



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 South
of Chiswell Green Lane, Chiswell, St Albans
Hertfordshire AL2 3AJ**

LPA Reference: 5/2022/0927

PINS Reference: APP/B1930/W/22/3313110

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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 17th 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) the impact on Green Belt purposes, 2) other harms (excluding landscape character and appearance); 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.

3.0 BACKGROUND

(i) Site Context

- 3.1 A full description of the site and context is set out in SOCG. The site, of approximately 14.02ha in area, is within the Metropolitan Green Belt and largely comprises greenfield agricultural land, separated into four distinct fields by trees. The site also comprises the former Chiswell Green Farm buildings in the north-east and Chiswell Green Riding School in the north-west. The land falls gradually from north to south and is within the Watling Chase Community Forest. The site area of 14.02ha includes 0.06ha of land located on the south side of Chiswell Green Lane which is designated highway land controlled by Hertfordshire County Council (HCC) Highways.
- 3.2 The fields in the north of the site are currently used for horse grazing, whilst the fields to the south are unmanaged grassland. Chiswell Green Riding School is in operation, providing horse riding lessons and livery.
- 3.3 The northern boundary is formed by Chiswell Green Lane, the residential properties 59 to 71 Chiswell Green Lane and the traveller site at 73 Chiswell Green Lane. The eastern and south-eastern boundaries of the site are bordered by the rear gardens of residential properties on Woodlea, Hammers Gate, Forge End and Long Fallow. These properties form the settlement edge of Chiswell Green. There is a small woodland area to the east of the site which is protected by a Tree Preservation Order (TPO) and is not included within the site boundary.
- 3.4 The now closed Butterfly World, a former visitor attraction, and its associated access road (Miriam Lane) is located to the west of the site. To the west beyond Miriam Lane are open fields which are generally free of built development.

(ii) The Development Proposals

- 3.5 The appeal site is bounded in parts by mature trees, shrubs and hedges. There are a number of trees protected by three different TPOs within the site.
- 3.6 The proposal is for the demolition of the existing structures and construction of up to 391 dwellings (Use Class C3), provision of land for a new school the provision open space provision and associated landscaping internal roads, parking, footpaths cycleways drainage, utilities and service infrastructure and new access arrangements.¹
- 3.7 The planning application is in outline with all matters reserved except for access. As such, it is the principle of the development that is under consideration, plus the details of 'Access'. Details relating to the other reserved matters of 'Appearance', 'Landscaping', 'Layout' and 'Scale' would be provided under future application(s) for approval of reserved matters, if this outline application were approved. As such, the application is accompanied by parameter plans for the proposed development and detailed plans showing the proposed accesses.
- 3.8 The proposal includes the following housing tenures:
- 156 affordable units (40%). The precise tenures are to be confirmed and secured through a section 106 agreement (s106); and
 - 229 private market units (60%), of which 12 are proposed to be plots for self-build.
- 3.9 An indicative residential mix is provided with the appeal, however the precise mix would be determined at a later stage through subsequent reserved matters application(s).

¹ The change in description was agreed at the case management conference.

- 3.10 In terms of proposals for access, two vehicular accesses are proposed to be created off Chiswell Green Lane, one in the north-west corner of the site and another towards the centre of the site in the north. These accesses would serve the northern part of the proposed residential development and future primary school. The proposals include localised widening of the existing carriageway on Chiswell Green Lane to 6.1m to accommodate the additional traffic flows associated with the proposed development. The northern footway on Chiswell Green Lane would be widened to 2m outside of nos. 46 and 48.
- 3.11 A vehicular access is also proposed to be created off Forge End to the east of the site, providing access to the southern part of the proposed residential development. A pedestrian/cycle access is also proposed off Forge End, with a further pedestrian/cycle and emergency vehicle access off Long Fallow.
- 3.12 Notwithstanding that all matters except access are reserved, the Appellant has submitted parameter plans which seek to guide the scope of reserved matters submission(s), these parameter plans deal with extent of built development, green infrastructure provision, building heights, the internal road structure and the extent of land for a new primary school.

(iii) Planning Framework

1. The Development Plan

- 3.13 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.
- 3.14 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.

3.15 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

3.16 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

3.17 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.

- 3.18 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).”*
- 3.19 Given this, I shall consider the weight that should be attributed to these policies according to their degree of consistency with the Framework.
- 3.20 **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.
- 3.21 I consider that Policy 1 is consistent with the Framework, 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 LP Policy 1 do not match up with the categories of paragraphs 149 & 150 of the NPPF, but 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.²

3.22 **Policy - S1 NP Location of development** was made in February 2021, it considers, amongst other things, 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.

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

3.24 **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

² Burston Nurseries para 17 CD 5.7

3.25 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.”

3.26 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 [...].”*

3.27 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 Framework 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 Framework.

3.28 Since it is common ground that the development is inappropriate development in the Green Belt, that turns on whether VSC exist to justify such development in accordance with paragraph 148 of the NPPF.

3.29 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. 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.

- 3.30 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.
- 3.31 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 outcome of the appeal.

4. Withdrawn Local Plan

- 3.32 The St Albans City and District Council Local Plan 2020-2036 was submitted for independent examination in March 2019.
- 3.33 The Appeal Site formed part of the GB review 2013 & 2014 (Parcel 25 & S8). I consider this further below. The appeal site was then subject to consideration in the SHLAA 2016 where it was considered that it should be further assessed for potential housing development.
- 3.34 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)³. Stage 1 of that evaluation was the Green Belt Review.
- 3.35 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

³ CD 5.8

developable land. Conclusions from the Independent Green Belt Review which assessed strategic land parcels informed the site selection evaluations.

- 3.36 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.
- 3.37 The Appeal Site was considered to be a 'Broad location' for development to include a minimum capacity of 365 dwellings and a site for appropriate contributions towards a 2 FE primary school as outlined in Policy S6 X)⁴
- 3.38 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 Review should have considered sites with smaller areas and that a finer grained review should be undertaken.
- 3.39 Subsequently the Local Plan was withdrawn. As the plan has been withdrawn, it can only be afforded very limited, if any, weight. I consider the weight to be attached to the evidence base further below.

5. Emerging Local Plan

- 3.40 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.

⁴ CD 5.9

3.41 Nevertheless, 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

3.42 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.

3.43 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.

3.44 I am aware that the sites are subject to the Draft HELAA including Appendix B (UCS) of the Draft HELAA 2021. However, the documents are in draft format and are

subject to results of the new Green Belt review. 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.

- 3.45 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

- 3.46 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.
- 3.47 NPPF paragraph 138 sets out the five purposes of the Green Belt
- 3.48 NPPF paragraph 147 says that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in Very Special Circumstances. It is common ground between the parties that the Appeal Proposal is inappropriate development. The Appellant's case is that VSC exists by other considerations that clearly outweigh inappropriateness, and any other harm resulting from the proposal. 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.
- 3.49 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.⁵ 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.⁶

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

⁵ R. (Lee Valley RPA) v Epping Forest DC [2016] EWCA Civ 404.

⁶ Turner v SSCLG [2016] EWCA Civ 466.

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 largely free from any built development.

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 and potentially a new school. The cubic content and quantum of the development would be significant as it comprises of a large number of two and three storey buildings. The school being larger. There would be a substantial loss of spatial openness. This would be compounded by the loss of visual openness, 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...⁷

- 4.12 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 review in relation to Green Belt purposes as part of the evidence base are relevant for the determination of applications.
- 4.13 The findings of the SKM Green Belt review where it assesses the relevant sub-area against Green Belt purposes 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.
- 4.14 In coming to this view, I have taken into account appeal decisions 5/2020/1992⁸ and 5/2020/3022⁹. In this connection, the Inspectors had regard to the Green Belt review when assessing the proposal against Green Belt purposes.
- 4.15 In particular to the Inspector’s decision¹⁰ 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.
- 4.16 The SKM Green Belt Review presents its assessment of each purpose and weighs it accordingly¹¹:

⁷ See also *Summers Poultry Products Ltd v SSCLG* [2009] EWHC 533 (Admin).

⁸ C.D 5.12 Para 24

⁹ CD 5.7 Para 24

¹⁰ CD 5.12

¹¹ Para 5.5 C.D 5.10

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

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

4.18 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.

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

4.20 In the review, the site fell within the wider parcel of GB25¹² 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.

4.21 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 Appeal Site is within sub-area S8.

¹² PDF page 146

- 4.22 It states *“Strategic Parcel GB25 significantly contributes towards 2 of the 5 Green Belt purposes: it safeguards the countryside and maintains the existing settlement pattern (providing a gap between St Albans and Chiswell Green). It also makes a partial contribution towards preventing merging and preserving setting. However, the sub-area identified on pasture land at Chiswell Green Lane displays particular urban fringe characteristics due to its proximity to the settlement edge and Butterfly World along Miriam Road to the west. This development bounds the outer extent of the pasture land and creates a physical barrier to the open countryside. The pasture land also displays greater levels of landscape enclosure due to localised planting along field boundaries. This creates potential to integrate development into the landscape with lower impact on views from the wider countryside and surroundings. At the strategic level, a reduction in the size of the parcel would not significantly compromise the overall role of the Green Belt or compromise the separation of settlements. Assessed in isolation the land makes a limited or no contribution towards all Green Belt purposes.”*
- 4.23 The review considers the Butterfly World together with the settlement edge to form a particular urban fringe. Planning permission for Butterfly World was granted in 2005. The approved building had a floorspace of nearly 10,000m² to include a rainforest biome with diameter of 100m. The biome included a public walkway, caves water courses and ancillary visitor and education facilities, shop, coffee shop, restaurant and lecture theatre proved over 2 storeys. Further, landscaping was proposed to help integrate the development into the countryside.
- 4.24 However, the biome has never been constructed and the Butterfly World site has been permanently closed for some time. It last opened in 2015. The area of land was subject to a number of planning permission for urban type development.

However, other than the original permission¹³ the subsequent permissions were temporary permissions and are now expired. Due to the nature of the temporary permissions, it is a requirement that the operational developments are removed, and land returned to its original features. Further, the current activities taking place on the Site (mainly storage of building materials) are unlawful and the Council is taking enforcement action against these uses (which is the subject of a separate ongoing appeal).¹⁴ The combined effect of this is that the position at Butterfly World at the date of the review is materially different to that now; and the current position itself may change (subject to the outcome of the enforcement appeal).

4.25 I therefore consider that the Appeal Site does not create a physical barrier to the open countryside to the same extent that was assessed as part of the SKM GB reviews. This therefore needs to be considered when assessing how the development performs against the Green Belt purposes.

4.26 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

4.27 The site is adjacent (east to south-east) to the settlement of Chiswell Green and would, if constructed, provide an extension to the existing settlement into open countryside. The SKM GB reviews (2013 and 2014) were published prior to the closure of Butterfly World. The land has since been put to an unlawful use but this is subject to enforcement proceedings.¹⁵ There has therefore been a change in circumstances since the publication of the review which needs to be considered as part of the overall assessment.

¹³ 2005/2003/1343 CD 5.13 erection of building for exhibition of butterflies and plants in association with the Gardens of the Rose with related horticultural training and research complex, visitor centre, cafeteria, coach/car park and access drive

¹⁴ The relevant enforcement documents are at CD 5.30.

¹⁵ ENF/2022/00005 & ENF/2022/00060

4.28 I note the Committee Report concluded that the proposal is not considered to represent unrestricted sprawl and there is not considered to be any significant harm. However, given Butterfly World is now vacant, the approval of this proposal has the potential to place pressure for increased residential development westward on the land at Butterfly World (subject to the tests outlined in the development plan and NPPF). I therefore consider there would be **moderate** harm to this purpose.

(b) to prevent neighbouring towns merging into one another

4.23 The construction of development between Chiswell Green and Hemel Hempstead would place pressure for the release of land including the area of land at Butterfly World. Whilst I acknowledged that a significant gap would be maintained to Hemel Hempstead, and in isolation the proposal would not physically merge Chiswell Green to another town, I consider that 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.”

4.24 The same approach should be adopted to this purpose. Taken in isolation, the development 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.

4.25 I acknowledge the content of the Committee Report:¹⁶

“the site is bound to the east and south by existing residential development, whilst the north of the site is bound by Chiswell Green Lane. The west of the site is bound by the former Butterfly World and Miriam Lane, creating a physical barrier to the open countryside, which was noted in the SKM Green Belt review 2013:

“the sub-area identified on pasture land at Chiswell Green Lane displays urban fringe characteristics due to its proximity to the settlement edge and Butterfly World along Miriam Road to the west. This development bounds the outer extent of the pasture land and creates a physical barrier to the open countryside. The pasture land also displays greater levels of landscape enclosure due to localised planting along field boundaries.”

4.26 I am mindful of the case law set out above¹⁷ which makes clear that the effect of the development as encroachment on the countryside may take the form of a loss of openness.

4.27 The site has urban fringe characteristics, which was also noted in the SKM Green Belt review 2013. As a result of the locational characteristics, the proposals would only have a localised effect on the Green Belt. The broad purpose of the Green Belt in this location would remain, and the encroachment into the countryside would not be significant. However, the existing site comprises four open fields, with built form limited to the north-west and north-east of the site. The proposals would

¹⁶ Under the heading c) to assist in safeguarding the countryside from encroachment

¹⁷ And also, the Smallford Works appeal decision at Page 38 CD 5.18

therefore encroach into an existing area of countryside. With the current uncertainty around Butterfly World, further encroachment beyond the site boundaries may be possible. As such, I identify **Moderate** harm to this purpose (at the upper end).

4.28 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.

4.29 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 **Moderate** 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

1. Landscape Character

4.30 The NPPF¹⁸ 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 in line with the thrust of NPPF.

¹⁸ Para 174

4.31 I have read Mr Friend's proof of evidence and I adopt his position as an expert witness. The harm that Mr Friend identifies in his proof would be harm to be weighed in the balance even if this site were not in the Green Belt, and would count against the proposals in such circumstances. 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. I have included this harm to landscape character and visual appearance in my assessment of the overall harm here. On an assessment of character and appearance I consider the harm to be **limited** harm.

2. Loss of Agricultural Land

4.32 The Agricultural Land Classification report submitted with the application identifies the majority of the site as being in Class 3A, which falls under the classification of the best and most versatile agricultural land.

4.33 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.

4.34 Based on the above, there is additional harm; **limited weight** is given to this harm.

Infrastructure

4.35 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.

- 4.36 I shall now consider whether this 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.¹⁹ In order to be consistent, I have dealt with the benefits as set out in the Appellant's statement of case.²⁰

- 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. In doing so, I am mindful of the weight being attributed to market and affordable housing including self-build in relation to recent appeal and application decisions within the Authority.

1. Market Housing

- 4.47 In terms of market housing, I acknowledge that Council can only demonstrate a 2 years' supply of deliverable housing.²¹ I acknowledge the shortfall remains considerable and significant, for the reasons set out in the Statement of Common Ground. I therefore attach **Substantial** weight (higher end of the spectrum – **Very Substantial**) to the provision of market housing.

¹⁹ Committee Report CD 3.4

²⁰ CD 3.8

²¹ CD AMR 2022 PDF 118

2. Affordable Housing

4.48 In terms of affordable housing, I recognise there have been serious shortcomings in terms of past trends. I therefore must take into account how critical this matter is within the balancing exercise. As part of this exercise, I have taken full account of the matters set out in the Statement of Common Ground, including the results of the GL Hearn South-West Hertfordshire Local Housing Needs Assessment 2020.²² I therefore attach **Substantial** weight (higher end of the spectrum – **Very Substantial**)

3. Self-build Housing

4.49 I am aware that the Council is not meeting its statutory duty in relation to Self-Build²³. 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. Given the circumstances. I therefore have accorded **Substantial** weight to this benefit.

4. Economic benefits

4.50 In terms of the economic benefits, the Appellant identifies direct and indirect economic benefits which could be delivered by the Appeal Proposal. I acknowledge there would be significant economic advantages from the delivery of the scheme. However, I consider Council Tax spending will only contribute towards the needs emanating from the development and are not benefits of the scheme. Taking all into consideration, I consider **Moderate** weight is given to the economic

²² CD 5.20

²³ CD 5.19 PDF Page 109-111

benefits and I believe this weight is consistent with other appeal decisions²⁴ the most recent decision I have seen is a site in Little Chalfont.²⁵

5. Open Space & BNG

- 4.51 The Appellant argues that Moderate weight should be accorded to the provision of public open space and delivery of 10% BNG.
- 4.52 Policy 70 of the Local Plan requires developments of over 100 dwellings to be provided with public open space including children's playground(s) on the basis of 1.2ha per 1,000 persons (equivalent to 0.0012ha per person). It recommends calculating the requirement based on an average of 2.5 persons per dwellings.
- 4.53 On this basis, the proposed up to 391 dwellings would have a population yield of 978. As such, Policy 70 would require the provision of 1.17ha of open space. Policy 70 also requires the provision of toddlers play space in developments of over 30 dwellings on the basis of 3sqm for every 5 dwellings with 2 or more bedrooms. The indicative housing mix submitted with the application states that the proposed development would have 345 dwellings with 2 or more beds. As such, the proposal would generate a requirement for 207sqm of toddlers play space.
- 4.54 The proposed development includes the provision of at least 2.92ha of publicly accessible open space, with 0.82ha of formal play space for children of all ages, with an additional 295sqm of play space for toddlers.
- 4.55 However, I do not consider that the open space is likely to be used significantly by residents from outside of the appeal site. Further, there is no deficiency in open space provision in Chiswell Green. As the Statement of Common Ground records,

²⁴ CD 5.18

²⁵ CD 5.22

“there is a wealth of public open spaces within proximity of the Appeal Site”
including four existing play areas within 900m of the appeal site.

- 4.56 Further, it is necessary to consider that the development would remove the riding school which was accessible to the general public and utilized a large part of the Appeal Site for riding and other activities. I do accept the activities required booking and was not free, whereas access to the Open Space would be at no direct charge to the general public. Nevertheless, Annex 2 of NPPF [Glossary] explains that Open Space includes all open space of public value including not just land but also areas of water (such a rivers canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity. To my mind, the existing riding school and activities fall squarely into this definition. I am also mindful of paragraph 145 of the NPPF which recognises the benefit of providing opportunities for outdoor sport and recreation in existing designated Green Belts.
- 4.57 Taking the above into account, I consider, open space and play space provision exceeds the requirements of Policy 70. I give positive weight to the element of Open Space which exceeds the policy requirement. I give no weight to the Open Space provision which meets the policy provision. Overall, I therefore conclude that **limited** weight is attributed to this benefit.
- 4.57 In term of BNG the net increase will be secured mostly off site. There is therefore an opportunity cost for not providing this on-site. Notwithstanding this, I have had regard to Appeal Decisions²⁶ at Burston Nurseries. The Inspector considered moderate weight to be attributed to on-site provisions which provided 137% increase in habitats and over 7,600% increase for hedgerows which is far more of an increase than is proposed for this appeal.

²⁶ APP/B190/W/21/3279463 CD 5.7 Para 75

- 4.58 In the Bullens Green Lane Appeal,²⁷ the Inspector made no reference to the level of weight to be accorded to BNG confirming it accorded with policy.
- 4.59 Taking the above into consideration, I consider that **limited** weight should be accorded to BNG in this instance.

6. Provision of a School

- 4.60 During the appeal process the Appellant sought to amend part of the description of development in relation to the school. The amendment to the description would be less prescriptive. Attached is a letter to PINS dated 9th March 2023.²⁸
- 4.61 I consider the matters highlighted in the letter do not give rise to any objection. I consider that SEND places and whether the school would be 1 form entry or 2 form entry to be incidental to the end use of a school [primary]. If during the Inquiry this matter goes beyond the scope outlined above, then I reserve the right to make further submissions.
- 4.62 I have taken account of the education report which was submitted as part of the application.²⁹ I understand that from a primary school perspective there is spare capacity in the existing schools. I also acknowledge the statutory duty placed upon the County Council to provide school placements.
- 4.63 I consider that it is highly unlikely that a SEND school will come forward at the site. Paragraph 7.7 of HCC's statement of case confirms that 113 new places for children with SLD will be provided through the relocation of Breakspear School from Abbots Langley to Croxley Green. This will go some way towards meeting the need in this part of the County. In terms of the possibility of a proposed SEND

²⁷ APP/B1930/W/20/3265925 CD 5.12 Par 64

²⁸ CD 5.21

²⁹ CD 5.26

school at the site, HCC considers it unlikely that there would be sufficient need to justify a SEND school in this location. I attach correspondence from HCC to this effect.³⁰

- 4.66 I am mindful that the HCC is unable to commit to a timescale regarding the potential delivery for 1) a new school 2) be certain as to when additional places will be required and 3) if the school would be required in this location in any event.
- 4.67 I am aware that a requirement for a new two form entry primary school within Chiswell Green was based upon the growth scenario contained in a Draft St Albans Plan, which was consulted on in September 2018. I note the delivery strategy for Chiswell Green included the Appeal Site. However, the Plan was subsequently withdrawn.
- 4.68 As for a primary school, the HCC Appeal Statement³¹ explains that the combined levels of growth proposed through the two appeals, the subject of the appeals, taken together *maybe (my italics)* best mitigated through the delivery of a new primary school on the land that forms part of the proposal. If no further growth is identified locally in the forthcoming and Local Plan and the Appeal Proposal becomes the only major development that comes forward in Chiswell Green area, it *may be (my italics)* appropriate to deliver additional primary school places to serve the development in an alternative manner.
- 4.69 At para 5.10 it states, *“due to the uncertainty concurrent planning appeals and the emerging Local Plan, the County Council cannot therefore commit to a timescale regarding the potential delivery for a new primary school and be certain when additional places will be needed”*.

³⁰ CD 5.31.

³¹ Para 5.9

- 4.70 On the evidence before me, I consider the financial contributions required mitigate against the development. However, I consider that there is a high level of uncertainty that the school (based on HCC own evidence) will need to be delivered, what timescale it will need to be delivered and whether it needs to be delivered in this location.
- 4.71 The Appellant considers Substantial weight to be attributed to the delivery of the school. Based on the above, I consider **limited weight** should accord to this benefit.

(iv) Planning Balance

- 4.72 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.
- 4.73 NPPF paragraph 147 says that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in Very Special Circumstances.
- 4.74 What is required is a single exercise of planning judgment about the totality of Green Belt and other harm balanced against the combined weight of other considerations. It is not a mathematical exercise. This is the approach taken at the Smallford Works Appeal³².
- 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

³² CD 5.18 Para 101- 103. See also *R. (Sefton MBC) v SSCHLG* [2021] EWHC 1082 (Admin).

(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:

Market Housing - **Substantial** weight (higher end of spectrum-**Very Substantial**)

Affordable Housing Substantial weight (higher end of the spectrum – **Very Substantial**)

Self-Build– **Substantial** weight.

Economic – **Moderate** weight

Public open space - **Limited** weight

BNG – **Limited** weight

Provision of school – **Limited** weight

4.78 Overall, I consider the benefits constitute **Substantial to Very Substantial** weight.

4.79 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.

4.80 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.