The Planning Inspectorate

Appeal Decision

Inquiry held on 3, 4, 16 and 17 May, 29 and 30 June, 5, 7, and 13 July 2023.

Site visit made on 17 May 2023.

by Joanna Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2023

Appeal Ref: APP/N1920/W/23/3314268
Land at Little Bushey Lane, Bushey.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Redrow Homes Limited against Hertsmere Borough Council.
- The application Ref 22/1071/OUT, is dated 14 June 2022.
- The development proposed is residential development (up to 310 units) with access from Little Bushey Lane, and land reserved for primary school, community facilities and mobility hub (Class E) along with car parking, drainage and earthworks to facilitate drainage, open space and all ancillary and enabling works. (Outline Application with Appearance, Landscaping, Layout and Scale Reserved).

Decision

1. The appeal is dismissed and planning permission for residential development (up to 310 units) with access from Little Bushey Lane, and land reserved for primary school, community facilities and mobility hub (Class E) along with car parking, drainage and earthworks to facilitate drainage, open space and all ancillary and enabling works (Outline Application with Appearance, Landscaping, Layout and Scale Reserved) is refused.

Application for costs

2. An application for costs was made by Redrow Homes Limited against Hertsmere Borough Council. This is the subject of a separate decision.

Procedural Matters

3. The planning application was in outline, with all matters reserved for subsequent approval except access. I have considered the appeal on that basis.

4. The description of development in the banner heading is taken from the appeal form as the description appears to have been amended following the planning application's submission.

5. On 17 February 2023, National Highways lifted their objection in respect of the M1 motorway, specifically regarding Junction 5's capacity and flood risk.

6. Following the appeal's submission, the Council's putative reasons for refusal were endorsed by the Council's Planning Committee on 23 February 2023.

7. Amended parameter plans and an amended Flood Risk Assessment (FRA) were produced with regard to drainage and flood risk in early March 2023. These were subject to further public consultation between 16 March and 6 April 2023. I have had regard to the responses to this consultation. No prejudice would be

caused to any parties by my consideration of these amended documents, given the extent of consultation.

8. On submission of the main parties' proofs of evidence on 5 April 2023, the Council and the Lead Local Flood Authority (LLFA) raised concerns about the absence of a sequential test (ST) in relation to all sources of flooding. Further concerns were also raised in respect of drainage. The need to undertake the ST gave rise to the Inquiry being phased across May, June and July 2023.

9. On 10 May 2023, a Statement of Common Ground (SOCG) – Flood Risk and Drainage confirmed that the only remaining area of disagreement with regard to flood risk and drainage related to the ST. This resulted in amendment of the third main issue to reflect the change in circumstances.

10. The appellant provided their ST evidence on 22 May 2023. The Council and the LLFA provided their ST rebuttals on 12 June 2023. As there were remaining areas of dispute, a further SOCG was requested but not provided until 28 June 2023. I have dealt with matters pertaining to the ST in the decision below.

11. I have had regard to a signed and executed unilateral undertaking submitted and dated 13 July 2023 and a signed and executed bilateral undertaking between the appellant and Hertfordshire County Council (HCC) submitted and dated 13 July 2023.

Main Issues

12. The site lies within the Metropolitan Green Belt. As the main parties agree that the proposed development would constitute inappropriate development in the Green Belt with regard to the National Planning Policy Framework (the Framework), the main issues in this appeal are:

a) The effect of the proposed development on the openness and purposes of the Green Belt;
b) The effect of the proposed development on the character and appearance of the area;
c) Whether the proposed development would be in a suitable location with regard to local and national policies relating to flood risk; and
d) Whether any harm to the Green Belt and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the proposed development.

Reasons

The site and the proposed development

13. The site comprises some 18 hectares of fields used for grazing by horses. Immediately north and east, it adjoins pasture fields and the vegetated buffer separating the site from the M1 and A41 road corridor (the road corridor). Beyond the road corridor are Hilfield Park and Aldenham reservoirs, Hilfield Castle, Aldenham Country Park, and the London Elstree Aerodrome.

14. To the south-east, there are further fields with Caldecote Farm, the Niland Conference Centre, Rosary Priory Convent and Immanuel College beyond and closer to Elstree Road. To the south and west, the site adjoins Little Bushey Lane and the rear gardens of residential properties on Little Bushey Lane, The

Squirrels, and Wayside Avenue. The frontage to Little Bushey Lane is bounded by trees and hedges. West and north-west, there are further pasture fields, Hart's Farm Stables, and relatively recent residential development.

15. The fields within the site are bounded by mature native hedgerows and post and rail fencing. A number of watercourses flow across the site. There are several large, mature trees, as well as dead and fallen trees, within field boundaries or dotted sporadically across the fields.

16. The site's topography varies, with the land at the southern and western boundaries at up to 105 metres above Ordnance Datum (AOD) and land to the north of the site at around 88 metres AOD. A high-voltage power line crosses the site north to south. Two pylons are located within the field east of The Squirrels and Wayside Avenue. A gas main runs across part of the site.

17. Two public rights of way (PROW) 33 and 40 cross the site. PROW 33 travels from the site's western edge at Little Bushey Lane and runs north-eastwards towards the road corridor, while PROW 40 crosses the site from Little Bushey Lane and runs south-eastwards to the road corridor where it crosses the M1 via a footbridge towards the A41.

18. The proposed development would comprise up to 310 residential units, land for a primary school, and a community mobility hub. There would be a new vehicular access from Little Bushey Lane, as well as pedestrian and cycle access through the site with the diversion of PROW 33 and 40. The green infrastructure would include informal recreation areas, sustainable drainage features, trees and hedgerows.

Policy context

National policy

19. Chapter 13 of the Framework seeks to protect Green Belt land. Paragraph 137 of the Framework confirms that the Government attaches great importance to Green Belts. Paragraph 138 of the Framework sets out Green Belt purposes. Paragraph 147 of the Framework confirms that inappropriate development, is by definition, harmful to the Green Belt and should not be approved except for in very special circumstances. Paragraph 148 of the Framework states that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

20. Paragraph 174 of the Framework states that planning policies and decisions should contribute to and enhance the natural and local environment, including criterion b) of paragraph 174 which refers to recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland. I have dealt with elements of the Framework pertaining to flood risk below. Relevant elements of the Planning Practice Guidance (PPG) are set out within the decision.

Local policy

21. The Development Plan for Hertsmere includes the Hertsmere Local Plan Development Plan Document: Core Strategy (CS), adopted in January 2013, and the Hertsmere Local Plan: Site Allocations and Development Management Policies Plan (SADM), adopted in November 2016.

22. CS Policy SP1 deals with the creation of sustainable development. It prioritises developing brownfield land and delivering development opportunities in Borehamwood, but also expects all existing built up areas within urban settlements to accommodate opportunities for meeting local housing, jobs growth and other development needs. Amongst other things, it seeks development that ensures a safe, accessible and healthy environment; conserves and enhances biodiversity; mitigates the environmental impact of transport; avoids prejudicing, either individually or cumulatively, characteristics and features of the natural and built environment; avoids inappropriate development within the Green Belt; and avoids development in the floodplain and close to river corridors unless the requirements of the ST and exception test (ET) have been met and flood prevention/mitigation measures are in place.

23. CS Policy SP2 requires a positive approach that reflects the Framework's presumption in favour of sustainable development. CS Policy CS1 states that the Council will make provision for at least 3,990 additional dwellings between 2012 and 2027. It outlines that the SADM will factor in a range of considerations in identifying new locations for development. CS Policy CS2 prioritises locating the majority of residential development in Borehamwood, Potters Bar and Bushey, with up to 25% of new housing in Bushey.

24. CS Policy CS3 confirms that where housing delivery has fallen below the required minimum rate over a rolling three year period by at least 20% and at the same point in time the expected completions over the following five years will be insufficient to compensate for the shortfall of the minimum required annualised rate, a review of housing allocations will be undertaken including consideration of safeguarded land for housing and land presently designated as Green Belt. New housing development will only be permitted if satisfactory arrangements are in place to provide the necessary infrastructure.

25. Aiming to increase the supply of affordable housing, CS Policy CS4 states that developments of five self-contained, residential units or more (gross), or residential sites of more than 0.2 hectares, should make provision for affordable housing. On sites of 15 units or more, a mix of social rented housing, affordable rent and intermediate housing will be required, with the precise tenure and dwelling mix to be agreed by the Council. At least 35% affordable housing is sought in the appeal location. The policy's aims equate to an affordable housing target of 1,140 from 2012 to 2027.

26. CS Policy CS12 states that all development proposals must conserve and enhance the borough's natural environment, including biodiversity, habitats, protected trees, and landscape character, in order to maintain and improve environmental quality, and contribute to the objectives of the adopted Greenways Strategy and the Hertsmere Green Infrastructure Plan. Policy SADM11 covers landscape character and asserts that development will be managed to help conserve, enhance and/or restore the character of the wider landscape across the borough. Reference is made to the Hertfordshire Landscape Character Assessments.

27. In respect of Green Belt, CS Policy CS13 refers to a general presumption against inappropriate development within the Green Belt, as defined on the Policies Map and confirms that such development will not be permitted unless very special circumstances exist. Development proposals, including those involving previously developed land and buildings, in the Green Belt will be assessed in relation to the Framework. Further villages and Green Belt sites are named, but are not of direct relevance here. Policy SADM22 confirms that the Green Belt boundary is shown on the Policies Map, while Policy SADM26 outlines criteria for development standards in the Green Belt, including development's scale, height and bulk being sympathetic to and compatible with its landscape setting and not being harmful to the openness of the Green Belt.

28. CS Policy CS16 looks to minimise and mitigate development's environmental impact, with reference to avoiding development in the floodplain and close to river corridors unless the requirements of the ST and ET have been met and flood prevention/mitigation measures are in place as required by the Environment Agency; incorporating the use of sustainable urban drainage where appropriate to reduce risk of flooding; and achieving reduced energy consumption and using energy from renewable resources. CS Policy CS17 deals with energy and CO_2 reductions.

29. Amongst other things, CS Policy CS18 states that provision of required key community facilities should be made as part of the development in consultation with the local community and local service providers and in order to meet or fund any infrastructure impact, having regard to the provisions of CS Policy CS21, while CS Policy CS19 supports proposals for the provision or dual use of key community facilities, including educational, healthcare and recreational facilities, subject to any environmental constraints and other relevant policies. CS Policy CS21 deals with planning obligations.

30. Policy SADM13 confirms that the natural environment of watercourses and areas of water will be improved wherever possible through Policy SADM16, which sets out key principles for watercourses. Policy SADM13 advocates that watercourses, including culverts, land adjacent to rivers, functional floodplains and flood storage areas should be restored to their natural state. It also states that new built development will normally be directed to Flood Zone 1, in preference to Flood Zones 2 or 3 as shown on the Policies Map. Policy SADM14 is set out in more detail in paragraphs below on flood risk. Policy SADM15 sets out criteria for sustainable drainage, particularly for major developments.

31. With regard to highways and access, Policy SADM40 sets out requirements for development to be accessible by a range of transport modes, including sustainable transport, to have safe and convenient routes through the site and access to adjoining routes, and not to cause or add significantly to road congestion or unduly harm the flow of vehicles, amongst other things.

32. The Draft Hertsmere Local Plan (Regulation 18, dated September 2021) (DHLP) included Policy H10 which sought to allocate sites for housing. Site allocation B1: Land East of Little Bushey Lane, Bushey included the site, Hart's Farm Stables, and land north-east of the stables for housing development (up to 350 homes) with community facilities, local retail, and flexible workspace, land for a two-form entry primary school, and public open space. Although the DHLP underwent public consultation, the Council decided on 27 April 2022 to set

aside the DHLP. It is agreed that no weight should be afforded to the DHLP, though the evidence base for the DHLP is a material consideration.

Purposes and openness of the Green Belt

33. The Metropolitan Green Belt is a strategic mechanism which stretches across a number of counties, including Hertfordshire. It is agreed between the main parties that the site is not one which makes an important strategic contribution to the Green Belt.

34. In developing the DHLP's evidence base, the Council commissioned the Green Belt Assessment (Stage 1) Report: Methodology and Assessment of Green Belt Parcels (January 2017)(Stage 1 assessment). The Stage 1 assessment involved considering how different areas perform against the Green Belt purposes set out in the Framework. Subsequently, further assessment on smaller parcels was undertaken as part of the Hertsmere Green Belt Assessment Stage 2: Final Report (March 2019)(Stage 2 assessment) and the Annex Report (January 2019)(Stage 2 assessment annex).

35. The Stage 1 assessment's Green Belt Parcel 6 is a large parcel located to the north and east of Bushey Heath/Bushey and includes the site. It describes the parcel as being connected to the large built-up area of Watford and forming part of the essential gap between Watford and Bushey Heath/Bushey Village and part of the essential gaps between these settlements and North Bushey and Elstree. It was found to be predominantly rural in character with more urbanising influences in the west and east. The Stage 1 assessment recommended that parcel 6 performs strongly against the purposes, but there is clear scope for sub-division. It stated that the area south of Little Bushey Lane, which may score less strongly, should be considered further.

36. Forming part of parcel 6, parcel SA-57 within the Stage 2 assessment and annex comprises some 57 hectares of land between Little Bushey Lane and the road corridor and includes the site. The Stage 2 assessment annex concludes that removal of parcel SA-57 from the Green Belt would have a limited impact on the strategic Green Belt's role as it is already characterised by urban influences and contained by the settlement edge and the road corridor, which would prevent any further sprawl and act as an additional barrier to the merging of settlements. It states that limited views to wider countryside and moderate levels of containment by urban form mean that this area is not a visually sensitive part of the Green Belt. It found that parcel SA-57 could be considered for release, particularly the southern area.

37. Notwithstanding that the DHLP was set aside prior to examination and albeit that larger parcels than the site itself were assessed at both stages, the Stage 1 and 2 assessments provide helpful assessment. While I note Mr Radmall's view that the Stage 1 and 2 Green Belt assessments are different in their strategic scope from his locally focused evidence, I afford the assessments significant weight as material considerations.

Openness of the Green Belt

38. The Framework confirms at paragraph 137 that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Openness can have both spatial and visual elements as

highlighted by the PPG[1] which considers that, when assessing the impact of a proposal on the openness of the Green Belt, a number of matters may need to be considered. These include openness being capable of having both spatial and visual aspects; the duration of the development, and its remediability; and the degree of activity likely to be generated, such as traffic generation.

39. The site is presently used for horse grazing and by pedestrians using PROW 33 and 40. The proposed development would introduce a significant volume of vehicular and pedestrian movements associated with housing, the school and mobility hub. This would dramatically alter the existing degree of activity on site. Furthermore, the change in the nature of the site would be long-standing. Both of these factors would have a negative effect on openness.

40. Apart from the presence of pylons, the site itself is free from built development, with limited post and rail fencing, hedgerows and trees providing enclosure and separation of fields. While this is not unique, the proposed development would introduce a significant quantum of built development. Spatially, built form or supporting infrastructure would indicatively occupy some 57% of the site or 10.4 hectares, with the remainder to be indicatively laid out as green infrastructure. While the proposed development would represent a considerably smaller site than parcel SA-57 in the Stage 2 assessment and matters of appearance, landscaping, layout and scale are reserved for determination with scope for mitigation of the spatial effect, the proposed development would significantly reduce spatial openness.

41. In terms of visual openness, views of the site from Little Bushey Lane are presently relatively open, due in part to the declining quality and extent of hedgerows. Despite some sections of hedging and trees and the pylons, it is possible to look across the site from Little Bushey Lane and see an area of open fields, with housing, Caldecote Farm, the Niland Conference Centre, Rosary Priory Convent and Immanuel College to the south and south-east and Hart's Farm and housing at Rossway Drive to the west and north-west. Given the likely concentration of development close to existing built development at Little Bushey Lane and the increased level of vehicular activity, even with sympathetic landscaping, the localised effect on visual openness would be significant and long-standing.

42. Looking from viewpoints outside the site along the road corridor, the site is viewed with the aforementioned built development on the edge of Bushey. Given the strong presence of built form adjacent to the site, this gives a sense of the semi-urban nature referred to in relation to parcel SA-57 in the Stage 2 assessment annex and reduces the site's rurality given its overall containment by urbanising influences. Though there would be a significant reduction in visual openness as built development would be in greater proximity to the road corridor, this would be partly mitigated by the green corridor acting as a buffer.

43. When standing within the site, one presently experiences the greatest sense of openness when walking along PROW 40. Although this route would be retained, its future users would experience significantly altered surroundings as built form would adjoin and enclose the earlier part of the route from Little Bushey Lane up to the proposed green corridor. Even with soft landscaping and open

[1] Paragraph 64-001-20190722: What factors can be taken into account when considering the potential impact of development on the openness of the Green Belt?

spaces at intervals along the proposed route with lateral views along street corridors, this would represent a significant change in visual openness.

44. Considering the totality of effects, the proposed development would cause significant harm to openness that would be both visual and spatial, long-standing, and would result in a considerably greater level of activity.

Purposes of the Green Belt

45. As defined by paragraph 138 of the Framework, the Green Belt serves five purposes. Though both assessments refer to the purposes numerically rather than alphabetically, I have used the nomenclature within the Framework. The main parties agree that purposes d) and e) are not of relevance. I have no reason to disagree.

46. The application of purpose a) on checking the unrestricted sprawl of large built-up areas hinges on the definition of a large built-up area. The Stage 1 assessment has Borehamwood as the only tier 1 settlement with Bushey and Potters Bar at tier 2, while the Stage 2 assessment defines Borehamwood as the only large built-up area within Hertsmere, with other towns such as Watford and parts of Greater London being large built-up areas.

47. Although the Stage 1 assessment found that parcel 6 met purpose a) moderately, this is unsurprising given the parcel's large size and position partially abutting Watford's built-up area. At Stage 2, the smaller parcel of SA-57 was found not to meet purpose a) as it did not abut the edge of a distinct large built-up area in either physical or perceptual terms. Mr Radmall's evidence conflicts with the Council's earlier Green Belt assessment work as he sees Bushey as a large built-up area on the map and when driving through it.

48. While Bushey's village core has been retained, post-war suburban development has altered the overall perception of Bushey as a place. Bushey is larger than some nearby settlements, such as Elstree. Notwithstanding this, Bushey remains a smaller built-up area than Borehamwood and spatial separation from other large built-up areas is retained. Bushey does not therefore form the large built-up area outlined in purpose a). If I had found that Bushey was a large built-up area, sprawl or the perception of sprawl would be restricted by the existing housing development to the north-west, the south, and south-west, as well as by the road corridor and the green corridor along the Bushey Heath Drain. As such, I find that there would be no harm to purpose a).

49. Turning to purpose b), which deals with preventing neighbouring towns from merging into one another, the Stage 1 assessment found parcel 6 to meet purpose b) strongly and the Stage 2 assessment found parcel SA-57 to score moderately against purpose b). Although the proposed development would reduce the gap between built development in Bushey and neighbouring settlements, it would not be closer to Radlett than the closest point of the Rossway Drive development. Although it would slightly reduce the gap between Bushey and Borehamwood, given the physical severance of the two settlements by the road corridor and the intervening land beyond the road corridor, I consider that the reduction in the gap would be extremely limited.

50. Even if Elstree were to be considered a town rather than a village, the proposed development would not extend towards Elstree as much as parcel SA-57 and would continue to maintain a significant gap between the settlements.

This gap is further defined by the road corridor and by the steeper landform to the south-east. These would assist in reducing any perceptual coalescence. Additionally, the green corridor within the proposed development would reduce any perception of merging of Bushey and Elstree. I find therefore that there would be very limited harm in respect of purpose b).

51. In respect of purpose c) on assisting in safeguarding the countryside from encroachment, the Stage 1 assessment found parcel 6 to meet purpose c) moderately, and the Stage 2 assessment found parcel SA-57 to meet the purpose weakly. Mr Clark considers the harm to purpose c) would be limited, while Mr Radmall finds that the site makes a moderate contribution to purpose c) and considers that semi-urban character applies to the site's setting, not to its intrinsic character. The lies next to, but outside the settlement boundary.

52. The site is undoubtedly affected by urbanising features, including the road corridor and housing at Rossway Drive and on and adjoining Little Bushey Lane. The sense of urbanisation is somewhat reduced to the south-east as the site adjoins further fields and paddocks, with Caldecote Farm, the Niland Conference Centre, Rosary Priory Convent and Immanuel College further away from the site abutting Elstree Road. While there is intervisibility between the site and the wider countryside beyond the road corridor, the site does not have a wholly rural character given its aforementioned setting. Even when walking across the fields which form the site, its rural attributes and sense of tranquillity are compromised by the visual appearance of adjoining built form and the aural experience of vehicles on the neighbouring road corridor. Therefore, I consider that the harm in respect of purpose c) would be modest.

Character and appearance

53. The proposed development is in outline form, with parameter plans and an indicative masterplan. The landscaping would be part of reserved matters and the appellant is not restricted specifically to the aforementioned plans. However, the aforementioned plans demonstrate what could be brought forward on site and include a landscaped buffer between proposed built development and the road corridor. It is a reasonable assumption that landscaping would be located generally as shown on these plans.

54. Primary mitigation would indicatively take the form of setting the built development back from existing watercourses on higher ground. In addition to the use of the existing watercourses to create the proposed development's structure, further consideration has been given to the existing hedgerows and trees to visually, physically and perceptually connect the built-up area with its wider setting. Secondary mitigation takes the form of illustrative landscaping proposals, with green spaces, linkages, hedgerows, trees, and watercourses.

55. The site lies within the National Character Area 111: Northern Thames Basin, an area extending from Hertfordshire to the Essex coast. Though both main parties agree that the site is not devoid of landscape value, it is also agreed by the main parties that the site and its vicinity do not constitute a valued landscape in the terms of paragraph 174 a) of the Framework which seeks to protect and enhance valued landscapes in a manner commensurate with their statutory status or identified quality in the development plan.

56. As far as the Hertfordshire County Landscape Character Assessment (HCLCA) is concerned, the site's north-western third falls within Landscape Character Area

(LCA) 22: Borehamwood Plateau, while the south-eastern two-thirds fall within LCA23: Elstree Ridge and Slopes. The character assessments for LCA22 and LCA23 highlight both positive and negative features.

57. LCA22 is described in the HCLCA as an area of gently undulating landform and considerable pasture within an intact landscape framework, with tall hedgerows and field trees containing views into and across the landscape. Positive reference is made to the two reservoirs and to parkland areas within the grounds of private schools, but this is not relevant to the site. It is asserted that LCA22's integrity is diluted on approaching towns that enclose to the east, west and south. Within LCA22's key characteristics, negative reference is made to fragmentation and disruption by the road corridor, pylons and raw edges of built development. In terms of visual and sensory perception, LCA22 is generally coherent apart from to the south-west where there is a mix of recreational, industrial and agricultural uses and the noisy road corridor contributes to the downgrading. The HCLCA identifies that the aim should be to improve and restore LCA22.

58. LCA23 is located between Bushey Heath and Borehamwood. The HCLCA illustrates its landscape character as being an area never very far from the impact or presence of built development despite its general containment behind and among vegetation. The area's spine is formed by a marked and well-treed ridge, while pasture, with some overgrazing and poor fencing, dominates the side slopes. Though largely screened by planting, the M1 passes through the area and is described as noisy. Amongst the key characteristics described in LCA23's summary profile, reference is made to considerable equestrian pasture, increasing impact of horse grazing, and the road corridor creating a major impact. When looking at physical influences and land cover and land use, the HCLCA refers to the primary land use being pasture, and exclusively for horses, with some paddocks seeming to be suffering from over-grazing. The HCLCA identifies that the aim should be to conserve and restore LCA23.

59. The site consists of overgrazed fields with hedgerows and trees in varying condition. There has been some loss of hedgerow and introduction of fencing. While open pasture grassland is representative of LCA23 in particular and is a positive feature, the ongoing degradation of the fields is unfortunate, but does not diminish their inherent value. Despite the degradation and their relative lack of rarity, the fields have a strong sense of place. Although the site is not within a valued landscape, the Landscape Institute's Technical Guidance Note 02/21: Assessing landscape value outside national designations (2021) advises that deliberately neglecting an area of landscape and allowing its condition to deteriorate should not be allowed to diminish its value in a planning context.

60. Though screened largely from view, the road corridor is intrusive within the locality, given vehicle noise depending on the wind direction. The road corridor physically separates the site from adjacent countryside. Additionally, the aerodrome exerts some aural and visual influence, with planes taking off and landing. Furthermore, Bushey's settlement edge is very visible from the site. Indeed, the settlement edge exerts a substantial influence on the site's setting.

61. The proposed development would develop open fields, thereby reducing the overall extent of open pasture fields within the relevant LCA. Even though only part of the site would contain built development and some parts of the site would remain open, the existing field pattern would not remain. While there are

urbanising effects with relatively stark edges of existing built form, I consider that the open fields themselves are sensitive and highly susceptible to change. There would be a major adverse effect on the open pasture fields at Year 1, which would continue in Year 15 as planting would not alter the overall effect of the loss of the open pasture fields.

62. Turning to landform, the parties' views differ quite substantially in terms of the effects at Years 1 and 15. As part of developing the DHLP, the Council commissioned LUC to produce Outline Landscape Appraisals for potential development sites in Hertsmere: Final report (October 2020). The LUC report outlines constraints for potential allocations, including Site 4: HEL215, HEL336 and B1 (HEL201): Land east of Little Bushey Lane of which the site is part.

63. The LUC report refers to LCA22 and LCA23 and confirms that effects on these LCA could be avoided or minimised by retaining public access with opportunities for countryside experience and providing opportunities to experience longer views from elevated areas; retaining all existing vegetation as far as possible, particularly mature trees; and enhancing the on-site watercourse, floodplain character and valley landform. The appellant has sought to address these points. However, land levels would change in some areas and the gently undulating landform would alter significantly with the introduction of built form and supporting infrastructure and would no longer be clearly visible. As such, the degree of physical change would be marked and would be of a moderate-major adverse level at Years 1 and 15.

64. There would be greater visual effects at Years 1 and 15 on views 2 (south from PROW 33), 3 (View east from Little Bushey Lane), 4 (View north-east from little Bushey Lane), 20 (View south-west from PROW 40) and 21 (View west from PROW 40 bridge over M1) than for the remainder of the landscape viewpoints. In view 3 in particular, the proposed access road would dominate the foreground, while views from PROW 33 and 40 would be significantly affected by enclosing built development, despite green and blue infrastructure proposals. The sense of walking through the countryside, albeit close to the urban edge, would be fundamentally eroded.

65. While the appellant views the overall effect on landscape character to be limited by reason of the existing landscape's condition, existing built form's urbanising effect, the area's fragmentation and disruption by the road corridor, and the aforementioned primary and secondary mitigation, I consider that all these factors would not overcome the significant change that would occur within the site. The site's open character would be lost due to the introduction of an extensive area of built form and retained landscape features would be subsumed within the built-up area, thereby reducing their visual influence.

66. I conclude that the proposed development would have a significant harmful effect on the character and appearance of the area, contrary to CS Policies SP1 and CS12 and SADM Policy SADM11, as set out above. It would also conflict with paragraph 174 b) of the Framework insofar as it seeks to recognise the intrinsic character and beauty of the countryside. This has significant weight.

Flood risk

67. Within the north-eastern part of the site, the Bushey Heath Drain, an Environment Agency Main River, runs south-east to north-west. Some ordinary watercourses run through the site, one travelling along a central field

boundary, while another runs through the southern part of the site. The Hilfield Park Reservoir is approximately 350m to the north-east, while Aldenham Reservoir is some 1.5km to the east.

68. The Environment Agency publishes mapping for different sources of flooding. This data indicates that much of the site is in Flood Zone 1 for flooding from fluvial sources. However, the course of the Bushey Heath Drain watercourse falls within Flood Zones 2 and 3. Approximately 10% of the site is also affected by reservoir flood risk from Hilfield Park Reservoir.

69. The Environment Agency's data indicates that there is a surface water flow path flowing through the east of the site in a south-east to north-west direction, consistent with the Bushey Heath Drain and adjacent land. An area of medium and high surface water risk lies along the field boundary across the centre of the site. Additional potential surface water flow paths at low and limited areas of medium flood risk are indicated in the site's south-west and north-west areas. This mapping does not account for the impact of climate change. Surface water flooding on the site could occur as a result of overland surface water flow paths and from the site's own surface water run-off.

70. Paragraph 159 of the Framework confirms that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.

71. Paragraph 162 of the Framework states that the aim of the ST is to steer new development to areas with the lowest risk of flooding from any source. It also asserts that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding, and confirms that the strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding. The PPG[2] confirms that even where an FRA shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the ST still needs to be satisfied.

72. Policy SADM14 deals with flood risk and contains numerous criteria, many of which pertain to principles for managing and mitigating flood risk on site. However, the first two criteria (i) and (ii) relate to avoiding and reducing the risk of flooding by (i) locating development within areas of lower flood risk through the application of the ST and then applying an ET in line with the Framework; and (ii) ensuring that development proposals in flood risk areas actively manage and reduce flood risk by applying the sequential approach at site level. The supporting text to Policy SADM14 does not provide further detail on how the ST should be applied.

73. No mention is made of Policy SADM14's criteria (i) and (ii) in the appellant's FRA. Paragraph 6.2 of the appellant's FRA states that ST is generally required for sites that have not been allocated within the Local Plan. It confirms that application of the ST falls outside the scope of the FRA.

[2] Paragraph 7-023-20220825 What is the aim of the sequential approach?

74. The appellant did not undertake an ST prior to submitting the application, or at any time during the application's lifetime. This is somewhat surprising as the Framework confirms that the sequential approach should be used in areas known to be at risk now or in the future from any form of flooding. The onus was on the appellant to undertake the ST. The Framework has not altered since July 2021, though the PPG was updated more recently in August 2022 with particular reference to the need to consider all sources of flooding including surface water flooding. Despite repeated opportunities to do so in both consultation responses and through the officer report, neither the Council nor the LLFA confirmed that the ST was required until after the appeal was lodged.

75. Instead, the appellant sought to locate built form within Flood Zone 1, the area at the lowest risk of fluvial flooding. However, when considering the ST, the Framework refers to development and not housing. Furthermore, consideration needs to be given to all sources of flood risk affecting the site. Accordingly, I consider that it is necessary to consider the entire site when establishing whether the ST should be applied.

76. The ST has now been undertaken and the Council has provided its views on the appellant's findings. The main areas of disagreement relate to the ST area of search, the parameters for site size and grouping of sites, what constitutes 'reasonably available', and whether any sites fall within that category other than the site itself. I cover these matters below.

77. The LLFA has undertaken more nuanced work than the appellant on whether sites would be at a lower risk of flooding and has also considered the variation of risk. I agree that the granularity of the appellant's approach to assessing the level and variation of flood risk is limited, and have had regard to Ms Waters' more detailed data on flood risk in reaching my decision.

Area of search

78. The Framework does not define the ST search area's extent. The PPG[3] advises that it will be defined by local circumstances relating to the catchment area for the type of development. This is not exhaustive. The PPG asserts that this may be clear for some developments, for example a school catchment area, but also notes that it could be wider than a local planning authority boundary for nationally or regionally important infrastructure. The PPG[4] confirms that the local planning authority will need to determine an appropriate search area, based on the development type proposed and relevant spatial policies.

79. The Council's Strategic Flood Risk Assessment (Level 1)(May 2018) at paragraph 4.3 states that the ST area of search could be the borough area, or a specific catchment if this is appropriate and justification is provided, such as a school catchment area or the need for affordable housing within a specific area identified for regeneration in Local Plan policies.

80. Without any engagement with the Council or LLFA, the appellant defined the ST area of search as the whole borough. This is not consistent with the aforementioned PPG. It was posited at the Inquiry that this was due to the tight Inquiry timescales, but this should not have been seen as a limit to the production of appropriate evidence or to reaching agreement on area of search parameters. Indeed, I offered to hold the remainder of the Inquiry in October

[3] Paragraph 7-027-20220825 How should the Sequential Test be applied to planning applications?
[4] Paragraph 7-029-20220825 Who is responsible for deciding whether an application passes the Sequential Test?

2023, which could have allowed more time for discussion. Neither main party sought to extend the timescales for the ST or for the response to the ST.

81. The Council has not produced guidance on the appropriate area of search for common development types or an up-to-date register of 'reasonably available' sites, clearly ranked in flood risk preference[5]. However, the Council considers that it would have been appropriate to consider parts of Hertsmere and the other Council areas within the South West Hertfordshire Housing Market Area (HMA), namely Dacorum, St Albans, Three Rivers, and Watford within a 10 mile zone from the site. However, the zone is not evenly drawn, excluding neighbouring London boroughs. Furthermore, little clarity was offered by the Council as to why the whole HMA was not chosen.

82. The 10 mile zone appears to be based on a 15 mile zone within an appeal[6] for a caravan and holiday lodge scheme in Newark and Sherwood, an approach which that Inspector considered overly restrictive. As the 15 mile zone relates specifically to the level of access for such schemes to fishing lakes and other associated recreational facilities, the two appeals are distinctly different from one another. Indeed, none of the elements of this appeal for housing, a primary school and a mobility hub are particularly unusual or 'niche'.

83. The Council's Appendix C identifies circa 70 sites outside Hertsmere, with only site numbers and indicative unit numbers provided. It is unclear what flood risk levels are relative to the site or if these sites would be reasonably available. I give these sites very limited weight in reaching my conclusions.

84. There is an absence of evidence that the proposed development would constitute nationally or regionally important infrastructure. While the borough is not particularly large and the site is close to the borough boundary, any residential scheme such as the appeal scheme would contribute to meeting housing need wherever it was located within the borough. Community facilities such as the school and mobility hub would not be out of place on other sites within the borough. Without convincing evidence to the contrary and despite the appellant's failure to engage with the Council on setting the area of search, I find that the appellant has taken a reasonable and pragmatic approach to defining the area of search as the borough in this instance.

Reasonably available sites

85. The PPG[7] describes reasonably available sites as being those in a suitable location for the type of development with a reasonable prospect of being available to be developed at the point in time envisaged for the development. It asserts that such sites could include a series of smaller sites and/or part of a larger site if capable of accommodating the proposed development. It confirms that such lower-risk sites do not need to be owned by the applicant. I can see no evidence in the PPG that it is for the Council to provide evidence on whether a site is reasonably available. Indeed, as the Council does not undertake the ST, it appears to be a task for the appellant.

86. Having referred to an appeal[8] in Framlingham, Suffolk which looked at sites some 15% - 20% larger or smaller than the Framlingham site, the appellant

[5] Ibid.
[6] Appeal APP/B3030/W/22/3309438, decision issued 14 April 2023.
[7] Paragraph 7-028-20220825 What is a "reasonably available" site?
[8] Appeal APP/X3540/W/20/3250557, decision issued 29 September 2020.

has considered sites 25% above and below the size and capacity of their site, that is sites between 13.6 and 23.1 hectares and capable of accommodating between 232 and 388 homes. No clear maximum size parameter has been set by the Council, though a lower threshold of 80 homes was applied, without particularly clear evidence as to how that was reached. In addition, the appellant has considered larger sites of which the proposed development could form a part and smaller sites where they could be grouped, though the focus was on smaller sites being next to or close to one another.

87. Despite being referred to by the Inspector in the Framlingham appeal as a standard approach, I can see no reference to a standard approach in either the current PPG (August 2022) or in the previous PPG (March 2014). The Framlingham appeal predates the current PPG and was for four houses. It is not materially comparable in size to the appeal before me, and in the absence of detailed evidence from that appeal, the origins and veracity of this standard approach remain unclear to me. In any event, no such percentages are set out in the current PPG and I can see no reason to refer to a 15% - 20% margin and then introduce a more 'conservative' 25% allowance above and below the site's size and capacity. As such, I am not convinced that the appellant's maximum and minimum site sizes and site capacities were robustly chosen and were consistent with the PPG's advice on assessment of a series of smaller sites or larger sites of which the development could form part.

88. With regard to the grouping of smaller sites, the proposed development would comprise around 310 homes, land for a primary school and a mobility hub, as well as green infrastructure. Although this represents a large, possibly even strategic scheme with non-residential elements, I see no reason why a number of smaller sites could not accommodate all these elements. As in the North Somerset appeal[9], smaller sites would not necessarily need to be contiguous. I agree with the Council that a series of sites would potentially indicate three or more sites. Equally, I am not convinced that part of a larger site would not represent a reasonable proposition in some circumstances, though considerably larger sites may take longer to bring forward and would not be reasonably available.

89. The appellant estimates that the proposed development would start on site in late 2024 with first completions in 2025. The Council considers that 2027 would see the first completions as it assumes two years for planning permission and two further years for discharge of conditions. I have had regard to the discussion of timescales set out in the Lichfields' Start to Finish document (2020), Table 2 of the Flood Risk Sequential Test SOCG and the Hertsmere Housing and Economic Land Availability Assessment (HELAA) methodology in Appendix B to Ms O'Brien's ST Rebuttal.

90. Given the need to undertake hydraulic modelling, determine reserved matters and discharge detailed and relatively onerous pre-commencement conditions on matters such as design coding, access works and drainage, I consider it likely that the start on site and first completions would slip somewhat in the real world, though not to as great an extent as the Council envisages. I acknowledge that the appellant, a national housebuilder, is not at a standing start. The appellant has freehold ownership of the land, has already made considerable progress towards scheme delivery in terms of the first two years

[9] Appeal APP/D0121/W/22/3313624, decision issued 20 June 2023.

of the Lichfields and HELAA methodology, and has undertaken archaeological trial trenching. However, I consider that the suggested start date is overly optimistic and is more likely to result in completions starting in 2026.

91. Even if I agreed with the appellant's first completions in 2025, I concur with the Inspector in the North Somerset appeal that being available to be developed does not necessarily mean that the development of an alternative site would need to follow the trajectory of start and build out dates set out for the appeal scheme. It is only necessary for the alternative land to be available to be developed.

92. For this appeal, the ST approach should therefore assess alternative sites falling within Hertsmere's administrative boundary; sites of different sizes, including smaller sites where development could be delivered across one or more sites and parts of larger sites; and sites which would be available for development at the point in time envisaged for the proposed development.

93. Using Council documents[10] to source sites, the appellant assessed 244 sites and undertook more detailed assessment of 31 sites. Unfortunately, the appellant did not have access to the 2022 call for sites or the 2022 HELAA. Their ST reached the conclusion that their site would be the only sequentially preferable site. The Council considers that other sites would have lower flood risk and would potentially be reasonably available, rendering them sequentially preferable. I cover the 14 disputed sites in the Flood Risk Sequential Test SOCG below.

94. HEL181 Compass Park, HEL347 Land to northeast of Cowley Hill, HEL362 South of Potters Bar, and HEL379 Kemprow Farm, Radlett are larger sites with lower flood risk than the site. The appellant's evidence with regard to the reasonable availability of these larger sites is not compelling as it lacks detail on how long it might take for these sites to come forward and whether this would be outside the expected timeframe for delivering the proposed development. Despite having been reliant on timescales from the 2019 HELAA, the appellant has not contacted landowners to understand availability and likely timing of delivery. While I understand the appellant's concerns about time taken for land acquisition, there is simply not sufficient information to demonstrate to me that these sites would not be reasonably available on the basis of timescales.

95. HEL176 Former Bushey Golf and Country Club, HEL177 Dove Lane, HEL209a Land North of Barnet Lane, HEL212 Land North of Watford Road, HEL231 Starveacres, HEL274 Land at Edgwarebury House Farm, HEL349X Shenley Grange, HEL358 Land south of Shenley Road, and HEL521 Bushey Hall Farm are all at lower risk of flooding than the site. The appellant has ruled them out on the basis of the appellant's lowest site size or dwelling numbers, which I have found not to be supported by the PPG or other compelling evidence.

96. HEL349X Shenley Grange and HEL358 Land south of Shenley Road have recently had planning applications refused and the LLFA objected to both on flooding issues. However, this does not mean that either site would not be at comparatively lower flood risk than the site. While an appeal has been lodged for HEL358 Land south of Shenley Road, this would not automatically remove the site from consideration. As far as HEL176 Former Bushey Golf and Country

[10] Housing Land Supply Trajectory (base date 1 April 2022); Brownfield Register (2022); Housing and Economic Land Availability Assessment (2019); DHLP; SADM, and Elstree Way Corridor Area Action Plan (2015).

Club is concerned, the emerging planning application should not be seen as a negative. For HEL209a Land North of Barnet Lane, HEL349X Shenley Grange, and HEL358 Land south of Shenley Road, other housebuilders holding options is not sufficient in the absence of detail to prevent the sites from being reasonably available.

97. For all of the aforementioned smaller sites, I recognise that there are a range of different constraints affecting them, but no site is likely to be without constraints. I consider that it has not been adequately demonstrated that they are not reasonably available and that the proposed development could not be delivered through a series of smaller sites.

98. Site HEL355 Heathbourne Green was to be allocated for 800 homes. Although it appears to be at lower risk of flooding than the site, its development timescale is a 16 year plus horizon. This site is not reasonably available.

99. In summary and having considered all the disputed sites, I find that some 13 sites would potentially fall within the meaning of reasonably available. It has therefore not been demonstrated that the proposed development could not be located elsewhere in an area at lower risk of flooding. Though I note that the appellant considers that the ET is passed, I have not applied the ET as I have found that the appeal would fail the ST.

100. I conclude the proposed development would not be in a suitable location with regard to local and national policies relating to flood risk. Accordingly, it would conflict with paragraph 162 of the Framework, CS Policies SP1 and CS16, and SADM Policy SADM14, as set out above. This has very substantial weight.

Other matters

101. I have been referred to numerous legal judgments and appeal decisions. Both main parties have sought to draw comparisons and similarities between the appeal decisions before me for a variety of reasons. Appeal decisions are unlikely to be directly comparable to one another, with differences in the size and type of development, planning policy, and housing land supply positions to name but a few differing factors. In this decision, I have referred to specific legal judgments and appeal decisions where directly relevant.

102. Many representations were made in respect of the planning application and the appeal. In addition to raising matters covered above, there were concerns about the effect of the proposed development on biodiversity, equestrianism, living conditions of neighbouring occupiers, archaeology, local infrastructure, and highway safety, including the effect on the wider strategic road network. Concern was also raised about pollution and disruption during construction. I have not dealt with these matters in any further detail given my decision.

Other considerations

103. I turn now to the other considerations advanced by the appellant, that they consider would collectively amount to very special circumstances.

104. The Framework's policy imperative to increase the supply of housing and radical change in approach from its predecessor policy documents is discussed

in the Gallagher Homes legal judgment[11]. Paragraph 60 of the current Framework seeks to support the Government's objective of significantly boosting the supply of homes. It clarifies that it is important that 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. The appeal scheme is described as being for up to 310 homes, though the appellant has confirmed that it may provide slightly closer to 300 if accounting for alterations to the parameter plans for drainage purposes.

105. CS Policy CS1 confirms that the Council will make provision for at least 3,990 additional dwellings between 2012 and 2027, an annual minimum of 266 dwellings. However, the CS is over five years old and the Inspector who examined the CS sought early review given her concerns about the housing requirement[12]. Due by January 2016, that early review did not take place.

106. Some 80% of Hertsmere and almost all land outside settlement boundaries is within the Green Belt. It is agreed between the main parties that the Green Belt boundaries and the settlement boundaries are substantively out of date. Reviewing and altering Green Belt boundaries substantially for the first time since the First Review of the Hertfordshire County Development Plan in 1971, the DHLP and its evidence base was predicated on releasing Green Belt land to meet future housing needs. Indeed, both main parties agree that use of Green Belt land for housing is inevitable to meet housing needs, in addition to use of brownfield land and densification. However, the DHLP was set aside in 2022.

107. The most recent Local Development Scheme (April 2021)(LDS) relates only to the DHLP. Given the absence of an up-to-date LDS and a clear pathway for Local Plan production, Hertsmere finds itself in a Catch-22 situation with planning taking place by planning application and appeal. I have little confidence at this point that the Council is moving forward effectively with efforts to meet local housing needs through the plan-led system. Regrettably, a new Local Plan is years away. In the meantime, it is agreed between the main parties that Bushey is a tier 2 settlement within the adopted settlement hierarchy and that it forms a sustainable location for development, whether one considers the current development plan, the DHLP's evidence base, or the DHLP itself in which the site was proposed for allocation.

108. The Council cannot demonstrate a five-year supply of deliverable housing and the standard method should be used to calculate the housing requirement in accordance with paragraph 74 of the Framework. However, the parties disagree on the extent of the shortfall, with the Housing Land Supply SOCG (2 May 2023) indicating the appellant's position of 1.23 years' housing supply or 942 dwellings from 2022/23 to 2026/27 and the Council's position of 2.25 years' housing supply or 1,713 dwellings over the same time period.

109. As a result, the shortfall is between 2,104 and 2,875 homes for the Council and the appellant respectively. My attention has been drawn to a legal judgment[13] in respect of the extent of the shortfall. Both the appellant's and Council's supply figures are woeful, representing extremely substantial shortfalls symptomatic of a chronic failure to deliver housing. Sadly, and as

[11] Gallagher Homes Ltd v Solihull MBC [2014] EWCA Civ 1610.
[12] Report on the examination into Hertsmere Revised Core Strategy, issued 5 December 2012.
[13] Hallam Land Management Ltd v SSCLG and Eastleigh Borough Council [2018] EWCA Civ 1808

highlighted by the Inspector in the Harris Lane, Shenley appeal[14], this is likely to worsen further given the absence of progress on plan-making. Even on the Council's figures, the Council is presently amongst the worst performing in the country on housing land supply and without proper plan-making, efforts to resolve housing land supply issues are likely to be limited in extent.

110. The proposed development would deliver up to 310 residential units. In doing so it would support the Government's aim to significantly boost the supply of housing. While housing has been provided in Bushey in recent years, this has done little to improve the borough-wide shortfall of housing whichever position taken. If I were to endorse the appellant's worst-case scenario on the Council's five-year housing land supply, in light of the scale of development proposed and of the aforementioned local and national circumstances, I would give the provision of market housing very substantial weight.

111. For affordable housing, the picture is no less bleak. The South West Hertfordshire Strategic Housing Market Assessment 2016 (SHMA) identifies an annual need for 434 net affordable dwellings between 2013 and 2036, while the South West Hertfordshire Local Housing Need Assessment 2020 (LHNA) refers to an annual need for 503 affordable dwellings between 2020 and 2036. Data from the Department for Levelling Up, Housing and Communities shows that at 31 March 2022, 799 households were on the Housing Register. It is agreed in the Affordable Housing SOCG (3 May 2023) that from 2013/14 onwards, net affordable housing completions have averaged 54 per year compared to the SHMA need for 434 net affordable dwellings. This results in an average annual shortfall of 380 affordable homes. Affordable housing forms just 14% of housing completions, against CS Policy CS4's target of 35%.

112. Even bearing in mind any affordability issues addressed by the standard method and the policy-off nature of the SHMA and LHNA figures, there is a pressing, persistent and acute need for affordable housing within Hertsmere, which should be addressed as a matter of urgency. This is an area where house prices are well in excess of the national or even the East of England average, and where rents are rising. The ongoing shortfall of affordable housing would have real consequences, either in terms of homelessness or people living in unsuitable accommodation. In the context of paragraph 8 of the Framework, such a shortfall and the likely inadequate future supply fails to ensure that a sufficient number and range of homes can be provided to meet the needs of present and future generations.

113. I understand that the Council's joint venture Hertsmere Living seeks to deliver affordable housing. While this is positive, it is unclear how many homes will be provided via this route in the short and medium-term. I also note that nearby Rossway Drive and Plomley Place provided around 71 affordable housing units. Notwithstanding this, the proposed development would deliver 40% affordable housing, in excess of CS policy CS4's requirement of 35% in this location, equating to up to 124 affordable homes. This would deliver over double Hertsmere's net annual average of affordable homes. In light of the extent of the gap between need for and provision of affordable housing, I afford this very substantial weight.

114. Turning to the matter of self and custom house building, the proposed development would include approximately 10 serviced plots secured by legal

[14] Appeal APP/N1920/W/22/3311193, decision issued 25 May 2023.

agreement. Under the Self Build and Custom Housebuilding Act 2015, local authorities are required to keep a register of those seeking to acquire serviced plots in the area for their own self-build and custom house building. They are also subject to duties under the Act to have regard to this and to give enough suitable development permissions to meet the identified demand.

115. The Framework includes the requirement to plan for the needs of self and custom builders and is supported by the PPG, which advises that local authorities should use the demand data from registers, supported by additional data from secondary sources, to understand and consider future need for this type of housing in their area[15]. There is no adopted local planning policy for self and custom house building. The main parties agree in the Self-Build and Custom Housebuilding SOCG that such provision is an important part of the Government's strategy to resolve the housing crisis.

116. Around 80 names are on the Council's register, including associations. Doubt has been cast on public awareness of the register; the risk of demand being underestimated; robustness of assessment and review; use of secondary data; whether permissions have been appropriately recorded as and restricted to self and custom-building; and whether the statutory duty is met. Though some progress has been made with the delivery of plots, I concur with these doubts and consider that there would be substantial unmet need for this form of housing. I therefore attribute the provision of up to 10 serviced plots for self and custom-building substantial weight.

117. Paragraph 81 of the Framework asserts that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity. The proposed development would deliver temporary economic benefits during construction and longer-term economic benefits. Temporary benefits would include some 342 direct and indirect construction jobs and wider economic output resulting from those jobs. Over the longer-term, economically active residents would contribute to the success of the local and wider economy in terms of economic output and commercial expenditure. I afford the economic benefits of the proposed development significant weight.

118. A net biodiversity gain of 20.33% habitat units, 39.42% hedgerow units and 12.41% river units is committed to by condition. Paragraph 180 of the Framework currently indicates opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity. The Environment Act 2021 requires 10% biodiversity net gain, but has not yet come into use. Other appeal decisions[16] have given differing weight to biodiversity net gain. However, given the extent to which biodiversity net gain would exceed 10%, I afford this moderate weight.

119. DHLP allocation B1 included a new primary school, but this did not move forward as the DHLP was set aside. The proposed development includes land for the primary school which is secured via planning obligation. HCC forecasting

[15] Paragraph 57-011-20210208 What is the relationship between the register and the Strategic Housing Market Assessment?
[16] Including Appeal APP/B1930/W/21/3279463, decision issued 31 January 2022; Appeal APP/V1505/W/22/3296116, decision issued 11 November 2022; and Appeal APP/X0415/W/22/3303868, decision issued 8 March 2023.

indicates that additional primary school capacity is unlikely to be required within the next five years, with demand being absorbed by other local schools. However, the proposed development is considered by HCC to contribute to additional cumulative demand locally, the scale of which will be dependent upon the Local Plan's progress. This is something of a paradox. I consider that it has not been demonstrated at this point that the new school is necessary. I give the provision of land for the primary school only moderate weight.

120. The proposed development would include delivery of a package of sustainable transport measures, secured by planning obligation. This includes a contribution of £1,397,121 for a 30 minute frequency bus service between new bus stops adjacent to the site, and Watford Junction and Borehamwood stations for a five year period; £40,000 towards personalised travel planning; £648,939 for cycling and walking routes; £30,000 for updating school travel plans for a number of nearby schools; sustainable travel vouchers; travel planning and travel plan monitoring for the proposed development. Many of these measures mitigate the proposed development's effects and are necessary, but I consider that the bus service provision and the enhancement of cycling and walking routes would also represent benefits for the wider local community. I give these benefits moderate weight.

121. Paragraph 126 of the Framework refers to the creation of high quality, beautiful and sustainable buildings and places as being fundamental to what the planning and development process should achieve. While the appellant is committed to delivering a high quality development and a condition requires a site-wide design code, I consider high quality design to be an essential tenet of development. Accordingly, this is not a benefit and is neutral in weight.

122. The proposed development would have a mobility hub, secured by planning obligation. This would include a café, reading area, shared office space, sustainable transport information, a bike stop, electric vehicle charging and cycle parking, and parcel drop off and collection. This is agreed by the main parties as being of moderate weight. I see no reason to disagree.

123. The main parties are in agreement that significant levels of accessible open space should have moderate weight. I concur with this finding. However, enhanced access to the countryside and the enrichment of blue/green infrastructure would provide no more than a limited benefit over and above the provision of open space. I give this limited weight.

124. Reference has been made to sustainable building measures such as electric vehicle charging, and use of insulation, air source heat pumps, and photovoltaic panels above Building Regulations. As electric vehicle charging is adequately covered by Building Regulations, I discount this as a benefit, apart from the additional charging offered within the mobility hub above. With regard to the other sustainable building measures, I afford these limited weight in the absence of detail in what is an outline application.

Planning obligations

125. I have only addressed the planning obligations to ascribe weight to the benefits of other considerations. Given my findings below, it has not been necessary to examine the planning obligations any further.

Whether any harm to the Green Belt and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the proposed development

126. Paragraph 148 of the Framework states that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

127. For this appeal, substantial harm would arise from inappropriateness, the significant reduction in openness, and conflict with two of the five Green Belt purposes, though the identified conflict with the purposes would be very limited and modest. These are three important elements contributing to the substantial weight to the actual and definitional harm to Green Belt. Though the Council chose to, I have not sought to apply a sliding scale to any specific level of substantial weight.

128. A Court of Appeal judgment[17] has confirmed that the interpretation given to any other harm in what is now paragraph 148 of the Framework is such that it is not restricted to harm to the Green Belt. There would be significant harm to the character and appearance of the area and very substantial harm in relation to whether the site is in a suitable location with regard to local and national policies relating to flood risk.

129. The other considerations are weighted as follows: very substantial weight for the provision of both market and affordable housing; substantial weight for self and custom-build housing; significant weight for economic benefits; moderate weight for biodiversity net gain, the provision of land for the primary school, the package of sustainable transport measures, the mobility hub, and significant levels of accessible open space; limited weight to enhanced access to the countryside, the enrichment of blue/green infrastructure, and sustainable building measures. High quality design is neutral in weight.

130. I have had regard to the other considerations. However, these do not clearly outweigh the harms that I have identified. Consequently, the very special circumstances necessary to justify the proposed development do not exist. The proposed development would therefore conflict with CS Policy SP1 and CS13, SADM Policy SADM26, and the requirements of chapter 13 of the Framework which have been summarised above.

131. The main parties agree that there is no five-year housing land supply, although they disagree on the extent of the shortfall. The lack of five-year housing land supply indicates that paragraph 11 (d) of the Framework applies and the policies which are most important for determining the application are out-of-date. CS Policy SP2 sets out similar requirements. I have had regard to a legal judgment[18] which confirms that where there are relevant development plan policies, but the most important for determining the application are out-of-date, planning permission should be granted (subject to section 38(6) of the 2004 Act) unless either limb (i) or limb (ii) is satisfied. The application of each limb is essentially a matter of planning judgment for the decision-maker.

[17] SSCLG & Others v Redhill Aerodrome Ltd [2014] EWCA Civ 1386
[18] Monkhill Ltd v SSHCLG & Waverley Borough Council [2019] EWHC 1993 (Admin)

132. In this instance, it is necessary to consider limb (i) of paragraph 11 (d) and footnote 7 of the Framework. For footnote 7 purposes in this appeal, the relevant policies within the Framework are those pertaining to land designated as Green Belt and areas at risk of flooding. These policies provide clear reasons for refusal of the appeal. As the Monkhill judgment confirms, where more than one footnote 6 policy is engaged (now footnote 7), limb (i) is satisfied, and the presumption in favour of sustainable development overcome, where the individual or cumulative application of those policies produces a clear reason for refusal. The presumption in favour of sustainable development is overcome in this appeal.

133. Despite the proposed development's merits, the very special circumstances do not clearly outweigh the conflict with the development plan and national policy in the Framework with regard to the totality of harm. In conclusion, the proposal would conflict with CS Policies SP1, SP2, CS12, CS13 and CS16, SADM Policies SADM11, SADM14, and SADM26, and paragraphs 148, 162, and 174 of the Framework, as set out above. As such, the appeal fails.

Conclusion

134. For the reasons set out above, the appeal should be dismissed and planning permission should be refused.

Joanna Gilbert

INSPECTOR

Appearances

For the Council

Emmaline Lambert, Counsel	Instructed by Mr Harvey Patterson, Head of Legal Services, Hertsmere Borough Council
She called:	
James Dale	Hertfordshire County Council
Georgia O'Brien MA	Senior Planning Officer, Hertsmere Borough Council
Grace Middleton MA	Senior Planning Officer, Hertsmere Borough Council
Peter Radmall MA B.Phil CMLI	Peter Radmall Associates
Martin Ross BA PGDip	Senior Planning Officer, Hertsmere Borough Council
Matthew Stimson	Shoosmiths
Charlie Thompson	Growth and Infrastructure, Hertfordshire County Council
David Uncle	Hertfordshire County Council

Katherine Waters MSc BSc C.WEM MCIWEM	Technical Director, WSP
Ross Whear BA (Hons) MA (Urban Design)	Head of Planning and Economic Development, Hertsmere Borough Council
Daley Wilson PGDip	Senior Planning Officer, Hertsmere Borough Council

For the Appellant

Zack Simons and Isabella Buono, Counsel	Instructed by Mrs Kathryn Ventham, Director, Stantec
They called:	
Nicole Cameron	Solicitor, Cripps
Patrick H Clark BA MA Lsc. Arch. CMLI	Landscape Planning Associate Director, Stantec
Caroline Featherston BSc (Hons) MSc MRTPI	Planning Associate, Stantec
Nicholas Martin Paterson-Neild BA (Hons) MPhil MRTPI	Director, Stantec
Andrew Moger BA (Hons) MA MRTPI	Director, Tetlow King Planning
Daniel Simpson BSc PhD CEcol	Director, Aspect Ecology
James Stacey BA (Hons) Dip TP MRTPI	Managing Director, Tetlow King Planning
Matt Thomas MSc FCILT FCIHT	Director, Vectos
Kathryn Ventham BSc (Hons) MSc MRTPI	Director, Stantec
Colin Whittingham BSc (Hons) MSc MCIWEM C.WEM PIEMA	Director, LDE division of RSK

Interested Parties

Maxie Allen	Councillor, Hertsmere Borough Council
Daren Nathan	Local resident and member of Little Bushey Community group
Chris Shenton	Councillor, Hertsmere Borough Council
Andrew Williams	Local resident and member of Little Bushey Community group

Documents submitted during and after the Inquiry

ID1: Transport and Highways Statement of Common Ground between Redrow Plc and HCC, May 2023 (v3)

ID2: Appellant's Opening and List of Appearances

ID3: Council's Opening

ID4: Housing Land Supply Statement of Common Ground, May 2023, including Disputed Sites List

ID5: Self-Build and Custom Housebuilding Statement of Common Ground, 9 May 2023

ID6: Affordable Housing – Statement of Common Ground, 9 May 2023

ID7: Statement of Common Ground – Flood Risk and Drainage, May 2023

ID8: Schedule of Draft Conditions

ID9: Transport and Highways Statement of Common Ground between Redrow Plc and HCC, May 2023 (v4)

ID10: Hertsmere Borough Council CIL Compliance Statement Addendum

ID11: Draft planning obligation by deed of agreement between Redrow Homes Limited and HCC, received on 16 May 2023

ID12: Draft planning obligation by unilateral undertaking by Redrow Homes Limited in favour of Hertsmere Borough Council, received on 16 May 2023

ID13: Appeal decision APP/D2320/W/20/3247136, Land at Pear Tree Lane, Euxton, Chorley

ID14: Email dated 17 May 2023 from the Council with regard to a proposed condition to remove permitted development rights

ID15: Flood Risk Sequential Test and Exception Test, May 2023

ID16: Land at Little Bushey Lane, Bushey: Proof of Evidence on Sequential Test Matters of Caroline Featherston MRTPI

ID17: Rebuttal Proof of Evidence and Appendices A - E– Sequential Test (Planning) of Georgia O'Brien MA

ID18: Rebuttal Proof of Evidence and Appendix A – Sequential Test (Flooding) of Katherine Waters MSc BSc C.WEM MCIWEM

ID19: Supplementary Proof of Evidence Addendum – Sequential Test (Planning) and Addendum Proof - Appendix A of Martin Ross BA PGDip

ID20 Supplementary Proof of Evidence Addendum – Sequential Test (Planning) and Addendum Proof - Appendix A of Martin Ross BA PGDip - Updated

ID21: Draft conditions received 26 June 2023

ID22: Draft planning obligation by unilateral undertaking by Redrow Homes Limited in favour of Hertsmere Borough Council, received on 27 June

2023

ID23: Appeal decision APP/N1920/W/22/3311193, Land adjacent and to the rear of 52 Harris Lane, Shenley WD7 9EG

ID24: Flood Risk Sequential Test Statement of Common Ground, June 2023

ID25: Statement made by Councillor Maxie Allen

ID26: Appeal decision APP/D0121/W/22/3313624 Land at Lynchmead Farm, Ebdon Road, Wick St Lawrence, Weston-super-Mare BS22 9NY.

ID27: Revised statement made by Councillor Maxie Allen

ID28: Statement made by Councillor Chris Shenton

ID29: Planning Benefits Table

ID30: Start to Finish: What factors affect the build-out rates of large scale housing sites? Second Edition, Lichfields, February 2020

ID31: Briefing Note prepared by RSK – Flood Risk and Drainage, 3 May 2023

ID32: 2014 Planning Practice Guidance Flood risk and coastal change

ID33: Draft planning obligation by unilateral undertaking by Redrow Homes Limited in favour of Hertsmere Borough Council, received on 5 July 2023

ID34: Final schedule of planning conditions, received on 6 July 2023

ID35: Ms O'Brien's meeting notes for meeting between appellant, Council and LLFA, dated 22 February 2023

ID36: Appellant's costs application, received on 6 July 2023

ID37: HCC's response in respect of transfer of part of the registered title, received on 6 July 2023

ID38: Draft planning obligation by deed of agreement between Redrow Homes Limited and HCC, and its appendices, received on 6 July 2023

ID39: Education Position Statement, dated 24 February 2023

ID40: Draft TP1 Form with comments from HCC, received on 7 July 2023

ID41: Draft TP1 Form – clean version from appellant, received 7 July 2023

ID42: Email from HCC in respect of condition on reserved matters for the primary school, including a committee report for 21/00356/FPM Land West of Stevenage, received 7 July 2023

ID43: Email from Council agreeing to amended main issue on flood risk, received 7 July 2023

ID44: Email from appellant agreeing to amended main issue on flood risk, received 7 July 2023

ID45: Draft TP1 Form – clean version from HCC, received 7 July 2023

ID46: Email from HCC regarding planning obligation progress, received 10 July 2023

ID47: Council's closing submissions

ID48: Appellant's closing submissions

ID49: Completed planning obligation by unilateral undertaking by Redrow Homes Limited in favour of Hertsmere Borough Council, received on and dated 13 July 2023

ID50: Email from appellant regarding company name change for members of the appellant's team, received 13 July 2023

ID51: Completed planning obligation by deed of agreement between Redrow Homes Limited and HCC, received on and dated 13 July 2023

ID52: Council's response to appellant's costs application, including appendices, received 14 July 2023

ID53: Appellant's reply on costs application, received 17 July 2023