

# LAND TO REAR OF TOLLGATE ROAD, COLNEY HEATH

## Appellant's Closing Submissions

### Introduction

1. For all the documents before you, the decisive question in this appeal is simple. And it is agreed. The question is:

*Do this scheme's benefits clearly outweigh its harms?*

2. If they do, then we agree that the appeal is supported both by local and national policy, and should be allowed.
3. In answering that decisive question, most of the important points are agreed. In particular, the Council agrees<sup>1</sup> with the Appellant that:
  - (i) The proposal is acceptable in terms of air quality, living conditions, noise, flood risk and highways safety/capacity.<sup>2</sup>
  - (ii) The Council also accepts that critical Government objectives are not being met in this area. In particular, as we explain below, the “plan-led” system in St Albans has collapsed. The delivery of housing – market, affordable, self and custom-build – has collapsed.

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<sup>1</sup> See the cross-examination of Mr Hughes.

<sup>2</sup> While the Parish Council seeks to revive these issues, we emphasise again, there is no objection on these grounds from the relevant statutory consultees, nor any of the in-house experts at the Council, in areas that relate to the Rule 6 party's evidence. On the contrary, the relevant consultees are satisfied with the scheme subject to various conditions. In those circumstances, you are (i) bound to attach considerable weight to the views of statutory consultees, and would therefore (ii) need cogent and compelling reasons to depart from the conclusions of those technical experts: R (Akester) v DEFRA [2010] EWHC 232 (Admin), at [112]. That sets a very high bar for the Rule 6 party's evidence, and it does not meet it.

Needs are spiralling. The Council accepts they are “*substantial and serious*”.<sup>3</sup> In relation to affordable housing, Mr Hughes described “*very acute needs*” and the manner in which the shortfall was further accumulating was a “*grave matter*”. Overall, as another Inspector recently found in this area, the diagnosis is “*bleak*”.<sup>4</sup> Things are only getting worse. And there is, as we will explain, no prospect of a plan-led solution for many years to come.

- (iii) We agree that for the Council to meet its needs for housing, the use of Green Belt land is not a choice. It is **inevitable**. That is obviously right: over 81% of St Albans is washed over by the Green Belt,<sup>5</sup> i.e. everything outside the urban areas.
- (iv) Of course, in a properly functioning local planning authority area, national policy would expect those releases of Green Belt land to be managed at least every 5 years through a local plan process. But the last plan in St Albans was adopted almost 30 years ago. And as we will explore, as we close this inquiry, we still have no idea **if** and **when** St Albans will adopt an up-to-date local plan, or **what** that new plan might actually include.
- (v) That leads to a catch-22. Housing needs are spiralling. It is inevitable that Green Belt land will be required to meet them. The Council tells us that can only be achieved through the “plan-led” system. But there is no “plan-led” system in St Albans to manage those releases.
- (vi) That is why, if we are actually to begin to meet needs in St Albans **now**, we **cannot** – at least in the short-medium term – rely on the “plan-led” system. If urgent and critical needs are to be met not in 5 years, not in 10 years, but **now**, a solution must be found

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<sup>3</sup> PH PoE §6.9.

<sup>4</sup> [CD14.6], §48.

<sup>5</sup> [CD3.1]; §3.15.

through the development management process. Through planning applications (and appeals) just like this one. Which will inevitably involve the use of land that is currently washed over by the Metropolitan Green Belt. That means that approvals – both at the local level, and at appeals like this one – will **inevitably** be required to meet these needs in the shorter term applying the planning balance at §148 NPPF, and the decisive test we have set out above. Again, there really is no other option. That is a statement of the inevitable.

(vii) Further, the Council agrees that:

- (a) None of its objections on heritage, landscape character or locational sustainability form stand-alone reasons which could justify dismissing the appeal. The only reason that stands on its own merits, so the Council says, is the objection over Green Belt issues. The same objection which will arise for almost every new proposal of this type in this district. We consider it below.
- (b) Our scheme would not have any significant impacts on the character of the landscape or townscape in the immediate vicinity of the site, and there will be no significant effects on the wider rural landscape character around Colney Heath.<sup>6</sup>
- (c) The scheme's profound public benefits outweigh any harm to the significance of heritage assets under paragraph 202 of the NPPF.<sup>7</sup>

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<sup>6</sup> Main SoCG; §6.22 [CD8.3].

<sup>7</sup> Mr Hughes in cross-examination.

(d) That there are no other technical constraints to the scheme's delivery.

4. In the end, the appeal site is a relatively flat, pleasant but unremarkable collection of equestrian fields surrounded by houses and stables to the north and east, and dense planting to the west. If St Albans ever want to start meeting the shortfalls of not tens, or hundreds but **thousands** of homes within the district, this is the kind of scheme that must be approved. Its benefits clearly outweigh its harms, and for reasons we will explain below, the balance at §148 NPPF and in Policy 1 of the District Plan support allowing the appeal and granting planning permission.

### **The plan-led system in St Albans is broken**

#### (i) The historical position

5. For decades, this part of Hertfordshire has been let down by the planning system.
6. Years go by – decades pass – national policies come and go. But through it all this Council has managed to keep its head buried firmly in the sand. There's been no strategic review of Hertfordshire's Green Belt in almost 40 years. New plan-making exercises have been tried. They have failed. As Mr Hughes rightly accepted in cross examination, the statutory development plan for the district relates to a completely different era.
7. The St Albans local plan [**CD3.1**] was adopted in 1994 - 18 years even before the 1<sup>st</sup> NPPF. That makes it the oldest local plan in the country.

8. The main parties agree that this plan is *deemed* out of date under national policy.<sup>8</sup> And we also agree that it is *substantively* out of date. Indeed, it could not be any *more* out of date. This plan became time-expired over 2 decades ago. It sought to accommodate the needs of a different generation, i.e. from 1981 – 2001. Those needs were identified in the Hertfordshire County Structure Plan 1986 Review, and the 1991 Alterations – in a totally different legal and policy context for plan-making in England. Of course, neither of those structure plans was predicated on a requirement to identify – let alone *meet* – objectively assessed needs for housing or anything else. Neither of the Structure Plans engaged with any strategic review of the St Albans Green Belt boundaries. Indeed, the Green Belt boundaries in this district have *never* been amended in light of a need to accommodate objectively assessed needs. Never.
9. That matters. Because this local plan was adopted almost 2 decades before the “*radical*” shift brought about by the 2012 NPPF, which made meeting objectively assessed needs for housing “*not just a material consideration, but a consideration of **particular standing***”.<sup>9</sup> Mr Hughes agreed that this has a bearing on the weight we should attribute to the plan.
10. Remarkably, even in 1994 it was accepted that there was a need to review the District Plan “*as a matter of urgency*”.<sup>10</sup> Of course, almost 30 years on and we are still waiting.

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<sup>8</sup> §11(d) and footnote 8 NPPF.

<sup>9</sup> See the *Gallagher v Solihull* case at [CD13.14], §31 and §97-§98. Hickinbottom J’s conclusions on these points were upheld by the Court of Appeal.

<sup>10</sup> [CD2.1], para 1.18.

(ii) The Regulation 18 consultation

11. There have been two attempts to adopt a new plan in St Albans since 1994. Both failed. The most recent attempt failed in 2020 both because of issues around the duty to cooperate, but also the soundness of the Council's approach to assessing its Green Belt.<sup>11</sup>

12. Just this week<sup>12</sup>, the consultation period closed on the Regulation 18 consultation period, which – so the Council promise – is to be followed by a further Regulation 19 consultation next year. The Council is proposing that it will be able to move from the point it has reached now to adoption in just over two years.<sup>13</sup> As Mr Hughes accepted in cross examination, this is a considerably more optimistic timetable than the Council's previous attempt was able to achieve (i.e. two years from Regulation 18 consultation not to adoption, but to abortive EiP hearings). There are, unfortunately, good reasons to think the latest timetable far too optimistic. Considering next steps:

(i) The Council now has to analyse the consultation responses and make any necessary changes to the emerging plan.

(ii) Then it has to draft the Regulation 19 consultation. That draft has to be consulted on. The responses must be analysed and again any changes will have to be made.

(iii) Next, the Council will have to draft a submission version of its plan. That will be submitted to the Secretary of State for examination. The examining inspector will, in due course, hold hearings and reach views on matters of soundness and legal

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<sup>11</sup> [CD9.26]; App B.

<sup>12</sup> See the cross examination of Mr Hughes.

<sup>13</sup> [CD3.3]; p.6.

compliance. Further modifications may be required. It is simply too early to say. The Council's LDS accepts that several of the steps in its timetable are outside the Council's control.

- (iv) The timetable is further complicated by the fact that central Government promises imminent changes to the legal structure of and policy framework for plan-making – changes which would inevitably have implications for the Council's timetable.
- (v) In this light, adopting a plan by 2025 errs considerably on the side of optimism.
- (vi) But even if the plan were adopted in 2025, Mr Hughes was right to accept that its effects in terms of delivery and meeting needs will not be immediate. On the contrary, even on that optimistic timetable the Council does not expect any material increase in housebuilding until at least 2028/29<sup>14</sup> - 5-6 years away. At best.

13. That matters because Mr Hughes agreed in cross-examination that:

- (i) The adoption of a new plan is essential in order to address the district's dire housing shortfalls.
- (ii) The release of significant areas of Green Belt land is inevitable as a consequence of any reasonable strategy to meet the district's needs. Indeed the emerging plan currently proposes more than 10,000 homes on greenfield Green Belt land.<sup>15</sup>
- (iii) But for now, we cannot know **if** or **when** the Council will ever adopt another local plan or **what** that final plan is going to say.

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<sup>14</sup> [CD3.1], p.27.

<sup>15</sup> [CD3.1]; p.27.

14. Again, that is the Catch-22. In the meantime, in the years until a plan is adopted, assuming a plan will eventually be adopted, if needs are to be met at all, it is inevitable that meeting them will depend on the development management process. Again, given the inevitability of using land that is now within the Green Belt to accommodate new homes, meeting those needs will require permissions to be granted applying the test at §148 NPPF. Again, that is not a choice. It is inevitable.

(iii) The consequences of these failures to plan

15. Mr Hughes accepted in cross-examination that the plan-led system envisaged by the NPPF has failed to deliver sufficient housing in St Albans. We agree. So the position is simple:

(i) The scale of the housing shortages within the district are staggering. We return to them below. Mr Hughes agrees that they are both “*substantial and serious.*”<sup>16</sup>

(ii) We cannot possibly know if there’ll be a plan-led answer to this crisis in the short or medium term.

(iii) We know, and again Mr Hughes has agreed, that the use of Green Belt land is inevitable to meet these shortfalls.

16. Which is why if the Council’s needs are to be addressed in the short or medium terms, then (a) that must be done through the development management process on Green Belt land where there is an impact on the 3<sup>rd</sup> Green Belt purpose (encroachment) and (b) it is inevitable that the test at §148 NPPF will be engaged. Not just engaged. For needs to be met, the §148

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<sup>16</sup> PH PoE §6.9 [CD9.10].



balance will actually have to be *passed*. We return to how the balance should be struck in this case below.

## **The scheme's benefits will be profound** <sup>17</sup>

### (i) Affordable housing

18. The scale of shortfall in affordable housing delivery in St Albans could not be much worse.

It is catastrophic. The parties agree that in St Albans:

- (i) 91% of the district's needs over the last 9 years remained unmet;<sup>18</sup>
- (ii) The net shortfall during that period has been over 5,000 homes, with projected further shortfalls over the *next* 5 years alone set to exceed 5,000 homes;<sup>19</sup>
- (iii) Those languishing on the housing register in St Albans are waiting on average not weeks or months but **years** to find an appropriate affordable home. Each and every property which becomes available in Colney Heath parish is subject to between 34-95 bids.
- (iv) This is the least affordable district of all local authorities in the East of England<sup>20</sup> – including for those on lower incomes<sup>21</sup>.

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<sup>17</sup> OB PoE; §5.56-5.61 [CD9.6].

<sup>18</sup> AH SoCG; p.9; Figure 4 [CD8.1].

<sup>19</sup> AH SoCG; p.9, Figure 4 [CD8.1].

<sup>20</sup> AG PoE, p.38. Figure 7.7 [CD9.1]; See also the cross-examination of Mr Hughes.

<sup>21</sup> AG PoE, p.41. Figure 7.10 [CD9.1]; See also the cross-examination of Mr Hughes.

- (v) Mr Hughes agreed that position is **acute**. He also agreed that the position was very unlikely to be remedied for many years. On the contrary, as Ms Gingell explained, the position is likely to get much, much worse.
19. Mr Hughes rightly accepted in cross-examination that the enormous shortfall **should** be dealt with within the next five years – indeed this was the approach taken in the Roundhouse Farm appeal.<sup>22</sup> However, the parties agree that at the current rates of delivery, it is inconceivable that this will actually happen. In fact, the situation over the next five years is projected to get much worse.<sup>23</sup>
20. The position is simple and stark: supply of affordable housing in this district has collapsed. Totally collapsed. And it is only getting worse.
21. In all the numbers, one could be forgiven for losing sight of what really matters. We are talking about housing some of the most vulnerable in our society. These are, as the Secretary of State has put it in other appeals, real people in real need **now**. Their voices have not been heard at this inquiry. But these are people in real and urgent needs. People of all backgrounds: key workers, parents and children. All united by one thing: they need a safe, warm and dry place to call home. They would wish to make that home here if only there was somewhere affordable for them go. And they are relying on the floundering planning system in St Albans to provide a home for them.
22. The most invidious consequence of this Council’s chronic failure to plan is that the needs of this segment of the community have gone unheeded and unmet for so many generations. The socio-economic costs of failing properly to house this segment of the population for so

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<sup>22</sup> [CD14.6]; DL:53.

<sup>23</sup> See p.13, Figure 7 [CD8.1].

long can never be tallied. But what we can say is that this failure represents a fundamental conflict with national planning policy:

- (i) The purpose of the planning system is to contribute to the achievement of sustainable development: §7 NPPF.
- (ii) That means ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations: §8(b) NPPF.
- (iii) As Inspector Masters said in 2021 in the Roundhouse Farm decision:<sup>24</sup>

“In SADC, **the position is...serious**. Since the period 2012/13, a total of 244 net affordable homes have been delivered at an average of 35 net dwellings per annum. Again, this equates to a shortfall also in the region of 4000 dwellings (94%) which, if to be addressed in the next 5 years, would require the delivery of 1185 affordable dwellings per annum.

The persistent under delivery of affordable housing in [this district and Welwyn Hatfield] presents **a critical situation**. Taking into account the **extremely acute** affordable housing position in both SADC and WHBC, I attach very substantial weight to the delivery of up to 45 affordable homes in this location in favour of the proposals” [emphasis added].

- (iv) That the shortfalls are so large and growing doesn’t make the contribution from this scheme’s 60 units less important. On the contrary, in the context of net annual delivery figures of 56 affordable homes over the last decade, projected delivery of 35 affordable homes a year over the next 5 years, and worsening affordability<sup>25</sup> **across all of St Albans**,<sup>26</sup> an offer of 60 affordable homes<sup>27</sup> represents a very substantial contribution to local supply.

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<sup>24</sup> [CD14.6]; DL:53-4.

<sup>25</sup> AG PoE, p.38. Figure 7.7 [CD9.1].

<sup>26</sup> AH SoCG; p.13; Figure 7 [CD8.1].

<sup>27</sup> In excess of the the adopted policy requirement of 35% in Policy 7A.

(v) The proposal is for a mix of tenures all of which meet the NPPF definition of affordable housing<sup>28</sup>. The tenures are designed to respond to a mix of needs which arise in this district. Different parts of that mix will be accessible to a range of households of different sizes and incomes. All of them will be affordable – both by definition, and in reality. All of this will, as Ms Gingell explained, make an important contribution to the delivery of mixed and balanced communities in this district.

23. The position is clear. The shortfalls in the delivery of affordable housing are *very* substantial. The needs are *very* substantial. The scale of the crisis in affordable housing and affordability is *very* substantial. The delivery of homes to meet needs is a benefit which both parties agree should attract **very substantial weight**.<sup>29 30</sup>

(ii) Market housing

24. The position on the delivery of market housing in this district is no better.

25. Looking backward, i.e. over the last 3 years of the housing delivery test, the Council accepts its shortfalls are **substantial**.

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<sup>28</sup> Annex 2, NPPF

<sup>29</sup> AH SoCG §10.17 [CD8.1].

<sup>30</sup> Despite the Council throughout this application and appeal process consistently attributing very substantial weight to the affordable homes proposed, Mr Hughes has subsequently sought to introduce a scale within the scale in an attempt to attribute a lower level of very substantial weight to the scheme's affordable housing offer. Ms Gingell explained in examination in chief why such an approach was problematic. Indeed, the Appellant has not been able to identify any other case where a Committee or Inspector has endorsed such an approach and you, Sir, are invited to reject it.

26. Looking forward, the parties agree the housing land supply shortfall is **substantial**,<sup>31</sup> that the Council has a **severe** and **acute** shortfall in the delivery of market housing.<sup>32</sup> On the Council's case it has a 2 year housing land supply set against a requirement of 1,066 homes per year.<sup>33</sup> On the Appellant's calculation, the position is more acute still, i.e. there will be shortfall in housing delivery over the next five years of 3,195 homes.<sup>34</sup>
27. All of those numbers, of course, measured against minimum 5 year targets: §74 NPPF. Which should be a floor and not a ceiling to delivery. Of course, St Albans has also failed the most recent Housing Delivery test by hundreds and hundreds of homes.<sup>35</sup>
25. Inspector Masters considered this issue in the Roundhouse Farm decision<sup>36</sup>:

“It is common ground that neither SADC or WHBC can demonstrate a five year supply of deliverable homes. Whilst there is disagreement between the parties regarding the extent of this shortfall, the parties also agreed that this is not a matter upon which the appeals would turn. I agree with this position. Even taking the Councils supply positions of WHBC 2.58 years and SADC at 2.4 years, the position is a **bleak** one and the shortfall in both local authorities is **considerable and significant**” [emphasis added].

26. Mr Hughes accepted that the situation since 2021 has further deteriorated and the diagnosis remains “*bleak, considerable and significant*”. He agrees that significantly boosting supply has been an important objective of Government policy for many years, and was a major thrust of the 2012 NPPF. He agrees it's an important objective. However, even on the Council's

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<sup>31</sup> Main SoCG, §6.6 [CD8.3].

<sup>32</sup> Main SoCG, §6.52 [CD8.3].

<sup>33</sup> [CD10.3]; p.31.

<sup>34</sup> OB PoE; App 1, p.6 [CD9.6]

<sup>35</sup> The Council scored only 69% which activates the tilted balance: see Main SoCG; §6.7 [CD8.3].

<sup>36</sup> [CD14.6]; DL:48-9.

most optimistic projections, it will be another 5-6 years before there is any significant increase in housing provision.<sup>37</sup>

27. Again, the imperative at §8 NPPF of ensuring enough homes are provided to meet the needs of present and future generations is being failed in St Albans. The planning system is failing in its most basic task here. And those failures are having dire social, economic and environmental consequences: families unable to afford somewhere to live, unsustainable solutions with people being forced to find a home further away from where they work, shop and socialise. Economic growth which simply is not and cannot happen without sensible population growth. When it comes to this scale of failure to deliver housing, justice delayed is justice denied.
28. Which is why the parties are agreed that the appeal scheme, at 81 market dwellings, could be delivered over the next five years and this would make a material contribution towards supply to which **very substantial weight** should be given.<sup>38</sup>

(iii) Self-build and custom homes

33. Since the 2012 NPPF, the Government has required local authorities to plan for a mix of housing which includes those who wish to build their own homes. The PPG tells us<sup>39</sup> that self-build or custom build “*helps to diversify the housing market and increase consumer choice*”. And we’re specifically told to plan to meet the needs of self-builders: §62 of the 2023 NPPF.

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<sup>37</sup> [CD3.1]; p.27.

<sup>38</sup>Main SoCG; §6.53 [CD8.3]. This is also aligned with the approach of Inspector Masters in the Roundhouse Farm Decision at §49 [CD14.6].

<sup>39</sup> PPG on “*Self-build and custom housebuilding*”, §16a.

34. Unlike most areas of housebuilding, this is fortified by a statutory duty. Section 2A(2) of the Self-build and Custom Housebuilding Act 2015 (which was inserted by section 10 of the Housing and Planning Act 2016) **requires** local authorities to “*give suitable development permission in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority’s area arising in each base period*”.
35. Despite this, as Mr Hughes agreed, the development plan is completely silent in relation to self-build or custom housing. We agree that the Council is not meeting its statutory duty to meet demand identified on its Self-build Register.<sup>40</sup> Mr Moger’s evidence – none of which is contested – shows that there were 735 entries on St Albans Self-Build register,<sup>41</sup> although true need is likely to be substantially higher when one considers secondary data sources.<sup>42</sup>
36. But even simply focusing on the much lower numbers on the Council’s register:
- (i) St Albans fell short by 95 plots in Base Period 1, 137 plots in Base Period 2, 100 plots in Base Period 3 and 80 plots in Base Period 4. A further 76 consents are required by the end of Base Period 5 in October 2023<sup>43</sup>, or that will be a further failure to comply with its statutory duty.

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<sup>40</sup> Main SoCG; §6.57 [CD8.3]

<sup>41</sup> AM PoE; p.44, Figure 4.1 [CD9.2].

<sup>42</sup> AM PoE; §4.12-4.30 [CD9.2].

<sup>43</sup> AM PoE; p.53, Figure 5.2 [CD9.2].

(ii) Analysis of supply now against the criteria listed at paragraph 038 of the PPG has found a total supply of only 31 plots within the district<sup>44</sup> - less than half of that counted in Roundhouse Farm appeal.<sup>45</sup> That supply position is uncontested.<sup>46</sup>

(iii) Finally, the emerging plan strategy would make provision for a total of just 306 serviced plots across the emerging Plan period to 2041.<sup>47</sup> The problem - as Mr Hughes rightly accepted - is that this strategy is destined to fail to meet both existing unmet needs as well as future needs for this type of housing.

37. So we have a specific kind of housing, subject to specific statutory duties for which there are specific needs. Those are important needs this scheme makes a material contribution toward meeting.

38. Inspector Masters considered St Albans' self-build housing position in the Roundhouse Farm decision in 2021 and concluded that:

“In common with both market housing and affordable housing, the situation in the context of provision of sites and past completions is a **particularly poor one**. To conclude, I am of the view that the provision of 10 self build service plots at the appeal site will make a positive contribution to the supply of self build plots in both local planning authority areas. I am attaching substantial weight to this element of housing supply.”<sup>48</sup>

39. That poor situation has since worsened. This scheme's offer of 6% (9 plots) should be afforded **very substantial weight** on the basis of: (a) an 80% increase on the number of units secured in St Albans compared to Roundhouse Farm; (b) a 160% increase in the

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<sup>44</sup> AM PoE; §5.8 – this is during the relevant period of the last five years.

<sup>45</sup> Albeit this detailed assessment against PPG wasn't undertaken in the Roundhouse Farm decision.

<sup>46</sup> See cross examination of Mr Hughes.

<sup>47</sup> AM PoE; §5.22 [CD9.2].

<sup>48</sup> [CD14.6], para 52.



shortfall in St Albans since the Roundhouse Farm decision which continues to increase; (c) a lack of an adopted plan policy to resolve that shortfall; (d) an emerging plan strategy that is bound to fail; and (e) an offer which is double that proposed in that emerging plan's draft policy.

(iv) Sustainable location

40. The appeal site is in a sustainable location where residents will have a genuine choice of transport modes, including public transport, walking and cycling options. Again, the main parties agree that:<sup>49</sup>

- (i) In light of the Appellant's contribution towards an enhanced bus service – dealt with further below – the highway authority's objection on public transport grounds is not maintained.<sup>50</sup>
- (ii) There is no objection from the LPA or the Highways Authority in relation to walking routes to and from the site to local services and facilities.
- (iii) This is not a case in which there would be an unacceptable impact on safety so as to justify refusal on highways grounds within the meaning of §111 NPPF.
- (iv) The site access is safe and appropriate.

41. So far as the highways authority's case goes, we are left with an objection in relation to certain cycling routes. Albeit the LPA accepts this objection does not amount to a reason for refusal on its own.

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<sup>49</sup> See the cross-examination of Mr Carr.

<sup>50</sup> Transport SoCG; §3.13 [CD8.2].

42. The starting point is §105 NPPF which requires:
- (i) Significant development to be focused on locations which are or can be made sustainable, through offering a **genuine choice** of transport modes; noting that:
  - (ii) Opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
43. Further, §110(a) NPPF requires decisionmakers to ensure that appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location.
44. These are not 1 size fits all policy prescriptions. They require careful judgment. On the nature of the site and its location, and the nature of the relevant scheme. In the end, national policy seeks a **genuine choice** of opportunities which are **appropriate** to the site and the scheme. That does not import a requirement for every service or facility to be accessible to every user by every mode of transport – i.e. the approach adopted by Mr Carr, who confirmed in cross-examination that he had adopted this absolutist approach to the policy without any reference e.g. to the nature this site.
45. To take each mode in turn:
46. First, walking. The District and County Councils accept that there is a good range of services and facilities accessible to our site on foot. The Parish Council disagrees.<sup>51</sup> They have relied on the Welsh Tool to assess walking routes<sup>52</sup> and Mr Dimbylow explained in his evidence in

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<sup>51</sup> JC PoE; p.35; Appendix 5, [CD9.14].

<sup>52</sup> [CD9.18].

chief that the assessment was flawed in at least two ways: (a) the Parish has failed to assess routes that residents of the scheme would actually use<sup>53</sup>; and (b) it lacks objectivity.<sup>54</sup>

47. You have, sir, already walked many of these routes. Mr Dimbylow has explained that<sup>55</sup>:

- (i) From the site, you can walk safely and easily to the shop, to the bus stops, to the primary school, the pre-school and to the pub.<sup>56</sup>
- (ii) There are a few locations where the walking audit identified improvements to pedestrian facilities would be beneficial. These are identified as part of the mitigation measures suggested by the draft proposed conditions.<sup>57</sup>

48. Second, public transport. Again, both the District and County Councils now agree that the site offers good accessibility to services and facilities in the wider area by public transport. Again, the Parish disagrees. But Mr Dimbylow's evidence shows that:

- (i) Bus stops for a range of routes are only a short walk from the site.<sup>58</sup>
- (ii) Buses from those stops can be used to access a wide range of services and facilities, including all of the amenities of St Albans. That, of course, includes a wide range of local secondary schools – including Samuel Ryder Academy<sup>59</sup> – to which we will return.

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<sup>53</sup> The Inspector is directed again to Mr Dimbylow's audit at **[CD5.12]** which is more appropriate.

<sup>54</sup> See for example, **[CD9.18]**; p. 6 and unsurprisingly, all of the assessed routes failed.

<sup>55</sup> This is not contested by the Council.

<sup>56</sup> ID PoE; p5 - Figure 3.1; p.39 – App ID1 **[CD9.4]**.

<sup>57</sup> ID PoE; §3.5 **[CD9.4]**.

<sup>58</sup> ID PoE; p.12-13; Tables 3.3 and 3.4 **[CD9.4]**.

<sup>59</sup> ID PoE; §3.38-3.42 **[CD9.4]**.

(iii) Existing and new residents will benefit from improved bus connectivity in light of the Appellant's providing a contribution of nearly £1.3m (over three years)<sup>60</sup> to enable HCC to provide an enhanced bus service similar to the 305, but with two services per hour weekdays and Saturday, with the introduction of a Sunday service.<sup>61</sup> On the Council's own definition,<sup>62</sup> this will become a "*key strategic bus route*".

49. What all of this means is that bus services available to new residents of the development offer the opportunity to make use of bus travel as a sustainable route choice to and from the development.<sup>63</sup>

50. Of course, in 2021, Inspector Masters considered the issue of locational sustainability of a site around a 10-15 minute walk to the north-east of this site. In that appeal, "*the Councils contended that the site was in an unsuitable and isolated location as a result, it would fail to provide satisfactory access to services and facilities by means other than the private motor car.*" This is similar to the case run by the Parish Council before you. In finding that location to be sustainable, Inspector Masters decided that:<sup>64</sup>

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<sup>60</sup>One of the Parish Council's key concerns is what happens after three years? The Inspector is directed to **[CD17.1]**, which refers to recent national research demonstrating the value for money of supporting local bus markets: at pg. 65. It also refers to a 2020 updated report also by KPMG with information on case studies of increased frequencies and increases in patronage following that initial investment. The purpose of the contribution is to assist the County Council with establishing an additional viable bus service in the long run.

<sup>61</sup> Transport SoCG, §3.13 **[CD8.2]**

<sup>62</sup> **[CD3.6]**; p.28; §6.22

<sup>63</sup> ID PoE; §3.42 **[CD9.4]**.

<sup>64</sup> **[CD14.6]**, DL:37-40.

- (i) there are bus services within close proximity, which “*provide an alternative mode of transport to the private car and could provide an important alternative to those sectors of the community who do not have access to a private car*”;
- (ii) “*taking into account average cycle times and distances to facilities outside of Colney Heath as set out within the facilities plan...**cycling provides a reasonable alternative** in this location to the private car*” [emphasis added] – we return to cycling below; and
- (iii) “*the facilities and services available within Colney Heath and the accessibility of these facilities both on foot and by cycle mean that a number of day to day needs could be met without reliance on the private car. As a result, the location of the appeal site cannot be described as isolated.*”

51. In cross-examination, Mr Carr accepted the appeal site is preferable to the Roundhouse Farm site from a locational sustainability standpoint in every respect (proximity to bus services and other facilities, pedestrian access and the provision of the bus service enhancement) **save for cycling**, where he felt unable to pick one site over the other.

52. On cycling, of course, Mr Carr points to no material changes e.g. in local, regional or national policy or guidance which should lead you to take a different view to that of Inspector Masters. There isn’t any. He relies on only explanation for this change appears to be the reliance he places on Department for Transport Local Transport Note 1/20,<sup>656</sup> which he rightly accepted<sup>67</sup>:

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<sup>65</sup> [CD16.4].

<sup>66</sup>In examination in chief, Mr Dimbylow also considered the assessments undertaken by the Parish Council in relation to LTN 1/20 within [CD9.17] and explained that he did not consider the assessment process used to be applicable for the purpose relied on. Unsurprisingly again, every route assessed failed.

<sup>67</sup> See the cross-examination of Mr Carr.

- (i) Was a document that came out a year before the Roundhouse Farm decision; and
- (ii) Includes nothing within its body to support using it to judge the acceptability of **existing** cycle routes for the purposes of §105 NPPF. To the extent this is what the highways authority have been doing, there is no support for this from the authors of the guidance. Indeed, that point was expressly recognised by WSP – the consultants instructed by both Hertfordshire and St Albans to prepare the St Albans District “*Local Cycling and Walking Infrastructure Plan*” July 2023 (the “LCWIP”), which noted at para 4.6.5 that the vast majority of local primary and secondary cycle routes will **fail** LTN1/20.

53. As Mr Dimbylow explained in examination in chief, the Council’s approach is flawed in the following ways:

- (i) LTN 1/20 represents a major change in the approach to designing cycling routes in that it requires – at all times – the segregation of cyclists from motor vehicles and pedestrians from cyclists. This will take some time to work through the network.
- (ii) There is no requirement for roads around a development site to all achieve LTN 1/20 compliance for a development to be acceptable.
- (iii) This level of segregation required by LTN 1/20 will never be suitable in places like Colney Heath High Street. This is also true for many of the routes in LCWIP, which would fail LTN 1/20 assessments, given the number of urban shared routes in St Albans. This is exactly why national policy requires decisionmakers to consider the type of development and its location.

54. Much of Mr Carr’s analysis is focused on the ability to cycle to one of the at least seven<sup>68</sup> secondary schools in the area – Samuel Ryder Academy. There are several ways of cycling from the appeal site to the academy in around 20 minutes. The best route, as Mr Dimbylow explained, involves crossing from Colney Heath high street at grade onto the north side of the A414 North Orbital Road which takes you almost all the way to the academy on a flat, straight road which is segregated from vehicular traffic. Other routes are available too – Mr Carr accepted in cross examination that it was possible to travel to Samuel Ryder Academy using primary and secondary routes identified by the Council in the recently (Feb ’23) consulted on emerging LCWIP.
55. Mr Carr accepted in cross examination that this ultimately comes down to whether you, Sir, accept his view that the fact that **all** residents will not be able to access Samuel Ryder Academy by cycle renders this an unsustainable location as a whole within the meaning of para 105 NPPF. It obviously does not:
- (i) There is a genuine choice of routes to the Academy by cycle and by bus.
  - (ii) Mr Carr provides no analysis of travel options to the range of *other* secondary schools in the area that are accessible to residents of the scheme by bus and bike;<sup>69</sup>
  - (iii) The scheme would lead to improvement works on alternative routes such as the A1(m) underpass<sup>70</sup> in order to make them more attractive to cyclists and pedestrians;<sup>71</sup>

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<sup>68</sup> [CD19.9]

<sup>69</sup> [CD19.9]

<sup>70</sup> Transport SoCG, §3.21 [CD8.2]

<sup>71</sup> Transport SoCG, §3.21 [CD8.2]

- (iv) Mr Carr has conducted no analysis of the travel plan requirement,<sup>72</sup> which would furnish residents with details of the range of improved travel options in order to increase their propensity to use alternatives both to the Academy and to other places.
56. Similarly, albeit some cyclists will no doubt travel south to Welham Green station from the appeal site along Tollgate Road to meet the regular connections into central London, less confident cyclists have a perfectly safe and acceptable route under the A1 underpass into Hatfield, and then south along a national cycle route. The Council calls these routes convoluted. But again, with respect, we are not here designing new purpose-built cycling infrastructure. We are taking up *appropriate* opportunities to enable the new residents to have a *genuine choice* of modes. Which they will.
57. To conclude, the position in respect of cycling and otherwise remains as Inspector Masters concluded just over two years ago – *“taking into account the essence of the Framework test as to whether a genuine choice of transport modes is on offer here, the appeal proposals would represent a sustainable location for new residential development.”*<sup>73</sup> The same is true here.
58. The Parish Council criticises the Appellant for not undertaking an LTP 1/20 audit of the proposed cycle routes. As above, that would not have been an appropriate exercise to undertake. Which explains why in the years of negotiation and discussion with the highways authority, such an audit was never requested. It is not only inappropriate, it is unnecessary for a scheme of this scale. Which is proposed along a long-recognised cycle route in the St

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<sup>72</sup>Transport SoCG, §3.16 [CD8.2]. It should be noted that the Appellant will also be making a contribution to HCC to monitor the plan.

<sup>73</sup> [CD14.6], DL:41.



Albans cycle map which WSP has proposed to upgrade from a secondary route to a primary route in the emerging LCWIP exercise.

59. A residual point raised by the Parish Council in respect of locational sustainability is potential concern about cumulative effects, particularly related to the Roundhouse Farm site. We note: (a) that this is not an issue that arises in the Council's evidence; (b) the Transportation Assessment includes consideration of the impact of the Roundhouse Farm site; and (c) the highways authority has raised no objection in respect of highways safety/capacity.<sup>74</sup>
60. Beyond locational sustainability, the Parish Council has also raised cumulative impact concerns in respect of settlement character, heritage and infrastructure – concerns which are raised by neither the Council nor relevant consultees. To be clear, there is no evidence before the inquiry of *any* material cumulative effects between this scheme and any others. On the third of these, it is important to note that the Appellant is committing to a planning obligation which includes, amongst other things, substantial contributions to (a) the local primary school (approx. £1.2m)<sup>75</sup> and (b) the already mentioned Samuel Ryder Academy (approx. £1.3m).<sup>76</sup>

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<sup>74</sup>In those circumstances, you are (i) bound to attach considerable weight to the views of statutory consultees, and would therefore (ii) need cogent and compelling reasons to depart from the conclusions of those technical experts: *R (Akester) v DEFRA* [2010] EWHC 232 (Admin), at [112].

<sup>75</sup> [CD19.11.2], p.12.

<sup>76</sup> [CD19.11.2], p.13.

(v) Previously developed land (“PDL”)

61. Mr Hughes accepted in cross examination that:

- (i) The appeal site as a whole meets the definition of PDL in national policy;<sup>77</sup> and
- (ii) This appeal engages the objective in §119 NPPF to promote an effective use of land by making as much use as possible of PDL.

62. Mr Hughes was correct to make this admission. There is nothing “mechanistic” or “overly technical” about it. Of course, as Mr Wilcox has repeatedly said, the NPPF is not a statute or a contract. But its policies have been drafted carefully – just as Mr Wilcox says in his closings. They mean what they say and they say what they mean. It is our job to apply them, not to re-write them. The Council’s position is that it would be “*absurd*” to treat a site which meets the definition of PDL as if it were PDL. But of course, it *is* PDL. Whether the Council likes it or not. That is not “mechanistic” or “literalistic”. It is applying the clear terms of national policy. What certainly *is* surprising is the Council’s failure to address its status as PDL anywhere in any of its written evidence, or indeed in Mr Hughes’ evidence in chief. The admission was made for the first time during cross-examination.

63. Overall, of course, there is a strategic imperative at the local level (e.g. in the Council’s emerging plan) and at the national level to prioritise the use of land which meets the definition of PDL over other kinds of e.g. Green Belt land. As Inspector Woodward put it in the Maitland Lodge appeal, where the Inspector determined this would make a site such as the appeal site “*sequentially preferable to non-PDL sites in the GB, which make up the majority of*

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<sup>77</sup> NPPF; p.71 Glossary

*GB land in the Borough.*<sup>78</sup> Indeed, this is the approach taken by the Council in the emerging local plan.<sup>79</sup>

64. Contrary to this, Mr Hughes, in cross-examination, accepted as an ‘initial filter’ the site was “*sequentially preferable*” but overall gave PDL status no weight due to the lack of built form on site and proposed extent of uplift in development. We will return to that weighting issue shortly.
65. The Parish Council does not accept this is PDL on the basis:
- (i) First, that the equestrian use is not lawful as the site has not been used continuously in that way for 10 years. However, this is the wrong test. The 1996 permission permitted stables, grooming and storage facilities<sup>80</sup> – plainly for an equestrian use and this related to the entire site.<sup>81</sup> Indeed this is consistent with the agreed position with the Council.<sup>82</sup>
  - (ii) In any event, the Appellant has presented reams of evidence to demonstrate that the fields are used on a rotational basis as part of equestrian land management<sup>83</sup>. Pausing a use on part of a site (e.g. through rotation) for weeks or even months does not amount to an abandonment of that use.
  - (iii) Further, they argue that the fields are only used for grazing such that they should be considered to be in agricultural use. Again, the position agreed with the Council is that these fields are in lawful equestrian use. In any event, the Appellant has provided evidence of

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<sup>78</sup> [CD14.20]; DL39.

<sup>79</sup> [CD3.1]; §3.13-14.

<sup>80</sup> Main SoCG; §3.1 [CD8.3].

<sup>81</sup> OB Rebuttal; Appendix 2 [CD9.24].

<sup>82</sup> Main SoCG; §6.12 [CD8.3].

<sup>83</sup> OB PoE; ; §5.217 [CD9.6].

additional food being given to horses, over and above any grazing which naturally takes place when they are within a field<sup>84</sup> as well as additional equestrian activities occurring on the site.<sup>85</sup>

(iv) Further still, the parish questions the curtilage. But the position is really simple:

(a) That the fields form an essential part of the use of the stables and ménage, with the fields used throughout the year on rotation.<sup>86</sup>

(b) They are in the same ownership.

(c) That the paddocks have a clear intimate association with the stable buildings and ménage, such that they form part and parcel and of the same curtilage.<sup>87</sup>

66. In the end, the position is simple. The Council and Appellant agree that the appeal site falls within the NPPF's definition of PDL. That is not the end of the story: it is important to note that the Appellant's case is not that the site comprises appropriate development in the Green Belt nor that its PDL status somehow circumvents the requirements of §148 of the NPPF.

67. Instead, we invite you to reflect on Inspector Woodward's point in Maitland Lodge, i.e. that the optimisation of an equestrian PDL site to promote homes is a *"significant positive benefit of the proposal in the context of a [district] where GB release is accepted as being inevitable to meet its housing*

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<sup>84</sup> OB Rebuttal; §9.23 [CD9.24].

<sup>85</sup> OB Rebuttal; App 2, para 7, Appendix 3 [CD9.24].

<sup>86</sup> OB PoE; Appendix 2 and 3 [CD9.6].

<sup>87</sup> Para 8.4.5 of the committee report [CD6.1] also confirms structures are associated with equestrian use.

needs.”<sup>88</sup> That was the case in Basildon district in that appeal, and the position is the same here.

68. On §119 NPPF:

- (i) That policy is only one expression of a thread which runs throughout local and national policy which prioritises the use of PDL over and above other kinds of e.g. Green Belt land. That is a strong and repeated focus of this Council’s strategy in its emerging Regulation 18 consultation. And that is why – consistent with the first sentence in §119 NPPF – our case remains that this is a benefit to be weighed in the ultimate planning balance and one that should attract **significant** weight.<sup>89</sup>
- (ii) That said, we acknowledge the Inspector’s point on the second sentence of para 119 that there risks being a circularity in the relationship between that clause, footnote 47 and para 148 (i.e. because you cannot tell until all the benefits of the scheme have been weighed whether making use of the relevant PDL would “*conflict with other policies in the Framework*”). Albeit the focus of 119 is on plan-making rather than decision-taking. But of course, that too becomes circular because as Mr Bell explained St Albans has not adopted a plan in 30 years. That chronic failure to plan should not immunise the Council from the consequences of this important thrust of national policy.
- (iii) In the end, either way – i.e. whether the benefits of developing PDL are weighed as part of the para 148 balance, or are introduced into the analysis only after that balance has been struck – the outcome is the same. As Mr Bell explained, given the range of benefits

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<sup>88</sup> [CD14.20]; DL39.

<sup>89</sup> OB PoE; §9.23 [CD9.6].

that flow from this appeal scheme, the benefits clearly outweigh the harms in this case whether the site is PDL or not<sup>90</sup> - a point we return to below.

69. Mr Wilcox's closings refer the *Dartford* case – which preceded and so does not consider para 149(g) or para 119 NPPF – to make the point that making effective PDL cannot be a free-standing material consideration in a Green Belt case. That is not what the case says. Nor is it how the position has been interpreted by (i) other inspectors, e.g. at Maitland Lodge, or indeed (ii) *this Council* which, as we have explained, is proposing in its Regulation 18 consultation to exhaust all of its Green Belt PDL supply before turning to other sources of Green Belt land. NB Mr Wilcox tries to distinguish those other decisions on the basis that the sites were smaller, but that has nothing to do with the relevant issues of *principle*, i.e. on how PDL is to be determined, and its weight as a free-standing material consideration.
70. 149(g) is a particular policy threshold to determine whether development is appropriate or not. If development is inappropriate, 149 does not seek to restrict what factors feed into the 148 balance. This is not re-introducing anything “by the back door”. The test at 148 NPPF is comprehensive. It is intended to accommodate within it all of a scheme's benefits against all of its harms including harm to the Green Belt. There is no basis for excluding any relevant material considerations from that balance, still less one as important as the strategic imperative to make efficient use of PDL. The analogy is to matters like e.g. less than substantial heritage impacts under 202. Once we have decided that such impacts are clearly outweighed by public benefits – as they are here – that does not mean that the impacts are excluded from the wider 148 balance. That is because, again, the 148 balance requires a

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<sup>90</sup> See the re-examination of Mr Bell.

comprehensive assessment of all material considerations. And there is no policy basis for excluding the use of PDL from that assessment.

(vi) Other benefits

71. The parties agree that the appeal scheme will result in a number of economic benefits<sup>91</sup>. The Appellant considers these should be given **significant weight** consistent with §81 NPPF, particularly given the depressed economic activity which has endured in this district for so many years as a consequence of the Council's failure to plan. So, contrary to the Council's case, the impact of these benefits is far greater than the level of generic benefits that would be expected from an ordinary housing development.
72. Further, the parties agree the appeal scheme will lead to biodiversity enhancements.<sup>92</sup> The dispute again is in respect of weight. Mr Hughes offers moderate weight on the basis that the gain is achieved off-site. However there is nothing in policy, guidance or legislation to support such an approach and the enhancements will indeed be maximised on site, with only residual improvements dealt with off-site. The delivery of 10% BNG should be given **significant weight**<sup>93</sup> on the basis that: (a) the development plan is silent on this matter; and (b) the offer will materially exceed national planning policy.

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<sup>91</sup> Main SoCG; §6.25 [CD8.3].

<sup>92</sup> Main SoCG; §6.39 [CD8.3].

<sup>93</sup> OB PoE, §8.21 [CD9.6].

## The scheme's impacts on its local landscape are limited

73. To set the scene: as we have explained, this Council has accepted the need to put lots and lots of houses on what are (at present) fields. So, to state the obvious, impacts one way or another on landscape character in this part of Hertfordshire are an **inevitable** consequence of the Council's strategy to meet its needs. Which is why, what *really* matters is not whether there will be any impact at all (of course there will be – at least on the site itself and its immediate surroundings) but whether those impacts are or can be made acceptable. As Mr Hughes agreed, if impacts are to occur, it is better that they are located away from designated landscapes, “valued” landscapes within the meaning of the NPPF, in areas where – like this one – we agree there will be no significant impacts on the character of the landscape or townscape in the appeal site's immediate vicinity, or on the wider rural landscape that surrounds the settlement.

74. The Council and the Appellant are agreed that:

- (i) The appeal site is not subject to any statutory or non-statutory designations for landscape or heritage value.<sup>94</sup>
- (ii) Given the overall character of the site (readily visible housing, dense belt of woodland providing physical and visual containment, etc.), we agree that the site is of medium to low landscape sensitivity to the proposed development.<sup>95</sup>

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<sup>94</sup> Main SoCG, §6.21 [CD8.3]

<sup>95</sup> Landscape SoCG; p.6.



(iii) The landscape impacts will not be significant on the character of the landscape / townscape in the immediate vicinity of the appeal site, and there will be no significant<sup>96</sup> effects on the wider, rural landscape character around Colney Heath.<sup>97</sup>

75. This is a case where built development is proposed on equestrian fields. Impacts on the site itself are inevitable (albeit you will have appreciated on-site the extent to which its character is already influenced by the suburbanising relationship with the backs of the row of houses along Tollgate Road, and other detracting features on and around the site).

76. What is notable is that the main parties have identified only three important views for you to consider on one of those, it is agreed the effect is negligible-moderate/slight adverse.<sup>98</sup>

77. As to the other views:<sup>99</sup>

(i) There will of course be changes which can be seen from viewpoints near the site, and those changes will be significant – particularly in Year 1, albeit somewhat less so in Year 15. However, the site is visually well contained. The extent of visibility is curtailed. While the change in character is assessed as adverse, this does not mean the development will be unattractive. The site’s containment is not – to respond to Mr Wilcox’s closing – a feature of the scheme. It is a feature of the *site*.

(ii) Albeit the scheme is at outline, its parameters and illustrative masterplan have been designed to complement both the established pattern of the settlement and that of the wider

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<sup>96</sup> This was amended from “material” to “significant” in the landscape RT session.

<sup>97</sup> Main SoCG, §6.22.

<sup>98</sup> Landscape SoCG; p.6.

<sup>99</sup> Landscape SoCG; p.6.

landscape.<sup>100</sup> Mr Self drew attention to the substantial set-backs from the river corridor and how the parameters plan and illustrative masterplan adapt and respond to the site's features.

78. Overall it is quite clear that this is the sort of limited and localised impact on local character which is inevitable if St Albans is to meet its housing needs. The Council does not rely on landscape and visual harm, or harm to character and appearance as a free-standing reason for refusal. As Mr Bell explained, the extent of harm should attract **moderate weight**.<sup>101</sup>

### **The scheme's public benefits outweigh any heritage harm**

79. The position on built heritage is almost completely agreed with the Council and its advisers. The scheme would be within the setting of 3 listed buildings. But, as Ms Stoten explained, the issue to consider is whether there is any harm – and if so, how much – to the *significance* of those assets. And in every case, the appeal site makes only a very minor contribution to the significance of the relevant assets through their setting. Which is why the proposed scheme – the parties agree would cause<sup>102</sup>:

- (i) With regards to North Mymms Park Grade I Listed House, the Grade II Listed Colney Heath Farmhouse and Grade II Listed Barn **less than substantial harm** within the lowermost end of the spectrum.

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<sup>100</sup> CS PoE; §1.22 [CD9.26].

<sup>101</sup> See the examination in chief of Mr Bell.

<sup>102</sup> Heritage SoCG; §2.1 [CD8.4].

- (ii) With regards to Tollgate Farm, it is agreed that this holds minimal heritage significance, at most and the harm to the heritage significance of Tollgate Farm would be **minimal**.

80. The parties agree that **the public benefits outweigh the harm** to designated heritage assets under para 202 of the NPPF.<sup>103</sup> Nonetheless, even though the extent of harm is – we agree – small, that harm must be given great weight in the overall balancing exercise under para 148 to which we return.

### **The scheme directs development to areas with lowest risk of flooding**

81. The Council, the LLFA and the Appellant are agreed that the appeal scheme is acceptable in terms of flood risk and drainage considerations, subject to the imposition of conditions.<sup>104</sup>

82. However, the Parish Council has raised an issue in respect of the failure to apply the sequential test in §162 NPPF, which notes that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source.

83. On that, the Council and the Appellant are agreed.<sup>105</sup>

- (i) The Appellant's decision not to carry out the sequential test has been informed by the Strategic Flood Risk Assessment for the area and a site-specific flood risk assessment. There is no requirement to carry out the sequential test in respect of surface water flood risk because the built development will be restricted to areas of no or low flood risk. The Parish

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<sup>103</sup> Main SoCG; §6.72.

<sup>104</sup> Main SoCG; §6.65-7.

<sup>105</sup> Main SoCG; §6.63-67.

referred to an underground chalk stream which, as Mr Henry explained in his rebuttal after intrusive ground investigation, simply doesn't exist.

- (ii) Finally, as the Inspector identified in the Flood Risk roundtable, the appeal scheme does steer development into Flood Zone 1 and no part of it proposes any development into areas of the site within Flood Zones 2 and 3. Flood risk from all other sources of flooding was found to be low. So, there was no need to carry out a sequential test.
- (iii) The scheme accords with the core aim of §162 NPPF of steering new development to areas with the lowest risk of flooding from any source. That position is agreed with the LPA. There is no relevant objection from the EA or the LLFA. All of the relevant statutory consultees are satisfied in relation to flood risk and sequential test matters. In those circumstances, you would need clear and compelling evidence to warrant casting all of that expertise aside. With respect, the Parish's case on this issue does not even come close to meeting that very high bar.

### **The scheme's impact on the wider Green Belt will be limited**

- 84. In the end, if this site were not (as is all of Colney Heath and 81% of the district as a whole) washed over by the Metropolitan Green Belt, we would not be here. Because the Council has confirmed that none of the other issues it identifies are weighty enough to warrant refusal on their own.
- 85. Of course, the Green Belt designation has nothing to do with landscape quality. It is not about protecting landscapes or townscapes. Or even protecting the open countryside in general – as Mr Wilcox implies in his closings. Still less, individual views around particular villages. Indeed, the Green Belt is not a policy mechanism which is concerned with

preserving villages or their settings. We have a wide range of other policies for those things. The Green Belt is for something much more specific. It is a spatial strategic policy designation which is fundamentally concerned with curtailing the post-war “sprawl” of Greater London.

86. To set the scene for the assessment of impact on the Metropolitan Green Belt in this case, as Mr Hughes has now agreed repeatedly, St Albans requires land which is currently in the Green Belt in order to meet the enormous and urgent needs we have described above. As we have explained, there is no adopted effective plan-led solution to managing releases of the Green Belt. Which means – in the medium to short term – that impact on the Green Belt one way or the other through development management decisions like this one isn’t a choice. It’s a necessity. It’s inevitable. The *real* issue is where schemes can come forward which don’t unacceptably impact on the Green Belt’s wider integrity, i.e. its ability to perform its strategic spatial purposes, those things for which the Green Belt was designated in the first place.
87. Of course, the site comprises some buildings, but it largely made up of equestrian fields. Which makes it, in the language of national Green Belt policy, relatively “*open*”. And albeit the scheme involves the provision of substantial areas of open space, adding the appeal scheme would make this site much less “*open*”. That is inevitable, at least so far as the spatial component of openness goes.
88. The visual component of openness is more nuanced. We are there concerned not only with the fact of buildings on a site. But how, from where and by whom those buildings can be perceived. This is when the site’s enclosure, its relatively limited field of visibility and lack of wider more distant views becomes important. Those features have a bearing on the extent of harm associated with the visual component of openness.

89. The site's also in the deemed "*open countryside*". But we must take care over that. The reason it finds itself still in the deemed "*open countryside*" is because it's *adjacent to but outside* Colney Heath. But that boundary isn't just marginally out of date. It's the product of a totally different generation of plan-making. In any event, as the 2023 ARUP Green Belt Review shows us, the **largest proportion** of sub areas across St Albans are thought to make a significant contribution to this 3<sup>rd</sup> Green Belt purpose, i.e. preventing "*encroachment*".<sup>106</sup> That is, let's be clear, the **only** Green Belt purpose in play here. But that purpose which will **inevitably** be engaged one way or the other all over the district if the Council is going to come anywhere remotely close to meeting its needs. We know scoring in relation to this purpose cannot rule sustainable sites out from bringing development forward. Or St Albans would never come anywhere close to finding enough sites to meet its needs.
90. It's no answer that the site has not been identified as suitable for release in the 2023 ARUP St Albans Stage 2 Green Belt Review. Because, as Mr Hughes accepted in cross examination, this site has not been looked at for release as a consequence of ARUP's methodology for reasons that have nothing to do with Green Belt purposes.
91. The Council has made much of the Arup Washed Over Villages Study. Pages of its closings are devoted to this untested, unexamined part of the evidence base to local plan, which it is agreed can only be afforded limited weight. Further, and in any event, the assessment of Colney Heath (and Area B in particular) did not score more than "moderate" for any of the assessment's categories, as against lots of other settlements which scored "high". Mr Wilcox is wrong to suggest that this is "overall" score of moderate for Colney Heath as a whole is

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<sup>106</sup> [CD3.4]; p.57.

dragged up by the appeal site to compensate for lower scores elsewhere. Arup consider that each of Areas A, B and C score moderate for all of the relevant criteria.

92. In any event, albeit the Council focuses on a particular sentence in a particular sub-section of this untested, unexamined assessment which references views from the southern boundary of “Area B”, remember – the purpose of this assessment was to consider whether to inset Colney Heath from the Green Belt. It is not an assessment of e.g. the extent to which our site contributes to the purposes of the Green Belt. Again, our site was excluded from assessment as a consequence of Arup’s methodology (a problem which may itself, in due course, be something with which the examining inspectors have to grapple).
93. The Council putting such weight on a particular viewpoint mentioned in the Arup work in this way conflates an assessment of Colney Heath’s Green Belt functions – which as above are spatial and strategic – with particular visual considerations arising from local viewpoints.
94. The appeal site is located to the south of the Roundhouse Farm appeal site. In this appeal, Mr Hughes’ evidence is that the former “*comprises a more rural site*” than the latter. Turning back to Mr Hughes’ evidence in the Roundhouse Farm appeal, his view there was that the site comprised of a rural experience/character.<sup>107</sup> As with this case, he relied on the same parcel 34 analysis from the now overtaken 2013 Green Belt Review and argued substantial harm to purpose (c) of the Green Belt.<sup>108</sup>

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<sup>107</sup> CS Rebuttal; p.42; App 1 §5.76; see also p.45; §5.81 and §5.84.

<sup>108</sup> CS Rebuttal; p.42; App 1; §5.76; see also p.45; §5.81 and §5.84.

95. However, as he accepted in cross examination, Inspector Masters rejected that analysis and found<sup>109</sup>:

**“[t]he broad thrust** of, function and purpose of the Green Belt in this location would remain and there would be no significant encroachment into the countryside. I therefore conclude that the appeal proposal would not result in harm in term of the encroachment of the Green Belt in this location. This is a **neutral factor** which weighs neither in favour nor against the appeal proposals” [emphasis added.]

96. The same is true here. We accept there will be at least some harm to the third Green Belt purpose. However, the appeal scheme has responded to this in a number of ways: (a) limiting development to approximately ½ of site; (b) planning the appeal scheme in such a way as not to breach any recognisable and clearly defined boundaries; (c) not extending beyond the linear development on Tollgate Road and (d) maintaining a significant swathe (over 100m) of open land alongside the River Colne. The broad thrust of the function and purpose of the Green Belt in this location would remain. The strategic and spatial functions of this part of the Metropolitan Green Belt would be preserved.

97. Mr Wilcox both in his opening and in his closing referred to the appeal site as “*an important Green Belt site*”. Indeed, he now calls it a “*highly*” important Green Belt site. With respect, there is no evidence to support the idea that there is anything of particular importance about this site to the wider Green Belt’s ability to perform its functions. Nowhere in the Council’s proofs of evidence did they suggest this site has any particular importance to the Green Belt. This idea is a new one, and it has not emerged from any of the Council’s proofs. It is totally unsupported.

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<sup>109</sup> CD14.6; DL26.



98. In any event, of course, this scheme will bring houses where now there are equestrian fields. And that change will have a localised impact both on openness and on countryside encroachment. The NPPF requires us to attribute substantial weight to those impacts. The key point between us and the Council then under §148 NPPF is how the final balance is to be struck.

### **Striking the balance**

99. S.38(6) of the Planning and Compulsory Purchase Act 2004 that planning applications should be determined in accordance with the development plan taken as a whole, unless material considerations indicate otherwise (including the NPPF).

100. The parties are agreed that Policy 1 – the Green Belt policy – is the most important development plan policy in this appeal.<sup>110</sup> That is so even though Policy 1, the boundaries it secures and all the other important policies in the adopted plan are deemed out of date and are also substantively out of date for the reasons we examine above.

101. In any event, Policy 1 incorporates the at para 148 NPPF. Which is why the parties agree that the key question for determining this scheme's accordance both with the statutory development plan read as a whole and also the NPPF is to ask whether its benefits clear outweigh its harms.

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<sup>110</sup> [CD19.1]; §14; See the examination in chief of Mr Bell.

102. If they do, the parties agree you should then allow the appeal and grant planning permission.<sup>111</sup>

103. On the harms side of the scale:

- (i) There will be less than substantial harm to the significance of 3 listed buildings which should receive great weight, and very minor harm to non-designated assets which should receive limited weight.<sup>112</sup>
- (ii) Impacts in relation to landscape and character considerations should, as Mr Bell explained, receive moderate weight.<sup>113</sup> It should be noted that the Council accepts this is not a free-standing reason for refusal. And remember, we agree with the Council that it is better to avoid development which would cause significant effect on the wider landscape – just as we do. We also know it’s better that any development avoids any designated or valued landscapes – again as we do.
- (iii) We also know that the fields will be less open as a result of our scheme, and that it will encroach to some degree into what is now deemed countryside. We must, as above, give those localised impacts on the Green Belt substantial weight, even though the parties agree that planning permissions in the Green Belt are inevitable applying the §148 balance in this district absent an effective plan-led approach to meeting needs.

104. On the benefits side of the scale:

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<sup>111</sup> And for completeness, the parties are agreed that if the §148 NPPF balance is passed, the scheme would inevitably pass the balance at §11(d)(ii) NPPF.

<sup>112</sup> See the examination in chief of Mr Bell.

<sup>113</sup> See the examination in chief of Mr Bell.

- (i) The break-down in the plan-led system in this part of Hertfordshire has had real consequences for real people. As we have explained, most of all, and for many years, this Council has not come anywhere *remotely* close to meeting its needs – for market housing, for affordable housing, and more recently for self-build housing either.
- (ii) As we have shown you, these shortfalls aren't marginal. They're staggering. We aren't talking about missing the mark by tens or even hundreds of homes. We're talking about thousands. Many thousands within the district.
- (iii) In St Albans, the plan-led system has broken. And our case is simple: there is no short or medium term prospect of it being fixed. And given what has happened in the recent past, we cannot rely on the hope of the adoption of the emerging plan. The real issue before this inquiry is whether the many people in need now should have to wait another 3 years, 5 years, 10 years, or however long it takes, St Albans to actually adopt a plan, and for sites to come forward in accordance with that plan. Or whether urgent problems require more urgent solutions.

105. In the end, you should give the benefits we describe above and in the evidence of (in particular) Mr Bell, Ms Gingell and Mr Moger **very substantial weight**.

106. As Mr Bell explained, those benefits can *easily* be delivered in full within 5 years<sup>114</sup> given that this site already in control of a major national housebuilder which has already begun initial work on reserved matters submissions, there is a commitment through condition to an abbreviated timescale for the submission of those reserved matters, the scheme's relatively modest scale, the lack of any technical constraints to delivery (and will of course inevitably

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<sup>114</sup>OB PoE; §5.30 [CD9.6].

come far ahead of any sites which will be delivered through a plan-led process in St Albans – assuming a plan *ever* materialises).

107. Vistry is the country’s largest housebuilder, and the country’s largest provider of affordable housing. For a developer of this scale, particularly given the acute and chronic scale of demand in this area for more houses, Mr Bell’s projection of delivering 50 homes a year on this site is not ambitious. It is conservative.

108. On top of that, we have:

- (i) the fact the appeal proposals would represent a sustainable location for new residential development<sup>115</sup>;
- (ii) a number of economic benefits and biodiversity enhancements, which the Appellant considers should be given **significant** weight<sup>116117</sup>;
- (iv) the optimisation of the use of the site as PDL to promote homes, which the Appellant considers should be given **significant** weight.<sup>118</sup>

109. The Council has repeatedly accepted the inevitability of and the need for an enormous amount new development in the Green Belt. Just not *here*. Indeed, when we push at the reasons for refusal, every single one apart from the Green Belt issue recedes on the Council’s case. And there is, it accepts, no free-standing objection to this scheme beyond the in-principle objection on the Green Belt (which will occur everywhere). Which shows us one

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<sup>115</sup> OB PoE; §5.90 [CD9.6].

<sup>116</sup> OB PoE, §8.20 [CD9.6].

<sup>117</sup> OB PoE, §8.21 [CD9.6].

<sup>118</sup> OB PoE; §9.23 [CD9.6].

thing: this is exactly the kind of sustainably located, well-enclosed, edge-of-settlement site which *should* be brought forward for development.

110. In the end, all of those benefits – with or without weighing the site’s status as PDL<sup>119</sup> – carry the §148 NPPF balance. Which means that allowing the appeal is also the decision which accords with the statutory development plan.
111. Our case is straightforward: these benefits are profound (and Mr Hughes accepted as much in cross-examination), the imperative to bring them forward is compelling, and they clearly outweigh what will only be a localised impact to this appeal site and its immediate surroundings.
112. For those reasons, the balance at §148 tilts clearly in favour of granting planning permission, and we will ask you to allow the appeal.

**ZACK SIMONS**

**JOEL SEMAKULA**

Landmark Chambers  
180 Fleet Street  
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**28 September 2023**

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<sup>119</sup> See the re-examination of Mr Bell.