

**Land to the Rear of 96 to 106  
High Street, Colney Heath**

**Rebuttal Planning Proof of Evidence of  
Steven Kosky BA (Hons) Dip TP MRTPI**

**On behalf of Tarmac Ltd (Appellant)**

Local Planning Authority Reference: **5/2022/0599**

Appeal Reference: **App/B1930/W/23/3333685**

**April 2024**

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**Client**

Tarmac

**Our reference**

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# 1. Introduction

- 1.1 This summary rebuttal has been prepared on behalf of the Appellant, pursuant to an Appeal by Tarmac against the refusal of outline planning permission for development at the Appeal Site, the details of which, are set out in my main Proof of Evidence.
- 1.2 This summary rebuttal is submitted in response to a number of key matters raised in the Planning Proof submitted by Phillip E Hughes MRTPI, on behalf of St Albans City and District Council, which are not agreed. This rebuttal clarifies those areas of disagreement and sets out my alternative position as the Appellant's planning witness.

## 2. Rebuttal of Evidence of Mr Phillip E Hughes

2.1 The Inspector will note that there is a considerable degree of common ground between the Appellant and the Council on a number of key matters, as set out in the Planning Statement of Common Ground (SoCG) (CD 8.6).

2.2 My main evidence principally deals with the main issues and the areas of disagreement with the Council, which have a bearing on the overall planning balance. The following rebuttal points respond to those parts of Mr Hughes's evidence to which there is additional disagreement between the Appellant and the Council. I deal with these matters below in the sequential order in which they appear in Mr Hughes's Proof:

### **Paragraph 4.74**

2.3 At Paragraph 4.74 of his Proof, Mr Hughes states that he considers that only limited weight can be placed upon the emerging St Albans Local Plan, which is at an early stage of preparation, to which I concur. However, Mr Hughes considers that selected elements of the emerging Local Plan can be given '*greater weight*', when taken in isolation, notably the '*reinforcement of the adopted spatial strategy*' and the settlement hierarchy.

2.4 I do not agree with Mr Hughes's position for two reasons: Firstly, there is no logic in the assessment that collectively, the emerging Plan carries only limited weight, yet selected elements of it, taken in isolation, can carry greater weight, when all of the emerging Plan is at the same early stage of development, none of which, has been tested.

2.5 Secondly, I do not consider that the emerging spatial strategy reflects or reinforces the adopted spatial strategy. As a matter of necessity, the emerging spatial strategy is very different in nature and is predicated on major, strategic Green Belt release across the district, to help address the critical housing shortfalls, which have accrued as a result of maintaining the current adopted spatial strategy.

### **Paragraphs 5.7 and 5.9**

2.6 Within these two Paragraphs, Mr Hughes makes reference to Paragraph 154 of the Framework and the consistency of Policy 1 of the adopted Local Plan with the Framework in defining inappropriate development in the Green Belt. However the development described as being inappropriate in this context is clearly not related to the Appeal Site.

### **Paragraphs 5.37 - 5.41 (Page 30)**

2.7 Within these paragraphs, Mr Hughes sets out an unevidenced detailed assessment of the likely resultant built form and scale of the proposed development, at the Reserved Matters stage. Mr Hughes estimates a likely overall building footprint of approximately 2,565 sqm, although Mr Hughes accepts that these figures '*are to a degree speculative*'.

- 2.8 In response, I consider Mr Hughes's assessment to be entirely speculative in nature, but broadly indicative of one of many potential development scenarios that could take place.
- 2.9 Notwithstanding, at Paragraph 5.40, Mr Hughes states that the proposed scale of the particular development he envisages equates to 36% of the appeal site area. Therefore under Mr Hughes's development scenario at least 64% of the Appeal Site will still remain open and therefore available for public open space, drainage and biodiversity net gain. Accordingly, I do not concur that *'these figures are illustrative of a very substantial loss of openness in spatial terms'* as suggested by Mr Hughes at Paragraph 5.41, as the figures do not support such an assessment and are themselves entirely speculative in nature.

#### **Paragraph 5.49**

- 2.10 Mr Hughes confirms at Paragraph 5.49, that he is mindful that the Appeal relates to an outline application, with all matters, except access, reserved. However, he states that his conclusions on harm to openness applies to the quantum of development (calculated only by Mr Hughes) *'regardless of layout, design, landscaping, appearance etc'*. This is not a logical judgement to make, as Mr Hughes created the development scenario which is the subject to the critique, but has provided no evidence to demonstrate that there are no other potential development scenarios on the Site that might be more acceptable.

#### **Paragraph 6.49**

- 2.11 At Paragraph 6.49 Mr Hughes acknowledges the benefits that arise during the build phase of the development. However he concludes that *'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'*. In this regard, Mr Hughes clearly assumes that all the draft allocation sites and the emerging Local Plan will be adopted in the near future.
- 2.12 The evidence of the last 30 years however strongly suggests otherwise, as some of the draft allocation sites which currently feature in the emerging Local Plan were similarly contained in earlier draft emerging plans which were then subsequently aborted, as set out in my main proof. The reality is that the economic benefits of the Appeal Site are likely to be realised before the earliest anticipated adoption of the emerging Local Plan.

#### **Paragraph 7.12**

- 2.13 As part of his assessment of the Planning Balance, Mr Hughes gives consideration to the appropriate weight to be given to the delivery of housing in the circumstances of a current deficient housing land supply position. In this regard, Mr Hughes states that he is *'mindful that housing land supply position is a snapshot in time'*. This proposition is however countered by the following sentence, wherein Mr Hughes states that the housing land supply deficiency *'may endure for some time'* albeit *'it is not expected to comprise a permanent state of affairs'*, noting that the adoption of a new Local Plan would be unsound under such circumstances.

- 2.14 However, the current, chronic, housing land supply deficiency is not a temporary feature or a *'snapshot in time'* of the current adopted Local Plan. It has been a constant and persistent feature of the adopted Local Plan, as reflected in the technical evidence of Emery Planning, which forms Appendix 1 of my main proof.
- 2.15 Reference to Paragraph 3.3 of my Appendix 1 of my Proof (CD 9.5) provides tangible evidence from all of the Council's available Annual Monitoring Reports (AMR's) which date back to April 2015. This confirms that of the nine AMR's published to April 2023, at no point during this period was the Council ever able to demonstrate a five year housing land supply. The best position achieved was in April 2016, at only 3.72 years, but this has since progressively declined to less than 2 years, as confirmed by the April 2023 AMR.
- 2.16 Accordingly, to suggest that the current major deficiency in the Council's housing land supply is something of *'snapshot in time'* is misleading, as the current position more accurately reflects the persistent erosion of the housing land supply over the best part of a decade. This is to be expected from an adopted Local Plan, which is now archaic, both in terms of its age and relevance, and which has had no new planned housing land supply sources contained within it, for decades.
- 2.17 It is important to also note in this context, that the housing land supply position will not automatically improve to the minimum required level once the emerging new Local Plan has been adopted. Indeed, Mr Hughes acknowledges that the position may *'endure for some time'* given that the Council's own Housing Trajectory indicates that the Council will not be able to meet its housing need until at least 2028 (assuming that the Plan is found sound at Examination).
- 2.18 Therefore the under-delivery 'snapshot' referred to by Mr Hughes is actually set within the context of a chronic failure to deliver new housing which has already persisted for 9 years and which is likely to persist for the foreseeable future.
- 2.19 Mr Hughes thereafter contrasts the permanent loss of land from the Green Belt against this 'snapshot' in the housing land supply position. As stated above, the housing land supply position is now so serious, that the permanent loss of some of the existing Green Belt in the St Albans district is a key feature of the emerging Local Plan, in order to seek an urgent remedy.
- 2.20 Indeed, this reflects a similar spatial strategy proposed by all other earlier attempts to bring forward a replacement Local Plan in the district.

#### **Paragraph 7.18**

- 2.21 Mr Hughes states at this Paragraph (second and third sentences) that the construction employment and spend associated with up to 45 houses is modest in scale. Furthermore that any economic benefits are tempered by the conflict with the adopted and emerging spatial strategy. This statement is not correct, as Mr Hughes is essentially diluting the economic benefits of the Appeal Scheme, prior to its assessment in the planning balance.

2.22 The correct approach is that the economic benefits are not tempered by any conflict with an emerging spatial strategy, acknowledged to be of limited weight. They are what they are assessed to be and then these benefits are weighed unvarnished in the planning balance against the identified harms. Mr Hughes's approach is to effectively magnify these harms, by tempering the economic benefits of the Scheme, before the planning balance exercise is undertaken.

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