

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

**OPENING STATEMENT ON BEHALF OF THE LOCAL PLANNING AUTHORITY**

**Introduction**

1. The Appellant seeks outline permission for up to 150 dwellings, with all matters reserved save for access (“the Proposal”), on land to the rear of 42-100 Tollgate Road, Colney Heath (“the Site”).
2. On 25 May of this year, the LPA refused permission for the Proposal. There were two reasons for refusal. The second reason, which related to the absence of a s. 106 planning obligation, is fully expected to fall away.
3. The first reason identified a number of harms which the LPA says will arise from the Proposal:
  - a. The Proposal involves inappropriate development in the Green Belt, and thus causes in-principle harm;
  - b. The Proposal will have a detrimental impact on the openness of the Green Belt;
  - c. The Proposal will harm the purposes of the Green Belt;
  - d. The Proposal will cause harm to the landscape character and appearance of the Site and its surroundings;
  - e. The Proposal will harm the significance of the settings of a number of designated and non-designated heritage assets; and
  - f. There is no demonstrably suitable access to sustainable transport modes.
4. The LPA’s conclusion was that those harms were not outweighed by the benefits of the Proposal, such that the planning balance resolved against the Proposal.

5. The LPA maintains that position in this inquiry. The Proposal has undoubted benefits, particularly from the provision of housing. But the evidence will show that there is simply no justification for the permanent loss of this important Green Belt site at this time.

### **The main issues**

6. The Inspector has identified five main issues for consideration, all of which are facets of the overarching planning balance articulated by the NPPF in para 11.
7. The main issues are:
  - a. The effect of the Proposal on the openness and purposes of the Green Belt;
  - b. The effect of the Proposal on the landscape character and appearance of the Site and surrounding countryside;
  - c. The effect of the proposed development on the setting and significance of nearby heritage assets, including the Grade I listed North Mymms Park House, Grade II listed Colney Heath Farmhouse and the adjacent Grade II listed barn, and the non-designated heritage assets of North Mymms Park and Tollgate Farm;
  - d. Whether the Site is in a location which is or can be made sustainable in transport terms; and
  - e. Whether or not the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.
8. There is a great deal of common ground between the LPA and the Appellant on these issues. What the dispute between the Appellant and the LPA boils down to, ultimately, is a single question: does the need for housing in St Albans warrant what is agreed to be inappropriate, harmful development in the Green Belt?

## **The policy framework**

9. The local and national policies relevant to this appeal are agreed. They are set out in the SoCG.<sup>1</sup>
10. The relevant development plan policies are to be found in the saved policies from the St Albans District Local Plan Review (“the Local Plan”), which dates from 1994.
11. There is no doubt that the development plan in this case is an old one. That does not, however, mean that it can be disregarded. On the contrary, the plan retains its statutory priority in development control decisions like this one.
12. It is worth emphasising, at the outset of the inquiry, that the development plan loses none of its statutory force just because parts of it are out of date in NPPF terms. As Lindblom LJ noted in the *Hopkins Homes* case (para 42):<sup>2</sup>

The NPPF is a policy document. It ought not to be treated as if it had the force of statute. It does not, and could not, displace the statutory “presumption in favour of the development plan”, as Lord Hope described it in *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447, 1450B–G. Under section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004, government policy in the NPPF is a material consideration external to the development plan. Policies in the NPPF, including those relating to the “presumption in favour of sustainable development”, do not modify the statutory framework for the making of decisions on applications for planning permission.

13. That important principle must be borne in mind throughout the next two weeks.
14. Perhaps the most important development plan policy in this appeal is Policy 1, the development plan’s Green Belt policy.<sup>3</sup> It is common ground that the Site is within the

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<sup>1</sup> Section 5.

<sup>2</sup> *SSCLG v Hopkins Homes Ltd* [2016] PTSR 1315. The case subsequently went to the Supreme Court, but Lindblom LJ’s analysis was not contradicted there.

<sup>3</sup> CD 2.1 pdf page 25.

Green Belt defined by that policy. The policy restricts development of this kind in the Green Belt, unless very special circumstances (“VSC”) can be demonstrated.

15. Also of particular importance are Policy 2, which directs development to higher-order settlements in the district, and Policy 86, which requires special regard to be had to the desirability of preserving Listed Buildings and their settings.
16. National policy applies essentially the same tests as the development plan in respect of Green Belt and heritage issues. In particular, NPPF paras 147 and 148 confirm that inappropriate development in the Green Belt is by definition harmful, and should not be approved save where VSC can be demonstrated. The NPPF also confirms that great weight should be given to the preservation of designated heritage assets (para 199).
17. The NPPF Green Belt test is particularly important here, because a conflict with the Green Belt protective policies is identified by fn 7 of the NPPF as something which can provide a clear reason for refusal sufficient to disengage the para 11 tilted balance. That is true even in cases where the development plan is out of date or where an authority can show less than 5 years’ HLS.
18. Thus the NPPF itself regards Green Belt protection as something which should be maintained even in the face of housing need.
19. Another material consideration in this appeal is the emerging St Alban’s Local Plan (“the ELP”).
20. The reg 18 consultation on the ELP concludes this month. As the ELP is at an early stage, only limited weight can be given to the policies which it contains. The ELP is important, however, for two main reasons:
  - a. It shows that the LPA is in the process of resolving its housing land supply (“HLS”) position, in an orderly and plan-led rather than an ad-hoc manner; and
  - b. The ELP is supported by the most up-to-date assessments and evidence on the status of Green Belt land in the district. The Site is not identified for release from the Green Belt, nor is it allocated for housing. In short, the most recent plan-level considerations show that the Site’s Green Belt status is not a historic matter: its openness is of current and future importance.

## **Main issue 1: openness and purposes of the Green Belt**

21. The first main issue concerns the impact of the Proposal on the openness and purposes of the Green Belt.
22. It must be stressed that inappropriate development in the Green Belt is harmful by definition, and that harm carries substantial weight against the Proposal.
23. In addition to that in-principle harm, the LPA's evidence will show that the Proposal would have a serious adverse impact on the openness of the Green Belt, both spatially and visually.
24. At present the vast majority of the Site is open and undeveloped. Its primary use is for grazing. Indeed, less than 1% of the Site area has buildings on it at present and only 3.8% has any development at all. The Site is, and is appreciated as, a part of the wider open countryside in the area.
25. Under the Proposal, that open character will be lost almost entirely. The LPA estimates that the Proposal will increase the developed area of the Site from 3.8% to 28%, and result in fifty times more built development by volume. A massive loss of undeveloped space. The introduction of up to 150 houses, not to mention ancillary buildings like garages and sheds, will be visible in numerous public and private views of the Site, having a major visual as well as spatial impact.
26. In short, the Proposal will result in a substantial loss of openness in both spatial and visual terms, on a permanent basis.
27. Turning to the purposes of the Green Belt, our evidence will focus on the third purpose: assisting in safeguarding the countryside from encroachment. We will show that that purpose would be substantially harmed were this Proposal to be permitted. Not only does the Proposal involve the spread of residential built development from the Tollgate Road ribbon into an area that is currently open countryside, but it would also place considerable

pressure on the undifferentiated areas of open undeveloped land to the North and to the South of the Site.

### **Main issue 2: landscape character and appearance**

28. The next main issue concerns the impact of the Proposal on the landscape character and appearance of the Site.
29. The Appellant and LPA are in agreement on much of the subject matter arising here. In particular, it is agreed that at least some harm will be caused to the landscape character of the Site, as well as to its neighbouring landscape and the wider landscape as well. There is also agreed to be harm to the Site's appearance from a number of key viewpoints.
30. There is some disagreement as to the magnitudes of some of those harms. Those disagreements will be explored in the round table session. Even on the Appellant's own case, though, this is an issue which weighs against the Proposal to some extent.
31. To be clear, the LPA does not suggest that the landscape and visual impact of the Proposal justifies the refusal of permission for the Proposal by itself. Rather, this is a harm which must be weighed in the balance against the Proposal when the VSC exercise is performed.

### **Main issue 3: heritage**

32. There are a number of important (including Grade I Listed) designated heritage assets in the vicinity of the Site, as well as some non-designated assets. The adverse impact of the Proposal on the settings of those assets is a matter which must be given great weight as a matter of law.
33. Happily, the Appellant's and LPA's heritage witnesses are in full agreement on the nature and extent of the heritage impact of the Proposal, and have recorded their agreed position in a comprehensive SoCG.
34. The identified harm to the relevant Listed Buildings is all at the lower end of the less than substantial harm spectrum, and it is common ground that the public benefits of the Proposal

outweigh those less than substantial harms for the purposes of NPPF para 202, so that heritage does not form a stand-alone reason to dismiss the appeal.

35. That does not, however, mean that the heritage impacts of the Proposal can be disregarded. Even a less than substantial harm is a serious matter: the NPPF provides that great weight must be given to all such harms,<sup>4</sup> and the Courts have confirmed that a less than substantial harm does not equate to a less than substantial objection.<sup>5</sup>

36. The identified and agreed heritage impacts are thus matters which carry great weight against the Proposal in the VSC balancing exercise.

#### **Main issue 4: sustainable transport**

37. The fourth main issue relates to the Appellant's ability to demonstrate the sustainability of the Site and the Proposal in transport terms.

38. This issue has evolved somewhat over the last couple of weeks. In particular, the Appellant has agreed to include a number of contributions in its planning obligation, and in doing so has met some of the LPA's concerns.

39. As things stand, the only transport objection which the LPA now maintains relates to cycling accessibility.

40. That, however, remains an important factor against the Proposal. We will show that the cycling route from the Site to the relevant high school is unsafe and unsuitable: it is unlit and has no road markings, placing cyclists into potential conflict with cars. Similarly, we will show that the cycling routes from the Proposal to other relevant amenities are incoherent and indirect, and thus contrary to policy.

41. Again, cycling provision does not represent a stand-alone reason to dismiss the appeal. It does however represent an adverse impact which must be reflected in the VSC balance.

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<sup>4</sup> NPPF para 199.

<sup>5</sup> *East Northamptonshire DC v SSCLG* [2015] 1 WLR 45 per Sullivan LJ at para 29.

## **Main issue 5: VSC**

42. The final main issue is the VSC balance itself.
43. The VSC exercise is not a “flat balance”. It is a heavily tilted one. The benefits of the Proposal need to be very weighty indeed to pass the VSC exercise, because the VSC exercise places very significant emphasis on protecting the Green Belt from harm.
44. We will demonstrate that the harms of the Proposal are such that it cannot demonstrate VSC in this case. The combination of substantial Green Belt harm, both intrinsically and from the impact on openness and purposes, combined with permanent landscape harm and the great weight attached to heritage harm, presents a very high hurdle indeed for the Appellant to surmount.
45. It goes without saying that we recognise the urgent need for housing in the district. That is factor which carries very substantial beneficial weight for the Proposal. But housing need is not a carte blanche to develop anywhere. And this is very far indeed from a suitable place for housing.
46. It is also relevant that the housing position in St Albans is actively being addressed via the local planning process and the ELP. So the HLS difficulties will not last forever. By contrast, if this Green Belt location is developed for housing, then its openness will be lost forever. The circumstances here are not special enough to warrant such a permanent loss.

## **The development plan and the planning balance**

47. Drawing the threads together, the Council will show that the Proposal is contrary to Policy 1 of the Local Plan. That conflict alone is sufficient to result in a conflict with the development plan overall, in the circumstances of the case. The Proposal is also contrary to other important development plan policies.
48. National policy is also against the Proposal. Indeed, inappropriate development in the Green Belt without VSC is one of the things which the NPPF is most strongly against.
49. In those circumstances, we will show that the planning balance is firmly against this Proposal. St Albans needs more homes; but this is not the place for them.



50. For those reasons we will be inviting the inspector to dismiss the appeal and refuse permission for this Proposal.

Luke Wilcox

Landmark Chambers

19 September 2023