

# LAND TO THE REAR OF HIGH STREET, COLNEY HEATH

## Appellant's Opening & Appearances

### Appearances

**Zack Simons** and **Edward Arash Abedian** of Counsel, instructed by **Matthew Scudamore** of Gateley Legal, will call:

- (i) **Simon Tucker** BSc (Hons) MCIHT, Director of DTA Transportation Ltd (transport, highways and accessibility).
- (ii) **Andrew Josephs** BA (Hons), Managing Director of Andrew Josephs Associates (heritage).
- (iii) **Joanna Ede** MA, DipLD, CMLI, Director and Head of Landscape and VIA at Turley (landscape and Green Belt impacts).
- (iv) **Annie Gingell** BSc (Hons) MSc, MRTPI, Associate Director at Tetlow King Planning Ltd (affordable housing).
- (v) **Steven Kosky** BA (Hons), Dip TP, MRTPI, Planning Director at Turley (planning policy and balance).

## Opening



*The appeal site indicated in yellow in the context the Colney Heath High Street, the football club, local services and facilities and the North Orbital Road (A414).*

1. This part of Hertfordshire has been let down by the planning system:
  - (i) There have been no significant revisions to St Albans' Green Belt boundaries since the district was formed in 1974.
  - (ii) The St Albans local plan was adopted in 1994. It is the oldest local plan in the country. But that plan was itself prepared in the late 1980s to accommodate needs identified in the Hertfordshire Structure Plan 1986 Review.
  - (iii) The original St Albans district plan, adopted in 1985, confirmed that all of the district outside the built-up areas falls into the Metropolitan Green Belt. And essentially, since then, nothing has changed.
2. Years go by – decades pass – national policies come and go. But through it all, this Council has kept its head buried firmly in the sand. New plan-making exercises have been tried. They

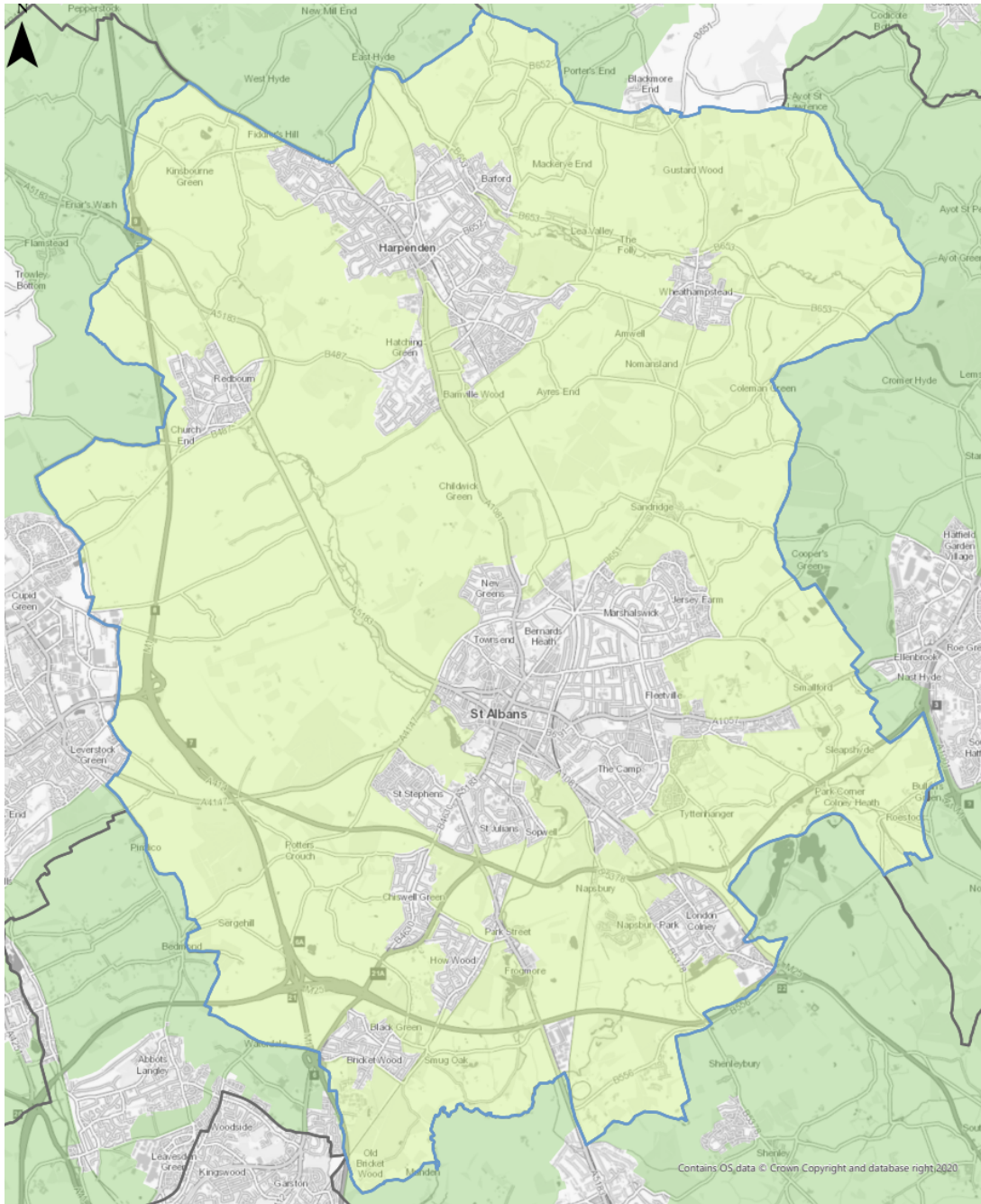
have failed. This development plan, and the Green Belt boundaries it enshrined, are from another generation. Only last month, the Secretary of State called this plan “*hopelessly out of date*”<sup>1</sup> Even on the Council’s best estimate, a new plan is not months but years away.

3. The break-down in the plan-led system here has real consequences for real people. Most of all, and for many years, this Council has not come anywhere *remotely* close to meeting its needs – for market housing, for affordable housing, and more recently for self-build housing either. Again, in a report endorsed only a few weeks by the Secretary of State, an Inspector described this position as “*dire*”.<sup>2</sup>
4. The shortfalls aren’t marginal. They’re staggering. We aren’t talking about missing the mark by tens or even hundreds of homes. We’re talking about thousands. Many thousands. With all the terrible social, economic and environmental consequences that failing to plan will bring: families unable to afford somewhere to live, thousands on the housing register waiting not weeks or months but years to find a home, unsustainable solutions with people being forced to find a home further away from where they work, shop and socialise. These shortfalls are substantial and they are serious.
5. How have we got here?
6. The real reason is the chronic inability of this Council to front up to the need to bring forward sensible development proposals in the Metropolitan Green Belt. Again, outside the urban areas, almost all of this Council is washed over by the Green Belt - around 82%:

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<sup>1</sup> CD14.42, DL:28.

<sup>2</sup> CD14.42, IR:588.



7. Given that constrained geography, the position is clear: if this Council is to come anywhere *near* meeting its needs (and in particular its needs for housing), release of Green Belt land isn't a choice. It's a certainty. There is literally no other option. The Council has recognised that fact for many, many years, e.g. in a series of abortive plan consultations and examinations.

8. In those circumstances, in areas of the country where the plan-led system is doing its job, national policy expects that sensible plan reviews *at least* every 5 years will manage those releases. But that just isn't happening in St Albans. Nowhere near, and not for a long time. Again, there have been alterations of these Green Belt boundaries for decades. And we are saddled with a local plan from another generation. We are in the foot-hills of (yet another) attempt at a new plan in this district, which is to be welcomed, but again – even on the Council's estimates – adoption is not months but years away, and delivery under that plan yet further still.
9. And that creates a Catch-22 which has stalled sensible development proposals in St Albans for many years. It is inevitable that land which is currently within the Green Belt will be required for new homes. National policy generally expects the release of that Green Belt land to be managed in a plan-led way. But there is no plan-led mechanism to release Green Belt land in St Albans to meet housing needs, and there has not been for a long time.
10. Of course, there is a wider regional and national housing crisis. But that does not dilute the severity of what is happening – or rather, what is *not* happening – in St Albans. On the Council's own figures, the shortfall in housing delivery over the next 5 years will be 2,460 homes. On the Appellant's figures, the position is even worse. On affordable housing, even measured against the lower target in the 2016 SHMA, the shortfall in net delivery over the last decade is over 5,600 homes. 91% of needs have gone unmet. And the parties agree that – even on the Council's numbers – these shortfalls are going not to improve over the next few years. They're going to get much, much worse.
11. So the real issue before this inquiry is whether the many people in need now should have to wait another 2 years, 5 years, 10 years, or however long it takes, for this Council to actually adopt a plan, and for sites to come forward in accordance with that plan. Or whether urgent problems require more urgent solutions.

12. Of course, national policy requires that any harm to the Green Belt is given substantial weight in the balance. But there is nothing unusual about that – all kinds of things are given significant, great or substantial weight in national policy. Indeed, since the first NPPF in 2012, national policy also prioritises achieving a significant boost of housing land supply in a step the Courts described as a “*radical*” shift in emphasis by making the meeting of housing needs not just a material consideration, but one of particular standing. And in recent years, the Secretary of State and a number of Inspectors have found that the delivery of market and affordable housing in circumstances like this attracts very substantial weight, and that it clearly outweighs harm to the Green Belt, so carrying the planning balance at §153 NPPF (see e.g. Inspector Masters at Roundhouse Farm, Colney Heath not far from here and in Basildon, Inspector McGlone in Dorking, Inspector Rose nearby in Elstree and the Secretary of State in Oxford Brookes, Little Chalfont, and most recently in Chiswell Green, St Albans – there are many other examples).
13. So we know that there is no systemic priority in national policy for e.g. Green Belt protection at any cost. Far from it. That said, of course, (a) each of those Green Belt approvals turned on the particular facts of the sites and schemes before those Inspectors, and (b) it is not *always* the case, particularly for more sensitive sites in landscape or Green Belt terms, that housing needs (even those in as broken an area as St Albans) will be found clearly to outweigh harm to the Green Belt. Indeed, a recent appeal in Colney Heath failed at the Tollgate Road site but that was, as Ms Ede in particular explains in her section 6, a much larger scheme on a very different site in terms of its landscape, visual and Green Belt characteristics. Which means, absent a new local plan, that delivery continues to deteriorate. Needs continue to spiral. An already bad situation is getting worse.
14. So, albeit this dire position on housing supply and plan-making sets the context for this appeal, what matters – as always – is to strike the correct balance for this scheme on this

site: on the one hand weighing the benefits which arise from meeting these desperate spiralling needs, on the other weighing impacts the site and its surrounds.

15. Which takes us to the appeal site off the High Street in Colney Heath:



16. In sum:

- (i) The site is a small, unremarkable field, accessed by private road off the High Street, enclosed on three sides by development and/or mature vegetation. It has no statutory, national, regional or local landscape designations. It isn't a "valued" landscape under the NPPF. Its visibility from the wider landscape is very limited – the relevant viewpoints are all agreed, and they are directly proximate to the site. Even if there would be low-level residual impacts on the setting of nearby listed buildings (which we say, after mitigation, there wouldn't be), we agree with the Council that those impacts are outweighed by the scheme's benefits. The Council agrees this site can accommodate the 45 homes proposed at an appropriate density with a significant area of green open space. The HCC landscape officer concluded that *'the proposed development should not give rise to any unacceptable landscape effects'* and that the proposed development should be *'supported in principle'*.
- (ii) Our site is very well located – in the heart of Colney Heath which includes a shop, a pub, a nursery, and a primary school. On a bike, it's under 20 minutes to access the full suite of retail options, services and facilities in St Albans and Hatfield. For those who wish to access regular direct rail services to Central London, Welham Green station can be reached in 15 minutes. Local bus stops take you to St Albans, Hatfield and Welwyn Garden City, and to local secondary schools. There is no objection from the LPA or County Council on issues of highways, transport or the site's location accessibility.
- (iii) Further, there are no objections from the LPA or Hertfordshire in relation to e.g. ecology, flooding, air quality, drainage, archaeology, access, safety or capacity, parking or anything else.



(iv) The site is, in the language of Green Belt policy, now relatively “*open*”, and would be less “*open*” if new homes were built. And yes, because it’s *next to* but *outside* the settlement, it’s deemed “*countryside*”. Even though Green Belt boundaries in St Albans are a relic of another plan-making era. Which means our scheme would, in the language of the NPPF, “*encroach*” into that countryside.

17. But, with respect, that’s the kind of narrow approach to development management which has prevented this Council from getting out of the mess it is in:

(i) This site does not make any significant contribution to the purposes of this part of the Metropolitan Green Belt.

(ii) Inspector Masters decided that Colney Heath is an accessible location with regards to local services and facilities, and nothing has changed since her decision. If anything, this site is better located than the site she assessed in 2021. The Tollgate Road decision, as we will explain, erred in its understanding of national transport policy. NB, and in any event, the decision is subject to a live legal challenge in the High Court.<sup>3</sup>

(iii) Albeit we do not cover the concerns of the R6 party in this short opening, we will return to them in our evidence.

18. So in the end, for all the many documents before you, madam, the real issue is simple:

*Do this scheme’s benefits clearly outweigh its harms?*

19. If they do, permission should be granted because the scheme will be supported both by the statutory development plans, and by §153 NPPF.

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<sup>3</sup> On 15.4.24, Mrs Justice Lang has recently granted permission for the challenge to proceed to a final hearing. The grounds concern the Inspector’s approach to (i) previously developed land, and (ii) biodiversity net gain.

20. And remember, even on the *Council's* case, you should give our benefits “*very substantial*” weight in relation to market housing, and also “*very substantial*” weight for affordable housing, and “*substantial*” weight to the delivery of self- and custom-build housing.
21. Our case is straightforward: these benefits are profound, the imperative to bring them forward is compelling, and following the same logic as the Secretary of State in last month’s Chiswell Green appeals [CD14.42], they clearly outweigh what will only be a localised impact to this appeal site and its immediate surroundings.
22. For those reasons, which we will develop in our evidence and in closing, the balance at §153 tilts decisively in favour of granting planning permission, and we will ask you to allow the appeal.

ZACK SIMONS

EDWARD ARASH ABEDIAN

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**23<sup>rd</sup> APRIL 2024**