APPEAL REFERENCE: APP/B1930/W/22/3313110

IN THE MATTER OF AN APPEAL PURSUANT TO SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990

LAND SOUTH OF CHISWELL GREEN LANE, CHISWELL GREEN, ST ALBANS

APPELLANTS' CLOSING SUBMISSIONS

I. THE HOUSING EMERGENCY IN ST ALBANS

1. Nowhere is the national housing crisis more acutely evident than St Albans. Mr Kenworthy and Mr Parker have detailed the true extent of the crisis in St Albans, without any challenge in XX from the Council or any contrary evidence from Mr Connell. Indeed, the Council expressly agrees with much of the Appellants' evidence on this issue in the SOCG.[1]

(1) Supply of market housing

2. The Council's supply of market homes has collapsed. The best-case scenario for the Council is a housing land supply of 2 years.[2] This is less than half the required minimum and equates to a shortfall of 3,195 homes.[3] At best, the Council will be able to deliver only 40% of its local housing need over the next five years.[4] Further, the Council's housing supply is in freefall: it has fallen from 3.49 years in 2017 and since the introduction of the NPPF in 2012 the Council has met its annual housing target on only a single occasion (at the start of that period in 2013/14).[5]

3. The collapse of the Council's housing supply has caused an inevitable under delivery of homes in the District. The Council has failed to meet the Housing Delivery Test ("**HDT**") since 2016/17, even when the targets were artificially reduced due to

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[1] CD 3.27
[2] CD 3.18a – Mr Kenworthy's POE at [6.12], final bullet point on p. 52/PDF p. 55.
[3] Ibid.
[4] Ibid at [6.165] on p. 53/PDF p. 56.
[5] CD 3.18a – Mr Kenworthy's POE at [6.12], see the table and final bullet point on pp. 51 – 52/PDF pp. 54 – 55.

Coronavirus. Moreover, these failures have not been near misses: the Council has not even achieved 75% on the HDT in the period since 2016/17.[6]

(2) Supply of affordable housing

4. The Council's supply of affordable homes is in an even more precarious – it is on life support.

5. In the period 2017/18 – 2021/22 the Council has an accumulated delivery shortfall of 4,360 affordable homes.[7] This extreme level of need is the inevitable product of the Council's chronic failure to deliver affordable housing: in the last 28 years the Council has delivered only 18% of all housing completions (net) as affordable housing and in the most recent five year period, the Council has averaged only 92 affordable dwellings per annum.

6. Looking forward, the Council is only able to demonstrate a supply of 395 affordable homes over the next five years: an equivalent of 79 affordable homes per annum – even less than it has delivered over the last five years.[8] Just like the Council's supply of market housing, the position is going from bad to worse. The ultimate position is that the Council has a shortfall of 5,507 affordable homes over the next five years.[9] This is a staggering shortfall, made all the worse by the fact that the affordability of homes in the District is getting worse, both when looked at in isolation and by comparison to England as a whole.[10] The real life position is that almost half of households in the District are unable to afford to access the lower quartile private rented housing.[11]

(3) Supply of self-build/custom housing

7. The Council's development plan is entirely silent on the provision of self-build housing. This is unsurprising, given the age of the Local Plan, but the inevitable consequence is that the Council is significantly failing to deliver the necessary supply of self-build housing. The Council's own data indicates a shortfall of 171 self build

[6] CD 3.18a – Mr Kenworthy's POE at [6.13] – [6.14] on p. 52/PDF p. 55.
[7] CD 3.22a – Mr Parker's POE at figure 4.1.5 on p. 20.
[8] CD 3.22a – Mr Parker's POE at [4.2.1] on p. 21.
[9] CD 3.22a – Mr Parker's POE at figure 4.2.2.
[10] CD 3.22a – Mr Parker's POE at [5.2] on p. 24.
[11] CD 3.22a – Mr Parker's POE at [5.8] on p. 26.

homes.[12] This is an overall delivery rate of only 20%.[13] However, these figures are likely to be unduly optimistic, with need being significantly greater than the Council's records indicate.[14]

(4) The Council's abdication of plan making responsibilities

8. One of the most striking aspects of the housing crisis in St Albans is the absence of any meaningful response from the Council.

9. The Council has published a HDT Action Plan in 2022, but this only contains measures to deliver approximately 160 homes in the period to 2027.[15] This is not even a meaningful start in tackling the shortfall of over 3,000 homes in the same period. It is frankly embarrassing.

10. The only additional evidence presented by Mr Connell was the Council's Local Development Scheme, indicating a best-case adoption of a new local plan in 2025. However, as Mr Connell confirmed in XX, this was simply a date that he had been presented with by the Council's officers: Mr Connell had taken no steps to interrogate that date or to consider whether it was realistic. Of course, when the LDS is interrogated, it is obviously optimistic. For example, it proposes 18 months from publication of the reg. 19 plan to adoption. In the context of a Green Belt Authority with multiple previous failures at adopting a local plan, this is unrealistic (especially given the potential further disruption from revisions to the NPPF). Ultimately, not only is there potential for delay at all stages of the plan-making process, as Mr Connell accepted, but in fact such delay is likely and quite possibly inevitable.

11. The Local Plan is almost 30 years old. It is from a different era and it is not fit for purpose. It is out of date in multiple respects: first, because of the absence of a 5YHLS; secondly, because of the persistent HDT failures; and thirdly, because the most important policies are out of date - those policies are inconsistent with the NPPF and, taken as a whole, the Local Plan does not plan for the up to date needs in its district, instead persisting with a failing and unjustifiable spatial strategy. Worse still, the Council has repeatedly failed to remedy this situation: the Council has failed to adopt

[12] CD 3.22a – Mr Parker's POE at [7.21] on p. 40.
[13] Ibid.
[14] CD 3.22a – Mr Parker's POE at [7.22] on p. 41.
[15] CD 3.18a – Mr Kenworthy's POE at [6.17] on p. 53/PDF p. 56.

a new local plan on at least two previous occasions and is currently operating in a policy vacuum.

12. Stepping back and looking at matters in the round, there is quite obviously a sustained and significant failure of plan making in the District. This is a significant material consideration in its own right, as Mr Kenworthy explained without challenge.[16] Indeed, it is a failure that the Council itself has recognised as far back as 2018 – some five years ago – when the Chairman of the Planning Policy Committee said:

> *'[…] we desperately need a new Local Plan. There hasn't been enough, or the right type of development of either housing or commercial premises in this District for a generation.*
>
> - *Over the last 20 – 30 years, our population has grown very significantly. Many local people have been priced out of living in the District.*
> - *Young people cannot afford to rent or buy so have to remain in their parents [sic.] homes.*
> - *If they can afford to rent, they cannot afford to buy and struggle when they start families.*
> - *People on lower incomes are particularly badly hit. They cannot afford market rents and affordable or social homes are not available.*
> - *Children are being brought up in tiny flats that are completely unsuitable for their needs, with parents made ill by the overcrowded conditions they are living in.*

13. These are the real-life consequences of the Council's abdication of its plan making responsibilities. There is no end in sight. This is not a position that can be allowed to continue: it is contrary to the established national objective of significantly boosting the supply of housing and it is having severe consequences for the families living in the District.

(5) The need to build houses in the Green Belt

14. The root cause of the housing emergency in the District is the Council's failure to get to grips with plan-making, and in particular the Green Belt in its area. However, assessed objectively, the issue is straightforward: there is insufficient land outside the

[16] CD 3.18a – Mr Kenworthy's POE at [3.21] – relying on the appeal decisions at CD 9.21 at DL 24 – 25 and CD 9.22 at DL 21 and IR 115.

Green Belt to meet housing need and thus it is inevitable that housing must be delivered in the Green Belt.

15. Mr Kenworthy's unchallenged analysis (based on the Council's own data) is that at best 14% of the District's housing need can be accommodated within urban areas.[17] It follows that on any reasonable view, it will be necessary of the Council to deliver housing in the Green Belt. The Council cannot wish away the remaining 86% of need. Indeed, as Mr Connell accepted in XX, the Council's latest published position within its most recent HDT action plan is that it will seek to meet all of its housing need in the next Local Plan.[18] However, even if housing need was slashed in half, as Daisy Cooper MP speculated, it will remain necessary to deliver housing on the Green Belt, as Mr Connell accepted in XX (and importantly he was not re-examined on this point).

16. Further, it is necessary to deliver housing on the Green Belt <u>now</u>. There is no moratorium on development in the Green Belt, as Mr Connell accepted in XX (he was not re-examined on this point either). In the absence of any moratorium and in the absence of any prematurity argument, good planning requires the delivery of housing in the Green Belt now. More than that, there needs to be the delivery of a range of houses on a range of sites. Any other approach would not be in the interests of good planning in the District and it would be callous to ignore the very real needs of the people living in the District.

II. EFFECT OF THE DEVELOPMENT ON THE GREEN BELT (MAIN ISSUE 1)

(1) The appropriateness of the southern appeal site

17. Through the Green Belt Review Sites and Boundaries Study the Council has comprehensively assessed the potential for strategic sites in the Green Belt.[19] The output of that assessment is clear: sub-area 8 is the most suitable strategic parcel for

[17] CD 3.18a – Mr Kenworthy's POE at [4.34] final bullet point on p. 34/PDF p. 37.
[18] See CD 8.25 at p. 19 (third row, third column). The Council's only response was to suggest that the position as uncertain and the Council might seek to meet a lower level of need. This is no answer. The Council relied on the AMR (CD 5.19) at [3.9] on p. 30, but all that this says is that the Council will review the position – there is no indication that the Council will choose a lower figure than local housing need calculated via the standard method. Even if the position is uncertain (which is not accepted, given CD 8.25), this does not assist the Council: the starting point (under both the current NPPF and the track-changed version) is local housing need calculated via the standard method. Exceptional circumstances are required to take a different approach but have not been demonstrated. Therefore if the position is uncertain, the appropriate approach is to assess matters on the basis that the Council will apply the NPPF and meet its local housing need in full.
[19] CD 8.5.

development; the eastern part of sub-area 8 is the most suitable part of that strategic parcel; and the southern appeal site is the most suitable site within that eastern part.[20] The southern appeal site is the top of the top of the top when it comes to development in the Green Belt. The fact that its relative size compared to other sites may have contributed to this (cf Council Closing Submissions para. 22(2)(c)) is beside the point: what matters is that as a means of delivering a development of the scale proposed by the appeal scheme somewhere in the St Albans Green Belt, the appeal site and appeal scheme can do so at the lowest possible cost to the Green Belt. Indeed this is clearly corroborated by the Council's own acceptance at the inquiry that the appeal scheme would cause no more than inevitable harm for a devleopment of this scale in the Green Belt..

18. This analysis is consistent with the earlier allocation in the emerging local plan. It is agreed that the emerging local plan cannot be given any weight now, but it is relevant to consider the prospect of allocation. As to this, the Council has withdrawn Mr Connell's suggestion that the southern appeal site will not be allocated in the next Local Plan **– in XX he accepted "*it's a likelihood*" (his exact words) that the site would indeed be allocated**. This concession (which the Council's closing submissions wholly improperly resile from, without any evidential basis)[21] was rightly made given (i) the acceptance that there is a need for at least some Green Belt release, including on strategic sites,[22] which Mr Connell acknowledged would be necessary even with a new local plan requirement figure sought to meet just a quarter of currently identified housing need given the findings of the Urban Capacity Study; (ii) the findings of the Green Belt Review which still hold good today; and (iii) the common ground with the Council that the proposed development would cause no more than the minimum inevitable level of harm associated with developing 391 homes in the Green Belt. Given these factors, you can have a high degree of confidence that the southern appeal site would be allocated in due course for residential development of this scale (likely including the provision of land for a school as well, given HCC's clear statement that

[20] See CD 8.5 at table 9.1 on p. 113/PDF p. 119 and p. 101/PDF p. 107.
[21] Council Closing submiions para. 12.
[22] Mr Connell accepted in XX that any green belt release in the new local plan when finally adopted would involve at least some strategic sites. Accordingly, given that the appeal site is the top-ranking strategic site, the uncertainties referred to at para. 9 of the Council's closing submissions do not affect the prospect of the appeal site being allocated.

such land is required for further development in Chiswell Green) if and when the Council finally gets a new local plan in place.[23]

19. The Council and the Appellants are agreed that significant weight should be given to the Green Belt Review.[24] However, belatedly, the Council has sought to caveat this agreement on the basis that there has been a material change of circumstances with the closure of Butterfly World. This is incorrect for the two reasons.

20. First, the unauthorised development against which the Council has taken enforcement action (the unauthorised change of use and the failure to remove the temporary toilet block) occurred after Butterfly World closed in 2015 and post-dates of the Green Belt Review. Therefore the enforcement action even if successfully defended on appeal would revert the position back to that at the time of the Green Belt Review. Accordingly, this unauthorised development (including its subsequent removal, if enforcement action is successful) is not a change of circumstances which materially changes the the baseline from that which was assessed in the Green Belt Review. Insofar as there is any other unauthorised development within Butterfly World, it is now too late for the Council to take enforcement action against that development, as Mr Connell accepted in XX.

21. Secondly, there is no indication that the Green Belt Review was based on the assumption that the permitted dome within Butterfly World would be built out in full. To the contrary, it is clear that the Green Belt Review assessed the Green Belt as it existed in 2014: all of the descriptions are in the present tense without any suggestion of future development.[25] Further, there would be no basis for that assumption. Planning permission for the dome was granted in 2005, some nine years previously, with development commenced before 2010 with the ground works, hard standing and pouring of concrete base of the dome.[26] Accordingly, the development was already delayed at the date of the Green Belt Review, as the assessors would have appreciated, and thus there would have been no basis for them to base their assessment on the assumption of completion.

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[23] For example, CD 3.16 – Education SOCG at [2.8] on p. 3/PDF p. 4.
[24] CD 5.4 – Mr Connell's POE at [4.12] on p. 20, confirming the relevance of the GBR; and in XiC when Mr Connell explained that he gave this significant weight.
[25] CD 8.5 at [10.1.3], [10.1.4], [10.4.3] – [10.4.12] and the table on p. 101/PDF p. 107.
[26] CD 3.18b at PDF p. 61 ff – see in particular condition 1 requiring commencement of development by 2010.

22. Thirdly, it is important to read the Green Belt Review's reference to Butterfly World in context. The full passage (CD 8.5, para. 10.1.4) reads as follows:

> *"However, the sub-area identified on pasture land at Chiswell Green Lane displays particular urban fringe characteristics due to its proximity to the settlement edge and Butterfly World along Miriam Road to the west. This development bounds the outer extent of the pasture land and creates a physical barrier to the open countryside."*

23. As Mr Friend accepted in XX from his landscape and visual perspective, this observation remains good. The Green Belt Review's identification of urban fringe characteristics *of the site* were due to both the settlement edge (which has not changed since) and Buterfuly World, which on any view in its lawful state would be a previously developed site with significant hardstanding and other physical development (as the aerial image in the Keep Chiswell Green presentation made abundantly clear) – containing development which at the time it was authorised was recognised as inappropriate development in the Green Belt (see CD 5.13-5.17)[27]. Mr Friend accepted in XX that these two factors continue to contribute to the site having urban fringe characteristics from a landscape and visual perspective. He also accepted that in its lawful state (i.e. discounting the matters which are the subejct of the ongoing encorcmenet action) the site continues to separate the appeal site from the open countryside. The observations of the Green Belt Review in this respect therefore remain fully valid.

24. The Appellant on the northern appeal site has argued that the Green Belt Review should be afforded less weight because of the Examining Inspector's comments on the withdrawn local plan. This argument is incorrect. The Inspector's concern was that the Council had failed to assess small scale sub areas, i.e. non-strategic small sites.[28] The Inspector did not have any concerns about the assessment of strategic sites. It follows that this is not a basis to reduce the weight to be afforded to the Green Belt Review.

25. In the Council's closing submissions at para. 22(2)(c), Mr Parkinson advanced a new point against the Green Belt review, not made in evidence or otherwise previously

[27] Note also that the extent of lawful development on the Butterfly World site (the hardstanding, the 'crater' foundations of the dome, and the unenforced-against built form) would on the Council's own definition of openeness at para. 18ff of their closing submissions be significant detractors to the Gree Belt.
[28] CD 4.77.15 at IR 33 and IR 37.

foreshadowed: namely that "*the GBR did not assess the cumulative effect of both the North and the South sites coming forward at the same time*". This new point is a bad one given that Ms Toyne's cumulative assessment for the Appellant was not challenged in XX or otherwise contradicted at the inquiry. In any event it does not affect the standalone merits of the southern appeal site and the appeal scheme.

26. Accordingly the conclusions of Green Belt Review in relation to the site continue to hold good today without caveat, and there is no good basis for departing from them. On this basis, the only proper conclusion is that the southern appeal site is the most appropriate site for strategic residential development. There is no alternative analysis.

(2) Green Belt – baseline analysis

27. In the baseline analysis, the southern appeal site makes a limited contribution to the openness of the Green Belt.

28. In respect of parcel S8, the Green Belt Review explains that there is a '*sense of enclosure*' in the parcel and that '*urban fringe elements are prominent, particularly […] [the] built edge of settlements*'.[29] This is especially the case '*at a local level [where] Butterfly World forms a distinctive feature to the west of Chiswell Green*'.[30] Further, the Green Belt Review highlights that the land around Chiswell Green Lane, including the southern appeal site, '*displays particular urban fringe characteristics due to its proximity to the settlement edge and Butterfly World along Miriam Road to the west. This development bounds the outer extent of the pasture land and creates a physical barrier to the open countryside. The pasture land displays greater levels of landscape enclosure due to localised planting along field boundaries. This creates potential to integrate development into the landscape with lower impact on views from the wider countryside and surroundings.*'[31] On this basis, the Green Belt Review concludes that the land immediately adjacent to Chiswell Green, including the southern appeal site, '*makes a limited or no contribution towards <u>all</u> Green Belt Purposes*' (emphasis added).[32]

29. Ms Toyne's analysis – in particular through the BWNS Green Belt Review - was consistent with these findings. As to openness, Ms Toyne explained through her

[29] CD 8.5 at [10.1.3] on p. 97/PDF p. 103.
[30] Ibid.
[31] CD 8.5 at [10.1.4] on p. 97/PDF p. 103.
[32] Ibid.

evidence that the principal contribution to openness is in the spatial dimension, because the appeal site is largely undeveloped, but there is no meanginful contribution to the visual aspect of openness: the existing vegetated boundaries truncate views, limiting intervisitibility between the southern appeal site and the remaining Green Belt to the west; views from the settlement edge towards the appeal site are also interrupted in part by the existing field boundary vegetation; and as such any appreciation of openess is limited to the immediate locality of the Appeal Site, with no perception of openness beyond the roads and residential properties that immediately adjoin the Site.[33]

30. Further, as to the purposes of including land within the Green Belt, Ms Toyne found that the appeal site made only a partial contribution to a single Green Belt purpose, namely preventing encroachment into the countryside.[34] This is entirely in accordance with the Green Belt Review.

31. The Council's challenge to Ms Toyne's assessment of the baseline was limited. As to openness, the Council did not identify any deficiencies in Ms Toyne's analysis. In particular:

(a) The largely undeveloped nature of the southern appeal site is agreed and was expressly part of Ms Toyne's analysis. There was no omission in her analysis in this regard.

(b) The Council's case in XX focussed in on very close distance views from private residential properties. Again, these had been taken into account by Ms Toyne and there was no omission in her analysis.

(c) There was a suggestion that longer views from outside the Green Belt looking west were relevant. Aside from the fact that Mr Friend provides little if any analysis of these views in Green Belt terms, there is only a very limited extent of visibility as Ms Toyne explained, consistently with the Green Belt Review.

[33] CD 3.19a – Ms Toyne's POE at [5.20] – [5.21] on pp. 46 – 47.
[34] Ibid at [5.51] on p. 55.

(d) The extent of activity from the existing riding school was acknowledged expressly by Ms Toyne in her evidence and there was no omission in this regard.[35]

32. In respect of Green Belt purposes, the Council's case at inquiry evolved beyond its earlier written analysis. In particular, on the first Green Belt purpose, checking the unrestricted sprawl of built up areas, Mr Connell advanced the contention for the first time in XiC that Chiswell Green was a large built up area. This was not foreshadowed in his POE. The absence of earlier analysis only underscored the weakness of this argument and Ms Toyne was right to reject it. Neither the Council's own Green Belt Review nor the BWNS Green Belt review considered Chiswell Green to be a large built up area for this purpose. That is the right analysis, reflecting the Council's own assessment of the different tiers of settlements, where Chiswell Green is not in the top tier as a large built up area.[36]

33. The Council based its case in XX on the appeal decision relating to Burston Garden Centre (another argument not in Mr Connell's evidence).[37] This is a site on the other side of St Albans, beyond the North Orbital Road. The Council sought to argue that a finding of harm to the first Green Belt purpose in that case meant that there was also harm to the same Green Belt purpose in this case. This is flawed in multiple respects. First, the comparison of two different sites on different sides of Chiswell Green is simplistic. A site specific and scheme specific analysis is required. Secondly, on closer examination, it is apparent that the Inspector's concerns in that case – which was about the separation between Chiswell Green and How Wood Village – is not a concern in this case, given (1) the location of How Wood Village; and (2) the close relationship between the southern appeal site and Chiswell Green in this case, which was not repolicated in the other appeal decision where the Inspector noted '*a degree of separation*' from Chiswell Green. Thirdly, there is no supporting reasoning which explains either: (1) how (or if) the Inspector grappled with the Green Belt Review; and/or (2) how Chiswell Green and How Wood Village are large built up areas for the purposes of the first Green Belt purpose (in particular, in the face of the Green Belt Review). Ultimately, this appeal decision provides no tenable basis for reaching a different view to Ms Toyne and the Green Belt Review in this case.

[35] See in particular the RPOE
[36] CD 8.3a at p. 19/p. 24.
[37] CD 9.16

34. On the second Green Belt purpose, the Council pinned its case on a simplistic recitation of the "thousand cuts" argument. The deficiency with this argument is that it requires site by site appraisal, not broad brush statements of principle. As Ms Toyne explained in response, when one focuses in on the southern appeal site, it is clear that the development of this parcel will not contribute to the merging of neighbouring towns, given its high levels of enclosure and relationship with Chiswell Green, being wrapped around by existing development from residential properties and Butterfly World. Accordingly, there is no merging effect.

35. It follows that Ms Toyne's assessment of the baseline is to be preferred.

(3) Effect on Green Belt openness and purposes

36. As to the effect of the proposed development, although the parties differed on their precise assessments, it was agreed by both of the Council's witnesses that the harm to the Green Belt from the proposed development was no more than that which would inevitably arise from a residential development of this scale within the Green Belt in this District. There is no excess or egregious harm; rather that harm has been minimised to the lowest possible extent.

37. Ultimately, this is fatal to the Council's case (given the acceptenace that some Green Belt release is needed to address the massive unmet needs and that there should be no moratium on that until such time as a new local plan is finally adopted). It is possible to argue – as the Council sought to do in XX of Mr Kenworthy as to whether or not the substantial weight to the Green Belt harm should be graduated or calibrated to the extent of effect, but in this case such an argument is arid because it makes no difference. The parties are agreed that nothing more than the minimum, inevitable, harm to the Green Belt is caused by the proposed development and thus, when paragraph 148 of the NPPF is applied, the substantial weight to be afforded to that harm is the same on either parties' analysis – it is substantial weight reflecting a minimum level of harm.

38. Insofar as it is necessary to go beyond this analysis, the Appellant submit that Ms Toyne's assessment of effects is to be preferred. Overall, she concluded that there was limited harm to the Green Belt, having regard to both the impact on openness and Green Belt purposes.[38] Mr Kenworthy struck his planning balance on this basis. There

[38] CD 3.19a – Ms Toyne's POE at [5.56] on p. 56.

was no inconsistency as the Council suggested in XX: that inconsistency was illusionary because it was based on individual component parts of Ms Toyne's analysis, not her overall conclusion on the degree of harm.

39. Further, in XX of Mr Kenworthy and Ms Toyne the Council sought to adopt a mathematical approach, taking the assessment of different elements and adding them up to create a higher level of harm. This approach is wrong as a matter of principle: the assessment of harm is not a mathematical exercise, but instead requires a holistic overall conclusion. That was Ms Toyne's approach and she was correct to do so.

40. As to spatial openness, Ms Toyne acknowledged that there would be harm to this dimension, but in so doing she also, rightly, had regard to the proposed development in its entirety, in particular the substantial areas that would not be developed. The Council challenged the precise figure in this regard on the basis that the school should be included, but even on this basis, the increase in the percentage of developed area would not be significant, as Ms Toyne explained.

41. As to visual openness, the Council reiterated its arguments about adjacent residential properties, but the more that this argument was reiterated, the clearer it became that the effects on visual openness were very limited – these were the only views that the Council could point to in support of its case. Ms Toyne took these matters into account, but they did not materially increase her assessment of harm. This was the same conclusion as the Council's officers who were of the view that '*there is no additional harm to openness as a result of the limited visual impact on openness of the Green Belt*'.[39]

42. As to Green Belt purposes, the proposed development would only cause very limited harm to the third Green Belt purpose and that harm would be confined to the southern appeal site itself.[40] Although the southern appeal site makes a partial contribution to this purpose and there would be development within the countryside, the level of harm is significantly mitigated by (1) the existing urban fringe influences in the baseline position; and (2) the fact that following the development there will be a strong, defensible, Green Belt boundary, enclosing the development with Chiswell Green.

43. In respect of this purpose, the Council focussed in XX of Ms Toyne on the fact that the urban influences could be stronger if Butterfly World had been completely built out.

[39] CD 3.4 at [8.3.9] on PDF p. 94.
[40] CD 3.19a – Ms Toyne's POE at [5.49] on p. 54.

That might be right, but it is of no consequence: as the Green Belt review has found, the current form of Butterfly World (and the other existing development) already imposes a substantial urban fringe influence on the appeal site. Ms Toyne's assessment was based on what is on the ground today, not what might have been. Thus, the Council's argument goes nowhere.

44. There has been no challenge to Ms Toyne's assessment of cumulative impacts. Indeed, this is a matter to which Mr Friend devotes three, essentially inconsequential, paragraphs in his POE. Accordingly, for the reasons that Ms Toyne gives, there is no basis for refusing to grant planning permission because of the cumulative impacts of the development but, even if this was a concern, the clear – and unduspited – preference must be for the devleopment of the southern appeal site with its lower levels of harm.[41]

45. Finally, an important lacunae in the Council's assessment was its failure to take proper account of the positive effects that the proposed development will have on the Green Belt through the formation of a strong boundary on the western edge. The boundary features already exist there, with Miriam Lane and Butterfly World, but at present the urban edge is raw. Following the proposed development, there will be substantial landscaping on the western side, softening the impact of the urban form, reinforcing the existing boundary features and reducing the urban fringe impacts on the Green Belt. This is an important factor that tempers the harm to the Green Belt.

46. We also note for comlepleteness that no party has challenged the Appellant's evidence on the comparative impacts of the South and North schems.

(4) Conclusion on this main issue

47. The starting point is that the southern appeal site represents the most appropriate site for strategic residential development within the Green Belt. As the Green Belt Review rightly concludes, the site is the most suitable part of area S8, that area as a whole being ranked No1 within the Tier 1 of the strategic sites that were assessed. It is the top of the top of the top.

48. Notwithstanding the Council's minor quibbles as to the extent of Green Belt effects, the ultimate position is that any harm arising from the proposed development is only

[41] CD 3.19a – Ms Toyne's POE at [7.44] on p. 72.

that which would arise inevitably from the any strategic residential-led development within the District's Green Belt. This was accepted in terms by both of the Council's witnesses.

49. Once it is accepted – as the Council's witness have - that development in the Green Belt is necessary and there is no moratorium on Green Belt development, then it follows from the above that there can be no tenable objection to the proposed development on Green Belt grounds. There is no better way of meeting the need for strategic residential development: it is the most appropriate site and any harm arising is only that which would inevitably arise from any such development in the District's Green Belt.

III. LANDSCAPE AND VISUAL IMPACTS (MAIN ISSUE 2)

(1) Impact on landscape character

50. The starting point – and end point – is the agreement between the Council and the Appellants that there is only a limited degree of harm to landscape character and that only limited weight should be afforded to that harm.[42] Mr Friend also agreed in XX that the level of harm was no more than inevitable for development of this scale on a green field site in the district.

51. This agreement reflects the fact that there were only two – very minor and ultimately immaterial - points of dispute between Mr Friend and Ms Toyne.

52. The first point of dispute relates to the effect on the character of the site in year 15. Ms Toyne's evidence is to be preferred and the proper conclusion is that at year 15 there will be a neutral on site effect. Although the character of the site would change, the proposed development would establish positive characteristic features across the southern appeal site, thus responding to the published landscape guidance and policy, as well as mitigating the adverse effects of the proposed development itself.[43] This would ensure the sensitive assimilation into the settlement and an overall improvement to the edge of Chiswell Green. Mr Friend's analysis erroneously

[42] CD 3.12 – SOCG – at p. 30/PDF p. 33.
[43] CD 3.25 at [1.21] on p. 4/PDF p. 8.

focussed on the adverse effects in isolation, rather than balancing both the landscape character harms and benefits.[44]

53. The second point of dispute concerns the effect on native hedgerows in year 15. Both Ms Toyne and Mr Friend agree that there will be a beneficial effect on this receptor and the dispute is only one of extent. As to this, Mr Friend based his position on the fact that some hedgerow would be removed for the creation of accesses. However, this is an incomplete assessment because the proposed structural planting will result in an overall net gain in native hedgerow length and quality.[45] This justifies the moderate beneficial effect described by Ms Toyne.

(2) Visual effects of the proposed development

54. The reason for refusal only refers to harm to landscape character.[46] There is no allegation of adverse visual effects. Mr Friend's decision to allege such effects was thus contrary to art. 35 of the Development Management Procedure Order and unreasonable. This was all the more the case given the alleged adverse visual effects were unjustified.

55. There was no methodological dispute between Mr Friend and Ms Toyne. Instead Mr Friend purported to dispute the value of the receptors in residential properties on the settlement edge of Chiswell Green.[47] There was no justification for these receptors to be given a high value. The agreed methodology ascribed a high value to a '*view of/from a location that is likely to be of national importance, either designated or with national cultural associations*'. Plainly these views do not have national cultural associations. Further, they are not designated for their visual value. Mr Friend's reliance on the Green Belt designation was in error: that is a spatial designation, not a landscape designation, and the visual component of openness does not change this because it is concerned with the extent of visibility, not the quality or value of a view. Mr Friend's error is all the more apparent given the protection of views from private properties is not a purpose of including land in the Green Belt.

[44] Ibid.
[45] CD 3.25 at [1.18] on p. 4/PDF p. 8. See also CD 2.18 (BNG assessment) at p. 9.
[46] CD 3.7 – 'the harm also related to landscape character'.
[47] There was agreement that these were high susceptibility receptors, in accordance with the LVIA's methodology.

56. It follows that Ms Toyne's assessment of visual effects is to be preferred. In any event, Mr Friend's criticisms had no consequence because Mr Connell did not depart from his limited weighting on this issue (and did not add any additional component of harm to his planning balance).

(3) Conclusion on this main issue

57. Ultimately, the proposed development would only give rise to a limited adverse effect on landscape character. That level of harm does not give rise to any policy conflict, even on Mr Friend's case. This is not an immaterial point as the Council suggested in XX of Mr Kenworthy.[48] Neither the NPPF nor the Local Plan impose a no harm test. Rather, they seek to consider whether the effects are acceptable. A limited adverse effect when delivering a strategic residential development is an acceptable, policy compliant, effect, as the OR and the Appellants' witnesses concluded.[49]

IV. THE EFFECT ON BEST AND MOST VERSATILE AGRICULTURAL LAND (MAIN ISSUE 3)

58. The Council's objection to the loss of agricultural land is inexplicable for multiple reasons.

59. First, over 90% of the land within the District is classified as Grade 3, like the southern appeal site.[50] It follows that if strategic residential sites are to come forward – as they must – then it is inevitable that sites with the same agricultural land classification will be lost.

60. Secondly, the southern appeal site makes no contribution to the agricultural productivity of the district. It has not been in productive agricultural use for more than 20 years and there is no prospect of this changing.[51] The southern appeal site is fundamentally unsuited to a modern, intensive, agricultural enterprise, being an isolated block of land, adjacent to the urban edge and severed from any wider agricultural land.[52] Accordingly, the loss of this agricultural land would have no effect

[48] And in Opening – ID3 at [24].
[49] CD 3.4 at [8.5.17] on PDF p. 104.
[50] CD 3.20a - Ms Tindale's POE at [3.6] on p. 6/PDF p. 8.
[51] CD 3.20a – Ms Tindales' POE at [3.14] – [3.15] on p. 8/PDF p. 10.
[52] CD 3.20a – Ms Tindale's POE at [3.16] on p. 8/PDF p. 10.

on the agricultural productivity of the District. In none of these respects was the Appellant's evidence challenged.

61. Thirdly, the loss of agricultural land does not give rise to any policy conflict. The Council's reasons for refusal do not allege any conflict with the Local Plan on this issue.[53] Further, there is no conflict with NPPF para. 174(b), as Mr Connell accepted in XX. That paragraph simply requires the benefits of best and most versatile agricultural land to be taken into account – it does not seek a particular outcome. But in any event, the land in this case does not give rise to any agricultural or economic benefit, given the enduring absence of productive agriculture.

62. It follows that the there is, at worst, limited harm arising from the loss of agricultural land and this should be afforded limited weight. This is agreed between the Appellants and the Council.[54]

V. HIGHWAYS AND TRANSPORT (MAIN ISSUE 4)

63. Neither the Council nor the Hertfordshire County Council, the local highways authority, objects to the proposed development, either on an individual or cumulative basis. This has been reaffirmed during the inquiry.[55] The objections by third parties are without merit and provide no good reason to take a different view to the Council and County Council.

(1) Impact on the highway network

64. The proposed development will not give rise to a severe residual cumulative impact on the highway network either in isolation or in combination with the development on the northern appeal site.

65. Mr Jones has undertaken detailed modelling of the impact on the highway network on a worst case basis. This approach is robust and is not disputed by any party, including Keep Chiswell Green ("**KCG**"). Instead, the dispute is as to what form of mitigation is necessary.

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[53] In particular the reasons for refusal do not allege conflict with Local Plan Policy 102 – which is out of date in any event (both by virtue of inconsistency with the NPPF and by virtue of NPPF para. 11(d) deeming it out of date).
[54] CD 3.12 at p. 30/PDF p. 33.
[55] ID21

66. Mr Jones explained his view that for the proposed development in isolation, the modal shift arising from the Travel Plan was sufficient mitigation, but for the developments in combination it would be necessary to introduce traffic signals at the double mini-roundabout. The County Council agrees with this analysis.[56]

67. Mr Walpole accepted the principle of signalisation, subject to detailed design, but contested the efficacy of the Travel Plan. This objection cannot give rise to a refusal of planning permission, given the introduction of traffic signals is offered as a fallback (although it is not considered necessary).[57] But in any event, it is an objection which is unjustified. The Travel Plan proposes a 16% decrease in single occupancy vehicle movements.[58] This is agreed by the County Council to be realistic.[59] That 16% decrease is made up of two components. The first component is a 10% reduction in car driver mode share as a result of active travel improvements.[60] Mr Walpole agreed in XX that he did not contest that element and he agreed that it was realistic.[61] The second component is a 6% increase in people working from home: more specifically, a shift from 9% to 15%. Mr Walpole contended that this was unrealistic, but that is wholly unsustainable, given on KCG's own evidence some 24% of people in Chiswell Green work from home.[62] Given this, achieving the lesser figure of 15% is eminently realistic and achievable, as both Mr Jones and the County Council have concluded.

68. It follows that the impacts of the proposed development will be appropriately mitigated and there is no basis for concluding that the proposed development will give rise to a severe residual cumulative impact on the highway network.

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[56] CD 3.17 – the Highways SOCG at [2.49], dealing with the southern appeal site in isolation; and ID 21, dealing with the southern and northern appeal sites together.
[57] For the avoidance of doubt, the Appellants' position is that if planning permission is granted for the proposed development in isolation, the traffic signals are not necessary. However, out of an abundance of caution, the Appellants offer signalisation in that event, if the Inspector deems it necessary.
[58] CD 2.10 – the Framework Travel Plan at Table 3 on p. 20/PDF p. 23.
[59] CD 3.17 – the Highways SOCG at [2.42] on p. 6/PDF p. 8.
[60] CD 3.17 – the Highways SOCG at [2.39] on p. 5/PDF p. 7.
[61] It is also consistent with KCG's evidence on reasons for greater bus uptake – CD 2.1 at PDF p. 7 – 9% more likely to use a more frequent bus – see also PDF pp. 11 – 12, to the same effect.
[62] CD 6.21 on PDF p. 4.

(2) Impact on highway safety

69. Only Mr Walpole has raised an objection on the basis of highway safety. That objection was narrow in scope and only related to the proposed shared pedestrian/cycle way on Chiswell Green Lane. Further, the objection was unfounded in multiple respects.

70. First, as Mr Walpole explained in XX, his analysis was based on the shared way being the only point of access. This was in error. There will be two points of access for all modes of travel into the southern appeal site at Chiswell Green Lane in addition to the access at Forge End and the pedestrian/cycle/emergency access at Long Fallow. Importantly, the most easterly of these access points (and thus the access point that is most likely to be used by school children walking from the centre of Chiswell Green) will be served by footways on both sides of Chiswell Green Lane, contrary to Mr Walpole's understanding.[63] From that access way, school children will be able to follow the footway around the internal access road to the school site. In addition, there is likely to be an internal footpath across the northern part of the site, providing a further alternative access to the school site.[64]

71. Secondly, the proposed shared way has been assessed in the Road Safety Audit and Mr Walpole's concerns were not corroborated.[65] This is consistent with the conclusion of the County Council who also found the shared way to be acceptable.[66]

72. Thirdly, and in any event, the proposed shared way has been designed in accordance with LTN1/20 and it will have a capacity of 300 pedestrians/cyclists per hour. This will be more than adequate, as Mr Jones explained in XiC, in particular when the unchallenged forecasts only identify 40 cycling trips per day on that route.

73. It follows that the proposed development is acceptable in terms of highway safety.

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[63] CD 1.22

[64] See CD 2.27, read together with CD 1.22 (see the annotation 'proposed footway avoids existing trees').

[65] CD 3.26 – Mr Jones' RPOE at Apx B, PDF p. 43 ff. Importantly, contrary to Mr Walpole's speculation in XX, the highways engineer undertaking the RSA was provided with details of pedestrian flows, as is apparent from the RSA at Appendix A and as Mr Jones confirmed in XiC in any event.

[66] CD 3.17 – the SOCG at [2.55] – [2.56] on pp. 7 – 9, PDF pp. 9 – 10.

(3) The locational accessibility of the proposed development

74. The issue of locational sustainability must be put in perspective. The Council has consistently assessed Chiswell Green as an appropriate location for development, both in the adopted local plan and in the aborted replacement local plan.[67]

75. The first difficulty with Mr Walpole's evidence was his erroneous approach to national policy. Mr Walpole assessed locational sustainability on the basis that walking, cycling and public transport had to be '*the first choice for journeys by new residents*'.[68] This is incorrect. Mr Walpole based this test on a Government policy paper from July 2020. That policy paper predates the NPPF. Given this, it cannot be taken as an expression of the Government's current approach to assessing the locational accessibility of developments; rather, that should be assessed by reference to the NPPF, in its current form.

76. Properly understood, the NPPF requires opportunities to promote walking, cycling and public transport use are '*identified and pursued*';[69] and it seeks to ensure that '*appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location*'.[70] Further, the NPPF recognises that opportunities to maximise sustainable transport solutions will vary depending on the location of the development.[71]

77. Mr Walpole did not recognise the contextual judgement that the NPPF requires. Instead Mr Walpole formulated arbitrary lists of required facilities, for which there is no policy or guidance support.[72]

78. The second difficulty with Mr Walpole's evidence was that he assessed the accessibility of the development on foot by the rigid application of an 800m walking distance.[73] This approach is flatly contrary to the relevant guidance. Manual For Streets recognises that whilst 800m represents a '*comfortable*' walking distance, it is not an upper limit and that walking is a realistic option to replace car trips at distances up

[67] CD 8.2 – at p. 21/PDF p. 23. Compare CD 8.1 at p. 13. The settlement is Tier 2 in both instances.
[68] For example – CD 6.12 – Mr Walpole's POE at [4.2] on p. 8/PDF p. 10.
[69] CD 7.1 – NPPF at para. 104(c).
[70] CD 7.1 – NPPF at para. 110(a).
[71] CD 7.1 – NPPF at para. 105.
[72] CD 6.12 – Mr Walpole POE at [4.3] on p. 8/PDF p. 10.
[73] For example – CD 6.12 at [4.8] – [4.9] on p. 9/PDF p. 11.

to 2 km.[74] This is also consistent with the WYG research which found that walking up to 1.95 km was realistic as a main mode of travel outside of London.[75] Further, the National Design Guide does not lead to a different conclusion: that discusses how new developments can be laid out so as to be walkable (based on an 800m distance), but it does not dictate or provide guidance on the location of development relative to existing facilities. Mr Walpole did not appreciate this in his evidence.

79. The third difficulty was that Mr Walpole failed to consider the full range of sustainable transport options. In particular, Mr Walpole made no reference at all to the possibility of train travel, despite the appeal site being in close proximity to four train stations, offering the possibility to travel to central London in under an hour by bus and train alone.[76]

80. Given these obvious errors in Mr Walpole's analysis, the Appellants submit that Mr Jones' evidence should be preferred. As he explained, Chiswell Green is served by a good range of facilities, including retail and employment, that are within convenient walking and cycling distance of the southern appeal site. Further, Chiswell Green is well located for the wider use of sustainable transport, in particular by cycle or bus into St Albans or the one of the four nearby rail stations, with plentiful opportunities for onward travel, especially to London and Watford. In short, applying the NPPF, it is clear that appropriate opportunities for sustainable transport exist and can be taken up. Mr Walpole was unable to identify any opportunities that had been overlooked.

81. It follows that the southern appeal site is in a sustainable location.

VI. THE EFFECT ON EDUCATION (MAIN ISSUE 6)

82. The Council do not dispute that the provision of the school land is a benefit, but instead they contest the weight to be given to it as a benefit. Mr Connell agreed that if planning permission is granted for both the northern and southern developments, then substantial weight should be afforded to the provision of the school land. Accordingly, the dispute is narrow, namely the weight to be afforded to the school land if planning permission is granted for the southern appeal site alone.

[74] CD 7.16 at [4.4.1] on p. 45.
[75] CD 3.26 – Mr Jones RPOE at PDF p. 23.
[76] Mr Jones XiC.

83. The starting point is to recognise that both the Council (and the County Council) consider that the obligation to provide the school land complies with reg. 122 of the Community Infrastructure Levy Regulations 2010. It follows that the Council (and the County Council) has concluded that the provision of the school land is necessary to make the development acceptable in planning terms. The Appellants agree.

84. Mr Connell's evidence – and the XX of Mr Kenworthy – must be seen in this context. The more that the Council suggested the delivery of the school land was uncertain, the further it strayed from the agreed position that the school land was necessary. Ultimately, it became clear that the Council's position was a contrived attempt to avoid giving the provision of a school land substantial weight, consistently with Mr Kenworthy's evidence and the officer's report.

85. The Appellants submit that substantial weight should be afforded to the provision of the school land for the following reasons.

86. First, there is no dispute that the school land is required. The SOCG with the County Council states so in terms.[77] More than that, the school land is the ideal response to that requirement. As Mr Hunter explained in his evidence, the school site is a rare opportunity because school land is not easy to come by, especially unencumbered, remediated and of an appropriate size without the need for compulsory purchase.[78]

87. Secondly, following discussions with the County Council, the description of development was amended to allow the County Council the maximum flexibility when bringing forward the school land, in particular to allow the County Council to develop the school land for a SEND school (either alone or in combination with primary provision). This is important because there is a significant unmet need for school places for children with profound neurological impairments ("**PNI**") and the school land will provide the County Council with the opportunity to address that need.

88. Mr Connell has sought to contest this analysis. He was wrong to do so in multiple respects.

[77] CD 3.16 – Education SOCG at [2.8] on p. 3/PDF p. 4.
[78] CD 3.21(a) – Mr Hunter's POE at [4.32] on p. 23

(a) The County Council's Statement of Case is clear: there is a shortfall in places for children with both PNI and Severe Learning Difficulties ("**SLD**"), but the County Council only has a plan to accommodate the SLD need.[79] The County Council does not have a plan to accommodate PNI. There is no contrary evidence and Mr Connell was not able to point to any before the inquiry.

(b) The email correspondence between Mr Hunter and Mr Wells in January 2023 does not alter this analysis.[80] Mr Wells email deals only (and specifically) with SLD needs. Mr Wells does not deal with PNI. Further, contrary to XX of Mr Hunter, there is nothing in the fact that Mr Hunter did not ask about PNI specifically because the County Council only disclosed that need to the Appellants in its subsequent statement of case, in February 2023.

(c) Similarly, the email to the case officer from the County Council in March 2023 does not alter the analysis.[81] Again, the only pertinent information in that correspondence is concerned with SLD provision (and specifically the sizxe of school required). That email does not deal with PNI. Further and importantly, as Mr Hunter has explained in his evidence, the school land <u>is</u> big enough for a PNI school (or PNI provision in combination with primary provision).

(d) The remaining straw to which the Council clutched on this point, in cross-exmaination of Mr Hunter and in closing submissions at para. 145, is the fact that the County Council has indicated a feasibility study would be needed prior it going ahead with a PNI school onn the site. However, Mr Hunter explained in XX and RX that there is nothing unusual about that: the requirement for a feasibility study is standard process. His expert opinion was that there were no foreseeable or likely showstoppers that would arise out of any such feasbilty study in future. He was the only education expert who appeared before the inquiry; there is no evidential basis in support of a different analysis. His evidence was obviously credible and well informed. The fact that no issues had arisen out of the feasbilty study already undertaken for a primary school underscores the confidence that can be had in his judgment in this respect.

[79] CD 2.41a – the County Council's SOC at [7.6] on p. 28/PDF p. 29.
[80] CD 5.25 – Email correspondence
[81] CD 5.31 – Email correspondence, purportedly from 20 March 2023.

89. It follows that all the available evidence before this inquiry shows that there is an unmet need for school places for children with PNI and the school land is suitable to accommodate that need.

90. Thirdly, although it is theoretically possible to conceive of meeting the need for school places in a different way, the use of the school land is very obviously the best – and thus most likely – solution. Enabling it is markedly advantageous in planning terms. More particularly:

(a) If planning permission is granted for both the north and the south sites, it is inconceivable that the County Council would seek to expand Killigrew Primary School to a 4FE. As Mr Hunter explained, there are no 4FE primary schools in Hertfordshire and such schools form less than 1% of the school stock across the country. Such an approach is so rare that DfE does not have baseline designs for 4FE. There is an obvious reason for this, given the qualitative benefits of smaller schools. Mr Connell accepted in XX that if permission is granted for both sites, an immediate need for the new school would arise and that substantial weight should in that situation be accorded to this benefit.

(b) There is insufficient surplus space at Killigrew Primary School to accommodate the pupil yield from the southern appeal site alone. The small (but insufficiently large) surplus that currently exists is necessary to ensure the smooth operation of the school, as Mr Hunter explained in XX. It is possible that the existing school could be expanded by 1FE to accommodate the need from the southern appeal site alone, but this is unlikely given: (1) 98% of the primary schools in Hertfordshire are 2FE; and (2) the requirement identified by the County Council is for a 2FE school, not for a 1FE extension.[82] In XX the Council appeared to suggest that expansion to a 3FE school would build resilience, but this point goes nowhere, given the County Council has not raised any concern about the resilience of the existing school and the current levels of up take indicate that it is well used.

(c) Given these matters, the most likely approach is that the County Council will draw down the primary school land, at the very least to deliver a 1FE school, with the ability to expand that in future, given the likelihood of future

[82] CD 2.41a at [5.2] on p. 19/PDF p. 20, final sentence.

development in Chiswell Green (having regard to the extent of need, the ability of urban sites to meet only 14% of the need, and Chiswell Green's comparative sustainability relative to much of the District).

(d) Ultimately, there are four possible options: (1) the County Council do not draw down the school land; (2) a primary school is constructed; (3) a SEND school is constructed; or (4) a primary school with SEND provision is constructed. The least likely of these four options is the first, given the County Council's stated requirement for the land; the unmet need for PNI school places; and the low likelihood of an alternative solution.

91. Fourthly, paragraph 95 of the NPPF requires local planning authorities to take '*a proactive, positive and collaborative approach*' to ensure that a sufficient choice of school places is available to meet the needs of existing and new communities. Further, local planning authorities are required to take the same approach '*to development that will widen the choice in education*'. The approach of Mr Connell and that put to Mr Kenworthy in XX is inconsistent with this clear policy. On the Council's approach, local planning authorities should sit around until schools are at capacity and there are no other options before recognising the importance of new school delivery. This is wrong. A proactive approach is that proposed by the Appellants: delivering a school now, with capacity for the southern appeal site and future growth in Chiswell Green. In addition, this approach will widen the choice in education, providing an alternative to the existing primary school (indeed, an alternative which KCG appeared to consider would be at least, if not more, attractive).

92. It follows that the provision of the school land is a benefit of the proposed development to which substantial weight should be afforded, consistently with the officer's report. (This is equivalent on the parties' weight scales to the "*great weight*" provided for by NPPF para. 95(a)).

VII. OTHER MATTERS

93. KCG and third parties have raised a number of other matters, outside of the reasons for refusal. The Appellants have responded to those matters through their evidence. Further, in XX Ms St Ledger McCarthy accepted that KCG had not presented evidence on the other matters raised in its SOC and/or that those matters did not give rise to a basis for refusing to grant planning permission.

94. Notwithstanding this, given the volume of representations made on the issue of precedent, it is necessary to deal with it briefly. The grant of planning permission will not give rise to any precedent. KCG's evidence has concentrated on Colney Heath. That is entirely irrelevant to precedent in this case. In addition, KCG's evidence about Chiswell Green has focussed on the potential for further applications to be made; not for further grants of planning permission. Further, it was based on the mistaken understanding that the grant of planning permission in this appeal would alter the Green Belt boundary and/or lessen the policy protection for land within the Green Belt.

95. In short, there is no evidence that the grant of planning permission in this case would render it more difficult for the Council to refuse to grant planning permission on another site. The absence of such evidence is readily explicable: the test of very special circumstances is inherently fact sensitive and thus not readily amenable – if at all – to arguments based on precedent. Further, the Council's own conduct – with different recommendations on each development – demonstrates the lack of any precedent, with the Council considering each site independently.

96. Accordingly, the representations based on precedent are nothing more than a generalised fear or concern. That is insufficient to found a precedent argument and it should be dismissed.

VIII. VERY SPECIAL CIRCUMSTANCES (MAIN ISSUE 7)

97. The Appellants accept that it is necessary to demonstrate very special circumstances in order to justify the grant of planning permission. Those circumstances exist here. Of all the cases for development in the Green Belt, this could not be stronger: the harm is limited and is clearly outweighed by a package of very significant benefits.

(1) Components of harm to be weighed in the balance

98. As to the harm arising from the proposed development, there are only three components.

99. First, the harm to the Green Belt. Mr Connell clarified in XX that he attributed a single value to this harm and treated it as a single factor (not multiple factors with the potential for double counting, as the SOCG suggested). That harm is to be afforded

substantial weight, consistently with the NPPF, as the parties have both identified.[83] For the reasons already explained, the Council is wrong to allege a greater scale of harm to the Green Belt, and in any event, the differences in the scale of harm are not material in this case, given the common ground that the harm is only that which is inevitable – the minimum harm, not justifying any increase in the weight, even on the Council's approach.

100. Secondly, there is an agreed position on the harm to landscape character: this is limited in scale and should be attributed limited weight. This too is accepted to be the minimum inevitable for a development of this scale.[84]

101. Thirdly and similarly, there is an agreed position on the loss of agricultural land: at most, this is limited in scale and should be attributed limited weight. This too is accepted to be the minimum inevitable for a development of this scale.[85]

102. Overall, therefore, on the evidence of the Council's own witnesses at this inquiry, the "harm to the Green Belt and any other harm" for the purposes of NPPF para. 148 is the minimum possible harm for a Green Belt development of this scale in the District- in the context that such developments need to come forward and there should be no moratorium pending the new local plan. **The substantial package of benefits which the appeal scheme would deliver comes at the lost possible cost to the Green Belt**.

(2) Benefits to be weighed in the balance

103. We now turn to that substantial package of benefits.

104. First, the Council and the Appellants are agreed that very substantial weight should be given to the delivery of market housing. This is consistent with the Inspector's conclusion in the Roundhouse Farm appeal (on a materially smaller scheme, but in the same District, with the same chronic housing delivery issues).[86]

105. Secondly, there is agreement that delivery of affordable homes should also attract very substantial weight.

[83] CD 3.12 at p. 30.
[84] Friend XX.
[85] Connell XX.
[86] CD 9.2 at DL 49.

106. Thirdly, there is agreement that the delivery of self-build and custom-build homes should attract substantial weight.

107. Fourthly, for the reasons already explained, the Appellants' position on the school land should be preferred and this should be afforded substantial weight.

108. Fifthly, it is agreed that the provision of open space and children's play space is a benefit, but there is a dispute as to the weight to be afforded to this delivery. The Council seeks to justify a lesser weighting on the basis that there is no identified deficiency. This is perverse. An identified deficiency is a factor that might increase the weight to be afforded to this benefit, but it is not a necessary precondition. The nature, quality and quantity of the provision must be assessed in its own right, as Mr Kenworthy did. On this basis, he concluded that the new provision was larger than that required by policy and represented an improvement because it integrated the open and play space into the development, allowing "doorstep" provision for the local community to use which is an improvement over the existing situation. Mr Kenworthy also highlighted that the local community would also be able to secure new bridleway access through the site to gain easier access to PROW beyond. This improvement in the baseline position and the overall quality of the development as a result justifies moderate weight, as the Council's officers also concluded.

109. Sixthly, the provision of ecological improvements is a benefit to which moderate weight should be afforded. Mr Connell struggled to give this any weight, seemingly on the basis that he thought it was a policy requirement. This is wrong in multiple respects. The policy requirement is that found in the NPPF which does not specify a target percentage. A 1% uplift would suffice. Accordingly, when, as here a greater uplift is provided, that should be attributed greater weight. The fact that this may be mandatory in the future does not change the analysis: as at the date of determination, the policy requirement is being exceeded. In any event, as a matter of principle, the fact that the policy requirement is met is not a reason to reduce its weight. Affordable housing is a prime example: no reduction is made because "only" a policy compliant level is provided. So too with ecological improvements: weight should be attributed based on the quality of the provision, without reduction for it being policy compliant. Similarly, the fact that some of the provision is off site does not reduce the weight: the off site provision is permissible under both current and emerging policy, and the off site provision is within the District or within the same Northern Thames Basin

National Character Area within Hertfordshire. It follows that at least moderate weight should be attributed to this benefit.

110. Seventhly, the socio economic benefits of the proposed development are significant. The Council accepts that this is a benefit, but seeks to contest the weight to be afforded to it, despite no issue being taken with this aspect in the Reason for Refusal.

111. The BWNS analysis in this respect has not been disputed. The proposed development will give rise to 214 direct jobs and 207 indirect jobs during construction with a combined GVA during construction of £114.6 million.[87] Following occupation, the GVA from the residents will amount to £25.5m *per year* with an additional £10.9m *per year* of commercial expenditure. This leaves out of account the council tax and new homes bonus (and therefore the Council's arguments about these latter two items are de minimis in the overall conclusion - even they are left out of account, that does not alter the order of magnitude of the economic benefits or the weight to be afforded to them). Further, the fact that some of this spend might not be within the District does not alter the weight to be afforded to it. These benefits are not to be assessed on a parochial basis: they are economic benefits to be realised. It follows that even looked at in isolation, divorced from the policy framework, the socio economic benefits justify substantial weight, as the Council's officers concluded.

112. This analysis is also consistent with paragraph 81 of the NPPF which <u>mandates</u> that significant weight to be given to the need to support economic growth and productivity (irrespective of whether that support is at a local or national level and irrespective of whether it is permanent or temporary). The appeal scheme would ,as Mr Connell accepted in XX, support economic growth and productivity and accordingly significant weight flows automatically from NPPF para. 81 to these benefits. There are a string of recent appeal decisions which confirm this approach, all considering considerably lesser schemes.[88] The Council has pointed to other appeal decisions but these do not assist because in none of them has the Inspector grappled with (or referred to) paragraph 81 of the NPPF, and most of them pre-date the appeal decisions upon which the Appellant relies. It follows that the Appellants' analysis is to be preferred.

[87] CD 2.7 – Socio Economic analysis – Table 6.1 on p. 34/PDF p. 38.
[88] CD 9.12 at DL 149 – 152. CD 9.10 at DL 95. CD 9.24 at DL 70.

113. Eighthly, as already explained, the development of the southern appeal site will improve the urban edge by incorporating substantial planting, assisting in the creation of a strong Green Belt boundary and giving rise to positive effects both on the Green Belt and the character and appearance of the area. This is a matter to which significant weight should be afforded in accordance with para. 134 of the NPPF.

(3) The very special circumstances balance

114. Before turning to the balance, there are two important preliminary considerations.

115. First, the Council founds its judgment on the assertion that, as Mr Parkinson put it in Opening: '*There is nothing "very special" about the circumstances of either case*'.[89] This approach is wrong as a matter of principle and law.[90] The question is not whether the individual circumstances are "*very special*"; rather the question is whether, cumulatively, the benefits clearly outweigh the harms. If this is so, then very special circumstances have been demonstrated, even if on an individual basis, the benefits were to be considered unremarkable (which in any case they are not).

116. Secondly, the difference in the parties' positions is small. Mr Connell explained in XX that in his view it was "very finely balanced" as to whether very special circumstances exist in this case. He then accepted that the proposed development only failed to demonstrate very special circumstances by a very fine margin. Consistently, with this, Mr Connell accepted that if the officer's weightings were adopted, then very special circumstances would be demonstrated. Accordingly, only a very small number of changes to Mr Connell's weightings are required before the benefits clearly outweigh the harms and very special circumstances are demonstrated *even on the Council's own case*.

117. Thirdly, even on Mr Connell's weightings, the clear and obvious conclusion is that very special circumstances have been demonstrated. Critical to this consideration are, first, the cumulative force of the weightings he has ascribed to the various benefits, and secondly – and fundamentally, his (and in the absence of any RX on these points the Council's) acceptance that (a) the only harm the appeal scheme would cause would be the inevitable harm of building 391 homes and a new school on a greenfield Green

[89] Paragraph 35. See also paras. 9 and 129 (last sentence) of the Council's closing submissions.
[90] CD 10.15 – the ***Wychavon*** case in the Court of Appeal [2008] EWCA Civ 692 per Carnwath LJ (as he then was) at [26].

Belt site in St Albans (b) some greenfield Green Belt sites will necessarily have to be developed to meet housing and education needs (given the vast difference between the extent of needs and the identified urban capacity) and (c) that there should not be a moratorium on meeting needs in the Green Belt pending the adoption of a new emerging plan at some indeterminate point in the future. **These three points are necessarily fatal to the Council's case.**

118. There is a hint of a previously unpleaded precedent argument at para. 9 of the Council's closing submissions, where reference is made to the risk of the death of the Green Belt by "a thousand cuts". In fact, the precedent risk in relation to the south site and appeal scheme runs the other way. If a VSC case cannot be made out in relation to a development which is agreed to cause the minimum inevitable "harm to the Green Belt and any other harm" for a development of this scale, which is top-ranked in the Green Belt review, then what prospect is there for VSC to be made out anywhere else? The consequences of dismissing this appeal would be in practice to bring about the very moratorium on pre-Local Plan Green Belt permissions that the Council has explicitly disavowed in evidence.

119. Overall, and having regard to the foregoing matters, the Appellants submit that the benefits of the proposed development are compelling, as officers recognised, and that as a package, the harm arising from the proposed development is clearly outweighed. It follows that very special circumstancesexist.[91] Once this hurdle has been cleared, the Council accepts that there is accordance with the development plan read as a whole, the proposed development benefits from the tilted balance in NPPF para. 11(d)(ii) and planning permission should be granted.

IX. CONCLUSION

120. For these reasons, the appeal should be allowed.

CHARLES BANNER K.C.

Keating Chambers,
15 Essex Street,
London WC2R 3AA.

[91] Sought by paragraphs 148 of the NPPF, Policy 1 of the adopted Local Plan and Policy S1 of the St Stephen Neighbourhood Plan

MATTHEW HENDERSON

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

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