

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

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

Appeal by Stackbourne Limited against the refusal of St Albans City and District Council, as Local Planning Authority, to grant outline planning permission for residential development of up to 100 dwellings with all matters reserved at Smallford Works, Smallford Lane, Sheapshyde, St Albans, Hertfordshire, AL4 0SA

**PROOF OF EVIDENCE OF PHILLIP E HUGHES MRTPI
ON BEHALF OF ST ALBANS CITY & DISTRICT COUNCIL - JUNE 2019**

PLANNING INSPECTORATE REF: APP/B1930/W/20/3260479

LOCAL PLANNING AUTHORITY REF. 5/19/3022

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1 Introduction

1.1 The proposal is for residential development on a site in the Green Belt, it is proposed to demolish existing buildings and erect up to 100 dwellings. This Appeal relates to an outline planning application ('the Application') which was refused planning permission on 16 July 2020. The Inquiry is scheduled to open on 16 March 2021.

1.2 This appeal is submitted against the decision of St Albans City and District Council to refuse to grant permission for the Application, which sought outline planning permission for up to 100 dwellings. All matters, including access, were reserved for future consideration.

1.3 Permission was refused for the following six reasons:

1. *The redevelopment of this unsustainably located site to provide 100 houses would result in substantial harm to the openness of the Green Belt when compared with the existing development on site. As such it fails to comply with Para 145(g) of the NPPF and comprises inappropriate development. There are no very special circumstances to override the identified harm. The proposal is therefore contrary to Policies 1, 8 and 74 of the District Local Plan Review 1994 and the NPPF 2019..*
2. *On the basis of the information provided, the proposed indicative development would have a detrimental impact on the wider Green Belt Countryside and be contrary to Policy 74 of the Local Plan Review and relevant provisions of the NPPF 2019.*
3. *The application has not demonstrated that that the proposed development would not have an unacceptable impact upon the Local Wildlife Site, where a protected species (Great Crested Newts) may be present, and the delivery of a net gain in biodiversity. The proposal therefore fails to comply with Local Plan Policy 106 And the NPPF 2019..*
4. *The submitted surface water drainage assessment fails to address the discharge mechanism, the provision of greenfield runoff rates or clarification of restricted discharge via a flow control device. As such the application has failed to demonstrate that the proposal provides satisfactory and appropriate sustainable drainage. Furthermore the application has not adequately demonstrated that the development would not adversely impact the public water supply. As such the proposal fails to comply with the NPPF 2019.*
5. *In the absence of a completed and signed legal agreement or other suitable mechanism to secure the necessary services and infrastructure improvements relating to education, leisure, transport and health provision and as such would place an additional burden on the existing infrastructure and services without an acceptable level of mitigation to overcome this harm. This is contrary to Policy 143B of the St Albans District Local Plan Review 1994 and the National Planning Policy Framework 2019.*
6. *In the absence of a completed and signed legal agreement or other suitable mechanism to secure the provision and retention of affordable housing on the site the proposal would fail to meet identified local housing needs, contrary to the aims of Policy 8 of the St Albans District Local Plan Review 1994, the Affordable Housing Supplementary Planning Guidance March 2004 and the National Planning Policy Framework 2019*

- 1.4 A copy of the Officer report was attached at Appendix 1 to the Council's Statement of Case and a copy of the decision notice was attached at Appendix 2 to the Council's Statement of Case.
- 1.5 The Council notes that this is an outline application with no details to be considered at this stage. In this respect it would appear the Appellant has mistakenly assumed that their application included details of access¹. That is not the case and I direct the Inspector to the planning application form; the Inspector will note that the planning application is for outline planning permission with all matters reserved. I attach at **Appendix PH1** a copy of the first page of the application form and I note the header to the form on which the appellant made their application. The Inspector will also note the description of development on the Decision Notice which is clear that all matters are reserved.
- 1.6 The Appellant relies on the illustrative proposed site plan² and the Council is agreeable to proceeding with reference to this plan as a reasonable indication of the scale and impact of development. However, it is important to note that such a plan does not comprise an application plan and is not a plan that will be permitted if this appeal was allowed.
- 1.7 The Appellant considers that the site has low to moderate archaeological potential due to past ground disturbance and that this is only locally significant, I note that this is a position based on very little information. As such, there can only be very limited confidence in such a conclusion given a failure to properly assess the archaeological potential and significance of the site. The application is therefore not compliant with the NPPF because it fails to supply the necessary information upon which to make an informed archaeological decision, contrary to the NPPF (Section 16, Paragraph 189, pp.55, ff.). However, I do not consider that permission should be refused on such grounds subject to the imposition of a suitably worded pre commencement condition.
- 1.8 Subject to agreement in respect of the Heads of Terms and the provision of an executed and enforceable undertaking and/ or condition(s) the Council will not be inviting the Inspector to dismiss this appeal on biodiversity and protected species grounds (reason for refusal 3). I am not aware that a suitable project has yet been identified by the parties, however I note the parties are now working to agree Heads of Terms and will update the Inspector at the Inquiry.
- 1.9 To date the Council has not been provided with a draft undertaking but I expect the Appellant will be providing an executed undertaking that will provide for necessary infrastructure improvements and 40% of the on-site housing to be affordable housing and subject to the provision of a suitable undertaking the Council will not invite the Inspector to dismiss the appeal on the grounds set out in reasons for refusal 5 and 6.

¹ See for instance the description of development in response to question E on the Appeal Form and 1.2 of the Appellant's Statement of Case. Neither of these descriptions relate to the Appellant's Application Form or the Decision Notice

² Plan Reference 02102 rev A

- 1.10 I note that Hertfordshire County Council have already provided evidence to support the need for necessary infrastructure contributions by way of education, libraries, youth services, health contributions, play area provision and maintenance, footpath improvement contributions, off site highway works, travel plan monitoring fee and the provision and maintenance of fire hydrants and I understand they will attend the roundtable session at the Inquiry to assist the Inspector.
- 1.11 My proof provides evidence to support reason for refusal 1 and 2 and I provide the planning balance. My colleague Mr John Rumble provides drainage evidence to support reason for refusal 4 which adopt in my planning balance assessment.

2 Site and Surroundings

- 2.1 The appeal site comprises land extending to a total of 3.5 hectares. It is detached from any existing settlement and facilities. It has a frontage onto the eastern side of Smallford Lane of approximately 220 metres and is located to the north of the North Orbital Road (A414). The site is located within the Metropolitan Green Belt.
- 2.2 The site forms part of a strip of countryside between the settlements of St Albans to the west and Hatfield to the east. Within, and washed over by, this part of the Green Belt are the small Green Belt settlements of Sleafshyde, Smallford and Colney Heath.
- 2.3 The appeal site is currently subdivided into a number of commercial sub plots and there are a limited number of buildings and temporary structures. The overall character and appearance of the site is one used for open storage of plant, machinery, building materials and vehicles. Whilst the Appellant refers to 22 plots within the site, drawing number 02101 Rev A seems to indicate 18 plots at site and the site board indicates a total of 18 units/ plots albeit some are subdivided and occupied by the same company (i.e., Glyn Hopkins Ltd a car dealership occupy plots 1C, 1D and 6). I consider there to be 17 units as the adjacent Units 1C and 1D are both occupied by Glyn Hopkins for the same purposes and operate together.



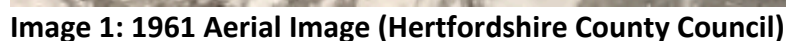
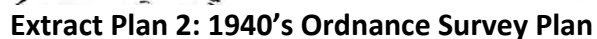
Extract Plan 1: Site Layout Including Plot Numbers

- 2.4 Plot 1D and 1C are both occupied by Glyn Hopkins and used for storing cars. Units 5, 7A and 7B are a large open yard that is currently vacant and not subdivided. The Table below details the occupiers of the sites detailed above with the use of the unit. The Table below is derived from my observations at site in Feb 2021.

Unit	Occupier	Use
1A	Versatile Utilities	Contractors Yard - Storage
1B	O'Shea Plant Hire	Storage of Plant
1C	Glyn Hopkins	Storage of cars
1D	Glyn Hopkins	Storage of cars
2A	SHACA Construction Ltd	Storage of Plant and materials
2B	K P Waste Ltd	Storage of refuse containers
2E	Versatile Utilities	Office to yard at 1A
3	ROL Construction	Storage
3A	Met Medical	Vehicle storage and offices
4	R & F Pallets Limited	Storage of pallets
5, 7A & 7B	vacant	Previously Storage
6	Glyn Hopkins	Storage of cars
8	The Scaffolding Co Ltd	Storage of scaffolding
9	Rahilly Plant Hire	Storage of Plant
10B	HERAS	Storage of fencing
11	HDD UK Ltd	Storage of building materials
12	Rosewood Irrigation	Storage of materials and vehicles
15	ROL Construction	Contractors Yard - Storage

Table 1: Occupants and Uses at Site (February 2021)

- 2.5 In terms of buildings at site, I note drawing 02101 Rev A shows the footprint of a number of buildings that are intended to indicate existing buildings. I have cross referenced this plan with the aerial photography for the site and all the buildings identified exist at site save the larger of the unnumbered building on unit 8 alongside the northern boundary west of the building numbered 11. I also note some new buildings have been erected on Unit 4 without the benefit of planning permission and tall racking has been erected on Unit 11, again without planning permission. I understand that these matters are the subject of current enforcement investigations by the Council.
- 2.6 It is common ground that the existing buildings at the appeal site are all single storey with gross external floorarea/ footprint of 2673.45 m².
- 2.7 In my view the use of the majority of the appeal site is for storage and distribution and I am supported in this view by the Business Rate Records for the site at **Appendix PH2** which record the description of each unit as Storage and Premises. The only exception to this is Unit 2E which is recorded as Officer and premises (this is the office that serves – or is ancillary to - Unit 1A, which is used for storage). I note the Appellant considers that the appeal site comprises part of a former brickworks and refers to that in support of the application the subject of this appeal.



- 2.9 Aerial Photography from 1961 would appear to confirm that the eastern part of the site fronting Smallford Lane was free of development and open. It also appears that the northern part of the appeal site was relatively free of development and the north east part of the site appears to be vegetated and the western boundary appears to have a wide landscape buffer. Otherwise it would appear related quarrying activity is occurring at site.
- 2.10 The wider image shows the extent of quarrying activity in the area and I note in passing that such uses are not evident in modern aerial photography and thus remediation has to some extent been successful in terms of the establishment of landscape where the land was previously quarried.
- 2.11 The aerial Image from 1990 below shows the landscape around the site (at the time of the 1990 appeal decision I refer to in section 3). I note that the north east and south west parts of the appeal site appear to comprise some vegetated land as opposed to being completely hardsurfaced. Other aerial photographs are included at **Appendix PH12**.

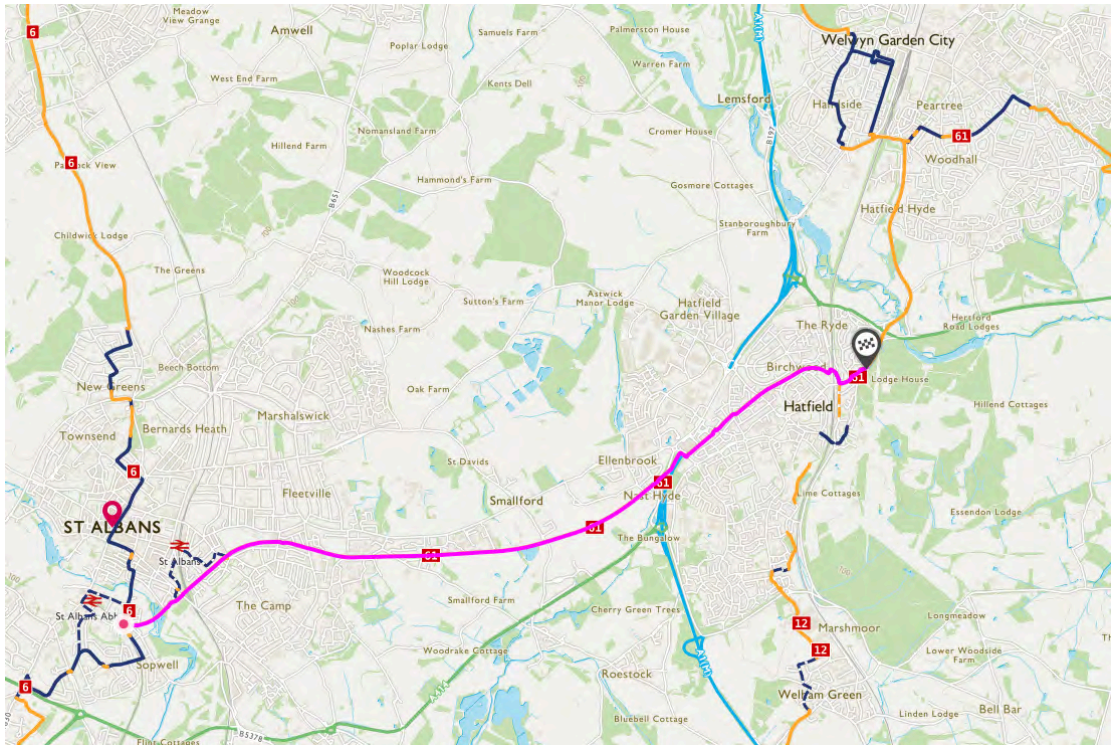


Image 2: 1990 Aerial Image (Hertfordshire County Council)

- 2.12 It is common ground that land to the north, west and south of the appeal site is open undeveloped land. To the east of the appeal site is open land with the south eastern corner of the appeal site located opposite four modest bungalows that comprise the north west tip of Sleepshyde.

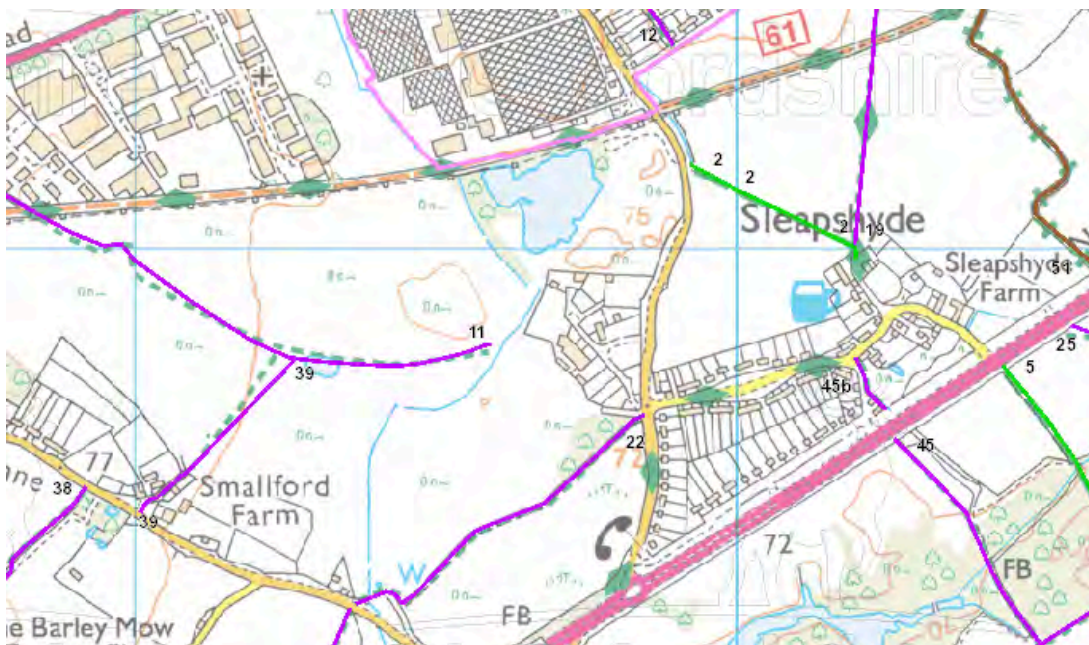
- 2.13 To the west of the appeal site are open countryside fields bisected by public footpaths. To the north is open land containing a fishing lake used for leisure purposes, beyond which is The Alban Way, a former railway line now used as a leisure cycle and footpath linking St Albans and Hatfield part of a wider PROW network (Route 61 on the national cycle network). To the north of the Alban Way is a commercial nursery within the Green Belt.
- 2.14 Land to the south of the appeal site also comprises open countryside fields between the appeal site and the A414 which passes through the Green Belt. South of the A414 is the settlement of Colney Heath also a village washed over by the Green Belt. To the east of the appeal site opposite the majority of the eastern site boundary are open fields bisected by public rights of way. A small proportion (c 20%) of the eastern boundary lies opposite two pairs of modest single storey small bungalows comprising the north west tip of Sleapshyde a small settlement within, and washed over by, the Metropolitan Green Belt.
- 2.15 The appeal site is situated in a prominent location beyond St Albans, close to the A405 trunk road which links the A1(M), M25 and M1. The appeal site comprises a prominent site on a lane linking two main approach routes to the city (i.e., A414 and A1057).
- 2.16 The site is situated within a Landscape Development Area and immediately bounds the Upper Colne Valley Site to the north and west. The site and area lies within Landscape Character Area 30 Colney Heath Farmland, for which the overall guidelines for managing change are 'Improve and conserve'.
- 2.17 Smallford Lane/ Station Road is a lane that links the A414 with A1057 Hatfield Road. There is a limited length of new footpath along the southern part of the appeal site frontage but no footpath to the north of the newly constructed access road (that has yet to come into use). A continuous footpath exists on the eastern side of Smallford Lane linking the A414 and A1057 it is very narrow in parts particularly north of the appeal site and crossing the Alban Way. It also provides connectivity to the Alban Way and network of public footpaths.
- 2.18 The appeal site is detached from any non-Green Belt settlement and falls in the open green space between St Albans and Hatfield. The extract from the Proposals Map below and the aerial photographs at **Appendix PH12** shows the location of the appeal site within the open Green Belt between settlements.

2.19 There are a number of public rights of way in the area. These include the Alban Way to the north which runs along the line of a disused railway and also comprises Sustrans route 61 which runs from Maidenhead via St Albans, Welwyn, Hertford through to Essex and is part of the national cycle network and part of a route that links the west coast (Bristol) with the east coast via national cycle routes 1 and 4.



Extract Plan 4A: The Alban Way (part of National Cycle Route 61)

- 2.20 Public Footpath 19 links The Plough at Sleepshyde with the Alban Way, Public Bridleway 2 linking The Plough at Sleepshyde with Smallford Lane, Public Footpath 22 which links Smallford Lane at the southern tip of the site with Tyttenhanger, Footpath 11 which runs from the appeal site west to link with the Alban Way and Footpath 39 which links Footpath 11 with Colney Heath Lane. These public rights of way, and others, are shown on the extract plan below:



Extract Plan 4B: Public Rights of Way



Image 3: View from the junction of Bridlepath 2 and Footpath 19 looking west

- 2.21 The existing complex of buildings (units 3 – 5) at the rear of the site are visible in this view. Smaller buildings and other structures at the site such as lorry bodies and vehicles are not clearly visible.
- 2.22 Views of the appeal site are achievable from a number of public vantage points including:

Approaches along	Smallford Lane
	Footpath 22
	Bridleway 2
	Footpath 19
	Footpath 11
	Sleapshyde Lane



Image 4: View Along Smallford Lane Frontage from the Northern Tip of the Site



Image 5: View from Footpath 11 looking east

- 2.23 Whilst the uses on the appeal site are visible in these views they are recessed and low scale and do not dominate views into the site. I also consider the nature of storage to have a transitory impact and to change from time to time.



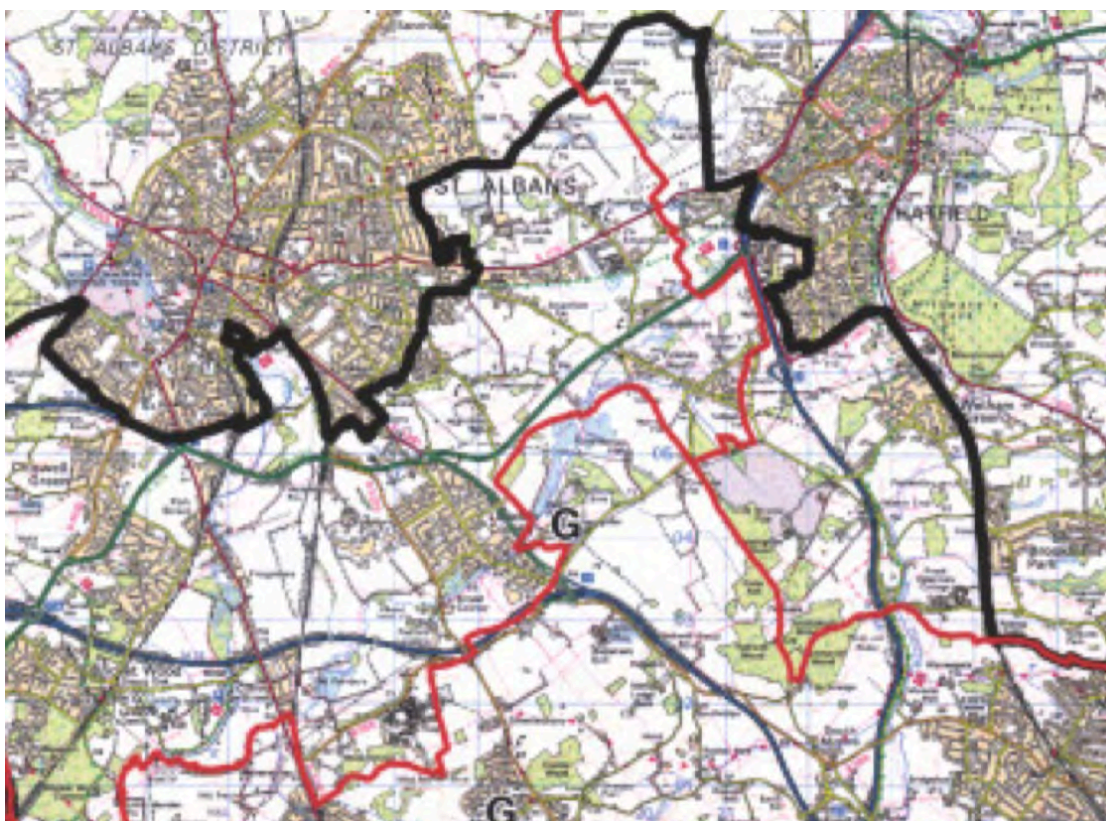
Image 6: View Along Smallford Lane Frontage from the New Access Looking South

- 2.24 In particular, I note a number of the plots/ units are used for storing motor cars associated with the car dealership of Glyn Hopkins and the site board also indicates that unit 8 is occupied by Grand Cars Ltd. Many of the other plots are used as yards by construction contractors such as ROL Construction Ltd (units 3 and 15), Versatile Utilities Limited (units 1a and 2e), 2W Construction Limited (unit 3a), Heydon and Carr Limited (unit 2a), HDD (UK) Limited (unit 11) and Preston Paving (UK) Limited (unit 12) or yards for plant hire companies such as C J O'Shea Limited (unit 1b), John Anderson Hire Limited, Superloos Limited and Smallford Supplies (units 5, 7a and 7b), Rahilly Plant limited (unit 9), Heras Fencing (unit 10b).
- 2.25 Sheapshyde does not contain any facilities to assist day to day living with only a public house at its very eastern periphery. Smallford fairs a little better with another public house that serves food, a Montessori nursery, vet practice, petrol filling station and garden centre but does not contain a shop (a former newsagent/ mini mart has ceased trading and been converted to a dwelling).
- 2.26 I include below a table of the distances to the closest facilities; all distances are measured from the centre point of the appeal site:

Primary School	Colney Heath JMI	1.3 kilometres
Secondary School	Beaumont School	3.8 kilometres
Doctors Surgery	Highfield Surgery	4.2 kilometres
Hospital	St Albans City (no A&E)	7.1 kilometres
Supermarket	Morrisons Hatfield Road	4.2 kilometres
Railway Station	St Albans City	5.5 kilometres
Community Centre	Colney Heath Village Hall	2.3 kilometres
Post Office	Colney Heath	1.8 kilometres

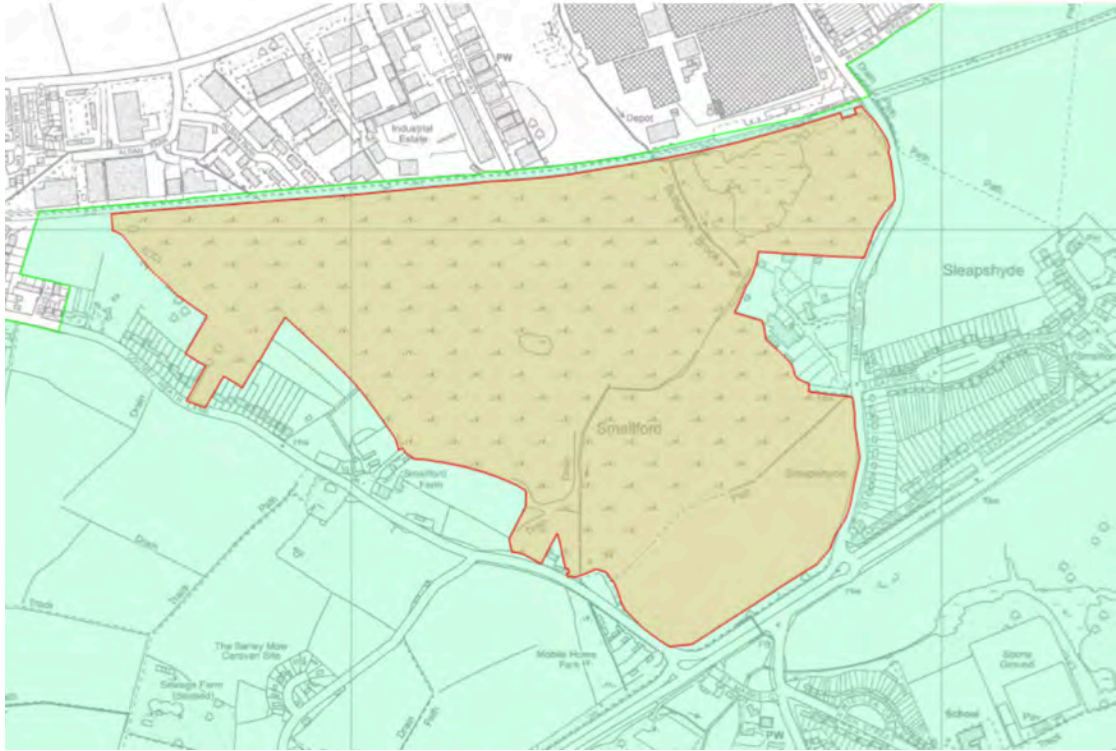
Table 2: Distance to facilities from the Appeal Site

- 2.27 There are bus stops on Smallford Lane at the southern tip of the appeal site served by the 305 service which serves St Albans City to the west and Colney Heath to the south. Monday to Friday there are 4 services in each direction with services to St Albans at 0741, 1020, 1320 and 1650 hours and 1005, 1305, 1612 and 1742 in the opposite direction. There are three services on a Saturday in each direction and none on a Sunday.
- 2.28 There are also bus stops 1.2 kilometres north of the appeal site on Hatfield Road to the north of Smallford served by a number of routes that provide 7 day access to St Albans, Hatfield, Welwyn Garden City and beyond.
- 2.29 The appeal site is part of the Watling Chase Community Forest area.



Plan Extract 5: The Watling Chase Forest Area

- 2.30 The site is surrounded by the Smallford Pit Local Wildlife Site (LWS), a County Wildlife site and the pond to the north of the appeal site is a NERC Act Habitat Area located within the LWS. The plan below identifies the Smallford Pit Local Wildlife Site in an orange tint.



Plan Extract 6: The Smallford Pit Local Wildlife Site

3 The Application the Subject of this Appeal and Planning History

- 3.1 Outline planning permission is sought for the redevelopment of the land to demolish the existing buildings and erect up to 100 dwellings with internal access roads, car parking and other related development. As I have shown in section 1 and at **Appendix PH1** all matters are reserved, including access.
- 3.2 An illustrative layout plan has been produced to show how the site may be laid out should permission be granted and to illustrate the impact of a development of this scale and character.
- 3.3 I consider the impact of the proposed development on openness, and character and appearance, below. However, at this stage, I make some general observations about the illustrative layout.



Plan Extract 7: The Illustrative Proposed Site Plan

- 3.4 The illustrative layout plan is produced to show that the site is able to accommodate the number of dwellings proposed and to show a way that such a number of houses could be laid out. It is clear that in order to accommodate the number of dwellings proposed and the mix indicated that the site will be developed intensely and the proposed development will be highly visible from outside the site with development sited along the site boundaries.

- 3.5 In this respect the illustrative layout shows the site frontage developed with two storey houses backing onto Smallford Lane in three terraces (1 of 4 houses, 1 of 5 houses and the other of 8 houses). In addition, two detached houses are also sited along this boundary backing onto Smallford Lane and sited very close to one another (i.e., 1 metres apart). The combination of this development will present an extensive two storey wall of development that turns its back on Smallford Lane and is only punctured by the proposed access road (see drawing 02700 rev A) below.



Plan Extract 8: Aerial Perspective

- 3.6 The northern boundary is similarly densely developed with a total of 16 dwellings comprising 7 pairs of semi-detached houses and two detached houses set within 10 metres and backing onto this boundary with a wall of development. The small gaps between buildings would not be evident in any view other than direct on and then they would largely be filled by terraced development within the site.
- 3.7 The north western boundary features eight two storey dwellings set within 10 metres of the boundary, again the properties would read as a wall of two storey development backing onto the countryside.
- 3.8 The south western boundary has greater permeability with buildings separated by open space and meaningful gaps allowing landscaping to penetrate into the site and be read with land beyond the appeal site.
- 3.9 The short southern boundary has a terrace of four two storey dwellings backing onto it with a set off as small as 3 metres.

- 3.10 Overall, the proposed development would present dense walls of two storey development backing onto three external boundaries.
- 3.11 Within the appeal site the illustrative layout shows three areas of landscaping an area described as a village green just south of the main entrance road and two triangles of land in the western part of the site.
- 3.12 The internal access around the appeal site is dominated by roadway and car parking. For instance, if I stood at the junction of the main access road with the road running north along the frontage of the terrace houses that back onto Smallford Lane to my east, I would have a two storey wall of development with 20 car parking spaces immediately to the road frontage. Enclosure, hardsurfacing and dominance of the car are the main features of this layout.



Plan Extract 9: Section C – C – Development Close to the Northern Boundary

- 3.13 Similarly, if I continued to travel along the road that accessed the semi-detached houses along the northern site boundary the experience would again be of enclosure with the two storey houses to the north (see drawing 02700 rev A) and two storey terraced houses to the south (see section C-C on drawing 02505 rev A). Between these two walls of development is a very hard environment comprising road and 58 car parking spaces.
- 3.14 Although illustrative, it is clear from the proposed layout (as well as other details) that up to 100 proposed houses would have a significant impact on the appearance of the site as well as its character and lead to a substantial harm to openness when compared to the baseline position at site and the boundaries of the site to open countryside.
- 3.15 The planning history is included in the Statement of Common Ground. However, I consider two application from that history below.

Planning Appeal Decision E1/B1930/2/3/01

- 3.16 This is a decision of the Secretary of State (“SoS”) in respect of the redevelopment of the site as a Class B1 Business Park, the Appellant was Stackbourne Limited. I have included a copy at **Appendix PH3**. At DL4 the SoS notes the location of the site within the Green Belt noting:

"[...] Green Belt, and it lies within the gap between St Albans and Hatfield, preventing both the merging of these two towns and the consolidation of the small settlements between them. He notes that the proposed development for 8,640 sq. m of Class B1 floorspace would be over three times larger than the existing authorised floorspace on the site, and, together with the proposed car parking provision for more than 300 vehicles would be a substantial development within the Green Belt."

- 3.17 In that context the existing buildings at site are identified by the Inspector in his report (Report paragraph 11) as having 2,200m² floorarea. The SoS carries out a Green Belt balancing exercise at DL6 and states inter alia:

"The Secretary of State accepts that benefits in the form of visual improvement to the site and its contribution to the surrounding area would flow from the proposed development, although he is not persuaded that development on the scale proposed is necessary to achieve an improvement in visual quality or that redevelopment of the site is necessarily the only way that such an improvement could be made. He agrees with the Inspector that the benefits to be gained from the proposed development in terms of visual amenity, highway improvements, improved layout and access, and the possible reduction in heavy vehicle traffic and noise nuisance are not sufficient to overcome the strong presumption against inappropriate development in the Green Belt which the proposed business park represents. The Secretary of State therefore concludes that, as the proposed development would add to the infilling of the vulnerable gap between St Albans and Hatfield, the advantages to be gained from the proposal are not sufficient to withstand the Green Belt objections and the very special circumstances required to justify the construction of new buildings on the site for Class B1 purposes have not been demonstrated."

- 3.18 I note a number of important conclusions reached by the SoS and having regard to the permanence of the Green Belt these are matters that also have materiality today. The role of the Green Belt in providing separation between Hatfield and St Albans as well as preventing the merging of the smaller settlement is noted and the SoS also concluded that a development of 8,640m² comprised a substantial development in the Green Belt. Having noted visual improvements and highway improvement including a reduction in heavy traffic and noise nuisance the SoS concluded that such matters did not overcome the strong presumption against inappropriate development and that the development would add to the infilling of a vulnerable gap between St Albans and Hatfield. Such conclusions on harm to inappropriateness and openness can also be applied to the appeal scheme given the current proposal is for over 11700m² of floorarea and the location of the site between St Albans and Hatfield remains unchanged.

Planning Permission Reference 5/2002/2112 and 5/2009/0757

- 3.19 This is the 2002 planning permission granted in 2004 for the new access road which the Inspector will note has been recently started at site and is now largely complete. I include at **Appendix PH4** a copy of the approved plan and I note that 2009 application discharged the landscape condition pursuant to the above permission.

- 3.20 The Inspector will note that the works undertaken at site do not yet include implementation of the approved landscape scheme which includes planting new trees including Heavy Standard 4 – 5 metres tall Oak and Hornbeam as well as new hedgerow comprising 1.5 – 1.75 tall of hawthorn, field maple, hornbeam and holly.
- 3.21 I therefore note that the current position at site in respect of the visibility of the existing site uses from Smallford Lane does not represent the lawful fallback position having regard to the conditions of the above permission.

4 Planning Policy

- 4.1 The Framework sets out the Government's economic, environmental and social planning policies for England. These policies articulate the Government's vision of sustainable development, which should be interpreted and applied locally to meet local aspirations and include a presumption in favour of Sustainable Development as well as the delivery of a sufficient supply of homes. It also promotes Sustainable Transport, Protecting the Green Belt and Achieving Well Designed Places.
- 4.2 The development plan for the area comprises the St Albans District Local Plan 1994. The following policies are relevant to consideration of the application the subject of this appeal. Those highlighted bold are those referred to in the reasons for refusal and those most important for determining the application. The exception is Policy 8 which was erroneously referred to in the reason for refusal instead of Policy 7A.

POLICY 1 - Metropolitan Green Belt
 POLICY 2 - Settlement Strategy
 POLICY 5 - New Housing Development in Specified Settlements
POLICY 7a - Affordable Housing in Towns and Specified Settlements
~~**POLICY 8 - Affordable Housing in the Metropolitan Green Belt**~~
 POLICY 13 - Extension or Replacement of Dwellings in the Green Belt
 POLICY 34 - Highways Considerations in Development Control
 POLICY 35 - Highways Improvements in Association with Development
 POLICY 39 - Parking Standards, General Requirements
 POLICY 40 - Residential Development Parking Standards
 POLICY 69 - General Design and Layout
 POLICY 70 - Design and Layout of New Housing
POLICY 74 - Landscaping and Tree Preservation
 POLICY 80 - Floodlighting
 POLICY 84a - Drainage Infrastructure (Drainage???)
 POLICY 97 - Existing Footpaths, Bridleways and Cycleways
 POLICY 104 - Landscape Conservation
 POLICY 106 - Nature Conservation
 POLICY 143 - Land Use Proposals Within the Upper Colne Valley
 POLICY 143a - Watling Chase Community Forest
POLICY 143b - Implementation

- 4.3 In addition, the Council has adopted supplementary planning documents including:
- Revised Parking Policies and Standards, January 2002
 - Design Advice Leaflet No. 1: Design and Layout of New Housing, November 1998
 - Affordable Housing March 2004

Are the most important policies out of date by reference to paragraph 213 of the Framework or otherwise?

- 4.4 Policies of the plan need to be assessed having regard to their consistency and whether the most important policies individually and taken as a whole are out of date. Weight to policies can reduce if they are not consistent with the Framework and subject to the degree of inconsistency policies can be considered to be out of date irrespective of the housing land supply position.
- 4.5 Policy 1 defines the extent of the Green Belt and refers to inappropriate development and the need to demonstrate very special circumstances. I consider the policy is broadly consistent with the Framework and I do not decrease weight. Any inconsistency relating to infilling in villages is not relevant to the proposal.
- 4.6 Policy 7A requires the provision of affordable housing on new housing sites of more than 0.4 hectares in size. The Policy is informed by policy guidance which targets the provision of 35% affordable housing on new housing sites. The evidence base supporting the now withdrawn Local Plan identified a large unmet need for affordable housing in St Albans on all sites of 10 or more dwellings. Policy 7A is consistent with the NPPF.
- 4.7 Policy 35 relates to highway improvements and is consistent with the Framework and thus attracts full weight.
- 4.8 Policy 74 refers to landscaping and trees and requires a number of factors to be taken into account when retaining landscaping as well as encouraging wildlife corridors as part of any landscaping strategy or scheme. Whilst the NPPF has a more nuanced approach to landscape the policy is broadly consistent with the Framework.
- 4.9 Policy 106 (nature conservation) does not require biodiversity net gains so does not go as far as the NPPF objective but it is otherwise broadly consistent with the aims and objectives of the NPPF (paragraphs 174/ 175).
- 4.10 Policy 143b is also consistent with the Framework and the requirement to provide infrastructure to support proposed development and therefore there is no reason to reduce weight to this policy.
- 4.11 Policy 84A refers to drainage infrastructure and there is no conflict with the NPPF, however it is recognised that the NPPF introduces a more sophisticated approach to drainage including reliance on sustainable drainage systems and therefore the policy is broadly consistent with the aims and objectives of the NPPF.
- 4.12 Policies 69 and 70 relate to design and encouraging good design and policy 104 toward landscaping conservation and are all consistent with the aims of the NPPF and as such carry full weight.
- 4.13 I attach at **Appendix PH5** a matrix of policies and assessment against the NPPF.

National Planning Policy Framework

4.14 The Framework sets out the Government's economic, environmental and social planning policies for England. These policies articulate the Government's vision of sustainable development, which should be interpreted and applied locally to meet local aspirations. Section 9 promotes Sustainable Transport and Section 13 relates to Protection the Green Belt. Section 2 includes the presumption in favour of Sustainable Development, Section 5 relates to the delivery of a sufficient supply of homes, Section 12 relates to achieving well-designed places, Section 14 relates to meeting the demands of Climate change and flood mitigation and Section 15 relates to conserving and enhancing the Natural Environment.

4.15 Paragraph 8 sets out the three overarching objectives of sustainable development and I note the draft text for consultation published in January 2021 amends the social and environmental objectives through the inclusion of beauty in the social objective and strengthening the environmental objective to state:

***"an environmental objective** –to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy."*

4.16 Paragraph 11 sets out the approach to the presumption in favour of sustainable development and decision making in the context or the orthodox approach to decision making or applying the "tilted balance". In the context of the application of the tilted balance paragraph 11d advises:

"where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."*

4.17 With regard to 11d(i) we are referred to footnote 6 for guidance, and it notes that inter alia:

"The policies referred to are those in this Framework (rather than those in development plans) relating to: [...] land designated as Green Belt [...]."

4.18 As such, when considering planning decisions relating to land in the Green Belt it is necessary to first determine whether Green Belt policies in the Framework provide a clear reason for refusal under paragraph 11(d)(i). If they do, the application is not assessed against the tilted balance in paragraph 11(d)(ii) of the Framework.

- 4.19 As far as I am aware no changes to this approach are proposed in the 2021 consultation version of the NPPF. Holgate J in **Monkhill**³ interpreted the meaning of the “clear reason for refusal” policy in the presumption in favour of sustainable development for decision-taking in 11(d)(i) of the NPPF. That judgement has been upheld by Lindblom LJ when the case was heard in the Court of Appeal⁴.
- 4.20 In terms of Green Belt policy the proposals for up to 100 dwellings and access roads and other development to facilitate the proposed housing comprise inappropriate development, unless it falls within an exception in paragraph 145 of the NPPF. I will demonstrate that the development does not fall within the exception to this in paragraph 145(g) of the Framework. It is common ground that this is the only exception in NPPF Paragraph 145 relied on by the Appellant. I also note that the consultation changes to the NPPF published last month do not propose changes to the long standing Green Belt policy approach in the NPPF. Paragraph 145(g) states:

“A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:

[...]

(g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:

- not have a greater impact on the openness of the Green Belt than the existing development; or*
- not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.”*

- 4.21 The Framework advises that inappropriate development should not be approved except in very special circumstances. Paragraphs 143 and 144 state:

“Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green belt unless the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal, is clearly outweighed by other considerations.”

- 4.22 Moving beyond Green Belt policy in the NPPF, the appeal site comprises land outside any designated settlement and thus comprises part of the countryside. Paragraph 170(b) of the Framework directs that decisions on planning applications should contribute to and enhance the natural and local environment by:

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

³ **Monkhill Ltd v Secretary of State for Housing, Communities And Local Government** [2019] EWHC 1993 (Admin)

⁴ **Monkhill Ltd v Secretary of State for Housing, Communities And Local Government** [2021] EWCA Civ. 74

- 4.23 The *Cawrey*⁵ judgment accepts that the recognition of the intrinsic character and beauty and character of the countryside imparts a degree of protection to those matters. Again the consultation draft of the NPPF published in January 2021 does not propose a change to the above (save a paragraph numbering change).
- 4.24 The Framework seeks to achieve well designed places and as set out at paragraph 127(f) seeks to provide high standards of amenity for existing and future users and being sympathetic to context including landscape setting (127(c)).
- 4.25 Paragraph 165 requires major development to incorporate sustainable urban drainage systems. Section 15 requires the protection and enhancement of biodiversity (174) and the refusal of schemes that lead to harm to biodiversity (175). These requirements are largely retained in the latest draft consultation version of the NPPF other than I note in respect of biodiversity it is proposed to be amended to read:

“179 d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around other developments should be pursued as an integral part of their design, especially where this can secure measurable net gains for biodiversity and enhance public access to nature.”

The Emerging Local Plan

- 4.26 The Regulation 22 Submission version of the Local Plan was submitted in March 2019. The Examining Inspectors expressed concerns that the duty to co-operate had not been satisfied and the Council has now withdrawn the plan.
- 4.27 However it is material to note that the Green Belt boundary in the area of the appeal site was not proposed to be amended and thus the appeal site was proposed to be retained within the Green Belt (in accordance with the principles of permanence).
- 4.28 Emerging Policy L3 related to Affordable Housing and had a threshold of 10 + units and required the provision of 40% on-site affordable housing in accordance with the evidence base.
- 4.29 The Council has commenced work on preparing a new draft Local Plan for the period 2020 – 2036. In accord with NPPF paragraph 48 the new local plan is at a very early stage and should carry no weight in the determination of this appeal.

⁵

Cawrey Ltd and SoSCLG and Hinkley and Bosworth BC [2016] EWHC 1198 (Admin)

Housing Land Supply

- 4.30 The Council accept that they are unable to demonstrate five years supply of deliverable housing land.
- 4.31 The Government's 'standard method' for Local Housing Need identifies an average of 902 new homes per annum for the District. The 'Housing Delivery Test' results require a 20% 'buffer' is to be applied to the Local Housing Need figure.
- 4.32 It is common ground that for the purposes of this appeal the Council can demonstrate a supply of 2.4 years of deliverable housing land.

5 The Council's Case

- 5.1 I will first address the question whether the proposed development is inappropriate development in the Green Belt before considering what other harm arises to the Green Belt and what other harm arises (adopting the conclusions of XXX in respect of drainage matters).
- 5.2 I then move on to consider whether any other considerations raised by the Appellant clearly outweigh the harm by way of inappropriateness and any other harm such that very special circumstances exist before addressing matters of biodiversity, infrastructure and affordable housing.

Green Belt – Inappropriate Development

- 5.3 The appeal site lies outside any existing settlement within the designated Green Belt as defined on the Proposals Map of the adopted Local Plan. Consistent with the Framework 2019 Policy 1 of the adopted local plan does not include a development incorporating up to 100 residential dwellings, access roads etc. as a form of development comprising an exception to the definition of inappropriate development.
- 5.4 The broad approach of policy in respect of the Green Belt is to designate areas of Green Belt land and then to consider development within the Green Belt to be inappropriate unless it is specifically identified as an exception⁶.
- 5.5 The erection of buildings is normally inappropriate development unless it meets and exception identified in NPPF paragraph 145.
- 5.6 The Framework requires at paragraph 144 that both harm by way of inappropriateness and any other Green Belt harm is harm that is attributed substantial weight.

Green Belt – Inappropriate Development - Paragraph 145(g)

- 5.7 I am aware that the Appellant considers the proposal is not inappropriate as it comprises previously developed land and the proposal will comprise complete redevelopment which would not cause substantial harm to the openness of the Green Belt and contribute to meeting an identified affordable housing need within the area of the local planning authority (NPPF 145(g)).
- 5.8 To qualify under this exception the site must be previously developed land, must not cause substantial harm to the openness of the Green Belt and must meet an identified need for affordable housing in the area.

⁶ after **Timmins and Anr and Gedling Borough Council** [2014] EWHC 654 (Admin)

- 5.9 I accept the land is previously developed land, and I accept subject to the completion of a satisfactory undertaking (yet to be produced) that the development would provide 40% Affordable Housing on a site of up to 100 dwellings. That comprises a proportion of affordable housing in excess of the policy requirement. On that basis the Council accepts that this part of paragraph 145(g) is also met.
- 5.10 The next stage under 145(g) to qualify as an exception is to demonstrate that the proposal will not cause substantial harm to the openness of the Green Belt. I pause to note the wording of bullet point 1 under 145(g) which clearly links the test of greater impact to the existing development. I note the same explicit test is not employed in bullet 2. However in my view it is necessary to assess openness with reference to the baseline (i.e. existing lawful) use of the appeal site.
- 5.11 I have therefore concluded that the appeal site would benefit from two of the three requirements under 145(g) insofar as it comprises pdl and the proposals would contribute to meeting an identified affordable housing need within the area.
- 5.12 I now turn to consider openness as the third tranche of the test under 145(g) and also in the wider context of Green Belt harm.
- 5.13 I conclude below that the proposed development would have a substantially greater impact on openness than the existing use of the site and would also lead to substantial harm to the openness of the Green Belt. Therefore, it is my view that the proposal cannot benefit from the exemption under paragraph 145(g) and comprises inappropriate development.

Green Belt - Openness

- 5.14 The Framework identifies openness and permanence as the essential characteristics of the Green Belt with the fundamental aim of Green Belt policy to keep land permanently open.
- 5.15 The concept of openness means the state of being free from built development; the absence of built form as opposed to the absence of visual impact⁷. However, the word “openness” is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if the proposed development occurs and factors relevant to the visual impact on the aspect of openness which the Green Belt presents⁸.
- 5.16 In **Turner**, Sales, LJ stated as follows (so far as relevant):

⁷ **R (Lee Valley RPA) v Epping Forest DC** [2016] EWCA Civ 404, Treacy, Underhill, Lindblom LJ

⁸ **Turner v SSCLG** [2016] EWCA Civ 466, Arden, Floyd and Sales LJ

- "14. [...] The word "openness" is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt presents
15. The question of visual impact is implicitly part of the concept of "openness of the Green Belt" as a matter of the natural meaning of the language used in para. 89 of the NPPF. I consider that this interpretation is also reinforced by the general guidance in paras. 79-81 of the NPPF, which introduce section 9 on the protection of Green Belt Land. There is an important visual dimension to checking "the unrestricted sprawl of large built-up areas" and the merging of neighbouring towns, as indeed the name "Green Belt" itself implies. [...]. Openness of aspect is a characteristic quality of the countryside, and "safeguarding the countryside from encroachment" includes preservation of that quality of openness. [...]
16. The visual dimension of the openness of the Green Belt does not exhaust all relevant planning factors relating to visual impact when a proposal for development in the Green Belt comes up for consideration. For example, there may be harm to visual amenity for neighbouring properties arising from the proposed development which needs to be taken into account as well. But it does not follow from the fact that there may be other harms with a visual dimension apart from harm to the openness of the Green Belt that the concept of openness of the Green Belt has no visual dimension itself.
25. The openness of the Green Belt has a spatial aspect as well as a visual aspect, and the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result of the location of a new or materially larger building there. But, as observed above, it does not follow that openness of the Green Belt has no visual dimension."

5.17 The Government updated the PPG in July 2019 (Para 001; ID 64-001-20190722) in respect of openness and it now states:

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

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

5.18 In **Samuel Smith**,⁹ the Supreme Court (Lord Carnwath) issued the lead judgement (with which Hale, Hodge, Kitchen and Sales agreed) in respect of the interrelationship between visual impact and openness of the Green Belt disagreeing with Lindblom LJ in the Court of Appeal. The Supreme Court Judgement was handed down on 3 December 2019 following the previous appeals at this site, it held:

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

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

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

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

5.20 With this in mind it is pertinent to look at the lawful baseline for the site. The appeal site comprises an area of predominately open land with a small number of buildings that is used for external storage. Also the site sits adjacent to open countryside to the north, south, west and along the majority of its east boundary. The site is located in a wider area of open countryside and attractive landscape.

5.21 As I set out in section 2 the lawful use of the appeal site and the character of the use is one of predominately open storage. In my experience the nature, quantum and height of materials stored at the site vary from time to time (as is the nature of a storage use).

⁹ R (**Samuel Smith Old Brewery (Tadcaster)**) & Ors v N. Yorks CC [2020] UKSC 3 on appeal from EWCA Civ 489

- 5.22 However, there are a number of permanent buildings on site that are either lawful or immune for enforcement. It is common ground that the floorarea of these buildings amount to 2673.45m², given the buildings are single storey that is also the footprint of buildings at site. as detailed at section 1 I suspect one building included in the above figure comprises a building that is not lawful or immune from enforcement. I consider that building to have a Gross External floor Area (GEA) of circa 180m². However I am assuming that the above overall figure is Gross Internal floor Area GIA and therefore I have increased 2673.45 by 10% to equate to GEA and then deducted the floorarea of the unlawful building. That results in a GEA of 2760.8m².
- 5.23 As established in section 3 the illustrative proposals for the site include details of house types and floorarea for the dwellings. It is therefore possible to compare the floorarea and footprint of buildings proposed with those existing at site.
- 5.24 In terms of an assessment of openness I am comfortable that floorarea is a starting point albeit that it is not the only measure against which openness is to be measured. In this context where other comparisons are not available floorarea can be a useful proxy. If floorarea was the only consideration there is no rational or reasonable conclusion other than the proposal would lead to a substantial erosion of openness and very substantial harm given the 325% increase proposed.
- 5.25 However, the existing site has a baseline that extends beyond the existing permanent buildings and indeed the proposal has an impact that extends beyond just the proposed buildings.
- 5.26 I recognise that the majority of the appeal site is currently hardsurfaced by a combination of macadam, road planings and compacted earth on which are sited structures and stored materials of varying character.
- 5.27 The surfacing would appear to be immune from enforcement or lawful, as is the use of the land for storage purposes.
- 5.28 The use of the appeal site is for storage and if not lawful I am prepared to assume for the purposes of this proof the current use is immune from enforcement. In forming my view of the nature of the lawful use I have had regard to my observations at site as part of this appeal and prior to the appeal as well as the business rate records which I include at **Appendix PH1** and the Appellant's answers on the planning application form¹⁰.
- 5.29 Materials stored on site are transitory and over time the amount of materials stored at site fluctuates. For instance vehicles stored at site will vary associated with the activities of the car dealerships; plant and machinery will leave site when hired out and contractors yards empty and refill with materials.

¹⁰ See for instance question 10 type of development where all floorarea is said to comprise B8 storage and distribution and question 14 where the existing use is described as a range of storage and distribution purposes.



Image 7: Units 1C and 1D February 2021



Image 8: Units 5, 7A and 7B February 2021

- 5.30 I also note that there is a turnover in the occupation of yards and periods when yards are vacant. I note that the large yard at the north west part of the site (units 5, 7a and 7b) and building 5 has been vacant and empty from my first visit to site in early November 2020 until finalising this proof in February 2021 (see image 8 above).
- 5.31 I therefore consider the impact of fluctuating levels of materials, vehicles and plant stored at site has less impact on openness than permanent buildings and operational development. In that respect I note the PPG makes reference to the duration and remediability of the development as material considerations in any assessment of openness. Clearly a site used for open storage with a limited number of permanent buildings has a degree of remediability that would not be achieved if the site was developed as a residential housing estate.
- 5.32 I am mindful that in setting out the exception at 145(g) of the NPPF it states that the baseline excludes temporary buildings. It is clearly in the author's mind that temporary buildings have a degree of remediability and lack permanence such that they should not be counted in any assessment of openness pursuant to 145(g). At the appeal site all the containers, portacabins, lorry bodies etc comprise temporary buildings for the purposes of 145(g).
- 5.33 In the **Turner** case before the High Court¹¹ Lang J commented at paragraph 28 on the lawfulness of the entitlement to distinguish between a scheme on pdl that replaced buildings with other buildings and a scheme that replaced mobile structures with buildings, this approach was supported in the Court of Appeal by Sales LJ at paragraph 13. At paragraph 31 of her judgment Lang J comments:

"In my judgment, the Inspector was entitled not to adopt the Claimant's volumetric approach, which calculated the volume of the mobile home and 11 trucks currently on the site, and concluded that the proposed development would be 242.53 sq. metres less in volume. From the perspective of openness, the Claimant was not comparing like with like, as the Inspector explained in paragraphs 12 to 14. The proposed development would have a greater impact on openness because the mobile home and trucks were moveable, and therefore the volume in any particular part of the site could vary at any time, whereas the building would be a permanent feature in one location. Moreover as the Inspector found in paragraph 14, the trucks were of more limited height than the front façade and high pitch roof of the proposed new building, which would close off views into the site and have a harmful effect on openness."

- 5.34 In his conclusion in the Court of Appeal Sales LJ states at 27:

"[...] It was rational and legitimate for him to assess on the facts of this case that there is a difference between a permanent physical structure in the form of the proposed bungalow and a shifting body of lorries, which would come and go; and even following the narrow volumetric approach urged by the appellant the Inspector was entitled to make the assessment that the two types of use and their impact on the Green Belt could not in the context of this site be "directly compared as proposed by the appellant" (para. 13). The Inspector was also entitled to take into account the difference in the visual intrusion on the openness of the Green Belt as he did in para. 14."

¹¹ **Turner v SSCLG** [2015] EWHC 2728 (Admin)

- 5.35 Another component of the proposed development that adversely impinges on openness is the height of the proposed permanent buildings compared to the height of the existing permanent buildings and storage at the site.
- 5.36 The existing buildings are of single storey scale. However they are commercial buildings and some of the buildings have a ridge height equivalent or similar to a two storey dwellinghouse. In particular the Inspector will note that Buildings 3 and 5 are commercial buildings used for storage of plant and materials and have a height similar in parts to a two storey dwellinghouse. However most of the remaining buildings have a single storey scale and are much shorter than any two storey dwelling.
- 5.37 In that respect I note housing proposed at the site has an eaves height of 5.75 metres with ridge heights ranging from 8 – 10 metres. Therefore, along the site frontage to Smallford Lane the proposed terraces of housing would have an overall height of 8 – 10 metres. This compares to the existing position where the car storage at units 1c and 1d has a height of around 1.5 metres (see Image 7) and storage at unit 1b ranges from 2 – 4 metres (see Image 6). To the north of the access road unit 1a has open storage and heights range from 2 – 3 metres generally.
- 5.38 To the north of the access the two terraces of houses would contrast with the open yards where storage is undertaken at heights of 2 – 3 metres on unit 1A and 2 – 4 metres on the other two units fronting Smallford Lane (see Images 4 and 11).
- 5.39 I have similar observations about the northern boundary where dwellings with an overall height of 8 – 10 metres would contrast with the one lawful building along that boundary and storage that I estimate at between 2 – 4 metres in height (excluding the tall racking which does not benefit from planning permission).
- 5.40 The north west boundary is currently completely open with units 5 and 7 vacant. I also note the previous storage at site appeared to have a height of around 2 - 3 metres. The illustrative layout shows 9 two storey houses aligned to the boundary.
- 5.41 The position along the south west boundary features the existing composite building 3 and 5 which is prominent along that boundary. Storage of vehicles plant and machinery on units 2A, SB, 9 and 6 ranges from 1.5 metres to 3 metres in height along the remainder of the boundary. The proposed layout shows the flank elevation of nine 2 storey dwellinghouses with ridge heights of up to 10 metres in height.
- 5.42 Within the site the impact of the proposed dwellings will provide a taller and more dominant and permanent form of development that would lead to a substantial reduction in openness.
- 5.43 I have detailed the baseline in terms of floorarea of buildings, hardstanding and use of the site above. In terms of vehicles parked at site I note the aerial photographs and my observations at site would seem to confirm that a total of circa 200 cars and vans comprising a combination of cars stored at site and vehicles parked at site associated with the various yards are routinely kept or parked at site.

- 5.44 I also note that the site is relatively open with views achieved through the site with internal subdivision achieved via open wire fencing and mesh fencing. Therefore, when standing on Smallford Lane at the site frontage views of the landscaping on the western boundary are achieved through the site (as are views of the depth of the site and storage uses and buildings on the western part of the site). I recognise that the degree of visibility through the site varies given the amount of material stored at site. In addition, the Inspector will note that the existing visibility of the site does not reflect the lawful position given the landscape scheme pursuant to the now implemented application for the proposed access will supplement existing planting along the site frontage (see **Appendix PH4**).
- 5.45 I recognise that the Inspector will be able to exercise his professional judgment in terms of the baseline position of the site.
- 5.46 Set against the baseline position are the proposals which are necessarily vague given this is an outline application with all matters reserved.
- 5.47 However as detailed in section 3 I understand the proposed dwellings will amount to circa 10,488 m² of Gross Internal floorarea (GIA). The proper measure for comparing floor area is Gross External floor area (GEA). I estimate that the GEA of each dwellinghouse is an average of 10% larger than the GIA allowing for the difference between detached, semi-detached and terraced properties. Therefore, adding 10% to the GIA results in an additional 1049 m² of development which results in a GEA of 11537m². In addition to the proposed dwellings themselves the illustrative layout plan show a circa 2.2m² shed in each of the 92 dwellinghouse gardens. That adds an additional 202m² and results in a total GEA of 11739m² (excluding any bin and cycle stores).
- 5.48 Therefore the table below confirms the estimated existing and proposed GEA and conforms that the proposal equates to an increase of circa 325% in terms of permanent development at site.

	Existing	Proposed	Increase
Floorarea	2760.8	11739	325.2%

Table 3: GEA Comparison Proposed and Existing Floorarea

- 5.49 In addition to this significant increase in built form on the appeal site the proposal will also increase the presence and prominence of built form. In this regard I have commented in section 3 about the solidity of the development along the external east and north boundaries. I also note that the development is two storey throughout with indicative ridge heights of approximately 8 – 10 metres. The prominence of the proposed buildings and their solidity would combine to make the site appear much less open than existing.

- 5.50 Permanent built form at two storey scale would stretch across the whole site, this would substantially erode openness compared to the scale and quantum of existing permanent development. The illustrative layout shows two storey development filling the length and width of the site with long terraces of two storey development necessary to achieve the number of dwellings proposed. The disposition of dwellings and their solid appearance from outside and within the site will reduce openness.
- 5.51 The permanent features of the existing appeal site that impinge on openness are the buildings detailed above and the hardsurfacing across the site. I have accepted that the existing site is largely hardsurfaced save a fringe around the site perimeter. The proposal in contrast would have three areas of public landscaping and the private gardens of the various dwellinghouses.
- 5.52 I therefore accept that the appeal site will feature less hardsurfacing than the existing use. The question that arises is whether that results in more openness? Openness is defined as the absence of development. The vast majority of the land not shown as hardsurfacing on the site would comprises private gardens and curtilages to the 100 dwellings. Within those areas I expect each dwelling will have an area of patio that will reduce the undeveloped garden space from that shown on indicative plans as well as the sheds shown on the plans which further reduce the undeveloped area.
- 5.53 In addition, I would expect each garden to be fenced off to provide privacy and security. Therefore, the rear gardens to the properties will be enclosed spaces containing development and heavily influenced by the two storey dwellings and enclosures. Whilst this space will contribute toward a reduction in hardsurfacing I do not consider it to result in a material increase in openness.
- 5.54 With regard to the public open spaces I note 3 areas are proposed. The “village green” accommodates a water feature which I understand will be an engineered pond as part of the SUDs strategy at the site. In addition, I expect it will also accommodate the children’s play equipment that is required to serve the site. Therefore, this space will not be free of development and there will be some diminution in openness. The other areas comprise two triangles of open land in the north western part of the site that appear open and an areas in the south eastern corner of the site that provides access to the bus shelter and is bisected by a footpath.
- 5.55 The proposal will reduce hardstanding at the appeal site, however as I have shown above that does not mean that the land will be more open. In my view visually the land will not appear materially more open than the existing use of the land having regard to the reduction in hardsurfacing.
- 5.56 In addition, I note the current storage use at the appeal site includes the storage and parking of vehicles. I have estimated that around 200 cars and vehicles are currently either stored or parked at site at any one time. In terms of the appeal site I note the proposal includes car parking spaces for around 210 cars within the public realm (i.e. accessed directly off the internal access roads and not the second tandem space or within garages).

- 5.57 Overall I do not consider there would be a material change in terms of the number of vehicles that can be accommodated or would be visible at the appeal site albeit I accept the disposition of vehicles would be different and numbers would vary on different days and at different times (as they do with the existing use of the site).
- 5.58 I have set out earlier some commentary on the impact of the proposed development (as per the illustrative layout plans) on the perceived openness of the appeal site noting the two storey solid walls of terraced and semi-detached dwellings that align the site's east and north boundaries. I also note that the development proposed turns its back on Smallford Lane and would be an inward looking development with back gardens, fencing and sheds between the wall of two storey development and the site boundary. In my experience these garden boundaries would be enclosed with close boarded fencing adding to the sense of enclosure created by the terraced walls of two storey development.
- 5.59 I therefore consider that in addition to the substantial increase in permanent development as proposed the scheme will significantly increase the visual perception of enclosure and reduce further the openness of the site.
- 5.60 In coming to these views I am mindful that this is an outline application with all matters reserved but I am also aware that the Appellant has submitted a significant volume of illustrative material designed to show how a development of up to 100 dwellings will impact on the appeal site. whilst I have made reference to the illustrative material and I note that this is the Appellant's best effort to show how the site can accommodate the scale of development proposed my conclusions on harm apply to the quantum of development as the harm is an inevitable consequence of such a quantum of development regardless of layout, design, landscaping, appearance etc..
- 5.61 I am mindful that the Appellant has relied on an appeal decision of October 2019 at Waverley Riding School¹². I have read that decision and whilst I am not aware of the exact circumstances of that case I note a number of material differences between that case and the appeal scheme at DL:11.
- a) The volume of proposed buildings would be less than current buildings
 - b) The footprint of proposed buildings would be less than existing buildings
- 5.62 In that case having regard to the reduction in volume and footprint the Inspector whilst acknowledging a wider geographic spread of buildings concluded the impact would be slight adverse. This is in contrast to the appeal scheme which results in a very substantial increase in floorarea (325%), footprint and volume as well as a wider geographic spread of buildings and leading to substantial harm to openness.

¹² APP/T3725/W/18/3218529

- 5.63 Another appeal decision at Smallfield in Surrey¹³ (**Appendix PH10**) grappled with the issue of openness on a site used for commercial uses including open storage and occupied by a large extent of hardsurfacing. In noting perimeter landscaping has gaps through which views into the appeal site were available and that the proposed dwellings would be up to 10 metres tall the Inspector concluded that the development would be visible to some extent from surrounding parts of the countryside during winter months. He then noted the proposed dwellings extended further rearwards than existing buildings and would be closely spaced and then he concluded on openness at DL9:

“[...] The height and extent of the development on these plots would be much greater than the modest scale of the previous buildings. The proposal would also be more intrusive than the previous areas of hard standing and the vehicle parking that took place there. For these reasons the proposal would have a greater impact on the openness of the Green Belt than both the previous development and the approved development. This harm to the Green Belt attracts substantial weight, as stated in the Framework.”

- 5.64 In another appeal in St Albans¹⁴ (**Appendix PH11**) where the existing use of the site was for a mix of uses, the site comprised previously developed land and paragraph 145(g) was in consideration. Around 633m² of new footprint was proposed (DL16) compared to the existing 205m² (DL15). The Inspector exercised caution in just comparing two dimensional figures given the outline nature of the appeal scheme and went onto consider the visual and spatial effects of the proposals (DL17). The Inspector noted (as is the case with this appeal) that the existing low level buildings would be replaced by buildings of greater height and volume and he concluded that whilst that appeal site was visually contained the proposals would have a significantly greater spatial impact on the openness of the Green Belt (DL18). He then concluded on openness at DL19:

“Consequently, the proposed development would, by virtue of its permanence and size, have a significantly greater impact on openness than the existing development. Therefore, I find that the proposal would not meet the exception in paragraph 145(g) of the Framework.”

- 5.65 I accept that these decisions relate to different sites with different circumstances but I am reliant on the Inspectors approach to assessing openness generally rather than the conclusions in respect of the individual sites and proposals.

¹³ APP/M3645/W/19/3230341

¹⁴ APP/ B1930/W/19/3241475 at Woodbury Manor dated 2 March 2020

Conclusion on Openness

- 5.66 I have identified the quantum of operational development on the appeal site and it comprises buildings and hardstanding. There is a substantial increase in built form as a result of the proposals increasing building floor area by around 325%. In addition, the buildings are all two storey and will have much greater visual impact than the existing buildings at site. I have also concluded that the reduction in hardstanding is offset by increased enclosure of the open spaces (gardens) by fencing and development in these areas including patios and sheds and other domestic paraphernalia.
- 5.67 Finally I have concluded that the site will appear substantially less open than the existing use of the site having regard to the solidity and enclosure that will result from a development of up to 100 two storey dwellings especially along the external boundaries of the site.
- 5.68 Therefore the proposed development would substantially erode openness in both the spatial and visual contexts even having regard to the baseline. In coming to this conclusion I am aware of the conclusion of an Inspector in assessing the impact of the redevelopment of a nursery site¹⁵ with an increase in floorarea of c150% (that appeal site had an existing floorarea of 7000m² and the proposal sought to deliver 17593m²) wherein she concluded in respect of the spatial component of openness at DL26:

"[...] In considering openness against the baseline outlined above, the proposed development would introduce a substantial amount of built form spread across the site at 1, 2 and 3 storeys in height. The scheme would thus far exceed the height, volume and site coverage of the existing structures. The development would therefore result in a substantial loss of openness in spatial terms."

- 5.69 In respect of the visible impact of the proposals the Inspector agrees that the zone of visual influence is relatively contained and the proposed development would have limited visibility for outside the site (DL28). She then concludes that:

"[...] I agree that the new buildings would have limited zones of visibility from outside of the site. Such visibility would be largely confined to short or medium range views from the bridleway. However, the loss of openness would be clearly perceived by users of the public right of way."

- 5.70 The Inspector also notes that the reduction in openness would be apparent to the many visitors to the development and she opened that the mitigation itself would increase the visual effects experienced from the loss of the openness. In the circumstances of that case the Inspector concludes that the spatial and visual harm to openness constitute significant harm to the Green Belt in addition to inappropriateness before concluding at DL39:

¹⁵ Land at Burston Garden Centre - APP/B1930/W/19/3235642 at **Appendix PH6**

“The development would therefore result in a substantial loss of openness and would conflict with the purposes of the Green Belt. The development would not accord with the Framework nor LP Policy 1. I attach substantial weight to this conflict and the harm arising to the Green Belt and its purposes by virtue of the development’s inappropriateness and the effect of openness.”

- 5.71 I acknowledge the differences between the two sites (Burston was not pdl) and the two sets of proposals and therefore conclude that in the circumstances of the Smallford Lane site the proposed development would have a substantially greater impact on openness than the existing use of the site and would lead to substantial harm to the openness of the Green Belt.

Other Harm

- 5.72 I do not ask the Inspector to add harm by way of conflict with the purposes of the Green Belt. Given the previously developed status of the appeal site this offsets its contribution toward encroachment and the damage to this strategically important gap between the settlements of St Albans and Hatfield.
- 5.73 Given my conclusions on paragraph 145(g) the Green Belt test is to consider inappropriateness and Green Belt harm and any other harm before moving to consider if the other considerations relied on by the Appellant clearly outweigh such harm.
- 5.74 I therefore consider other harm before identifying the other considerations relied on by the Appellant and carrying to the balance. The other harm is:
- Harm by way of the harm to the character and appearance of the area
 - Harm by reason of the unsustainable location of the appeal site for a residential development of up to 100 dwellings
 - Harm by reason of drainage issues
- 5.75 I have already recognised that archaeology, ecology and biodiversity matters and infrastructure are matters that should be capable of being overcome by a suitable section 106 undertaking and/ or conditions. If such matters are not secured by way of an undertaking then they and the failure to provide affordable housing would further weigh against the grant of planning permission.

Location for Residential Development

- 5.76 I note that *Manual for Streets* (MfS) at paragraph 4.4.1 discusses walking neighbourhoods which are characterised by having a range of facilities up to 800 metres walking distance. At 6.3.6 it notes that pedestrian routes need to be direct and match desire lines as closely as possible and that permeable networks help minimise walking distances. I have included an extract from MfS at **Appendix PH7**.
- 5.77 *Planning for Walking* published by the Chartered Institution of Highways and Transportation in April 2015 states that typical catchments for walking are around 800 metres or 10-minutes' walk (p29 Land use planning for pedestrians). It also advises that pedestrian catchments depend on the power of a destination with ranges of 400m for bus stops and 800m for railway stations (p 30). I have included an extract from Planning for Walking at **Appendix PH8**
- 5.78 *Guidelines for Providing Journeys on Foot* (GPJF) published by the Institution of Highways and Transportation in 2000 at Table 3.2 (page 49) advises that for school trips an acceptable journey is 1km and a desirable distance is 500 metres with a maximum journey of 2km. For town centres the desirable distance is 200 metres with an acceptable distance of 400 metres and a maximum of 800 metres. Other facilities elsewhere the desirable distance is 400m, the acceptable distance is 800m and the preferred maximum is 1.2KM.). I have included an extract from GPJF at **Appendix PH9**
- 5.79 I have set out at section 2 the distances to several facilities necessary for day to day living. I do not consider Sleafshyde or Smallford to provide necessary facilities to serve the day to day needs of occupants of a residential estate of 100 family houses.
- 5.80 For instance the closest Junior and primary school is located at Colney Heath. Whilst on paper the journey at 1300 metres the nature of the journey ensures that very few parents would undertake such a journey with young children having to walk alongside the A414 a dual carriageway high speed trunk road subject to the national speed limit and then cross via a pedestrian footbridge and then walk along the narrow footpath on High Street close to the junction with the A414. On the walking route any pedestrians would have to cross Smallford Lane twice (once from the appeal site to the footpath on the eastern side of the road and then after they cross Sleafcross Gardens they return to the western side at the junction with the A414), then cross the A414 on the pedestrian bridge before crossing the double junction of St Marks Close and Church Lane with High Street before finally crossing from the western footpath to the school on the eastern side of High Street. I consider such a route involving crossing roads six times wholly unsuitable for young children on bicycles. The next closest primary school is 4 kilometres away.



Image 9a: High Street Junction with St Marks Close and Church Lane © Google

Image 9b: Narrow Footpath on High Street Colney Heath

- 5.81 In my view the vast majority of journeys to primary school would be undertaken by motor car.
- 5.82 The closest supermarket of mainstream retail food offer is located at Morrisons on Hatfield Road in St Albans, 4.2 kilometres from the appeal site.
- 5.83 The railway station is located 5.5 kilometres from the appeal site. The bus service that passes the appeal site is infrequent and it is likely that for regular bus services the bus stops on Hatfield Road would have to be used. As noted these are over a kilometre from the appeal site and well outside the 400 metres recommendation in guidance. I accept that cycle access to the station could be achieved via the Alban Way.
- 5.84 Routes to the north will include stretches of very narrow footpath, I recognise that an alternative route to the footpath alongside Smallford Lane is via the footpath crossing the Alban Way. That route is lit but remote from the road and activity and may not be suitable during times of little activity or during darkness. I also note that this footpath at its junction with the Alban Way is prone to standing water and pooling and puddles. The combination of these factors will discourage walking to the north of the appeal site.
- 5.85 What is clear from Table 1 is that all facilities are located more than 800 metres walking distance from the appeal site with schools, doctors surgeries, shops, post offices etc all located substantial distances from the appeal site
- 5.86 I conclude that day to day facilities are not located within a suitable walking distance or via a suitable route and therefore the proposed development will encourage the use of the car and not promote the use of alternative methods of transport. I consider this to be especially acute when considering the distances and route that very young children attending pre-school and lower school would have to take to walk and the roads they would have to cross to access these facilities.



Images 10: Narrow Footpaths alongside Smallford Lane

- 5.87 Accordingly, I do not consider the appeal site to comprise a sustainable location for new residential development, I note that the Framework at 102 seeks to promote opportunities for walking and cycling as well as public transport. I do not consider the proposal would assist in providing such opportunities and the appeal site is not located to reduce the need to travel nor would it offer a genuine choice of transport modes to the private motor car contrary to paragraph 103.
- 5.88 I do not consider that the proposed development would be located within walking distance of primary schools and pre-school and is well beyond normal walking distances for access to town centres. It will not make the fullest use of walking and cycling and will therefore conflict with the Framework. I do accept that access to the Albans Way is possible once you have crossed Smallford Lane and travelled along a public footpath and this may present some opportunities for travel by cycle or offer genuine choice of transport modes contrary to paragraph 103.
- 5.89 I do not consider that the proposed development would be located within walking distance of primary schools and pre-school and is well beyond normal walking distances for access to town centres. It will not make the fullest use of walking and cycling and will therefore conflict with the Framework. I do accept that access to the Albans Way is possible once you have crossed Smallford Lane and travelled along a public footpath and this may present some opportunities for travel by cycle.
- 5.90 Given the site will lead to a reliance on the private motor car I do not consider it would help to reduce greenhouse gas emissions by reason of its location contrary to paragraph 150 NPPF. The site is located outside a settlement and is heavily reliant on car journeys for access to facilities and local services and thus conflicts with NPPF paragraph 92.

- 5.91 Given the location of the site remote from facilities by distance and route I do not consider this to represent a sustainable location for new residential development. In that respect it will not encourage cycling or walking and will result in over reliance on the private transport which would not assist in reducing reliance on private motor vehicles and in that respect would not ensure an integrated approach to the location of housing, economic uses and community facilities and services in conflict with the environmental role of sustainable development as well as paragraph 92 (e) NPPF.
- 5.92 Therefore, such harm should be added to the inappropriateness of the proposed development and harm to openness when assessing whether very special circumstances exist to justify this development in the Green Belt.

Other Harm - Character of the Area

- 5.93 I have already commented on the openness of the site in the context of assessing the proposals impact on the Green Belt and its fundamental aims and application of paragraph 145.
- 5.94 The existing site has little landscape merit as it comprises a site almost entirely covered in hardstanding, buildings or bare ground and used for open storage. However there is some existing vegetation including tree screening growing within the site.



Plan Extract 10: The Watling Chase Community Forest Boundary

5.95 In terms of an acceptable approach to the landscape planning and design of degraded and potentially contaminated site, landscape character should be considered in context. The site is located within Watling Chase Community Forest (WCCF), so any proposed development should support the objectives for WCCF. The main objectives for the Community Forest include:

- *creating a visually exciting and functionally diverse environment*
- *regenerating the environment of the Green Belt and similar areas*
- *protecting sites of nature conservation value and creating new opportunities for nature conservation*
- *increasing opportunities for sport and recreation and improving access to the countryside*
- *providing new opportunities for the educational use of the area*
- *establishing a supply of timber and other woodland products*
- *increasing community commitment to the Community Forest concept and involvement in its implementation*
- *encouraging the private sector to implement the Forest's aims and invest in the area*
- *creating jobs in the woodland and leisure industries*

5.96 I am unclear how the proposal would contribute to any of these objectives and I do not consider the Appellant's submissions demonstrate how such objectives will be met by the proposed development. The design objectives for development in the WCCF note that:

"Well planned woodland and other habitats can help to enhance or restore the character and identity of an area, which can make it more attractive for the community and businesses alike. If good planning and design are used to promote access to the Forest, including through the provision of Gateway sites, this will encourage people to use and care for the Forest and will help raise awareness of it within the community. [...]"

5.97 The approach includes discouraging development which diminishes the quality of the Forest environment, creating a balance of woodland and open spaces, ensuring the scale of woodland reflects the scale of the landscape and taking into account landscape character assessments.

5.98 The Hertfordshire Landscape Character Assessment locates the site in LCA 30: Colney Heath Farmland, for which the strategy and guidelines for managing change are *Improve and Conserve*, with specific reference to:

- *support WCCF*
- *new woodland planting to maintain and improve visual separation from the adjacent urban uses and transport corridors.....*
- *Scale of planting to typically comprise small woods, copses and shelterbelts.....*
- *reduce visual impact of adjacent built areas....improve public access and signing...*
- *encourage maintenance of existing pattern and scale of hedgerows and field trees that provide enclosure...*
- *promote hedgerow restoration and creation....*
- *encourage opportunities to extend heath habitats ...*

- *promote the restoration of degraded sites associated with mineral extraction ...*
- *promote the creation of new ponds*

5.99 I am unclear from the proposals to date how the scheme will contribute toward the landscape strategy for the area.

5.100 The appeal site is located within an area of open countryside and I accept that the existing use does not have a positive impact on the character and beauty of the countryside. However, its appearance and transient use with storage occupying the site and few permanent buildings preserves some degree of permeability through the site with views through deciduous perimeter landscaping of the depth of the site and landscaping on the opposite site boundaries.

5.101 The existing condition of the site frontage is not an accurate baseline as the landscaping scheme pursuant to the new access has yet to be implemented.



Image 11: Site Frontage Looking North from the New Access

5.102 I have not undertaken my own Landscape and Visual Impact Assessment (LVIA) but as a Chartered Town Planner I have reviewed the Appellant's LVIA. I do not dispute the methodology and general approach the Appellant undertakes in respect of their LVIA other than the absence of winter views.

- 5.103 I note the findings of the Appellant's LVIA which was carried out in summer with all deciduous trees in full leaf and it is fairly accepted by the Appellant as representing the best case scenario¹⁶ (which must be right given it was carried out when deciduous trees and planting were all in leaf). It is also important to note that the LVIA was undertaken before the works associated with the implementation and provision of the new access to the site were undertaken and the planting removed along the eastern boundary. I use my planning judgement in assessing the impact on the character of the area of the proposed form of development. I agree with the Appellant's zone of theoretical visibility (ZTV) and the identification of visual receptor locations. My main concerns relate to the part of the ZTV around Footpath 11, Bridleway 2 and footpaths 19 and 39, Smallford Lane, Sheapshyde Lane and the lake to the north of the appeal site.
- 5.104 I reach different judgments to some of those arise in the LVIA. These arise from my assessment of the area and the impact of the site in both its existing and proposed uses and the area within which it is located. In particular I do not give the same apparent positive weight to the role of public open space from the new site as a positive element of the scheme in the wider landscape and my assessment of the impact of the existing uses on the wider area is lower than the Appellant's whilst my assessment of the impact of the proposed use is higher as I explain below.
- 5.105 As I have detailed in my evidence the proposal would enclose views within the site with solid perimeter development along the east and north boundaries preventing views through the site and presenting walls of two storey development close to the site boundaries. In Image 9 and Image 4 the relatively open appearance across the site with trees on the northern boundary (Image 9) and the trees and open perspective to the south (Image 4) in view would be replaced by the terraces of two storey dwellings backing onto Smallford Road which present a wall of development. This would be particularly evident in the view at Image 10.
- 5.106 In Image 12 (below) which shows part of the eastern boundary where landscaping has been retained once the access road was constructed the relatively open view through the site with open sky would be replaced by the solid terrace of dwellings as shown on the illustrative layout plan.

¹⁶ See paragraph 1.8 of the LVIA



Image 12: View Looking West Across the Northern part of the site (Unit 11)

- 5.107 On Footpath 19 and Bridleway 19 views across to the site (Image 4) that are currently open with the existing building at the rear of the site would be replaced by the solid enclosure provided by the rear of the three terraces of dwellinghouses that would align the closest boundary and run either side of the existing building.
- 5.108 In views from the north on the bridge across the Alban Way glimpsed views of existing buildings on the site are available. The presence of those buildings and the freedom from permanent development are evident through the existing winter planting. This perspective would be replaced by the solid wall of development now proposed along the northern boundary as illustrated in section C – C at section 3.
- 5.109 As illustrated in Image 13 below the scale and solidity of permanent buildings will be evident in these views.



Image 13: View Through Existing Vegetation Looking South from Bridge

- 5.110 I also note the site is visible and evident from the lake to the north and on the perimeter footpath around the lake as well as across the land north of the appeal site. I recognise the lake is a private fishing lake.



Image 14: View of Appeal Site from the Lake



Image 15: View from Land to the North of the Appeal Site

- 5.111 Again in this view the solid row of detached houses along the north western boundary would be dominant enclosing the site through the vegetation.



Image 16: View Looking East from Footpath 11

- 5.112 On approaches along Footpath 11 from the Alban Way the appeal site is visible both in short views close to the boundary (see Image 3) and longer views on the approach to the site travelling east as shown above in Image 16. I also note that the north west parts of the appeal site are visible from Footpath 22.
- 5.113 In all views of the site including those illustrated above but particularly those on public footpaths or the public highway the change would be evident with substantially more permanent enclosure resulting from the proposed scale of development.
- 5.114 The same degree of increased enclosure will be apparent to occupants of buildings in Sleafshyde who have direct views toward the appeal site (i.e. the modest bungalows at 19 – 22 Smallford Lane) as well as properties with indirect views such as the views from the rear gardens of properties on the northern side of Sleafshyde Lane. I recognise that some of the residents may welcome the removal of the storage uses from the site but in my view the degree of additional enclosure weighs against any such residential amenity benefits that they may perceive.
- 5.115 The application site lies within the Colney Heath Farmland Landscape Character Area and is part of the Watling Chase Community Forest. The site is surrounded by a County Wildlife site and the pond to the north of the site is a NERC Act¹⁷ Habitat Area. I accept that the existing site is of itself of little landscape merit. However, the surrounding land has been colonised by natural scrub and the existing boundaries of the site include some scrub and native tree belts which partly screen and contain the existing low intensity and low level storage uses on the site from the surrounding area. This combined with the permeability of the use of the site reduces the impact of the use of the site on the wider context.
- 5.116 To achieve the proposed scale of development the proposal will comprise a dense and urban character of development that is likely to result in a regimented layout as shown on the illustrative plans. This cannot be seen as beneficial to landscape character in view of the strategy (see 5.91 and 5.94) for the area. The proposals include long lines of terraced houses, road frontages dominated by parking, detached houses with no front gardens and gaps infilled with side parking. These aspects of the design would be considered likely to result in a poor quality of environment in an urban context.
- 5.117 The dense layout coupled with small gardens and lack of space for screen planting along all the boundaries within the red line would mean that the development could not be integrated with the surrounding landscape. It would rely almost entirely on existing planting outside the site boundary for screening and softening of the built elements as viewed from the surrounding area, rights of way and road frontage.

¹⁷ Natural Environment and Rural Communities Act 2006

- 5.118 The green space provision is minimal and potentially 30% of the village green is required for an attenuation basin in the form of the pond (this could increase subject to the drainage evidence) and I assume a significant proportion of the remaining area will be devoted to children's play equipment. Space for water and sustainable surface treatment of runoff should be allowed in addition to tree planting and open space provision, integrated with the landscape design and biodiversity gain.
- 5.119 The proposal does not improve connectively nor does it make positive enhancements to green infrastructure connections and provision. In landscape and green infrastructure terms there is a potential key link to a right of way to the west (Footpath 11) which links to the Alban Way, this would provide opportunities for accessing the wider area without having to walk along or cross Smallford Lane. I acknowledge that the southern corner on the Smallford Lane frontage appears to create small new public realm which relates to the existing bus shelter, Sleafshyde and the footpath to Colney Heath Lane to the southwest.
- 5.120 I accept that the proposed development would have some beneficial impacts for landscape in the long term as a result of the change from predominantly hard surface, industrial development to residential, including green spaces and planting within the body of the site. Some of these positive benefits would be offset by the extent of built form and the degree to which the site and its internal areas are enclosed from views looking in. In my judgement the existing use causes a lesser degree of harm to the area than the Appellant assesses and the proposal will lead to a greater degree of harm and impact. I accept that the proposed development would result in a moderate adverse effect on the setting of the site post construction. However, whilst I accept maturing landscape will reduce the impact over time I do not consider such impacts would be mitigated completely or be neutral given the scale of permanent physical development proposed and its manifestation around the perimeter of the site. I consider the impact could reduce after 15 years to a minor adverse effect.
- 5.121 I also consider the sensitivity of the site to accommodate development is greater than the Appellant categorised it (low) but agree the existing landscape character is of medium sensitivity. The reason I consider the sensitivity of the site to accommodate the proposed changes to be greater than low is that I do not consider the assessment undertaken to give enough weight to the transient nature of the existing use of the site for storage, the relatively small degree of permanent building on site and the wider Green Belt setting. Consequently, the significance of the development of the site for up to 100 dwellings comprising permanent buildings on Landscape Character could be greater than indicated. I recognise that this is an outline application with all matters reserved for future consideration.
- 5.122 With regard to the retention of mature landscaping around the boundaries of the site I note the proximity of proposed housing in the illustrative layout plan to such planting and would have some concerns about the prospects for its retention given the impact on the amenity of occupiers of some houses and their enjoyment of their garden spaces and the health of some of the trees. I also note that the majority of perimeter planting appears to be off site.

5.123 Overall given the scale of proposed development that is to be accommodated on the appeal site and the Appellant's indications of how such a number of dwellings would have to be laid out to be accommodated on site I consider that the development would have an moderate adverse impact on the wider Green Belt countryside. As such, it would not recognise sufficiently the intrinsic character and beauty of the countryside instead providing an island of intense urban development that turns its back on the countryside and encloses its boundaries. In that context the proposal fails to demonstrate how a development of the scale proposed could provide adequate space for planting within the development to screen and accommodate adequate tree planting to ameliorate the impact of the development. Thus the proposal would be contrary to 170 NPPF and Policy 74 of the adopted Local Plan.

5.124 Therefore, such harm should be added to the inappropriateness of the proposed development and harm to openness when assessing whether very special circumstances exist to justify this development in the Green Belt.

Other Harm - Drainage Matters

5.125 I note the conclusions of my drainage colleagues that:

"The reasons for objection as set out in our response are fundamental concerns with the proposed development in relation to surface water management and flood risk"

5.126 The surface water drainage strategy is not demonstrated to provide a suitable strategy to meet the requirements of the site and area. I note the failure to provide survey information which undermines the Appellant's position and the assessment provided fails to provide clarification of discharge mechanism; provision of Greenfield runoff rates; clarification of restricted discharge via a flow control device; details of maintenance arrangements for the proposed shared SuDS features and that the proposal would not adversely affect the public water supply. This failure weighs against the grant of permission.

5.127 I noted at recent site visits standing water on Smallford Lane between the new and existing accesses to the appeal site, full ditches alongside the appeal site, standing and pooled water on units 5 and 7 and on the Alban Way.

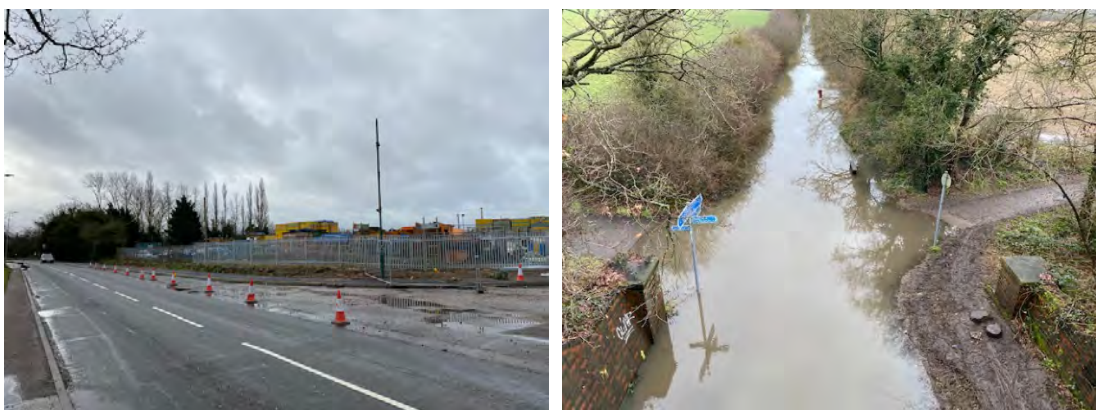


Image 17: Standing Water Smallford Lane and Alban Way

- 5.128 Given the significant unresolved drainage issues, the reliance on third party land to provide a solution (without to date I understand the consent of third party owners), the lack of any mechanism to secure third party owners cooperation or any dialogue to such an effect and the in principle doubts whether any such scheme could come forward I do not consider such a matter could appropriately be overcome through the imposition of conditions in either a positive or negative (*Grampian*) format. I also note the concerns my drainage colleagues raise that any satisfactory drainage solution may well affect the ability of the site to accommodate the quantum of development proposed.
- 5.129 Therefore, such harm should be added to the inappropriateness of the proposed development and harm to openness when assessing whether very special circumstances exist to justify this development in the Green Belt.

6 Other Considerations Advanced By The Appellant

- 6.1 I have shown that the proposal comprises inappropriate development. Furthermore I have demonstrated that the proposal would lead to a loss of openness and would comprise an inappropriate location for new residential development.
- 6.2 It is well established that it is for the Appellant to demonstrate that very special circumstances exist to warrant overriding normal Green Belt presumptions. Such circumstances will not exist unless the harm by reason of inappropriateness and any other harm¹⁸ is clearly outweighed by other considerations.
- 6.3 The Appellant's case of what material considerations they consider to amount to very special circumstances is detailed in their statement of case¹⁹. Broadly stated, the considerations upon which the Appellant relies are:
- The need for and provision of market housing in the area;
 - The need for and provision of 40% affordable housing in the area;
 - Opportunities for environmental benefits
 - Transport Network improvements at peak hours and removal of HGV trips from residential roads that experience heavy congestion
 - Economic benefits
- 6.4 I do not consider that these circumstances justify overriding the strong presumption against inappropriate development in the Green Belt, nor do they outweigh the harm through inappropriateness, detriment to openness, harm to character, harm by reason of its location and harm to drainage interests and other harm occasioned by this form of development.
- 6.5 In the circumstances that the Inspector agrees with the Council that the material considerations relied upon by the Appellant do not amount to very special circumstances (i.e. they fail to clearly outweigh all the harm) then the Inspector should conclude that planning permission should not be granted and dismiss this appeal.

General

- 6.6 Very special circumstances will not exist unless the material planning considerations advanced by the Appellant **clearly** outweigh both the harm by reason of inappropriateness **and** any other harm. I pause here to reflect that matters prayed in aid by an appellant or applicant to cumulatively outweigh harm by way of inappropriateness and any other harm should not be referred to as very special circumstances or VSC (see Appellant's Statement of Case at 4.79 by way of example). Very special circumstances are the outcome of the Green Belt balancing exercise and only exist at a point when that balance has been undertaken and the other considerations clearly outweigh the harm.

¹⁸ After **SoS CLG, Reigate and Banstead BC, Tandridge DC and Redhill Aerodrome Ltd** [2014] EWCA Civ. 1386

¹⁹ See paragraphs 4.79 of the Statement of Case

6.7 In these circumstances, I have already established that the development is inappropriate and will lead to an erosion of openness as well as damaging the character and of the countryside and Green Belt. Additional harm by way of drainage harm and the unsustainable location of the appeal site add to the weight of factors against the proposed development. Therefore, the circumstances relied on by the Appellant will need to be of sufficient weight to clearly outweigh these components of harm that cumulatively amount to greater harm than just that of inappropriateness.

6.8 In this regard, I am mindful of the stringent test articulated by Sullivan, J (as he then was) in **Draper**²⁰, which concerned national Green Belt policy in Planning Policy Guidance Note 2 ("PPG2"). Although PPG2 was replaced by the Framework, for present purposes, current national Green Belt planning policy has not changed. In paragraph 58 of his judgment, Sullivan, J states:

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

6.9 In **Temple**²¹, Sullivan, J (as he then was) clarified the test for demonstrating very special circumstances by confirming that it was not necessary for each factor, of itself, to be 'very special' and that factors which individually were otherwise quite ordinary could cumulatively become very special circumstances.

6.10 Further guidance was provided by the Court of Appeal²², in which Carnwath LJ stated inter alia that:

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

and

"23. At the general level, a judgment must be made as to whether, or in what circumstances, the societal value attached to the protection of the homes of gipsies as individuals can in principle be treated as sufficiently important to outweigh the public value represented by the protection of the Green Belt. [...] the guidance neither excludes nor restricts the consideration of any potentially relevant factors, including personal circumstances. PPG2 limits itself to indicating that the balance of such factors must be such as "clearly" to outweigh Green Belt considerations. It is thus left to each inspector to make his own judgment as to how to strike that balance in a particular case."

²⁰ **R (Chelmsford) v First Secretary of State and Draper** [2003] EWHC 2978

²¹ **R (Basildon District Council) v First Secretary of State and Temple** [2004] EWHC 2759 (Admin)

²² **Wychavon District Council v Secretary of State and Butler** [2008] EWCA Civ 692

and

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

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

6.11 I therefore consider the other considerations relied upon by the Appellant and attribute weight to these matters.

Housing Need and Contribution of the Proposed Housing

6.12 It is common ground that the Council is unable to demonstrate a five year supply of deliverable housing land. The Council has a 2.4 year supply of deliverable housing land and has a serious and significant shortfall.

6.13 I also recognise that the Council does not have an up to date local plan to deliver housing to meet its current housing needs.

6.14 Therefore I agree that the provision of up to 60 dwellings to meet local need in terms of market housing should be attributed significant weight.

6.15 In a written Ministerial Statement of 17 December 2015 the Minister for Housing and Planning confirmed that:

"[...] the government's policy that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances."

6.16 Whilst I note the grant of outline planning permission with all matters reserved would not render the proposed development deliverable for the purposes of the NPPF²³ (and thus would not increase the deliverable supply) I do not reduce the weight to be attributed to housing given the housing land supply position in St Albans.

²³ See the NPPF glossary definition

6.17 However I do not consider positive weight can be given to delivery within five years absent clear evidence that completions will begin within 5 years. I have not seen evidence that the site would be deliverable within 5 years and given some of the challenges with the site I would have my doubts about deliverability in such a timescale. The matters I consider that could lead to delivery include:

- The need to obtain reserved matters approvals
- The need to discharge pre commencement conditions
- The need to undertake a satisfactory archaeological investigation ahead of development commencing
- The need to remove and attenuate contaminated land
- The need to obtain rights over the third party land to enable drainage discharges
- The need to obtain vacant possession

The Provision of 40% Affordable Housing

6.18 I recognise the provision of 40% affordable housing would deliver 5% more (i.e. 5 more affordable dwellings if 100 dwellings are delivered from the site) than Policy requires and should be recognised in the weighting of such matters.

6.19 Subject to such matters being secured²⁴ I consider the delivery of affordable housing at 40% of the total net number of houses at the appeal site should be attributed substantial weight.

Green Belt Purposes

6.20 The Appellant purports that the appeal proposal will contribute positively toward the purpose of assisting urban regeneration by recycling derelict and other urban land. The proposal will not contribute toward any of the five purposes identified at paragraph 134 of the Framework.

6.21 The fifth purpose of the Green Belt is to enable and assist in urban regeneration by recycling derelict and other urban land. The Appellant promotes a positive case in respect of this consideration. I consider that approach to be misguided for two reasons:

- a) The land is not derelict
- b) The land is not urban

6.22 The Concise Oxford English Dictionary defines derelict as *Abandoned, ownerless property*. The land is currently largely occupied, in use, has not been abandoned and the owner is the Appellant. Therefore, it is not derelict.

²⁴ i.e. an executed section 106 undertaking that secures the provision and retention of affordable housing with a suitable tenure split.

- 6.23 The land is located in the countryside outside any town or city and whilst its current use may have urban characteristics I would not accept that the land is urban land. Urban land is land within a town or city, manifestly that is not the appeal site.
- 6.24 In my view the meaning of the fifth purpose is to constrain development beyond settlement boundaries in the Green Belt in order that land within the settlements that has been abandoned and is derelict is recycled in favour of open green land in the countryside.
- 6.25 Therefore this is not a matter that weighs in favour of the proposals and no positive weight should be attributed to it.

Opportunities for Environmental Benefits

- 6.26 Whilst I recognise that the proposal can improve certain aspects of the site (i.e. internal landscaping etc.) and remove or remediate contamination at the site these are policy requirements and if not achieved then permission would be refused (see Policy 24 of the development plan) I have also commented on the impacts of the proposed development including the visual impact of such a substantial amount of permanent new development and its enclosing impacts on the appeal site that are countervailing factors.
- 6.27 I have already demonstrated that the proposal would harm the environment and would not protect the natural environment in terms of the Green Belt and countryside. The proposal comprises inappropriate development and would erode the openness of the Green Belt to a substantial extent. It would also locate a significant residential development in an inaccessible location the occupants of which will rely on the private motor car. The proposal has failed to bring forward a satisfactory drainage strategy and harms such interests. Given these clear conclusions it is apparent that the proposed development cannot significantly contribute toward the environmental objective of sustainable development.
- 6.28 I note biodiversity gains are a policy objective²⁵ and the emerging Environment Act seeks to formalise this position. To date such gains have not been demonstrated (for instance by reference to the Natural England metric). Whilst welcome meeting that policy objective to avoid refusal of permission cannot be a benefit of a planning scheme that merits more than moderate weight.
- 6.29 I attribute moderate weight to the environmental benefits relied on by the Appellant.

²⁵ See for instance NPPF 170(d)

Transport Network improvements at peak hours and removal of HGV trips from residential roads that experience heavy congestion

- 6.30 Whilst I recognise the findings of the Transport Assessment in respect supporting the proposed development by way of HGV and peak time traffic, any such benefits are tempered by a number of factors.
- 6.31 The appeal site is located within 350 metres of the A414 trunk road. Smallford Lane is not a road I would characterise as a residential road so immediate access to the appeal site does not rely on traffic through residential roads.
- 6.32 I am not aware that Smallford Lane experiences heavy congestion but I am aware that some congestion occurs on the A414 but recent works on the trunk road may assist in that respect. Employment sites that generates HGV traffic located close to a trunk road would in my view reduce the impact of such traffic on residential roads.
- 6.33 I also note that the removal of the employment use from the appeal site would not remove the need for employment land to serve these businesses. As such, the relocation of these businesses to another site will merely divert the traffic to other roads.
- 6.34 Finally I have visited the site pursuant to this appeal on a number of occasions and I have not noted at any visit any significant movements of traffic associated with the appeal site. In fact during one hour visits I have not witnessed more than single figure traffic movements in and out of the appeal site.
- 6.35 Therefore as a benefit of the scheme I do not consider such matters merit more than little weight.

Economic Benefits

- 6.36 I have shown that the proposed site does not comprise land of the right type in the right place to support growth. Whilst the Council has no in principle objection to the redevelopment of the appeal site the loss of the existing economic use from the site will lead to a diminution in economic activity associated with employment. Set against this will be the generic gains to be achieved from the construction phase of the development and the increased spend from the new residents.
- 6.37 I am conscious of the materiality of local finance considerations²⁶ and that it is for the Appellant to identify such matters, clearly show how any such considerations would be material and how they weigh in favour of the grant of planning permission. To date I have not seen any evidence about how such matters are benefits of this scheme and not simply necessary to accommodate the development or resolve needs emanating from the development itself.

²⁶ See for instance PPG Reference ID: 21b-011-20140612

- 6.38 Council Tax spending and infrastructure spending will only contribute toward the needs emanating from this development and are not a benefit of the scheme. Infrastructure has to meet the tests set out at paragraph 56 of the NPPF, PPG²⁷ and at regulation 122(2) of the CIL Regulations. In my view the tests of necessity and direct relationship to the development indicate that such infrastructure contributions are intended to serve the development as otherwise they may fail the tests.
- 6.39 The spend from potential future occupants of the appeal site will not result in significant local benefits given the lack of local shopping and other facilities and the reduction in local employment opportunities and facilities and such economic benefits would be achieved from any site within the Council's administrative area. An increase in trade to the local public houses would be an economic benefit of the scheme however this again is tempered by the loss of employment trade for these facilities from the site. I note the new access road has recently started construction and is intended for use by the occupants on the existing site, as such the existing use of the site must be viable and contribute toward economic prosperity given the significant investment made implementing the access proposals at site.
- 6.40 On the information available to me, I conclude that the loss of economically active employment land and the disruption to existing businesses outweighs the generic benefits of new housing development and thus the proposal will not provide a net contribution toward the economic objective.
- 6.41 I concluded that the loss of economically active employment land outweighs the generic benefits of new housing development and thus the proposal will not provide a net contribution toward the economic objective. Therefore, I do not consider such matters to represent a benefit of the scheme and thus do not carry weight in favour of the grant of planning permission.
- 6.42 I attribute little weight to the environmental benefits relied on by the Appellant.

²⁷ PPG Reference ID: 23b-002-20190901

7 The Green Belt Balance (NPPF paragraph 144)

- 7.1 Given I have concluded that the proposal will lead to substantial harm by way of a loss of openness it is clear that the proposal would not qualify as an exception under either of the bullet points pursuant to paragraph 145(g) of the Framework. It is therefore inappropriate development in the Green Belt.
- 7.2 Permission should normally be refused for inappropriate development unless very special circumstances can be demonstrated.
- 7.3 Very Special Circumstances will not exist unless other considerations relied on by the Appellant clearly outweigh the harm by way of inappropriateness and any other harm.
- 7.4 The Framework requires that harm by way of inappropriateness and any other harm to the Green Belt is to be allocated substantial weight.
- 7.5 The appeal proposal will lead to substantial harm to the openness of the Green Belt and comprises inappropriate development. Such matters carry substantial weight in the planning balance.
- 7.6 In addition, I do not consider the appeal site to represent a sustainable location for new residential development and I have noted its relative inaccessibility in terms of day to day facilities. I do not consider the proposal to represent the right form of development in the right place and in my view such matters carry substantial weight against the grant of permission. The proposal will also lead to harm to the character of the countryside and wider area to which I attribute moderate weight and harm to drainage matters to which I attribute significant weight (although such matters do not affect my overall conclusion such that should drainage be removed from the balance my view is that the other considerations relied on by the Appellant would not outweigh the harm by way of inappropriateness and any other harm).
- 7.7 In support of the proposals the Appellant identifies the contribution toward housing given the failure to deliver housing and maintain a five year supply of deliverable housing land and I have attributed significant weight to such matters as well as substantial weight to the provision of affordable housing at 40% which is above the minimum policy requirement.
- 7.8 I attribute moderate weight to the environmental benefits relied on by the Appellant and little weight to transport matters.
- 7.9 On the basis of my analysis it is evident that the other considerations advanced by the Appellant do not outweigh, never mind clearly outweigh, the harm by way of inappropriateness and any other harm. Therefore, very special circumstances do not exist, and planning permission should not be granted. I consider that the policies of the Framework provide a clear reason for refusing the development as it is inappropriate development in the Green Belt and there are no very special circumstances to justify the grant of permission.

- 7.10 Should the Appellant fail to deliver a mechanism to provide for the 40% affordable housing then that benefit of the scheme would become a failure to deliver the affordable housing at all that would represent a serious and substantial shortcoming of the application the subject of this appeal that would weigh heavily, in addition to the above factors, against the grant of planning permission.
- 7.11 In addition, the failure to secure biodiversity gains and infrastructure would weigh further against the grant of permission.
- 7.12 If the Inspector is minded to allow this appeal the Council would request that the conditions provided are considered. In addition, a section 106 undertaking to deliver necessary infrastructure and affordable housing would be necessary.

8 Overall compliance with the development plan, and other material considerations

- 8.1 As I have demonstrated, the appeal proposal would not comprise development within a Green Belt settlement, is not required for the exempted purposes in the Green Belt and very special circumstances have not been demonstrated; therefore the proposals are contrary to Policy 1 of the Saved Policies of District Local Plan Review.
- 8.2 I have shown that the proposal would lead to a major loss of openness leading to substantial harm to the openness of the Green Belt.
- 8.3 I have also shown that the proposed scale of development would not integrate with the existing landscape and would lead to harm to the character and appearance of the area contrary to Policies 1 and 74 of the Saved Policies of District Local Plan Review.
- 8.4 My colleague has demonstrated that the drainage details provided by the Appellant do not meet the expected details to demonstrate a satisfactory strategy can come forward for the site and given likely reliance on third party land to provide a satisfactory strategy no certainty can be provided that such a strategy could be forthcoming. Accordingly the proposal would conflict with Policy 84A of the Saved Policies of District Local Plan Review.
- 8.5 For these reasons, the development is contrary to the development plan taken as a whole.
- 8.6 Paragraph 11 of the NPPF provides the presumption in favour of sustainable development with the approach to decision making set out at paragraphs c and d. I have demonstrated that the proposal does not accord with the development plan so the decision maker is directed to paragraph d.
- 8.7 It is common ground that the Council cannot demonstrate a five year supply of deliverable housing land and thus policies for the delivery of housing, which are most important policies in an application for housing, are out of date pursuant to footnote 7. However, as demonstrated above policies of the Framework that protect the Green Belt (see footnote 6) provide a clear reason for refusing the development proposed.
- 8.8 No material considerations that indicate that the application should be determined otherwise than in accordance with Development Plan exist. That is because NPPF paragraph 144 balances all material considerations and leads to conclusion that permission should be refused.

9 Infrastructure and Section 106

- 9.1 The proposal would have a significant impact on local infrastructure and the proposal would be required to make provision to address its impacts on in particular education, health, leisure and transport provision. I understand it to be common ground between the parties that the provision of an agreed undertaking including Heads of Terms to cover the matters identified in the Council's committee report as well as securing the affordable housing offer will enable the Council to invite the Inspector not to dismiss the appeal for the reasons set out in reasons for refusal 5 and 6.
- 9.2 The Appellant is required to ensure a satisfactory delivery mechanism within a section 106 undertaking is provided to secure infrastructure contributions as part of the proposals. I anticipate that this will be agreed prior to the commencement of the Inquiry. Absent any measures to address such impacts, the proposal would adversely impact on the local community and erode confidence in the social cohesion of communities. The failure to deliver adequate infrastructure to serve the proposed development weighs against the grant of permission
- 9.3 I note the location of the Smallford Pit Local Wildlife Site (LWS) and the potential presence of great crested newts in the area noting that a precautionary approach, consistent with national policy, is recommended.
- 9.4 However, on the basis of additional information submitted since permission was refused for the application the subject of this appeal, I do not invite the Inspector to dismiss the appeal on such grounds subject to being satisfied that conditions and/ or an obligation can address such matters including delivering net gains in biodiversity.
- 9.5 The proposal comprises major development and will exceed any threshold to require the provision of affordable housing. The Council understand that the Appellant will ensure a satisfactory delivery mechanism within a section 106 undertaking is provided to secure the requisite affordable housing as part of the proposals including a policy compliant tenure split. I anticipate that an undertaking will be agreed prior to the commencement of the Inquiry. Until agreed, or secured, the failure to make and secure satisfactory provision to deliver and retain affordable housing is a matter that weighs heavily against the grant of permission and should carry substantial weight.
- 9.6 I have undertaken my Green Belt balance on the assumption that the Appellant's offer to deliver 40% affordable housing with an appropriate tenure mix will be secured in a section 106 undertaking. Absent such an offer then the weight to be given to the other considerations relied on by the Appellant will diminish further.
- 9.7 I have undertaken my planning balance on the assumption that the section 106 undertaking will come forward to secure the necessary infrastructure absent such an undertaking the weight will shift even further toward the refusal of permission.

10 Summary and Conclusions

- 10.1 The appeal site comprises land extending to a total of 3.5 hectares. It is detached from any existing main settlement and facilities. It has a frontage onto the eastern side of Smallford Lane of 220 metres and is located to the north of the North Orbital Road (A414). The site is located within the Metropolitan Green Belt and within the Watling Chase Forest area surrounded by the Smallford Pit Local Wildlife Site, a County Wildlife site and the pond to the north of the appeal site is a NERC Act Habitat Area.
- 10.2 The appeal site is currently subdivided into a number of commercial sub plots and there are a limited number of buildings and temporary structures, it is common ground that the appeal site comprises previously developed land.
- 10.3 Land to the north, west and south of the appeal site is open undeveloped land that is part of the open countryside. The majority of the eastern boundary is to open countryside beyond Smallford Lane and a small section of the south eastern part of the site is sited opposite 4 modest bungalows that comprise the north western tip of Sheapshyde, a Green Belt settlement.
- 10.4 Sheapshyde and Smallford do not contain any of the day to day facilities necessary to support residential life. The appeal site is located remote from any main settlement and a range of day to day facilities.
- 10.5 Outline planning permission, with all matters reserved for future consideration, is sought for the redevelopment of the land to demolish the existing buildings and erect up to 100 dwellings with internal access roads, car parking and other related development.
- 10.6 It is common ground that the Council is unable to demonstrate a five year supply of deliverable housing land with a supply position of 2.4 years.
- 10.7 The Council considers that the development comprises inappropriate development that leads to a substantial loss of openness.
- 10.8 The Appellant's case is that the site comprises an exception to the test of inappropriateness on the basis of paragraph 145(g). It is common ground that the appeal site comprises previously developed land and that the appeal proposals which provide 40% affordable housing (which exceeds policy requirements) comprises development that contributes to meeting an identified affordable housing need within the area.
- 10.9 The dispute between the parties is whether substantial harm arises to the openness of the Green Belt. The lawful baseline comprises an area of predominately open land with a small number of buildings that is used for external storage. Also the site sits adjacent to open countryside to the north, south, west and along the majority of its east boundary. The site is located in a wider area of open countryside and attractive landscape.

- 10.10 Paragraph 145(g) NPPF states that the baseline excludes temporary buildings. Temporary buildings have a degree of remediability and lack permanence such that they should not be counted in any assessment of openness pursuant to 145(g). At the appeal site all the containers, portacabins, lorry bodies, plant etc comprise temporary buildings for the purposes of 145(g).
- 10.11 The proposals will lead to a 325% increase in the floorarea of permanent development at the appeal site.
- 10.12 Materials stored on site are transitory and over time the amount of materials stored at site fluctuates. For instance vehicles stored at site will vary associated with the activities of the car dealerships; plant and machinery will leave site when hired out and contractors yards empty and refill with materials.
- 10.13 In addition, the height of stored materials at site are predominantly much lower than the height of the proposed dwellinghouse which range from 8 – 10 metres, I have noted that the significant increase in built form on the appeal site will also increase the presence and prominence of built form across the whole of the appeal site. In addition to the substantial increase in permanent development as proposed, and therefore the spatial and visual reduction in openness, the scheme will significantly increase the visual perception of enclosure and reduce further the openness of the site.
- 10.14 Therefore, the proposed development would substantially erode openness in both the spatial and visual contexts even having regard to the baseline. Substantial harm arises in respect of openness and the proposal comprises inappropriate development. Such matters carry substantial weight against the proposed development and conflict with the NPPF and Policy 1 of the Local Plan.
- 10.15 I do not consider the appeal site to comprise a sustainable location for new residential development, I note that the Framework at 102 seeks to promote opportunities for walking and cycling as well as public transport. I do not consider the proposal would assist and the appeal site is not located which limit the need to travel and offering genuine choice of transport modes contrary to paragraph 103.
- 10.16 The proposed development is not located within walking distance of schools and is well beyond normal walking distances for access to town centres. It does not make the fullest use of walking and cycling and will therefore conflict with the Framework. Given the location of the site remote from facilities by distance and route I do not consider this to represent a sustainable location for new residential development that promote the use of alternatives to the private car and in that respect would not ensure an integrated approach to the location of housing, economic uses and community facilities and services in conflict with the environmental role of sustainable development as well as paragraph 92 (e) NPPF. Such matters carry substantial weight in the planning balance.

- 10.17 Overall given the scale of proposed development that is to be accommodated on the appeal site and the Appellant's indications of how such a number of dwellings would have to be laid out to be accommodated on site I consider that the development would have an moderate adverse impact on the wider Green Belt countryside. As such, it would not recognise sufficiently the intrinsic character and beauty of the countryside instead providing an island of intense urban development that turns its back on the countryside, provides enclosed solid development along external boundaries. In that context the proposal fails to demonstrate how a development of the scale proposed could provide adequate space for planting within the development to screen and accommodate adequate tree planting to ameliorate the impact of the development. Thus the proposal would be contrary to 170 NPPF and Policy 74 of the adopted Local Plan. I consider that moderate weight applies to such harm.
- 10.18 I have noted the position of my drainage colleagues relating to the significant unresolved drainage issues, the reliance on third party land to provide a solution (without to date I understand the consent of third party owners), the lack of any mechanism to secure third party owners cooperation or any dialogue to such an effect and the in principle doubts whether any such scheme could come forward. Therefore, I do not consider such a matter could appropriately be overcome through the imposition of conditions in either a positive or negative (*Grampian*) format. I also note the concerns my drainage colleagues raise that any satisfactory drainage solution may well affect the ability of the site to accommodate the quantum of development proposed. I attribute significant weight to such harm which conflicts with paragraph 14 NPPF and Policy 84a of the Local Plan.
- 10.19 It is well established that it is for the Appellant to demonstrate that very special circumstances exist to warrant overriding normal Green Belt presumptions. Such circumstances will not exist unless the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations.
- 10.20 The Appellant relies on various other considerations. I recognise the Council is unable to demonstrate a five year supply of deliverable housing land and does not have an adopted plan to deliver housing to meet such needs. Such matters weigh in favour of the grant of permission; however, my view is consistent with the Written Ministerial Statement that unmet need is unlikely to clearly outweigh harm to the Green Belt. In this case it does not outweigh never mind clear outweigh but should be attributed significant weight.
- 10.21 Furthermore, subject to affordable housing being secured by a section 106 undertaking I consider the delivery of affordable housing at 40% of the total net number of houses at the appeal site should be attributed substantial weight.
- 10.22 I have not invited the Inspector to dismiss this appeal on the basis of conflicts with Green Belt purposes. I also do not accept that such matters weigh in favour of the grant of permission and dismiss the notion that the proposals comprise urban regeneration of derelict and other urban land. The land is not urban and is not derelict.

- 10.23 I have attributed moderate weight to the environmental benefits relied on by the Appellant and little weight to the benefit of removing HGV traffic from this locale. Whilst the Council has no in principle objection to the redevelopment of the appeal site the loss of the existing economic use from the site will lead to a diminution in economic activity associated with employment. Set against this will be the generic gains to be achieved from the construction phase of the development and the increased spend from the new residents. The spend from potential future occupants of the appeal site will not result in significant local benefits given the lack of local shopping and other facilities and the reduction in local employment opportunities and facilities and such economic benefits would be achieved from any site within the Council's administrative area. I concluded that the loss of economically active employment land outweighs the generic benefits of new housing development and thus the proposal will not provide a net contribution toward the economic objective. Therefore, I do not consider such matters to represent a benefit of the scheme and I attribute little weight to the environmental benefits relied on by the Appellant.
- 10.24 On the basis of my analysis it is evident that the other considerations advanced by the Appellant do not cumulatively outweigh, never mind clearly outweigh, the harm by way of inappropriateness and any other harm. Therefore, very special circumstances do not exist, and planning permission should not be granted. I consider that the policies of the Framework provide a clear reason for refusing the development as it is inappropriate development in the Green Belt and there are no very special circumstances to justify the grant of permission.
- 10.25 Should the Appellant fail to deliver a mechanism to provide for the 40% affordable housing then that benefit of the scheme would become a failure to deliver the affordable housing at all that would represent a serious and substantial shortcoming of the application the subject of this appeal that would weigh heavily in addition to the above factors against the grant of planning permission.
- 10.26 It is common ground that the Council cannot demonstrate a five year supply of deliverable housing land and thus policies for the delivery of housing, which are most important policies in an application for housing, are out of date pursuant to footnote 7. However, as demonstrated above policies of the Framework that protect the Green Belt (see footnote 6) provide a clear reason for refusing the development proposed.
- 10.27 No material considerations that indicate that the application should be determined otherwise than in accordance with Development Plan exist. That is because NPPF paragraph 144 balances all material considerations and leads to conclusion that permission should be refused.
- 10.28 The Framework sets out three overarching objectives to sustainable development, in conclusion I consider each below having regard to the overarching form of development.

- 10.29 I have demonstrated that the proposal would harm the environment and would not protect the natural environment in terms of the Green Belt and countryside. The proposal comprises inappropriate development and would erode the openness of the Green Belt to a substantial extent. It would also locate a significant residential development in an inaccessible location that will exacerbate reliance on the private motor car and no satisfactory solution has been provided for drainage at site. Given these clear conclusions it is apparent that the proposed development does not contribute toward the environmental objective of sustainable development.
- 10.30 The Framework then advises that sustainable development should have a social dimension, which requires the supply of housing to meet the needs of present and future generations by creating high quality environments. The proposal does not create a high quality built environment and the location of the site within the Green Belt away from facilities increases reliance on the motor car. However, I accept that it would provide a significant contribution toward the social dimension of sustainable development by reason of providing new homes including affordable housing. However the location of the development does not assist with social integration or access to necessary facilities to support residential life and the illustrated inward looking form of development proposed would exacerbate separation from any local communities. Furthermore, the loss of a local unallocated employment site also has social impacts that temper the weight to the benefit of providing housing. However overall the proposal must be considered to make a significant contribution toward the social objective.
- 10.31 The proposed site does not comprise land of the right type in the right place to support growth. Whilst the Council has no in principle objection to the redevelopment of the appeal site the loss of the existing economic use from the site will lead to a diminution in economic activity associated with employment. Set against this will be the generic gains to be achieved from the construction phase of the development and the increased spend from the new residents and the Council Tax spending and infrastructure spending will only contribute toward the needs emanating from this development and are not a benefit of the scheme. However, the spend from the appeal site will not result in significant local benefits given the lack of local shopping facilities and the reduction in local employment opportunities and facilities and would be achieved from any site within the Council's administrative area. I note the new access road has recently started construction and is intended for use by the uses on the existing site, as such the existing use of the site must be viable and contribute toward economic prosperity given the significant investment made implementing the access. On the information available to me I conclude that the loss of economically active employment land outweighs the generic benefits of new housing development and thus the proposal will not provide a net contribution toward the economic objective.
- 10.32 I therefore conclude that the proposal does not comprise sustainable development and invite the Inspector to dismiss this appeal.