

**COLNEY HEATH PARISH COUNCIL (RULE 6 PARTY)**

**CLOSING STATEMENT**

**28th September 2023**

**LAND TO THE REAR OF 42-100 TOLLGATE ROAD& 42 TOLLGATE ROAD,  
COLNEY HEATH**

**Ref : APP/B1930/W/23/3323099**

## **CLOSING STATEMENT ON BEHALF OF COLNEY HEATH PARISH COUNCIL**

1. In the Parish Council's opening statement we asserted that Colney Heath is not a suitable or sustainable location for a large development such as the proposed scheme. During the course of the inquiry we have sought to present evidence in support of our assertion and also to challenge the evidence of the appellant where we believe it has not accurately reflected either the realities of life in our village or the impact on it if the scheme were to go ahead. This statement aims to focus on what we see as the critical areas of the evidence the inquiry has heard and to demonstrate why they lead us to believe that our initial assertion remains wholly valid.
2. Colney Heath is rural in character and is situated in the Green Belt. The National Planning Policy Framework states (para 137) that the essential characteristics of the Green Belt are its openness and permanence. The NPPF sets out the purposes of the Green Belt (para 138) and also states (para 147) that inappropriate development is by definition harmful to the Green Belt and should not be approved other than in very special circumstances. It follows that any development that is contrary to the purposes of the Green Belt is inappropriate and should not be permitted.
3. It should be noted that CHPC was neither a consultee nor in full agreement with any of the Statements of Common Ground. CHPC also draws attention to the fact that much of the evidence presented to this inquiry was not available to the inspector at the Bullens Green inquiry in 2021.
4. Let us turn now to the relevance of this to the present appeal. Colney Heath has an open character which is immediately apparent to residents and visitors alike and is a defining feature of the village. A recent review (CD 3.5) by ARUP concluded that the open character of the village, and the important contribution that it makes to the openness of the Green Belt, were such that it should continue to be regarded as washed over. This being so, it is clear that anything which detracts from the openness constitutes harm.
5. Thus the question arises as to whether the appeal scheme would detract from the openness of the village setting. In presenting the Parish Council's evidence, and also in his questions to the appellant's witness and with reference to photomontages presented in CD 5.25, Mr. Clemow demonstrated that the buildings constructed on the site would completely cut off

the view from the north-west corner to the distant south east, with a substantial reduction in openness. The loss of openness, and the fact that the loss would be permanent, clearly runs counter to the fundamental aim of the Green Belt.

6. Para 138(c) states that one of the purposes of the Green Belt is to safeguard the countryside from encroachment. The OED tells us that encroachment is advancement “beyond original or proper limits”, in this case advancement across the site from the current boundary formed by the rear of the houses in Tollgate Road. It is not only the fact that there is advancement but more particularly its extent that is striking. The garden boundary of No. 100 Tollgate Road is some 70m from the road. The illustrative masterplan (CD 5.18) has houses in the south east corner of the site i.e. that closest to No. 100, at some 260m from the nearest point of Tollgate Road, with the SuDS installation a further 60m into the field. The southern boundary of the built area (Field B) is a mere 50m from the river at the south east corner, leaving a relatively narrow corridor alongside the river. This surely represents a substantial encroachment from the original limit and is thus contrary to purpose (c) of the Green Belt.
7. Taken together, the loss of openness and the extent of encroachment lead to the conclusion that the appeal scheme would have a serious adverse impact on the Green Belt in both visual and spatial terms.
8. With regard to the proposed site, it is accepted by all parties that within the development as marked by the red line there are areas in Flood Zones 2 and 3. This being so, para 161a requires the application of a sequential test. Moreover, in his evidence to the inquiry Mr. Hughes stated that in his professional opinion a sequential test should have been requested at the application stage given that parts of the appeal site are in Flood Zones 2 and 3; CHPC agrees with this assertion. The appellant maintains that the test is not necessary as all building is restricted to Flood Zone 1. In reaching this conclusion they have failed to consider the entire area within the red line.
9. The appellant’s Flood Risk Assessment incorporated the tests which were carried out on the site. These took place during a summer of record temperatures and a March – July rainfall only 50% of the average. Notwithstanding the conditions at the time of the tests, it was found that groundwater levels were unusually high. The appellant’s argument that building

only in the area of lowest flood risk in a wider site where flooding is known to occur is undermined by precedent as referred to in our evidence. Previous planning inquiries have upheld the view that development includes all the areas within the red line and that disaggregation is not appropriate. In her decision at what is known as the Bushey appeal, Inspector Gilbert wrote:-

*“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”.*

10. Other inspectors have taken a similar line on the issue of disaggregation, details of which have been provided to the inquiry.
11. The clear implication of this decision is that it is not possible to disaggregate the different parts of a site when considering whether the sequential test is required; it is the entire site or the whole area within the red line which must be considered. The Parish Council maintains that the appellant has not considered the entire site, has not carried out the test and has failed to meet the requirements of para 161 of the NPPF.
12. It is the case that both national policy and the emerging Local Plan favour developments on previously developed (or brownfield) land as an effective use of land. The NPPF (para 120c) states that planning should give substantial weight to using suitable brownfield land for homes and other needs. Such a designation for the appeal site would thus carry greater weight in the planning balance than that for an undeveloped site. The appellant has claimed that the appeal site is in equestrian use and is therefore previously developed land.
13. The Parish Council does not agree that the appeal site is PDL as there is no basis for the claim that the site is in continuous equestrian use. The land was originally in agricultural use as shown by Mr. Clemow in his evidence. In order to demonstrate equestrian use it would be necessary to prove that a change of use for the land had been formally approved or that the land had been in equestrian use for at least 10 years; neither of these obligations can be met.

14. In 1996 an application relating to “land to south of Colney Heath Farm” was submitted to St Albans District Council. The application was for the “erection of stable with associated grooming and storage facilities”. A copy of the application is appended to CD 9.13. The application form (p.2) asked “Does your application involve a change of use?” and the NO option was selected. On p.3 a further question “Do the proposals involve a change of use of land?” and again the NO option was selected. There is no record since that time of a change of use for this land having been approved.
15. In a number of the appellant’s documents it is stated that the land which forms the appeal site, other than the buildings, hard standing etc. which form a very small part of the site, is used for grazing horses; this was also the terminology used by Mr. Self, the appellant’s witness. The owner’s statement (Appendix 3, CD 9.6) refers to grazing horses for much of the year, with any equestrian equipment only “temporary”.
16. As laid down in the Sykes judgement, there is an important distinction between grazing horses and keeping horses, as set out in CD 9.12, para 7. The former entails horses eating grass to an extent which supports life; this is an agricultural use of the land. In this judgement Mr. Justice Kilner Brown concluded that, in respect of the land, “you look to see what is its substantial use”. In this case the substantial use of the land is clearly grazing.
17. With regard to the claim of continuous equestrian use for at least 10 years, Mr. Clemow in his evidence showed a series of images which demonstrate that horses have not been regularly and continuously kept or exercised on the field which forms the appeal site for 10 years. It would be necessary to establish this to prove lawful equestrian use and thus that the land was PDL. Mr. Clemow demonstrated that the earliest evidence of continuous equestrian activity i.e. riding, training or exercising dates from 2016.
18. It therefore seems clear that, as there has been no approved change of use of the land nor continuous equestrian use of the land for at least 10 years, the site should not be considered as previously developed. We contend that the proposed building will take place on agricultural land, the loss of which should be considered in the planning balance.

19. The NPPF, at para 10, states that “at the heart of the Framework is a presumption in favour of sustainable development”. In practice this could be taken to mean that developments should be prioritised in locations which are or could be made sustainable. We now wish to consider whether this applies to Colney Heath.
20. The most important consideration for the sustainability of a location is transport; this markedly affects the ability of residents to travel to school, work, leisure activities etc. For a location to be described as sustainable it requires good public transport and an environment which encourages walking and cycling. Colney Heath falls far short of these criteria.
21. The current daily bus service is inadequate and unreliable. It is recognised that the provisions of the s106 agreement would lead to significant improvements in this route but without the detail of the improved service it is not possible to identify the benefits it would bring. Travel to many essential destinations, such as doctors’ surgeries and hospitals, will still require at least one change with implications for journey times and also cost. These improvements, while welcome, are time-limited, hence there is a real concern that after 3 years the position will revert to the status quo ante - or worse.
22. The condition of the local infrastructure is such that walking and cycling are not encouraged. Walking distances to most essential amenities – shops, schools, medical facilities – are too great to be practical for most people. Our assessment of the suitability of local walking routes has shown that not one meets a satisfactory level. Pavements are often narrow, of poor surface quality and overgrown. Other than for social purposes, leisure or short walks to the local shop residents do little walking; journeys on foot beyond the confines of the village would be rare.
23. The position for cycling is similar. The three key roads which lead to, through and from the village are all narrow and carry significant volumes of traffic; three of the four roads leading from the central roundabout suffer problems with parked cars, narrowing the usable road width to a single carriageway in places. Such conditions are dangerous for cyclists, and render cycling beyond the village to access schools, shops and other amenities problematic for most cyclists. The local cycle routes which could be used for regular travel to schools and work all have safety concerns, some are unlit and/or in poor condition and therefore unsuitable, especially for winter afternoons and evenings.

24. Our analysis of a number of local cycling routes, most of which were put forward in the appellant's Transport Assessment (CD 5.12), was carried out by a resident with extensive direct experience of transport and traffic issues; the study used the standard LTN 1/20 as a reference. The routes examined included some proposed as being suitable for travel to schools and work, and also routes to the nearest railway station. This showed that none of the routes studied was satisfactory; all were either not direct or even circuitous, too high risk or too far for cyclists of all ages and abilities, this being the standard required for an acceptable route.
25. It should be noted that the Parish Council is the only body which has conducted formal assessments of the secondary walking and cycling routes, and also of some primary cycling routes, which link the site to surrounding areas. Although these routes are included in the St Albans LCWIP, there is no evidence that their suitability has been previously assessed other than by the Parish Council.
26. A particular issue for both some walking and cycling routes is the need to use the A1(M) underpass which connects Colney Heath to amenities in Hatfield, including schools, shops and doctors' surgeries. Flooding is a persistent problem and I know from painful personal experience in the middle of a sunny afternoon that the underpass is not a nice place due to anti-social behaviour. Cosmetic improvements are promised but I suggest that a pig with lipstick is still a pig. It would need more than cosmetic improvements to encourage many residents to go near it.
27. The combination of these factors – poor bus services, distances to necessary amenities and unsafe and unsatisfactory conditions for walking and cycling – result in a high degree of car usage. The reality is that virtually all adults drive everywhere, with implications for congestion and pollution; it is difficult to see this changing in the short to medium term. The proposed development would result in hundreds more cars on local roads, thereby exacerbating these problems.
28. Colney Heath is a small to medium sized village that, contrary to the appellant's claim of "a long list of local facilities", has very limited facilities. Those that are present are very useful to and valued by residents but do not come close to meeting the needs of day-to-day living

in the village. For example, it is not possible to buy an ordinary family meal in the local shop. Residents need to travel beyond the village to purchase everyday necessities, to seek medical treatment and to access employment and most social and leisure activities. The proposed development would place further stress on places in the local school, resulting in more children having to attend primary as well as secondary schools elsewhere. The village simply cannot support hundreds more new residents.

29. CHPC continues to hold serious concerns regarding traffic in Tollgate Road. These concerns include the effect of parking on traffic flows and safety, particularly around the junction with Fellowes Lane which is directly opposite the proposed site access. A further concern is the impact of traffic generated by the development site on residents in the immediate vicinity, especially those at No. 44.

30. To conclude then, we come to the inferences we draw from the evidence regarding the suitability and sustainability of Colney Heath as a location for the proposed development. We provide these as the answers to the following questions:

Does the proposed development meet the purposes of the Green Belt? NO

Is the land previously developed? NO

Has the appellant met all the requirements of the NPPF? NO

Does Colney Heath have the facilities and amenities to support the development? NO

Is the development sustainable? NO

Have very special circumstances been proved? NO

and thus to the final question:

Should the development go ahead? NO

The Parish Council urges you, Sir, to dismiss this appeal.



