

Document: CD4.84 Rebuttal Evidence Planning Balance

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL REFERENCE: Appeal APP/B1930/W/22/3312277

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**PROOF OF EVIDENCE OF: STEVEN FIDGETT BSc (Hons) DipTP (Dist) MRTPI
REBUTTAL EVIDENCE - PLANNING BALANCE**

FOR: HEADLANDS WAY LIMITED

APPEAL AGAINST THE REFUSAL OF PLANNING PERMISSION FOR:

"The demolition of existing buildings, the building of up to 330 discounted affordable homes for key workers, including military personnel, the creation of open space and the construction of new accesses."

DATE: 6 APRIL 2023

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1. INTRODUCTION

- 1.1 This rebuttal evidence is submitted in response to the St Albans City and District Council's Planning Proof of Evidence of Mr Stephen Connell, dealing with the planning balance and green belt issues. A separate rebuttal has been prepared by Annie Gingell in respect of affordable housing issues.
- 1.2 The specific concerns which necessitate this rebuttal evidence clarify the evidence provided in respect of:
- a) Weight to be afforded to key development plan policies;
 - b) Previous SHLAA, strategic sites and site selection;
 - c) Status of the SKM Green Belt Review;
 - d) Applicability of the SKM Green Belt Review to the appeal site;
 - e) Status of the Current Local Plan Review.
- 1.3 I do not comment on other matters contained within the Council's Proofs of Evidence, which are already covered in my main Proof of Evidence (CD 4.81) but the lack of comment should not be construed as agreement.

2. REBUTTAL EVIDENCE

Weight To Be Afforded To Key Development Plan Policies

- 2.1 In Mr Connell's evidence he makes various comments about the key policies in the development plan. I comment on each below.
- 2.2 Mr Connell refers to Policy 1, 102 and 143b of the 1994 Local Plan and Policy S1 of the SSPNP as being the most important policies for the determination of the Appeal under paragraph 11(d) of the NPPF (CD5.3 [3.14 and 3.15]). However, while these are the remaining, extant policies of the development plan relevant to this Appeal, the most relevant policies in the context of paragraph 11 (d) are those relating to the supply of housing, housing allocations and affordable housing, all of which are agreed to be out of date in the context of the NPPF. In effect, the supply side, the positive side of the development plan, has ceased to exist and what remains are the constraint based policies only.
- 2.3 Mr Connell goes on to consider the weight to be attached to these policies according to the perceived consistency with the NPPF. I disagree with Mr Connell for the following reasons:
- 2.3.1 Policy 1 of the Local Plan must be read as a whole and is framed in such a way as to be inconsistent with the NPPF. While I agree that the policy sets out a presumption against development in the Green Belt and does provide for very special circumstances, this is not expressed in the terms of the NPPF, and would not pass examination in a local plan context. There is no reference to what constitutes inappropriate development, the exceptions differ in substance from those in the NPPF and there is no reference to openness or the purposes of including land within the Green Belt. The policy also applies considerations that are not present in the NPPF, including integration with the landscape, siting, ecology, design and external appearance and additional landscaping. None of these are reflected in the test set out in paragraph 148 of the NPPF.
- 2.3.2 Policy 102 of the Local Plan refers to agricultural land and Mr Connell suggests this is consistent with the NPPF as it applies a balancing exercise to be carried out. I deal with this in my evidence [8.26] where I say that the Local Plan policy is inconsistent with the NPPF (CD 7.1 [174]) which requires consideration of the economic benefits of agricultural land and that, where available, land of lesser quality should be used, but does not require applications to be refused or an overriding need. Policy 102 reflects past Government policy that has long since been revoked in favour of the more considered approach of the NPPF. I further point out in my evidence that most of the District comprises grades 2 or 3 land and that each of the sites previously considered for release for housing contain areas of 2 and 3a land. It is not a

determining factor in this case.

2.3.3 Policy 143b of the Local Plan considers supporting infrastructure requirements and seeks the delivery of such infrastructure when required to meet the needs arising from the development proposed. While it is expressed in a way that it may not be now, as it predated CIL and current s106 requirements, it is broadly consistent with the approach of the NPPF in matching infrastructure to development needs and is relevant to this appeal. Subject to completion of the s106 agreement, this is met in this Appeal.

2.3.4 I comment on the SSPNP in my evidence [3.11-3.15]. I note that while Policy S1 and the NP accord with the NPPF, it does not seek to make any allocations for housing or provide for the release of Green Belt, leaving both matters to any future Local Plan Review. It does, however, provide for the consideration of applications against very special circumstances under the terms of paragraph 148 of the NPPF.

2.4 As Mr Connell refers in his evidence [3.24 and 3.30] the most relevant policies of the development plan are out of date and hence the Appeal must be determined in the context of paragraph 148 of the NPPF. I agree, as considered in those terms in my main proof of evidence.

Previous SHLAA, Strategic Sites and Site Selection

2.5 Mr Connell references the fact that the land at Chiswell Green was given a 'green' rating in the SHLAA that followed the 2018 call for sites (CD5.8). He also notes that the Council then concentrated on strategic sites (over 500 dwellings) which were assessed as part of the SKM Green Belt Review. He notes [3.36] that the Local Plan review was withdrawn following criticism of the narrow focus of this and the accompanying Green Belt Review only on strategic sites.

2.6 I would, however, note that the Inspectors also raised a number of further concerns in relation to the site selection methodology utilised by the Council. These can be summarised as:

2.6.1 Perceived inconsistencies were identified in how sites had been discounted;

2.6.2 Some sub-areas in the Green Belt rated as 'red' were not subject to a detailed assessment in the same way as those considered 'green' or 'amber', making comparison difficult;

2.6.3 The impacts of smaller sites as opposed to larger parcels were perceived not to have been consistently reviewed to allow informed decisions on Green Belt release to be made; and

2.6.4 Concerns that previously developed sites, or sites in a sustainable location well served by public transport in the Green Belt, below the size threshold had been discounted.

2.7 These concerns go to how the Green Belt Review was carried out as well as to the brief given for the Review and the Council's site selection process. It is clearly highly relevant that this Review was withdrawn as a result and the Council have commissioned a new evidence base, including a new Green Belt Review (being conducted by Arup), rather than seek to rely on the previous work and related site selection process.

Status of the SKM Green Belt Review

2.8 Mr Connell acknowledges that the withdrawn Local Plan Review and associated site selection process can be given no weight in this Appeal [4.13] but then continues to assert that the 'judgements reached in the Green Belt Review in relation to Green Belt purposes' are relevant in the determination of applications and, by implication therefore, in this Appeal. I wholly reject this assertion. Given that this Local Plan Review was formally withdrawn, following the criticisms levelled by the Inspectors at the previous site selection process, which included criticism of the inconsistent approach to the assessment of sites, and given that the Council have accepted this and commissioned a new Green Belt assessment, I consider that no weight can be given to the SKM Green Belt Review.

2.9 As has been the case in the appeals referenced, while consideration has been given to the SKM Green Belt Review, in each case the Inspector has independently considered the specific circumstances of each appeal site and proposed development against the Green Belt purposes and reached a conclusion accordingly. They have, therefore, come to their own conclusion as to the degree of harm to Green Belt based on the more detailed assessment of the site location, characteristics and degree of conflict (or otherwise) with the purposes of including land within the Green Belt.

Applicability of the SKM Green Belt Review to the Appeal Site

2.10 In terms, then, of how Mr Connell approaches the application of the SKM review to this Appeal, I take issue with a number of matters.

2.11 Mr Connell confuses the contribution made by each parcel to each Green Belt purpose, with the weight to be attached to the degree of harm caused by development within this parcel [4.19]. This is conflating two different things. In his approach, his starting point is that if the parcel makes a significant contribution to a Green Belt purpose, this equates to substantial weight. This ignores consideration of the degree of harm to that purpose caused by the development proposed, which may vary according to scale, location, and other characteristics. Hence, the resulting weight must also vary according to the significance of the contribution to that purpose and the degree of harm arising to that purpose from the development proposed. This, in my view, is a matter of judgement based on the circumstances of the proposal.

2.12 Mr Connell also fails to recognise that the SKM Green Belt Review adds a local purpose to the Green Belt that is not present in the NPPF. He initially recognises the three purposes of Green Belt relevant

to this Appeal [4.9] as:

- a) To check the unrestricted sprawl of large built up areas;
- b) To prevent neighbouring towns merging into one another; and
- c) To assist in safeguarding the countryside from encroachment.

2.13 I agree that neither of the two remaining purposes, the protection of the setting of historic towns nor regeneration, are relevant in this case.

2.14 Mr Connell proceeds to conflate significance and the weight attached to harm [4.21], while also confusing the legitimate purposes of Green Belt identified above, with an additional, local purpose used by SKM in their site analysis, but which does not accord with the NPPF. This relates to the maintenance of the existing settlement pattern and preventing the merger of smaller settlements or local gaps that do not form part of the national purposes defined above (CD 5.10 [5.2.15, 5.2.21 and 7.6]).

a) To check the unrestricted sprawl of large built up areas

2.15 Mr Connell attaches Moderate harm to purpose a) above [4.24] based on his analysis that the site falls within an area detached from Chiswell Green, that relates to the countryside, has no defensible western boundary and would place pressure on the release of additional land. However, this analysis bears no relation to the purpose being assessed. The SKM report, to which he refers, defines this purpose by reference to the large built up areas – these being London, Luton and Dunstable and Stevenage (CD5.10 [7.2.1]). Figure 7.1 shows that parcel 25 makes 'limited or no contribution' to this purpose.

2.16 Even on Mr Connell's conflation of significance and harm, this cannot equate to Moderate Harm as he suggests. Using the SKM approach he references, in my view, as the parcel makes limited or no contribution to this purpose, the attendant harm and weight to be attached must equally be limited or no harm. As set out in my evidence, I consider there is **No Harm** to this purpose.

b) To prevent neighbouring towns merging into one another

2.17 Mr Connell refers to the 'pressure for the further release' of land between Hemel Hempstead and Chiswell Green in supporting his view that there is harm, but that this is of limited weight [4.26]. He acknowledges that a significant gap would be maintained [4.25], and that the Appeal proposal would not result in any threat of merging of towns [4.26].

2.18 I would note that Chiswell Green is a specified settlement or larger village, but is not one of the towns assessed in Green Belt coalescence in the SKM Review, which focusses on the principal towns including St Albans, Hemel Hempstead, Harpenden and Watford.

- 2.19 As set out in my evidence, I consider there is **No Harm** to this purpose.
- c) To assist in safeguarding the countryside from encroachment
- 2.20 Mr Connell again conflates the significance of the contribution of parcel 25 to this purpose with the question of whether there is harm and the degree of weight to be attached to such harm. It must be borne in mind also, that by definition, any development of Green Belt land will have some degree of impact on this purpose. The SKM Review reduced the significance of the contribution to this purpose where there were urbanising features or a degraded landscape that reduced the contribution of the parcel to the wider countryside and/or where the landscapes were enclosed and disconnected from the countryside. Hence depending on the circumstances of each site, all potential Green Belt releases were considered to impact significantly on this purpose (CD5.10 [Fig 7.3]).
- 2.21 While Mr Connell references the open landscape character of the countryside, which is rural in nature and in which development would be visually conspicuous, he acknowledges that these comments were made in relation to the wider parcel [4.32]. Notwithstanding this acknowledgement, he considers the same characteristics apply to the Appeal site and hence considers the weight to be accorded to the harm to be very substantial. I do not share this view. The LVIA and evidence set out by Paul Gray (CD4.78) demonstrate the visually enclosed nature of the Appeal site and its relationship with public viewpoints and the wider countryside. Mr Connell also references openness in relation to this purpose and I deal with this in my main evidence.
- 2.22 As I set out in my evidence, in light of this evidence and analysis, I consider that the harm in this case is **Moderate**.

Status of the Current Local Plan Review

- 2.23 Mr Connell correctly sets out the position consistent with the Council's SoC, that no weight can be placed on any emerging Local Plan and that as a consequence, this Appeal must be determined on the basis of the prevailing policy as it now stands [3.38]. However, he then goes on to seek to apply some relevance and weight to the Local Plan Review, which he says is proceeding with vigour [3.39] and subsequently refers to the LDS and to meetings of the LPAG.
- 2.24 While the LDS program suggests a Draft Reg 18 Local Plan is due to be published in July 2023, no documents relating to the new evidence base for the Review have been published and no documents are provided by Mr Connell. Moreover, he references that the initial outputs from the latest Green Belt Review and initial outputs of the Site Selection work will only be seen by LPAG in June 2023 at which point they must also consider a Draft Reg 18 Local Plan. Given that it is now April and no evidence base documents have been finalised, or published in either draft or final form, or indeed even considered by the LPAG, or other Council committees, I find this timescale implausibly tight. I have to question the timescales and level of rigour behind any decisions taken in such circumstances.

Given the past history in relation to each previous failed attempt, I do not consider that any weight can be attached to this process.

- 2.25 As Mr Connell notes, the only document available thus far which gives a hint as to the emerging evidence base is the HELAA, which considers the Appeal site to have been found to be potentially suitable, available, and achievable, subject to further assessment in the wider Local Plan Review process.
- 2.26 He considers that this weighs neutrally in the context of this Appeal as it has not considered Green Belt. I disagree. It is the only document available thus far, and it identifies the suitability of the Appeal site as far as the other policy drivers are considered, subject to consideration of Green Belt. I therefore, attach positive weight to this conclusion, albeit limited by reference to the very early stage in the Local Plan Review process.