

**Land to the rear of 42-100 Tollgate Road & 42
Tollgate Road, Colney Heath – Appeal ref.
APP/B1930/W/23/3323099**

Proof of Evidence (including summary) of Oliver Bell BSc MSc MRTPI

ON BEHALF OF VISTRY HOMES LTD

August 2023

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1. Qualifications, Experience and Declaration

- 1.1 My name is Oliver Bell and I am a Chartered Town Planner and Member of the Royal Town Planning Institute. I hold a Bachelor of Science (Honours) in Geography from Swansea University and a Master of Science in Development Planning from University of Reading. I have more than 15 years' professional experience as a town planner.
- 1.2 I am a chartered member of the Royal Town Planning Institute.
- 1.3 I appear at this Inquiry on behalf of Vistry Homes Ltd to provide planning evidence with respect to the appeal against St Albans City & District Council's refusal of planning application reference 5/2022/1988.
- 1.4 I am a Director at Nexus Planning, which was established in 2013 as a specialist town planning consultancy. I joined Nexus Planning since its outset some 10 years ago, and prior to this worked at Guildford Borough Council and Woking Borough Council in the development management team.
- 1.5 In my present capacity I advise a range of developers and housebuilders on town planning matters with a focus on greenfield residential developments in the south east of England.
- 1.6 I have extensive experience of managing a wide range of projects throughout my career, with a particular focus in strategic land promotion and the management of complex major residential and mixed-use planning applications across the UK, participating in numerous Local Plan Examinations and appeals.
- 1.7 I have also co-ordinated the preparation of a number of Environmental Impact Assessments (EIAs) for major developments across the country.
- 1.8 I have been directly involved in the project since April 2023.
- 1.9 The evidence which I have prepared and provide for this Appeal is consistent with the RTPI's professional code of conduct and is true to be best of my knowledge and belief; and I confirm that this reflects my professional opinion irrespective of by whom I am instructed.
- 1.10 This proof has been prepared having regard to the Inspector's pre and post Case Management Conference ('CMC') notes.

2. Introduction and Scope of Evidence

2.1 It is worth highlighting at the outset that there is a considerable degree of common ground between the Appellant and the Council on a number of matters. To avoid duplication with the content of the Statement of Common Ground (SoCG) (CD8.3), I do not outline these matters in full in my evidence. Further topic based SoCGs are currently being prepared in respect of:

- Affordable Housing;
- Landscape;
- Transport; and
- Heritage.

2.2 Against this background, my evidence focuses on the Main Issues identified by the Inspector in his Case Management Conference Summary Note, which are as follows:

- a. The effect of the proposed development 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 appeal 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.

2.1 Detailed matters relating to landscape and Green Belt are addressed in the evidence of Mr Self (CD9.5).

2.2 Detailed matters relating to heritage are addressed in the evidence of Ms Stoten (CD9.3).

2.3 Detailed matters relating to transport are addressed in the evidence of Mr Dimbylow (CD9.4).

2.4 Detailed matters relating to affordable housing are addressed in the evidence of Ms Gingell (CD9.1).

2.5 Detailed matters relating to self build / custom housing are addressed in the evidence of Mr Moger (CD9.2).

2.6 It was also agreed that a number of Other Matters are to be dealt with at the Inquiry as addressed below.

2.7 A draft Section 106 Agreement necessary to mitigate the impacts of the Appeal Scheme (in the event planning permission is granted) is being drafted with the Council. Subject to this being finalised, it is common ground that Reason for Refusal (RfR) 2, which is procedural, would be addressed and I proceed on the basis it has been.

2.8 The Inspector's CMC note outlines a need to consider evidence on the effects of the proposed development on traffic and highway safety, flood risk and drainage, the ecology of the area including the River Colne, noise, air quality and the living conditions of the occupiers of nearby residential properties. It is however noted these matters are not in dispute between the main parties. These matters are dealt with in the SoCG and the evidence of Mr Dimbylow, although I provide further commentary later on in my evidence.

3. The Appeal Site / Appeal Scheme

- 3.1 A full summary of the Appeal Scheme is set out in Section 4 of the SoCG.
- 3.2 The Appeal Site and surrounding area is described in full within the SoCG.
- 3.3 The planning application was validated by the Council on 23rd August 2022 and the 13-week statutory date from validation for the determination of the planning application was 22nd November 2022. The Appeal Scheme was given reference 5/2022/1988. Multiple extensions of time were agreed with the Council, including until the 20th January 2023, 28th February 2023 and finally until 27th March 2023. The application was determined 25th May 2023.

4. The Development Plan

4.1 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.

4.2 Relevant case law¹ 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.

4.3 The SoCG confirms that the development plan comprises:

- Saved Policies of the St. Albans District Local Plan Review (1994) (“the Local Plan”) (CD2.1);
- HCC’s Waste Core Strategy & Development Management Policies DPD (2012) (CD2.2); and
- HCC’s Hertfordshire Minerals Local Plan 2007 (CD2.3).

4.4 The Local Plan was originally adopted in 1985 and reviewed in 1994. I note that the evidence base of the Local Plan Review, was predicated on the already out of date Hertfordshire County Structure Plan 1986 Review, rather than the up-to date (at the time) Hertfordshire County Structure Plan 1991 Alterations. Indeed, this is recognised at paragraph 1.18 of the Local Plan which states:

“Preparatory work on the District Plan Review was well advanced before the Structure Plan Alterations were finalised. Consequently the District Plan Review was prepared against the background of the County Structure Plan 1986 Review, rather than the Alterations 1991”.

4.5 However, despite this even at the time of adoption of the Local Plan, paragraph 1.18 of the Local Plan recognises the consequences of the dated evidence base:

“The District Council recognises that there is a need to alter or review the District Plan as a matter of urgency”.

4.6 Therefore, whilst the Local Plan was adopted in 1994, some 29 years ago, it is based on the requirements of the County 37 years ago in 1986.

4.7 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. Paragraph 219 of the National Planning Policy Framework (“the Framework”) is clear due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework, which I address against the relevant policies below.

4.8 A full list of development plan policies relevant to the determination of the Appeal Scheme are set out within the SoCG.

4.9 The SoCG confirms at paragraph 5.5 the most important policies in determining the Appeal Scheme are Policies 1, 2, 69, 86 and 143b of the Local Plan and that it is common ground the most important policies of the Local Plan are out of date by reason of the Council’s inability to demonstrate the required five-year supply of deliverable housing sites, in accordance with footnote 8 of the Framework. The Council’s position is its housing supply sits at only 2.0 years and

¹ R. v. ROCHDALE METROPOLITAN BOROUGH COUNCIL ex p. MILNE 31st July 2000 (CO/292/2000) at paragraphs 49 and 50 (CD13.1)

the Appellant’s position is that the supply position is even worse (1.97 years [See Appendix 1]), but whichever figure is used, the SoCG confirms at paragraph 6.7 the shortfall is “substantial”.

- 4.10 Furthermore, the development plan is considered to be out of date having regard to footnote 8 of the Framework and also in the context of the Housing Delivery Test (HDT) results 2021 (CD16.1) which show the Council having a result of only 69%, triggering the presumption in favour of sustainable development irrespective of the housing land supply position.
- 4.11 The Local Plan period ran until to 2001 and consequently there has been no plan led strategy to meet the District’s development needs for a staggering 22 years, which as I explain later in this Proof, is the principal cause of the Council’s woeful housing land supply position, noting the Green Belt constraints that prevails across the District.
- 4.12 I am clear that in the absence of an up to date plan-led system within an area highly constrained by Green Belt, it is only going to result in a further worsening of housing delivery for the foreseeable future.
- 4.13 Turning to the development plan policies relevant to the determination of the Appeal Scheme (which as I have detailed above is agreed with the Council), I set out my assessment of the Appeal Scheme’s compliance below:

Policy 1

- 4.14 Policy 1 of the Local Plan is agreed to be a most important policy and a purported conflict with this Policy is referred to in the Council’s first reason for refusal.
- 4.15 This policy confirms the boundaries of the Green Belt within the District and states these boundaries have been defined by reference to the degree of long-term expansion of the built-up areas acceptable in the context of the purposes of the Green Belt. In this context, I note that the original St Albans District Plan (adopted July 1985) placed all the District in the Green Belt except for the main built-up areas (para. 2.3 of CD2.1). Supporting paragraph 2.4 of the Local Plan then confirms it proposes “...a limited number of minor adjustments to the Green Belt in order to improve the long term permanence of the boundaries...More major boundary adjustments have been made at the following locations...”. Adopted in 1994, it is clear Green Belt boundaries haven’t been reviewed in the District for a staggering 29 years and were only defined to meet development needs until 2001. In recognition of this paragraph 4 of the Local Plan states:

“Nevertheless, the District Council recognises that there is a need to prepare Alterations or a full Review of the District Plan, looking to 2001 or beyond, as a matter of urgency.” (my emphasis)

- 4.16 Policy Intention 35 ‘Monitoring and Review of the District Plan’ crystallises this, stating that the District Council will:

“(iii) prepare, as a matter of urgency, alterations or a full review of the Plan, taking account of the County Structure Plan Approved Alterations 1991 and looking to 2001 or beyond.”
- 4.17 One might reasonably expect that process to have commence immediately following the adoption of the Local Plan in 1994 and yet 29 years later, we still await the completion of the review.
- 4.18 Policy 1 outlines that other than for development in Green Belt settlements referred to in Policy 2 (which does not apply to the Appeal Scheme) or in very special circumstances, permission will not be given for development other than for a specific number of purposes. These exceptions are not wholly consistent with those outlined at paragraphs 149 and 150 of the Framework. However, in the context of the Appeal Scheme, the relevant provision is ‘very special

circumstances’ which exists within Policy 1 and the Framework. Accordingly, I am of the view that Policy 1 can be afforded full weight in the determination of this appeal.

- 4.19 As I outline later on in my evidence, the benefits of the Appeal Scheme clearly outweigh any harms such that very special circumstances exist and on this basis, I consider the Appeal Scheme is compliant with Policy 1.

Policy 2

- 4.20 Policy 2 establishes the hierarchy of settlements and spatial strategy for the District across the plan period of 1994 – 2001. Whilst it is identified as a most important policy, I note that a conflict with Policy 2 is not cited in the Council’s reasons for refusal.
- 4.21 The hierarchy of settlements identified in Policy 2 is predicated on the County Structure Plan which was adopted in 1986. This identifies three distinct settlement types: Towns, Specified Settlements and Green Belt Settlements.
- 4.22 In general terms the policy seeks to protect and enhance the essential character of the existing settlements. Colney Heath is identified as a Green Belt Settlement where Policy 2 identifies that apart from exceptions in Policy 1, development will not normally be permitted except where it meets local housing needs or the local facilities and service needs of the settlement where the development is proposed. Development must not also detract from the character and setting of the settlement.
- 4.23 Firstly dealing with weight given to this policy, the hierarchy of settlements and spatial strategy contained within Policy 2 was defined to meet development needs between 1994 and 2001 and is therefore plainly out of date as it was devised to meet the needs of a different generation. Slavishly adhering to the settlement strategy would have the effect of thwarting otherwise sustainable development, which would fly in the face of the Government’s objective of “*significantly boosting the supply of homes...*” and ensuring “*a sufficient amount and variety of land can come forward where it is needed...*” (paragraph 60 the Framework). Furthermore, paragraph 61 of the Framework is clear that “*To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment...*” which is demonstrably not the case, noting strategic policies are informed by housing needs determined decades ago.
- 4.24 The Council’s woeful housing land supply position of 2 years at best, is symptomatic of this issue, further reinforced by a Housing Delivery Test score of only 69%.
- 4.25 Furthermore, and as I have outlined earlier, the Local Plan was clear that at the time of adoption that reviewing the Plan to look beyond 2001 was an ‘urgent priority’ at that time, let alone now.
- 4.26 It is clear that if the Council is to get anywhere close to meeting its development needs, the release of Green Belt sites is essential, as reflected in the Council’s emerging Local Plan (CD3.1). Accordingly, I afford only limited weight to Policy 2.
- 4.27 In relation to compliance with Policy 2, this links back to exceptions identified in Policy 1, which as I have already identified the Appeal Scheme would comply with.
- 4.28 As I outlined earlier, Policy 2 generally seeks to protect and enhance essential character of the existing settlements and under part 3 relating to Green Belt Settlements states “*development must not detract from the character and setting of these settlements within the Green Belt.*”

4.29 Firstly, it should be noted that there is a limitation to which the Appeal Scheme’s compliance with this aspect of the policy can be assessed, being an outline application. Nevertheless, I refer to the evidence of Mr Self (CD9.5), which explains the following:

“7.2 the scale and configuration of the development will complement the nucleated settlement pattern of the southern part of Colney Heath”.

“7.3 From my observations on Site and from the wider area I believe that there will be a negligible adverse impact on the character of the wider landscape.”

4.30 Furthermore, the Design and Access Statement (CD4.6) prepared in supporting of the planning application for the Appeal Scheme outlines at paragraph 7.2 that:

“The design proposals for the Site have evolved through an iterative design process informed by environmental and technical work, an understanding of the development’s relationship with Colney Heath and the surrounding context, and an assessment of planning and design policy, including building upon the Objectives contained within the St Albans City and District Council Local Plan. This has resulted in the Development Plan (Figure 7.1) which seeks to minimise environmental impacts whilst maximising social, economic, biodiversity and sustainability benefits.”

4.31 Section 7 of the Design and Access Statement then explains in great detail the rationale for the form of the development, its scale, inclusion of green infrastructure, layout principles and character areas. Whilst much of this is illustrative at this stage, in my view it provides the framework for a high quality development that respects the character of the existing settlement.

4.32 Given the above, I agree that the Appeal Scheme would protect and enhance the essential character of the existing settlement including its setting.

4.33 Overall, I consider the Appeal Scheme complies with Policy 2 but even if a conflict was found, this policy can only be afforded limited weight due to its lack of consistency with the Framework.

Policy 69

4.34 The main parties have agreed through the SoCG that Policy 69 is a most important policy, it is however noted that the policy is not referred to in the reasons for refusal. Policy 69 requires all development to have an adequately high standard of design, taking into account the following factors:

- i. *Context – the scale and character of its surroundings in terms of height, size, scale, density or plot to floorspace ratio;*
- ii. *Materials – shall normally relate to adjoining buildings. Large isolated buildings in rural or settlement edge settings shall be clad in materials that take account of the general colour and tonal value of their background;*
- iii. *Other policies – Applicants shall take into account all relevant policies and requirements.*

4.35 I consider this policy to be generally consistent with the Framework and accordingly can be afforded full weight in the determination of this appeal.

4.36 In relation to the requirements regarding scale and character in terms of plot ratios, height, size and scale, as well as the requirements in relation to materials (criteria i and ii), I can see no reason why these matters could not be

satisfactorily addressed at the reserved matters stage. This view appears to be shared by the Council where at paragraph 8.5.16 of the Committee Report (CD6.1) its states:

“Taking the above discussion into account, it is not considered that there would be harm caused in relation to design and amenity that could not be mitigated through good detailed design and through the appropriate use of planning conditions. As such, this matter is considered to weigh neutrally in the planning balance, with no positive or negative weight given in these regards.”

4.37 However, I note that at paragraph 5.35 of the Council’s SoC it now alleges conflict with Policy 69 due to a purported *“failure to respect context to respect context, deliver high quality design and have proper regard to setting and the character of the area together with the loss of existing attractive arable landscape”*.

4.38 I have already addressed this matter in relation to the requirements of Policy 2 to the extent it is relevant for an outline application and found compliance. As such, I do not agree with this statement.

4.39 With regards to criterion iii, the SoCG records at paragraph 5.7 that:

“The main parties do not agree whether a conflict with Policies 1, 2, 69 and 143b of the Local Plan arises in relation to the Appeal Scheme. However, both parties do agree that the Appeal Scheme complies with, or can comply with at the reserved matters stage, all other relevant policies in the Local Plan, as listed above, albeit the Council does not consider the Appeal Scheme to support the objectives of the Watling Chase Community Forest consistent with Policy 143A.”

4.40 Having regard to my findings in relation to the above mentioned policies and the fact it is agreed the Appeal Scheme complies with, or can comply with at the reserved matters stage, all other relevant policies in the Local Plan, no conflict arises with Policy 69.

Policy 86

4.41 Policy 86 relates to covers the protection of buildings of special architectural or historical interest and is agreed through the SoCG to be a most important Policy although no conflict with Policy 86 is alleged in the Council’s decision notice (CD6.2).

4.42 Criterion i of Policy 86 requires that:

“...for planning permission for development which affects a listed building or its setting), the Council will have special regard to the desirability of preserving the building or its setting or any features of architectural or historic interest which it possesses.”

4.43 Criterion i reflects the duty of decision makers set out in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Criterion i of Policy 86 is therefore consistent with the most up to date legislation and current national policy set out in the Framework in this specific regard (paragraph 197a of the Framework).

4.44 I do not consider Criterion ii relevant to the Appeal as this relates to the demolition of listed buildings.

4.45 Criterion iii of Policy 86 sets out criteria that a development should be assessed against when considering a developments impact on heritage assets and makes reference to the guidance in *“Appendix iv of the Department of the Environment Circular 8/87 (or successive Government advice)”*.

4.46 In respect of Circular 8/87 and ‘successive Government advice’, I understand the following:

- Circular 8/87 was superseded by PPG 15: Planning and the historic environment (DETR, 1994)
- PPG 15 was superseded by Planning policy statement 5: planning for the historic environment (DCLG, 2010)
- PPS 5 was superseded by the Framework (2012)
- The Framework 2012 has been revised to the present day version – the Framework 2021.

4.47 In respect of parts a-h within criteria iii, none would be relevant to the Appel Scheme as they relate to the impacts on the fabric/curtilage of a listed building itself rather than its setting.

4.48 Returning to the overarching requirement of criterion iii of Policy 86, this effectively leads the decision maker to consider the Framework. In this regard, paragraph 199 states:

“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.”

4.49 The SoCG (CD8.3) outlines the following relation to heritage matters:

“6.70 There are three designated heritage assets in the vicinity, in which the Appeal Site forms part of their setting. These designated heritage assets are the Grade I listed North Mymms Park House, the Grade II listed Colney Heath Farmhouse and the Grade II listed barn on the north side of Colney Heath Farm. It is agreed that less than substantial harm will occur upon the significance of Colney Heath Farmhouse, Grade II listed barn and North Mymms Park House, and whilst the extent of harm is not agreed, it is agreed to be less than substantial and at the lower end of that spectrum.

6.71 It is agreed that 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 Appeal Scheme.

6.72 The parties agree that the public benefits outweigh the harm to designated heritage assets.

6.73 The appeal site also falls within the setting of two non-designated heritage assets, Tollgate Farmhouse and the landscape at North Mymms Park. It is agreed that the impact on their setting should be taken into account in determining the appeal.”

4.50 As set out in the Heritage Statement of Common Ground (CD8.4), there are no significant areas of disagreement in relation to the impact on heritage assets from the Appeal Scheme. The Heritage Statement of Common Ground sets out the following agreed position of the Appellant and Council with respect to the impact on identified heritage assets in Section 3:

- Grade II Listed Colney Heath Farmhouse and Barn - less than substantial harm and at the lowermost end of the spectrum
- Grade I Listed North Mymms Park House - less than substantial harm and at the lowermost end of the spectrum
- Non-designated North Mymms Park Parkland - very minor harm
- Non-designated Tollgate Farm – very minor harm

4.51 I am in full agreement with the agreed position between the parties.

4.52 Paragraph 202 of the Framework states:

“Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.”

4.53 The main parties agree impacts on the designated heritage assets sit at the lowermost end of the less than substantial harm spectrum² and are agreed that the public benefits of the Appeal Scheme outweigh this harm³. I agree.

4.54 Paragraph 203 of the Framework states:

“The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”

4.55 As previously set out, the agreed position of the parties is that there is a ‘very minor’ impact upon the setting of the North Mymms Parkland and Tollgate Farm, both of which are non-designated heritage assets. The Framework states *“a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”*

4.56 Having regard to the significance of the non designated assets and scale of harm identified, I am clear that the benefits of the Appeal Scheme comfortably outweigh this ‘very minor’ harm.

4.57 It is also agreed that the Appeal Scheme is acceptable in terms of archaeological matters, subject to the imposition of conditions.

4.58 Given the public benefits of the Appeal Scheme outweigh the heritage harms, I am of the view there is no conflict with Policy 86 of the Local Plan. I do however acknowledge this does not take away the fact harms have been identified to heritage assets, which I address in the planning balance later on in my evidence.

Policy 143A

4.59 The Appeal Site falls within the Watling Chasing Community Forest area as shown in Figure 21A of the Local Plan (CD2.1). The SoCG at paragraph 5.7 records that *“the Council does not consider the Appeal Scheme to support the objectives of the Watling Chase Community Forest consistent with Policy 143A”* (CD8.3) rather than alleging an overt conflict.

4.60 The Policy details that the Council *“will welcome detailed proposals for the purposes of landscape conservation, recreation, nature conservation and timber production”*. The policy is very broad in its objectives and there is nothing the Appeal Scheme directly conflicts with, which might explain the Council’s choice of words. However, I see no reason why these objectives can’t be complied with at the reserved matters stage in so far as they are relevant, such as details relating to the recreational use of areas of open spaces and details relating to the protection and management of the Local Wildlife Site in the southern part of the Appeal Site.

² Heritage Statement of Common Ground paragraph 2.1 (CD8.4)

³ Statement of Common Ground paragraph 6.72 (CD8.3)

4.61 Policy 143A also requires compliance with Policy 1 (addressed earlier) and other specified policies, where it is common ground there is no conflict. Accordingly, I find that the Appeal Scheme would not conflict with the policy or undermine the overall delivery of its objectives.

Policy 143B

4.62 Policy 143b is agreed to be a most important Policy and conflict with this policy is referred to in the Council's second reason for refusal.

4.63 As set out in the SoCG, the Council and Appellant will be working towards the agreement of a S106 agreement to address the infrastructure requirements set out in the Council's second reason for refusal. On this basis, there is no conflict with Policy 143B.

Compliance with the Development Plan as a whole

4.64 As I have outlined earlier, relevant case law⁴ 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. As identified by Mr Justice Sullivan at that time, given the numerous conflicting interests that the development plan seeks to reconcile:

"...it would be difficult to find any project of any significance that was wholly in accord with every relevant policy in the development plan. Numerous applications would have to be referred to the Secretary of State as departures from the development plan because one or a few minor policies were infringed, even though the proposal was in accordance with the overall thrust of development plan policies." (paragraph 49)

4.65 As such there may be:

"..no clear cut answer to the question: "is this proposal in accordance with the plan?"" (paragraph 48)

4.66 Accordingly, he concluded that for the purposes of according with the relevant legislation:

"..it is enough that the proposal accords with the development plan considered as a whole. It does not have to accord with each and every policy therein." (paragraph 50)

4.67 My assessment of compliance with Policy 1 is on the basis very special circumstances exist to allow the Appeal Scheme. I have then assessed compliance with all other disputed policies and found the Appeal Scheme to comply or is capable of complying at the reserved matters stage. There is no other alleged conflict with relevant development plan policies. On this basis, I consider the Appeal Scheme to comply with the development plan taken as a whole.

4.68 However, even if some conflict with relevant policies is found, that does not automatically mean a failure to comply with the development plan as a whole. Instead, a judgement will need to be made as to the weight to be given to that policy, the extent of the conflict and the importance of that policy in the consideration of the development proposed.

⁴ R. v. ROCHDALE METROPOLITAN BOROUGH COUNCIL ex p. MILNE 31st July 2000 (CO/292/2000) at paragraphs 49 and 50 (CD13.1)

5. Other Material Considerations

National Planning Policy Framework

- 5.1 It is common ground with the Council that the Framework is a material consideration in the determination of this appeal to which significant weight should be given.
- 5.2 The Framework includes a range of policies that are relevant to the Appeal Scheme and the Council in its reason for refusal reference conflict with the Framework.

The Need for up to Date Local Plans

- 5.3 Paragraph 33 of the Framework is clear that:

“Policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary. Reviews should be completed no later than five years from the adoption date of a plan, and should take into account changing circumstances affecting the area, or any relevant changes in national policy. Relevant strategic policies will need updating at least once every five years if their applicable local housing need figure has changed significantly; and they are likely to require earlier review if local housing need is expected to change significantly in the near future.”

- 5.4 The PPG (Paragraph: 062 Reference ID: 61-062-20190315) provides further detail, outlining that:

“To be effective plans need to be kept up-to-date. The National Planning Policy Framework states policies in local plans and spatial development strategies, should be reviewed to assess whether they need updating at least once every 5 years, and should then be updated as necessary.”

Under regulation 10A of The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) local planning authorities must review local plans, and Statements of Community Involvement at least once every 5 years from their adoption date to ensure that policies remain relevant and effectively address the needs of the local community. Most plans are likely to require updating in whole or in part at least every 5 years. Reviews should be proportionate to the issues in hand. Plans may be found sound conditional upon a plan update in whole or in part within 5 years of the date of adoption. Where a review was undertaken prior to publication of the Framework (27 July 2018) but within the last 5 years, then that plan will continue to constitute the up-to-date plan policies unless there have been significant changes as outlined below.

There will be occasions where there are significant changes in circumstances which may mean it is necessary to review the relevant strategic policies earlier than the statutory minimum of 5 years, for example, where new cross-boundary matters arise. Local housing need will be considered to have changed significantly where a plan has been adopted prior to the standard method being implemented, on the basis of a number that is significantly below the number generated using the standard method, or has been subject to a cap where the plan has been adopted using the standard method. This is to ensure that all housing need is planned for as quickly as reasonably possible.”

- 5.5 The Local 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. As I have outlined earlier in my evidence the plan period only ran until to 2001. It planned the provision of 6,400 units between 1981 – 1996 and 7,400 between 1986 – 2001. Consequently, I find it astonishing that there has been no plan led strategy to meet the Council’s development needs for 22 years, even more so when the Council identified a review of the Local Plan was necessary “as a matter of urgency” at the point of adoption 29 years ago given it was based on the already out of date Hertfordshire County

Structure Plan 1986 Review. In my experience, the Local Plan is therefore likely to represent one of the oldest development plans still in operation across the whole of England. Put simply, the Council has exhibited a monumental failure in ensuring the planning system in the District is “*genuinely plan-led*”, as required by paragraph 15 of the Framework.

- 5.6 This is a situation which cannot be described as anything other than appalling but the consequences are more important, namely an authority that is fuelling the housing and affordability crisis this country faces through woeful performance against the HDT (69%) and a severe housing land supply shortfall which even on the Council’s figures is a mere 2.0 years⁵.
- 5.7 The Council had been preparing a new St. Albans Local Plan (2020-2036) (CD3.1). This was submitted to the Secretary of State for examination in March 2019. However, on 14th April 2020, the Inspector wrote to the Council identifying serious concerns regarding the Duty to Cooperate and that the plan would very likely need to be withdrawn. The Local Plan was subsequently formally withdrawn by the Council on 23rd November 2020.
- 5.8 The most recent Local Development Scheme (September 2022) (CD3.3) sets out that the Council is preparing a new Local Plan and adoption of the new Local Plan targeted for December 2025. The Regulation 18 Local Plan to 2041 has now been published and the consultation period runs from 12th July to 25th September 2023.
- 5.9 It is common ground that the emerging Local Plan can only be afforded limited weight in the determination of this Appeal and that the evidence underpinning it is a material consideration. Notwithstanding this, I would make the following key observations in relation to the Regulation 18 Local Plan:
- The Local Housing Need calculated by the Standard Method is 888 units per annum, or 15,096 over the plan period.
 - Over 81% of the District’s area is classified as Green Belt.
 - At paragraph 3.2 it states “*the Plan is taking the approach of identifying and allocating Previously Developed Land/ Brownfield sites first for development so that growth is as sustainable as possible.*”
 - At paragraph 3.13 it states that “*the Local Plan seeks to make the most efficient use of land in the District and has undertaken an extensive and rigorous search for Previously Developed Land (PDL) (also known as ‘Brownfield land’ in national policy) within existing built-up areas. The approach has been underlain by the concept of ‘leaving no stone unturned’ in the search for appropriate sites on brownfield land.*” It goes on to say at paragraph 3.14 that “*This extensive search also included potential PDL opportunities in the Green Belt*”.
 - Despite this, large amounts of Green Belt land are proposed for removal as shown in Appendix 1 of the Emerging Local Plan – Local Plan Sites (CD3.1) and draft policies map (CD3.2). This includes draft allocations of approximately 10,767 dwellings on non-PDL Green Belt land and 237 dwellings on Green Belt PDL land.
 - Table 3.2 outlines the Council’s proposed trajectory and shows the Council won’t start meeting its annual housing need until at least 2028/29, even with an up to date local plan.
 - The emerging Local Plan proposes the retention of Colney Heath as a settlement washed over by the Green Belt, with no allocations proposed at the Appeal Site or the settlement.
- 5.10 This appeal is clearly not the forum to consider the soundness of the emerging Local Plan but having regard to the above, I am clear the vast majority of the Council’s development needs will have to be accommodated within the Green Belt and even with a new Local Plan, the Council will not start meeting its development needs for at least another 5 years at best. It is also apparent the Council has failed to consider the merits of the Appeal Site as PDL

⁵ Paragraph 6.5 of the Statement of Common Ground (CD8.3)

and in the view of Mr Self (which I agree with) incorrectly concluded Colney Heath should continue to be washed over by Green Belt and as a result, failed to consider the release of any sites on the edge of the settlement.

Making Effective Use of Land

5.11 Paragraph 119 of the Framework 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 or ‘brownfield’ land”.

5.12 Furthermore, paragraph 120d of the Framework states that planning decisions should:

“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 (for example converting space above shops, and building on or above service yards, car parks, lock-ups and railway infrastructure)”

5.13 It is common ground that the existing residential dwelling on site and its garden comprise PDL, being outside a defined settlement boundary⁶ (see para 6.11 of the SoCG).

5.14 With regard to the rest of the Appeal Site, I refer to drawing 3925/126 of Appendix 2 of my evidence which demonstrates the extent of the site I consider to be PDL.

5.15 I understand the Council accept that the equestrian facilities at the Appeal Site, namely the single storey 12-bay stable building, all-weather manège, equestrian storage containers and associated hardstanding comprise PDL. However, I understand that the Council question whether the associated paddocks fall within the same curtilage as these equestrian facilities, and therefore also comprises PDL.

5.16 I understand that the approach of assessing curtilage is set out in *Methuen-Campbell v Walters [1979] 2 QB 525* which was recently endorsed in the Court of Appeal⁷. My understanding of these judgements is that land must be so intimately associated with a building it forms *part and parcel* of the building.

5.17 The owner of the Appeal Site has provided a statement in relation to the use of the site for equestrian purposes (Appendix 3 of my evidence). This is illustrated in plan form at drawing ref. 3925/127A (Appendix 2 of my evidence). It is clear from these two documents that the fields form an essential part of the use of the stables and ménage, with the fields used throughout the year on rotation.

5.18 It is for these reasons, combined with my site visit, that I am of the opinion the paddocks have a clear intimate association with the stable buildings and ménage, such that they form part and parcel of the same curtilage.

5.19 I am aware of appeal decisions at Clover Court, Clanfield⁸, Lavendon, Olney⁹ and Maitland Lodge, Billericay¹⁰ where the Inspectors found equestrian uses not to be agricultural use and therefore constituted PDL. In respect of the Lavendon, Olney appeal, the Inspector stated the following at paragraph 13:

⁶ Dartford Borough Council v Secretary of State for Communities & Local Government (CO/4129/2015) (CD13.7)

⁷ R (Hampshire County Council) v Secretary of State for Environment, Food and Rural Affairs [2021] EWCA Civ 398 (CD13.13)

⁸ Appeal ref: APP/D3125/W/19/3235474 (CD14.33)

⁹ Appeal Ref: APP/Y0435/W/17/3178790 (CD14.34)

¹⁰ Appeal Ref: APP/V1505/W/22/3296116 (CD14.20)

“From my visit it is clear that although only the northern part of the site contains development, the paddocks that extends to the south is part of the use of the site for equestrian purposes. I find this to be an integral part of the site that is within the curtilage of the manege and stable building. Thus, the site is considered previously developed land.”

- 5.20 Given the above, and noting the definition of PDL at Annex 2 of the Framework, I consider that the entire extent of the Appeal Site comprises PDL. The Site is therefore generally a sequentially preferable location for development over other greenfield Green Belt sites, particularly in the highly constrained context of St Albans District. This approach aligns with the findings of the Inspector at paragraph 39 of the aforementioned Maitland Lodge appeal¹⁰.
- 5.21 I place significant weight on the effective use of PDL to provide homes, which accords with paragraph 119 of the Framework and again aligns with the weight given by the Inspector at paragraph 35 of the Maitland Lodge appeal¹⁰.

The Need for Market Housing

- 5.22 The Housing Land Supply evidence at Appendix 1 of my evidence addresses matters of housing land supply generally in the context of the agreement that the Council is unable to demonstrate a 5 year housing land supply, contrary to the requirements of paragraph 74 of the Framework. This section of my evidence focuses on the importance of, and need for, housing generally in the District.
- 5.23 The Local Plan was adopted well before even the 2012 Framework, is devoid of a housing requirement and is based upon a strategy to meet development needs which had regard to a policy framework outlining a fundamentally different approach to calculating housing need.
- 5.24 This interpretation is supported by the courts in the case of Gallagher Estates Ltd & Lioncourt Homes Ltd v Solihull Metropolitan Borough Council¹¹ where at paragraph 97, Mr Justice Hickinbottom explains the significance of the Framework coming into force:

“However, this fails to acknowledge the major policy changes in relation to housing supply brought into play by the NPPF. As I have emphasised, in terms of housing strategy, unlike its predecessor (which required a balancing exercise involving all material considerations, including need, demand and relevant policy factors), the NPPF requires plan-makers to focus on full objectively assessed need for housing, and to meet that need unless (and only to the extent that) other policy factors within the NPPF dictate otherwise. That, too, requires a balancing exercise – to see whether other policy factors significantly and demonstrably outweigh the benefits of such housing provision – but that is a very different exercise from that required pre-NPPF. The change of emphasis in the NPPF clearly identified that paragraph 47 should on occasions, yield different results from earlier policy scheme; and it is clear that it may do so.”

- 5.25 The Framework 2021 maintains this radical change where at paragraph 8 it outlines the three overarching objectives to secure sustainable development and paragraph 8b states that to achieve the ‘social objective’ 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...”

- 5.26 Paragraph 60 of the Framework then states that:

¹¹ Gallagher Estates Ltd & Lioncourt Homes Ltd v Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin) (CD13.14)

“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 groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.”

5.27 Furthermore, paragraph 74 of the Framework 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.”

5.28 It is common ground between the parties that the Council cannot demonstrate a five year housing land supply against its local housing need figure calculated using the standard method with a 20% buffer applied. The SoCG confirms that the Council considers its housing land supply is 2.0 years at best, whilst the Appellant considers this to be 1.97 years, as detailed in the Housing Land Supply Statement at Appendix 1. It is common ground between the parties that this is a substantial shortfall, and the difference between housing land supply figures is not determinative. I agree.

5.29 Furthermore, the HDT 2021 results (CD16.1) show the Council having a result of 69% triggering the presumption in favour of sustainable development irrespective of the housing land supply position¹². In the absence of an up-to-date local plan, I cannot see this figure materially improving, indeed it is quite probable it will continue to worsen until a new local plan is adopted (the Council consider this to be more than 2 years away).

5.30 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. Furthermore, the Appellant is proposing to agree to a condition which shortens the standard time limit for implementation from three years to two years for the submission of reserved matters and reducing the time limit for commencement from two years to one year from the date of the approval of the last reserved matters. In reality, the Appellant, as a national housebuilder, would seek to implement the scheme much quicker if the necessary planning approvals are obtained.

5.31 The weight given to the delivery of market housing must, in my view, be given in the context of the agreed substantial housing land supply shortfall, the woeful HDT results and fact that there is no strategy in place, nor will there be for more than 2 years, to rectify this crisis. Indeed, I find it difficult to imagine a more severe situation in respect of housing delivery than that found in St Albans District.

5.32 The Appeal Scheme would make a meaningful contribution towards meeting that need, a benefit that is common ground between the Council and Appellant must be afforded very substantial weight. This is consistent with other decisions in the District, also at Colney Heath¹³ and was applied by the Council in their own decision to approve the application at Sewell Park in St Albans¹⁴.

The Need for Affordable Housing

5.33 Paragraph 60 of the Framework clearly sets out the Government’s objective of “significantly boosting the supply of homes”. To address the needs of the whole community, paragraph 62 confirms that:

“Within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing,

¹² Footnote 8 of the Framework

¹³ Paragraph 10 of Appeal ref. APP/B1930/W/20/3265925

¹⁴ Paragraph 8.7.3 of Committee Report relating to Application ref. 5/2021/0423/LSM

families with children, older people, students, people with disabilities, service families, travellers, people who rent their homes and people wishing to commission or build their own homes)”. (my emphasis)

- 5.34 The need for affordable housing, and the importance of its provision, is emphasised in many Government publications as outlined in the evidence of Ms Gingell (CD9.1).
- 5.35 It is agreed in the SoCG that Policy 7A of the Local Plan is not relevant to the Appeal Scheme due its location outside a Town or Specified Settlement.
- 5.36 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. Circular 6/98 is no longer relevant and SADC therefore applies the threshold that affordable housing is required on sites where 15 or more dwellings are proposed, as set out in Policy 7A, across the entire District.
- 5.37 Paragraph 6.50 of the SoCG records that:

“It is agreed 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 SPD requirement of 35% and reflects the emerging Policy requirement in the Regulation 18 Local Plan, represents a social benefit to which very substantial weight should be given.”

- 5.38 The evidence of Ms Gingell (CD9.1) further addresses affordable housing need, which I do not propose to repeat at length. However, in terms of affordability of housing within the District Ms Gingell sets out that:

“12.29 ...there is an acute housing crisis in St Albans, with a lower quartile house price to average income ratio of 16.53. Mortgage lending is typically offered on the basis of up to 4.5 times earnings (subject to individual circumstances). Here, the affordability ratio is some 267% higher than that and rising.

- 5.39 With respect to the need for affordable housing, Ms Gingell outlines:

“5.15 ...the 2020 LHNA, identified an objectively assessed need for 13,248 net affordable homes between 2020 and 2036, equivalent to an estimated annual need of 828 affordable homes across St Albans”

- 5.40 In regard to the delivery of affordable homes she states:

“6.22 Against the most recent assessment of affordable housing need in St Albans, a shortfall of -1,428 affordable dwellings has arisen in the two first years of the 2020 LHNA period,”

“8.33 ...even if every single dwelling included in the Council’s latest 5YHLS i.e., 2,145 , were to be delivered over the five year period as affordable dwellings, this would not come close to meeting the minimum affordable housing need of 4,140 dwellings¹⁵. The situation is even worse when compared to the backlog need figure of 5,570 dwellings for the period.”

¹⁵ 828 x 5

5.41 To put this in further context, the emerging Local Plan is proposing to meet the Council’s standard method figure of 888 dwellings per year, 40% of which will be affordable housing meaning even with a new plan in place, affordable housing needs will not come close to being met in full.

5.42 I further note that in a number of recent appeals Inspectors have, in particular, offered considerable weight to the provision of affordable housing. In the case of the appeal at Bullens Green Lane, also within Colney Heath¹⁶, the Inspector states the following in her report:

“53. The uncontested evidence presented by the appellant on affordable housing for both local authorities illustrates some serious shortcomings in terms of past delivery trends. In relation to WHBC, the affordable housing delivery which has taken place since 2015/16 is equivalent to a rate of 23 homes per annum. The appellant calculates that the shortfall stands in the region of 4000 net affordable homes since the 2017 SHMA Update, a 97% shortfall in affordable housing delivery. If the shortfall is to be addressed within the next 5 years, it would required the delivery of 1397 affordable homes per annum. In SADC, the position is equally as 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.

54. The persistent under delivery of affordable housing in both local authority areas 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.” (my emphasis)

5.43 Ms Gingell concludes her evidence by stating:

“12.32 Considering the authority’s past poor and lamentable record of affordable housing delivery and high and rising numbers of households on the housing register, it is my view (and the Councils) that the provision of up to 60 affordable dwellings on this site should be afforded very substantial weight in the determination of this appeal.”

5.44 Having regard to the national policy context I have referred to, the dire affordable housing situation portrayed by Ms Gingell in her evidence and fact that the Appeal Scheme provides 40% affordable housing, materially exceeding the 35% required by the St. Albans Affordable Housing SPD, which I add is guidance rather than policy, I agree with her that very substantial weight should be given to the delivery of affordable housing in this appeal – a matter that is agreed between the main parties.

The Need for Self & Custom Build Housing

5.45 The SoCG at paragraphs 6.54-6.56 summarises the relevant legal and policy considerations in relation to the provision of self-build and custom build housing. I note that the adopted Local Plan is silent in relation to self-build and custom build housing.

5.46 It is agreed that the Council is not meeting its statutory duty to meet Self-build Register demand and that there is an unmet demand for serviced plots for self- build and custom housebuilding in St Albans.

5.47 It is further agreed that the provision of 9 custom and/or self-build plots weighs in favour of the Appeal Scheme, but parties do not agree on the weight to be afforded in this regard.

¹⁶ Appeal ref. APP/B1930/W/20/3265925 (CD14.6)

- 5.48 The evidence of Mr Moger (CD9.2) addresses custom and self-build housing need. In terms of the need of custom and self-build housing within the District, Mr Moger sets out that:

“4.29 True demand for Self-Build and Custom Housebuilding can therefore be expected to lie between the 732 individuals and three associations of individuals currently registered on the Council’s Self-Build Register and could be as high as 977 people when using national data as a proxy, 1,292 when AMA Market Research data is utilised, and 1,353 when analysis of secondary data sources such as building plot search websites is undertaken in line with the provisions of the PPG.”

- 5.49 With regard to supply Mr Moger identifies that:

“6.76 There is a cumulative unmet need for at least 488 serviced plots across Base Periods 1, 2, 3, 4 and 5 of the Council’s self-build register;”

“5.18 The Council now have until 30 October 2023 to deliver 488 plots otherwise it will fail in its statutory duty for the fifth year running”.

- 5.50 I also note that Mr Moger identifies that the emerging Local Plan (which covers the period until 2041) only makes specific provision for 306 serviced plots. He then outlines at paragraph 7.23 onwards that:

“6.71 The emerging Plan strategy would only address 62% of the shortfall that already exists, and that is before one even considers the need for a further 226 plots arising from Base Periods 6 and 7.

6.72 The emerging Plan strategy appears destined to fail to meet both existing unmet needs as well as future needs for this type of housing.”

- 5.51 It is agreed that the emerging Local Plan can only be afforded limited weight¹⁷ but it is nevertheless relevant to note that Policy HOU5 of the Emerging Local Plan “requires” Broad Locations and sites of 100+ dwellings to make provision for 3% serviced plots provision and merely “encourages” such provision on sites of 10 or more dwellings. I agree with Mr Moger that it is highly unlikely that such a form of wording would result in any meaningful increase in supply above that ‘required’ to be provided on the Broad Locations and Large Sites.

- 5.52 Notwithstanding this, the Appeal Scheme includes 9 self-build / custom build plots which amounts to 6% of total units proposed and is therefore double that of the Council’s emerging policy.

- 5.53 In the appeal decision at Bullens Green Lane, Colney Heath¹⁸, the Inspector states the following in her report:

“52. 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”.

- 5.54 The Inspector attributed substantial weight to custom and self-build housing in this Appeal Decision but as Mr Moger identifies, the shortfall has increased by 160% since this appeal was determined (para 5.18 of CD9.2).

- 5.55 Given the above, I am in full agreement with Mr Moger that there is a very substantial level of unmet need within St Albans for this type of housing. I note the adopted Local Plan is silent in relation to self-build and custom build

¹⁷ Para 5.12 of the SoCG (CD8.3)

¹⁸ Appeal ref. APP/B1930/W/20/3265925 (CD14.6)

housing, with the Appeal Scheme proposing double that required through the emerging Local Plan. Accordingly, I agree with Mr Moger very substantial weight should be afforded to the provision the 9 custom and self-build plots.

Building a Strong, Competitive Economy

5.56 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.

5.57 Page 13 of the document entitled ‘The Economic Footprint of UK House Building’ published in March 2018 by the House Builders Federation (CD16.2) 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.

5.58 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.

5.59 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).

5.60 This additional spend is significant, and would help support the long-term vitality and viability of the District’s economy, services and facilities.

5.61 Paragraph 81 of the Framework advises 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, I therefore attach significant weight to the economic benefits associated with the Appeal Scheme. This approach follows that taken by the Inspector in the Maitland Lodge, Billericay¹⁹ appeal which was for 47 new homes and therefore resulted in materially lower economic benefits than the Appeal Scheme.

Green Belt

5.62 It is agreed the Appeal Scheme would amount to inappropriate development in the Green Belt. Paragraph 147 of the Framework states that such development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances (“VSC”). Paragraph 148 then explains that substantial weight should be given to any harm to the Green Belt and that VSC will not exist unless the potential harm to the Green Belt by reason of the inappropriateness, and any other harm arising from the proposal, is clearly outweighed by other considerations.

Impact on openness

5.63 The Framework does not define openness, however the PPG²⁰ includes a non-exhaustive list of matters that should be taken into account when 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;*

¹⁹ Paragraph 41 of Appeal ref. APP/V1505/W/22/3296116 (CD14.20)

²⁰ Paragraph: 001 Reference ID: 64-001-2019072

- *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.”*

Spatial impact on openness

5.64 With regard to the spatial impact on openness Mr Self sets out that:

“5.52 In the previous section I have identified that approximately half of the Site will remain undeveloped and that the open land will primarily be used for ecological enhancements. The balance of the Site will be developed for housing and supporting infrastructure and that will clearly have a significant impact on the spatial openness of the greater part of the Site”.

“5.53 For the reasons set out below, the loss of openness that the Appeal Scheme will give rise to, will only be experienced, for the most part, from the near distance and as such the impact on the wider Green Belt will be strictly limited”.

Visual impact on openness

5.65 Mr Self comments the following in respect to the visual impact on openness as a result of the Appeal Scheme:

“5.55 Given that the majority of the external boundaries of the Site already have built development, or established planting, alongside them, then the Appeal Scheme will benefit from a good degree of physical and visual containment from day 1.

5.56 As the hedgerow on the north eastern Site boundary matures and as the additional planting on the field boundaries becomes established, the greater part of the development will be screened from the wider landscape.

5.57 Whilst there is currently no public access onto the Site, views from within it, will inevitably change. The impact on the wider Green Belt will however be localised and will reduce over time as the planting matures.”

5.66 In relation to the degree of activity, it is possible that the Appeal Scheme may, at times, be more noticeable during the construction phase, for example before planting has been established, but the construction period will be relatively short-lived – I would anticipate circa 3 years. As I have outlined earlier in my evidence, the PPG allows a consideration of the duration of effects and thus this limits the weight given to any such impacts to my mind.

5.67 During the operational phase, there will be increased movements of vehicles and pedestrians within the site and at the site entrance on Tollgate Road, as compared with the existing baseline. However, movements associated with the Appeal Scheme would all route to and from Tollgate Road which is a busy road with a fairly high volume of traffic moving along it each day and I note that the Committee Report (CD6.1) states the following at paragraph 8.12.23:

“The modelling results indicate that the proposed development would have minimal impact on the operation of Tollgate Road in the morning and evening peak periods.”

5.68 Given the above, I conclude that traffic travelling to and from the Appeal Site would not have any discernible impact upon any perception of openness of the Green Belt.

5.69 Finally, the PPG indicates that consideration can be given to the duration and remediability of effects. Plainly the Appeal Scheme, in its operational phase, is permanent and thus not remediable.

Conclusions on impacts on openness

5.70 Given the above, I am in agreement with Mr Self, that whilst the Appeal Scheme would result in a significant harm to openness at a Site level, the impact of the development on the Green Belt would be strictly localised.

Impact on the purposes of including land in the Green Belt

5.71 In terms of assessing ‘any other harm’, I first turn to impact on the five purposes of including land in the Green Belt which are set out a paragraph 138 of the Framework.

5.72 It is common ground with the Council that the Appeal Scheme does not conflict with purposes a) and b), whilst it is also agreed that purposes d) and e) are not relevant to the Appeal. I do not need to consider these purposes further in my evidence.

c) to assist in safeguarding the countryside from encroachment;

5.73 The evidence of Mr Self finds the following in respect of impacts upon Green Belt purpose c):

“5.46 the Appeal Scheme will, as a matter of fact, encroach onto the greater part of the Site, it will have only a strictly limited effect on the wider countryside due to the relationship of the Site to Colney Heath and the established Site boundaries which will be strengthened with new planting.

5.48 The Site is therefore considered to make a relatively weak contribution to this Green Belt purpose.”

5.74 I am in full agreement that whilst the Appeal Scheme would encroach into the countryside, this would be a minor incursion given the Site itself performs weakly against this purpose.

Summary of Green Belt Harm

5.75 Overall and having regard to the evidence of Mr Self, he identifies that the impacts on the Green Belt are as follows:

- Significant impact on the openness of the Green Belt at a site level, and a strictly limited impact on the wider Green Belt;
- Minor impact against purpose c) noting the Site makes a relatively weak contribution to this Green Belt purpose already

5.76 I agree with this analysis.

Landscape, Character and Appearance

5.77 It is common ground between the parties that the Site does not carry any landscape designations and is not a valued landscape in the terms of Paragraph 174 of the Framework. The site is however located within the Countryside where the Framework at paragraph 174(b) states planning decisions should recognise the intrinsic character and beauty of the countryside.

5.78 The evidence of Mr Self (CD9.5) has assessed the existing site and its contribution to the countryside it is situated within:

“6.10 The Site itself is of limited intrinsic landscape quality. I say that because there are no landscape features within the Site of particular value e.g. veteran or TPO trees; the underlying landform is relatively flat; and the land is intensively grazed and is sub divided by post and wire fences. There are also a number of detracting features, such as the areas of hardstanding; the manège, stables, and outbuildings, all of which are of a utilitarian appearance.”

“4.24 Given the overall character of the Site, the intervisibility with neighbouring housing and the lack of distinctive landscape features within the Site, it is considered to be of medium to low landscape sensitivity to the proposed development”.

5.79 Mr Self also considers the merits of the appeal scheme and how it will contribute to character and appearance as follows:

“6.14 Approximately 48% of the Site will be remain as green open space. This will include Colney Heath Farm Meadows, new areas of planting, SuDS features and informal areas of open space. In addition, there will be incidental areas of open space within the development envelope, street trees and there will also be the gardens of the properties. Overall these will provide significant landscape benefits.”.

5.80 Mr Self concludes on the impact on the landscape as follows:

“6.22 The character of the greater part of the Site will change from equestrian use to housing with associated green infrastructure. The key feature of value within the Site is the Colney Heath Farm Meadows Wildlife Site which will be retained and enhanced. The existing field pattern will also be respected with the external field boundaries retained and enhanced. The Appeal Scheme will therefore respond to the prevailing pattern of the countryside in an appropriate manner.”

“7.3 From my observations on Site and from the wider area I believe that there will be a negligible adverse impact on the character of the wider landscape.”

5.81 Mr Self also considers the Appeal Scheme’s impact on the settlement pattern of Colney Heath itself. In this regard, Mr Self identifies that:

“5.10 The Appeal Scheme will complement the nucleated pattern of development in the southern part of Colney Heath and will be of a similar scale to the neighbouring development”.

5.82 Having walked the site and surrounding settlement of Colney Heath myself I am in agreement with Mr Self that the Appeal Scheme will complement the nucleated pattern of development and result in negligible impacts on the character of the countryside.

5.83 Overall, I am in full agreement with Mr Self that the Appeal Scheme appropriately responds to the prevailing character of the area and conclude that the Appeal Scheme is consistent with the Framework in respect of landscape, character and appearance, effectively limiting effects to a site level through a change from equestrian use to a housing development.

Location and Sustainability

5.84 Paragraph 105 of the Framework states that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.

5.85 Paragraph 110a of the Framework seeks 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.”

5.86 The evidence of Mr Dimbylow (CD9.4) considers that:

“3.43 I consider the walking accessibility of the site to be good, with day-to-day facilities available within reasonable walking distance. A local shop and pub are within walking distance as are the bus stops. The village hall which has a pre-school is also close. The proximity of the site to the primary school, and secondary school bus services mean education trips have a realistic alternative to travel by private car”.

“3.47 In terms of sustainability, I consider that the location of the site is conducive to providing future residents with a realistic choice to the private car for many day-to-day journeys”.

5.87 This is a position I wholly agree with Mr Dimbylow on, and it is my view that there is an appropriate choice of sustainable transport modes available to future residents that would not mean that they are wholly reliant on a car to meet daily needs. Furthermore, as Mr Dimbylow refers to in his evidence, the sustainability credentials of Colney Heath have recently been subject scrutiny under the Inquiry for the Bullens Green Lane Appeal (CD14.6), where the Council were unable to substantiate their assertion Colney Heath was an unsustainable location.

5.88 At paragraphs 40 and 41 of this Appeal Decision, the Inspector states:

“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.

Overall and to conclude, taking into account the essence of the Framework test as to whether a genuine choice of transport modes is on offer, the appeal proposals would in my view represent a sustainable location for new residential development.” (my emphasis)

5.89 As Mr Dimbylow records, there has been no material change in circumstances since the granting of this appeal decision that would lead to an alternative conclusion, one which is highly relevant to the Appeal Scheme noting its proximity to the Appeal Site.

5.90 Accordingly, it is my opinion that the Appeal Site represents an appropriately sustainable location for the development proposed and this weighs neutrally in the planning balance.

Access

5.91 Paragraph 109 of the NPPF stipulates that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual impacts on the road network would be ‘severe’.

5.92 It is common ground between the appellant and the Council that safe access and egress can be achieved to and from the Site.

Biodiversity and Ecological Enhancements

5.93 Paragraph 179b of the Framework states that plans should:

“promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.”

5.94 Paragraph 180a then states that when determining planning applications, local planning authorities should apply the following principles:

“a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;”

5.95 The Environment Act requires a 10% net gain in biodiversity but this does not become mandatory until the Biodiversity Net Gain Regulations come in to effect in November 2023 and in any event, this will not apply to the Appeal Scheme having regard to transitional measures²¹.

5.96 The submitted Ecological Impact Assessment (CD4.8) demonstrates a range of biodiversity enhancements are proposed as part of the Appeal Scheme. A planning condition can be attached to secure a biodiversity net gain which will include off-site improvements on land owned by the Appellant. The Appellant is willing to deliver an off-site contribution equating to a 10% increase of the Appeal Site’s existing value. This is materially higher than a ‘measurable net gain’ referenced in the Framework.

5.97 There is nothing in the Framework to suggest that reduced weight should be given to biodiversity enhancements achieved off-site and overall, I attach significant weight to this benefit.

²¹ DEFRA Land use: Policies and Framework – BNG: What’s happened and what’s coming next (20/07/2023)

6. Rule 6 Party Comments

6.1 Colney Heath Parish Council (“CHPC”) has been granted Rule 6 status for the appeal. They have produced a Statement of Case (CD7.3) which raises a number of matters. The following matters raised in CHPC’s SoC has already been dealt within my evidence which I do not propose to repeat.

- Housing land supply;
- Locational sustainability and sustainable modes of transport;
- Green Belt harm;
- Heritage harm;
- Landscape and character impacts; and
- Extent of PDL.

6.2 Other matters raised by CHPC but not already addressed in my evidence are as follows:

- The definition of affordable housing and affordable housing mix;
- Coursers Road has been omitted from road safety assessment. They will provide evidence on the importance of this route and that of the Bell roundabout as well as its road traffic accident history;
- That cars have to park on key roads due to historic layout of village – therefore dropping roads capacity;
- Lack of existing school spaces;
- Car emissions;
- Evidence on the current projects aiming to improve the River Colne.

Affordable Housing Definition and Mix

6.3 The evidence of Ms Gingell covers the appropriateness of the affordable housing definition in the context of Colney Heath, in line with the Framework and whether this will provide truly affordable housing for the area. In summary following an analysis of Colney Heath, Ms Gingell concludes:

“10.8 ...the following analysis demonstrates that each of the proposed affordable housing tenures at the appeal site are in fact affordable to a range of household types on lower quartile incomes”.

6.4 Given that the affordable units are available to those on lower quartile incomes, I would agree the affordable housing is genuinely affordable.

6.5 With regards to the appropriateness of the affordable housing mix, which includes smaller one and two bed units which CHPC states are unacceptable within Colney Heath as:

“3.09 Rural locations are not suitable sites for one or two bedroom dwellings due to the lack of public transport and social facilities. Building large numbers of smaller starter homes in this rural location will permanently embed carbon emissions.”

- 6.6 The matter of the Site being a sustainable location that offers a variety of modes of transport is a matter that I have already covered through the evidence of Mr Dimbylow, so will not re-address this matter specifically. However, importantly Ms Gingell notes in her evidence with regards to the CHPC’s comments:

“10.7 This issue has no bearing on the need for affordable housing in St Albans District nor Colney Heath and does not diminish the weight attributed to the proposed affordable units.”

- 6.7 Accordingly, my view in relation to the weight to be given to the provision of affordable housing remains.

Exclusion of Coursers Road and Historic Layout of the Village

- 6.8 With regards to the impact of traffic on the roads of the village Mr Dimbylow sets out within his evidence (CD9.4):

6.2 “Whilst I recognise that new housing will inherently generate some traffic movements, I consider that these have been quantified and assessed in the Transport Assessment using an agreed methodology.”

6.6 “The Transport Assessment undertook traffic surveys and considered the impact of the development including traffic growth and concluded the impact will not be severe, this is common ground with the highway authority.”

- 6.9 Based on the methodology of the highway safety work undertaken I am satisfied that the circumstances of Colney Heath have been adequately considered. It is also of note that the approach to assessing the impact of the Appeal Scheme on the wider highway network and conclusions of the Transport Assessment and Road Safety Audit have been agreed with the County Highway Authority through the Highways SoCG (CD8.2 paragraph 3.3 and 3.14).

- 6.10 With regards to the comment about Coursers Road being excluded from the highway safety work supporting the application, this is simply incorrect. As Mr Dimbylow sets out in paragraphs 6.24 of his proof of evidence, the Transport Assessment (CD5.12) submitted by RPS in support of the application includes Coursers Road and the roundabout junction the CHPC also refer to.

- 6.11 I am therefore in agreement with Mr Dimbylow that safe and suitable access to the site can be achieved by all users as demonstrated through the Road Safety Audit, and that the impacts of additional movements associated with the site has been adequately assessed through the Transport Assessment, the methodology of both of which have been agreed with the County Highways Authority.

Car Emissions

- 6.12 The SoCG outlines at paragraphs 6.74-6.76 that the Appeal Scheme is acceptable in relation matters relating to air quality.

Impact on the River Colne and Flood Zone Designation

- 6.13 The Appeal Scheme is supported by a Flood Risk Assessment, Surface Water and Foul Water Drainage Strategy (CD4.9) and Drainage Letter from Stantec (CD5.1). The Environment Agency, Affinity Water and the Council’s Drainage Consultant have confirmed no objection to the Appeal Scheme, subject to the imposition of conditions. Furthermore, no housing is proposed to be located in the areas outside of Flood Zone 1. A technical note has also been prepared by Stantec to address this and other related matters which can be found at Appendix 4 of my evidence.

6.14 I am therefore of the view that the Appeal Scheme will not materially impact the River Colne nor will future residents be at risk from flooding or will the Appeal Scheme increase flooding elsewhere.

7. Third Party Comments

7.1 A number of comments are raised by third parties. The majority of matters are addressed within this SoC, SoCG or the topic based SoCGs, however below is a response to the specific points:

- **Public transport** – The evidence of Mr Dimylow demonstrates that the Appeal Site will have suitable access to public transport modes
- **Pedestrian and cycle connections** – The evidence of Mr Dimylow demonstrates that the Appeal Site will have suitable access to pedestrian and cycle connections such that a reliance upon the private motor vehicle can be avoided.
- **Traffic impacts in the local area** – It is agreed with the Council that the Appeal Scheme is acceptable in relation to highway safety and capacity.
- **Heritage impacts** – The Appeal Scheme is supported by an Archaeology and Heritage Assessment and a Heritage Setting Addendum. It is common ground that whilst less substantial harm is identified to the designated heritage assets, the public benefits outweigh the harm.
- **Development within the Green Belt** – My evidence, along with the evidence of Mr Self addresses this matter.
- **Character of development** – It is common ground that 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 material effects on the wider, rural landscape character around Colney Heath.
- **Flood risk / drainage concerns** – the Appeal Scheme is supported by a Flood Risk Assessment, Surface Water and Foul Water Drainage Strategy (CD4.9) and Drainage Letter from Stantec (CD5.1). The Environment Agency and the Councils Drainage Consultant have confirmed no objection subject to the imposition of conditions.
- **Flooding Sequential Test** – It is common ground between the main parties that a sequential test does not need to be applied. The Flood Risk Assessment that accompanied the application (CD4.9) confirms that the sequential test is not required. However, for clarity I address each potential source of flooding below through reference to the Flood Risk Assessment.

Fluvial Flood Risk

All built development is located in Flood Zone 1 (low risk) with minimum finished floor levels proposed at 72.45m. The EA modelled maximum flood level including climate change adjacent to the site is 71.84m AOD, providing a minimum freeboard of 600mm, in the southern most corner of the site, increasing to 770mm in the eastern most corner of the site. The area adjacent to the River Colne is located in Flood Zone 2 and 3 (medium to high risk), however there is no development proposed in this area. As all built development is within Flood Zone 1 the Flood Risk assessment identifies that the overall fluvial flood risk to the Appeal Scheme is low. As such, this does not trigger the need for the sequential test.

Surface Water Flood Risk

The majority of the site is shown to be at very low risk of surface water flooding. A small area of surface water flood risk is shown along the northern boundary, behind the existing properties fronting Tollgate Road. Based on the topographical survey, the Flood Risk Assessment outlines this area of flood risk is considered to be as a

result from surface water runoff ponding in localised low spots on soil with impeded drainage characteristics, based on the clay soil conditions below. Given that this is the case the FRA confirms that there is a low surface water flood risk where the built development is to be situated, thereby not triggering the sequential test.

It is also noted that there is a corridor of medium to high probability of pluvial flooding in the lowest parts of the site, immediately adjacent to the watercourse and with a similar extent to the fluvial floodplain. However, as with the fluvial flood risk, no built development is proposed within this section of the site thereby making the pluvial flood risk to the Appeal Scheme low. As such, this does not trigger the need for the sequential test.

Groundwater Flood Risk

The FRA confirms that the water table is closer to the ground level to the south and west of the Site. When the water table is high, groundwater will emerge first in the lowest lying areas of the site, closest to the channel, with a similar extent to the fluvial and pluvial flood extents, in the well-defined corridor. Looking at topographic information, the built development is located several metres above that corridor and therefore will be at low probability of groundwater flooding

Reservoir and Sewer Flood Risk

As confirmed by the FRA, there would be low flood risk from reservoir and sewer flood risk.

Given the above, I consider the Appellant has sufficiently demonstrated that the development would be steered to areas of the lowest risk of flooding from any source, as required by paragraph 162 of the Framework. Given that this is the case, the sequential test is not required to be applied to the Appeal Scheme.

- **Chalk stream** – the Appeal Scheme is supported by a Flood Risk Assessment, Surface Water and Foul Water Drainage Strategy (CD4.9) and Drainage Letter from Stantec (CD5.1). The Environment Agency, Affinity and the Council’s Drainage Consultant have confirmed no objection subject to the imposition of conditions.
- **Underground Chalk Stream** – Unfortunately third-party comments have mis-interpreted some technical information and there is no underground chalk stream to the north of the Site. A technical note has been prepared by Stantec addressing this and can be found at Appendix 4 of my evidence.
- **Previously Developed Land** – My evidence outlines the justification for identifying all parts of the Appeal Site comprise PDL.
- **Impacts on wildlife** – Natural England confirmed no objection and Hertfordshire Ecology confirmed that the Appeal Scheme is considered acceptable subject to the imposition of conditions. It is common ground that the Appeal Scheme is satisfactory in respect of its ecological impact.
- **Impacts on services and facilities** – The Appeal Scheme will make financial contributions to mitigate impacts upon a range of existing infrastructure providers. This will be secured by a Section 106 legal agreement.
- **Noise** – Environmental Compliance confirmed that the Appeal Scheme is acceptable in terms of noise pollution. This is also common ground with the Council.
- **Air Quality** – Environmental Compliance confirmed that the Appeal Scheme is acceptable in terms of air pollution. This is also common ground with the Council.

- **Contamination** – Environmental Compliance confirmed that the Appeal Scheme is acceptable in terms of contamination. This is also common ground with the Council.
- **Affordability** – This is addressed by the evidence of Ms Gingell and highlighted in my evidence.

8. Planning Balance

Heritage Balance (paragraph 202 of the Framework)

8.1 It is common ground the Appeal Scheme would cause less than substantial harm to the setting of the Grade I listed North Mymms Park House as well as the Grade II listed Colney Heath Farmhouse and Barn.

8.2 Paragraph 202 of the Framework states:

“Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.”

8.3 It is common ground the impact on the designated heritage assets sits on the lowermost spectrum of less than substantial harm spectrum²² and that the public benefits of the Appeal Scheme outweigh this harm²³. I agree that the public benefits of the Appeal Scheme, namely the provision of market, affordable and self build and custom build plots outweighs this harm and therefore the balance expressed at paragraph 202 of the Framework is passed.

Very Special Circumstances Balance (paragraph 148 of the Framework)

8.4 It is common ground that the Appeal Scheme would comprise inappropriate Green Belt development and should only be allowed if the potential harm to the Green Belt and any other harms is clearly outweighed by other considerations (paragraph 148 of the Framework)

8.5 I have already outlined, through reference to the evidence of Mr Self, that the Appeal Scheme would result in a significant loss of openness at a site level with a strictly limited impact on the wider Green Belt namely due to the contained nature of the site, existing urban influences and built form on site.

8.6 It is agreed that in relation to Green Belt purposes, the only harm arising is in respect of purpose c) – preventing encroachment. Drawing again on the evidence of Mr Self, the site performs weakly against this purpose and as such the conflict with this purpose would result in “negligible impact” on the function of the wider Green Belt.

8.7 Whilst substantial weight must be given to inappropriate development in the Green Belt, the harm to openness is significant and the harm to Green Belt purpose c) is limited, albeit that does not diminish the weight to be given to such harms.

8.8 The Framework also requires ‘any other harms’ arising as a result of the Appeal Scheme to be taken into account.

8.9 In relation to character and appearance, the SoCG confirms at paragraph 6.22 that landscape impacts will not be significant and limited to impacts on the Site and its immediate vicinity, with no material effects on the wider landscape. The evidence of Mr Self concludes the Appeal Scheme will respond to the prevailing pattern of the countryside in an appropriate manner.

8.10 There would be the less than substantial harm to the setting of designated heritage assets and it is agreed this is at the lowermost end of that spectrum. Whilst I have demonstrated the Appeal Scheme passes the heritage balance expressed at paragraph 202 of the Framework, this harm must still be considered as part of the overall balance.

²² Heritage Statement of Common Ground paragraph 2.1 (CD8.4)

²³ Statement of Common Ground paragraph 6.72 (CD8.3)

- 8.11 The agreed position between the Council and Appellant concludes a ‘very minor’ impact upon the setting of the North Mymms Parkland and Tollgate Farm, both of which are non-designated heritage assets. The Framework states “*a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.*”
- 8.12 I consider matters relating to locational sustainability weigh neutrally in the planning balance.
- 8.13 In my view, these harms are clearly outweighed by other considerations as outlined in my evidence and summarised below.
- 8.14 I consider that the entire extent of the Appeal Site to comprise PDL. The Site is therefore generally a sequentially preferable location for development over other greenfield Green Belt sites, particularly in the highly constrained context of St Albans District. I place significant weight on the effective use of PDL to provide homes, which accords with paragraph 119 of the Framework and aligns with the weight given by the Inspector at paragraph 35 of the Maitland Lodge appeal⁷
- 8.15 I have outlined that the weight given to the delivery of market housing must, in my view, be given in the context of the agreed substantial housing land supply shortfall, the woeful HDT results and fact that there is no Local Plan strategy in place, nor will there be for more than 2 years, to rectify this crisis. Indeed, I have outlined that I find it difficult to imagine a more severe situation in respect of housing delivery than that found in the District of St Albans. The Council’s failures in plan-making means that the only mechanism for resolving the supply positions is through applications for windfall developments such as this. Accordingly, I afford very substantial weight to the supply of market housing, which is agreed with the Council, and in line with the weight applied in a variety of recent decisions made by both the Council and Planning Inspectorate within the District as previously referred to in my evidence.
- 8.16 Having regard to the dire affordable housing situation portrayed by Ms Gingell in her evidence and fact that the Appeal Scheme provides 40% affordable housing, materially exceeding the 35% required by St. Albans Affordable Housing SPD (2004) (CD2.4) which does not carry the same status as policies within the development plan, I conclude that very substantial weight should be given to the delivery of affordable housing in this appeal. This level of weight is agreed with the Council, and in line with a variety of recent decisions made by the Council and Planning Inspectorate within the District as previously referred to in my evidence.
- 8.17 Having regard to the woeful self build and custom build position outlined in the evidence of Mr Moger, the fact that the adopted Local Plan is silent in relation to the provision of self-build and custom build housing and that the Appeal Scheme proposes double that required through the emerging Local Plan, I conclude that very substantial weight should be given to the provision of 9 serviced custom and self-build plots.
- 8.18 The Written Ministerial Statement of December 2015 (CD16.12) indicated that unmet need is unlikely to clearly outweigh harm to Green Belt and any other harm so as to establish very special circumstances. However, my evidence has made clear that this is not the basis upon which it is suggested the appeal should be allowed and in any event I note that the Inspector dealing with the aforementioned Colney Heath appeal succinctly dealt with this matter where at paragraph 47 she said:

“I am aware of the Written Ministerial Statement of December 2015 which indicates that unmet need is unlikely to clearly outweigh harm to Green Belt and any other harm so as to establish very special circumstances. However, in common with the appeal decision referred to, I note that this provision has not been incorporated within the Framework which has subsequently been updated and similar guidance within the Planning Practice Guidance has been removed. I can therefore see no reason to give this anything other than little weight as a material consideration.”

- 8.19 I raise this matter as the Council were unwilling to include it within the SoCG and I wholly agree with the above conclusion.
- 8.20 Significant weight should be given the economic benefits during the construction and operational phase of the development, in line with paragraph 81 of the Framework.
- 8.21 Significant weight should be given to the biodiversity enhancements associated with the Appeal Scheme. This is justified on the basis the development plan is silent on this matter, the Framework only requires a measurable gain and whilst the Environment Act requires a 10% net gain, this does not become mandatory until the Biodiversity Net Gain Regulations come in to effect in November 2023, which in any event will not apply to the Appeal Scheme having regard to transitional measures.
- 8.22 These factors, when considered collectively, demonstrate that the benefits of the Appeal Scheme *clearly* outweigh the harm and therefore VSC exists to justify the grant of planning permission.

The Tilted Balance (paragraph 11d of the Framework)

- 8.23 It is common ground with the Council that it cannot demonstrate a five year housing land supply and that it only achieved a HDT of 69% in 2021. In such circumstances the ‘tilted balance’ expressed at paragraph 11d of the Framework is engaged.
- 8.24 As I have found VSC exists, Green Belt policies within the Framework do not provide a clear reason for refusing the development proposed and limb i of paragraph 11d of the Framework does not apply. The Appeal scheme should therefore be determined in accordance with limb ii of paragraph 11d which requires an assessment of whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As I have established that VSC exists, it is clear that the adverse impacts of the Appeal Scheme do not come close to significantly and demonstrably outweighing the benefits.
- 8.25 Given the above, planning permission should be granted in accordance with paragraph 11d of the Framework.

Section 38(6) Balance

- 8.26 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.
- 8.27 Relevant case law²⁴ 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.
- 8.28 I have applied paragraph 148 of the Framework and found that VSC exists, meaning the Appeal Scheme does not conflict with Policy 1 of the Local Plan.
- 8.29 I have then assessed compliance with all other disputed policies and found the Appeal Scheme to comply or is capable of complying at the reserved matters stage. There is no other alleged conflict with relevant development plan policies. On this basis, I consider the Appeal Scheme to comply with the development plan taken as a whole.

²⁴ R. v. ROCHDALE METROPOLITAN BOROUGH COUNCIL ex p. MILNE 31st July 2000 (CO/292/2000) at paragraphs 49 and 50 (CD13.1)

8.30 Given the above, material considerations do not indicate determining the Appeal Scheme other than in accordance with development plan and therefore I respectfully urge the Inspector to allow the appeal.

9. Summary Proof

9.1 My name is Oliver Bell and I am a Chartered Town Planner and a member of the Royal Town Planning Institute. I appear at this Inquiry on behalf of Vistry Homes and have been directly involved in the project since January 2022.

9.2 It is common ground with the Council that:

- a. The development plan is more than five years old and therefore the Council's housing land supply should be measured against the local housing need figure calculated using the Government's standard method.
- b. The Council identifies a five year housing land supply of 2.0 years, whereas the Appellant considers the position to be lower at 1.97. It is in any event agreed that the housing land supply shortfall is substantial.
- c. The emerging Local Plan should be afforded limited weight in the determination of this appeal.
- d. The Council has a severe and acute shortfall in the delivery of market housing. The Appeal Scheme, at 81 market dwellings, could be delivered in full over the next five years and would make a material contribution towards supply to which very substantial weight should be given.
- e. There is an acute need for affordable housing within St Albans, and the provision of 60 much needed affordable units (40%), which exceeds the minimum SPD requirement of 35%, represents a social benefit to which very substantial weight should be given.
- f. The Appeal Scheme would not conflict with Green Belt purposes a) and b), whilst d) and e) would not be relevant to the Appeal.
- g. The Appeal Scheme is acceptable in terms of highway capacity and safety considerations.
- h. The proposed development is satisfactory in respect of its impacts upon ecology, trees, flooding/drainage and air quality subject to conditions.

9.3 I now address the main issues identified in the Inspector's Post CMC note.

Main Issue - The effect on the openness and purposes of the Green Belt;

Openness

9.4 Drawing on the evidence of Mr Self, I agree that there would be a significant impact upon openness of the Green Belt, importantly this would be at site level and strictly limited in the wider Green Belt. From a visual perspective Mr Self identifies that the impact on the wider Green Belt would be localised and will reduce over time as planting matures.

9.5 Accordingly, I agree with Mr Self that the Appeal scheme would result in a significant impact on the openness of the Green Belt which would be strictly localised.

Purposes

- 9.6 It is common ground between the Council and Appellant that the Appeal Scheme does not conflict with purposes a) and b), whilst it is further agreed purposes d) and e) would not be relevant to the appeal.
- 9.7 Mr Self identifies that the Appeal Scheme whilst conflicting with purpose c) *to assist in safeguarding the countryside from encroachment*, the Appeal Scheme would only have a strictly limited effect on the wider countryside due to the relationship of the Site to Colney Heath and the established Site boundaries which will be strengthened with new planting. I agree with Mr Self that the Site is therefore considered to make a relatively weak contribution to this Green Belt purpose.

Conclusion on Green Belt

- 9.8 In considering both the Appeal Schemes impact on openness and on the purposes of the Appeal Scheme, on the basis of Mr Self's evidence I consider that the totality of harm would be:
- Significant impact on the openness of the Green Belt at a site level with localised visual harm and a negligible impact on the wider Green Belt;
 - Minor impact against purpose c) noting the Site makes a relatively weak contribution to this Green Belt purpose already

Main Issue - The effect on the landscape character and appearance of the site and surrounding countryside

- 9.9 The evidence of Mr Self concludes that the Appeal Scheme would complement the nucleated pattern of development and result in negligible impacts on the wider character of the countryside. Furthermore, that the Appeal Scheme appropriately responds to the prevailing character of the area. I therefore agree with Mr Self that that the visual impacts of the Appeal Scheme would be effectively limited to a site level through a change from equestrian use to a housing development.

Main Issue – The effect on the setting and significance of nearby heritage assets

- 9.10 Through the work conducted through the Heritage SoCG, there are no significant areas of disagreement in relation to the impact on heritage assets. The following is agreed through section 3 of the heritage SoCG (CD8.4) between the Council and Appellant:
- Grade II Listed Colney Heath Farmhouse and Barn - less than substantial harm and at the lowermost end of the spectrum
 - Grade I Listed North Mymms Park House - less than substantial harm and at the lowermost end of the spectrum
 - Non-designated North Mymms Park Parkland - very minor harm
 - Non-designated Tollgate Farm – very minor harm

9.11 It is also common ground between the appellant and Council that, in line with paragraph 202 of the Framework, the public benefits of the Appeal Scheme outweigh the less than substantial harm identified to heritage assets²⁵. The Appeal Scheme therefore does not conflict with Policy 86 of the Local Plan. I agree.

Main Issue - Whether the appeal site is in a location which is or can be made sustainable in transport terms

9.12 Drawing upon the evidence of Mr Dimbylow, I consider that due to the close proximity of the Appeal Site to a variety of services and facilities, future residents would have a realistic alternative to the private car for travel to meet their daily needs. I therefore consider that the Appeal Site is situated in a sustainable location and complies with paragraph 105 of the Framework.

9.13 Furthermore, the sustainability credentials of Colney Heath have recently been subject scrutiny under the Inquiry for the Bullens Green Lane Appeal (CD14.6), where the Council were unable to substantiate their assertion Colney Heath was an unsustainable location. There have been no material changes in circumstances since this decision.

Main Issue - 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.

9.14 I accept that the Appeal Scheme would be inappropriate Green Belt development. In such circumstances, Paragraph 148 of the Framework requires the potential harm to the Green Belt by reason of inappropriateness, and any other harms resulting from the proposal, to be clearly outweighed by other considerations in order for VSC to exist.

9.15 I have outlined, through reference to the evidence of Mr Self, that the Appeal Scheme would result in a significant impact on the openness of the Green Belt, however this would be limited primarily to the Site itself given its relationship to the settlement of Colney Heath.

9.16 The Appeal Scheme only conflicts with purpose c) as expressed at paragraph 138 of the Framework. However, I have found through reference to the evidence of Mr Self, that the increase in encroachment will be minor noting the Site makes a relatively weak contribution to this Green Belt purpose already.

9.17 Therefore, whilst substantial weight must be given to inappropriate development in the Green Belt and any other harm to the Green Belt, the harm to openness is tempered to some degree owing to the particular characteristics of the Appeal Site. Furthermore, only minor harm to one purpose of including land within the Green Belt arises, thus overall any harm to the Green Belt beyond inappropriateness is, in my view, significant albeit that does not diminish the substantial weight to be given to it.

9.18 The Framework requires 'any other harm' resulting from the Appeal Scheme to be taken into account.

9.19 In relation to character and appearance, the SoCG (CD8.3) confirms at paragraph 6.22 that landscape impacts will not be significant and limited to impacts on the Site and its immediate vicinity, with no material effects on the wider landscape. The evidence of Mr Self concludes the Appeal Scheme will respond to the prevailing pattern of the countryside in an appropriate manner and due to the Site being visually well contained and its rural fringe character, the Appeal Scheme will not result in any significant effects to the character of the wider landscape.

²⁵ Paragraph 6.72 of the SoCG (CD8.3)

- 9.20 There would be the less than substantial harm to the setting of designated heritage assets and it is agreed this is at the lowermost end of that spectrum. Whilst I have demonstrated the Appeal Scheme passes the heritage balance expressed at paragraph 202 of the Framework, this harm must still be considered as part of the overall balance.
- 9.21 The evidence of Ms Stoten (CD9.3) also concludes a ‘very minor’ impact upon the setting of the North Mymms Parkland (paragraph 5.6) and Tollgate Farm (paragraph 5.7), both of which are non-designated heritage asset. The Framework states *“a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”*
- 9.22 In my view, these harms are clearly outweighed by other considerations as outlined in my evidence, which are summarised below.

Benefits of the Appeal Scheme

- 9.23 I am of the opinion the paddocks have a clear intimate association with the stable buildings and menage, such that they form part and parcel of the same curtilage. It is therefore the case that the Appeal Site meets the definition of previously developed land and is a sequentially preferable location for development over other non PDL Green Belt sites, particularly in the context of St Albans District. I place significant weight on the effective use of PDL to provide homes, which accords with paragraph 119 of the Framework.
- 9.24 I have outlined that the weight given to the delivery of market housing should be given in the context of the agreed substantial housing land supply shortfall, the woeful HDT results and fact that there is no Local Plan strategy in place, nor will there be for many years, to rectify this crisis. Indeed, I have outlined that I find it difficult to imagine a more severe situation in respect of housing delivery than that found in St Albans District, and the Council’s failures in plan-making means that the only mechanism for resolving the supply positions in at least the next few years is through applications for windfall developments, such as this. Accordingly, I afford very substantial weight to the supply of market housing which is common ground with the Council.
- 9.25 Having regard to the dire affordable housing situation portrayed by Ms Gingell in her evidence and fact that the Appeal Scheme provides 40% affordable housing, materially exceeding the 35% required by the Council’s Affordable Housing SPD, I conclude that very substantial weight should be given to the delivery of affordable housing in this appeal.
- 9.26 Noting the similarly abysmal custom and self-build housing situation in St Albans portrayed by Mr Moger in his evidence, in relation to the 9 serviced plots provided by the Appeal Scheme I afford very substantial weight to the provision of custom and self-build housing.
- 9.27 Significant weight should be given the economic benefits during the construction and operational phase of the development, in line with paragraph 81 of the Framework.
- 9.28 Significant weight should be given to the biodiversity enhancements associated with the Appeal Scheme, which materially exceed national planning policy.
- 9.29 These factors, when considered collectively, demonstrate that the benefits of the Appeal Scheme clearly outweigh the harms and therefore VSC exists to justify the grant of planning permission.

Planning Balance

- 9.30 Having addressed the Inspector’s main issues, I now address the planning balance.

Very Special Circumstances Balance (paragraph 148 of the Framework)

- 9.31 It is common ground that the Appeal Scheme would comprise inappropriate Green Belt development and should only be allowed if the potential harm to the Green Belt and any other harms is clearly outweighed by other considerations (paragraph 148 of the Framework).
- 9.32 In considering the Inspector's main issues, I have already identified the harms that would arise as a result of the Appeal Scheme and the weight to be prescribed to these. However, having regard to the benefits of the Appeal Scheme outlined above, I have found that these clearly outweigh the harm through inappropriateness and other harms, and therefore VSC exists to justify the grant of planning permission.

The Tilted Balance (paragraph 11d of the Framework)

- 9.33 It is common ground with the Council that it cannot demonstrate a five year housing land supply and that it only achieved a HDT of 69% in 2021. In such circumstances the 'tilted balance' expressed at paragraph 11d of the Framework is engaged.
- 9.34 As I have found VSC exists, Green Belt policies within the Framework do not provide a clear reason for refusing the development proposed and limb i of paragraph 11d of the Framework does not apply. The Appeal scheme should therefore be determined in accordance with limb ii of paragraph 11d which requires an assessment of whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As I have established that VSC exists, it is clear that the adverse impacts of the Appeal Scheme do not come close to significantly and demonstrably outweighing the benefits.
- 9.35 Given the above, planning permission should be granted in accordance with paragraph 11d of the Framework.

Section 38(6) Balance

- 9.36 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.
- 9.37 Relevant case law²⁶ 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.
- 9.38 I have applied paragraph 148 of the Framework and found that VSC exists, meaning the Appeal Scheme does not conflict with Policy 1 of the Local Plan.
- 9.39 I have then assessed compliance with all other disputed policies and found the Appeal Scheme to comply or is capable of complying at the reserved matters stage. There is no other alleged conflict with relevant development plan policies. On this basis, I consider the Appeal Scheme to comply with the development plan taken as a whole.
- 9.40 Given the above, material considerations do not indicate determining the Appeal Scheme other than in accordance with development plan and therefore I respectfully urge the Inspector to allow the appeal.

²⁶ R. v. ROCHDALE METROPOLITAN BOROUGH COUNCIL ex p. MILNE 31st July 2000 (CO/292/2000) at paragraphs 49 and 50 (CD13.1)

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