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OPENING COMMENTS

*On behalf of St. Alban's City and District Council*

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1. This is an appeal by Stackbourne Limited ("the Appellant") against the refusal of St. Albans City and District Council ("the Council") to grant outline planning permission for residential development of up to 100 dwellings with all matters reserved ("the Development") at Smallford Works, Smallford Lane, Sheapshyde, St Albans, Hertfordshire, AL4 0SA ("the Site").
2. The Site is located within the Metropolitan Green Belt. The Government's commitment to the protection of the Green Belt is unequivocal – and the National Planning Policy Framework ("NPPF") states in terms that the Government attaches "*great importance to Green Belts*" (paragraph 133).
3. It is for this reason that paragraph 145 of the NPPF states that the construction of new buildings is inappropriate in the Green Belt, unless one of the exceptions in that paragraph applies. It is common ground that the only relevant exception here is paragraph 145(g) which states that the following is not inappropriate development:

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

*– not have a greater impact on the openness of the Green Belt than the existing development; or*

*– not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority."*

4. The Appellant relies on the second bullet point. In this respect, the key issue is whether the development would cause substantial harm to the openness of the Green Belt.<sup>1</sup> In this context, it is common ground that openness is an “open-textured” concept, capable of having both spatial and visual aspects.<sup>2</sup>
5. It is the Council’s case that this development plainly would cause substantial harm to openness:
  - (1) The proposals will lead to at least a 325% increase in the floor-area of permanent buildings at the Site. On any basis, this is a significant increase in permanent and un-remediable built form on the Site, causing substantial harm to the spatial element of openness.
  - (2) Whilst the existing site also contains storage materials associated with the use of each plot, the materials stored on site are transitory and over time the amount of materials stored at site fluctuates. The number of vehicles stored at the Site change with the activities of the car dealerships; plant and machinery leave the site when hired out; and contractor’s yards empty and refill with materials. These materials do not have an equivalent impact on openness as the permanent building associated with a housing estate. In addition, the height of stored materials at site is predominantly much lower than the height of the proposed dwellinghouses.
  - (3) The parties disagree over the visual impact of the proposed development compared to the existing. However, whilst visual impact is a matter that the Inspector is entitled to take into account as a matter of planning judgment,<sup>3</sup> even if the Appellant is correct that there would be limited change to the visual impacts of openness, this does not make an otherwise inappropriate development – by virtue of the spatial impact on openness - appropriate.

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<sup>1</sup> It is common ground that the development involves “*the partial or complete redevelopment of previously developed land*” and that it would “*contribute to meeting an identified affordable housing need within the area of the local planning authority*”.

<sup>2</sup> See Planning Practice Guidance section on “Green Belt” at paragraph 001.

<sup>3</sup> R. (on the application of Samuel Smith Old Brewery) v North Yorkshire CC [2020] J.P.L. 963 at paragraph 25.

6. In circumstances where the development causes substantial harm to the openness of the Green Belt, planning permission should be refused unless “*very special circumstances*” (“VSC”) exist (paragraph 143 of the NPPF). Such circumstances will not exist unless the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations (see paragraph 144 of the NPPF). Needless to say, this is a high bar to meet.
7. The Appellant does not come close to meeting it in this case. Substantial harm must be given to any identified Green Belt harm (see paragraph 144 of the NPPF). In circumstances where (i) the harm caused to openness is itself substantial and (ii) one of the essential characteristics of the Green Belt is its openness (see paragraph 133 of the NPPF) the harm caused to the Green Belt here must be given substantial weight, at the very top end of the scale.
8. To that must be added any other (non-Green Belt) harm. There are two elements of other harm:
  - (1) Sustainability of location: The Site is detached from any existing main settlement and facilities. Sheapshyde and Smallford do not contain any of the day to day facilities necessary to support residential life, and the Site is well beyond normal walking distances for access to town centres. Neither does the Site limit the need to travel and offers a genuine choice of transport modes (contrary to paragraph 103 of the NPPF).
  - (2) Character and Appearance: there is no dispute as to the methodology and general approach that the Appellant has undertaken in its Landscape and Visual Impact Assessment (“LVIA”)<sup>4</sup>. However, contrary to the Appellant’s assessment, the Council considers that the Development would have a moderate adverse impact on the wider Green Belt countryside. It would read as an island of intense urban development that turns its back on the countryside, with solid perimeter development along the east and north boundaries preventing views through the site and presenting walls of two storey development close to the Site boundaries.

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<sup>4</sup> Other than the absence of winter views – which the Inspector will be able to assess on the site visit.

9. Even without this additional harm, the harm to the Green Belt alone is self-evidently not “*clearly outweighed*” by other considerations.
10. The Appellant makes much of what it calls a “*chronic failure of local plan making*”, which has resulted in the Council not having a 5 year housing land supply (“5YHLS”).<sup>5</sup> However, whilst we will no doubt hear more about that, ultimately both parties have reached common ground that the provision of housing (including 40% affordable housing) should carry significant weight in the determination of this appeal.<sup>6</sup>
11. Significant weight to housing, cannot outweigh, let alone “*clearly outweigh*”, the very substantial weight that must be given to the Green Belt harm; and that remains the case, even if one also takes into account the other benefits relied on by the Appellant (such as environmental improvements, reduction in vehicular trips etc).
12. In those circumstances, VSC do not exist and permission should be refused.
13. The Council’s drainage reason for refusal (reason for refusal four) has been addressed. At the eleventh hour (yesterday), the Appellant agreed to amend the point of discharge for the proposed drainage system to the Butterwick Brook. This had first been suggested by the Lead Local Flood Authority last summer through its Surface Water Drainage Advisory Service, and it was made clear that this would resolve the LLFA’s concerns regarding the provision of a feasible discharge mechanism. Given outstanding concerns relating to the need for third party consents (Hertfordshire County Council own the land between the site and the Butterwick Brook) and the need for an appropriate level of water storage and treatment on the Site (none of which has been shown to date on any of the submitted plans) a pre-commencement planning condition would be needed to secure the details of this drainage strategy.

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<sup>5</sup> It is common ground that the Council is unable to demonstrate a five-year supply of deliverable housing land - with a supply position of 2.4 years.

<sup>6</sup> See paragraph 7.26 of the Statement of Common Ground.

14. Whilst paragraph 11(d) of the NPPF is engaged in this case (by virtue of the fact that the Council does not have a 5YHLS), ultimately it does not dictate the outcome.<sup>7</sup> If it is found that the Development is (i) inappropriate development and (ii) VSC do not exist, the tilted balance in paragraph 11(d)(ii) of the NPPF is not engaged.<sup>8</sup> Conversely, if it is found that the Development is (i) not inappropriate development or (ii) that VSC exist, it will necessarily be the case that the adverse effects of the development do not significantly and demonstrably outweigh the benefits.
15. The “planning balance” is therefore self-contained within paragraph 143 of the NPPF.
16. The outcome of that paragraph is that the appeal should be dismissed, and in due course the Council will invite the Inspector to dismiss the appeal.

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<sup>7</sup> For that reason, the issue of whether the most important policies for the determination of the appeal are also out of date by virtue of inconsistency with the NPPF is somewhat sterile, given (i) paragraph 11(d) is triggered by the lack of a 5YHLS in any event and (ii) paragraph 11(d)(ii) of the NPPF does not affect the outcome of the appeal.

<sup>8</sup> This is because the policies of the NPPF provide a clear reason for refusing the development.