

Town and County Planning Act 1990 (As Amended) - Section 78

Town and Country Planning (Inquiry Procedure) (England) Rules 2000

**Appeal by Tarmac Limited against the refusal of St Albans City
and District Council, as Local Planning Authority, to grant
outline planning permission for residential development of up
to 45 dwellings, all matters reserved except access**

at

**Land to the rear of 96 - 106 High Street, Colney Heath, Herts,
AL4 0NP**

**PROOF OF EVIDENCE OF PHILLIP E HUGHES MRTPI
ON BEHALF OF ST ALBANS CITY & DISTRICT COUNCIL**

MARCH 2024

PLANNING INSPECTORATE REF: APP/B1930/W/23/3333685

LOCAL PLANNING AUTHORITY REF: 5/2022/0599

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Phillip Eric Hughes will say:

I am a director of PHD Chartered Town Planners Limited, a town planning consultancy that I established in 1995. I have also worked at a senior level in local government for 10 years in both Planning Policy and Development Control.

I have a Bachelor of Arts Honours Degree (BA [Hons]) in Town and Country Planning and have been a corporate member of the Royal Town Planning Institute (MRTPI) since 1990 and I am a Fellow of the Royal Geographical Society (FRGS). I also have a Diploma in Management Science (Dip Man) and I am a Member of the Institute of Management (MCMI). I am also a member of the Town and Country Planning Association and an affiliate member of the RIBA.

I have represented a wide variety of clients at appeals ranging from Local Planning Authorities (including LB Camden, RB Kingston, Spelthorne, Hertsmere, Watford, Welwyn Hatfield and Walsall Boroughs and Central Bedfordshire, Uttlesford, Epping Forest, St Albans and Bassetlaw Districts), Parish Councils including Bovingdon, Hartlip, Loddington and Tetsworth to housebuilders (New Homes Estates Limited, MASMA Limited, Whittleworth Homes, Fusion Residential, Henry Homes plc. etc.), developers (MS Oaklands Ltd, Acre London Holdings Limited, Lanz Group, Mitre Property Management Limited, Mark Stephen Limited etc.), property companies (Acre LLP, Orb Estates, Property Matters LLP, Property Matters LLC, Albermarle Property Investments plc.), businesses (Super Toughened Glass Limited, Williams Tenders Limited, JIRWL, Hollywell Spring Limited), amenity groups (Anglefield Residents Association, Stopit Action Group, Paynes Lane Association, Hemley Hill Action Group, Birch Green Residents Group, Bury Gate Residents Association) and individual householders.

I have visited the appeal site and general locality on a number of occasions, and I am familiar with the policies applicable to the site. I was also the Council's witness in respect of the recent Tollgate Road appeal. I am familiar with the local, national and regional planning policies relevant to this appeal.

The evidence that I have prepared and provide for this appeal has been prepared and is given in accordance with the guidance of the Royal Town Planning Institute and I confirm that the opinions expressed are my true and professional opinions.

Phillip E Hughes BA(Hons) MRTPI FRGS Dip Man MCIM

1 Introduction

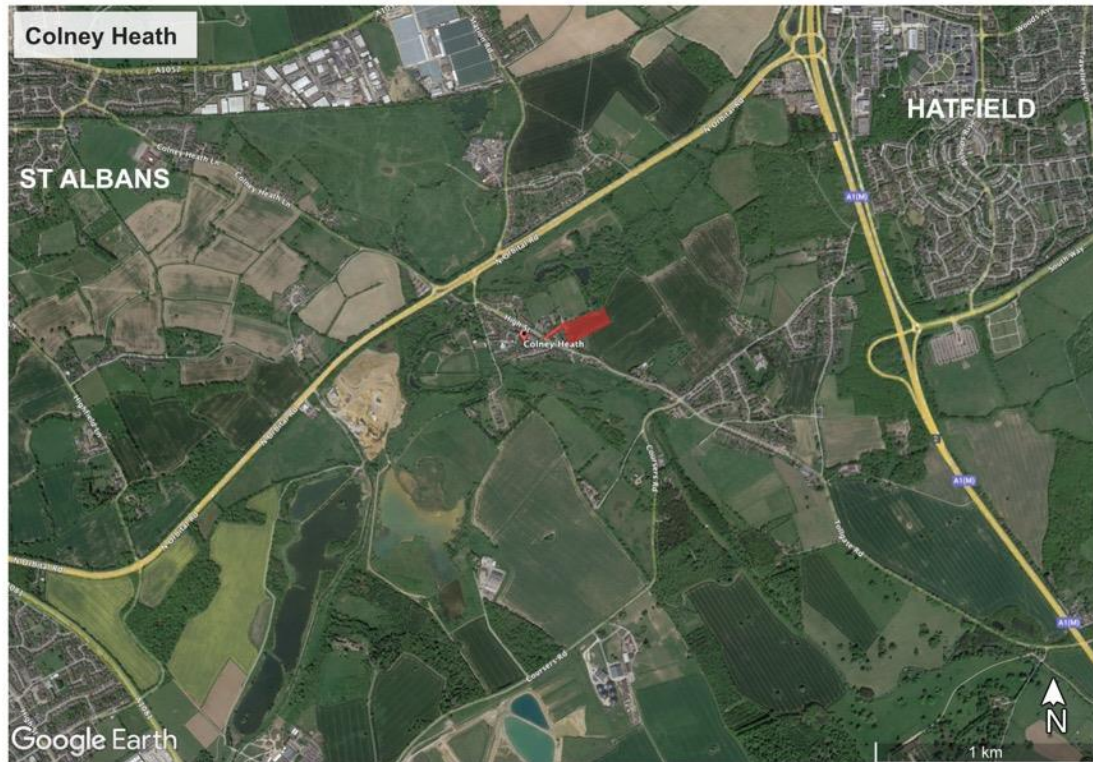
- 1.1 The proposal is for residential development of up to 45 dwellings on a site in the Green Belt ('the appeal site'). This appeal relates to an outline planning application ('the application') which was refused planning permission. A public inquiry into the appeal is scheduled to open on 23 April 2023.
- 1.2 All matters, excluding access, are reserved for future consideration.
- 1.3 The two reasons for refusal are outlined in the Officer Report at **CD6.1** and on the decision notice at **CD6.2** and are set out below:
1. *The site is within the Metropolitan Green Belt and the proposed development represents inappropriate development within the Green Belt, as set out in the National Planning Policy Framework 2021. In addition to the in-principle harm to the Green Belt by reason of inappropriateness, other harm is identified as a result of the proposed development in terms of: its detrimental impact on the openness of the Green Belt, harm to Green Belt purposes, harm to landscape character the adjacent Grade II listed building, loss of high quality agricultural land, and the impacts on social and physical infrastructure. The potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is not clearly outweighed by other considerations; and as a result the Very Special Circumstances required to allow for approval of inappropriate development in the Green Belt do not exist in this case. The proposal is therefore contrary to the National Planning Policy Framework 2021 and Policy 1 of the St Albans District Local Plan Review 1994.*
 2. *In the absence of a completed and signed S106 legal agreement or other suitable mechanism to secure: Education provision in the form of new primary school, secondary school, nursery and childcare provision; Special Educational Needs and Disabilities provision; Library service provision; Youth Service provision; Play Areas, Parks and open Spaces and Leisure and Cultural Services provision; Affordable Housing provision; Highway Works including provision for Sustainable Transport; the infrastructure needs of the development would not be met and the impacts of the proposal would not be sufficiently mitigated. The proposal is therefore contrary to the National Planning Policy Framework 2021 and Policy 143B (Implementation) of the St. Albans District Local Plan Review 1994.*
- 1.4 The National Planning Policy Framework (NPPF) was updated in December 2023 but its approach to Green Belt harm and decision making, countryside character and beauty, harm to heritage assets and decision making in respect of heritage assets remains materially unchanged. Any changes that have occurred to relevant parts of the NPPF principally relate to paragraph numbering.
- 1.5 This is an outline application with only access to be considered at this stage. The application plans include a concept master plan and illustrative layout plan, however these do not and cannot set the layout, scale or appearance of the proposed development or the landscaping of the site as these matters remain reserved.

- 1.6 It is common ground¹ that the Council cannot demonstrate a five-year housing land supply and their Housing Delivery Test Score is below 75% and as such the presumption in favour of sustainable development in paragraph 11(d) of the NPPF is engaged.
- 1.7 However, as I demonstrate in this proof, the site is in the Green Belt and leads to Green Belt harm and policies of the Framework indicate that permission should be refused. Therefore, consistent with my case at the Tollgate Road Inquiry, the tilted balance is disengaged pursuant to footnote 7 of the NPPF.
- 1.8 Evidence to support the Council's case is also being provided by:
- Mr John Paul Friend – Landscape
 - Mr Nick Collins - Heritage
- 1.9 I adopt their conclusions insofar as they relate to harm to heritage assets and landscape.
- 1.10 Where I refer to weight to harm or benefits I do so in accordance the following scale:
- Substantial
 - Significant
 - Moderate
 - Limited
 - None

¹ Statement of Common Ground at **CD8.1** at paragraph 6.3

2 Site and Surroundings

- 2.1 The appeal site comprises land extending to a total of 1.68 hectares. Other than the access corridor, it is rectangular in shape with the long boundaries facing north west and south east.



The Appeal Site © Google

- 2.2 The site is located adjacent to Colney Heath a washed over village located within the Metropolitan Green Belt within the administrative area of St Albans City and District Council. The appeal site is located away from any settlement within the Metropolitan Green Belt.
- 2.3 Colney Heath comprises a group of three clusters of development with the westernmost cluster (Colney Heath or Park Corner) the one the appeal site relates to most closely. The two other areas are known as Roestock and Bullens Green.
- 2.4 This part of Colney Heath comprises a nucleated element contained by High Street to the north east, Park Lane to the south east and Church Lane to the south west. The appeal site lies outside this area. Development north of High Street comprises a ribbon of dwellings fronting High Street. The exception to this is the Football Club which is located to the rear of the school. However, this site is overwhelmingly open land comprising the pitch itself or training pitches/ recreation ground.
- 2.5 A single storey clubhouse is located close to the north west corner of the appeal site.



The Appeal Site and Neighbouring Clubhouse © Google

- 2.6 The appeal site is located to the south-east of the Colney Heath Football Ground which comprises an open playing pitch and practice pitches/ recreation ground as well as a single storey clubhouse building and a storage container.



The Appeal Site as Part of an Arable Landscape © Google

- 2.7 To the north east of the Football Club also bounding the appeal site is open woodland including some fishing lakes. The other long boundary (the southeast boundary) is located to the north west of open agricultural fields. The short north east boundary likewise faces onto open agricultural fields. The land to the south east and north east appears to be farmed as part of the same agricultural holding.
- 2.8 The short south west boundary backs onto the rear garden boundaries of six semi-detached dwellings fronting High Street (nos. 96 – 106) that comprise the easterly extent of the washed over Green Belt settlements of Colney Heath.
- 2.9 To the south east of 96 – 106 High Street fronting High Street are three Grade II Listed Buildings (94 High Street, Apsley Cottage and the Crooked Billet Public House). These buildings and their setting are described by Mr Collins in his proof and also identified in the Heritage Statement of Common Ground.
- 2.10 The site, which is undeveloped, completely open and is currently in active agricultural use as part of a larger tract of land. The appeal site has been farmed historically as part of an arable holding.
- 2.11 The neighbouring land uses include to the south west the rear garden boundaries to 96 – 106 High Street (houses comprising part of the ribbon fronting the north side of High Street); open agricultural land to the south-east and north-east and the largely open land comprising the football club to the north west.
- 2.12 Other than development in the rear gardens of 96 – 106 High Street and the Football Club Clubhouse there is no meaningful in-depth development along this side of High Street which is characterised by a ribbon of development.



The Appeal Site and Public Rights of Way Network – Base © Google

- 2.13 As described by Mr Friend an extensive network of public footpaths, rights of way and tracks pass by the appeal site including alongside three boundaries. The PROW network includes Footpath 041 which runs through the grounds of the Public House off High Street and alongside the south east appeal site boundary.
- 2.14 This footpath links to a wider network of rights of way including Footpaths 045, 005, 041, 051, 024, 031 and 046 with to the north-east and east of the appeal site.



The Appeal Site from Footpath 45 (PH)

- 2.15 South of the appeal site rights of way include High Street and the footpaths alongside it and Public footpaths 034, 035, 032, 055 and 021 which joining the Watling Chase Trail.
- 2.16 The appeal site is open and its boundaries albeit demarked by post and rail fencing and some landscaping comprising trees, gappy hedgerow and understorey growth are permeable and allow views into and out of the site from the public footpaths and tracks as well as neighbouring dwellings and land. The topography of the site and immediate area is generally flat with a gentle undulation.
- 2.17 Views are available of the site and its openness (i.e. the lack of any development on the site) is perceived from the public footpath network as well as along High Street including in gaps between buildings.



The Appeal Site from the Football Club Car Park (NW Corner of the Appeal Site)



The Appeal Site from the NE Corner of the Appeal Site

- 2.18 The appeal site is situated in a prominent location between St Albans and Hatfield and outside the washed over Green Belt settlement of Colney Heath.
- 2.19 Mr Friend describes the landscape qualities of the area noting that the site and area lies within National Character Area 111: Northern Thames Basin and Hertfordshire Landscape Character Area ('LCA') 30: Colney Heath Farmland, which features organic field patterns, woodland blocks and mixed farmland as key characteristics. I note that the overall guidelines for managing change in the LCA are 'Improve and conserve'.
- 2.20 The appeal site is detached from any non-Green Belt settlement and falls in the open green space between St Albans and Hatfield.
- 2.21 Mr Friend addresses the viewpoints from which the site can be seen and describes these views contrasting the existing open rural appearance with the site developed for up to 45 dwellings.
- 2.22 The appeal site falls within the northern part of the Watling Chase Community Forest area which separates Hatfield and St Albans.

3 The Application and Planning History

- 3.1 Outline planning permission is sought for the development of the land for up to 45 dwellings with revised road junctions, internal access roads, car parking and other related development including green infrastructure. All matters are reserved, save for access. Access is proposed from High Street via the existing Football Club car park.
- 3.2 An illustrative master plan has been produced to show how the site may be laid out should permission be granted and to illustrate the impact of a development of this scale and character. No visualisations from key views have been produced to accompany the application the subject of this appeal or the appeal.



Extract Illustrative Masterplan (Rev. E)

- 3.3 The illustrative masterplan shows the development extending rearwards of the ribbon of houses (96 – 10 High Street) that front High Street. The illustrative masterplan includes two rows of houses comprising a total of 17 houses at the south west part of the site immediately to the rear of 96 – 106 High Street and closest to the three listed buildings. Taken together these two rows of houses provide a solid wall of development that comprises a barrier to any appreciation of the open countryside which lies beyond the appeal site.
- 3.4 The proposal for up to 45 dwellings includes the following housing tenures:
- 18 affordable units (40%); and
 - 23 market units (51%); and
 - 4 plots for market custom self-build (8.9%).
- 3.5 The final mix and property sizes would be determined at reserved matters stage.

Planning History

- 3.6 The appeal site has no relevant planning history.
- 3.7 Planning permission was granted at appeal² for the erection of 100 dwellings on a Green Belt site on the edge of Colney Heath Bullens Green that straddles the boundary with half the proposed dwellings lying within the administrative area of Welwyn Hatfield District Council. A copy of this decision is included at **CD14.6**.
- 3.8 Following the Bullens Green appeal decision recently (i.e. in January 2024) an appeal decision of Inspector Hayden at Tollgate Road Colney Heath was issued³. It dismissed an application for up to 150 dwellings on a site adjacent to the boundary of Colney Heath. That appeal decision is attached at **CD14.37**.
- 3.9 I also note the 2016 appeal decision on neighbouring land known as Roestock Depot⁴. In that decision the Inspector found that much of the site was previously developed land, but the proposals would lead to a greater loss of openness than existing development and did not amount to infilling:
- “Given the sites location in a gap between to distinctly separate built-up areas (Bullen’s Green and Roestock) and the scale of the proposed development, which would not be flanked by existing built form on both sides for much of its depth, I do not consider that the development could be appropriately described as limited infilling in a village. This is notwithstanding the presence of houses either side of the site along the road frontage.”*
- 3.10 Having concluded that the proposed development would have a greater impact on openness than the existing buildings the Inspector concluded:
- “[...] Therefore, the development would be at odds with the Green Belts essential characteristics, openness and permanence. Furthermore, it would be in conflict with its defined purposes, specifically to assist in safeguarding the countryside from encroachment.”*
- 3.11 I note the Appellant has identified Smallford Works on various plans. I acted for the Council at an Inquiry⁵ that considered that exclusively previously developed land (it is an industrial estate). The appeal proposed the redevelopment to provide up to 100 dwellings, it was in outline with all matters reserved. An illustrative masterplan accompanied the application. The appeal was dismissed with the Inspector concluding that it would lead to a substantial loss of openness, an encroachment into the countryside and a failure to recognise the intrinsic character and beauty of the countryside. A copy of that decision is included at **CD14.39**.

² APP/B1930/W/20/3265925 and APP/C1950/W/20/3265926

³ APP/B1930/W/23/3323099

⁴ APP/B1930/W/15/3137409 at **CD14.24**

⁵ APP/B1930/W/20/3260479

4 Planning Policy

4.1 The development plan comprises the St Albans District Local Plan 1994 (SADLP).

4.2 The following saved policies of the SADLP are relevant to consideration of the application the subject of this appeal.

- POLICY 1 - Metropolitan Green Belt
- POLICY 2 - Settlement Strategy
- POLICY 8 - Affordable Housing in the Metropolitan Green Belt
- POLICY 34 - Highways Considerations in Development Control
- POLICY 35 - Highways Improvements in Association with Development
- Policy 36a - Location of New development in relation to Public Transport Network
- POLICY 39 - Parking Standards, General Requirements
- POLICY 40 - Residential Development Parking Standards
- POLICY 69 - General Design and Layout
- POLICY 70 - Design and Layout of New Housing
- POLICY 74 - Landscaping and Tree Preservation
- POLICY 84 - Flooding and River Catchment Management
- POLICY 86 - Buildings of Special Architectural or Historic Interest
- POLICY 104 - Landscape Conservation
- POLICY 106 - Nature Conservation
- POLICY 111 – Archaeological Sites
- POLICY 143a - Watling Chase Community Forest
- POLICY 143b - Implementation

4.3 In the Roestock Depot appeal decision, the inspector concluded in respect of Policies 1 and 2:

“Policies 1 and 2 of the LP restrict development in the Green Belt other than for specified purposes. This general approach to Green Belt protection is consistent with that of the National Planning Policy Framework (the Framework) but I note that greater scope for exceptions are set out at paragraph 89 of the Framework and this is an important material consideration.”

4.4 Inspector Aston found in the Smallford Works appeal that Policy 1:

“[...] does require very special circumstances to justify inappropriate development and also requires new development to integrate with the existing landscape. I agree with the parties that although it is not entirely consistent with the Framework it is not out of date insofar as it relates to this appeal.”

4.5 In her decision at Bullens Green the Inspector concluded in respect of Policy 1:

“[...] The proposals would lead to conflict with policy 1 of the St Albans District Council Local Plan, 1994. This policy identifies the extent of Green Belt within the Borough, and outlines the developments which would be permitted which broadly align with the development identified by the Framework.”

4.6 Inspector Hayden found at DL154:

“I have established above that saved Policy 1 is consistent with the Framework ”

4.7 Policies 1, 2, 69, 86 and 143b are most important policies.

4.8 Policy 1 identifies (along with the Proposals Map) the extent of the Green Belt and then states:

“Within the Green Belt, except for development in Green Belt settlements referred to in Policy 2 or in very special circumstances, permission will not be given for development for purposes other than that required for:

- a) mineral extraction;*
- b) agriculture;*
- c) small scale facilities for participatory sport and recreation;*
- d) other uses appropriate to a rural area;*
- e) conversion of existing buildings to appropriate new uses, where this can be achieved without substantial rebuilding works or harm to the character and appearance of the countryside.”*

4.9 Policy 2 sets out the settlement strategy looking to safeguard the character of Green Belt settlements including from the cumulative effect of development proposals. It then sets out a settlement hierarchy with St Albans sitting at the top of the hierarchy and then Harpenden as towns excluded from the Green Belt. Next are a series of seven specified settlements which are excluded from the Green Belt and include London Colney. Finally are a group of nine Green Belt settlements including at GBS2 the three parts of Colney Heath (Colney Heath, Roestock and Bullens Green). Within these Green Belt settlements (which are all washed over by the Green Belt) the policy advises that development will not normally be permitted other than if it meets the exceptions in Policy 1 and it advises that development must not detract from the character and setting of the Green Belt settlements.

4.10 Policy 69 relates to General Design and Layout of all new development and requires such development to have regard to context as well as having regard to Policy 2. I note that context is an important part of good design and is reflected in the National Design Guide (NDG) which identifies context as an important element of the design process.

4.11 Policy 86 relates to Buildings of Special Architectural or Historic Interest (Listed Buildings) and requires decision makers to *inter alia* have special regard to the desirability of preserving the building or its setting. Whilst the NPPF has evolved heritage policy and advice Policy 86 is not inconsistent with the NPPF nor the statutory duty in §66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (As Amended).

- 4.12 Policy 143a supports the establishment of the Watling Chase Community Forest which includes the location of the appeal site and also requires proposals to be consistent with Green Bet policy.
- 4.13 Policy 143b relates to infrastructure requirements where provision is required in the first instance on site and if off site provision is necessary it will need to be secured.
- 4.14 SADC has adopted relevant supplementary planning documents including:
- Revised Parking Policies and Standards, January 2002
 - Design Advice Leaflet No. 1: Design and Layout of New Housing, November 1998
 - Affordable Housing March 2004

National Planning Policy Framework

- 4.15 The Framework was revised in December 2023 and sets out the Government's economic, environmental and social planning policies for England. These policies articulate the Government's vision of sustainable development, which should be interpreted and applied locally to meet local aspirations. In terms of the most relevant sections for this appeal, Section 9 promotes Sustainable Transport and Section 13 relates to Protection of the Green Belt. Section 2 includes the presumption in favour of Sustainable Development. Section 5 relates to the delivery of a sufficient supply of homes. Section 12 relates to achieving well-designed places, Section 15 relates to conserving and enhancing the Natural Environment and Section 16 relates to conserving and enhancing the Historic Environment.
- 4.16 Paragraph 11 sets out the approach to the presumption in favour of sustainable development. Paragraph 11d advises that the presumption means, for decision-making:
- “where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, granting permission unless:*
- the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁷; or*
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”*
- 4.17 The NPPF has been revised and in the circumstances of SADC where a plan has reached Regulation 18 stage with a policy map accompanying it the Council is tasked with demonstrating a four year supply of deliverable land. However, the transitional arrangements now in place mean this appeal is to be determined against the five year requirement. It is common ground that the Council cannot demonstrate a four-year or five year supply of deliverable housing land and also via its HDT results the policies of the local plan are out of date.

- 4.18 Footnote 8 states that in the situation where a Local Planning Authority is unable to demonstrate a five-year supply of deliverable housing land and/ or the HDT results are below 75% then the policies which are most important for determining the application are deemed to be out of date.
- 4.19 Paragraph 11(d)(i) and Footnote 7 provides (so far as relevant) that the tilted balance is disengaged in circumstances policies of the Framework protect assets of importance and provide a clear reason for refusing permission. Footnote 7 clarifies that:
- “The policies referred to are those in this Framework (rather than those in development plans) relating to: [...] land designated as Green Belt [...]; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 72); [...]”*
- 4.20 As such, when considering planning decisions relating to land in the Green Belt it is necessary to determine whether the application of the Green Belt policies and/or the Heritage policies in the Framework provide a clear reason for refusal under paragraph 11(d)(i). If they do, the tilted balance in paragraph 11(d)(ii) of the Framework is disengaged.
- 4.21 Paragraph 154 of the Framework provides that “the construction of new buildings” is “inappropriate development” in the Green Belt, unless one of the stated exceptions applies. The proposal for up to 45 dwellings and access roads and other development to facilitate the proposed housing comprise inappropriate development. The development on this greenfield arable site does not fall within any of the exceptions.
- 4.22 The Framework advises that inappropriate development is, by definition, harmful to the Green Belt should not be approved except in very special circumstances (paragraph 152). Paragraph 153 states:
- “When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green belt unless the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal, is clearly outweighed by other considerations.”*
- 4.23 I understand that it is common ground that the proposals comprise inappropriate development⁶, erodes openness⁷ and would not assist in safeguarding the countryside from encroachment⁸.
- 4.24 It is common ground that less than substantial harm arises to the setting of listed buildings. In those circumstances NPPF para. 208 requires a decision maker to weigh any harm to a designated heritage asset against the public benefits of the proposal.

⁶ Paragraph 11.1 of the SoCG at **CD8.1**

⁷ Paragraph 11.2 of the SoCG at **CD8.1**

⁸ Paragraph 11.4 of the SoCG at **CD8.1**

- 4.25 Great weight is to be given to the conservation of heritage assets (205).
- 4.26 In the circumstances of this case my view is that the public benefits of granting planning permission outweigh the heritage harm and as such the heritage harm does not disengage the tilted balance.
- 4.27 The appeal site comprises land outside any designated settlement and thus comprises part of the countryside. Although not a “footnote 7 policy”, paragraph 180(b) of the Framework directs that decisions on planning applications should contribute to and enhance the natural and local environment by:

“recognising the intrinsic character and beauty of the countryside ...”

- 4.28 The *Cawrey*⁹ judgment accepts that the recognition of the intrinsic character and beauty and character of the countryside necessarily imparts a degree of protection to those matters.
- 4.29 Furthermore Paragraph 180(b) also requires the wider benefits including the economic and other benefits of the best and most versatile land (BMV) to be recognised.
- 4.30 The Framework seeks to achieve well designed places and as set out at paragraph 135(f) seeks to provide high standards of amenity for existing and future users and being sympathetic to context including landscape setting (135(c)).
- 4.31 Paragraph 175 requires major development to incorporate sustainable urban drainage systems. Section 15 requires the protection and enhancement of biodiversity (185 - 186).

The National Design Guide (NDG)

- 4.32 As noted in the National Design Guide:

“The National Planning Policy Framework makes clear that creating high quality buildings and places is fundamental to what the planning and development process should achieve. [...]”

- 4.33 The NDG as referenced in the PPG sets out 10 characteristics and states that good design considers how a development can make a positive contribution to all 10 characteristics.
- 4.34 It advises that a well-designed place is unlikely to be achieved by focusing only on the appearance, materials and detailing of buildings and it comes about through making the right choices at all levels.

⁹ i.e. paragraph 49 of *Cawrey Ltd and SoSCLG and Hinkley and Bosworth BC* [2016] EWHC 1198 (Admin) at **CD13.2**

4.35 The first of the ten characteristics is context within which the role of good design is to enhance the surroundings. The NDG advises that well designed new development responds positively to the surrounding context and details a number of physical features including existing built development including layout form, scale etc.

4.36 In terms of understanding local and wider context the NDG advises¹⁰:

“Well-designed new development responds positively to the features of the site itself and the surrounding context beyond the site boundary. It enhances positive qualities and improves negative ones...”

4.37 The NDG states inter alia¹¹:

“Well-designed new development is integrated into its wider surroundings, physically, socially and visually. It is carefully sited and designed, and is demonstrably based on an understanding of the existing situation, including [...]: the landscape character and how places or developments sit within the landscape, to influence the siting of new development and how natural features are retained or incorporated into it;

The Emerging St Albans Local Plan

4.38 The Regulation 22 Submission version of the St Albans Local Plan was submitted in March 2019. The Examining Inspectors expressed concerns that the duty to co-operate had not been satisfied and the Council withdrew the plan.

4.39 However, it is material to note that the Green Belt boundary in the area of the appeal site was not proposed to be amended and thus the appeal site was proposed to be retained within the Green Belt (in accordance with the principles of permanence).

4.40 Furthermore, pursuant to the 2013 Green Belt Assessment, which comprises part of the evidence base for the Local Plan, no changes were proposed to the Green Belt boundaries around Colney Heath or the washed over status of the Green Belt settlements (i.e. Colney Heath). The appeal site was not identified as either a strategic site or a smaller scale site in the Green Belt Assessment. The Examining Inspectors described the Green Belt process as follows in a letter in April 2020¹² at para. 31:

“The Green Belt Review Purposes Assessment (November 2013) was prepared jointly for the Council with Dacorum and Welwyn Hatfield Councils by SKM (GB004). This Stage 1 of the review identified large parcels of land across the three authorities. Those areas contributing least to the Green Belt were determined and a number of strategic sub areas in St Albans were identified for further investigation. These were taken forward to Stage 2 where SKM undertook a review and detailed assessment of those strategic sub areas in the Green Belt Review Sites and Boundaries Study (February 2014) (GB001).”

¹⁰ NDG Paragraph 41

¹¹ NDG Paragraph 43

¹² See Examining Inspector’s Post Hearing Letter of 14 April 2020

4.41 In that letter the Inspectors raised concern that the GB Review process excluded consideration of sites of less than 500 dwellings (see paragraph 37) and that the capacity from smaller sites could be greater than estimated having regard to the smaller scale sites identified in the 2013 review not being an exhaustive list. The GB Review did not take forward the small scale sub areas assessed in 2013 *as making no or little contribution to the Green Belt purposes.*

4.42 The appeal site is not located in a sub area that was assessed in 2013 as making little or no contribution to the Green Belt purposes and in fact was considered to make a significant contribution toward safeguarding the countryside from encroachment (therefore parcel 34 was not considered to perform poorly against the purposes or warrant subdivision).

4.43 The Examining Inspectors' concern is encapsulated at paragraph 41 wherein they state the following about the Council's focus on strategic sites:

"This has ruled out a number of sites that have already been found to impact least on the purposes of the Green Belt. It may well also have ruled out other nonstrategic sites with limited significant impacts on the Green Belt which may have arisen from a finer grained Green Belt Review."

4.44 Given Parcel 34 performs well against the purposes the Inspector's criticism cannot have been aimed at Parcel 34 or the appeal site. In respect of parcel 34 the SKM Green Belt Review Part 1¹³ states:

"Significant contribution towards safeguarding the countryside and maintaining the existing settlement pattern (providing gap between Hatfield and London Colney). Partial contribution towards preventing merging (of St Albans and Hatfield) and preserving the setting of London Colney, Sleafshyde and Tyttenhanger Park. Overall the parcel contributes significantly towards 2 of the 5 Green Belt purpose."

4.45 SADC commenced work on preparing a new draft Local Plan for the period to 2041.

4.46 The evidence base to support the new plan includes a Settlement Hierarchy Study that concluded in Part 1¹⁴ that the settlement hierarchy in the 1994 Plan should be further refined and updated to informal decisions and work on the spatial strategy and site selection noting:

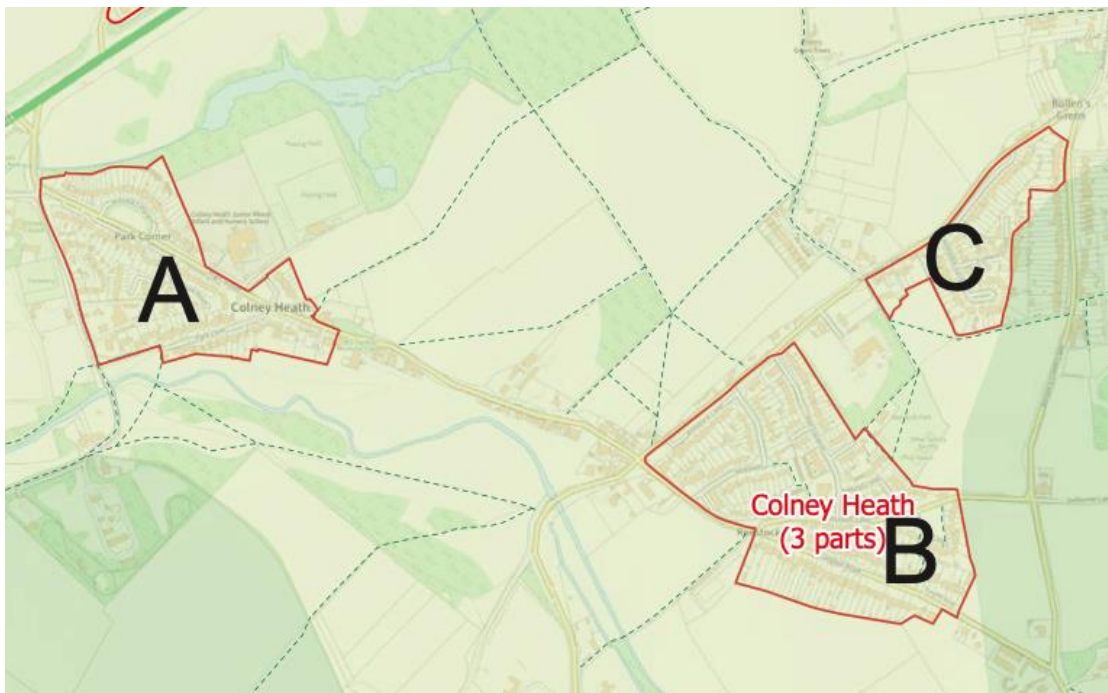
"The results of the Study have shown that there is a significant range of settlement types in the District, resulting in the identification additional settlement 'tiers' in the hierarchy, when compared to the current hierarchy from the Local Plan Review 1994."

13 **CD3.8**

14 **CD3.6**

In particular, differentiation has been identified between St Albans as a City/Large Town and Harpenden as a Town; London Colney as a Small Town; Large Villages to the north of the District and Medium Sized Villages to the south of St Albans; and washed over Green Belt villages. The Stage 2 Settlement Hierarchy Study further develops an understanding of the relationships between settlements in St Albans District, and those outside the District boundary.”

- 4.47 In terms weighting settlement by reference to community facilities, shopping, employment access etc of the 16 settlements assessed Colney Heath there were only three worse performing settlements¹⁵.
- 4.48 As part of the evidence base for the new Local Plan a revised Part 2 Green Belt Review assessed a range of sites (both large and small) for release from the Green Belt.
- 4.49 That report relied on the Green Belt Review: Washed Over Settlement Study¹⁶ which was prepared by ARUP and comprises part of the evidence base. The existing and any proposed washed over Green Belt settlement are assessed against NPPF paragraph 144. In respect of Colney Heath the recommendation is to retain it as a washed over settlement noting the open character of the village and its moderate settlement scale and form as well as the moderate settlement edge characteristics and setting¹⁷. The report includes a plan that identifies the three component parts of Colney Heath, i.e., Colney Heath (A), Roestock (B) and Bullens Green (C).



Colney Heath Component Parts

15 See Appendix 7 to the Part 1 Report at **CD3.6**
16 **CD3.5**
17 See the Summary table at page 3 at **CD3.5**

- 4.50 In terms of development scale and form overall the village is considered to have a settlement scope of moderate and in respect of Colney Heath West it notes:

“The western area of Colney Heath (A) is a small cluster of development located along High Street and the adjacent Wistlea Crescent. There is infill development south of the High Street on Cutmore Drive. The development is moderately dense with moderately sized gardens. Built form is generally up to two storeys with a mixture of detached, semi-detached and a small number of terraced houses.”

- 4.51 The conclusion in Part 1 is that the village has an open character. The settlement is acknowledged as having generous green spaces with large wide verges on primary routes including along High Street.

- 4.52 With regard to the assessment of contribution to openness in Part 2 it notes:

“Linear views along the High Street are typical, with glimpses of trees in back gardens and the wider Green Belt particularly to the north.”

- 4.53 In assessing the village against paragraph 144 NPPF the study concludes that the village has a moderate score and notes in respect of Colney Heath West inter alia:

“Area A is surrounded to the west by woodland which is mostly unbroken but to the south the boundaries are particularly intermittent with low garden hedges which expose the settlement to the wider landscape and create a strong localised relationship with the surrounding landscape. The east of the area is a mix of intact back garden hedgerow boundaries but also relatively undefined or intermittent boundaries with a mix of man-made and natural features in the gaps between residential development.”

- 4.54 The report then concludes that the open character is considered to make an important contribution to the openness of the Green Belt and then recommends:

“The village has an open character and makes an important contribution to the openness of the Green Belt, therefore it should be retained as washed over.”

- 4.55 The Green Belt Review 2023¹⁸ endorsed the findings of the Green Belt Review: Washed Over Settlement Study and the built on the work of the Part 1 Assessment with consideration given to potential impacts upon the relative strength of the Green Belt boundary and whether new boundaries would be defined ‘clearly, using physical features that are readily recognisable and likely to be permanent’. On that basis buffers were applied to the major settlements and then the areas of assessment within the buffers were defined taking into account the SKM Stage 1 GBR weakly performing land against NPPF purposes, promoted sites identified through the Council’s site selection work and Non-Green Belt land. Of the 182 sub areas identified 122 were recommended for retention in the Green Belt. Parcel 34 was not subdivided, and no changes are proposed to any Green Belt boundaries or the washed over status of settlements within this parcel.

¹⁸ See Table 1.3 and Figure 1.1 – Settlement Hierarchy of the emerging Local Plan 2041 at **CD3.1**

- 4.56 The published Regulation 18 Plan does not identify the site for release from the Green Belt or to be allocated for housing to assist in meeting the housing requirement over the Plan period. The appeal site does not comprise a site identified in the emerging Plan as an allocation site for housing. The Housing and Economic Land Availability Assessment 2021 (HELAA) followed on from the Call for Sites where the site was promoted.



Site CH-14-21

- 4.57 The appeal site was promoted as part of a larger site (CH-14-21 – see above) through the Call for Sites 2021. The Housing and Economic Land Availability Assessment (HELAA) was undertaken without reference to the Green Belt Review which could change the suitability of sites. It found the appeal site to be subject to a number of non-absolute constraints including Green Belt, Local Wildlife Status, Landscape Character Areas and habitat concerns. The HELAA concluded that the site was potentially suitable, available and achievable subject to further assessment as part of the site selection process.
- 4.58 The HELAA and Green Belt Review were used to identify suitable sites for allocation in the Regulation 18 Plan. Given the outcome of the Green Belt Review and the performance of Parcel 34 in terms of the purposes no land around Colney Heath Village is proposed for allocation and the appeal site is not identified for allocation given Colney Heath falls within the sixth tier of settlements in the settlement hierarchy and the land around the village and in particular to the south around Tollgate Road provides a *significant contribution towards safeguarding the countryside and maintaining the existing settlement pattern*.

- 4.59 The emerging plan (which is at an early stage of preparation) does not allocate the appeal site to meet the housing requirement of the plan over the plan period. The Plan will have to meet its housing requirement to be considered sound. The Plan defines the settlement hierarchy and Colney Heath is a Green Belt village that comprises part of the sixth of seven tiers of settlements¹⁹.
- 4.60 Policy SP1 sets the spatial strategy for St Albans applies sustainable development principles to determine if development can be considered sustainable including in respect of the location which should minimise the need to travel by directing growth to areas with good transport networks that are well served by jobs services and facilities. It confirms inter alia:
- “The City of St Albans will continue to be the pre-eminent focus in the District for housing, employment, services, retail, the evening economy, education and healthcare.*
- The Settlement Hierarchy (Table 1.3) provides the basis for allocation and location of growth, locating most growth generally within and adjacent to the larger and most sustainable urban centres that are Tier 1 - St Albans and Hemel Hempstead; Tier 2 – Harpenden, and Tier 3 - London Colney.”*
- 4.61 It then sets broad locations for urban extensions and development sites before addressing the allocation of large, medium and small site allocations:
- “The other categories of development are Large Sites (100-249 homes), Medium Sites (10-99 homes) and Small Sites (5-9 homes). These sites are concentrated mostly within urban areas and around the higher tiers in the Settlement Hierarchy.”*
- 4.62 In my view this spatial strategy is entirely consistent with the NPPF and is also broadly consistent with the adopted local plan. Emerging Policy SP2 relates to the climate emergency and requires new development to be located in the most sustainable locations in order to minimise the need to travel through encouragement of walking, cycling and public transport.
- 4.63 Policy SP3 builds on the Green Belt Review and allocate 15,096 homes in the district up to 2041. It requires growth to be supported by suitable infrastructure including schools, transport including walking cycling and public transport and sports and leisure facilities.
- 4.64 No sites allocated as broad locations for urban extensions are located in or close to Colney Heath²⁰.
- 4.65 Policy LG1 and LG4 sets out criteria to support the broad locations for development and large medium and small sites (which exclude Colney Heath) and include the provision of 40% affordable housing.

19 See Table 1.3 and Figure 1.1 – Settlement Hierarchy of the emerging Local Plan 2041 at **CD3.1**

20 See Table 3.1 at **CD3.1**

4.66 Policy LG5 relates to the Green Belt and states that proposals will be assessed in accordance with national policy. Policy LG7 allows for the grant of schemes for affordable only housing schemes of 9 or less dwellings in the Green Belt.

4.67 Policy SP4 relates to housing and HOU1 advocates a housing mix and Policy HOU2 relates to Affordable Housing and states inter alia:

“The Council will seek to meet the District’s affordable housing needs by:

a) Requiring residential development proposals (Use Class C3) with a gain of 10 or more homes, or where the site has an area of 0.5 hectares or more, to provide -

- i. 40% of homes as on-site affordable housing;*
- ii. A tenure mix of 30% social rented, 30% affordable rented and 40% affordable home ownership, which includes 25% of all affordable housing as First Homes;*
- iii. A design approach where affordable housing is indistinguishable in appearance from market housing on site and distributed evenly across the site with affordable housing dwellings to be clustered in groups of no more than 15 homes;*
- iv. Affordable housing to meet required standards and be of a size and type which meets the requirements of those in housing need.”*

4.68 Policy SP8 sets out the Transport Strategy which requires account to be taken of the Hertfordshire County Council Local Transport Plan as well as supporting development in locations which enable active and sustainable transport journeys together with reducing car journeys. Policy TRA1 sets out transport considerations for new development and includes a number of requirements that have to be demonstrated for major proposals including:

- i. Measures to reduce the need to travel by private car are identified and implemented;*
- ii. Active and sustainable connections to key destinations are deliverable at an early stage of development;*
- iii. How the proposed scheme would be served by public transport and would not have a detrimental impact to any existing or planned public transport provision;*
- iv. Safe, direct and convenient routes for active journeys to key destinations are provided and prioritised in their design;*
- v. Comprehensive and coherent integration into the existing pedestrian and cycle, public transport and road networks will be secured;*

4.69 Strategic Policy SP10 relates to the natural environment and biodiversity and seeks to protect green infrastructure recognising its role in combating climate change and supporting biodiversity and landscape value. Policy NEB6 relates to biodiversity and also requires minimum biodiversity net gains of 10% on site.

4.70 Policy NEB10 relates to landscape and design and requires proposals to demonstrate eight components of any scheme and that within the landscape character areas proposals must conserve, enhance or restore the prevailing landscape character of the area.

- 4.71 Policy SP11 relates to the historic environment and when considering the impact of a proposed development on the significance of a designated heritage asset, great weight will be given to the asset's conservation and its setting. Policy HE1 relates to designated heritage assets and sets out support for works to listed buildings in a number of specific circumstances. Policy HE2 relates to non-designated heritage assets and reiterates the approach of the NPPF.
- 4.72 Policy SP12 relates to high quality design and requires development to inter alia respond positively to context. Policy DES1 also requires new development to positively respond to context taking account of local distinctiveness.
- 4.73 Policy SP13 relates to health and well-being and as part of that it identifies the particular reliance of improved walking and cycle infrastructure to assist in more active modes of transport and reducing air pollution. Policy SP14 relates to the delivery of infrastructure.
- 4.74 I consider that only limited weight can be placed on this emerging plan which is at an early stage of preparation for the purposes of this appeal. However, the general direction of travel and reinforcement of the adopted spatial strategy and settlement hierarchy are matters that can be given greater weight. I also note that the evidence base including the Green Belt Review Parts 1 and 2 have been found material and referred to by the Inspectors at Bullens Green and Tollgate Road. The Washed Over settlements study was also found to be material and referred to by Inspector Hayden in the Tollgate Road appeal decision where he found its characterisation of the settlement to coincide with his assessment²¹.

21 DL22 of **CD14.37**

5 The Council's Case

5.1 I present evidence under the broad topic headings from the reasons for refusal:

- a. Green Belt;
- b. Character and Countryside;
- c. Heritage Assets;
- d. Best and Most Versatile Land;
- e. Infrastructure;

5.2 In addressing (b) and (c) I will draw on the evidence of Mr Friend and Mr Collins. I will also address the location of the site and although not a component of the reason for refusal I will consider if such matters are a benefit or disadvantage of the proposal.

5.3 I understand that it is common ground that the proposal comprises inappropriate development in the Green Belt. In that context I will consider what other harm arises to the Green Belt as well as considering harm to the character and appearance of the area, harm to the countryside and harm to designated heritage assets and the loss of best and most versatile land.

5.4 I will also will briefly address matters of biodiversity, archaeology, location and access and infrastructure before considering whether any other considerations raised by the Appellant clearly outweigh the harm by way of inappropriateness and any other harm such that very special circumstances exist.



The Green Belt around St Albans and Hatfield (the site is in Area 34)²²

²² Green Belt Review Purposes Assessment Annex 1 Parcel Assessment Sheets for SADC 2013 **CD3.8**

- 5.5 In undertaking the Green Belt balance I will address whether the decision is to be undertaken in the context of the orthodox planning balance or whether in the context of paragraph 11(d) of the Framework the application of policies of the Framework that protect the Green Belt provide a clear reason for refusing the development proposed and thus the so called *tilted balance* is disengaged.

Green Belt – Inappropriate Development

- 5.6 The NPPF confirms that the essential characteristics of the Green Belt include its openness and permanence.
- 5.7 The appeal site lies outside any existing settlement within the designated Green Belt as defined on the Proposals Maps of the adopted Local Plans. Consistent with the Framework (paragraph 154), Policy 1 SADLP does not define development of up to 145 residential dwellings, access roads etc. as an exception from the definition of inappropriate development. The adopted development plan directs new housing development to the main settlements and applies a settlement hierarchy that does not identify the washed over Green Belt settlement of Colney Heath as sustainable locations for new housing development.
- 5.8 The broad approach of policy in respect of the Green Belt is to designate areas of Green Belt land and then to consider development within the Green Belt to be inappropriate unless it is specifically identified as an exception²³.
- 5.9 Consistent with the Framework (paragraph 154), Policy 1 SADLP does not define development of up to 150 residential dwellings, access roads etc. as an exception from the definition of inappropriate development.
- 5.10 The erection of buildings is normally inappropriate development unless it meets an exception identified in NPPF paragraph 154. The proposed development does not comprise one of those exceptions and the Appellant does not claim it to qualify thus.
- 5.11 Paragraph 153 of the NPPF confirms that harm by way of inappropriateness and any other Green Belt harm is harm that is attributed substantial weight.
- 5.12 Paragraph 152 NPPF states that inappropriate development should not be approved except in very special circumstances. Then paragraph 153 confirms that “very special circumstances” will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. The test is to be “clearly outweighed” and not merely “outweighed”.

²³ See **Timmins and Anr and Gedling Borough Council** [2014] EWHC 654 (Admin) at **CD13.3**

- 5.13 The application of NPPF paragraph 152 provides a clear reason to refuse planning permission under NPPF 11(d)(i), and it would only ever be through the exercise of the Green Belt planning balance in NPPF para. 153 wherein other considerations are demonstrated to clearly outweigh the harm by way of inappropriateness and any other harm that permission could be granted.
- 5.14 Therefore the decision will have to be taken with all the harm first identified and weighed and then the other considerations relied on by the Appellant considered and weighed and only if those other considerations “clearly outweigh” the harm by way of inappropriateness and all other harm do very special circumstances exist.

Green Belt - Openness

- 5.15 The Framework (para. 142) identifies openness and permanence as the essential characteristics of the Green Belt with the fundamental aim of Green Belt policy to keep land permanently open and thereby prevent urban sprawl.
- 5.16 The concept of openness means the state of being free from built development; the absence of built form as opposed to the absence of visual impact²⁴. However, the word “openness” is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if the proposed development occurs and factors relevant to the visual impact on the aspect of openness which the Green Belt presents²⁵.
- 5.17 In **Turner, Sales**, LJ stated as follows (so far as relevant):

"14. [...] The word “openness” is open-textured, and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt presents

15. The question of visual impact is implicitly part of the concept of “openness of the Green Belt” as a matter of the natural meaning of the language used in para. 89 of the NPPF. I consider that this interpretation is also reinforced by the general guidance in paras. 79-81 of the NPPF, which introduce section 9 on the protection of Green Belt Land. There is an important visual dimension to checking “the unrestricted sprawl of large built-up areas” and the merging of neighbouring towns, as indeed the name “Green Belt” itself implies. [...]. Openness of aspect is a characteristic quality of the countryside, and “safeguarding the countryside from encroachment” includes preservation of that quality of openness. [...]

²⁴ **R (Lee Valley RPA) v Epping Forest DC** [2016] EWCA Civ 404, Treacy, Underhill, Lindblom LJ, para. 7 at **CD13.4**

²⁵ **Turner v SSCLG** [2016] EWCA Civ 466, Arden, Floyd and Sales LJ at **CD13.5**

16. *The visual dimension of the openness of the Green Belt does not exhaust all relevant planning factors relating to visual impact when a proposal for development in the Green Belt comes up for consideration. For example, there may be harm to visual amenity for neighbouring properties arising from the proposed development which needs to be taken into account as well. But it does not follow from the fact that there may be other harms with a visual dimension apart from harm to the openness of the Green Belt that the concept of openness of the Green Belt has no visual dimension itself.*

25 *The openness of the Green Belt has a spatial aspect as well as a visual aspect, and the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result of the location of a new or materially larger building there. But, as observed above, it does not follow that openness of the Green Belt has no visual dimension."*

5.18 In response to various judgements and case law including Turner the Government updated the Planning Practice Guide (PPG) in July 2019²⁶, in respect of openness it now states:

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

- *openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume;*
- *the duration of the development, and its remediability – taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness; and*
- *the degree of activity likely to be generated, such as traffic generation."*

5.19 In **Samuel Smith**,²⁷ a judgment of the Supreme Court (Lord Carnwath) issued the lead judgment (with which Lady Hale, Lord Hodge, Lord Kitchin and Lord Sales agreed) in respect of the interrelationship between visual impact and openness of the Green Belt, disagreeing with the judgment of Lindblom LJ in the Court of Appeal. The Supreme Court judgment was handed down on 3 December 2019. Therein Lord Carnwath said:

²⁶ Para 001; ID 64-001-20190722

²⁷ R (**Samuel Smith Old Brewery (Tadcaster) & Ors v N. Yorks CC** [2020] UKSC 3 at **CD13.6**

"22. *The concept of "openness" in para 90 of the NPPF seems to me a good example of such a broad policy concept. It is naturally read as referring back to the underlying aim of Green Belt policy, stated at the beginning of this section: "to prevent urban sprawl by keeping land permanently open ...". Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt. As PPG2 made clear, it is not necessarily a statement about the visual qualities of the land, though in some cases this may be an aspect of the planning judgement involved in applying this broad policy concept. Nor does it imply freedom from any form of development. Paragraph 90 shows that some forms of development, including mineral extraction, may in principle be appropriate, and compatible with the concept of openness. A large quarry may not be visually attractive while it lasts, but the minerals can only be extracted where they are found, and the impact is temporary and subject to restoration. Further, as a barrier to urban sprawl a quarry may be regarded in Green Belt policy terms as no less effective than a stretch of agricultural land."*

"39. *[...] As explained in my discussion of the authorities, the matters relevant to openness in any particular case are a matter of planning judgement, not law."*

"40 *Lindblom LJ criticised the officer's comment that openness is "commonly" equated with "absence of built development". I find that a little surprising, since it was very similar to Lindblom LJ's own observation in the Lee Valley case (para 23 above). It is also consistent with the contrast drawn by the NPPF between openness and "urban sprawl", and with the distinction between buildings, on the one hand, which are "inappropriate" subject only to certain closely defined exceptions, and other categories of development which are potentially appropriate. I do not read the officer as saying that visual impact can never be relevant to openness."*

5.20 In effect what the Supreme Court found was that the visual component of openness is capable of being a material consideration, but it is not necessarily a consideration in every case. Spatial openness is always a component of openness.

5.21 There is a difference between impacts on visual amenity, which are normally considered within the process of LVIA and the visual aspects of openness which are considered as part of Green Belt Assessment. In a LVIA an assessment is made on the effects of development on views available to people and their visual amenity and how this may affect character and scenic quality. In consideration of Green Belt, an assessment is made on the effects of development on the visual openness of the Green Belt including impacts on views, links to the wider Green Belt, inter-visibility between settlements and whether measures could be proposed that would restore the baseline aspects of openness.

5.22 In a Secretary of State decision of November 2021²⁸ in dealing with visual openness on a site that has urban influences, paragraph 8.9 of the Inspector's conclusions, which were adopted by the Secretary of State, state:

²⁸ Haydock Point - Land at A580 / A49 - Ref: APP/H4315/W/20/3256871 at **CD14.25**

*“In visual terms, external views of the site are relatively local and the M6 and A580, the Holiday Inn and the grandstands and other buildings of Haydock Park Racecourse lie close to its eastern, southern and northern boundaries respectively. Almost immediately west of the M6 is the extensive Haydock Industrial Estate (HIE). However, the proximity of these urban influences and features would do nothing to offset but, on the contrary, would serve to emphasise the permanent loss of openness, notwithstanding the relative containment of external views. **Moreover, the proposed landscape bunding and tree screening round the site, intended to soften the appearance of the buildings in the landscape, would aggravate the obvious loss of the essential and fundamental openness of the Green Belt. That loss carries substantial planning weight against the appeal.**” [4.17-22, 5.6] (emphasis added)*

- 5.23 With this in mind it is pertinent to look at the actual and the lawful baseline for the site. The appeal site comprises an area of open agricultural land with no development present. It is used for arable purposes.



The Appeal Site Existing © Google

- 5.24 The existing built development at the appeal site is limited to the hardstanding including the access to the football club and parking area. The area of the site that will accommodate the proposed housing and estate roads is completely devoid of any development, it is open.
- 5.25 The appeal site is visible from public views with its openness appreciated as part of the wider countryside as distinct from the settlement of Colney Heath and the ribbon of dwellings fronting High Street. In views approaching the site from the east the openness of the appeal site can be perceived as part of the wider countryside and also in its own right.

- 5.26 In views from the south looking north from adjacent fields and footpaths again the openness of the site can be perceived and appreciated. I have included at **Appendix 1** some photographs taken around the area to illustrate the visibility of the appeal site. These photographs should be read together with those produced by Mr Friend and are intended as an *aide memoire* to assist the Inspector in understanding the scope of viewpoints that are relevant to be considered.
- 5.27 The appeal site is also visible in views from High Street including between existing buildings were the ribbon nature of development fronting High Street and open fields to the rear can clearly be appreciated.
- 5.28 The openness of the appeal site where its openness as part of the wider countryside can be perceived from the existing football club ground and its access and car park to the north and west in contrast to the ribbon of development fronting the north side of High Street.



The Appeal Site from the Football Club Car Parking

- 5.29 The appeal site comprises an area of open land with no development present that is used as arable farmland in conjunction with neighbouring fields.



The Appeal Site from the Pitch Side at Colney Heath Football Club

5.30 The appeal site is located in a wider area of open countryside and attractive landscape that is open and frames the washed over Green Belt settlements of Colney Heath as shown on the aerial image below which represents a mid-range view of the appeal site in the context of Colney Heath.



Aerial Image Of Site And Colney Heath Base Image © Google

- 5.31 Land to the east of the appeal site comprises exclusively agricultural land crossed by numerous public rights of way. Land to the north and north west of the appeal site comprises an open sports pitch and recreation ground and a woodland with fishing lakes. A single storey sports clubhouse is located close to the north west corner of the appeal site.
- 5.32 Land to the south east of the appeal site comprises open countryside predominately comprising arable farmland crossed again by a number of public rights of way. A public house beer garden also immediately abuts the south west corner of the appeal site.
- 5.33 The south west/ west boundary is abutted by the rear garden boundaries to 7 residential properties (94 – 106 High Street) that comprise a ribbon of development fronting High Street. To the south west of 88 – 106 High Street is a ribbon of dwellings fronting High Street (Nos 83 – 101) and beyond them is open land. To the northwest of these houses and to the south of High Street lies the remainder of Park Corner/ Colney Heath one of the three settlements that makes up the washed over Green Belt village of Colney Heath.
- 5.34 Given these specific characteristics of the appeal site I consider it to be open in both a spatial and visual sense. In that respect I have already detailed the extent of development at the appeal site and given the definition of openness in this regard relates to the absence of development I consider the appeal site to be completely open in a spatial and visual sense. Visually the site can be perceived from public views along High Street between houses that front the road as well as along the length of the public footpath network to the northeast, east and southeast of the appeal site. The impression visually of the appeal site is that it comprises part of the open countryside that extends to the east of High Street.
- 5.35 I am mindful that the Appellant also considers the appeal site to be open and a characteristic of this area to be openness. In their LVIA they state that they consider the appeal site to form part of a sub area LLCA1 which *“is defined by the open fields of Colney Heath and Roundhouse Farm.”*²⁹. They then define the key characteristics of LLCA1 as including:
- “Gently undulating landform with little variation contributing to a strong sense of openness.”*
- 5.36 I concur that the area including the appeal site has a strong sense of openness.

29 CD4.12 at 4.30

- 5.37 Into this local and wider open countryside context the appeal proposal is to introduce up to 45 new dwellinghouses, access roads and other development. I acknowledge that it will only be possible to definitively measure the extent of proposed development at reserved matters stage, however, I estimate that the 45 proposed dwellings³⁰ would have an approximate footprint of 2,250m². Added to that I have allowed another 180m² for garages³¹. Then allowing for a shed or other outbuilding in each garden of 3m² would add a further 135m². Therefore, I estimate the proposed building footprint is approximately 2565m². This figure is to a degree speculative, but it is a reasonable and conservative, assumption given the scale of the proposed development that allows comparison between the existing and proposed contexts.
- 5.38 In addition to the proposed buildings hardstanding is proposed in the form of access roads, estate roads and footpaths as well as car parking courts as well as patios and parking spaces/ driveways for the proposed dwellings. Based on the illustrative masterplan I have assumed 150 metres length of access and estate roads with a conservative average width of 9 metres to allow for footpaths. That equates to 1350m² of access road and pavement. In addition, secondary access roads and car parking courts would add another c1250m². Private driveways add approximately 1000m² of further hardstanding. The external footpath that circumnavigates the open space is approximately 130 metres in length with a width of 2.5 metres that equates to 320m² of further hardstanding. Finally I am allowing 6.5m² of patio or hardstanding per dwelling which adds a further 300m² of hardstanding. Again, I realise that these figures are to a degree speculative, but they are a reasonable and I believe conservative assumption given the scale of the proposed development as well as the illustrative masterplan proposals and allows a comparison to be made between the existing and proposed contexts.
- 5.39 Therefore the proposals include approximately 3,000m² of hardstanding in addition to the 2565m² of building footprint. This equates to a built development footprint of 5,565m². I estimate the rectangular parcel of land on which the houses are to be sited to have an area of 15,300m².
- 5.40 Therefore the proposed scale of development equates to 36% of the appeal site area, this compares to the existing baseline that equates to 0% combined building and hardsurfacing coverage.
- 5.41 These figures are illustrative of a very substantial loss of openness in spatial terms.
- 5.42 However, in terms of the visual component of openness this difference is more marked given the existing baseline is a completely open arable field located beyond an existing ribbon of dwellings fronting High Street and the proposed buildings are two storey scale and extend up to 150 metres east of the ribbon of two storey dwellings fronting High Street.

³⁰ For the purposes of this exercise I have assumed that the average dwelling is a three bedroom 5 person dwelling with a footprint of 50m².

³¹ The illustrative masterplan shows approximately 11 garage spaces. A garage space of 6 x 3 metres equals 18m².

- 5.43 There is no existing development at site and thus the volume of existing development is 0m³. In terms of three dimensional impact we do not have details of the house types, but we can approximate a volume of built development by using the average dwellinghouse footprint of development (50m²) and using an average eaves height of 5.2 metres³² and a roof height of 3 metres. I estimate the approximate volume of built development comprising dwellinghouses to be over 15,000m³. Incidental buildings such as garages (c 500m³) and sheds (300m³) would need to be added to that figure to give an approximate volume of c15,800m³ of proposed buildings across the appeal site as an illustration of the overall volume of proposed above ground development.
- 5.44 This scale of development and the loss of openness will be perceived both spatially having regard to the openness of the existing appeal site and visually having regard to public and private views of the existing completely open appeal site. I consider the appeal site and thus the loss of openness proposed to be visible from High Street to the west of the appeal site and the Public Footpath network to the east, north, north-east, south and south east of the appeal site³³.
- 5.45 Having regard to the baseline the proposal would lead to a very substantial and permanent loss of openness in both a spatial and visual context. I consider the substantial adverse impact on openness in a spatial dimension to lie toward the top end of the scale of such impact. Given the complete absence of any development on the appeal site and the visibility of the site from surrounding rights of way I also consider the loss of openness in a spatial sense to be substantial.
- 5.46 I consider that in addition to the substantial increase in permanent development as proposed the scheme will significantly increase the visual perception of enclosure and reduce further the openness of the site and this part of the Green Belt.
- 5.47 As to duration, the development would be permanent, a further aggravating factor.
- 5.48 A high degree of activity would be introduced onto the site, which presently involves only the limited occasional activity associated with farming arable land. I have visited the site and area on a number of occasions and on all of these occasions it was not possible to discern any activity on site. The proposals would introduce vehicle movements behind the ribbon of houses that front High Street, noise and activity from residential occupation of 45 dwellings, parking and manoeuvring of vehicles, light from houses, streetlamps, security lighting and vehicle headlights. These would be further aggravating factors reducing openness through generated activity.

³² The same as I estimate for the existing houses at 96 – 106 High Street and an average that accounts for 2.5 storey development as well as bungalows.

³³ See Photographs at section 2 and on previous pages in section 5 and at **Appendix 1**

- 5.49 In coming to these views I am mindful that this is an outline application with all matters except access reserved but I am also aware that the Appellant has illustrative material designed to show how the proposed scale of development will impact on the appeal site. Whilst I have referred to the illustrative material (and I note that this is the Appellant's best effort to show how the site can accommodate the quantum of development proposed) my conclusions on harm apply to the quantum of development as the harm is an inevitable consequence of such a quantum regardless of layout, design, landscaping, appearance etc...
- 5.50 In conclusion I consider that in spatial terms the proposal would substantially erode openness and lead to substantial harm in that regard. I also consider it will have a substantial impact on the visual appreciation of openness and again such matters lead to substantial harm. In coming to this conclusion I rely on both my analysis above as well as the perception of the site from neighbouring private dwellinghouses, adjacent country lanes and the footpath network that borders and provides views over the appeal site.
- 5.51 In addition to the substantial increase in permanent development as proposed the scheme will lead to significant degrees of activity across the site and impacts from light and noise that further reduce openness.
- 5.52 In assessing this matter I consider the impact of the development as a whole and do not seek to credit as open encapsulated space such as private gardens or verges noting the findings of Inspector McDonald in an appeal at Leverhulme³⁴:

"The appellant sought to suggest that elements of the schemes, such as the play areas, sports pitches and open spaces would not be inappropriate development, and this somehow reduced the effect of the proposals. Yet, whilst these elements would not be inappropriate development on their own, there would still be a requirement to preserve the openness of the Green Belt and not conflict with the purposes of including land within it. Furthermore, the open spaces, play areas and pitches would be clearly related to housing development.

Moreover, parallel with the above, arguments that significant amounts of land would remain undeveloped, and that would contribute to spatial openness are illogical. Private gardens, play areas and amenity spaces are included in the appellant's calculations as 'undeveloped' land, but these areas would be contained or surrounded by housing."

- 5.53 I conclude that the harm arising from the substantial loss of openness of the Green Belt is very substantial, given the existing open nature of the appeal site and the scale of development and degree of harm to openness that is proposed.

34 DL64 - 65 at **CD14.41**

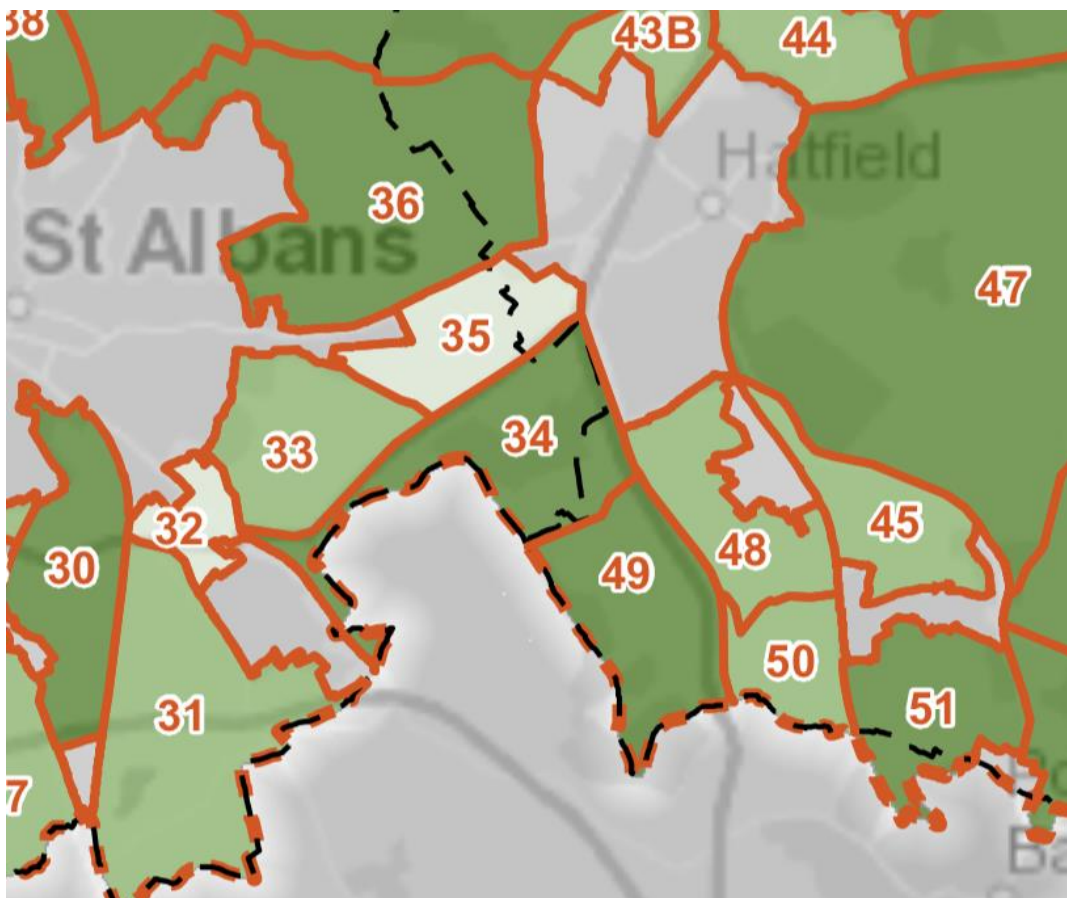
Green Belt - Purposes

5.54 The purposes of the Green Belt are set out in NPPF at paragraph 143:

- a) *“to check the unrestricted sprawl of large built-up areas;*
- b) *to prevent neighbouring towns merging into one another;*
- c) *to assist in safeguarding the countryside from encroachment;*
- d) *to preserve the setting and special character of historic towns; and*
- e) *to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.”*

5.55 I understand that the Council, together with Welwyn Hatfield District Council and Dacorum Borough Council, commissioned SKM Consultants to carry out an independent Green Belt Review to inform future plan-making. The Green Belt Review Purposes Assessment (November 2013) sets out findings and identifies that a number of the areas reviewed were considered to contribute least toward the purposes of including land in the Green Belt.

5.56 The appeal site is located within Parcel 34 which is located to the southwest of Hatfield and the northeast of London Colney, covering an area of 419ha.



Parcel 34 (the darker the green the more significant the contribution to safeguarding the countryside)

- 5.57 The appeal site falls within parcel 34 which was not one of the areas that performed poorly in the review. In that context Green Belt releases and allocation of land for housing are unlikely to be identified in Parcel 34. The rationale for the identification of parcel 34 is set out in Appendix 4 to the Assessment (p.95) is as follows:

“Green Belt Land between Hatfield and London Colney – the parcel is defined around the Colne Valley and allows assessment of the gap between London Colney and Hatfield. Parcel boundaries follow main roads including the A414 and contains 3rd tier settlements.”

- 5.58 The third tier settlements are Colney Heath, Roestock and Bullens Green.

- 5.59 Parcel 34 “comprises *“predominately arable farmland and heathland”* with some blocks of woodland. Parcel 34 has not been subdivided, unlike some other parcels where sub areas of those parcels perform differently against the purposes. The narrow local gap at Colney Heath is identified in the Assessment which also identifies the strong and open characteristics of the land.

- 5.60 The Assessment summarises the principal function of the parcel and assesses it against the first 4 purposes of the Green Belt as well as assessing against the additional local Green Belt purpose of maintaining existing settlement pattern, finding as follows:

“Significant contribution towards safeguarding the countryside and maintaining the existing settlement pattern (providing gap between Hatfield and London Colney). Partial contribution towards preventing merging (of St Albans and Hatfield) and preserving the setting of London Colney, Sleafshyde and Tyttenhanger Park. Overall the parcel contributes significantly towards 2 of the 5 Green Belt purposes.”

- 5.61 With respect to encroachment and safeguarding the countryside the Assessment grades the contribution of the parcel as significant and comments:

“The parcel displays typical rural and countryside characteristics, especially to the south, in medium sized arable fields with hedgerow boundaries, sheep pasture and substantial riverine wetland habitats along the Colne, and areas of heath and semi natural grassland which are locally important at Colney Heath. Tyttenhanger Park and Hall is located to the south. There is evidence of linear built development in the north part of the parcel which contains Colney Heath and Bullens Green. The A1(M) is also a major urban influence which is audibly intrusive. Levels of openness are generally high especially to the south due to an absence of built development.”

- 5.62 The Green Belt Review identifies that typical rural and countryside characteristics exist towards the south of the parcel, whilst levels of openness are generally high. The rural and countryside characteristics are also. This description accords with my view of the context of the appeal site for the reasons I set out.

- 5.63 Although the application site is located adjacent to the football club ground and to the rear of residential properties on High Street, the site forms part of the wider swathe of open countryside to the rear of High Street as opposed to any built up area. The currently open site is visible throughout the wider area.

5.64 It is noted that the Green Belt or settlement pattern in the south of parcel GB34 has not been significantly changed since the Green Belt Assessment was undertaken and it is considered that this assessment remains applicable. A change to the wider area of Green Belt since the assessment was published is the grant of permission for 100 homes at Bullens Green Lane. However, as noted by that Inspector the context of that site differs significantly from other parts of Parcel 34. Inspector Masters found that the site was contained by residential development to the north, a short terrace of cottages at its eastern corner, residential dwellings at its south west corner and a pumping station and dwellings to the west³⁵. In that context she opined³⁶:

“Whilst the open countryside to the south and east is clearly visible, the surrounding residential properties either facing the site or their rear gardens and associated boundary treatment is also clearly visible. These range in scale and form from bungalows fronting Fellowes Lane, glimpsed views of the 3 storey dwellings within Admiral Close and Hall Gardens and the rear elevations and gardens of properties along Roestock Gardens. Bullens Green Lane and Fellowes Lane serve to enclose the appeal site and provide a degree of containment from the wider countryside and beyond.”

5.65 That Inspector found that the broader characteristics of Parcel 34 were not reflected in that appeal site which she found not to comprise a positive element of the countryside³⁷.

5.66 Inspector Hayden at the more recent Tollgate Road appeal was drawn to these findings of Inspector Masters by that Appellant. However, in assessing that site he concluded, consistent with the Council’s evidence at that appeal, that that site was visible from a range of public viewpoints within and around Colney Heath³⁸. He then concludes that:

“[...] I consider that the appeal site, in its current form, makes a strong contribution to the purpose of the Green Belt in safeguarding the countryside from encroachment in this part of the District.”

5.67 In addressing the Bullens Green decision he notes³⁹:

The appellant seeks to draw a parallel here with the appeal decisions for the Roundhouse Farm site, off Bullens Green Lane, in Colney Heath. In that case the Inspector concluded that the proposed development would have only a localised effect on the Green Belt, that the broad function and purpose of the Green Belt would remain and that there would be no significant encroachment into the countryside. However, the decision makes clear that this was a result of the locational characteristics of the site, contained on three sides by residential development and separated from the countryside to the south and east.

35 **CD14.6** DL11

36 **CD14.6** DL13

37 **CD14.6** DL15

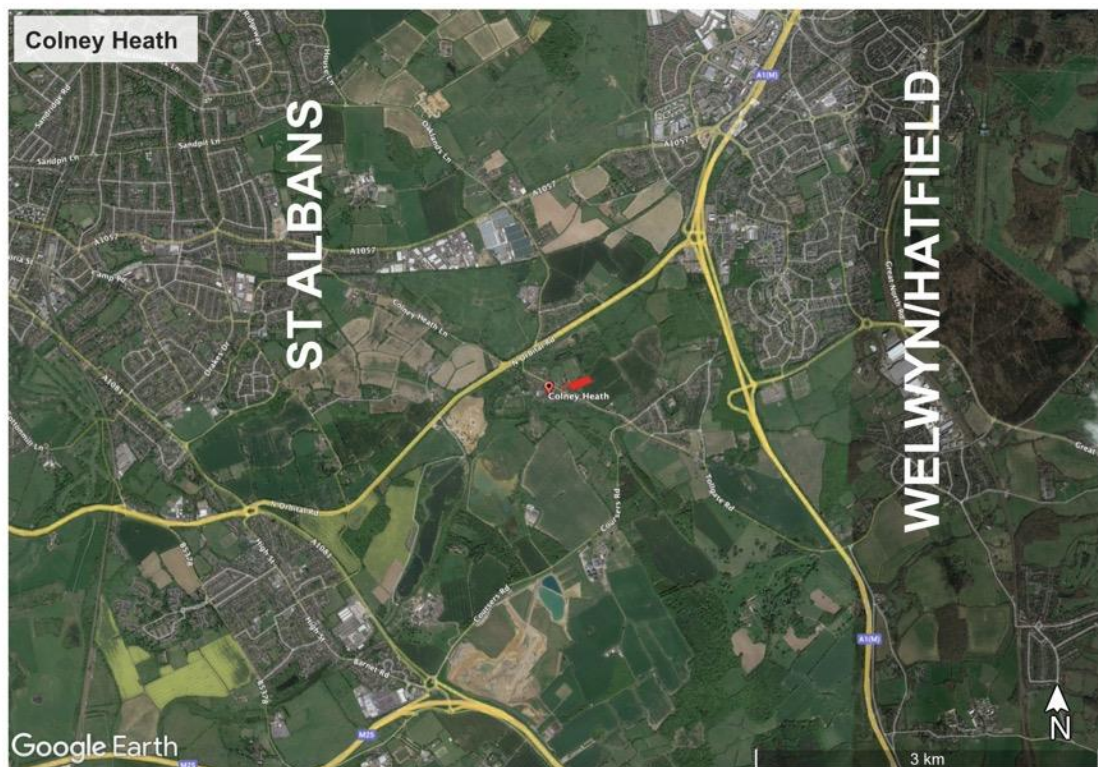
38 **CD14.37** DL28

39 **CD14.37** DL29 – DL30

Although the appeal site in this case forms part of the same wider tranche of Green Belt identified and assessed in the 2013 Green Belt Review, it is distinct from the Roundhouse Farm site, in that it forms part of the open countryside outside of the settlement, rather than being contained by it. Therefore, I do not accept that the Inspector's findings on the impacts of the proposal for the Roundhouse Farm site on the purposes of the Green Belt should be applied in this appeal. Furthermore, no two cases are the same, and it is a core principle of the planning system that each proposal is considered on its own merits.

5.68 I note that the Appellant in assessing the contribution of the appeal site toward purpose c (which they refer to as purpose 3) notes⁴⁰:

"The Site demonstrates a strong relationship with the countryside through its arable land use, and overall, the site's contribution to Purpose 3 is considered to be 'Significant'."



The Appeal Site Location Between St Albans/ London Colney and Hatfield/ Welham Green

5.69 The parcel is also considered to contribute significantly to the maintenance of existing settlement patterns in particular with regard to the separation of St Albans with Hatfield as well as smaller settlements such as Colney Heath and Roestock. In this context encroachment into the countryside has the potential to erode existing settlement patterns. I consider such matters when assessing character.

40 CD4.12 at Paragraph 6.6

- 5.70 The proposed development will lead to the erosion of open space between St Albans and Hatfield such that it will reduce the open space in the gap between these settlements. However, the development itself will not lead to urban sprawl of any large built up areas (rather the sprawl that will ensue is to the village of Colney Heath) and thus would not conflict with the first purpose at para. 143(a) NPPF.
- 5.71 Having regard to the Assessment, the wider area within which the appeal site is located (i.e. parcel 34 as identified in the Assessment) performs a valuable role in containing the Green Belt settlements of Colney Heath, Sleapshyde and Tyttenhanger Park and preventing towns such as St Albans, London Colney and Hatfield and Welham Green merging. The proposals will erode the degree of separate identity of the component parts of Colney Heath village. However, this harm is predominately to the character of the area and the development of the site itself does not of itself lead to the merging of neighbouring towns, albeit parcel 34 contributes positively to this purpose. I do conclude that the finger of development proposed that protrudes from the ribbon of development fronting High Street, would not respect context or local distinctiveness of the Colney Heath settlement pattern. Therefore, whilst the proposal would conflict with para. 143(b) NPPF only limited harm arises.
- 5.72 In the context of my openness assessment I have already described the appeal site as open located in the countryside beyond the settlement. The aerial imagery and observations at site support such a position. The proposals will encroach into that countryside with a residential estate development of up to 45 dwellings and incidental development such as access roads etc. The degree of encroachment both in terms of the spread of development and the quantum of development means that 45 dwellings and access roads etc will fill the depth of the site protruding out into the open countryside from the ribbon of development that fronts High Street. The development materially encroaches into the open countryside.
- 5.73 Park Corner/ Colney Heath extends north east as far as High Street and the ribbon of development fronting that road. It does not extend north or east of High Street.
- 5.74 In my view the degree of encroachment both in terms of the spread of development and the quantum of development is substantial and leads to substantial harm.
- 5.75 The site characteristics (i.e. a narrow rectangular site that protrudes from the ribbon of houses that comprise the extent of the existing village alongside the north/ east of the High Street and is visible from a range of public views) exacerbate and do not ameliorate the harm to this purpose.
- 5.76 As found with the Tollgate Road appeal site I consider that the appeal site comprises part of the open countryside outside the washed over settlement and is not contained by Colney Heath⁴¹ unlike the Bullens Green site.

41 See DL30 at **CD14.37**

5.77 Thus I am of the view that similar conclusions to Inspector Hayden should be reached who found in respect of that site⁴²:

“is clearly visible from a range of public vantage points within and around Colney Heath and that it forms part of a swathe of open land along the River Colne, which is visually connected to the wider countryside beyond to the southeast and northwest. On this basis, I consider that the appeal site, in its current form, makes a strong contribution to the purpose of the Green Belt in safeguarding the countryside from encroachment in this part of the District.” (emphasis added)

5.78 He then concluded that⁴³:

“the appeal proposal would constitute a substantial incursion of urban development into the open countryside to the south of Colney Heath, extending the settlement well beyond the existing ribbon of housing on Tollgate Road. This would cause substantial harm to the key purpose of the Green Belt in this location in safeguarding the countryside from encroachment.” (emphasis added)

5.79 The Green Belt Purposes Assessment considered that parcel 34 makes a significant contribution toward safeguarding the countryside from encroachment. Such matters were considered in the context of the Roestock Depot Appeal decision⁴⁴ (a site that comprises, in part, previously developed land) wherein the Inspector noted at DL17:

“The existing buildings on the site undoubtedly have an impact on openness but the likely increase in volume and spread of mass and bulk across the site into areas currently absent of buildings would result in a greater impact on openness. Therefore, the development would be at odds with the Green Belts essential characteristics, openness and permanence. Furthermore, it would be in conflict with its defined purposes, specifically to assist in safeguarding the countryside from encroachment.” (emphasis added)

5.80 It is in this context that the emerging Local Plan does not seek to allocate further sites around Colney Heath acknowledging that the site at Bullens Green will deliver 100 new dwellings attached to this tier 6 (of 7) Green Belt village. Whilst I accept that the eLP is at an early stage of preparation and adoption and should only carry limited weight the direction of travel is clear as is the spatial strategy which seeks to locate new housing development either within or attached to the higher order settlements within St Albans (e.g. St Albans, Harpenden, London Colney) or attached to Hemel Hempstead as part of the major urban extensions to that settlement.

5.81 I therefore conclude that in respect of the purposes of including land in the Green Belt the proposed development would conflict with a number of purposes, in summary:

42 DL27 – DL32 at **CD14.37**

43 DL31 at **CD14.37**

44 **CD14.24**

a) *to check the unrestricted sprawl of large built-up areas;*

The appeal site is adjacent to the washed over Green Belt village of Colney Heath and would provide an extension to the east of this settlement beyond the ribbon of existing dwellings fronting High Street. The proposal would disrupt and change the existing settlement pattern with built form spread out in a dispersed manner and in a way that does not follow or relate to any obvious features on the ground (as shown in the Illustrative Masterplan). If permitted the development of this site would put significant pressure on the open fields around the appeal site and would therefore have the potential to lead to further sprawl. However in my view Colney Heath is not a large built up area and for that reason there is no harm to this purpose..

b) *to prevent neighbouring towns merging into one another;*

The Green Belt Review 2013 considers parcel GB34 contributes towards the strategic gap between St Albans and Hatfield and notes that any minor reduction in the gap was unlikely to compromise the separation of the settlements in physical or visual terms, or overall visual openness. Whilst the proposed development would introduce additional built form in the gap its integrity would be maintained. Very limited harm arises to this purpose.

c) *to assist in safeguarding the countryside from encroachment;*

The site is bound by residential properties to the short south west boundary providing a strong and defensible boundary, however defensible boundaries do not exist to the north, east and south of the site where the appeal site comprises part of a swathe or belt of open land. The proposal would extend the existing built-up area into undeveloped Green Belt, projecting notably further east than the existing ribbon of properties on High Street. The proposed residential buildings would project around 160m further east than the existing properties on High Street. The two storey development would also extend 80 metres further east than the single storey clubhouse building on the neighbouring football club ground. The proposals encroach on an area of existing open countryside. The Illustrative Masterplan shows the built form being spread out in a dispersed manner that does not follow or relate to any obvious features on the ground.

The development of this site would put significant pressure on neighbouring land. It would therefore have the potential to lead to further encroachment into the countryside. Substantial harm arises in relation to this purpose.

5.82 For similar reasons articulated above in the context of the Roestock and Tollgate appeals I invite the Inspector to conclude that the appeal site makes a strong contribution toward safeguarding the countryside from encroachment. There is therefore conflict with paragraph 143(c) NPPF and the harm by way of encroachment is substantial and carries substantial weight against the proposed development.

Other Harm – Countryside, Landscape and Character Harm

- 5.83 The development will be noticeable and result in the introduction of development on a greenfield site. The site is located within views that exhibit elements of the existing settlement edge that sits locally but will extend from the existing ‘ribbon’ of development that sits along High Street and appear as a distinct component, with fields remaining to the northeast, east and southeast. The proposed site layout is contrary to the current pattern of development that follows the north or eastern side of High Street. In terms of landscape character I note Mr Friend’s conclusion⁴⁵:

“Overall, the proposals will harm and not improve or conserve the local landscape character.”

- 5.84 I note that Mr Friend analyses visual effects and observes⁴⁶:

“Views from High Street will be limited but this change will remain visible due to its relative height.

Overall it is clear that the development will be obvious from the surrounding footpath network. This change will be experienced from 5 footpaths (041, 045, 031, 005 and 024) that link to the wider network with effects that would be significant.”

- 5.85 In terms of the proposed mitigation whilst this may lead to some screening of the proposed houses and reduction in visual impacts it will enclose currently open views of countryside. Mr Friend notes⁴⁷:

“[...] It is agreed that the mitigation measures that are outlined on the Illustrative Masterplan will have the effect of reducing some visual effects from the wider landscape but will not reduce them to a level below Major to Moderate from 5 or 6 footpaths that connect to the wider network and the mitigation measures will reduce openness of the current views.

The proposal will introduce an awareness of built form of a residential nature that will appear to extend the existing settlement edge to the north to viewers from the footpath network in particular and appear incongruous.”

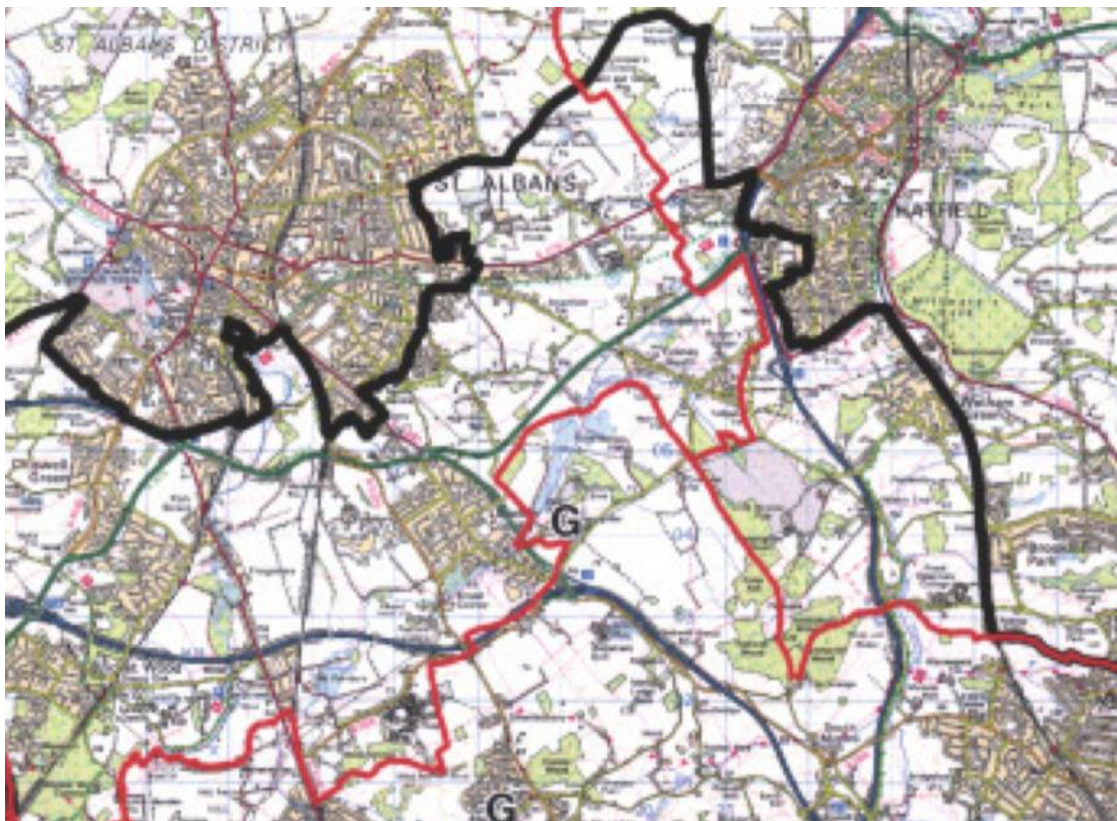
- 5.86 The site is located with views that exhibit elements of the existing settlement edge that sits to the north, but these do not overwhelm the current rurality that is felt within the site. The landscape evidence shows that the landscape and visual impacts that occur would be in the context of an existing site that is influenced by some built form that comprises a ribbon of houses located alongside the south west boundary and appreciated locally, but the proposals will be visible in local views and will affect the current baseline adversely as they would be visually intrusive.

45 See paragraph 7.1.5

46 See paragraphs 6.1.4 – 6.1.5

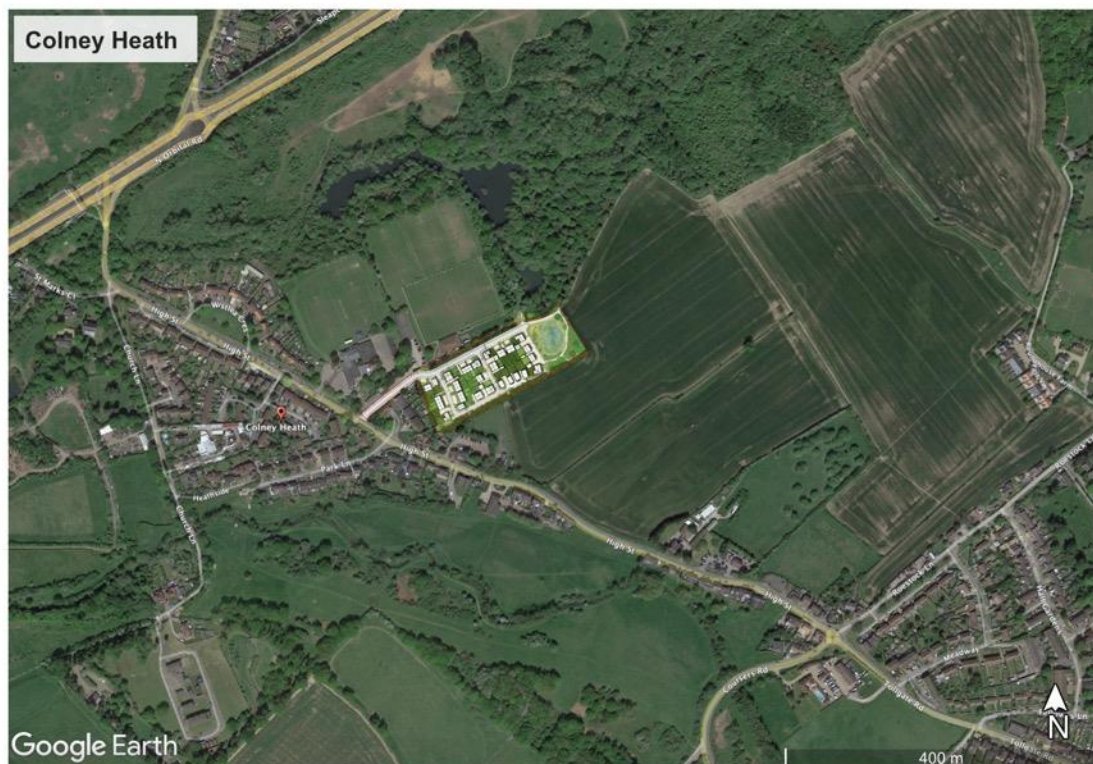
47 See paragraphs 6.1.17 – 6.1.18

- 5.87 The visual aspect of openness as it relates to the Green Belt is not measured in the same way as would be the case with a visual assessment. That change is visible and proof of harm in terms of openness. Consequently, if the proposals are visually intrusive they will affect openness regardless of residual visual effects. That the site is currently seen in the context of the settlement edge should be given very little weight, it will appear to extend the settlement to the north east into the open countryside.
- 5.88 It has been accepted and is common ground that there will be a level of harm to the site and its immediate surroundings at a residual level. I have adopted Mr Friend's evidence and findings and note that he concludes that the Appellant's assessment has understated the visual effects of the development and its impact on landscape character. Therefore, the proposed development would harm and not improve or conserve the local landscape character in accordance with the guidelines for landscape change in the Colney Heath Farmland Landscape Character Area.
- 5.89 The proposals will not recognise the intrinsic character and beauty of the countryside.
- 5.90 Recognition of the intrinsic character and beauty of the countryside necessarily imparts a degree of protection (after Cawrey) and the development of an estate of 45 dwellings would fail to recognise the character and beauty of the appeal site and wider countryside of which it forms part.



The Watling Chase Forest Area

- 5.91 This failure to respect context, deliver high quality design and have proper regard to setting and the character of the area together with the loss of existing attractive arable landscape would also conflict with Policies 2 and 69 of the St Albans District Local Plan Review.
- 5.92 The proposal would not make a positive contribution to local character and the identified harm would lead to conflict with 135 b), 135 c), 139 as well as 180(b) of the Framework as well as the National Design Guide.
- 5.93 Overall, in terms of the harm to the character and appearance occasioned by the development of the site for 45 dwellings the degree of harm would be permanent, significant and irreversible and attracts moderate to significant adverse weight.
- 5.94 In terms of the NPPF is the question of whether the proposals would recognise the intrinsic character and beauty of the countryside. As established recognition necessarily imparts a degree of protection commensurate with the quality of the countryside. The attractive nature of this part of the countryside together with its positive contribution toward the purposes of including land in the Green Belt means that a development of 45 dwellings would not recognise the intrinsic character and beauty of this part of the countryside. Indeed the development of 45 dwellings on over 75% of the appeal site would lead to the loss of that part of the countryside thus directly conflicting with the policy of recognising intrinsic character and beauty as well as harming the landscape character as opposed to conserving or improving it.



The Proposed Development and Colney Heath © Google Base Image

- 5.95 I consider the proposal to be discordant and to interrupt the pattern of the settlement introducing a contrived in depth development that will have no relationship to the existing ribbon of development along this side of High Street. As well as harming the landscape and countryside I consider the proposal will not relate to any features on the ground or the settlement pattern and that is illustrated on the aerial image below.
- 5.96 The proposal comprises a finger of built development on a narrow rectangular plot that juts out from the ribbon of development along the northern side of High Street. There is no context for such a form of built development that fails to relate to settlement form and local context. It comprises a discordant townscape feature that fails to have regard to local context or local distinctiveness as well as harming the countryside. As such it conflicts with the policies and parts of the Framework I have already identified as well as paragraphs 41 and 43 of the NDG insofar as it fails to respond positively to the surrounding context or site itself (both landscape and townscape). In addition as shown by Mr Friend the proposals fails to integrate into their surroundings.
- 5.97 I consider this elevates the weight to such harm toward significant in the range moderate to significant.

Other Harm - Setting of the Designated Heritage Assets

- 5.98 I adopt the findings of my colleague Mr Collins in respect of such matters.
- 5.99 Whilst there are no designated or non-designated heritage assets within the site boundary, within 1km of the site there are 20 designated heritage assets including: 19 Grade II listed buildings and 1 Conservation Area. Of the 19 Grade II listed buildings, 3 are located close to the appeal site comprising 94 High Street, Apsley Cottage and The Crooked Billet Public House; which all lie immediately to the south of the development site.
- 5.100 One designated heritage asset is located just 10 metres from the appeal site boundary and another 25 metres away, the Appeal Site forms an important part of the setting of all three assets, which are all Grade II listed buildings.
- 5.101 The NPPF advises that any harm to the significance of assets including harm within their setting will require clear and convincing justification.
- 5.102 In terms of the Crooked Billet Public House Mr Collins concludes⁴⁸:

“The proposals have the potential to not just alter the visual relationship between the listed building and its rural hinterland but also the ‘sense’ of suburbia beyond – caused through lighting, noise etc. “

48 Paragraph 4.22

5.103 With regard to Apsley Cottage his conclusion is⁴⁹:

“The cottage is far more enclosed than the pub, but is also closer to the Appeal site – meaning that the relationship and setting is far more proximate making the intervisibility and the potential to ‘experience’ change more likely. “

5.104 Finally with regard to 94 High Street Mr Collins concludes⁵⁰:

“Development to the rear of the listed building will alter its historic setting, introducing a ‘suburban’ development where previously there was none and therefore for many of the reasons given above, the proposals will cause a small element of less than substantial harm, however I believe this to be negligible.”

5.105 Mr Collins concludes that there is harm to the significance of the assets through impact on their setting. The harm is judged to be a low level of less than substantial, when considered with regard to paragraph 208 of the NPPF. Conflict is identified with the NPPF and Policy 86 of the adopted Local Plan.

5.106 NPPF Paragraph 205 advises local planning authorities that

“When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.”

5.107 The proposals conflict with development plan policy insofar as it would fail to preserve the setting of designated heritage assets, i.e. listed buildings. The public benefits of providing more housing in the circumstances of the Council’s housing land supply position together with 40% affordable housing set against the development plan requirements outweigh the harm to the significance of these heritage assets. Therefore in the context of paragraph 208 NPPF the public benefits of the scheme outweigh the heritage harm and of itself heritage harm does not justify withholding planning permission.

5.108 Therefore the harm to heritage assets does not of itself justify the refusal of planning permission. However, and importantly it remains a harm that should be taken account of in the Green Belt balance pursuant to paragraph 153 NPPF. Such an approach is consistent with the Tollgate Road appeal decision⁵¹ wherein the Inspector concurred with the parties that policies of the Framework that protect heritage assets did not of themselves provide a clear reason for dismissing that appeal. However Inspector Hayden then found:

49 Paragraph 4.24

50 Paragraph 4.26

51 **CD14.37** DL145 - 146

“[...] this does not constitute a finding of ‘no heritage harm’ and therefore a neutral factor in the overall Green Belt balance. Instead, the harm to the designated heritage assets remains an impact to which paragraph 205 of the Framework indicates great weight should be given, irrespective of the finding of less than substantial harm to their significance. Accordingly, the fact that the proposed development would harm rather than conserve the settings and significance of the Grade I and Grade II listed buildings, carries great weight against the appeal proposal in the Green Belt balance.”

- 5.109 The permanent damage that would occur to the significance of these assets through harm to their setting is a matter that weighs against the grant of planning permission in the planning balance by constituting an “other harm” under NPPF para 153. In the circumstances of this case and the Green Belt balance great weight applies to the failure to preserve the significance of the designated heritage assets.

Other Harm – Best and Most Versatile land

- 5.110 The appeal site comprises agricultural land in active arable use.
- 5.111 The Agricultural Land Classification report submitted with the application the subject of this appeal identifies the site as being Grade 2, which falls within the SADC Local Plan Policy 102 definition of ‘high quality agricultural land’ and NPPF definition of ‘Best and most versatile agricultural land’ (BMV).
- 5.112 The NPPF requires decision makers to recognise the wider benefits inter alia *“including the economic and other benefits of the best and most versatile agricultural land”*.
- 5.113 The land is actively farmed as part of a larger arable holding. It has historically been farmed for the same purposes recognising the quality of the land to support the growth of crops.
- 5.114 The economic benefits of retaining best and most versatile agricultural land especially land in active use is well established and recognised by Government policy at NPPF 180(b). Another benefit of retaining BMV at this site is it retains the size of the land available for arable crop production maintaining economies in terms of the existing holding. It also assists in maintaining (i.e. conserving) the landscape quality of the area which includes arable land as a key characteristic.
- 5.115 This is a matter that weighs against the grant of planning permission and the loss of BMV needs to be justified. I attribute limited weight to the loss of BMV.

Sustainable Transport

- 5.116 The Appellant considers the appeal site to be a sustainable and accessible location for new housing⁵². The appeal site is located beyond the eastern periphery of Colney Heath, a dispersed village with few facilities. The village is an amalgamation of a string of settlement comprising Park Corner/Colney Heath, Roestock and Bullens Green.

⁵² See for example 3.13, 4.8, 4.9, 6.3, 6.7, 6.8(vi) etc. of the Statement of Case at **CD7.1**

5.117 Subject to securing necessary footpath and bell mouth improvements detailed in the Transport Statement and the Highways Technical Note the Council does not object to the proposals on the basis of access for pedestrians to the facilities in the village.

Colney Heath Primary School	0.35 kilometres
Colney Heath Village Hall (Including Nursery)	0.5 kilometres
Post Office and Mini Mart	0.8 kilometres
Hairdressers	0.8 kilometres
Public House	0.35 kilometres
St Mark's Church	0.8 kilometres

Table 1: Distance by Foot to Existing Village Facilities

5.118 However, the village relies on surrounding settlements (London Colney, Welham Green/ Hatfield and St Albans) to provide for the day to day facilities such as secondary and tertiary education, employment, libraries, restaurants, supermarkets, banks, doctors surgeries, dentists, railway stations etc.. The table below records the location of such facilities:

Secondary Schools	
Samuel Ryder Academy Secondary School	5.3 kilometres
Nicholas Breakspear RC School	2.8 kilometres
Primary Schools	
De Havilland Primary Hatfield	5.8 kilometres
St Mary's C of E Primary Welham Green	4.6 kilometres
Hospital	
QE2 Welwyn Garden City	9.5 kilometres
Doctors Surgeries	
Potterells Medical Centre Welham Green	5.3 kilometres
Highfield Surgery	4.4 kilometres
Chemist	
Kean Pharmacy Welham Green	4.4 kilometres
Dentists	
Hilltop Dental Surgery	4.9 kilometres
Welham Green Dental Surgery	4.2 kilometres
Supermarkets	
Sainsburys London Colney	5.0 kilometres
Tesco Extra Hatfield	6.5 kilometres
Morrisons St Albans	5.0 kilometres
Asda and Lidl Hatfield	5.4 kilometres
Library	
Hatfield Library	5.5 kilometres
Banks	
Hatfield	5.5 kilometres

Table 2: Distance by Vehicle to Day to Day Facilities

- 5.119 The site is located remote from day to day facilities to meet the needs of future residents if the appeal site were permitted and access to those facilities will be reliant on private motor cars.
- 5.120 Cycle routes to facilities outside Colney Heath are unattractive due to the speed of traffic, narrowness of roads, unlit nature of routes and/ or circuitous routes to facilities. Public transport comprises infrequent bus services.
- 5.121 With regard to public transport I note Inspector Hayden’s conclusions and the financial contributions considered necessary to fund improvements to bus services that serve Colney Heath to make additional residential development accessible by public transport⁵³.



Barley Mow Lane © Google

- 5.122 With regard to cycling the route from the appeal site to the Samuel Ryder Academy would include cycling along an unlit narrow country lane (Barley Mow Lane) and crossing a busy trunk road that Inspector Hayden concluded was unsafe and unsuitable for cycling to and from school⁵⁴ noting that the route:

“would be unsafe and unsuitable for cycling home from school, particularly during the hours of twilight and darkness in the afternoons of the winter months.”

and

⁵³ DL70 – 76 at **CD14.37**

⁵⁴ DL79 and DL82 at **CD14.37**

“the two main cycle routes to the Samuel Ryder Academy are unsafe and/or indirect. As such I do not consider cycling to the local secondary school would be a genuine travel choice for pupils living on the proposed development. The evidence presented by the main parties demonstrates that cycling to other secondary schools in the area, both in St Albans and Hatfield, would be affected by similar drawbacks of unlit or unsegregated routes.”

- 5.123 Welham Green is the closest railway station (4.8 km (3 miles) from the appeal site – 2 km (1.2 miles) closer to the appeal site than St Albans City Station and 3.5 km (2.2 miles) closer than St Albans Abbey Station). In respect of cycle access Inspector Hayden concluded that it was not a genuine modal choice for most residents⁵⁵:

“Overall, therefore, the two alternative cycle routes from the appeal site to Welham Green Station have significant drawbacks. Consequently, I do not consider they would provide a genuine modal choice for journeys to the station for most residents of the proposed development.”



Tollgate Road Between Colney Heath and Welham Green © Google

- 5.124 Overall I do not consider that the nature of the routes for cyclists will encourage cycling as an alternative to the motor car. These routes would deter cyclists other than the most determined or experienced from using these routes for commuting or casual travel.

55

DL85 at **CD14.37**

- 5.125 I am familiar with the roads around the appeal site and I would not seek to encourage inexperienced cyclists to ride the main roads (such as Tollgate Road to Welham Green or Coursers Road to London Colney) as the speed of traffic, narrowness of these roads, lack of run off areas or footways and lack of lighting provide challenges for even experienced cyclists.
- 5.126 I do not suggest that the sustainability of the site's location is a reason for refusal, but I do not consider the location of the site is a matter that weighs in favour of the grant of planning permission. In my view future residents will be dependent on cars for access to day to day facilities and normally such matters would weigh against the grant of planning permission.
- 5.127 In the circumstances of this case such a matter should be treated as a neutral factor and not as the Appellant considers an other consideration that weighs in favour of the grant of permission⁵².

Other issues

- 5.128 The failure to provide a satisfactory mechanism to deliver necessary infrastructure to service the proposed development, and also secure the proposed affordable housing, was an issue at the application stage. However, it is agreed between the parties that a section 106 obligation can address the provision of necessary infrastructure, the securing of affordable housing, and the provision of off-site biodiversity enhancements to off-set the on-site biodiversity net loss.
- 5.129 In those circumstances I do not invite the Inspector to dismiss the appeal on such grounds, and these issues do not fall within the bracket of "other harms" unless the Appellant does not provide a satisfactory mechanism to deliver these matters wherein the failure to provide for necessary infrastructure would weigh against the grant of permission and in those circumstances comprise an "other harm".

Conclusion on Harm

- 5.130 Given the overall package of harm to the Green Belt the loss of this open field to a residential housing estate comprises a substantial level of harm. The essential characteristics of Green Belts are their openness and permanence; the proposal would substantially erode openness to a degree that the land permanently remove it from the countryside or any meaningful contribution to openness such that it would no longer comprise part of the countryside. The proposal will cause substantial harm to the Green Belt and carry substantial weight at the very upper end of such weight. I also consider the encroachment of development would not safeguard the countryside and as such the proposal conflict with the purposes.
- 5.131 As to any other harm that is “non-Green Belt” harm, the proposals would not recognise and harm the intrinsic character and beauty of the countryside and harm landscape character. In that respect it would not respect the landscape strategy as it does not comprise high quality design having regard to context as well as failing to improve (enhance) or conserve landscape character.
- 5.132 Overall, in terms of the harm to the character and appearance occasioned by the development of the site for 45 dwellings the harm would be permanent, significant and irreversible, which is an adverse factor attracting moderate to significant weight weighing against the proposal.
- 5.133 The less than substantial harm to designated heritage assets carries great weight and the loss of BMV carries additional weight against the grant of permission. The failure to demonstrate sustainable transport links to day to day facilities in neighbouring settlements means the location of the proposed development will mean it is car dependent and thus is not a benefit of the scheme.
- 5.134 The proposals would fail to preserve the setting of designated heritage assets, i.e. listed buildings. Whilst the public benefits of providing more housing in the circumstances of the Council’s housing land supply position together with the oversupply of affordable housing set against the development plan requirement outweigh the great weight that is given the conservation of this heritage asset taken in isolation, the permanent damage that would occur to the setting of designated and non-designated assets in this case is a matter that weighs against the grant of planning permission in the planning balance by constituting an “other harm” under NPPF paragraph 153. In the circumstances of this case and the Green Belt balance I have attributed great weight to the harm to the setting of the designated heritage assets recognising that great weight is given to the conservation of heritage assets, however I recognise the common ground that the harm lies toward the lower end of less than substantial harm.

6 The Appellant's "Other Considerations" under NPPF para. 148

6.1 In this section I assess the other considerations relied on by the Appellant and consider whether they are capable of clearly outweighing the harm I have identified.

6.2 In terms of "other considerations" or benefits of the scheme I note that the Appellant relies on a number of factors which can be summarised as:

- The provision of housing in an area of housing need
- Affordable Housing provision
- Provision of custom build dwellings
- Sustainable Location for New Residential Development
- Delivering and securing an access road
- Delivering 10% BNG
- Economic benefits

6.3 I do not set out the dispute between the parties on the impact of the proposal on the Green Belt in terms of openness and purposes. I do not consider such arguments comprise "other considerations" that weigh in favour of the grant of permission. Instead, if supported (and I do not consider they should be), they would go to the degree of weight attributed to harm.

6.4 It is well established that it is for the Appellant to demonstrate that very special circumstances exist to warrant overriding normal Green Belt presumptions. Such circumstances will not exist unless the harm by reason of inappropriateness and any other harm⁵⁶ is clearly outweighed by other considerations. In addition, substantial weight must be given to Green Belt harm.

6.5 In these circumstances, I have already established that the development is inappropriate and will lead to an erosion of openness as well as damaging the character, appearance and visual amenity of and encroaching into the Green Belt. Additional harm by way of harm to character and the countryside, loss of BMV land and harm to the setting of listed buildings add to the weight of factors against the proposed development. Therefore, the circumstances relied on by the Appellant will need to be of sufficient calibre to **clearly** outweigh these components of harm that cumulatively amount to greater harm than just that of inappropriateness.

6.6 In this regard, I am mindful of the stringent test articulated by Sullivan, J (as he then was) in **Draper**⁵⁷, which concerned national Green Belt policy in Planning Policy Guidance Note 2 ("PPG2"). Although PPG2 was replaced by the Framework, for present purposes, current national Green Belt planning policy has not changed. In paragraph 58 of his judgment, Sullivan, J states:

⁵⁶ SoS CLG, Reigate and Banstead BC, Tandridge DC and Redhill Aerodrome Ltd [2014] EWCA Civ 1386 at **CD13.8**

⁵⁷ *R (Chelmsford) v First Secretary of State and Draper* [2003] EWHC 2978 at **CD13.9**

"The combined effect of paragraphs 3.1 and 3.2 [of PPG2] is that, in order to justify inappropriate development in the Green Belt, (a) there must be circumstances which can reasonably be described not merely as special but as very special, and (b) the harm to the Green Belt by reason of inappropriateness and any other harm must be clearly outweighed by other considerations. Those other considerations must be capable of being reasonably described as very special circumstances. If they are capable of being so described, whether they are very special in the context of the particular case will be a matter for the decision maker's judgment."

6.7 In **Temple**⁵⁸, Sullivan, J (as he then was) clarified the test for demonstrating very special circumstances by confirming that it was not necessary for each factor, of itself, to be 'very special' and that factors which individually were otherwise quite ordinary could cumulatively become very special circumstances. This supports my view that very special circumstances are the outcome of the balancing exercise (and not the inputs to such an exercise) and only exist at the point when the other considerations clearly outweigh the harm by reason of inappropriateness and any other harm.

6.8 Further guidance was provided by the Court of Appeal⁵⁹, in which Carnwath, LJ (as he then was) stated inter alia that:

"21. [...] The word "special" in PPG2 connotes not a quantitative test, but a qualitative judgment as to the weight to be given to the particular factor for planning purposes. [...]"

and

"26 [...] I see no reason, in terms of policy or common sense, why the factors which make a case "very special" should not be the same as, or at least overlap with, those which justify holding that Green Belt considerations are "clearly outweighed". To my mind, the wording of para 3.2 ("will not exist unless") reinforces that view. I prefer the formulation used by Sullivan J himself in a judgment the previous year on somewhat similar facts, Doncaster Metropolitan Borough Council v Secretary of State for the Environment, Transport and the Regions [2002] JPL 1509, para 70, where (also in the context of para 3.2 of PPG2) he said:

"Given that inappropriate development is by definition harmful, the proper approach was whether the harm by reason of inappropriateness and the further harm, albeit limited, caused to the openness and purpose of the Green Belt was clearly outweighed by the benefit to the appellant's family and particularly to the children so as to amount to very special circumstances justifying an exception to Green Belt policy." (Original emphasis.)"

⁵⁸ **R (Basildon District Council) v First Secretary of State and Temple** [2004] EWHC 2759 (Admin) at **CD13.10**

⁵⁹ **Wychavon District Council v Secretary of State and Butler** [2008] EWCA Civ 692 at **CD13.11**

The provision of housing in an area of need

- 6.9 It is common ground that there is a substantial and serious housing land supply shortfall in St Albans. The proposal would provide housing in an area of current need and thus is a benefit of the scheme. Overall it is common ground that the provision of housing carries very substantial weight.
- 6.10 The emerging plan (which I acknowledge is at an early stage of preparation) does not allocate the appeal site or any part of it to meet the housing requirement of the plan over the plan period. The Plan will have to meet its housing requirement to be considered sound and the appeal site will not be allocated as part of the current plan process. As I detail in section 5 the plan defines the settlement hierarchy and Colney Heath is a Green Belt village that comprises part of the sixth of seven tiers of settlements.
- 6.11 Emerging Policy SP1 sets the spatial strategy for St Albans and confirms that the City of St Albans will continue to be the pre-eminent focus in the District for housing, and that the Settlement Hierarchy (Table 1.3) provides the basis for allocation and location of growth, locating most growth generally within and adjacent to the larger and most sustainable urban centres that are Tier 1 -3 (noting that Colney Heath one of the smaller villages washed over by the Green Belt lies in Tier 6).
- 6.12 Emerging Policy SP2 requires new development to be located in the most sustainable locations in order to minimise the need to travel through encouragement of walking, cycling and public transport. Policy SP3 allocates 15,096 homes in the district up to 2041. It requires growth to be supported by suitable infrastructure including schools, transport including walking cycling and public transport and sports and leisure facilities.
- 6.13 No sites allocated as broad locations for urban extensions are located in or close to Colney Heath⁶⁰.
- 6.14 It is my view that the Appellant's reliance on housing need and supply are important considerations that weigh in favour. It is common ground that the provision of up to 27 market and 18 affordable houses carry very substantial weight in the planning balance. I am mindful of the judgement in *Hunston*⁶¹ where it was stated:

"[...] the weight to be given to such a housing shortfall (and whether it constituted 'very special circumstances' for the purposes of the NPPF) is a matter of planning judgment. The weight to be attached to the shortfall may, as a matter of planning judgment, be reduced where a shortfall is inevitable due to a district being subject to policies which restrict development."

⁶⁰ See Table 3.1 at **CD3.1**

⁶¹ **St Albans v Hunston Properties Ltd and Anor** EWCA Civ. 1610 at **CD13.12**

- 6.15 I note that in concluding that permission should be refused at Tollgate Road Inspector Hayden attributed very substantial weight to the provision of 150 dwellings of which 90 were market dwellings.
- 6.16 Inspector Hayden had adopted the weight to housing agreed between the parties in light of the Bullens Green appeal decision for 100 dwellings. However it has to be material overall in terms of weight and where a proposal falls within any spectrum to consider the overall quantum of housing proposed. Whilst I do not demure from the agreed weighting of very substantial I do consider that a scheme of just 45 dwellings (the appeal) must carry less weight than a scheme of 150 dwellings (Tollgate Road).
- 6.17 In that respect I am mindful of the findings of Inspector Woodward in determining an appeal for 37 dwellings in the Metropolitan Green Belt in Hertfordshire⁶²:

“However, it is also important to put into context the extent to which the scheme would address the Council’s housing supply position. The provision of 37 dwelling would not be significant in overall scale and represents a relatively modest number of new houses. Nevertheless, in light of the Council’s severe shortfall in HLS and housing delivery, and the lack of a plan to address future requirements, I attribute significant weight to the contribution the scheme would make to boosting the Borough’s overall housing land supply.”

- 6.18 Necessarily I consider the contribution of 45 dwellings in terms of housing need (or 27 market houses) should carry less overall weight than the 150 dwellings (90 market) at Tollgate Road.

Affordable Housing

- 6.19 On the back of an under-delivery of housing generally, significant shortfalls in affordable housing provision have occurred. The appeal scheme proposes 40% of the proposed housing to be affordable. That equates to up to 18 affordable dwellings.
- 6.20 Subject to the affordable provision being secured by way of an obligation (which it is agreed between the parties is necessary⁶³) it is common ground that it is a benefit of the scheme that should carry very substantial weight.
- 6.21 I note that at Bullens Green the Appellant offered 45% of the total housing as affordable housing (thus exceeding the emerging Policy requirement) and on that basis the Inspector agreed that very substantial weight should be given to such matters⁶⁴.
- 6.22 It is logical that whilst it is agreed that very substantial weight applies to affordable housing given the lower offer than Bullens Green the weight in this case must be lower on the spectrum of very substantial than at Bullens Green.

62 **CD14.40** DL45

63 See SoCG Appendix 2 at **CD8.1**

64 See DL 53 – 54 at **CD14.6**

6.23 I note that in concluding that permission should be refused at Tollgate Road Inspector Hayden attributed very substantial weight to the provision of 40% affordable housing.

6.24 I make the same point in respect of affordable units as I do market housing that the weight must fall lower on the spectrum of very substantial than found by either Inspector Masters in respect of the 45 affordable units at Bullens Green or Inspector Hayden in terms of the 60 affordable units at Tollgate Road. In his Harris Lane decision Inspector Woodward noted the modest number of affordable units proposed (15) and concluded⁶⁵:

“Again, it is a relatively modest number, but in light of the context outlined, this contribution weighs significantly in favour of the appeal.”

Custom Build Houses

6.25 I accept that the Council has not maintained an adequate supply of custom self-build plots to meet demand in the area and to that extent, subject to the plots being secured, marketed and delivered consistent with the position on housing generally such matters carry substantial weight as part of the overall provision of housing.

6.26 I note the Inspector at Bullens Green concluded:

“To conclude, I am of the view that the provision of 10 self build serviced plots at the appeal site will make a positive contribution to the supply of self build plots in both local planning authority areas. I am attaching substantial weight to this element of housing supply.”

6.27 The Bullens Green scheme delivered 10% of the overall housing provision as Custom Self Build (CSB) units and on that basis the Inspector concluded that substantial weight applied to that element of the housing supply.

6.28 In the case of the Tollgate Road appeal scheme it proposed 9 CSB units or plots. The Appellant argued that very substantial weight should be given to the provision of CSB. The Council argued (through me) that consistent with Bullens Green substantial weight was appropriate. Whilst arguing for substantial weight we argued that it should be lower in the spectrum than Bullens Green given the smaller proportion and quantity of plots/ dwellings. Inspector Hayden agreed that substantial weight was appropriate and not very substantial weight.

6.29 In this case the scheme proposes 4 custom build dwellings (and not self build serviced plots) which equates to 8.9% of the total offer. Quantitatively it is less CSB homes or plots than proposed at either Bullens Green or Tollgate Road and proportionally it is less than proposed at Bullens Green.

65 **CD14.40** DL46

- 6.30 The custom build houses are market housing where the purchaser can have some (normally limited) influence on for instance the final internal layout of the dwelling or other defined design changes to the housebuilders house type.
- 6.31 Again within the spectrum of substantial weight the weight to be given to these 4 dwellings must be less then the 10 proposed at Bullens Green or the 9 at Tollgate Road.

Inevitable Harm

- 6.32 Should it be suggested that the harm that arises is inevitable and as such the weight to such harm should be reduced or its inevitability comprise a benefit of the scheme I reject such an approach as I do not consider the harm I have identified as inevitable.
- 6.33 In any event, as the High Court noted in ***Goodman Logistics***²¹, it would be illogical to suggest the "inevitable harm" caused by meeting the need for inappropriate development in the Green Belt *"somehow enhanced the weight to be given to the [applicant's] case on need and lack of any alternative site, or could otherwise affect the striking of the balance between benefit and disbenefit."* (per Holgate, J at paragraph 37).

Sustainable Location for Development

- 6.34 Whilst I do not invite the Inspector to dismiss the appeal on location factors I have addressed the position in terms of the accessibility of the site to public transport and by cycle in section 5.
- 6.35 I have also shown that the washed over Green Belt village of Colney Heath incorporating Park Corner/ Colney Heath is not of itself well provided with facilities and relies on access to neighbouring higher order settlements for many day-to-day facilities, including employment and education.
- 6.36 The adopted and emerging Local Plans both include a settlement hierarchy in which Colney Heath comes toward the bottom with both seeking to concentrate new development in or around the higher order settlements. In the emerging Local Plan the spatial strategy seeks to locate new development in or around the City of St Albans and the towns of Harpenden and Hemel Hempstead.
- 6.37 Insofar as the Appellant relies upon such matters in support of their proposal, I do not consider this to be a consideration that weighs in favour of the proposal for the reasons I have explained in section 5 and I consider it to be a matter that cannot be relied on as a positive or other consideration in the Green Belt balance.

Delivering and securing an access road

- 6.38 The access road is provided to access the appeal site and the proposed 45 dwellings.
- 6.39 There are existing access arrangements for the football club and off-site parking and turning space for cars using that space during school drop off and collection times.
- 6.40 The provision of an access road has no wider benefits than for the future residents of the appeal site and is not a matter that weighs in favour of the grant of planning permission.
- 6.41 Rather the provision of a satisfactory access road ensures no reason for refusal and is a matter that is neutral in the overall planning balance.

Biodiversity Net Gains

- 6.42 The application site comprises an arable field. There is no public access to the appeal site. The appeal site comprises predominately land for growing cereal crops. A native hedgerow/ trees align the south east boundary whilst ribbons of modified grassland are identified along the north west and south west boundaries⁶⁶.
- 6.43 The application is accompanied by an Ecological Impact Assessment which states that the development is not anticipated to result in any significant residual negative effects on important ecological features following the implementation of the recommended mitigation measures. Hertfordshire County Council Ecology raises no objection to the proposals and are satisfied that BNG can be delivered from the site.
- 6.44 The application proposes the provision of 10% biodiversity net gain (BNG), which is welcomed.
- 6.45 The development plan for St Albans does not currently require provision of BNG but the NPPF does require BNG from all development schemes. I acknowledge that the Environment Act 2021 mandates at least 10% BNG for sites. The only reason that does not apply to this scheme is that the application the subject of this appeal was submitted after February 2024. Had the application been submitted after February 2024 at least 10% BNG would be required to meet the requirements of the Act. I do consider 10% BNG, to be a benefit of the scheme. As such, it is a quirk of timing that the scheme delivers more than is required, I attribute limited weight to such matters.

⁶⁶ Plan BIA Baseline RSE_5500_BIA V2 at **CD4.4**

Economic Benefits

- 6.46 The economic benefits of providing more housing at this Green Belt village location away from the main settlements of St Albans District are limited given the limited range of facilities within Colney Heath itself.
- 6.47 Residents will need to travel to neighbouring towns or cities (St Albans and London Colney) to access supermarket shopping, employment, services, comparison shopping and other main economic activity. Therefore, development consistent with the emerging Local Plan allocations and spatial strategy as well as the adopted spatial strategy would also achieve such economic benefits and be located closer to such facilities.
- 6.48 However fundamentally household spend is not necessarily all new spend as those households already exist, some within St Albans administrative area, and currently spend money in the local economy.
- 6.49 I acknowledge the benefits that arise during the build phase of the development, but these are generic benefits that would arise anywhere in St Albans District and the draft allocation sites provide the most sustainable way to crystallise such economic benefits close to the areas of greatest economic activity, accessibility and access to facilities.
- 6.50 In assessing whether the proposals comprise sustainable development generic economic benefits of the proposed housing scheme are not unique to this scheme and the Council Tax spending and infrastructure spending will only contribute toward the needs emanating from this development and are not a benefit of the scheme. The construction employment and spend associated with up to 45 houses is temporary and modest in scale. Any economic benefits are tempered by the location of the proposed housing being contrary to the adopted and emerging spatial strategy and the lack of local facilities to benefit from additional local spend as well as the fact that not all that household spend is new spending in the economy. Overall the position on economic impact is positive but carries limited to moderate positive weight.
- 6.51 I acknowledge that the proposed development would generate economic benefits, however, the scale of any economic benefit would be limited.
- 6.52 For those reason I attribute limited weight to the economic benefits of providing housing in this Green Belt location.

7 Planning Balance

- 7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2 By reason of the local plan policy conflict identified above, the proposed development does not accord with the development plan taken as a whole given it introduces inappropriate development into the Green Belt that erodes openness and conflicts with the purposes of the Green Belt, fails to have proper regard to the character and appearance of the area having regard to its countryside context, harms the setting of heritage assets and leads to a loss of BMV.
- 7.3 The Framework is a material consideration in the determination of these appeals. Under paragraph 11(d), the policies most important for the determination of the appeals are deemed to be out of date by reason of the HDT results and housing land supply shortfall: see footnote 8. This requires the decision-maker to consider whether the application of policies in the Framework provide a clear reason for refusing the proposal. One of the key sets of policies in the Framework are the policies protecting Green Belt land, and another is the protection of designated heritage assets.⁶⁷
- 7.4 As I have already demonstrated the application of policies in the Framework relating to the Green Belt provide a clear reason for refusing the proposal. Thus the tilted balance, otherwise engaged by the HDT and 5YHLS position, is disengaged in this case.
- 7.5 The proposed development constitutes “inappropriate development” in the Green Belt. This is, by definition, harmful, and should not be approved except in “very special circumstances”. Substantial weight must be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is “clearly outweighed” by other considerations.
- 7.6 As explained above in section 5, the other Green Belt harm by loss of openness leads to substantial harm at the upper end of such harm and must carry substantial weight. The appeal site and area contribute significantly to safeguarding the countryside from encroachment and maintain settlement patterns. The proposals would lead to encroachment into the countryside and would erode settlement patterns. Such harm to the purposes of Green Belt carries substantial weight
- 7.7 Added to this is “any other harm” arising from the other matters considered above.

⁶⁷ i.e. section 13 and footnote 7 of the National Planning Policy Framework 2023

- 7.8 In that respect, the failure to recognise the intrinsic character and beauty of the countryside and adverse impact on the character of the area carries moderate to significant weight against the appeal scheme, the failure to justify the loss of best and most versatile agricultural land carries limited weight against the proposal and the adverse impact on the setting of a designated heritage asset carries great weight against the appeal scheme and all comprise additional harms that add to the harm to Green Belt matters.
- 7.9 I have undertaken my Green Belt balancing exercise assuming that a satisfactory obligation is presented to the Inquiry and thus there is no infrastructure objection (otherwise the weight of harm would increase yet further).
- 7.10 The weight of factors against the grant of permission present a high hurdle for the Appellant to demonstrate that these harms, taken together, are “clearly outweighed” by other considerations such that “very special circumstances” exist. This high bar is illustrated in an appeal decision in St Albans⁶⁸ wherein the Inspector notes:
- “The determination of whether very special circumstances exist is a matter of planning judgement based on a consideration of all relevant matters. However, very special circumstances cannot exist unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations. Consequently, for the appeal to succeed, the overall balance would have to favour the appellants case, not just marginally, but **decisively.**”* Emphasis added
- 7.11 The factors relied on by the Appellant comprise the contribution to housing (including affordable housing and custom build houses) which collectively carry very substantial weight.
- 7.12 In assessing the appropriate weight to be given to the delivery of housing in the circumstances of a current deficient housing land supply position I am mindful that housing land supply position is a snapshot in time. Whilst it may endure for some time it is not expected to comprise a permanent state of affairs (as the adoption of a local plan would likely be unsound in those circumstances). In contrast permanence is one of the essential characteristics of the Green Belt together with openness and the proposals would lead to the permanent loss of the openness of this part of the Green Belt. The permanent loss of land that positively contributes to the openness of the Green Belt would not change and the adverse impacts would endure.
- 7.13 The biodiversity scheme to be secured by the obligation will ensure biodiversity losses and net gains are compensated and achieved on site. Therefore, subject to such matters being secured, this comprises a benefit overall in any planning balance, I attribute such matters limited weight in favour of the grant of permission.

⁶⁸ APP/ B1930/W/19/3235642 at Burstons Garden Centre at **CD14.23**

- 7.14 I have also concluded that the location of the appeal site is not a matter that weights in favour of the grant of planning permission and indeed in respect of the spatial strategy of the adopted and emerging Local Plans as well as the unresolved cycle and public transport matters are a concern, this matter is at best neutral in any planning balance.
- 7.15 I have shown that the generic economic benefits arising from housing development at this location which has limited local facilities would amount to benefits of limited weight.
- 7.16 Overall, notwithstanding the benefits of the scheme taken together, I do not consider that they “clearly outweigh” the harms to amount to “very special circumstances” to justify inappropriate development in the Green Belt for the purposes of paragraph 153 of the Framework.
- 7.17 I am cognisant of the Written Ministerial Statement of July 2015, which sets out the Secretary of State’s own view that need is unlikely to clearly outweigh harm to the Green Belt to justify the loss of Green Belt land and the grant of planning permission. I recognise that the WMS was not incorporated into policy and carries only limited weight but the principle remains good and is consistent with the decision of Inspector Hayden at Tollgate Road (as well as others). I consider part of the rationale behind such an approach must lie in one of the two essential characteristics of the Green Belt being their permanence.
- 7.18 In assessing whether the proposals comprise sustainable development generic economic benefits of the proposed housing scheme are not unique to this scheme and the Council Tax spending and infrastructure spending will only contribute toward the needs emanating from this development and are not a benefit of the scheme. The construction employment and spend associated with up to 45 houses is modest in scale. Any economic benefits are tempered by the conflict with the adopted and emerging spatial strategy and the lack of local facilities to benefit from additional local spend. Overall the position on economic impact in respect of the economic dimension of sustainable development is positive but carries limited to moderate positive weight.
- 7.19 There are some social benefits from the provision of housing and the provision of affordable housing. Such matters weigh in favour of the grant of planning permission. However the location of the site away from many employment, community and social facilities tempers the weight to the social benefit of providing housing.
- 7.20 I consider that the proposal will lead to very substantial environmental harm such as the loss of openness, encroachment into the countryside and significant permanent built development in the Green Belt countryside which adversely affect the character of the area including the setting of heritage assets. The impact on the environment is substantially negative.

- 7.21 Overall, notwithstanding the benefits of the scheme taken together, I do not consider these to “clearly outweigh” the harms and demonstrate “very special circumstances” to justify inappropriate development in the Green Belt for the purposes of paragraph 153 of the Framework.
- 7.22 I do not consider that the housing land supply position in St Albans means that permission should be granted for residential development in the circumstances of this case. In that regard I note the conclusions of other Inspectors in recent Green Belt cases (including Tollgate Road and Smallford Works appeals I have referred to earlier) where the appeals were dismissed in areas with deficient HLS.
- 7.23 In her recent decision of July 2023 at Little Bushey Lane⁶⁹ (in Hertsmere Borough Council area) Inspector Gilbert attributed very substantial weight for the provision of both market and affordable housing; substantial weight for self and custom-build housing; significant weight for economic benefits; moderate weight for biodiversity net gain, the provision of land for the primary school, the package of sustainable transport measures, the mobility hub, and significant levels of accessible open space; limited weight to enhanced access to the countryside, the enrichment of blue/green infrastructure, and sustainable building measures⁷⁰. Having weighted these other considerations and noted the lack of a five year housing land supply the Inspector concluded⁷¹:
- “I have had regard to the other considerations. However, these do not clearly outweigh the harms that I have identified. Consequently, the very special circumstances necessary to justify the proposed development do not exist. [...]”*
- 7.24 I recognise that the circumstances of each case are different but rely on this for the overall approach taken.
- 7.25 In her decision of 21 July 2023 Inspector Board considered an outline scheme for 125 dwellings and a 60 bed care facility on Green Belt in Brookmans Park which is part of Welwyn Hatfield District⁷². In her decision she refers to the Bullens Green appeal decision and distinguishes the two sites⁷³. Having determined that the provision of market and affordable homes carry very substantial weight at the top end of the spectrum and 10 self-build plots carries substantial weight and the proposed care home was given significant positive weight, a new scout hut as part of the scheme was given moderate weight, 15% BNG carried moderate weight, economic benefits carried very minor weight and despite being located within walking distance of a range of facilities and a railway station the location of that site carried very minor weight. In that context Inspector Broad concluded:

69 See **CD14.26**

70 See DL129 at **CD14.26**

71 See DL130 at **CD14.26**

72 **CD14.27**

73 DL64 at **CD14.27**

“The determination of whether very special circumstances exist is a matter of planning judgement based on a consideration of all relevant matters. However, very special circumstances cannot exist unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations. Consequently, for the appeal to be allowed, the overall balance would have to favour the Appellant’s case, not just marginally, but decisively.

Overall, I have considered the totality of the other considerations of the provision of market housing, self-build, affordable housing, care home, scale of Green Belt release, ELP (including findings of the Local Plan Inspector) and there are other factors which add to this weight. Even so, the totality of the other considerations do not clearly outweigh the combined weight of the harm to the Green belt, harm to character and appearance and conflict with the development plan in this regard. Therefore, I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.”

- 7.26 I therefore consider that in this case, where the benefits/ other considerations are less compelling, the application of the Green Belt policy provides a “clear reason for refusing” the development proposal under NPPF paragraph 11(d)(i) and therefore the so called tilted balance is disengaged.
- 7.27 The proposed development conflicts with the most important development plan policies, and as such conflicts with the development plan taken as a whole. In addition, the policies of the Framework provide clear reasons to refuse permission, and material or other considerations would not amount to very special circumstances or otherwise justify the grant of permission. As such, I invite the Inspector to dismiss the appeal.
- 7.28 Given my conclusion it is not necessary to undertake the decision making process in the context of the tilted balance.
- 7.29 If the Inspector was to conclude that very special circumstances did exist (a view I do not share) then the outcome of that process is that permission should be granted and it would not be necessary to go further than undertaking the conventional Green Belt planning balance exercise (which is necessary given the common ground that the proposed development is inappropriate and erodes openness).
- 7.30 If the Inspector is minded to allow this appeal, I would request that the conditions that have been provided are imposed. In addition, a section 106 obligation to deliver necessary infrastructure and affordable housing is necessary.
- 7.31 Therefore, in conclusion, I invite the Inspector to dismiss the appeal.

8 Infrastructure and Section 106

8.1 The proposal would require a section 106 undertaking to secure elements of the scheme including:

- Affordable Housing at 40% (up to 18 dwellings) plus an appropriate tenure split
- Custom Build Housing
- Off-site highway works

8.2 The proposal would have a significant impact on local infrastructure. The Heads of terms for any section 106 obligation are to be agreed between the parties. However, the proposal would be required to make provision to address its impacts on

- Provision/ Management of Open Space and Play Space;
- NHS and Health Care Enhancements
- Ambulance Healthcare contribution
- Community facilities in Colney Heath;
- Waste and recycling centre improvements;
- waste Service transfer station capacity;
- Library Service (towards the enhancement of Marshalswick Library);
- Youth Service (towards St Albans Young People's Centre);
- primary education;
- secondary education;
- Special Education Needs and Disabilities contribution (SEND)
- Travel Plan and monitoring fee
- Off-site sustainable transport improvements
- Biodiversity Net Gain including management of spaces
- Monitoring fee

8.3 The provision of an agreed obligation including Heads of Terms to cover the matters identified above agreed to meet the tests under CIL Regulation 122(2) and the NPPF⁷⁴. Should a satisfactory undertaking be provided that makes provision for the necessary infrastructure as well as securing the affordable housing offer it will enable me to invite the Inspector not to dismiss the appeal for these reasons.

8.4 The provision of necessary infrastructure is required pursuant to Policy 143b SADLP as well as emerging Policies SP13 and SP14. These matters are consistent with the requirements of the NPPF in particular paragraph 57.

8.5 I understand that the Council and County Council will be presenting a CIL Compliance Statement at the Inquiry.

⁷⁴ See SoCG Appendix 2 at **CD8.1**

Appendix 1

Photographs

Photographs all taken by P E Hughes MRTPI not taken in accordance with any photographic convention and to be used as an aide memoire



1 & 2 Above and Below - Land opp 43 High St





3 & 4 Above and Below Footpath 034





5 Above from pavement outside 53 High St



6 From High St alongside Crooked Billet



7 & 8 Above and Below from Crooked Billet Garden and Car Park





9 Above FP 041 in Crooked Billet



10 From FP041



11 & 12 Above and Below FP041





13 Above between 92 and 94 High St



14 From Park Lane the Gap between 98 and 100 High St



15 From High St at junction with access road



16 From access road/ car park



17 & 18 Above and below from car park/ access road





19 Above from the Colney Heath FC Car Park



20 From the track accessing the fishing lakes alongside the appeal site



21 & 22 Above and below from pitch side at Colney Heath FC





23 & 24 Above and below from FP031





25 & 26 Above and Below from High St outside the school



Appendix 2

Aerial Photographs

All Aerial Imagery utilises Google Earth Base Imagery © Google

