

Town and Country Planning Act 1990 (As Amended) – Section 78
Town and Country Planning (Inquiry Procedure) (England) Rules 2000

Appeal by Aurora Properties (UK) Ltd against the refusal of Welwyn Hatfield Borough Council, as Local Planning Authority, to grant outline planning permission with all matters reserved except access, for up to 125 dwellings, a care facility for up to 60 bedrooms (Use Class C2), and a scout hut (Use Class F2) at Land to the North of Bradmore Way, Bradmore Way, The Brookmans Estate, Brookmans Park

PLANNING BALANCE PROOF OF EVIDENCE
OF
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PRINCIPAL MAJOR DEVELOPMENT OFFICER
WELWYN HATFIELD BOROUGH COUNCIL
JANUARY 2023

PLANNING INSPECTORATE REF: APP/C1950/W/22/3307844

LOCAL PLANNING AUTHORITY REF: 6/2022/1097/OUTLINE

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1. Qualifications and experience

- 1.1 My name is David Elmore, and I am employed by Welwyn Hatfield Borough Council (the Council) as a Principal Major Development Officer; a position that I have held since June 2021. Prior to that I was a Senior Development Management Officer at the same Council from 2016. I have 6 years and 7 months experience in Development Management. I have personally managed a range of planning applications including a large scale (1000+ dwellings) mixed-use proposal, proposals for 100+ dwellings in the Green Belt, and medium-to-large scale residential, commercial, and educational development in urban areas.
- 1.2 I hold a Bachelor of Science degree in Environmental Planning from Queens University, Belfast, and a further Master of Science Degree in Planning & Regeneration from the same University.

2. Scope and structure of evidence

- 2.1 In this proof of evidence, I present evidence for the Council on the planning balance.
- 2.2 I was the case officer responsible for managing the application now subject to this appeal and I have local knowledge of the area.
- 2.3 I confirm that the opinions expressed in this proof of evidence are my true and professional opinions.
- 2.4 My evidence should be read in conjunction with the proofs of evidence prepared by Robert Browne, who speaks to reasons for refusal 1 (excluding very special circumstances) and reason for refusal 2, and Matthew Wilson who speaks on the topic of the Council's emerging Local Plan with particular reference to the appeal site as a proposed allocation. In those respects, I adopt and rely upon their conclusions.

3. Introduction

- 3.1 The proposal is an outline planning application for up to 125 dwellings, a care facility for up to 60 bedrooms (Use Class C2), and a scout hut (Use Class F2), on Land to the North of Bradmore Way, The Brookmans Park Estate (“the Appeal Site”). All matters are reserved except access.
- 3.2 The Council refused planning permission on 05 August 2022, and the reasons for refusal were as follows:
1. *The proposal would represent inappropriate development in the Green Belt, result in a considerable loss of Green Belt openness and represent a significant encroachment into the countryside. No very special circumstances exist to clearly outweigh this harm. Consequently, the proposal conflicts with Policy GBSP1 of the Welwyn Hatfield District Plan 2005, Policy SADM34 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission 2016 and the National Planning Policy Framework.*
 2. *The proposed development would severely detract from the character of the site and area, in conflict with Policies D1, D2 and RA10 of the Welwyn Hatfield District Plan 2005; Supplementary Design Guidance 2005; Policy SP9 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016; and the National Planning Policy Framework.*
 3. *The application has failed to demonstrate that there would not be an unacceptable impact on highway safety and that the impact on the road network would not be severe. Furthermore, the application has failed to demonstrate that priority first would be given to pedestrian movements in the area and that the needs of people with disabilities and reduced mobility would be addressed. Consequently, the proposal conflicts with Policy M5 of the Welwyn Hatfield District Plan 2005, Policy SADM12 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016 and the NPPF.*
 4. *The application has failed to demonstrate that it would contribute positively to the biodiversity of the site. Without such assurances, the proposal conflicts with Policy R11 of the Welwyn Hatfield District Plan, Policy SADM16 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016 and the NPPF.*
 5. *The application fails to demonstrate that the proposed development will not increase flood risk to the site and elsewhere. Furthermore, the sustainable drainage system is unacceptable. Consequently, the proposal conflicts with Policy SADM14 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016 and the NPPF.*
 6. *The applicant has failed to satisfy the sustainability aims of the plan and to secure the proper planning of the area by failing to ensure that the development proposed would provide a sustainable form of development in mitigating the impact on local infrastructure and services which directly relate to the proposal and which is necessary for the grant of planning permission. The applicant has failed to provide a planning obligation under Section 106 of the Town and Country Planning Act 1990 (as amended). The Local Planning Authority considers that it would be inappropriate*

to secure the required financial contributions and provisions by any method other than a legal agreement. The proposal is therefore contrary to Policies IM2, M3, M4 and H2 of the Welwyn Hatfield District Plan 2005; Policies SP13 and SADM1 of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016; and the National Planning Policy Framework.

- 3.3 Since the appeal was lodged, the appellant has submitted further information to try and address reason for refusal (RfR) 3, 4, 5 and 6.
- 3.4 Regarding RfR 3, on 9 January 2023, a Statement of Common Ground was agreed between Hertfordshire County Council Highways (HCC Highways) and the Appellant (CD13.03). This confirm that HCC Highways no longer object to the development subject to planning obligations (which have been agreed) and conditions. On this basis, the Council withdraw this RfR.
- 3.5 Regarding RfR 4, a biodiversity offsetting sum was agreed between the main parties on 6 January 2023. However, the terms/clauses to ensure this biodiversity offsetting is appropriately implemented has not been agreed between the main parties in the S106 Agreement which is still in draft. As such, RfR 4 currently stands.
- 3.6 Regarding RfR 5, the Lead Local Flood Authority (LLFA) confirmed on 06 January 2023 that following review of the additional information submitted by the Appellant at appeal, the objection no longer stands subject to conditions. A Statement of Common Ground between the LLFA and the Appellant was also agreed on 10 January 2023 (CD13.04). On this basis, the Council withdraw this RfR.
- 3.7 Regarding RfR 6, this would be satisfied through completion of a S106 Agreement. However, as the S106 is still in draft, this reason for refusal stands.

4. Statutory duties and policy context

- 4.1 Within this section I provide an overview of the statutory duties directly applicable to this appeal, as well as the Development Plan, emerging Local Plan, and national policy context. In addition to this, I will set out what I consider to be the most important Development Plan policies for the determination of the appeal. I will also explain the weight which I consider should be given to the Council's emerging Local Plan in decision making.

Statutory duties

- 4.2 S70(2) of the Town and County Planning Act 1990, as amended, requires, in dealing with an application for planning permission, that the authority shall have regard to the provisions of the development plan, so far as material to the application, and any other material considerations.
- 4.3 S38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Development Plan

- 4.4 The reasons for refusal of the application reference specific planning policies in the Statutory Development Plan. In this case, the Development Plan takes the form of the Saved Policies of the Welwyn Hatfield District Plan 2005 (District Plan)(CD5.01).
- 4.5 Within the District Plan, the policies that I consider most important for the determination of this appeal are those directly referenced within the reasons for refusal (save for those policies on the now withdrawn reasons for refusal). These comprise:
- Policy GBSP1 – Definition of the Green Belt
 - Policy D1 – Quality of design
 - Policy D2 – Character and Context
 - Policy RA10 – Landscape Regions and Character Areas
 - Policy R11 – Biodiversity and Development
 - Policy IM2 – Planning Obligations
 - Policy M3 – Green Travel Plans
 - Policy M4 – Developer Contributions
 - Policy H2 – Location of Windfall Residential Development
 - Policy SP13 – Infrastructure Delivery

National Planning Policy Framework

- 4.6 The National Planning Policy Framework (NPPF)(CD8.23), last updated in July 2021, sets out the Government's planning policies for England and how they should be applied.

The presumption in favour of sustainable development

- 4.7 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-date [footnote 8], granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed [footnote 7]; or*
- ii. 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.”*

4.8 Footnote 8 states:

“This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a 5-year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous 3 years.”

4.9 It is common ground between the main parties that the development plan policies which are most important for determining the appeal are out-of-date by virtue of footnote 8 of the NPPF.

4.10 Footnote 7 provides (so far as relevant):

“The policies referred to are those in this Framework (rather than those in development plans) relating to: [...] land designated as Green Belt [...].”

4.11 As such, when considering planning decisions, it is necessary to first determine whether the application of the Green Belt policies provide a clear reason for refusal under paragraph 11(d)(i). If they do, the application is not assessed against the tilted balance in paragraph 11(d)(ii) of the NPPF.

Protecting Green Belt Land

4.12 It is common ground that the proposal would comprise inappropriate development in the Green Belt and would not benefit from any of the exceptions in paragraph 149 of the NPPF.

4.13 Paragraph 147 of the NPPF states:

“Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.”

4.14 Paragraph 149 goes on to state:

“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 by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.”

4.15 Other Green Belt policies relevant to this appeal are listed in Section 5 of this Proof of Evidence.

4.16 I note that on 22 December 2022 the government published the *Levelling-up and Regeneration Bill: reforms to national planning policy*, and, alongside it, a proposed text of NPPF revisions. Amongst others, changes to the five-year housing land supply test are suggested which includes Councils no longer having to provide five-year housing land supply buffers. Another draft revision is intended to make clear that local planning authorities are not required to review and alter Green Belt boundaries if this would be the only way of

meeting need in full. While currently at open consultation, this shows the likely direction of travel. In very broad terms, it appears that the proposed revisions to the NPPF seek to prioritise the protection of the Green Belt over the delivery of new homes. I do not comment here on the political desirability of that, and in any event acknowledge that they are no more than proposed reforms at this stage.

Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016 (DLP Proposed Submission)

- 4.17 The DLP Proposed Submission (CD6.01) was submitted for examination to the Secretary of State in May 2017. Whilst the examination is currently being held, the hearings concluded in March 2021 and Main Modifications consultation commenced on 4 February 2023 and is set to conclude on 15 February 2023. The DLP Proposed Submission does not seek to allocate the appeal site but does include a large site in Brookmans Park for 428 dwellings and an primary school (BrP4/4a).
- 4.18 The Proof of Evidence of Mr Wilson includes a high-level overview of the progression of the DLP Proposed Submission to-date.
- 4.19 The relevant DLP Proposed Submission policies are those directly referenced within the reasons for refusal (save for those policies on the now withdrawn reasons for refusal). These comprise:
- Policy SADM34 (Development in the Green Belt)
 - Policy SP9 (Place-Making and High Quality Design)
 - SADM16 (Ecology and Landscape)
 - SP13 (Infrastructure Delivery)
 - SADM1 (Windfall Development)
- 4.20 Having regard to paragraph 48 of the NPPF, Mr Wilson considers that significant weight can be attributed to the applicable policies contained in it.

5. Main Issues and assessment

- 5.1 In this section I will identify the likely main issues (as set out in the Inspector's Pre-Conference Note), assess the policy conflict and harms which remain, and attach weight to these harms for the purpose of VSC and the Planning Balance exercise.

Green Belt (appropriateness and openness)

- 5.2 As stated in RfR 1, the Council contend that the proposal would represent inappropriate development in the Green Belt, result in a considerable loss of Green Belt openness and represent a significant encroachment into the countryside, in conflict with Policy GBSP1 of the District Plan, Policy SADM34 of the DLP Proposed Submission, and the NPPF.

- 5.3 Policy GBSP1 of the District Plan states that *"the Green Belt will be maintained in Welwyn Hatfield as defined on the Proposals Map. The towns and specified settlements listed in Policy GBSP2 are excluded from the Green Belt. The precise boundaries of the Green Belt around these towns and settlements are defined on the Proposals Map."*

- 5.4 Policy SADM34 of the DLP Proposed Submission states (where applicable) that:

"Within the Green Belt as defined on the Policies Map planning permission will be granted for development in accordance with national policy and other policies in this plan subject to the following criteria."

and;

"Where a change of use of land is proposed, applicants will need to demonstrate that the proposal would preserve the openness of the Green Belt and minimise any impact on the landscape."

- 5.5 In terms of the NPPF, paragraphs 137-138 and 147-150 are relevant.
- 5.6 The Proof of Evidence of Bobby Browne assesses that the proposed development would cause significant harm to Green Belt openness. He goes on to state that it presents a significant spatial and visual intrusion within the Green Belt that cannot be mitigated by measures outlined in the appeal scheme, and the harm will not be remediable.
- 5.7 Mr Browne also confirms that development of the land would represent a considerable encroachment into the countryside and would undermine the contribution that the site makes in safeguarding the countryside from encroachment.

Having regard to the Proof of Evidence of Mr Browne, I consider that the appeal scheme would conflict with all of the above policies.

- 5.8 Paragraph 148 of the NPPF makes clear that it should be ensured that substantial weight is given to any harm to the Green Belt. This applies to any development, irrespective of type and scale, which is considered to harm the Green Belt. Clearly, however, the scale of substantial harm to the Green Belt from the appeal scheme would be considerably greater than an extension to a single building or a minor development also deemed to harm the Green Belt. Having regard to this, as well as the Proof of Evidence of Mr Browne, and identified policy conflict, I give substantial weight (at the high end of the scale) to the harm which would arise to the Green Belt from the appeal scheme in terms of inappropriateness, loss of openness and conflict with paragraph 138(c) of the NPPF.

Character and appearance of area

- 5.9 As stated in RfR 2, the Council contend that the proposed development would severely detract from the character of the site and area in conflict with Policies D1, D2 and RA10 of the District Plan; the Council's Supplementary Design Guidance; Policy SP9 of the DLP Proposed Submission; and the NPPF.
- 5.10 Policy D2 of the District Plan states that *"the Council will require all new development to respect and relate to the character and context of the area in which it is proposed. Development proposals should as a minimum maintain, and where possible, should enhance or improve the character of the existing area."*
- 5.11 Policy D1 of the District Plan outlines that the Council will require the standard of design in all new developments to be of a high quality and that the design of new development should incorporate the design principles and policies in the Plan and the guidance contained in the Supplementary Design Guidance. One of these design principles is character and, as such, I consider that Policies D1 and D2 of the District Plan are inextricably linked. It is acknowledged though that as this is an outline application, 'detailed design' is not a matter for consideration.
- 5.12 The Council's Supplementary Design Guidance (CD8.12) supports Policies D1 and D2 of the District Plan and outlines, amongst other things, that new development must be sensitive to local character and not detrimentally affect the townscape and landscape.
- 5.13 Policy RA10 of the District relates to Landscape Regions and Character Areas and states that: *"Proposals for development in the rural areas will be expected to contribute, as appropriate, to the conservation, maintenance and enhancement of the local landscape character of the area in which they are located, as defined in the Welwyn Hatfield Landscape Character Assessment."*
- 5.14 Policy SP9 of the DLP Proposed Submission, sets out the principles of high-quality design and fostering a positive sense of place. One of these principles is for development to respond to character and context so they can relate well to their surroundings and local distinctiveness, including the wider townscape and landscape.
- 5.15 In terms of the NPPF, paragraphs 130 and 134 are relevant.
- 5.16 The Proof of Evidence of Bobby Browne assesses the site to hold a high/local landscape value, that the proposal represents a considerable alteration away from the baseline landscape elements of the site, and the predicted landscape effects will be permanent and irreversible.
- 5.17 Mr Browne outlines that the agricultural land use, boundary trees, and lack of built form combine to create a strong rural character for the site, and that the adjacent suburban character intrusion is limited to a small portion of the site. Mr Browne also asserts that the appeal site performs an important role in revealing the rural setting to Brookmans Park and creating a unique sense of place distinct from other settlements in the area.
- 5.18 Mr Browne then goes on to confirm that the proposal would equate to the loss of a key landscape characteristic (being the rural setting of Brookmans Park) and would be detrimental to the character of the settlement edge. He also states that the introduction of built form on the site considerably closer to Peplins Wood will cause a notable change in the

character of the woodland and reduce the contribution it makes to the wider character of the area as an important landscape feature.

- 5.19 In visual terms, Mr Browne explains that even by year 15 post completion, substantial adverse visual effects are predicted to remain on residents of Bradmore Way and Peplins Way and on people using the public footpath along Bradmore Way. A moderate adverse effect is also predicted over the same period on people using the adjacent golf course.
- 5.20 Having regard to the Proof of Evidence of Bobby Browne I consider that the appeal scheme would conflict with all the above policies. I give substantial weight to the harm which would arise to the character of the site and area.

The effect of the scheme on highway safety

- 5.21 As previously stated in Section 3 of my Proof of Evidence, following further information submitted by the Appellant since the appeal was lodged, HCC Highways no longer object to the development subject to planning obligations (which have been agreed) and conditions. On this basis, the Council withdraw RfR 3.

Whether the scheme would protect and enhance the natural environment

- 5.22 As previously stated in Section 3 of my Proof of Evidence, a biodiversity offsetting sum has been agreed between the main parties. However, the terms/clauses to ensure this sum is appropriately implemented has not been agreed between the main parties in the S106 Agreement which is still in draft. As such, RfR 4 currently stands.
- 5.23 Policy R11 of the District Plan requires all new development to demonstrate how it would contribute positively to the biodiversity of the site, and Policy SADM16 of the DLP Proposed Submission states that proposals will be expected to maintain, protect, and wherever enhance biodiversity.
- 5.24 In terms of the NPPF, paragraphs 174 and 180 are relevant.
- 5.25 As evidenced by the ecological information submitted to the Council at application stage (CD2.05), without biodiversity offsetting, the development would result in a loss of 9.85 area-based/habitat BU, which is a measurable net loss of -31.61%.
- 5.26 In the absence of an agreed S106 Agreement securing the biodiversity offsetting is suitably implemented, the proposal is contrary to the above policies. I attach substantial weight to the harm identified because of the extent of loss of biodiversity.

Whether the scheme would be at risk from flooding

- 5.27 As previously stated in Section 3 of my Proof of Evidence, following further information submitted by the Appellant since the appeal was lodged, the LLFA no longer object to the development subject to conditions. On this basis, the Council withdraw RfR 5.

Whether the scheme would make appropriate provision for infrastructure

- 5.28 This relates to RfR 6 and the failure to provide a planning obligation under S106 of the Town and Country Planning Act 1990 (as amended) to mitigate the impact of the development on facilities, services, and infrastructure.

- 5.29 Policy IM2 of the District Plan states that *“in order to satisfy the sustainability aims of the Plan and secure the proper planning of the area, development will be required to provide for the infrastructure, services and facilities which are directly related to it and necessary to the granting of planning permission. Developers will be required to provide or finance the cost of all such provision which is fairly and reasonably related in scale and kind to the development, including:*
- (i) On-site facilities directly related to the proposed development in the interests of proper planning and to mitigate any possible adverse environmental impact;*
- (ii) Off-site improvements, services and facilities necessary as a result of the development in order to avoid placing an additional burden on the existing community and to mitigate any possible adverse environmental impact arising from the development; and*
- (iii) Affordable housing in accordance with Policy H7.*
- 5.30 A similar approach is set out in policy SP13 of the DLP Proposed Submission
- 5.31 Policy M3 of the District Plan requires development of the scale proposed to be supported by a Green Travel Plan, and it is necessary for Travel Plans to be secured through a S106 Agreement.
- 5.32 Policy M4 of the District Plan requires new transport infrastructure to be secured and implemented. The proposal necessitates a sustainable transport contribution and the appropriate mechanism to secure this is through a S106 Agreement.
- 5.33 Policy H2 of the District Plan relates to the location of windfall residential development and one of the criteria for assessing potential and suitability of development is the capacity of existing and potential infrastructure to absorb further development. A similar approach is set out in Policy SADM1 of the DLP Proposed Submission.
- 5.34 In terms of the NPPF, paragraph 55 is relevant.
- 5.35 While it is appreciated that Heads of Terms have been agreed between the main parties (CD13.09), the S106 Agreement remains in draft form at this time. As such, the proposal would conflict with the above policies. I attach substantial weight to this harm given the extent of impact which would be caused to existing services, facilities, and infrastructure, as well as the community, in the absence of an effective S106 Agreement.

6. The appellant's "other considerations" NPPF paragraph 148

6.1 The appellant's Statement of Case (SoC)(CD13.05) sets out a number of "other considerations" on which they rely to "clearly outweigh" the harm identified and demonstrate very special circumstances (VSC). These comprise:

- Appeal site will make a limited to no contribution to the Green Belt purposes
- Assessment of Inspector Middleton in EX273
- Housing land supply
- Affordable housing
- Self-build housing
- Highly sustainable location
- Renewable energy
- Appeal decisions
- Provision of Care Home
- Provision of Scout Hut
- A biodiversity net gain of 15%
- New green infrastructure
- Economic benefits
- A package of S106 measures

6.2 A hierarchy of weight has been agreed between the parties to assist the Inspector in undertaking their analysis of the appeal proposal (CD13.10). My evidence adopts this hierarchy in attributing weight to the various relevant considerations.

Appeal site will make a limited to no contribution to the Green Belt purposes

6.3 RfR 1 included conflict with one of the purposes of including land in the Green Belt, being that the proposal would not assist in safeguarding the countryside from encroachment (NPPF paragraph 138c). It is common ground between the main parties that there would not be any conflict with any of the other purposes of including land in the Green Belt.

6.4 I therefore disagree with this other consideration, insofar as it relates to the above purpose conflict. I concur with the evidence of Mr Browne which explains why the appeal proposal would conflict with this purpose and represent a significant encroachment into the countryside. I give no positive weight to this other consideration advanced by the appellant. It is, in Mr Browne's evidence, part of the harm caused to the Green Belt.

Assessment of Inspector Middleton in EX273

6.5 Examination Document EX273 of the DLP Proposed Submission titled '*Stage 9 Hearing – Inspector's observations on site discussions*' (CD6.71), includes the examining Inspector's observations on sites including, but not limited to, those which have not been formally submitted to the examination by the Council. The appeal site (BrP12a) was not formally submitted to the examination by the Council.

6.6 While the Inspector states that BrP12a could contribute to the five-year supply of housing, EX273 only includes the Inspector's observations on the site. Moreover, the Inspector makes clear in paragraph 7 of EX273 that "*I have not concluded on the sites that have not been formally submitted to the Examination by the Council. I have however discussed, where appropriate, my findings on the evidence base, including the representations and hearing discussions, concerning these sites*".

- 6.7 The Proof of Evidence of Mr Wilson makes clear that despite the Appellant's claim, Officers have not recommended the site for inclusion in the DLP Proposed Submission on three occasions and nor does the examining Inspector recommend the inclusion of the site.
- 6.8 Mr Wilson also states that the development strategy that is the subject to Main Modification consultation does not require any of the 16 sites examined by the Inspector (including BrP12a) to be included in the draft Plan.
- 6.9 Having regard to the above, I do not give any positive weight to the assessment of the site by Inspector Middleton in EX273.

Housing land supply

- 6.10 It is common ground that the Council cannot demonstrate a 5-year housing land supply. The latest published housing land supply for Welwyn Hatfield is 2.46 years, presented in the 2020/21 Annual Monitoring Report (CD7.04). The latest 2021 Housing Delivery Test result (2018/19 – 2020/21)(CD7.01&CD7.02) for Welwyn Hatfield is 66%.
- 6.11 It is accepted that this shortfall is considerable and significant, and there is no dispute that given the existing position in Welwyn Hatfield, the delivery of housing represents a significant benefit. To date, however, the appellant has not demonstrated that the site would be deliverable (as defined in Annex 2 of the NPPF) within 5 years which I contend should temper the degree of weight attributed to this benefit. I nonetheless attach substantial weight to the provision of market housing which would make a positive contribution to the supply of market housing in the local authority area.

Affordable housing

- 6.12 The application proposes 45% affordable housing in a local authority area which has an acute need. Such provision exceeds the requirements of adopted Policy H7 (30%) of the District Plan and the requirements of Policy SP7 (35%) of the DLP Proposed Submission.
- 6.13 It is common ground between the main parties that 45% affordable housing is a material consideration weighing in favour of the appeal. It is also common ground that the tenure mix of the affordable housing provision will be agreed with the Council and each of the main parties agrees it will accord with the Council's latest evidence on affordable housing tenure, as set out in the Welwyn Hatfield Strategic Housing Market Assessment Partial Update 2015(CD6.08)(the latest evidence of overall need is in the SHMA 2017 Update) or any such documents at the time of Reserved Matters.
- 6.14 I consider that very substantial weight should be attributed to this benefit. Such weighting is agreed by the appellant in the main parties' Statement of Common Ground (CD13.01).

Self-build housing

- 6.15 It is common ground between the main parties that the Council has no adopted policy for securing self-build and custom housebuilding and that the Council has failed to meet its statutory duty under the provisions of the 2015 Self-Build and Custom Housebuilding Act (as amended by the 2016 Housing and Planning Act) to have issued a sufficient number of suitable permissions to meet demand arising from Base Periods 1, 2, 3 and 4 of its Self-Build Register. It is also agreed that the Council are also unlikely to meet their duty in respect of Base Period 5.

6.16 It is common ground that the provision of up to 10 (8%) serviced plots for self-build and custom housebuilding in the context of the substantial shortfall that has accrued to date and the low levels of existing and planned provision would make a positive contribution to the supply of self-build plots in the local planning authority area and should be attributed substantial weight in the planning balance.

Highly sustainable location

6.17 It is common ground that the site is a sustainable location for residential development in terms of its accessibility to services and facilities by transport modes other than the car. I do not however agree that the site is a “highly” sustainable location.

6.18 The examining Inspector’s observations of BrP12a (Examination Document EX273)(CD6.71) state in paragraph 120 that *“The site is between 0.5km and 0.75 km from the village centre which has a range of local shops and other facilities as well as bus stops with regular services to a number of destinations. The railway station is a little further distant, but the PS is much closer and within easy walking distance. From a movement perspective, this is a **sustainable** location for residential development.”* (Emphasis added in bold and underlined). It is important to note here that the examining Inspector regarded the site a “sustainable” not a “highly sustainable” location. I agree.

6.19 The local authority area has two main towns – Welwyn Garden City and Hatfield. Paragraph 4.10 of the District Plan states that *“they are the main sources of housing for the district, contain the major shopping and service facilities, schools and community facilities and are the principal locations for local employment”* and *“...they offer the best opportunity for sustainable development”*.

6.20 Brookmans Park is designated as a Specified Settlement in the District Plan which is a secondary focus for development. The District Plan also regards Brookmans Park as one of six large villages and paragraph 4.11 of the District Plan acknowledges that such large villages are less self-sufficient and dependent to a certain extent on the two main towns for employment and main services.

6.21 The Settlement Strategy of the DLP Proposed Submission similarly identifies Brookmans Park as a large, excluded village and places third in the settlement hierarchy¹ behind the main town of Welwyn Garden City and the town of Hatfield. The settlement hierarchy outlines that the shops and facilities mainly serve the community needs of these villages and those living in the surrounding rural areas.

6.22 In terms of retail offer, Brookmans Park is identified as a large neighbourhood and village centre in the Welwyn Hatfield Draft Local Plan Proposed Submission August 2016. Large neighbourhood and village centres place third in the retail hierarchy² behind the major town centre of Welwyn Garden City and town centre of Hatfield.

6.23 The village centre of Brookmans Park has a good range of small convenience shops, commercial units, hot food takeaways/restaurants, local butcher, pharmacy, dentist, community library and public house. All are within convenient walking distance from the

¹ Paginated page 42 of the Welwyn Hatfield Borough Council - Draft Local Plan Proposed Submission August 2016 (CD6.01)

² Paginated page 54 of the Welwyn Hatfield Borough Council - Draft Local Plan Proposed Submission August 2016 (CD.6.01)

appeal site. I consider that the scale, type and range of such services and facilities are not uncommon for a large village area and is consistent with the DLP Proposed Submission's function of large, excluded villages in that they mainly serve the community needs of these village and those in surrounding rural area.

- 6.24 Brookmans Park Station is located on the East Coast Mainline Railway with frequent direct connects to Moorgate (34 minutes) and Welwyn Garden City (at least 11 minutes). There are usually three trains per hour in each direction on weekdays and two per hour at weekends³.
- 6.25 The nearest bus stops are also located at the Brookmans Park Station which provide the following services – 200, 201, 242, 305, 355 and 610.
- 6.26 The 610 is the only service which regularly departs/arrives at Brookmans Park and connects to the heart of the towns of Hatfield and Luton. I consider all other services to be infrequent.
- 6.27 The 200 service only operates on a Monday with a single departure to and single arrival from nearby villages.
- 6.28 The 201 service only operates on Tuesdays and Fridays with a single departure to and single arrival from nearby villages and Welwyn Garden City.
- 6.29 The 242 service only operates on a Sunday with up to five departures to and arrivals from settlements (including Waltham Cross, Cheshunt, Goff's Oak, Northaw and Potters Bar) and the two towns of Hatfield and Welwyn Garden City.
- 6.30 The 305 service operates on Monday to Friday with up to three departures to and three departures from St Albans, Colney Heath and Potters Bar. On Saturdays this is reduced to a single departure/arrival.
- 6.31 The 355 service operates between Monday-Friday but with only a single departure to and single arrival from St Albans, Colney Heath, Welham Green, Little Heath, Potters Bar.
- 6.32 The timetables of all services are contained in Core Document CD12.27.
- 6.33 Having regard to the proximity of the appeal site to the village centre, the scale, type and range of services and facilities in the village centre, frequency of rail and bus services and connections to towns/cities, it is my opinion that the site would be a sustainable location but not a "highly" sustainable location.
- 6.34 Now turning to weight. Policy H2 (Location of Windfall Residential Development) sets out that all applications for windfall residential development will be assessed for potential and suitability against certain criteria. One such criterion is *"the location and accessibility of the site to services and facilities by transport modes other than the car"* (Criteria ii). This criterion is reflected in Policy SADM1 of the DLP Proposed Submission and clearly falls within the environmental objective of sustainable development as stated in paragraph 8 of the NPPF.
- 6.35 It is my contention, therefore, that as it is already a local policy requirement (both adopted and emerging) to ensure that a windfall residential development is in a sustainable location,

³ Times and frequencies are taken from Train Line - <https://www.thetrainline.com/stations/brookmans-park>

this cannot and, should not, be used as an ‘other consideration/benefit’ to contribute toward the appellant’s VSC case.

- 6.36 I also contend that paragraph 69(c) of the NPPF is not applicable in this case as the appeal site is not located outside of an existing settlement.
- 6.37 Having regard to all of the above, I do not attribute any positive weight to this other consideration advanced by the appellant. I contend that there would be an absence of harm.

Renewable energy

- 6.38 The Appellant’s SoC states that new homes on the appeal site will all achieve the best EPC ratings, and every home will seek to deliver renewable energy and/or to conserve energy through insulation and smart use of energy. Furthermore, every dwelling will benefit from at least one vehicle Electric Vehicle (EV) point, with larger dwellings having two EV points. In addition, all of the enhanced energy performance and the reduction in carbon emissions required by Part L of the Building Regulations will be achieved or exceeded.
- 6.39 It is already a policy requirement in the Council’s District Plan for developments to include measures to maximise energy conservation. Policy R3 states:
- “The Council will expect all development to:*
- (i) Include measures to maximise energy conservation through the design of buildings, site layout and provision of landscaping; and*
- (ii) Incorporate the best practical environmental option (BPEO) for energy supply.”*
- 6.40 This approach has been followed through into both emerging policies SP10 and SADM13 of the DLP Proposed submission. In particular, Policy SADM13 states that all major development proposals must demonstrate that they have sought to maximise opportunities for renewable and low carbon sources of energy supply, where consistent with other Local Plan policies.
- 6.41 There is a lack of certainty from the Appellant regarding Part L of the Building Regulations in terms of whether the requirements will be met as a minimum or exceeded. As building works must meet all relevant requirements of the Building Regulations, achieving compliance should not be regarded as a benefit. The extent of exceedance has also not been provided.
- 6.42 In terms of EV charging, Part S of the Building Regulations which came into effect on 15 June 2002⁴, requires all new build homes to have at least one EV charging point. While it is noted that larger dwellings would have an additional EV charging point, it is considered the benefit arising would be very limited at best.
- 6.43 Taking account of the above, I consider that only very limited weight positive weight should be afforded to this other consideration by virtue of the additional EV charging provision for larger dwellings.

⁴ Infrastructure for the charging of electric vehicles – Approved Document S (CD12.26)

Appeal decisions

- 6.44 The Appellant's SoC outlines that due weight will be given to the benefits of the scheme having regard to the conclusions of Inspector Masters in the recent Colney Heath appeal (APP/C1950/W/20/3265926)(CD9.28), and that of the Council's Development Management Committee decision on 9 December 2021 to grant planning permission on land adjacent to King George V Playing Fields in Cuffley (6/2015/1342/PP)(CD12.04-CD12.07). I will now address each of these in turn.

Roundhouse Farm, Land Off Bullens Green Lane, Colney Heath (APP/C1950/W/20/3265926)

- 6.45 This appeal was allowed on 14 June 2021 and the development proposed was an outline application for the erection of up to 100 dwellings, including 45% affordable and 10% self-build, together with all ancillary works (All matters reserved except access).
- 6.46 The appeal site was cross boundary between the local authority area of Welwyn Hatfield Borough Council and St Albans City and District Council. Both Councils were unable to demonstrate a 5-year supply of deliverable housing sites and the housing land supply position was 2.58 years and 2.4 years respectively.
- 6.47 The site was an agricultural field in the Green Belt and very special circumstances were required to justify the development.
- 6.48 The Inspector concluded in paragraphs 78 and 79 as follows:

"The proposals would cause harm by reason of inappropriateness and harm to openness. Both of these attract substantial weight. I have also attached moderate weight to harm to the character and appearance of the area. However, these appeals involves two local authority areas, both of which have acute housing delivery shortages and acute affordable housing need. The proposals would make a contribution towards addressing these needs in the form of market, self build and affordable housing in both WHBC and SADC. I have attached very substantial weight to the provision of both market housing and affordable housing. I have attached substantial weight to the provision of self build housing. These factors, when considered collectively demonstrate that very special circumstances do exist."

"I conclude that in the case of these appeals, I find that the other considerations in this case clearly outweigh the harm that I have identified. Looking at the case as a whole, very special circumstances do exist to justify inappropriate development in the Green Belt. My findings on the other matters before me do not lead me to a different conclusion. As a result, I therefore conclude that the proposals would comply with both the Framework and the development plans taken as a whole. For the reasons given above, and having considered all other matters raised, the appeals are allowed."

- 6.49 There are however a number of key differences between that appeal and the one now at appeal. The first is that the locational characteristics are not the same. While both appeal sites are located on the edge of a settlement, the degree of containment, features on the boundaries, site topography and overall character varies. Moreover, the Inspector did not consider there to be any conflict with the purposes of including land in the Green Belt and only attached moderate weight to the harm to the character and appearance of the area (which she described as 'limited'). In this case, conflict with one of the purposes of including land in the Green Belt is identified by the Council as well as substantial harm to the character and appearance of the area.

Land adjacent to King George V Playing Fields in Cuffley (6/2015/1342/PP)

- 6.50 This planning application was granted on 31 March 2022 at Welwyn Hatfield Borough Council and the proposal was in outline form for residential development of up to 121 dwellings, associated infrastructure and a change of use from agricultural land to an extension of the King George V playing field.
- 6.51 The site was an agricultural field in the Green Belt and very special circumstances were required to justify the development.
- 6.52 In this case harm to the Green Belt was identified by of inappropriate, loss of openness, and conflict with one of the purposes of including land in the Green Belt – being the failure to assist in safeguarding the countryside from encroachment. With respect to ‘any other harm’, no material harm was identified.
- 6.53 The provision of market, self-build and affordable housing were advanced. Another important positive factor (of which significant weight was attached) was the allocation of the application site in the Council emerging Local Plan for housing development and the examining Inspector indicating that its inclusion is ‘sound’.
- 6.54 Again, there are clear differences between this decision and the appeal proposal in terms of the harms identified and the factors which have been weighed in the balance.

Other recent appeal decisions

- 6.55 In addition to the application and appeal referenced in the appellant’s SoC, I have recorded a number of recent appeal decisions including residential development in the Green Belt. I will demonstrate that these other examples do not draw direct comparisons to the appeal proposal.

Monks Cross Link Road, Huntington, North Yorkshire (APP/C2741/W/21/3282969)(CD10.12)

- 6.56 This was an appeal in which the Secretary of State approved 970 homes as well as a primary school, convenience store and new country park on 14 December 2022.
- 6.57 The Council did not have a development plan in place but had submitted its draft plan for examination. The Secretary of State considered that the emerging policies of most relevance to this case identified the appeal site as a strategic housing site.
- 6.58 York Council was unable to demonstrate a 5-year supply of housing sites, as its current housing land supply was between 2.79 years and 3.45 years.
- 6.59 Against the proposal are the harm, carrying “substantial weight”, to the Green Belt by reason of inappropriateness, significant harm to Green Belt openness and to two Green Belt purposes.
- 6.60 The provision of new market and affordable housing, a new primary school and an early years facility each attracted significant weight; and the new country park attracted moderate weight. Significant weight was also attached to the social and economic benefits of housing delivery. Meanwhile, the fact the site is identified in the council’s emerging local plan as suitable in principle for strategic development was given limited weight.
- 6.61 Overall, the Secretary of State considered that the benefits of the proposal were collectively sufficient to clearly outweigh the harm to the Green Belt and other harm such that very

special circumstances exist to justify permitting the development. Also, the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits and, therefore, the presumption in favour of sustainable development applied.

- 6.62 The key differences between this recovered appeal decision and the appeal proposal are their varying size and scale, the development proposed as a whole, harms identified, and other factors which weighed in the balance. The site's allocation in the emerging local plan was also a key difference. The scale of the development in the recovered appeal decision has also influenced the weight attached to benefits – for example, social and economic benefits.

Land at Maitland Lodge, Southend Road, Billericay (APP/V1505/W/22/3296116)(CD9.19)

- 6.63 This appeal concerned 47 homes on previously developed land (PDL) which sits partly within the Green Belt. The appeal was allowed on 11 November 2022.

- 6.64 In this case Basildon Borough Council could not demonstrate a 5-year supply of deliverable housing sites (it was agreed between the parties that the housing land supply range was between 1.6 and 2.33 years).

- 6.65 The two key differences between this example and the appeal proposal were that the Land at Maitland Lodge site was PDL, and the Inspector concluded that the development would be "not inappropriate" development in the Green Belt. This was, in my view, a major factor which led to the appeal being allowed.

Land North of Kennel Lane, Billericay (APP/V1505/W/22/3298599)(CD9.44)

- 6.66 This appeal, allowed on 09 December 2022, sought outline permission (with all matters reserved except access) for up to 200 homes in an undeveloped site in the Green Belt.

- 6.67 It was common ground that the appeal proposal constituted inappropriate development in the Green Belt. The Inspector also identified a moderate level of harm to the openness of the Green Belt and limited harm to the purposes of including land within it. No other harms were found.

- 6.68 It is also noted that the site was selected as a draft housing allocation in the Council's emerging Local Plan and, in the absence of both an up-to-date local plan and clear demonstration of a material change in circumstances which justifies a different conclusion to be reached in respect to the particular site, that evidence base weighed very heavily in favour of the appeal proposal.

- 6.69 I therefore consider there to be clear differences between this decision and the appeal proposal in terms of the harms identified and the factors which were weighed in the balance.

- 6.70 Concluding on the above, I do not give any weight to these other appeal decisions as none draw direct comparisons to the appeal proposal. It is also well established in the planning system that each application/appeal must be considered on its own merits.

Provision of Care Home

- 6.71 It is common ground that paragraph 21.2 DLP Proposed Submission outlines that a planning objective for Brookmans Park is to improve the choice of housing, including specialist

accommodation such as a care home. There is no doubt that the provision of the proposed 60-bed care facility would represent a benefit of the scheme.

- 6.72 On 6 January 2023, the Council contacted the Appellant to correct paragraphs 8.32 and 8.33 of the main parties Statement of Common Ground as it transpired that they did not in fact include the full list of extant planning consent for C2 care homes in the local authority area or completions. To-date there has not been a response from the Appellant.
- 6.73 Total extant planning consents for C2 care homes across Welwyn Hatfield comprise:
- Plot 6000, Hatfield Avenue, Hatfield AL10 9UA (6/2017/0550/MAJ)
 - Land adjacent to 45 Broadwater Road, Welwyn Garden City AL7 3AX (6/2018/3292/MAJ)
 - St Andrews, Great North Road, Welwyn Garden City AL8 7SR (6/2020/1249/FULL & 6/2021/0249/FULL)
 - Oakview Lodge, Princes Avenue, Welwyn Garden City AL7 4DT (6/2020/0826/FULL)
 - Former Shredded Wheat Factory, Welwyn Garden City, AL8 6UN (6/2018/0171/MAJ).
- 6.74 Between 1 April 2016 and 31 March 2022 there have been four care home developments:
- Queen Elizabeth II Hospital, Howlands, Welwyn Garden City, AL7 4HQ (6/2015/2132/RM)
 - Land at Bericot Way, Welwyn Garden City, AL7 2RT (N6/2014/2462/MA) – this was re-provision for Hyde Valley House which closed in 2018.
 - Oak Cottage Residential Home, 4 Wilkins Green Lane, Hatfield AL10 9RT (S6/2014/1091/FP)
 - Knebworth Care Home, 59 London Road, Woolmer Green, SG3 6JE (6/2017/1064/FULL).
- 6.75 In terms of need for new specialist needs housing, the 2017 Strategic Housing Market Assessment (CD6.09) established a need for 340 new care home bedrooms for residential or nursing care, to meet the specific needs of older people who are no longer able to live independently over the plan period 2013-32. However, this has since been updated to take account of the 2018-based population projections and reflect the need over the new plan period 2016-36. Examination document EX203A (CD6.59) indicates a need for 201 new care home bedrooms, under the 2018-based alternative migration variant projections.
- 6.76 151 care home bedspaces have been completed since the beginning of the plan period (since 2013) and a further 265 are expected to be delivered over the next five years. A table setting this out is included as a Core Document (CD6.130).
- 6.77 While the identified need for care facilities in the Borough is due to be exceeded over the next five years, it is appreciated that such provision has not occurred and is not due to occur in Brookmans Park and a planning objective of the DLP Proposed Submission is to provide care home provision in Brookmans Park.
- 6.78 Considering all of the above factors, I attach significant weight to this benefit.

Provision of Scout Hut

- 6.79 It is noted from the Scouts official website that a group currently exists within Brookmans Park (North Mymms) and there are 9 others in nearby villages and settlements including Colney Heath, Hatfield, Newgate Street and Potters Bar⁵.
- 6.80 The appellant's SoC states that evidence will be provided on this benefit. In my view such a facility would provide a social, recreational, and cultural benefit to the community including future residents arising from the development. However, in the absence of any evidence of need, I attribute only very limited positive weight toward such provision.

A biodiversity net gain of 15%

- 6.81 The development seeks to provide a biodiversity net gain of 15% - achieved through a financial contribution for biodiversity offsetting and secured within a S106 Agreement.
- 6.82 A financial contribution of £302,349 has been agreed between the main parties for biodiversity offsetting. Subject to terms/clauses being agreed to ensure this sum is appropriately implemented within the S106 Agreement, this benefit would attract positive weight.
- 6.83 The provision for at least 10% biodiversity net gain contained in the Environment Act 2021 has not yet been enacted and therefore these benefits exceed the more modest requirement contained in Policy R11 of the District Plan, Policy SADM16 of the DLP Proposed Submission, and paragraph 174 of the NPPF. Subject to this being secured in a S106 Agreement, I give moderate weight to this benefit.
- 6.84 The degree of weighting I have attributed to this benefit is also informed by a recent appeal decision on land near to Bishop's Itchington, Stratford on Avon, Warwickshire (Appeal Ref: APP/J3720/W/22/3292579)(CD9.50) whereby the Inspector attached significant weight to a biodiversity net gain of 96.5%.

New green infrastructure

- 6.85 The appellant's SoC states that one of the scheme benefits is the provision of green infrastructure. While the application is in outline with all matters reserved except for access, it has been supported by a Landscape Masterplan (CD1.29) which shows the location, type, and extent of green infrastructure. This includes tree and shrub planting, wildflower meadow, play space and public open space.
- 6.86 It is however important to note that both local and national planning policy requires landscaping to be a fundamental part of development proposals.
- 6.87 Policy D8 of the Council's District Plan states that all development, other than changes of use of buildings, should include landscaping as an integral part of the overall design. High quality public space and landscaping is also a key design principle under Policy SP9 of the DLP Proposed Submission.
- 6.88 In terms of national policy, paragraph 130 of the NPPF outlines that planning decisions should ensure that developments are visually attractive through a number of design

⁵ <https://www.scouts.org.uk/groups/?loc=brookmans%20park>

measures including effective landscaping. Paragraph 131 also emphasises the importance of tree planting in planning decisions.

- 6.89 The existing condition of the site is also a relevant factor. The site is undeveloped block of agricultural grassland, and the proposal will result in the loss of all the existing grassland habitat, as well as a loss of biodiversity on-site.
- 6.90 While paragraph 134 of the NPPF outlines that significant weight should be given to development which reflects local design policies and government guidance on design (of which landscaping is relevant), it is a salient point that such a matter is reserved for future consideration. Additionally, other types of green infrastructure such as public open space and play space are already a requirement under the Council's Planning Obligations SPG 2012 (CD8.15).
- 6.91 Having regard to all the above factors, this is not a consideration to which I attach positive weight. I contend that there would be an absence of harm.

Economic benefits

- 6.92 The appellant's SoC includes economic benefits as one of the scheme benefits but does not provide any explanation as to what these would be.
- 6.93 The proposal would have an economic benefit during the construction and landscaping phase by creating employment opportunities on site and indirectly supporting business through the supply chain. However, the economic benefits in terms of construction would be short-term and therefore limited. Local business would derive some long-term economic benefit from the future occupiers spending on goods and services, but this would also be limited in scale.
- 6.94 It is noted that Paragraph 81 of the NPPF states that significant weight should be placed on the need to support economic growth and productivity. In my view, this needs to be read in the context of Chapter 6 of the NPPF. While residential development may provide some economic benefits, that is less central to creating a strong, competitive economy than growth in the commercial and industrial sectors.
- 6.95 Based on the type and scale of the development, it is my opinion that this consideration should attract limited weight in favour of the proposal.

A package of S106 measures

- 6.96 As set out in the agreed Heads of Terms, the development would be subject to both financial and non-financial contributions.
- 6.97 All financial contributions (save for a biodiversity offsetting sum to provide net-gain) are necessary to mitigate the impact of the development on local infrastructure, services, and facilities, and are not considerations to which I attach positive weight.
- 6.98 Non-financial obligations comprise affordable housing; self-build housing; on-site open space, play space and SUDS management and maintenance; provision of the scout hut; a travel plan; and highway works. I have addressed and attributed relevant weight to many of these obligations already in this proof. The other outstanding obligations such as SUDS management and maintenance; a travel plan; and highway works are deemed to be

necessary to mitigate the impact of the development on the environment and infrastructure and are not considerations to which I attach positive weight.

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 conflict with the District Plan, the proposed development does not accord with the development plan of the Council.
- 7.3 The NPPF is a material consideration in the determination of this appeal. Under paragraph 11(d), the policies most important for the determination of the appeal are deemed out of date by reason of the housing land supply shortfall. This requires the decision-maker to consider whether the application of policies in the NPPF provide a clear reason for refusing the development proposed. One of the key policies in the NPPF (relevant in this case) is land designated as Green Belt.
- 7.4 I consider that the conflict with Green Belt policy in the NPPF provides a clear reason for refusal. The NPPF says that the fundamental aim of Green Belt policy is to keep land in the Green Belt permanently open.
- 7.5 Paragraph 148 of the NPPF outlines that it should be ensured 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 by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
- 7.6 The proposal would constitute inappropriate development in the Green Belt, result in a loss of Green Belt openness and conflict with one of the purposes of including land in the Green Belt – being the failure to assist in safeguarding the countryside from encroachment. In accordance with the NPPF, substantial weight must be given to this harm. I consider that the scale of substantial harm is high end.
- 7.7 Added to this is “any other harm” resulting from the proposal. This comprises: harm to the character of the site and area which carries substantial weight against the appeal proposal; failure to contribute positively to biodiversity which, in the absence of a S106 agreement securing the terms of biodiversity offsetting, carries substantial weight against the appeal proposal; and, in the absence of a S106 Agreement, the failure to ensure that the appeal proposal would mitigate the impact on local services, facilities, and infrastructure, which carries substantial weight against the appeal proposal.
- 7.8 The “other considerations” advanced by the Appellant are listed above in paragraph 6.1. I acknowledge that the contribution of the appeal scheme to market housing and self-build housing each carry substantial weight, and the provision of affordable housing (at a level above that required by policy) carries very substantial weight. I also acknowledge that the proposed care home provision in the area carries significant weight. I give moderate weight to the proposed 15% biodiversity net gain (subject to S106 Agreement), limited weight to the economic benefits arising from the appeal scheme, and very limited weight to the provision of the proposed Scout Hut and renewable energy infrastructure. The Appellant’s contention that the appeal site will make a limited to no contribution to the Green Belt purposes is clearly not agreed (harm is identified in that respect). I do not give any positive weight to the assessment of Inspector Middleton in examination document EX273, the contention that the appeal site is in a “highly” sustainable location, or other appeal

decisions. The provisions of new green infrastructure and the package of S106 measures (other than those already agreed to be benefits) would result in an absence of harm in those respects.

- 7.9 Notwithstanding the benefits of the appeal proposal taken together, I consider that these would not “clearly outweigh” the harms such that very special circumstances do not exist for the purposes of paragraph 148 of the NPPF.
- 7.10 I am mindful that a S106 Agreement would mean that the identified harms in terms of loss of biodiversity and impact on local services, facilities, and infrastructure, would no longer apply. Given that this may, by the time of the inquiry, be the case, I have re-visited my assessment of the planning balance leaving these additional harms out of account. I remain of the view that the benefits of the appeal proposal taken together would still not “clearly outweigh” the harm to the Green Belt and character of the site and area.
- 7.11 It is my view that the application of Green Belt policy provides a “clear reason for refusing” the development proposal under NPPF paragraph 11(d)(i).
- 7.12 I therefore conclude that the proposed development conflicts with the development plan, and material considerations would not justify the grant of permission.

8 Conclusion (summary proof)

- 8.1 The proposal seeks outline permission for up to 125 dwellings, a care facility for up to 60 bedrooms (Use Class C2), and a scout hut (Use Class F2), on Land to the North of Bradmore Way, The Brookmans Park Estate. The application was refused by the Council for six reasons.
- 8.2 My evidence relates to the Planning Balance and should be read in conjunction with the proofs of evidence prepared by Robert Browne, who speaks to reasons for refusal 1 (excluding very special circumstances) and reason for refusal 2, and Matthew Wilson who speaks on the topic of the Council's emerging Local Plan with particular reference to the appeal site as a proposed allocation. In those respects, I adopt and rely upon their conclusions.
- 8.3 Since the appeal was lodged, the appellant has submitted further information to try and address reasons for refusal 3, 4, 5 and 6. Reasons for refusal 3 has been addressed subject to planning obligations (which have been agreed) and planning conditions, and reason for refusal 5 has been addressed subject to conditions. On this basis, the Council confirm withdrawal of these two reasons for refusal. Regarding reason for refusal 4, a biodiversity offsetting sum has been agreed between the main parties. However, the mechanism to ensure this sum is appropriately enacted has not been agreed between the main parties in the S106 Agreement which is still in draft. Currently, this reason for refusal stands. Regarding reason for refusal 6, this would be satisfied through completion of a S106 Agreement. However, as the S106 is still in draft, this reason for refusal stands.
- 8.4 S38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 8.5 Within the District Plan, the policies that I consider most important for the determination of this appeal are those directly referenced within the reasons for refusal (save for those policies on the now withdrawn reasons for refusal).
- 8.6 The relevant policies of the Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016 are those directly referenced within the reasons for refusal (save for those policies on the now withdrawn reasons for refusal). Having regard to the National Planning Policy Framework (NPPF) paragraph 48, the evidence of Mr Wilson considers that significant weight can be attributed to the applicable policies contained in it.
- 8.7 The Council is not able to demonstrate a five-year supply of deliverable housing sites and, therefore, the policies which are most important for determining the application are deemed to be out of date by virtue of footnote 8 of the NPPF. I am of the view that the application of Green Belt policy in the NPPF however provides a clear reason for refusing the development proposed, and therefore the "tilted balance" in paragraph 11(d)(ii) is not engaged.
- 8.8 It is common ground that the development comprises inappropriate development in the Green Belt. The Proof of Evidence of Mr Browne also assesses that the appeal scheme would cause significant harm to Green Belt openness and represent a considerable encroachment into the countryside.

- 8.9 Paragraph 148 of the NPPF outlines that it should be ensured 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 by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
- 8.10 I attach substantial weight (at the high end of the scale) to the harm which would arise to the Green Belt from the appeal scheme in terms of inappropriateness, loss of openness and conflict with purpose 138(c) of the NPPF.
- 8.11 In terms of “any other harm”, having regard to the Proof of Evidence of Bobby Browne and the policy conflicts I have identified, I give substantial weight to the harm which would be caused to the character of the site and area. Furthermore, in the absence of an agreed S106 Agreement, I also give substantial weight to the harm which would be caused in terms of loss of biodiversity and substantial weight to the harm which would be caused by virtue of the adverse impacts on services, facilities, and infrastructure as a result of the appeal scheme.
- 8.12 The appellant’s Statement of Case sets out a number of “other considerations” on which they rely to “clearly outweigh” the harm identified and demonstrate very special circumstances.
- 8.13 I acknowledge that the contribution of the appeal scheme to market housing and self-build housing each carry substantial weight, and the over-provision of affordable housing carries very substantial weight. I also acknowledge that the proposed care home provision in the area carries significant weight. I give moderate weight to the proposed 15% biodiversity net gain (subject to S106 Agreement), limited weight to the economic benefits arising from the appeal scheme, and very limited weight to the provision of the proposed Scout Hut and renewable energy infrastructure. The Appellant’s contention that the appeal site will make a limited to no contribution to the Green Belt purposes is clearly not agreed (harm is identified in that respect). I do not give any positive weight to the assessment of Inspector Middleton in examination document EX273, the contention that the appeal site is in a “highly” sustainable location or other appeal decisions. The provisions of new green infrastructure and the package of S106 measures (other than those already agreed to be benefits) would result in an absence of harm.
- 8.14 Notwithstanding the benefits of the appeal proposal taken together, I consider that these would not “clearly outweigh” the harms such that very special circumstances do not exist for the purposes of paragraph 148 of the NPPF.
- 8.15 I am mindful that a S106 Agreement would mean that the identified harms in terms of loss of biodiversity and impact on local services, facilities, and infrastructure, would no longer apply. Should this occur, I remain of the view that the benefits of the appeal proposal taken together would still not “clearly outweigh” the harm to the Green Belt and character of the site and area.
- 8.16 It is my view that the application of the Green Belt policy provides a “clear reason for refusing” the development proposal under NPPF paragraph 11(d)(i).
- 8.17 I therefore conclude that the proposed development conflicts with the development plan, and material considerations would not justify the grant of permission.
- 8.18 I invite the Inspector to dismiss the appeal.