

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”)

CLOSING SUBMISSIONS

On behalf of St Albans City and District Council

INTRODUCTION

1. As I stated in Opening, 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. The conclusions that are reached on the other main issues ultimately feed into this overall VSC planning balance.
2. These Closing Submissions are structured as follows:
 - (1) Planning Framework
 - (2) Green Belt Harm
 - (3) Non-Green Belt Harm
 - (4) Other considerations
 - (5) Overall planning balance

(1) PLANNING FRAMEWORK

3. Planning permission for either development should be refused unless VSC exist: paragraph 147 of the National Planning Policy Framework (“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. If – as is the Council’s position - VSC do not exist for either development, then the developments will be contrary to the development plan taken as a whole because there would be a breach of Policy 1 of the Local Plan.¹
5. That is the case regardless of the weight that is given to the relevant policies of the Local Plan.² In this respect, it is common ground that the most important policies for determining the applications are out of date because the Council does not have a five-year housing land supply (“5YHLS”) and due to its housing delivery test (“HDT”) results. However, if VSC do not exist, this provides a “*clear reason*” for refusing the applications.³ In those circumstances, the tilted balance in paragraph 11(d)(ii) of the NPPF is not engaged and the appeal proposals would represent unjustified inappropriate development in the Green Belt.
6. Given this, it is agreed that in the event that VSC are not demonstrated, planning permission should be refused.⁴
7. As the determinative planning balance, it is therefore essential that the VSC balance under paragraph 148 of the NPPF is correctly applied.

Correct approach to paragraph 148 of the NPPF

8. In carrying out the balance under paragraph 148, the NPPF expressly advises that substantial weight must be given to any Green Belt harm. That weighting is mandated by

¹ Policy 1 is at CD 8.1 – page 12. Accepted by Mr. Kenworthy in xx.

² 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) the determinative planning balance under paragraph 148 of the NPPF does not consider the question of development plan policy compliance. Mr. Kenworthy agreed that the Inspector did not have to resolve the weight to be attached to Policy 1 of the Local Plan.

³ See paragraph 11(d)(i) of the NPPF read together with footnote 7.

⁴ Accepted by Mr. Kenworthy in xx.

policy irrespective of the circumstances (and remains the same regardless of whether or not a local planning authority has a 5YHLS). This reflects the importance of the protection of the Green Belt in national policy as a designation of national importance. Indeed, the NPPF states in terms that the Government attaches “*great importance to Green Belts*” (paragraph 137).

9. Further, 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.⁵ Further, for VSC to exist, it is not enough for the benefits to merely outweigh the harm – they must clearly outweigh the identified harm. 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

Emerging policy

10. Finally, it is worth at this point addressing the question of emerging policy. It is agreed that the emerging Local Plan should be given no weight, since there is no document to give any weight to.⁷ That said, work on the new Local Plan is progressing with vigour and regulation 18 consultation is scheduled shortly (between July-September 2023). There is no positive evidence before the Inquiry to suggest that the overall timetable towards adoption is unachievable.
11. The housing requirement under the new Local Plan is unknown, and whether the standard method calculation for local housing need is to be used is a decision to be made through the local plan process.⁸ The spatial strategy in the new Local Plan – i.e. how that housing requirement will be distributed across the District – is also unknown. We do not know whether the requirement will be met through a small number of broad locations for growth (as in the withdrawn plan); a large number of smaller sites; or a combination of both. Further, a new Green Belt Review is due to be published shortly.⁹

⁵ See *R. (Luton Borough Council) v Central Bedfordshire* [2015] EWCA Civ 527 – CD 10.10.

⁶ CD 10.14 at [24].

⁷ Overarching Statement of Common Ground with the South Site – CD 3.12 - paragraph 5.16.

⁸ See the most recent Annual Monitoring Report – CD 5.19 – at paragraph 3.19.

⁹ Mr. Connell’s Proof of Evidence (“POE”) for the North Site at paragraph 3.41.

12. Therefore, whilst there has been a lot of reference to the South Site (which was allocated in the withdrawn Local Plan) as being “at the front of the queue” for allocation in the emerging Local Plan, we simply cannot say today that it is likely that it will be allocated in the new Local Plan (the North Site, of course, was not allocated in the withdrawn Local Plan). And in any event, we are applying a different, and more stringent, test in this Inquiry (VSC) compared with the test that is applied when deciding to release land from the Green Belt through a Local Plan review.
13. The remainder of these submissions are structured around the three key components of the balancing exercise under paragraph 148 of the NPPF: (i) Green Belt harm; (ii) non-Green Belt harm; and (iii) other considerations – i.e., the benefits of each proposal.

(2) GREEN BELT HARM

Approach to assessing Green Belt harm

14. The starting point is the correct approach to assessing Green Belt harm:
15. First, both schemes constitute “*inappropriate development*” in the Green Belt. Inappropriate development is “*by definition, harmful to the Green Belt*” (NPPF para. 147). This is even before one considers harm due to loss of openness and harm to Green Belt purposes. Any harm to openness or purposes is in addition to the definitional harm.¹⁰
16. Second, so far as openness is concerned, the Planning Practice Guidance (“PPG”) sets out four factors that may be relevant when assessing openness:¹¹

“Assessing the impact of a proposal on the openness of the Green Belt ... requires a judgment based on the circumstances of the case. By way of example, the courts have identified a number of matters which may need to be taken into account in making this assessment. These include, but are not limited to:

- *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 ... and*
- *The degree of activity likely to be generated, such as traffic generation”*

¹⁰ Agreed by Mr. Kenworthy in xx.

¹¹ Cited in Mr. Connell’s POE for the North Site at paragraph 4.5.

17. It is common ground that all factors are relevant here.¹²
18. Third, in terms of the spatial aspect of openness, this is generally understood to mean the absence of built development. It is not the same as openness in a landscape character sense and is not influenced by what we can visually discern. Therefore, there can be harm to the spatial aspects of openness without there being a visual impact. On that basis, visual mitigation will not mitigate spatial impacts. Further, even if spatial harm is “inevitable” and cannot be avoided or further minimised, that is not a basis to reduce the degree of harm.¹³
19. Fourth, when looking at visual aspects we are considering whether development would have an adverse effect on the perception of openness. The ability to see built form where previously there was none will result in a visual harm to openness. This is a different approach to assessing visual effects in accordance with Guidelines for Landscape and Visual Impact Assessment (“GLVIA”), which is concerned with how pleasant a view is to visual receptors, and therefore takes into account factors such as the attractiveness of new development and green space rather than the simple question of whether the Green Belt will appear more built up than before.¹⁴ Therefore, both landscape witnesses agreed that it would be impermissible to automatically read across the conclusions on visual effects from an Landscape and Visual Impact Assessment (“LVIA”) when reaching a conclusion on openness¹⁵ - although as I will come to, the landscape witness for the North Site in fact adopted the approach that he agreed was wrong.
20. Fifth, it is important to take care when considering the combined spatial and visual effects of a development on openness. Visual impacts on openness can fall into three categories: (i) they can be neutral – i.e., visually the site may be no more or less visually open following the development; (ii) they can offer an improvement to openness; thereby reducing any harm arising from the spatial impacts of the development; (iii) they can in

¹² Toyne xx; Fidgett xx.

¹³ All accepted by Ms. Toyne in xx.

¹⁴ For example, the impact of a development on a particular visual receptor might be low because development will be screened by landscape that is in character. When looking at the impact on openness – if that view was a view that was previously open the blocked view would result in an adverse effect on openness.

¹⁵ Toyne xx and Gray xx. See also CD 10.11 – Samuel Smith – paragraph 5: “*the quality of the landscape is not relevant to the inclusion of land within a Green Belt or to its continued protection*”.

of themselves be harmful; thereby increasing any harm arising from the spatial impacts of the development.

21. There is no dispute that both developments will result in harmful visual impacts on openness. Therefore, the third category above is relevant – and this visual harm to openness can only increase the degree of harm to openness over and above that which follows from their spatial harm. There is no basis in national planning policy or guidance to support “netting off” spatial and visual harm; or to suggest that harm from visual effects can reduce the overall degree of harm to openness. As it was put in Turner v SSCLG [2016] EWCA Civ 466 (at paragraph 25), “...*the absence of visual intrusion does not in of itself mean that there is no impact on the openness of the Green Belt as a result of the location of a new or materially larger building there*”.¹⁶

22. Finally, in terms of the Green Belt Review:

(1) Whilst all parties agree that no weight should be given to the withdrawn draft Local Plan (2020-2036), there is a disagreement on the weight to be attached to the St Albans Green Belt Review prepared by Sinclair Knight Merz on behalf of the Council (“GBR”). Both sites are located within Strategic Sub-Area 8 (“SSA 8”) within Parcel GB25 within the GBR.

(2) The Council and the Appellant on the South Site agree that the GBR should be given significant weight. However, that does not mean that the findings of the GBR can simply be applied wholesale to the development proposals:

a. There have been changes in circumstance on the ground since the GBR was published. The closure of Butterfly World, to the immediate west of the South Site, after Part 2 of the GBR was published in February 2014, represents a change in circumstance and affects the findings of the GBR insofar as it relates to the South Site – for reasons I’ll come onto.

¹⁶ CD 10.14 – paragraph 25.

- b. Whilst the South Site was the top ranked site out of the eight strategic sites identified for potential release in the GBR, it was also one of the smallest strategic sites.¹⁷ Ms. Toyne accepted that it was inevitable that smaller sites, such as this, will achieve a higher ranking than the larger Green Belt sites in the ranking of sites at the end of the February 2014 Green Belt Review.¹⁸
- c. The GBR did not assess the cumulative effect of both the North and the South sites coming forward at the same time.

(3) The Appellant on the North Site on the other hand, contends that the GBR should be given “no weight” at all. This position was never adequately explained at the Inquiry, but is in any event fundamentally flawed:

- a. It is agreed that conceptually a decision-maker can give no weight to an emerging or withdrawn plan but give weight to an evidence base document.¹⁹ The weight to be given to the evidence base document will depend on whether the evidence base document was subject to criticism by those examining the plan.²⁰
- b. The position of Mr. Parker appears to be that the Inspectors who examined the Council’s withdrawn Local Plan concluded that the GBR was “*seriously flawed*”.²¹ However, when one actually looks at what the examining Inspectors said, it is clear that their criticisms do not have any bearing on the GBR assessment of the northern part of SSA 8.
- c. For a start, the Inspectors did not criticise the substantive findings reached by the GBR in relation to the individual parcels or strategic sub-areas

¹⁷ See CD 5.11 – Table 13.1 on page 117.

¹⁸ See also the quote in the LVIA – CD 2.5 – paragraph 4.29 (page 18): “2.1.2 *The Green Belt Review ranking...prioritised physical Green Belt and landscape impact factors and also gave some initial consideration to ease in delivery of development (likely planning and infrastructure lead times). The site preferences arising from this ranking reflect an overriding consideration of ‘least impact’ on Green Belt purposes an ease of assimilation of development into the landscape. Inevitably smaller sites, such as that at Chiswell Green (S8) attain a higher ranking than the larger Green Belt releases, such as at East Hemel Hempstead (S1/2).*”

¹⁹ CD 9.11 – paragraph 18.

²⁰ Agreed by Mr. Parker in xx.

²¹ See, for example, Mr. Parker’s POE at paragraph 3.82(i).

assessed. Instead, there were two main procedural criticisms, neither of which has any relevance here.

- d. First, there was a criticism that the small-scale sub-areas identified in the Stage 1 Report (November 2013) were not investigated in the Stage 2 Report (February 2014).²² However, that is irrelevant here, because the North Site was not part of a small-scale sub-area identified for potential release in the Stage 1 Report.²³
- e. Second, the Inspectors noted that the list of small-scale sub-areas identified in the Stage 1 Report may not be exhaustive, and that by only considering eight areas in detail in the Stage 2 report, the Council may have missed out on other potential small-scale sub-areas.²⁴ However, that criticism also does not apply here because SSA 8 was considered at a fine grain in the Stage 2 Report, and the part of the area within which the North Site falls was not found to be suitable for release.²⁵
- f. In this respect, (i) there was nothing to prevent the Stage 2 Report from identifying more than one suitable site in SSA 8²⁶ and (ii) nor was the North Site ruled out from consideration on the basis that it had a capacity of less than 500 units. The GBR itself did not impose a 500-unit cap when considering sites – after all, the South Site had a maximum potential capacity of only 450 units,²⁷ and despite being given several opportunities, none of the witnesses for the North Site were able to point to any part of the GBR where this cap was imposed. Rather, as Mr. Connell explained, the 500-unit threshold post-dated the GBR during the subsequent site-selection progress in 2018²⁸ - and therefore is not a sound basis to reduce the weight to be attached to the GBR itself.

²² CD 4.77.15 at paragraph 33.

²³ CD 8.3 – Figure 8.1 on page 68.

²⁴ See paragraphs 37 and 41 of CD 4.77.15.

²⁵ CD 5.11 – for example, page 101.

²⁶ Agreed by Mr. Parker in xx.

²⁷ See Table 13.1 on page 117.

²⁸ See Draft Site Selection Evaluation at CD 5.8.

g. Therefore, the criticisms raised by the examining Inspectors do not affect the findings of the GBR so far as they relate to the North Site. Nor is there any other basis for departing from the findings of the GBR.²⁹ Mr Gray had not considered the GBR any detail, despite accepting that it was relevant to his evidence, but said that the visual findings in relation to the North/West part of SSA8 “*seemed right*”. There was a faint suggestion raised by Mr. Fidgett for the first time in cross-examination on the last day of the evidence that circumstances may have changed since the GBR was published (potentially because of Mr. Collins had planted some new trees around the North Site) but it was difficult to understand what had changed and why this would affect the findings of the GBR.

23. I turn next to consider the impact of both developments on Green Belt openness and purposes – starting with the North Site.

North Site: harm to Green Belt Openness and Purposes

Openness

24. The Site comprises approximately 14ha of undeveloped countryside. There is only a very small amount of existing built development on the site,³⁰ and such built form that there is would not be regarded as inappropriate in Green Belt policy terms. It is therefore spatially completely open. Whilst there is some screening of views into the North Site from existing vegetation (on the north and east boundaries) there remains views into the open areas of the North Site from these locations. More open views into the North Site can be obtained from the west, particularly from Public Right of Way (“PROW”) St Michael Rural Footpath 12 where, as Mr. Gray acknowledges, “*the full sense of openness of the Green Belt*”³¹ can currently be experienced. Therefore, to a great extent, the North Site is also visually open.

²⁹ Mr. Parker also claims that the Council resiled from any reliance on the Green Belt Review in the Burston Nurseries appeal. However, he was unable to point to anything in the Burston Nurseries decision to suggest that either the Council or the Inspector considered that the Green Belt Review should be given no weight because of the findings of the Inspector.

³⁰ See, for example, Ecology Appraisal – CD 4.9 – Figure 19 on page 29.

³¹ See Mr. Gray POE at paragraph 8.7.

25. The North Site does not immediately adjoin the existing settlement edge of Chiswell Green,³² being separated from the western edge of the settlement by an open paddock and an evergreen hedge. This prevents the existing settlement edge of Chiswell Green from exerting any significant influence on the open character of the Site. Further, given the vegetation on Chiswell Green Lane, Butterfly World provides very limited urban influence on the Site. Both Mr. Friend and Ms. Toyne³³ are right that the Site is not integrated with Chiswell Green. Rather, there is a strong connection with the wider countryside to the west, which ensures that the Site reads as part of a tract of open countryside beyond the settlement. Indeed, Mr. Gray agreed that the Site “*absolutely*” has a strong relationship with the open countryside to the western side of the Site.³⁴
26. Unsurprisingly, therefore, the GBR identified that the northern part of SSA 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*”³⁵ Mr Gray did not dispute that finding saying that it “*seemed right*”, and nor did he volunteer any explanation for why they did not also apply to the North Site.³⁶ The GBR also acknowledges that the site falls within an area that “*is separate from the edge of the settlement and relates more to the wider countryside*”.³⁷
27. Spatially, the development would result in a very substantial loss of openness on the North Site. Fields which are currently predominantly open would be replaced by a significant amount of urban development comprising buildings, roads and other associated infrastructure. Based on the indicative layout, over 10ha of this 14ha site would be covered with built form. The existing built form on site has a footprint of c. 560 sqm; this would be replaced with a developed area of c. 100,000 sqm³⁸ - a 18,000% increase There would also be a very substantial increase in volumetric terms,³⁹ with

³² See, e.g., Ms. Toyne – Appendix LT3 – Site Context photo 7.

³³ See Ms. Toyne’s POE at paragraph 7.5.

³⁴ In xx.

³⁵ CD 5.11 – page 101.

³⁶ In xx.

³⁷ CD 5.11 – page 101 under the heading “Settlement Form”.

³⁸ Officer’s Report – CD 4.48 at paragraph 8.2.4. Mr. Fidgett agreed to these figures in xx as a generalised indication of the level of increase.

³⁹ Agreed by Mr. Fidgett (with the caveat that there would be with any development of this nature – which, self-evidently, does not reduce or minimise the level of harm caused).

proposed buildings of 2-3 storeys high. Even Mr. Fidgett acknowledged that there would be a substantial to very substantial loss of spatial openness.⁴⁰ The impact is plainly very substantial.

28. This harm would be irreversible and cannot be mitigated. A substantial area of presently open Green Belt land would no longer be characterised by an absence of built development.
29. The impact would also not be restricted to a loss of spatial openness: in addition to this very substantial loss of spatial openness, there would be a significant loss of visual openness.
30. In his written evidence, Mr. Gray contended that the visual impact on openness would be “*very localised and marginal*”.⁴¹ However, as he acknowledged, he had assessed the impact of the development on visual openness in a similar way to how he had judged the impact on visual appearance – taking into account exactly the same considerations.⁴² This is agreed to be the wrong approach, and this fundamental error infected his assessment of the harm to visual openness. For example, the view from Footpath 12, previously assessed as having a “*negligible*” effect on openness, was revised to “*moderate*” – even on Mr. Gray’s own analysis.⁴³ Similarly, the view from residential properties to the east, previously assessed as “*moderate*” was upgraded to “*major adverse*”.⁴⁴ As a consequence, his written evidence is largely worthless as an analysis of Green Belt visual harm.
31. These key errors were compounded by a failure to take into account or understand the appeal proposals – which means that even these revised effects underplay its true impact. As set out below, Mr. Gray had not taken into account the gaps in the boundary screening which would enable “*clear views*”⁴⁵ into the site at places on the eastern and western boundaries. Further, the GBR – agreed to be a relevant document when assessing the

⁴⁰ Accepted in xx. His point was the need to consider both the spatial and visual aspects (although as set out below – the visual harm arising from the development cannot reduce the level of spatial harm to openness).

⁴¹ Mr. Gray’s POE at paragraph 8.3.

⁴² Agreed in xx.

⁴³ Agreed in xx.

⁴⁴ Agreed in xx.

⁴⁵ Mr. Gray in xx.

effect of the proposals on visual openness – had not been considered in any detail by Mr. Gray.

32. The correct position, as explained by Mr. Friend, is that there are a number of viewpoints, immediately adjacent to, and further away, from the North Site where the visual impact from the proposed development would be substantially harmful to openness.
33. The development would be clearly visible from more elevated land to the west of the site, such as Footpath 12; reducing openness in this sensitive location can currently be experienced. The harm to visual openness from this location is agreed by Mr. Gray to be moderate (at least). In truth, it is greater than this as there would be clear views into the site from the west, as opposed to the “glimpsed” views claimed by Mr. Gray. The reduction in visual openness would also be visually perceived from the footpaths that run adjacent to the Site on the northern (Footpath 80) and western (Footpath 21) boundaries where built form would be visible in place of existing views into an open site. Further, from the east, the existing clear views across an open site from the residential properties on Cherry Hill and The Croft would be foreshortened leading to a now agreed major adverse impact on visual openness.
34. Overall, the development would be perceived as a significant incursion of the settlement into the wider open countryside. Mr. Gray expressly agreed that the development will have significant effects on openness which are more than localised.⁴⁶
35. On top of this, it is necessary to consider the impact of the development on activity. Whilst this is also agreed to be material, it is not something that had been considered by any of the North Site’s witnesses in their written evidence. Currently, there is very little activity on or from the North Site. The increase in internal movements; vehicular trips

⁴⁶ In xx. Given that Mr. Fidgett sought to then question whether this concession had been made – the relevant part of the exchange is set out below:

There will be a significant effect on the visual openness of the Green Belt that is more than localised? There is a level of significance.

I can write down that it is common ground that there is significant adverse effects on openness from the development? I do agree that there is bound to be a level of significance. It is significant – yes.

Significant visual effects on openness that are more than localised? Yes

on Chiswell Green Lane, noise etc, would all result in a significant increase in activity on the Site that would add further harm to openness.

36. For all of these reasons, the North Site Appellant was right to accept – in the original Statement of Common Ground – that there would be substantial harm to openness.⁴⁷ That is plainly a reference to the degree of harm (not its weight). For the reasons set out above, this harm is at the highest end of the scale – very substantial. The overall effects go beyond those which would inevitably arise from development of this quantum.⁴⁸ This is a Site with a very open baseline; separated from the existing settlement edge; surrounded on all sides by PROWs, and clearly visible from the more elevated land to the west. It is not surprising that inserting major residential development into this highly sensitive area would give rise to harm to Green Belt openness at the highest end of the scale.

37. In the course of the Inquiry, the North Site Appellant – perhaps worried that it had been too realistic about the effects of the development in its written evidence – sought to further downplay the level of harm. In a document entitled “Statement of Common Ground 2”,⁴⁹ Mr. Fidgett sought to record his evidence as noting only a “moderate” degree of harm to openness. This late attempt to minimise the harm caused should be rejected:

(1) For a start, it departs from the agreed original Statement of Common Ground, without any explanation; and nor was the basis for a moderate degree of harm explained in Mr. Fidgett’s written evidence.⁵⁰

(2) In any event, that written evidence (and the subsequent “SOCG2”) was prepared a time when (as set out above) Mr. Gray considered the visual effects to be “*very localised and marginal*”. However, Mr. Gray had applied the wrong test and in it is now common ground that, assessed on the correct basis, the development has significant visual effects on openness that are more than localised.

⁴⁷ Under “Table of Agreements and Disagreements” – “Substantial harm caused by way of inappropriateness” is stated to be “Agreed”.

⁴⁸ A concession made by the Council’s witness in relation to the South Site, but not in respect of the North Site.

⁴⁹ ID 19.

⁵⁰ Mr. Fidgett’s POE addressed the weight to be given to this harm (said to be moderate to substantial); there was no suggestion that the degree of harm was only moderate.

(3) In addition, as set out above, the undoubted visual harm that results from the development can only add to the spatial harm to openness. Therefore, even if the visual harm to openness here is only limited (which it is not, and this is now agreed), it would drive a coach and horses through the protection afforded to the Green Belt in national planning policy if this level of harm could be said to somehow reduce the agreed substantial harm to spatial openness to somehow an overall degree of moderate harm to openness.

38. Overall, the development on the North Site would result in very substantial harm to Green Belt openness.

Green Belt Purposes

39. The starting point is the GBR. The North Site is located in an area of “*higher sensitivity*” and was not recommended for release in the GBR; indeed, in light of the findings of the GBR in relation to this part of SSA 8, the North Site is very far from being at the front of the queue for release.

40. Whilst Mr. Fidgett sought to rely on the fact that the fact that SSA 8 itself had performed comparatively well within the GBR; this is based on a misreading of the GBR. The “*sub-area identified on pasture land at Chiswell Green Lane*” identified in the Stage 1 Report as contributing least to Green Belt purposes⁵¹ is plainly the South Site and not the whole of SSA 8. That is clear both from the description used in the Stage 1 Report (e.g. the reference to the Butterfly World being located “*along Miriam Road to the west*”)⁵² and the fact that the Stage 2 Report clearly considered that development within the remainder of the sub-area would result in an unacceptable level of harm to Green Belt purposes.

41. In any event, the findings of the GBR are borne out by the detailed appraisal of the North Site’s performance against Green Belt purposes carried out at this Inquiry.⁵³ Turning then

⁵¹ At paragraph 8.2.9.

⁵² See CD 5.10 at paragraph 8.2.9 on page 62 (Emphasis added).

⁵³ It is worth noting that there is nothing in the criticism that Mr. Connell has simply translated the results of the GBR parcel assessment when assessing the degree of harm caused by this development. As is made clear from his POE (e.g., at paragraph 4.23) he has assessed the effects of this development. That is why on occasion he comes to a different judgment from the GBR. For example, he concludes that the development would result in

to assess the scheme against the Green Belt purposes set out in paragraph 138 of the NPPF.⁵⁴

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

42. The GBR found that this parcel made no contribution to this purpose. However, that is because – for the purposes of its strategic review - it treated “large built-up areas” as being London, Luton & Dunstable and Stevenage.⁵⁵ Therefore, following the methodology in GBR, there would be no large built-up areas in the District – even St. Albans would not be defined as a large built-up area.⁵⁶ It was inevitable, applying that approach, that the parcels around St. Albans and Chiswell Green would be found to make no contribution to preventing unrestricted sprawl. Plainly, for the purposes of this appeal, Chiswell Green should be considered to be a large-built up area. It is a settlement identified in the Local Plan;⁵⁷ and as the Appellants are keen to emphasise elsewhere, has a range of services and facilities. Indeed, it was treated as a large built-up area by the Inspectors at both appeals into the Burston Nurseries development,⁵⁸ and there is no reason for departing from that approach here.

43. The development would plainly result in harm to this purpose. 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 settlement edge, and extends westwards beyond the former Butterfly World site.⁵⁹ This is why neither the GBR nor the withdrawn Local Plan

moderate harm to urban sprawl (purpose a) whereas the GBR found that Strategic Sub-Area 8 of Parcel 25 made no contribution.

⁵⁴ Mr Connell was criticised for not recognising that the GBR added an additional “local purpose” when considering the contribution that each parcel made to the Green Belt purposes. This was factually incorrect – as Mr. Connell explained, he was well aware that the GBR had added this local purpose. In any event, it is a criticism that goes nowhere given that the local purpose relates only to purpose (b). The effect of the local purpose is that potential merging between St. Albans and Chiswell Green can be taken into account. However, Mr. Connell does not find harm to purpose (b) on this basis.

⁵⁵ CD 8.3 – page 25.

⁵⁶ CD 8.3a – November 2013 GBR - see map on page 40 – Figure 1. All of the parcels around St. Albans make a limited contribution to limiting urban sprawl.

⁵⁷ The Barton Willmore (now Stantec) methodology (CD 2.6) says that a “large built-up area” can be defined as “An area that corresponds to the settlements identified in the relevant Local Plan”. Chiswell Green is a settlement identified in the relevant Local Plan (CD 8.1 – Policy 2 on page 13: “The following large villages are classified as Specified Settlements”).

⁵⁸ CD 9.16 – First Burston Nurseries appeal decision - paragraph 36 finds conflict with purpose (a). Same approach taken in second decision (CD 9.4) – paragraphs 26 and 29.

⁵⁹ As Ms Toyne notes in her POE at paragraph 7.37, the development “could be considered as an incoherent, dispersed or irregular form of development and contribute to sprawl as it is not connected to an adjoining settlement”.

suggested that a westward expansion to the North of Chiswell Green Lane would be appropriate.

44. Importantly, there is also no defensible boundary to the western edge of the site. The existing trees on the western boundary are limited in depth⁶⁰ and would form a weak boundary even with additional buffer planting – especially since this boundary would be punctured by the proposed connections into Footpath 21. However, the effect would be most apparent at a distance from the North Site to the west. From these elevated views (such as Footpath 12), it is agreed that the settlement of Chiswell Green will visibly extend to the west towards the viewer by about 650 metres – or a third of a mile.⁶¹ As extended, it is agreed that the new settlement edge of Chiswell Green will appear to be surrounded by open countryside to the north, south and west.⁶² Importantly, there is no obvious physical boundary or feature separating the site on the western edge from the remaining open countryside. The nearest road to the west is Furzebushes Lane – which lies beyond the land to the west of the site.
45. Indeed, when asked whether there was a physical boundary to the west which meant that someone looking at this extension of Chiswell Green would say to themselves “I know why it has stopped there”, Mr. Gray readily agreed that there was no feature like that.⁶³
46. If that is not harm to this purpose, it is hard to know what would be. Post-development, Chiswell Green would be perceived to be sprawling into the open countryside with no obvious connection to the existing settlement or limit on its expansion. Mr. Fidgett’s assessment that there would be no harm at all to this purpose is clearly wrong and, in the circumstances, Mr. Connell’s assessment of moderate harm to this purpose is in fact generous to the North Site.

(b) To prevent neighbouring towns merging into one another

47. There is also harm to this purpose (albeit limited). As found in the GBR, the wider Parcel 25 forms part of a network of parcels which form the Strategic Gap between St Albans

⁶⁰ For example, see Viewpoint 4 of Mr Friend’s POE for the North Site.

⁶¹ Agreed by Mr. Gray in xx.

⁶² Agreed by Mr. Gray in xx – albeit that he said that views would be slightly restricted to north of the site.

⁶³ In xx. Paragraph 143(f) of the NPPF states that when defining Green Belt boundaries, plans should – (f) define boundaries clearly, using physical features that are readily recognisable and likely to be permanent.

and Hemel Hempstead.⁶⁴ Whilst the development clearly would not result in coalescence with Hemel Hempstead, towns tend to merge incrementally over time, and therefore it is unlikely that one single development will result in towns merging. In other words, this purpose can be offended incrementally. The development of this site (especially if it was together with the South Site) would result in ribbon development along both sides of Chiswell Green Lane, physically reducing the separation with Hemel Hempstead, albeit to a limited extent given the gap that would remain. Mr. Connell was right to find limited harm to this purpose.

(c) To assist in safeguarding the countryside from encroachment

48. It is common ground that there is at least moderate harm to this purpose.⁶⁵ This level of agreed (minimum) harm to this purpose is far from inevitable.⁶⁶ It also must involve a recognition that the Site is currently perceived as countryside, and would no longer be post-development. However, the North Site Appellant has again underplayed the effect of the development – which would in fact result in very substantial harm to this purpose.
49. Mr. Fidgett’s assessment of only a moderate degree of harm relied on two key components of Mr. Gray’s evidence that no longer stand up to scrutiny. First, Mr. Fidgett’s claim that the North Site’s “*connection [with] and perception of the wider countryside is limited*”⁶⁷ is wholly inconsistent with both how the Site is perceived on the ground and with Mr. Gray’s acknowledgment that the North Site “*absolutely*” has a strong relationship with the open countryside to the western side of the North Site.⁶⁸ Second, the suggestion that the visual impact would be “*limited to localised views without significantly impacting the countryside extending to the west or north*”⁶⁹ no longer reflects Mr. Gray’s position that there would be a significant effect on visual openness from the Footpath 12 to the west.

⁶⁴ November 2013 GBR – CD 8.3 – Table 8.1.

⁶⁵ See Mr. Fidgett’s PoE at paragraph 8.22. He agreed in xx that the reference to there being “limited” harm in SOCG2 was (another) error.

⁶⁶ See, for example, the Colney Heath appeal decision – CD 9.2 – at paragraph 26 – where no harm was found to this purpose. Mr. Friend agreed in xx that there would inevitably be an impact on encroachment from any development, but importantly that there will be better effects on some sites compared to others.

⁶⁷ See Mr. Fidgett PoE at paragraph 8.18.

⁶⁸ In xx.

⁶⁹ Mr. Fidgett POE at paragraph 8.20.

50. In truth, the harm to this purpose would be very substantial – a function of the development very substantially reducing openness on a site that is currently visually perceived as open countryside. In this respect, it is important to remember that there is an inherent connection between a loss of openness and harm to this purpose. As it was put by the Court of Appeal in Turner: “*Openness of aspect is a characteristic quality of the countryside, and ‘safeguarding the countryside from encroachment’ includes preservation of that quality of openness*”.⁷⁰
51. Overall, the significant level of harm to Green Belt purposes counts very substantially against the grant of planning permission for the North Site.

South Site: harm to Green Belt Openness and Purposes

Openness

52. Whilst influenced to a degree by the existing settlement edge of Chiswell Green, the vast majority of the South Site is spatially open.⁷¹ 96% of the site is currently free from built development,⁷² and the built development that does exist on the South Site is restricted to its northern end. To the extent that reliance was placed in the written evidence on the fact that the South Site is internally divided into parcels defined by hedgerows with trees and small woodlands, Ms. Toyne agreed that those features do not limit its sense of spatial openness. In a spatial sense, the site is currently positively contributing to the fundamental aim of Green Belt policy of keeping land permanently open.⁷³ Further, whilst the South Site is currently influenced to a degree by the current activities on Butterfly World (storage of construction materials, vehicle parts, household items, vehicle sales), it is important to note that these activities are subject to enforcement action.⁷⁴
53. Ms Toyne agrees that, as is stated in the LVIA, the development proposal will result in a substantial increase in built form on the Site.⁷⁵ As set out in the Officer’s Report,⁷⁶ the

⁷⁰ Quoted in Mr. Connell’s POE for the North Site at paragraph 4.11. See also the Smallford Works appeal decision at paragraph 38 – CD 5.18.

⁷¹ Agreed by Ms. Toyne in xx.

⁷² See Ms. Toyne’s POE at paragraph 5.17: “*Built form already covers 4% of the appeal site*”.

⁷³ Agreed by Ms. Toyne in xx.

⁷⁴ CD 5.30 –page 6.

⁷⁵ Agreed in xx and see also paragraph 8.6 of the LVIA (CD 2.5) – page 43.

⁷⁶ CD 3.4 - at paragraph 8.3.5.

built-up area would comprise c. 10.62ha of a c. 13.96ha site. As spatial openness is concerned with the absence of built development – a substantial increase in built form must result in substantial harm to spatial openness.

54. Whilst Ms. Toyne relied on the fact that 41% of the site would not be covered with built development, that figure must be treated with considerable caution. For a start, it assumes that the school land is undeveloped and therefore Ms. Toyne agreed that the 41% figure would reduce if the school came forward. In any event, the 41% figure includes within it elements that will undoubtedly impact on spatial openness (such as children’s play areas; cycleways; drainage, utilities and service infrastructure; and roads).⁷⁷ Further, the urban influence of the new built form will extend far beyond its footprint; as the undeveloped parts of the South Site will be perceived in its context. Almost the entirety of the South Site will be deprived of its open character.
55. In any event, the extent of site coverage only tells part of the story. As the PPG recognises, the volume of the built form is highly relevant – which requires consideration of height. Here, the height of the new buildings ranges from 2.5 up to 3 stories.⁷⁸ In comparison with the baseline position, there will be a massive increase in volume of built form on the site and the volume of built form proposed as part of the development is very substantial (even Ms. Toyne accepted that there would be substantial volume of built form on the South Site and a substantial increase above the baseline).
56. There is no prospect of remediability – the change will be irreversible.⁷⁹ The footprint and volume of built form would be a permanent feature and its spatial impact will not reduce over time.
57. The fact that the spatial harm would be restricted to the appeal site itself, as noted by Ms. Toyne,⁸⁰ is an irrelevant consideration: development will never have a spatial or physical impact on openness on land outside of the boundaries of the site,⁸¹ since development

⁷⁷ Ms Toyne agreed that these features would impact on spatial openness to some extent.

⁷⁸ CD 1.25.

⁷⁹ LVIA (CD 2.5) – page 43 - at 8.8: “*The existing fields will be subject to a pronounced and irreversible change from open pasture to residential development*”.

⁸⁰ See Ms. Toyne’s POE at paragraph 5.23.

⁸¹ Agreed by Ms. Toyne in xx.

will never take place outside the red-line boundary. Having regard to this consideration as a factor to reduce the degree of spatial harm would mean that the spatial impacts of the development would be unduly minimised.

58. The loss of openness would be visually perceived by the many who have views across it – in particular, from Chiswell Green Lane; from residential properties on Long Fallow, Forge End and Woodlea; and from pedestrians on PROW 82, 28 and 22. These are local views but the fact that the loss of openness may be only locally perceived does not lessen the conflict with the fundamental aim of Green Belt policy. As such, whilst the South Site is fairly visually contained, the impact of the development within that area is substantial.
59. For example, residential properties along the settlement edge (such as those on Long Fallow, Forge End and Hammers Gate) currently have open views over the site.⁸² Far from being “a very few” properties, as claimed by Ms. Toyne, there are in fact a significant number of properties. It is common ground that post-construction, residents of houses will have open, close range, frontal views of new built form in place of views of an open field.⁸³ That will result in a large magnitude of change (i.e. *a pronounced change to the existing view, resulting in the loss or addition of features that will substantially alter the composition of the view*).⁸⁴ This arises from being able to see built form in place of views of an open field – i.e. harm to visual openness. The factors that reduce the impact to visual appearance to negligible in Year 15 (in the LVIA) will do nothing to reduce the impact on visual openness. The visual openness of the South Site for these visual receptors will be completely lost.
60. Similar effects will be experienced elsewhere. The LVIA records adverse effects at Year 1 to varying degrees at seven visual receptors: (i) Residential properties on the settlement edge; (ii) Users of Chiswell Green Lane; (iii) Users of Long Fallow, Forge End and Woodlea; (iv) Pedestrians on PROW 82, 28 and 22; (v) Workers at the commercial estate on Miriam Lane. These adverse effects all arise from the visibility of

⁸² LT2 – Photograph K – e.g., properties on Long Fallow have views over an open field.

⁸³ LVIA – CD 2.5 – paragraph 8.16 (page 45). Agreed in xx.

⁸⁴ CD 2.5 (Last Appendix) - Table 1.6 on page 8.

additional built form into the view.⁸⁵ That is a visual harm to openness which would be compounded by the high degree of activity that would be introduced onto a site where presently there is almost none.

61. Overall, the suggestion that inserting 391 new homes and associated development onto a spatially open site would only result in a “limited” degree of harm to openness, as suggested by Mr. Kenworthy, is plainly wrong. It is not even supported by the Appellant’s own evidence (Ms. Toyne referred on a number of occasions to the moderate harm that would be caused to the openness of the South Site).⁸⁶

Green Belt Purposes

62. Turning to assess the scheme against the Green Belt purposes set out in paragraph 138 of the NPPF:

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

63. The South Site currently performs a role in fulfilling this purpose as there is a clear boundary, and contrast, between the residential properties at the settlement edge of Chiswell Green and the open undeveloped nature of the South Site. Despite attempts to argue that there is “clutter” on the Site, in truth this is minimal and to the extent that it is present it is confined to the very northern boundary of the South Site adjacent to Chiswell Green Lane.⁸⁷ The appeal proposals would extend the settlement of Chiswell Green in a westerly direction and built development would now be spread across the full extent of the South Site.⁸⁸

64. Further, as agreed by Ms. Toyne, it is relevant when considering whether or not development amounts to urban sprawl to consider the extent to which it has defensible boundaries – and in particular, whether every boundary is defensible. As Mr. Connell observed, the south-western part of the Site, which borders onto Miriam Lane, does not

⁸⁵ Agreed by Ms. Toyne in xx.

⁸⁶ For example, she expressly agreed that her position would be that there would be moderate harm to spatial openness and in addition harm to visual openness. She also said that she did not consider that the level of activity on site would be “*sufficient to change the balance of moderate harm on the openness of the site*”.

⁸⁷ See, e.g., Site Appraisal Photos G and K – at Ms. Toyne’s Appendix LT2. There is no “clutter” or buildings to the south of the site.

⁸⁸ CD 2.27.

have a strong defensible boundary.⁸⁹ There is no landscape bunding in this location and limited visual screening.⁹⁰ There is very little to physically separate the South Site from the open countryside beyond to the south-west. Further, Miriam Lane is essentially an access road to the (now closed) Butterfly World. It is not a major transport corridor. In fact, it is now not even possible to travel up Miriam Lane – since it is blocked by closed gates. The GBR had placed a lot of weight on Butterfly World as providing a physical barrier.⁹¹ Now that Butterfly World is closed, the extent to which Miriam Lane provides a permanent physical boundary at the south-western corner of the South Site is reduced.

65. The proposed development introduces built form close to the edge of the site in this sensitive location.⁹² This will increase the perception of urban sprawl, resulting in a moderate degree of harm to this purpose – as correctly assessed by Mr. Connell.

(b) To prevent neighbouring towns merging into one another

66. Similar considerations apply to the South Site as they do to the North Site (see above at paragraph 47). For the reasons set out there, there is a degree of harm to this purpose (albeit limited).

(c) To assist in safeguarding the countryside from encroachment

67. It is common ground that there is some harm to this purpose. That finding of harm must include an acceptance that the Site is currently countryside.⁹³ Post-development, however well-designed the scheme is, the South Site will no longer be perceived as countryside.
68. However, the harm to this purpose is greater than that assessed by Ms. Toyne (moderate as opposed to limited). In particular, the extent to which the South Site is influenced by the urbanising effect of Butterfly World has reduced since Stage 2 of the GBR was published in February 2014. There can be no doubt that the dome that was permitted under the original Butterfly World planning permission would have been a significant feature in the landscape – at 23 metres in height and 100 metres in diameter.⁹⁴

⁸⁹ CD 2.27.

⁹⁰ Viewpoint G at CD 3.19B.

⁹¹ February 2014 GBR – quote from Ms. Toyne at paragraph 2.60 of her POE: “*This development bounds the outer extent of the pasture land and creates a physical barrier to the open countryside*”.

⁹² Land Use Parameters Plan – CD 1.28.

⁹³ CD 2.6 - Page 11: “*...the development of the Site would result in the loss of countryside...*”

⁹⁴ See features of the dome in JK8 and CD 5.13.

It would have contributed significantly to a perception of the appeal site as an urban fringe location. If constructed, the dome would have had more of an effect on the openness of the Green Belt in this location than the base of the dome – which is what is currently on site at the moment. At the time that the GBR was published, Butterfly World was open and there was no reason to suppose that the dome would not eventually be built once sufficient funding had been obtained. Now, as Mr. Connell explained, there is no prospect of that occurring.

69. Therefore, circumstances have changed since the GBR was published. Whilst the South Site is influenced by the existing urban edge to the east; there is less influence to the west. In simple terms, the South Site reads more as countryside now than it did before. That countryside would be encroached upon by the westward expansion of Chiswell Green resulting in moderate harm to this purpose.

Conclusion on Green Belt Harm

70. Substantial weight must be given to the harm identified on both sites.
71. It is important to recognise that this involves giving substantial weight to a degree of harm. Whilst Mr. Kenworthy refused to agree, giving substantial weight to a substantial level of harm is a weightier consideration under paragraph 148 of the NPPF compared to giving substantial weight to a limited level of harm. That must be the case otherwise the overall weight that would be given to (say) the harm to openness arising from a larger replacement house in the Green Belt would be the same as that given to major warehouse development. The fact that he failed to recognise this calls into doubt his overall planning balance.
72. On the North Site, Mr. Fidgett's approach is even harder to understand. Whilst substantial weight is given to the definitional harm, the other Green Belt harm he identifies is given less than substantial weight (either moderate or moderate to substantial).⁹⁵ Again, it is impossible to understand why, since there is no explanation for this in his written evidence. However, it is plainly inconsistent with the NPPF which states that substantial weight should be given to "*any harm to the Green Belt*" (paragraph

⁹⁵ See ID19 – Planning SOCG2.

148). The only element of harm that substantial weight has been given to is the definitional harm. Therefore, not only has the North Site underplayed the degree of Green Belt harm caused by the development, this is compounded by impermissibly reducing the weight to be given to this harm. The overall conclusions reached by Mr. Fidgett should be treated with considerable caution in the light of this.

(3) NON-GREEN BELT HARM

73. It is then necessary to consider any other non-Green Belt harm in respect of both sites. This includes, for both sites, (i) harm to landscape character and appearance and (ii) loss of best and most versatile (“BMV”) agricultural land.
74. In this respect, it is important to remember that any other harm must be weighed into the balance under paragraph 148 of the NPPF. Therefore, the fact that the reasons for refusal do not indicate a freestanding breach of either agricultural land or landscape policies does not make any difference to the balance under paragraph 148 of the NPPF.⁹⁶ If there is harm, which there is, it must be weighed into that overall balance and the degree of harm is the same whether or not it is said to separately breach the relevant local plan policies.⁹⁷

Character and appearance

75. 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. As set out above, all that is needed is to assess the level of harm caused and add it to the balance of harm arising.

North Site

76. The starting point is the weight to be given to the LVIA submitted with the application, and indeed the evidence of Mr. Gray more generally. Unfortunately, that evidence can

⁹⁶ Accepted by Mr. Kenworthy in xx.

⁹⁷ Accepted by Mr. Kenworthy in xx.

be given very limited weight and nor can there be any confidence that the LVIA accurately sets out the effects of the development:

- (1) It was rightly accepted that the LVIA is an important document in the determination both of the application and of this appeal.⁹⁸ However, it is riddled with errors.⁹⁹ To take just one example, Mr. Gray acknowledged that the conclusion it reached on the effect of the development on the landscape features of the Site was “*plainly wrong*” and needed to be “*re-written*”¹⁰⁰ – not least because it showed that the landscape effects of the development got worse, not better, over time. For some reason, the North Site Appellant did not take the opportunity to correct these errors before the Inquiry began even though they were pointed out by Mr. Friend over a month before on the exchange of proofs. As a result, the LVIA was effectively re-written in the course of the Inquiry through a “Statement of Common Ground”¹⁰¹ that Mr. Gray acknowledged was itself “rushed” and did not fully correct the LVIA.

- (2) This is a point that goes well beyond the credibility of the judgments reached in the LVIA and subsequently. As Mr Gray accepted, assessing the nature and significance of effect is an important part of LVIA process and for an LVIA to be fit for purpose, it is important that the assessment of effects is transparent and understandable. It was also (rightly) agreed that it is important to know why effects are adverse both to know whether and to what extent they will reduce, but also to design effective mitigation for the development.¹⁰² The LVIA (even as re-written through the “SOCG”) does not fulfil this function. For example, Mr. Gray accepted that there was nothing in the LVIA which records why there are major adverse effects on the features of the Site post-construction.¹⁰³ The LVIA does not transparently set out the nature of the effects from the development and is therefore not fit for purpose; and nor is it of any

⁹⁸ Mr. Gray in xx.

⁹⁹ By way of a few examples only, paragraph 7.9 should be corrected to say that there will be “major adverse” effects at the post-construction stage; 7.10 – should be corrected to say that the residual effects on the site would be “moderate beneficial” not “slight beneficial”; paragraph 5.46 should read “major adverse” impact on residential amenity at post-construction.

¹⁰⁰ Agreed in xx.

¹⁰¹ As we will see, this was not the first time that the North Site used a post-evidence SOCG as a device to effectively re-write its evidence without any explanation or acknowledgement.

¹⁰² In xx.

¹⁰³ Agreed in xx.

assistance in designing effective mitigation (even at the outline stage) – or in providing any confidence that the effects can be acceptably mitigated.

- (3) That can then be seen in the proposals we have in front of us. There are no parameters plans addressing matters such as building height, or site layout (unlike on the South Site); nor any landscape strategy to inform the consideration of landscaping at reserved matters stage (again, unlike the South Site). Further, for all that the North Site Appellant waxed lyrical in its evidence about how the development was “landscape-led”, the indicative masterplan was obviously fixed at a very early stage in the process and had not been informed by the LVIA in any meaningful sense at all.¹⁰⁴ Mr. Gray had not even spoken to the design team.¹⁰⁵ Whilst Mr. Friend has taken into account the potential for mitigation in his assessment of effects, even for an outline proposal it is uncommon for there to be so much uncertainty about how the development could actually acceptably come forward at this stage and what the residual effects would actually be.
- (4) The assessment of visual effects was similarly flawed. There is agreed to be no GLVIA compliant assessment of the effects of the development on Footpath 82 in the LVIA,¹⁰⁶ notwithstanding the fact that it runs in close proximity to the Site to the east. Further, at times in his evidence, Mr. Gray appeared to be making up the visual effects of the development on the spot (for example, in the space of under a minute, Mr. Gray said that there would be “no harm” to visual receptors on Footpaths 80 and 21; then minor harm; then no harm; then beneficial effects; before eventually settling on no harm).
- (5) These key errors were then compounded by a failure to take into account important elements of the appeal proposals. For example, the effects of the footpath connections onto Footpath 21 on the north and south-west corners of the North Site had not been assessed.¹⁰⁷ Further, Mr. Gray had not assessed the impact of the emergency access

¹⁰⁴ See CD 4.43 – page 5. There is no material difference between the indicative masterplan in place then which cannot have been informed by the LVIA in any meaningful way since it was published 7 days after the LVIA.

¹⁰⁵ Agreed in xx – the suggestion instead was that his advice had been filtered through the Applicant’s agent – presumably Mr. Parker.

¹⁰⁶ Agreed in xx.

¹⁰⁷ Agreed in xx. In fact – see on page 9 of the LVIA (CD 4.17) – Viewpoint 8 (location of the North-West footpath connection) was discounted from further assessment on the basis that there is no visual connection with the site.

to the east of the North Site which would result in a break in the existing boundary hedgerow. As a result, his assessment of effects was revised on the hoof in cross-examination.

(6) None of these errors can be wished away on the basis that this is an outline proposal. Of course it is, but changing the indicative masterplan will have other and different consequences. For example, strengthening the buffer to the west, or moving built form away from the western boundary will simply move built form closer to the northern or eastern boundaries. These consequences have not been assessed at any point, both because the LVIA is so flawed and also because the indicative masterplan was never truly landscape-led in the first place.

(7) Finally, the attempt to give new landscape evidence through Mr. Fidgett should be given short shrift. Mr. Fidgett is not a qualified landscape architect and had expressly relied on the findings of Mr. Gray on landscape and visual matters in his written evidence. He agreed that on matters falling within Mr. Gray's expertise the latter's evidence should be preferred.

77. For all these reasons, there is a very real doubt about whether there is sufficient information before the Inquiry to properly assess the landscape and visual effects of this development.

78. Even if that is not accepted, and working on the basis of the material that we have, it is clear that the North Site Appellant has significantly understated the effects of the development on landscape character and appearance.

Landscape character

79. It is common ground that the North Site and its features has a medium sensitivity;¹⁰⁸ that there would be a large magnitude of change at Year 1, and a medium magnitude at Year 15; and that there would be a major adverse effect at Year 1 and a moderate significance of effect at Year 15. Unusually, the dispute is as to the nature of effect at Year 15 – since

¹⁰⁸ Given that sensitivity is a combination of value and susceptibility, in light of this common ground there is no need to resolve the dispute about whether the value of the site features is low – as assessed by Mr. Gray – or medium – as assessed by Mr. Friend.

Mr. Gray contends that the development would have a residual beneficial (rather than adverse) effect on the landscape character of the North Site itself.

80. There is no basis for this conclusion which falls apart on the most cursory examination. It is common ground that post-construction there will be a “large” magnitude of change – defined in the LVIA as *“Permanent removal of, or a significant change to, the characteristics of the landscape element in question. Limited scope for replacement, reinstatement or other mitigation”*¹⁰⁹ Not only does that finding in of itself suggest that there would be limited scope for mitigation but the significant change to the characteristics of the North Site which is adverse in Year 1 is agreed to be the introduction of built form onto the site. That harmful effect of the development, which covers 74% of the Site,¹¹⁰ remains there at Year 15.
81. Rather, it is agreed that the main change that has happened in the 15 years post-construction is that the landscaping will have matured.¹¹¹ However, whilst this might help soften and integrate the new built form (which is why Mr Friend reduces his adverse effects from major to moderate) it is agreed that the new green infrastructure will still be perceived in the context of a new housing estate – the very thing that was causing the major harm in the first place.¹¹² It is therefore very hard to understand why the adverse effects do not merely reduce, but (on Mr. Gray’s approach) are in fact offset to such an extent that the net effect is beneficial.
82. The only substantive answer he could give was that the landscaping would be “exemplary”. However, as he agreed, achieving well-designed landscaping is a requirement of national planning policy, and therefore any scheme;¹¹³ and there is simply no detail as to what this supposedly exemplary landscaping would involve; whether it could be provided whilst still delivering the required quantum of development; and why it shifts the effects all the way to beneficial. Anyone can turn up to an Inquiry, claim that their scheme will be “exemplary” and then say (without more) that the overall effect will be beneficial. We rightly adopt a more rigorous approach than this.

¹⁰⁹ LVIA (CD 4.17) – page 12.

¹¹⁰ See CD 4.47.1.

¹¹¹ Agreed in xx.

¹¹² Agreed in xx.

¹¹³ Agreed in xx.

83. In truth, as Mr. Friend finds, the residual effect of the development (with mitigation) on the landscape character of the Site and its surroundings would be to irreversibly change the character of the agricultural field from arable field to one with built form, associated managed open space, infrastructure and activity. Whilst the maturation of the primary and secondary mitigation measures, in particular the planting within the open space, will result in a softening and filtering the built form, the rural character of the North Site will have been lost. The effect would be a moderate residual adverse effect to its landscape character. That is a sensible, balanced, and reasoned view.
84. For similar reasons, the harm to the setting of the Site would also be moderate adverse.¹¹⁴ It is common ground that there would be no material impact on the wider St Stephens Plateau Landscape Character Area.¹¹⁵

Visual effects

85. Turning next to visual effects. These would be experienced primarily from the north, east and west of the Site and the adverse effects on visual appearance would be significant from a number of PROWs, including three which run along the North Sites' boundaries. The suggestion in the LVIA that the overall adverse visual effects are negligible seriously misjudges the effects of the development; and in any event was revised during the course of the Inquiry.
86. Taking these effects in turn:
87. Views from PROWs to the immediate north and west of the Site:¹¹⁶ there are two PROWs that border the North Site: (i) Footpath 80, which runs to the north of the site and (ii) Footpath 21, which runs to the west.
88. Mr. Gray assesses the residual significance of effect as being “neutral”. There are two main reasons for this. First, the sensitivity of visual receptors using the footpath is

¹¹⁴ See Mr. Friend's POE at paragraphs 5.1.5-5.1.18 – the Landscape SOCG incorrectly states that the effects on this receptor have not been assessed by Mr. Friend.

¹¹⁵ Assessed by both witnesses as being slight – albeit Mr. Gray still contends for a beneficial effect.

¹¹⁶ See Mr. Gray's Appendix 2 – viewpoint 7 (Footpath 80) and 9 (Footpath 21).

recorded as being “low”. Second, the residual magnitude of change is recorded as being “very small”. Taking these in turn:

89. So far as sensitivity is concerned, Mr. Gray has severely underestimated the sensitivity of views from these footpaths. His assessment of “low sensitivity” is equated with a “*small number of private views visible from principal living spaces*” under his LVIA methodology¹¹⁷ which is clearly not relevant to views from a PROW. These are publicly accessible views; available to receptors likely to be using the PROWs for the purposes of recreation; by users likely to have the expectation of a rural outlook. The sensitivity should therefore be “high” under his own methodology – as assessed by Mr. Friend. In cross-examination, Mr. Gray agreed that, in accordance with GLVIA,¹¹⁸ the susceptibility of visual receptors using these footpaths was “high”. In those circumstances, an overall “low” sensitivity is plainly wrong.
90. So far as magnitude is concerned, Mr. Gray’s assessment is that there would be only a “*very minor loss or alteration to a key feature of characteristic of the existing view*”.¹¹⁹ Along both footpaths, residential built form is not characteristic of the existing landscape for much of their length as they run around the site. Even post-mitigation, built form will be visible above the hedgerow from Footpath 80 and through the existing planting from Footpath 21.¹²⁰ Mr. Gray agreed that built form on the northern boundary “*will be visible and evident*”. Further, as Mr. Gray accepted, at all points along the footpaths, people will be aware that they are walking next to a housing estate.¹²¹ Further, at the two points where there will be a break in the hedgerow on the western boundary of the site,¹²² “*clear views*” will be available into the North Site. This is not acknowledged anywhere in the assessment of effects in the LVIA.¹²³
91. Overall, there would be a substantial adverse effect on visual receptors along both footpaths.

¹¹⁷ CD 4.17 at Table 5 – page 13.

¹¹⁸ See extract at Mr. Friend’s POE for the North Site at paragraph 6.1.17.

¹¹⁹ CD 4.17 – descriptor for a “very low” magnitude of change at Table 6 on page 13.

¹²⁰ It is worth noting that Ms Toyne reaches the same conclusion – see her POE at paragraph 7.14.

¹²¹ Agreed in xx.

¹²² See illustrative masterplan at CD 4.47.1.

¹²³ Agreed in xx.

92. PRoW St Michael Rural Footpath 12:¹²⁴ this footpath is adjacent to Square Wood, at an elevated position to the west of the North Site. It is agreed not to be a localised view of the North Site.¹²⁵ It is common ground that the view is currently over open countryside;¹²⁶ that housing development is not a characteristic component of the view;¹²⁷ and that the existing settlement edge of Chiswell Green is not a prominent or detracting feature in the view.¹²⁸ It is also agreed that housing on the North Site will be evident post-construction.¹²⁹ As will be apparent from the site visit, Mr. Friend is right that there will be clear views into parts of the North Site from this location. Further, there is little that can be done by mitigation to prevent views into the site – because the site is visible by virtue of Footpath 12 being at a higher elevation than the site. The resultant harm to visual receptors at this location would be significant.
93. Views from the east:¹³⁰ these views are from residential properties on Cherry Hill/The Croft and from Footpath 82 which runs north/south to the east of the site from Chiswell Green Lane. It is common ground that the upper storeys of the development will be visible from both residential properties and also from Footpath 82 even at Year 15.¹³¹ Further, Mr. Gray had assessed the visual effects from this location on the basis that “*The existing evergreen hedge that defines the eastern boundary of the appeal site and the paddocks will remain unchanged*”.¹³² This is completely wrong as there will be a break in the hedgerow to allow for a tarmacked access of 5 metres in width and 55 metres in length. This break is agreed to enable clear views into the site and Mr. Gray agreed that the magnitude of change will increase for both residential properties and also receptors on Footpath 82 beyond that assessed in the LVIA.

¹²⁴ Mr. Friend’s – Viewpoint 6 – page 26 of his POE for the North Site. Viewpoints 18 and 19 in the LVIA.

¹²⁵ Agreed in xx.

¹²⁶ Agreed in xx.

¹²⁷ Agreed in xx.

¹²⁸ Agreed in xx. See also the previous appeal decision on the paddock land to the east of the North Site in Mr. Connell’s rebuttal at paragraph 31 – emphasis added: “*The proposed rear line of dwellings would be clearly visible above the existing hedge, because of their height and scale, when viewed from a range of vantage points on the public rights of way in the Green Belt to the west of the site. The proposal would also be in view from a number of locations along Chiswell Green Lane some distance to the south. The views of the proposed dwellings from all of the above vantage points would be more pronounced during the winter months. The line of existing dwellings along Cherry Hill and The Croft is currently visible to some degree from these vistas but they do not appear collectively as a visually discordant feature which the proposed development would successfully ameliorate.”*

¹²⁹ Agreed by Mr. Gray in xx.

¹³⁰ Viewpoints 2-4 of the LVIA – pages 30-31.

¹³¹ Mr. Gray Evidence in Chief.

¹³² Mr. Gray POE at paragraph 8.9.

94. It was agreed that there will be a large magnitude of change from the residential properties and also from part of Footpath 82 (whereas the LVIA assessed this as only being medium for the properties and the magnitude of change for the PROW had not been assessed in the LVIA). It was also agreed that there would be major (as opposed to moderate) adverse effect on residential properties – this is a significant effect under Mr. Gray’s methodology.¹³³
95. Overall, therefore, the North Site Appellant’s suggestion that the adverse visual effects are negligible seriously misjudges the visual effects of the development. The effect from all of the receptors set out above would be significant; and there would be a level of additional harm that would be significant in views from Chiswell Green Lane and from Footpath 39.
96. Mr Connell is right to give substantial weight to the overall harm from the North Site to landscape character and appearance. Mr. Fidgett’s suggestion that the degree of harm is “limited” is impossible to reconcile with Mr. Gray’s evidence. Mr. Fidgett’s further suggestion that the harm (which is common ground, if not its extent) should be given “*no weight*”¹³⁴ (i.e., effectively disregarded) is, with respect, a nonsense. The idea that the now acknowledged landscape character and appearance effects of the development should be given no weight is yet further evidence that the overall planning balance carried out by the North Site Appellant is partial and inadequate and ultimately unsound.

South Site

97. On the South Site there is significant agreement between the landscape witnesses. It is common ground that there is some harm, both to landscape character and in terms of its visual effects. However, this is ultimately given limited weight by Mr. Connell in the overall balance. Given this, it would not be proportionate to address in detail the few points of difference between Mr. Friend and Ms. Toyne in this closing – the details of which are addressed in Mr. Friend’s written evidence.

¹³³ Both changes agreed in xx.

¹³⁴ See ID 19 – the harm to landscape character and appearance was also not taken into account in Mr. Fidgett’s planning balance in his POE either.

98. Nevertheless, this harm (albeit limited) must be taken into account under paragraph 148 of the NPPF, since this paragraph requires all harms to be taken into account, not just those effects which are deemed to be of significance under the relevant LVIA methodology.

Agricultural Land

99. Both developments would result in the loss of BMV agricultural land. On the North Site, 10.9ha of Grade 3a land is lost from a total site area of 14.2ha; on the South Site it is 7ha from a total site area of 13.9ha. This results in additional harm (albeit limited) in respect of both sites, that must be weighed into the balance.

(4) OTHER CONSIDERATIONS

100. 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. Further, in considering the benefits of each proposal, a careful judgment is required – rather than merely regurgitating the findings of other Inspectors, often involving different circumstances and contexts, but in any event reflecting no doubt the evidence and arguments that were put before them which almost certainly also differed from here.

101. Taking each site in turn:

Benefits on the North Site

Affordable housing for key workers

102. No doubt much of the North Site Appellant's closing will be devoted to this topic, as it is the only truly substantive benefit that the North Site delivers. That said (i) it is important that the decision here is made based on planning, rather than emotive, considerations; and (ii) the delivery of key worker housing, which is clearly an important benefit of this proposal, is just one component of the wider planning balance that must be carried out in accordance with national planning policy.

103. Three preliminary points must be made:

104. First, whilst Mr. Fidgett has divided this into three apparently separate benefits (Housing; Key Worker Housing; and Affordable Housing), in truth there is one substantive benefit

since the “Housing” is “Affordable Housing” and it is only for “Key Workers”. Indeed, he agreed that, whilst the benefits had been disaggregated, cumulatively they amounted to very substantial weight to the benefit arising from the new housing provided by the development. Whilst splitting up this benefit into three may superficially appear to increase the “number” of benefits that arise on the North Site; it is well-established that the planning balance under paragraph 148 of the NPPF is not a mathematical exercise.¹³⁵

105. Second, the Council agrees that the delivery of key worker affordable housing is not only a benefit of the proposal but one which ought to be afforded substantial weight. The Council fully supports the provision of key worker housing.
106. The only difference relates to whether this should be substantial weight at the very highest end of the scale (i.e., very substantial) or not. This is important context. There is no suggestion by the Council that the proposed homes will “sit empty” or that the option to buy a home on the North Site would not be a profound benefit for those able to do so. Clearly, it would be. Increasing home ownership is, rightly, a key national policy objective.
107. However – when considering whether this benefit of the proposal ought to be given the very highest weighting - the Council is right to challenge the extent to which the reduction in prices will make the housing on the site materially more affordable than existing market housing elsewhere in the District and whether the proposal meets the priority need for housing in the District. These are factors that go to the degree of substantial weight; not whether this is a benefit in the first place.
108. Third, and perhaps most importantly, even if very substantial weight is given to this benefit, ultimately it does not affect the overall planning balance. Given the level of harm to the Green Belt (combined with the degree of landscape and visual harm), this benefit cannot be said to clearly outweigh the harm (even in combination with the other fairly generic benefits relied on by the North Site Appellant).

¹³⁵ See CD 10.12 – at [34] – paragraph 148 does not “*require a particular mathematical exercise*”.

109. Fourth, it is suggested by the North Site Appellant that the LHNA ought to be given limited weight. However, it is agreed to be the most up to date assessment of affordable housing need in the District before the Inspector. It has been tested at the examination into the Watford Local Plan and was not the subject of criticism in the Inspector’s Report. There is no criticism by the North Site Appellant of the methodology that sits behind the assessment, and nor are alternative figures offered. Indeed, the affordable Housing Statement of Common Ground is based on figures from the LHNA. Plainly, it can be given material weight for the purposes of this appeal.
110. It is also necessary to briefly deal with two distractions in the case run by the North Site Appellant on this issue.
111. First, numerous attacks have been made on the Council, in particular by Mr. Parker. He has sought to characterise the Council’s approach key worker housing as being “*tardy*”, “*unambitious*” and “*indifferent*”.¹³⁶ These accusations are unfair, and many fall apart upon objective scrutiny.
112. For example, far from being “*entirely excluded from the Council’s evidence base on housing needs*”¹³⁷ (as Mr. Parker claims) the South West Hertfordshire Local Housing Needs Assessment (2020) (“the LHNA”)¹³⁸ includes key workers within its assessment of the need for affordable housing for rent and for affordable home ownership (“AHO”). The true complaint is that the needs for key workers have not been separately assessed. However, it is agreed that there is no requirement in national planning policy to do so;¹³⁹ and the approach taken in the LHNA was not the subject of any criticism by the Inspector who examined the Watford Local Plan;¹⁴⁰ Mr. Parker has put forward no evidence of any local authority post-NPPF separately measuring Key Worker housing need; and it is agreed that this is not common-place.

¹³⁶ See Mr. Parker POE at paragraph 3.54 and 3.63.

¹³⁷ Mr. Parker POE at paragraph 3.57.

¹³⁸ CD 5.20.

¹³⁹ Agreed by Mr. Parker in xx. There is nothing in paragraph 62 of the NPPF which says that the size, type and tenure of housing needed for every single group in society should be assessed.

¹⁴⁰ As Mr Connell says in his rebuttal (paragraph 28) the LHNA was the key piece of affordable housing evidence for Watford’s Local Plan Examination last year. Mr. Parker did not dispute that the Watford Local Plan did not include a separate bespoke assessment of key worker housing need and that by being found sound, the Inspector must have found that it was based on proportionate evidence and was consistent with national planning policy.

113. There are numerous other examples of Mr. Parker’s criticisms of the Council being overblown¹⁴¹ and his evidence and his evidence should be read with some caution.¹⁴² As should the repeated references to “Jubilee Square” as if this somehow proved that the Council was acting inconsistently in its approach to this appeal, notwithstanding, as Mr. Connell pointed out, Jubilee Square is not a scheme designed solely for key workers. Ultimately, Mr. Parker accepted that a fair characterisation of the position was his own words – before permission was refused – namely that the Council is genuinely committed to delivering more affordable housing through an up-to-date plan but like many Councils has found it difficult.¹⁴³ Given this, it is regrettable that rather than simply focussing on the benefits of the proposed development for key workers, the North Site Appellant has decided to spend a considerable amount of time seeking to unfairly run-down the Council’s approach to this issue.
114. Second, another distraction is the repeated reference throughout the Inquiry to many key workers earning more than the income threshold under the Council’s Allocation Policy.¹⁴⁴ However, the purpose of the Council’s allocation policy is to allocate households on the housing register for social and affordable rented housing. There is no criticism of the levels set in the Allocations Policy, which are set at that level because, above that threshold, households have sufficient income to meet need for rented accommodation on the private market and therefore do not have a need for rented affordable housing– which is what the allocations policy is designed to allocate. Key worker household who earn less than the threshold (and therefore do have a need for rented affordable housing) are, of course, fully entitled to affordable rented accommodation.
115. This scheme is designed to meet a different need – i.e., those who are able to afford to rent in the private sector, but not to buy at all on the open market.¹⁴⁵ For those in the gap between renting and buying that need will be met once they are able to afford a lower

¹⁴¹ For example, he also criticised the various draft plans put forward for not having a specific policy for Key Workers, but accepted that there is no requirement in national policy to have bespoke allocations or policies for key workers and that the Watford Local Plan also does not include a specific policy on key workers – yet was found sound.

¹⁴² Not least because it is clear that Mr. Parker stands to personally gain financially if the appeal is successful.

¹⁴³ See Planning Statement at CD 4.21 at paragraph 6.1 on page 11.

¹⁴⁴ CD 8.28. Table on page 34.

¹⁴⁵ Agreed by Ms. Gingell in xx.

quartile home of a suitable size. That is because a lower quartile home is seen as “entry-level” market housing. That is the approach taken in the PPG for the purposes of assessing affordable housing need.¹⁴⁶ Whilst as Ms. Gingell pointed out, the PPG does not require discounts to be set in relation to a lower-quartile price, it would be surprising if did. Whether or not this is needed will depend on the disparity between lower and median prices in any particular area; and (as set out above) the Council’s concerns here go to weight not whether the proposed development amounts to affordable housing. Consistent with the PPG, this is also the approach taken by the LHNA¹⁴⁷ which has used “*lower quartile prices...to reflect the entry-level point into the market*” (and remembering that this approach albeit not tested at examination in St. Albans has been considered in the Watford Local Plan examination).

116. It is also consistent with common-sense. If the housing that is provided at the development is in fact more expensive than entry-level housing elsewhere in the District, that will obviously reduce the extent of its benefit because those purchasing a home in the development would have been able to purchase an (undiscounted) home elsewhere.

117. With that in mind, it is necessary to consider the discount that is being offered here and whether it would result in properties that are more affordable than the entry-level price of housing elsewhere in the District. As it is put in the LHNA:¹⁴⁸

“...The problem with having a percentage discount is that it is possible in some locations or types of property that such a discount still means that AHO housing is more expensive than that typically available in the open market (i.e. lower quartile homes). This is particularly the case when this discount is applied to new homes which already attract a new-build premium”

¹⁴⁶ See the PPG section on Housing and Economic Needs Assessment at paragraph 21 – emphasis added: “*How can the number of newly arising households likely to be in affordable housing need be calculated? Projections of affordable housing need will have to reflect new household formation, the proportion of newly forming households unable to buy or rent in the market area, and an estimate of the number of existing households falling into need. This process will need to identify the minimum household income required to access lower quartile (entry level) market housing.*”

¹⁴⁷ See CD 2.50 – at paragraph 7.7: “*In this section we establish the entry-level costs of housing to both buy and rent across the study area. Our approach has been to analyse Land Registry and Valuation Office Agency (VOA) data to establish lower quartile prices and rents. For the purposes of analysis (and to be consistent with the PPG) we have taken lower quartile prices and rents to reflect the entry-level point into the market*”. See also Table 47 at paragraph 5.183.

¹⁴⁸ CD 5.20 at paragraph 5.182.

118. The key issue here is that the discount for all tenures being offered (First Homes, Shared Ownership and Discounted Market Sale) is applied to the median house price district-wide of a similar property (assuming that this is lower than the open-market value of the property itself given the disparity in house prices between St. Stephen's ward and the District as a whole).¹⁴⁹

119. Taking the different tenures of AHO products being offered in turn:

(1) Discounted Market Sale properties: according to ONS data, the price of an entry-level home in the District is £415,000 – without a discount. That requires a household salary of £83,000 to purchase.¹⁵⁰ The same data shows that a median-quartile home in the District – with a 33% discount is c. £395,000. That requires a household salary of £79,000 to purchase.¹⁵¹ This is a difference of about 5%. However, this data comes from the ONS data-sets and therefore includes all properties sold. It is agreed that the properties at Addison Park would attract a new-build premium of around 15%.¹⁵² Applying this to the ONS data, even with a discount of 33% and even applying that discount to the district-wide median price, the sale price of properties at the development would be more expensive than an entry-level home elsewhere.

That can only serve to reduce, at least to some extent, the benefit of this development. It is no answer to say that the discount is “at least” 33% since there is no obligation on the owner to sell at a greater discount; and why would it if there is a purchaser who is willing to purchase at that price (for example, someone able to afford an entry-level home in the District but who would prefer to purchase a new-build property at Addison Park). The point is that linking the discount to the median (rather than entry-level) price severely limits the benefit of this proposal in genuinely enabling key workers to enter into the housing market who would not otherwise be able to do so.

(2) First Homes: exactly the same issue arises. We know that the capped price for First Homes, with the discount, is £250,000. But that is largely meaningless without

¹⁴⁹ Row 4 of ID14 – showing the effect of applying a 33% reduction to the cost of a lower-quartile home is therefore irrelevant.

¹⁵⁰ See ID14 – row 2.

¹⁵¹ See ID14 – row 3.

¹⁵² Agreed by Ms. Gingell and put to Mr. Connell in xx.

knowing whether a similar entry-level home could be purchased for the same price, without any discount.

(3) Shared Ownership: The position here is slightly different, as the key consideration is whether the rent that must be paid (applying the North Site's discount to a median-priced property of a similar size) is higher than a lower-quartile rent.¹⁵³ Even on the basis of purchasing a 10% share in the property (the lowest amount possible), any properties sold above £482,500 would result in a rent that exceeds the lower-quartile rent.¹⁵⁴ And this calculation excludes other outgoings that could affect the affordability of a purchase (which is taken into account by mortgage providers) – for example, the monthly cost of the mortgage, service charge, loans, monthly outgoings. Notably, these are factors that the LHNA considered were relevant when assessing whether shared ownership products offered a genuine ability to purchase a property in the District for those that were otherwise unable to do so.¹⁵⁵

120. Therefore, the position is not as straightforward as being able to point to key worker households (often on high incomes) who may be able to afford the properties on the development. That really is only half of the picture – it leaves unanswered the big question namely whether those households are being given an opportunity to purchase in St. Albans which they would otherwise not have had.

121. On top of this is the fact that the development would not be meeting the priority need for affordable housing.¹⁵⁶ That is self-evidently for affordable and social rented properties. Indeed, the LHNA is clear that this should be given priority over AHO “*as it makes provision for those that are more in need*”.¹⁵⁷ Of course, there is not a policy requirement for a specific tenure split for affordable housing. But that rather misses the point. This is inappropriate development that is sought to be justified in the Green Belt on the basis that VSC exist – a high bar. It is clearly relevant in that context, when judging the weight

¹⁵³ See the approach taken in the LHNA at paragraph 5.193.

¹⁵⁴ ID 25.

¹⁵⁵ See Table 51 on page 107 – also note the commentary at paragraph 5.193.

¹⁵⁶ For example, see the LHNA Executive Summary on page 7 - LHNA – executive summary – page 7. 443 households require affordable housing to rent per annum between 2020 and 2036. The figure is 385 per annum for AHO.

¹⁵⁷ See page 8 of the LHNA (CD 5.20) – “*there is effectively a trade-off between delivering more affordable homes to buy or delivering fewer affordable homes to rent (due to lower viability), but the latter should be given priority as it makes provision for those that are more in need.*”

to be given to this central benefit of the proposal, to take into account that it would do nothing to address the priority need for affordable housing in the District.

122. Overall, Mr. Connell was fully entitled to give this benefit substantial weight. Yes, it is a substantive benefit, but ultimately given how the North Site Appellant has chosen to price the properties at the scheme against a district wide median price, not one that should be given the very highest degree of weight.

Self-build affordable housing

123. The self-build provisions in the section 106 agreement have undergone considerable revisions in the course of the Inquiry – and indeed after all of the evidence had been heard (notwithstanding that Mr. Connell’s concerns about the self-build housing, as originally proposed, were raised a month before in the Inquiry in his Proof of Evidence).
124. The Council still has concerns about this element of the proposal. The discount on the original purchase of the plot will be no more than £20,000 and, as Mr. Connell explained, a purchaser will then need to construct their home with no discount on the construction costs; before selling at a 33% discount on market value. There remains a risk for any initial purchaser that this will not be a viable proposition. In any event, there is no evidence of the actual demand for affordable self-build properties by key workers, in circumstances where any purchaser of the plot would require a significant capital sum in order to self-build – this is not a question of the plots remaining empty but rather goes to the extent to which this development will help meet the District-wide need for self-build plots as set out on the register. These concerns do remain unresolved,¹⁵⁸ even with the agreed provisions in the section 106, and they are matters that go to the weight to be afforded to this benefit.
125. In any event, even if substantial weight is given to the self-build element of the proposal it should be recognised that just 5% of the units are self-build (i.e. 16). As with the harms caused by the proposal, this substantial weight is being applied to this particular degree of benefit. The fact that the weight that is given to this benefit is the same as that afforded

¹⁵⁸ See further detail, including relevant appeal decisions, in Mr. Connell’s POE for the North Site at paragraph 4.58-4.60.

to the Green Belt harm (i.e. considerable harm to a designation of national importance) obviously does not mean that the two considerations somehow cancel each other out.

Economic benefits

126. The economic benefits claimed fall into three main categories: (i) construction employment and spend (ii) support for local facilities and services and (iii) “revenue benefits” – such as contributions through section 106 contributions and tax revenues. Taken collectively, they should be given moderate weight.
127. The job creation during the construction stage is relatively low in real terms, and only temporary during the construction period.
128. The benefits from Council Tax revenue and New Home Bonus receipts should not be taken into account as there is no evidence that they will be used to help make this development acceptable in planning terms and therefore in accordance with the PPG should be disregarded (as agreed by Mr. Kenworthy).¹⁵⁹ Council Tax receipts merely cover the cost of public services which are required to be delivered to residents in the Council’s area and there is no evidence that the New Homes Bonus would be spent in a way so as to make the effects of this particular development acceptable in planning terms. The section 106 contributions are put forward as mitigation for the development.
129. Therefore, the only real economic benefit here is the support the development would provide for local facilities and services, which is moderate given the size of the development and taking into account the fact that not all of the anticipated spend would be spent within the District itself. The benefits that arise here would arise from any scheme of a similar size within the District.¹⁶⁰ There is nothing unique or special about the economic benefits that would arise from this development.
130. Whilst the North Site has never directly subscribed to the argument that paragraph 81 of the NPPF mandates that significant weight be given to the economic benefits of a proposal – whatever their extent – I deal with that argument here. It is plainly wrong. In

¹⁵⁹ See CD 9.7 – Codicote appeal decision. Paragraph 95.

¹⁶⁰ Accepted by Mr. Kenworthy in xx for the South Site. there is no reason why the same approach should not be adopted on the North Site.

truth, it is a clever “lawyer’s argument” that fails to read the words used in paragraph 81 of the NPPF in full and in their context: paragraph 81 states that significant weight is placed on the need to support economic growth and productivity; not that significant weight should be given to any economic benefit of development. The paragraph could quite easily have said: *“local authorities should ensure that significant weight is given to any economic benefits of a proposal”* – in the same way in which that instruction is given in respect of Green Belt harm. It is therefore entirely consistent with paragraph 81 of the NPPF to give significant weight to that general need, but only moderate weight to the actual economic benefits delivered by this proposal taking into account the factors set out above.

131. This is why Inspectors do not simply give significant weight to the economic benefits accruing from every scheme. Simply because the Inspectors in those decisions did not expressly reference paragraph 81 in their appeal decisions does not mean that they did not take it not account.
132. In any event, an approach that paragraph 81 requires significant weight to be given to all economic benefits is not one taken by Mr. Fidgett (or Mr Kenworthy for that matter) in their evidence, since they gave given even more than the supposedly mandated weight. Whilst Mr. Kenworthy sought to argue that the reference to “significant” in the NPPF was merely a “starting point” this leads to absurd consequences, because at the same time he was quick to emphasise that the NPPF imposes a “cap” on the weight to be afforded to Green Belt harm of “substantial” – ruling out very substantial weight being given. There is no obvious reason why the NPPF should take this approach; and many reasons why it would not.

Public access and recreation

133. The provision of public access to additional open space is recognised to be a benefit of the proposal. However, the weight to be afforded is limited. Significant areas of public open space already exist in the local area¹⁶¹ (including a children’s play area right next

¹⁶¹ CD 3.12 (the Overarching Statement of Common Ground with the South Site) – paragraph 2.38:

“There is public open spaces within proximity to the Appeal Site, including allotments, playing fields, public parks, play space and religious grounds. In terms of the public open spaces with play facilities, these include:

to the north-east corner of the North Site), and there is no evidence of any identified shortfall in local open space in the vicinity.¹⁶² Whilst the open space on the development may be on the “doorstep” of the new residents, it is unlikely to be extensively used by other residents in the area given the existing provision. There would be additional access provided to the PROW network, however there are already a number of connections to this network (and on the North Site in particular, there is already a safe east-west route along Footpath 80 which avoids the need to walk along Chiswell Green Lane).

134. It is also important to remember that the development would (i) be providing additional access to PROWs that would themselves be harmed by the development through adverse visual effects and (ii) the “exemplary” open space, and the recreational opportunities it provides, has already been taken into account by the North Site Appellant in reducing the landscape harm caused by the proposals. It is double counting to separately count it as a free-standing benefit of the proposals.

Pedestrian, cycle and bus accessibility

135. As Mr Connell points out, this is in effect the same benefit. The improvements to pedestrian accessibility are already taken into account in considering the benefit of “public access and recreation”. To the extent that the North Site Appellant also relies on contributions to local bus routes – this is a mitigation measure to ensure that the development is sustainable. It is hard to see how it can also be treated as a separate benefit of moderate weight. Notably, the South Site Appellant (which provides a similar package of measures) does not resort to counting it as a benefit of the proposal).

136. No additional weight should be given to this “benefit”.

Biodiversity Net Gain (“BNG”)

-
- *Playing fields at Cherry Hill and Mayflower Road which are within 500m of the Site;*
 - *Greenwood Park allotments; and*
 - *Four existing play areas within 900m of the Appeal Site, one of which (Greenwood Park Play Area) has an extensive provision of play equipment for children up to the age of 14 years, with a new range of play equipment for children under 6 years installed in 2019”.*

¹⁶²Accepted by Mr. Kenworthy in xx.

137. This was raised as a benefit for the first time by Mr. Fidgett in his evidence in chief. It had not previously been referred to as a benefit in his proof, rebuttal proof, SOCG1 or even SOCG2. Nor was Mr. Connell asked about it.
138. It is suggested that weight should be given to it as a benefit to ensure consistency with the South Site. However, the circumstances there are entirely different. For a start, no BNG calculations were submitted with the application; therefore, we do not know whether there will be an “on-site” net gain or loss, and the degree of this;¹⁶³ as such, we do not know how much of the 10% net gain will need to be delivered off-site; further no potential receptor site for the off-site net gain has been identified; and therefore at this stage, there is no detail at all as to how the net gain will be delivered. The reverse is true on every count on the South Site.
139. Mr. Fidgett was originally right to have given this no material weight as a benefit. Even if weight should be given to “ensure consistency”, it should be limited. There is already a policy requirement to achieve a net gain in the NPPF, and it is expected that the mandatory 10% requirement will come into effect in November this year. If we were here in 6 months time, what is secured through the section 106 would be an automatic condition on any grant of planning permission by virtue of the Environment Act. Reflecting this, and the fact that the net gain achieved is modest in any event, Mr. Connell was right to give only limited weight to this benefit.

Benefits on the South Site

140. Turning next to the South Site, the Council accepts that there are a number of benefits which weigh in favour of the grant of planning permission on the South Site. However, they do not clearly outweigh the identified harm.

Housing Need

141. There is no material dispute as to the extent of the general housing need. The Council does not have a 5YHLS. For the five-year period (2021/2 to 2025/26) there is just a 2-year supply of deliverable housing sites¹⁶⁴ and no early prospect of that deficit being

¹⁶³ On the South Site there is a net loss of -29.39% habitats units.

¹⁶⁴ 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.

addressed. There is also accepted to be an acute affordable housing need 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).

142. The delivery of shared ownership units is also agreed between the parties to have substantial positive weight.

Education

143. The Council accepts that there is a benefit from the school land – the issue is the weight to be attached to that benefit: either substantial (Mr. Hunter) or limited (Mr. Connell).

144. The description of development seeks permission for “the provision of land for new school”. It is plainly relevant when considering the extent to which this land is a benefit, to have regard to the likelihood of whether a school will come forward on the site or not. In this respect, there is no suggestion that there is any need for a secondary school on the site – the two options are a primary school or a SEND school.

SEND school

145. The views of Hertfordshire County Council (“HCC”) – as Education Authority and as the organisation who would ultimately decide whether to build a SEND school on this site – should obviously be given very significant weight. In this respect, HCC did not request that land be available for a potential SEND school.¹⁶⁵ Indeed, there is no agreement with HCC that the site would be suitable for a SEND school; HCC consider that further feasibility work is required.¹⁶⁶ The need for further feasibility work plainly introduces some uncertainty about whether a SEND school will come forward on the site. Further, whilst Mr. Hunter concludes that the size of the site is suitable to accommodate

¹⁶⁵ CD 5.31 – a SEND school is described as a “second use option”, and was “not an option that we requested”.

¹⁶⁶ Statement of Common Ground – CD 3.16: “The suitability of any other forms of education provision...may be possible subject to further feasibility study and assessment of the safeguarded site.”

at least 80 PNI children, he also agreed that size isn't the only factor when deciding whether a site is suitable for a PNI school – hence the need for further feasibility work.

146. This alone is sufficient basis to only afford limited weight to the potential for a SEND school coming forward on the South Site.
147. In addition, there is the question of whether or not there is a need for a SEND school here. It is agreed that there is no need for a Severe Learning Difficulties (“SLD”) school on the site – however, Mr. Hunter says that there is a need for a Profound Neurological Impairment (“PNI”) school on the basis that HCC does not have a strategy for meeting a supposedly unmet need for those places. The sole basis for this is a close and forensic reading of the text in HCC’s Statement of Case. However, the organisation best placed to know whether or not there is a strategy for PNI places is HCC. There is nothing from them to suggest there is real need for such a school, even when it was directly asked by the Appellant “*whether there is a deficit in provision*”.¹⁶⁷ Indeed, HCC considers that its School Place Planning Strategy shows that the education land is unlikely to be considered as an option for a new SEND School – including for a PNI school.¹⁶⁸
148. Ultimately, HCC’s position is that the potential for a SEND school “*was an accepted offer on the basis that it does not prejudice HCC*”¹⁶⁹ – i.e., providing the option of a SEND school on the land would not cause any harm. Hardly a ringing endorsement for a benefit to which the South Site Appellant gives substantial weight.

Primary School

149. The South Site sits within the St Michael’s Primary Planning Area – where there are two primary schools – Killigrew Primary and Prae Wood School. The current forecast, without either development, is that there would be a surplus of places in the St Michael’s Primary Planning Area up to 2026-27.¹⁷⁰

¹⁶⁷ See CD 5.25.

¹⁶⁸ CD 5.31.

¹⁶⁹ CD 5.31.

¹⁷⁰ CD 2.41(a) – page 19, paragraph 5.4 and Table 7.

150. Importantly, Killigrew Primary School has the potential to be expanded from 2 forms of entry (“FE”) to 3FE.¹⁷¹ That expansion from 2FE to 3FE would accommodate the likely pupil yield from this development¹⁷² - on the agreed basis that development in this location will generate a need for an additional 1FE per 400 dwellings.¹⁷³ That option of expanding Killigrew Primary School to meet the additional demand as a result of the development would bring some advantages to Killigrew School. Having a school with three forms of entry would help the financial viability of the school¹⁷⁴ since larger schools are more able to cope with future fluctuations in roll numbers.¹⁷⁵
151. HCC’s position is that if the South Site is the only site to come forward, it may be appropriate for the additional primary school capacity required to be delivered through an expansion of Killigrew Primary School since, if just the South Site is approved, that would not generate enough pupils to support opening a new primary school.¹⁷⁶ So, the probability of a new school being needed (as opposed to meeting the need arising from the development through an expansion of Killigrew) is inherently linked to level of future growth. To provide a critical mass to support delivery of a new primary school would require in the region of 800 new homes to come forward – beyond those originally forecast (i.e., the South Site plus 400 others).¹⁷⁷

¹⁷¹ Education Report (CD 2.8) – 4.10 – “HCC has confirmed that this school could be expanded to accommodate the pupils expected to be living on this development should that be deemed the most appropriate project” and Mr. Hunter’s POE at paragraph 4.18.

¹⁷² Education Report (CD 2.8) at 4.10 – “HCC has confirmed that this school could be expanded to accommodate the pupils expected to be living on this development should that be deemed the most appropriate project”.

¹⁷³ Education Report (CD 2.8) = paragraph 6.1.

¹⁷⁴ Education Report (CD 2.8) at 4.10: “Having a school with three forms of entry would aid in the financial viability of the school through economies of scale.” Agreed in xx.

¹⁷⁵ Education Report (CD 2.8) at 4.10: “Larger schools are better placed to be able to deal with changes in roll numbers, as they are able to shrink provision and stay a financially sustainable model.” Agreed in xx.

¹⁷⁶ CD 2.41a - PDF 10 (page 9): “In the event that one of the two planning appeals are allowed, it may be appropriate for additional primary school capacity to be delivered through the expansion of an existing, local primary school. Taken in isolation, when assessed against the local context, each proposal would not generate the critical mass to support the opening of a sustainable new primary school. In the event that both appeals in Chiswell Green are allowed, it might be more appropriate for HCC to bring forward increased primary school capacity in the form of a new primary school on the proposed, serviced site that is included as part of this proposal”.

¹⁷⁷ The suggestion made in R-X that it would be undesirable to wait to this point because it would mean that primary schools would be at capacity ignores both the continued potential for Killigrew Primary to be expanded and also Mr. Hunter’s position, as set out in the Education Report that operationally full schools are demonstrative of a properly functioning school system – see CD 2.8 at paragraph 7.4.

152. Given the uncertainty HCC's position is that there is currently uncertainty surrounding the levels of growth in the local area. That is plainly right given the stage that the emerging Local Plan is at. There is nothing from HCC that says that a new primary school on the site is likely. Therefore, whilst the provision of land is clearly a benefit, not least in providing some flexibility – as recognised by HCC (and as recognised by the fact that HCC considers it meets the tests under regulation 122 of the CIL Regulations) – it is not a benefit to which substantial weight should be afforded.

Economic Benefits

Open Space, Children's Play Space, Access to PROW

BNG

153. These benefits have all been considered above in relation to the North Site. The weight afforded to each is the same in respect of the South Site as given to the North Site. Whilst there are of course some nuances in the position on each site (as reflected in the written evidence) a similar overall approach should be adopted in respect of the South Site.

Design

154. It is said by Mr. Kenworthy that significant weight should be given to the design of the development on the basis that it would create help soften and improve the existing "hard" settlement edge and therefore "*help raise the standard of design more generally in an area*".

155. Whether or not that is the case can be best judged on site – and in particular from existing viewpoints where the existing settlement is visible. The Council's position is that this benefit is exaggerated.

156. However, in any event, delivering a development of high-quality design is a policy expectation under national planning policy.¹⁷⁸ Paragraph 134 of the NPPF which tells us that development that is not well designed should be refused. If the development was not capable of providing a well-designed development at reserved matters stage, it would be contrary to national policy.

¹⁷⁸ Agreed by Mr. Kenworthy in xx.

157. To be well-designed, development must comply with the elements of paragraph 130 of the NPPF - including that it adds to the overall quality of the area and establishes or maintains a strong sense of place.¹⁷⁹ Therefore, to achieve significant weight under paragraph 134 of the NPPF a development must be more than be well designed (which is a minimum expectation in any event) - it must help raise the standard of design more generally in an area. In other words, it is not enough simply to (for example) add to the overall quality of the area. Therefore, even if there would be an improvement to the settlement edge, the development does no more than what would be required of it under national planning policy in any event, and no weight should be afforded to this as a benefit of the proposal.

(5) OVERALL PLANNING BALANCE

158. On the North Site, the cumulative harms which the development would give rise to are very substantial indeed. The development would constitute a very significant encroachment into the Green Belt resulting in very substantial harm to its openness in conflict with its fundamental aim and causing harm to three of its purposes. In addition, there would be a high degree of harm to landscape character and visual appearance.

159. The benefits said to outweigh that harm are in the main generic – new open space provision, economic benefits and the like (although that of course does not mean that they should not be weighed into the overall balance). It does mean, however, that the main benefit put forward is the provision of affordable housing for key workers. However, if unmet housing need (whether for market or affordable housing) was given decisive weight in the overall planning balance, and used to permit a proposal that resulted in considerable Green Belt and landscape harm, then it is difficult to see where VSC would not exist for edge of settlement Green Belt development in the District. In other words, the set of circumstances here are far from being very special; the adverse effects in fact clearly outweigh the benefits.

160. As Mr. Connell fairly acknowledged, the balance is more marginal on the South Site – a function of the reduced level of harm to Green Belt openness and purposes; a limited degree of harm to landscape character and appearance; and a wider range of benefits.

¹⁷⁹ Agreed by Mr. Kenworthy in xx.

However, as tempting as it may be to simply say “well St. Albans needs to build on the Green Belt to meet its housing need; the harm here is “inevitable” if it is going to meet its need; and therefore, permission should be granted” that is not the exercise required by paragraph 148 of the NPPF. All harm (inevitable or not) must be properly weighed – and not reduced on that basis; further decisions about how the District’s housing need should be met, and where, are for the Local Plan process; and the NPPF has deliberately set a higher threshold that must be met when considering individual planning applications. Applying that high threshold test, the benefits may just outweigh the harm, but do not clearly do so, and therefore permission should be refused on the South Site.

161. Overall, 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.

162. As a result, both appeals should be dismissed.

ANDREW PARKINSON

Landmark Chambers,
180 Fleet Street,
London,
EC4A 2HG

9th May 2023