



**TOWN AND COUNTRY PLANNING ACT 1990 (as amended)**

**PROOF OF EVIDENCE**

**of Stephen Connell BA (Hons), Dip TP, MRTPI**

**on behalf of St Albans & District Council Land North of Chiswell  
Green Lane, Chiswell, St Albans Hertfordshire AL2 3AJ**

**LPA Reference: 5/2021/3194**

**PINS Reference: APP/B1930/W/22/3312277**

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## **1.0 INTRODUCTION**

- 1.1 With a view to keeping within the spirit of the Inspector's pre-conference note Annex A, my qualifications are set out to Appendix 1, the statement of truth is set out to Appendix 2, details of my appointment are set out to Appendix 3 and my summary proof is set out to Appendix 4.

## 2.0 SCOPE OF EVIDENCE

2.1 This proof of evidence is presented to the Public Inquiry, scheduled for 8 days commencing on 17<sup>th</sup> April 2023. For the avoidance of doubt, landscape & visual amenities including spatial and visual impacts on Green Belt openness will be dealt with separately by Mr John-Paul Friend. My proof should be read in conjunction with his. I specifically deal with 1) Green Belt purposes; 2) other harms (excluding landscape character); 3) benefits; and 4) the planning balance.

2.2 My evidence is structured as follows, in line with the proper approach from national policy:

- Inappropriate development within the Green Belt
  
- The effect upon the openness and purposes of the Green Belt
  
- Any further harm
  - (i) Landscape character
  - (ii) Loss of Agricultural Land
  - (iii) Infrastructure (RfR2)
  
- Whether the harm by reason of inappropriateness, and any other harm would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

- Planning Balance

2.3 I start by considering (i) the site context, (ii) the development proposals and (iii) the planning framework.

2.4 In this proof, the following scale of weight has been used (as agreed with the Appellant:

Very Substantial<sup>1</sup>

Substantial

Moderate

Limited

No Weight

2.5 The Appellant did not want 'Significant' to be part of the weighing scale.

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<sup>1</sup> I take this to mean Substantial at the higher end of the spectrum.

## **3.0 BACKGROUND**

### **(i) Site Context**

- 3.1 The main part of the appeal site forms part of St Stephens Green Farm. It is of c14.2 hectares in area and located for the north side of Chiswell Green Lane, west of the settlement of Chiswell Green. The site is broadly flat albeit with a slight gradient sloping down from east to west. There is some low-level fencing within the site, and it lies in open countryside within the Metropolitan Green Belt. It is also within the Watling Chase Community Forest.
- 3.2 It includes a rarely used polo field within a larger area of grazing which has a large agricultural barn and its own access off Chiswell Green Lane. The polo use is occasional and may be undertaken under permitted development rights, but there is no separate planning permission for this use and the lawful planning use of the site is agricultural. There is a small paddock with stables to the south-east of the main field, which also has an access from Chiswell Green Lane.
- 3.3 There are public rights of way adjacent to the west boundary (Footpath St Stephen 021) adjacent to the north boundary (Footpath St Stephen 080), and adjacent to east boundary along paddock access from Chiswell Green Lane and the Croft are adjacent/parallel to the south and east boundaries respectively. There is extensive planting around the site boundaries, effectively restricting views into the site from the adjacent footpaths and highways. There is thick planting of c2-.2.5m high evergreen hedge within the site to the north and east boundaries,

there is large mature and varied tree planting and vegetation along Chiswell Green Lane and thicker belts of mature tree vegetation beyond the west and north boundaries.

- 3.4 Beyond a c.60m wide strip of open paddock to the east of the site lie The Croft and Cherry Hill, which are residential streets that form the edge of the settlement of Chiswell Green. To the south is generally open, albeit with some relatively small-scale residential and mixed development; and beyond the vegetation adjacent to the west and north boundaries lie open fields or tree belts, generally free of built development.
- 3.5 The site lies outside the city of St. Albans. The site is located on land outside the settlement of Chiswell Green and is therefore within the open countryside and within the Metropolitan Green Belt.

#### **(ii) The Development Proposal**

- 3.6 The description of development is *“Outline planning permission (access sought) for the demolition of existing buildings and 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 and highway works including new foot and cycle path and works to junctions.”*
- 3.7 The planning application is in outline, with approval of access sought, and is for demolition of existing buildings, and 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 and highway works

including new foot and cycle path and works to junctions. Only indicative proposed plans are provided, apart from for access.

- 3.8 In terms of proposals for access, a new primary vehicular access is proposed to be created off Chiswell Green Lane, towards the south eastern corner of the site; and an existing vehicular access off The Croft would be extended and used to create a gated access to the site for use by emergency vehicles only. There would be a new 3m wide shared foot and cycleway created from the main vehicular access point, along the north side of Chiswell Green Lane and to the local shops and amenities on Watford Road and linking to the opposite side of Tippendell Lane.
- 3.9 In terms of the type of affordable homes proposed to be provided, it is stated that the homes would be discounted by a third from market value and that it would be secured through legal agreement to provide housing for Key Workers. In this regard, and as set out in the application submission, the scheme applies the definition of 'essential local workers' from the NPPF to be those for whom the housing is proposed i.e., *“public sector employees who provide frontline services in areas including health, education and community safety –such as NHS staff, teachers, police, firefighters and military personnel, social care and childcare workers”*.
- 3.10 It is stated that a mix of detached, semi-detached and terraced dwellings and small apartment blocks is envisaged, that the intention is for the dwellings to be two or two-and-a-half storey, and that the indicative housing mix would be: 32 x 1-bed, 116



x2-bed, and 182 x 3-bed properties; albeit this could be subject to change at reserved matters stage.

- 3.11 The submitted 'Indicative Proposed Site Layout' is subject to change but demonstrates how the quantum of development proposed may potentially be laid out on the site. It shows: a layout of radial routes centred on a landscaping feature 'The Green'; open space green buffer zones adjacent to the north and west boundaries; a significant area of new public open space labelled 'Memorial Park' adjacent to the southern Chiswell Green Lane boundary within which a potential new public right of way is shown; tree-lined streets and the different property types located throughout the development.

### **(iii) Planning Framework**

#### **1. The Development Plan**

- 3.12 Section 38(6) of the Planning and Compulsory Purchase Act 2004 confirms that the determination of applications for planning permission must be made in accordance with the development plan unless material considerations indicate otherwise.

- 3.13 The Development Plan consists of the following:

- The saved policies of the Council's District Local Plan Review 1994 (including its associated adopted Proposals Maps) (the Local Plan Review)
- St Stephen Neighbourhood Plan (2019-2036) (the Neighbourhood Plan)

- HCC's Waste Core Strategy & Development Management Policies DPD (2012);
- HCC's Hertfordshire Minerals Local Plan 2007.

3.14 The following policies were cited in the reasons for refusal:

- Policy 1 of the Local Plan Review – Metropolitan Policy 1 - Metropolitan Green Belt
- Policy 102 of the Local Plan Review – Loss of Agricultural
- Policy 143b of the Local Plan Review - Implementation
- Policy S1 of the Neighbourhood Plan - Location of development

3.15 These are the most important policies for the determination of the application for the purposes of paragraph 11(d) of the National Planning Policy Framework (NPPF).

## 2. Weight to be afforded to the most important policies

3.16 As the Council cannot demonstrate a five-year supply of deliverable housing sites, and by virtue of its housing delivery test results, footnote 8 of paragraph 11(d) of the NPPF deems the most important policies for determining the application out-of-date. However, the saved policies remain development plan policies until the emerging local plan is adopted and, whilst the policies are deemed to be out of date, an assessment still needs to be made of the weight to attach to these policies.

- 3.17 Paragraph 219 of the NPPF states that: *“existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”*
- 3.18 Given this, I shall consider the weight that should be attributed to these policies according to their degree of consistency with the NPPF.
- 3.19 **Policy 1 LP – Metropolitan Green Belt** is referred to in reason for refusal 1. This policy confirms that in the Green Belt, permission will not be granted for development outside Green Belt Settlements except in identified exceptional circumstances, which do not apply to the Appeal Proposals, or except in very special circumstances. The Policy goes on to indicate that new development within the Green Belt shall integrate with the existing landscape. Siting, design and external appearance are particularly important and additional landscaping will normally be required.
- 3.20 I consider that Policy 1 is consistent with the NPPF, which confirms at paragraph 147 that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances (VSC). Paragraph 148 confirms that substantial weight should be given to any harm to the Green Belt. VSC will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal, is clearly outweighed by other

considerations. Paragraphs 149 and 150 set out exceptions to inappropriate development. Whilst the categories of not inappropriate development in LP Policy 1 do not match up with the categories of paragraphs 149 & 150 of the NPPF, this is not material on the facts of the case since there is no dispute that the development is inappropriate. The policy requirement to integrate with the landscape is consistent with paragraph 174 (b) of the NPPF. Therefore, I consider that full weight should be given to LP Policy 1 at this appeal. I am aware of appeal decisions that acknowledge that Policy 1 is broadly consistent with the NPPF.<sup>2</sup>

- 3.21 **Policy - S1 NP Location of development** was made in February 2021. It states, amongst other things, that residential development outside of the built-up boundaries of Chiswell Green would not be supported unless it meets either the exceptions to inappropriate development within the Green Belt or demonstrates VSC. The policy is consistent with the NPPF.
- 3.22 **Policy 102 LP – Loss of Agricultural Land** confirms *‘that development involving the loss of high-quality agricultural land will normally be refused, unless an overriding need can be made’*. I appreciate that Local Plan Policy 102 evolved from the now revoked PPG 7 and there is no requirement set out in the NPPF to require an overriding need to be demonstrated as set out in the LP Policy. However, paragraph 174(b) of the NPPF states that the economic and other benefits of the best and most versatile agricultural land should be recognised. Policy 102 requires a balancing exercise to be carried out. I am of the opinion, that within the context of paragraph 174(b) of the NPPF,

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<sup>2</sup> Burston Nurseries, paragraph 17 CD 5.7

a balancing exercise remains fundamental to decision making process. Therefore, on that basis the policy is broadly consistent with the thrust of NPPF.

- 3.23 **Policy 143B LP - Implementation** expects planning applications for the development sites to include within them, provision for infrastructure consequences. The provision of mitigation from development is consistent with the NPPF.

### 3. Operation of paragraph 11(d) of the NPPF

- 3.24 Since the most important policies for determining the application are out of date, it is necessary to consider the effect of paragraph 11(d) of the NPPF. This states as follows:

*“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.”*

- 3.25 With regard to 11d(i) we are referred to footnote 7 for guidance, and it notes that inter alia: *“The policies referred to are those in this Framework (rather than those in development plans) relating to: [...] land designated as Green Belt [...].”*

- 3.26 As such, when considering planning decisions relating to land in the Green Belt, it is necessary to first determine whether Green Belt policies in the NPPF provide a clear reason for refusal under paragraph 11(d)(i). If they do, the application is not assessed against the tilted balance in paragraph 11(d)(ii) of the NPPF.
- 3.27 Since it is common ground that the development is inappropriate development in the Green Belt, whether or not there is a clear reason for refusal turns on whether VSC exist to justify such development in accordance with paragraph 148 of the NPPF.
- 3.28 If there are such VSC, there is no “*clear reason for refusal*” under paragraph 11(d)(i) of the NPPF and (by definition) the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, assessed against the NPPF for the purposes of paragraph 11(d)(ii) of the NPPF. Further, and in any event, the development will comply with the development plan taken as a whole, since it would comply with Policy 1 LP & Policy S1 of the NP. On either basis, planning permission should be granted.
- 3.29 On the other hand, if VSC do not exist, the proposal would be contrary to those same policies, and contrary to the development plan taken as a whole. Further, paragraph 11(d)(i) of the NPPF would operate to provide a clear reason for refusal under the NPPF. In those circumstances, permission should be refused.
- 3.30 As such, the balancing exercise under paragraph 148 of the NPPF is determinative of the outcome of the appeal. Given this, the age and weight of the policies in the development plan

(particularly, the Local Plan Review and the NP) is of little relevance to the overall outcome.

#### 4. Withdrawn Local Plan

- 3.31 The St Albans City and District Council Local Plan 2020-2036 was submitted for independent examination in March 2019.
- 3.32 The Appeal Site formed part of the GB review 2013 & 2014 (Parcel 25). I consider this further below.
- 3.33 The Council ran a Call for Sites in 2018. Strategic sites and previous SHLAA submissions were evaluated using a Red Amber Green rating system against the criteria set out in the Draft Strategic Site Selection Evaluation Outcome Report (2018)<sup>3</sup>. Stage 1 of that evaluation was the Green Belt Review.
- 3.34 In March 2018, the Council agreed that strategic sites are those considered capable of accommodating a minimum of 500 dwellings or with 14 hectares of developable land. Conclusions from the Independent Green Belt Review which assessed strategic land parcels informed the site selection evaluations.
- 3.35 Sites given a red rating at either Stage 1 or 2 were eliminated from the site process. Eight sites were given a green rating. This included Land at Chiswell Green.
- 3.36 In a letter dated 14 April 2020, the Inspectors examining the plan identified concerns about the narrow focus that had been placed on only strategic sites. They also considered that the Green Belt

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<sup>3</sup> CD 5.8

Review should have considered sites with smaller areas and that a finer grained review should be undertaken.

3.37 Subsequently the Local Plan was withdrawn.

#### 5. Emerging Local Plan

3.38 No draft policies for the new Local Plan have yet been produced. Therefore, no weight can be attached to it in decision making. It is also important to note that the potential outcome of evidence being prepared for the new Local Plan or the likelihood of land being allocated or otherwise as a result of that evidence, must not be prejudged. No weight can be attached to speculation about the likelihood of Green Belt releases in the new Local Plan or where these may be located. This application must be treated on its own merits, based on relevant policy and material considerations which apply at the time of making the decision.

3.39 Nonetheless, it is important to note that the emerging Local Plan is progressing with vigour. I have been advised that the Local Plan Advisory Group (LPAG) continues to meet regularly to review progress. The new Local Development Scheme (LDS) was adopted by the Council in September 2022 which shows in brief:



**Local Development Scheme**

	Regulation 18 Consultation	Regulation 19 Pre - Submissio Consultation	Submissio	Examination	Adoption
Local Plan	July – Sep 2023	July – Sep 2024	Dec 2024	Dec 2024 - Nov 2025	Dec 2025

3.40 The Local Plan is firmly on course to go to Regulation 18 consultation on 14 July 2023 as set out in the Local Development Scheme. The LPAG meetings have received several chapters of the draft Local Plan for comment since December 2022. LPAG has endorsed the officer work to carry this forward to meet the 14 July 2023 Local Plan Regulation 18 consultation commencement date on three occasions since the LDS was adopted: on 13 December 2022, 24 January 2023 and 14 March 2023.

3.41 At the 14 March 2023 LPAG meeting, the Group again confirmed the current Work Programme, which sets out that LPAG intends to recommend at its meeting on 20 June 2023 to the Policy Committee meeting on 29 June 2023 to commence the draft Local Plan Regulation 18 consultation on 14 July 2023. The LPAG Work Programme also shows the outputs of the new Green Belt Review and Site Selection work being reported to LPAG on 6 June 2023.

3.42 It is noted that the application site has been submitted via the Call for Sites process which ran from January to March 2021, with reference STS-53-21 (labelled 'Land north of Chiswell

Green Lane and east of The Croft, Chiswell Green') under the current Housing and Economic Land Availability Assessment (HELAA) process. It has been assessed for suitability, achievability and availability, and been found to be 'potentially suitable, available and achievable subject to further assessment as part of the site selection process.' This HELAA assessment notes however that evidence base work, including a Green Belt Review, is underway and may change the site suitability in the future.

- 3.43 Therefore, noting that the HELAA review did not assess the site against Green Belt purposes, and that this is subject to a separate ongoing process which is yet to conclude, the findings of the HELAA are only considered to weigh neutrally in the planning balance, with no positive weight resulting from its findings.

#### 6. Approach to the Green Belt under the NPPF

- 3.44 In terms of Green Belt, paragraph 137 of the NPPF confirms that 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.
- 3.45 NPPF paragraph 138 sets out the five purposes of the Green Belt
- 3.46 NPPF paragraph 147 says that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in VSC. It is common ground that the development is inappropriate development. As set out in paragraph 148, VSC

will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

- 3.47 It is not necessary for each consideration relied on to be “very special” in of itself: see Wychavon District v SSCLG [2008] EWCA Civ 692. However, the material planning considerations advanced by the Appellant must clearly outweigh both the harm by reason of inappropriateness and any other harm. In this respect, substantial weight must be given to any harm to the Green Belt (see paragraph 148). This is clearly a high bar. The Court of Appeal has emphasised that the VSC test is higher than the “exceptional circumstances” test for Green Belt release through the development plan process: see R. (Luton Borough Council) v Central Bedfordshire [2015] EWCA Civ 537.

## 4.0 ASSESSMENT

4.1 As set out above, the proposed development should not be approved unless the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

4.2 The potential harm by reason of inappropriateness is given substantial weight. I now turn to consider the other Green Belt harm.

### **(i) Green Belt Harm**

4.3 The NPPF identifies openness and permanence as the essential characteristics of the Green Belt with the fundamental aim of Green Belt policy to keep land permanently open.

#### 1. Openness

4.4 The concept of openness means the state of being free from built development; the absence of built form as opposed to the absence of visual impact.<sup>4</sup> However, the word “openness” is open-textured, and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if the proposed development occurs and factors relevant to the visual impact on the aspect of openness which the Green Belt presents.<sup>5</sup>

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<sup>4</sup> R. (Lee Valley RPA) v Epping Forest DC [2016] EWCA Civ 404.

<sup>5</sup> Turner v SSCLG [2016] EWCA Civ 466.

4.5 The Planning Practice Guidance (PPG) - ID 64-001-20190722 – addresses what factors can be taken into account when considering the potential impact of development on the openness of the Green Belt – which include but are not limited to the following:

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

4.6 The appeal site is presently open and overall is free from any built development (with the exception of one agricultural shed).

4.7 I have considered Mr Friend’s opinion and I adopt his approach. The site would be replaced by a substantial amount of urban development, comprising buildings, roads, parking spaces and associated infrastructure. The cubic content of the development would be significant as it comprises of a large number of two and three storey buildings. There would be a substantial loss of spatial openness. This would be compounded by the loss of visual openness. The appeal site lies clearly separate from the built-up area and forms part of the open countryside. The

openness and scale of the site can be appreciated from the adjoining Chiswell Green Lane, as well as nearby Public Rights of Way. There would be a substantial loss in the visual openness of the site, together with a significant increase in activity. These changes would be permanent and irreversible.

- 4.8 The proposal taken as whole would result in a very substantial loss of openness both in spatial and visual terms. It would replace the open countryside with a substantial urban development. This would very substantially adversely affect the visual and spatial sense of openness currently enjoyed by recreational users of the countryside and existing residents. This harm should be given **very substantial** weight.

## 2. Purposes

- 4.9 NPPF paragraph 138 sets out five purposes of a Green Belt. I consider that the proposal conflicts with three of the purposes of the Green Belt:

- To check unrestricted sprawl of large built-up areas
- To prevent neighbouring towns merging into one another
- To assist in safeguarding the countryside from encroachment

- 4.10 The starting point is that the impact of the development on these Green Belt purposes is linked to its impact on openness. As it was put by the Supreme Court in R. (Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire CC [2020] UKSC 3:

*“22. The concept of “openness” in [what was then] para 90 of the NPPF seems to me a good example of such a broad policy concept. It is naturally read as referring back to the underlying aim of Green Belt policy, stated at the beginning of this section: “to prevent urban sprawl by keeping land permanently open ...”. Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt.”*

- 4.11 Similarly, in Turner v SSCLG [2016] EWCA Civ 466, the Court of Appeal held:

*15...There is an important visual dimension to checking “the unrestricted sprawl of large built-up areas” and the merging of neighbouring towns, as indeed the name “Green Belt” itself implies. Greenness is a visual quality: part of the idea of the Green Belt is that the eye and the spirit should be relieved from the prospect of unrelenting urban sprawl. Openness of aspect is a characteristic quality of the countryside, and “safeguarding the countryside from encroachment” includes preservation of that quality of openness...<sup>6</sup>*

- 4.12 As part of the Council’s evidence base for the now withdrawn local plan, the appeal site was considered as part of a much larger parcel of land labelled GB 25, which was included in the SKM Green Belt review 2013.<sup>7</sup>

- 4.13 I am aware that the withdrawn plan has no legal status for decision making, and that the previous site selection process has no weight, but that the judgements reached in the Green Belt

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<sup>6</sup> See also Summers Poultry Products Ltd v SSCLG [2009] EWHC 533 (Admin).

<sup>7</sup> C.D 5.10

review in relation to Green Belt purposes as part of the evidence base are relevant for the determination of applications.

4.14 The findings of the SKM Green Belt review where it assesses the relevant area against Green Belt purposes represents the most recent published Green Belt review relevant to the appeal site, and I consider that it is acceptable to take it into account when considering the appeal site against the Green Belt purposes.

4.15 In coming to this view, I have taken into account appeal decisions 5/2020/1992<sup>8</sup> and 5/2020/3022<sup>9</sup>. In this connection, the Inspectors had regard to the Green Belt review when assessing the proposal against Green Belt purposes.

4.16 In particular to the Inspector's decision<sup>10</sup> at Bullens Green Colney Heath where the Inspector didn't follow the review was not a result of the outcome of the previous plan process, rather more due to the differences in the parcel size assessed in the review compared to the appeal site. As such, it is considered that the Green Belt review is material insofar as it assesses sites against Green Belt purposes.

4.17 The SKM Green Belt Review presents its assessment of each purpose and weighs it accordingly:<sup>11</sup>

- Significant contribution to GB Purposes
- Partial Contribution to GB Purposes
- Limited or no contribution to GB Purposes

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<sup>8</sup> C.D 5.12 Para 24

<sup>9</sup> CD 5.7 Para 24

<sup>10</sup> CD 5.12

<sup>11</sup> Para 5.5 C.D 5.10



4.18 Notwithstanding the rating above, I have carried out my own assessment.

4.19 Taking a top, middle and bottom approach, and for the purposes of the SKM review together with a view to be consistent with other levels of weight identified in this proof and another proof, I consider the weighting set out in SKM GB review to be as follows:

Significant – to be Substantial.

Partial – to be Moderate .

Limited or no contribution – to be limited or no contribution.

4.20 I have since checked this weighting scale against my observations and professional opinion.

4.21 In the review, the site fell within the wider parcel of GB25<sup>12</sup> which confirms that it contributes significantly [**Substantial**] to the safeguarding the countryside from encroachment and maintaining the existing settlement pattern in addition to making a partial [**Moderate**] contribution towards preventing merging and preserving setting. Overall, the parcel was found to contribute significantly [**Substantial**] to 2 out of 5 purposes.

4.22 The assessment noted that part of the wider parcel has urban characteristics and part of the south-east of the wider parcel was recommend for further consideration for exclusion from the Green Belt through the Local Plan processes, identified as strategic sub-area SA-S8. The site is not part of this sub area, which was identified for further consideration because of its

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<sup>12</sup> PDF page 146

urban fringe characteristics and greater levels of landscape enclosure. Neither of these features applies to the appeal site.

4.23 I now consider how the development performs against each of the Green Belt purposes.

*(a) to check the unrestricted sprawl of large built-up areas*

4.24 The site is in open countryside and not directly adjacent to the built edge of Chiswell Green. It reads as detached from the existing built edge, and the development would not “round off” the settlement. The Green Belt Review states that the site falls within an area that: *“is separate from the edge of the settlement and relates more to the wider countryside”*. There is also no defensible boundary to the western edge of the site, and the development would therefore place pressure for additional land to be released for built-up development. I therefore consider **Moderate harm** is identified.

*(b) to prevent neighbouring towns merging into one another*

4.25 The construction of development between Chiswell Green and Hemel Hempstead would place pressure for the further release of land between these two settlements. Whilst I acknowledge that a significant gap would be maintained to Hemel Hempstead, and in isolation the proposal would not physically merge Chiswell Green to another town, development may be contrary to this purpose at a point before coalescence occurs. As it was put in R. (on the application of Heath and Hampstead Society) v Camden London Borough Council [2007] EWHC 977 (Admin):

*“While it may not be possible to demonstrate harm by reason of visual intrusion as a result of an individual – possibly very modest – proposal, the cumulative effect of a number of such proposals, each very modest in itself, could be very damaging to the essential quality of openness of the Green Belt and Metropolitan Open Land.”*

- 4.26 The same approach should be adopted to this purpose. Taken in isolation, it would not result in the merging of towns. However, if this justification was used to permit each development proposal in the gap between these settlements, over-time the separation of towns would be significantly eroded. Further, the identity of a settlement is not really determined by the distance to another settlement; the character and place and of the land between must be taken into account. Therefore, I do identify harm to this purpose but recognise that it is **limited**.

*(c) to assist in safeguarding the countryside from encroachment.*

- 4.27 As stated above, the findings of the SKM Green Belt review assesses the relevant area against Green Belt purposes and it represents the most recent published Green Belt review relevant to the Appeal site, and it is considered acceptable to take into account when considering the appeal site against the Green Belt purposes.
- 4.28 I am mindful of the case law set out above,<sup>13</sup> which makes clear that the effect of the development as encroachment on the countryside may take the form of a loss openness.

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<sup>13</sup> And also, the Smallford Works appeal decision at Page 38 CD 5.18

- 4.29 In the review, the site fell within the wider parcel of GB25<sup>14</sup> which confirms that it contributes significantly [**Substantial**] to the safeguarding the countryside from encroachment and maintaining the existing settlement pattern. The appeal site fell distinctly within the more open 'West' part of the sub-area SA-S8.
- 4.30 Under the heading "Landscape Character", the review states that "the landscape has a very open character and development would completely change this. Any changes to this landscape would be very conspicuous. Agricultural intensification is a key contributor to the current character and influences the openness of the landscape. Some of the boundaries still compromise hedgerows with hedgerow trees, but they are frequently very fragmented.
- 4.31 In terms of settlement form, the review confirms that the area is separate from the edge of the settlement and relates more to the wider countryside. The review continues in relation to "views/visual features": *"the openness of the landscape means development would be conspicuous from the surrounding landscape, with key visual receptors compromising the residents of dispersed properties and users of the small local roads."*
- 4.32 I acknowledge that these comments were made in the context of a larger sub-area. However, I consider the above findings are applicable to the appeal site when considered in its isolation. As set out in the evidence of Mr Friend, this site is distinctly separate from the edge of the settlement and relates fundamentally to the wider countryside. The impact on openness on the site would be

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<sup>14</sup> pdf page 146

very substantial. This would result in **substantial** (at the highest end of the spectrum – **very substantial**) harm to the purpose of safeguarding the countryside from encroachment.

4.33 Overall, the site would conflict with three of the purposes of the Green Belt. However, I consider the impact upon the encroachment of the countryside to be the most important conflict.

4.34 For the avoidance of doubt, I am aware of appeal decisions forwarded by the Appellant as set out in the Committee Report<sup>15</sup> which relate to development within the Green Belt. I am of the opinion, that they are materially different to this appeal. In particular, this site is not an edge of settlement site. It is an open green field which has greater landscape sensitivity and performs a more important role within the Green Belt.

4.35 In my professional opinion, I consider that in addition to the ‘definitional’ harm to the Green Belt by reason of inappropriateness there would be **Very Substantial** harm to the openness of the Green Belt and **Substantial** harm to the purposes of the Green Belt. The NPPF confirms that the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open – that is free from development – and that the essential characteristics of Green Belts are their openness and their permanence. Clearly these proposals fail to accord with these fundamental aims.

#### **(ii) Any other (non-Green Belt) harm**

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<sup>15</sup> Para 8.12

## 1. Landscape Character

4.36 The NPPF<sup>16</sup> sets out that decisions should contribute to and enhance the natural environment by protecting and enhancing valued landscapes and by recognising the intrinsic character and beauty of the countryside and the wider benefits. I also note that that para. 92 and 130 seek to ensure developments are sympathetic to local character including amongst other things landscape setting. As set out above, Policy 1 of the Local Plan is broadly consistent with these policies.

4.37. Mr Friend identifies harm both to the landscape character of the site and also from the visual effects of the development. I have given **substantial** weight to this combined harm to landscape character and the adverse visual effects of the development. Care is needed to ensure that this aspect of the harm occasioned by the proposals is not watered down or discounted on the basis that the site is in the Green Belt – the assessment of the effects of the development on landscape character and appearance is conceptually different from the harm that the development would cause to the Green Belt. I have included this harm to landscape character in my assessment of the overall harm here.

## 2. Loss of Agricultural Land

4.38 The Agricultural Land Classification report submitted with the application identifies the majority of the site as being in Class 3A,

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<sup>16</sup> Para 174

which falls under the classification of the best and most versatile agricultural land.

- 4.39 The development would conflict with local and national policy relating to agricultural land. Further, noting the findings of previous Green Belt purposes assessments (as set out above) it is not considered likely that this open site would be considered suitable for Green Belt release through a Local Plan allocation process. Furthermore, consideration of loss of agricultural land on this scale should form part of the Local Plan process, as opposed to being decided through ad hoc applications.
- 4.40 Based on the above, there is additional harm; **limited weight** is given to this harm.

### 3. Infrastructure

- 4.41 In the absence of a legal obligation to secure contributions, the development would fail to adequately mitigate its effect upon local services and infrastructure. As such the proposal would fail to comply with Policies 1 and 143B of the Local Plan and the Framework 2021. It is likely that this matter will be resolved and a s106 obligation will be engrossed.
- 4.42 I shall now consider whether the harm by reason of inappropriateness, and the other harms I have identified, would be clearly outweighed by other considerations so as to amount to the VSC required to justify the proposal.

### **(iii) Very Special Circumstances**

4.43 There are identified planning benefits from the Appeal Proposals. The Appellant has put forward the case that there are VSC, which were considered by the Council when determining the application.<sup>17</sup> In order to be consistent, I have dealt with the benefits as set out in the Appellant's statement of case.<sup>18</sup>

4.44 I shall address these material considerations and consider whether together they constitute VSC that clearly outweigh the harm to the Green Belt by reason of inappropriateness and any other harm.

#### 1. Affordable Housing

4.45 The proposed development is for up to 330 new homes which would be discounted by a third from market rates, available for key workers. It would meet the following NPPF definition of affordable housing (From NPPF Annex 2: Glossary):

*“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.*

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<sup>17</sup> Committee Report.

<sup>18</sup> Para 41-44



*Provisions should be in place to ensure housing remains at a discount for future eligible households.”*

- 4.46 The ‘Key Workers’ for whom the housing would be provided would meet the NPPF definition of ‘essential local workers’, being “Public sector employees who provide frontline services in areas including health, education and community safety – such as NHS staff, teachers, police, firefighters and military personnel, social care and childcare workers”. Furthermore, the necessary 25% of the affordable housing will meet the Government requirement for ‘First Homes’, which requires amongst other things that units must be discounted by a minimum of 30% against the market value, which is here proposed for all of the units (being discounted by 33%).
- 4.47 When considering the weight to be given to the affordable housing provision, I acknowledge that there is a clear and pressing need for affordable housing in the District, and therefore the provision of affordable housing weighs in favour of the development.
- 4.48 I also note the Appellant has submitted an Affordable Housing Needs Assessment which sets out a crude assessment of affordable housing need for key workers in St Albans and a South-West Hertfordshire. This extrapolates data from the September 2020 ‘South West Hertfordshire Local Housing Needs Assessment’ (LHNA) and other publicly available sources to calculate an assessment of Affordable Home Ownership housing (AHO) (which includes First Homes and Discounted Market Sale Housing) for Key Workers in St Albans. From the LHNA assessment that there is a need for 385 AHO

dwellings per annum in St Albans District, and then reducing this figure in accordance with the number of ‘Key Workers’ identified in this proposal (listed in the document as Teachers, Police, Firefighters, NHS, Social and Care Workers, Local Authority Staff and Military Personnel) as a proportion of the total workforce (roughly 19% in the document); an estimate of AHO Housing Need for Key Workers of 74 dwellings pa or 1,332 over the next Local Plan period of 2020-2038 is arrived at.

4.49 The Appellant criticizes the Council for not attempting to measure housing needs of Key Workers,<sup>19</sup> however there is no requirement to carry out a separate assessment for key workers in national policy or guidance. Further, it cannot be assumed that 19% of those in need of AHO dwellings are “key workers”. That said, there is no dispute that there is a need for housing for key workers. The question is whether this development will help meet that need or not.

4.50 In his consultation response, the Council’s Strategic Housing Manager notes:

*“...there is no evidence that these homes will be meet the demand for affordable rented properties or that there is a demand for such a large development or how genuinely affordable these properties will be in an area of such high house prices.”*

4.51 Given market levels are high in the area, it has not been evidenced that key workers will be able to obtain a home even with a discount of 33%. The GL Hearn South-West Hertfordshire

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<sup>19</sup> Para 33 (b) (c) of the Appellant’s SoC

Local Housing Needs Assessment 2020<sup>20</sup> shows that a discount above 33% would be required to make discounted market sale properties affordable (35-36% for 2-4 bedroom properties).<sup>21</sup>

- 4.52 It is not clear at the point of writing whether the development proposes Shared Ownership Housing. However, the same report states at paragraph 5.193:

*“...the likely OMV of housing makes it difficult to see how a shared ownership product could have a level of outgoings equivalent to accessing the private rented sector. This does not mean that shared ownership should not be provided in St. Albans (clearly such a product has some advantages, such as lower deposit requirements). However, it does suggest that shared ownership schemes are likely to mainly be available to households with higher incomes (within the rent/buy gap).”*

- 4.53 Importantly, however, these calculations are not based on the affordability for key workers. Based on 35% of income being spent on housing costs (see paragraph 5.50), the GL Hearn Report calculates affordability for AHO products for those on a median income (£44,200) and those on a lower quartile income (£25,600).<sup>22</sup> This shows that AHO is not affordable for a 2-4 bedroom flat even for those on a median quartile income. This is based on an assumption of a 20% discount. However, even applying a 33% discount, 3-4 bedroom houses are not affordable even for those on a median quartile income.

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<sup>20</sup> CD 4.60 PDF 212 Figure 28

<sup>21</sup> See Table 48 on page 105.

<sup>22</sup> At Appendix B, Figure 28 on page 212.

- 4.54 Most key workers will fall between the lower to median quartile incomes. For example, ONS data<sup>23</sup> shows that a nurse assistant earns £23,000, whilst a nurse earns £39,135. Similarly, local government administrative occupations earn £25,937 and teaching and other professionals £25,692. Senior care workers earn £19,983 and social workers £34,213. Even with a 33% discount, anything larger than a one-bedroom unit will be unaffordable for key workers.
- 4.55 Further, there are no identified delivery partner(s) for the housing, or indication over the proportion of shared ownership and self-build etc. This increases uncertainty at this stage over the extent to which the final housing mix would reflect the type of homes most needed as identified in the LHNA; for example, if the delivery model of the final delivery partner(s) favoured a mix of property types not in accordance with the mix recommended in the latest LHNA.
- 4.56 In any event, the Council's Spatial Planning consultation response notes that in the GL Hearn Report the majority of the need in the District is for rented affordable accommodation, but that all of the affordable housing is described as discount market housing. The NPPF at paragraph 63 sets out that an objective of affordable housing provision is to create mixed and balanced communities and noting that the provision would be solely for 'Key Workers' this objective may not be met, even when noting that details of house size and layout would be finalised at Reserved Matters stage. It is considered that a mixture of general market housing and affordable rent, plus the proposed

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<sup>23</sup> Data from ONS figure 10 annual full time gross pay by occupation

discounted Key Worker dwellings, would be more likely to lead to a mixed and balanced community as sought in policy.

- 4.57 For all of these reasons, I consider that **substantial** weight should be accorded to affordable housing provision but given the uncertainties in relation to affordability I suggest this is to be at the lower end of scale.

## 2. Self-Build Affordable Housing

- 4.58 In terms of self-build, there is considerable uncertainty about how much self-build housing would be provided. Furthermore, there is uncertainty whether self-build housing could be considered affordable and whether it could be delivered. I accept that the plot could be offered at a discount; however, the construction costs would be at normal market rates. It is not clear how much demand there would be from individuals looking for self-build housing, who meet the criteria to be eligible for affordable housing at the site, and who have the capital needed to construct their own home; and are willing to sell on the constructed home at a discount (so that it remains affordable). The demand for such housing is likely to be substantially lower than the demand for market self-build housing. At the time of writing this proof the matter has not moved forward and I am no clearer to understanding how the self builds would be delivered and if they would represent an affordable housing option.
- 4.59 I refer to a supplementary planning document (Self Build & Affordable housing) to a nearby authority East Cambridgeshire

District Council<sup>24</sup>. At paragraph 2.3.1 it sets out how a self-build home could be affordable housing (in accordance with national definitions). However, paragraph 2.3.2 opines that due to the complexities involved, it would appear unlikely many, if any, custom and self-build housing will be officially classed as genuine affordable housing. In this connection, I consider the St Albans Council were right, as like other authorities, to question affordability and delivery in relation to self-build dwellings.

4.60 I am aware that the Council is not meeting its statutory duty in relation to Self-Build<sup>25</sup>. From 1 April 2016 to 30 October 2022, there were a total of 745 entries on the Self Build and Custom Housebuilding Register and between 31 October 2016 and 30 October 2022 the Council granted permission for 158 self-build plots. The NPPF identifies that planning policies should reflect the housing needs of different sectors of the community including but not limited to people wishing to commission or build their own homes. I would in normal circumstances accord **substantial** weight to the delivery of self-build dwellings. However, given the uncertainty set out above, I can only accord **limited** weight to this benefit. I refer to two appeal decisions<sup>26</sup> which deal with the complexities of self-build discounted housing and matters of uncertainty, the need to demonstrate the identified local need and matters arising from affordability and income.

### 3. Public Open Space

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<sup>24</sup> CD 5.27

<sup>25</sup> CD 5.19 PDF Page 109-111

<sup>26</sup> CD 5.28 – CD 5.29

- 4.61 At paragraph 43- 44 of the Appellant’s Statement of Case<sup>27</sup>, it is argued that significant weight should be accorded to the provision of public open space and new public footpaths.
- 4.62 In response, I consider that **limited** weight should be attributed to the Memorial Park open space and paths - as other landscaping and open space would be considered as mitigation to the impacts. I appreciate the site is close to public rights of way. Nevertheless, I am also conscious that the site is located away from the edge of the existing settlement and therefore overall access to the open space would be more limited to the general public than an edge of settlement development. The proposed open space is more likely to benefit the residents of the development rather than the wider community.

#### **(iv) Planning Balance**

- 4.63 Paragraph 137 of the NPPF confirms that 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.
- 4.64 NPPF paragraph 147 says that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in VSC.
- 4.65 What is required is a single exercise of planning judgment about the totality of Green Belt and other harm balanced against the

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<sup>27</sup> CD .4.55

combined weight of other considerations. It is not a mathematical exercise. This is the approach taken at the Smallford Works Appeal<sup>28</sup>.

4.66 I consider that the development would be inappropriate development in the Green Belt that would lead to substantial harm to its openness, and purposes of the Green Belt. It would have an adverse impact upon the landscape character of the area (both in Green Belt terms and on its own) and loss of agricultural land. I attribute **Very Substantial** weight to the cumulative harm identified above.

4.67 I am also mindful of the benefits of this proposal as set out below:

- Affordable Housing Substantial weight (**Substantial** weight)
- Self-Build – (**Limited** weight).
- Public open space and environmental improvements – (**Limited** weight)

4.68 Overall, I consider the benefits should be given **Substantial** weight.

4.69 As such, VSC do not exist as the benefits of the proposal do not clearly outweigh the harm. The development is therefore contrary to the development plan and the NPPF provides a clear reason for refusal. Planning permission should therefore be refused.

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<sup>28</sup> CD 5.18 Para 101- 103. See also *R. (Sefton MBC) v SSCHLG* [2021] EWHC 1082 (Admin).



- 4.70 I recognise the Council is unable to demonstrate a 5- year supply of housing which is currently at 2.36 years. I acknowledge the shortfall remains considerable and significant. As such, the policies which are most important for determining the application are out of date. However, as demonstrated above the policies of the NPPF that protect the Green Belt provide a clear reason for refusing the development proposed.
- 4.71 Here, balancing the benefits against the harm, the benefits do not *clearly* outweigh the harm to the Green Belt and any other harm. The VSC required to justify this development in the Green Belt do not exist. There are specific policies in the NPPF that indicate that this development should be restricted. Overall, I consider that from the available evidence there are no material considerations which indicates that the Appeal Proposal should be determined other than in accordance with the development plans, and therefore the appeal should be dismissed.