

The Implications of the NPPF (Dec 23) and the 2022 Housing Delivery Test figures (Dec 23)

Section 78 Appeal by Headlands Way Limited

Land North of Chiswell Green Lane, Chiswell Green, St Albans AL2

Planning Inspectorate Ref: APP/B1930/W/22/3312277

LPA Ref: 5/2021/3194

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REF: AP/nm/0124

January 2024



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Personal Statement

I have a BA (Hons) in Geography and an MSc in Urban and Rural Planning and am a Chartered Member of the Royal Town Planning Institute. I am familiar with the St Albans District and its 1994 Local Plan and, since 2009, with the Council's attempts to adopt a new Local Plan.

This document has been prepared and is given in accordance with the guidance of the RTPI's Code of Professional Conduct (Feb 2023) and I confirm that the views expressed are my genuine professional opinions.

Brian Parker

January 2024



Introduction

1. My name is Brian Parker. I have a BA (Hons) in Geography and an MSc in Urban and Rural Planning and I am a Chartered Member of the Royal Town Planning Institute. I am familiar with the St Albans City and District Council (the Council) and its 1994 Local Plan and, since 2009, with its attempts to adopt a new Local Plan.
2. This document responds to a letter (dated 18th January 2024) from the Department for Levelling Up, Housing and Communities regarding new material: namely, the revised National Planning Policy Framework (NPPF) and the Government's 2022 Housing Delivery Test (HDT) figures, both of which were published in December 2023. The letter invited submissions to be made if it is thought that the new material affects *"the case you put to the Inspector at the Inquiry"*.
3. As requested, this written representation is made by 1st February 2024 and relates to matters arising from the two documents. It will address the HDT figure and then the NPPF, after, first, setting the context for this response by briefly outlining the proposal and the principal cases of the parties so that the implications of the new material may be readily apparent.

The Proposal

4. Addison Park is a proposal for up to 330 affordable homes exclusively for Key Workers who live or work in the District¹. As confirmed by the Section 106 Agreement (the S106), the homes will be a mix of First Homes, Discounted Market Sales Housing and Shared Ownership, discounted by at least a third against the District-wide market price. Addison Park is not just "very special", it is unique.
5. "Key Workers" are defined in the S106 to conform with the wording of the Council's Affordable Housing Supplementary Planning Guidance (CD 8.17), supplemented by military personnel to be consistent with the definition of "essential local workers" in Glossary of the NPPF² and the Council's adoption of the Armed Forces Covenant.

¹ Under 'Local Connection Priority Criteria', the S106 includes a cascade system, prioritising Key Workers in the St Albans District before those in adjacent Districts and then the rest of Hertfordshire.

² Public sector employees who provide frontline services in areas including health, education and community safety – such as NHS staff, teachers, police, firefighters and military personnel, social care and childcare workers.

The Cases of the Parties at The Inquiry

6. The essence of the Appellant's argument at the Inquiry was that "*very special circumstances*" existed for permission to be granted for up to 330 discounted affordable local homes for essential local workers. In these regards:
- "Essential local workers" comprise the only group of people identified in the NPPF's definition of "affordable housing".
 - Consequently, Addison Park offers:
 - the right housing (affordable);
 - for the right people (essential workers); and
 - in the right place (locally).
 - Furthermore, Addison Park is proposed in a District which not only has the oldest Local Plan in England and (in consequence) is also suffering from a chronic housing crisis, with the least affordable house prices in the East of England and a known and persistent problem with housing affordability for Key Workers since 2006.
 - Accordingly, the benefits of the Appeal Scheme clearly outweighed the definitional harm by reason of inappropriateness and any other harm.
7. By way of stark contrast, the Council argued that the scheme was:
- the wrong housing – (because the Council wants the majority of new houses to be very expensive, market dwellings without any discounts);
 - for the wrong people – (because the Council does not regard essential local workers worthy of specific consideration); and
 - in the wrong place – (because the Site has not been allocated in a draft Local Plan).
8. Another important part of the Appellant's case was that "planning" was broken in St Albans:

- In respect of **plan-making**, alongside failing to update the oldest Local Plan in England, the Council, whilst fully aware that Key Workers are essential for balanced and sustainable communities, has persistently chosen not even to measure the affordable housing needs of these essential local workers, let alone promote policies to meet that need; and
- In respect of **decision-making**, instead of the “*positive and creative*” approach required by paragraph 38 of the NPPF, the Council had been wholly negative with regard to the Addison Park proposal: after attempting to remove any reference to Key Workers from both the description of the proposed development and the draft S106, the Council then argued that because all the new homes at Addison Park would be for Key Worker households, it should be refused because it comprised the wrong mix of housing.

THE 2022 HOUSING DELIVERY TEST FIGURES, DECEMBER 2023

9. A Housing Delivery Test (HDT) “*measures net homes delivered in a local authority area against the homes required, using national statistics and local authority data*” [NPPF, Glossary]. On 19th December 2023, the Government published the latest HDT figures (**Appendix 1**). For St Albans it reveals that in the three years 2019-2022, the total number of houses required was 2,307 but the total number delivered was 1,273.
10. This means that:
 - the Council delivered **just 55%** of its housing requirement;
 - which is **the worst performance in the 5 consecutive years in which St Albans has failed to achieve 75%** since the HDT began in 2018.
 - Because the delivery of housing is significantly below the 75% threshold set in Paragraph 79(c) of the NPPF:
 - the presumption in favour of sustainable development is engaged;
 - a 20% buffer is applied to its housing requirement; and

- in addition, the Council is required to produce yet another HDT Action Plan.

11. So far as the last matter above is concerned, the Council published the most recent of its Action Plans (**Appendix 2**) in December 2023, in response to delivering only 69% of its housing requirement for the previous 3-year period³ (i.e. far below the 75% threshold but significantly better than the 55% figure it will have to account for later this year).
12. At 5.2.1 of that Action Plan, the Council asserted that it “... *recognises the importance of its planning service in enabling and supporting growth*” and repeats its claim that it is “*committed to ensuring the delivery of an efficient and effective service*”.
13. However, this not remotely borne out by reality:
 - As set out at the Inquiry (Parker PoE, “The Planning Crisis in St Albans”, CD 4.77), the planning service in St Albans is so inefficient and ineffective that it frustrates growth instead of enabling it;
 - Accordingly, On 19th December 2023, St Albans was identified in a speech by Secretary of State, at the Royal Institute of British Architects to be amongst “*7 of the worst authorities in terms of plan-making*”;
 - The facts are clear: despite the publication of a succession of Action Plans “*to show how the Council is responding to the challenge of ensuring that more homes are built in the District and faster*”⁴, fewer homes are being built and the situation is getting worse. This is the context in which an Appeal Scheme to deliver new housing and the implications of the new NPPF should be assessed.
14. This is the real-world context in which both an Appeal Scheme to deliver new housing and the implications of the new NPPF with regards to such a proposal, must be assessed.

THE NPPF, DECEMBER 2023

15. The revised NPPF was published in December 2023 and paragraph 1 tells us that it “... *sets out the Government's planning policies for England and how these should be applied*”. Paragraph 2 reaffirms that the NPPF “... *is a material consideration in planning decisions*”.

³ St Albans Housing Delivery Test Action Plan 2022. Paragraph 1.1.2. Published December 2023.

⁴ Ibid, Paragraph 1.1.4

16. Two preliminary points must be made with regard to the following analysis of the relevance of changes made to the NPPF for the purposes of this Appeal:

- First, the policies that are unchanged in the current version are just as important as those that have been revised or introduced because, after extensive consultation and review, they reaffirm Government policy; and
- Second, given this is a Section 78 Appeal, this focus below is necessarily on the NPPF's approach to decision-taking, and the most relevant sections for the purpose of deciding this Appeal, that is to say:
 - Section 2 Achieving Sustainable Development;
 - Section 5 Delivering a Sufficient Supply of Homes;
 - Section 4 Decision-Making; and
 - Section 13 Protecting the Green Belt.

Achieving Sustainable Development

17. Paragraph 7 reaffirms that *“the purpose of the planning system is to contribute to the achievement of sustainable development ...”*; and Paragraph 11 explains that *“... decisions should apply a presumption in favour of sustainable development”*.

18. Because the Council has less than a 2-year supply of deliverable housing sites, Paragraph 11(d) of the NPPF applies; and because the Appeal Site is in the Green Belt, Paragraph 11d(i) is engaged, the implications of which are addressed below under Protecting the Green Belt.

19. The application of Paragraph 11(d) also potentially engages Paragraph 14 which provides that:

“In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided the following apply:

a) *the neighbourhood plan became part of the development plan five years or less before the date on which the decision is made; and*

b) *the neighbourhood plan contains policies and allocations to meet its identified housing requirement (see paragraphs 67-68)."*

20. Whilst the text has been revised, the following still applies:

- First, a scheme which demonstrates "very special circumstances" is supported by the St Stephen Neighbourhood Plan (SSNP)⁵; and
- Secondly, the SSNP does not contain policies and allocations to meet its identified housing requirement⁶.

Consequently, as with the previous version, the re-worded Paragraph 14 is not engaged by the Appeal Scheme.

21. Importantly, paragraph 8(b) of the NPPF reaffirms the Government's commitment to the social objective of sustainable development:

"... to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being"

22. The Council's own Housing Needs Study (DCA, 2006), states that Key Workers

*"... are **essential for the balanced and sustainable development of the local community and local economy**"⁷*

(emphasis added).

⁵ Fidgett Proof, CD 4.81 (3.15)

⁶ Fidgett Proof, CD 4.81 (3.11)

⁷ Parker, Proof, CD 4.77 (3.61)

23. Despite this, however:

- The Council still has no policies or draft policies to deliver housing for those members of the local community who are essential to the achievement of sustainable development; and
- Whilst the Council repeatedly insists it should only meet local needs rather than imposed targets, it has deliberately chosen not to measure the housing needs of the most important members of the local community, let alone attempt to meet them.

Delivering a Sufficient Supply of Homes

24. The very first revision to the NPPF is in Paragraph 1, which now explicitly explains that the achievement of sustainable development includes *“the provision of sufficient homes”*.

25. Consistent with this, Paragraph 60 (in Section 5) now states that:

“The overall aim should be to meet as much of an area’s identified housing need as possible, including with an appropriate mix of housing types for the local community”.

26. Paragraph 60 of the NPPF therefore reaffirms that the appropriate mix of housing types is an area-wide issue. In this regard, however:

- Despite the Council’s Housing Needs Study expressly stating that Key Workers are “essential for the balanced ... local community”⁸, the Council nonetheless objected to the Appeal Scheme as not being balanced on the basis that it comprised 100% affordable housing for Key Workers⁹; and
- Whilst objecting to a scheme for 100% affordable housing for lacking balance, the Council frequently approves schemes which comprise 100% open market houses, including its own scheme on Council-owned land at Cottonmill Lane¹⁰.

⁸ Parker, Proof, CD 4.77 (3.61)

⁹ St Albans Council Officer Report CD 4.51 (8.11.18)

¹⁰ Appendix 2 - St Albans Housing Delivery Test Action Plan 2022. Paragraph 5.4.1, final bullet point. Published December 2023.

27. Paragraph 63 of the NPPF reaffirms that:

“Within this context of establishing need, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. These groups should include (but are not limited to) ...”

28. In these regards and for the following reasons, the Appellant’s case is that the affordable housing needs of Key Workers should not just be assessed and reflected in policies but met through decision-making and especially in locations such as St Albans where market housing is way out-of-reach of many Key Workers:

- First, *“essential local workers”* comprise the only group explicitly mentioned in the Government’s definition of Affordable Housing [NPPF, Glossary];
- Second, the Council’s own evidence base stated that Key Workers *“are essential for the balanced and sustainable development of the local community and local economy”*; and
- Third, the country has only recently emerged from a Covid Pandemic in which essential local workers had literally put their lives on the line to serve their local communities.

29. At the Inquiry, the Council admitted that it had never attempted to measure the housing need of its Key Workers. However, Ms Gingell of Tetlow Planning did, and concluded¹¹:

“The evidence clearly demonstrates that the majority of key worker households do not earn enough to be able to purchase a property on the open housing market. It also demonstrates that the majority of key worker households earn too much to be eligible for social / affordable rented housing.

These people represent the hidden middle whose needs have largely been forgotten about by the Council. It is estimated that within the St Albans Local Authority area alone there are as many as 27,089 key workers falling within this gap. This demographic of people clearly makes up a significant proportion of the population for the area.”

¹¹ Gingell Summary Proof, CD 4.80.1 (2.26-2.27)

30. Shortly after that evidence was put to the Inquiry, the consultation version of the Council's latest Emerging Local Plan (ELP) was published (**Appendix 3**). It mentions Key Workers just once, at paragraph 4.8:

"The District's house prices are amongst the highest not only in Hertfordshire, but across the whole country. As a result local people on lower-level incomes, especially younger people and key workers, often find themselves priced out of the market, and there is clearly a high need for affordable housing."

31. That is the sole mention of the Key Worker housing problem in the ELP. However, having acknowledged its existence, the Council has made no attempt to do anything about it.
32. Paragraph 66 of the NPPF is unchanged and reaffirms that major housing schemes of 100% affordable housing are entirely appropriate. Indeed, they are special enough to be exempt from requirements imposed on other schemes. Instead of welcoming or promoting schemes for 100% affordable housing, however, the Council's model¹² still requires the majority of houses in major schemes in the Green Belt to be open market housing¹³ (i.e. unaffordable to all but the very wealthy). It does so under the self-evidently flawed assumption that a contribution of 40% is all that is viable and despite the fact that building thousands of new homes which are unaffordable to essential local workers is the opposite of sustainable development. Such housing will generate more and more pressure on local health, education, care and emergency services, whilst making no provision for the Key Workers needed to provide those services locally.
33. Paradoxically, although St Albans Council insists it wishes to minimise the release of Green Belt land, its 60:40 split inevitably delivers the opposite. Whilst Addison Park can deliver 330 affordable homes on 14 hectares, the Council would need to release 35 hectares to deliver that number or, if it restricted itself to 14 hectares, would deliver just 132 affordable homes.
34. Whilst the current draft of the ELP clearly needs significant revision, it has been through a Regulation 18 Consultation. Consequently, the Council is only required to demonstrate a 4-year

¹² "... the only model St Albans has for the delivery of affordable housing is for it to come alongside, and parasitic upon, open market housing on an aspirational, albeit undelivered, 60:40 split ..." Paul Stinchcombe KC, Closing Submissions on behalf of the Appellant [14].

¹³ Draft Policy HOU2 of the Emerging Local Plan seeks a split of 60% open market housing, 40% affordable housing.

supply of deliverable housing sites in accordance with revised Paragraphs 77 and 226 of the NPPF. In January 2024, the Council published its 4-Year Housing Land Supply Position (**Appendix 4**), which confirmed it can only demonstrate a supply of 1.7 years¹⁴. Consequently, the presumption in favour of sustainable development applies in accordance with Paragraph 11(d) and 79(c) of the NPPF.

35. Paragraph 79 confirms that an annual HDT for each Local Planning Authority (LPA) will continue to be published and reaffirms the consequences of various levels of under-delivery. This issue was addressed in the HDT section above.

Decision Making

36. Paragraph 38 of the NPPF reaffirms that “*Local planning authorities should approach decisions on proposed development in a positive and creative way*”. However, in St Albans the Council’s approach has been anything but positive (paragraph 8 above, second bullet point), with the consequence that essential local workers have no option but to rely on the Appeal system to provide the correct approach or, at the expense of the local community, to take the Council’s advice and leave the area¹⁵.
37. As in the previous version of the NPPF, Paragraph 48 confirms that LPAs may give weight to relevant policies in emerging Plans according to certain criteria, whilst Paragraphs 49 and 50 concern prematurity.
38. Whilst the text of Paragraph 48 has not changed since the Inquiry, the latest ELP has undergone a Regulation 18 Consultation. In this regard, however, the unresolved objections to it [see Paragraph 48(b)] are extensive and significant. For instance:
- The ELP, like its failed predecessor, allocates draft sites without a proper planning balance exercise (sites have been selected following a Green Belt Review but without taking proper account of other considerations such as the economic, social or environmental benefits of individual sites);

¹⁴ Four Year Housing Land Supply Position and Housing Trajectory, paragraph 1.9. January 2024

¹⁵ Parker Proof CD 4.77 (4.7 and Fig. 5)

- Despite assuring the Inquiry of the veracity of the SKM Green Belt Review¹⁶, the Council is now informed by a second Green Belt Review which identifies different sites for consideration (the Council will have to explain why SKM and Arup have arrived at different conclusions and which should take priority);
- Despite the SHMA which informs the Plan confirming that the vast majority of homes – 828 per annum – in its capped target of 888 dpa should be affordable¹⁷, (equivalent to 93%) the Council wants the majority (60%) to be out-of-reach to all but the very wealthy;
- The Council continues to insist that a 40% affordable housing contribution is the most that can be viably achieved (in the face of compelling evidence that far higher levels can be delivered - not least by the Appeal Scheme); and
- Despite acknowledging the problems facing Key Workers, the Council shows no interest in doing anything about it.

39. In respect of Paragraph 49:

- The ELP seeks to deliver c.15,000 new homes in the Green Belt. Accordingly, neither Addison Park alone nor Addison Park and the site south of Chiswell Green Lane combined (330 and 721 homes, respectively), are *“so substantial ... that to grant permission would undermine the plan-making process ...”* as required by Paragraph 49(a); and
- Earlier this month (Jan 2024), in respect of an application for 95 dwellings in the Green Belt (**Appendix 5**):
 - The Council explained that: *“A new Local Plan is underway but is at a very early stage ...”*¹⁸ and not, therefore, at *“the advanced stage”* required by Paragraph 49(b) in any event; and

¹⁶ Connell Rebuttal CD 5.40 (21-25)

¹⁷ Gingell Proof CD 4.80 (6.8-6.11)

¹⁸ Appendix 5 Officer Report 8.2.5, p.152

- Accordingly, when the 95-home scheme to deliver much-needed housing and affordable housing (but no Key Worker housing) was refused, there was no mention of “prematurity” in the Reason for Refusal (**Appendix 6**).

40. The opening sentence of Paragraph 50 is unchanged and explains the bar for a refusal based on prematurity is set very high:

“Refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination ...”,

41. Accordingly, and for all of the above reasons:

- Refusal on the grounds of prematurity is not remotely justified; and
- No weight should be given to any of the ELP’s draft policies.

Protecting the Green Belt

42. As set out above, the Council can only demonstrate a supply of deliverable housing sites of 1.7 years against its 4-year target. This fact engages the presumption in favour of sustainable development and paragraph 11(d) of the NPPF which, in turn, engages footnote (7) and national policy on “Proposals affecting the Green Belt”.

43. Paragraph 142 of the NPPF has been revised to explain that:

“Green Belt boundaries are not required to be reviewed and altered if this would be the only means of meeting the objectively assessed need for housing over the plan period.”

44. However, Paragraph 142 relates to Plan-Making rather than Decision-Making. Whilst it is unclear how the Council will move forward, the best predictor of future behaviour is past behaviour. In its 1994 Local Plan, and every subsequent attempt to replace it including the current ELP, the Council has sought to alter its Green Belt boundaries to meet at least some of the housing need of its local communities.

45. No policy changes have been made to the sub-section “Proposals affecting the Green Belt” [Paragraphs 149-153]. Consequently, the evidence submitted to the Inquiry by Mr Fidgett to demonstrate that “*very special circumstances*” exist¹⁹, such that the Appeal should be Allowed, remains both valid and compelling.
46. In the words of Paul Stinchcombe KC²⁰:

“I commend Mr Fidgett’s judgement to you entirely. It is obviously consistent with both the decision of Inspector Masters in the Bullens Green Lane decision letter (CD 9.2) and the subsequent decision of the Council itself regarding land to rear of Harpenden Road (CD 9.3). Indeed, if, in those cases, the provision of considerably fewer affordable homes, both in absolute numbers and in terms of percentage, amounted to benefits to which very substantial weight should be accorded, sufficient to amount to very special circumstances, then the provision of 330 affordable homes (100%), all for Key Workers, amounts to very special circumstances on steroids.”

Conclusions

47. The Housing Delivery Test confirms that the housing crisis in St Albans is becoming worse. The Council is barely delivering half of its requirement.
48. The Council’s own 4-Year Housing Land Supply Position Statement confirms that its supply of deliverable housing sites has worsened and now stands at just 1.7 years.
49. 18 years after the Council’s own evidence base stated that Key Workers “... *are essential for the balanced and sustainable development of the local community and local economy*”, the revised NPPF reaffirms the presumption in favour of sustainable development and emphasises the importance of delivering a sufficient supply of housing including for specific groups.
50. Despite this, the Council refuses to measure the housing need of its essential local workers, let alone meet it. Ms Gingell’s evidence demonstrates that most local Key Worker households have combined incomes that exclude them from social housing but are insufficient to buy their own homes. As she so put it:

“... the hidden middle ... have largely been forgotten about by the Council”.

¹⁹ Fidgett Proof CD 4.81 (Chapter 10)

²⁰ Land North of Chiswell Green Appellant Closing Statement (114)

51. Consequently, and as was put to the Inspector at the Inquiry:

“... it is only through allowing, on Appeal and upon the basis of Very Special Circumstances, new housing such as proposed by the Appeal Scheme, that there is any hope of beginning to meet the unmet housing needs in St Albans, both generally and in terms of critically needed affordable housing also, and especially for Key Workers.”²¹

Brian Parker
January 2024

Appendices: Separate Documents

Appendix 1 – Housing Delivery Test, DLUHC, Dec 2023

Appendix 2 – HDT Action Plan, St Albans Council 2002, Dec 2023

Appendix 3 – Regulation 18 Emerging Local Plan, July 2023

Appendix 4 – 4-Year Housing Land Supply Position April 2023, St Albans Council, Jan 2024

Appendix 5 – Officer Report Ref: 5/2022/0267, Jan 2024

Appendix 6 – Decision Notice Ref: 5/2022/0267, Jan 2024

²¹ Parker Proof CD 4.77 (6.5)