

SMALLFORD WORKS

Proof of Evidence of David Churchill – Planning

Ref: APP/B1930/W/20/3260479

SUBMITTED ON BEHALF OF STACKBOURNE LTD

February 2021

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1 QUALIFICATIONS AND EXPERIENCE

- 1.1 I – David Churchill – am a qualified town planner, having obtained a degree in Planning Studies and post-graduate diploma in Town Planning from Nottingham University. I have been a full member of the Royal Town Planning Institute (RTPI) since January 2003 and am a Partner of Carter Jonas LLP.
- 1.2 I have advised a range of clients in relation to the promotion of land and submission of planning applications, predominantly focused on residential-led development. My experience also includes appearances at section 78 inquiries, as witness and at hearings, as well as lead consultant roles at development plan examinations and judicial review challenges at the High Court.
- 1.3 I have a thorough understanding of the planning background of the proposals, appeal site and local area and I submit this Proof of Evidence (“PoE”) to address the various planning matters relevant to the appeal site.
- 1.4 I will take into account the evidence presented by other witnesses called by the Appellant inasmuch as it relates to the planning matters. I draw the Inspector’s attention to matters of significance in the exercise of the planning balance in determining the appeal.
- 1.5 The evidence I have prepared and provide for this appeal is true, has been prepared, and is given in accordance with the guidance of RTPI and the ‘Procedural Guide: Planning Appeals – England’ published by the Planning Inspectorate (November 2020). I confirm that the opinions expressed are my true and professional opinions.

2 SCOPE AND PROCEDURAL MATTERS

- 2.1 I provide this PoE on behalf of Stackbourne Limited (“the Appellant”).
- 2.2 The application was refused by Members upon the recommendation of the Case Officer. I will refer to the Case Officer’s Report (**Appendix A1**) and Decision Notice (**Appendix A2**).
- 2.3 This PoE should be read in conjunction with the agreed Statement of Common Ground (“SoCG”) and the Appellants submitted Statement of Case (“SoC”). I make necessary references to each throughout my evidence.
- 2.4 All Section 78 appeal decisions and court judgments referenced are listed at **Appendix A3** with a short explanation of their relevance.
- 2.5 My evidence, which also draws upon the evidence of my fellow witnesses where applicable, will examine the issues that remain in dispute between both parties. These are:
- Compliance with Green Belt policy;
 - Design and impact on character and landscape;
 - Drainage and water quality;
 - Other matters (including sustainability of location, ecology and archaeology); and
 - Planning balance.

Unilateral Undertaking

- 2.6 A draft s106 obligation has been submitted in support of the appeal. This sets out the requirements and financial contributions that the two main parties agree are necessary to make the development acceptable in planning terms. It also fully addresses matters related to the fifth and sixth reasons given by the Council for refusing planning permission.

Conditions

- 2.7 A Schedule of Proposed Conditions has also been agreed and submitted to support the appeal proceedings, and are appended to the SoCG.

3 BACKGROUND

3.1 The SoCG (Sections 2-4) provides an agreed factual background relating to the site, including in relation to the following topics:

- Site and surroundings;
- Policy, physical and other designations;
- Planning history; and
- Proposed development.

3.2 Where there are disagreements in these areas, they are detailed in the SoCG. I have not repeated these matters here in the interests of brevity.

Third Party Representations

3.3 The Inspector has received a number of third-party representations with some containing inaccurate or untrue statements that must be addressed and which relate to the new access to the site, the purported former use of the site and the footways associated with it.

3.4 In relation to the new access on Smallford Lane, this was secured by way of planning permission in 2004 (Ref: 5/2002/2112) and later had its legal implementation confirmed by way of a certificate of lawful development (Ref: 5/2017/2393) granted in January 2017. The internal road was delivered in 2008/09. The current phase 2 work commenced early last year, but has been delayed as a result of (i) awaiting approval from Herts County Council to restrict traffic movement on Smallford Lane to allow highway work to be carried out; and (ii) waiting for materials and parts to be delivered which were held up during the various periods of lockdown. The access is now being completed and will act as the primary access/egress for the existing operations.

3.5 There is also an untrue statement that the site has previously been used for waste disposal. The adjoining site known as 'Smallford Pits', owned now by Hertfordshire County Council, was previously used for clay extraction and then later infilled with waste material, with the clay being used to make bricks on the Smallford Works site. Smallford Works was not excavated for clay, and the ground here is undisturbed.

3.6 Finally, the comment *"pedestrians, when leaving the site, will need to cross this busy road as there is no pavement on the development side of Smallford Lane due to the ditch"* is factually incorrect. A new pavement has been constructed running the length of the new access road within Smallford Works and continuing along our side of Smallford Lane, connecting into the pavement at the bus stop. As part of this application an informal crossing point for pedestrians has also been proposed

that would be secured by way of planning obligation. It is plain to see from a visit to the site that the pavements have been constructed to a high specification.

4 PLANNING POLICY CONTEXT

- 4.1 Section 6 of the SoCG sets out in detail the relevant policies in the determination of this appeal. Below, I highlight the relevant parts of the policies that are most significant to the determination of the appeal.

National Planning Policy Framework (NPPF)

- 4.2 Upon the publication of the revised NPPF in 2018, the Secretary of State (then, James Brokenshire) reiterated the Government's commitment to the delivery of 300,000 homes per year by the mid-2020s, stating "*This revised planning framework sets out our vision of a planning system that delivers the homes we need*". This commitment has been reiterated on a number of occasions since then. To deliver it, we will need to see a step change in the planning process. This requires all parties within the development sphere to perform to their utmost.

- 4.3 Paragraph 10 emphasises that at the heart of the Framework is the presumption in favour of sustainable development. In this case, for decision-taking, paragraph 11 states:

d) 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*

- 4.4 It is common ground that the Council cannot demonstrate a 5 Year Housing Land Supply (5YHLS) and has a Housing Delivery Test (HDT) result below 75% of the housing requirement. The effect of this is to render the relevant housing supply policies with the development plan out-of-date. However one looks at the matter, the shortfall of 2.4 years is substantial. As Foskett J observed in a court judgment, "*a demonstrable lack of a 5-year supply of housing land might well demand the more forceful application of the presumption referred to in paragraph 14*" (now, para. 11 in the extant version of the Framework).¹

- 4.5 Footnote 6 to paragraph 11 of the Framework identifies Green Belt land as "areas or assets of particular importance" for the purposes of paragraph 11(d)(i). It follows that the Green Belt policies

¹ *Langton Homes Ltd v Secretary of State for Communities and Local Government* [2014] EHC 487 Paragraph 61

in the Framework are at the heart of this appeal. Both parties agree that the key Green Belt policy in this case is paragraph 145(g) of the Framework, in particular the second bullet point within that policy given that the proposal includes the provision of affordable housing.

- 4.6 This means that, in this appeal, the central question is whether the proposed development would cause *substantial harm* to the openness of the Green Belt. If it would not cause such substantial harm, it can be considered appropriate development in the Green Belt pursuant to paragraph 145 of the Framework. Accordingly, the Green Belt policies in the Framework would not provide a clear reason for dismissing the appeal and so the presumption in favour of granting permission should apply (unless, for other reasons, any adverse impacts of approving the proposal would *significantly and demonstrably* outweigh the benefits when assessed against the policies of the Framework taken as a whole, which cannot possibly be the case here).
- 4.7 Other relevant policies of the Framework include paragraphs 124 and 127 on good design, paragraph 165 on sustainable urban drainage systems, paragraph 170 on the countryside, and paragraph 175 on biodiversity.

Local Planning Policy

St Albans Local Plan

- 4.8 The St Albans District Local Plan Review (DLPR) was adopted in 1994 - some 27 years ago - pre-dating the introduction of the Framework and the Planning and Compulsory Purchase Act 2004. It is reputedly the oldest development plan in the country. It is a matter of public record that the Council was one of the fifteen that were identified by the (then) Secretary of State for the Ministry of Housing, Communities and Local Government for intervention in 2017. The correspondence is attached at **Appendix A4**.
- 4.9 The failure to deliver an update to the 1994 DLPR leaves a significant vacuum in local planning policy and demonstrates – to my mind – that the Council is unable to carry out its planning functions effectively.
- 4.10 Notwithstanding the significant shortcomings of the Council in relation to planning policy, the SoCG details the most important policies for the determination of the appeal. It is agreed that these can be considered out-of-date². I consider them in more detail in Section 5 below.

² Taking the “Wavendon basket” approach as set out in *Wavendon Properties Limited v Secretary of State of Housing Communities and Local Government, Milton Keynes Council* [2019] EWHC 1524 (Admin) and confirmed by the Court of Appeal in *Paul Newman Homes v Secretary of State for Housing, Communities and Local Government* [2021] EWCA Civ 15.

- 4.11 The extent of the Metropolitan Green Belt set out by Policy 1 is at odds with the current context on delivering the homes we need. The Council has recognised the need to deliver homes on existing Green Belt land to meet its local housing need. Given that the DLPR policies are so out-of-date, I consider that the Green Belt policies in the Framework must come to the fore in this appeal. This approach is in line with a recent appeal decision made by an Inspector in relation to a Metropolitan Green Belt site in Essex, where the development plan was also very substantially out-of-date.³

Need for Housing

- 4.12 Despite agreement on the 5YHLS position, it is material to consider the wider context surrounding the delivery of housing in St Albans. I refer the reader to previous evidence set out in the SoC⁴, as well as new evidence below.
- 4.13 The application of the HDT confirms that St Albans has consistently delivered housing below expectations, with scores of 58% (2018), 63% (2019) and 63% (2020). The score of 63% in the most recent 2020 HDT results means that the Council is delivering housing at a rate “substantially below” its housing requirement (para. 215, Framework).
- 4.14 The recent Council Authority Monitoring Report also indicates a significant lack of supply in affordable dwellings. As a proportion of new net dwellings, an average of 17.2% were affordable in the last 5 years – far below the Council’s own adopted target of 35%. This target is critical in the context of the general affordability of housing in St Albans⁵.

Withdrawn Local Plan(s)

- 4.15 Since the introduction of the NPPF, the Council has tried – and failed – to adopt two development plans: the Strategic Local Plan 2011-2031, and the Local Plan 2020-2036. The Appellant has actively promoted the site for development in both.
- 4.16 In November 2017, the examining Inspector – Mr David Hogger – concluded that the Council had failed to comply with its ‘duty to cooperate’ when preparing a new Local Plan. He recommended withdrawal of the draft Strategic Local Plan. This recommendation was challenged unsuccessfully by the Council in the High Court.⁶
- 4.17 The more recent draft Local Plan 2020-2036 was withdrawn in November 2020. This followed the examining Inspectors’ initial findings that the Council had yet again failed in its duty to cooperate.

³ APP/M1520/W/20/3246788, paragraph 5

⁴ Paragraphs 3.16-3.33

⁵ ONS Affordability Ratios show St Albans to have the 4th worst affordability nationally outside of London with median house prices 16 times median gross annual workplace earnings.

⁶ *R. (St Albans City and District Council) v Secretary of State for Communities and Local Government* [2017] HWHC 1751

The Inspector's report also raised concerns regarding the Council's process in seeking to demonstrate 'exceptional circumstances' for removing areas from the Green Belt, noting the failure to prioritise previously developed sites in the first instance (**Appendix A5**). This is something that was also questioned by the Appellant during the Examination (**Appendix A6**).

4.18 There is no reasonable explanation for the Council's chronic plan-making failures. In the absence of any such explanation, it may reasonably be asked whether the Council does genuinely intend to bring forward a coherent plan that is both legally compliant and sound. This is particularly evident when examining the preparation of the Local Plan 2020-2036 (**Appendix A7**). As was well documented in local media, political tensions surrounding Government decisions (as well as disregard for them) and party-political squabbling regarding control of the Council and its Planning Policy Committee have continuously thwarted constructive work.

4.19 In March 2020, the Government set a clear deadline of December 2023 for all authorities to have an up-to-date Local Plan in place. The Minister of State for Housing, Christopher Pincher, recently made clear the Government's expectations:

"It is critical that work should continue to advance Local Plans through to adoption by the end of 2023 to help ensure that the economy can rebound strongly from the Covid-19 pandemic. Completing Local Plans will help to ensure that we can build back better and continue to deliver the homes that are needed across England. [...] Where necessary, we remain committed to using all powers available to Government in order to ensure that progress on plan making is maintained"

Emerging Local Plan

4.20 The Council has very recently begun preparation of a new Local Plan covering the period 2020-2038.

4.21 At the time of writing, a consultation is running between 25th January and 8th March 2021 seeking views on a 'Sustainability Appraisal Scoping Report' and a 'Call' for prospective development sites. The Appellant has recently engaged with this consultation.

4.22 An updated Local Development Scheme was published in January 2021, setting out the timetable for the production of the Local Plan 2020-2038. The Council states that it intends to adopt the Local Plan before December 2023 but this is based on unrealistic assumptions (e.g. 6 months from submission to adoption⁷).

⁷ Research by the consultancy Lichfields from April 2017 has shown that it takes an average of 16.8 months for a post-NPPF Local Plan to be found sound by an Inspector after being submitted to the Secretary of State for consideration. Even the Council's last Local Plan took 20 months from submission to being withdrawn and EiP hearings did not commence for 10 months from submission.

- 4.23 There is a clear correlation between the Council's long-standing failure to deliver an up-to-date Local Plan, its significant and consistent under-delivery of housing against its assessed needs, and the chronic and worsening unaffordability of homes available to local people . There is no evidence which suggests to me that this cycle of failure is soon to be rectified. The consequence is not just a local planning policy vacuum but a real and damaging effect on the social fabric of the area.

5 PLANNING MATTERS

Green Belt

Paragraph 145(g)

- 5.1 The Government has long emphasised that local planning authorities should prioritise the delivery, and maximise the potential, of previously developed land (PDL) in advance of greenfield sites. This is set out in both White Papers⁸ and the Framework itself.⁹ Paragraph 137 particularly highlights PDL as a priority when proposing to amend Green Belt boundaries.
- 5.2 This context is important when applying the test in paragraph 145(g) of the Framework in this appeal. Despite the Government's commitment to the delivery of 300,000 dwellings per annum (dpa), placing considerable pressure on Green Belt and greenfield land, only limited amendments to Green Belt policy have been made. This means, inevitably, that there is greater pressure on suitable PDL sites within the Green Belt to come forward for residential development. The introduction of the second bullet point in paragraph 145(g) of the Framework – the “substantial harm” test – has been a step-change in policy in this regard and it would be reasonable to infer that the Government had this in mind when formulating the policy.
- 5.3 The withdrawn Local Plan 2020-2036 proposed the release of 525 hectares of Green Belt land – almost all of which was greenfield – and yet it was still falling short in planning for the future development needs of St Albans.
- 5.4 The scarcity of available PDL sites in St Albans was discussed by the Council's Spatial Planning Manager, Mr Chris Briggs, reporting to the 9 June 2020 Planning Policy Committee that *“There are a number of Green Belt, previously developed sites that have been included in the draft Local Plan housing trajectory. Moving forward, there are likely to be a small number of additional previously developed sites, such as Smallford Works and Glinwells that may be approached differently.”* The minutes of this meeting are shown at **Appendix A8**.
- 5.5 There is a clear recognition that to meet housing needs and address the affordability crisis that the Council has got itself into, PDL sites in the Green Belt must be given serious consideration.

⁸ *Fixing our broken housing market* (February 2017) and *Planning for the Future* (August 2020)

⁹ See Paragraph 84, 117, 118, 119

“Affordable Housing Need”

- 5.6 No threshold or definition is given in para. 145(g) as to what it means to “contribute” to an “identified affordable housing need”. However, it has been accepted in numerous appeals¹⁰ that the provision of a policy-compliant level of affordable housing would meet this criterion.
- 5.7 The proposed development goes further than a policy-compliant level, providing 40% (40 units) – in excess of the 35% requirement of Policy 7A of the DLPR and Affordable Housing SPG. I consider this excess to be a factor that should attract significant weight in the planning balance given the affordability crisis within the St. Albans housing market.

Openness

- 5.8 The second bullet point in paragraph 145(g) requires the development to “*not cause substantial harm to the openness of the Green Belt*”.
- 5.9 The term “*substantial harm*” is not further defined. It must therefore be a matter of planning judgement. Nevertheless, this test has been described by an inspector as a “*high bar*”¹¹. This observation was rightly made by the Case Officer in the present case¹², but unfortunately, this did not prevent the test from being applied incorrectly. The Case Officer considered that only “*some*”¹³ harm can come to the Green Belt when, applying the policy correctly, anything less than substantial¹⁴ harm is acceptable.
- 5.10 Openness itself, which is not further defined in policy, is widely considered to be an open-textured concept.
- 5.11 The leading court judgment in this area (*Turner*¹⁵) made clear that the decision-maker must consider the impact of the proposal in the context of existing impacts to the Green Belt – in other words, a baseline condition must be determined.
- 5.12 The more recent judgment of the Supreme Court in the *Samuel Smith*¹⁶ case does not question the *Turner* judgement, but instead reiterates the importance of planning judgement when assessing openness. Indeed, the PPG “*requires a judgement based on the circumstances of the case*” with a

¹⁰ APP/N1920/W/19/3229315, APP/T3725/W/18/3218529

¹¹ Paragraph 16 APP/T3725/W/18/3218529

¹² Paragraph 8.3.13, Officer’s Report

¹³ “An amount or number of something that is not stated or not known; a part of something” <https://dictionary.cambridge.org/dictionary/english/some>

¹⁴ “Large in size, value, or importance” <https://dictionary.cambridge.org/dictionary/english/substantial>

¹⁵ *Turner vs. Secretary of State for Communities and Local Government* [2016] EWCA Civ 466

¹⁶ *R (Samuel Smith Old Brewery (Tadcaster) and others v North Yorkshire County Council* [2020] UKSC

number of matters capable of being relevant. This makes clear that openness is capable of having both spatial and visual impacts, as well as temporal and sensory-based/activity components.¹⁷

- 5.13 I consider that the Case Officer, in deciding to recommend a refusal of the application to the Council's Development Control Committee on 13 July 2020, incorrectly assessed the existing baseline condition of the current lawful use of the site.
- 5.14 The Appellant has already set out its analysis of openness in detail within the SoC. This analysis is reinforced by the observations of Counsel (**Appendix A9**). Therefore, I have taken the opportunity to provide more specific references and visual aids to illustrate the Appellant's case on openness. I direct the reader to **Appendix A10**.
- 5.15 Drawing on this evidence and my own visits to the appeal site, I consider that the proposals would not cause "substantial harm" to the openness of the Green Belt.
- 5.16 I have first considered the impact of the existing development and operations on openness. The existing development includes a number of structures across the site, both fixed and transient, stacked high in places to the equivalent of approximately 3 storeys, leaving minimal open space. Whilst the majority of structures on site are transient, the intensive use of the site has been consistent. So, whilst some high stacked storage may be moved on, it is readily replaced and/or another part of the site becomes itself highly stacked. The historical imagery included at **Appendix A11** demonstrates this.
- 5.17 The site is characterised by the longstanding and ongoing industrial activity associated with the site, including frequent HGV activity, as well as the presence of floodlights and constant industrial noise. This mix of elements detracts from the openness of the site and creates an industrial environment more appropriate to an urban industrial estate than the Green Belt. The existing features of the site arise from its lawful use. The current occupiers of the site undertake a range of activities, including the storage of scaffolding, heavy plant and materials, which must be securely contained and monitored throughout the day and night.
- 5.18 As a result, I consider the existing development is significantly harmful spatially, visually and in general perceptual terms to the openness of the Green Belt in this location.
- 5.19 The proposed development would result in a material increase in the building footprint across the site, compared with the existing uses. Furthermore, I accept that the appeal proposals would result in some visual impact as a result of the fixed building heights associated with two storey buildings. However, the boundary vegetation – which is to be largely retained and strengthened in places – would remove this visual impact or at least soften it considerably. I consider that the appeal

¹⁷ Reference ID: 64-001-20190722

proposals would introduce a more rationalised site coverage by introducing green spaces (including gardens) and vegetation throughout, contributing to greater permeability and a more positive relationship with the open countryside beyond the site, particularly to the west. Furthermore, the appeal proposals will reduce the disturbance that the site currently generates due to industrial noise and light pollution. Comparing the masterplan for the proposed development with an aerial image of the site in its current state (**as is shown in Appendix A10**) enables the positive and negative aspects of both possibilities for the site to be understood. It is clear from this comparison that substantial harm would not be caused.

- 5.20 Compared with the existing unregulated industrial activity, the incoming residential activity would result in a significant reduction in more dominant HGV vehicles, as well as an overall reduction in vehicular trips. There would be a reduction in noise, particularly harsh loud noise associated with industrial uses, including the scaffolding yard. Lighting would be more tightly controlled, with tall floodlights being replaced by a more sensitive lighting scheme to be approved by the Council.
- 5.21 Taken as a whole, I do not consider that the proposed development would cause “substantial” harm compared to the existing baseline condition. Instead, the evidence suggests that the proposal would lead to *improvements* in openness to counterbalance whatever negatives are considered to remain.
- 5.22 For these reasons, I consider that the proposed development should be considered appropriate development in the Green Belt in accordance with paragraph 145(g) of the Framework.

Design, Character and Landscape Impact

- 5.23 The Council's second reason for refusal judges the development to cause '*detrimental impact on the wider Green Belt countryside*'.
- 5.24 I have already provided evidence on the impact of the proposed development on the openness of the Green Belt, and concluded that it would result in less than substantial harm. My evidence on that matter is also relevant here.
- 5.25 The second reason requires more specific consideration of the design of the proposal and its impact upon the character and appearance of the area. I refer to the Design and Access Statement (DAS), Landscape Visual Impact Assessment (LVIA), Arboricultural Survey (AS), Preliminary Ecological Assessment (PEA), and Landscape Strategy (LS) submitted with the planning application.

Design Evolution and Principles

- 5.26 The PPG¹⁸ recognises the importance of a coordinated approach between applicant, local authority, and other interested parties during the evolution of the design of a development. This is something the Appellant has successfully undertaken through presentations to Colney Heath Parish Council and its Neighbourhood Planning Steering Group, the local Ward Councillor, and two in-person exhibitions, as well as online engagements, with the general public.
- 5.27 The starting point for the design process was the proposal to re-use a brownfield site – a site which, in design terms, contains activities considered to be a ‘bad neighbour’ to nearby residential development and which are not in-keeping with the countryside location. The vision was to deliver much-needed housing in a manner that reflects the local identity of Sleapshyde and which better integrates into the wider landscape setting¹⁹.
- 5.28 The DAS demonstrates how the masterplan design has evolved to reflect and assimilate with the key positive characteristics of Sleapshyde and the surrounding area. For example, the incorporation of a village green at the heart of the masterplan area introduces an area of green and open space. This contrasts with the existing presentation of the site which is extensively covered with hardstanding, out-of-character with the surrounding context. Introducing a grassed amenity space at the heart of the proposed development would improve both the ecological quality of the site, and provides an opportunity to link to the existing amenity spaces within Sleapshyde and the countryside beyond via the proposed pedestrian access from the southern corner. Furthermore, the DAS demonstrates how townscape character has been assessed within Sleapshyde and notes the potential to replicate the architectural precedent in the area (such as Sleapshyde Farm). As the application is in outline, the architectural detail would be scrutinised and approved by the Council at the detailed design stage.
- 5.29 The level of detail provided with the application goes far beyond what would typically be expected of an outline application. From the outset, the Appellant has been committed to demonstrating that a well-designed residential development can be achieved at the site.

Quantum/Density of Development

- 5.30 The Indicative Masterplan shows 100 dwellings being provided across a range of typologies in a policy-complaint mix. This represents a residential density of approximately 28 dwellings per hectare.
- 5.31 Paragraph 122 of the Framework is clear in its support for the efficient use of land. Paragraph 123 emphasises this as especially important where there is an existing or anticipated shortage of land

¹⁸ Ref: 20-014-20140306

¹⁹ See Objectives and Vision of the Design and Access Statement

for meeting identified housing needs, as is the case in St Albans, where there is a particular pressure on greenfield, Green Belt sites to meet this housing need.

- 5.32 The density of the proposed development was not specifically challenged in the Officer's Report – indeed, it was correctly recognised that low-density residential development could be an inefficient use of Green Belt land.²⁰
- 5.33 The existing development in Sleepshyde is built at marginally lower densities, predominantly due to the size of residential gardens and a more linear layout to development. I consider that a slightly higher density on the appeal site is justified, in the interests of securing an optimal use of this previously developed site in an area of high housing need.

Character

- 5.34 The points that I have made in paragraph 5.17 above apply equally here. The existing operations are a bad neighbour in the village of Sleepshyde and the redevelopment of the site for housing would result in a more appropriate use in this location. This has been appreciated by the Council: in its 2009 SHLAA assessment, it described itself as having *"long had aspirations to remove the poorly located industrial uses"*.
- 5.35 Whilst the delivery of up to 100 dwellings at this location would see a notable increase in the level of housing in the area, it would not negatively impact the character of the village given what it is replacing. Furthermore, the removal of industrial operations and a reduction in vehicle movements would increase the tranquillity of this semi-rural location.

Landscape Impact

- 5.36 The LVIA analysed the landscape and visual effects of the proposal from 18 vantage points within the adjoining countryside and public footpaths. It concludes that the proposal results in a combination of 'minor', 'moderate beneficial' and 'adverse' effects across the development site at the post-construction stage. These reduce to 'minor', 'slight beneficial' and 'neutral' effects following the maturing of the planting introduced as mitigation, which are outlined within the Landscaping Strategy.
- 5.37 The Officer's Report does not take issue with these detailed judgments in the LVIA. Instead, it is said that "minimal weight" should be applied to the LVIA because the assessment was carried out during full leaf cover, the viewpoint locations were not agreed with the Council, and additional winter viewpoints were required.²¹

²⁰ Officer's Report paragraph 8.6.3

²¹ Paragraph 8.6.13

5.38 However, the LVIA *does* consider the visual impact of the development in winter months and acknowledges that there would be some visibility.²² However, unlike the Case Officer, the LVIA considers the magnitude of *change* to be small given the presence of existing development. This is another example of the Council failing to give due consideration to the impact of the existing development on the site, in particular its visibility and detrimental impact on the existing landscape.

Loss of Trees

5.39 The Arboricultural Implications Report concludes that no mature or category 'A' or 'B' trees, and no trees of high landscape or biodiversity value, are to be removed. I refer the reader to the Tree Protection Plan (Ref: SJA TPP 19227-041) within the Arboricultural Implications Report.

5.40 The Tree Protection Plan details the possible removal of specific and/or groups of trees were the illustrative masterplan to be taken forward. However, some individual trees (Tree No.'s 11, 12, 13 and 14), as well as the partial removal of G2a, have already been removed as part of the delivery of the new access road to the site. In accordance with the section 278 agreement for the new access road, a number of new Oak, Ash and Hornbeam trees will be planted either side of the new road entrance with minimum 16cm girths and being 4-5m tall. This is demonstrated on Drawing No. H7701/103 (**Appendix A12**) and formulates the baseline condition.

5.41 All remaining trees would need to be removed either because they are situated within the footprints of proposed structures or they are too close to these to enable them to be retained, all of these trees are Category C or below. However, as the layout is to be approved at Reserved Matters stage, it is possible that the removal of these trees could be avoided.

5.42 The application was supported by a Landscape Statement produced by Ubu Design Landscape Architects. This provided an indicative landscape strategy that would (see page 4 of the statement):

- Retain and enhance existing landscape features;
- Enhance the local landscape character, mitigate any potential visual impact;
- Enhance existing green infrastructure networks;
- Create biodiversity net gain;
- Improve connectivity; and
- Provide amenity space.

5.43 As demonstrated in the landscape strategy, there would be ample opportunity to provide new tree planting around the site boundary, close to points of potential low quality tree removal, and within

²² Paragraph 5.25 and 5.29 of LVIA

the heart of the development itself. Any future landscape strategy approved at detailed design stage would seek to achieve these aims and would be subject to approval the Council.

- 5.44 Accordingly, any potential loss of trees would be minimal and would be easily mitigated by new planting secured within a landscape strategy. This would result in an improved character within the site and its boundary.
- 5.45 Proper consideration has been given to landscaping in seeking to retain a quality environment within and around the site. Accordingly, the application complies with Policy 74 of the DLPR and the Council's second reason is not substantiated.

Drainage

- 5.46 For the purposes of this matter, I refer to the Proof of Evidence relating to drainage matters (**see Appendix A13**).
- 5.47 This demonstrates the following:
- A suitable discharge mechanism has been demonstrated in the form of a drainage survey of the ditch along the eastern site boundary that shows this is connected to the River Colne;
 - This ditch lies partially in the ownership of the appellant, who therefore has riparian rights, including the right to discharge;
 - A final drainage strategy will be approved by the Council at the detailed design stage and secured by condition to this appeal. An indicative drainage strategy has demonstrated that the four pillars of sustainable drainage systems are delivered, that this aligns with the SuDs Manual, and the technical standards are met.
- 5.48 I agree that the surface water drainage system can be designed to conform fully with the requirements of the technical standards, guidance notes and planning policy. The system will reduce the risk of contamination to water supplies and should also reduce the risk of flooding within and beyond the boundary of the site.
- 5.49 I also take note of the Written Statement from Dr Robert Murdock on public water supply (**Appendix A14**). This details how the redevelopment of the appeal site for residential use would reduce the risk of pollution of the drinking water supply boreholes at Roestock and Tyttenhanger compared to the current site uses. This is because the site-wide contamination investigation would identify any contamination present on the appeal site and this would inform a Remediation Strategy and Construction Environmental Management Plan which would be implemented during the construction phase of the development. Furthermore, the sustainable drainage strategy would

include the required water quality treatment stages for all surface water runoff and would exclude the use of any infiltration-based techniques.

- 5.50 Accordingly, the appeal would comply with paragraph 163 and 165 of the Framework and the Council's fourth reason provides no grounds for dismissing the appeal.

Other Matters

Sustainability (of Location)

- 5.51 The Council considers the appeal site to be "*unsustainably located*" (first reason for refusal). This is a concern about the distance of the site from most day-to-day amenities leading to a reliance on the private car.
- 5.52 I refer to the Transport Assessment (TA) prepared by Pell Frischmann and submitted as part of the initial application. The TA undertook a multi-modal trip generation assessment to assess the potential impact of the proposed development in comparison with the existing land use. The methodology and results were agreed with Hertfordshire County Council (HCC) in pre-application discussions. I consider it significant that Hertfordshire County Council's (HCC's) Highways department did not, upon review of the submission, object to the development.
- 5.53 The TA demonstrates that the proposed development would result in a decrease in peak hour and daily vehicle trips, as well as a significant decrease in HGV vehicle movements associated with the existing industrial land use. Overall, it is concluded that the proposed development would improve highway capacity on the local highway network and key junctions, and would lead to a net improvement in road safety by reducing the likelihood of collisions along Smallford Lane.
- 5.54 Accordingly, the TA demonstrates that the reuse of this industrial site for residential development would result in a more sustainable use of the site (in transport/location terms).
- 5.55 As for public transport connections, Alban Way is under 250m north of the site, providing a designated trail for cyclists and walkers along a disused section of the Great Northern Railway, between St Albans and Hatfield, and thereby also connecting to National Rail stations. There is also a bus stop immediately outside of the site providing services into St Albans, Colney Heath, and Potters Bar.
- 5.56 Accessibility to the site by walking and cycling has been incorporated into the design of the site, with provision being made for connections to the existing footway network.
- 5.57 The Case Officer noted that no details of sustainability measures for travel were proposed in the application. This is provided as part of a s106 agreement, with Travel Plans secured by obligation.

- 5.58 Finally, the Case Officer considered the development to be unsustainable by virtue of its location beyond the settlement boundary. However, the site is located amongst dispersed development that exists to the east side of St Albans around Smallford and Sleepshyde. These are well-established neighbourhoods within the District and the appeal site does not disproportionately increase their size or role in the settlement hierarchy. The site is an appropriate distance from both Smallford (and various elements associated with a village) and St Albans (the district/city centre) with options to access either of these settlements by sustainable transport means.
- 5.59 The Council's description of the site as "unsustainably located" is therefore unfounded.

Ecology

- 5.60 Paragraphs 5.45-5.50 of the SoC set out the in-principle position relating to ecology. The SoCG sets out the agreed position that the Council's third reason for refusal can be overcome by a suitable condition and/or planning obligation.
- 5.61 A draft condition has been provided to the inquiry requiring the surveying of Great Crested Newts. The proposed planning obligation will also secure a financial contribution towards a scheme for mitigating the impact of recreational users on the adjacent LWS.
- 5.62 The Appellant's ecologist has reviewed both the draft planning condition and the planning obligation and concludes that they would provide a suitable solution to any concerns held by the Council relating to these ecological assets. This statement is included at **Appendix A15**.

Archaeology

- 5.63 The Council raised in its SoC an absence of analysis from the Appellant in relation to the potential for archaeological interest at the site. An Archaeological Desk Based Assessment was undertaken in 2018, but due to an administrative error when the application was submitted, it was omitted. This has now been rectified and the document being reviewed by the Council.

Very Special Circumstances

- 5.64 Should the Inspector conclude that the proposed development would result in “substantial harm” to the openness of the Green Belt, it would amount to inappropriate development in the Green Belt and engage paragraph 143 of the NPPF. This states that inappropriate development in the Green Belt should only be approved in very special circumstances (VSCs)
- 5.65 For the avoidance of doubt, I do not accept that the proposal would cause “substantial harm” to the openness of the Green Belt, for the reasons I have already given. Nevertheless, I address the issue of VSCs in case this conclusion is reached. Very special circumstances only exist if “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” (para. 144).

Assessment of harm

- 5.66 Were the development found to be inappropriate in the Green Belt, the conclusion would necessarily have been reached that it would cause “substantial harm”. However, even in this event, the existing baseline of the site is still material, and the degree of harm cannot be considered the same as if the site were greenfield or a less intensively developed PDL site.
- 5.67 Moreover, the Council does not consider that the proposed development would conflict with any of the five purposes at paragraph 134 of the NPPF²³. I agree. The redevelopment of the site would not undermine the current contribution the site makes to the purposes of the Green Belt. In fact, the reuse of a brownfield site in an area of extensive housing need positively contributes to the fifth purpose of the Green Belt in reducing the pressure on greenfield, Green Belt sites to come forward for development. In my judgment, this significantly reduces the weight on the ‘harm’ side of the scale when undertaking the VSC balance.

Countervailing considerations

- 5.68 I consider that the following matters amount to compelling “other considerations” when undertaking the VSC balance.
- 5.69 ***Chronic failure of local plan-making*** – The proposed development will assist in reversing the legacy of damaging under-delivery of housing in the District. Due to the prolonged position of the Council in failing to have a Local Plan in place since 1997, a planning vacuum has been created, suffocating the delivery of much-needed market and affordable housing across the District and leading to an acute affordability crisis. Whilst a plan-led approach has been the preference of the Appellant, its hand has been forced by the continued failure of the Council to plan positively for the

²³ Paragraph 5.7 of Council’s Statement of Case.

area. The Council itself has indicated that the development of PDL in the Green Belt should be handled by the development management system, as distinct from a plan-led approach (see **Appendix A9**). The Council has also stated more recently that PDL in the Green Belt will need to play a role in the Council's future Local Plan housing trajectory (see paragraph 3.12 of its SoC).

- 5.70 ***Affordable Housing Provision*** – The provision of 40% affordable housing is in excess of the policy requirement. The poor housing delivery in the District has resulted in an extremely high and worsening level of unaffordability for local residents, particularly those in the lower quartile of earnings and most in need of affordable housing. The delivery of both open market and affordable housing, but particularly the latter, will provide a significant boost in helping local residents to access the housing market and meet Government ambitions to address the housing crisis.
- 5.71 ***Reuse of Previously Developed Land*** – The proposed development will also significantly improve the existing condition of the site and result in a number of environmental benefits. The development of the site provides the opportunity for environmental remediation of a sustainability located brownfield site. This is of particular significance given the identified need for new development on greenfield sites across the District.
- 5.72 ***Reduction in Vehicle Trips*** – The proposed development will have a positive impact on the local highway network due to the net reduction in trips in peak hour and the removal of HGV trips from a residential road that experiences heavy congestion.
- 5.73 In the context of an out-of-date Local Plan, where some loss of the Green Belt is unavoidable to provide enough homes in the District, the proposed development would deliver substantial social benefits (relative to its size) by contributing to housing need and providing significant environmental improvements, including remediating contamination. There would be local economic benefits from both the building works and additional household expenditure. A more detailed case to this end is made in the Appellant's SoC.
- 5.74 Overall, if the proposed development were considered to be inappropriate (which is not my judgment), the considerations identified above would still clearly outweigh the Green Belt harm identified such that VSCs exist.

6 PLANNING BALANCE

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The exceptional vintage of the development plan for the District means that the policies of the Framework must come to the fore in this case.
- 6.2 A most important material consideration – at the heart of the Framework itself – is the presumption in favour of sustainable development set out at Paragraph 11. It is evident and agreed that the Council has a significant shortfall of 5-year housing land supply and has failed the HDT – rendering its housing policies out-of-date and requiring the ‘tilted balance’ to be applied in the determination of this appeal.
- 6.3 Accordingly, where the policies most important for the determination of the proposals are out-of-date, permission should be granted unless other policies of the Framework dictate otherwise, or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- 6.4 The evidence provided demonstrates that the proposals should not be considered inappropriate development in the Green Belt, when assessed against the second test in paragraph 145(g) of the Framework. The existing operations at the site already result in a significant level of harm to both the spatial and visual openness of the Green Belt. In this context, the proposed development would fall far short of the “*high bar*” of causing “substantial harm” in my judgment.
- 6.5 The existing site operates as an intensive industrial yard, recognised as being a bad neighbour. The appeal scheme would create a more rational development, removing a range of negative sensory receptors that are inappropriate to the character of the area. Whilst the proposal is for a significant number of houses, it would also significantly enhance the character of the area given the current condition and appearance of the site.
- 6.6 However, should the Inspector conclude that the proposed development does not meet the second test of paragraph 145(g), I have explained why VSCs are made out in this case.
- 6.7 On either analysis, therefore, whether the development is considered to be appropriate or inappropriate in the Green Belt, the relevant policies of the Framework do not provide a clear reason for refusing the development proposed.
- 6.8 In favour of the scheme, I attribute very substantial positive weight to the delivery of both market and affordable housing. This is in the context of the significant and worsening affordability of housing in St Albans, the poor and chronic under-delivery of housing, as well as the failure to produce a Local Plan in over 25 years, with the prospects of any future Local Plan in significant

doubt. I also note that the provision of affordable housing is in excess of Local Plan policy requirements, weighing strongly in favour of the proposal.

- 6.9 I give significant positive weight to the economic benefits associated with the delivery of up to 100 dwellings, including the contribution these households would make to the local economy.
- 6.10 I also give significant positive weight to the environmental benefits of removing the existing use and replacing it with a more environmentally beneficial permanent use. I also give significant positive weight to the reduction in vehicle movements, with very significant weight applied to the removal of a large number of HGV movements along Smallford Road.
- 6.11 Set against these I give significant negative weight to the potential visual impact harm, though it is noted that this harm is minor, appreciating the existing baseline position.
- 6.12 Weighing these judgments against each other, it is plain that the adverse effects of the proposal would not come close to significantly and demonstrably outweighing its benefits; indeed, the contrary would be true, with the benefits significantly and demonstrably outweighing the adverse effect.
- 6.13 It follows that the presumption in favour of sustainable development applies with full force in this appeal and the appeal should be allowed.