

STATEMENT OF CASE

Smallford Works, Smallford Lane, Smallford, St Albans, AL4
0SA

PREPARED ON BEHALF OF STACKBOURNE LTD

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Contents

1	INTRODUCTION	6
2	BACKGROUND	7
3	KEY PLANNING POLICY CONTEXT	8
	Strategic Housing Land Availability Assessment	8
	Emerging Local Plan 2020-2036	8
	Need for Housing.....	11
4	APPELLANTS CASE: PART 1 – PRINCIPLE OF DEVELOPMENT (GREEN BELT).....	15
	Paragraph 145 Assessment – Exception to Inappropriate Development in the Green Belt	16
	Paragraph 144 and Paragraph 143 Assessment – Very Special Circumstances.....	26
5	APPELLANTS CASE: PART 2 – RELEVANT CONSIDERATIONS AND TECHNICAL MATTERS.....	30
	Sustainability (of Location)	30
	Design, Character and Landscape	33
	Drainage and Impact on Water Quality	37
	Ecology	38
6	APPELLANTS CASE: PART 3 – Section 106 Agreement.....	40
7	PLANNING BALANCE	42
8	Procedure	44

APPENDICES

Appendix A – Site Location Plan

Appendix B – Adopted Policies Map of the Site

Appendix C – Pre-application Response

Appendix D – Indicative Masterplan

Appendix E – Decision Notice

Appendix F – SHLAA Pro-forma of Site

Appendix G – Letter to Council dated 3rd February 2020

Appendix H – Emerging Local Plan Inspectors' Post-Hearings Letter

Appendix I – Officers Report relating to an application for a new access road (Ref: 5/2002/2112)

Appendix J – 2009 Reinstatement Cost Assessment

Appendix K – 2012 Reinstatement Cost Assessment

Appendix L – 2013 Report and Valuation

Appendix M – 2015 Reinstatement Cost Assessment

Appendix N – Occupational Lease Agreements dating the prior 10 years

Appendix O – Historical Aerial Imagery of Site

Appendix P – CLUED Application Cover letter

Appendix Q – Photograph of Site Access Dated August 2020

Appendix R – Officers Report 5/19/2434

Appendix S – Counsel Opinion

Appendix T – Image of signage at entrance to LWS

1 INTRODUCTION

1.1 This Statement of Case has been prepared by Carter Jonas on behalf of Stackbourne Limited (“the Appellant”) in accordance with the Procedural Guide: Planning Appeals – England (July 2020)

1.2 The Appeal has been submitted against the decision by St. Albans City and District Council (“SACDC” or “the Council”) on 16 July 2020 to refuse to grant outline planning permission (LPA Ref: 5/2019/3022) (“the Planning Application”) for the redevelopment of the established employment site known as Smallford Works, Smallford Lane, Smallford, St Albans, Hertfordshire, AL4 0SA (“the Appeal Site”). The description of development is as follows:

“Outline planning permission with all matters reserved, except access, for the redevelopment of site including demolition of existing buildings to provide up to 100 residential units”

1.3 This document addresses the principal planning issues which the appeal proposals give rise to, and directly responds to the Council’s Reasons for Refusal. In doing so, it provides a planning assessment and reaches a conclusion as to the acceptability of the appeal proposals having considered the planning balance throughout.

1.4 This Statement of Case is supported by various appendices to assist the Inspector’s understanding of the case advanced by the Appellant.

1.5 The remainder of this Statement of Case addresses the following:

- Section 2 (**Background**) briefly describes the key topics covered within the Statement of Common Ground;
- Section 3 (**Key Planning Policy Context**) expands on important background context that informs the key arguments;
- Section 4-6 (**Appellants Case**) sets out the Appellant’s case for the proposed development in response to the Council’s reasons for refusal;
- Section 7 (**Planning Balance**) brings together the planning balance in concluding why the appeal should be allowed;
- Section 8 (**Procedure**) examines the appropriate procedure to assess the topics of the appeal.

2 BACKGROUND

2.1 The following topics are detailed within the draft Statement of Common Ground submitted in support of this appeal:

- Summary of the appeal site;
- Relevant planning designations;
- Planning history;
- Description of development;
- Pre-application discussions and public engagement;
- Application determination and Reasons for Refusal; and,
- The Development Plan and relevant planning policies.

2.2 Section 3 to this Statement of Case provides some detailed context on the emerging Local Plan, Strategic Housing Land Availability Assessment, and housing need and delivery within the District. These are important context to the arguments provided within the subsequent chapters.

3 KEY PLANNING POLICY CONTEXT

Strategic Housing Land Availability Assessment

- 3.1 The site was included within the Council's 2009 Strategic Housing Land Availability Assessment (SHLAA). This assessment is included at Appendix F. The 2016 SHLAA update lists the site but does not include any further detailed assessment.
- 3.2 The 2009 SHLAA identified the site as previously developed land (PDL). This identified the only physical constraints to new development as the location of the site within Flood Zone 3b. Later evidence submitted to the Council has proven the site actually lies within Flood Zone 1, which is reflected in up-to-date Environment Agency mapping.
- 3.3 The SHLAA also made an assessment of the site against the purposes of the Green Belt, concluding the site:
- Would not result in unrestricted sprawl of large built up areas'
 - Would not result in neighbouring towns merging into one another as the site is PDL
 - Would not result in encroachment into open countryside as the site is PDL;
 - Would not affect the setting and special character of St Albans; and
 - Would assist in urban regeneration by encouraging the recycling of derelict and other urban land.
- 3.4 Overall, officers concluded:

"The site is previously developed land and the Council has long had aspirations to remove the poorly located industrial uses on the site, in order to secure some major environmental enhancement of the area as part of Watling Chase Community Forest. It is recognised that this is unlikely to happen without some 'enabling development'.

However, almost the entire site is within Flood Zone 3b Functional Flood Plain. PPS25 says that more vulnerable uses (including residential dwellings) should not be permitted in Flood Zone 3b."

- 3.5 Again, this inaccurate assessment of flood risk has since been corrected and accepted by the Council (Officer's Report paragraph 8.6.17).

Emerging Local Plan 2020-2036

- 3.6 The St Albans & City District Council Local Plan 2020-2036 ("the Emerging Plan") was submitted to the Planning Inspectorate for Examination in March 2019. The Stage 1 Hearing Sessions were

held between 21st and 23rd January 2020 – covering issues related to legal compliance, the duty to cooperate, the spatial strategy and matters related to the Green Belt.

- 3.7 The Appellant undertook an active participation throughout the preparation of the Local Plan, including attendance at the Stage 1 Hearing Sessions relating to Spatial Strategy and Green Belt.
- 3.8 Immediately after the hearings, the Appellant wrote to the Case Officer to provide an update of key events that had arisen out of the Spatial Strategy and Green Belt sessions. This letter is included at Appendix G. In this letter we highlighted the Council's statements on its the Spatial Strategy of the new Plan. The Council stated at paragraph 1.1 of its Matter 3 Hearing Statement:

*"The basis for the overall spatial strategy and broad distribution of growth set out in Policy S1 is a direct response to the relevant Statute and national policy, principally set out in the NPPF. In simple terms, following the NPPF, **the basis has been to start by making the best use of previously developed land (PDL) in existing settlements (and PDL in the Green Belt as far as it is compatible with NPPF paragraph 145 (g)) first.**" [Our emphasis]*

- 3.9 The letter went on to quote a statement made by the Council's Spatial Planning Manager, Chris Briggs at the hearings. It highlighted his statement that the Council had intended through the emerging Local Plan to see PDL sites in the Green Belt to come forward through the development management process, as windfall sites. We then detailed how the Council's Strategic Housing Land Availability Assessment (SHLAA) provides a favourable view of the site's redevelopment potential, taking account of the accepted error in the assessment that identified the site as being in Flood Zone 3b whereas it is instead in Flood Zone 1.
- 3.10 On 14 April 2020, the examining Inspectors issued a letter (ED38) to the Council setting out their "serious concerns in relation to legal compliance and soundness" resulting from discussions at these hearings and consideration of the examination documentation to-date. This letter is included at Appendix H.
- 3.11 Whilst the legal deficiencies, including a failure to meet the Duty to Cooperate were foremost to the Inspectors' concerns, they also found issue with the Council's approach to Green Belt. In particular, the Inspectors questioned the Council's lack of prioritisation of PDL that had been put forward as a potential site allocation e.g. Smallford Works.
- 3.12 In considering its next steps, Chris Briggs, reported 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 context for this was the need to find more sites for housing to address

need and the focus on the assessment of suitability of PDL sites in the Green Belt. When asked by Members, Mr Briggs went on to confirm that there were not very many of these sites, and Smallford and Glinwells would represent the larger of these. [Add to the appendices]

- 3.13 The Council sent a response to the Inspectors in July 2020. This focused on legal compliance issues as the Council were keen to convince the Inspectors that there was a pathway to continuing the Examination. This included the proposed removal through Main Modifications of a 2,000 dwelling garden village (Park Street Garden Village) that formed one of the Inspectors concerns around the Duty to Cooperate.
- 3.14 On 1 September 2020, the Inspectors issued a response letter confirming that the earlier raised legal deficiencies remain, and that the Examination would not be able to continue. The Council will now have to either withdraw the Local Plan or request the Inspectors to produce their final report, with the potential for the Council to legally challenge this.
- 3.15 Whilst we agree with the Inspectors' assessment, we are disappointed that the Council are unable to rectify some of the soundness deficiencies raised by the Inspectors, namely in relation to PDL in the Green Belt. Key factors that can be taken from the Local Plan production and Examination process include:
- The Council committed to make the best use of PDL in the Green Belt [para 1.1 of the Council Matter 3 Hearing Statement];
 - The Smallford Works site, as with all other PDL Green Belt sites, was assessed through the SHLAA process, with suitable sites to be incorporated as part of Local Plan trajectory as 'windfall' development [officer input to Examination in Public];
 - The Council did not include these sites in the (then) emerging Local Plan as officers felt the policies of the plan supported their development and maximisation [officer input to Examination in Public];
 - The basis for assessment of such sites is the SHLAA, which confirmed that the site is PDL and the Council has long had aspirations to remove the poorly located industrial uses on the site, which will require enabling development. It was incorrectly assessed at that stage as being within Flood Zone 3b, an error now rectified with it accepted the site lies within Flood Zone 1, meaning that the site is capable of being assessed as suitable for residential development [2009 SHLAA and contemporary evidence provided including the latest Environment Agency mapping];
 - The SHLAA assessed the site against the Green Belt and determined that it:
 - Would not result in unrestricted sprawl of large built up areas'
 - Would not result in neighbouring towns merging into one another as the site is PDL

- Would not result in encroachment into open countryside as the site is PDL;
 - Would not affect the setting and special character of St Albans; and
 - Would assist in urban regeneration by encouraging the recycling of derelict and other urban land.
- Officers intended on reconsidering PDL sites, specifically identifying Smallford Works, as potential housing allocations through modifications to the emerging Local Plan [officer presentation to Planning Policy Committee].

Need for Housing

- 3.16 The social objective of the NPPF seeks to ensure that a sufficient number and range of homes can be provided to meet the needs of present and future generations. This delivery, along with the fostering of well-designed and safe built environments with accessible and open space will support strong, vibrant and healthy communities.
- 3.17 Chapter 5 of the NPPF seeks to support the Government's objective of significantly boosting the supply of homes by ensuring a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.
- 3.18 Draft Policy L3 (**Provision of and Financial Contributions towards Affordable Housing**) seeks a minimum of 40% affordable homes, as a proportion of the overall dwelling numbers on the site or an equivalent land area, on schemes of 10 (net) or more homes. On schemes of 100 dwellings or above, land for affordable housing must be distributed to facilitate socially desirable geographic spread of affordable dwellings.
- 3.19 Draft Policy S4 (**Housing Strategy and Housing Requirement/Target**) states that the housing requirement over the 16 year period (2020-2036) is 14,608 additional homes at an overall average of 913 homes per annum.
- 3.20 This is split into three time periods:
- 2020-2025 the requirement/target is 565 per annum.
 - 2025-2030 the requirement/target is 1,075 per annum.
 - 2030-2036 the requirement/target is 1,075 per annum.
- 3.21 In SACDC's latest Annual Monitoring Report (base date 31st March 2019) the Council report a supply of 2,021 dwellings. Based on a calculated need of 896 dwellings per annum as per the Standard Methodology and required buffer applied by the Housing Delivery Test, it is concluded that the Council have approximately a 1.9 year supply of housing (2019/20 – 2023/24).

3.22 However, a further review of the Council's proposed housing supply shows it contains a number of sites where planning permission has not been obtained, either where an application is pending determination, only pre-application discussions have been held, or an allocation is in place.

3.23 The revised NPPF provides a robust definition for "deliverable" sites in the context of demonstrating a supply of housing. This states:

"To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).

b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years."

3.24 The new definition within the NPPF corrects the prior distorted view on deliverability that resulted in local authorities over estimating future supply delivery, allowing for the presumption of inclusion in the five year supply to be small sites and those with detailed planning permission. For all others, including even sites with outline planning permission, the wording in the revised NPPF presumes against their inclusion unless "there is clear evidence that housing completions will begin on site within five years".

3.25 The supply also includes windfall provision from year 2 onwards, contrary to best practice. To avoid double counting, windfall should only be applied to years 4 and 5.

3.26 Removing such sites from the Council's suggested supply results in a reduction of some 378 dwellings. Applying this more accurate supply figure of 1,643 would result in the ability of the Council to demonstrate just 1.53 years supply.

3.27 In August 2020, Government consulted on proposals to change the standard methodology for calculating Local Housing Need (LHN). Under these revisions the LHN for St Albans would increase to 997 dpa. Were this brought into place and using the above stated supply, it would amount to a supply of just 1.37 years.

- 3.28 Regardless of where the actual supply falls within this 1.37-1.9-year bracket, it is clear that the Council falls demonstrably short of demonstrating a five-year supply of housing and has done for a number of years. The impact of this on housing affordability and therefore the ability of local residents to access the housing market is clear. The latest affordability ratios for the District show that median house prices are 16.81 times that of median household incomes, placing it as the fourth least affordable local authority nationally, outside of London.
- 3.29 This has doubled since the turn of the century and is up from 11.09 at pre-crash (2007) levels. This means that residents in St Albans will have to earn double what they could have in the year 2000 in order to afford the housing they need.
- 3.30 The situation is even more dire for those most in need of housing. Taking median house prices against median household incomes for the lower quartile, the affordability ratio is even higher at 17.68 times. This reflects the delivery of just 290 net additional affordable housing units over the last five years (58/annum) and just 1,680 affordable units over the last 24 years (70/annum). This compares to prevailing targets to deliver approximately 365 affordable units per annum and a SHMA that suggests the actual need is in excess of 685 dpa¹.
- 3.31 The provision of 60 new market dwellings and 40 affordable units cannot be understated, with the level of affordable housing actually in excess of policy requirements (40% provision compared to 35% within policy). The proposals would help make a significant contribution to the supply of housing in the District where affordability and access to affordable housing has been stifled to a level that is up there with the worst in the country. In light of the imperative in the NPPF to boost significantly the supply of housing, this provision is a significant consideration in favour of the proposal.
- 3.32 The scheme would also boost the economy by providing construction jobs and supporting local building trades. Research by the House Builders Federation has shown that 3.1 jobs are created for every home built, resulting in the potential of 310 jobs created by the development through construction and the associated logistics network. The proposal has the potential to generate £2.6m per annum invested into local shops and services from residents of new homes, with a further £500,000 in one off spending to make the new houses “feel like a home”². These economic benefits carry positive weight in favour of the proposal.
- 3.33 As is detailed below, the site currently comprises a relatively intensive industrial use of very low environmental value. The proposed development would significantly uplift the environmental value of the site by introducing new landscaping and removing a use that forms a negative impact both

¹ Appendix 6 of the New Local Plan states that the Council’s SHMA shows more than 75% of all housing need is for affordable homes.

² The Economic Footprint of House Building in England and Wales – HBF – July 2018

within and outside of the site. These environmental enhancements are considered to provide considerable weight in favour of the proposal.

4 APPELLANTS CASE: PART 1 – PRINCIPLE OF DEVELOPMENT (GREEN BELT)

4.1 The Council's first reason for refusal states:

“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 the 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.”

4.2 This first reason is central to the principle of development in this Appeal. The site's location within the Green Belt inevitably requires satisfaction of either Paragraph 145/146 or 144/143 of the NPPF. Policy 1 (**Metropolitan Green Belt**) of the DLPR 1994 defines the extent of the Metropolitan Green Belt within the district. Although this policy confirms the placing of the site within the Green Belt, this definition was formed over 25 years ago. Due to the age of the DLPR, and with a replacement yet to reach an advanced stage, the decision should rely predominantly on the above listed Green Policy as set out within the NPPF. This is in line with a recent decision made by an Inspector at an appeal site in Castle Point.³

4.3 Policy 8 (**Affordable Housing in the Green Belt**) appears to have been listed in error in the decision notice, with reference to the Officer's Report. When discussing the level of affordable housing, the Case Officer states:

“Policy 8 of the Local Plan refers to affordable housing within the green belt, due to the size of this site this Policy does not apply”

4.4 We concur with this position, as this policy is intended to refer to rural exception sites, which in themselves are typically small in scale. We therefore do not consider this as part of the assessment below.

4.5 Policy 74 (**Landscaping and Tree Preservation**) also appears to be listed in error, with its content referring to the retention or provision of new landscaping on site. Although we consider it is not relevant to Reason 1, it remains relevant to Reason 2 – discussed later.

³ APP/M1520/W/20/3246788 Paragraph 5

- 4.6 In light of the above, the proposal is firstly assessed against Paragraph 145, and then Paragraph 144 and 143 of the Framework. These matters have been considered by Counsel, with his Opinion provided at Appendix S.

Paragraph 145 Assessment – Exception to Inappropriate Development in the Green Belt

- 4.7 Paragraph 145 states that the construction of new buildings (including dwellings) should be regarded as inappropriate in the Green Belt, aside from defined exceptions listed. At Paragraph 145(g), one listed exception includes:

“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”*

Redevelopment of Previously Developed Land

- 4.8 The Appeal Site constitutes PDL dating back over 80 years, this is a position of common ground between the Appellant and the Council. This is acknowledged in the Officer’s Report to Planning Committee:

“Given the above, the Council does not dispute that the site constitutes previously developed land. It therefore needs to be assessed as to whether the proposal complies with either part of para 145(g)” (Paragraph 8.3.6)

“There is no in-principle objection to residential development and some weight is given to the Emerging Local Plan and redevelopment of PDL within the Green Belt” (Paragraph 8.3.9).

- 4.9 The site is in operational industrial use and consists of several permanent buildings and extensive hardstanding and other structures across the site. Additional information was submitted by the Appellant (dated 2 March 2020) highlighting comments made by Council officers on the character of the site when evaluating it as part of a SHLAA assessment in 2009 (Appendix F). Assessing officers concluded:

“The site is previously developed land and the Council has long had aspirations to remove the poorly located industrial uses on the site, in order to secure some major environmental

enhancement of the area as part of Watling Chase Community Forest. It is recognised that this is unlikely to happen without some ‘enabling development’.”

- 4.10 The Government has emphasised the need of local planning authorities to prioritise the delivery of previously developed land in advance of greenfield sites. The Housing White Paper ‘Fixing our broken housing market’ (February 2017) states at Paragraph 1.24:

“We must make as much use as possible of previously-developed (‘brownfield’) land for homes’

- 4.11 Continuing, Paragraph 1.25 states:

“Going further, the presumption should be that brownfield land is suitable for housing unless there are clear and specific reasons to the contrary (such as high flood risk)”

- 4.12 This rhetoric has continued in the more recently published Planning White Paper ‘Planning for the Future’ (August 2020). At Paragraph 1.12, the Government outline their intentions to:

*“promote the stewardship and improvement of our precious countryside and environment, ensuring important natural assets are preserved, **the development potential of brownfield land is maximised**, that we support net gains for biodiversity and the wider environment and actively address the challenges of climate change” [our emphasis]*

And at paragraph 2.25:

*“**the opportunities to better use existing brownfield land for housing, including through greater densification. The requirement figure will expect these opportunities to have been utilised fully before land constraints are taken into account**” [our emphasis]*

- 4.13 These aspirations are present in the current version of the NPPF, with several paragraphs allowing or promoting the greater use of previously developed land for housing which is of low environmental value (Paragraphs 84, 117, 118, 119). Paragraph 137 in particular lists previously developed land as a priority when proposing to amend Green Belt boundaries:

“Before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic policy-making authority should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for development. This will be assessed through the examination of its strategic policies, which will take into account the preceding paragraph, and whether the strategy: makes as much use as possible of suitable brownfield sites and underutilised land”.

- 4.14 The utilisation of previously developed land is recognised as the primacy development option within the draft Local Plan. As is set out in our letter to the Council (date 3 February 2019), the Council state at Paragraph 1.1 of its Matter 3 Hearing Statement:

*“The basis for the overall strategy and broad distribution of growth set out in Policy S1 is a direct response to the relevant Statute and national policy, principally set out in the NPPF. In simple terms, following the NPPF, **the basis has been to start by making the best use of previously developed land (PDL) in existing settlements (and PDL in the Green Belt as far as it is compatible with NPPF paragraph 145 (g)) first**” [our emphasis]*

- 4.15 This context is important in applying the test of Paragraph 145. Government has continued its commitment to the delivery of 300,000 dwellings per annum (dpa) has put considerable pressure on Green Belt and greenfield land, particularly in the south east. This is reflected in the current (if not yet withdrawn) emerging Local Plan for SACDC, which proposes the release of 525 hectares of Green Belt land, near entirely greenfield, in order to meet its future development needs.
- 4.16 Throughout this 300,000 dpa commitment, Government has made only limited amendments to Green Belt policy, both seeking to see a greater number of PDL sites within the Green Belt being development. Government has made it clear that maximising the redevelopment of PDL sites plays a premier role to meeting national and local housing targets. The extent of Green Belt release that has occurred and is proposed despite these changes show that all sustainable PDL opportunities need to be utilised.
- 4.17 Paragraph 137 relates to the production of Local Plans and emphasises the need to utilise all PDL sites prior to making amendments to the Green Belt in order to unlock development sites. Paragraph 145(g) relates to the assessment of planning applications, which we assess below.

Redevelopment of Previously Developed Land: Applying the Correct Test

- 4.18 As stated, an exception to the construction of new buildings being considered inappropriate development is possible subject to compliance with either condition listed at Paragraph 145(g). It is critical to note that the first and second bullets of Paragraph 145(g) provide alternative criteria, with only one requiring satisfaction.
- 4.19 As the Proposed Development involves the provision of affordable housing (40 units or 40% of total) it is the second condition of Paragraph 145(g) requiring compliance:

*“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.**” [our emphasis]*

- 4.20 The NPPF provides no threshold or definition of what it means to “contribute” to an “identified affordable housing need”. However, it has been accepted in numerous appeals that the provision of a policy compliant level of affordable housing would meet this criteria.⁴
- 4.21 The Affordable Housing SPG (March 2004) states that the Council will seek a target level of 35% affordable units on suitable sites above the site size thresholds. In providing the 40% affordable housing, the proposal *exceeds* the criteria listed in policy. This is recognised by the Case Officer at Paragraph 8.3.16:
- “The proposed development would provide 40% (40 units) of affordable housing, providing a quantum of affordable housing in excess of the 35% required by Policy. However, the applicants have not indicated the tenure split or the size and type of units of affordable housing. The site is previously developed land and it is accepted that it would not be inappropriate development to redevelop the site if the proposal does not cause substantial harm to the openness of the Green Belt”*
- 4.22 The remaining issue therefore remains as to whether the proposals would not cause “substantial harm” to the openness of the Green Belt.
- 4.23 The definition of “*substantial harm*” is not defined and must therefore be one of planning judgement. Paragraph 145(g) is a replication of the 2012 NPPF Paragraph 89 bullet 6, with the addition of the second test and the insertion of “*substantial harm*” compared to the earlier test (and retained test under bullet 1) of “*not have a greater impact on the openness*”.
- 4.24 It is important to note that this change was made in light of the Government commitment to deliver 300,000 dpa, as detailed above. The use of “substantial” is deliberate and should not be undervalued, with the NPPF reserving the term for some of the most valued assets e.g. heritage. It is clear that the intention of this change was to see the vast majority of PDL sites that don’t fit the typical vision of “Green Belt” come forward for development.
- 4.25 In considering this point, the appeal Inspector to Waverley Riding School describes the new “substantial harm” test as a “*high bar in my opinion*”.⁵ This conclusion is also reached by the Case Officer at Paragraph 8.1.13 who considers that it is a “*lesser test of harm than under the first part of Para 145(g) accepting that some harm can be caused to the openness of the Green Belt*”. In fact, the relevant test allows not just “some” harm, but anything less than “substantial”⁶ harm that can occur and still comply with Paragraph 145(g).

⁴ APP/N1920/W/19/3229315, APP/T3725/W/18/3218529, APP/M3645/W/19/3230341

⁵ Paragraph 16 APP/T3725/W/18/3218529

⁶ “Large in size, value, or importance” <https://dictionary.cambridge.org/dictionary/english/substantial>

Assessing Impact to Openness of the Green Belt

4.26 “Openness” is a term not defined in policy and there has therefore been much litigation in how proposals should be tested in their impact on the openness of the Green Belt.

4.27 The defining legal case in this area is *Turner vs. Secretary of State for Communities and Local Government* [2016] ECWA Civ 466. Paragraph 14 of the judgement confirmed:

“The concept of ‘openness of the Green Belt’ is not narrowly limited to the Volumetric approach suggested by Mr Rudd. 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 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 openness within the Green Belt presents”

4.28 Therefore, when considering the question of impact on openness of the Green Belt, it is clear that the decision maker must consider the impact of the proposal compared to the existing impact on the Green Belt (a baseline). Further, the “open-textured concept” adjudged in this case confirms that a number of factors are capable of being relevant to openness, as well as individual components within a site (e.g. hardstanding, vehicles etc.).

4.29 The Supreme Court in *R (Samuel Smith Old Brewery (Tadcaster) and others v North Yorkshire County Council* [2020] UKSC 3 has recently provided further clarity as to the interpretation of the openness of the Green Belt. At Paragraph 39, the importance of planning judgement within the role of the decision is re-enforced:

“...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”.

4.30 It is important consider that the decision reached by *Turner* was not argued to be incorrectly decided, in fact, it was expressly endorsed by both sides.

4.31 Therefore, this most recent case makes it very clear that whilst visual impact of a particular proposal may be judged as a relevant factor in assessing the openness of the Green Belt it, in itself, is not a strict nor mandatory determinative factor.

4.32 The latest PPG on the Green Belt was published on 22 July 2019 and reflects the issues outlined above. With regards to the factors that can be taken into account when considering the potential impact of development on the openness of the Green Belt, Paragraph 001 states:

“Assessing the impact of a proposal on the openness of the Green Belt, where it is relevant to do so, requires a judgement 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.*

Lawful Use of Site

- 4.33 It is agreed by both parties that the site comprises PDL. However, the extent of consideration of the baseline appears to have been an important factor in the recommendation put forward by the Case Officer.
- 4.34 The Officer's Report states at paragraph 8.2.23 *"This proposal would result in a substantive increase in permanent volume and floor space across the site. Whilst much of the site is covered by structures these are transient and not permanent, nor has the lawfulness of the site been established and planning permission does not exist for the existing use"*.
- 4.35 The Case Officer appears to have come to the view that the existing uses are unlawful and could theoretically be removed. It is unclear to what extent that this has reduced the weight she applies to the buildings or existing uses onsite but given the above statement, some adjustment has been made.
- 4.36 The Appellant sought to establish a Certificate of Lawful Existing Use or Development (CLEUD) in October 2018 (Ref: 5/2018/2006). This was withdrawn following recommendations from the Council that it would be refused.
- 4.37 It was suggested that the individual units would each need their own submission. Whilst each unit is individually fenced off, they are centrally managed by the Appellant and utilise shared welfare facilities. This is much in the same way serviced offices work, where the Council has allowed a single CLEUD despite the recognition that each office within the building acts as an individual unit⁷.
- 4.38 The site has been in a continuous storage and distribution use dating back to before the establishment of the modern planning system, a position the Council accepts. Evidence submitted to the CLEUD comprised (and are included at Appendices I - P):

⁷ For example 5/19/2434 with the Delegated Report at Appendix R.

- Officers Report relating to an application for a new access road (Ref: 5/2002/2112);
- 2009 Reinstatement Cost Assessment;
- 2012 Reinstatement Cost Assessment;
- 2013 Report and Valuation;
- 2015 Reinstatement Cost Assessment;
- Occupational Lease Agreements dating the prior 10 years;
- Aerial Imagery; and
- Cover letter.

4.39 In any event, it is not for this appeal to determine the suitability of those submissions, nor any previous CLEUD submission. The Appellant is now seeking individual CLEUDs for each unit in order to formalise position the position of the permanent buildings and storage uses onsite.

4.40 As part of the previous CLEUD submission, the Council also raised concern that some of the units had been impacted by the delivery of new estate road, changing their size and shape over the last 10 years. The Appellant will be addressing within the new CLEUD submissions.

4.41 It remains that the site has not been subject to any enforcement action from the Council relating to the uses onsite.

Openness Assessment

4.42 In providing our assessment of openness, we consider the following relevant factors:

Building Footprint and Heights

4.43 The existing site contains permanent buildings that extend to 2,673.45m², which are mainly single storey in height. The footprint of the proposed permanent buildings will not be determined until reserved matters stage and therefore cannot be considered absolute. The indicative masterplan provides an example of what could be delivered, with the footprint at 11,448m². These buildings would be two-storeys in height. Therefore, from a perspective of purely permanent building footprint and heights, there is a negative impact on openness.

Site Coverage

4.44 The existing site contains several permanent buildings along the western edge of the site, forming a significant cluster, with six buildings along the north and central parts of the site. The rest of site is covered by extensive hardstanding and structures associated with the current industrial use, leaving minimal open space and no green space.

- 4.45 As can be seen from the aerial imagery at Appendix O, the extent of storage on site has intensified over the years, most notably in the southern, central and western parts of the site, where nearly the entirety of the floorspace is utilised for storage.
- 4.46 Whilst the proposal introduces a greater level of permanent building footprint across the site, the proposals introduce rationalisation to the site coverage that creates a more orderly layout to the development. This places development at its most dense where it is least open (visually) along the northern and eastern boundaries. The coverage of areas without development (i.e. land that does not consist of buildings, structures or hardstanding) is significantly increased through the provision of residential gardens and a new Village Green that also works to separate instances of development.

Visual Impact

- 4.47 The existing site is largely self-contained, benefitting from dense landscaping around its boundary and a flat topography limiting any visual impact on long views or at a local level. Standing within the site, between the expanse of stored material, intense industrial activity and dense landscape boundaries, there is negligible connection to the open countryside. From outside of the site, views into the site go little further than the existing trees around the boundaries, with the exception of the altered landscape boundary at the location of the new access. This provides views – looking west – of existing structures upon the eastern boundary, as well as the permanent buildings in the centre and western boundaries of the site – but not into the countryside beyond.
- 4.48 It is important to note that this access has now been delivered and therefore forms part of the existing baseline. Therefore, its inclusion within the proposed development cannot be considered to result in increased visibility of the site. In fact, the existing viewpoint from this access into the site is of a block of industrial buildings (see image at Appendix Q). Conversely, the indicative masterplan shows the potential for a tree lined access, leading into a central village green, with the housing along this viewpoint set further back in the site. This has the potential to be an improved position, but it most certainly would not create substantial harm to the openness of the site.
- 4.49 The proposed development largely retains the self-contained nature of the site, through retention and strengthening of landscaping around its boundary, thus providing equal or less visual impact on long views at a local level.
- 4.50 The height of the existing vegetation around the boundary would minimise the impact that increased building heights and scale would ultimately have. The rooftops of some new houses would be visible from outside of the site and a public footpath; however, the existing buildings are also visible from this footpath. Accordingly, the magnitude of change is small, even in winter months.

- 4.51 The proposals increase the visual and perceptual openness of the site within the development with features that better relate it to the neighbouring countryside. The landscaped gateway for pedestrians and cyclists that comprise the former access works to blend this entrance to the site with surrounding dense landscaping upon the boundaries. The central village green and residential gardens within the development will undoubtedly provide the benefit of increasing the visual perception of the site as an edge of settlement, countryside location. The provision of mews avenues within the development draws the attention to the neighbouring open space to the west of the site, thus creating a greater perceptual and visual connection to it – as opposed to the existing site where existing development, both permanent buildings and others, prevents this.
- 4.52 The proposed development in the more central part of the site is placed perpendicular to Smallford Lane to avoid substantial impact on the visual openness of the countryside beyond the site to the west. Even with an increase in building height, this would provide a limited obtrusive vision into the site than the existing buildings that sit almost parallel and prevent views beyond it.

Activity

- 4.53 At Paragraph 8.3.24 of the Officer's Report, the Case Officer concludes:
- "The application form indicates that 100 houses would be provided. The redevelopment of the site to provide 100 houses would be likely to result in a greater impact upon the openness of the Green Belt than the existing situation and would result in substantial harm to the openness of the green belt by reason of the likely scale, built form, and activity associated with 100 houses."*
- 4.54 We outline our opinion of scale and built form above. Despite making the comment with regards to activity, the Case Officer appears to have not considered the "baseline" activity. As set out, in PPG on openness – quoted by the Officer – a comparable factor is vehicular movements.
- 4.55 The submitted Transport Assessment confirms that the number of vehicular trips, when compared to the existing site in both AM and PM peak hours, will reduce, as well as the total number of trips throughout the day. Further, there would also be a "significant decrease" in the number of Heavy Goods Vehicles (HGVs) travelling along rural-edge roadways. Elsewhere in the Officer's Report (Paragraph 8.8.7) this is considered acceptable, though should be recognised as a considerable benefit. Although considered acceptable in regard to highways, the Officer considered that the activity with 100 houses would contribute to "substantial impact" on openness. Although noted that presence cannot necessarily be comparable, the reduction of HGVs would also have the benefit of reducing a further visual impact.
- 4.56 In addition to the visual impacts of the industrial uses (including traffic generated), the noise, dust and pollutant impacts of such a use in such a location should be considered as part of the baseline. The Council has previously stated that this is a "poorly located industrial uses on the site". The

activities associated with industrial uses, and the resultant noise created when compared to residential development, is a further consideration that officer appears not to have fully explored.

Remediability

- 4.57 Throughout the Officer's Report, the Case Officer is keen to stress the remediability of the existing site. The existing site does contain some structures that are by nature "remediable", but this forms only one side of remediability. At Paragraph 8.3.23, the Officer makes an incorrect assumption about the site:

"Whilst much of the site is covered by structures these are transient and not permanent, nor has the lawfulness of the site been established and planning permission does not exist for the existing use".

- 4.58 As we have made clear, the site is not unlawful and has not been subject to enforcement action. This is further confirmed by SACDC's Enforcement Teams "No Comment" on the application. Whilst in the middle of undertaking a key, determinative assessment of the proposal, this comment should cast serious doubt on the Officer's overall assessment, particularly given the view has been relied upon to make the assessment throughout.

- 4.59 The correct baseline needs to reflect all the existing permanent structures on the site, as well as the extent of storage activities that have occurred. As has been detailed, the extent of storage activity has never fallen to a low level, though often times the vast majority of individual units has been occupied by storage material. In lieu of the redevelopment of the site, the Appellant will continue to lease out all units and will seek ways to intensify the industrial operations of the site in order to maximise its commerciality.

Conclusion

- 4.60 When concluding whether the proposed residential and associated open space causes a substantially greater harm to the openness of the Green Belt than the current industrial uses, it is important to check back to the purpose of the introduction of the test at Paragraph 145(g). Government continues to have a brownfield first agenda, including PDL sites in the Green Belt, for addressing the worsening housing crisis. SACDC represents an acute case of this crisis, among the worst nationally, and has recognised that the redevelopment of sites such as the appeal site are necessary in its future housing strategy. However, the Council has shown that it is unable to bring forward such a strategy through the Plan making process. The introduction of Paragraph 145(g) bullet 2 was specifically introduced within the 2019 NPPF to see sites such as Smallford Works come forward for redevelopment.
- 4.61 The activity associated with a residential use on this site compared to the existing industrial use has been proven to be improved through the reduction of HGV vehicular travel movements, which

in itself will reduce the visual impact on the openness of the Green Belt. Although some structures are by nature, “remediable”, they also have the potential to be intensified.

- 4.62 The Appeal proposals would not cause “substantial harm” on the openness of the Green Belt compared to the existing development. Whilst it is acknowledged that the proposals would result in a greater building footprint and increased height compared to the existing development, the proposals introduce measures that enhance aspects of the visual and perceptual openness of the Green Belt with a more rationalised site coverage that include the introduction of green spaces and positive relations to the open countryside, particularly to the west.
- 4.63 Accordingly, the proposed development accords with Paragraph 145(g) of the NPPF and is not considered inappropriate development in the Green Belt.

Paragraph 144 and Paragraph 143 Assessment – Very Special Circumstances

- 4.64 Should the Inspector consider that the appeal proposals would constitute substantial harm to the openness of the Green Belt, it would be considered inappropriate development. For the avoidance of doubt we do not accept that this would be the correct assessment of the site, its circumstances or indeed the correct application of policy. However, we address the matter in the event that this conclusion is reached. As such, the relevant test is set out in Paragraph 143 of the NPPF which states that inappropriate development in the Green Belt should only be approved in Very Special Circumstances.
- 4.65 In considering whether Very Special Circumstances (VSCs) exist, it is important to first assess the role the site plays with regard to openness, and against the purposes of including the land within the Green Belt.
- 4.66 We present our case on the openness of the site above. By nature of the test at 145(g), to be considered inappropriate it would have to be considered that there is “substantial” harm to the openness of the Green Belt. In any event, the existing baseline of the site is still material and the case of harm cannot be considered the same as if the site was greenfield or even a less intensive PDL site.
- 4.67 With regards to the purposes of the Green Belt, Paragraph 134 of the NPPF states that the Green Belt serves five purposes. We consider the role of the site against these purposes below and what impact the proposed development would have on them.

Purposes

To check the unrestricted sprawl of large built-up areas

- 4.68 The nearest large built up area to the site is St Albans City, the centre of which is located nearly 5km to the west. As the site does not adjoin and is located a fair distance from St Albans City, the proposed development therefore does not represent urban sprawl in so far as it does not result in a continuous and unbroken built extension to the existing built environment such that it would appear as an incongruous encroachment into undeveloped countryside.

To prevent neighbouring towns merging into one another

- 4.69 The extent of the Green Belt between the settlements excluded from the Green Belt (St Albans and Hatfield) extends to nearly one kilometre east and west. The Proposed Development will not lead to any material coalescence of the two settlements as the built form will be surrounded by dense vegetation adjacent to Smallford Lane and the open space to the west will ensure the site is visually well contained from users of the public footpaths and the road.
- 4.70 The presence of the existing industrial activities would mean the resulting residential development would not lead to an 'urbanising' effect for the site. Accordingly, there would be no visual, spatial or perceptual erosion of the gap between St Albans and Hatfield.

To assist in safeguarding the countryside from encroachment

- 4.71 The site is PDL that has been in industrial use for over 80 years. It lies adjacent to the settlements of Smallford and Sleapshyde and provides a 'bad neighbour' to these predominantly residential areas. As the site is PDL and operates an industrial use that includes the operation of a significant number of HGVs, it can be comfortably concluded that the development of the site for residential purposes will not encroach into the countryside. The existing use, which provides an unattractive neighbour to the existing residential areas already exists within the Green Belt. Notwithstanding this, the replacement of previously developed land which is predominantly industrial in character to a residential development will provide an improvement to the nearby Green Belt Settlements of Smallford and Sleapshyde.
- 4.72 Furthermore, the findings from the LVIA concludes that there will be no long term significant adverse effects arising as a result of the proposed development, and found the proposed use and built form as being beneficial due to the landscape enhancements that will be brought into an existing industrial site which, apart from its retained boundaries, is currently bereft of any vegetation or ecological diversity. The proposed development will sit within an existing robust landscape framework and the majority of boundary trees and vegetation will be retained apart from where it is necessary to provide access from Smallford Lane.

To preserve the setting and special character of historic towns

- 4.73 The proposed development cannot conflict with his purpose as the site is located over a kilometre from the edge of St Albans City. As such, the development of the site will preserve the setting and

special character of the nearby historic town. The redevelopment of the site would result in the delivery of much needed housing within SACDC, reducing the pressure on development within St Albans City, which may have resulted in a negative impact to the setting of the historic town.

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

- 4.74 Although the site is located within the Green Belt, it is comprised of PDL with significant levels of exiting built form dating back over 80 years. As such, it can therefore be reasonably concluded that the development of the site is an example of recycling derelict urban land.
- 4.75 Based on the above assessment, whilst it is recognised that the proposed development is located within the Green Belt, it will not materially impact on the purposes for why the Green Belt was designated. Should the Inspector not conclude that the proposed development would not cause substantial harm to the openness of the Green Belt, we maintain that VSCs can be demonstrated. We return to this later. In accordance with Paragraphs 143-144 of the NPPF, this requires consideration of “any other harm resulting from the proposal” and “other considerations” (which could weigh in favour of the proposals).
- 4.76 It is significant that the Council came to similar conclusions over the impact redeveloping the site would have on the purposes of the Green Belt (see Appendix F).

Very Special Circumstances Case

- 4.77 VSCs will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The above assessment has considered the potential harm the redevelopment of the site would have on the purposes of the Green Belt and on its openness. Below we set out the case of VSCs applicable to the site.
- 4.78 There is no definition of what constitutes VSCs, with it decided on a case by case basis. It may be that no one material consideration constitutes VSCs on its own, but a pool of considerations together can clearly outweigh the harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal.
- 4.79 We now consider what VSCs exist in relation to the proposals:
- 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 an up-to-date, NPPF compliant Local Plan in place since 1997, a planning vacuum has been created, threatening the delivery of much needed market and affordable housing across the District. This has simultaneously resulted in the detriment of social cohesion in St Albans, as the absence of a Local Plan has failed to address the key issues and challenges facing

the District. The development for 100 new open market and affordable homes will therefore provide a range of house types to reflect the demand for housing in the District.

- The provision of 40% affordable housing is in excess of policy requirement. The poor housing delivery in the District has resulted in an extremely high and worsening affordability 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 to helping local residents being able to access the housing market and meet Government ambitions to address the housing crisis.
- The proposed development will also significantly improve the existing site condition 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 planned for greenfield sites across the District.
- The proposed development will contribute positively to the local highway network due to the net reduction in trips in peak hour and removal of HGV trips from residential road that experiences heavy congestion.

4.80 Substantial weight is given to the harm found by way of inappropriateness. However, the overall amount of Green Belt harm is significantly moderated by way of the current operation and the assessed poor contribution of the site to the purposes of the Green Belt. The redevelopment of the site would not undermine the current contribution the site makes to the purposes of the Green Belt when considered against the existing baseline. And in fact, the reuse of a brownfield site in an area of extensive housing need positively contributes to purpose 5 of the Green Belt in reducing the pressure of greenfield, Green Belt sites to come forward for development.

4.81 In the context of an out-of-date Local Plan, and where some sacrifice of the Green Belt is unavoidable⁸ in order to provide enough homes in the District. The scheme provides substantial social benefits, relative to its size by contribution made to housing need, and proposes environmental improvements in cleaning up a poor quality existing use, as well as remediating contamination. There would be local economic benefits from both the building works and additional household expenditure. Overall, these considerations clearly outweigh the Green Belt harm identified. Looking at the case as a whole, VSCs do exist which justify housing on the site.

4.82 We complete the planning balance associated with Paragraph 144 later. Firstly, it is appropriate to explore the other relevant considerations important to the determination of this Appeal.

⁸ See current emerging Local Plan that proposes 525 hectares to be released from the Green Belt in order to accommodate new development.

5 APPELLANTS CASE: PART 2 – RELEVANT CONSIDERATIONS AND TECHNICAL MATTERS

5.1 In setting out an appropriate format for the final planning balance, it is important to consider the other relevant considerations appropriate for the determination of the Appeal.

5.2 A number of matters are agreed as resolved between the Appellant and the Council. The detail of these are set out in the Statement of Common Ground, but in summary these include:

- Loss of Employment Uses;
- Housing Supply;
- Flood Risk;
- Amenity;
- Car Parking/Highway Safety and Rights of Way;
- Contaminated Land;
- Affordable Housing;
- Legal Agreement

5.3 However, a number of matters are disputed between the Appellant and the Council. These relate largely to reasons for Refusal 2-4, with sustainability relevant to part of Reason for Refusal 1. We set out our analysis of the following features below:

- Sustainability (of Location);
- Design, Character and Landscape;
- Drainage;
- Impact on water quality; and
- Ecology.

Sustainability (of Location)

5.4 At Reason for Refusal 1, the Case Officer considers that the site is “*unsustainably located*”.

5.5 Within the OR, discussion of this is restricted to one Paragraph (8.5.1) where it is stated:

“Paragraph 150 of the NPPF sets out that new development should be planned in ways that can help to reduce greenhouse gas emissions, such as through its location, orientation and design. Paragraph 92 requires planning decisions to plan positively for the provision and use of shared spaces, community facilities and residential environments to...ensure an integrated approach to considering the location of housing economic uses and community facilities and services. The site is outside a settlement and is heavily reliant on car journeys for access to facilities and local services. Whilst this application is in outline, no details of sustainability measures have been provided in connection with this application. This goes towards the inappropriateness of the development in this Green Belt location.”

- 5.6 We consider that the Case Officer has failed to appropriately consider the sustainability of the site's location, based on the facts of the case and the information that was submitted to the Council. We propose our assessment of the site's sustainability in terms of location below.

Relevant National Policy

- 5.7 Chapter 9 highlights sustainable transport as a key consideration of sustainability by location. Paragraph 102 of the NPPF states:

“transport issues should be considered from the earliest stages of plan-making and development proposals so that:

- a) The potential impacts of development on transport networks can be addressed;*
- b) Opportunities from existing or proposed transport infrastructure, and changing transport technology and usage, are realised – for example in relation to the scale, location or density of development that can be accommodated;*
- c) Opportunities to promote walking, cycling and public transport use are identified and pursued;*
- d) The environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effects, and for net environmental gains;*
- e) Patterns of movement, streets, parking and other transport considerations are integral to the design of schemes, and contribute to making high quality places.*

- 5.8 Paragraph 103 states:

“The planning system should actively manage patterns of growth in support of these objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However,

opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making”

- 5.9 Paragraphs 109 and 110 of the NPPF require consideration to be given to sustainable transport modes, the needs of people with disabilities, safe layouts, the delivery of goods and provision for plug-in and ultra low-emission vehicles.
- 5.10 Paragraph 111 refers to the need for Travel Plans and Transport Statements or Transport Assessments and states that *“all developments that will generate significant amounts of movement should be required to provide a travel plan, and the application should be supported by a transport statement or transport assessment so that the likely impacts of the Proposed Development can be assessed”*.

Assessment

- 5.11 A Transport Assessment (TA) was prepared by Pell Frischmann and submitted as part of the initial application.
- 5.12 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 vehicle trip generation of the existing site has been calculated using a first principles traffic survey at the site access. The TA demonstrated 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 in comparison with the existing light-industrial land uses at the site. This would be expected to present an improvement in highway capacity terms on the local highway network and key junctions, as well as presenting a net improvement in road safety and reducing the likelihood of collisions along Smallford Lane. The methodology and results of trip generation assessments have been agreed with HCC during pre-application discussions.
- 5.13 The site benefits from access to public transport and existing cycle routes, which provide connections to the centres of Hatfield and St Albans and National Rail stations. This includes a bus stop immediately outside of the site providing services into St Albans, Colney Heath, and Potters Bar. Whilst Alban Way lies 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.
- 5.14 Accessibility to the site by walking and cycling has been incorporated into the design of the site and site access, and connections to the existing footway network has been considered and provided.
- 5.15 The TA has demonstrated that the proposed development would result in a decrease in peak hour and daily vehicle trip.

- 5.16 The Case Officer quotes Paragraph 150 of the NPPF in their OR, suggesting that new development should help to reduce greenhouse gas emissions, such as through its location, orientation and design. The TA has consequently demonstrated that the number of daily vehicle trips will in fact reduce, in combination with a reduction in daily HGV vehicle trips. Accordingly, the reuse of this industrial site represents a more sustainable use of the site.
- 5.17 The Officer notes that no details of sustainability measures for travel have been proposed in connection with this application. This is expected to be provided as part of a Unilateral Undertaking/Section 106 agreement, with Travel Plans secured by condition.
- 5.18 Finally, the Officer considers the development being outside the settlement as constitutive of its unsustainability. Despite being physically outside the settlement boundary, the site is generally located amongst dispersed development that exists to the east side of St Albans around Smallford and Sleapshyde. The site retains an appropriate physical distance from both Smallford (and various components associated with a village) and St Albans (the district/city centre) that can be accessed via sustainable transport means.
- 5.19 Therefore, we consider the Council's conclusions on the site being "unsustainably located" as unfounded, especially when measured against Chapter 9 of the NPPF and the merits of the case.

Design, Character and Landscape

- 5.20 The Council's second reason for refusal states:

On the basis of 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.

- 5.21 **Policy 74 (Landscaping and Tree Preservation)** seeks the retention of existing landscape features including healthy trees, hedgerows, ponds and watercourses. Tree surveys will be required for applications where the site includes significant landscaping. The provision of new landscaping must retain existing trees and shrubs and preference should be given to native shrubs and trees.
- 5.22 Paragraph 8.19 within the DLPR supporting Policy 74 states that "*The Council expects that proper consideration will be given to the landscaping requirements of all planning proposals, in order that the quality of the environment of the District will be maintain and enhanced*".
- 5.23 Despite the quotation of Policy 74, and the vague reference to "relevant provisions of the NPPF" used by the Case Officer, we consider this reason for refusal warrants full exploration of the design, character and impact on landscape from the development – all of which are interlinked. Accordingly, we set out the relevant national and local policy considerations below.

Relevant National Policy

5.24 Chapter 12 of the NPPF seeks to achieve well-designed places. Paragraph 124 states that good design is a key aspect of sustainable development and creating better places which are acceptable to communities. Paragraph 124 continues to emphasise that effective engagement between applicants, communities, LPAs and other interested parties is essential for achieving good design. Paragraph 127 lists key design principles that should be achieved through decision making, these include:

- Adding to the overall quality of an area;
- Visually attractive;
- Sympathetic to local character;
- Establish a strong sense of place; and
- Optimise the potential of the site.

Relevant Local Policy

Policy 69 (General Design and Layout) states that development shall have high standards of design taking into account context, materials; and other policies.

Policy 70 (Design and Layout of New Housing) states the design of new housing should have regard to the setting and character of the surroundings. Developments must consider design and layout; dwelling mix; roads and footpaths; parking and garages; landscape; privacy between dwellings and rear boundaries; orientation; amenity space around dwellings; defensive space; open space; and materials.

Policy 74 (Landscaping and Tree Preservation) – see above

Policy 75 (Green Space within Settlements) states development of green space will be considered against whether: the land should be retained as open use; the proposed development would destroy the surrounding area; wildlife conservation has been provided; and the integrity of and value of green chains such as watercourses and disused railway lines are maintained.

Assessment

5.25 A Design and Access Statement (DAS) has been prepared by Turner and supports this application. It outlines how the proposal would represent a highly beneficial use of a previously developed Site from inception to a developed masterplan. The scheme has been sensitively designed to ensure there is negligible impact to the openness of the Green Belt. Our analysis of openness has been provided above.

- 5.26 This report demonstrates how the proposed residential development will seek to respond to and enhance the site through considered design principles and physical treatments. It outlines how the new buildings will be designed to a high quality in conjunction with the Council with a Design Code.
- 5.27 An LVIA has been prepared by UBU and supports this application. The report concludes that the landscape and visual effects of the proposal will result in a combination of minor and moderate beneficial and adverse effects at the Post Construction stage, which are reduced to minor, slight beneficial and neutral residual effects with the maturing of the planting introduced as mitigation measures.
- 5.28 An Arboricultural Survey (AS) prepared by SJA concludes that no mature or category 'A' or 'B' trees, and no trees of high landscape or biodiversity value are to be removed. The proposed removal of individual and groups of trees will represent a partial alteration to the main arboricultural features of the site and will not have an adverse impact on the arboricultural character and appearance of the local landscape.
- 5.29 A Preliminary Ecological Assessment (PEA) prepared by Green Environmental concludes that due to the existing commercial use and lack of semi-natural habitats, the Site is considered to be of negligible ecological value with no potential for wildlife. As such, it does not recommend any further surveys.
- 5.30 Therefore, it can be concluded that the proposed development complies with Chapters 2 and 12 of the NPPF and policies 69, 70, 74 and 75 as the scheme can be accommodated within the landscape character and visual amenity and because it is acceptable in terms of landscape and visual impact.
- 5.31 The Officer considers that the design of the development is of an appropriate density and the proposed mix of dwellings is acceptable. They claim that the several poor condition trees will be removed placing impact on openness of the Green Belt. This is incorrect, with an indicative Landscape Strategy provided that has specifically accounted for mitigation on potential visual impact and enhancing the local landscape character. We would anticipate the Council to condition a more detailed landscape strategy that can ensure that the Council is content the visual impact of the development is minimalised.
- 5.32 The Officer states that the proposed development will be beneficial in the long term, resulting in a minor, neutral effect on the landscape once replacement planting has matured. The Officer raises concerns that some poor vegetation towards the end may be compromised by encroaching development, and suggests that careful management and significant replacement would be required and could be secured by condition.
- 5.33 The Officer states at Paragraph 8.6.12:

“However, the assessment does not take account of the Green Belt setting in assessing the wider landscape value. Consequently, the significance of the development on Landscape Character could be greater than indicated.”

5.34 The Officer states at Paragraph 8.6.13:

“Landscape and Visual Impact Assessment has been prepared to inform the landscape strategy. The methodology is based on current Guidelines for Landscape and Visual Assessment Edition 3. However, the assessment was carried out in summer during full leaf cover and VP locations have not been agreed with the LPA. Therefore, only limited weight can be given to the assessment as it does not fully comply with the methodology indicated. It is recommended that additional winter viewpoints and VP locations are agreed with the LPA to assess the visual impact of the proposed development and minimise the negative impact on the wider Green Belt Countryside”

5.35 The Case Officer failed to provide this comment at any point during the determination of the application. In fact, despite continual requests by the Appellant to meet and discuss the proposals, the Case Officer provided no comments in relation to the application at all and failed to agree to a meeting.

5.36 The LVIA includes references to the impact that winter months would have on the visual impact of the development. Paragraph 1.8 of the LVIA states:

“The assessment was carried out during summer when the deciduous trees surrounding the site were in full leaf. This represents the best-case scenario in relation to the screening effects of vegetation. The screening effect of the deciduous trees, hedgerows and under-storey shrubs will decrease during the winter. However the extensive surrounding vegetation also contains a large mix of evergreen species which will therefore retain some of the screening effects during the winter months.”

5.37 Then at paragraphs 5.25 and 5.29, when considering the impact of the development on views from the adjoining countryside and public footpaths, it states:

*“The proposed development intends to retain the western boundary vegetation in its entirety but the upper portions and rooftops of some of the housing may be visible above the trees in places, especially in winter. The magnitude of change is deemed to be **small** as some existing buildings are visible from this public footpath...”*

*“The magnitude of change from this footpath will be mostly **small** with the existing buildings being removed and replaced by housing. The upper storeys and roof lines of the latter are likely to be visible from certain locations. This may be increased in winter after leaf fall.”*

- 5.38 Indeed, whilst there would be some greater visibility of the site in winter months, this is true of the existing development. The Officer again fails to appreciate how the baseline position has a detrimental impact on the adjacent countryside not just in visual terms, but from the resulting noise.
- 5.39 Whilst not suggested, it is considered that additional winter viewpoints and VP locations can be agreed with the LPA, secured through condition, to assess further the visual of the final design of the proposed development at Reserved Matters. This does not have to impact the principle of development established by this outline planning application.
- 5.40 It is considered that the application has sought the retention of existing landscape features including healthy trees. A Tree survey has been undertaken. Proposals for new landscaping has retained existing trees and shrubs and preference should will be given to native shrubs and trees when the landscaping strategy is finalised with the Council. The application has had proper consideration for landscaping in seeking to retain a quality environment within and around the site. Accordingly, the application applies with Policy 74 of the DLPR and Reason for Refusal 2 is not applicable.

Drainage and Impact on Water Quality

- 5.41 A drainage survey of the ditch along the eastern site boundary was undertaken by Denetech on 24th September 2020. The preliminary plans showing the route of this ditch confirm that it connects to a tributary of the River Colne to the south of the North Orbital Road. The survey has therefore demonstrated that the ditch connects to an ordinary watercourse (the tributary channel) which in turn connects to a main river (the River Colne).
- 5.42 The existing drainage system on site is in a poor condition and it has not been possible to establish where all of the existing site drains, although the topographic survey of the site shows that the significant majority of the site slopes to the south and east, i.e. towards the eastern boundary ditch. A manhole has been identified in the verge to the south of the bus shelter on Smallford Lane which shows an inlet pipe entering from the direction of the existing access to the Smallford Works site, but no outlet pipes were visible (due to siltation).
- 5.43 The submitted Flood Risk Assessment proposes attenuating runoff on site and discharging at a peak rate of 14 l/s (the 100 year greenfield runoff rate) for all events up to and including the 100 year plus 40% for climate change storm. The Lead Local Flood Authority's guidance on surface water drainage requires all brownfield sites to "aim to achieve greenfield runoff rates" and it is considered, taking the large number of site constraints into account, that this requirement has been achieved.
- 5.44 The drainage survey has established connectivity of the eastern boundary ditch to a surface watercourse and this is considered to be a suitable discharge mechanism. A range of sustainable drainage (SuDS) techniques are possible on the site and these could utilise more above-ground

SuDS features and achieve a lower discharge rate (e.g. Q_{bar}) should that be necessary. It is noted that this is an outline application or *up to* 100 dwellings. What has been proposed is a technically sound solution for delivering the indicative masterplan of up to 100 dwellings. Alternative solutions may be proposed that results in the greater use of above ground SuDS, and a likely reduction in units, which may be utilised at the detailed design stage but should not be seen as a necessity.

Ecology

- 5.45 The conclusions of the submitted Preliminary Ecological Appraisal remain true. The survey and report are in date (June 2019) and should still be considered valid.
- 5.46 The site is currently ecologically very poor due to its continued use for industrial and commercial purposes; there are no on-site features which require protection or mitigation. The boundaries vegetation is to be retained and enhanced where possible. The Council's assertion that the new access would result in the loss of some trees is now moot given that this has been delivered under an earlier planning permission. Given the current baseline, there is the potential to achieve net biodiversity onsite through measures that can be controlled by condition and through the detailed design stage.
- 5.47 There is the potential for increased recreational use of the adjacent LWS as a result of the development. However, this would be limited to just use of the well-defined paths through the site due to the restrictions that are in place e.g. no sitting, playing etc. linked to the gas risk (see signage image at Appendix T). This limited use would also reduce the likely quantum of users to just those passing through to Alban Way or Colney Heath Lane (which is where the footpaths in the LWS link to). We do not believe the Hertfordshire County Council (HCC) ecologist has fully appreciated this restricted use, which can clearly be seen from a site visit and seeing why the footpaths are so worn.
- 5.48 The records provided by HCC in its consultation response are well in excess of 1 km from the site. There are 2 records with not very accurate grid references (only accurate to 1 km). Both records date from early 1980s and for the purposes of informing work now, can be discarded as too old. Normally any works within about 250m of a potential Great Crested Newt pond would be surveyed. The fishing lakes are just over 50m away at their nearest point. Another pond within the LWS is in excess of 300m away and can be discounted. Fishing lakes are not usually good for amphibians as the fish eat their eggs. The site itself has nil potential GCN habitat and therefore there are nil potential impacts on GCN habitat or animals. Therefore, there are no predicted impacts, even if they are present nearby.
- 5.49 If there is considered to be the need for mitigation, any on-site 'avoidance' measures are unrealistic due to:
- a) the size of appeal site;

- b) the immediate proximity of the LWS; and
- c) that expected users will predominantly be through walkers due to the existing restrictions of use of the LWS.

5.50 Mitigation is a possibility and we would support the provision of financial contributions to further enhance signage for the restricted use of the LWS; enhancement of footpaths to deter people diverting from these; and/or payment to a local sports club to encourage use of provided pitches also to deter people from using the grassland instead.

6 APPELLANTS CASE: PART 3 – SECTION 106 AGREEMENT

6.1 Reasons for Refusal 5 and 6 are set out below:

5. *In the absence of a completed and signed legal agreement or other suitable mechanism to secure the necessary devices 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 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.*

6.2 These reasons relate to the absence of a legal agreement under Section 106 of the Town and Country Planning Act 1990 (as amended). The application reported to the Planning Committee noted that any decision to grant planning permission would require an S106 agreement and/or Unilateral Undertaking to cover matters set out at Paragraph 8.10.1. of the Officer's report.

6.3 A draft Section 106 Agreement / Unilateral Undertaking is to be prepared by the Appellant in support of the application. This will contain the following Heads of Terms:

- Affordable housing at 40% of final residential yield;
- Financial contributions for:
 - Secondary education expansion of Samuel Ryder Secondary School by 1FE;
 - Library services enhancements of the children's area at Marshalswick Library;
and
 - Increasing capacity at Pioneer Young People's Centre;
- Travel Plans, including £6,000 towards the County Council's costs of administering and monitoring the objectives of the Travel Plan and engaging in any Travel Plan Review;
- Improvements at the access of Sleapshyde Lane in the form of dropped kerbs and tactile paving and at the access of Sleapcross Gardens in the form of tactile paving;
- Fire hydrants;
- £752 per dwelling for provision of additional health facilities in the area; and

- A toddler play area to be provided on site prior to first occupation of the development, together with details of its facilities, retention and future management.

6.4 As a consequence, this Appeal rests to be determined on the basis of the other substantive reasons for refusal, namely Reason 1-4 inclusive.

7 PLANNING BALANCE

- 7.1 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. Such a consideration of importance is the presumption in favour of sustainable development set out in paragraph 11 of the Framework. The question of a 5 year housing land supply in relation to the appeals is not disputed, and therefore the 'tilted balance' in sub-paragraph d) of paragraph 11 of the Framework is applied in the determination of these appeals. This makes clear that 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.
- 7.2 The site has been assessed as not inappropriate development in the Green Belt, with the proposed development not forming substantially greater harm to the openness of the Green Belt than the existing baseline industrial operations. Were the Inspector to feel otherwise, a VSCs case has been demonstrated that justifies residential development in this location of the Green Belt. In either event, the relevant policies of the Framework do not provide a clear reason for refusing the development proposed and the tilted balance remains.
- 7.3 In favour of the scheme, very substantial weight is attributed to the delivery of both market and affordable housing. This is particularly true 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 future of the emerging Local Plan in significant doubt. It is also noted that the provision of affordable housing is in excess of Local Plan policy requirements, weighing strongly in favour of the proposal.
- 7.4 Significant weight is given to the economic benefits associated with the delivery of up to 100 dwellings, including the contribution these households play to the local economy.
- 7.5 Significant weight is also given to the environmental benefits of removing the existing use to a more environmentally beneficial use and permanent condition. Significant weight is also applied to the reduction in vehicle movements, with very significant weight applied to the removal of a large number of HGV movements along Smallford Road.
- 7.6 Significant weight is applied to the potential visual impact harm, though it is noted that this harm is minor, appreciating the existing baseline position.
- 7.7 A viable and acceptable drainage solution has been demonstrated, appreciating that this is an outline application for *up to* 100 dwellings. An alternative drainage strategy may be presented at a

more detailed design stage that results in fewer dwellings. This would be a matter for reserved matters and/or a condition where the detailed drainage strategy would be secured.

- 7.8 The impact of recreational activity on the adjacent LWS is not anticipated to result in significant harm to any important habitats or biodiversity. If required, a financial contribution could be secured for enhanced signage for the restricted use of the LWS; enhancement of footpaths to deter people diverting from these; and/or payment to a local sports club to encourage use of provided pitches also to deter people from using the grassland instead.
- 7.9 Overall, the benefits of the scheme clearly and demonstrably outweigh the assessed harm, including, and if applicable, any harm by reason of inappropriateness. As such VSCs, if needed, exist, which would justify development in the Green Belt.
- 7.10 Applying Paragraph 11(d) of the NPPF, the relevant policies of the Framework that protect areas or assets of particular importance (as listed at footnote 6) do not provide a clear reason for refusing the development, nor do the adverse impacts of the development demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. Accordingly, the appeal should be allowed.

8 PROCEDURE

- 8.1 The Appellant requests the appeal to be determined by a blend of procedures, as introduced and encouraged under the Business and Planning Act 2020.
- 8.2 Given the complexities of the planning policy and balance issues raised, it would be appropriate to allow these matters to have an inquiry format, with cross-examination of expert witnesses. The issues to be discussed, particularly around the Green Belt include a need to examine planning judgement, worthy of cross-examination, but also the interpretation of national policy, that would benefit from input of advocates.
- 8.3 Other issues should be capable of, and may be most appropriately explored through a roundtable discussion. These topics comprise:
- Drainage and water supply;
 - Landscape; and
 - Ecology.
- 8.4 Any additional topics raised during the appeal should be capable of being covered by written representations.
- 8.5 We anticipate that the inquiry would last 3-4 days if the above format is followed.