



## Appeal Decision

Inquiry held on 19-22 and 26-28 September 2023

Site visit made on 26 September 2023

by M Hayden BSc, Dip TP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2024

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Appeal Ref: APP/B1930/W/23/3323099

Land to the rear of 42-100 Tollgate Road & 42 Tollgate Road, Colney Heath, St Albans AL4 0PY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Vistry Homes Limited against the decision of St Albans City & District Council.
  - The application Ref 5/2022/1988, dated 5 August 2022, was refused by notice dated 25 May 2023.
  - The development proposed is described as '**Outline application for the demolition of the existing house and stables and the erection of up to 150 dwellings, including affordable and custom-build properties, together with all ancillary works (all matters reserved except access)**'.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The planning application was made in outline with matters relating to layout, scale, appearance and landscaping reserved for subsequent approval. A Parameters Plan was submitted for determination, which, together with an Illustrative Masterplan, Concept Plan and Landscape Cross-Sections, indicates the broad extent of the proposed development, the storey height of dwellings, and the position of landscaping and surface water flood management infrastructure. I have taken these into account insofar as they have informed my assessment of the Green Belt, visual, landscape and heritage impacts of the appeal proposal.
3. Access is the only detailed matter fixed for determination as part of the appeal. The Proposed Access Layout plan<sup>1</sup> was revised during the application process to include pedestrian crossing facilities with tactile paving at the proposed junction<sup>2</sup>. Although it was not referred to in the decision notice, the revised access plan was referenced in the Committee Report<sup>3</sup>, so I am satisfied that the relevant parties, including the Highway Authority, were consulted on it. I have determined the appeal on this basis.
4. A draft legal agreement under Section 106 of the 1990 Act was submitted by the Appellant, containing planning obligations for the provision of affordable housing, self-build and custom housebuilding plots, open space, sustainable transport improvements, biodiversity offsetting, and education, childcare, youth, library,

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<sup>1</sup> Drawing no. JNY11289-RPS-0100-001 Rev B (CD5.26)

<sup>2</sup> As explained in RPS Technical Note JNY11289-06 (CD5.10)

<sup>3</sup> Paragraph 6.15 of CD6.1

waste and health service contributions. The agreement was discussed at the Inquiry and amended to clarify the definition of the sustainable transport contribution. The signed and executed Deed was submitted after the close of the Inquiry, and I have had regard to it in determining the appeal, as set out in my decision below.

5. A revised National Planning Policy Framework (the Framework) was published in December 2023<sup>4</sup>, the policies of which are material considerations in determining appeals from the date of its publication. The main parties, including the Rule 6(6) party, were invited to submit comments on the implications for this appeal of the revisions to the Framework, which included a Statement of Common Ground (SoCG) between the Council and the Appellant. I have taken the SoCG, their responses and the revised Framework into account in reaching my decision. All references to the Framework below are to paragraph or footnote numbers in the December 2023 version.

### The Appeal Site, Location and Surroundings

6. Colney Heath is a small, nucleated village, which is located between the larger settlements of St Albans to the northwest, Hatfield to the northeast, Welham Green to the southeast, and London Colney to the southwest. The village is composed of three triangular clusters of development, separated and surrounded by open countryside, comprising a mixture of fields and woodlands, and the valley and washlands of the River Colne.
7. The appeal site is located adjacent to the southernmost part of the village, at Roestock, and includes 42 Tollgate Road as well as land to the south of 42-100 Tollgate Road. The site consists primarily of open fields, used for grazing and exercising of horses, except for the dwelling and garden of no. 42 and a small equestrian facility in the northwest corner of the site. The fields slope gently down to a woodland belt along the River Colne, which forms the south western boundary of the site. The north western and south eastern boundaries of the appeal site are formed by post and wire fences with intermittent field hedgerows, beyond which are further fields and paddocks.

### Development Plan Context

8. The relevant development plan policies in this case are contained in the Saved Policies of the City and District of St Albans Local Plan Review (1994) (the Local Plan). Saved Policy 1 of the Local Plan, which is agreed by the Council and the appellant to be the most important policy in this appeal, establishes that the whole of St Albans District lies within the Metropolitan Green Belt, except for towns and specified settlements listed in saved Policy 2 of the Local Plan. Colney Heath is not a town or specified settlement, but is classified in Policy 2 as a **Green Belt Settlement, which are smaller villages located within or 'washed over' by the Green Belt**. Therefore, notwithstanding the age of the Local Plan, it is common ground that the whole of the appeal site lies within the Metropolitan Green Belt<sup>5</sup>.
9. A new Local Plan to 2041 (the emerging Local Plan) is being prepared, which has undergone Regulation 18 public consultation. The emerging Local Plan proposes a number of changes to Green Belt boundaries in order to meet the future development needs of the District. Whilst these do not include any alterations to the Green Belt at Colney Heath, it is at an early stage in its preparation and has not yet been subject to Examination. Therefore, I attach limited weight to the

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<sup>4</sup> Published on 19 December 2023, and republished on 20 December 2023 to remove erroneous text

<sup>5</sup> Paragraph 6.14 of the Statement of Common Ground between the Council & Appellant (CD8.3)

policies in the emerging Local Plan in the determination of this appeal. This is also a matter of common ground between the Council and appellant.

## Main Issues

10. The decision notice comprises two reasons for refusal. The substantive issues in this case are contained within the first reason for refusal. The main parties agree that the appeal proposal comprises inappropriate development in the Green Belt<sup>6</sup>. Paragraph 152 of the Framework establishes that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 153 of the Framework goes on to state 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.**
11. One of the changes to national policy in the December 2023 Framework, concerns the requirement to demonstrate a supply of deliverable housing sites. Due to the fact that the emerging Local Plan has reached the Regulation 18 stage, the Council is now required to identify a 4-year supply of deliverable housing sites against the housing requirement for St Albans, rather than a 5-year supply as previously.
12. However, it remains common ground between the main parties that the Council is unable to demonstrate a 4-year supply<sup>7</sup>. In such circumstances, the tilted balance under paragraph 11(d)(ii) of the Framework would normally apply<sup>8</sup>. However, the Courts<sup>9</sup> have established that where, as in this case, Green Belt policy requires all relevant planning considerations to be weighed in the balance, the outcome of that assessment determines whether planning permission should be granted or refused, so there is no justification for applying limb (ii) in addition to limb (i) of paragraph 11(d) of the Framework.
13. Therefore, the determination of this appeal hinges on whether or not **'very special circumstances' exist**. Saved Policy 1 of the Local Plan is consistent with the Framework in respect of the **'very special circumstances' test** and, therefore, carries weight in this appeal<sup>10</sup>. The Council and appellant agree that, whether or not **'very special circumstances' exist to justify the proposed development** will determine the consistency of the appeal proposal with saved Policy 1, and, thereby, as the most important policy, with the development plan as a whole. I return to this towards the end of my decision below.
14. In view of the above, and having regard to everything I have read, heard and seen in this case, the main issues in this appeal are:
  - The effect of the proposed development on the openness and purposes of the Green Belt;
  - The effect of the appeal proposal on the landscape character and appearance of the area;
  - The effect of the proposed development on the setting and significance of nearby heritage assets, including the Grade I listed North Myrms Park

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<sup>6</sup> Paragraph 6.16 of CD8.3

<sup>7</sup> Page 5 of the SoCG on the Implications of the Revised Framework for the Appeal, January 2024

<sup>8</sup> By reason of footnote 8 of the Framework

<sup>9</sup> Paragraph 39(12) of *Monkhill Ltd v SSHCLG & Waverley BC* [2019] EWHC 1993 (Admin)

<sup>10</sup> Under paragraph 225 of the Framework

House, Grade II listed Colney Heath Farmhouse and adjacent Grade II listed barn, and the non-designated heritage assets of North Mymms Park and Tollgate Farm;

- Whether the site's location is or can be made sustainable in transport terms; and
  - Whether or not the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, including the provision of housing and any other benefits which the proposed development may bring, so as to amount to the very special circumstances necessary to justify the proposed development.
15. The second reason for refusal cited the absence of a completed and signed S106 agreement, at the time of the decision, to mitigate the effects of the proposed development on local services and infrastructure. However, the Council confirmed<sup>11</sup> that once the submitted S106 agreement had been signed, as is confirmed in the preliminary matters above, the second reason for refusal would fall away. I deal with the provisions of the S106 agreement as part of the '**Other Considerations**' below.
16. The effects of the proposed development on traffic and highway safety, flood risk and drainage, air quality and the living conditions of neighbouring properties were also raised in representations by the Rule 6(6) party and other interested parties. Although these matters did not form part of the reasons for refusal, they were, nevertheless, discussed at the Inquiry, and I have addressed them below as part of the '**Other Matters**'.

## Reasons

### *Effect on Green Belt Openness*

17. Paragraph 142 of the Framework establishes that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Accordingly, openness is one of the essential characteristics of Green Belts which it is necessary to maintain. Whilst the main parties agree that the proposed development of up to 150 dwellings would reduce the openness of the Green Belt at Colney Heath, the extent of any harm to openness is disputed.
18. The Courts have identified a number of factors that may be taken into account in assessing the impact of a proposal on the openness of the Green Belt<sup>12</sup>. These include that openness can comprise both spatial and visual aspects, and that the duration and remediability of the development, and the degree of activity likely to be generated, such as traffic movement, may also be relevant.
19. In terms of the spatial component of openness, the appeal site measures approximately 7.82 hectares (ha) in area, nearly all of which comprises open fields. **Based on the Council's estimates**<sup>13</sup>, the existing development in the north-west corner of the site, including the manège, stables, stores and hardstandings, and the curtilage of no. 42, occupies an area of around 3,000 square metres (sqm), amounting to just 3.8% of the appeal site area. It is clear, therefore, that the appeal site is currently almost entirely free of buildings and other development.
20. The Parameter Plan shows that the developable area of the appeal scheme, including the access, would be 4.06 ha, which amounts to approximately 52%

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<sup>11</sup> At the Inquiry during the round table discussion on the S106 agreement on 28 September 2023

<sup>12</sup> PPG Paragraph: 001 Reference ID: 64-001-20190722

<sup>13</sup> In paragraphs 5.23 and 5.24 of Phillip Hughes' proof of evidence (CD9.10)

- of the site area. The change from open fields to urban development across more than half of the appeal site would have a significant impact on the spatial openness of the Green Belt in this location.
21. Turning to the visual component of openness, the appeal site can be seen from a number of locations on surrounding roads and public footpaths. The key viewpoints are identified in the Landscape and Visual Impact Assessment (LVIA), submitted with the application<sup>14</sup>. Photographs 7, 13, 14 and 16 in the LVIA show the site is visible from Tollgate Road to the southeast and northwest, from Coursers Road to the northwest, and from Public Footpath 33, which runs along the northwest boundary of the site.
22. From each of these locations, which I also visited, the appeal site is seen as part of a corridor of open fields and countryside, which runs along the River Colne, to the south and west of the houses along Tollgate Road. The Green Belt Review: Washed Over Villages Study<sup>15</sup> records that the views from the southern boundary of Colney Heath along Tollgate Road have very strong connections to the wider landscape with open fields and woodland blocks in the background. I observed the same and that the appeal site forms part of the open landscape in these views. Although hedgerows and stable buildings line parts of the northwest and southeast boundaries, the openness of the appeal site can be seen above and beyond them and in the gaps between the field hedges. As such, in visual terms, the site makes an important contribution to the openness of the Green Belt in this location.
23. The appeal proposal would extend residential development across a substantial proportion of the site. Based on the dimensions of the developable area on the Parameter Plan, the proposed development would infill around three-quarters of the gap between the houses on Tollgate Road and the woodland along the River Colne on the south eastern boundary of the site<sup>16</sup>. On the north western boundary it would take up around half of the distance between the rear garden fences of the dwellings on Tollgate Road and the river<sup>17</sup>.
24. The appellant argues that the proposed development would be visually and physically contained by existing hedgerows and additional planting on the field boundaries. However, it is evident from the visualisations for viewpoints 7, 13 and 16<sup>18</sup>, that the dwellings would be clearly visible above the existing and proposed boundary landscaping, at years 1 and 15 post development, filling the open space currently afforded by the appeal site. Furthermore, any 'containment' or screening provided by the proposed landscaping at the edges of the appeal scheme would serve to reduce the visual openness of the site, rather than mitigate the effect of the development on the openness of the Green Belt.
25. The increased level of activity generated by up to 150 new homes would also affect the openness of the site as it is currently experienced. Traffic movement throughout the proposed development during the daytime, and light emitted by

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<sup>14</sup> Landscape and Visual Impact Assessment and Green Belt Assessment, June 2022 (CD4.10)

<sup>15</sup> Page 11 of the Green Belt Review: Washed Over Villages Study, June 2023 (CD3.5)

<sup>16</sup> The south eastern boundary of the appeal site measures around 320 metres (m) from the rear garden fence of 100 Tollgate Road to the River Colne; the developable area measures approximately 250 m along this boundary; 250 is 78% of 320.

<sup>17</sup> The north western boundary of the site measures approximately 100 m from the rear garden boundary of 42 Tollgate Road to the River Colne; the developable area would extend around 50 m from the rear of no. 42, which is half of 100 m.

<sup>18</sup> Photosheets (CSA3925121 Rev E), April 2023 (CD5.25)

dwelling and street lights at nighttime, would visually disrupt what is presently an open site with a minimal level of movement and activity associated with the stables and the dwelling at no. 42. The loss of openness on the site would also be permanent and not remediable.

26. Overall, the loss of openness on the appeal site due to the permanent change from fields used for horses to a housing estate of up to 150 dwellings, which would be built across more than half of the site and be clearly visible from surrounding roads and footpaths, intruding into the corridor of open land between Colney Heath and the River Colne, would be substantial. The resulting harm to the openness of the Green Belt in this location would, therefore, be substantial.

#### *Effect on Green Belt Purposes*

27. Paragraph 143 of the Framework establishes that the Green Belt serves five purposes. In this case, it is common ground between the Council and the appellant that the proposed development would not assist in safeguarding the countryside from encroachment<sup>19</sup>. As such it would conflict with one of the five purposes of the Green Belt as defined in paragraph 143(c) the Framework, albeit the degree of harm to this purpose is disputed.
28. The **appellant's evidence** concludes that the appeal site makes a relatively weak contribution to this Green Belt purpose, on the basis that they consider the site to be well screened to views from the wider area by the intervening settlement and the vegetation along the river corridor<sup>20</sup>. However, from my own observations and the photographic evidence in the LVIA referenced above, I have found that the appeal site 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.
29. The appellant seeks to draw a parallel here with the appeal decisions for the Roundhouse Farm site, off Bullens Green Lane, in Colney Heath<sup>21</sup>. 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.
30. 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<sup>22</sup>, 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.

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<sup>19</sup> Paragraph 6.18 of the Core SoCG (CD8.3)

<sup>20</sup> Paragraphs 5.46-5.48 of **Clive Self's** PoE (CD9.5) and paragraphs 6.23-6.25 of the LVIA (CD4.10)

<sup>21</sup> Paragraphs 24-26 of appeal decisions APP/B1930/W/20/3265925 and APP/C1950/W/20/3265926

<sup>22</sup> Parcel 34 in the Green Belt Review Purposes Assessment, Final Report, November 2013 (CD12.3)



31. In this case, 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.
32. Paragraph 153 of the Framework establishes that substantial weight should be given to any harm to the Green Belt. Accordingly, the harm to the openness and purposes of the Green Belt, in addition to the harm by reason of inappropriateness, carry substantial weight against the appeal proposal.

*Effect on Landscape Character and Appearance*

33. The appeal site consists primarily of fields of open pasture land, which slope gently down to a woodland belt along the River Colne on its south western boundary. Although the site has a settlement edge context on its north eastern side from the backs of the houses and gardens along Tollgate Road, its predominant character is rural. It forms part of a corridor of open countryside along the River Colne, which includes Colney Heath common to the northwest and the parkland landscape of North Mymms House to the southeast, and contributes to the attractive rural setting to Colney Heath on its south and west sides.
34. In terms of its defined landscape character type, the appeal site is located within the Colney Heath Farmland Landscape Character Area (LCA)<sup>23</sup>. The key landscape characteristics of the site which reflect those of the LCA are: its medium-scale farmland features of remnant hedgerows and fields, which although not in arable use are nevertheless consistent with the medium-scale landscape of the LCA; the subtle, gently undulating landform of the fields towards the river; and the presence of urban development on one side of the site, which is filtered by the trees and hedgerows along the rear gardens of the houses on Tollgate Road.
35. The proposed development would result in the loss of much of the rural character of the site. Its open fields and gently undulating landform would be largely replaced by an urban landscape. Only the portion of land within the Colney Heath Farm Meadows Local Wildlife Site (LWS) adjacent to the River Colne would remain undeveloped. But even this would be mostly hidden from wider views along Tollgate Road by the proposed housing, and apparent only from within the development and on Public Footpath 33 where it crosses the river. As such the contribution of the site to the corridor of open countryside along the River Colne would be significantly diminished.
36. I acknowledge that the boundary trees and hedgerows would be retained and supplemented, such that over time, the hard urban edge of the proposed development would become softened and filtered by landscaping, in the same way as the existing settlement edges of Colney Heath. However, the photographic visualisations show that, even once the planting has established, the development would continue to be an urbanising element in the landscape, projecting into the Colne Valley.
37. In its current form the site makes a positive contribution to the rural setting of Colney Heath. Although it is common ground between the Council and the appellant that the site is not a 'valued **landscape**' under the terms of paragraph

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<sup>23</sup> LCA 30 as defined in the Hertfordshire Landscape Character Assessment (p131-134 of CD12.1)

- 180(a) of the Framework<sup>24</sup>, it has intrinsic character and beauty as part of the countryside, under paragraph 180(b) of the Framework. As a result of the proposed development, the contribution and value of the site to the rural character of the area and setting of Colney Heath would be substantially eroded.
38. I have considered the respective assessments of the appellant and Council of the landscape and visual effects of the proposed development, which are summarised in the Landscape SoCG<sup>25</sup>. These are based on the methodology set out in the LVIA<sup>26</sup>, which acknowledges an element of subjectivity is involved in the assessment process. The parties disagree in their judgements on the level of landscape and visual effects for a number of the key receptors. Overall, I find the **Council's assessment to be** a fairer representation of the effects of the proposed development, and the **appellant's** to underestimate the landscape and visual impacts of the proposal, for the following reasons.
39. With regard to landscape effects, the appellant assesses the quality of the existing landscape on the appeal site to be 'medium to low', whereas the Council regards it as of 'medium' quality. The LVIA methodology describes 'low' quality as an unattractive or degraded landscape, affected by numerous detracting elements, with limited public views<sup>27</sup>, which is not a fair description of the landscape character of the appeal site. Whilst the landscape of the appeal site does not fit the description of '**high**' quality in the LVIA methodology, it is of at least 'medium' quality and value, which the LVIA methodology regards as generally pleasant, with no distinctive features and relatively ordinary characteristics, having limited public access, but visible in public views.
40. In terms of the impact of the proposed development on the landscape character of the appeal site itself, the appellant considers the effect would be at a '**moderate** adverse' level. However, the proposal would fundamentally alter the landscape of the appeal site from predominantly open fields to urban development. This could not be regarded as merely 'noticeable', which is how the LVIA methodology describes a 'moderate adverse' effect. Rather the change to the character and appearance of the site itself would be substantial, visually intrusive and could not be adequately mitigated, which the LVIA methodology counts as a '**substantial adverse**' effect. Moreover, the impact on site would not reduce over time, given that the change to an urban form would be permanent. Therefore, I consider that the proposed development would continue to have a '**substantial adverse**' effect on the landscape of the site itself, as illustrated in the visualisation of the view from Public Footpath 33 at year 15<sup>28</sup>.
41. In respect of the surrounding landscape, the Council and the appellant agree that the appeal proposal would have a 'moderate adverse' effect on the neighbouring landscape at year 1, but the appellant considers this would reduce **to a 'slight adverse' effect by year 15**. However, even with the planting established, I have concluded above that the proposed development would continue to be an urbanising element in the landscape along the River Colne. This would be noticeable in key views rather than having a minor residual effect, which is one of the important differences between '**moderate**' and '**slight**

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<sup>24</sup> Paragraph 12 of the Landscape SoCG (CD8.5)

<sup>25</sup> Appendix 2 of CD8.5

<sup>26</sup> Appendix 1 of CD4.10

<sup>27</sup> Table LE 1 of CD4.10

<sup>28</sup> Massing Model Photomontage from Viewpoint 07 – Year 15 (CD5.25).



- adverse'** landscape effects in LVIA methodology<sup>29</sup>. In my judgement, therefore, the adverse effect of the proposed development on the neighbouring landscape would remain at a **'moderate'** level.
42. Within the wider landscape, the proposed development would be clearly visible as a new urban extension into the countryside south of Colney Heath, as illustrated in the visualisation from Tollgate Road to the east of the site<sup>30</sup>. It would also be evident from other positions in the surrounding landscape, such as from Coursers Road to the northwest and the private access track to Park Cottages off Tollgate Road to the southeast<sup>31</sup>.
43. Its visibility within the wider landscape would noticeably change the character, scale and pattern of the landscape and townscape in the area, resulting in a **'moderate adverse' effect at year 1**, which would be likely to reduce **to a 'slight adverse' effect** over time, as the boundary planting matures to filter the impact of the development. However, I do not agree that the effects at year 15 would **be 'negligible', as judged by the** appellant, given that the development would extend across more than half of the site and fill a large part of the gap between the existing houses on Tollgate Road and the River Colne, in views from the southeast and northwest.
44. Turning to visual effects, the Landscape SoCG identifies four key views or visual receptors<sup>32</sup> affected by the proposed development. These are: the view from Public Footpath 33 (Photo 7); the views from Tollgate Road to the northwest and southeast of the site (Photos 13 and 16 respectively); and the private view from North Mymms House.
45. Users of Public Footpath 33 currently enjoy open views across the appeal site of the corridor of countryside along the River Colne, both when arriving at and leaving the village. The Council and the appellant agree these views have a medium to high level of sensitivity, which reflects the criteria in the LVIA for the sensitivity of public rights of way as visual receptors<sup>33</sup>. Although the existing houses on Tollgate Road form a partly urban fringe background in this view, the proposed development would extend the urban area along and much closer to the footpath. It is clear from the visualisations for viewpoint 7<sup>34</sup>, that the proposed development would present a hard urban edge, close up in views from Public Footpath 33, at year 1, and would remain prominent, even at year 15 when the landscaping has matured. The view of the open landscape setting to the village would be substantially eroded, which, in my judgement, would have a **'substantial adverse'** visual effect on the views enjoyed by users of Public Footpath 33. Whilst the visual impact of the development would reduce over time, the effect would remain at least at a **'moderate adverse' level**.
46. In terms of the views from Tollgate Road, to the northwest of the site at the entrance to Colney Heath Farm (viewpoint 13), road users currently enjoy open views across the fields to the woodland along the River Colne. The photographic visualisations of the proposed development<sup>35</sup> show that the new housing would be very prominent in this view, even at year 15, extending the settlement

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<sup>29</sup> Table LE 4 in CD4.10

<sup>30</sup> Massing Model Photomontages from Viewpoint 16 (CD5.25)

<sup>31</sup> Photographs 14 and 17 in Appendix C to the LVIA (CD4.10)

<sup>32</sup> Appendix 2 to CD8.5

<sup>33</sup> Table VE1 in the LVIA (CD4.10)

<sup>34</sup> Massing Model Photomontage from Viewpoint 7 – Years 1 and 15 (CD5.25)

<sup>35</sup> Massing Model Photomontages from Viewpoint 13 (CD5.25)

towards the river, urbanising, disrupting and foreshortening the view. As such, the magnitude of change to this view would be substantial rather than moderate, resulting in a 'substantial adverse' effect, albeit this would be mitigated to a **'moderate adverse' effect over time**, as the boundary landscaping matures. The **appellant's assessment that the visual effect at year 15 would be 'slight adverse' is based on** an assumption that the houses would become assimilated into the surrounding landscape. However, I do not consider this would be the case given that the existing landscape in this view is largely free of domestic buildings.

47. To the southeast of the appeal site, the proposed development would be seen in the middle distance in views from Tollgate Road and the private access track to Park Cottages (viewpoints 16-18). Again based on the photographic visualisations<sup>36</sup>, the proposed development would be a noticeable element in views from this location, extending the village by around 120 m to the south into what is currently undeveloped landscape. As a middle distance view, I am satisfied this would **result in a 'moderate' rather than 'substantial' adverse effect at year 1, reducing to a 'slight adverse' effect by year 15**, as the proposed boundary landscaping would serve to filter the view, with minor residual effects remaining.
48. The view from North Mymms House is restricted to the north eastern corner of the site, where the Illustrative Masterplan and Parameter Plan show bungalows that would be limited to 6 m in height. The visualisations illustrate that only the roofs of dwellings in this corner of the site would be visible from North Mymms House at year 1, but largely screened by vegetation at year 15. As such, I agree with the conclusions of the Landscape SoCG that the proposed **development would have a 'minimal adverse' effect on the private view from North Mymms House, which over time would reduce to 'neutral'**. I consider the heritage effects of the proposal on the setting of North Mymms House separately below.
49. In addition to the key views identified in the Landscape SoCG, it is clear from the evidence of the landscape witnesses, the LVIA and my own observations on site, that a number of other views would also be affected. In the view from Coursers Road (photo 14), the proposed development would be seen extending well beyond the line of dwellings on Tollgate Road southwards into the corridor of open countryside along the River Colne. I agree with the Council that this would have at least a 'moderate adverse' impact on the view from Coursers Road, at year 1, which may reduce to a **'slight adverse' effect by year 15** as the boundary landscaping within the site matures. However, the housing would remain visible in this view, particularly during the winter months when there are no leaves on the trees.
50. Many of the dwellings along Tollgate Road, including nos. 42-100, have open views over the appeal site, both from ground and first floor windows. Based on the criteria in the LVIA<sup>37</sup> these residential views have a high degree of visual sensitivity to change. Whilst the existing views are filtered by garden and boundary landscaping, the proposed development would still **have a 'moderate adverse' visual effect on them**. Even with the benefit of supplementary planting along the north eastern boundary of the site, as suggested at the Inquiry, the

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<sup>36</sup> Massing Model Photomontages from Viewpoint 16 (CD5.25)

<sup>37</sup> Table VE1 in the LVIA (CD4.10)

view of the existing fields would be lost to urban development. Therefore, I **agree with the Council's assessment that the** adverse effect of the development on those private **views would remain at a 'moderate' level** over time.

51. Based on the landscape and visual evidence I have seen and heard, I do not share the appellant's **view that** the appeal site is visually contained or that the impacts of the proposed development on the surrounding landscape would be limited and localised. The site is clearly visible from the surrounding roads, footpaths and dwellings on all sides, in nearby and middle distance views. Its existing open farmland character would be replaced by urban development, which would have adverse effects on the existing rural setting of Colney Heath and the views of countryside from surrounding receptors. The adverse visual and landscape effects would **range from 'substantial'** and **'moderate'** in the first year following the completion of the development, to **'slight'** after 15 years with landscaping mitigation. However, in a number of locations, the impacts would remain at a 'substantial' or 'moderate' adverse level over time.
52. Overall, I consider that the adverse landscape and visual impacts would cause significant harm to the landscape character and appearance of the appeal site and the surrounding area. In my view the proposed development would fail to recognise the intrinsic character and beauty of the countryside on the site and to the south of Colney Heath. As such it would be contrary to paragraph 180(b) of the Framework. It would also be contrary to Policy 2 of the Local Plan which seeks to safeguard the character and setting of Green Belt settlements, including Colney Heath.

#### *Effect on Heritage Assets*

53. It is common ground<sup>38</sup> that the following heritage assets located around the appeal site would be affected by the proposed development:
- North Mymms Park house, a Grade I listed building, located to the southeast of the appeal site, and the surrounding landscape of North Mymms Park that it lies within, which is a non-designated heritage asset;
  - Colney Heath Farmhouse and its associated Barn, which are both Grade II listed buildings, and are located to the northwest of the site; and
  - Tollgate Farm, which is a non-designated heritage asset, located to the east of the appeal site.
54. Although none of the heritage assets are within the appeal site, each has a degree of intervisibility with it. As such, the site forms part of the setting of these heritage assets, which the Glossary in the Framework defines as the surroundings in which heritage assets are experienced. Paragraph 206 of the Framework establishes the need to consider the effect of development within the setting of designated heritage assets. I also have a statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the setting of listed buildings in determining the appeal. In addition, paragraph 209 of the Framework requires that the effect of proposals on the significance of non-designated heritage assets should be taken into account.

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<sup>38</sup> Paragraphs 1.2. and 1.3 and section 3 of the Heritage SoCG (CD8.4)

55. Dealing firstly with North Mymms Park, the Grade I status and heritage significance of the house is derived largely from its architectural, artistic and historic interest as a late 16<sup>th</sup> century, Jacobean country house, with later additions and alterations. The non-designated parkland has both historic and artistic value as the original deer park to the house, which was evolved into the current ornamental landscape in the 18<sup>th</sup> century. The parkland provides long distance vistas to and from the northwest façade of the house, and forms one of the principal elements of its setting.
56. The appeal site lies around 300 m from the north western end of the parkland and about 1.4 km from the house. Whilst historic mapping<sup>39</sup> reveals that it was once part of the wider agricultural estate of North Mymms Park, that link is not legible in the landscape, and is purely of historic interest. The northeast corner of the appeal site can be seen from the upper floor windows of North Mymms Park house, but there is no evidence that it was designed as such to be part of a borrowed view in the landscape beyond the parkland. It is common ground between the Council and the appellant, therefore, that the appeal site makes only a very minor contribution to the heritage significance of the Grade I Listed House and unregistered parkland through setting<sup>40</sup>.
57. I have concluded above that the proposed development would have a minimal adverse effect on views from North Mymms Park house, reducing to a neutral effect over time as the proposed boundary landscaping matures. Accordingly, any urbanising influence it would have on the wider setting of North Mymms Park, including from light spill, would likewise be minimal. On this basis, I concur with the agreed position in the SoCG, that the harm to the heritage significance of North Mymms Park house arising from the appeal proposal would be less than substantial, and that its impact on the heritage significance of the parkland would be very minor.
58. Colney Heath Farmhouse and the associated Barn on its northeast side are located around 180 m from the appeal site, separated by a field used for horse grazing. The Farmhouse dates from the late 17<sup>th</sup> century and the Barn, which fronts Coursers Road, from the late 18<sup>th</sup> century. Their heritage significance is principally derived from the architectural and historic illustrative interests of their physical form and layout, both individually and together with the other buildings in the complex, which reference their original role in the historical development of Colney Heath as an agricultural and rural community.
59. It is common ground that the setting of the Farmhouse and Barn, which includes the historic landholding associated with the farm, makes a contribution to their heritage significance. It does so by affording views of the listed buildings and illustrating their agricultural past. Historic mapping reveals that the appeal site was at one time part of the tenancy associated with the farm<sup>41</sup>. The adjacent field immediately to the southeast of the complex offers the best views of the Farmhouse and is most legible as part of its original farmland setting. But the appeal site, in its current form as open pasture, also contributes to the wider rural, once agricultural, setting of the Farmhouse and Barn, albeit to a lesser degree.

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<sup>39</sup> Plate 13 in Appendix 3 of the Heritage SoCG (CD8.4)

<sup>40</sup> Page 5 of the Heritage SoCG

<sup>41</sup> Plate 4 in Appendix 1 to the Heritage SoCG

60. The proposed development would diminish the wider rural setting to the listed former farm buildings, and result in the loss of an illustrative part of their historic setting. It would also alter the character of the adjacent field, largely **removing it's** visual connection to the wider corridor of open land, and reducing the farmland setting of Colney Heath Farm to a standalone field. Therefore, the appeal proposal would cause harm to the heritage significance of the Farmhouse and Barn through the change to their setting. But the harm would be less than substantial, given that the principal parts of the setting would be preserved.
61. Finally, Tollgate Farm is located around 200 m to the east of the appeal site, fronting Tollgate Road at its junction with Bullens Green Lane. Historic maps record a complex of farm buildings located here from the early 19<sup>th</sup> century, and it is registered in the Historic Environment Record (HER) as a non-designated heritage asset. However, the farmhouse is modern and there is no special architectural interest apparent in the historic fabric of the farm buildings around the triangular courtyard. The heritage significance of the asset is primarily derived from the historic interest of a post medieval farmstead on the site, and its possible association with an adjacent tollbar recorded in the HER. Accordingly, it is common ground between the Council and the appellant that Tollgate Farm is a non-designated heritage asset of minimal value<sup>42</sup>. I have little evidence to conclude otherwise.
62. The setting of the asset comprises agricultural land to the south and west, and the adjacent Tollgate Road. **The appeal site forms part of the farm's broader** historic agricultural setting, but there is limited intervisibility between it and the oldest buildings on the farm, which are screened by a group of modern silos on its western boundary. As such, the appeal site makes a very minor contribution to heritage significance of Tollgate Farm through setting. Accordingly, although the proposed development would be co-visible with the farm buildings in views from the southeast along Tollgate Road, the harm to any heritage significance in these views would be very minor.
63. Paragraph 209 of the Framework states that in weighing proposals that affect non-designated heritage assets, a balanced judgement is required having regard to the scale of any harm or loss and the significance of the asset. In respect of Tollgate Farm, the very minor harm, given the minimal significance of the asset, carries minimal weight against the appeal scheme. Whilst the North Mymms Park landscape is of heritage significance to the setting of the Grade I listed house, the very minor harm which the proposed development would cause, due to the minor contribution of the appeal site to that setting, likewise adds minimal weight against the proposal. Whilst not determinative, these need to be weighed in the Green Belt balance below.
64. With regard to the designated heritage assets, I have found that the proposed development would result in less than substantial harm to the heritage significance of North Mymms Park house, Colney Heath Farm and its associated Barn through setting. Paragraph 208 of the Framework expects that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, that harm should be weighed against the public benefits of the proposal. I carry out this heritage balance in the light of my consideration of the benefits of the proposed development below.

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<sup>42</sup> Page 7 of the Heritage SoCG



### *Sustainability of Location in terms of Transport*

65. Paragraph 109 of the Framework expects significant development to be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes, taking into account that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Paragraph 114 of the Framework also seeks to ensure that in assessing development proposals, appropriate opportunities to promote sustainable transport modes can be taken up, given the type of development and its location.
66. Colney Heath has a number of facilities and services, which one would expect for a settlement of this size, including a pre-school, primary school, village hall, public house, church, hairdressers, takeaway, and a village store and post office. All of these would be accessible on foot for residents of the proposed development, within a 10-20 minute walk from the site, via level and safe walking routes along Tollgate Road and the High Street.
67. I have considered the evidence submitted by Colney Heath Parish Council on the walking routes to facilities in the village<sup>43</sup>. Whilst this assesses routes along the High Street and Tollgate Road to be of insufficient quality and safety to encourage walking, the assessment methodology, based on the Welsh Active Travel Design Guidance, requires an element of subjective judgement. I walked these routes and did not find them unattractive or inconvenient, notwithstanding the speed and volume of traffic using Tollgate Road and the High Street.
68. In addition the Highway Authority did not raise any highway safety objections to the reliance of the proposed development on these walking routes to access facilities in the village. A series of improvements to the routes is proposed by the appellant, including the installation of accessible crossing points at the entrance to the site and upgrading crossing points along the High Street, which could be secured by condition. The raised table proposed on Tollgate Road at the entrance to the site would also assist in reducing traffic speeds along this part of the walking routes. As such, I am satisfied that journeys to the available services and facilities within Colney Heath on foot would be a genuine modal choice for residents of the proposed development.
69. However, residents would need to travel to the surrounding settlements of St Albans, London Colney, Welham Green, Hatfield and Welwyn Garden City to access secondary schools, healthcare facilities, employment, larger supermarkets and railway stations. None of these services are within reasonable walking distance of the appeal site. Therefore, safe and reliable access to them by cycling and public transport would be necessary for the appeal site to be considered a sustainable location for the proposed development in terms of transport.
70. With regard to public transport, the Highways SoCG provides a summary of the existing bus routes serving Colney Heath<sup>44</sup>. Although seven services run through the village, three are principally school services with a single out and return bus operating in term time only, and three consist of a single service running mid to late morning, enabling short shopping trips to London Colney, Hatfield, Welwyn Garden City and St Albans on just one day per week. Only the 305 provides a regular service. However, even this is limited to five buses per day in each direction on weekdays and Saturdays, with no service on a Sunday.

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<sup>43</sup> Colney Heath Walking Routes Assessments (CD9.18)

<sup>44</sup> Table 1 of Highways SoCG (CD8.2)



71. The nearest railway stations serving Colney Heath are in Welham Green and St Albans, approximately 3.7 and 6.8 kilometres from the appeal site. The Parish **Council's evidence** shows that the current timetable for the 305 bus is impractical for most commuters seeking to travel to work by train from St Albans, Welham Green or Potters Bar<sup>45</sup>. Although the 305 route passes close to a number of secondary schools in St Albans, with only one bus in the morning peak period, it is also doubtful that the current service would provide a genuine travel choice for secondary school pupils living on the appeal site.
72. Access to medical services is also problematic. The GP practices that the Hertfordshire and West Essex Integrated Care Board (ICB) identify as providing primary care services for Colney Heath<sup>46</sup>, and to which the financial contribution for general medical services in the S106 agreement would be provided, are located in Hatfield. There are no direct bus services to Hatfield from Colney Heath and the nearest GP surgery at Northdown Road in Hatfield is around 2.4 km away on foot, which is beyond reasonable walking distance.
73. The Highway Authority defines a minimum service provision level of 4 buses per hour peak and 2 buses per hour off peak (06:30 to 22:00) as appropriate for most developments to make public transport a sustainable travel option<sup>47</sup>. It is clear that Colney Heath lacks this level of bus service provision. Therefore, without a railway station within reasonable walking distance of the village, public transport is not currently a genuine travel choice for future residents of the proposed development to access services not available in the village.
74. The S106 agreement contains a planning obligation for a financial contribution of £433,000/year for 3 years, which would enable the 305 service to be increased to two buses per hour in the peak periods and to introduce a service on Sunday. Although not at the minimum service level specified above, the Highway Authority confirmed in oral evidence at the Inquiry that a half-hourly service would be sufficient to provide for the likely increase in patronage that the proposed development would generate.
75. Whilst the exact timetable was not available in evidence, such a frequency of service would be likely to make public transport a genuine modal choice for residents of the proposed housing to access employment opportunities in London, St Albans and other surrounding settlements, including via interconnecting train services at St Albans and Welham Green stations. For journeys to school, the increased frequency of the 305 route would make bus travel a realistic option to access most of the secondary schools in St Albans, including the Samuel Ryder Academy, to which the financial contribution for secondary education expansion in the S106 agreement would be provided.
76. In terms of access to supermarkets and shops by bus, whilst the 305 does not serve the nearest large shopping centre at Colney Fields, the enhanced service would offer an increased choice of bus times during the day and at weekends to access shops and services in St Albans, including the supermarket on Hatfield Road. However, there would still be no direct access by bus to the GP surgeries in Hatfield providing primary care services to residents of Colney Heath. Whilst the increased frequency of the 305 bus would reduce waiting times for connecting bus services to Hatfield, I am not persuaded that having to catch two or more buses to get to a GP medical appointment would make public transport a genuine travel choice for this type of journey.

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<sup>45</sup> Paragraphs 3.2.3-3.2.5 of Colney Heath Parish Council PoE on Sustainability of Location (CD9.14)

<sup>46</sup> Paragraph 6.9 of the Committee Report on application Ref: 5/2022/1988/LSM (CD6.1)

<sup>47</sup> Place & Movement Planning and Design Guide for Hertfordshire, HCC 2023 (CD16.15)

77. Turning to cycling, a number of pieces of evidence were provided on the suitability of cycle routes from Colney Heath for regular journeys to facilities and services not available in the village. These include the cycle route audit contained within the Transport Assessment (TA) submitted with the appeal<sup>48</sup>, the evidence of both the **appellant's transport witness and the Highway Authority**, the Cycle Route Assessments undertaken by the Parish Council<sup>49</sup>, the Local Cycling and Walking Infrastructure Plan (the LCWIP)<sup>50</sup>, and Local Transport Note (LTN) 1/20<sup>51</sup>, which provides the **Department for Transport's** design guidance for cycling infrastructure. I have considered all of these carefully, as well as making my own observations on site of the different cycling routes.
78. The two key cycling journeys that were identified by the parties are to the Samuel Ryder Academy, as the secondary school with increased capacity, and to Welham Green Station, as the nearest station for onward commuting journeys by public transport north and south. Starting with the route to Samuel Ryder Academy, it is possible to travel from the appeal site to the school by bicycle using a mixture of on-road and off-road/segregated cycle routes. The shortest route would be approximately 5.3 km and take around 20 minutes to cycle.
79. The LCWIP identifies the first part of the route along Tollgate Road and the High Street, crossing over the A414 and continuing into St Albans via Colney Heath Lane, as a primary route, albeit not audited. However, access to Samuel Ryder Academy from this route would require cycling along Barley Mow Lane, which although identified in the LCWIP as a secondary cycling route, is a single track, unlit road with no road markings. Whilst it might be appropriate as a leisure cycling route during daylight hours, Barley Mow Lane 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.
80. An alternative route is available along the segregated cycle lane on the north side of the A414 from the junction with Colney Heath Lane to the London Colney roundabout, from where there is a shared pedestrian and cycle route along London Road and Drakes Drive to the school. However, this is not the most direct route to Samuel Ryder Academy, and is a longer journey than the secondary route along Barley Mow Lane. In addition, whilst the cycleway is segregated along most of its length, there are no traffic signals where it crosses the junction of the A414 with Colney Heath Lane. With the high vehicle speeds and traffic volumes along the A414, I noted the clear potential for conflict between cyclists and motorised vehicles turning into Colney Heath Lane at this point on the route.
81. LTN 1/20 identifies five core principles, which comprise the key requirements for people wishing to travel by bicycle; these are that routes need to be coherent, direct, safe, comfortable and attractive. I recognise the main purpose of LTN 1/20 is to guide the design of new cycle infrastructure, and that the change in approach set out in the guide will take time to work through the cycle network. However, in the meantime, I am satisfied that it is reasonable to have regard to the same principles in assessing the suitability of cycle routes along existing highway infrastructure, where they are being promoted as part of a sustainable travel plan for new development.

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<sup>48</sup> Appendix 16 of Transport Assessment by RPS, dated November 2022 (CD5.12)

<sup>49</sup> Cycle Route Assessments (CD9.17)

<sup>50</sup> St Albans and District Local Cycling and Walking Infrastructure Plan, July 2023 (CD19.13)

<sup>51</sup> Cycle Infrastructure Design, Local Transport Note 1/20, DfT, July 2020 (CD16.4)

82. In this case, 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.
83. Cycle access to Welham Green Station is possible by one of two routes. The most direct route is via Tollgate Road and Dixons Hill Road, a journey of around 3.5 km, taking around 12 minutes to cycle. However, the TA<sup>52</sup> notes that the derestricted speed limit and speed of traffic along a large part of the route makes it suitable only for frequent and confident cyclists. The alternative cycle route is via the tunnel under the A1(M) at the end of Bullens Green Lane, then along a shared use pedestrian and cycle route to Pooleys Lane in Welham Green, and from there through a short section of on-road route to reach the station. Whilst the tunnel under the A1(M) is poorly lit and uninviting, measures are proposed to improve its environment, which could be secured by condition. Therefore, I do not regard this as a drawback.
84. However, this route via Hatfield is longer, at approximately 5.5 km, and the direction of the route is not clear in places. Whilst a section forms part of National Cycle Route 12, large parts of the route are not signed, including the shared path along Roehyde Way and South Way, where it runs adjacent to the carriageway, and the connection to this from the A1(M) underpass. The section of the route running from the bridge over South Way to Pooleys Lane is also isolated, lacks natural surveillance where it passes along the back of the industrial estate on Travellers Lane, and dense hedgerows also reduce the effectiveness of the lighting on this stretch. Due to these issues, I found that the route lacks safety, coherence and directness.
85. 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.
86. In considering this issue, I have had regard to the Roundhouse Farm appeal decision, in which the Inspector concluded that the site in Bullens Green Lane represented a sustainable location in terms of the choice of transport modes<sup>53</sup>. The Courts have established the importance of consistency in decision making on similar cases, but also that decision makers are entitled to reach different conclusions to an earlier decision, provided the reasons for doing so are substantiated.
87. My findings are consistent with the Roundhouse Farm decision in respect of the accessibility of facilities and services in Colney Heath on foot, which I consider weighs in favour of this appeal proposal as well. I also acknowledge that in the case before me, access to facilities outside of the village by bus would be better than was the case at the Roundhouse Farm appeal. Accordingly, I have concluded that public transport would be a genuine choice of transport mode for journeys to secondary schools, places of employment and larger supermarkets and shops, similar to the Inspector for the Roundhouse Farm appeal. However, I have explained why I reach a different conclusion in respect of access to medical facilities by public transport, which is based on the evidence presented to me.

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<sup>52</sup> Sustainable Modes of Travel Audit, Appendix 16 of Transport Assessment, RPS, Nov 2022 (CD5.12)

<sup>53</sup> Paragraphs 37-41 of appeal decisions APP/B1930/W/20/3265925 and APP/C1950/W/20/3265926

88. My conclusions on cycle access are different to those of the Inspector for the Roundhouse Farm appeal. However, the evidence before me is also different. In this case, I have been provided with an audit of cycle routes conducted by the Parish Council, and evidence from the Highway Authority, which were not available at the Roundhouse Farm appeal. I have given detailed reasons, based on this evidence and my own observations of the alternative cycle routes, as to why I consider that cycling would not be a genuine mode of transport to access facilities outside of Colney Heath. As such, I am satisfied that my conclusions on this issue are justified having regard to the Roundhouse Farm appeal and the need for consistency.
89. That said, I concur with the Council that the limitations on the appeal site's location in terms of access by sustainable modes of transport may not be sufficient to fail the policy tests in paragraphs 109 and 114 of the Framework and, therefore, justify the dismissal of the appeal in their own right. However, the lack of a genuine choice of sustainable modes of travel to access medical facilities, and the incoherent, indirect and unsafe cycling routes from the village, are important material considerations which weigh against the proposed development in the overall planning balance.

### *Other Considerations*

#### Provision of Market and Affordable Housing

90. It is common ground that the District Council is unable to demonstrate a 4-year supply of housing land, as now required under paragraphs 77 and 226 of the revised Framework. Whilst the Council and the appellant have not been able to agree an updated housing land supply figure, they do agree that the shortfall against the 4-year requirement remains substantial<sup>54</sup>.
91. In addition, it is evident that there is serious under-delivery of housing in the District, based on **the Government's Housing Delivery Test (HDT). The latest HDT for 2022 reveals that the delivery rate over the 3 years from 2019/20 to 2021/22 has fallen to 55% against the housing requirement for this period<sup>55</sup>. These figures highlight a substantial shortfall in the delivery and supply of new homes in St Albans against what is required to address the needs of the District.**
92. The Council has taken steps to address housing needs in the publication of its emerging Local Plan, which allocates sites to meet the housing requirements for the period to 2041. The Local Development Scheme for St Albans<sup>56</sup> anticipates that the emerging Local Plan would be adopted in December 2025. But even if this is achieved, the Housing Trajectory in the emerging Local Plan<sup>57</sup> shows that housing delivery on the allocated sites would not commence until 2028/29, around 5 years from now. In the meantime, the housing trajectory shows that the delivery of new homes, even with an allowance for windfall, would continue to fall well short of the annual number of dwellings required. In turn this would only serve to deepen the problems associated with an under supply of housing, including increased house prices, decreased affordability and households remaining in unsuitable accommodation for their needs, which have been evidenced by the appellant<sup>58</sup>.

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<sup>54</sup> Page 7 of the SoCG on the Implications of the Revised Framework for the Appeal, January 2024

<sup>55</sup> Page 5 of the SoCG on the Implications of the Revised Framework for the Appeal, January 2024

<sup>56</sup> St Albans City & District Council Local Development Scheme, September 2022 (CD3.3)

<sup>57</sup> Table 3.2 of St Albans City and District Council Draft Local Plan 2041, July 2023 (CD3.1)

<sup>58</sup> Affordable Housing Proof of Evidence of Annie Gingell (CD9.1)

93. The proposed development would provide up to 150 new dwellings, of which 81 units would be in the form of market housing. I have no reason to believe that the development could not be delivered in the next 5 years, making a material contribution to the supply. Indeed, the appellant has offered to shorten the standard time limit for implementation. Given the substantial shortfall in the supply of housing in the District, the likelihood that the gap will not be bridged in the next 5 years without further permissions on non-allocated sites, and the **Government's objective** in paragraph 60 of the Framework to significantly boost the supply of homes, I consider that the provision of 81 units of market housing should carry very substantial weight in favour of this appeal.
94. Up to 60 of the proposed dwellings would be provided as affordable housing, with a tenure split of 25% First Homes, 8% Shared Ownership and 67% Affordable Rent, secured through planning obligations in the S106 agreement. The evidence presented in the Affordable Housing SoCG shows that there is a shortfall in the supply of affordable homes of around 2,220 dwellings, which is projected to increase over the next 5 years<sup>59</sup>.
95. Policy 7A of the Local Plan requires a proportion of affordable housing on sites of 0.4 ha within Towns and Specified Settlements, **which the Council's Affordable Housing Supplementary Planning Guidance (SPG)**<sup>60</sup> sets at 35%. Whilst this policy does not apply to Colney Heath as a Green Belt Settlement, it is common ground that the provision of 60 units of affordable housing on the appeal site, amounting to 40% of the total, would represent a social benefit to which very substantial weight should be given. I concur with this, given the scale of the need for affordable housing in the District and the evidence that this will worsen in the next 5 years without further permissions on non-allocated sites.

#### Self-Build and Custom Housebuilding

96. The proposed development would also provide up to 9 dwellings in the form of self-build and custom housebuilding (SB&CH) plots, secured through obligations in the S106 agreement. Although not a policy requirement in the Local Plan, people wishing to build their own homes is one of the types of housing need which the Framework seeks to address<sup>61</sup>. To that end local authorities are required to keep a register of people seeking to acquire serviced plots within the area for SB&CH, and to grant enough planning permissions to meet the identified need on the register<sup>62</sup>.
97. It is common ground that the Council is not currently meeting the need on its Self-Build Register and that there is unmet demand for serviced plots for SB&CH in St Albans<sup>63</sup>. Up to the end of October 2022, there had been 735 entries on the St Albans Register, amounting to a demand for 745 plots for SB&CH, which the Council has a duty to meet by the end of October 2025<sup>64</sup>. Based on the **appellant's evidence**, to date the Council has granted permissions for 31 SB&CH plots<sup>65</sup>, leaving a substantial unmet need.

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<sup>59</sup> Figure 7 in the Affordable Housing SoCG (CD8.1)

<sup>60</sup> Paragraph 7.13 of the St Albans SPG on Affordable Housing, March 2004 (CD2.4)

<sup>61</sup> Paragraph 63 of the Framework

<sup>62</sup> Footnote 29 of the Framework

<sup>63</sup> Paragraphs 6.57 and 6.58 of the Core SoCG (CD8.3)

<sup>64</sup> Figure 4.1 and paragraph 4.10 of Andrew Moger PoE (CD9.2)

<sup>65</sup> Figure 5.2 of Andrew Moger PoE (CD9.2)



98. Therefore, the provision of 9 plots on the appeal site would make a material contribution to addressing the unmet need for SB&CH in the District. Given the scale of need or demand for SB&CH relative to that for affordable housing in St Albans, I consider the provision of 9 plots for SB&CH would be a benefit attracting substantial weight in favour of the appeal proposal. This would also be consistent with the weight afforded to the provision for SB&CH by the Inspector in the Roundhouse Farm appeal decision, where a comparable number of 10 plots were being provided.

#### Economic benefits

99. It is common ground that the appeal proposal would result in economic benefits through the creation of temporary jobs in construction and related activities during the development process and additional household spend in the local area. The appellant calculates that 360-465 direct, indirect and induced jobs would be created and an extra £3.76 million of household expenditure would benefit local services and facilities.
100. However, these are generic figures. It is unclear from the evidence provided how many jobs would be contracted for the full length of the construction process and how many would be related to just one construction phase. The gross expenditure figure is a multiplier of an average weekly household expenditure, not all of which would be spent in local shops and services, so **the benefit of this to the District's economy would be likely to be less.**
101. Although paragraph 85 of the Framework places significant weight on the need to support economic growth, the appellant confirmed in oral evidence that this does not dictate the weight to be given to economic benefits in each case. Overall, therefore, whilst I acknowledge that the proposed development would generate economic benefits, the scale of any economic benefit would be modest, and, therefore, I attach no more than moderate weight to this in favour of the appeal.

#### Ecology

102. The south western part of the appeal site is located within the Colney Heath Farm Meadows LWS, which would be retained. Measures to ensure its protection from increased recreational pressure as a result of residential development could be secured by condition. Subject to this and other on-site mitigation measures to enhance retained and create new habitats to provide for protected species, it is common ground that the proposed development would not result in any significant residual negative effects on important ecological features<sup>66</sup>.
103. However, the Ecological Impact Assessment submitted with the appeal confirms that there would be an overall net loss in area based habitats, due to the loss of grassland habitats on the north eastern part of the site<sup>67</sup>. This cannot be mitigated on-site, but the appellant proposes to compensate for the loss by delivering a 10% biodiversity net gain (BNG) off-site, through a Biodiversity Offsetting Scheme, secured through the S106 agreement.
104. The proposed 10% BNG would be equivalent to the minimum level of BNG mandated in the Environment Act 2021, which is expected to apply to all major development proposals, such as the appeal scheme, during 2024. Given that at the time of writing the statutory requirement for BNG is not yet in force, I consider that the commitment to its provision in advance would be a

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<sup>66</sup> Paragraph 6.38 of the Core SoCG (CD8.3)

<sup>67</sup> Paragraph 5.78 of Ecological Impact Assessment, July 2022 (CD4.8)



benefit in favour of the appeal scheme. However, because the gain proposed would be at the minimum of the level set out in the Act, I attach no more than moderate weight to it.

#### Previously Developed Land

105. There are two related questions to consider here. Firstly, whether the whole of the appeal site constitutes previously developed land (PDL) as defined in Annex 2 of the Framework. Secondly, if the whole of the site is PDL, whether its status as such should carry any weight in the planning balance to be **undertaken to determine whether 'very special circumstances'** exist to justify the appeal proposal as inappropriate development in the Green Belt, taking account of the **Framework's** policies on making effective use of PDL and on the re-use and redevelopment of PDL in the Green Belt.
106. Dealing with the first question, PDL is defined in Annex 2 of the Framework as land which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure. It is clear that the house and garden at 42 Tollgate Road and the land on which the stables, manege and associated hardstanding areas are located, comprise PDL. The dispute is over the whether the remainder of the site, consisting of open fields, comprises part of the curtilage to the stable facilities and thereby PDL.
107. The planning permission for the stables and associated grooming and storage facilities granted in 1996<sup>68</sup> applies to the whole of the appeal site apart from no. 42. This is evident from the site plan relating to the permission, which includes all of the land and the adjacent fields to the southeast, and from the application form which confirms the site area as 10.8 ha. Although the permission did not involve a change of use of the land, the application form confirmed the land was already in use for horse grazing. I recognise horse grazing is different to an equestrian use, and the Parish Council disputes whether the fields have been in regular and consistent equestrian use without interruption for the last 10 years. However, the photographic evidence supplied by the appellant shows the fields being used for riding and exercising horses as far back as 2009. Moreover, the Council as the local planning authority (LPA) has confirmed that the appeal site, excluding no. 42, is in lawful equestrian use.
108. These pieces of evidence are sufficient for me to conclude, for the purposes of this appeal, that the fields within the appeal site form part of the curtilage to the stables. Therefore, whilst the majority of the appeal site comprises green fields and is patently not **'brownfield'** in character or appearance, I agree that because the fields form part of the same curtilage as the stables, the whole of the appeal site meets the definition of PDL in the Framework.
109. Turning to the second question, paragraph 123 of the Framework expects strategic policies to accommodate development needs in a way that makes as **much use as possible of PDL or 'brownfield' land**. Although the focus of this sentence in the Framework is on plan-making, the emphasis on making use of PDL is also relevant to decision making, and the appellant refers to it in this context<sup>69</sup>. However, this sentence is qualified by footnote 49 of the Framework, which makes clear that maximising the use of PDL should not be done in a way that would conflict with other policies in the Framework.

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<sup>68</sup> Application Reference: 5/96/1240

<sup>69</sup> Paragraph 5.11 of Oliver Bell PoE (CD9.6)

110. Paragraph 154(g) of the Framework sets out the policy approach which should be taken to PDL in the Green Belt. It defines the circumstances in which the re-use and redevelopment of PDL would qualify as an exception to the presumption against new buildings in the Green Belt. These are where it would not have a greater impact on the openness of the Green Belt than the existing development or would not cause substantial harm to openness if meeting local affordable housing need.
111. The Court of Appeal judgement in the Dartford case<sup>70</sup> established that the proviso on the circumstances in which PDL may be developed or re-used in the Green Belt means that the **Framework's encouragement of development** on brownfield land is not unqualified where the land in question lies within the Green Belt. Whilst the Dartford judgement preceded the changes to the Framework introduced since 2018, the policies on the development of PDL in the Green Belt and making best use of brownfield land that existed at the time of the judgement are broadly consistent with those in the 2023 revised Framework.
112. I have concluded above that the proposed development would cause substantial harm to the openness and purposes of the Green Belt. As such it would not qualify as an exception under paragraph 154(g) and would, therefore, constitute inappropriate development in the Green Belt. Accordingly, the appeal proposal would conflict with the **Framework's** policy on the approach to the re-use and redevelopment of PDL in the Green Belt.
113. Whether or not this policy conflict and the resulting Green Belt harm would be outweighed by other considerations **is the subject of the 'very special circumstances' test, which I deal with below. However,** in circumstances where the appeal **proposal does not comply with the Framework's policy** on the re-use of PDL in the Green Belt, it would undermine that policy to then attach weight to the development and use of PDL in favour of the appeal proposal, when carrying out the **'very special circumstances'** Green Belt balancing exercise.
114. I have been referred to the Maitland Lodge appeal decision<sup>71</sup>, in which the Inspector attached positive weight to the use of PDL within the Green Belt, in the light of the **Framework's policy on making effective use of PDL**. However, this was in a context where the Inspector had already concluded the proposal would not cause substantial harm to the openness of the Green Belt, and was, therefore, an acceptable use of PDL in the Green Belt that did not constitute inappropriate development in the Green Belt. Accordingly, he did not need to **determine 'very special circumstances'** and the use of PDL was capable of being weighed as a free-standing material consideration as part of the overall planning balance. The circumstances in this appeal are very different, and accordingly, the Maitland Lodge decision does not offer a comparable precedent for me in determining this issue.
115. The appellant also suggests that the appeal site is a sequentially preferable location for development over other non-PDL Green Belt sites, in the context of the need for housing in the District. This is based on the expectation in paragraph 147 of the Framework that plans should give first consideration to land which has been previously-developed, in circumstances where it has

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<sup>70</sup> In paragraph 13 of Dartford BC and SoSCLG and Ors [2017] EWCA Civ 141 (CD13.7)

<sup>71</sup> Appeal Ref: APP/V1505/W/22/3296116

been concluded it is necessary to release Green Belt land for development. However, paragraph 147 of the Framework clearly applies to the preparation of development plans. Therefore, whether or not the appeal site should be considered a sequentially preferable site over non-PDL sites within the Green Belt, is a matter to be determined through the preparation and examination of the emerging Local Plan rather than this appeal.

116. I note that in the Maitland Lodge decision, the Inspector regarded the sequential preference of that site as PDL in the Green Belt as a positive benefit. However, again, that was in a context where the appeal proposal was not inappropriate development in the Green Belt or harmful to the Green Belt. In this appeal, notwithstanding the PDL status of the site, the proposal would constitute inappropriate development in the Green Belt, due to the substantial harm it would cause to the openness of the Green Belt.
117. Therefore, on the above basis, I conclude that the PDL status of the appeal site should not carry any weight in favour of the proposed development.

#### *Other Matters*

##### Flood Risk and Drainage

118. The majority of the appeal site, including the land on which housing development is proposed, is located within Flood Zone 1, as shown on the **Environment Agency's Flood Zone Map for fluvial flooding**<sup>72</sup>. The south western part of the site within the Colney Heath Farm Meadows LWS is located in Flood Zones 2 and 3, being at a lower ground level and adjacent to the River Colne.
119. Paragraph 173 and footnote 59 of the Framework expect applications to be supported by a Flood Risk Assessment (FRA) for all development within Flood Zones 2 and 3. An FRA was submitted with the application the subject of the appeal, which assesses the risk from all sources of flooding. With regard to fluvial flood risk, the flood mitigation strategy in the FRA recommends the ground floor levels within the residential scheme be set above the EA modelled maximum flood level, which the appellant confirmed could be achieved.
120. The EA mapping in the FRA shows that the majority of the appeal site is at very low risk of surface water flooding<sup>73</sup>. There is a strip of land along the north eastern boundary of the site to the rear of the houses on Tollgate Road, sections of which are mapped as being at medium and high risk of surface water flooding. Photographic evidence submitted by the Parish Council and local residents shows lying water in this location.
121. It has been suggested that this is evidence of an underground chalk stream. However, the appellant has provided technical evidence based on ground investigations and topographical surveys, which confirms that this is due to rainwater accumulating in shallow surface depressions, because of the underlying impermeable clay rich strata on this part of the site<sup>74</sup>. The County Council as the Lead Local Flood Authority (LLFA) agrees with this position and that the ground conditions preclude the presence of an underground stream at the surface in this location<sup>75</sup>. I am satisfied the evidence supports this position.

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<sup>72</sup> Fig 5-1: Flood Risk Assessment, Surface Water & Foul Water Drainage Strategy, June 2022 (CD4.9)

<sup>73</sup> Figure 5-3 in the FRA (CD4.9)

<sup>74</sup> Paragraph 8.1.1 of Ronald Henry's Rebuttal Proof (CD9.23)

<sup>75</sup> Paragraph 3.1.1 of the SoCG on Surface Water Flood Risk (CD8.6)

122. With regard to groundwater flood risk, the FRA confirms a relatively high groundwater table beneath the site, with groundwater levels at or near the surface in the western part of the site, closest to the River Colne. The risk of ground water flooding is considered to be medium in this area and low across the remainder of the site<sup>76</sup>, which comprises the proposed development areas. As a precautionary measure, the LLFA agreed a condition to investigate seasonal groundwater levels, with measures to mitigate the risk of flooding from this source. I consider this would be a reasonable approach.
123. The FRA recommends both flood mitigation and surface water drainage strategies, including sustainable drainage systems and features to manage the discharge of water generated onsite, without increasing the risk of flooding elsewhere. Ultimately details of the drainage strategy would be dealt with at reserved matters stage and would remain within the control of the LPA. Neither the Environment Agency nor the LLFA have outstanding objections to the appeal proposals in relation to the risks of flooding from any sources. Overall, therefore, I am satisfied that the evidence demonstrates the proposed development would be capable of managing and/or mitigating any residual flood risks.
124. It was argued by the Parish Council and in third party representations that the appeal proposal fails to satisfy the sequential test because part of the appeal site lies within Flood Zones 2 and 3. I have considered the relevant appeal decisions referred to me on this matter. However, each of those cases are materially different in that critical elements of the proposed developments, such as the site access, were located within Flood Zones 2 or 3. In the appeal before me, the areas proposed for development are located within Flood Zone 1.
125. Accordingly, in this case, I conclude that the appeal proposal satisfies the requirements of the sequential test set out in paragraph 168 of the Framework. The mitigation measures proposed would also ensure consistency with paragraph 173 of the Framework, in not increasing flood risk elsewhere.

#### Traffic and Highway Safety

126. Access to the proposed development would be via a new junction on the southern side of Tollgate Road, created by the demolition of the property at no. 42. It would be opposite the entrance to Fellowes Lane on the north side of the road. The new junction would be designed so that vehicles exiting the appeal site would give priority to traffic on Tollgate Road.
127. The Proposed Access Layout Plan<sup>77</sup> demonstrates adequate visibility in both directions for vehicles exiting the site onto Tollgate Road, based on a 30 mph speed limit on Tollgate Road. Although average vehicle speeds along this section of Tollgate Road are currently in excess of that limit, a raised table would be installed at the junction to calm traffic and reduce speeds to below 30 mph, on what is a busy section of Tollgate Road.
128. Pavements on either side of the access road that tie into the existing footway on the southern side of Tollgate Road would ensure safety for pedestrians leaving and entering the site. In addition, to improve pedestrian visibility at the entrance to Fellowes Lane, a new section of pavement is proposed to the west of Fellowes Lane to provide a continuous east-west footway along the

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<sup>76</sup> Paragraphs 5.3.3 and 5.3.4 of CD9.23

<sup>77</sup> Drawing no. JNY11289-RPS-0100-001 Rev B (CD5.26)

northern side of Tollgate Road opposite the site access. Dropped kerbs with tactile paving would also be installed to provide pedestrian crossing facilities on all four arms of the junction.

129. I acknowledge the concerns about parked cars on the north side of Tollgate Road and in Fellowes Lane reducing visibility for vehicles and pedestrians at the entrance to Fellowes Lane and adding to traffic congestion. However, the proposed junction has been designed in line with the recommendations of the Road Safety Audit submitted as part of the TA<sup>78</sup>. The changes to the junction as part of the appeal scheme would improve highway safety along this stretch of Tollgate Road, by slowing traffic speeds.
130. With regard to traffic volumes, the TA predicts that the proposed development would generate 66 vehicle trips during the morning peak hour and 70 in the evening peak hour<sup>79</sup>. The distribution of trips across the local road network was modelled based on Census travel to work data, using the TRICS database. This predicts that around two-thirds of the vehicle trips will travel northwest along Tollgate Road towards the A414 and M25, and one third southeast towards Welham Green and the A1000. The modelled effects of the additional vehicle trips on the surrounding junctions within Colney Heath and onto the A414 and A1000 show that all junctions would continue to operate within their design capacity and, whilst queue lengths would increase, the impact on delays would be minimal<sup>80</sup>.
131. The TA also modelled the effect of the additional traffic on Tollgate Road, where on street parking on the north side of the street narrows the carriageway to one vehicle width, causing queues and delays<sup>81</sup>. Whilst the results show that for traffic travelling northwest along Tollgate Road, the average delay would increase from 5 to 8 seconds against the 2027 baseline, overall the impact of the proposed development on flows would be minimal.
132. Paragraph 115 of the Framework states that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety or a severe impact on the operation of the road network. The proposed development would not give rise to such levels of highway impact, and the Highway Authority did not seek to oppose it on these grounds. I am satisfied that the appeal proposal would therefore be consistent with the Framework and comply with the requirements of Policy 34 of the Local Plan in these respects.

#### Air Quality

133. The Air Quality Assessment (AQA) submitted with the appeal records that the existing concentrations of Nitrogen Dioxide (NO<sub>2</sub>) and Particulate Matter (PM<sub>2.5</sub> and PM<sub>10</sub>), as recorded at the roadside monitoring stations within the surrounding area, are well below the relevant limit values and national objectives for these vehicle emission pollutants<sup>82</sup>. Furthermore, it confirms that these limit values and objectives are unlikely to be exceeded either within or outside the site, based on the levels of traffic predicted to be generated by the proposed development<sup>83</sup>. Nevertheless, transport mitigation measures are

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<sup>78</sup> Appendix 11 of the Transport Assessment, November 2022 (CD5.12)

<sup>79</sup> Table 6.1 of CD5.12

<sup>80</sup> Tables 7.1-7.16 of CD5.12

<sup>81</sup> Tables 7.17-7.20 of CD5.12

<sup>82</sup> Paragraph 4.4.2 and Table 4-2 of the Air Quality Assessment, Stantec, June 2022 (CD4.2)

<sup>83</sup> Paragraph 5.4.1 of the Air Quality Assessment (CD4.2)

proposed as part of the Travel Plan required by the S106 agreement, to encourage travel by sustainable modes of transport, which would help to reduce vehicle emissions further.

134. The risk to human health from the effects on air quality of the increase in heavy duty vehicles on the road network during the construction period, is likewise assessed to be low. Whilst the risk of dust soiling from construction works is high, mitigation measures would be put in place as part of a Construction Management Plan, the implementation of which could be required by condition.
135. Therefore, whilst I note the concerns of local residents about the impact of traffic growth on air quality in the surrounding area, the evidence shows that the overall effect of development traffic from the appeal scheme on local air quality would be 'not significant'. The Council's Environmental Compliance Officer also confirmed the proposal to be acceptable in terms of air quality. I have no alternative evidence to indicate otherwise. Accordingly, this factor would carry neutral weight in the planning balance.

#### Living Conditions

136. Based on the illustrative masterplan the proposed development would result in dwellings at the ends of the gardens to nos. 44-100 Tollgate Road. However, the length of the rear gardens to these properties ranges from around 25-60 m. As such the likely separation distances between the habitable room windows of the existing and proposed dwellings would be such as to avoid any loss of privacy through overlooking. This is a matter which could otherwise be controlled by condition at a reserved matters stage.
137. The design and position of the proposed access road at the entrance to the site would result in all traffic entering and leaving the development adjacent to 44 Tollgate Road. This would be likely to generate an additional level of noise for the occupiers of no. 44, at the side of the property. However, the Noise Impact Assessment identified the main source of existing noise on the site to be from traffic along Tollgate Road and that the existing daytime and night-time noise levels are within acceptable noise limits.
138. Whilst future traffic movements and noise would occur to the side and rear of no. 44, there is no evidence that the predicted level of traffic entering and exiting the site within peak hours and throughout the day would result in an unacceptable increase in noise levels for the occupiers of no. 44. The illustrative masterplan indicates there would be scope for landscaping along the side and rear boundary of no. 44 to assist in mitigating the effects of extra traffic noise, which could be secured by conditions if this were necessary.
139. Therefore, the effect of the proposal on the living conditions of the occupiers of existing properties surrounding the site would weigh neutrally in the planning balance.

#### Community Infrastructure

140. The proposed development would place pressure on existing local community facilities by generating additional demand for primary and secondary school places and healthcare services, and increasing the use of recreation facilities, libraries and other services. Policy 143B of the Local Plan expects development proposals to provide for their infrastructure consequences. The S106 agreement includes obligations for the payment of financial contributions towards off-site provision at existing or new facilities, which have been agreed



in consultation with the respective service providers, and would satisfy the tests for planning obligations in paragraph 57 of the Framework. Consequently, the appeal scheme accords with Policy 143B of the Local Plan and any effects on infrastructure carry neutral weight in the planning balance.

#### Minerals safeguarding

141. The appeal site is located in a Sand and Gravel Belt identified in the Hertfordshire Minerals Local Plan (2007) (the MLP), Policy 5 of which encourages mineral extraction prior to development taking place which may sterilise any significant mineral resource. However, in this case the Minerals Resource Assessment submitted with the application demonstrates that prior extraction would likely not be feasible or economically viable. The County Council as the Minerals Planning Authority requested a condition requiring a minerals recovery strategy for the opportunistic use of minerals on the site. But subject to this, the proposed development would comply with Policy 5 of the MLP and be consistent with paragraph 218 of the Framework. Accordingly, this consideration does not weigh against the appeal proposal.

#### *Whether very special circumstances necessary to justify the proposed development within the Green Belt exist*

142. The starting point in this case is that the appeal proposal constitutes inappropriate development in the Green Belt, which paragraph 152 of the Framework establishes is, by definition, harmful to the Green Belt, and should not be approved except in very special circumstances. **In carrying out the 'very special circumstances' test, it is important to note that under paragraph 153 of the Framework, for 'very special circumstances' to exist, the harm by reason of inappropriateness and any other harm resulting from the proposal must be 'clearly' outweighed by other considerations.** So, it is not sufficient for the factors in support of the proposal to merely outweigh the harm. Rather, for the appeal to be allowed, the overall balance of benefits against harms would have to weigh decisively in favour of the appeal scheme, not just marginally.
143. Beginning with harms, in addition to the harm by reason of inappropriateness, I have found that the proposed development would cause substantial harm to the openness of the Green Belt at Colney Heath and to its purpose in safeguarding the countryside from encroachment. Paragraph 153 of the Framework requires substantial weight to be given to any harm to the Green Belt. Accordingly, the harm to the openness and purpose of the Green Belt, in addition to the harm by reason of inappropriateness, each carry substantial weight against the appeal proposal. In my view these comprise a comprehensive range of Green Belt harm, not merely by reason of inappropriateness, but to the fundamental aim and purposes of the Green Belt.
144. In terms of other harms, the proposed development would also cause significant harm to the rural landscape character and appearance of the appeal site and the surrounding countryside to the south of Colney Heath, which I have established would be contrary to both national and Local Plan policies. Whilst the Council did not rely on the harm to landscape character as a separate reason for refusal, it is a distinct harm to be considered alongside the Green Belt harm in the overall balance. In my view, for the reasons I have given above, the level of landscape harm which would result, adds further significant weight against the appeal proposal.

145. With regard to heritage effects, in carrying out the heritage balances in paragraphs 208 and 209 of the Framework, I find that the public benefits of the appeal scheme, including the delivery of market, affordable and SB&CB housing, would outweigh the less than substantial harm to the heritage significance of North Mymms Park house, Colney Heath Farm and Barn, and the very minor harm to the heritage value of the North Mymms parkland and Tollgate Farm, through setting. Therefore, the policies of the Framework that protect heritage assets do not provide a clear reason for dismissing the appeal on heritage grounds, under paragraph 11(d)(i) of the Framework.
146. However, 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. The very minor harm to the non-designated heritage assets adds a minimal degree of further weight against the proposal.
147. In respect of access by sustainable modes of transport, notwithstanding the proposed improvements to the 305 bus service, which would be a benefit arising from the appeal scheme, the lack of a genuine choice of sustainable modes of travel to medical facilities, and the inadequacies of the cycling routes from the village to other key facilities, would result in journeys being made by car rather than more sustainable modes. In my view, these factors carry a moderate amount of weight against the proposed development.
148. Turning to the benefits of the proposal, there is a pressing need for additional housing in St Albans District, which the appeal scheme would help to address. The shortfalls against the requirement for a 4-year supply of housing land and the need for affordable housing are substantial. Although there is an emerging Local Plan, which allocates sites to meet housing needs over the next 20 years, this is unlikely to result in the delivery of sufficient new homes to meet the shortfalls within the next 5 years. Therefore, the construction of up to 150 new homes, including 60 affordable units, are key benefits of the appeal proposal, which, given the shortfalls and the Government's objective to significantly boost the supply of homes, should be accorded very substantial weight in the overall Green Belt balance.
149. In addition, the provision of 9 plots for SB&CB housing within the appeal scheme, although small in number, represents a benefit attracting substantial weight, given the level of unmet demand for this type of housing in the District. The proposed development would also deliver material economic and ecological benefits, in the form of jobs, increased trade for local services, and a 10% BNG, both of which I consider should attract moderate weight in favour of the appeal proposal. I also attach moderate weight to the improvements to the 305 bus service, which would result from the proposal and be a benefit to existing and future residents of the District.
150. All other matters carry neutral weight in the Green Belt balance, including the PDL status of the appeal site, and the effects on flood risk and drainage, traffic and highway safety, air quality, living conditions, community infrastructure and minerals safeguarding. I have explained my reasoning for this above.

151. In carrying out the Green Belt balance, the Courts have established that **determining whether 'very special circumstances' exist to justify inappropriate** development in the Green Belt, is an exercise of planning judgement, rather than a mathematical exercise in which each element of harm or benefit is added to a balance<sup>84</sup>.
152. Accordingly, I have considered the totality of the benefits of the proposed development against the totality of its harms. Even though the provision of market and affordable housing attracts the highest level of weight of any consideration in this case, overall I judge that the housing and other benefits do not clearly outweigh the combination and extent of harms to the Green Belt, landscape character and appearance, and heritage assets, and arising from the limitations in the choice of sustainable transport modes. Therefore, I conclude that the other considerations in this appeal do not clearly outweigh the harm that I have identified.
153. Consequently, the very special circumstances necessary to justify the proposal as inappropriate development in the Green Belt do not exist. In these circumstances, paragraph 152 of the Framework dictates that the proposed development should not be approved. Accordingly, the policies of the Framework that protect the Green Belt also provide a clear reason for dismissing the appeal, under paragraph 11(d)(i) of the Framework. On this basis, the appeal scheme does not benefit from the presumption in favour of sustainable development, as defined in the Framework.
154. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. It is common ground that saved Policy 1 of the Local Plan, which deals with the Green Belt is the most important policy in this case. Although the most important policies of the development plan are out of date in this case<sup>85</sup>, I have established above that saved Policy 1 is consistent with the Framework **in respect of the 'very special circumstances' test, and, therefore, carries weight** in the appeal.
155. The main parties agree that **whether or not 'very special circumstances' exist** to justify the proposed development will determine the consistency of the proposed development with saved Policy 1 and, thereby, as the most important policy, with the development plan as a whole. **As 'very special circumstances' do not exist in this case**, saved Policy 1 also stipulates that permission for the appeal scheme should not be granted. Therefore, a decision to dismiss the appeal would be in accordance with the development plan, and there are no material considerations to indicate otherwise.

## Conclusion

156. For the reasons given above, and taking account of all other matters raised, I conclude that the appeal should be dismissed.

*M Hayden*

INSPECTOR

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<sup>84</sup> Paragraph 34 of *Sefton Metropolitan Borough Council v SSHCLG & Jerry Doherty* [2021] EWHC 1082 (Admin)

<sup>85</sup> By reason of Footnote 8 of the Framework

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Luke Wilcox, of Counsel	instructed by St Albans City & District Council
Christopher Carr, MPlan CMILT MTPS	Senior Transport Development Officer, Hertfordshire County Council (HCC)
David Uncle, BSc MSc	Senior Flood Risk Officer, HCC (LLFA)
Nick Collins, BSc (Hons) MSc MRICS IHBC	Consultant, Portico Heritage
John-Paul Friend HND (LGD) BA Hons Dip LA CMLI	Director, LVIA Ltd
Phillip Hughes, BA (Hons) MRTPI FRGS Dip Man MCMl	Director, PHD Chartered Town Planners Ltd
Jaqueline Hutton	Head of Legal, SACDC ( <i>for S106 Round Table</i> )

### FOR THE APPELLANT:

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Ian Dimbylow MEng CEng MICE MCiHT	Director, RPS Transport
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Clive Self, MA (Urb Des) Dip LA CMLI	Managing Director, CSA Environmental
Annie Gingell, BSc (Hons) MSc, MRTPI	Associate, Tetlow King Planning Ltd
Andrew Moger, BA (Hons) MA MRTPI	Director, Tetlow King Planning Ltd
Jade Lyus	Vistry Homes Ltd ( <i>for S106 Round Table</i> )

### FOR COLNEY HEATH PARISH COUNCIL (RULE 6 PARTY):

John Clemow	Parish Councillor, CHPC
Tony Burns	Parish Councillor, CHPC
Mike Rawlins	Neighbourhood Plan Project Officer, CHPC
Ian Skelt	Local Resident ( <i>for Flooding Round Table</i> )
Lesley Bloomfield	Local Resident ( <i>for Planning evidence</i> )

### INTERESTED PARTIES:

Deepak Bhat	Local Resident
Lesley Bloomfield	Local Resident
Lynn Skelt	Local Resident
John Rowland	Local Resident
Susan Blunt	Local Resident
Peter Clarke	Local Resident

#### DOCUMENTS SUBMITTED AT THE INQUIRY

- CD 19.1 **Appellant's Opening Statement and Appearances** (dated 19/09/23)
- CD 19.2 Colney Heath Parish Council Opening Statement (19/09/23)
- CD 19.3 Opening Statement on behalf of Local Planning Authority (19/09/23)
- CD 19.4.1 Deepak Bhat - Interested Party Statement (19/09/23)
- CD 19.4.2 Lesley Bloomfield - Interested Party Statement (18/09/23)
- CD 19.4.3 Corrinne Doust – Interested Party Statement (18/09/23)
- CD 19.4.4 Margaret Nash – Interested Party Statement (submitted 19/09/23)
- CD 19.4.5 Lynn Skelt - Interested Party Statement (submitted 19/09/23)
- CD 19.4.6 Melvin & Marianne Davies - Interested Party Statement (16/09/23)
- CD 19.4.7 Peter & Jenny Stevenson - Interested Party Statement (16/09/23)
- CD 19.4.8 Ryan Simpson Flowerday - Interested Party Statement (16/09/23)
- CD 19.4.9 John Rowland - Interested Party Statement (19/09/23)
- CD 19.4.10 Nancy Taffs - Interested Party Statement (submitted 19/09/23)
- CD 19.4.11 Kate Day - Interested Party Statement (submitted 19/09/23)
- CD 19.4.12 Sue Slingsby - Interested Party Statement (submitted 19/09/23)
- CD 19.5 Round Table agenda for Flood Risk (dated 19/09/23)
- CD 19.6 Round Table agenda for Heritage (dated 19/09/23)
- CD 19.7 Round Table agenda for Landscape (dated 20/09/23)
- CD 19.8 St Albans City & District Council Map of Cycle Routes
- CD 19.9 305 Bus Route Plan (dated 19/09/23)
- CD 19.10 Colney Heath Parish Council presentation slides (22/09/23)
- CD 19.11.1 Summary of Obligations in S106 Agreement (dated 21/09/2023)
- CD 19.11.2 Final Draft of S106 Agreement (submitted 21/09/23)
- CD 19.11.3 S106 Agreement Site Location Map
- CD 19.11.4 List of conditions agreed between the LPA and Appellant (27/09/23)
- CD 19.12 CIL Compliance Statement (dated 27/09/23)
- CD 19.13 Local Cycling & Walking Infrastructure Plan for St Albans District, Dec 2022
- CD 19.14 Closing Statement on behalf of Local Planning Authority (28/09/23)
- CD 19.15 Colney Heath Parish Council Closing Statement (28/09/23)
- CD 19.16 **Appellant's** Closing Statement (28/09/23)

#### DOCUMENTS SUBMITTED FOLLOWING THE CLOSE OF THE INQUIRY

- S106 Agreement – signed and certified (dated 11/10/2023)
- Statement of Common Ground between St Albans City & District Council and Vistry Homes Ltd on the implications of the updated National Planning Policy Framework (dated January 2024)
- Position Statement - Implications of the revised NPPF, obo Vistry Homes Ltd (dated January 2024)
- Email from Colney Heath Parish Council on the implications of the revised NPPF (dated 5 January 2024)