

Town and County Planning Act 1990 (As Amended) - Section 78

Town and Country Planning (Inquiry Procedure) (England) Rules 2000

Appeal by Vistry Homes Limited against the refusal of St Albans City and District Council, as Local Planning Authority, to grant outline planning permission for residential development of up to 150 dwellings, all matters reserved except access at Land Rear of 42 - 100 Tollgate Road, Colney Heath, Herts, AL4 0PY

**PROOF OF EVIDENCE OF PHILLIP E HUGHES MRTPI
ON BEHALF OF ST ALBANS CITY & DISTRICT COUNCIL**

AUGUST 2023

PLANNING INSPECTORATE REF: APP/B1930/W/23/3323099

LOCAL PLANNING AUTHORITY REF: 5/2022/1988

Contents

1	Introduction	2
2	Site and Surroundings	4
3	The Application and Planning History	10
4	Planning Policy	12
5	My Evidence to Support the Council's Case	25
	Green Belt – Inappropriate Development	26
	Green Belt – Openness	27
	Green Belt – Purposes	37
	Other Harm – Countryside and Character	44
	Other Harm – Heritage Assets	46
	Other Harm – Sustainable Transport	47
	Other Issues	51
	Conclusions on Harm	51
	Drainage and Flooding	52
6	The Appellant's Other Considerations	56
7	Planning Balance	64
8	Infrastructure and Section 106	69

Appendices

1	Aerial Image of the Site - Wide Context	70
2	Aerial Image of the Site - Mid Context	72
3	Aerial Image of the Site - Close Context	74

Phillip Eric Hughes will say:

I am a director of PHD Chartered Town Planners Limited, a town planning consultancy that I established in 1995. I have also worked at a senior level in local government for 10 years in both Planning Policy and Development Control.

I have a Bachelor of Arts Honours Degree (BA [Hons]) in Town and Country Planning and have been a corporate member of the Royal Town Planning Institute (MRTPI) since 1990 and I am a Fellow of the Royal Geographical Society (FRGS). I also have a Diploma in Management Science (Dip Man) and I am a Member of the Institute of Management (MCMI). I am also a member of the Town and Country Planning Association and an affiliate member of the RIBA.

I have represented a wide variety of clients at appeals ranging from Local Planning Authorities (including LB Camden, RB Kingston, Spelthorne, Hertsmere, Watford, Welwyn Hatfield and Walsall Boroughs and Central Bedfordshire, Uttlesford, Epping Forest, St Albans and Bassetlaw Districts), Parish Councils including Bovingdon, Hartlip, Loddington and Tetsworth to housebuilders (New Homes Estates Limited, MASMA Limited, Whittleworth Homes, Fusion Residential, Henry Homes plc. etc.), developers (MS Oaklands Ltd, Acre London Holdings Limited, Lanz Group, Mitre Property Management Limited, Mark Stephen Limited etc.), property companies (Acre LLP, Orb Estates, Property Matters LLP, Property Matters LLC, Albermarle Property Investments plc.), businesses (Super Toughened Glass Limited, Williams Tenders Limited, JIRWL, Hollywell Spring Limited), amenity groups (Anglefield Residents Association, Stopit Action Group, Paynes Lane Association, Hemley Hill Action Group, Birch Green Residents Group, Bury Gate Residents Association) and individual householders.

I have visited the appeal site and general locality on a number of occasions, and I am familiar with the policies applicable to the site. I am familiar with the local, national and regional planning policies relevant to this appeal.

The evidence that I have prepared and provide for this appeal has been prepared and is given in accordance with the guidance of the Royal Town Planning Institute and I confirm that the opinions expressed are my true and professional opinions.

1 Introduction

1.1 The proposal is for residential development of up to 150 dwellings on a site in the Green Belt ('the appeal site'). This appeal relates to an outline planning application ('the application') which was refused planning permission (as per the Officer Report at [CD6.1](#)). A public inquiry into the appeal is scheduled to open on 19 September 2023.

1.2 All matters, excluding access, are reserved for future consideration.

1.3 The reasons for refusal are set out on the decision notice ([CD6.2](#)) below:

1. *The site is within the Metropolitan Green Belt and the proposed development represents inappropriate development within the Green Belt, as set out in the National Planning Policy Framework 2021. In addition to the in-principle harm to the Green Belt by reason of inappropriateness, other harm is identified as a result of the proposed development in terms of: its detrimental impact on the openness of the Green Belt, harm to Green Belt purposes and harm to landscape character and appearance. Harm is also identified to the significance of the Grade I listed North Mymms Park house, Grade II listed Colney Heath Farmhouse and adjacent Grade II listed barn and the non-designated heritage assets of North Mymms Park and Tollgate Farm. Harm is also identified as insufficient information has been provided to demonstrate that the site has suitable access to sustainable transport modes. The benefits of the proposed development comprise the provision of up to 150 dwellings, including 40% affordable housing and up to 9 self-build units at the site which could contribute significantly towards meeting an identified housing need in the District, and the provision of public open space and delivery of 10% biodiversity net gain (through on-site and off-site provision). The potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is not clearly outweighed by other considerations; and as a result the very special circumstances required to allow for approval of inappropriate development in the Green Belt do not exist in this case. The proposal is therefore contrary to Policy 1 of the St Albans District Local Plan Review 1994 and the National Planning Policy Framework 2021.*
2. *In the absence of a completed and signed S106 legal agreement or other suitable mechanism to secure: additional health services provision; education provision in the form of new primary school, secondary school, and childcare provision; Special Educational Needs and Disabilities provision; library service provision; youth service provision; waste service provision; leisure and cultural services provision; affordable housing provision; open space and play space provision; biodiversity net gain; and highway works including provision for sustainable transport improvements and a travel plan; the development fails to adequately mitigate its effect upon local services and infrastructure and secure the identified 'very special circumstances'. The proposal is therefore contrary to Policies 1 (Metropolitan Green Belt) and 143B (Implementation) of the St. Albans District Local Plan Review 1994 and the National Planning Policy Framework 2021.*

- 1.4 This is an outline application with only access to be considered at this stage. The application plans include a parameters plan¹ and concept master plan², however these do not and cannot set the layout, scale or appearance of the proposed development as these matters remain reserved.
- 1.5 It is common ground, as indicated in the Statement of Common Ground³ that the Council cannot demonstrate a five-year supply of deliverable housing land and their Housing Delivery Test Score is below 75% and as such the so-called tilted balance pursuant to paragraph 11(d) of the NPPF is engaged.
- 1.6 However, the site is in the Green Belt⁴ and policies of the Framework policies in the Framework that protect areas or assets of particular importance provide clear reasons for refusing the development proposed. Therefore, the tilted balance is disengaged.
- 1.7 Evidence on behalf of the Council is also being provided by:
- Mr John Paul Friend in respect of landscape matters⁵,
 - Mr Nick Collins in respect of heritage matters⁶ and
 - Mr Chris Carr in respect of highway matters⁷.
- 1.8 I adopt their evidence in respect of these matters

1 [CD5.21](#)

2 [CD5.15](#)

3 [CD8.3](#)

4 See footnote 7 of the NPPF at [CD1.1](#)

5 [CD9.9](#)

6 [CD9.7](#)

7 [CD9.8](#)

2 Site and Surroundings

- 2.1 The appeal site comprises land extending to a total of 7.82 hectares. It is located to the south-west of a ribbon of houses fronting Tollgate Road that comprise the southerly extent of the washed over Green Belt settlements of Colney Heath.
- 2.2 Colney Heath is situated within the administrative area of St Albans City and District Council close to the administrative boundary with Welwyn Hatfield District Council (in fact part of Bullens Green is located within the administrative area of Welwyn Hatfield District Council).
- 2.3 The site is largely undeveloped and open but includes the dwellinghouse and garden to 42 Tollgate Road as well as a single-storey stables building and associated storage containers alongside the north-west boundary.
- 2.4 The neighbouring land uses include the rear garden boundaries to houses fronting Tollgate Road to the north-east, open agricultural land to the south-east, open woodland and the River Colne and local wildlife site to the south-west and open land to the north-west. This side of Tollgate Road is characterised by a ribbon of detached and semi-detached dwellings and does not feature in depth residential development or estate style residential development.
- 2.5 A public footpath linking Tollgate Road to Coursers Road (Colney Heath 033) is located alongside the full length of the north-west boundary, it forms part of an extensive range of local footpaths. Mr Friend describes the landscape qualities of the area as well as identifying the site as falling within Landscape Area 030 – Colney Heath Farmland (LCA).
- 2.6 He also describes the location and qualities of the Colney Heath Farm Meadows Local Wildlife Site (LWS).
- 2.7 The boundaries of the appeal site are delineated by some hedge planting and post and rail fencing. Where planting exists it is ‘gappy’ in places and views into the site are available from the public footpath as well as neighbouring dwellings and land.
- 2.8 Mr Collins describes the location of local heritage assets relative to the appeal site. These include designated assets and non-designated assets.
- 2.9 The site is located within the Metropolitan Green Belt.
- 2.10 The site is currently predominately open and used for exercising and grazing horses.
- 2.11 Beyond the site to the south, west and east lies open countryside.
- 2.12 The appeal site is visible along Tollgate Road on the approach from Welham Green as illustrated in the photographs below.



The Appeal Site Viewed on the Approach Along Tollgate Road over Countryside Looking East © Google

- 2.13 The appeal site is also visible across open land to the west as you approach the site from the junction of Coursers Road, High Street and Tollgate Road travelling west toward Welham Green.



The Appeal Site from the Pavement Alongside Tollgate Road Looking West



The Appeal Site and Countryside to the North West Viewed from Footpath 033 at the Boundary of the Appeal Site With the River Colne Looking North East

- 2.14 As detailed earlier the site is also visible from Footpath 033 which runs alongside the north western site boundary and follows the undulation of the appeal site dropping down to the River Colne.



View from Footpath 033 Looking South East through a gap in the Hedgerow



View From the Boundary of Tollgate Farmhouse Looking South East

- 2.15 The appeal site is open and its boundaries albeit demarked by some landscaping comprising trees, hedgerow and understorey growth are also demarked by open post and rail fencing and both provide permeability and views into and out of the site. The topography of the site and immediate area generally slopes from north down to the riverbed in the south.



View Along the South East Boundary Looking North East

- 2.16 The appeal site is situated in a prominent location between St Albans/ London Colney and Hatfield/ Welham Green and outside the washed over Green Belt settlement of Colney Heath (which incorporates Roestock).
- 2.17 The site and area lie within National Character Area 111: Northern Thames Basin and Hertfordshire Landscape Character Area ('LCA') 30: Colney Heath Farmland, which features organic field patterns, woodland blocks and mixed farmland as key characteristics. The overall guidelines for managing change in the LCA are 'Improve and conserve'.
- 2.18 The appeal site is detached from any non-Green Belt settlement and falls in the open green space between St Albans and Hatfield.
- 2.19 The appeal site falls within the northern part of the Watling Chase Community Forest area which separates Hatfield and St Albans.



View Looking North from Close to Southern Corner of the Appeal Site



The Storage Container and Stables Building looking South West Along the Existing Access Road

3 The Application and Planning History

- 3.1 Outline planning permission is sought for the development of the land for up to 150 dwellings with new road junctions, internal access roads, car parking and other related development including green infrastructure. All matters are reserved, save for access. Access is proposed from Tollgate Road.
- 3.2 An illustrative master plan has been produced to show how the site may be laid out should permission be granted and to illustrate the impact of a development of this scale and character. A parameters plan⁸ accompanied the application the subject of this appeal.



Extract Illustrative Masterplan (Rev D) at CD5.18

- 3.3 The illustrative layout plan shows the proposed residential development confined to the area of the site within Flood Zone 1 which comprises the higher and more prominent land. The proposed development has an estate layout and is sited behind the ribbon of houses that front, and are directly accessed from, Tollgate Road.
- 3.4 The proposal includes the following housing tenures:
- 60 affordable units (40%). The tenure is agreed to provide 2:1 affordable rental to shared ownership dwellings as well as 25% First Homes.; and
 - 81 market units (54%),
 - 9 plots for market self-build (6%).

⁸ CD5.21

- 3.5 The final mix and property sizes would be determined at reserved matters stage.
- 3.6 A new vehicular and pedestrian access is proposed to be created off Tollgate Road, which would require the demolition of no. 42 Tollgate Road. A raised table is proposed at the new crossroad junction between the site and Tollgate Road and between Fellowes Lane and Tollgate Road. The proposals also include the provision of a new section of footway on the north side of Tollgate Road.

Planning History

- 3.7 The appeal site has no relevant planning history. The three applications comprising the history of parts of the appeal site are detailed at section 3 of the Statement of Common Ground.
- 3.8 Planning permission was granted at appeal⁹ for the erection of 100 dwellings on a Green Belt site on the edge of Colney Heath, Bullens Green that straddles the boundary with Welwyn Hatfield District Council, we will describe that appeal site and contrast it with the appeal site.
- 3.9 I also note the 2016 appeal decision on neighbouring land known as Roestock Depot¹⁰. In that decision the Inspector found that much of the site was previously developed land, but the proposals would lead to a greater loss of openness than existing development and did not amount to infilling:

“Given the sites location in a gap between to distinctly separate built-up areas (Bullen’s Green and Roestock) and the scale of the proposed development, which would not be flanked by existing built form on both sides for much of its depth, I do not consider that the development could be appropriately described as limited infilling in a village. This is notwithstanding the presence of houses either side of the site along the road frontage.”

- 3.10 Having concluded that the proposed development would have a greater impact on openness than the existing buildings the Inspector concluded:

“[...] Therefore, the development would be at odds with the Green Belts essential characteristics, openness and permanence. Furthermore, it would be in conflict with its defined purposes, specifically to assist in safeguarding the countryside from encroachment.”

⁹ APP/B1930/W/20/3265925 and APP/C1950/W/20/3265926 at [CD14.6](#)

¹⁰ APP/B1930/W/15/3137409 at [CD14.24](#)

4 Planning Policy

- 4.1 The development plan comprises the St Albans District Local Plan 1994 (SADLP).
- 4.2 The following saved policies of the SADLP are agreed to be relevant to consideration of the application the subject of this appeal¹¹.

POLICY 1 - Metropolitan Green Belt
POLICY 2 - Settlement Strategy
POLICY 8 - Affordable Housing in the Metropolitan Green Belt
POLICY 34 - Highways Considerations in Development Control
POLICY 35 - Highways Improvements in Association with Development
Policy 36a - Location of New development in relation to Public Transport Network
POLICY 39 - Parking Standards, General Requirements
POLICY 40 - Residential Development Parking Standards
POLICY 69 - General Design and Layout
POLICY 70 - Design and Layout of New Housing
POLICY 74 - Landscaping and Tree Preservation
POLICY 84 - Flooding and River Catchment Management
POLICY 84a - Drainage Infrastructure
POLICY 86 - Buildings of Special Architectural or Historic Interest
POLICY 104 - Landscape Conservation
POLICY 106 - Nature Conservation
POLICY 111 – Archaeological Sites
POLICY 143a - Watling Chase Community Forest
POLICY 143b - Implementation

- 4.3 It is common ground that Policies 1, 2, 69, 86 and 143b are most important policies¹².
- 4.4 Policy 1 identifies (along with the Proposals Map) the extent of the Green Belt and then states:

“Within the Green Belt, except for development in Green Belt settlements referred to in Policy 2 or in very special circumstances, permission will not be given for development for purposes other than that required for:

- a) mineral extraction;*
- b) agriculture;*
- c) small scale facilities for participatory sport and recreation;*
- d) other uses appropriate to a rural area;*
- e) conversion of existing buildings to appropriate new uses, where this can be achieved without substantial rebuilding works or harm to the character and appearance of the countryside.”*

¹¹ Paragraph 5.4 of the SoCG at [CD8.3](#)

¹² Paragraph 5.5 of the SoCG at [CD8.3](#)

- 4.5 Policy 2 sets out the settlement strategy looking to safeguard the character of Green Belt settlements including from the cumulative effect of development proposals. It then sets out a settlement hierarchy with St Albans sitting at the top of the hierarchy and then Harpenden as towns excluded from the Green Belt. Next are a series of seven specified settlements which are excluded from the Green Belt and include London Colney. Finally are a group of nine Green Belt settlements including at GBS2 the three parts of Colney Heath (Colney Heath, Roestock and Bullens Green). Within these Green Belt settlements (which are all washed over by the Green Belt) the policy advises that development will not normally be permitted other than if it meets the exceptions in Policy 1 and it advises that development must not detract from the character and setting of the Green Belt settlements.
- 4.6 In the Roestock Depot appeal decision (CD14.24), the inspector concluded in respect of Policies 1 and 2:
- “Policies 1 and 2 of the LP restrict development in the Green Belt other than for specified purposes. This general approach to Green Belt protection is consistent with that of the National Planning Policy Framework (the Framework) but I note that greater scope for exceptions are set out at paragraph 89 of the Framework and this is an important material consideration.”*
- 4.7 In her decision at Bullens Green (CD14.6) the Inspector concluded in respect of Policy 1 *inter alia*:
- “[...] The proposals would lead to conflict with policy 1 of the St Albans District Council Local Plan, 1994. This policy identifies the extent of Green Belt within the Borough, and outlines the developments which would be permitted which broadly align with the development identified by the Framework.”*
- 4.8 Policy 69 relates to General Design and Layout of all new development and requires such development to have regard to context as well as having regard to Policy 2. I note that context is an important part of good design and is reflected in the National Design Guide (NDG) which identifies context as an important element of the design process.
- 4.9 Policy 86 relates to Buildings of Special Architectural or Historic Interest (Listed Buildings) and requires decision makers to *inter alia* have special regard to the desirability of preserving the building or its setting. Whilst the NPPF has evolved heritage policy and advice Policy 86 is not inconsistent with the NPPF nor the statutory duty in §66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (As Amended).
- 4.10 Policy 143a supports the establishment of the Watling Chase Community Forest which includes the location of the appeal site and also requires proposals to be consistent with Green Belt policy.
- 4.11 Policy 143b relates to infrastructure requirements where provision is required in the first instance on site and if off site provision is necessary it will need to be secured.

4.12 SADC has adopted relevant supplementary planning documents including:

- Revised Parking Policies and Standards, January 2002
- Design Advice Leaflet No. 1: Design and Layout of New Housing, November 1998
- Affordable Housing March 2004

National Planning Policy Framework

4.13 The Framework sets out the Government's economic, environmental and social planning policies for England. These policies articulate the Government's vision of sustainable development, which should be interpreted and applied locally to meet local aspirations. In terms of the most relevant sections for this appeal, Section 9 promotes Sustainable Transport and Section 13 relates to Protection of the Green Belt. Section 2 includes the presumption in favour of Sustainable Development. Section 5 relates to the delivery of a sufficient supply of homes. Section 12 relates to achieving well-designed places, Section 15 relates to conserving and enhancing the Natural Environment and Section 16 relates to conserving and enhancing the Historic Environment.

4.14 Paragraph 11 sets out the approach to the presumption in favour of sustainable development. Paragraph 11d advises that the presumption means, for decision-making:

“where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, granting permission unless:

- the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁷; or*
- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”*

4.15 It is common ground that the Council cannot demonstrate a five-year supply of deliverable housing land and also via its HDT results the policies of the local plan are out of date.

4.16 Footnote 8 states that in the situation where a Local Planning Authority is unable to demonstrate a five-year supply of deliverable housing land and/ or the HDT results are below 75% then the policies which are most important for determining the application are deemed to be out of date.

4.17 Paragraph 11(d)(i) and Footnote 7 provides (so far as relevant) that the tilted balance is disengaged in circumstances policies of the Framework protect assets of importance and provide a clear reason for refusing permission. Footnote 7 clarifies that:

“The policies referred to are those in this Framework (rather than those in development plans) relating to: [...] land designated as Green Belt [...]; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 63); [...]”

- 4.18 As such, when considering planning decisions relating to land in the Green Belt it is necessary to determine whether the application of the Green Belt policies and/or the Heritage policies in the Framework provide a clear reason for refusal under paragraph 11(d)(i). If they do, the tilted balance in paragraph 11(d)(ii) of the Framework is disengaged.
- 4.19 I conclude in section 5 that heritage policies do not provide a clear reason to refuse permission and therefore of themselves do not disengage the titled balance. However, I also conclude that Green Belt policy as set out in the Framework provides clear reasons for refusal and thus the tilted balance is disengaged.
- 4.20 Paragraph 149 of the Framework provides that “the construction of new buildings” is “inappropriate development” in the Green Belt, unless one of the stated exceptions applies. The proposal for up to 150 dwellings and access roads and other development to facilitate the proposed housing comprise inappropriate development. Exception (g) relates to limited infilling to complete redevelopment of previously developed land where it would not have a greater impact on openness or not cause substantial harm to openness where it would re-use pdl where it would contribute toward meeting local affordable housing need. It is common ground that the development does not fall within any of the exceptions and comprises inappropriate development¹³.
- 4.21 The Framework advises that inappropriate development is, by definition, harmful to the Green Belt should not be approved except in very special circumstances (paragraph 147). Paragraph 148 states:
- “When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green belt unless the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal, is clearly outweighed by other considerations.”*
- 4.22 It is common ground that the proposals comprise inappropriate development¹⁴, erode openness¹⁵, do not comprise an exception under paragraph 149(g) of the Framework and would not assist in safeguarding the countryside from encroachment¹⁶.

13 Paragraphs 6.13 and 6.16 of the SoCG at [CD8.3](#)

14 Paragraph 6.16 of the SoCG at [CD8.3](#)

15 Paragraph 6.17 of the SoCG at [CD8.3](#)

16 Paragraph 6.18 of the SoCG at [CD8.3](#)

- 4.23 It is common ground that less than substantial harm arises to the setting of listed buildings. In those circumstances NPPF para. 202 requires a decision maker to weigh any harm to a designated heritage asset against the public benefits of the proposal¹⁷.
- 4.24 Great weight is to be given to the conservation of heritage assets (paragraph 199).
- 4.25 In the circumstances of this case my view is that the public benefits of granting planning permission outweigh the heritage harm (and this is a matter of common ground¹⁸) and as such the heritage harm does not disengage the tilted balance.
- 4.26 The appeal site comprises land outside any designated settlement and thus comprises part of the countryside. Although not a “footnote 7 policy”, paragraph 174(b) of the Framework directs that decisions on planning applications should contribute to and enhance the natural and local environment by:

“recognising the intrinsic character and beauty of the countryside ...”

- 4.27 The *Cawrey*¹⁹ judgment accepts that the recognition of the intrinsic character and beauty and character of the countryside necessarily imparts a degree of protection to those matters.
- 4.28 The Framework seeks to achieve well designed places and as set out at paragraph 127(f) seeks to provide high standards of amenity for existing and future users and being sympathetic to context including landscape setting (127(c)).
- 4.29 Paragraph 169 requires major development to incorporate sustainable urban drainage systems. Section 15 requires the protection and enhancement of biodiversity (180).

The National Design Guide (NDG)

- 4.30 As noted in the National Design Guide:

“The National Planning Policy Framework makes clear that creating high quality buildings and places is fundamental to what the planning and development process should achieve. [...]”

- 4.31 The NDG as referenced in the PPG sets out 10 characteristics and states that good design considers how a development can make a positive contribution to all 10 characteristics.
- 4.32 It advises that a well-designed place is unlikely to be achieved by focusing only on the appearance, materials and detailing of buildings and it comes about through making the right choices at all levels.

¹⁷ Paragraph 6.71 of the SoCG at CD8.3

¹⁸ Paragraph 6.72 of the SoCG at CD8.3

¹⁹ i.e. paragraph 49 of **Cawrey Ltd and SoSCLG and Hinkley and Bosworth BC** [2016] EWHC 1198 (Admin) at CD13.2

4.33 The first of the ten characteristics is context within which the role of good design is to enhance the surroundings. The NDG advises that well designed new development responds positively to the surrounding context and details a number of physical features including existing built development including layout form, scale etc.

4.34 In terms of understanding local and wider context the NDG advises²⁰:

“Well-designed new development responds positively to the features of the site itself and the surrounding context beyond the site boundary. It enhances positive qualities and improves negative ones...”

4.35 The NDG states inter alia²¹:

“Well-designed new development is integrated into its wider surroundings, physically, socially and visually. It is carefully sited and designed, and is demonstrably based on an understanding of the existing situation, including [...]:

the landscape character and how places or developments sit within the landscape, to influence the siting of new development and how natural features are retained or incorporated into it;

The Emerging St Albans Local Plan

4.36 A Regulation 22 Submission version of the St Albans Local Plan was submitted in March 2019. The Examining Inspectors expressed concerns that the duty to co-operate had not been satisfied and the Council withdrew the plan.

4.37 However, it is material to note that in that version of the Local Plan the Green Belt boundary in the area of the appeal site was not proposed to be amended and thus the appeal site was proposed to be retained within the Green Belt (in accordance with the principles of permanence).

4.38 Following withdrawal of that Plan the Council recommenced the Local Plan process. This has culminated in the Regulation 18 Consultation being published in July 2023²² with consultation running until September 2023 in accordance with the Local Development Scheme published in September 2022²³.

4.39 The appeal site was submitted through the Call for Sites 2021. The Housing and Economic Land Availability Assessment (HELAA) was undertaken without reference to the Green Belt Review which could change the suitability of sites. It found the appeal site to be potentially suitable, available and achievable subject to further assessment as part of the site selection process.

20 NDG Paragraph 41

21 NDG Paragraph 43

22 CD3.1

23 CD3.3

- 4.40 Furthermore, pursuant to the 2013 SKM Green Belt Review Part 1²⁴, which comprised part of the evidence base for the now withdrawn draft Local Plan, no changes were proposed to the Green Belt boundaries around Colney Heath or the washed over status of the Green Belt settlements (such as Colney Heath). The appeal site was not identified as either a strategic site or a smaller scale site in the Green Belt Assessment. The Examining Inspectors described the Green Belt process as follows in a letter in April 2020²⁵ at para. 31:

“The Green Belt Review Purposes Assessment (November 2013) was prepared jointly for the Council with Dacorum and Welwyn Hatfield Councils by SKM (GB004). This Stage 1 of the review identified large parcels of land across the three authorities. Those areas contributing least to the Green Belt were determined and a number of strategic sub areas in St Albans were identified for further investigation. These were taken forward to Stage 2 where SKM undertook a review and detailed assessment of those strategic sub areas in the Green Belt Review Sites and Boundaries Study (February 2014) (GB001).”

- 4.41 In that letter the Inspectors raised concern that the GB Review process excluded consideration of sites of less than 500 dwellings (see paragraph 37) and that the capacity from smaller sites could be greater than estimated having regard to the smaller scale sites identified in the 2013 review not being an exhaustive list. The GB Review did not take forward the small scale sub areas assessed in 2013 *as making no or little contribution to the Green Belt purposes.*
- 4.42 The appeal site is not located in a sub area that was assessed in 2013 as making little or no contribution to the Green Belt purposes and in fact was considered to make a significant contribution toward safeguarding the countryside from encroachment (therefore parcel 34 was not considered to perform poorly against the purposes or warrant subdivision).
- 4.43 The Examining Inspector’s concern was encapsulated at paragraph 41 wherein they state the following about the Council’s focus on strategic sites:

“This has ruled out a number of sites that have already been found to impact least on the purposes of the Green Belt. It may well also have ruled out other non-strategic sites with limited significant impacts on the Green Belt which may have arisen from a finer grained Green Belt Review.”

- 4.44 Given Parcel 34 performs well against the purposes the Inspector’s criticism cannot have been aimed at Parcel 34 or the appeal site. in respect of parcel 34 the SKM Green Belt Review Part 1²⁴ states:

“Significant contribution towards safeguarding the countryside and maintaining the existing settlement pattern (providing gap between Hatfield and London Colney).

²⁴ [CD3.4](#)

²⁵ Examining Inspector’s Post Hearing Letter of 14 April 2020

Partial contribution towards preventing merging (of St Albans and Hatfield) and preserving the setting of London Colney, Sleafshyde and Tyttenhanger Park. Overall the parcel contributes significantly towards 2 of the 5 Green Belt purpose.”

- 4.45 SADC commenced work on preparing a new draft Local Plan for the period to 2041.
- 4.46 The evidence base to support the new plan includes a Settlement Hierarchy Study that concluded in Part 1²⁶ that the settlement hierarchy in the 1994 Plan should be further refined and updated to informal decisions and work on the spatial strategy and site selection noting:

“The results of the Study have shown that there is a significant range of settlement types in the District, resulting in the identification additional settlement ‘tiers’ in the hierarchy, when compared to the current hierarchy from the Local Plan Review 1994.

In particular, differentiation has been identified between St Albans as a City/Large Town and Harpenden as a Town; London Colney as a Small Town; Large Villages to the north of the District and Medium Sized Villages to the south of St Albans; and washed over Green Belt villages. The Stage 2 Settlement Hierarchy Study further develops an understanding of the relationships between settlements in St Albans District, and those outside the District boundary.”

- 4.47 In terms weighting settlement by reference to community facilities, shopping, employment access etc of the 16 settlements assessed Colney Heath there were only three worse performing settlements²⁷.
- 4.48 As part of the evidence base for the new Local Plan a revised Part 2 Green Belt Review was commissioned to assess a range of sites (both large and small) for release from the Green Belt²⁸.
- 4.49 That report relied on the Green Belt Review: Washed Over Settlement Study²⁹ which was prepared by ARUP and comprises part of the evidence base. The existing and any proposed washed over Green Belt settlement are assessed against NPPF paragraph 144. In respect of Colney Heath the recommendation is to retain it as a washed over settlement noting the open character of the village and its moderate settlement scale and form as well as the moderate settlement edge characteristics and setting³⁰. The report includes a plan that identifies the three component parts of Colney Heath, i.e., Colney Heath (A), Roestock (B) and Bullens Green (C).

26

[CD3.7](#)

27

See Appendix 7 to the Part 1 Report

28

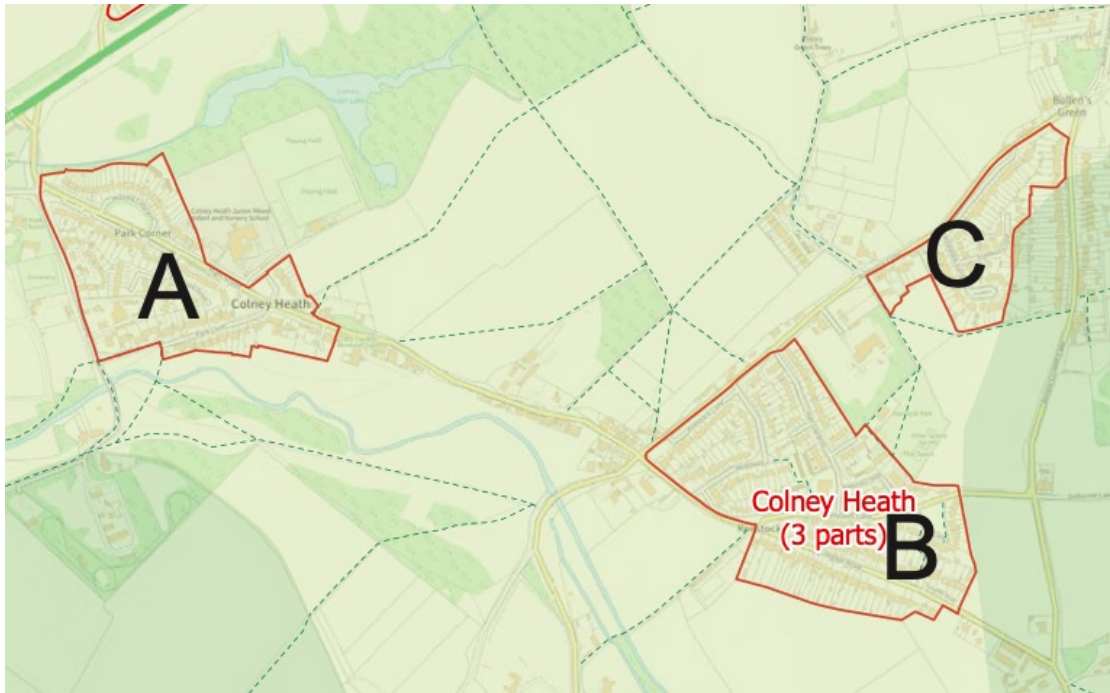
[CD3.5](#)

29

[CD3.6](#)

30

See the Summary table at page 3



Colney Heath Component Parts

- 4.50 In terms of development scale and form overall the village is considered to have a settlement scope of moderate and in respect of Colney Heath South it notes:

“The largest area (B) to the south, is a cluster of development along looping lanes and cul-de-sacs between Tollgate Road and Roestock Lane. This area has some localised three storey development with moderate density and moderately sized gardens. The development is a mixture of detached, semi- detached and terraced houses.”

- 4.51 The conclusion in Part 1 is that the village has an open character. With regard to the assessment of contribution to openness in Part 2 the assessment notes in respect of Roestock:

“Views from the southern boundary, however, have very strong connections to the wider landscape with open arable fields and wooded blocks in the background as there is a visually permeable boundary with no adjacent development along Tollgate Road.

There are glimpsed views of the fields and wooded blocks in the wider Green Belt landscapes from Roestock Lane through gaps in development.”

- 4.52 In assessing the village against paragraph 144 NPPF the study concludes that the village has a moderate score and notes in respect of Colney Heath South inter alia:

“The southern and eastern boundaries of area B have a mixture of various garden fences and hedges which allow a moderate visual permeability and some areas with simple, very visually permeable fences allow a strong relationship with the wider landscape; for example along Tollgate Road [...]”

- 4.53 The report then concludes that the open character is considered to make an important contribution to the openness of the Green Belt and then recommends:

“The village has an open character and makes an important contribution to the openness of the Green Belt, therefore it should be retained as washed over.”

- 4.54 The Green Belt Review 2023²⁸ endorsed the findings of the Green Belt Review: Washed Over Settlement Study and the built on the work of the Part 1 Assessment with consideration given to potential impacts upon the relative strength of the Green Belt boundary and whether new boundaries would be defined ‘clearly, using physical features that are readily recognisable and likely to be permanent’. On that basis buffers were applied to the major settlements and then the areas of assessment within the buffers were defined taking into account the SKM Stage 1 GBR weakly performing land against NPPF purposes, promoted sites identified through the Council’s site selection work and Non-Green Belt land. Of the 182 sub areas identified 122 were recommended for retention in the Green Belt. Parcel 34 was not subdivided, and no changes are proposed to any Green Belt boundaries or the washed over status of settlements within this parcel.
- 4.55 The published Regulation 18 Plan does not identify the site for release from the Green Belt or to be allocated for housing to assist in meeting the housing requirement over the Plan period. The appeal site does not comprise a site identified in the emerging Plan as an allocation site for housing. The Housing and Economic Land Availability Assessment 2021 (HELAA) followed on from the Call for Sites where the site was promoted. The HELAA identified the site (CH-37-21) and was considered potentially suitable subject to absolute and non-absolute constraints being mitigated. However, the HELAA process did not consider Green Belt constraints.
- 4.56 The HELAA and Green Belt Review were used to identify suitable sites for allocation in the Regulation 18 Plan. Given the outcome of the Green Belt Review and the performance of Parcel 34 in terms of the purposes no land around Colney Heath Village is proposed for allocation and the appeal site is not identified for allocation given Colney Heath falls within the sixth tier of settlements in the settlement hierarchy and the land around the village and in particular to the south around Tollgate Road provides a *significant contribution towards safeguarding the countryside and maintaining the existing settlement pattern*.
- 4.57 The emerging plan (which is at an early stage of preparation) does not allocate the appeal site to meet the housing requirement of the plan over the plan period. The Plan will have to meet its housing requirement to be considered sound. The Plan defines the settlement hierarchy and Colney Heath is a Green Belt village that comprises part of the sixth of seven tiers of settlements³¹.

³¹ See Table 1.3 and Figure 1.1 – Settlement Hierarchy of the emerging Local Plan 2041

- 4.58 Policy SP1 sets the spatial strategy for St Albans applies sustainable development principles to determine if development can be considered sustainable including in respect of the location which should minimise the need to travel by directing growth to areas with good transport networks that are well served by jobs services and facilities. It confirms inter alia:

“The City of St Albans will continue to be the pre-eminent focus in the District for housing, employment, services, retail, the evening economy, education and healthcare.

The Settlement Hierarchy (Table 1.3) provides the basis for allocation and location of growth, locating most growth generally within and adjacent to the larger and most sustainable urban centres that are Tier 1 - St Albans and Hemel Hempstead; Tier 2 – Harpenden, and Tier 3 - London Colney.”

- 4.59 It then sets broad locations for urban extensions and development sites before addressing the allocation of large, medium and small site allocations:

“The other categories of development are Large Sites (100-249 homes), Medium Sites (10-99 homes) and Small Sites (5-9 homes). These sites are concentrated mostly within urban areas and around the higher tiers in the Settlement Hierarchy.”

- 4.60 In my view this spatial strategy is entirely consistent with the NPPF and is also broadly consistent with the adopted local plan. Emerging Policy SP2 relates to the climate emergency and requires new development to be located in the most sustainable locations in order to minimise the need to travel through encouragement of walking, cycling and public transport.

- 4.61 Policy SP3 builds on the Green Belt Review and allocate 15,096 homes in the district up to 2041. It requires growth to be supported by suitable infrastructure including schools, transport including walking cycling and public transport and sports and leisure facilities.

- 4.62 No sites allocated as broad locations for urban extensions are located in or close to Colney Heath³².

- 4.63 Policy LG1 and LG4 sets out criteria to support the broad locations for development and large medium and small sites (which exclude Colney Heath) and include the provision of 40% affordable housing.

- 4.64 Policy LG5 relates to the Green Belt and states that proposals will be assessed in accordance with national policy. Policy LG7 allows for the grant of schemes for affordable only housing schemes of 9 or less dwellings in the Green Belt.

- 4.65 Policy SP4 relates to housing and HOU1 advocates a housing mix and Policy HOU2 relates to Affordable Housing and states inter alia:

³² See Table 3.1 at [CD3.1](#)

“The Council will seek to meet the District’s affordable housing needs by:

- a) Requiring residential development proposals (Use Class C3) with a gain of 10 or more homes, or where the site has an area of 0.5 hectares or more, to provide -*
 - i. 40% of homes as on-site affordable housing;*
 - ii. A tenure mix of 30% social rented, 30% affordable rented and 40% affordable home ownership, which includes 25% of all affordable housing as First Homes;*
 - iii. A design approach where affordable housing is indistinguishable in appearance from market housing on site and distributed evenly across the site with affordable housing dwellings to be clustered in groups of no more than 15 homes;*
 - iv. Affordable housing to meet required standards and be of a size and type which meets the requirements of those in housing need.”*

4.66 Policy SP8 sets out the Transport Strategy which requires account to be taken of the Hertfordshire County Council Local Transport Plan as well as supporting development in locations which enable active and sustainable transport journeys together with reducing car journeys. Policy TRA1 sets out transport considerations for new development and includes a number of requirements that have to be demonstrated for major proposals including:

- i. Measures to reduce the need to travel by private car are identified and implemented;*
- ii. Active and sustainable connections to key destinations are deliverable at an early stage of development;*
- iii. How the proposed scheme would be served by public transport and would not have a detrimental impact to any existing or planned public transport provision;*
- iv. Safe, direct and convenient routes for active journeys to key destinations are provided and prioritised in their design;*
- v. Comprehensive and coherent integration into the existing pedestrian and cycle, public transport and road networks will be secured;*

4.67 Strategic Policy SP10 relates to the natural environment and biodiversity and seeks to protect green infrastructure recognising its role in combating climate change and supporting biodiversity and landscape value. Policy NEB6 relates to biodiversity and also requires minimum biodiversity net gains of 10% on site.

4.68 Policy NEB10 relates to landscape and design and requires proposals to demonstrate eight components of any scheme and that within the landscape character areas proposals must conserve, enhance or restore the prevailing landscape character of the area.

4.69 Policy SP11 relates to the historic environment and when considering the impact of a proposed development on the significance of a designated heritage asset, great weight will be given to the asset’s conservation and its setting. Policy HE1 relates to designated heritage assets and sets out support for works to listed buildings in a number of specific circumstances. Policy HE2 relates to non-designated heritage assets and reiterates the approach of the NPPF.

- 4.70 Policy SP12 relates to high quality design and requires development to inter alia respond positively to context. Policy DES1 also requires new development to positively respond to context taking account of local distinctiveness.
- 4.71 Policy SP13 relates to health and well-being and as part of that it identifies the particular reliance of improved walking and cycle infrastructure to assist in more active modes of transport and reducing air pollution. Policy SP14 relates to the delivery of infrastructure.
- 4.72 I consider that little weight can be placed on this emerging plan which is at an early stage of preparation for the purposes of this appeal. However, the general direction of travel and reinforcement of the adopted spatial strategy and settlement hierarchy are matters that can be given greater weight.

5 My Evidence to Support the Council's Case

- 5.1 I present evidence under the broad topic headings that are covered in the reasons for refusal, namely:
- a. Green Belt (inappropriateness, openness and purposes);
 - b. Character and Countryside;
 - c. Heritage Assets;
 - d. Location;
 - e. Infrastructure;
- 5.2 It is common ground that the proposal comprises inappropriate development in the Green Belt³³. In that context any dispute about the pdl status of the land or parts of the site are largely academic. In that context I will consider what other harm arises to the Green Belt as well as considering harm to the character and appearance of the area, harm to the countryside and harm to designated and undesignated heritage assets, as well as the sustainability of the location to support new residential development.
- 5.3 I will also briefly address matters of biodiversity, archaeology, and infrastructure before considering whether any other considerations raised by the Appellant clearly outweigh the harm by way of inappropriateness and any other harm such that very special circumstances exist.



The Green Belt around St Albans and Hatfield (the site is in Area 34)³⁴

³³ Statement of Common Ground at [CD8.3](#) at paragraph 6.16

³⁴ Green Belt Review Purposes Assessment Annex 1 Parcel Assessment Sheets for SADC 2013 [CD3.4](#)

- 5.4 In undertaking the Green Belt balance I will address whether the decision is to be undertaken in the context of the orthodox planning balance or whether in the context of paragraph 11(d) of the Framework the application of policies of the Framework that protect the Green Belt provide a clear reason for refusing the development proposed and thus the so called *tilted balance* is disengaged.

Green Belt – Inappropriate Development

- 5.5 The NPPF confirms that the essential characteristics of the Green Belt include its openness and permanence.
- 5.6 The appeal site lies outside any existing settlement within the designated Green Belt as defined on the Proposals Maps of the adopted Local Plans. Consistent with the Framework (paragraph 149), Policy 1 SADLP does not define development of up to 150 residential dwellings, access roads etc. as an exception from the definition of inappropriate development. The adopted development plan directs new housing development to the main settlements and applies a settlement hierarchy that does not identify the washed over Green Belt settlement of Colney Heath as sustainable locations for new housing development.
- 5.7 The broad approach of policy in respect of the Green Belt is to designate areas of Green Belt land and then to consider development within the Green Belt to be inappropriate unless it is specifically identified as an exception³⁵.
- 5.8 Consistent with the Framework (paragraph 149), Policy 1 SADLP does not define development of up to 150 residential dwellings, access roads etc. as an exception from the definition of inappropriate development.
- 5.9 Therefore, it is common ground that the proposed development comprises inappropriate development. Paragraph 148 of the NPPF confirms that harm by way of inappropriateness and any other Green Belt harm is harm that is attributed substantial weight.
- 5.10 Paragraph 147 NPPF states that inappropriate development should not be approved except in very special circumstances. Then paragraph 148 confirms that “very special circumstances” will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. The test is to be “clearly outweighed” and not merely “outweighed”.
- 5.11 The application of NPPF paragraph 148 provides a clear reason to refuse planning permission under NPPF 11(d)(i), and it would only ever be through the exercise of the Green Belt planning balance in NPPF para. 148 wherein other considerations are demonstrated to clearly outweigh the harm by way of inappropriateness and any other harm that permission could be granted.

³⁵ See **Timmins and Anr and Gedling Borough Council** [2014] EWHC 654 (Admin) at [CD13.3](#)

- 5.12 Therefore the decision will have to be taken with all the harm first identified and weighed and then the other considerations relied on by the Appellant considered and weighed and only if those other considerations “clearly outweigh” the harm by way of inappropriateness and all other harm do very special circumstances exist.

Green Belt - Openness

- 5.13 The Framework (para. 137) identifies openness and permanence as the essential characteristics of the Green Belt with the fundamental aim of Green Belt policy to keep land permanently open and thereby prevent urban sprawl.
- 5.14 The concept of openness means the state of being free from built development; the absence of built form as opposed to the absence of visual impact³⁶. However, the word “openness” is open-textured, and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if the proposed development occurs and factors relevant to the visual impact on the aspect of openness which the Green Belt presents³⁷.
- 5.15 In **Turner**, Sales, LJ stated as follows (so far as relevant):

- "14. [...] The word “openness” is open-textured, and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt presents
15. The question of visual impact is implicitly part of the concept of “openness of the Green Belt” as a matter of the natural meaning of the language used in para. 89 of the NPPF. I consider that this interpretation is also reinforced by the general guidance in paras. 79-81 of the NPPF, which introduce section 9 on the protection of Green Belt Land. There is an important visual dimension to checking “the unrestricted sprawl of large built-up areas” and the merging of neighbouring towns, as indeed the name “Green Belt” itself implies. [...]. Openness of aspect is a characteristic quality of the countryside, and “safeguarding the countryside from encroachment” includes preservation of that quality of openness. [...]
16. The visual dimension of the openness of the Green Belt does not exhaust all relevant planning factors relating to visual impact when a proposal for development in the Green Belt comes up for consideration. For example, there may be harm to visual amenity for neighbouring properties arising from the proposed development which needs to be taken into account as well. But it does not follow from the fact that there may be other harms with a visual dimension apart from harm to the openness of the Green Belt that the concept of openness of the Green Belt has no visual dimension itself.

³⁶ **R (Lee Valley RPA) v Epping Forest DC** [2016] EWCA Civ 404, Treacy, Underhill, Lindblom LJ, para. 7 at [CD13.4](#)

³⁷ **Turner v SSCLG** [2016] EWCA Civ 466, Arden, Floyd and Sales LJ at [CD13.5](#)

25 *The openness of the Green Belt has a spatial aspect as well as a visual aspect, and the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result of the location of a new or materially larger building there. But, as observed above, it does not follow that openness of the Green Belt has no visual dimension."*

5.16 The Government updated the PPG in July 2019 (Para 001; ID 64-001-20190722) in respect of openness and it now states:

"Assessing the impact of a proposal on the openness of the Green Belt, where it is relevant to do so, requires a judgment based on the circumstances of the case. By way of example, the courts have identified a number of matters which may need to be taken into account in making this assessment. These include, but are not limited to:

- *openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume;*
- *the duration of the development, and its remediability – taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness; and*
- *the degree of activity likely to be generated, such as traffic generation."*

5.17 In **Samuel Smith**,³⁸ the Supreme Court (Lord Carnwath) issued the lead judgment (with which Lady Hale, Lord Hodge, Lord Kitchin and Lord Sales agreed) in respect of the interrelationship between visual impact and openness of the Green Belt, disagreeing with Lindblom LLJ in the Court of Appeal. The Supreme Court judgment was handed down on 3 December 2019. Lord Carnwath said:

"22. The concept of "openness" in para 90 of the NPPF seems to me a good example of such a broad policy concept. It is naturally read as referring back to the underlying aim of Green Belt policy, stated at the beginning of this section: "to prevent urban sprawl by keeping land permanently open ...". Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt. As PPG2 made clear, it is not necessarily a statement about the visual qualities of the land, though in some cases this may be an aspect of the planning judgement involved in applying this broad policy concept. Nor does it imply freedom from any form of development. Paragraph 90 shows that some forms of development, including mineral extraction, may in principle be appropriate, and compatible with the concept of openness. A large quarry may not be visually attractive while it lasts, but the minerals can only be extracted where they are found, and the impact is temporary and subject to restoration. Further, as a barrier to urban sprawl a quarry may be regarded in Green Belt policy terms as no less effective than a stretch of agricultural land."

"39. [...] As explained in my discussion of the authorities, the matters relevant to openness in any particular case are a matter of planning judgement, not law."

³⁸ R (**Samuel Smith Old Brewery (Tadcaster) & Ors v N. Yorks CC** [2020] UKSC 3 at [CD13.6](#)

“40 Lindblom LJ criticised the officer’s comment that openness is “commonly” equated with “absence of built development”. I find that a little surprising, since it was very similar to Lindblom LJ’s own observation in the Lee Valley case (para 23 above). It is also consistent with the contrast drawn by the NPPF between openness and “urban sprawl”, and with the distinction between buildings, on the one hand, which are “inappropriate” subject only to certain closely defined exceptions, and other categories of development which are potentially appropriate. I do not read the officer as saying that visual impact can never be relevant to openness.”

5.18 In effect what the Supreme Court found was that the visual component of openness is capable of being a material consideration, but it is not necessarily a consideration in every case.

5.19 There is a difference between impacts on visual amenity, which are normally considered within the process of LVIA and the visual aspects of openness which are considered as part of Green Belt Assessment. In a LVIA an assessment is made on the effects of development on views available to people and their visual amenity and how this may affect character and scenic quality. In consideration of Green Belt, an assessment is made on the effects of development on the visual openness of the Green Belt including impacts on views, links to the wider Green Belt, inter-visibility between settlements and whether measures could be proposed that would restore the baseline aspects of openness.

5.20 In a Secretary of State decision of November 2021³⁹ in dealing with visual openness on a site that has urban influences, paragraph 8.9 of the Inspector's conclusions states:

“In visual terms, external views of the site are relatively local and the M6 and A580, the Holiday Inn and the grandstands and other buildings of Haydock Park Racecourse lie close to its eastern, southern and northern boundaries respectively. Almost immediately west of the M6 is the extensive Haydock Industrial Estate (HIE). However, the proximity of these urban influences and features would do nothing to offset but, on the contrary, would serve to emphasise the permanent loss of openness, notwithstanding the relative containment of external views. Moreover, the proposed landscape bunding and tree screening round the site, intended to soften the appearance of the buildings in the landscape, would aggravate the obvious loss of the essential and fundamental openness of the Green Belt. That loss carries substantial planning weight against the appeal.” [4.17-22, 5.6]

5.21 With this in mind it is pertinent to look at the actual and the lawful baseline for the site. The appeal site comprises an area of open land with very little development present. It is predominantly used for grazing.

³⁹ Haydock Point - Land at A580 East Lancashire Road / A49 Lodge Lane Ref: APP/H4315/W/20/3256871 at [CD14.25](#)



The Appeal Site © Google

- 5.22 The existing built development at the appeal site is limited to the house fronting Tollgate Road and its curtilage (accepting that it comprises a dwellinghouse in the countryside⁴⁰) and stables building and containers close to the north west boundary together with hardstanding including the ménage and the access.
- 5.23 I consider the area of the previously developed components on the appeal site comprises a footprint of circa 3000m² of development. Of that 3000m², buildings or structures (containers) account for circa 380m².and the remainder comprises hardstanding comprising access road and menage.
- 5.24 The appeal site⁴¹ has an area of 78,200m² therefore the previously developed element of the appeal site (3000m²) comprises 3.8% of the appeal site area and the built form (i.e. buildings and structures of 380m² footprint) comprise less than 0.5% of the appeal site area.
- 5.25 As shown on the aerial imagery above and below and evident at the site the built development is confined to the north-west corner of the appeal site. These features and their extent are also shown on the Appellant's Existing Features Plan⁴².

40 after **Dartford BC and SoSCLG and Ors** [2017] EWCA Civ 141 at [CD13.7](#)

41 7.82 hectares on the application form, therefore 78,200m²

42 CSA/3925/122 Rev A at [CD4.19](#)



Aerial Image of the North West corner of the Appeal Site © Google

- 5.26 The very small proportion of the appeal site occupied by any form of development is evident having regard to the aerial image above at 5.19 which shows the full extent of the appeal site.
- 5.27 The appeal site is visible from public views with its openness appreciated as part of the wider countryside as distinct from the settlement of Colney Heath and the ribbon of dwellings fronting Tollgate Road. In views approaching the site from the north and north west the openness of the appeal site can be perceived as part of the wider countryside and also in its own right.
- 5.28 The appeal site is also visible in the approach from the east and south east with views across other open fields from Tollgate Road of the appeal site where its openness as part of the wider countryside can be perceived in contrast to the ribbon of development fronting the south side of Tollgate Road.



View from the pavement on Tollgate Road Opposite Meadway looking south



View from Tollgate Road looking west/ north west

- 5.29 The appeal site is located in a wider area of open countryside and attractive landscape that is open and frames the washed over Green Belt settlements of Colney Heath as shown on the aerial image below which represents a mid-range view of the appeal site in the context of Colney Heath.



Aerial Image Of Site And Colney Heath Base Image © Google

- 5.30 Land to the north-west of the appeal site comprises an open field separating the appeal site from Coursers Road beyond its roundabout junction with Tollgate Road and High Street. To the west and south-west there is open countryside comprising woodland, riverbed and beyond them open fields with the odd intermittent building within this open landscape.
- 5.31 Land to the south, east and south-east of the appeal site comprises open countryside comprising open fields with the odd intermittent building dispersed within this open landscape.
- 5.32 To the north of the appeal site is a ribbon of detached and semi-detached dwellinghouses, of which 42 Tollgate Road comprises part, fronting the south side of Tollgate Road and backing onto the appeal site. On the northern side of Tollgate Road lies the remainder of Roestock one of the three settlements that makes up the washed over Green Belt village of Colney Heath.

- 5.33 Given these specific characteristics of the appeal site I consider it to be open in both a spatial and visual sense. In that respect I have already detailed the extent of development at the appeal site and given the definition of openness in this regard relates to the absence of development I consider the appeal site to be overwhelmingly open in a spatial sense. Visually the site can be perceived from public views along Tollgate Road between houses that front the road as well as along the length of the public footpath that aligns with the north-west boundary of the appeal site. The impression visually of the appeal site is that it comprises part of the open countryside that extends to the east, south and west of Tollgate Road.
- 5.34 Into this local and wider open countryside context the appeal proposal is to introduce up to 150 new dwellinghouses, access roads and other development. I acknowledge that it will only be possible to definitively measure the extent of proposed development at reserved matters stage, however, I estimate that the 150 proposed dwellings⁴³ would have an approximate footprint of 7,500m². Added to that I have allowed another 450m² for garages⁴⁴. Then allowing for a shed or other outbuilding in each garden of 3m² would add a further 450m². Therefore, an estimate of building footprint is approximately 8400m² across the proposed site. I realise that this figure is to a degree speculative, but it is a reasonable and I believe conservative, assumption given the scale of the proposed development and allows a comparison to be made between the existing and proposed contexts.
- 5.35 In addition to the proposed buildings hardstanding is proposed in the form of access roads, estate roads and footpaths as well as car parking courts as well as patios and parking spaces/ driveways for the proposed dwellings. Based on the illustrative masterplan I have assumed 750 metres length of access and estate roads with a conservative average width of 9 metres to allow for footpaths and parallel car parking bays. That equates to 6750m² of access road and pavement. In addition, private access roads and car parking courts would add another c2600m². Private driveways add approximately 2250m² of further hardstanding. The external footpath that circumnavigates the external estate boundary is approximately 450 metres in length with a width of 2.5 metres that equates to 1125m² of further hardstanding. Finally I am allowing 6m² of patio or hardstanding per dwelling which adds a further 900m² of hardstanding. Again, I realise that these figures are to a degree speculative, but they are a reasonable and I believe conservative, assumption given the scale of the proposed development as well as the illustrative masterplan proposals and allows a comparison to be made between the existing and proposed contexts.
- 5.36 Therefore the proposals include approximately 13,600m² of hardstanding in addition to the 8400m² of building footprint. This equates to a built development footprint of 22,000m² or 2.2 hectares. Such a scale of development equates to 28% of the appeal site area, this compares to the existing baseline that equates to 3.8% combined building and hardsurfacing coverage.

43 For the purposes of this exercise I have assumed that the average dwelling is a three bedroom 5 person dwelling with a footprint of 50m².

44 The illustrative masterplan shows approximately 25 garage spaces. A garage space of 6 x 3 metres equals 18m².

- 5.37 The comparison between the existing building coverage of 380m² and the proposed building coverage of c8400m² is illustrative of this very substantial loss of openness to proposed new buildings. However, in terms of the visual component of openness this difference is more marked given the majority of the buildings comprising the existing baseline are single storey structures (other than 42 Tollgate Road which comprises part of the existing ribbon of dwellings fronting Tollgate Road and does not extend south beyond that ribbon) whereas the majority of the proposed buildings are two storey scale and extend up to 220 metres south of the ribbon of two storey dwellings fronting Tollgate Road.
- 5.38 The existing buildings have a modest volume of circa 1070m³. In terms of three dimensional impact we do not have details of the house types, but we can approximate a volume of built development by using the average dwellinghouse footprint of development (50m²) and using an average eaves height of 5.2 metres⁴⁵ and a roof height of 3 metres. I estimate the approximate volume of built development comprising dwellinghouses to be over 50,250m³. Incidental buildings such as garages (c 1500m³) and sheds (1000m³) would need to be added to that figure to give an approximate volume of c52750m³ of proposed buildings across the appeal site as an illustration of the overall volume of proposed above ground development which would increase fifty fold.
- 5.39 Furthermore, as I stated earlier the existing development is restricted to the north-west corner of the appeal site and other than the dwellinghouse at 42 Tollgate Road comprises single storey development. The proposal extends development of a two storey scale 220 metres to the south of the ribbon of development fronting Tollgate Road as well as across the 250 metre width of this in depth site.
- 5.40 This scale of development and the loss of openness will be perceived both spatially having regard to the openness of the existing appeal site and visually having regard to public and private views of the appeal site. I consider the appeal site and thus the loss of openness proposed to be visible from Tollgate Road to the east of the appeal site, Tollgate Road to the north of the appeal site, Tollgate Road and Coursers Road to the west of the appeal site and Footpath 033 to the west of the appeal site⁴⁶.
- 5.41 Having regard to the baseline the proposal would lead to a very substantial and permanent loss of openness in both a spatial and visual context. I consider the substantial adverse impact on openness in a spatial dimension to lie toward the top end of the scale of such impact.
- 5.42 I consider that in addition to the substantial increase in permanent development as proposed the scheme will significantly increase the visual perception of enclosure and reduce further the openness of the site and this part of the Green Belt.

⁴⁵ The same as the existing house at 42 Tollgate Road and an average that accounts for 2.5 storey development as well as bungalows.

⁴⁶ See Photographs at section 2 and on previous pages in section 5

- 5.43 As to duration, the development would be permanent, a further aggravating factor.
- 5.44 A high degree of activity would be introduced onto the site, which presently involves only the grazing and exercising of horses. I have visited the site and area on a number of occasions and on all of these occasions it was not possible to discern any activity on site. The proposals would introduce vehicle movements behind the ribbon of houses that front Tollgate Road, noise and activity from residential occupation of 150 dwellings, parking and manoeuvring of vehicles, light from houses, streetlamps, security lighting and vehicle headlights. These would be further aggravating factors reducing openness through generated activity.
- 5.45 In coming to these views I am mindful that this is an outline application with all matters except access reserved but I am also aware that the Appellant has illustrative material designed to show how the proposed scale of development will impact on the appeal site. Whilst I have referred to the illustrative material (and I note that this is the Appellant's best effort to show how the site can accommodate the quantum of development proposed) my conclusions on harm apply to the quantum of development as the harm is an inevitable consequence of such a quantum regardless of layout, design, landscaping, appearance etc...
- 5.46 In conclusion I consider that in spatial terms the proposal would substantially erode openness and lead to substantial harm in that regard. I also consider it will have a substantial impact on the visual appreciation of openness and again such matters lead to substantial harm. In coming to this conclusion I rely on both my analysis above as well as the perception of the site from neighbouring private dwellinghouses, adjacent country lanes and the footpath network that borders and provides views over the appeal site.
- 5.47 In addition to the substantial increase in permanent development as proposed the scheme will lead to significant degrees of activity across the site and impacts from light and noise that further reduce openness.
- 5.48 I conclude that the harm arising from the substantial loss of openness of the Green Belt is very substantial, given the existing open nature of the appeal site and the scale of development and degree of harm to openness that is proposed.

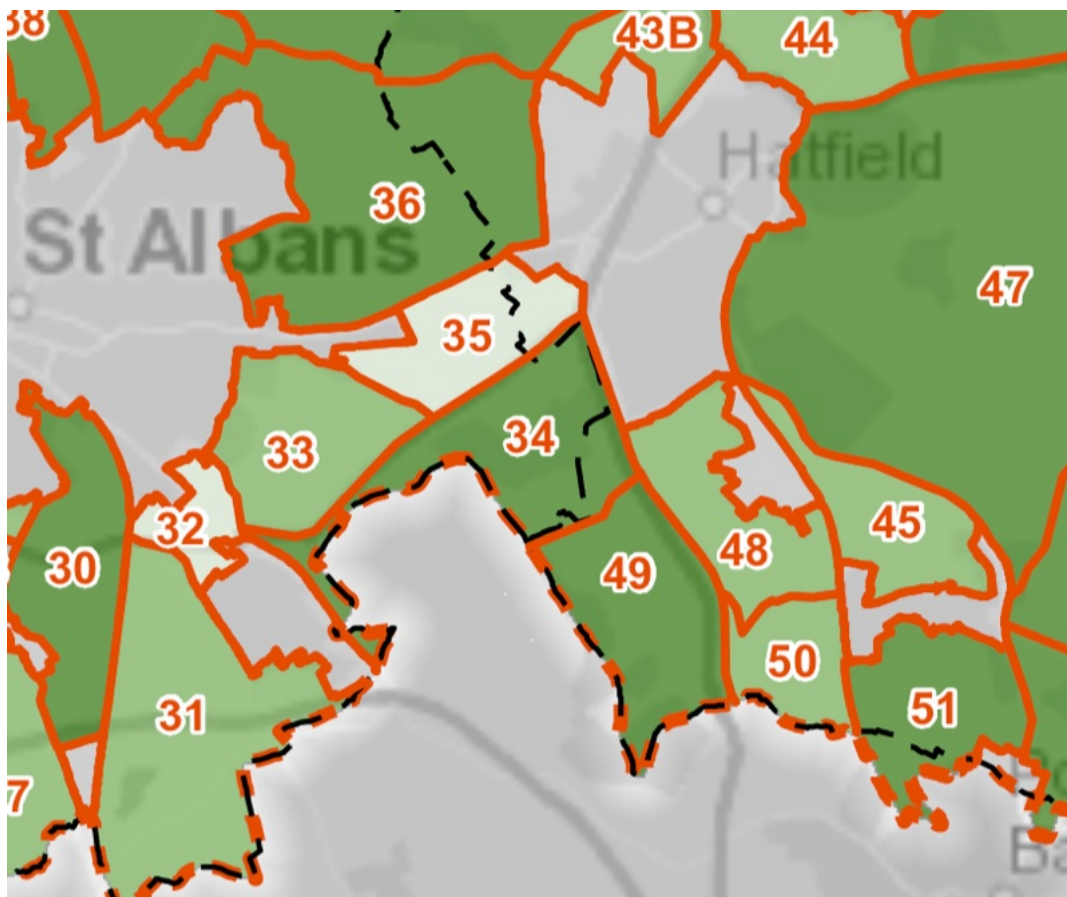
Green Belt - Purposes

5.49 The purposes of the Green Belt are set out in NPPF at paragraph 138:

- a) *“to check the unrestricted sprawl of large built-up areas;*
- b) *to prevent neighbouring towns merging into one another;*
- c) *to assist in safeguarding the countryside from encroachment;*
- d) *to preserve the setting and special character of historic towns; and*
- e) *to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.”*

5.50 I understand that the Council, together with Welwyn Hatfield District Council and Dacorum Borough Council, commissioned SKM Consultants to carry out an independent Green Belt Review to inform future plan-making. The Green Belt Review Purposes Assessment (November 2013)⁴⁷ sets out findings and identifies that a number of the areas reviewed were considered to contribute least toward the purposes of including land in the Green Belt.

5.51 The appeal site is located within Parcel 34 which is located to the southwest of Hatfield and the northeast of London Colney, covering an area of 419ha.



Parcel 34 (the darker the green the more significant the contribution to safeguarding the countryside)

47

CD3.4

- 5.52 The appeal site falls within parcel 34 which was not one of the areas that performed poorly in the review. In that context Green Belt releases and allocation of land for housing are unlikely to be identified in Parcel 34. The rationale for the identification of parcel 34 is set out in Appendix 4 to the Assessment (p.95) is as follows:

“Green Belt Land between Hatfield and London Colney – the parcel is defined around the Colne Valley and allows assessment of the gap between London Colney and Hatfield. Parcel boundaries follow main roads including the A414 and contains 3rd tier settlements.”

- 5.53 The third tier settlements are Colney Heath, Roestock and Bullens Green.
- 5.54 Parcel 34 “comprises the broad and shallow basin of the meandering upper River Colne” comprising “predominately arable farmland and heathland” with some blocks of woodland. Parcel 34 has not been subdivided, unlike some other parcels where sub areas of those parcels perform differently against the purposes. The narrow local gap at Colney Heath is identified in the Assessment which also identifies the strong and open characteristics of the land.
- 5.55 The Assessment summarises the principal function of the parcel and assesses it against the first 4 purposes of the Green Belt as well as assessing against the additional local Green Belt purpose of maintaining existing settlement pattern. The principal function is identified as follows:

“Significant contribution towards safeguarding the countryside and maintaining the existing settlement pattern (providing gap between Hatfield and London Colney). Partial contribution towards preventing merging (of St Albans and Hatfield) and preserving the setting of London Colney, Sleafshyde and Tyttenhanger Park. Overall the parcel contributes significantly towards 2 of the 5 Green Belt purposes.”

- 5.56 With respect to encroachment and safeguarding the countryside the Assessment grades the contribution of the parcel as significant and comments:

“The parcel displays typical rural and countryside characteristics, especially to the south, in medium sized arable fields with hedgerow boundaries, sheep pasture and substantial riverine wetland habitats along the Colne, and areas of heath and semi natural grassland which are locally important at Colney Heath. Tyttenhanger Park and Hall is located to the south. There is evidence of linear built development in the north part of the parcel which contains Colney Heath and Bullens Green. The A1(M) is also a major urban influence which is audibly intrusive. Levels of openness are generally high especially to the south due to an absence of built development.”

- 5.57 The Green Belt Review identifies that typical rural and countryside characteristics exist towards the south of the parcel, whilst levels of openness are generally high. The rural and countryside characteristics are also noted in relation to the riverine habitats along the River Colne. This description accords with my view of the context of the appeal site for the reasons I set out.

- 5.58 Although the application site is located to the rear of residential properties on Tollgate Road, the site forms part of the wider swathe of open countryside when travelling along Tollgate Road. The currently open site is visible to the west and east when travelling along Tollgate Road.
- 5.59 It is noted that the Green Belt or settlement pattern in the south of parcel GB34 has not been significantly changed since the Green Belt Assessment was undertaken and it is considered that this assessment remains applicable. A notable change to the wider area of Green Belt since the assessment was published is the granting of planning permission for 100 homes at the Bullens Green Lane site. However, as noted by that Inspector the context of that site differs significantly from land to the south of Tollgate Road.



The Appeal Site Location Between St Albans/ London Colney and Hatfield/ Welham Green

- 5.60 The parcel is also considered to contribute significantly to the maintenance of existing settlement patterns in particular with regard to the separation of London Colney and St Albans with Hatfield and Welham Green as well as smaller settlements such as Colney Heath, Bullens Green and Roestock. In this context encroachment into the countryside or development that leads to merger has the potential to erode existing settlement patterns.

- 5.61 The proposed development will lead to the erosion of open space between St Albans/ London Colney and Hatfield/ Welham Green such that it will reduce the open space in the gap between these settlements. However, the development itself will not lead to urban sprawl of any large built up areas and thus would not of itself conflict with the first purpose at para. 138(a) NPPF.
- 5.62 Having regard to the Assessment, the wider area within which the appeal site is located (i.e. parcel 34 as identified in the Assessment) performs a valuable role in containing the Green Belt settlements of Colney Heath, Sleafshyde and Tyttenhanger Park and preventing towns such as London Colney and Hatfield and Welham Green merging. The proposals will erode the degree of separate identity of the component parts of Colney Heath village especially when viewed along Tollgate Road. However, this harm is predominately to the character of the area and the development of the site itself does not lead to the merging of neighbouring towns, albeit parcel 34 contributes positively to this purpose. Therefore, the proposal itself would not conflict with para. 138(b) NPPF.
- 5.63 In the context of my openness assessment I have already described the appeal site as open located in the countryside beyond the settlement. The aerial imagery and observations at site support such a position. The proposals will encroach into that countryside with a residential estate development of up to 150 dwellings and incidental development such as access roads etc. The quantum of development together with its spread across the site filling the length of the appeal site (such that the only open space remaining is located to the south within the flood plain of the River Colne will materially encroach into the open countryside.
- 5.64 Roestock and Colney Heath as a settlement within the Green Belt extends as far as Tollgate Road and other than the ribbon of development at 42 – 100 Tollgate Road the settlement does not extend south of Tollgate Road.
- 5.65 In my view, the degree of encroachment both in terms of the spread of development and the quantum of development is substantial and leads to substantial harm.
- 5.66 The proposals encroach into that countryside with a residential estate development of up to 150 dwellings and incidental development such as access roads etc. The degree of encroachment both in terms of the spread of development and the quantum of development is substantial and leads to substantial harm.
- 5.67 The Green Belt Purposes Assessment considered that parcel 34 makes a significant contribution toward safeguarding the countryside from encroachment. Such matters were considered in the context of the Roestock Depot Appeal decision⁴⁸ (a site that comprises, in part, previously developed land) wherein the Inspector noted at DL17:

48 [CD14.24](#)

*“The existing buildings on the site undoubtedly have an impact on openness but the likely increase in volume and spread of mass and bulk across the site into areas currently absent of buildings would result in a greater impact on openness. Therefore, the development would be at odds with the Green Belts essential characteristics, openness and permanence. **Furthermore, it would be in conflict with its defined purposes, specifically to assist in safeguarding the countryside from encroachment.**”
(emphasis added)*

- 5.68 There is therefore conflict with paragraph 138(c) NPPF and the harm by way of encroachment is substantial and carries substantial weight against the proposed development.
- 5.69 It is in this context that the emerging Local Plan does not seek to allocate further sites around Colney Heath acknowledging that the site at Bullens Green will deliver 100 new dwellings attached to this tier 6 (of 7) Green Belt village. Whilst I accept that the eLP is at an early stage of preparation and adoption and should only carry limited weight the direction of travel is clear as is the spatial strategy which seeks to locate new housing development either within or attached to the higher order settlements within St Albans (e.g. St Albans, Harpenden, London Colney) or attached to Hemel Hempstead as part of the major urban extensions to that settlement.
- 5.70 In terms of the Inspector’s conclusion at the Bullens Green appeal I consider this site to be markedly different from that site and I note that Inspector’s findings in respect of the Green Belt assessment of 2013 *inter alia*⁴⁹:

“With reference to the gap between Hatfield and London Colney, preventing the merger of St Albans and Hatfield, and preserving the setting of London Colney, Sleafshyde and Tyttenhanger Park, the report states that the parcel makes a significant contribution towards safeguarding the countryside and settlement pattern and gaps between settlements. These characteristics bear little or no relationship to the appeal site, and given the sheer size and scale of the land identified within the report when compared to the appeal site, I place only very limited correlation between the conclusions drawn here in relation to the function of the land or assessment of its function relative to the purposes of the Green Belt when compared to the appeal site.”

- 5.71 I consider that the appeal site closely correlates with the characteristics of Parcel 34 and its functions as part of the Green Belt. I consider it a wholly false exercise to seek to subdivide character areas and separate their contribution toward the purposes as part of the wider parcel, the obvious outcome of such an exercise is that the wider parcel is undermined to the extent that the whole of the parcel is eroded in terms of its contribution.

⁴⁹ See DL24 at [CD14.6](#)

- 5.72 The Inspector at Bullens Green assessed character and appearance of that site as mixed edge of settlement and countryside noting the experience is one of edge of settlement rather than a rural context⁵⁰. She noted that the Bullens Green appeal site was bounded on two full sides by residential development of 2 – 3 storeys in height and along the other two boundaries some development was evident before concluding that⁵¹:

“The Councils contend that the appeal site provides a positive element of the countryside that frames Colney Heath. I do not agree. The very clear sense of countryside is only evident when you travel beyond the appeal site south along Tollgate Road. Here the landscape character changes from mixed residential and open field to predominantly open fields with dotted farm buildings and isolated residential dwellings set within this open landscape. This is entirely different to my experience of the appeal site which I have outlined above.”

- 5.73 The appeal site is located to the south of the Bullens Green appeal site and the Bullens Green Inspector in terms of her purposes assessment concludes⁵²:

*“I have already set out in my assessment of character and appearance above that the appeal site has an urban edge/ edge of settlement character. **I have made a clear distinction between the appeal site and its separation from the countryside beyond to the south and east of the appeal site.** In this way, the appeal site is influenced by the surrounding residential development. As a result of these locational characteristics and influences, the consequences of the development at the appeal site would mean that the proposals would have only a localised effect on the Green Belt. The broad thrust of, function and purpose of the Green Belt in this location would remain and there would be no significant encroachment into the countryside. I therefore conclude that the appeal proposal would not result in harm in term of the encroachment of the Green Belt in this location. This is a neutral factor which weighs neither in favour nor against the appeal proposals.”*

- 5.74 I agree that the context of that appeal site and Tollgate Road are markedly different, and my view is that Tollgate Road comprises a more rural aspect than the Bullens Green site. In particular the position to the south of Tollgate Road resonates with that Inspector’s clear sense of countryside with open fields and I agree with her findings that:

“The very clear sense of countryside is only evident when you travel beyond the appeal site south along Tollgate Road. Here the landscape character changes from mixed residential and open field to predominantly open fields with dotted farm buildings and isolated residential dwellings set within this open landscape.”

- 5.75 Another clearly distinguishing factor is the presence of residential development along only one boundary of the appeal site (i.e. the ribbon of dwellings fronting Tollgate Road) as opposed to 2.5 sides of the Bullens Green appeal site.

50 DL13 at [CD14.6](#)

51 DL15 at [CD14.6](#)

52 DL26 at [CD14.6](#)

5.76 Therefore, I do not consider that the Inspector's findings in terms of purposes translate from the specific circumstances of the Bullens Green Site (abutted on two and a half sides by residential development) to the appeal site.

5.77 I therefore conclude that in respect of the purposes of including land in the Green Belt the proposed development would conflict with a number of purposes, in summary:

a) *to check the unrestricted sprawl of large built-up areas;*

The appeal site is adjacent to the washed over Green Belt village of Colney Heath and would provide an extension to the south of this settlement beyond the ribbon of existing dwellings fronting the south side of Tollgate Road. The proposed development would disrupt and change the existing settlement pattern with built form spread out in a dispersed manner and in a way that does not follow or relate to any obvious features on the ground (as shown in the Illustrative Masterplan). If permitted the development of this site would put significant pressure on the field to the north west between the site and Colney Heath Farm and the open fields to the south east of the site bound by Tollgate Road and the driveway to Park Cottage. The development of this site would therefore have the potential to lead to further sprawl beyond the application site. However in my view Colney Heath is not a large built up area.

b) *to prevent neighbouring towns merging into one another;*

The Green Belt Review 2013 considered parcel GB34 to contribute towards the strategic gap between St Albans and Hatfield and notes that any minor reduction in the gap would be unlikely to compromise the separation of the first tier settlements in physical or visual terms, or overall visual openness. Whilst the proposed development would introduce additional built form in the gap between St Albans and Hatfield, the integrity of the gap would be maintained. Very limited harm is identified to this purpose.

c) *to assist in safeguarding the countryside from encroachment;*

The site is bound by residential properties to the north east and the wooded course of the River Colne to the south west, both providing strong and defensible boundaries, however defensible boundaries do not exist to the north and south of the site where the appeal site comprises part of a swathe or belt of open land. The proposal would extend the existing built-up area into undeveloped Green Belt, projecting notably further west and south than the existing ribbon of properties on Tollgate Road. The proposed residential buildings would project around 220m further south-west than the existing properties on Tollgate Road and around 177m further south west than the rear garden boundary of those properties. The proposals encroach on an area of existing open countryside. The Illustrative Masterplan shows the built form being spread out in a dispersed manner that does not follow or relate to any obvious features on the ground.

The development of this site would put significant pressure on the field to the north between the site and Colney Heath Farm and the open fields to the south of the site bound by Tollgate Road and the driveway to Park Cottage. The development of this site would therefore have the potential to lead to further encroachment into the countryside. Substantial harm is identified in relation to this purpose.

- 5.78 Overall I consider that the harm to the purposes of including land in the Green Belt attracts substantial weight.

Other Harm - Countryside and Character Harm

- 5.79 I adopt the findings of my colleague Mr Friend in respect of such matters. The submitted LVIA identifies a level of harm at a residual stage on the proposed development site. These adverse effects are identified as still occurring after mitigation measures have established and are providing a maximum level of amelioration.
- 5.80 The development will be noticeable and result in the introduction of development on a greenfield site. The site is located within views that exhibit elements of the existing settlement edge that sits locally but will extend south from the existing 'ribbon' of development that sits along the south of Tollgate Road and appear as a distinct component, with fields remaining to the north-west and south-east. The proposed site layout is contrary to the current pattern of development that follows Tollgate Road to the south and disrupts the countryside framing the southern part of Colney Heath with development protruding out into open countryside.
- 5.81 The site is located with views that exhibit elements of the existing settlement edge that sits to the north, but these do not overwhelm the current tranquillity that is felt within the site. I note that Mr Friend acknowledges that the landscape and visual impacts that occur would be in the context of an existing site that is influenced by some built form that comprises a ribbon of houses located alongside the north east boundary and appreciated locally, but the proposals will be visible in local views and will affect the current baseline adversely.
- 5.82 The proposed development would harm and not improve or conserve the local landscape character in accordance with the guidelines for landscape change in the Colney Heath Farmland Landscape Character Area.
- 5.83 The proposals will not recognise the intrinsic character and beauty of the countryside.
- 5.84 Recognition of the intrinsic character and beauty of the countryside necessarily imparts a degree of protection (after *Cawrey*), and the development of an estate of 150 dwellings and creation of new access would fail to recognise the character and beauty of the appeal site and wider countryside of which it forms part.

5.85 I note Mr Friend's conclusions that:

"The proposals will harm and not improve or conserve the local landscape character."

and

"It is agreed that the mitigation measures that are outlined on the Illustrative Masterplan will have the effect of reducing some visual effects from the wider landscape but not remove them totally."

"The proposal will introduce an awareness of built form of a residential nature that will appear to extend the existing settlement edge to the south to viewers."

5.86 This failure to respect context and have proper regard to setting and the character of the area together with the loss of existing attractive countryside would also conflict with Policies 2 and 69 of the St Albans District Local Plan Review. Furthermore, it would not support the objectives of the Watling Chase Community Forest consistent with Policy 143A insofar as an estate development as proposed would not deliver landscape improvement in accordance with Green Belt.



The Watling Chase Forest Area

5.87 The proposal would not make a positive contribution to local character and the identified harm would lead to conflict with 127 b), 127 c), 130 as well as 174(b) of the Framework. Furthermore, in the context of character the harm to the setting of the heritage assets would conflict with 197 c) of the Framework albeit the public benefits would outweigh that harm pursuant to NPPF 202.

- 5.88 Overall, in terms of the harm to the character and appearance occasioned by the development of the site for 150 dwellings the degree of harm would be permanent and irreversible and of itself attracts moderate weight in the planning balance.
- 5.89 In terms of the NPPF is the question of whether the proposals would recognise the intrinsic character and beauty of the countryside. As established recognition necessarily imparts a degree of protection commensurate with the quality of the countryside. The attractive nature of this part of the countryside together with its positive contribution toward the purposes of including land in the Green Belt mean that a development of 150 dwellings would not recognise the intrinsic character and beauty of this part of the countryside. Indeed the development of 150 dwellings on over half of the appeal site would lead to the loss of that part of the countryside thus directly conflicting with the policy of recognising intrinsic character and beauty as well as harming the landscape character as opposed to conserving or improving it.
- 5.90 In the circumstances of this case I do not seek to add a new element of harm, but I consider this elevates the weight to such harm to moderate to significant.

Other Harm - Setting of the Designated Heritage Asset

- 5.91 I adopt the findings of my colleague Mr Collins in respect of such matters. I note there are no designated or non-designated heritage assets within the site boundary.
- 5.92 Mr Collins considers that there are three key designated heritage assets in the vicinity in which the Appeal Site forms part of their setting. These heritage assets are identified in the Heritage Statement of Common Ground⁵³ and comprise the Grade I listed North Mymms Park House and the Farmhouse and Barn at Colney Heath Farm both listed Grade II.
- 5.93 The landscape of North Mymms Park is not only an important element of North Mymms Park House's setting but is also regarded as a non-designated heritage asset in its own right.
- 5.94 Tollgate Farmhouse has also been identified as a non-designated heritage asset, the setting of which could be affected by the proposed development.
- 5.95 I note Mr Collins' view that there is an element of harm to the setting of all these assets. In the case of the designated heritage assets, judged to be less than substantial at the lower end of the spectrum⁵⁴, when considered with regard to paragraph 202 of the NPPF.
- 5.96 With regards the non-designated heritage assets, this harm is also regarded as at a very minor level but considered in the context of paragraph 203 of the NPPF.

53 [CD8.4](#)

54 Such matters are agreed see Heritage SoCG at [CD8.4](#)

- 5.97 The proposals conflict with development plan policy insofar as it would fail to preserve the setting of designated heritage assets, i.e. listed buildings. The public benefits of providing more housing in the circumstances of the Council’s housing land supply position together with 40% affordable housing set against the development plan requirements outweigh the harm to these heritage assets in the context of paragraph 202 of the NPPF.
- 5.98 The permanent damage that would occur to the setting of the various assets in this case is a matter that weighs against the grant of planning permission in the planning balance by constituting an “other harm” under NPPF para 148. In the circumstances of this case and the Green Belt balance great weight applies to the less than substantial harm to the setting of the three designated heritage assets and the very minor level of harm to the two non-designated heritage assets.

Other Harm – Sustainable Transport

- 5.99 I adopt the findings of my colleague Mr Carr in respect of such matters.
- 5.100 The appeal site is located on the southern periphery of Colney Heath, a dispersed village with few facilities. The village is an amalgamation of a string of settlement comprising Colney Heath village, Roestock and Bullens Green, the appeal site is located adjacent to the southern boundary of Roestock. The majority of any facilities within Colney Heath are located in the main village as opposed to the Roestock/ Bullens Green parts. The Council, in light of the Bullens Green appeal decision, have accepted that the facilities in Colney Heath are accessible by foot to the appeal site, these facilities are detailed in the table below:

Colney Heath Primary School	1.25 kilometres
Colney Heath Football Club	1.25 kilometres
Colney Heath Village Hall (Including Nursery)	1.1 kilometres
Post Office and Mini Mart	0.7 kilometres
Hairdressers	0.7 kilometres
Public House	1.1 kilometres
St Mark’s Church	1.5 kilometres
Colney Heath Recreation Ground	0.6 kilometres

Table 1: Distance by Foot to Existing Village Facilities

- 5.101 However, in my view these distances are not optimal, and I note that guidance from Government and CIHE both discuss walkable neighbourhoods with facilities ideally located closer than those in Colney Heath.
- 5.102 The village relies on surrounding settlements (London Colney, Welham Green/ Hatfield and St Albans) to provide for the day to day facilities such as secondary and tertiary education, employment, libraries, restaurants, supermarkets, banks, doctors surgeries, dentists etc... The table below records the location of such facilities:

Secondary Schools	
Samuel Ryder Academy Secondary School	6.2 kilometres
Nicholas Breakspear RC School	3.8 kilometres
Link Academy	3.6 kilometres
Primary Schools	
De Havilland Primary Hatfield	6.7 kilometres
St Mary's C of E Primary Welham Green	3.8 kilometres
Hospital	
QE2 Welwyn Garden City	10.3 kilometres
Doctors Surgeries	
Potterells Medical Centre Welham Green	5.3 kilometres
Highfield Surgery	5.4 kilometres
Chemist	
Kean Pharmacy Welham Green	3.7 kilometres
Dentists	
Hilltop Dental Surgery	6.2 kilometres
Welham Green Dental Surgery	3.4 kilometres
Supermarkets	
Sainsburys London Colney	4.4 kilometres
Tesco Extra Hatfield	7.8 kilometres
Morrisons St Albans	5.9 kilometres
Asda and Lidl Hatfield	6.2 kilometres
Lidl Welwyn Garden City	13 kilometres
Library	
Hatfield Library	6.3 kilometres
Banks	
Hatfield	6.5 kilometres

Table 2: Distance by Vehicle to Day to Day Facilities

- 5.103 Mr Carr records the closest railway station is at Welham Green outside the guidance for walking distances from residential homes. He notes the location of bus stops relative to the appeal site as well as the bus services that serve those stops. His table sets out the services and their frequency and provision in peak hours and at weekends.
- 5.104 I concur with Mr Carr's conclusion that overall, the potential for promoting sustainable transport trips to and from the proposed developments on the appeal site is minimal and would lead to residents and users of the site being reliant on private motor vehicles in conflict with Paragraphs 110 and 112 of the NPPF (CD1.1).
- 5.105 In terms of cycling I note routes along Coursers Road (to London Colney) and Tollgate Road (to Welham Green) are along two way roads with fast traffic with no street lighting along parts of the route.



Coursers Road Between London Colney and Colney Heath



Tollgate Road Between Colney Heath and Welham Green © Google

- 5.106 Routes to St Albans north would be via Colney Heath village, which is busy and congested at peak hours, then crossing the A414 and via Colney Heath Lane to join the Alban Way. Colney Heath Lane is narrow and poorly lit in parts, although subject to a 40 mph speed limit traffic moves fast along this road and the narrow carriageway is tight with two way traffic flows.

5.107 In terms of routes to secondary school I understand Samuel Ryder Academy is the closest available catchment school for residents of the site to attend. The direct cycle route to the school would involve travel along the High Street, crossing the A414 (on the pedestrian bridge), joining Colney Heath Lane and then travel along and Barley Mow Lane and Highfield Park Drive.



Colney Heath High Street at Peak Hours



Barley Mow Lane © Google

- 5.108 I do not consider that the nature of the routes for cyclists will encourage cycling as an alternative to the motor car. These routes would deter cyclists other than the most determined or experienced from using these routes for commuting or casual travel.
- 5.109 I am familiar with the roads around the appeal site and I would not seek to encourage inexperienced cyclists to ride the main roads (such as Tollgate Road to Welham Green or Coursers Road to London Colney) as the speed of traffic, narrowness of these roads, lack of run off areas or footways and lack of lighting provide challenges for even experienced cyclists.
- 5.110 I agree with Mr Carr and do not consider that children attending schools (such as Colney Heath Primary and Samuel Ryder Academy) would cycle from the appeal site. The nature of connecting roads and crossings are such that most parents and carers would, I expect, discourage their children from riding to schools. I concur with MR Carr's conclusion that:

“cycling accessibility from this location to a wide range of amenities and along safe and desirable routes is not possible and therefore, the actual propensity to cycle from the proposed development to all amenities is low and therefore people will not choose to cycle and instead use the private vehicle.”

- 5.111 The failure to satisfactorily demonstrate that the site has satisfactory access to sustainable modes of transport comprises harm to which additional weight applies.

Other issues

- 5.112 The failure to provide a satisfactory mechanism to deliver necessary infrastructure to service the proposed development, and also secure the proposed affordable housing, was an issue at the application stage. However, it is agreed between the parties that a section 106 obligation can address the provision of necessary infrastructure, the securing of affordable housing, and the provision of off-site biodiversity enhancements to off-set the on-site biodiversity net loss.
- 5.113 In those circumstances I do not invite the Inspector to dismiss the appeal on such grounds, and these issues do not fall within the bracket of “other harms” unless the Appellant does not provide a satisfactory mechanism to deliver these matters wherein the failure to provide for necessary infrastructure would weigh against the grant of permission and in those circumstances comprise an “other harm”.

Conclusion on Harm

- 5.114 Given the overall package of harm to the Green Belt the loss of this open field to a residential housing estate comprises a substantial level of harm. The essential characteristics of Green Belts are their openness and permanence; the proposal would substantially erode openness to a degree that the land permanently remove it from the countryside or any meaningful contribution to openness such that it would no longer comprise part of the countryside. The proposal will cause substantial harm to

the Green Belt and carry substantial weight at the very upper end of such weight. I also consider the encroachment of development would not safeguard the countryside and as such the proposal conflict with the purposes of including land in the Green Belt, such harm also carries substantial weight.

- 5.115 As to any other harm that is “non-Green Belt” harm, the proposals would not recognise and in fact harms the intrinsic character and beauty of the countryside and harms landscape character. In that respect it would not respect the landscape strategy as it does not comprise high quality design having regard to context as well as failing to improve (enhance) or conserve landscape character.
- 5.116 Overall, in terms of the harm to the character and appearance occasioned by the development of the site for 150 dwellings the harm would be permanent, substantial and irreversible, which is an adverse factor carrying moderate to significant weight.
- 5.117 Given the location of the site away from a number of day to day facilities in neighbouring settlements and not easily accessible by quality public transport and cycling routes, I do not consider this to represent a location will encourage cycling or use of the limited public transport links and will result in reliance on the private car. It would not ensure an integrated approach to the location of housing, economic uses and community facilities and services, in conflict with the environmental role of sustainable development and contrary to the spatial strategy of the development plan and emerging Local Plan. I ascribe moderate weight to this harm.
- 5.118 The proposals would fail to preserve the setting of designated heritage assets, i.e. listed buildings and non-designated heritage assets. Whilst the public benefits of providing more housing in the circumstances of the Council’s housing land supply position together with the oversupply of affordable housing set against the development plan requirement outweigh the great weight that is given the conservation of this heritage asset taken in isolation, the permanent damage that would occur to the setting of designated and non-designated assets in this case is a matter that weighs against the grant of planning permission in the planning balance by constituting an “other harm” under NPPF paragraph 148. In the circumstances of this case and the Green Belt balance I have attributed great weight to the harm to the setting of the designated and non-designated heritage assets recognising that great weight is given to the conservation of heritage assets, however I recognise the common ground that the harm lies toward the lower end of less than substantial harm and as such within a spectrum of great harm I would place this toward the lower end.

Flooding and Drainage

- 5.119 There are two matters arising from The Inspector’s post CMC enquiry, one related to the need for a sequential test and the other the potential existence of an underground watercourse across the appeal site.

Sequential Test

- 5.120 I note it is common ground between the main parties that Drainage is not a reason to withhold planning permission and that a sequential test is not required⁵⁵.
- 5.121 The Council's position is based on the responses of the Environment Agency (EA) and the Drainage Consultant engaged by the Council neither of whom object to the proposed development on the basis of risk of flooding⁵⁶.
- 5.122 Whilst the application does not include layout the parameters plan and masterplan and other supporting information accompanying the application the subject of this appeal all indicate that the developable area of the appeal site is wholly contained within Flood Zone 1, as is the access to the residential development. I note that the proposal includes the retention of the Colney Heath Farm Meadows Local Wildlife Site and the provision of attenuation ponds within the area of the site that is at the higher risk of flooding (Zones 2 and 3). Such matters (i.e. linking the permission to the parameters plan) can be the subject of suitably worded conditions to limit the extent of residential development to the areas shown on the parameters plan.
- 5.123 A surface water drainage strategy accompanied the application, it had been designed to accommodate run-off from all rainfall events up to and including the 1 in 100-year event, with a 40% allowance for climate change. The Council's Drainage Consultants confirmed that the proposed development would be acceptable subject to the inclusion of a condition in the event of permission being granted. The proposed development is therefore in accordance with Policy 84 of the Local Plan 1994 and the NPPF.
- 5.124 Given this consensus (i.e. that the residential development was contained within Flood Zone 1 and did not increase the risk of fluvial flooding and the development is limited to the areas at the lowest risk of fluvial flooding and is at very low risk from all other potential sources of flooding and surface water can be mitigated by a satisfactory strategy) the Council (having discussed the matter with EA) informed the Applicant (as they were) that EA's view was that a sequential test could be required but they did not decide to refuse planning permission on the basis of the failure to provide one.
- 5.125 It is fair to record that EA's position on the need for a sequential test morphed during the life of the application the subject of this appeal. Having first not commented on the need for a sequential test⁵⁷ they then suggested one should be submitted⁵⁸ but then clarified that this was in error⁵⁹. Latterly EA changed their position to suggest

55 SoCG paragraph 6.66 at [CD8.3](#)

56 Albeit EA initially objected to the scheme on the basis of groundwater concerns related to the proximity of works to the River Colne. However, their response of 17 March 2023 removed their objection subject to the imposition of conditions.

57 EA Consultation response of 3 October 2022

58 EA Consultation response of 30 January 2023

59 Email EA to SADC 3 February 2023

that a Sequential Test should be requested but that was a matter for the Local Planning Authority. In their response of 17 March 2023 they stated:

“We have not objected to this application on flood risk grounds, but this does not remove the need for you to apply the sequential test and to consider whether it has been satisfied. Where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, there will always be some remaining risk that the development will be affected either directly or indirectly by flooding. A failure to satisfy the sequential test can be grounds alone to refuse planning permission.”

5.126 Following this the Council sought clarification from EA who confirmed:

“[...] we are not raising an objection as our concerns have been overcome. It is for you as the Local Authority to decide whether the Sequential Test is needed and has been carried out correctly.”

5.127 The Council did not refuse planning permission on the basis of the failure to provide a sequential test and I support that planning judgment having regard to the fact that all the residential development proposed, and its access, is located within Flood Zone 1. In that context the development is located away from the areas at the greatest risk of flooding consistent with NPPF paragraph 159.

5.128 However, my professional opinion is that a sequential test should have been requested at application stage given parts of the appeal site are located within Flood Zones 2 and 3⁶⁰. However, given there is no flooding objection from EA, the Council’s Drainage consultant or the LLFA I do not consider it would be reasonable to refuse permission on the basis of a failure to provide a sequential test.

5.129 However, I acknowledge that the NPPF strictly applied could be read to direct development to sites at a lower risk of flooding and in that respect a sequential test could be argued to be necessary when any part of a development site is located in Flood Zones 2 or 3. I still consider, as a matter of planning judgment, the Council’s decision not to refuse permission on the basis of a failure to undertake a sequential (and exceptions) test reasonable and rational.

5.130 I note in a recent appeal decision⁶¹ the Inspector found that a sequential test should have been undertaken given that site was in part located within Flood Zone 3. However, that scheme and site distinguish themselves from the current appeal scheme given the more acute flood risk factors at that site, the LLFA concerns about the FRA submitted with that application/ appeal, modelled off site flood risk and the fact that the access to the residential development was not located in Flood Zone 1.

⁶⁰ Indeed if the application/ appeal site area was reduced to include just the residential component of the development and include as blue land the remaining parts of the site, it would appear that no sequential test could be required.

⁶¹ Land at Little Bushey Lane, Bushey at [CD14.26](#)

- 5.131 I note that Affinity Water has responded to PINS commenting on the application and raising no objection subject to conditions in respect of water supply matters pertaining to the chalk boreholes in the area.

Underground watercourse

- 5.132 I understand that third parties allege that an underground stream passes through the site and that this is evidenced by ground depressions across the site. The Council had consulted with the Lead Local Flood Authority (LLFA) in respect of this matter and their advice is that there is insufficient evidence to support that proposition given the geotechnical investigations that reveal the underlying geology including clay soils often produce depressions in the ground where water can pool.
- 5.133 The LLFA has suggested the following condition be imposed on any grant of permission:

“No development shall be commenced until detailed ground investigations have been conducted across the site and submitted to the Local Planning Authority. The ground investigations should identify seasonal groundwater levels (to reflect that the initial testing was conducted in summer) and ensure areas of shallow groundwater will not compromise the development and vice versa. Where shallow groundwater is identified, appropriate measures to mitigate groundwater flood risk should be proposed to ensure the risk of groundwater flooding is not increased on or off site.”

- 5.134 EA were also consulted in respect of this matter and confirmed these matters did not alter its position.
- 5.135 The Appellant provided a technical note⁶² to address this matter and I note it observed *inter alia* that surface water flood risk is due to ponding of surface water runoff due to localised low spots and concluded:

“Based on the photos provided, it is suspected that there is local ponding of water in a depression in the surface of the site in clay rich Kesgrave Group geology or potentially (sic) within granular Kesgrave Group deposits where the groundwater is unable to drain due to surrounding cohesive/ relatively impermeable geology. The natural drainage of the area may well concentrate within these local depressions which may even form a longitudinal feature, depending on the topography locally this may even induce a flow in particularly heavy rainfall events.”

Conclusion on Flooding Matters

- 5.136 In respect of flooding and drainage the Council consider that subject to the imposition of suitably worded conditions as recommended by EA, LLFA and the Council that the development can be made safe, would not increase flood risk and would not detrimentally affect third parties.

62 via Stantec dated 24 January 2023

6 The Appellant's "Other Considerations" under NPPF para. 148

6.1 In this section I assess the other considerations relied on by the Appellant and consider whether they are capable of clearly outweighing the harm I have identified.

6.2 In terms of "other considerations" or benefits of the scheme I note that the Appellant relies on a number of factors which can be summarised as:

- The provision of housing in an area of housing need
- Affordable Housing provision
- Provision of self-build plots
- Sustainable location for new housing
- Provision of open space and children's play space
- Economic benefits

6.3 I do not set out the dispute between the parties on the impact of the proposal on the Green Belt in terms of openness and purposes. I do not consider such arguments comprise "other considerations" that weigh in favour of the grant of permission. Instead, if supported (and I do not consider they should be), they would go to the degree of weight attributed to harm.

6.4 It is well established that it is for the Appellant to demonstrate that very special circumstances exist to warrant overriding normal Green Belt presumptions. Such circumstances will not exist unless the harm by reason of inappropriateness and any other harm⁶³ is clearly outweighed by other considerations. In addition, substantial weight must be given to Green Belt harm.

6.5 In these circumstances, I have already established that the development is inappropriate and will lead to an erosion of openness as well as damaging the character, appearance and visual amenity of and encroaching into the Green Belt. Additional harm by way of harm to character and the countryside, unsustainable location and harm to the setting of a listed building add to the weight of factors against the proposed development. In addition it may be necessary to add harm by way of highway safety harm (albeit the presence or absence of highway-related harm does not change the outcome of my overall assessment). Therefore, the circumstances relied on by the Appellant will need to be of sufficient calibre to **clearly** outweigh these components of harm that cumulatively amount to greater harm than just that of inappropriateness.

6.6 In this regard, I am mindful of the stringent test articulated by Sullivan, J (as he then was) in **Draper**⁶⁴, which concerned national Green Belt policy in Planning Policy Guidance Note 2 ("PPG2"). Although PPG2 was replaced by the Framework, for present purposes, current national Green Belt planning policy has not changed. In paragraph 58 of his judgment, Sullivan, J states:

⁶³ After **SoS CLG, Reigate and Banstead BC, Tandridge DC and Redhill Aerodrome Ltd** [2014] EWCA Civ 1386

⁶⁴ **R (Chelmsford) v First Secretary of State and Draper** [2003] EWHC 2978

"The combined effect of paragraphs 3.1 and 3.2 [of PPG2] is that, in order to justify inappropriate development in the Green Belt, (a) there must be circumstances which can reasonably be described not merely as special but as very special, and (b) the harm to the Green Belt by reason of inappropriateness and any other harm must be clearly outweighed by other considerations. Those other considerations must be capable of being reasonably described as very special circumstances. If they are capable of being so described, whether they are very special in the context of the particular case will be a matter for the decision maker's judgment."

- 6.7 In **Temple**⁶⁵, Sullivan, J (as he then was) clarified the test for demonstrating very special circumstances by confirming that it was not necessary for each factor, of itself, to be 'very special' and that factors which individually were otherwise quite ordinary could cumulatively become very special circumstances. This supports my view that very special circumstances are the outcome of the balancing exercise (and not the inputs to such an exercise) and only exist at the point when the other considerations clearly outweigh the harm by reason of inappropriateness and any other harm.
- 6.8 Further guidance was provided by the Court of Appeal⁶⁶, in which the Carnwath, LJ (as he then was) stated inter alia that:

"21. [...] The word "special" in PPG2 connotes not a quantitative test, but a qualitative judgment as to the weight to be given to the particular factor for planning purposes. [...]"

and

"26 [...] I see no reason, in terms of policy or common sense, why the factors which make a case "very special" should not be the same as, or at least overlap with, those which justify holding that Green Belt considerations are "clearly outweighed". To my mind, the wording of para 3.2 ("will not exist unless") reinforces that view. I prefer the formulation used by Sullivan J himself in a judgment the previous year on somewhat similar facts, Doncaster Metropolitan Borough Council v Secretary of State for the Environment, Transport and the Regions [2002] JPL 1509, para 70, where (also in the context of para 3.2 of PPG2) he said:

"Given that inappropriate development is by definition harmful, the proper approach was whether the harm by reason of inappropriateness and the further harm, albeit limited, caused to the openness and purpose of the Green Belt was clearly outweighed by the benefit to the appellant's family and particularly to the children so as to amount to very special circumstances justifying an exception to Green Belt policy." (Original emphasis.)"

⁶⁵ **R (Basildon District Council) v First Secretary of State and Temple** [2004] EWHC 2759 (Admin)

⁶⁶ **Wychavon District Council v Secretary of State and Butler** [2008] EWCA Civ 692

The provision of housing in an area of need

- 6.9 It is common ground that there is a substantial and serious housing land supply shortfall in St Albans. The proposal would provide housing in an area of current need and thus is a benefit of the scheme. Overall it is common ground that the provision of housing carries very substantial weight.
- 6.10 The emerging plan (which I acknowledge is at an early stage of preparation) does not allocate the appeal site or any part of it to meet the housing requirement of the plan over the plan period. The Plan will have to meet its housing requirement to be considered sound and the appeal site will not be allocated as part of the current plan process. As I detail in section 5 the plan defines the settlement hierarchy and Colney Heath is a Green Belt village that comprises part of the sixth of seven tiers of settlements.
- 6.11 Emerging Policy SP1 sets the spatial strategy for St Albans and confirms that the City of St Albans will continue to be the pre-eminent focus in the District for housing, and that the Settlement Hierarchy (Table 1.3) provides the basis for allocation and location of growth, locating most growth generally within and adjacent to the larger and most sustainable urban centres that are Tier 1 -3 (noting that Colney Heath one of the smaller villages washed over by the Green Belt lies in Tier 6).
- 6.12 Emerging Policy SP2 requires new development to be located in the most sustainable locations in order to minimise the need to travel through encouragement of walking, cycling and public transport. Policy SP3 allocates 15,096 homes in the district up to 2041. It requires growth to be supported by suitable infrastructure including schools, transport including walking cycling and public transport and sports and leisure facilities.
- 6.13 No sites allocated as broad locations for urban extensions are located in or close to Colney Heath⁶⁷.
- 6.14 It is my view that the Appellant's reliance on housing need and supply are important considerations that weigh in favour. It is common ground that the provision of up to 90 market and 60 affordable houses carry very substantial weight in the planning balance. I am mindful of the judgement in *Hunston*⁶⁸ where it was stated:

"[...] the weight to be given to such a housing shortfall (and whether it constituted 'very special circumstances' for the purposes of the NPPF) is a matter of planning judgment. The weight to be attached to the shortfall may, as a matter of planning judgment, be reduced where a shortfall is inevitable due to a district being subject to policies which restrict development."

⁶⁷ See Table 3.1

⁶⁸ **St Albans v Hunston Properties Ltd and Anor** EWCA Civ. 1610

Affordable Housing

- 6.15 On the back of an under-delivery of housing generally, significant shortfalls in affordable housing provision have occurred. The appeal scheme proposes 40% of the proposed housing to be affordable. That equates to up to 60 affordable dwellings.
- 6.16 Subject to the affordable provision being secured by way of an obligation (which it is agreed between the parties is necessary⁶⁹) it is common ground that it is a benefit of the scheme that should carry very substantial weight.
- 6.17 I note that at Bullens Green the Appellant offered 45% of the total housing as affordable housing (thus exceeding the emerging Policy requirement) and on that basis the Inspector agreed that very substantial weight should be given to such matters⁷⁰.
- 6.18 It is logical that whilst it is agreed that very substantial weight applies to affordable housing given the lower offer than Bullens Green the weight in this case must be lower on the spectrum of very substantial than Bullens Green.

Custom Self Build Plots

- 6.19 I accept that the Council has not maintained an adequate supply of custom self-build plots to meet demand in the area and to that extent, subject to the plots being secured, marketed and delivered consistent with the position on housing generally such matters carry substantial weight as part of the overall provision of housing.
- 6.20 I note the Inspector at Bullens Green concluded:

“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.”

- 6.21 The Bullens Green scheme delivered 10% of the overall housing provision as Custom Self Build (CSB) units and on that basis the Inspector concluded that substantial weight applied to that element of the housing supply. In the case of the current appeal scheme it proposes 9 CSB units or plots. That equates to 6% of the proposed units (as opposed to 10%) and on that basis (as well as the lower quantum) the weighting of substantial weight, but lower in the spectrum than Bullens Green, is consistent with Inspector at Bullens Green.

69 See SoCG paragraph XX

70 See DL 53 - 54

Sustainable Location for Development

- 6.22 Whilst I do not invite the Inspector to dismiss the appeal on location factors Mr Carr sets out the position in terms of the accessibility of the site to public transport and by cycle.
- 6.23 I have also shown that the washed over Green Belt village of Colney Heath incorporating Roestock is not of itself well provided with facilities and relies on access to neighbouring higher order settlements for many day-to-day facilities, including employment and education.
- 6.24 The adopted and emerging Local Plans both include a settlement hierarchy in which Colney Heath comes toward the bottom with both seeking to concentrate new development in or around the higher order settlements. In the emerging Local Plan the spatial strategy seeks to locate new development in or around the City of St Albans and the towns of Harpenden and Hemel Hempstead.
- 6.25 Insofar as the Appellant relies upon such matters in support of their proposal, I do not consider this to be a consideration that weighs in favour of the proposal for the reasons explained by Mr Carr and set out above in section 5 and I consider it to be a matter that weighs against the grant of planning permission and therefore cannot be relied on as a positive or other consideration in the Green Belt balance.

Provision of open space and children's play space

- 6.26 I note the proposals are in outline with no details of layout or appearance included. However the illustrative material includes the provision of open space and children's play space. These are said to be benefits of the scheme.
- 6.27 I do not consider the provision of children's play area to be a benefit for the wider community, in fact it is a requirement to serve the occupants of the proposed development and will have little benefit beyond the appeal scheme itself.
- 6.28 In coming to this judgement I am mindful that Colney Heath already benefits from a number of play areas. In particular Roestock has an existing play area located at the Roestock Park Play Area which includes a playground, Multi Use Games Area (MUGA) and open space just 250 metres from 42 Tollgate Road⁷¹. That area serves Roestock already and is better located in the heart of the settlement to serve the residents than a new playground on the periphery of the settlement away from most of the residents and across the busy Tollgate Road from most dwellings in the settlement.

⁷¹ Roestock Park is marked on the Illustrative Masterplan and is accessible via Fellowes Lane and Admirals Close.



Roestock Park Including Play space, MUGA and Open Space

- 6.29 In terms of open space I note the appeal site is currently predominately open and provides visual amenity to those who pass the site. The proposal is to cover the majority of the appeal site in housing and preserve some of the area that is liable to flooding as open space. Public access would be available to the edge of that space via a footpath that runs parallel to the edge of the housing estate (as shown on the illustrative masterplan but not the parameters plan), however that access would be via the proposed housing estate and merely provides a circuitous route around and through a housing estate.
- 6.30 I do not consider such a route to be preferable to public footpath users than the network of public rights of way around Colney Heath. In my view it would only benefit for proposed residents of the housing estate and not the wider community.
- 6.31 I also note that the Open Space Study accompanying the emerging Local Plan⁷² that only 6.6% of respondents found the existing open space provision near where they live in St Albans District to be unsatisfactory and 84.2% found the existing provision either very or quite satisfactory.
- 6.32 Roestock Park is defined as an amenity greenspace⁷³ and performs extremely well against the quality and value criteria.

⁷² St Albans and District Council Open Space Study Draft Final June 2023 ([CD3.8](#))

⁷³ See Entry 157 on Table 6.2 at [CD3.8](#)

- 6.33 I note that within Colney Heath existing natural and semi natural greenspace is provided at 11.81 hectares per 1,000 population which is the second highest ratio in the district and compares extremely favourably for example to St Albans (0.95) and London Colney (3.74)⁷⁴. In fact Table 11.3.2 confirms that current provision in the Colney Heath area exceeds requirements. I also note that the Open Space study is understandably confined to the land within St Albans insofar as it relates to Colney Heath and therefore excludes, for example, Bullens Green Wood in assessing open space around Colney Heath.
- 6.34 As such I only attribute very limited weight to such matters as benefits of the proposed development.

Biodiversity Net Gains

- 6.35 The application site comprises two fields grazed by horses, with a stable block and ménage located in the north of the site. The site also includes the house and garden of no. 42 Tollgate Road. The south of the application site also includes part of the Colney Heath Farm Meadows Local Wildlife Site (LWS) – a non-statutory designation. Approximately 40% of the LWS is located within the application site, with the remaining LWS extending over and along the River Colne to the south west and additional fields to the north west. The LWS comprises a mosaic of unimproved neutral to acid grasslands along the River Colne. There is no public access to the appeal site or the LWS within the appeal site. The proposed development includes the retention and protection of the LWS with limited, controlled public access.
- 6.36 The application is accompanied by an Ecological Impact Assessment which states that the development is not anticipated to result in any significant residual negative effects on important ecological features following the implementation of the recommended mitigation measures. Hertfordshire County Council Ecology welcomes the retention of the LWS, but notes that the proposed residential development would increase pressure on the site.
- 6.37 The application proposes the provision of 10% biodiversity net gain (BNG), which is welcomed. The proposed development would result in a net loss of 9.24 habitat units and a gain of +35.81 hedgerow units. An off-site solution is therefore required to achieve 10% BNG. The preference is to achieve BNG on site but where that is not possible off site provision is to be provided. BNG would have to be secured in a s106 given it will relate to land outside the control of the Appellant and/ or contributions toward an established scheme.
- 6.38 I acknowledge that the Environment Act 2021 is expected to mandate at least 10% BNG from November 2023, however the development plan for St Albans does not currently require provision of BNG and I do consider 10% BNG, albeit reliant on off-site provision, to be a benefit of the scheme. I attribute limited to moderate weight to such matters.

74 See Table 5.1

Economic benefits

- 6.39 The economic benefits of providing more housing at this Green Belt village location away from the main settlements of St Albans District are limited given the limited range of facilities within Colney Heath itself.
- 6.40 Residents will need to travel to neighbouring towns or cities (St Albans and London Colney) to access supermarket shopping, employment, services, comparison shopping and other main economic activity. Therefore, development consistent with the emerging Local plan allocations and spatial strategy as well as the adopted spatial strategy would also achieve such economic benefits and be located closer to such facilities.
- 6.41 I acknowledge the benefits that arise during the build phase of the development, but these are generic benefits that would arise anywhere in St Albans District and the draft allocation sites provide the most sustainable way to crystallise such economic benefits close to the areas of greatest economic activity, accessibility and access to facilities.
- 6.42 In assessing whether the proposals comprise sustainable development generic economic benefits of the proposed housing scheme are not unique to this scheme and the Council Tax spending and infrastructure spending will only contribute toward the needs emanating from this development and are not a benefit of the scheme. The construction employment and spend associated with up to 150 houses is temporary and modest in scale. Any economic benefits are tempered by the location of the proposed housing being contrary to the adopted and emerging spatial strategy and the lack of local facilities to benefit from additional local spend. Overall the position on economic impact is positive but carries moderate positive weight.
- 6.43 For those reason I attribute moderate weight to the economic benefits of providing housing in this Green Belt location.

7 Planning Balance

- 7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2 By reason of the local plan policy conflict identified above, the proposed development does not accord with the development plan taken as a whole given it introduces inappropriate development into the Green Belt that erodes openness and conflicts with the purposes of the Green Belt, fails to have proper regard to the character and appearance of the area having regard to its countryside context, harms the setting of heritage assets and fails to take advantage of sustainable transport measures such as public transport and cycling.
- 7.3 As I have already demonstrated the application of policies in the Framework relating to the Green Belt provide a clear reason for refusing the proposal. Thus the tilted balance, otherwise engaged by the HDT and 5YHLS position, is disengaged in this case.
- 7.4 It is common ground that the proposed development constitutes “inappropriate development” in the Green Belt. This is, by definition, harmful, and should not be approved except in “very special circumstances”. Substantial weight must be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is “clearly outweighed” by other considerations.
- 7.5 As explained above in section 5, the other Green Belt harm by loss of openness leads to substantial harm at the upper end of such harm and must carry substantial weight. The appeal site and area contribute significantly to safeguarding the countryside from encroachment and maintain settlement patterns. The proposals would lead to encroachment into the countryside and would erode settlement patterns. Such harm to the purposes of Green Belt carries substantial weight
- 7.6 Added to this is “any other harm” arising from the other matters considered above.
- 7.7 In that respect, the failure to recognise the intrinsic character and beauty of the countryside and adverse impact on the character of the area carries moderate to significant weight against the appeal scheme, the failure to provide adequate details of how the access to the site will be made sustainable in terms of public transport and cycle travel carries moderate weight against the appeal scheme and the adverse impact on the setting of a designated heritage asset carries great weight against the appeal scheme and all comprise additional harms that add to the harm to Green Belt matters.
- 7.8 I have undertaken my Green Belt balancing exercise assuming that a satisfactory obligation is presented to the Inquiry and thus there is no infrastructure objection (otherwise the weight of harm would increase yet further).

7.9 The weight of factors against the grant of permission presents a high hurdle for the Appellant to demonstrate that these harms, taken together, are “clearly outweighed” by other considerations such that “very special circumstances” exist. This high bar is illustrated in an appeal decision in St Albans⁷⁵ wherein the Inspector noted:

*“The determination of whether very special circumstances exist is a matter of planning judgement based on a consideration of all relevant matters. However, very special circumstances cannot exist unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations. Consequently, for the appeal to succeed, the overall balance would have to favour the appellants case, not just marginally, but **decisively.**”* Emphasis added.

7.10 The factors relied on by the Appellant comprise the contribution to housing (including affordable housing and self-build plots) which collectively carry very substantial weight.

7.11 In assessing the appropriate weight to be given to the delivery of housing in the circumstances of a current deficient housing land supply position I am mindful that housing land supply position is a snapshot in time. Whilst it may endure for some time it is not expected to comprise a permanent state of affairs (as the adoption of a local plan would likely be unsound in those circumstances). In contrast permanence is one of the essential characteristics of the Green Belt together with openness and the proposals would lead to the permanent loss of the openness of this part of the Green Belt. The permanent loss of land that positively contributes to the openness of the Green Belt would not change and the adverse impacts would endure.

7.12 The biodiversity scheme to be secured by the obligation will ensure biodiversity losses and net gains are compensated and achieved on and off site. Therefore, subject to such matters being secured, this comprises a benefit overall in any planning balance but because it relies on off-site solutions, I attribute it limited to moderate weight.

7.13 I do not accept that the provision of a play area to serve the proposed development located beyond the periphery of the southern extent of the existing settlement is a tangible benefit to the wider community given the more conveniently located existing play area and recreation ground at Roestock Park. I have also shown that the loss of the majority of the site as open space outweighs the provision of the undevelopable parts of the appeal site as open space. However, I have allowed very limited weight to such matters as a benefit of the scheme given there is limited access onto parts of the site (however that of itself is tempered by the fact that it is access to the periphery of a housing estate).

7.14 I have also concluded that the location of the appeal site is not a matter that weights in favour of the grant of planning permission and indeed in respect of the spatial strategy of the adopted and emerging Local Plans as well as the unresolved cycle and public transport matters mean this is a matter that weighs against the grant of permission. Even if these matters are resolved such a matter would remain at best neutral in any planning balance.

⁷⁵ APP/ B1930/W/19/3235642 at Burstons Garden Centre [CD14.23](#)

- 7.15 I have shown that the generic economic benefits arising from housing development at this location which has limited local facilities would amount to benefits of moderate weight.
- 7.16 Overall, notwithstanding the benefits of the scheme taken together, I do not consider that they “clearly outweigh” the harms to amount to “very special circumstances” to justify inappropriate development in the Green Belt for the purposes of paragraph 148 of the Framework.
- 7.17 I am cognisant of the Written Ministerial Statement of July 2015, which sets out the Secretary of State’s own view that need is unlikely to clearly outweigh harm to the Green Belt to justify the loss of Green Belt land and the grant of planning permission. I consider part of the rationale behind such an approach must lie in one of the two essential characteristics of the Green Belt being their permanence.
- 7.18 In assessing whether the proposals comprise sustainable development generic economic benefits of the proposed housing scheme are not unique to this scheme and the Council Tax spending and infrastructure spending will only contribute toward the needs emanating from this development and are not a benefit of the scheme. The construction employment and spend associated with up to 150 houses is modest in scale. Any economic benefits are tempered by the conflict with the adopted and emerging spatial strategy and the lack of local facilities to benefit from additional local spend. Overall the position on economic impact in respect of the economic dimension of sustainable development is positive but carries limited to moderate positive weight.
- 7.19 There are some social benefits from the provision of housing and the provision of affordable housing. Such matters weigh in favour of the grant of planning permission. However the location of the site away from many employment, community and social facilities tempers the weight to the benefit of providing housing.
- 7.20 I consider that the proposal will lead to very substantial environmental harm such as the loss of openness, encroachment into the countryside and significant permanent built development in the Green Belt countryside which adversely affect the character of the area including the setting of heritage assets. The impact on the environment is substantially negative.
- 7.21 Overall, notwithstanding the benefits of the scheme taken together, I do not consider these to “clearly outweigh” the harms and demonstrate “very special circumstances” to justify inappropriate development in the Green Belt for the purposes of paragraph 148 of the Framework.
- 7.22 I do not consider that the housing land supply position in St Albans means that permission should be granted for residential development in the circumstances of this case. In that regard I note the conclusions of other Inspectors in recent Green Belt cases where the appeals were dismissed in areas with deficient HLS.

7.23 In her recent decision of July 2023 at Little Bushey Lane Inspector Gilbert attributed very substantial weight for the provision of both market and affordable housing; substantial weight for self and custom-build housing; significant weight for economic benefits; moderate weight for biodiversity net gain, the provision of land for the primary school, the package of sustainable transport measures, the mobility hub, and significant levels of accessible open space; limited weight to enhanced access to the countryside, the enrichment of blue/green infrastructure, and sustainable building measures⁷⁶.

7.24 Having weighted these other considerations and noted the lack of a five year housing land supply the Inspector concluded⁷⁷:

“I have had regard to the other considerations. However, these do not clearly outweigh the harms that I have identified. Consequently, the very special circumstances necessary to justify the proposed development do not exist. [...]”

7.25 I recognise that the circumstances of each case are different but rely on this for the overall approach taken.

7.26 In her decision of 21 July 2023 Inspector Board considered an outline scheme for 125 dwellings and a 60 bed care facility on Green Belt in Brookmans Park which is part of Welwyn Hatfield District⁷⁸. In her decision she refers to the Bullens Green appeal decision and distinguishes the two sites⁷⁹. Having determined that the provision of market and affordable homes carry very substantial weight at the top end of the spectrum and 10 self-build plots carries substantial weight and the proposed care home was given significant positive weight, a new scout hut as part of the scheme was given moderate weight, 15% BNG carried moderate weight, economic benefits carried very minor weight and despite being located within walking distance of a range of facilities and a railway station the location of that site carried very minor weight. In that context Inspector Broad concluded:

“The determination of whether very special circumstances exist is a matter of planning judgement based on a consideration of all relevant matters. However, very special circumstances cannot exist unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations. Consequently, for the appeal to be allowed, the overall balance would have to favour the Appellant’s case, not just marginally, but decisively.

76 See DL129 at [CD14.26](#)

77 See DL130 at [CD14.26](#)

78 [CD14.27](#)

79 DL64 at [CD14.27](#)

Overall, I have considered the totality of the other considerations of the provision of market housing, self build, affordable housing, care home, scale of Green Belt release, ELP (including findings of the Local Plan Inspector) and there are other factors which add to this weight. Even so, the totality of the other considerations do not clearly outweigh the combined weight of the harm to the Green belt, harm to character and appearance and conflict with the development plan in this regard. Therefore, I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.”

- 7.27 I therefore consider that in this case, the application of the Green Belt policy provides a “clear reason for refusing” the development proposal under NPPF paragraph 11(d)(i) and therefore the so called tilted balance is disengaged.
- 7.28 The proposed development conflicts with the most important development plan policies, and as such conflicts with the development plan taken as a whole. In addition, the policies of the Framework provide clear reasons to refuse permission, and material or other considerations would not amount to very special circumstances or otherwise justify the grant of permission. As such, I invite the Inspector to dismiss the appeal.
- 7.29 Given my conclusion it is not necessary to undertake the decision making process in the context of the tilted balance.
- 7.30 If the Inspector was to conclude that very special circumstances did exist (a view I do not share) then the outcome of that process is that permission should be granted and it would not be necessary to go further than undertaking the conventional Green Belt planning balance exercise (which is necessary given the common ground that the proposed development is inappropriate and erodes openness).
- 7.31 If the Inspector is minded to allow this appeal, I would request that the conditions that have been provided are imposed. In addition, a section 106 obligation to deliver necessary infrastructure and affordable housing is necessary.

8 Infrastructure and Section 106

8.1 The proposal would have a significant impact on local infrastructure and the proposal would be required to make provision to address its impacts on

- Affordable Housing at 40% plus an appropriate tenure split
- Self-build and Custom Housing
- Provision of Open Space and Play Space;
- NHS and Health Care Enhancements
- Ambulance Healthcare contribution
- Community facilities improvements to the Roestock Scout Hut;
- Waste and recycling centre improvements;
- waste Service transfer station capacity;
- Library Service (towards the enhancement of Marshalswick Library);
- Youth Service (towards St Albans Young People's Centre);
- primary education;
- secondary education;
- Special Education Needs and Disabilities contribution (SEND)
- Travel Plan and monitoring fee
- Off-site highway works
- Off-site sustainable transport improvements
- Biodiversity Net Gain including Off Site Compensation Contribution
- Monitoring fee

8.2 The provision of an agreed obligation including Heads of Terms to cover the matters identified above agreed to meet the tests under CIL Regulation 122(2) and the NPPF⁸⁰. Should as satisfactory undertaking be provided that makes provision for the necessary infrastructure as well as securing the affordable housing offer it will enable me to invite the Inspector not to dismiss the appeal for these reasons.

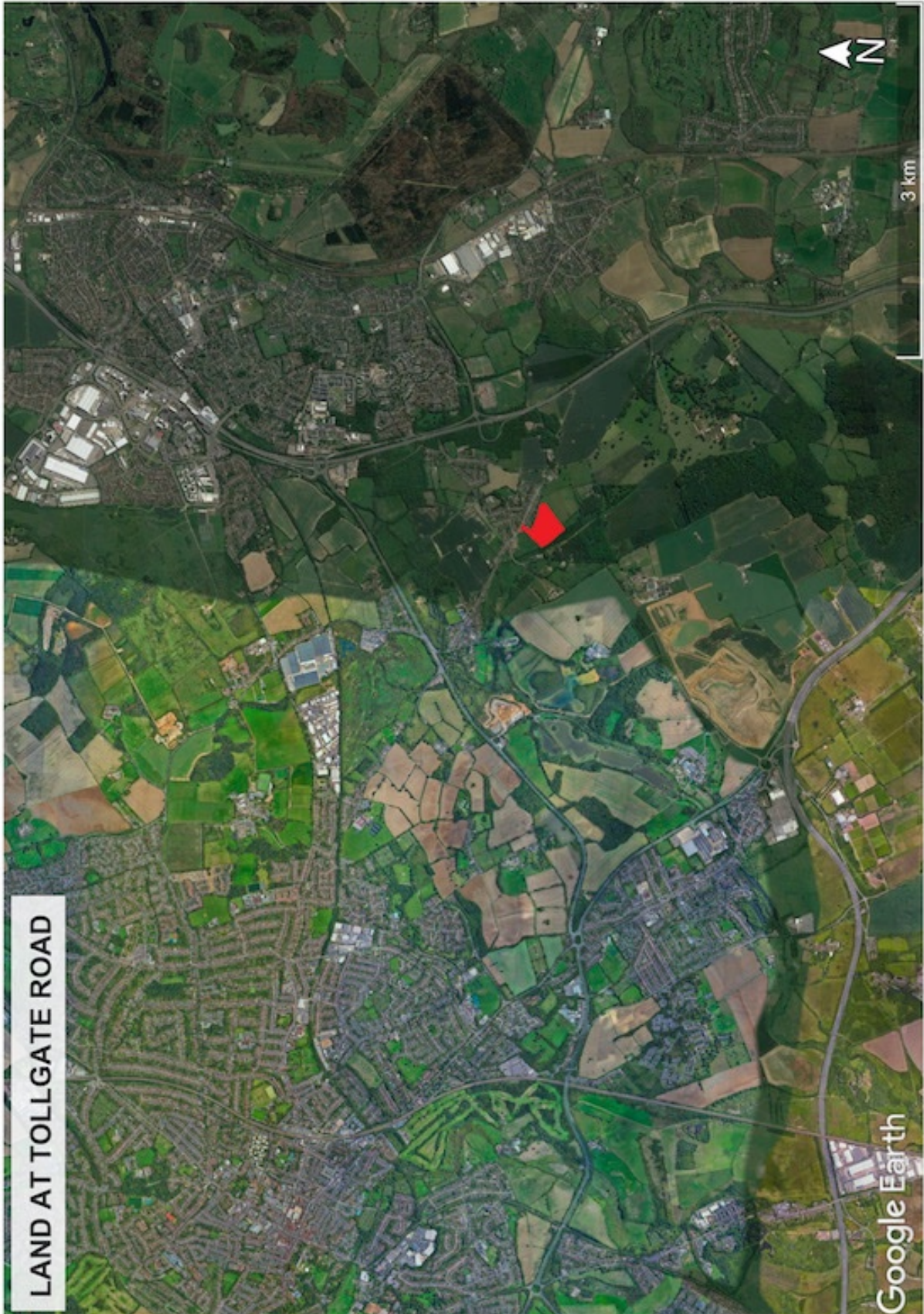
8.3 The provision of necessary infrastructure is required pursuant to Policy 143b SADLP as well as emerging Policies SP13 and SP14. These matters are consistent with the requirements of the NPPF in particular paragraph 56.

8.4 I understand that the Council and County Council will be presenting a CIL Compliance Statement at the Inquiry.

⁸⁰ See SoCG at [CD8.3](#) at Section 7

Appendix 1

Aerial Image Wider Context



Appendix 2

Aerial Image Mid Context



Appendix 3

Aerial Image Close Context

