason.

4.6 Both reasons for refusal also refer to the NPPF (**CD 4.1**), without reference to specific sections or paragraphs.

4.7 The Appellants will seek to agree and engross a S106 legal agreement with the Council prior to the opening of the Inquiry. This means that reason for refusal no.2 will no longer be relevant to the determination of the Appeal Proposals and will leave Policies 1 and S1 and relevant sections NPPF (**CD 4.1**) as the focus of the Inquiry.

### **Weight to be given to development plan**

4.8 The Local Plan was adopted in November 1994 (**CD 5.1**). The Local Plan policies were reviewed by the Secretary of State and a Direction under Planning and Compulsory Purchase Act 2004 made on the 14 September 2007 saving the policies.

4.9 Paragraph 8.2.11 of the Council's Committee Report (**CD 3.4**) explains that the policies which are most important for determining the application (now the appeal) are regarded to be out-of-date on the basis of the guidance set out in paragraph 11, footnote 8 of the NPPF (**CD 4.1**), which explains that:

*"...Local Plan policies are regarded to be out-of-date (for the purposes of determining planning applications for the provision of housing) in 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 73 of the NPPF); 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".*

4.10 Paragraph 8.6.2 of the Council's Committee Report (see **CD 3.4**) confirms that the Council only has a housing land supply of 2.2 years. The Council has only delivered 69%<sup>6</sup> of its housing requirement over the previous three years.

4.11 Therefore, the Appellants' evidence will explain that the policies contained within

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<sup>6</sup> 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**).

the above Development Plan documents carry limited weight in the determination of the Appeal Proposals.

### **Presumption in Favour**

4.12 The Appellants' evidence will explain that the Council must adopt a "presumption in favour" of supporting proposals that will delivery new housing in the District, particularly with reference to the guidance contained within:

- Housing delivery test; and
- Paragraph 11(d) of the NPPF (**CD 4.1**) which reads as follows:

*"d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, 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; 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."*

4.13 The Appellants' evidence will explain that in an authority where there exists a current policy vacuum and 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, unless material considerations indicate otherwise.

4.14 The Appellants' evidence will draw reference to the conclusions included in the Council's evidence base documents, as summarised below, considered relevant to the determination of the Appeal Proposals:

- SACDC's Green Belt Review: Sites and Boundaries Study (December 2013) (**CD 5.4**);
- SACDC Green Belt Review Sites & Boundaries Study (February 2014) (**CD 5.5**);

- SACDC's 5-Year Housing Land Supply position, affordable housing delivery position and self-build homes delivery position (as referred to in various appeal decisions and committee reports in the district);
- SACDC's Strategic Housing Land Availability Assessment (SHLAA, updated in May 2018) (**CD 5.8**);
- SACDC's Housing and Economic Land Availability Assessment 2021 (HELAA) (**CD 5.9 & 5.10**); and
- Appendix B (Urban Capacity Study) of the Draft HELAA (2021) (**CD 5.11**).

### **Other Key Decisions**

4.15 The Appellant's evidence will draw reference to recent appeal decisions and Council decisions in relation to development on other green belt proposals that have demonstrated 'very special circumstances' (VSC). These decisions include:

- Oaklands College, St Albans Campus, St Albans ('Oaklands College') – PINS Ref: APP/B1930/W/15/3051164 (**CD 3.8**);
- Roundhouse Farm, Land off Bullens Green Lane, Colney Heath ('Colney Heath') – PINS APP/B1930/W/20/3265925 (**CD 3.9**);
- Land to Rear of 112-156b Harpenden Road, St Albans ('Sewell Park') - SACDC Ref: 5/2021/0423/LSM (**CD 3.10**);
- Land to the rear of Burston Garden Centre, North Orbital Road, Chiswell Green, St Albans ('Burston') – PINS Ref: APP/B1930/W/21/3279463 (**CD 3.11**);
- Land off Orchard Drive, How Wood, St Albans – SACDC Ref: 5/2021/2730 (**CD 3.12**);
- Sun Lane and Ilkley Road – PINS Ref: APP/W4705/V/18/3208020 (**CD 3.13**)
- Land South of Heath Lane, Codicote – PINS Ref: APP/X1925/W/21/3273701 (**CD 3.14**);
- Land at Maitland Lodge, Southend Road, Billericay – PINS Ref: APP/V105/W/22/3296116 (**CD 3.15**); and
- Land north of Kennel Lane, Billericay – PINS Ref: APP/V1505/W/22/3298599 (**CD 3.16**).

4.16 These decisions are a material consideration in this case because there are a number of similarities between these decisions and the Appeal Site's circumstances. They also highlight how much weight can be afforded to the benefits set out in a VSC case.



## 5.0 COUNCIL'S POSITION & APPELLANTS' PLANNING CASE

5.1 The Planning Statement and the supporting technical reports accompanying the outline planning application for the Appeal Site form the basis for the Appellants' appeal case and how the Appeal Proposals comply with the relevant requirements of the Development Plan (despite it being out of date) and the NPPF (**CD 4.1**).

### **Expert Witnesses**

5.2 The Appellants' understanding of the Council's position is derived from the decision notice issued by the Council on 6<sup>th</sup> December 2022.

5.3 The Appellants will be represented by Charles Banner KC of Keating Chambers.

5.4 The Appellants are expecting to instruct approximately four expert witnesses to prepare evidence in relation to the following subject matters for the Appeal Proposals:

#### Reason for Refusal No.1

- Impact on the purposes of the Green Belt, Green Belt openness, and landscape character and appearance = Landscape Expert Witness
- Impact on Agricultural Land = Agricultural Land Expert Witness

#### Reason for Refusal No.2<sup>7</sup>

- S106 Contributions = Town Planning Expert Witness.

#### Planning Balance

- The education contributions and education land provision as part of the Very Special Circumstances (VSC) case = Education Expert Witness.
- Need for market, custom and affordable housing as part of the VSC case = Town Planning Expert Witness.
- Prospects of market, custom and affordable housing being delivered in the

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<sup>7</sup> In the event that the Council and Appellants are unable to agree and engross the S106 Agreement

absence of the appeal scheme = Town Planning Expert Witness.

- Other benefits (i.e. open space provision, BNG, etc) as part of the VSC case = Town Planning Expert Witness.
- The overall planning benefits package, the VSC case and planning balance = Town Planning Expert Witness.

5.5 Should the Council resolve to introduce additional matters in its SOC or in evidence to those that have been set out in the decision notices, the Appellants reserve the right to review and adjust its case and associated evidence as may be required.

5.6 It is noted that a substantial number of representations have been received from other third parties. Should any 'Rule 6 parties' be identified, the Appellants reserve the right to review and adjust its case and associated evidence as may be required.

### **Summary of Appellant's Case & Grounds of Appeal**

5.7 The Appellants consider the Council's position to be ill-founded.

#### Reason for Refusal 1

5.8 In terms of the purported detrimental impact on the openness and purposes of the Green Belt, the Appellants will provide evidence that demonstrates:

- The development of the Site would have a limited effect on the key characteristics of the Green Belt that is its "openness and permanence". Built form already covers 4% of the Site and built form on the settlement edge of Chiswell Green encloses the Site to the north, east and south-east. Visual openness of the Site is also limited by the existing vegetated field boundaries which truncate views between the various fields within the Site as well as limiting intervisibility between the Site and the remaining Green Belt to the west. Views from the settlement edge toward parts of the Site and towards the wider Green Belt beyond are also interrupted by the existing field boundary vegetation. Therefore, the Site exhibits a limited perception of openness due to the restricted extent of visual connection to the wider landscape. The existing western boundary vegetation would be retained and enhanced, and this would serve to contain introduced built forms on the Site and thus limit any impact upon the openness of the Green Belt. As a result, there would only be a limited loss both physical and perceptual openness,

restricted to the Site itself, and very little effect on the openness of the remaining Green Belt to the south-west and west. Furthermore, development of the Site would provide a new clearly defined boundary to the Green Belt based on existing retained physical features, strengthened and enhanced, such that they would be permanent, long term and enduring, as required by Paragraph 140 of the NPPF (**CD 4.1**), and Paragraph 143 Points (e) and (f) of the NPPF, which state with regard to Green Belt boundaries that plans should:

***e) "be able to demonstrate that Green Belt boundaries will not need to be altered at the end of the plan period; and  
f) define boundaries clearly, using physical features that are readily recognisable and likely to be permanent".***

- The Site makes no contribution to Green Belt Purpose 1: To check the unrestricted sprawl of large built-up areas, in that the Site is not within the vicinity of any large-built up areas and therefore does not act as an effective barrier against sprawl from any such large built-up areas. Development of the Site would be a well-designed extension to the settlement of Chiswell Green, providing a rational rounding off of the settlement morphology, appearing as a coherent addition to the existing settlement pattern and would be in keeping with the character of the edge of Chiswell Green immediately to the east, such that it would not constitute sprawl.
- The Site makes limited to no contribution to Green Belt Purpose 2: To prevent neighbouring towns from merging, as the Site is only contiguous with Chiswell Green, and development of the Site would not result in the merging of towns or the coalescence of any settlements. Whilst there would be some loss of open land between the existing first tier settlements of St Albans and Watford, development at the Site would not result in the merging of these towns, and a substantial swathe of largely open countryside would remain as functioning Green belt between them.
- The Site only makes a partial contribution to Green Belt Purpose 3: To assist in safeguarding the countryside from encroachment, as whilst the development of the Site would result in the loss of a small parcel countryside, much of this is strongly influenced by its existing urban fringe location, and some existing development on the Site. The existing boundaries of the Site, which largely physically and visually contain the Site, would be retained and enhanced by the comprehensive landscape strategy, to create a strong and

defensible boundary such that encroachment would be limited to, and contained by, the robust, clearly defined boundaries of the Site, thus preventing any further encroachment into the adjacent countryside.

- makes a limited or no contribution to the majority of the purposes of the Green Belt, and that development of the Site, subject to the landscape and visual principles set out in the Outline Planning Application, would appear as a coherent addition to the existing settlement pattern and would be in keeping with the character of the edge of Chiswell Green immediately to the east.
- The Site makes no contribution to Green Belt Purpose 4: To preserve the setting and special character of historic towns, as the Site does not abut, nor is in the locality of an identified historic settlement core, and therefore makes no contribution to the setting of an historic town, either in the immediate or wider context, or any views or vistas between any historic town and the surrounding landscape.

5.9 In terms of the purported detrimental impact on landscape character and appearance, the Appellants will provide evidence that demonstrates:

- The development will:
  - Integrate with the existing landscape, in particular through boundary treatment and landscaping that will help to mitigate any detrimental landscape visual impacts on the wider landscape. This includes the proposed boundary buffer which, combined with landscape bunds and mature boundary trees to the immediate west, will integrate and filter views of the development in response to the NPPF (**CD 4.1**), Policy 1 of the Local Plan (**CD 5.1**) and Policies S1, S3 and S5 of the St Stephen Neighbourhood Plan (**CD 5.12**).
  - Protect and enhance the landscape character of the area in which it is located as well as the character of existing adjacent settlements, by taking account of the local context and reflecting the landscape features and character and setting of the local area, in response to the NPPF (**CD 4.1**), Policies 1, 2 and 101 of the Local Plan (**CD 5.1**) and Policies S3 and S6 of the St Stephen Neighbourhood Plan (**CD 5.12**).
  - Create safe, attractive spaces of human scale, in particular on the urban fringe, through the provision of accessible green space, including green space for children's play areas, in response to Policies 79, 74 and 105 and Policies S5 and S10 of the St Stephen Neighbourhood Plan.

- Avoid significant harm to the ecological value of the countryside, and instead maintain and enhance the natural environment and its landscape character, through the creation of connective chains of green infrastructure which will achieve a net gain in biodiversity, with the planting of additional trees, creation of wildflower areas, and the restoration, reinforcement and maintenance of existing hedgerows, in response to Policy 1 of the Local Plan (**CD 5.1**), Section 4 of the St Albans District Green Infrastructure Plan and Policies S6 and S10 of the St Stephen Neighbourhood Plan (**CD 5.12**).
- Create new green recreation routes that provide safe and accessible pedestrian and cycle links from settlements to the District's Green Infrastructure network within the surrounding countryside, in response to Section 4 of the St Albans District Green Infrastructure Plan and Policies S5 and S14 of the St Stephen Neighbourhood Plan.
- Development of the Site will result in very limited visual effects. The local topographical variation and vegetation in the vicinity of the Site provides a high level of physical and visual screening to the Site that would limit visibility of development on the Site predominantly to those locations immediately adjacent to the Site. Where the Site is visible, development on the Site would be partially visible, predominantly in filtered views through intervening vegetation. However, the development would be set within a comprehensive, sympathetic landscape strategy, which would deliver substantial tree planting throughout and a restored and reinforced western boundary of the Site to create a robust settlement edge.
- The Site is only partially representative of Landscape Character Area 10: St Stephen's Plateau, defined in the Hertfordshire Landscape Character Assessment (**CD 5.13**), in that it comprises medium scale fields, with the settlement edge of Chiswell Green prominent on the southern, eastern and north-eastern edges of the Site. As noted in the 'Visual Impact' section of the character area description, *"the raw built edges of Chiswell Green and How Wood represent significant suburban impact"*, and this strongly influences the character of the Site. In contrast to the character area description, the visually enclosed fields are not used for arable farming but as pony paddocks. The surrounding landform and vegetation combine to limit the visibility of the Site from the wider area, and this is in contrast to the more open landscape to the west of the Site. The character of the Site is affected by the detracting influence of the western settlement edge of Chiswell Green which adjoins the Site to the north, east and south, such that

the Appeal Site and its immediate context sit within an urban fringe landscape with a strong relationship with the settlement edge.

- The overarching principles for the landscape strategy would, however, provide a framework for development on the Site that reflects the local characteristics and responds to the guidance set out in the Hertfordshire Landscape Character Assessment (**CD 5.13**) for the St Stephen's Plateau LCA.
- Development within the Site would introduce housing to an area of land on the western edge of Chiswell Green already influenced by its urban fringe location. The development would directly relate to the existing settlement edge and reinforce the existing settlement pattern by a rational rounding off of the settlement of Chiswell Green. It would also provide an opportunity to create a robust and permanent boundary to the settlement, and assimilate it into the immediate and wider context, with limited detrimental effects on landscape character or appearance of the landscape beyond the Site.

5.10 In terms of the purported detrimental impact on agricultural land, the Appellants will provide evidence that demonstrates:

- The Appeal Site comprises a series of grassland fields. The northern part of the Appeal Site is used as a livery business, with grassland fields supporting that facility to the south. The land within the Appeal Site is therefore currently used to support a recreational livery business. The loss of this land would not therefore have any effect on the current agricultural productivity within the district and the economic benefits that accrue from that production.
- The Appeal Site comprises a mixture of approximately 7ha of Subgrade 3a land and 5.5 ha of Subgrade 3b land and does therefore include a limited area of the lowest quality of land within the definition of the "best and most versatile" land. The distribution of the quality of land within the Grade 3 category is typical of Grade 3 land through the district and also the wider region. Statistical data issued by Defra in 2003 provides a breakdown of the areas of land uses within different districts, based on the MAFF Provisional ALC mapping. Within St Albans district the relative percentages are as follows:

Grade	Area	%	National Percentage England
1	0	0	3.3
2	966	8	16.7
3	10,987	90	54
4	247	2	15.7
5	0	0	10.3
TOTAL	12200	100	100

This data suggests that with over 90% of the land shown on the provisional ALC mapping, agricultural sites are likely to comprise Grade 3 land, with areas of Subgrade 3a and 3b within them and limited areas of higher quality Grade 2 land within some areas. Some very limited areas are likely to comprise significantly lower quality Grade 4 land, potentially associated with floodplain areas which would be unsuitable for development in any event.

- The detailed survey work that has been carried out in the vicinity by Defra and in connection with other local site applications also supports the output from the Defra statistics where sites typically comprise a mixture of Subgrades 3a and 3b with smaller areas of Grade 2 and 1 land. (figure can be produced, if required based on output below). If agricultural land areas are to be developed within the district in order to meet housing needs, therefore, that is inevitably going to involve the development of proportions of Subgrade 3a land.
- In terms of the weight to be attached to the loss of agricultural land in the planning balance, Section 15, Paragraph 174 of the NPPF (**CD 4.1**) states that:

*"Planning policies and decisions should contribute to and enhance the natural and local by:*

*a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);*

*b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland"*

- The Local Plan Review includes Policy 102 (Loss of Agricultural Land) (**CD 5.1**) is inconsistent with the NPPF (**CD 4.1**). It states:

*"Development which would result in the loss of agricultural land will be assessed against the following criteria:*

*(i) Land Quality: development resulting in the loss of high quality agricultural land, classified by the Ministry of Agriculture as being Grade 1,2 or 3a, will normally be refused. An exception to the policy may be made if there is an overriding need for the development and there is no alternative land of a lower quality which could reasonably be used.*

- This policy was developed under PPG 7 "The Countryside and the Rural Economy" and does not reflect the current framework for consideration under the NPPF (**CD 4.1**) as referred to above. Therefore, the consideration of the weight to be attached to the development of 7ha of the lowest quality of "best and most versatile" Subgrade 3a land should be considered within the context of the current NPPF (**CD 4.1**) as discussed above and not within the outdated PPG 7.
- In addition, the Natural England guidance for consultation with Local Authorities identifies the threshold of such land that would be considered significant:

*"In accordance with Town and Country Planning (Development Management Procedure) (England)(Amendment) Order 2012 Schedule 5, the LPA must consult Natural England on:*

- *The loss of not less than 20ha of grades 1, 2 or 3a agricultural land which is for the time being used for agricultural purposes;*
  - *The loss of less than 20ha of grades 1, 2 or 3a agricultural land which is for the time being used for agricultural purposes, in circumstances in which the development is likely to lead to a further loss agricultural land amounting cumulatively to 20ha or more."*
- Natural England have been consulted in relation to the Appeal Proposals and have made no comment about the loss of land on the Appeal Site.
  - The Appeal Site therefore comprises only a limited area of the lowest quality within the category of the best and most versatile land, where the development would not be likely to lead to the loss of more than 20ha of the best and most versatile land, due to its contained nature. The land is wholly typical of the quality of land in the district, if not of lower quality than some



areas of land and proposed developments on agricultural land in the vicinity are likely to comprise proportions of Subgrade 3a land. Within this context, no overriding weight should be attached in the overall planning balance to this limited loss of Subgrade 3a land.

#### Reason for Refusal 2

5.11 In the event that the Council and Appellants are unable to agree and engross the S106 Agreement, the Appellants will provide evidence that demonstrates:

- The S106 obligations proposed will mitigate the impact of the Appeal Scheme on local community infrastructure.

#### VSC case & planning balance

5.12 Evidence will be submitted by the Appellants to demonstrate that the Appeal Proposals accord with the NPPF (**CD 4.1**) and, notwithstanding the weight to be given to adopted policy, accord with the relevant policies of the Development Plan, and therefore represent sustainable developments under the NPPF (**CD 4.1**). As a consequence, the Appellants will demonstrate that planning permission should be granted.

5.13 Evidence will be submitted by the Appellants to support the several strands to the Appellants' planning balance case against the Council's reasons for refusal. These strands comprise:

- The Appellants accept that the Appeal Proposals seeks to bring forward 'inappropriate development' in the Green Belt requiring very special circumstances (VCS) to be demonstrated;
- The VSC case to justify granting planning permission is directly linked to the requirements of Policy 1 of SACDC's Local Plan (1994) (**CD 5.1**), Policy S1 of the St Stephen Neighbourhood Plan (2022) (**CD 5.12**) and Paragraphs 137, 147 and 148 of the NPPF (**CD 4.1**). The merits of the VSC case are discussed below:
  - i. The abovementioned policies and paragraphs 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.

ii. The Appellant will demonstrate that that VSC exists in this case that is sufficient to warrant the grant of planning permission. The Appellant's evidence will demonstrate that:

- In view of the low level of housing delivery in District, '**very substantial weight**' can be attributed to delivery of the Appeal Proposals' market housing;
  - In view of the low level of affordable housing delivery in District, '**very substantial weight**' can be attributed to delivery of the Appeal Proposals' affordable housing;
  - In view of the low level of self-build or custom-build housing delivery in District, '**Substantial weight**' can be attached to the delivery of the self/custom-build plots;
  - '**Substantial weight**' can be attached to the delivery of the education land;
  - '**Substantial weight**' can be attached to the delivery of the socio-economic benefits;
  - '**Moderate weight**' can be attached to the delivery of open space;
  - '**Moderate weight**' can be attached to the delivery of 10% BNG; and
  - These benefits outweigh the harm to the Green Belt, which is to be given '**substantial weight**' in its own right, and any other harm presented at the Inquiry.
- This case is to be considered in the context of:
    - Acute need for housing: The Council's own evidence base and recent decision demonstrate there exists an acute 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.
    - 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 needs of the District are to be met.
    - Delays in the Local Plan Review: Council has one of the oldest Local Plan's (**CD 5.1**) in the country and has had several failed attempts at preparing a new Local Plan. The latest attempt is at its early stages and the reality is that the preparation, consultation and examination of a new emerging local plan is some way off and action needs to be

taken now to bolster market housing, affordable housing and self-build housing supply.

- Suitability of the 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.
- Absence of Constraints: The conclusions of the extensive technical work undertaken on behalf of the Appellant explains that the Appeal Site is not the subject of any constraint that would undermine development;
- Other Benefits: The Appeal Proposals would deliver other positive economic benefits for the District and its labour market through the creation of new jobs and an increase in labour supply and expenditure in the local economy; and
- Deliverability: 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.

5.14 In terms of the provision of education land in planning balance, the Appellants will provide evidence that demonstrates:

- It is an agreed position between the Appellants and Hertfordshire County Council ("HCC") Education that a development of circa 390 dwellings would be expected to generate in the region of one form of entry ("1FE") (210 places) worth of primary school aged pupils.
- There is only one existing primary school in Chiswell Green, Killigrew Primary and Nursery School, which is currently full or nearly full in the majority of year groups. It is noted that the school does not currently have the capacity to accommodate the potential level of new demand arising from the proposed development. HCC has therefore requested, and the Applicants have agreed to, a contribution of £3,024,011 towards the future expansion of Killigrew Primary and Nursery School or primary other primary school with expansion potential in the area. At this stage, this is anticipated to meet the primary education need generated by the development.
- However, HCC has also noted that, due to the uncertainty surrounding the

emerging St Albans Local Plan in relation to a preferred growth scenario and housing target for the District, it would welcome the provision of land with the Application site to be safeguarded for a new Primary School.

- On that basis, a site of 1.89ha, which is the high end of Building Bulletin 103's requirement for a 2FE (420 place) school site, is reserved on the development to enable the delivery of new school provision, should it be required (subject to a Business Case being established). HCC have confirmed in writing the appropriateness of the site under their adopted school site checklist. The provision of land for a 2FE school can give HCC the option to grow the local primary school planning area beyond 1FE should the need be established.
- From a Primary School landscape perspective, it is recognised by the Appellants and acknowledged by HCC that birth numbers are falling, and that the primary school planning areas closest to this development are forecasting falling rolls. On that basis, the requirement for land may not be necessary when the development does come forward, however the Appellants have agreed to safeguard provision and provide commensurate planning obligations towards new provision should the need be established. Any new provision that is provided would include an element of Early Years provision.
- The Appellants and HCC have agreed that there is very little spare capacity in the Secondary School phase, and that planning obligations will be necessary, commensurate to the development's child yield, to assist in growing the number of available places to serve this area of St Albans. This is likely to be achieved through expanding existing provision. The Appellants have also agreed to provide contributions towards Special Education Needs provision to serve the area, again if the need has been established by HCC. The Appellants are committed to proactive joint working with HCC Education.
- On the basis of the above, there are no outstanding issues between the Appellants and HCC in terms of Education development mitigation with heads of terms agreed for the contributions to meet the demand generated by the proposed development. Furthermore, the Applicants have gone beyond this by agreeing to safeguard land for the provision of a new 2FE primary school, which is a benefit which attracts **substantial** weight.

5.15 The Appellant's evidence will draw reference to the findings set out in other appeal decisions that are relevant to the Appeal Proposals. The majority of these are already discussed in the Appellants' Planning Statement and in the Council's

Committee Report. Other appeal decisions may also be included in evidence if they are deemed relevant by the Appellants.

### **Conclusion**

- 5.16 The Appellant's evidence will conclude that when considering the 'planning balance' there are overwhelming reasons therefore to support this Appeal Proposals and allow the release of the Appeal Site now so that it can be developed at the earliest opportunity. In this case, the benefits of the Appeal Proposals outweigh the purported harm to the Green Belt, character and appearance of the landscape and agricultural land.
- 5.17 Having had regard to the above and the significant benefits associated with the Appeal Proposals, the Appellants respectfully request that outline planning permission is granted for the Appeal Proposals on the basis that they accord with the objectives of national and local planning policies.