

ADDISON PARK

OPINION

Introduction

1. I have been asked to advise by McPartland Planning Limited (“my Instructing Town Planners”) as to the weight (if any) which can properly be given by the ultimate decision-makers to an internal consultation response made to St Albans City and District Council (“the Council”) by its Spatial Planning Department with regard to Planning Application Ref. No. 5/2021/3194 (“the Planning Application”). By that Application, permission is being sought for “Addison Park” (named after the Housing Minister who presided over the “homes fit for heroes” initiative following the Great War), comprising up to 330 discounted Affordable Homes, exclusively for key workers, on land in the Green Belt on the western edge of Chiswell Green (“the Application Site”).
2. Before turning to the factual background against which my Opinion has been sought, it will help to set the context by reference to the National and Local Planning Policy and Guidance applicable to the proposal, noting that the Application Site is in the Green Belt.

National Policy and Guidance

3. The National Planning Policy Framework (“NPPF”) states as follows, at [137]-[138], regarding the importance and purposes of the Green Belt:

“137. The government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

138. Green Belt serves 5 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.”*

4. The NPPF states, at [140], that Green Belt boundaries should only be altered, through the preparation or updating of Local Plans, where “*exceptional circumstances*” are fully evidenced and justified.
5. The proposed development of Addison Park constitutes “*inappropriate development*” in the Green Belt (see: NPPF at [149]), in respect of which the NPPF states as follows at [147] and [148]:

“147. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.”

148. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ 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.”

6. Accordingly, in order for Addison Park to be permitted, the applicant must demonstrate that “*very special circumstances*” exist, sufficient clearly to outweigh the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal.
7. It is also to be noted in these regards that the NPPF defines “*affordable housing*” in its Glossary, *inter alia* as follows:

“Affordable housing: housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions:

...

c) Discounted market sales housing: is that sold at a discount of at least 20% below local market value. Eligibility is determined with regard to local incomes and local house prices. Provisions should be in place to ensure housing remains at a discount for future eligible households. ...”

8. Three points follow:
 - a. First, “*essential local workers*” (in other words key workers) are the only group explicitly identified in the definition.

- b. Second, *“discounted market sales housing”* is explicitly included in the definition.
 - c. Third, nothing in the NPPF definition ranks one form of affordable housing over any other.
9. Further, the National Planning Policy Guidance (“PPG”) confirms, at Paragraph: 005 Reference ID: 67-005-20190722, that:

“All households whose needs are not met by the market and which are eligible for one or more of the types of affordable housing set out in the definition of affordable housing in Annex 2 of the NPPF are considered to be in affordable housing need”.

10. It should further be noted in this regard that it has recently been decided as follows by a senior Inspector in a decision letter dated 29th October 2021 (APP: A5270/W/21/2360157):

“34. ... There is no provision in local or national policy or guidance that justifies ranking one form of affordable housing need over another. Indeed, Planning Practice Guidance makes clear that all households whose needs are not met by the market and who are eligible for one or more of the types of affordable housing specified in the Glossary to the Framework are in affordable housing need.

35. On that basis, the significant weight to be attached to the benefits of the proposal in this regard are in no way diluted by the forms of tenure offered ...”

Local Policy

11. Policy 1 Metropolitan GB of the (antiquated) St Albans District Local Plan Review 1994 (“the 1994 Local Plan”) confirms that other than for a small number of exceptions, new development in the Green Belt will require *“very special circumstances”*.
12. There is no adopted policy which ranks one form of affordable housing over another over another. It is also to be noted in this regard that, in March 2004, the Council published a Supplementary Planning Guidance for Affordable Housing (“the SPG”), in which, at [5.2], both *“low cost market housing”* and *“key worker housing”* were included within the Council’s definition of *“affordable housing”*, again without ranking one form of affordable housing

over another. Moreover, having identified the issue of “key worker housing”, the SPG went on to address this, at [3.12-3.13], and provided a definition of “key workers” at [5.12]:

“Key Workers

3.12 There are growing difficulties in the provision of housing for workers on lower incomes necessary for the economic health of the County. Hertfordshire County Council has concluded that if nothing is done then the most likely scenario is one of growing polarisation, more and longer commuting, and poorer personal and public service sectors. A specific research study of the housing needs of key workers across the County has been undertaken. Housing problems are predicted to worsen both in terms of affordability and access.

3.13 A strategy to provide affordable housing will increasingly have to address the provision of housing for these key workers.”

“Key Worker Housing

5.12 The Council has formulated a definition of key workers to support its Housing Strategy and the Local Plan as outlined below:

“Key workers are people employed or taking up employment (have a confirmed and accepted job offer) in the following employment categories:

- Teachers for Hertfordshire County Council*
- Police officers for Hertfordshire Constabulary*
- Fire officers for Hertfordshire Fire and Rescue Service*
- Health care workers in National Health Service Trusts working in*
- Hertfordshire Social care workers for Hertfordshire County Council (residential careworkers and social workers dealing with families/children or vulnerable adults)*
- Local Authority Staff*

Or such other groups that may be nominated from time to time by the Head of Housing, St Albans District Council.”

13. It is this definition which has been adopted in the Planning Statement in support of Addison Park, only supplemented with the addition of military personnel (following the Armed Forces Covenant in 2011).

Factual Background

The Planning Application and Planning Statement

14. The Planning Application for Addison Park was submitted to the Council on 29th November 2021, supported by a suite of supporting documents including a Planning

Statement, in which, *inter alia*, it was argued that “*very special circumstances*” did exist sufficient to allow the scheme to be approved.

15. The very special circumstances relied upon in the Planning Statement included, in summary, the proposed provision of 100% affordable housing, exclusively for key workers, delivered through a scheme which discounted all the houses proposed (including Shared Ownership) by a third against the market value, and in circumstances in which:

- a. The Council could not demonstrate anything like the 5-year Housing Land Supply required by [74] of the NPPF, and also had a massive shortfall in affordable housing.
- b. The Council had long since concluded that “*exceptional circumstances*” existed to justify the release of sites from the Green Belt *via* a Local Plan Review in order to deliver a sufficient housing land supply.
- c. The Council had, however, failed to deliver a new Local Plan, *inter alia* because the evidence-base contained in the Green Belt review it had commissioned was deeply flawed¹, and had failed, accordingly, to ensure sufficient housing (including affordable housing) had been built.
- d. The Council had, accordingly, both lost a number of housing appeals on Green Belt land by reason of “*very special circumstances*” existing through helping to meet the need for more homes, including affordable homes, and had itself recently resolved to grant planning permission for housing on Green Belt sites on this basis.
- e. Addison Park proposed a considerably higher proportion of affordable homes (and exclusively for key workers) than those other recently permitted proposals.

¹ This is returned to in [23]-[30] below.

16. In elaboration of [15] above, on 14th June 2021 the Council lost an appeal (APP/B1930/W/20/3265925) with regard to the erection of up to 100 dwellings, including 45% affordable, at land off Bullens Green Lane, Colney Heath, bordering St Albans and Welwyn Hatfield. In her decision letter, Inspector Masters held *inter alia* as follows at [48]-[54]:

“48. It is common ground that neither SADC nor WHBC can demonstrate a five year supply of deliverable homes. Whilst there is disagreement between the parties regarding the extent of this shortfall, the parties also agreed that this is not a matter upon which the appeals would turn. I agree with this position. Even taking the Councils supply positions of WHBC 2.58 years and SADC at 2.4 years, the position is a bleak one and the shortfall in both local authorities is considerable and significant.

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.

...

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 relation to WHBC, the affordable housing delivery which has taken place since 2015/16 is equivalent to a rate of 23 homes per annum. The appellant calculates that the shortfall stands in the region of 4000 net affordable homes since the 2017 SHMA Update, a 97% shortfall in affordable housing delivery. If the shortfall is to be addressed within the next 5 years, it would require the delivery of 1397 affordable homes per annum. 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.

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.

17. It is also to be noted that, consistent with the definition of the same in the NPPF, Inspector Masters identified the “*delivery of affordable housing*”, collectively, as the matter to which

such substantial weight should be attached – without breaking it down into the particular type of affordable housing proposed. It is further to be noted that, at [24] and [61] of her decision letter, Inspector Masters gave little weight to the emerging Local Plan, or its evidence-base.

18. Following the above appeal decision, in July 2021² the Council resolved to grant permission for up to 150 dwellings, with an affordable housing contribution of 40%, on a Green Belt site to the rear of 112-156b Harpenden Road (Ref: 5/2021/0423), doing so on the basis that very special circumstances had been demonstrated, with the Officer’s Report stating *inter alia* as follows, at [8.7.1]-[8.7.4], cross-referring to [49] and [54] of the above decision letter³:

*“8.7.1. As noted above, the Council cannot demonstrate a 5 year housing land supply. The proposed development is for up to 150 new homes and would provide 40% affordable housing. It is proposed that 5 of the market units would be made available as plots of self-build housing.
...*

8.7.2. SADC currently has a housing land supply of 2.5 years from a base date 1 April 2020. It is acknowledged that 2.5 years is substantially below the required 5 years. There is also a clear and pressing need for affordable housing within the District.

8.7.3. The provision of housing therefore weighs heavily in favour of the proposals. How much weight is a matter of planning judgement, informed by material considerations. In this regard, the recent appeal decision at Colney Heath (appeal by Canton Limited) is a relevant consideration. This decision was issued on 14 June 2021 and therefore considers the very same housing and affordable housing position in the District as applies in relation to the application subject of this committee report. Some data, such as ward specific data is not relevant, but the Council acknowledges that there is pressing need across the District in its entirety. The Council did not contest the data on housing need submitted by the appellant to the Inquiry. ...

8.7.4. There is no material reason for officers to apply a different weighting to the proposals subject of this officer’s report. The housing situation and the emerging plan situation are the same. There is no reason to think that the site cannot come forward immediately on receipt of

² Ultimately issuing the decision notice on 12th January 2022 after completion of a Section 106 Agreement.

³ Further, on 20th December 2021 the Council also resolved to grant outline planning permission (subject to a s.106 agreement) for 30 houses on a Green Belt site off Orchard Drive, Park Street, St Albans (Ref: 5/2021/2730), with the Officer’s Report making similar references to the Colney Heath decision letter at [8.4.1]-[8.4.3].

full planning permission and significantly boost local supply. Accordingly, very substantial weight is attached to the delivery of market and affordable housing ..."

19. It was against the backcloth of the above, that the Planning Statement submitted in support of Addison Park made the point, at [6.3], that the above scheme, which the Council considered to be acceptable because "*very special circumstances*" had been demonstrated, offered an affordable housing contribution of just 40%, none of which were discounted or allocated for key workers, whereas Addison Park was proposing 100%, all for key workers/essential local workers.

20. Whilst the Planning Statement in support of Addison Park conceded, at [8.4], that the proposal would cause Green Belt harm, it went on to state (correctly) as follows:

"8.4 ... However, it's important to note that such harm will be caused at all undeveloped sites in the Green Belt. This is important because the Council has long-since concluded that in the St Albans District "exceptional circumstances" exist to release sites from the Green Belt and because it's currently heavily dependent upon ad hoc housing schemes on unallocated Green Belt sites which have been approved on the basis of "very special circumstances", including as recently as July 2021 (Ref: 5/2021/0423)."

The Consultation Response

21. On 2nd February 2022, the Council received a consultation response on the Planning Application for Addison Park from its Spatial Planning Department, including on the Green Belt considerations to which the Planning Application gave rise. My Instructing Town Planners had a Teams Meeting with the Case Officer the following day, 3rd February, to discuss that consultation response and were advised that the Council was minded to refuse permission on the basis of it. I have, accordingly, been asked to advise as to the weight (if any) which can properly be given by the ultimate decision-makers to that consultation response.

22. It is to be noted that, in that response, heavy reliance was placed on the evidence base assembled in support of the Council's (now withdrawn) Replacement Local Plan,

including the SKM Green Belt Review, with the consultation response concluding as follows:

“It is considered clear that a number of significant harms and significant benefits would result from this proposed development. ... The SKM Green Belt Review considered that overall parcel GB 25 does significantly contribute to safeguarding the countryside and maintaining the existing settlement pattern, in addition to making a partial contribution towards preventing merging and preserving setting. It notes that part of the parcel does have urban characteristics, and part of the south east of the parcel is recommended for further consideration for exclusion from the Green Belt through the Local Plan processes. The application site, however, is clearly indicated as being of higher landscape sensitivity and is indicatively proposed to be retained for landscaping and not for further consideration for release from the Green Belt through the Local Plan processes. ”

The Green Belt Review and the Withdrawal of the Local Plan

23. The above reliance on the SKM Green Belt Review is to be seen against the backdrop that the Inspectors who examined the Council’s withdrawn Local Plan, Inspectors Crosby and Worthington, concluded that this Review was seriously flawed⁴:

“37. This approach raises a number of concerns. As part of the fundamental approach stemming from 2013/14, smaller sites (less than 500 dwellings or 14ha) have been excluded from the Green Belt Review and site selection process. This includes the smaller scale areas of land identified in GB004 as contributing least to Green Belt purposes. Paragraph 8.1.5 of GB004 is clear that the small-scale sub areas identified in that study may not be exhaustive. It also recognises that it is possible that additional potential small-scale boundary changes that would also not compromise the overall function of the Green Belt might be identified through a more detailed survey. Thus, the capacity from such smaller sites could be much higher than that estimated by the Council.”

“45. ... smaller sites have been disregarded as part of the plan making process. It is our view that this approach has ruled out an important potential source of housing that may have been found to have a lesser impact on the purposes of the Green Belt than the sites selected without sufficient justification.”

24. The Council has acknowledged both that that the Green Belt Review was flawed, and that all of the “Broad Locations” identified by SKM could be replaced if other strategic or

⁴ Inspectors Crosby and Worthington’s letter to the Council, Ref: ED40, 14th April 2020, [37] and [45].

smaller sites were identified in a subsequent Green Belt Review. Indeed, it has assured the Inspectors that:

- a. The Council would conduct a new Green Belt Review *“to capture both additional strategic and smaller-scale parcels of land ...⁵”*; and that
- b. *“The Council would not seek to limit consideration of sites coming forward or their ability to add to or replace existing locations identified in the plan ...⁶”*

25. In February 2021, after the emerging Local Plan had been formally withdrawn, the Head of Planning reminded Councillors on the Planning Policy Committee that the sites identified by the SKM Green Belt Review no longer carried weight and that no sites could be properly assessed until a new Green Belt Review had been carried out:

“Members need to remember that those 8 Broad Locations, they’re no longer in existence because they were in the old Withdrawn Local Plan. So, Members have not actually identified – and won’t do until we get to the end of the Site Selection Process – which sites that Members may wish to take forward in the Regulation 18 Consultation next year.”

26. In December 2021, at an Inquiry into inappropriate development in the Green Belt at Burston Nurseries, Chiswell Green (APP/B1930/W/21/3279463), the Council’s position had changed from the previous appeal at the same site in 2019 (APP/B1930/W/19/3235642). In 2019, the Council’s Proof of Evidence had stated, *inter alia*⁷:

“It is also of relevance that the site is not within in (sic) one of the Broad Locations for development where Policy S6 would apply. Therefore, the emerging local plan does not advocate a change in direction of policy for the appeal site, which would remain one of restraint”.

⁵ Ref: ED41, 2nd July 2020, [3].

⁶ *Ibid*, [38].

⁷ Proof of Evidence of Mr Shaun Greaves of GCCP Town Planning Consultants on behalf of SACDC, 2019 [4.6.3].

27. However, following the withdrawal of the emerging Local Plan, in December 2021 the Council made no reference to the Broad Locations identified *via* the SKM Green Belt Review or the implications for sites not identified, instead stating as follows⁸:

“The previous submission local plan was withdrawn, and work has commenced on its replacement. Given the stage at which the emerging local plan has reached no weight can be given to it.”

28. Consequently, in his decision letter dated 31st January 2022, Inspector Gilbert-Wooldridge stated as follows, at [13]:

“The development plan for the purposes of this appeal is the St Albans Local Plan Review 1994 (LP). The draft ELP had been submitted for examination at the time of the previous appeal. It sought to allocate broad locations for development, including for C2 units, and included a review of the Green Belt as part of the identification of such locations. The appeal site was not proposed for allocation. However, the examining Inspectors identified several concerns in April and September 2020 and the ELP was withdrawn from examination in late 2020. Work has begun on a new version of the ELP with initial public consultation expected during 2022. The parties agree that no weight can be attributed to the ELP in decision-making and I have no reason to disagree.”

29. Further, on 18th January 2022, the Spatial Planning Manager, speaking to Councillors at the Local Plan Advisory Group in relation to the previous site selections based on SKM’s Green Belt Review, stated as follows:

“Regardless of what’s been the consideration of land parcels in the past, Arup will take a new stance on it ... Every single piece of the now Withdrawn Local Plan has been stripped back. There are no assumptions of ‘it was in the previous local draft plan with this boundary, so, therefore, you know, that’s a working assumption ... that’s okay’. Absolutely not. Everything is built in a systematic basis in exactly the same way whether it was considered in the Withdrawn Local Plan or not. Everything is treated exactly the same way and you will be able to see, in due course, exactly a systematic, identical process whether it’s been previously submitted or not.”

⁸ Proof of Evidence of Mr Shaun Greaves of GCCP Town Planning Consultants on behalf of SACDC, November 2021 [5.6.2]-[5.6.3].

30. Accordingly, and at [8.5]-[8.7] of the Planning Statement in support of the Planning Application for Addison Park, it was stated as follows:

“8.5 Whilst, since 2009, the Council has concluded that “exceptional circumstances” exist to release sites from the Green Belt via a Local Plan, it has failed to deliver a new Plan and so failed to ensure sufficient affordable houses have been built. In addition, the Council has failed to produce a satisfactory Districtwide study to identify which sites contribute least to the purposes of the Green Belt. A GB Review was commissioned in 2013-14, from Sinclair Knight Merz (“SKM”), however, that Review can no longer carry any weight because of:

- the strong criticisms of it by Inspectors Crosby and Worthington, and*
- the Council’s acknowledgment that all of the Strategic Sites/Broad Locations shortlisted by the GB Review and allocated in the (now Withdrawn) 2018 Local Plan, could be replaced by smaller sites if they are judged to be better alternatives.*

...

8.7 Thus, the fact that the Application Site wasn’t shortlisted in a heavily-criticised GB Review and, consequently, not included in a now-redundant Site Allocations Policy, is immaterial. Instead, weight should be put on the inevitable fact that large unallocated sites in the Green Belt must be developed if the Council is to make any impression on the affordable housing shortfall, let alone meet current and future housing needs.”

The Issue

31. The issue upon which I have been asked to advise is, essentially, whether the Council can lawfully rely upon the SKM Green Belt Review as a counter-balance to the very special circumstances afforded by Addison Park’s proposed contribution towards meeting affordable housing need, in circumstances in which:

- a. As noted in [15]-[19] above, the Council has such a housing shortfall that planning permission has been granted for Green Belt residential development – both on appeal and by the Council if – upon the basis that meeting those housing needs does amount to very special circumstances; and
- b. As noted in [15.c.] and [23]-[30] above, the Council has failed to deliver an up-to-date Local Plan to meet those housing needs, *inter alia* because the evidence-base contained in the Green Belt Review it had commissioned (the SKM Green Belt

Review upon which the Spatial Planning Department's consultation response heavily relies) was found to be flawed by the Local Plan's examining Inspectors.

The Legal Framework

32. The above issue engages the following three areas of planning law:
- a. The acknowledged importance of consistency in planning decisions.
 - b. The equally acknowledged importance that an Officer's Report to Committee does not materially mislead Members on any matter bearing on their decision.
 - c. The correct approach to take to potentially material considerations when making planning decisions.

Consistency

33. Whilst all planning decisions must be made on the individual merits of each application, there is an acknowledged public interest in consistent decision making in planning – see: *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government and another* [2014] EWHC 754 (Admin), per Lindblom J (as he then was), at [19(7)]:

“Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system. ...: see, for example, the judgment of Pill LJ Fox Strategic Land and Property Ltd v Secretary of State for Communities and Local Government [2013] 1 P & CR 6, paras 12–14, citing the judgment of Mann LJ in North Wiltshire District Council v Secretary of State for the Environment (1992) 65 P & CR 137, 145.”

Officer's Report to Committee

34. The principles applicable to a Planning Officer's Report to Committee are also well settled - see: *R (Mansell) v Tonbridge & Malling BC* [2019] PTSR 1452, at [42(2) and (3)]:

“(2) ... The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision,

and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way – so that, but for the flawed advice it was given, the committee's decision would or might have been different – that the court will be able to conclude that the decision itself was rendered unlawful by that advice.

*(3) Where the line is drawn between an officer's advice that is significantly or seriously misleading – misleading in a material way – and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact (see, for example *R. (on the application of Loader) v Rother District Council* [2016] EWCA Civ 795), or has plainly misdirected the members as to the meaning of a relevant policy (see, for example, *Watermead Parish Council v Aylesbury Vale District Council* [2017] EWCA Civ 152). There will be others where the officer has simply failed to deal with a matter on which the committee ought to receive explicit advice if the local planning authority is to be seen to have performed its decision-making duties in accordance with the law (see, for example, *R. (on the application of Williams) v Powys County Council* [2017] EWCA Civ 427). But unless there is some distinct and material defect in the officer's advice, the court will not interfere."*

Material Planning Considerations

35. Finally on the law, a distinction is to be drawn between:

- a. Mandatory material considerations, which a Local Planning Authority *must* take into account (because they are either expressly or impliedly identified in the Act, or in policy, as considerations required to be taken into account by the authority "as a matter of legal obligation", or because they were "so obviously material" as to require direct consideration); and
- b. Other considerations, which a Local Planning Authority has a discretion to take into account or not - see: *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) v North Yorkshire County Council* [2020] UKSC 3, at [29]-[32].

Analysis

36. It is quite clear that the Council have a profound housing shortage. It can demonstrate only about half of the requisite 5-year housing land supply, and lost the Colney Heath

appeal (APP/B1930/W/20/3265925) for that reason. Importantly, Inspector Master's conclusions regarding the shortfall in affordable housing were especially stark. Since 2012/13, a total of just 244 net affordable homes had been delivered, at an average of just 35 net dwellings *per annum*, which equated to the very considerable shortfall she identified.

37. It was in these circumstances that, acknowledging the importance of consistency in these regards (see: *Bloor Homes* at [33] above), the Council recently granted planning permission on another Green Belt site to the rear of 112-156b Harpenden Road (Ref: 5/2021/042313), expressly stating, at [8.7.4] of the Officer's Report, that "*very substantial weight is attached to the delivery of market and affordable housing*". As noted in footnote 3 above, the Council has adopted a similar approach with regard to a Green Belt site off Orchard Drive, Park Street, St Albans (Ref: 5/2021/2730).

38. As noted in [19] above, and the Planning Statement submitted in support of Addison Park proposal at [6.3], that scheme (which the Council considered to pass the very special circumstances threshold) offered an affordable housing contribution of just 40% (and the Colney Heath Proposal 45%), none of which were discounted or allocated for key workers; whereas Addison Park was proposing 100% affordable housing, all for key workers.

39. It is quite plain, therefore, that – again applying the principle of consistency – the Council will have to attach even more than "*very substantial weight*" to the delivery of the considerably greater quantum of affordable housing now proposed (up to 330 affordable dwellings at Addison Park, compared to up to 60 on the Harpenden Road site and up to 45 at Colney Heath), especially given that, as decided in the recent decision letter referred to in [10] above (APP: A5270/W/21/2360157), the weight to be attached to the benefits in this regard "*are in no way diluted by the forms of tenure offered ...*"

40. It is, of course, for Members to balance the very considerable planning benefit to be attached to so considerable a delivery of much-needed affordable housing, and to key workers, against the Green Belt harm attendant on such development - albeit in

circumstances in which, as noted in [20] above and at [8.4] of the Planning Statement, some such harm will inevitably be occasioned on whichever Green Belt site is released for the necessary housing development, whether (eventually) through a Local Plan Review; or on appeal (as at Colney Heath); or pursuant to its own grant of planning permission (as at the Harpenden Road site and Park Street).

41. Given the importance, then, of this balancing exercise to the correct decision-making on the instant Planning Application, it is obviously essential that:

- a. Members are given full and accurate information by which to undertake that balancing exercise, and not misled in any material way – see: *Mansell*, at [34] above; and
- b. Properly informed as to the status and reliability of any potentially material consideration which they might, or might not, take into account as a matter of their discretion – see: *Samuel Smith Old Brewery*, at [35] above.

42. It is by reference to both of the above legal requirements that I have grave concerns that the Council will fall into fundamental error if the Officer's Report either refers to the SKM Green Belt Review at all; or, if it does refer to it, fails to make it absolutely clear that:

- a. The SKM Green Belt Review has been criticised by the two Inspectors examining the now withdrawn Local Plan, and has been acknowledged to be flawed by the Council's own Spatial Planning team;
- b. In consequence of the above, that same team has given an assurance that a new Green Belt Review would be commissioned that would do things differently;
- c. The Head of Planning has, accordingly, expressly told Members that the previous site selection process was now irrelevant; and

- d. The Council has resiled from any reliance on the withdrawn Local Plan at an Inquiry in December 2021 and the Inspector agreed that it was no longer relevant “for decision-making”.

43. In particular, whilst the evidence base supporting the SKM Green Belt Review might reasonably be considered a potentially material consideration in certain cases, that cannot be so with regards to a smaller site (less than 500) which was not proposed to be allocated by the emerging Local Plan, given that it was the failure to consider such sites properly which was the very error the examining Inspectors identified with regard to that Review⁹, and part of the reason that the Plan was withdrawn. Accordingly, any reference in the Officer’s Report to the discredited SKM Green Belt Review will (unless very heavily *caveated* as above) run the considerable risk that, with regards to a matter which, in the words of the Court in *Mansell*, has an absolutely fundamental “bearing upon their decision”:

- a. Members may wrongly take into account, and give weight to, the SKM Green Belt as a potentially material planning consideration, without appreciating the extent to which it has been discredited and rejected following independent examination;
- b. Members unfamiliar with the examination of the Local Plan may be misled on the extent to which that Review can properly be relied upon in this particular case;
- c. Members who have been repeatedly advised that that the sites identified by the SKM Green Belt Review no longer carry any weight, may be left utterly confused as to the approach they can properly take; and
- d. Members may wrongly attribute weight – potentially, determinative weight - to the SKM Green Belt Review when making a decision on a proposal which offers considerably greater affordable housing than has already been considered to amount to very special circumstances in the St Albans Green Belt, and when – if

⁹ See [23] above.

properly advised, and for all the above reasons – they might reasonably consider that no weight should be attributed to that Review at all.

44. If I can be of any further assistance, my Instructing Town Planner should not hesitate to contact me.

Paul Stinchcombe QC
39 Essex Chambers
81 Chancery Lane, London WC1A 2DD

11th February 2022