

Land to the Rear Of 42-100 Tollgate Road & 42 Tollgate Road, Colney Heath

Statement of Case

ON BEHALF OF VISTRY HOMES LTD

May 2023

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1. Introduction

1.1 This Statement of Case (“SOC”) has been prepared by Nexus Planning on behalf of Vistry Homes Ltd (“the Appellant”), in accordance with Procedural Guidance issued by the Planning Inspectorate in December 2022.

1.2 The appeal is lodged against St. Albans City and District Council’s (“the Council”) refusal of the following development:

“Outline application (access sought) - Demolition of existing house and stables and the construction of up to 150 dwellings including affordable and custom-build dwellings together with all ancillary works”

at

Land To The Rear Of 42-100 Tollgate Road & 42 Tollgate Road Colney Heath St Albans Hertfordshire (“the Appeal Site”)

1.3 In the first instance, the appellant would highlight that an amendment to the description of development to include self-build dwellings was agreed with the Council prior to the determination of the application. However, this amendment to the description was not reflected in the Decision Notice. As such the appellant will be seeking to amend the description as part of the appeal to the following:

“Outline application (access sought) - Demolition of existing house and stables and the construction of up to 150 dwellings including affordable, self-build and custom-build dwellings together with all ancillary works” (“the Appeal Scheme”)

1.4 The Appeal Scheme was validated on 23rd August 2022 and given reference 5/2022/1988. The 13-week statutory determination expiry date was 20th November 2022. Multiple extensions of time have been agreed with the Council, including until the 20th January 2023, 28th February 2023 and most recently until 27th March 2023. The application was presented to the St. Albans Planning (Development Management) Committee on 22nd May 2023 where Members resolved to refuse the application in line with the officer recommendation. The Decision Notice was issued on 25th May 2023. The Decision Notice sets out the following reasons for refusal:

Reason for Refusal 1

The site is within the Metropolitan Green Belt and the proposed development represents inappropriate development within the Green Belt, as set out in the National Planning Policy Framework 2021. In addition to the in-principle harm to the Green Belt by reason of inappropriateness, other harm is identified as a result of the proposed development in terms of: its detrimental impact on the openness of the Green Belt, harm to Green Belt purposes and harm to landscape character and appearance. Harm is also identified to the significance of the Grade I listed North Mymms Park house, Grade II listed Colney Heath Farmhouse and adjacent Grade II listed barn and the non-designated heritage assets of North Mymms Park and Tollgate Farm. Harm is also identified as insufficient information has been provided to demonstrate that the site has suitable access to sustainable transport modes. The benefits of the proposed development comprise the provision of up to 150 dwellings, including 40% affordable housing and up to 9 self-build units at the site which could contribute significantly towards meeting an identified housing need in the District, and the provision of public open space and delivery of 10% biodiversity net gain (through on-site and off-site provision). The potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is not clearly outweighed by other considerations; and as a result the very special circumstances required to allow for

approval of inappropriate development in the Green Belt do not exist in this case. The proposal is therefore contrary to Policy 1 of the St Albans District Local Plan Review 1994 and the National Planning Policy Framework 2021.

Reason for Refusal 2

In the absence of a completed and signed S106 legal agreement or other suitable mechanism to secure: additional health services provision; education provision in the form of new primary school, secondary school, and childcare provision; Special Educational Needs and Disabilities provision; library service provision; youth service provision; waste service provision; leisure and cultural services provision; affordable housing provision; open space and play space provision; biodiversity net gain; and highway works including provision for sustainable transport improvements and a travel plan; the development fails to adequately mitigate its effect upon local services and infrastructure and secure the identified 'very special circumstances'. The proposal is therefore contrary to Policies 1 (Metropolitan Green Belt) and 143B (Implementation) of the St. Albans District Local Plan Review 1994 and the National Planning Policy Framework 2021.

- 1.5 On the basis of the reasons for refusal, the Appellant considers that the following matters are to be the main matters of the appeal:
 - a. The impact of the Appeal Scheme on the openness of the Green Belt;
 - b. The impact of the Appeal Scheme on the purposes of including land in the Green Belt;
 - c. The impact of the Appeal Scheme on landscape character and appearance;
 - d. The impact of the Appeal Scheme on the setting of nearby heritage assets;
 - e. The locational sustainability of the Appeal Site; and
 - f. Whether the Appeal Schemes benefits clearly outweigh the harms.
- 1.6 A draft Statement of Common Ground ("SoCG") has been issued to the Council and will be agreed in advance of the inquiry.

2. The Appeal Site and its Surroundings

- 2.1 The Appeal Site measures approximately 7.82 hectares in total, comprising of the dwelling and curtilage of 42 Tollgate Road, along with equestrian buildings, manège and associated paddocks to the rear. The Appeal Site is located to the south east of Colney Heath.
- 2.2 A wide range of services are within a reasonable walking and cycling distance of the Appeal Site.
- 2.3 A detailed description of the Appeal Site is set out within the SoCG.

3. Relevant Planning History

- 3.1 A previous planning application (ref. 5/1996/1240) was granted on appeal (dated 23rd July 1997) for the unrestricted erection of a stable with associated grooming and storage facilities. Since the granting of this application the entire Appeal Site has been in an equestrian use. Whilst there has been no change of use application, the Appellant will advance that correspondence between the Appellant and the Council has established that the equestrian use has been present at the site in excess of 10 years and therefore immune from enforcement action in accordance with 171B of the Town and Country Planning Act 1990.
- 3.2 The appellant will seek to formally agree with the Council through the SoCG that the entire appeal site, other than the dwelling and curtilage of 42 Tollgate Road, is in lawful equestrian use.

4. The Appeal Scheme

- 4.1 The Appellant seeks outline planning permission with all matters reserved except vehicular access off Tollgate Road for the demolition of 42 Tollgate Road and all existing equestrian buildings and the construction of up to 150 dwellings.
- 4.2 The Appellant is proposing as part of the Appeal Scheme to increase the affordable housing provision from 35% to 40%, bringing the total to 60 affordable units. The mix and tenure of these units will be agreed with the Council through the S106 negotiations, however the Appellant is advancing a split of 66% rented and 33% shared ownership.
- 4.3 A full description of the Appeal Scheme is set out in the SoCG.

5. Planning Policy and other Material Considerations

Development Plan

- 5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be determined in accordance with provisions of the development plan unless material considerations indicate otherwise.
- 5.2 The development plan comprises the St. Albans District Local Plan Review (1994) (“SADLPR”), Hertfordshire County Council Minerals Local Plan (2007) and Hertfordshire County Council’s Waste Core Strategy & Development Management Policies DPD (2012). The St. Albans District Plan was originally adopted in 1985 and reviewed in 1994. A number of policies were saved by direction of the Secretary of State on the 20th of September 2007. The Council’s document “Saved and Deleted Policies Version – July 2020” details which policies were saved by this Direction. It is noted however, that this document does not assess the extent to which these saved policies are consistent with the NPPF, and the subsequent weight that therefore should be afforded to each policy in accordance with paragraph 219 of the National Planning Policy Framework (“NPPF”).
- 5.3 A full list of the development plan policies relevant to the determination of the Appeal Scheme and their consistency with the Framework will be set out within the SoCG.

Supplementary Planning Documents or Guidance

- 5.4 In addition to Development Plan policies, the Council has also adopted a number of Supplementary Planning Documents (SPDs)/Supplementary Planning Guidance (SPGs) including the following:
- Design and Layout of New Housing Advice Leaflet No.1 (1998)
 - Revised Parking Policies and Standards (2002)
 - Supplementary Planning Guidance – Affordable Housing (2004)
- 5.5 A full list of the SPDs/SPGs relevant to the determination of the Appeal Scheme will be set out within the SoCG.

Other Material Considerations

Emerging Local Plan Documents

- 5.6 The Council had been preparing a new St. Albans Local Plan (2020-2036). This was submitted to the Secretary of State for examination in March 2019. However, on 14th April 2020, the Inspectorate wrote to the Council identifying serious concerns regarding the Duty to Cooperate and advised that the plan would very likely need to be withdrawn. The plan was formally withdrawn by the Council on 23rd November 2020.

- 5.7 Whilst the withdrawn Local Plan is no longer subject to the provisions of paragraph 48 of the NPPF (weight to emerging policies), its evidence remains a material consideration.
- 5.8 The most recent Local Development Scheme (September 2022) (“LDS”) sets out that the Council is preparing a new Local Plan. The LDS schedules that the first Regulation 18 Consultation is to be undertaken between July – September 2023, with full adoption of a new Local Plan targeted for December 2025. The Appellant will seek to agree the weight to be given to the emerging Local Plan, if published, with the Council in the SoCG.

National Planning Practice Guidance

- 5.9 On 6th March 2014, the Government published the National Planning Practice Guidance (“PPG”). The PPG is a live document that is actively updated to ensure that it remains up-to-date. The PPG is divided into different topic areas, which provide advice and guidance to inform the understanding and approach to implementation of the NPPF. Reference will be made to this document throughout the Appeal.

National Planning Policy Framework

- 5.10 The PPG outlines that the NPPF represents up-to-date Government planning policy and is a material consideration that must be taken into account where it is relevant to a planning application or appeal (ID: 21b-006-20190315). The Appellant considers that significant weight should be given to the NPPF in the determination of this appeal and reference will be made to this document throughout the Appeal.
- 5.11 In 2021, the Government republished an updated NPPF, which sets out the Government’s planning policies for England. Paragraph 11 outlines that at the heart of the NPPF lays a “presumption in favour of sustainable development”.
- 5.12 Paragraph 8 of the NPPF identifies that there are three sustainable development objectives that the planning system must aim to achieve:
- An economic objective – to help build a strong, responsive and competitive economy;
 - A social objective – to support strong, vibrant and healthy communities; and
 - An environmental objective – to contribute to protecting and enhancing our natural, built and historic environment.
- 5.13 A consultation on amendments to the NPPF ended in March 2023. At the time of writing this Statement of Case the outcomes of this consultation have not been published but it cannot be afforded any weight at this point in time. The Appellant reserves the right to provide comment as necessary when the outcomes of the consultation become known.

6. Housing Land Supply

6.1 To achieve the social objective of sustainable development, paragraph 8b of the NPPF outlines that it is necessary to:

“to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations...”

6.2 Paragraph 60 of the NPPF then states that:

“To support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of group with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.”

6.3 Paragraph 74 of the NPPF states:

“Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old.”

6.4 The Development Plan is more than five years old and therefore the Council’s five year housing land supply should be measured against the District’s local housing need calculated using the Government’s standard method (PPG ref. ID: 68-005-20190722). This results in a local housing need of 887 dwellings per annum at the time of calculation. However, housing delivery in St. Albans has, for example, amounted to only 638 dwellings in 2018/19, 443 dwellings in 2019/20 and 516 dwellings in 2020/21¹.

6.5 The Council’s latest Authority Monitoring Report (re-published in March 2023) covers 1 April 2021 to 31 March 2022 and identifies a supply of only 2.0 years.

6.6 In an appeal at Land off Bullens Green Lane, Colney Heath² which preceded the above document, the Inspector in their decision dated 14th June 2021 outlined in paragraph 5 that the Council acknowledged that it could not demonstrate a five year supply of housing. The appeal decision identified views on the actual supply ranging between 1.64 years put forward by the appellant and 2.40 years by the Council.

6.7 Ultimately the difference between the two figures was not determinative in the Inspector’s decision, and due to the “bleak” (paragraph 48) housing land supply position, the provision of housing was afforded “very substantial weight”

¹ Housing Delivery Test Results 2021

² APP/B1930/W/20/3265925

(paragraph 78) in the planning balance by the Inspector. It is noted that since this 2021 decision, the housing land supply position of the Council has deteriorated further as confirmed in the latest Authority Monitoring Report.

- 6.8 The Appellant will seek to agree the precise extent of the housing land supply shortfall with the Council through the SoCG, but in the event this is not possible the Appellant will prepare supplementary evidence.
- 6.9 Footnote 8 of the NPPF identifies that policies that are most important for determining the application will be considered out-of-date where a local planning authority cannot demonstrate a five year supply of deliverable housing sites.
- 6.10 The Housing Delivery Test (“HDT”) 2021 results show the Council having a result of 69%, triggering the presumption in favour of sustainable development irrespective of the housing land supply position. The Appellant will outline how the prolonged absence of a plan-led system and the withdrawal of the emerging Local Plan is only going to result in even lower levels of housing delivery for the foreseeable future, having regard to the constraints in the District.

7. The Appellant's Case

The Development Plan

- 7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, where regard is to be had to the statutory development plan in determining an application for planning permission, the determination shall be made in accordance with the development plan unless material considerations indicate otherwise.
- 7.2 The SADLPR was completed in March 1994, with the original plan being adopted in July 1985. A number of policies were saved by the Secretary of State in September 2007, but the plan period (to 1996) has long since passed. The Appellant will therefore outline that the SADLPR is fundamentally out of date as it fails to contain any strategic policies that seek to address the objectively assessed needs for the present day, or indeed the last few decades.
- 7.3 Paragraph 219 of the NPPF is clear that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF.
- 7.4 The SADLPR Proposals Map designates the Appeal Site as Green Belt and Policy 1 of the SADLPR states that *"The boundaries of the Green Belt around these areas (as shown on the Proposals Map) have been defined by reference to the degree of long-term expansion of the built-up areas acceptable in the context of the stated purpose of the Green Belt"*.
- 7.5 Whilst the protection of designated Green Belt land is consistent with the NPPF, a fundamental failure to keep plans up to date and to provide sufficient land to meet local housing needs is not. Importantly, the Council state that a new local plan will not be adopted until December 2025 at best³ and thus a continued implementation of the development plan, which has a complete absence of any housing requirement to meet current development needs, or indeed the accumulated unmet need from previous years, would fly in the face of the Government's objective of significantly boosting the supply of new homes (paragraph 60 of the NPPF) and result in a continued and substantial shortfall in meeting housing needs.
- 7.6 Notwithstanding the withdrawn Local Plan's demonstrable shortcomings, it still included significant releases of Green Belt land to accommodate development needs, and therefore it is clear that there has been a long-standing acceptance by the Council that Green Belt release is necessary to accommodate development needs. Accordingly, the Appellant will advance that the most important policies of the development plan are out of date due to a lack of consistency with the NPPF and being predicated on housing numbers that are wholly out of date. The Appellant will advance that this substantially reduces the weight that can be afforded to these policies.

³ See St Albans City & District Council Local Development Scheme September 2022

Other Material Considerations

Making Effective Use of Land

7.7 Paragraph 119 of the NPPF outlines that strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously developed (“PDL”) or ‘brownfield’ land’.

7.8 Paragraph 120 of the NPPF further sets out that planning decisions should:

d) promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively

7.9 The Appellant will advance that the existing residential dwelling on site and its garden comprises PDL, being outside a defined settlement boundary⁴. Furthermore, the paddocks which comprise the majority of the Appeal Site are within the curtilage of the equestrian buildings and manège on the Appeal Site, and therefore also comprise PDL. The appellant will seek to agree this with the Council through the SoCG with reference to a range of appeal decisions⁵.

7.10 As the Appeal Site is entirely PDL, the Appellant will argue that it is a sequentially preferable location for housing over non PDL Green Belt land in the District and would support the development of underutilised land and buildings to meet identified needs, in line with national policy.

7.11 In the event it is not common ground with the Council that all the paddocks form part of a single equestrian curtilage, the Appellant will provide detailed evidence which will establish how the paddocks meet the criteria of curtilage in accordance with the relevant case law⁶ and therefore comprise PDL, in line with the definition in Annexe 2 of the NPPF.

The Need for Market Housing in St. Albans

7.12 Paragraph 60 of the NPPF seeks to support the Government’s objective of significantly boosting the supply of homes. However, the Appellant will advance that the woefully out-of-date plan led system in St. Albans has had a profound effect on both housing land supply and delivery within the District.

⁴ Dartford Borough Council v Secretary of State for Communities & Local Government (CO/4129/2015)

⁵ Such as APP/V1505/W/22/3296116, APP/D3125/W/19/3235474 and APP/Y0435/W/17/3178790

⁶ Challenge Fencing Ltd v SSHCLG and Elmbridge Borough Council [2019] EWHC 553 (Admin)

- 7.13 The Appellant will seek to agree common ground with the Council regarding its housing land supply shortfall, which in a best case scenario based on the Council's latest Five Year Housing Land Supply Report⁷, is 2.0 years – a serious and substantial shortfall with no short term strategy to remedy this.
- 7.14 The HDT results further confirm a woeful performance of housing delivery, with the most recent 2022 result at only 69%, materially lower than the threshold to trigger the presumption in favour of sustainable development on its own.
- 7.15 The Appeal Scheme, at 150 dwellings, would be delivered in full over the next five years, thus making a material contribution towards the five year supply.
- 7.16 It is beyond dispute that the Council in this case has a severe and acute shortfall in the delivery of market housing. The proposal would make a meaningful contribution towards meeting that need, a benefit that the Appellant will outline must be afforded very substantial weight, which is consistent with an earlier appeal decision in the District, also at Colney Heath⁸ and was applied by the Council in their own decision to approve the application at Sewell Park in St Albans⁹.

The Need for Affordable Housing in St. Albans

- 7.17 Policy 7A of the SADLPR seeks to secure affordable housing on sites over 0.4 hectares. The Policy also states that the Council will seek to negotiate a proportion of affordable housing based on site and marketing conditions and local housing need. It is noted however that this Policy is specific to sites contained within Towns and Specified Settlements as defined in Policy 2, which does not include Colney Heath.
- 7.18 In March 2004, the St. Albans Affordable Housing SPD was adopted as a material consideration in the determination of planning applications. This document sets out the Council is applying the threshold of Circular 6/98, that being affordable housing is required on all sites of 1ha or more, or of 25+ dwellings, the Council will seek an on-site affordable housing provision equivalent to 35% of the dwellings on the site.
- 7.19 The Appellant will provide detailed analysis of the affordable housing need and provision in St. Albans. This analysis will consider various strategy documents produced by the Council such as the St. Albans Homelessness Strategy 2022-2025 and St. Albans Housing Strategy 2023-2026, along with the evidence relating to the annual need contained within evidence from Strategic Housing Market Assessment (2016) and Local Housing Needs Assessment (2020).
- 7.20 Evidence will also be presented on past market and affordable housing delivery, and comparisons will be made with the identified affordable housing needs against delivery performance. The Appellant will consider a number of

⁷ Authority Monitoring Report 2022

⁸ Appeal ref. APP/B1930/W/20/3265925

⁹ Application ref. 5/2021/0423/LSM

affordability indicators; for example, the number of households on the St Albans City and District Housing Register, which totalled 559 households at 31 March 2022.

7.21 Overall, the case presented by the Appellant will be that there is an acute need for more affordable housing within St. Albans, and the delivery of 60 much needed affordable units (40%), which exceeds the minimum requirement of 35%, represents a social benefit to which very substantial weight should be given. This weight afforded to affordable housing is again consistent with the earlier appeal decision in Colney Heath and was applied by the Council in their own decision to approve the application at Sewell Park in St Albans.

The Need for Self & Custom Build Housing in St. Albans

7.22 The Self-build and Custom Housebuilding Act (2015) requires the Council to keep a register of individuals and associations of individuals who wish to acquire serviced plots of land to bring forward self-build and custom housebuilding projects and places a duty on the Council (or other decision maker) to have regard to these registers in carrying out planning functions.

7.23 The provision of self-build and custom housebuilding is a key part of the Governments overarching housing strategy to solve the housing crisis as set out in the NPPF (2021) and the PPG.

7.24 The Appellant will provide a detailed analysis of the Council's performance against its prescribed statutory duties of this act to have met demand arising from Base Periods 1, 2, 3 and 4 by 30 October 2022. Furthermore, the future supply of self-build and custom housebuilding plots in St Albans relative to the level of demand identified will also be presented.

7.25 This evidence will demonstrate that there is a very substantial unmet need for serviced plots for self-build and custom housebuilding in St Albans and that the benefit of the provision of 9 custom and/or self-build plots weighs very substantially in favour of the Appeal Scheme.

Building a Strong, Competitive Economy

7.26 The Appellant will advance that the Appeal Scheme will result in a number of economic benefits, including:

- The direct creation of construction jobs;
- The creation of other jobs in construction related activities such as brick manufacturing; and
- Additional household expenditure in the local area.

7.27 Page 13 of the document entitled 'The Economic Footprint of UK House Building' published in March 2018 by the House Builders Federation confirms that the scale of employment supported by house building is equivalent to between 2.4 and 3.1 direct, indirect and induced jobs per new dwelling built. As such, the Appeal Scheme would create between 360 and 465 direct, indirect and induced jobs.

- 7.28 In addition to construction phase employment and related expenditure, the new residents would help to support local businesses and communities in the longer-term by way of additional disposable income expenditure and usage.
- 7.29 The Office for National Statistics (“ONS”) family spending in the UK statistics for April 2020-March 2021 identifies that total average weekly household expenditure was £481.50. In total, the direct expenditure for 150 households would amount to £3,755,700 per annum (£481.50 x 150 homes x 52 weeks).
- 7.30 This additional spend is significant, and would help support the long-term vitality and viability of the District’s economy, services and facilities.
- 7.31 The Appellant will advance that the economic benefits of the Appeal Scheme collectively carry significant weight having regard to Paragraph 81 of the NPPF, which emphasises that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

Green Belt

- 7.32 The Appellant will outline that the benefits of the Appeal Scheme clearly outweigh harms to the Green Belt and any other harms, such that very special circumstances (“VSC”) exists in line with paragraph 148 of the NPPF.
- 7.33 In relation to impacts upon the Green Belt, openness is not defined in the NPPF, however the PPG (Paragraph ref. ID: 64-001-20190722) sets out a list of matters that should be taken into account in assessing Green Belt openness, which are as follows:
- “openness is capable of having both spatial and visual aspects - in other words, the visual impact of the proposal may be relevant, as could its volume;*
- the duration of the development and its remediability - taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness; and*
- the degree of activity likely to be generated, such as traffic generation.”*
- 7.34 Evidence will be provided by the Appellant to address the above considerations in reference to impacts upon the openness of the Green Belt, in particular noting existing built form on site and visual prominence of the existing settlement edge and general containment to the wider Green Belt.
- 7.35 The Appellant will make reference to the Green Belt Review Purposes Assessment which was undertaken by Sinclair Knight Merz (SKM) in 2013 on behalf of St Albans City and District Council, Dacorum Borough Council, and Welwyn Hatfield Borough Council.

7.36 Furthermore, the Appellant will outline how the development of the Appeal Site would not materially conflict with the purposes of including land within the Green Belt, other than safeguarding the countryside from encroachment in which very limited harm is identified.

Heritage

7.37 Paragraph 199 of the NPPF states that:

When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

7.38 There are two heritage assets in the vicinity, in which the Appeal Site forms part of their setting. These heritage assets are the Grade I listed North Mymms Park House and the Grade II listed Colney Heath Farmhouse.

7.39 With regards to the Grade I Listed North Mymms Park House, the Appellant will provide evidence that the Appeal Scheme will be minimally visible from the asset, beyond the associated parkland and intervening agricultural land and will be seen in conjunction with nearby existing development. The Appeal Scheme will also be visible from the associated parkland, again beyond intervening agricultural land and in conjunction with adjacent existing development. As such, the Appellant contends that the harm to the significance the Grade I asset would be less than substantial and at the lowermost end of the spectrum, and harm to the heritage significance of the parkland would be very minor.

7.40 With regards to the Grade II Listed Colney Heath Farmhouse, evidence will be produced that the Appeal Scheme will result in less than substantial harm to the heritage significance of the asset, at the lowermost end of that spectrum, through the change in character of farmland which was historically associated with the asset.

7.41 As less than substantial harm is identified to the designated heritage assets, paragraph 202 of the NPPF states that this harm should be weighed against the public benefits of the proposal.

7.42 Evidence will therefore be provided by the Appellant that the very substantial public benefits of the Appeal Scheme outweigh the less than substantial harm identified to the settings of both the Grade I and Grade II assets.

Effect on Character and Appearance

7.43 Evidence will be provided which will show the key views of the site and a commentary will be provided on the existing and anticipated effects of the development. A SoCG will be agreed with the LPA which will identify the key views for the Inspector to visit.

- 7.44 As a detailed LVIA accompanied the planning application, that information will not be replicated but the findings of it will be summarised in the landscape evidence. Reference will also be made to the Hertfordshire Landscape Character Assessment.
- 7.45 The evidence will show that the Appeal Site does not carry any statutory or non-statutory designations for landscape or heritage value and that it is not considered to be a Valued Landscape in respect of para 174a of the NPPF.
- 7.46 The evidence will also demonstrate that the Appeal Site has a relatively ordinary character and there are no structural landscape features within the site that would constrain development. Similarly, there are no topographic features that would constrain development. Overall, the Appellant will advance the Appeal Site is of medium to low landscape quality, on account of its edge-of-settlement character and its residential/equestrian uses.
- 7.47 The evidence will also show that the site is visually well contained with views largely restricted to the immediate surroundings and only limited middle distance views available. Where views are available, it will be advanced that the Appeal Site is frequently seen within the context of existing development.
- 7.48 The parameter plan and illustrative masterplan will be described and it will be shown that the form and scale of development would complement the settlement pattern of Colney Heath and provide the framework for a high quality development to come forward at the Reserved Matters stage.
- 7.49 Similarly, the evidence will show that the landscape and visual effects of the development will, for the most part, be localised, and will not result in any material harm to the wider countryside or the setting of Colney Heath.

Location and Sustainability

- 7.50 On the 5th May 2023 immediately prior to the application reporting to the Planning Committee for determination, the County Highway Authority raised a new objection in relation to locational sustainability. The objection particularly focussed on the safety of identified cycle routes and further consultation being required with local bus providers to explore if further services could be provided with the Appeal Scheme. This objection is reflected in the reason for refusal.
- 7.51 The Appellant will seek to agree a separate Highways Statement of Common Ground in relation to locational sustainability with the County Council and Local Planning Authority to narrow points of difference.
- 7.52 The Appellant will also advance evidence to demonstrate that the cycle routes identified in the cycling audit provided by the Appellant are safe and as such the Appeal Scheme can offer suitable alternatives to the private car. Furthermore, in more general sustainability terms, the Appeal Site is located on the edge of a sustainable settlement which benefits from access to a range of services and facilities that are within walking and cycling distance of the Appeal Site. It is also located in close proximity to a range of sustainable transports modes, including bus services and

railway stations which have been previously found to be acceptable for sustainability purposes in the recent Bullens Green appeal.

7.53 Indeed, the Inspector for the Bullens Green appeal remarked on paragraph 41 in relation to Colney Heath:

To my mind, 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. These factors weigh in favour of the appeal proposals.

7.54 Therefore, it will be advanced that the sustainable location of the Appeal Site is in fact a benefit that weighs in favour of the Appeal Scheme, rather than a consideration that should amount to a reason for refusal.

Other Relevant Matters

7.55 The Appellant will seek to agree with the Council through the SoCG that the Appeal Scheme complies with all other relevant local and national planning policies, having particular regard to the following matters.

Access

7.56 Whilst initially objection was raised by the County Highway Authority, their response dated 5th May 2023 confirms that they have no objection to the vehicular access to the Appeal Site or any objection to any road safety issues as a result of the Appeal Scheme.

7.57 The Appellant will seek to agree with the Council through the SoCG that the access is acceptable and the Appeal Scheme would not raise any highway safety implications.

Biodiversity and Ecological Enhancements

7.58 The Council's Ecologist has not raised any objection to the impact of the development on protected species, subject to a number of conditions. It is further notable that the designated Local Wildlife Site is being retained and enhanced by the Appeal Scheme. The Appellant will seek to agree with the Council through the SoCG that the Appeal Scheme would not result in an adverse impact on biodiversity or ecology.

7.59 As part of the appeal the Appellant will also outline that the Appeal Scheme would deliver net gains in biodiversity through offsite compensation secured by a S106 agreement with the Council.

Minerals

7.60 Hertfordshire County Council ("HCC") Minerals and Waste commented on the Appeal Scheme on 10th February confirming that the Appeal Scheme is considered acceptable subject to the imposition of conditions. The Appellant will however seek to agree with HCC in advance of the inquiry that 'opportunistic extraction' of minerals is not viable or practical at the Appeal Site.

8. Response to Third Parties

- 8.1 In response to the public consultation undertaken by the Council, there have been 385 letters of objection at the time of writing the SoC.
- 8.2 The majority of matters raised in these letters of objection are addressed within this SoC or the SoCG, however below is a response to the most frequent matters raised by the public consultations:
- a. Development in the Green Belt – As outlined within the SoC, it is accepted that the Appeal Scheme comprises inappropriate development in the Green Belt and how the development is justified in that context.
 - b. Traffic impacts in the local area – the Appeal Scheme is supported by a Transport Assessment which addresses such matters.
 - c. Infrastructure capacity of Colney Heath – A S106 agreement will be signed by the Appellant that will make appropriate contributions to the local infrastructure to mitigate the impact of the Appeal Scheme.
 - d. Sustainability – Colney Heath has a range of services and transport options within both cycle and walking distance of the site that would allow future residents of the Appeal Scheme to meet their daily needs without reliance on a private car.
 - e. Pollution to the adjacent stream – The Environment Agency raises no objection to the Appeal Scheme which will be built with an appropriate drainage scheme that does not result in river pollution.
 - f. Impact on character – As outlined within the SoC, the Appeal Scheme will create a development that would complement the settlement pattern of Colney Heath and provide the framework for a high-quality development to come forward at the Reserved Matters stage.

9. Overall Conclusions

- 9.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, where regard is to be had to the statutory development plan in determining an application for planning permission, the determination shall be made in accordance with the development plan, unless material considerations indicate otherwise.
- 9.2 Relevant case law¹⁰ confirms that in applying Section 38(6) it is necessary to have regard to the accordance of the proposals with the development plan as a whole.
- 9.3 The Appellant's evidence will advance that when considering the overall planning balance, the development plan is woefully out of date reducing the weight that can be afforded to the most important policies for the determination of the Appeal Scheme.
- 9.4 The Appellant will outline that the NPPF is a material consideration of significant weight and that the very substantial benefits of the Appeal Scheme will clearly outweigh any harm to the Green Belt, as well as any other harms, namely impacts on the character and appearance of the landscape and impact on the setting of heritage assets.
- 9.5 These factors, when considered collectively, will be sufficient to demonstrate that very special circumstances exist to justify this form of development in the Green Belt and accordingly the Appellant will respectfully request that the Appeal Scheme is allowed.

¹⁰ R. v. ROCHDALE METROPOLITAN BOROUGH COUNCIL ex p. MILNE 31st July 2000 (CO/292/2000) at paragraphs 49 and 50

10. Planning Obligations/Conditions

10.1 The Appellant will endeavour to agree a list of conditions with the Council in advance of the Inquiry.

10.2 The Appellant will also work with the Council to agree a Section 106 planning obligation, as required.

11. Appeal Procedure/The Evidence for the Appellant

11.1 Having regard to the Procedural Guidance for Planning Appeals dated December 2022, the Appellant considers that the Inquiry procedure is most appropriate for the Appeal Scheme as it raises a range of complex issues including:

- the extent of the housing land supply shortfall in the District and issues of housing delivery;
- determining the extent of affordable housing need in the area;
- determining the extent of self build / custom build housing need in the area;
- a detailed assessment of any harm to Green Belt openness and its purposes;
- assessment of any adverse impacts upon the character and appearance of the area;
- assessment of impacts upon the setting of heritage assets; and
- assessment of the locational sustainability of the appeal site

11.2 Based upon the nature of these issues, there is a clear need for the evidence to be tested through formal questioning by an advocate as the Appeal Scheme raises highly complex planning policy considerations and many witnesses will need to rely upon highly technical evidence.

11.3 Having regard to the issues the Appellant considers are most likely to comprise the local planning authority's objections to the Appeal Scheme, the Appellant intends to call witnesses who will address the following matters:

- Planning;
- Affordable housing;
- Custom and Self-Build housing;
- Green Belt impacts;
- Landscape and visual impact;
- Heritage impacts;
- Transport sustainability; and
- Housing Land Supply (unless this can be agreed).

11.4 The Appellant reserves the right to call additional relevant witnesses should further issues be raised against the Appeal Scheme by the Council or third parties.

11.5 In support of the evidence, reference will be made to the documents referred to within this SoC and any others agreed with the Council which form part of the Core Document List. The Appellant reserves the right to add additional documents to address any issues raised against the proposal or any new documents or decisions of relevance.

11.6 A finalised Core Document List will be agreed with the Council and this will be submitted prior to the start of the Inquiry.

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