



# Department for Communities and Local Government

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Our Ref: APP/B1930/A/12/2180486  
& APP/B1930/A/13/2201728

11 August 2015

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEALS BY HUNSTON PROPERTIES LTD  
SEWELL PARK, LAND REAR OF NOS 112-156B HARPENDEN ROAD, ST ALBANS,  
HERTFORDSHIRE AL3 6BZ  
APPLICATION REFS: 5/11/2857 & 5/12/2713**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Frances Mahoney DipTP, MRTPI, IHBC, who held a public local inquiry on 22-24 and 28-31 July 2014 into your client's appeals against the decisions of St Albans City and District Council (the Council) to refuse outline planning permission for:
  - planning application ref. 5/11/2857, dated 18 November 2011, a proposal for the erection of 116 dwellings and 72 bed care home and formation of new accesses to Harpenden Road, 2 tennis courts and public open space (**Appeal A – ref. APP/B1930/A/12/2180486**);
  - planning application ref. 5/12/2713, dated 4 October 2012, a proposal for the erection of 85 dwellings, formation of new accesses to Harpenden Road, 2 tennis courts and public open space (**Appeal B – ref. APP/B1930/A/13/2201728**);at Sewell Park, land to the rear of Nos. 112-156b Harpenden Road, St Albans, Hertfordshire, AL3 6BZ.
2. A Planning Inspector, acting on behalf of the Secretary of State, issued a decision in respect of Appeal ref. APP/B1930/A/12/2180486 in a letter dated 12 March 2013. That decision was the subject of an application to the High Court and was subsequently quashed by order of the Court dated 12 December 2013. That appeal therefore falls to be re-determined.

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## **Inspector's recommendation and summary of the decision**

3. The Inspector recommended that both Appeal A and Appeal B be dismissed and that planning permission be refused in both cases. The Secretary of State agrees with the Inspector's analysis and recommendation and he has decided to dismiss the appeals and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers are to that report.

## **Matters arising since 12 March 2013**

4. Following the quashing of the previous decision in respect of Appeal ref. APP/B1930/A/12/2180486 on 12 December 2013, the Planning Inspectorate wrote to the parties setting out a written statement of the matters with respect to which further representations were invited for the purposes of his re-determination of the appeal. Interested parties were also given the opportunity to ask for the inquiry to be reopened. On 21 February 2014, in response to the representations received from the parties, the Secretary of State announced that he had decided to re-open the inquiry into this appeal.
5. On 12 and 21 February 2014, Appeals A and B were recovered for the Secretary of State's determination, under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990 because they involve significant development in the Green Belt and are at the same site.
6. The Secretary of State is in receipt of comments submitted by Ms M Fernandes dated 23 July 2014. The Secretary of State has given consideration to those comments but as they do not raise new matters that would affect his decision, he does not consider it necessary to circulate them to parties prior to reaching a decision on these appeals. A copy of Ms Fernandes' comments is not attached to this letter but will be provided on request to PCC@communities.gsi.gov.uk.

## **Policy considerations**

7. In deciding these appeals, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan consists of the saved policies in the St Albans District Local Plan Review 1994 (LP). The Secretary of State considers that the development plan policies of most relevance to these appeals are those set out in IR21.
8. Other material considerations which the Secretary of State has taken into account include: The National Planning Policy Framework (the Framework); the Planning Practice Guidance (the Guidance); the Community Infrastructure Levy (CIL) Regulations; and The Planning Obligations Guidance - Toolkit for Hertfordshire.
9. The Secretary of State notes the Inspector's remarks that the emerging St Albans Strategic Local Plan (SLP) seeks to set the overall levels of growth appropriate to meet the future needs of the area, and includes an independent review of the Green Belt and a Housing Needs Assessment/Strategic Housing Market Assessment (IR15); and that it is to be followed by a Detailed Local Plan setting out a comprehensive suite of policies, including site allocations and maps (IR17). The Secretary of State has had regard to the main objectives of the Green Belt review

(IR16); notes that eight strategic sub-areas have been evaluated on the basis of their relative contribution to Green Belt purposes and landscape impact; and that the composite appeal site forms part of one of the larger strategic sub-areas (SA-S4), Sewell Park (IR16). He notes that the consideration of the ranked strategic sites is being considered further through the local plan process, and agrees with the Inspector that this is the correct forum for such strategic decisions (R162). For the reasons in IR19, he also agrees that the emerging local plan documents attract very limited weight in the consideration of these appeals (IR19).

## **Main issues**

10. The Secretary of State has taken account of the fact that both appeal sites lie within the Green Belt and that the developments proposed comprise inappropriate development (IR145). The Secretary of State agrees with the Inspector's other remarks at IR145-146 and he too considers that the main considerations in this case are those set out in IR147.

### ***Effect on the openness and purposes of the Green Belt***

11. The Secretary of State notes that, in the case of the Appeal B proposal, the appellant has offered to provide a landscaping belt and that the linear nature of the rounding-off line could be varied to introduce a softer less rigid line of development across the field (IR156). However, for the reasons set out in IR155-156, he does not consider that an appropriate mechanism could be put in place as part of the appeal to re-visit the layout and extent of the development (IR156).
12. For the reasons in IR148-163, the Secretary of State considers that both appeal proposals would significantly reduce the openness of the Green Belt, to its considerable detriment, and would amount to unrestricted sprawl, compromising, in the main, two of its purposes, thereby adding appreciably to the substantial harm by virtue of inappropriateness (IR164).

## **Other harm**

### ***Effect on the character and appearance of the surrounding area***

13. For the reasons in IR165-166, the Secretary of State agrees with the Inspector that the development in Appeal A would not successfully integrate with the existing landscape, being out of scale and character with the surroundings and that it would unacceptably intrude into the open character and appearance of the countryside landscape, thereby compromising the terms of LP Policies 1 and 69 (IR167).
14. For the reasons in IR168-170, the Secretary of State agrees with the Inspector that even given the localised nature of views of the development, the Appeal B proposal would unacceptably harm the character and appearance of the countryside, contrary to LP Policies 1 and 69 (IR170).

## **Other Considerations**

### ***Housing need and supply***

15. The Secretary of State has carefully considered the housing need and supply issues in this case. For the reasons in IR172-194, he agrees with the Inspector that the Council is unable to demonstrate a five year supply of housing land (IR189), and that the housing land supply is likely to be somewhere between the appellant's

figure of 2.4 years and the Council's figure of 3.73 years (IR193). He agrees that it will be for the local plan examination process to establish the accuracy, credibility and plausible nature of the assumptions applied (IR193).

16. In the circumstances of the case, the Secretary of State agrees with the Inspector that it is reasonable to conclude that the appeal proposals would contribute significantly to the unmet housing need within the District and that this should weigh positively and heavily in the balance of the overall decision (IR194).
17. The Secretary of State agrees with the Inspector that whilst the identified deficiency in housing land supply and unmet housing need weighs positively in the balance, it must be weighed alongside the further proffered other considerations to assess whether they cumulatively outweigh the harm by reason of inappropriateness and any other harm, so as to amount to very special circumstances necessary to justify the development proposed (IR196). He considers these matters further in paragraphs 25-32 below.

#### *Affordable housing provision*

18. For the reasons in IR190, 191 and 197, the Secretary of State also agrees that there is a significant shortfall in the provision of affordable housing in the District and that the appeal proposals, in providing 35% affordable housing, would make a significant contribution to such housing provision and would be a substantial benefit of the developments, and that this weighs heavily in favour of the proposals (IR197).

#### *Care home provision (Appeal A only)*

19. For the reasons in IR198-200, the Secretary of State agrees with the Inspector that little positive weight in the consideration of Appeal A should be afforded to the provision of 72 care beds in this location (IR200).

#### *Open space/tennis courts*

20. The Secretary of State notes that the proposals include the provision of on-site open space around the pond area as well as enhanced existing hedgerows and trees, and the establishment of a new tree belt, and that it is intended that the pond area would be managed to encourage and provide habitats for existing species (IR201). He agrees with the Inspector that the long term management of these areas would improve the biodiversity of the location as well as offering opportunities for recreation and improvements in individual's well-being (IR201).
21. The Secretary of State also agrees that the new cycleways and footpaths would have the potential to improve highway safety and that this would be a positive benefit of the proposals, although, for the reasons in IR202, he agrees that these benefits would be limited (IR202). For the reasons in IR203, he agrees that the provision of the tennis courts should carry little weight in his consideration of these appeals (IR203).

#### **Other matters**

22. The Secretary of State has carefully considered the Inspector's conclusions in IR204-209 regarding education, health, biodiversity, highways, flooding and the

living conditions of nearby residents. For the reasons set out in those paragraphs, he agrees with the Inspector's conclusions on these matters.

### ***Conditions and obligations***

23. The Secretary of State has considered the schedules of conditions included within the IR; the Inspector's comments at IR129-142; paragraphs 203 and 206 of the Framework and the Guidance. He is satisfied that the proposed conditions are reasonable and necessary and meet the tests of paragraph 206 of the Framework. However, he does not consider that they overcome his reasons for refusing the appeals. With regard to the appellant's suggestion about a split decision in respect of Appeal A, the Secretary of State concurs with the Inspector's remarks at IR142.
24. The Secretary of State has also considered the executed and signed Unilateral Undertakings; the Inspector's comments on these at IR143, 201-204, and 207; paragraphs 203-205 of the Framework and the Guidance. For the reasons in IR203, he considers that the proposed tennis courts would not be directly related to the developments and would not fairly and reasonably relate in scale and kind to them. Other than the tennis courts, he considers that the provisions offered by the Unilateral Undertakings would accord with the tests set out at paragraph 204 of the Framework and Regulation 122 of the CIL Regulations, and he agrees with the Inspector that they would comply with The Planning Obligations Guidance - Toolkit for Hertfordshire (IR143). However, the Secretary of State does not consider that they are sufficient to overcome his concerns with the proposed schemes as identified in this decision letter. The Secretary of State observes that the Inspector has not commented on whether the obligations comply with Regulation 123(3) of the CIL Regulations. However, in view of his decision below to dismiss these appeals, the Secretary of State does not consider it necessary for him to seek further evidence on this matter.

### ***Overall conclusion and balance***

25. The Secretary of State agrees with the Inspector that the appeal proposals would give rise to definitional harm to the Green Belt arising from inappropriate development, that additional harm would arise from erosion to openness and permanency, as well as from unrestricted sprawl, and that these further identified Green Belt harms appreciably add to the substantial Green Belt harm caused by virtue of inappropriateness (IR210). He agrees that in both appeals there would also be significant harm to the character and appearance of the area, diminishing its intrinsic character and beauty, causing real and serious harm with a lasting effect on the nature of the countryside (IR211).
26. The Secretary of State has gone on to assess whether the proffered other considerations in this case clearly outweigh the harms he has identified.
27. There is a significant shortfall in the Council's five year housing supply, and the Secretary of State, like the Inspector, has had regard to the constraining nature of the Green Belt designation washing over the District, other than the established urban areas (IR214). He has carefully considered the impact that such a designation has in the balance of the decision (IR214).
28. The Secretary of State notes that the Council has accepted that, with their promoted growth agenda, designated Green Belt greenfield land will be required to

fulfil the requirements of the District and possibly those of neighbouring Councils; but agrees that the selection of sites is not an appropriate matter for consideration as part of these appeals (IR214). He also agrees with the Inspector that, whilst there will be Green Belt harm somewhere in the District when residential allocations come forward, this is not a good enough reason to off-set or diminish the site specific harms identified in relation to these appeals (IR214), which the Secretary of State considers to be substantial (IR214). He further agrees with the Inspector that the reasons in IR215 indicate that the local plan is out of date in respect of housing land supply but not that those reasons off-set or diminish the harms he has identified.

29. The Secretary of State agrees with the Inspector that the housing which would result from the proposed developments would make a considerable contribution to the identified shortfall, boosting significantly the supply of housing in the District; and that, in these circumstances, significant weight should be attributed to this factor particularly taking into account the progress of the emerging SLP towards adoption (IR216). He agrees with the Inspector that the proposals would also result in the provision of much needed affordable housing in a District whose needs appear acute, and that significant weight should be ascribed to this factor as a positive benefit of the proposals (IR217).
30. The Secretary of State agrees with the Inspector that the proposed care home beds in Appeal A would provide for a growing need in modern purpose-built facilities but, given the lack of proven necessity of a greenfield, Green Belt location, he agrees that this need is of little weight, and that progress made to provide for the need identified by the County Council lessens this further (IR218). He also agrees that, in the main, the communal benefits are required to mitigate the effects of the development and do not weigh heavily in the balance of the decision (IR219); and, for the reasons in IR203, that the provision of the tennis courts is not a positive contributory factor (IR219).
31. Having carefully considered the Inspector's analysis and comments at IR210-219, the Secretary of State agrees that the appeal proposals would assist in the provision of much needed housing in the local area and District in general (IR220). He agrees that the proposals would also have a social and economic role to play in achieving positive growth now and in the future (IR220). However, he also agrees with the Inspector that such benefits would be at significant cost to the intrinsic character of the countryside and its green, open, pastoral appearance, and that this identified dis-benefit of the environmental role of the proposals is so significant as to outweigh the proffered benefits and that the proposals do not amount to sustainable development (IR220).
32. Taking into account Government policy in the Framework, and given the identified Green Belt harm, in conjunction with the harm to character and appearance, the Secretary of State agrees with the Inspector that the harm is serious enough to significantly and demonstrably outweigh the benefits of both appeal schemes and bring them into conflict with the development plan and the Framework as a whole (IR221). Overall, the Secretary of State considers that, taking all of the benefits of the proposed developments into account, both on an individual basis and cumulatively, the harm to the Green Belt has not been clearly outweighed, and very special circumstances do not exist to justify allowing the inappropriate

development. He also concludes that there are no material considerations sufficient to overcome the conflict he has identified with the development plan.

### **Formal Decision**

33. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeals and refuses planning permission for;

- planning application ref. 5/11/2857, dated 18 November 2011, a proposal for the erection of 116 dwellings and 72 bed care home and formation of new accesses to Harpenden Road, 2 tennis courts and public open space;
- planning application ref. 5/12/2713, dated 4 October 2012, a proposal for the erection of 85 dwellings, formation of new accesses to Harpenden Road, 2 tennis courts and public open space;

at Sewell Park, land to the rear of Nos. 112-156b Harpenden Road, St Albans, Hertfordshire, AL3 6BZ.

### **Right to challenge the decision**

34. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

35. A copy of this letter has been sent to the Council.

Yours faithfully

*Christine Symes*

**Christine Symes**

Authorised by Secretary of State to sign in that behalf

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# Report to the Secretary of State for Communities and Local Government

by Frances Mahoney DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Date 8 June 2015

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**TOWN & COUNTRY PLANNING ACT 1990**

**ST ALBANS CITY & DISTRICT COUNCIL**

**APPEALS BY HUNSTON PROPERTIES LTD**

Inquiry held on 22 – 24 & 28 - 31 July 2014

Sewell Park, Land R/O Nos 112-156b Harpenden Road, St Albans, Hertfordshire AL3 6BZ

File Refs: APP/B1930/A/12/2180486 & APP/B1930/A/13/2201728

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**Appeal A File Ref: APP/B1930/A/12/2180486****Sewell Park, Land R/O Nos 112-156B, Harpenden Road, St Albans, Hertfordshire AL3 6BZ**

- 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 Hunston Properties Ltd against the decision of St Albans City & District Council.
- The application Ref 5/11/2857, dated 18 November 2011, was refused by notice dated 10 February 2012.
- The development proposed is the erection of 116 dwellings and 72 bed care home and formation of new accesses to Harpenden Road, 2 tennis courts and public open space.

**Summary of Recommendation: That the appeal be dismissed.**

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**Appeal B File Ref: APP/B1930/A/13/2201728****Sewell Park, Land R/O Nos 112-156B, Harpenden Road, St Albans, Hertfordshire AL3 6BZ**

- 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 Hunston Properties Ltd against the decision of St Albans City & District Council.
- The application Ref 5/12/2713, dated 4 October 2012, was refused by notice dated 16 January 2013.
- The development proposed is the erection of 85 dwellings, formation of new accesses to Harpenden Road, 2 tennis courts and public open space.

**Summary of Recommendation: That the appeal be dismissed.**

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## Preliminary Matters

1. The inquiry sat from the 22-24 July, and 28-31 July 2014, with an accompanied site visit on the 30 July 2014.
2. As set out above, there are two separate appeals. These appeals were recovered on the 12 February 2014 under Section 79 and paragraph 3 of Schedule 6 of the above Act by the Secretary of State (SoS), because the appeals involve proposals for significant development in the Green Belt.
3. Appeal A was first heard by way of an Inquiry held by another Inspector on 5-8 and 12-13 February 2013. The appeal was dismissed on the 12 March 2013. Hunston Properties Ltd then challenged that decision<sup>1</sup>. Judge Pelling QC, sitting as a judge of the High Court quashed the Inspector's decision. The Council then appealed to the Court of Appeal and the judgement was handed down on the 12 December 2013<sup>2</sup>. Sir David Keene concluded that the Section 78 appeal should be remitted to the SoS for re-hearing and determination<sup>3</sup>. Consequently, the Inspector's decision was quashed. As a result this case has now fallen to me to consider and recommend a decision to the SoS based on the submitted evidence and all that I heard and saw at the Inquiry. At the Inquiry and within their written evidence both the Council and the appellant company took reference from, and referred to, the terms and conclusions of the quashed decision. Following the close of the Inquiry comments were sought from the parties in relation to the weight which should be ascribed to the terms of the quashed decision<sup>4</sup>. Notwithstanding the appellant company's position at the Inquiry, through subsequent submissions<sup>5</sup> it was of the view that the effect of quashing a decision is to leave the appeal outstanding, so that a further decision has to be made. Its preferred authority is *Arun DC v SSCLG* [2013] EWHC 190 (Admin) (the Arun judgement)<sup>6</sup>. The Council, on the other hand, consider the Arun judgement was wrongly decided and should not be followed. They favour, amongst other authorities, the detailed addressing of the question of the materiality of previous quashed decisions in *St Albans District Council v SSCLG* [2015] EWHC 655<sup>7</sup>, where matters, which did not lead to the quashing of a decision, are promoted as still being capable of being material considerations.
4. However, the Council do acknowledge that the remarks made by the Judge in the St Albans case were obiter, and did not form part of the ratio of the judgement<sup>8</sup>.

<sup>1</sup> This quashed decision was found to be unlawful on the basis that the Inspector had erred in law in placing weight on a constrained dwelling supply figure from a revoked plan. The decision was quashed on a comparatively narrow point unrelated to the Inspector's conclusions on the impact of the proposal on the character and appearance of the locality and on the Green Belt.

<sup>2</sup> Case No C1/2013/2734 - The Hunston judgement. The focus of the challenge centred upon what was the correct figure to be used in housing land supply calculations – Lane Appendix 6.

<sup>3</sup> Lord Justice Maurice Kay and Lord Justice Ryder agreed with the Judgement of Sir David Keene.

<sup>4</sup> Inquiry Docs 29 & 30.

<sup>5</sup> Inquiry Doc 29.

<sup>6</sup> Attached to Inquiry Doc 29.

<sup>7</sup> Attached to Inquiry Doc 30 and including other specified authorities.

<sup>8</sup> Paragraphs 5 & 6 of Inquiry Doc 30.

I also note that the Judge in the St Albans case does not consider the Arun judgement in his discussion of materiality.

5. Having considered the parties submissions I acknowledge that the decision of Inspector Fieldhouse was found to be unlawful taking into account the findings in the Arun judgement<sup>9</sup>. In any case, had the quashed decision been considered in the balance of these appeal cases, it would not have made any difference to my overall recommendation, taking into account, the strong reliance placed on the decision of Inspector Papworth by Inspector Fieldhouse and her agreement with the conclusions of this earlier decision. Consequently, I have reached my own judgements on the material considerations in these appeals which are reasoned elsewhere within this report.
6. Appeal B deals with a smaller appeal site (2.8 hectares) wholly contained within the wider Appeal A site (5.136 hectares). The issues in these cases are, in the main, common to both appeals, unless indicated otherwise, and I have dealt with them accordingly. When referring to matters or circumstances which relate to both appeal sites I have referred to them as being the composite appeal site. Otherwise they are distinguished as appeal sites A or B.
7. Reason for refusal 2 relating to Appeal A, relates to whether the proposal would properly contribute to meeting the housing need in the District for smaller units. The Council confirmed that they would not be defending this position<sup>10</sup>. In a previous appeal decision concerning the same site and a similar development<sup>11</sup>, the Inspector concluded that there was no specific development plan policy on floor area of dwellings and there would still remain a mix of house types catering for a range of housing needs. He further concluded any harm in this regard would be limited and the benefits in terms of social stability and the establishment of communities would outweigh any adverse effect<sup>12</sup>. The Council has accepted the Inspector's conclusion in this regard and the matter was not pursued at the previous Fieldhouse Inquiry. Therefore, for these reasons, this matter will not be considered further in this report.
8. Following the close of the Inquiry executed and signed Unilateral Undertakings (UUs) were submitted<sup>13</sup>. Their terms and wording were considered at the Inquiry and it was only necessary for them to be administratively completed after the close of the event. This accommodation to the appellant company was undertaken with the agreement of the Council. I have, therefore, taken the completed UUs into account.
9. Following the close of the Inquiry the Court of Appeal overturned the decision of Mrs Justice Patterson in *Redhill Aerodrome Limited v Secretary of State for Communities and Local Government, Tandridge District Council and Reigate and*

<sup>9</sup> The Council's presented argument that another judge could disagree with the position in Arun in consideration of their presented authorities set out at Inquiry Doc 30 does have merit. Nonetheless, on balance the quashed decision no longer exists in law.

<sup>10</sup> In opening; at paragraph 5.1 of the Council's Statement dated Nov 2012; and at paragraph 1.3 of Smith proof.

<sup>11</sup> APP/B1930/A/11/2164231 – Decision of Inspector Papworth (Papworth decision) - Lane Appendix 1.

<sup>12</sup> Paragraph 24 of Papworth decision.

<sup>13</sup> Inquiry Docs 17 & 18.

Banstead District Council<sup>14</sup>. As a result the parties were given the opportunity to comment on the implications of this judgement<sup>15</sup>. The setting out of their respective cases has taken account of their comments in this regard.

10. On the 27 February 2015 the Department for Communities and Local Government published the 2012 based household projections to 2037 for England (2015 household projections). Following further consultation with the parties and receipt of their comments these have been taken into account and the respective cases revised accordingly.

### **The Site and Surroundings**

11. The composite appeal site lies on the northern edge of St Albans, set between the mainline railway<sup>16</sup> and Harpenden Road (A1081) where existing frontage residential development is, for the most part, post-war, detached dwellings with sizeable rear gardens.
12. It is principally an open agricultural field laid to grass<sup>17</sup>. There is a centrally located pond with established planting<sup>18</sup> concentrated along the outer boundaries. The local context includes urban townscape to the west on Harpenden Road<sup>19</sup>, and to the south on Sandridgebury Lane. St Albans Girls' School is a large complex that lies beyond Sandridgebury Lane. Playing fields extend eastwards from the school complex towards Valley Road. To the east beyond the school site and Valley Road is the Porters Wood Industrial Estate, which includes some large commercial units and office buildings, with a tall communications mast which does have some prominence in localised views. The Long Spring Wood tree belt runs along the northern edge of the industrial estate serving as a green transitional feature with the wider open countryside beyond. To the north of the composite appeal site is the Woollams Rugby Club site, including a clubhouse and floodlight pitch areas.
13. The wider context of the composite appeal site is the gently undulating open, green countryside landscape, which extends off at a distance to the east, north and north-west. This does include utilitarian structures such as the railway, including its gantries and embankment, along with the telecom mast on the industrial estate.
14. The appeal proposals include the demolition of No 126 Harpenden Road, a detached house typical of those in the immediate vicinity, to provide the access from the main road to the appeal site. Whilst a pleasant house, the introduction of the proposed access road and pavements would not be uncharacteristic of the urban development along the frontage.

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<sup>14</sup> Redhill Aerodrome Limited and Secretary of State for Communities and Local Government, Tandridge District Council and Reigate and Banstead Borough Council [2014] EWHC 2476 (Admin).

<sup>15</sup> Inquiry Docs 21 and 25.

<sup>16</sup> London St Pancras to Sheffield.

<sup>17</sup> Appeal site A is some 5.136 hectares, whilst Appeal site B comprises the westernmost 2.8 hectares of Appeal site A.

<sup>18</sup> Trees and hedgerows.

<sup>19</sup> The frontage houses back onto the composite appeal site.

## Planning Policy

15. In preparation is a new local plan, the St Albans Strategic Local Plan (SLP). This seeks to set the overall levels of growth considered appropriate to meet the future needs of the area. It is at an early stage of preparation, including an independent review of the Green Belt and Housing Needs Assessment/Strategic Housing Market Assessment (SHMA).
16. The Green Belt review is being undertaken under the guise of an Initial Evaluation of Green Belt Strategic Sub Areas (Green Belt Review)<sup>20</sup>. The main objectives of the Green Belt Review were to identify potential sites within the strategic sub-areas for potential release from the Green Belt for future development, estimate the potential development capacity of each site, and rank the sites in terms of their suitability for potential Green Belt release<sup>21</sup>. Eight strategic sub-areas have been evaluated on the basis of their relative contribution to Green Belt purposes and landscape impact. The composite appeal site forms part of one of the larger strategic sub-areas (SA-S4<sup>22</sup>), Sewell Park, likely to be considered only for residential use<sup>23</sup>.
17. The SLP is to be followed by a Detailed Local Plan (DLP) setting out a comprehensive suite of policies, including site allocations and maps.
18. A pre-submission document is expected to be published in May 2015 with the examination of the SLP expected in March 2016 and adoption towards the end of 2016<sup>24</sup>. The DLP, in a pre-submission version, is intended for publication in December 2015 with examination in October 2016 and final adoption in February 2017<sup>25</sup>.
19. It is acknowledged that it is highly desirable that local planning authorities should have an up-to-date plan in place. The Council are working towards achieving this goal with a planned out progression for their emerging local plan. Even though progress is slow I do not consider this to weigh negatively in the overall balance of the decision. Nonetheless, with the date for the adoption of the plan sometime well into the future<sup>26</sup>, the emerging local plan documents attract very limited weight in the consideration of this appeal proposal.
20. Following the revocation of the East of England Regional Spatial Strategy (RS) in 2012 the Council has relied upon the relevant saved policies of the development plan which consists of the St Albans District Local Plan Review 1994 (LP). The housing delivery target<sup>27</sup> within the LP was ultimately superseded by the RS<sup>28</sup>,

<sup>20</sup> Two part independent review centred on recommendations for potential inner Green Belt boundary revisions and estimates of potential dwelling capacity. Briggs Appendix Part Three LPA/CB/1.14; Green Belt Review Purposes Assessment (Oct 2013) (Lane Appendix 42) & Green Belt Review Sites & Boundaries Study (Feb 2014) (Lane Appendix 43).

<sup>21</sup> Paragraph 1.1.4 Green Belt Review Sites & Boundaries Study (Feb 2014) (Lane Appendix 43).

<sup>22</sup> Briggs Appendix Part Three LPA/CB/1.14 - Page 62-76 & Page 134

<sup>23</sup> The Green Belt Review.

<sup>24</sup> Inquiry Doc 5 – Local Development Scheme.

<sup>25</sup> Inquiry Doc 5 – Local Development Scheme.

<sup>26</sup> Which might itself be the subject of slippage.

<sup>27</sup> Which covered the period 1986-2001.

<sup>28</sup> The LP target was superseded by the Hertfordshire Structure Plan Review 1991-2011 which was itself superseded by the RS.

which, having been revoked has left a policy vacuum in terms of housing delivery target.

21. The saved policies of the LP which do have relevance are as follows:

- **LP Policy 1** – this identifies the extent of the Green Belt in the District and sets out the approach to managing development within it.
- **LP Policy 2** –sets out the LP settlement strategy. It identifies the settlements which are excluded from the Green Belt and also villages which are within it. The policy seeks to protect the character of settlement.

Whilst not strictly in accordance with the wording of the National Planning Policy Framework (the Framework) these policies do follow the general thrust of current policy guidance.

- **LP Policy 4** addresses the distribution of new housing development within towns and specified settlements. In principle, development will be permitted on the sites identified in the schedule or on other land where residential use would be consistent with other policies in the plan.
- **LP Policy 7A** identifies the Council's target for affordable housing delivery in the plan period. Affordable housing will be sought as part of housing schemes on sites over 0.4 hectares in size or where in excess of 15 units are proposed.
- **LP Policy 69** provides guidance on the design of new developments and requires all proposals to have a high standard of design.
- **LP Policy 70** relates specifically to the design and layout of new housing identifying various factors which must be considered in the design of any new residential schemes.
- **LP Policy 74** requires the consideration of the retention of existing landscaping and the provision of new landscaping.
- **LP Policy 143b** requires the provision of appropriate infrastructure and facilities in order to mitigate the impacts of development and meet the needs of residents.

22. The Framework is also relevant. Accordingly the Council rely upon the relevant saved policies of the LP and national guidance in their opposition of this proposal.

### **Planning History/The Proposals**

23. Appeal A is for 116 dwellings of which 35% would be affordable, along with a 72 bedroom residential care home and associated open space and tennis courts. Whilst maintaining the percentage of affordable homes, open space and tennis courts, Appeal B would comprise a reduced scheme for 85 dwellings.

24. Both are in outline with access, layout and scale also to be considered, leaving only appearance and landscaping reserved for future determination. Common to both schemes are the proposed access, footway and cycle link arrangements

from Harpenden Road, as well as two tennis courts. The proposed access would be created by the demolition of No 126 Harpenden Road.

25. In 2012 an Inquiry was held into an appeal for a similar scheme to that of Appeal A<sup>29</sup>. It was dismissed essentially on the basis of harm by reason of inappropriateness; harm to openness and two purposes of including land within the Green Belt (urban sprawl and encroachment); and to the character and appearance of the area. That identified harm was not clearly outweighed by other considerations that amounted to very special circumstances. The Inspector did identify that between Sandridgebury Lane and the north-west corner of the appeal site, where it is partly enclosed by the built form of Harpenden Road and the cul-de-sac to the north of the filling station, there is an area that could be regarded as rounding-off development, and not as sprawl, rather as a thickening of the depth of built up area on the east side of the road<sup>30</sup>. Development in this section of the site 'would be visually assimilated with the existing arrangement and grain of development. Within that area the topography allows for some setting-in of floor levels to reduce the visual effect, with much of the buildings being within the skyline of dwellings on the main road when seen from the east'<sup>31</sup>.
26. Inspector Papworth also identified the proposed care home as being a more substantial building than the proposed houses, where the use may constrain the extent to which the floor levels could step with the terrain in order to reduce its height and appearance of bulk. He concluded it could be prominent in long views and when considered against the present situation of open field and limited visibility of most of the surrounding buildings, would cause harm to the rural character and appearance of the urban edge<sup>32</sup>.
27. In addition, he identified that beyond the rounding-off line, development<sup>33</sup> would appear as encroachment into the countryside as the north east area is on higher ground and development here would be prominent in views from the east and south. That prominence would form a developed link between the school grounds to the south and the playing fields and their attendant structures to the north. This would erode the countryside character and consolidate the appearance of development in depth along the main road corridor to a much greater and more harmful degree than at present.
28. I am aware that there was a complaint to the Planning Inspectorate in respect of several aspects of the Papworth decision and I have had regard to the response of the Inspectorate<sup>34</sup>.
29. It is clear from the decision that Inspector Papworth considered development to the east of the rounding off line and on the north eastern part of the site to amount to urban sprawl and encroachment into the countryside. However, development to the west of the identified rounding off line would not be

<sup>29</sup> APP/B1930/A/11/2164231 – Decision of Inspector Papworth (Papworth decision) - Lane Appendix 1 – relevant layout plan Inquiry Plan A.

<sup>30</sup> Paragraph 12 of Papworth decision. The appellant company has relied upon this 'rounding off line' in the design of the scheme set out in Appeal B.

<sup>31</sup> Paragraph 15 of the Papworth decision.

<sup>32</sup> Paragraph 17 of the Papworth decision.

<sup>33</sup> Appeal A proposal.

<sup>34</sup> Lane Appendices 3 & 4.

perceived as sprawl or encroachment, other than in respect of the impact of the care home element of Appeal A.

30. Appeal B is a reduced scheme, in response to the terms and conclusions of the previous appeal decision, both in respect of the number of units proposed and the area of land involved<sup>35</sup>. It has been designed to interpret the comments of Inspector Papworth in respect of his 'rounding-off' line, beyond which he considered development would appear as encroachment into the countryside<sup>36</sup>.

### **Matters not in Dispute<sup>37</sup>**

31. In relation to the planning considerations, the Council and the appellant are in agreement that:

- the appeal sites lie within the Metropolitan Green Belt;
- the proposals constitute inappropriate development in the Green Belt;
- Appeal A would cause harm to the openness of the Green Belt along with harm to two purposes of the Green Belt, being encroachment and urban sprawl;
- the Council cannot demonstrate a five-year housing land supply as set out at paragraph 49 of the Framework;
- the development plan is not up-to-date in respect of housing land supply;
- consequently paragraph 14 of the Framework must be considered<sup>38</sup>;
- there is an acknowledged need to release greenfield Green Belt land for housing<sup>39</sup>;
- the proposals are not considered premature in relation to the plan-making process;
- the proposed developments would contribute towards affordable housing provision;
- within the previous appeal proceedings<sup>40</sup>, the appellant company increased the percentage of affordable housing from 35% to 53%. However, as part of this re-determination, with the agreement of the Council the percentage of affordable housing for consideration returned to the original proffered figure of 35%. I have considered it accordingly;

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<sup>35</sup> The care home has been deleted from Appeal B.

<sup>36</sup> One of the purposes of the Green Belt.

<sup>37</sup> Source Statement of Common and proofs of evidence – matters of agreement between the main parties.

<sup>38</sup> Paragraph 7.9 Briggs proof, although Footnote 9 of the Framework may temper the application of paragraph 14 and is consequently a material consideration in this case.

<sup>39</sup> Resolutions of the Planning Policy Committee and full Council to consult upon proposals to release greenfield sites in the District from the Green Belt in order to meet urgent housing needs.

<sup>40</sup> Appeal A only.



- both Appeal sites A & B form part of a wider site known as Sewell Park identified as a strategic sub-area of land (SA-S4) within the Green Belt with possible potential for Green Belt release<sup>41</sup>;
- the Care Home proposed is Class 2 ie it is an institution providing residential accommodation and care to people in need, primarily those aged 85 plus<sup>42</sup>;
- the composite appeal site is located 1.8km to the north of St Albans City Centre and some 5km to the south of Harpenden Town Centre;
- bus stops are located within 80 metres and 100 metres of the composite appeal site;
- there is a regular service to St Albans City Railway Station or Harpenden Railway Station;
- local services and facilities include local shops (High Oaks (715 metres); secondary schools (220 metres & 635 metres); primary school (800 metres); sports facilities within 220 metres; and dental and medical services within 670 metres and 1900 metres respectively;
- the composite appeal site is well situated to utilise a wide range of facilities which can be accessed by either walking or cycling;
- off-site improvement works delivered through UUs<sup>43</sup> include, if required, the realignment of the Batchwood Drive approach to provide a separate right turn lane (Ancient Briton traffic signals); and additional measures along Old Harpenden Road to mitigate rat running through the promotion of a one-way restriction;
- there are no highway concerns for either appeal proposal. The Highway Authority considers that the benefits of the highway works proposed will outweigh any dis-benefits of a new access onto Harpenden Road;
- reasonable financial contributions and provisions<sup>44</sup> are offered in respect of sustainable transport provisions; green travel plan; leisure/library/youth/childcare/nursery/primary-secondary education; fire hydrants; highway works; tennis courts; affordable housing; management entity as set out in the UUs<sup>45</sup>;
- in respect of Appeal A the following plans are those relevant to this proposal:
  - 0969/P/01 – Location Plan
  - 0969/P/02C – Indicative Site Layout

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<sup>41</sup> Parts 1 & 2 of the independent Green Belt Study (October 2013) produced by Sinclair Knight Merz – Lane Appendix 43 and 44.

<sup>42</sup> Agreed Inquiry Doc 15.

<sup>43</sup> Inquiry docs 17 and 18 and statements in support of planning obligations Inquiry docs 12 & 13.

<sup>44</sup> The contributions within the UU are in line with the calculations included in the Hertfordshire Planning Obligations Toolkit.

<sup>45</sup> Inquiry docs 17 and 18 and statements in support of planning obligations Inquiry docs 12 & 13.

0969/P/03A – Street Scenes

TPP/126HR/01 - Tree Protection Plan

- in respect of Appeal B the following plans are those relevant to this proposal:

0969/P/101 – Location Plan

0969/P/102 – Site Layout

0969/P/103 – Street Scenes

TPP/126HR/01 - Tree Protection Plan

### **The case for the appellant company**

32. These appeals concern proposed housing development on Green Belt land in circumstances where the Council cannot demonstrate an adequate housing land supply<sup>46</sup>. It is accepted that in accordance with paragraph 89 of the Framework the appeal proposals amount to inappropriate development in the Green Belt. Two purposes of the Green Belt would be harmed through encroachment and urban sprawl. However, the extent of this harm is minimal. In addition, by definition the proposed inappropriate development would harm openness. Given the acknowledged need to release greenfield Green Belt land for housing, such harm, wherever it is occasioned, would be an inevitable consequence of the housing position in which the Council finds itself. Given that this composite site is largely contained by existing built development, limited weight should be attached to the harm to openness.
33. Appeal A is a re-determination appeal, made necessary as the previous Inspector erred in law when finding that there was a five year housing supply in St Albans<sup>47</sup>.
34. The appellant company fully acknowledge the considered findings of both Inspectors Papworth and Fieldhouse in relation to the impact of Appeal A on the Green Belt and landscape<sup>48</sup>. Their case relating to Appeal A does not expand further in respect of the impact on the Green Belt or landscape (character and appearance of the locality)<sup>49</sup>.
35. However, since the previous decisions were taken the following matters which influence the assessment of housing need and the weight to be given to it in decision making have emerged:
- the Council's resolution to consult upon proposals to release greenfield sites from the Green Belt in order to meet fully, objectively assessed housing needs (OAN);
  - independent expert reports which confirmed the suitability of the composite appeal site for development of the nature proposed<sup>50</sup>;

<sup>46</sup> Required by paragraphs 47 of the Framework.

<sup>47</sup> Hunston Properties v SSLG [2013] EWHC 2678 (Admin) – Lane Appendices 5 & 6

<sup>48</sup> These are set out paragraphs 25, 26, 27, 29, 30 of this report.

<sup>49</sup> Wright proof paragraph 1.6.

<sup>50</sup> Green Belt Review Purposes Assessment (Oct 2013) (Lane Appendix 42) & Green Belt Review Sites & Boundaries Study (Feb 2014) (Lane Appendix 43).

- the need for affordable housing has become more acute over time; and
- the need for residential provision for the elderly has also increased since the 2013 appeal.

(All of these points equally apply to Appeal B, other than the latter.)

36. The above matters must be weighed into the overall balance of the decision and it is the case of the appellant company that in both appeals the harm identified to the Green Belt as well as to the landscape (Appeal A only) can be clearly outweighed by very special circumstances. This will be returned to later in the case for the appellant company.
37. Appeal B is a smaller scheme, on a lesser site, without the care home element. The layout takes into account the 'rounding-off line' advocated by Inspector Papworth, as being the area of the site where development would not harm any of the five purposes of the Green Belt. Within that conclusion he also considered that the only development which would not be visually assimilated and would cause harm to character and appearance would be the care home building<sup>51</sup>. Inspector Fieldhouse reflected these earlier conclusions in her decision.
38. The Appeal B proposal, in being limited to behind the 'rounding-off line'<sup>52</sup>, and without a care home building, would leave the five purposes of the Green Belt uncompromised and no harm to character and appearance would be caused<sup>53</sup>.
39. Acceptably designed two storey homes could make for an acceptable urban edge to open countryside. Both nearby New Greens Avenue and Toulmin Drive present a park edge in respect of a significant area of undeveloped open space and open countryside respectively.
40. Nonetheless, if it were thought that an urban edge may not be characteristic or visually appropriate, then the balance of the 2.3 hectare appeal site<sup>54</sup> offers the ready opportunity to provide a wider landscaping scheme<sup>55</sup> than that currently proposed. This could be dealt with by appropriate conditions.
41. Appeal site B, however, is not prominent in visual terms and the retention and reinforcement of the existing vegetation structure would not only integrate the development appropriately but would ensure that Green Belt amenities would not be materially affected. The proposed development (Appeal B) would be integrated within the existing landscape and afford an entirely appropriate urban edge to the countryside<sup>56</sup>. In this way the views of the two previous Inspectors, who considered the potential developability of the Appeal B site, are supported<sup>57</sup>.
42. The local landscape quality is considered to be medium due to the generally good condition of the enclosing field hedgerows and woodlands. For the most part the

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<sup>51</sup> Paragraph 17 of the Papworth decision.

<sup>52</sup> As advocated by Inspector Papworth.

<sup>53</sup> Appeal B has specifically been designed to respond to the conclusions of Inspector Papworth in order to ensure that no harm is occasioned to any of the five purposes of the Green Belt, by virtue of restricting the spread of development to within the rounding-off line.

<sup>54</sup> What remains were Appeal B to be allowed.

<sup>55</sup> On land within the control of the appellant company (blue outlined land).

<sup>56</sup> Evidence of Mr Wright.

<sup>57</sup> Urban edge side of rounding-off line.

site is not readily visible from the wider setting due to its relatively recessive landform and limited public vantage points. The tall communication mast, the distinct transport corridor of the mainline railway, and the substantial prominent Woollams Rugby clubhouse and lighting columns are all urbanising elements in the landscape which impact on the quality of the countryside. The composite appeal site is well contained by topography and field boundaries, allowing only limited views from the local countryside, lanes and roads.

43. The layout of Appeal B relates readily to the urban fringe and would be perceived as a thickening of the residential properties off Harpenden Road. In terms of accommodating change, the significance of the proposal would be moderate but not significant. The effect on the localised setting would be moderate to minor, being a landscape where there is the ability to accommodate change. Although there would be change, the change would not be readily appreciated and where it would be, that appreciation would be localised<sup>58</sup>.
44. Both sites reflect the contained urban fringe character and could successfully accommodate development without compromising the aims and objectives of the Green Belt.
45. For the following reasons, the appellant company considers Appeal B to be as non-controversial as any application for inappropriate development in the Green Belt could be:
  - in circumstances where a five-year housing land supply cannot be demonstrated;
  - where there is an acute need for affordable housing;
  - where greenfield, Green Belt land will have to be developed in order to meet housing need;
  - where the appeal site has not been discounted for release from the Green Belt to meet those needs;
  - no Green Belt purpose would be prejudiced and a large swathe of land is available to create a landscaped urban edge; and
  - the development would be consistent with the previous appeal decisions, being exactly the response that those decisions were designed to provoke.

#### *Housing Land Supply*

46. The Council's acknowledgement that, contrary to the requirements of the Framework, it cannot demonstrate a five-year housing land supply, places Appeals A and B in a very different place to that considered by either of the previous Inspectors.
47. However, the shortfall in the housing supply is considerably greater than that promoted by the Council<sup>59</sup>. With the RS now revoked and the housing target policy of the LP not having been saved, there exists a policy vacuum in this regard. Therefore, it is necessary to use an up to date, objective assessment of full needs in order to identify the Council's annual housing target, which can then

<sup>58</sup> Proof of Mr Wright section 8.

<sup>59</sup> Lane Appendix 29.

be used to see whether it can demonstrate a five year supply of deliverable housing.

48. The Council had the option to use the figure of 436 which they promote through their consultation on proposals to release greenfield sites from the Green Belt in order to meet full housing needs. They could also have used the figure of 586, which in November 2013 was recommended by an Independent Assessment of Housing Needs and Strategic Housing Market Assessment (Housing Vision Report) produced by consultants commissioned by the Council<sup>60</sup>.
49. The Council appear to have no confidence in their own promoted housing targets, but at the Inquiry favoured the 2011 based DCLG projection of 532<sup>61</sup>. This is, however, an unadjusted figure based on historic data. The Housing Vision figure offers a more up to date locally adjusted calculation of full OAN. In fact, based on the data set out in the Office for National Statistics (ONS) 2012-Subnational Population Projections for districts in England published in May 2014, in the appellant company's view at the Inquiry, a full OAN of some 622 dwellings per annum, being the then most recent unadjusted projection, should be used<sup>62</sup>.
50. However, the lowest conceivable figure to be considered as full OAN would be 586<sup>63</sup>, making the Council's initial reliance on the most out of date figure of 532 to be wholly unjustifiable<sup>64</sup>.
51. The appellant company consider that in accordance with paragraph 47 of the Framework, a record of persistent under delivery of housing in the District justifies a 20% buffer for the following reasons:
  - between 1991 and 2001 the annual average dwelling increase in the District was 420 against an annual target of 480<sup>65</sup>;
  - between 2001 and 2010 the annual average was 353 dwellings per annum measured against an annual target of 360<sup>66</sup> ;
  - this results in an under delivery of 663 up to 2010;
  - over the last 5 years<sup>67</sup>(1 April 2009 to 31 March 2014) there has been an unjustified under delivery<sup>68</sup> of some 71 dwellings<sup>69</sup> and this backlog should be made up within the next five years; and

<sup>60</sup> Lane appendix 36.

<sup>61</sup> Household Interim Projection Figures (2011 to 2021) published in April 2013. This figure is based on the 2011 based interim sub-national population projections, published by the Office for National Statistics (ONS) – September 2012.

<sup>62</sup> A vacancy rate of dwellings of 3% has also been applied which reflects that promoted by paragraph 2.75 of the Housing Vision report of 3.2% giving an annual housing requirement of 641.

<sup>63</sup> Housing Vision figure.

<sup>64</sup> 532 dwellings per year with a 5% buffer equates to 4.49 years supply with a new homes delivery of 2512 between 1 April 2014 and 31 March 2019 – Lane paragraph 8.2.

<sup>65</sup> Confirmed within the Housing Monitoring Report - April 2010

<sup>66</sup> Rate proposed 2001-2021 in the RS.

<sup>67</sup> Cotswold DC v SSCLG [2013] EWHC 3719 – paragraphs 50 and 48 – Cotswold approach.

<sup>68</sup> Paragraphs 4.3 to 4.11 & Tables 4.5 and 4.6 - Lane Appendix 29.

<sup>69</sup> PPG ID 3-035-20140306 – sets out that Council's should aim to deal with any undersupply within the first five years of the plan period where possible.

- in addition, following a positive balance of 300 dwellings between January 2001 and July 2008, between August 2008 and March 2014 there was a <sup>70</sup>negative balance of 248. The recession and the building out of allocations in the LP offer an explanation for the deficit<sup>71</sup>. Only three allocated LP sites remain to be developed, with only one within the five year housing land supply.
52. The appellant company promote a five year housing land supply target for St Albans District of 3,931 dwellings. This is some 1,138 dwellings greater than that of the Council<sup>72</sup>. The use of the out-dated DCLG household projection (April 2013) as the base data, with no adjustment for vacancy, applying only a 5% buffer and no application of any shortfall are the main flaws in the Council's approach promoted at the Inquiry.
  53. In respect of housing land supply, the Council has persistently over-estimated the numbers of homes to be built in any five year period<sup>73</sup>. Two sites in particular supposedly providing 320 units within the five year housing trajectory are suspect as being realistically deliverable. The Civic Centre site is complex in respect of land ownership which brings into doubt whether it should be deliverable<sup>74</sup>. Harpenbury Hospital is another Green Belt site which has also been identified as a school site. The uncertainty over which use may take priority does not provide certainty as to whether the site is available now<sup>75</sup>.
  54. In these circumstances the Council's claimed trajectory of 2,512 should be treated with extreme caution.
  55. Following the publication of the 2015 household projections the Council revised their position on OAN to a figure of 637 based on this new data<sup>76</sup>. This figure is much closer to the appellant company's full OAN of 622. These 2015 household projections are the most up to date estimate of future housing growth<sup>77</sup>. The number of households in St Albans is identified as increasing by some 3,370 (58,474 households in 2015 rising to 61,844 in the 5 year period to 2020). This equates to 674 new households per annum<sup>78</sup>. This is an increase again on that of both the 2011 based DCLG projection<sup>79</sup> and the appellant company's own assessment based on the ONS 2012-Subnational Population Projections for districts in England.
  56. The appellant company considers on the basis of the up-dated data, along with the 20% buffer, that a 5 year housing land supply target results for St Albans of

<sup>70</sup> Using the Briggs figures from paragraph 7.12 of his proof.

<sup>71</sup> Lane Rebuttal section 5.

<sup>72</sup> 2,793 units – Briggs proof paragraph 7.20.

<sup>73</sup> The 2012 AMR estimated 558 completions (2012-13) with 463 completed in 2013-14. From the 2013 AMR only 320 were completed in 2012-23 and only 375 in 2013-14. Thus the 2012 AMR over-estimated delivery between 2012-14 by some 326. AMR 2013 over-estimated delivery by some 167.

<sup>74</sup> Both Inspectors Papworth and Fieldhouse had reservations about including this site in the trajectory – Papworth decision paragraph 36 – Fieldhouse decision paragraphs 43 & 44.

<sup>75</sup> Footnote 11 of the Framework.

<sup>76</sup> See paragraphs 99/100 of this report and Inquiry Doc 28.

<sup>77</sup> PPG ID:2a-016-20150227 paragraph 16.

<sup>78</sup> Applying a 3% vacancy rates comes to 694 dwellings per annum.

<sup>79</sup> Council's base source for its original figure of 532.

well over 800 dwellings per annum. It will also be necessary for the Council to adjust housing figures further so as to assist the delivery of affordable housing.

57. Therefore, it is the view of the appellant company that, based on the Council's original settled upon figure of ONS, at best, can only demonstrate a 2.4 years housing land supply<sup>80</sup>. As previously set out the extent of the shortfall is far greater than the Council suggest. For the foreseeable future a substantial level of unmet housing need will prevail. Consequently, 85 dwellings (Appeal B) and 116 dwellings (Appeal A + 72 care home beds) would make an important contribution towards addressing this unsustainable position.
58. The results of the 2015 household projections significantly strengthen the case for the allowing of these appeals bolstering the case on very special circumstances.

#### *Care Home*

59. In respect of care home provision people are living longer and are less likely to live with relatives. Hence, the housing needs of the elderly are growing<sup>81</sup>. Therefore, the care home aspect of Appeal A is much needed and there is no similar provision in the locality. It is proposed as part of an inclusive and mixed community to be accommodated by the proposed development<sup>82</sup>. This is reinforced by Planning Practice Guidance (PPG) which advises that housing provided for older people, including residential institutions in Use Class C2, should be counted against Council housing requirements<sup>83</sup>. It should not be considered as an isolated provision, making no contribution to meeting the overall housing need.
60. However, if the care home element of the scheme in Appeal A is considered unacceptable then it is open to the SoS to issue a split decision in the circumstances that this would be distinct and clearly distinguishable from that which might prove to be acceptable<sup>84</sup>. Any resultant undeveloped pocket of land could be appropriately landscaped until such time as, if appropriate, the site could be developed in an acceptable manner.

#### *Affordable Housing*

61. The provision of much needed affordable housing is also a key consideration contributing to very special circumstances. Whilst not set in policy, the Council encourages a 35% contribution of affordable housing<sup>85</sup>. LP Policy 7A does set a target to secure at least 200 affordable dwellings per year through new house building and conversions. Given the age of the policy and it's out of step nature with the principles of the Framework<sup>86</sup> as a supply of housing policy, it has little relevance. In addition, the available evidence base of need ranges from 897 units in the 2002 Housing Needs Study<sup>87</sup> through to the Housing Vision report of

<sup>80</sup> Appellant company's Closing paragraph 125 and Lane proof paragraph 8.7.

<sup>81</sup> In St Albans as well as elsewhere.

<sup>82</sup> Paragraph 50 of the NPPF – Appeal A only.

<sup>83</sup> PPG Ref ID: 2a-021-20140306.

<sup>84</sup> PPG Ref 21a-013-20140306 & Section 79 T & C Planning Act 1990.

<sup>85</sup> Relevant extracts of the Supplementary Planning Guidance Affordable Housing March 2004 within Lane Appendix 30.

<sup>86</sup> Paragraph 49 of the Framework.

<sup>87</sup> Lane Appendix 30 doc 10.

2013 which identified a net need for the District between 2011 and 2031 of 8,072 affordable dwellings<sup>88</sup>. The latter report, as the latest evidence, is the most credible and equates to a need for 404 new affordable homes per annum over the identified period.

62. However, over the last 20 years in only one year (1997-98) has the Council managed to achieve even the target set in the LP Policy 7A (at least 200 units per annum)<sup>89</sup>. In the year 2013-14 only 37 affordable units were delivered.
63. The evidence illustrating the significant shortfall in affordable housing provision was not presented to either of the previous Inspectors.
64. St Albans has a substantial and rising level of unmet affordable housing need, but there has been a persistent under-delivery of supply. Inspector Fieldhouse afforded 'great weight' to the provision of 35% affordable housing. Given that the provision of affordable housing is a priority in the Council's Housing Strategy; that the Council has a poor track record in delivering affordable housing; and that the need is so acute, it is entirely proper to give substantial weight to the benefit of affordable housing provision when considering the planning balance. This is a material consideration and one of the key contributors to the very special circumstances justifying the grant of planning permission for both proposals.

#### *Sustainable development*

65. Paragraph 14 of the Framework states that at its heart is a presumption in favour of sustainable development, which should be seen as 'a golden thread running through both plan-making and decision-taking'<sup>90</sup>. In this context the first question to be asked is whether the proposals constitute sustainable development<sup>91</sup>. This is a broad concept under the Framework comprising economic, social and environmental roles. However, economic, social and environmental gains should be sought jointly and simultaneously through the planning system.
66. Economically the proposals would create jobs, bring homes closer to jobs and bring in extra money for expenditure<sup>92</sup>. In fulfilling the social dimension the proposals would provide help to address unmet housing need for both market and affordable housing in order to support strong, vibrant and healthy communities<sup>93</sup>, particularly where the Council has persistently failed to deliver the levels needed.
67. Environmentally the proposals would bring benefits<sup>94</sup> in relation to the biodiversity of the site, bringing life back to the pond; providing full mitigation measures in relation to an identified bat roost; and improving species-poor, rough grassland by the creation of landscaped areas. In addition, the reducing of

<sup>88</sup> Lane Appendix 30 doc 7 table 6.5.

<sup>89</sup> Lane Appendix 30 Section 4.0 Table 4.11 & doc 6 page 18.

<sup>90</sup> Lane proof paragraph 12.9.

<sup>91</sup> Lane proof paragraph 12.9, paragraph 106 of appellant's closing and paragraph 37 of judgement in *William Davis v SSCLG* [2013] EWHC 3058 (Admin).

<sup>92</sup> Lane proof appendix 34.

<sup>93</sup> Paragraph 7 of the Framework.

<sup>94</sup> Appellant's closing paragraphs 106-110 inclusive.



congestion at the nearby Ancient Briton junction would be a major benefit in this regard<sup>95</sup>.

68. The composite site's edge of city location with ready access to local facilities and public transport also serve to enhance its environmental role.
69. Therefore, each proposal delivers substantial benefits in all three dimensions: economic, social and environmental. Each proposal satisfies the criteria to be considered as a sustainable development<sup>96</sup>.

#### *Other harms*

70. The appellant company accepts that Appeal A does give rise to some non-Green Belt harms in line with the findings of Inspectors Papworth and Fieldhouse. Other than to question whether Appeal A would be unduly prominent, the appellant company does not pursue Appeal A further in this regard.
71. In respect of Appeal B the proposal is a sensitive and considered response to the findings of the previous Inspectors. It is a contained site and views from the surroundings are limited. This is an urban fringe with a range of urbanising elements. The development would take account of the topography of the landscape and its character. Whilst the eastern boundary would be in the form of a straight hedge, further landscaping could be provided on the owned land (blue land) beyond<sup>97</sup>. Any non-Green Belt harms of Appeal B are negligible, being of limited weight in the balance of this decision.

#### *The Green Belt Balance – the very special circumstances*

72. As the appellant company has acknowledged from the outset, the development proposed in either appeal is inappropriate development as defined by the Framework and is, therefore, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. These will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations<sup>98</sup>. The appellant company considers the following considerations to amount to the very special circumstances which would clearly outweigh the identified harms.
73. Firstly, the LP is out of date<sup>99</sup> as accepted by the Council. In addition, the settlement boundaries defined in the mid-1990s can no longer be regarded as meeting the long term needs of the District. Therefore, the considerable housing need, including for affordable homes, goes unmet denying housing to the local community. On this basis the LP should be non-determinative.
74. In addition, the Council cannot demonstrate a five year supply of housing land by reference to need<sup>100</sup>. It is, therefore, clear that there is, now, and into the future a substantial level of unmet housing need. The proposed new dwellings,

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<sup>95</sup> Reduce queuing traffic and pollution levels in accordance with paragraph 30 of the Framework.

<sup>96</sup> Lane proof paragraphs 11.3 – 11.32 & 12.9 – 12.14.

<sup>97</sup> Could be dealt with by condition.

<sup>98</sup> Paragraph 88 of the Framework.

<sup>99</sup> It dates from 1994.

<sup>100</sup> Council claim between 4.25 and 4.58 years, but the Lane evidence demonstrates it is actually 2.40 years.

including the care home, would make a significant contribution towards addressing that unsustainable position.

75. It is acknowledged that PPG paragraph 34 of 'Housing and economic land availability assessment'<sup>101</sup> sets out that unmet housing need is unlikely, on its own, to outweigh the harm to the Green Belt and other harm to constitute the very special circumstances justifying inappropriate development on a site within the Green Belt.
76. However, 'unlikely' does not mean 'never', and it all depends on the proper weighing of a planning balance through the Green Belt test<sup>102</sup>. This is particularly so where the Council is, as here, actively considering the release of greenfield sites from the Green Belt to meet those needs<sup>103</sup>. The housing need in St Albans is considered capable of constituting *exceptional circumstances*<sup>104</sup> justifying a change to the Green Belt boundaries<sup>105</sup>.
77. The composite appeal site plays a limited Green Belt role, causing limited harm to the Green Belt, which would not undermine the direction of travel of the Council, since it would not amount to the release of land for development which the Council has decided not to release through plan making. The proposals would secure the early deliverability of much needed market and affordable housing, along with important infrastructure improvements.
78. The Council, however, indicated at the Inquiry<sup>106</sup> that their then identified OAN (532 dwellings per annum) would be dealt with by the first four favoured sites. Site SA-S4 is ranked fifth according to the Council and equal fourth as interpreted by the appellant company. The Council's Planning Policy Committee resolved at their meeting on the 3 July 2014, that the site package within the emerging SLP should be revised on the basis that, amongst other things, the provision of Green Belt strategic sub-areas sites SA-S1, S2, S3 and S5 would achieve the mixed development strategy<sup>107</sup>. However, SA-S1 and S2 lies on the urban edge of Hemel Hempstead adjoining the administrative boundary of Dacorum Borough Council. These sites are intended to provide some 2,500 dwellings. However, due to the sites' geographical positioning away from St Albans and close to another Council's area, whilst there is a recognition by the Council of a duty to co-operate there is no firm confirmation from Dacorum Borough Council that they recognise these allocations would be solely attributable to the housing needs of St Albans.
79. In addition, with an acknowledged greater OAN based on the 2015 household projections, the reliance on the first four identified strategic Green Belt sites to deliver the housing requirement is a flawed strategy in light of the new data.

<sup>101</sup> PPG ref ID: 3-034-20140306.

<sup>102</sup> Hawkesbury Golf Course Smith Appendix 6 DL32 & Stanford-le-Hope decision Smith Appendix 19.

<sup>103</sup> Resolution of the Planning Policy Committee and full Council – July 2014

<sup>104</sup> See Lane Rebuttal Appendix 6 & Inquiry Doc 2.

<sup>105</sup> Substantial weight should be attributed to this in accordance with Stanford-le-Hope (Lane Appendix 19) and Hawkwell decisions (Lane Appendix 20).

<sup>106</sup> Briggs proof 5.32-5.34.

<sup>107</sup> Lane rebuttal paragraph 9.1.

80. Further, there is very little evidence of engagement in respect of the duty to co-operate before establishing either the OAN or in respect of the strategic Green Belt sites<sup>108</sup>.
81. The figure of 436<sup>109</sup> has been rejected by the Housing Vision Report<sup>110</sup> and is itself based on a ten year migration led scenario. Such an approach is not in accordance with the guidance within the Framework<sup>111</sup> that migration, as a factor of housing need, must be taken into account over the plan period.
82. In addition, as already identified above, the identified need for affordable housing<sup>112</sup> represents a significant percentage of the Council's promoted OAN (93%), a substantial benefit in its own right. It follows therefore, that the preferred strategic sites will not be sufficient to meet identified needs.
83. Further, through the terms of the respective UUs<sup>113</sup>, the appeal proposals would offer the provision of new infrastructure and other community benefits<sup>114</sup> to mitigate the effects of the development. In particular, improvements to the Ancient Briton junction would reduce congestion, bring down queuing and improve traffic flows in the area<sup>115</sup>. The Highway Authority considers that special circumstances have consequently been demonstrated in favour of the proposals. Therefore, significant weight should be given to this benefit.
84. In respect of Appeal A it provides an opportunity to meet the need to provide housing for older people which is critical given the projected increase in the number of households aged 65 and over<sup>116</sup>. It would serve an area where there is no alternative provision close by and would be consistent with paragraph 50 of the Framework to provide for a mix of housing based on current and future demographic trends.

### *Conclusion*

85. The composite appeal site offers an immediate, sustainable development opportunity on the urban edge of St Albans with a clear relationship to housing provision for the population of the District. In addition, all of the promoted very special circumstances identified above should be given significant and/or substantial weight sufficient, either alone or together, to clearly outweigh the very limited harm to the Green Belt by way of inappropriateness and all other

<sup>108</sup> See Inquiry Docs 22 & 23 for extract responses in relation to comments of neighbouring authorities in relation to the extent of engagement in the duty to co-operate.

<sup>109</sup> Promoted through their consultation on proposals to release greenfield sites from the Green Belt.

<sup>110</sup> Lane Appendix 36 paragraph 7.2.

<sup>111</sup> Framework paragraph 159.

<sup>112</sup> Housing Vision 404 dwellings per year.

<sup>113</sup> Inquiry Documents 17 & 18.

<sup>114</sup> Some already identified above but include open space provision – construction of two new tennis courts made available to the school and local community – footpath and cycleway improvements.

<sup>115</sup> Agreed by the Highway Authority.

<sup>116</sup> Housing Vision Report at ES 49 sets out that there is an estimated current requirement for 2,160 specialised units of accommodation in St Albans Council area (up to 2011 – 65+households). Up to 2031 an increase of 1,080 is estimated with some 402 units being extra care for the over 75s.

harm, so as to justify the grant of permission for both appeals<sup>117</sup>. Given the presumption in favour of sustainable development and the outweighing of the limited harm to the Green Belt by the substantial benefits of each proposal the appeals should be allowed<sup>118</sup>.

### **The Case for the Council**

86. The primary question in respect of both appeals is whether very special circumstances exist to clearly outweigh the harm caused by reason of inappropriateness and any other harm. Then it is necessary to consider whether the development complies with the development plan.

#### *Green Belt*

87. The proposed development (both appeals), other than the tennis courts, is inappropriate development in the Green Belt, and, therefore, by definition harmful<sup>119</sup>. Such harm should be given substantial weight in the balance of any decision.
88. The agreed position is that Appeal A would result in the unrestricted sprawl of large built-up areas, encroaching on the countryside, thereby compromising two of the purposes of the Green Belt<sup>120</sup>. This amounts to substantial harm<sup>121</sup>.
89. The same is true of the development proposal in Appeal B. The appellant company contends that as Appeal B would sit behind the rounding-off line, promoted by the previous Inspectors, this circumvents any offence to the identified Green Belt purposes. In fact whilst Inspectors Papworth and Fieldhouse both identified that there would be harm from development set beyond the rounding-off line, they did not indicate that development up to (within) the line would not be harmful. The appellant company has proceeded on the assumption that the wholesale development up to the rounding-off line would be acceptable. This is not the case. Both Inspectors identified that some development could have the effect of not harming the two Green Belt purposes. Neither Inspector purported to propose an alternative development by reference to comments in a decision letter. Their reasoning should enable the developer to assess their prospects of obtaining alternative permission, but that does not involve re-designing a scheme. The Inspectors merely indicated a broad area within which some development could be acceptable.
90. Given the clear views which would be obtained of the development in the locality, both schemes would unacceptably harm the identified purposes of the Green Belt. The appellant company acknowledges the Council's concerns regarding the impact of the proposal in respect of Appeal B by promoting at the Inquiry<sup>122</sup> initially a three metre wide landscaping belt, which then developed into a much larger area beyond appeal site B extending over an unspecified, but potentially extensive part of appeal site A.

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<sup>117</sup> Lane proof paragraphs 11.90 & 11.91.

<sup>118</sup> Lane proof paragraph 11.92.

<sup>119</sup> Paragraph 88 of the Framework.

<sup>120</sup> Paragraph 80 of the Framework.

<sup>121</sup> As highlighted by Inspectors Papworth and Fieldhouse.

<sup>122</sup> Mr Wright's oral evidence.

### *Other harm*

#### *Character and appearance*

91. The appeal proposals would have significant impacts on the landscape character of the site and immediate area. Inspector Fieldhouse considered that the proposed buildings<sup>123</sup> would generally mask the existing dwellings and would be prominent in the overall area irrevocably harming the character and appearance of this part of the countryside<sup>124</sup>. The views of both Inspectors, in this regard, are accepted by the appellant company. This judgement would equally apply to Appeal B. The more limited amount of development proposed would not result in lower levels of impact given the landscaping scheme proposed and the nature of the development. Neither circumstances nor evidence have changed since the Fieldhouse decision and the Council maintain this position in this regard.
92. The application of a straight rounding-off line without deviation or reference to topography pays no regard to other straight line development in the area. The scheme places two and two and a half storey development at the northern edge of the site, an area Inspector Papworth considered would be a harmful location for development<sup>125</sup>. It proposes a hard urban edge to the open countryside. This is a muted location which is generally enclosed. However, the enclosure does not reduce the effects, it simply defines a specific area of impact. The proposed three metres wide landscaping belt<sup>126</sup> would not have a significant effect in limiting the identified visual harm. The extended landscaping scheme in the case of Appeal B, to include a wider area of planting over some part of the residual land<sup>127</sup> has not been the subject of detailed landscape and visual evidence. No provision has been made for the landscaped area's maintenance or long term safeguarding and well-being. In any event the unspecified additional planting would not ameliorate the identified harm in this case.
93. Therefore, both proposals would cause substantial harm to the landscape and visual nature of the locality and the site itself. In this way the terms of LP Policies 69 and 74 would be compromised.

### *Other considerations*

#### *Housing need*

94. St Albans District is heavily constrained by the predominance of Green Belt designation outside of its urban areas. Protection policies on a considerable scale relating to Green Belt, presents a context for consideration when dealing with the significance of a housing shortfall<sup>128</sup>. The scale of the shortfall in its context, which may include the extent of the important planning constraints in the District, are factors upon which the ultimate decision may turn<sup>129</sup>. The circumstances of these appeals fall within the identified terms of the Hunston judgement. Given the heavily constrained nature of St Albans, there is nothing special about a shortfall in housing land supply. The constraining factor is

<sup>123</sup> Appeal A.

<sup>124</sup> Fieldhouse decision paragraph 19. She reflected the views of Inspector Papworth.

<sup>125</sup> Papworth decision - Paragraph 16

<sup>126</sup> Proffered as part of the original appeal proposals.

<sup>127</sup> The difference between appeal site A and appeal site B.

<sup>128</sup> Hunston decision – paragraph 29.

<sup>129</sup> Hunston decision – paragraph 32.

equally true of neighbouring areas which bolsters this point that this is a common place factor, not a very special circumstance when proffered as a single issue.

95. It is agreed that significant weight should be placed on the housing shortfall in these cases. The SoS has clarified that although each case will depend on its facts, the single issue of unmet demand is unlikely to outweigh harm to the Green Belt and other harm to constitute the 'very special circumstances' justifying inappropriate development in the Green Belt<sup>130</sup>. This position has been reiterated in a further statement in January 2014<sup>131</sup> and subsequently in Planning Practice Guidance (PPG).
96. At the Inquiry the Council relied on the figure of 532 dwellings per annum as being the relevant full OAN. It had been adopted for development control purposes and derived from the 2013 DCLG household projection figures<sup>132</sup>. This is an interim figure but was based on the most recent figures produced from Government at that time. PPG recognises these are a starting point for consideration of housing need. Applying a 5% buffer results in a 4.47 year supply or 3.91 years with a 20% buffer.
97. If 586 was used<sup>133</sup> with a 5% buffer there is a 4.05 year supply or with a 20% buffer the supply would be 3.55 years. The above calculations of the Council do not take into account any shortfall or surplus alternatives<sup>134</sup>.
98. The figure of 436 has been suggested by the Council as the basis for preparing the draft SLP<sup>135</sup>. Housing Vision does recognise the potential for other figures to amount to OAN. Given that recognition, the Council was justified in using a recently produced Government-derived figure for development control purposes.
99. Upon the publication of the 2015 household projection figures an average of 637 new households per annum for the draft SLP plan period of 2011-2031 was identified. In addition, the SHMA 2013 is currently being up dated and will be published in 2015.
100. The Council has not taken a decision on whether or not these or any other figures may more accurately represent the most up to date figures for full OAN. This matter would be properly decided as part of the decision making process of the LP. However, as the 2015 household projections are the most recent Government evidence in this regard, the Council accept the figure of 637 dwellings per annum as the appropriate figure to use as a proxy for the full OAN without any moderation. Therefore, on this basis the Council consider they have a 3.73 years supply<sup>136</sup>.

<sup>130</sup> Written Ministerial Statement dated July 2013 – Briggs Appendix Part One - LPA/CB/1.2.

<sup>131</sup> Written Ministerial Statement dated January 2014 – Briggs Appendix Part One - LPA/CB/1.4.

<sup>132</sup> Based on 2011 ONS and Census figures.

<sup>133</sup> Housing Vision figure – locally derived figure arising from the SHMA.

<sup>134</sup> The calculation is based solely on the housing target in this case 532 dwellings per annum + 5% or 20%.

<sup>135</sup> On 16 July 2014.

<sup>136</sup> 5 year supply of 2,497 dwellings + 5% buffer.

### *Buffer*

101. The two previous Inspectors found that a 5% buffer was appropriate. The main question is whether anything has changed since their conclusions in this regard were reached. The appellant company focuses on whether it is appropriate to judge delivery on the basis of the last five years performance and the Council's performance on delivery over the last two years.
102. The Council, on the other hand, has relied on the terms of the judgement in *Cotswold v SoS for Communities and Local Government* [2013] EWHC 3719<sup>137</sup>. Whilst Mr Justice Lewis indicated that there was an entitlement to have regard to a five year period for assessing if there had been a record of persistent under delivery, the decision-maker in the instance of the case subject to judgement had had regard to the twenty year period of the Structure Plan and a ten year period<sup>138</sup>.
103. The previous Inspectors both concluded that 5% was the appropriate buffer based on the Council's delivery record over a longer period than five years. In the case of Inspector Fieldhouse she considered delivery over an 11 year period<sup>139</sup>. Therefore, the Council consider it appropriate to take a ten or twenty year period to examine performance on delivery to justify the percentage buffer applied. Mr Briggs evidence<sup>140</sup> shows that from 2001-02 to 2013-14 delivery was variable, with an overall modest surplus against targets. Inspector Papworth concluded that on balance the record of delivery was varied and should not be regarded as persistent under-delivery<sup>141</sup>. Consequently, the appropriate application of paragraph 47 of the Framework is to apply a buffer of 5%.

### *Supply*

104. In respect of supply, the issue is essentially whether the current trajectory is accurate on the basis that the identified sites are deliverable<sup>142</sup>. The Council consider they are. The appellant company's case relates to when the development of three major sites may come forward<sup>143</sup>, and so whether they should be identified within the five year trajectory.
105. Harperbury Hospital has been identified for both a school site as well as housing. It is proposed that both forms of development would come forward in a complementary manner. Therefore, the competing scenario promoted by the appellant company is not correct and does not set up a barrier to the development of the site.
106. Mr Lane suggested a planning application on Smug Oak Lane was likely to be refused. However, this was not on the grounds of the principle of development, but on design. The Council is confident any shortcomings can be resolved. Inspector Fieldhouse considered this site deliverable, albeit beyond 2015<sup>144</sup>.

<sup>137</sup> Lane Appendix 29-28

<sup>138</sup> Paragraph 50 of Approved Judgement–Lane Appendix 29-28.

<sup>139</sup> Paragraph 31 of Fieldhouse decision.

<sup>140</sup> Briggs Proof 7.12 – 7.19.

<sup>141</sup> Papworth decision paragraphs 23 & 24.

<sup>142</sup> Paragraph 47 footnote 11 of the Framework.

<sup>143</sup> Position confirmed by Mr Lane in cross examination. The three sites are Harperbury Hospital, Smug Oak Lane and Civic Centre.

<sup>144</sup> Fieldhouse decision paragraph 47.

107. Recent discussions on the Civic Centre site with landowners indicate that negotiations should have been concluded by the end of 2014. Scheme development and project procurement will follow with planning permission being anticipated to be granted in late 2015/early 2016.
108. In all three cases it is considered they make a significant contribution to the identified future supply of housing in the District fulfilling the terms of footnote 11 of the Framework.
109. The Council accepts that substantial weight should be given to the unmet need for housing<sup>145</sup>. However, the Hunston judgement identified that the scale of the shortfall is likely to be one consideration to be reflected in the decision on very special circumstances<sup>146</sup>.

#### *Local Plan Process*

110. The appellant company also contends that the local plan process in St Albans District is broken. It seeks to require weight on the basis that the Council has delayed in producing a local plan. However, in the Hunston judgement it is clear that planning decisions are ones to be arrived at in the public interest, balancing all the relevant factors and are not to be used as some form of sanction on local councils<sup>147</sup>. The Council has undertaken a proper and appropriate plan-making process. The appellant company acknowledges that the proper place for identifying appropriate strategic housing sites, along with the appropriate amount of housing to plan for, is within the local plan process. It is the delay which is of concern to the appellant company<sup>148</sup>. However, the local development scheme<sup>149</sup> sets out a reasonable timescale in step with the identified land supply.
111. The criticism levelled at the local plan evidence base is unfounded. The SHMA (Housing Vision report) was undertaken over a single market area which was accepted by the appellant company as equating essentially to the administrative boundaries of St Albans City and District<sup>150</sup>. In addition, the extent of home movers' self-containment had been taken into account by Housing Vision<sup>151</sup>.
112. It was also suggested that the SHMA figure of 586 was wrongly rejected by the Council as being that to take forward in the plan-making process. However, Housing Vision presented a range of need figures recommending one based on a five year migration trend period<sup>152</sup>. The report acknowledged that the most appropriate housing need figure was for the Council to decide upon, based on the evidence available to them. In this instance the Council initially settled on the figure of 436 as the full OAN for the District, but did acknowledge that this figure may change through the local plan process. The Council is undertaking proper steps to appropriately plan for the housing provision of its area.
113. The promotion of strategic sub-areas S1 and S2 was also raised as a shortcoming of the Council's strategy. It was suggested they were meeting, in

<sup>145</sup> Smith proof paragraph 6.49.

<sup>146</sup> Hunston judgement paragraph 28.

<sup>147</sup> Hunston judgement paragraph 31.

<sup>148</sup> Mr Lane in cross-examination.

<sup>149</sup> Inquiry Doc 5.

<sup>150</sup> Lane Appendix 36 page 33.

<sup>151</sup> Lane Appendix 36 page 30 paragraph 1.64.

<sup>152</sup> Period most commonly used in official projections.



part, the needs of Dacorum Borough Council (Hemel Hempstead). It was also suggested the Council had not fulfilled its duty to co-operate and that Dacorum Borough Council would be likely to object to the sites meeting the needs of St Albans. However, there is on-going engagement with neighbouring councils, including Dacorum, who welcome the infrastructure requirements of the strategic sub-areas, and Welwyn & Hatfield Borough Council, who have engaged with St Albans with regards to the production of their SHMA. As the emerging SLP evolves through the various stages to adoption, issues of mutual interest with neighbouring authorities will be addressed, particularly in respect of future associative outputs<sup>153</sup>.

114. This is not a broken local plan system. There is presently a gap in the local plan framework. However, given the extent of the housing land supply available<sup>154</sup>, this is not of great significance as there has been substantial progress in the production of the plan and a clear timetable towards adoption.
115. The Council has recognised that even taking the housing need figure of 436 there will be a need for a greenfield Green Belt release to meet that housing need through the plan period<sup>155</sup>. Nonetheless, the composite appeal site is not required to meet the identified need. The appropriate local plan housing requirement and which sites will be used to meet that requirement is a matter for the future. The current appeals are not the place for resolving these issues. Consequently, only limited weight should be placed upon the fact that greenfield, Green Belt releases will be required.
116. The appellant company's conclusion that the composite appeal site is suitable for housing is predicated upon the conclusion that the developments would not cause harm. However, the Green Belt Review<sup>156</sup> identified that SA-S4 has strong countryside characteristics; that the small scale enclosed character of the land make it a valuable part of the countryside<sup>157</sup>; that as part of the wider site (SA-S4) it made a significant contribution to safeguarding land from encroachment<sup>158</sup>. The Green Belt Review reports consider the relative acceptability of developing sites for housing ie the least worse sites and do not of themselves determine the acceptability or suitability of development. They are high level reports to inform the plan-making process and no substitute for a detailed assessment of either appeal sites A or B. Therefore, harm has been identified and this should be weighed into the balance in terms of an assessment of the sustainability of the development.

#### *Affordable housing/Community benefits*

117. In respect of the contribution that the appeal proposals would make to the provision of affordable housing, the Council accept that significant weight should be attached to the shortfall. However, whilst significant it is not overriding. The

<sup>153</sup> Inquiry Doc 24.

<sup>154</sup> Whether that is derived from 532 or 586 figures.

<sup>155</sup> Green Belt Review Purposes Assessment (Oct 2013) (Lane Appendix 42) & Green Belt Review Sites & Boundaries Study (Feb 2014) (Lane Appendix 43) – these reports were predicated on a conditional basis, as identifying the potential for development, not that the identified sites should be developed.

<sup>156</sup> SKM reports of Oct 2013 and Feb 2014 – Lane Appendix 42 & 43.

<sup>157</sup> Green Belt Review paragraph 8.2.5 Lane Appendix 42.

<sup>158</sup> Green Belt Review paragraph 11.1.14 Lane Appendix 43.

35% proffered is provision required by policy. Any Green Belt site that does come forward would be similarly required to make the same provision.

118. The up-grading of the Ancient Briton junction should be afforded only some weight<sup>159</sup> primarily because the junction improvements are not necessary in the absence of the proposals. The evidence in this regard has not changed since the Fieldhouse Inquiry and so the weight she attributed to this element should remain the same.
119. Limited weight was also given to the provision of the tennis courts by Inspector Fieldhouse. There was no evidence of a specific need or direct benefit of facility at that time. Mr Lane in cross-examination confirmed the situation has not changed. Further, no mechanism has been provided to transfer the tennis courts to the school; or provide future management of the courts; or monies for maintenance/management; or scheme were the facility to be transferred or offered to a third party such as a residents group or similar. Its long term management and security for community use is not, therefore, safeguarded.

#### *Care home provision*

120. Turning to the Care Home<sup>160</sup>, there is no need for one. The identified need in the District is for 163 care home beds from 2011-2021<sup>161</sup>. This relates to needs predicated from both private and Council sources. The SHMA identified extra care requirements to 2021 as being in the order of 400 units<sup>162</sup>. The appellant company's position is that extra care included care home provision. However, Mr Briggs in evidence confirmed that according to Housing Vision this did not relate to care home provision but C3 uses only. Extra care was equivalent to flexi care referred to in the Accommodation Services document. The SHMA confirms this, with the appellant company's housing figures being a sub-set of the overall housing needs. The SHMA must be considered in the context of considering housing, not institutional care homes. As a result, the appellant company has tried to consider a need figure for a type of provision which is different from a care home.
121. Nonetheless, there have been a number of approvals for care home accommodation within the urban area<sup>163</sup>. There have been 168 beds completed since 2012 with a net gain of 82 beds<sup>164</sup>. With a number of schemes for further care home proposals in the pipe line, there is no need for this scheme. In addition, as noted by Inspector Fieldhouse<sup>165</sup>, there is no evidence that a Green Belt site is necessary in the absence of any other urban sites likely to come forward before 2021.
122. The appellant company has suggested that were the care home element of the scheme to be rejected, a split decision in the case of Appeal A could still be delivered. However, the Council do not support this view, as a gap would be left in the development which could not be simply filled by landscaping. The removal

<sup>159</sup> Fieldhouse decision paragraph 71.

<sup>160</sup> Appeal A only.

<sup>161</sup> Flexicare Housing Hertfordshire page 19 - Briggs Appendix LPA/CB/1.18.

<sup>162</sup> Pro rata figure from a 2031 figure – Lane Appendix 36-264.

<sup>163</sup> Including 64 beds at King Harry Lane and 63 beds at Camp Road – Briggs proof paragraph 9.8.

<sup>164</sup> Briggs proof paragraph 9.16.

<sup>165</sup> Fieldhouse decision paragraphs 64 and 65.

of a building the size of the care home would necessitate reconsideration of the totality of the development.

### *Sustainable development*

123. The Council do not accept that the proposed developments are sustainable within the meaning of the Framework. The presumption in favour of sustainable development does not apply in any case given the operation of paragraph 14, footnote 9 of the Framework.
124. Essentially in respect of the environmental limb of sustainability, Green Belt harm by virtue of compromising the various purposes of including land within it, along with Green Belt visual matters are all factors in the assessment of whether development is sustainable. The development causes harm in landscape and visual terms and so cannot be regarded as being sustainable.
125. The appellant company's assessment of sustainability did not consider landscape issues. Their evidence was that Green Belt issues were policy designations, and not ones to be considered under the sustainability question. That is clearly not the right approach given the relevance of landscape and visual issues when considering whether there is a contravention of the purposes of including land in the Green Belt.
126. In addition, in relation to the social and economic elements of sustainability, these would be capable of being provided by any housing development in a greenfield, Green Belt location. They are not matters which should be considered as being very special of themselves or contributing significantly to very special circumstances.

### *The Balance*

127. In these cases there are a series of circumstances which led cumulatively to a finding of harm. There is no principle that very special circumstances will exist unless some extra or additional harm is identified<sup>166</sup>. The lack of a five year housing land supply, whether at a higher or lower level depending on which figure is settled upon, weighs heavily against the proposals, particularly taking into account the lower level of benefit proffered. The weight to be placed on housing need as a single issue in a Green Belt context is tempered by the terms of a recent Ministerial Statement<sup>167</sup> and the PPG. In this instance, for the reasons set out above, and weighing all elements<sup>168</sup> into the balance of the decision, the hurdle of very special circumstances cannot be overcome.

### **Written Representations from interested persons<sup>169</sup>**

128. Representations were received at the time the planning applications were considered by the Council<sup>170</sup>. Further letters were then received in relation to these appeals. The following is a list of the essence of the concerns raised<sup>171</sup>:

<sup>166</sup> As suggested by the appellant company – relevant appeal decisions: Little Chalvedon Hall-Lane Appendix 49, Cherry Hill – Inquiry Doc 6, Land off Glebelands, Thundersley– Smith Appendix 5.

<sup>167</sup> Briggs Appendix LPA/CB/1.2.

<sup>168</sup> Including the provision of affordable housing and community and infrastructure benefits.

<sup>169</sup> Both at the application and appeal stage of both appeals.

<sup>170</sup> Source the Officer's Reports to Planning Committee on both Appeals A and B.

<sup>171</sup> No third parties addressed the Inquiry.

- As inappropriate development in the Green Belt there are no very special circumstances to warrant permitting the proposal;
- Proposal would erode the countryside;
- Would represent urban sprawl;
- Cause a loss of openness;
- Erosion of Green Belt buffer;
- Premature development;
- Cause increased traffic and congestion with implications for highway safety, including the safety of children at local schools;
- The Ancient Briton Junction is at capacity;
- Impact on foul water drainage;
- Local schools are already at full capacity; proposal would generate significant extra demand;
- Will impact on medical service provision;
- No need for care home with sufficient provision available on brownfield sites;
- Proposals have not fundamentally changed from the schemes refused previously;
- Proposed demolition of No 126 Harpenden Road and provision of new access will adversely impact on the streetscene;
- Would impact on the habitat of bats;
- Short rear gardens would cause loss of privacy in neighbouring dwellings;
- Loss of grade 2 farm land;
- Flooding concerns;
- No need for tennis courts; and
- Transport statement flawed.

### **Conditions and Obligations**

129. Lists of agreed conditions were submitted by the parties at the Inquiry (Inquiry Docs 19 & 20). Following discussion at the Inquiry I have amended and amalgamated a number for clarity, precision, elimination of duplication, and taking into account guidance in this regard. In general, the conditions relate equally to both Appeals A and B other than a few minor changes but separate schedules of conditions for each appeal are produced in Annex A for clarity.

130. Standard conditions are required on the approval of the reserved matters and on the commencement of development. Confirmation of the approved plans and documents setting out the parameters of the proposed developments is needed to define the site and its layout. Further conditions are required to ensure that the submission of reserved matters and later details

comply with the considerations taken into account in the approval of the outline permission.

131. Taking into account the topography of the composite site it is necessary to include a condition to secure details of the existing and proposed ground/slab/ridge levels.
132. A condition relating to surface water run-off, foul and surface water drainage is also deemed necessary to ensure adequate arrangements are in place to respond to local concerns, particularly in relation to flooding and in the interests of environmental impact.
133. Details of the road, footways, access, turning head and cycleways is required to ensure the standard of construction; their actual timetabled provision; and their retention for purpose.
134. The condition relating to the Construction Management/Method Plan and Statement is required in order to protect the amenities of nearby residents and general amenity.
135. A condition relating to the submission and implementation of the green travel plan, the provision and retention of the new public footpath/cycleway routes associated with the scheme is necessary to provide sustainable transport objectives, giving people a real choice about how they travel.
136. Conditions relating to the protection of existing trees and hedgerows and the establishment and management of the pond and new landscaped areas are required both in the interest of amenity as well as biodiversity. For the same reason, conditions dealing with the future management; long term wellbeing of these natural elements; and their protection during the construction phase are necessary.
137. A more detailed condition requiring an arboricultural method statement, in relation to the retention and protection of the existing trees and hedgerows on the site, is required in circumstances where these features are important within the character and appearance of the countryside.
138. The locality has been identified as having some possible archaeological interest. Therefore, a condition requiring a programme of investigation is justified.
139. Although evidence is limited regarding whether there is any contamination of this agricultural land, it is reasonable that investigations should be carried out in relation to possible contamination. Therefore, for this reason conditions are imposed.
140. Details of the facilities for the storage of refuse are required in the interests of visual amenity and living conditions.
141. Limitations on external lighting are necessary to minimise visual impacts and the character of the countryside as is the control of roof alterations to the new houses. The Council suggested all extensions and additions to the new houses

including buildings in the gardens should be controlled. However, in the circumstances of an urban area this seems an excessive unjustified response.

142. I have considered the appellant company's request that in Appeal A, were the care home not to prove acceptable when the residential element prevailed, a split decision could be issued. However, whilst the care home would be located in the north western corner of appeal site A it is an integral part of the design concept of the layout and scale of development. Were the development to go ahead it would leave an unsolved hole in the development. Whilst it could be landscaped it seems to me that were the care home to have been omitted from the scheme, the layout of the dwellings would have been likely to have been different. On this basis I do not consider that, in the context of the layout proposed, the care home can be divided out as an independent part of the overall development to justify a split decision in this instance.
143. The statutory provision for planning obligations is found at Section 106 of the Town and Country Planning Act 1990 (as amended) with further policy guidance in relation to the exercise of that power set out at paragraphs 203-204 of the Framework. The statutory regulation of planning obligations is contained within Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 which provides that, where a determination is made which results in a planning permission being granted for development, a planning obligation may only constitute a reason for granting planning permission if the obligation meets the tests set out in Framework paragraph 204. As such, it would be unlawful to take an obligation into account if it does not meet the tests. The signed UUs (Inquiry Docs 17 & 18) deal with the provision of the affordable housing (35%); sustainable transport/traffic calming contributions; green travel plan; leisure, library, youth, childcare, nursery, primary education, secondary education contributions; highway works; provision of tennis courts; setting up of management entity. Other than the tennis courts, a matter which I shall return to later in this report, all of these matters are accepted as being in compliance with Planning obligations guidance – toolkit for Hertfordshire<sup>172</sup>.

### **Inspector's Conclusions**

144. I have reached the following conclusions based on the evidence given at the Inquiry, the written representations made and my inspection of the site and its surroundings. The numbers in square brackets [] denote earlier paragraphs in this report from which these conclusions are drawn.
145. The composite appeal site lies within the Green Belt and it is a matter of agreement that the developments proposed comprise inappropriate development [31]. As set out in the Framework paragraph 87, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Substantial weight is given to any harm to the Green Belt<sup>173</sup>.
146. The Council has a shortfall in its five year housing land supply [31, 94, 95]. Accordingly, having regard to paragraph 49 of the Framework, relevant policies

<sup>172</sup> Produced by Hertfordshire County Council – Extract attached to Inquiry Doc 12.

<sup>173</sup> Paragraph 88 of the Framework.

for the supply of housing should not be considered up to date. In such circumstances, Framework paragraph 14 confirms that permission should be granted for sustainable development unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole or specific policies in the Framework indicate development should be restricted. The latter point, expanded on within Framework footnote 9, means that despite out of date policies, the presumption in favour of granting planning permission for sustainable development proposals (Framework paragraph 14) would not apply where specific policies in the Framework indicate development should be restricted<sup>174</sup>.

147. Therefore, the main considerations in this case relate to:

- the effect of the development proposed on the openness and purposes of the Green Belt;
- the effect on the character and appearance of the surrounding area; and
- whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the developments proposed (both Appeals A, including care home element, and B).

*Openness and purposes of the Green Belt*

148. Framework paragraph 79 confirms that the Government attaches great importance to Green Belts. It sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts being their openness and permanence.

149. As a greenfield agricultural field the composite appeal site is open, being free from built development. Notwithstanding that, the development proposed would include areas of open space and ecological enhancements, the proposed new dwellings and the care home (Appeal A only) would reduce significantly the openness of this part of the Green Belt resulting in harm to openness as a matter of fact [31, 34].

150. The appellant company maintains that the current open character of appeal site B is only appreciated in localised views, and that it is not read within any wider open landscape context, in part, due to the topography of the land [42]. It is also the appellant company's intention to reduce the visual impact of the development through landscaping [41]. To my mind however, those considerations relate more to character and appearance, than an assessment in relation to openness. The concept of openness does not relate directly to visibility or visual harm but to a lack of development.

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<sup>174</sup> The Framework does include specific policies indicating that inappropriate development, which includes general housing, should be restricted in the Green Belt except in very special circumstances.

151. In both cases the proposed developments would result in the permanent loss of Green Belt<sup>175</sup> and its openness. In this way the fundamental aim of the Green Belt designation would be harmed.
152. Paragraph 80 of the Framework sets out five purposes served by Green Belt.

*To check unrestricted sprawl*

153. The composite appeal site adjoins the built up area of St Albans. Appeal site A runs east from the rear garden boundaries of the houses in Harpenden Road, the northerly cul-de-sac, and the properties in Sandridgebury Lane, across to the existing easterly field boundary hedge [11 & 12]. A development of some 116 dwellings (some being two and two and half storeys) and a care home with a deep and wide overall floor plan resulting in a bulky building, would spread out into the open countryside beyond the limits of the established urban area, setting a new urban edge to the playing fields to the north and to the further open land to the east. This would represent unrestricted sprawl [88]. Consequently there would be some harm in this regard.
154. Inspector Papworth identified that the area of the composite site enclosed by the cul-de-sac to the north, the built form along Harpenden Road, and a short frontage onto Sandridgebury Lane could be regarded as rounding-off and not as sprawl<sup>176</sup>. This essentially reflects the appeal site in relation to Appeal B. He considered the development of this area would amount to a thickening of the depth of built-up area on the east side of the road. However, whilst the Inspector conveys a view on the development potential of the appeal site he does not indicate the extent of such development in its built form.
155. However, in respect of Appeal B, the appellant company has submitted a layout plan with scale and access to be considered. The proposed development would extend out from the rear gardens of the houses on Harpenden Road to the notional rounding-off line. This, on plan, appears as a straight diagonal line across the composite appeal site taking no account of the topography of the land. The layout takes full advantage of the land available, with dwellings closely addressing the linear outer boundary of the appeal site. Whilst acknowledging the comments of the previous Inspector, in considering a specific layout and scale of development, I find that the proposed extent and intensity of development would represent unrestricted urban sprawl.
156. I have taken into account that the appellant company has indicated that they would provide a landscaping belt along the eastern boundary and that the linear nature of the rounding-off line could be varied to introduce a softer less rigid line of development across the field<sup>177</sup> [37, 38, 39, 40]. However, firstly I am charged with considering the scheme as submitted by the appellant company and as determined by the Council. Secondly, this proposal is for 85 dwellings. As part of this appeal I do not see how an appropriate mechanism could be put in place to re-visit the layout and extent of the development.

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<sup>175</sup> Appeal A 5.136 hectares; Appeal B 2.8 hectares.

<sup>176</sup> Paragraph 12 of Papworth decision.

<sup>177</sup> Oral evidence of Mr Wright.



157. Therefore, all in all, I consider that the developments proposed would spread the existing extent of built development further into the Green Belt, equating to sprawl on this edge of the settlement, therein resulting in some harm [31].

*To prevent the merging of neighbouring towns*

158. The proposed developments would not contribute to the merging of neighbouring Harpenden with St Albans, the two urban centres being sufficiently distant from one another to obviate such an effect.

*To preserve the setting and special interest of historic towns*

159. The composite appeal site is set on the residential urban edge of St Albans where development is comparatively recent to that of the historic core of the City. There is no suggestion that the appeal proposals would adversely impact on the setting and special interest of the City. Taking into account the character and nature of the adjoining development and its distant relationship with the City core I do not consider this purpose of the Green Belt to be relevant in this instance.

*To assist in urban regeneration by encouraging the recycling of derelict and other urban land*

160. The Council has acknowledged that it will be necessary to release greenfield, Green Belt land to meet the future housing needs of the District<sup>178</sup> [45 & 115]. This was not a matter of disagreement between the parties.

161. In this regard, I am mindful that the composite appeal site is identified within the Green Belt Review as part of strategic site SA-S4. However, as already highlighted this review was to identify potential sites for potential release from the Green Belt considering their capacity and ranking them in terms of their suitability. It was compiled, along with the SHMA, to inform the production of the SLP considering the relative acceptability of developing sites for housing. In itself it does not determine the acceptability or suitability of specific development proposals. The Review was not to identify sites as suitable for release from the Green Belt, but to distinguish the lesser harm areas from the rest of the Green Belt<sup>179</sup>. It does not pre-empt the outcome of any planning application where a wider range of economic, social and environmental factors would be considered [116].

162. The consideration of the ranked strategic sites would be and, is being, considered further through the local plan process. This is the correct forum for such strategic decisions leading to potential changes to the Green Belt boundaries.

163. Given that the essential characteristics of the Green Belt are its permanence and openness, the Framework makes it clear that its boundaries should only be altered in exceptional circumstances, and then through the local plan process. It is not for me to prejudge the outcome of that process. Overall, I am not

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<sup>178</sup> Council's growth agenda.

<sup>179</sup> Para 2.2 Briggs rebuttal

persuaded that the development proposed materially advances this particular Green Belt purpose.

### *Green Belt conclusion*

164. The appeal proposals would significantly reduce the openness of the Green Belt, to its considerable detriment and would amount to unrestricted sprawl compromising, in the main, two of its purposes, thereby adding appreciably to the substantial harm by virtue of inappropriateness.

### **Other harm**

#### *Character and appearance*

165. Appeal A – The north-east area of the appeal site stands on higher ground. As I saw at the site visit, development in this area would have particular prominence when viewed from the east and south [91]. Due to the internal conditions of usage the care home building would fail to respond to the changes in level of the site. If anything, its design would need to compensate for those changes, producing a large footprint building with continuous floor levels. The resultant proposed bulk and scale of the care home building, whilst viewed in the context of the filling station, with its forecourt canopy, would appear uncharacteristic of development in the area which is more of a domestic scale concentrated on detached and semi-detached houses [37]. It would also result in the spread of development between the school site/development along Sandridgebury Lane and the rugby club site to the north, eroding the countryside character and consolidating the appearance of development in depth along the main road corridor.
166. The visual prominence of the care home when added to that of the two and two and half storey development particularly in the north-east area of the site would amount to a visually dominant form of development. The visual prominence of the last existing house in the cul-de-sac, in wider landscape views, emphasises the potential impact of the proposed development [92].
167. In this way, development in Appeal A would not successfully integrate with the existing landscape, being out of scale and character with the surroundings and would unacceptably intrude into the open character and appearance of the countryside landscape. Thereby, the terms of LP Policies 1 and 69 would be compromised [93].
168. Appeal B<sup>180</sup> seeks to respond to the comments of the previous Inspector in respect of the potential for development within the area between the rear gardens of the houses on Harpenden Road and the rounding-off line [37]. The concentration of built form essentially in the western half of the appeal site where levels do drop down, or offer an opportunity for some setting-in of floor levels would assist in reducing the visual impact of the proposal in the wider landscape. The existing residential development along Harpenden Road would similarly serve as an urban backdrop. However, it would still be visible when viewed from Sandridgebury Lane, although the extent of views would diminish with distance

<sup>180</sup> Care home building not included.

towards the east, and from the footpath running along the Long Spring boundary belt of trees adjacent to the industrial estate [92]. In both cases the extent of the visibility of the proposal would change with the seasons as leaf cover changes.

169. The appellant company essentially promotes the extent, scale and layout of its development as being an acceptable extension of the existing urban edge of development [39 & 41]. I do not agree. The neighbouring development along Harpenden Road is linear in nature and, in the main, is concentrated along the road frontage. The rear gardens which back onto the composite appeal site are long and serve as a verdant transition between the built development of St Albans and its green countryside setting. What is proposed is a development adopting a hard urban, linear edge where built form closely addresses the open countryside landscape and, other than the pond area and the tennis courts, would be dominated by built form. A three metre wide landscaping belt, where there is currently none, would take some time to establish even if more mature stock was included, and one of its purposes would be to screen the proposed development. This implies some necessity to create a visual barrier between the development and the landscape. It does not imply a complementing integration of development into the landscape. The appellant company's vague reactionary offer of a more extensive landscaping belt on the land beyond the rounding –off line similarly does not reassure me that the proposed development would not unacceptably harm the character of the countryside.

170. Whilst I accept Inspector Papworth's view that development within the rounding-off line could be assimilated with the grain of existing development and take advantage of small changes in levels to reduce the visual prominence<sup>181</sup>, he did not indicate the extent or layout of the development which might be considered to be acceptable. In the case of Appeal B I have considered the proposed scale and layout and find that even given the localised nature of views of the development it would unacceptably harm the character and appearance of the countryside contrary to LP Policies 1 and 69. Even given that these policies were adopted in 1994 their aims are broadly in line with those of the Framework with regard to good design and protecting the natural environment.

### **Other considerations**

171. As set out at the start, the harm to the Green Belt by reason of inappropriateness is acknowledged. I have also found that there would be harm to the openness, permanence and at least two of the stated purposes of the Green Belt [31]. Framework paragraph 88 confirms that, when considering any planning application, substantial weight is to be given to any harm to the Green Belt and that very special circumstances will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The case for the appellant company in this regard, is based largely on the shortfall in housing land supply and the package of benefits secured by planning obligations.

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<sup>181</sup> Papworth decision paragraph 15.

### *Housing need and supply*

172. To boost significantly the supply of housing, Framework paragraph 47 identifies that Councils should ensure that their local plans meet the full, objectively assessed needs (OAN) for market and affordable housing in the housing market area, as far as is consistent with the policies of the Framework. In addition, they must identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer of either 5% or 20% (moved onward from later in the plan period), to ensure choice and competition in the market for land. The 20% buffer would be applied where there had been a persistent under delivery of housing.
173. The Council accept that the housing requirement within the LP is out of date and that they do not have a five year supply of housing land [31 & 94]. They also accept that significant weight should be placed upon the housing shortfall in these cases [95]. Based on the evidence there is no reason to question this agreed position. It is the extent of the shortfall in housing land supply which is the point of contention in this case and the amount of weight which should be attributed to it.
174. The judgement of Mr Justice Hickinbottom in *Gallagher Estates Ltd v Solihull MBC* clarifies that, where there is no local plan, then the housing requirement for a local authority (for the purposes of paragraph 47 of the Framework) is the full OAN<sup>182</sup>. The judgement further sets out that full OAN for housing is the objectively assessed need for housing in an area, leaving aside policy considerations<sup>183</sup>. It is therefore closely linked to the relevant household projection, but is not necessarily the same. The judgement also clarifies that the requirement to meet full OAN equally applies when considering development control decisions. Consequently, it is reasonable to consider the OAN in the context of the policies within the Framework as material considerations in the balance of this decision.
175. The housing requirement was also defined by Mr Justice Hickinbottom as the figure which reflects not only the assessed need for housing, but also any policy considerations that might require that figure to be manipulated to determine the actual housing target for an area.
176. The Council has a number of options for candidates for the title OAN, including the figure of 436 dwellings per annum promoted by the Council as the basis for preparing the draft SLP. However, at the Inquiry the Council relied upon the figure of 532 dwellings per annum as the relevant interim full OAN and adopted for development control purposes, based on the 2013 DCLG household projection figures [96]. Their justification for using this figure was that it was based on the most recent figures produced from Government and the PPG recognises such figures as a starting point for consideration of need<sup>184</sup>. However, as highlighted by the appellant company, the ONS 2012-Subnational Population Projections for

<sup>182</sup> The Court of Appeal supported this position - Case No: C1/2014/1702 dated 17 December 2014 - Judges: Laws LJ; Patten LJ; Floyd LJ

<sup>183</sup> The Court of Appeal supported this position - Case No: C1/2014/1702 dated 17 December 2014 - Judges: Laws LJ; Patten LJ; Floyd LJ.

<sup>184</sup> PPG ID 2a-015.

districts in England, published in May 2014, up date the basic DCLG population data which undermines the calculation of the OAN by the Council<sup>185</sup> [49].

177. Nonetheless, the Council's own SHMA<sup>186</sup> forms a key piece of evidence to facilitate the preparation of the SLP. The evidence base of this document post-dates that of the 2013 DCLG projections<sup>187</sup>. The appellant company initially promoted the Housing Vision figure of 586 dwellings per annum as being the lowest conceivable figure to be considered as full OAN [50].
178. I appreciate the target and approach taken within the Housing Vision Report has yet to be tested, but nonetheless it does reflect the Council's own most recent evidence base and has been produced taking into account the requirements of the Framework in this regard.
179. As part of a Section 78 appeal process it is not for the decision-maker to seek to carry out some sort of local plan process as part of determining the appeal<sup>188</sup> and ascertaining the appropriate OAN for the future development of the District. However, I am mindful that the Housing Vision figure is considerably greater than the base figure for the SLP<sup>189</sup>, and that produced based on the DCLG figures.
180. In addition, with the recent publication of the 2015 household projections both parties have revised their positions on the relevant full OAN in these cases. The Council has indicated that a figure of 637 new dwellings per annum may be more appropriate, although I appreciate this has not been tested as part of the LP process [99]. Nonetheless, this is closer to the figure that the appellant company originally promoted of 622 [49]. In light of this recent up to date evidence the appellant company now favour 674 dwellings per annum<sup>190</sup> [55].
181. In these circumstances, the extent of the OAN lacks clarity, with the Council itself presenting a confused position. The Framework places emphasis on the use of up to date evidence to achieve an objective assessment. Therefore, taking a pragmatic approach, I consider that the full OAN is likely to be somewhere between the two promoted figures, particularly in the knowledge that the SHMA is currently being up dated. I am mindful that local needs assessments should be informed by the latest available information. The Framework is clear that Local Plans should be kept up to date. A meaningful change in the housing situation should be considered in this context, but this does not automatically mean that housing assessments are rendered outdated every time new projections are issued<sup>191</sup>. The Housing Vision figure, therefore, is also still of relevance until such time as the SLP has completed its passage through the process of examination to final adoption. The Housing Vision Report does recognise the potential for other figures to amount to OAN. Whichever figure is settled upon, clearly there is a significant shortfall in meeting housing need and the publication of the 2015 housing projections makes the situation more pressing for the Borough.

<sup>185</sup> The ONS May 2014 data shows an increase of some 7,500 in population for the St Albans District.

<sup>186</sup> Lane Appendix 36 – Housing Vision Report.

<sup>187</sup> As well as the previous two appeal decisions and the original Hunston judgement.

<sup>188</sup> Hunston judgement paragraph 26.

<sup>189</sup> 436 v 586.

<sup>190</sup> 694 dwellings per annum with a 3% vacancy rate.

<sup>191</sup> 2012-2037 Household Projections were published on 27 February 2015 – PPG ID 016.

182. A further provision to be applied to the overall calculation of need, once made, is an additional percentage buffer moved forward from later in the plan period to ensure choice and competition in the market for land<sup>192</sup>, and to ensure that there is sufficient land to accommodate some flexibility to ensure that the identified need can be met. In respect of the application of an appropriate buffer, Inspector Papworth found that a 5% addition was supported by the evidence. The figures of delivery are difficult to appraise due to the change in the overall targets between Structure Plan/RS and now the emerging SLP figure<sup>193</sup>. Over the last fourteen years, in general terms, when measured against a combination of these targets, delivery is mostly above target. In the last five years delivery has been less positive with under delivery being marked in the last two years.
183. The PPG requires a longer term view to be taken in addressing this issue as such an approach would be likely to take account of the peaks and troughs of the housing market cycle<sup>194</sup>. In addition, the introduction of the Framework and its requirements, specifically relating to housing provision, was in response to the effects of the recession and the objective aim of boosting the supply of housing. Mr Justice Lewis in the Cotswold case<sup>195</sup> set out that, in principle, regard should be had to a five year period for assessing if there had been a record of persistent under delivery. However, the decision-maker in the Cotswold case had looked at a longer period, including that of the Structure Plan, as have I.
184. In the circumstances of the revocation of the RS, the uncertainty of the appropriate OAN, economic and market circumstances, and the emerging nature of the SLP, I consider to focus purely on the last five years would be to unfairly penalise the Council when in overall terms they can demonstrate a long term record of good delivery, albeit mixed and varied. In this context, an additional buffer of 5% is reasonable and justified [56, 101, 102, 103].
185. However, there is no indication that any shortfall has been factored into the Council's calculation [97]. This results in an element of housing need that should be taken into account and delivered within the five year period and not delayed until later (Sedgefield method). This gives me cause for concern regarding the reliability of the Council's promoted case on its five year housing land supply.
186. In addition, in respect of the promoted supply of land there are still two long committed sites to be developed contributing towards the five year housing land supply and beyond [51, 104-108]. The Council make no allowance for non-delivery of sites. In addition, there is some doubt over the following sites in respect of whether they will deliver homes within the five year period [55 & 56].
187. Firstly, Harperbury Hospital is located wholly in the Green Belt. Although the Council assure me that pre-application processes are progressing, this development involves two elements of development (a school and residential). 210 dwellings are expected to be delivered between 2016 and 2019. In the absence of evidence to the contrary and taking into account development progress, this would seem optimistic [105]. In addition, in respect of the Civic Centre site, dialogue is on-going, and whilst I do not doubt that the site is

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<sup>192</sup> Paragraph 47 of the Framework

<sup>193</sup> Briggs proof 7.10-7.19.

<sup>194</sup> PPG ID 3-035.

<sup>195</sup> Case No CO/3629/2013 – Lane Appendix 29-28.

capable of providing residential accommodation, with multiple ownerships involved the timescale is likely to be subject to slippage<sup>196</sup> [107].

188. In the main, the above factors do not reassure me that the overall assessment of land available to meet a five year housing land supply is robust and can be relied upon.

*Conclusion on housing need and supply*

189. There is an acceptance that the Council are unable to demonstrate a five year supply of housing land. Framework paragraph 49 sets out that, in such circumstances, relevant policies for the supply of housing should not be considered up-to-date. It is an agreed position that there is a policy vacuum in respect of housing supply. Whilst a lack of a five year land supply of deliverable housing land does not provide an automatic 'green light' to planning permission, a balance must be struck. The deficiency in land supply will carry substantial weight in that balancing exercise. However, the crucial question for the decision-maker is not: is there a shortfall in housing land supply? It is: have very special circumstances been demonstrated to outweigh the Green Belt objection? This question will be returned to later in the overall conclusions of this report.
190. The Council's promoted housing land supply of 3.73 years has been shown to be suspect and to be treated with caution [99 & 100]. This is further confirmed by the Council's stance on affordable housing provision [117]. LP Policy 7A - Affordable Housing seeks to secure at least 200 affordable homes per year through new house building and conversions [21, 61]. However, the Housing Vision report highlighted a significant shortfall in the provision of affordable homes, the need being established at 8,072 between 2011 and 2031. This equates to 404 affordable dwellings per annum [61]. That essentially equates to some 90% of the overall general housing target being required for affordable housing. The Council has also failed to meet its affordable housing need in 19 out of the last 20 years. The Council suggest that, firstly, the 200 dwellings per year is an aspirational target and secondly, the need for affordable housing should be considered in the context of likely delivery.
191. PPG ID 2a-029 sets out that an increase in the total housing figures included in the local plan should be considered where it could help deliver the required number of affordable homes. In this instance, once again the local plan process is the forum in which the affordable housing need, its context, and its impact on the total housing figures will be debated. However, in the context of this decision the failure of the Council to consistently achieve their own aspirational target, which is significantly below the evidence based target identified in the SHMA, adds weight to the reservations already expressed in relation to the overall housing need/land supply in the District.
192. In addition, I have further reservations relating to the relationship of the Council's expressed housing need with any unmet need of neighbouring authorities. This does not relate to the Council's response to the duty to co-operate. As part of the plan making process the Council has engaged with neighbouring and nearby authorities and stakeholders through regular and issue based meetings at officer and councillor level, as well as joint work on specific

<sup>196</sup> The Annual Monitoring Report 2010 showed 90 dwellings completed from 2012-2014. On last evidence none have been completed.

plan documents and evidence bases<sup>197</sup>, and providing evidence to other Council's local plan examinations [113]. The concern is how the Green Belt constraint within other council areas, juxtaposed with that of St Albans may impact on the expressed housing need [113]. Cross-boundary housing provision is a matter which will, no doubt, be considered through the local plan/examination process. It is not a matter for me to take a view upon other than to recognise it is an unresolved issue between authorities, one which could impact on the OAN for St Albans. At present the Council's position lacks clarity in this regard, as well as in relation to the targeted meeting of need in respect of strategic sub-areas, in particular that of SA-S1 & S2 on the edge of Hemel Hempstead [78 & 113].

193. The appellant company's original assessment of housing need settled on 2.4 years [57]. This was based on a number of assumptions which have not been tested, placing its credibility in question. Nonetheless, I consider that based on the evidence before me the housing land supply is likely to be somewhere between these two figures<sup>198</sup>. It will be for the Local Plan examination process to establish the accuracy, credibility and plausible nature of the assumptions applied [100, 110, 115].
194. In these circumstances, it is reasonable to conclude that the appeal proposal would contribute significantly to the unmet housing need within the District and this should weigh positively and heavily in the balance of the overall decision [31 & 95].
195. As already highlighted above, in decision-taking, Framework paragraph 14 makes it clear that, even if relevant development plan policies are out of date, the presumption to grant permission does not apply where specific policies in the Framework indicate that development should be restricted<sup>199</sup>. As inappropriate development in the Green Belt Framework paragraph 87 sets out this is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Such development includes general housing.
196. Therefore, whilst the identified deficiency in housing land supply and unmet housing need weighs positively in the balance of this decision, it must be weighed alongside the further proffered other considerations to assess whether they cumulatively outweigh the harm by reason of inappropriateness and any other harm, so as to amount to very special circumstances necessary to justify the development proposed.

#### *Affordable housing provision*

197. There is an acknowledged need for affordable housing in the District [61 & 117]. The extent of the need has been placed in question from the current aspirational target of the Council expressed in LP Policy 7A<sup>200</sup>, to the Housing Vision identified need of 404 dwellings per annum [61 & 62]. Clearly on this evidence there is a significant shortfall in the provision of affordable housing in the District and on past performance the closing of the gap in meeting the identified need is slow. Therefore, the appeal proposals, providing 35% affordable housing, would make a significant contribution to such housing

<sup>197</sup> Briggs proof paragraph 5.44.

<sup>198</sup> 3.73 years v 2.4 years.

<sup>199</sup> Framework Footnote 9.

<sup>200</sup> At least 200 dwellings per annum.



provision and would be a substantial benefit of the developments [31 & 64]. This weighs heavily in favour of the proposals.

#### *Care home provision-Appeal A only*

198. The previous Inspector considered there was no specific need for the care home and no justification at that time for one within the Green Belt<sup>201</sup>. This is based on the evidence of Hertfordshire County Council<sup>202</sup> which sets out that in St Albans the projected further growth needed by 2020/21 for all care home units is 163 across both privately and publically funded sectors [120]. The Council contend this evidence still has relevance. The appellant company, on the other hand, favours the evidence of the Housing Vision report which identifies an upward trend in the need for housing for those aged 75 plus which crosses the boundary between high-level support needs and high-level care needs ('Extra Care')<sup>203</sup> [120]. This reflects the recognised increase in the ageing population.
199. However, the Extra Care that is referred to, does not relate to care homes of the nature proposed in Appeal A<sup>204</sup>. They are counted outside Class 2 institutions<sup>205</sup>. Therefore, the proposed development of a care home, in the circumstances of this appeal, would not contribute to the identified need for Extra Care/Flexicare beds/housing [120]. As a result, until further clarification through the local plan process becomes available, where the identified provision for Extra Care is to be attributed in terms of housing need, the evidence of the County Council through their Flexicare document is the most reliable source<sup>206</sup>.
200. A minimum of 127 new care home beds have been completed since 2012<sup>207</sup> which, in the main, are concentrated within urban areas. Even given some small scale losses of care home beds, this makes for a significant contribution towards the growth needed in this sector. Notwithstanding the disputed extent of the future need for care home provision and the benefits of the proposed scheme providing for a growing need in modern purpose-built facilities, there is no evidence that it needs to be provided within the Green Belt, on greenfield land [121]. Therefore, this factor along with the progress being made to meet the identified need affords the provision of 72 care beds in this location little positive weight as a consideration in the balance of my recommendation.

#### *Open space/tennis courts*

201. The proposals also include the provision of on-site open space around the pond area as well as enhanced existing hedgerows and trees, and establishment of a new tree belt<sup>208</sup>. It is intended that the pond area would be managed to encourage and provide habitats for existing species [67]. The long term management of these areas would improve the biodiversity of the location as well as offering opportunities for recreation and improvements in individual's well-

<sup>201</sup> Papworth decision paragraphs 51 & 52.

<sup>202</sup> Flexicare Housing Hertfordshire - Briggs Appendix LPA/CB/1/18.

<sup>203</sup> An increase of 404 Extra Care housing units up to 2031.

<sup>204</sup> Inquiry Doc 15 defines the type of care home proposed.

<sup>205</sup> Briggs Appendix LPA/CB/1.19 - Table page 19 – Only the sum of residential/nursing care is calculated into the total for all care home units.

<sup>206</sup> ie 163 units for all care home units needed by 2020/21.

<sup>207</sup> Briggs proof paragraph 9.8.

<sup>208</sup> Appeal B.

being<sup>209</sup>. The UU makes provision for the funding and formation of a management entity to take responsibility for such areas.

202. The schemes both include new cycleways and footpaths linking Sandridgebury Lane and Harpenden Road. In providing an off-road linkage between St Albans Girls' School and Harpenden Road it would direct users away from the main road with the potential for improved highway safety. This would be a positive benefit of the proposals. However, as it would only serve to reduce journey time along the main road by a relatively small margin, the cycleway/footway still emerging out onto Harpenden Road elsewhere, the benefits are limited.
203. The two developments include the provision of two tennis courts [143]. There is no evidence that there is a specific identified need for such facilities. It was initially intended that these courts should be conveyed to the St Albans Girls' School, there being some potential connection between the loss of courts on the school site and the future development of the institution. This would not be a direct benefit to the wider community or the occupiers of the developments. However, the appellant company then suggested the courts could be managed by a residents' group or tennis club set up. The lack of clarity in respect of the need for the tennis courts, the degree to which they would be available for community use<sup>210</sup>, their future in terms of ownership, management and future long term funding, and the lack of undertakings within the UU to secure these elements, give me little confidence that the tennis courts are directly related to the development or would fairly and reasonably relate in scale and kind to the developments. The provision of the tennis courts is, therefore, not considered justified and should carry little weight in the balancing of my recommendation.

### Other matters

204. *Education* – The County Council identified that the proposed developments would place pressure on schools at all levels of the age range. To mitigate such impacts funding through the UUs would be used to expand existing provision in the locality of the development. This is a reasonable and measured approach to achieve a sustainable development in this regards.
205. *Health* – Whilst residents may have understandable concerns regarding the impact of the future residents of the developments on local health services, no mitigation was requested by the Council in this regard. No case was proffered that such contributions were justified or necessary.
206. *Biodiversity* – No habitats of high intrinsic ecological importance were identified as part of the Habitat Survey Report. Bats and reptiles were both identified as species requiring further investigation. The subsequent Bat Assessment identified bat activity as being very low and being concentrated on only limited areas of the composite site, the bat species being common and widespread. The Reptile Assessment concluded that reptiles are likely to be absent from the site and therefore, the proposed development is unlikely to impact upon reptiles through killing and/or injury, even in the absence of

<sup>209</sup> These factors can be considered as part of the social as well as environmental role of the proposal and would be weighed in as positive benefits were it necessary to make such a assessment.

<sup>210</sup> Either of the options for the ownership/management of the tennis courts implies restriction in terms of wider community access.

mitigation. Therefore, neither habitats nor wildlife would be compromised by the proposals. To safeguard this position conditions would need to be imposed to protect the trees, habitats and wildlife.

207. *Highway* - Concern has been expressed by residents in relation to the impact of traffic generated by the proposed development on the existing highway network. The composite appeal site is accessible to local amenities, the city centre and key transport interchanges by a choice of means of travel. In addition, in terms of the safety and operational characteristics, the proposed developments would have minimal impact on the operation of the surrounding highway network. A package of deliverable measures proposed to mitigate the impact of the development-related trips on the surrounding highway and transport networks, including the promotion of a travel plan; provision of enhanced pedestrian and cycle infrastructure; and operational improvements to the Ancient Briton traffic signals junction and along Old Harpenden Road<sup>211</sup>, are proposed. The UU secures the management of the travel plan. I am conscious that the Highway Authority has not raised any concern in relation to the proposed development in this regard subject to the imposition of conditions and the provision of mitigating infrastructure. Taking into account the terms and conclusions of the Transport Assessment I see no reason to disagree.
208. *Flooding* – Some local residents have raised concerns regarding possible flooding and impact on foul water drainage. The Report on Environmental Impact Assessment (Flooding) concludes that any increase in surface water runoff can be managed on site through Sustainable Urban Drainage System techniques. These would mitigate for the consequences of flooding by incorporating measures to accommodate flood risk and an appropriate foul water drainage system. In this way the proposal would not pose a flood risk and a condition could be imposed to secure the required measures to achieve this.
209. *Living conditions of nearby residents* – In the case of both Appeals A & B the sites are sufficiently distant to neighbouring dwellings so as to minimise any material harm to the outlook or privacy of existing residents. The submitted layouts show how the new housing environments would be accommodated, juxtaposed with that existing. The enhancement of existing boundary hedgerows and trees would also serve to soften the impact of the new dwellings in this regard.

### **Inspector's overall conclusion and balance**

210. There is definitional harm to the Green Belt arising from inappropriate development. Additional harm arises from erosion to openness and permanency, which are essential characteristic of Green Belts, as well as representing unrestricted sprawl. Substantial weight should be given to any harm to the Green Belt. The very special circumstances needed to justify development that is harmful to the Green Belt, and any other harm, will not exist unless that harm is clearly outweighed by other considerations. The substantial harm to the Green Belt caused by the appeal proposals, including the care home in the case of appeal A, by virtue of inappropriateness is appreciably added to by reasons of the further identified Green Belt harms.

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<sup>211</sup> Source Transport assessment (Milestone report).

211. In both appeals there would also be significant harm to the character and appearance of the area, diminishing its intrinsic character and beauty, causing real and serious harm with a lasting effect on the nature of the countryside.
212. The identified harms amount to a weighty scale to tip in the balance of the decisions.
213. However, on the other side of the balance are other considerations. These considerations in themselves are not very special circumstances<sup>212</sup>. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
214. With a significant shortfall in the Council's five year housing supply I am mindful of the constraining nature of the Green Belt designation washing over the District, other than the established urban areas. Even though such constraints will be considered as part of the local plan process it would be irrational for me to close my eyes to the impact that such a designation has in the balance of this recommendation<sup>213</sup>. The Council has accepted that with their promoted growth agenda Green Belt greenfield land will be required to fulfil the requirements of the District and possibly those of neighbouring Councils. The selection of sites is not an appropriate matter for consideration as part of these appeals. However, suffice to remark that the harm to the Green Belt and other harms are matters being appraised as part of the selection process. Whilst I appreciate there will be Green Belt harm somewhere in the District when residential allocations come forward, this is not a good enough reason to off-set or diminish the harms I have identified in relation to these appeals which are site specific.
215. This equally applies to the notion that because St Albans District and its adjoining neighbours are all constrained by the Green Belt this makes the position of lacking a five year supply of housing land nothing special. The Framework makes no allowance for such circumstances. With the shortfall in supply being marked and considerably below the five year bar the only conclusion to make is that the local plan is consequently out of date in respect of housing land supply.
216. The housing which would result from the proposed developments would make a considerable contribution to the identified shortfall, boosting significantly the supply of housing in the District. In these circumstances significant weight should be attributed to this factor particularly taking into account the progress of the emerging SLP towards adoption which the Council accept may be subject to slippage in terms of timescale.
217. The proposals would also result in the provision of much needed affordable housing in a District whose needs appear acute but the Authority chose to apply an aspirational target, which neither reflects the identified need nor even aspires to meet the need. Consequently, I ascribe significant weight to the provision of affordable housing in these appeals as a positive benefit of the proposals.

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<sup>212</sup> Mr Lane for the appellant company advocated other considerations as being very special circumstances.

<sup>213</sup> Hunston decision paragraph 30.

218. The proposed care home beds within Appeal A would provide for a growing need in modern purpose-built facilities. However, given the lack of proven necessity of a greenfield, Green Belt location, this need is of little weight and progress made to provide for the need identified by the County Council lessens this further.
219. In the main, the communal benefits such as the junction improvements and contributions to education etc are required to mitigate the effects of the development. These do not weigh heavily in the balance of the decision. I have already concluded that the provision of the tennis courts is not a positive contributory factor in the weighing of the decision.
220. As already established the appeal proposals would assist in the provision of much needed housing<sup>214</sup> in the local area and District in general. They would also have a social and economic role to play in achieving positive growth now and into the future. However, such benefits would be at significant cost to the intrinsic character of the countryside and its green, open, pastoral appearance. This identified dis-benefit of the environmental role of the proposals is so significant as to outweigh the proffered benefits. Therefore, whilst acknowledging that there are specific policies in the Framework indicating development within the Green Belt should be restricted<sup>215</sup>, as a consequently academic point the appeal proposals would not amount to sustainable development and the presumption in favour of such development would not apply<sup>216</sup>.
221. Therefore, in the balance of the consideration of these appeals, taking into account Government policy<sup>217</sup>, as well as recent Ministerial statements<sup>218</sup>, given the identified Green Belt harm, in particular the potential harm by reason of inappropriateness, the harm to openness, permanence and other stated purposes of the Green Belt, in conjunction with the harm to character and appearance, the harm is serious enough to significantly and demonstrably outweigh the benefits of both appeal schemes and brings them into conflict with the development plan and the Framework as a whole. Therefore, very special circumstances do not exist and the appeals should fail.

## Recommendations

222. For the reasons set out above, I recommend, on balance, that planning permission be refused in the case of both **Appeal A**, with or without the care home element<sup>219</sup> and **Appeal B**. Should the Secretary of State come to a different conclusion, the conditions set out at Annex A attached hereto are recommended.

*Frances Mahoney*

Inspector

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<sup>214</sup> Including affordable housing.

<sup>215</sup> Framework footnote 9.

<sup>216</sup> The presumption in favour of sustainable development set out in paragraph 14 of the Framework applies only to sustainable development.

<sup>217</sup> The Framework.

<sup>218</sup> Briggs Appendix LPA/CB/1.2, 1.3 & 1.4.

<sup>219</sup> As a split decision - see paragraph 142 of this report.

## **Annex A – Schedule of recommended conditions**

### **Appeal A**

1. Details of appearance and landscaping (hereinafter called “the reserved matters”) shall be submitted to and approved in writing by the Local Planning Authority before development begins and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the Local Planning Authority no later than three years from the date of this permission.
3. The development hereby permitted shall begin no later than two years from the date of approval of the last of the reserved matters to be approved.
4. The development shall be carried out in accordance with the approved plans and documents listed as follows – 0969/P/01, 0969/P/02C, 0969/P/03A, tree protection plan (TPP/126HR/01), Reptile Assessment, Bat Assessment, Habitat Survey report, Design and Access Statement, Landscape Appraisal and Transport Assessment.
5. No development shall take place until details of the existing and proposed ground levels across the site and the levels of the proposed floor slabs and ridge heights have been submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details.
6. Notwithstanding any details already submitted, prior to the commencement of development a Flood Risk Assessment/Sustainable Drainage Strategy shall be submitted to and approved in writing by the Local Planning Authority. The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment/Sustainable Drainage Strategy which should include the following measures: -
  - a) on and/or off-site drainage works, both foul and surface water, including provision of surface water flood storage on the site; and
  - b) mitigation limiting the surface water run-off generated by the 100 year return period critical storm, with 30% addition for climate change, so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.

The approved scheme shall be maintained in an operational condition at all times. There shall be no discharge of foul and surface water from the site into the public system until the drainage works in the approved strategy have been completed.

7. Prior to commencement of development, detailed drawings of all highway works including details of the internal road layout, proposed access onto Harpenden Road, new turning head to serve No 126A to 132 Harpenden Road,

footpaths and cycleways and all materials to be used for hard surfaced areas, other than those within domestic curtilages, including roads, cycleways, footpaths and car parking shall be submitted to and approved in writing by the Local Planning Authority. The details shall include a timetable for the implementation of the agreed details. The works shall be carried out in accordance with the agreed details and the timetable. Once complete these route ways shall be retained for public use.

8. No development shall take place until green travel plans, *relating to both the residential element and the care home*, have been submitted to and approved in writing by the local planning authority, including a timetable for the implementation of their terms. The terms of the plans shall then be implemented in accordance with that timetable. The agreed measures shall be retained.
9. No development, including works of demolition, shall take place until a Construction Management/Method Plan and Statement with respect to the construction phase of the development has been submitted to and approved in writing by the local planning authority. Development works shall be undertaken in accordance with the approved Construction Management/Method Plan and Statement. The details shall include, amongst other things, construction vehicles numbers, type and routing; traffic management requirements; hours of work/piling/deliveries; contractors/visitors parking areas, compounds, storage areas (including storage of plant and materials) and details of wheel washing facilities; cleaning of site entrances, site tracks and the adjacent public highway; the management of crossings of the public highway and other public rights of way; minimisation of dust emissions arising from construction activities on the site; the recycling/disposal of waste from demolition and construction works; post construction restoration/reinstatement of the working areas and any temporary access to the public highway; and details of the responsible person (site manager/office) who can be contacted in the event of a complaint.
10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order) (with or without modification), there shall be no enlargement or extension of the dwellings hereby permitted involving any additions or alterations to the roof without the prior written permission of the Local Planning Authority.
11. No development shall take place on site until a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority has been implemented.
12. No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the

development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins.

13. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.
14. Prior to the commencement of development, details of the provision to be made for the storage of refuse *for the individual dwellings and care home* shall be submitted to and approved in writing by the Local Planning Authority. Such provision shall be made available prior to the occupation of the building to which it relates and shall be retained thereafter.
15. Prior to the commencement of the development a habitat and landscape management plan dealing with the pond area as well as the existing boundary hedgerows and other public landscaped areas (*that around the care home*) , including long term design objectives; management responsibilities; maintenance schedules; any translocation/replacement hedge planting; extent and layout of a buffer zone around the pond; details of how the buffer zone would be protected during development; and incorporation of features to accommodate and encourage identified wildlife present (see Habitat survey Reports) shall be submitted to and approved in writing by the local planning authority. The management plan shall be implemented in accordance with an agreed timetable which shall form part of the management plan and its requirements adhered to thereafter.
16. Prior to the commencement of any development works, a detailed arboricultural method statement (AMS) shall be submitted to and approved in writing by the local planning authority. The AMS shall be based upon an up-to-date, tree and hedge survey to be submitted with the statement and shall contain details of the specification and location of tree and hedge protection or barriers, shown on a tree protection plan (TPP). The approved protection scheme shall show trees and hedges for removal and retention. The erection of the protection for the retained trees and hedge shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site (duration of the development phase). Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority. The TPP shall also show root protection areas of all retained trees and hedges and those trees and the section of hedge to be removed. Details of tree and hedge pruning should be contained in the tree survey information. No tree/hedge shall be damaged, felled or pruned other than as expressly permitted by the approved protection scheme. The AMS shall provide details of any construction activities, including excavations that may require works within protected root areas, including the construction of



specialist hard surfaces. All works shall be carried out in strict accordance with the approved details.

17. Prior to the commencement of development a street lighting scheme for the development shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the agreed details.

## **APPEAL A - Split decision**

Conditions as above excluding the text in italics.

### *Decision text*

The appeal is dismissed insofar as it relates to the construction of the 72 bed care home. The appeal is allowed insofar as it relates to the erection of 116 dwellings and formation of new accesses to Harpenden Road, 2 tennis courts and public open space at Sewell Park, Land R/O Nos 112-156B, Harpenden Road, St Albans, Hertfordshire AL3 6BZ in accordance with the terms of the application, Ref 5/11/2857, dated 18 November 2011, and the plans submitted with it, so far as is relevant to that part of the development hereby permitted.

## **APPEAL B**

1. Details of appearance and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before development begins and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the Local Planning Authority no later than three years from the date of this permission.
3. The development hereby permitted shall begin no later than two years from the date of approval of the last of the reserved matters to be approved.
4. The development shall be carried out in accordance with the approved plans and documents listed as follows – 0969/P/101, 0969/P/102, 0969/P/103, tree protection plan (TPP/126HR/01), Reptile Assessment, Bat Assessment, Habitat Survey report, Design and Access Statement, Landscape Appraisal and Transport Assessment.
5. No development shall take place until details of the existing and proposed ground levels across the site and the levels of the proposed floor slabs and ridge heights have been submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details.
6. Notwithstanding any details already submitted, prior to the commencement of development a Flood Risk Assessment/Sustainable Drainage Strategy shall be submitted to and approved in writing by the Local Planning Authority. The development permitted by this planning permission shall only be carried out in

accordance with the approved Flood Risk Assessment/Sustainable Drainage Strategy which should include the following measures: -

- a) on and/or off-site drainage works, both foul and surface water, including provision of surface water flood storage on the site; and
- b) mitigation limiting the surface water run-off generated by the 100 year return period critical storm, with 30% addition for climate change, so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.

The development permitted by this planning permission shall only be carried out in accordance with the details included within the approved Flood Risk Assessment. There shall be no discharge of foul and surface water from the site into the public system until the drainage works in the approved strategy have been completed.

- 7. Prior to commencement of development, detailed drawings of all highway works including details of the internal road layout, proposed access onto Harpenden Road, new turning head to serve No 126A to 132 Harpenden Road, footpaths and cycleways and all materials to be used for hard surfaced areas, other than those within domestic curtilages, including roads, cycleways, footpaths and car parking shall be submitted to and approved in writing by the Local Planning Authority. The details shall include a timetable for the implementation of the agreed details. The works shall be carried out in accordance with the agreed details and the timetable and retained for purpose. Once complete these route ways shall be retained for public use.
- 8. No development shall take place until a green travel plan has been submitted to and approved in writing by the local planning authority, including a timetable for the implementation of its terms. The terms of the plans shall then be implemented in accordance with that timetable. The agreed measures shall be retained.
- 9. No development, including works of demolition, shall take place until a Construction Management/Method Plan and Statement with respect to the construction phase of the development has been submitted to and approved in writing by the local planning authority. Development works shall be undertaken in accordance with the approved Construction Management/Method Plan and Statement. The details shall include, amongst other things, construction vehicles numbers, type and routing; traffic management requirements; hours of work/piling/deliveries; contractors/visitors parking areas, compounds, storage areas (including storage of plant and materials) and details of wheel washing facilities; cleaning of site entrances, site tracks and the adjacent public highway; the management of crossings of the public highway and other public rights of way; minimisation of dust emissions arising from construction activities on the site; the recycling/disposal of waste from demolition and construction works; post construction restoration/reinstatement of the working areas and any temporary access to the public highway; and details of the responsible person (site manager/office) who can be contacted in the event of a complaint.

10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order) (with or without modification), there shall be no enlargement or extension of the dwellings hereby permitted involving any additions or alterations to the roof without the prior written permission of the Local Planning Authority.
11. No development shall take place on site until a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority has been implemented.
12. No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins.
13. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.
14. Prior to the commencement of development, details of the provision to be made for the storage of refuse for the individual dwellings shall be submitted to and approved in writing by the Local Planning Authority. Such provision shall be made available prior to the occupation of the building to which it relates and shall be retained thereafter.
15. Prior to the commencement of the development a habitat and landscape management plan dealing with the pond area as well as the existing boundary hedgerows; new easterly boundary landscaped belt; and other public landscaped areas , including long term design objectives; management responsibilities; maintenance schedules; any translocation/replacement hedge planting; extent and layout of a buffer zone around the pond; details of how the buffer zone would be protected during development; and incorporation of features to accommodate and encourage identified wildlife present (see Habitat survey Reports) shall be submitted to and approved in writing by the local planning authority. The management plan shall be implemented in accordance with an agreed timetable which shall form part of the management plan and its requirements adhered to thereafter.
16. Prior to the commencement of any development works, a detailed arboricultural method statement (AMS) shall be submitted to and approved in writing by the local planning authority. The AMS shall be based upon an up-to-date, tree and hedge survey to be submitted with the statement and shall contain details of the specification and location of tree and hedge protection or

barriers, shown on a tree protection plan (TPP). The approved protection scheme shall show trees and hedges for removal and retention. The erection of the protection for the retained trees and hedge shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site (duration of the development phase). Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority. The TPP shall also show root protection areas of all retained trees and hedges and those trees and the section of hedge to be removed. Details of tree and hedge pruning should be contained in the tree survey information. No tree/hedge shall be damaged, felled or pruned other than as expressly permitted by the approved protection scheme. The AMS shall provide details of any construction activities, including excavations that may require works within protected root areas, including the construction of specialist hard surfaces. All works shall be carried out in strict accordance with the approved details.

17. Prior to the commencement of development a street lighting scheme for the development shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the agreed details.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Matthew Reed Of Counsel	Instructed by the Head of Legal Services of St Albans City and District Council
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He called

David Huskisson Dip LA CMLI	Principal of david huskisson associates
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Christopher Briggs BA(Hons) MCD MRTPI	Spatial Planning Manager and Deputy Head of Planning & Building Control St Albans City and District Council
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Philip Smith BA(Hons) DipTRP MRTPI	Director of Brian Barber Associates
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### FOR THE APPELLANT:

Paul Stinchcombe QC Ned Hulme Of Counsel	Both instructed by DLA Town Planning Ltd
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They called

David Lane BSc(Hons) DipTP MRTPI FRSA	Principal of DLA Town Planning Ltd
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Ben Wright BA(Hons) DipLA CMLI	Company Director of aspect landscape planning Ltd
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## DOCUMENTS

- 1 Statement of Common Ground
- 2 Report to Planning Policy Committee dated 3 July 2014
- 3 Relevant extracts from Planning Practice Guidance
- 4 Huskisson evidence Appendix 3
- 5 Local Development Scheme 2014-2017
- 6 APP/B1930/A/13/2209594
- 7 Strategic Housing Market Assessment 2008
- 8 5 year land supply – additional calculations
- 9 Report to Planning Policy Committee dated 29 November 2013
- 10 Draft Unilateral Undertaking - unsigned - 2164231
- 11 Draft Unilateral Undertaking – unsigned - 2201728
- 12 Statement in support of planning obligations by Hertfordshire County Council - 2201728
- 13 Statement in support of planning obligations by Hertfordshire County Council - 2164231
- 14 Internal County Council Doc relating to Care Home provision

- 15 Confirmation of Class C2 Care Home
- 16 Letter dated 24 October 2012 from David Lane re alteration to the percentage of affordable housing
- 17 Unilateral Undertaking dated 27 August 2014 – Signed – Appeal A
- 18 Unilateral Undertaking dated 27 August 2014 – Signed – Appeal B
- 19 Draft Conditions – Appeal A
- 20 Draft Conditions – Appeal B
- 21 Appellant company response re: Redhill decision – Court of Appeal ([2014] EWCA Civ 1386)
- 22 Appellant Company letter dated 22 December 2014 – updated information
- 23 Appellant Company letter dated 9 January 2015 – re responses of neighbouring Councils to SLP Regulation 18 consultation exercise
- 24 Response of Council to letters of Appellant Company Docs 22 & 23
- 25 Council response re: Redhill decision
- 26 Judgement bundle
- 27 Further submissions following publication of the DCLG 2012-based household projections – appellant company’s response
- 28 Council’s response to 2012 DCLG 2012-based household projections – revisions to proof of Mr Briggs

#### **DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE INQUIRY**

- 29 Submissions on the weight to be attached to the decision of Inspector Fieldhouse – appellant company
- 30 Additional submissions on behalf of the local planning authority

#### **PLANS**

- A Plan relating to appeal APP/B1930/A/11/2164231



## Department for Communities and Local Government

### **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

#### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;**

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.