

LAND NORTH OF CHISWELL GREEN LANE, CHISWELL GREEN, ST ALBANS,
HERTFORDSHIRE, AL2 3AJ (“the North Site”)

LAND SOUTH OF CHISWELL GREEN LANE, CHISWELL GREEN, ST ALBANS,
HERTFORDSHIRE, AL2 3AJ (“the South Site”)

OPENING COMMENTS

On behalf of St Albans City and District Council

Introduction

1. The principal main issue in both appeals is whether the Appellants can demonstrate the Very Special Circumstances (“VSC”) necessary to justify their proposed inappropriate developments in the Green Belt.
2. Both sites are located within the Metropolitan Green Belt. The Government’s commitment to the protection of the Green Belt is unequivocal – and the National Planning Policy Framework (“NPPF”) states in terms that the Government attaches “*great importance to Green Belts*” (paragraph 137).
3. Planning permission for either development should be refused unless VSC exist (paragraph 147 of the NPPF). Such circumstances will not exist unless the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations (see paragraph 148 of the NPPF).
4. In carrying out this balance, the NPPF expressly advises that substantial weight must be given to any Green Belt harm (paragraph 148), reflecting the importance of the protection of the Green Belt in national policy.
5. The requirement for something “*very special*” is deliberately framed in national policy. Needless to say, it is a high bar to meet. It requires more than the “*exceptional*

circumstances” required to release land from the Green Belt – already a stringent test. Imposing a very high bar before inappropriate development is permitted in the Green Belt is key to ensuring permanence and avoiding the death of the Green Belt by “*a thousand cuts*”.

6. The Council’s position is that both Appellants’ cases fail to demonstrate that the Green Belt and other harms for each scheme are clearly outweighed by the benefits, when those harms and benefits are properly weighted. The Green Belt therefore provides a “*clear reason*” for refusing both developments and both proposals fail to comply with both the development plan, and also the NPPF.
7. Finally by way of introduction, whilst the appeals are cojoined, it is appreciated that they are separate development proposals and the factors leading into the overall planning balance on each site are different. Further, every combination of outcomes is possible (both sites could be approved, neither could be approved, or one of either site could be approved). The Council’s position is that both should be refused.
8. For the sake of brevity for the purposes of opening, where there are similarities between each site they will be addressed together; but the Council will ensure both in its evidence and in closing to address the separate planning balances on each site.

Green Belt harm

9. Both schemes constitute “*inappropriate development*” in the Green Belt. Inappropriate development is “*by definition, harmful to the Green Belt*” (NPPF para. 147), even before one considers harm due to loss of openness and harm to Green Belt purposes.
10. It is also common ground that each proposal would have “some” impact on both openness and purposes. One of the questions for this Inquiry is the level of the impact on each site.
11. It is the Council’s position that each proposal would result in very substantial loss of openness in this part of the Green Belt. Openness can be defined as the absence of built development. In relation to spatial openness, it is therefore necessary to consider how each development impacts on the extent of built form on both sites; this can include

consideration of the degree of site coverage by built form, but also (in accordance with the Planning Practice Guidance) the increase in volume.

12. Given the level of additional development proposed on both sites, it is unsurprising that Mr. Friend finds very substantial harm to openness in respect of each proposal. On both sites, fields which are currently predominantly open would be replaced by a significant amount of urban development, comprising buildings, roads and other associated infrastructure. On the North Site, based on the indicative layout, over 10ha of this 14ha site would be covered with built form; on the South Site, as set out in the Officer's Report,¹ the built-up area would comprise c. 10.62ha of a c. 13.96ha site. A substantial area of presently open Green Belt land would no longer be characterised by an absence of built development.
13. The impact would also not be restricted to a spatial one. The Green Belt would appear visibly more built up were either development to be permitted, than without it. Briefly dealing with each site in turn:

(1) On the North Site, the suggestion by Mr. Gray that the impact would be "*very localised and marginal*"² significantly understates the adverse effects of the proposal on visual openness. There are a number of viewpoints, immediately adjacent to, and further away, from the Site where the visual impact from the proposed development would be substantially harmful to openness. For example, the development would be clearly visible from more elevated land to the west of the site, such as PROW St. Michael Rural FP 12; reducing openness in a location where – as Mr Gray accepts – "*the full sense of openness of the Green Belt*"³ can currently be experienced. Overall, the development would be perceived as a significant incursion of the settlement into the wider open countryside.

(2) Whilst the southern site is more visually contained, the impact of the development within that area is substantial. Presently, views into the Site from Chiswell Green Lane (including from the end of Public Right of Way 82) are of open countryside. The change to the view of a housing development would be profound and substantial. There will

¹ At paragraph 8.3.5.

² Proof of Evidence at paragraph 8.3.

³ See Mr. Gray Proof of Evidence at paragraph 8.7.

also be views of the proposed development from a number of residential properties along the settlement edge (such as those on Long Fallow, Forge End and Hammers Gate), which currently enjoy views out over the open countryside.

14. Overall, the harm to openness on both sites would be very substantial.
15. Unsurprisingly, this harm to openness results in conflict with the purposes of including land within the Green Belt (given that one of the “*essential characteristics of Green Belts*” are their “*openness*” – see paragraph 137 of the NPPF).
16. It is common ground with each Appellant that their proposals conflict with the purpose of safeguarding the countryside from encroachment. The issue in dispute is again the degree of conflict.
17. On the North Site, as Mr. Connell will explain, this is very substantial – a function of the development very substantially reducing openness on a site that is currently perceived as open countryside – detached, as it is, physically and perceptually from the existing western settlement edge of Chiswell Green along Cherry Hill. The North Site also lacks a defensible western boundary to halt the substantial western encroachment of Chiswell Green brought about by this proposal.
18. The harm on the South Site is less (moderate), by virtue of the existing influence of the urban fringe in that location, but nonetheless important.
19. The parties disagree as to whether either proposal would conflict with purpose (a) – to check the unrestricted sprawl of large built-up areas; and (b) – to prevent neighbouring towns merging into one another; and that will be a matter to be tested in the evidence.
20. Finally, whilst all parties agree that no weight should be given to the withdrawn draft Local Plan (2020-2036) (which allocated the South Site as a broad location for growth), there is a disagreement on the weight to be attached to the St Albans Green Belt Review (“GBR”) prepared by Sinclair Knight Merz on behalf of the Council. Both sites are located within Strategic Sub-Area 8 within Parcel GB25 within the GBR.

21. The Council and the Appellant on the South Site agree that the GBR should be given significant weight (although, as Mr. Connell recognises, this is subject to any changes in circumstance on the ground). In this respect, as he will explain, the closure of Butterfly World, to the immediate west of the South Site after the GBR was published represents a change in circumstance and affects the findings of the GBR insofar as it relates to the South Site.⁴
22. The Appellant on the North Site on the other hand, contends that the GBR should be given “no weight” at all. That is perhaps not surprising since the GBR was clear that the northern part of Sub-Area 8, within which the North Site sits, “*has a very open character and development would completely change this*”; and that “*the openness of the landscape means development would be conspicuous from the surrounding landscape*”⁵ As Mr. Connell will explain, the reasons why the draft plan was withdrawn do not affect these findings of the GBR.
23. Overall, on both sites this harm to the Green Belt counts very substantially against the grant of planning permission in this case.

Any other harm

Character and Appearance

24. There is harm to landscape character and appearance on both sites, although to different degrees. Harm to the intrinsic character and beauty of the countryside is harm to be weighed against the grant of planning permission. Unlike a non-Green Belt case, there is no need to decide whether this harm would be “unacceptable” in its own right: all that is needed is to assess the level of harm caused and add it to the balance of harm arising.
25. On the North Site, Mr Friend finds that the development would result in a moderate adverse effect to the landscape character of the site. That is a sensible and balanced view. Mr Gray, on the other hand, finds moderate beneficial effects (a surprising and flawed conclusion;

⁴ There is a typographical error in Mr. Connell’s Proof for the South Site at paragraph 4.33. The second sentence says: “*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*”. This sentence, which applies to the North Site, does not apply to the South Site. It does not follow from the findings of the GBR that the South Site would not be suitable for release; whether or not it is released is a matter for the emerging Local Plan and cannot be prejudged.

⁵ CD 5.11 – page 101.

all the more so since his LVIA shows that the beneficial effects of the proposal are reducing over time – in other words, this is a scheme where the landscape effects get worse, not better, over time). The adverse effects on visual amenity would be significant from a number of PROWs, including three which run along the North Sites' boundaries. The Appellant's suggestion that the adverse visual effects are negligible, and indeed beneficial for residents who currently overlook the North Site, seriously misjudges the visual effects of the development. Mr Connell is right to give substantial weight to the harm to character and appearance.

26. On the South Site there is significant agreement between the landscape witnesses, and whilst it is recognised that there is some harm, both to landscape character and in terms of its visual effects, this is ultimately given limited weight by Mr. Connell in the overall balance.

Agricultural Land

27. Both developments would result in the loss of best and most versatile agricultural land. This is an additional harm that must be weighed in the balance.

Benefits

28. The nature and level of benefits is very different on the North Site compared to the South Site. However, on both sites, the benefits fail to clearly outweigh the harm identified. Taking each site in turn:

South Site

29. The Council accepts that there are a number of benefits which weigh in favour of the grant of planning permission on the South Site.

30. There is no material dispute as to the extent of the general housing need. The Council does not have a five-year supply of housing land. For the five-year period (2021/2 to 2025/26) there is just a 2-year supply of deliverable housing sites⁶ and no early prospect of that deficit being addressed. There is also accepted to be an acute affordable housing need

⁶ As recognised by Mr. Connell at paragraph 4.47 of his Proof for the South Site. The reference to 2.36 years at paragraph 4.79 is a typographical error.

in the District. The provision of up to 156 affordable housing units as part of the development, with a mix of tenures (affordable rent, first homes, social rented homes and intermediate/shared ownership) would be a very substantial benefit. In consequence, both in relation to housing and affordable housing the Council has afforded the very highest weighting level to the contribution which the appeal proposals would make towards meeting the unmet needs (very substantial weight). The delivery of shared ownership units is also agreed between the parties to have substantial positive weight.

31. There remains some dispute as to the weight to be accorded to some of the other benefits, and those areas will be explored in the planning evidence.

North

32. The main benefit put forward on the North Site is the delivery of affordable homes for key workers. The Council fully supports the provision of key worker housing, and Mr. Connell has given this benefit substantial weight. The issue between the parties is whether this benefit should be given “very” substantial weight.
33. Mr. Connell’s weight is to be preferred. There remain significant concerns about the affordability of the new homes for key workers (implicitly accepted by the Appellant through last minute attempts to revise the draft section 106 agreement); the development would do nothing to meet the acute need for affordable and social rented homes; and the occupation of the scheme largely by higher-earning key workers would not accord with the NPPF’s objective for mixed and balanced communities. Very little thought appears to have been given as to how the self-build plots could be delivered as affordable housing, and whether this would even be an attractive proposition to purchasers.
34. No doubt much time will be spent debating these issues. However, this should not distract from the fact that even if the proposed affordable housing is given very substantial weight, this (together with the other benefits put forward by the North Site Appellant) does not come close to outweighing (let alone “clearly outweighing”) the associated Green Belt and landscape harm that would follow from development on this sensitive site.

Overall

35. VSC have not been demonstrated on either site. There is nothing “very special” about the circumstances of either case. The “*other considerations*” cumulatively fall far short of “*clearly outweighing*” the harms.
36. Whilst paragraph 11(d) of the NPPF is engaged in this case (by virtue of the fact that the Council does not have a 5YHLS and the Housing Delivery Test results), ultimately it does not dictate the outcome.⁷
37. On both sites, if it is found that VSC do not exist, the tilted balance in paragraph 11(d)(ii) of the NPPF is not engaged, and the NPPF says that there is a “*clear reason*” to refuse. Conversely, if it is found that VSC do exist, it will necessarily be the case that the adverse effects of the development do not significantly and demonstrably outweigh the benefits.
38. The “planning balance” is therefore self-contained within paragraph 148 of the NPPF.
39. The outcome of that paragraph is that both appeals should be dismissed, and in due course the Council will invite the Inspector to dismiss each appeal.

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⁷ For that reason, the issue of whether Policy 1 of the Local Plan is also out of date by virtue of inconsistency with the NPPF is somewhat sterile, given (i) paragraph 11(d) is triggered by the lack of a 5YHLS in any event and (ii) paragraph 11(d)(ii) of the NPPF does not affect the outcome of the appeal