

Appeal ref: APP/B1930/W/23/3323099
Local Authority Planning Application ref: 5/2022/1988
Land at Tollgate Road, Colney Heath

CLOSING STATEMENT ON BEHALF OF THE LOCAL PLANNING AUTHORITY

Introduction¹

1. At the outset of the inquiry, the LPA and the Appellant agreed that the outcome of the appeal turned on a single question: do the benefits of the Proposal outweigh its harms clearly and decisively enough to amount to VSC?
2. After two weeks of evidence, it is clear that the Proposal's benefits, substantial though they are, do not reach the level of VSC. The evidence has established that there is no justification for the permanent loss of this important Green Belt site at this time.
3. There is no doubt that the housing position in St Albans is dire. I do not hide from that fact. But housing need, even serious housing need, does not justify any housing development anywhere. Housing is not the only important planning consideration. The protection of the Green Belt another very weighty consideration, to which the Government itself attaches "great importance" (NPPF para 137).
4. In opening the inquiry, Mr Simons and Mr Semakula stressed the reality – families in need – that lies behind housing numbers. They were right to do so.
5. But there is an equally compelling reality behind Green Belt policy.
6. The open, undeveloped countryside is an invaluable, and finite, natural resource in this country. The encroachment of development into that countryside is not just a matter of red lines on plans: it is the erosion of open countryside. And that open countryside is something that so many people find so very important. Once lost to housing, that openness

¹ I have adopted the same abbreviated terms in this closing statement as in my opening statement.

can never be recovered. It is gone forever, to the detriment of us all. Such a loss should not occur lightly.

The policy context, and the central question in the appeal

7. I set out the detail of the relevant development plan and national policies in opening. I adopt that analysis in closing and do not repeat it.
8. Happily, the Appellant and the LPA are in agreement that, under both the development plan and the NPPF, the success or failure of the appeal turns on the Green Belt VSC test.
9. As articulated in the NPPF, VSC for a proposal 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 (para 148).
10. If the Proposal can show VSC, then there is no reason in NPPF terms not to apply the para 11 tilted balance, and if the VSC test is passed, the para 11 tilted balance must also be passed. Conversely, if the VSC test is failed, the para 11 tilted balance is disengaged by footnote 7 and the NPPF points clearly to refusal.
11. The planning witnesses agree that the VSC test in Policy 1 of the development plan is the same as that in the NPPF. The planning witnesses also agreed that, if Policy 1 is breached by a failure of the VSC test, the result is non-compliance with the development plan overall. Conversely, they agreed that if Policy 1 is met, then the development plan overall is supportive of the Proposal.
12. If the Appellant can establish that the benefits of the Proposal clearly outweigh the harms, then the appeal succeeds. If not, the appeal fails. It is in that context that the main issues are to be understood and approached.

Main issue 1: openness and purposes of the Green Belt

13. The first issue relates to the impact of the Proposal on the openness and purposes of the Green Belt.

14. It is common ground that the Proposal is inappropriate development in the Green Belt. It is also common ground that the PDL exceptions in NPPF para 148(g), which permit otherwise inappropriate development in the Green Belt, are not satisfied in this case.
15. The NPPF makes plain that inappropriate development is harmful by definition, and that that in-principle harm carries substantial weight against the Proposal.
16. That in-principle harm is not the only harm arising under this head though. The Proposal will also result in major harms both to the openness of the Green Belt, and to its purposes.
17. I begin with openness.
18. Openness is one of the two essential characteristics of the Green Belt. The other one is its permanence; and Mr Self agreed in XX that the impact of the Proposal would be permanent. This is not a case of temporary or remediable loss.
19. Both Mr Hughes and Mr Self recognised that, as a matter of principle, openness has two main dimensions. The first, and more important, is the spatial element, which is concerned with the built form which is actually to be introduced. The spatial element is the more important because, as Mr Self agreed, Green Belt policy is a form of strategic spatial policy. Furthermore, openness is the opposite of urban sprawl, which is itself a spatial concept.
20. The second dimension of openness is the visual element: how the development is experienced or perceived. Mr Hughes explained, and Mr Self accepted, that both public and private views are relevant to this analysis.
21. In order to understand the harm arising to those elements of openness, it is first necessary to understand the baseline character of the Site at present.
22. Perhaps the best evidence we have as to the Site's character and contribution to openness comes from the 2023 Washed Over Villages Study (CD 3.5), which is part of the evidence base for the ELP. That document contains a detailed, granular analysis of the washed over settlements in St Albans, including Colney Heath. Indeed, it is the most up to date, detailed Green Belt analysis available to the inquiry, as Mr Bell accepted.

23. The following key points emerge:

- a. Colney Heath is identified as a settlement with an open character (p. 10);
- b. Colney Heath is assessed in three “areas”, reflecting the nucleated clusters which comprise the settlement. The appeal Site abuts the southern boundary of area B;
- c. The settlement scores moderate overall against the “key views to/from settlement” criterion. Within that criterion, however, it is clear that the views to and from the southern boundary of area B are some of the most important for the whole of Colney Heath. The Study says that views from the southern boundary of area B have “*very strong connections to the wider landscape with open arable fields and wooded blocks in the background as there is a visually permeable boundary with no adjacent development along Tollgate Road*” (page 11). That can only be talking about the part of area B which adjoins the appeal Site: the appeal Site is in fact to the south, rather than the south-west, of area B, and the area of the appeal Site is the only part of the area B boundary that has no adjacent development along Tollgate Road. That the views in question are from a private land boundary and predominantly private is nothing to the point: private views as well as public ones are relevant to the exercise, and the Study does not distinguish between the two.
- d. In other words, the Proposal would introduce development right into the area which gives rise to the “very strong connection”.
- e. Similarly, in respect of the settlement edge characteristics and setting, the part of area B along Tollgate Road (i.e. the area with which we are concerned) is again singled out for its strong relationship with the wider landscape (page 12).
- f. The study overall concludes that Colney Heath should remain a washed over settlement, and none of it is proposed for release from the Green Belt.
- g. Mr Self made the point, in re-examination, that Colney Heath overall was assessed as moderate for its openness contribution. That is true. But that does

not alter the fact that the specific area of the appeal Site performed very strongly against more than one criterion. The fact that Colney Heath overall scored moderate simply emphasises the importance of the Site's contribution compared to the remainder of the settlement: in essence, the moderate overall score is the result of the high performance around the appeal Site and lower performance elsewhere. The moderate score demonstrates just how important this Site is to Colney Heath.

24. It is also worth recalling that, whatever its deemed status under the NPPF, the Site consists, as a matter of fact, overwhelmingly of undeveloped green fields. That is a matter to which I will return. For now, suffice to say that is highly relevant to the level of spatial and visual change which the Proposal would introduce.
25. Given that Site context, the impact of the Proposal on openness would be very great.
26. Beginning with spatial impact, Mr Hughes observed in unchallenged evidence that the Proposal will, if permitted, result in a 2,000% increase in the footprint of built form, and an astonishing 5,000% increase in the volume of built development. On any view, that is a very serious loss of openness on what is currently an almost entirely open site.
27. Mr Self noted that the spatial impact of the Proposal was significant. He sought to reduce that impact, however, by reference to how the Proposal would be experienced. Such an approach is logically flawed and illegitimate: the spatial impact can only be assessed by reference to spatial considerations, and the experience of the Proposal – in other words, how it appears and from where it can be seen – is not a spatial matter at all, but a visual one. Mr Hughes' more logical approach to spatial impact is plainly to be preferred.
28. Turning to the visual impact of the Proposal, Mr Self placed considerable emphasis on the “containment” of the Proposal, and sought to present it as a good thing in Green Belt openness terms. Again, however, his approach is flawed – containment is the opposite of permeability (as Mr Hughes accepted in XX), and the 2023 Villages Study makes clear more than once that it is the visual permeability of the southern boundary of area B that gives it its value in Green Belt openness terms.

29. Put simply, the “containment” effect of the Proposal is something that increases the harm to openness. A point which Mr Self failed to recognise.
30. Similarly, Mr Self’s assessment failed properly to recognise that the Site sits right in the middle of the swathe of open green land which runs along the River Colne. The Proposal, if permitted, would take a large bite out of that swathe, depriving it of much of its spatial and visual value as an open area.
31. Another visual impact of the Proposal on openness arises from vehicular movement and light. Surprisingly, this did not form any part of Mr Self’s analysis, but was instead dealt with by Mr Bell. Mr Bell suggested that such movement would not have any discernible impact on the perception of openness, because all such traffic would route via the Tollgate Road. That however is a bad point: the visual impact of traffic is not confined to the Site access, but will occur throughout the area of the Site with built form, and that area of the Site currently has no or minimal such light or movement. Further, the presence of traffic movement and light in the land to the south of area B of Colney Heath would represent visual disruption to one of the most important parts of the Green Belt around Colney Heath, as I have already explained. This is another respect in which the Appellant has underestimated the openness impact of its Proposal.
32. In all the circumstances, Mr Hughes was right to identify a substantial adverse visual impact as well as an adverse spatial one.
33. Turning to the purposes of the Green Belt, it is common ground that the only purpose which is impacted is the third one: to assist in safeguarding the countryside from encroachment.
34. As an initial point, the word “encroachment”, as a matter of plain English, implies a “creeping in” from the outside. Conceptually, therefore, it is at settlement edges that encroachment issues are most likely to arise. So it is strange to reduce the weight given to the encroachment of the Proposal, as Mr Self did, on the basis that it occurs from a settlement edge. That rather misses the point of this purpose.
35. Again, in seeking to reduce the impact of the Proposal’s encroachment, Mr Self relied heavily on the containment effect of the Proposal. Once again, however, his approach

misses the point: a contained encroachment is still an encroachment. The open space of the Site will be no less lost because it has a solid, visually impermeable boundary around it. Indeed, in the particular context of the appeal Site, the containment makes the encroachment worse, not better, as I have already explained.

36. Mr Hughes was correct, in the circumstances, to identify a substantial harm to the purposes of the Green Belt.

37. A word here about Bullens Green. The Appellant has relied on the Bullens Green decision as a comparator for the approach which this inquiry should take. The two cases, however, are not alike in respect of Green Belt. Inspector Masters, in deciding the Bullens Green appeal, did not have the benefit of the 2023 Villages study. More importantly, the Bullens Green site is in a part of the Green Belt which makes a lesser contribution to openness than does the appeal Site – the Villages Study makes clear that the focus of interest in Colney Heath is the area to the south of area B – i.e. our Site – whereas there is no equivalent interest identified for the Bullens Green site. And all witnesses agreed that each case must be assessed on its own merits.

38. Drawing the threads together, therefore, there are three independent, free-standing substantial harms here: the in-principle harm from inappropriate development; the harm to openness in both its components; and the harm to Green Belt purposes. The circumstances required to outweigh such a set of harms need to be very special indeed.

Main issue 2: landscape character and appearance

39. The next main issue concerns the impact of the Proposal on the landscape character and appearance of the Site.

40. There was a large amount of agreement between Mr Friend and Mr Self here. Where they differed was on the magnitude of several of the agreed impacts.

41. Beginning with landscape impact, the parties were agreed that the impact was at its greatest on the Site itself, reducing as the neighbouring landscape is considered, and reducing yet

further at the level of the wider landscape, so as to be less than significant in terms of weight.²

42. Whereas Mr Self begins, at the most impactful level of the Site itself, at moderate weight, falling to negligible weight at the wider landscape level, Mr Friend begins with an assessment of substantial adverse Site-level impact, moderate impact at the neighbouring landscape level (moderate to slight at year 15), and moderate impact on the wider landscape (reducing to slight adverse at this level by year 15) (CD 8.5, app 2).
43. Mr Friend's assessment of the impact of the Proposal better reflects the underlying landscape sensitivities. As he explained, the qualities and sensitivities of the various landscape receptors at the Site vary from medium to low, save for the heritage receptors which are highly sensitive (Friend PoE para 4.1.4). It is the combination of the medium to low sensitivities at the Site, taken with the substantial magnitude of change which the Proposal would make to the land use, that results in a starting point of a substantial adverse direct effect in year 1.
44. As for the indirect landscape effects, the Proposal would, Mr Friend explained, result in a moderate adverse effect at year 15 even with mitigation planting in place: the sheer extent and permanent nature of the change from pasture fields to residential housing drives such a conclusion. Even the year 15 impact of the Proposal on the wider landscape is more than neutral: Mr Friend confirmed that the extension of the existing Tollgate Road ribbon development into the fields to the south of the settlement leaves a residual slight adverse impact even at year 15 and after mitigation.
45. Turning to visual impact, the key dispute between Mr Friend and Mr Self related to the view from Tollgate Road to the north west of the appeal Site (CD 5,25, photo 13). Mr Self considered that the year 1 impact of the Proposal on that view would be moderate adverse; a clear underrepresentation of the impact even on the basis of his own firm's visualisations. The year 1 impact is plainly higher, within the substantial to moderate range, as explained by Mr Friend.

² The main statement of common ground (CD 8.3) suggests, at para 6.22, that there would be no "material effects" on the wider landscape. The parties agreed in the LVIA round table that the word "material" here should be replaced with the word "significant", so as to capture more accurately the meaning of the signatories.

46. Similarly, while the adverse impact on this view would be reduced by year 15, because of the effect of planting, that reduction would not be such as to warrant Mr Self's slight adverse assessment. At least a moderate impact remains.

Main issue 3: heritage

47. The heritage impact of the Proposal is agreed between Mr Collins and Ms Stoten.

48. Since the position is agreed, I do not propose to dwell on it overmuch, though that should not be taken as diminishing its importance to the inquiry.

49. The parties have agreed that less than substantial harm, at the lowermost end of the spectrum, will apply to each of the Grade II Listed Colney Heath Farmhouse and the associated Grade II Listed Barn. That harm arises from the loss of the agricultural character of the Site, and the resultant loss of an illustrative part of the historic setting of the assets. It also alters the character of the field between the assets and the Site, which goes from being part of a continuous stretch of open agricultural land to a stand-alone field.

50. Similarly, less than substantial harm at the lowermost end of the spectrum is identified to the Grade I Listed North Mymms Park house. The urbanising effect of the Proposal would have an impact, albeit a small one, on the appreciation of the significance of the Grade I Listed asset, and would impact on its relationship with its historic agricultural estate. While the Site's contribution to the setting of the house is a very minor one, its loss is nevertheless a form of harm and more than de minimis.

51. A very minor harm is also identified to the non-designated Tollgate Farm historic asset.

52. None of these harms is sufficient to justify the refusal of the application on heritage grounds alone. Nevertheless, the identified and agreed heritage impacts are matters which carry great weight against the Proposal in the VSC balancing exercise, as both Mr Bell and Mr Hughes agreed in their planning evidence.

Main issue 4: sustainable transport

53. The fourth main issue relates to the Appellant's ability to demonstrate the sustainability of the Site and the Proposal in transport terms.
54. As things have developed, this issue is now a narrow one, at least as between the Appellant and the LPA. It is concerned solely with cycling provision.
55. But it is no less important for that.
56. Both Mr Carr and Mr Dimbylow recognised that the county council's LTP4 policy document (CD 17.1) gives high priority to cycling, as one of the most sustainable and healthy modes of travel: see in particular policies 1, 5 and 8 of LTP4. The NPPF also recognises the importance of cycling, placing it (along with walking) at the top the priority list for sustainable transport modes (para 112(a)).
57. Mr Carr and Mr Dimbylow agreed that, when considering the needs of cyclists, it was fair to consider the core principles contained in LTN 1/20 (CD 16.4).
58. LTN 1/20 was developed for the purpose of informing the design of new cycle infrastructure. But as Mr Carr explained, it is nevertheless an important source of guidance in assessing the suitability of potential cycling routes on existing roads. The core principles established by LTN 1/20 are based on the needs of cyclists, and those needs are exactly the same whether the route in question is a new one or an existing one. Mr Dimbylow agreed with that proposition in cross examination, and accepted that the county council acted properly in having regard to LTN 1/20 to inform its assessments.
59. Section 4 of LTN 1/20 establishes five core things which cyclists need from a route: coherence; directness; safety; comfort; and attractiveness.
60. In that regard, the LPA and LHA have concerns about two destinations in particular.
61. The first is the Samuel Ryder Academy. As Mr Carr explained, that is the only secondary school in the vicinity of the Site which has any current vacancies, and is in any event one of the nearest schools to the Site.

62. Mr Carr considered the routes which the cyclist could take to get from the Site to the academy. When I say the “cyclist”, we must keep in mind who we are talking about here – children. In that context, Mr Carr was unable to identify a route that a child could use to get from the Site to the academy which did not involve the breach of at least one of the LTN 1/20 core principles.
63. The first route Mr Carr identified involved crossing the A414 North Orbital at its junction with Colney Heath Lane, and travelling south-west from there using Barley Mow Lane. As Mr Carr noted in his proof (para 54; Mr Dimbylow was wrong in XX to say that the route was identified for the first time in Mr Carr’s oral evidence), Barley Mow Lane is for the most part a single-track route, unlit, and without road markings. Such a route gives rise to a risk of conflict between cyclists and cars; and such a risk is unlikely to be acceptable to the parents of child cyclists, as Mr Carr noted.
64. The second route involved crossing the A414 and heading north, away from the Academy, to arrive at the Hatfield Road, and thereby to approach the academy from the north-east. Such a route is very obviously indirect, and thus contrary to LTN 1/20.
65. In his oral evidence, for the first time, Mr Dimbylow identified an alternative means of getting from the Site to the academy, using the A414 and Nightingale Lane. Since that route emerged for the first time in oral evidence and after Mr Carr’s evidence, we have had a limited opportunity to consider it. Mr Dimbylow accepted however that Nightingale Lane is unlit along its length; that too introduces safety concerns for the child cyclist, especially in the winter months when a child may well find him or herself cycling in the dark or the gloaming. As to its width and overgrown nature, the inspector has indicated that he will see the route for himself before reaching his decision.
66. It follows, we say, that there is no LTN 1/20 compliant route from the Site to the Samuel Ryder Academy. Every option is either unsafe or indirect.
67. The second area of concern relates to cycling access from the Site to Welham Green railway station.
68. The Appellant’s Transport Assessment identifies two options to get to the station from the Site (CD 5.12; page 383). The more direct route is labelled C3, and involves passing along

Tollgate Road to the East of the Site. As Mr Carr explained, and as Mr Dimbylow agreed, Tollgate Road to the East is not for everyone: only confident cyclists can safely use it.

69. For the less confident or more vulnerable cyclist, the alternative route is labelled C2 in the TA. That route, however, fails the LTN 1/20 test of directness – Mr Dimbylow accepted it was a “less direct” route. It also fails the coherence test – the number of changes of direction and switchbacks on the route is plainly undesirable.

70. Thus, the cyclist has a choice between a fast and unsafe route, or an indirect and incoherent one. In those circumstances, and as Mr Carr identified, there is likely to be an increased use of the private car, or some other less sustainable option, to reach the train station.

71. While none of these points justify the dismissal of the appeal on their own, they are nevertheless matters which carry at least some adverse weight against the Proposal.

Main issue 5: VSC

72. The final main issue is the VSC balance itself.

73. On the harm side, the NPPF requires consideration of both Green Belt harms, and all other harms.

Green Belt harm

74. Beginning with the Green Belt, as I’ve already explained, the Proposal gives rise to three free-standing forms of Green Belt harm: the in-principle harm from inappropriate development; the harm to openness in both the spatial and visual dimension; and the harm to the third Green Belt purpose. Each of those harms attracts substantial weight against the Proposal, for the reasons I gave earlier.

Other harms

75. There are other harms arising from the Proposal as well, which need to be taken into consideration.

76. Beginning with heritage impact, Mr Hughes and Mr Bell agreed that, though the impact on the three designated assets is at the lowermost end of the less than substantial scale, the harm nevertheless attracted great weight because of the effect of policy.
77. Some limited weight is also to be attached to the minor harm to the non-designated assets, as the planning witnesses agreed.
78. Turning to landscape harm, Mr Bell attached moderate weight to the identified harm. Mr Hughes by contrast attached moderate to significant harm to this factor. Their views rest on the evidence of Mr Self and Mr Friend, respectively. As I have explained above, Mr Friend's approach is preferable, and it follows that Mr Hughes' higher adverse weight is the correct level for this harm.
79. On the sustainable transport issue, Mr Hughes attached limited to moderate harm to the absence of LTN 1/20-compliant cycling routes from the Site to Samuel Ryder School, and to Welham Green railway station. He was right to do so. The absence of compliant routes to locations like this may not be enough to amount to a breach of the NPPF para 105 test; but as a matter of principle, they remain material considerations which are adverse to the Proposal.

Benefits: housing

80. Turning to the benefits side of the equation, the main benefit which the appeal scheme would provide is the provision of housing.
81. As Mr Hughes explained, the weight to be given to housing can be approached in two ways: an overall assessment of weight to housing can be made; or each of the three components of that housing can be assessed and weighed separately. It is important, however, to recall Mr Hughes' point that the method adopted should not change the overall weighting to the element: the weight to all housing must be the sum of its parts; no less, but certainly no more either.
82. On the Appellant's approach of assessing the elements of housing separately, we agree that the weight to be attached to the market and affordable components is very substantial, in each case.

83. Where we disagree is in respect of self-build custom housing. The Appellant attaches very substantial weight to this component of the housing delivery. As Mr Hughes explained, however, that is too great a provision. The Bullens Green decision³ is instructive here. In that case, Inspector Masters assigned substantial weight to the provision of 10 self-build plots, which comprised 10% of the overall housing provision under that proposal. That is more, in both absolute and percentage terms, than the provision proposed by the Appellant in this appeal. The substantial weight assigned by Inspector Masters was in a context where she had two authorities' worth of need to consider, and where St Albans had no emerging policy at all to address the self-build issue to any extent.

84. We accept that the need for self-build plots in St Albans is greater now than it was at the time of Bullens Green. But the number of units on offer here is lower, and the emerging plan position is better, than it was at the time of the Bullens Green decision. And we do not know, because it is not in evidence, how the Welwyn Hatfield position was quantified by Inspector Masters.

85. Both Ms Gingell and Mr Moger attempted to disaggregate the Bullens Green decision, and to suggest that the appropriate comparator is just the St Alban's "half" of what was on offer in that case. That is a flawed approach. Inspector Masters was concerned with the proposal as a whole, assessed against the combined needs of the two areas: she did not attempt to break it down area by area. Nor should she have done: she was deciding one appeal, not two.

86. The result, we say, is that the weight to the self-build element should be in the same bracket now as it was in Bullens Green. Substantial weight is the correct assignment to this factor.

Other benefits

87. A number of other benefits are identified for the Proposal.

88. Beginning with PDL, Mr Bell assigned significant weight to the use of PDL land, on the basis that NPPF para 119 adopts such an approach at the strategic level, and on the basis that the Proposal meets the strict terms of the PDL definition in the NPPF's annex.

³ CD 14.6.

89. His approach, in this regard, is flawed. That is for three reasons.

90. First, the approach which should be taken to PDL in the Green Belt in the development control context is set out in NPPF para 149. That paragraph contains an exception from the concept of inappropriate development which is directly targeted at PDL – sub-para (g). That sub-paragraph tells you how to deal with PDL in the Green Belt. And it is common ground that the Proposal does not fall within the sub-para (g) exception (CD 8.3 para 6.13). To re-introduce PDL as a weighty benefit in the VSC stage is to undermine the para 149 approach, and to re-introduce PDL by the back door. There is no basis to do so.

91. In this regard, it is relevant to note the observations of the Court of Appela in *Dartford BC v SSCLG* (CD 13.7). In that case, it was alleged that the NPPF contained a conflict between the policies for the protection of the Green Belt, on the one hand, and policies encouraging the re-use of PDL, on the other. The Court of Appeal held that no such conflict exists. It did so in this way (para 11):

“There is in truth no conflict between these two core principles, as is demonstrated by the more detailed policies about the Green Belt. Paragraph 87 of the NPPF states: “As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.”

12 Paragraph 89 goes on to say that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. But that general policy is immediately qualified by exclusions, one of which is: “limited infilling or the *partial* or complete *redevelopment of previously developed sites* (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.” (Emphasis added.)

13 Accordingly, the NPPF accommodates the definition of previously developed land within the general policy about development in the Green Belt. If a new building is a partial redevelopment of a previously developed site it is not to be regarded as inappropriate redevelopment in the Green Belt, provided that it has no greater impact on the openness of the Green Belt than the existing development. The proviso also means that the encouragement of development on brownfield land is not, at least in the Green Belt, unqualified. So any possible tension is resolved.”

92. In other words, the appropriate place to address the role of PDL in the Green Belt context is through what is now the para 149(g) exception, and not as a general material consideration in the VSC balance.
93. Secondly, in any case, NPPF para 119, insofar as it deals with PDL, is concerned with strategic plan-making, not with development control decisions. Furthermore, para 119 is subject to footnote 47, which disapplies the policy where it would conflict with other policies of the Framework – which of course includes Green Belt. To add PDL weight to the VSC balance in these circumstances is to pull yourself up by your own bootstraps, and is another form of re-introducing the relevance of PDL despite the failure of the para 149(g) test.
94. Thirdly, and perhaps most importantly, the vast majority of the Site – well over 90% of it – comprises undeveloped green fields. There is no meaningful sense in which the Proposal involves a re-use of the Site at all. The terms used in the NPPF are not chosen at random. PDL is, as its name suggests, aimed at land which is previously developed. The NPPF treats PDL as synonymous with “brownfield”, which is itself telling. Those terms are apt for only a tiny fraction of our site: overwhelmingly, the Site is green fields (literally). To treat the Site as though it were not green fields but brownfield is plainly contrary to the spirit and purpose of the NPPF, and defeats the whole point of the policy preference given to brownfield land. The Site is PDL only on the most mechanistic, legalistic and literalistic reading of the NPPF; and Mr Bell and Mr Hughes both gave evidence that a mechanistic approach to the NPPF is unsuitable.
95. It is notable in this regard that, where previous inspectors have applied the PDL definition to pastureland in the curtilage of equestrian facilities, the proportion of developed land vs undeveloped green fields is not remotely comparable to the balance here. Thus in Lavendon Olney (CD 14.35), the proposal was for only 14 houses; Clover Court Clanfield (CD 14.34) concerned only four dwellings; and Maitland Lodge (CD 14.20) involved a 124% volumetric increase and an 80% footprint increase in built development, compared to 5,000% and 2,000% respectively for the Proposal here.

96. In short, none of those inspectors had to grapple with a Site with the sheer extent of green fields as this one. Nor did they have to grapple with the policy implications of such a site being treated as if it were entirely brownfield.
97. The PDL issue is therefore one which should carry no weight in the planning balance.
98. Turning to the economic benefits, Mr Hughes attached moderate weight to this matter, whereas Mr Bell assigned significant weight.
99. From his proof, it appeared that Mr Bell initially contended that the grant of significant weight was something which flowed from para 81 of the NPPF. Happily, there is no need now to decide on whether it has that effect, because Mr Bell accepted in evidence that NPPF para 81 does not in fact mandate the level of weight to be applied to this benefit. It is therefore a matter in the inspector's unfettered judgment.
100. In forming that judgment, I commend Mr Hughes' approach to the inquiry. The scheme will indeed have economic benefits; but these are nothing out of the ordinary, and are simply those that would be expected from any housing development of this scale. Furthermore, the benefits arise in a location which is low down in the settlement hierarchy, so that the benefits would crystallise in a location which is removed from the key areas of economic activity. Those are considerations which warrant the assignment of moderate weight only.
101. The next issue is biodiversity net gain. There is no dispute that the Proposal delivers 10% BNG, and that that is a benefit of the Proposal. The delivery of BNG, however, arises off-site. That is relevant because, as Mr Bell accepted, off-site BNG provision is in the nature of compensation, whereas on-site BNG is in the nature of mitigation. NPPF para 180(a) makes clear that mitigation is sequentially preferable to compensation; it follows that on-site BNG is sequentially preferable, and thus more beneficial, than off-site BNG.
102. For that reason, Mr Hughes was correct to reduce the weight to the BNG because it arises off-site. His assignment of moderate weight is preferable to Mr Bell's significant weight in the circumstances.

The planning balance

103. How, then, are these various threads to be drawn together into a conclusion?
104. The test, it is agreed, is the VSC test. That is not a flat balance, but a tilted one; and it is heavily tilted against the development. It is not enough for the benefits to outweigh the harms; they must clearly outweigh them if the Proposal is to meet the policy tests for permission.
105. The Proposal's benefits are not weighty enough to pass that test.
106. I fully accept that the need for housing, of all kinds, is acute in this district. There is no doubt but that St Alban's needs more homes. The ELP itself recognises that Green Belt land will need to be released to meet that need.
107. But as Mr Hughes, Mr Self and Mr Bell all agreed, it does not follow that this Green Belt site is required for housing. That depends on the importance of the Site and its contribution to the Green Belt.
108. And the Site is highly important to the Green Belt. It makes a major contribution to the function of the Green Belt around Colney Heath – indeed, it is one of the most important parts of the Green Belt in the whole of the village. The Appellant, unfortunately, has misunderstood and underestimated that importance.
109. The Appellant has also underestimated the other harms which its Proposal would cause.
110. On the other side of the balance, the Appellant has included assignments of weight to benefits which are not borne out by the evidence. In particular, the Appellant has overassessed the economic, BNG, and self-build benefits, and has misunderstood and misapplied PDL policy and incorrectly assigned a positive weight to it as a factor.
111. While the need for housing in St Alban's is undoubtedly acute, this is simply not the right place for those houses. The harms which would result are just too great to justify the loss of this part of the Green belt forever.
112. In those circumstances, the VSC balance resolves against the Proposal.

113. And all the parties to the inquiry agree that, if the VSC balance is failed, then the appeal fails too.

114. On that basis, I invite the inspector to dismiss the appeal and refuse permission for this inappropriate development.

Luke Wilcox

Landmark Chambers

28 September 2023