

APPEAL BY AURORA PROPERTIES (UK) LTD

LAND NORTH OF BRADMORE WAY, THE BROOKMANS PARK ESTATE,

BROOKMANS PARK, HERTFORDSHIRE

Appeal Ref: APP/C1950/W/22/3307844

CLOSING SUBMISSIONS

ON BEHALF OF THE APPELLANT

INTRODUCTION

1. This is an appeal into a proposal for market, affordable and self-build housing, a care home and a scout hut on an exceptionally well contained site on the edge of major settlement. The Council has no 5YS of housing land, an enormous unmet backlog of affordable housing, and a huge housing waiting list. There is no up-to-date development plan of any kind, the last local plan was adopted 18 years ago and that plan had an end date over a decade ago. There is huge uncertainty over whether the emerging plan will ever be adopted, the examination process alone which has taken 6 years already because the Council have refused to accept the need to meet its own need, and refusal to release an adequate amount of land from the Green Belt, And a steadfast refusal to release sites identified by the Council as causing high harm to the Green Belt, including one for 400 homes at Brookman's Park.
2. In contrast the appeal site causes far less harm to the Green Belt. Indeed, having assessed it the Council initially identified the site as suitable for housing before the local politics got in the way. The site is almost completely enveloped by huge trees, the landform and the existing settlement. The local plan inspector has endorsed the site as a suitable site for release. It is within easy walking distance of a main line railway station with regular services into London within circa 30 mins, within easy walking distance of a healthy and attractive collection of local shops and services, within easy walking distance of a secondary school and with a primary school on its doorstep.
3. There has been a recent appeal in the last two years allowed for a very similar proposal on a greenfield site in the Borough at Colney Heath. That site is far less well contained, in a vastly inferior location in terms of access to shops, facilities and schools. The Colney

Heath site was never identified as suitable for development or release from the Green Belt in any local plan process. Less still identified as suitable for housing by the Local Plan inspector. The appeal site is vastly superior to that site physically, visually, locationally and in terms of recognised suitability as an allocation in the local plan process.

4. The case is favour of allowing this appeal at Brookman's Park is utterly overwhelming. There is absolutely no justification whatsoever for this proposal to have been refused. And DE oral evidence demonstrates that what has sadly taken place here is a completely political decision, divorced entirely from the planning evidence.
5. The fact the Government is now proposing to remove the need for any Council to have to meet any of its housing need in the Green Belt means there is no prospect this plan will be adopted. The Government has even gone as far as to introduce a new procedure to allow authorities such as WHBC, who have not yet adopted their plan, to go back and prepare a new plan within 2 years, with a new special protection requiring it to demonstrate only a 4 year housing land supply for that period.
6. It is what councillors in Welwyn have been praying for. And to imagine the Council will now adopt a plan which releases 6,000 new homes when it is on the cusp of being given the opportunity to wipe all those allocations away, is utterly fanciful. Its like all their Christmas' have come at once.
7. This assessment of this appeal proposal begins with the development plan. Only there isn't one. Not a real one, which is up-to-date and meeting the housing needs of the residents of this Borough. The Council has got away with not having an up-to-date plan for over a decade and it looks highly certain it is about to get away with it for even longer.
8. The needs of its own residents are not being met. They are not being met on a truly monumental scale. Even the emerging Local Plan comes nowhere near to address the already existing huge shortfall in affordable homes. This appeal will not solve the Council's problems. But with its high level of affordable housing provision, well above policy requirements, and with self build and a care home it is at least a start.
9. If this appeal is dismissed, we might as well give up. The politicians will have outwitted those in housing need once again. And in the face of what the Council witnesses accepted is a housing crisis in this Borough, that would be not just unfortunate. It would be desperately sad.

THE DEVELOPMENT PLAN

10. Section 38(6) of the Planning and Compulsory and Compulsory Purchase Act 2004 ("the 2004 Act") requires applications to be determined in accordance with the Development

Plan unless material considerations indicate otherwise. In this case, this is the Welwyn Hatfield District Plan (“WHDP”) from 2005.

11. The 2005 adopted Local Plan (“LP”) is from bygone planning era. The housing target the plan sought to meet is derived from the Hertfordshire Structure Plan, adopted in 1998, some 25 years ago. I was not even a barrister in 1998. I was still a student. I am now 50.
12. The LP adoption predates even the first iteration of the National Planning Policy Framework (“the NPPF- 2012”) by 7 years. That NPPF was itself published 11 years ago. The High Court has confirmed the NPPF introduced a “*radical policy change in respect of housing provision*” (Gallagher Estates Ltd & Lioncourt Homes Ltd vs Solihull Metropolitan Borough Council [2014] EWHC 1283 Admin;¹). Which makes the adopted WHDP now painfully out-of-date.
13. The Development Plan has no currency whatsoever in terms of a decision being made in 2023. Self-evidently nor has it had any such value for over a decade, given it was only ever intended to address development needs up to 201². Yet it formed the foundation of the Council’s first reason for refusal, wherein the Council relied upon Policy GBSP1 of the painfully out of date WHDP.
14. The policies in the WHDP are all out-of-date. The housing requirement is very obviously out-of-date. Which in turn self-evidently makes all the settlement boundaries out of date: see Lord Carnwath at paragraph 64 in Suffolk Coastal v Hopkins Homes: Richborough Estates v Cheshire East [2017] UKSC 17.³ As this is an authority area where undeveloped land is almost entirely Green Belt, the Green Belt boundaries are also out of date as they are drawn to reflect the interface between settlement boundaries and the countryside. The whole plan and everything in its is out of date. Which is why the plan should be given virtually no weight
15. The Green Belt boundaries in Welwyn Hatfield Borough were drawn up in 1993. That is 30 years ago. Those boundaries also determine the extent of settlements. It is self-evident that these boundaries are preventing WHBC from meeting its housing need. They are therefore plainly out of date. DE could not (or would not) answer in XX whether these boundaries are out-of-date. His responses were not credible and reveal the Council and he in particular in his report and proof of evidence has approached this case on a tactical rather than a planning basis.
16. The Council’s apparent defence to this was to abandon reliance on the only Green Belt policy left in the Development Plan. In XX of RG, the Council sought to highlight the fact that DE does not seek to rely on that policy in his proof of evidence. That the Council

¹ CD11.06

² see paragraphs 1.15 and 2.17 of the WBDP for confirmation of the end date

³ CD11.05.

does not seek to defend the policy it relied upon in its first reason for refusal demonstrates just how much trouble the Council is in with regard to Section 38(6) PCPA 2004.

17. But the problems with the adopted Development Plan do not end with all it's the out-of-date boundaries. Many of the policies in the Development Plan have not been saved. This has direct relevance to this case. There was a policy which allowed development in the Green Belt if Very Special Circumstances could be demonstrated: policy RA1 *Development in Green Belt*. But it was not saved in the saving direction of 2007. The policy was consistent with national Green Belt policy at the time has remained inconsistent with all version of the NPPF. That is because the VSC test has always been in there in national policy for what is now several decades. But of course, those local plan saving letters issued by the Secretary of State in 2007 were not designed to allow out of dates plans to run on as if they were proper up-to-date local plans.
18. The Secretary of State local plan saving letters were designed merely to ensure there was at least some basic policy coverage. Indeed, as everyone knows these saving letters sent in 2007 emphasised how important it was for LPAs to progress full Local Development Frameworks ("LDF") with Core Strategies, Development Management DPD and Allocation DPDs as soon as possible. Remember them? And how important it was for LPAs to ensure the LDF was consistent with Regional Strategies – remember those too? Well WHBC achieved none of that. But it is that letter with this historic terms in them, are the only reason the Council can rely on Green Belt at all. And of course, despite relying upon the saving letter, the Council have not mentioned it in their evidence or placed it in the Core Documents. That will be because the contents are excruciatingly embarrassing for the Council. It reveals just how painfully out of date the WHDP is.
19. The absence of a Very Special Circumstance test in the development plan therefore makes the Green Belt Policy in Welwyn Hatfield inconsistent with the NPPF: it does not allow for development where Very Special Circumstances exist. The development plan plainly should. The Green Belt Policy that the Council relies upon in its first Reason for Refusal ("RfR") is therefore out of date for that additional reason as well.
20. So to recap, the Council's Green Belt boundary is out of date and its Green Belt policy is inconsistent with the NPPF and out of date.
21. But this policy is not just out-of-date for being inconsistent with the NPPF. As, DE was right to accept in XX it is, in fact, *severely* out-of-date.
22. Beyond that the Plan is out-of-date for not being based on up to date housing requirements, it is out of date for being inconsistent with the NPPF I multiple regards, not least it is not an up to date plan (see NPPF para 11 and 12).
23. It is also common ground between the main parties that the adopted LP is deemed out-of-date by virtue of footnote 8 of the NPPF because there is no 5YS of housing land. As

this site is in the Green Belt the tilted balance does not apply. Instead it is the statutory test in Section 38(6) of PCPA 2004 which applies.

24. The Council should not have relied upon the adopted LP in its reasons for refusal. That was plainly wrong, especially as their witness has now abandoned any reliance up on it
25. The difficulty for the Council of course is that it has nothing else. WHBC is in that exclusive group of authorities which has a local plan so out-of-date that it has no regard to the world of modern planning policy because not only does adoption of the 2005 plan predate even the first version of the NPPF (2012), but its actual end date predates the NPPF (2012). It has no regard to the need to boost significantly the supply of housing, nor the presumption in favour of sustainable development, nor the requirement for development plans to be up-to-date. Indeed, it was adopted before the whole raft of other policy initiatives which the NPPF introduced such as policy to address the housing needs of the whole community, to meet the needs of older people or meet self-build housing need.
26. As will be submitted shortly, this failure in plan-making has consequences, severe consequence, for real individuals and families. They are not just missing numbers. Each and every one is in need of suitable housing. They are individuals, families, who have been let down by this local authority's inability to have in place an up-to-date development plan.

The Relevance of the Green Belt Boundaries in the Local Plan

27. One only has to look at the scale of Green Belt release proposed in the emerging Local Plan ("eLP"), with land to provide in excess of 6,000 dwellings proposed to be removed from the Green Belt, and that is in an emerging plan that does not even seek to achieve the Full Objectively Assessed Housing Need for market and affordable housing ("FOAHN"), as evidence that the current existing GB boundaries are *woefully* out-of-date. The Councils' witnesses cannot run away from that simple fact. Both Mr Wilson (MW) and DE rightly accepted in XX that the scale of the proposed GB release in the eLP is a material consideration in this appeal.
28. Further evidence that the existing GB boundaries are out-of-date is provided by virtue of the fact that the Council itself has granted permission for a site currently in the Green Belt as defined by Policy GBSP1 of the adopted Local Plan (Application S6/2015/1342/PP at Land to the north east of King George V Playing Fields, Northaw Road East, Cuffley) on the basis that Very Special Circumstances ("VSCs") exist. Mr Gray (RG) was therefore right to suggest in both his written⁴ and oral evidence that the policy related to the GB boundaries in the adopted LP (Policy GBSP1), referred to in the first RfR, should be given reduced weight as a consequence. Further, and as set out above,

⁴ table under para 3.12 of his main Proof.

that point is only furthered by the fact that there is no saved policy referring to VSCs in the adopted LP (Policy RA1 was not saved), as the LP inconsistent with the Framework.

29. What this means is the decision maker is entitled to give reduced weight to settlement boundaries and Green Belt boundaries defined in the adopted local plan. In other words, the Green Belt boundary is out-of-date and should be afforded less weight in the planning balance. The NPPF says that substantial weight should be given to the protection of the Green Belt. But the extent of the Green Belt in Welwyn is plainly out-of-date, and in such circumstances **the harm** arising from development contrary to it should be given less weight: as per Lord Carnwath (ibid).
30. Alternatively, the Inspector can treat the seriously out-of-date nature of the plan and the Green Belt boundaries as material considerations relevant to the Very Special Circumstances needed to clearly outweigh the substantial weight to be given to Green Belt harm.
31. Either way, it would be illogical to treat the Green Belt boundaries in the WHDP the same as those of an up-to-date plan. To do otherwise risks the prospect of Local Authorities in Green Belt areas enjoying no real consequence for not having an up-to-date development plan.

THE NPPF

32. Section 38(6) PCPA 2004 requires that the proposal be made in accordance with the Development Plan unless material considerations indicate otherwise. There are ample material considerations here, not least of all the fact the plan is completely out of date. But the key material consideration is the NPPF. That is the only way in which the VCS test can be imported into the decision making in this case.
33. The NPPF requires substantial weight be given to any Green Belt harm. But the NPPF also requires Development Plans to be up to date, which is plainly not the case here. The only way to recognise this, is to accept that substantial weight is given to the harm to the Green Belt by reason of inappropriateness and any other harm. It would be potentially wrong to give anything other substantial weight to harm to the Green Belt, given what the NPPF dictates to decision makers to do, even though its boundaries are plainly out of date and the plan which defines the Green Belt is painfully out of date.
34. Instead, the inspector is invited to take into account all of the above facts about the plan being out to date, it not addressing housing needs, failing to deliver affordable housing and having settlement boundaries and Green Belt boundaries which are plainly out of date the factors which support a conclusion that VSC are made out here. The VSC is addressed below. It points overwhelming in favour of the proposal. But the key point here is that the failure to have an up-to-date development plan and for it to be so out-of-date

must count towards the VSC case – otherwise there is no consequence for the Council in terms of having such an out-of-date plan. Other Inspectors have made plain such delays and the consequence for housing delivery are relevant to the VSC case— please see Colney Heath Decision Letter para 49 (“DL49”) in the VSC part of the decision from para 45 onwards CD9.28; Kennel Lane, Billericay DL58 CD9.44; North Lane, Huntington, York IR197 & SoS DL27, CD10.12.

35. The Council seem to now be arguing the development plan is irrelevant. All that matters is the VSC test. But that would be ignore entirely the significance of the development plan in decision making and perilous state of the Council’s painfully out of date development plan.

THE WEIGHT TO GIVE EMERGING LOCAL PLAN

36. The Council’s answer to this desperate situation is to point to the emerging Local Plan (“eLP”). It does not meet the FOAHN and has been reduced to 10 years contrary to the PPG. It will not properly address the acute housing and affordable housing needs. It will not solve the huge shortfall in the 5YS or the affordable housing waiting list or backlog. It is not a reason to refuse this appeal. The Council have not raised any argument that the proposal is premature or will prejudice the eLP.
37. Yet the Council want the Inspector to give substantial weight to the eLP in the hope she will dismiss this appeal. The Council officers suggest it will soon be adopted. But that adoption looks wholly unlikely given the surrounding circumstances. Circumstances which as MW accepted are material consideration in the determination of this appeal.
38. The Council rely on paragraph 48 of the NPPF:

“48. Local planning authorities may give weight to relevant policies in emerging plans according to:

 - a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
 - b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
 - c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)”
39. That list is about factors to be considered where a decision maker is looking to give weight to an emerging LP. The Council say the eLP is at an advances stage, the objections have been heard but it can be assumed they are resolved because the inspector has accepted the Main Modifications and likewise the inspector can have only reached that point on the basis that the eLP is consistent with the NPPF.

40. But to accept that and give the eLP substantial weight would be to ignore the reality of the situation. Firstly, the local plan inspector has not provided his report into whether the plan is sound and how all the many objections will be resolved. The Main Modifications (“MM”) are so extensive and far reaching there ought to be an examination hearing into them. The MM contradict what the Council has said and what it said in a letter to the Prime Minister over the high harm sites. There are highly contentious local elections in 2 months time, there are radical new proposed changes to the NPPF, other LPAs are abandoning or suspending their plans in droves, and the Council is plainly not committed to adopting the plan, as made plain in the meeting on 20 December. It was also made plain in that meeting that the Council has this appeal very much in mind in terms of what it is doing now.
41. Even if the eLP is given significant weight it is equally important to note that it will not solve the acute 5YS and affordable housing problems in the Borough.
42. But RG has it right when he makes clear he gives the eLP little weight because of these surrounding circumstances. And it is important to understand them in detail, before address what weight should be given to it
43. The story of the eLP is a sorry saga indeed. Work on the evidence base for it commenced as long ago as 2005. Yes. 2005. But it was stalled or otherwise delayed on numerous occasions. It was finally submitted for examination almost 12 year later in May 2017. That is not a Council’s which is keen to adopt a plan. Quite the reverse. It is an authority trying its very best not to adopt a plan. And why – well because it no doubt assumed, correctly, that as a predominantly Green Belt authority it would see far less new development by not having a plan than if it did.
44. But even that 12 year delay to submission is an extraordinary 6 years ago. Incredibly, that examination is still ongoing, and is by far the longest running in the country.⁵ It is a truly unique situation and its delay is plainly a material factor which can form part of the Appellant’s VSC case. As noted above, other Inspectors have made plain such delays and the consequence for housing delivery are relevant to the VSC case – please see Colney Heath DL49 CD9.28; Kennel Lane, Billericay DL58 CD9.44; North Lane, Huntington, York IR197 & SoS DL27, CD10.12
45. The eLP is being examined against the 2012 NPPF, which has been superseded 3 times. And soon to be a fourth time. Paragraph 47 of the NPPF 2012 requires LPAs to meet their full objectively assessed housing need (“FOAHN”) not their “local housing need” calculated using the standard method, which was introduced with the 2018 update to the NPPF.

⁵ [plans-strategic.xlsx \(live.com\)](https://www.plans-strategic.xlsx.live.com).

46. Such is the length of time that the examination has been ongoing, that the FOAHN has changed a number of times since the eLP was submitted. It has now been confirmed by the examining Inspector (Inspector Middleton) as 15,200 dwellings (760 dpa) over the period (2016 – 2036). This compares with 888 dpa under the Standard Methodology.⁶
47. RG’s overview of the eLP proceedings to date in his evidence shines a light on this Council’s persistent and steadfast refusal to submit sufficient housing sites to meet its FOAHN, regardless of what the FOAHN number at the time.⁷ This is despite numerous requests from Inspector Middleton for it to do so, and his confirmation that:
 - i) exceptional circumstances exist for the Council to meet its FOAHN; and
 - ii) there are suitable sites to achieve the FOAHN available to the Council, including the appeal site, a point to which we will return.
48. Members of the Council have also sought to reduce the FOAHN to a number lower than the range identified by their own consultants.
49. Moreover, it is worth noting at this point that the Appeal Site has been found to be suitable for release from the Green Belt for housing in a number of the eLP evidence base documents, including:
 - (i) Housing Sites Selection Background Paper (June 2016);
 - (ii) Housing and Economic Land Availability Assessment (June 2019); and
 - (iii) Housing and Employment Site Selection Background Paper (2019).
50. It was also recommended for release from the GB as an additional allocation, to assist in making up the shortfall in dwellings identified by Inspector Middleton at that point in the examination, in Reports to meetings of the Council’s Cabinet Planning and Parking Panel (“CPPP”) of 23rd and 29th January 2020. The predictable outcome of those meetings was that Members of the CPPP rejected the recommendations of their Officers, instead resolving to recommend to the Council Cabinet a strategy that would deliver only 13,076 dwellings over the plan period, nearly 3,000 short of the then FOAHN of 16,000 dwellings.
51. DE correctly accepted in XX that the fact the site had been found suitable for inclusion in the eLP is a relevant material consideration in this appeal and must be relevant to the VSCs case in this appeal. It is notable that this a factor that is missing from his own written assessment of the VSCs, a point we will return to.
52. In order to assist the Council in meeting its FOAHN, Inspector Middleton took it upon himself to assess sites that had passed the site selection process but had not been formally submitted for inclusion in the eLP by the Council and provide his findings on their suitability. As RG noted in both his written and oral evidence, it is highly unusual for a

⁶ EX274 (CD6.72) para 38.

⁷ Section 5 an Appendix RG4 of RG’s main PoE.

LP Inspector to take such a step, and it demonstrates both Inspector Middleton's frustration at the Council's refusal to put forward sufficient sites and his desperation for meaningful progress to be made on the eLP.

53. Inspector Middleton's findings on the appeal site are set out in paragraphs 115 – 121 of EX273, which is before the inquiry.⁸ They are, we submit, highly germane to this appeal. In summary:
- a. He noted the level of containment provided by Peplins Wood and the railway line to its western and much of its northern side and the further landscaping along the eastern boundary with the Golf Course and the settlement edge to the southern boundary.
 - b. He concluded that the Appeal Site's development would not result in coalescence between Brookman's Park and Welham Green.
 - c. He found that the GB harm from development of the Appeal Site could have been lower than the wider parcel of land it was assessed as part of in the Council's Stage 3 GB Study, had it been separately assessed. The wider parcel (P66) was found to have moderate -- high harm, with a smaller parcel comprising the appeal site (P66a) and some additional land to north, found to be of more limited harm.
 - d. From a movement perspective, he found that this is a sustainable location for residential development; and
 - e. He concluded that the site could contribute to the five-year supply of housing, it being obviously deliverable.
54. In XX DE accepted that these findings of the Inspector are supportive of it being suitable for housing. He also agreed that they are material considerations in the context of this appeal and could contribute to the appellant's VSCs case. Clearly the findings of the Inspector examining the Local Plan on the suitability of this appeal site for release from the GB and development for housing are highly relevant to the Inspector in determining this appeal, and RG is right to refer to them as such in his evidence and to give them **substantial weight**.
55. It is notable that DE avoided *any* discussion of the relevance of these findings in his written evidence. His suggestion that they be given no positive weight in the Very Special Circumstances balance is untenable. A previous Inspector's findings on the same Site for the same proposed use is highly relevant to the decision that this Inspector has to make. The fact these findings were made by a senior Planning Inspector in June 2021, less than two years ago makes them exceptionally relevant. And the fact they are made in the context of the Council proposing a plan which does not seek to address its housing needs, but where the Local Plan Inspector himself identified this as a suitable site to meet that need, makes them fundamental. Yet DE said nothing about them in his Proof of Evidence. That omission is startling. It exemplifies the Council's flawed approach to the NPPF 148 balance.

⁸ CD 6.71.

56. As already noted, the Council's Members ignored the recommendation of Officers to formally submit this - and other sites - to meet the FOAHN. It is testament to Inspector Middleton's desperation to make progress on the examination that he first accepted a reduced plan period of 10 years as a way out of the stalemate with the Council, meaning a reduction in the number of houses needing to be allocated in the Plan. Remarkably, the Council was unwilling to agree to even that compromise, instead resolving that it would only proceed with the plan on the basis of a yet lower housing requirement still, based on the Councillors' desire not to meet its full objectively assessed need (even for the 10-year period). The fact Inspector Middleton accepted that approach, and in so doing, acknowledged it is not fully consistent with the requirements of the NPPF 2012, shows pragmatism being stretched to the extreme.
57. So where are we now? The eLP has now proceeded to the point whereby the Main Modifications have been the subject of consultation, with that having concluded on 15th February 2023. Council officers have now told the Appellant that it proposes to send the consultation responses to the Inspector. Normally one might look at this recent sequence of events and assume the plan will be soon adopted. But that is not what is going on.
58. To understand why the plan has little prospect of being adopted one needs to understand both the background, recent events and the new proposed changes to the NPPF.

Background

59. The evidence shows:
 - i. This is a Council that has done everything possible **not** to meet its FOAHN throughout the lengthy examination process of 6 years. There can be no doubt about that.
 - ii. Principally this is because of the extent of land that would need to be released from the GB to achieve this. As an authority where nearly all of the undeveloped land is Green Belt, the release of land from the Green Belt for housing is inevitable. But the Council has been very reluctant to accept this.
 - iii. When the Inspector made clear there were exceptional circumstances to justify the Council releasing land from the Green Belt to meet its FOAHN, the Council sought to object to meeting its full FOAHN on the basis it would be inappropriate to release sites from the Green Belt.
 - iv. The Council has gone further though and sought to delete sites which were in the plan – these are the sites which its own analysis classified as high harm sites.
 - v. It has gone as far as to blatantly ignore the Inspector's request to consider other suitable sites to meet the FOAHN, to the point where the inspector was left

embarrassed; this left him with no alternative but to have to assess the sites himself, which is highly unusual if not unprecedented.

- vi. The Council has been prepared to delay the adoption of the plan for many years in its dispute with the Inspector over the extent of these Green Belt releases.
 - vii. In September last year, Cabinet members of the Council even went as far as writing to the Prime Minister to express their dissatisfaction with the Local Plan Inspector and his insistence on the Council meeting its FOAHN.⁹ In particular they sought to emphasise their unwillingness to release the high harm sites, which the Council itself had allocated in the Submission Plan, making clear that was a red line they were not prepared to ever cross. The letter ends with these words: “*we have made a decision to remove these sites and will not reverse that decision.*”
33. Therefore, what the evidence shows is that the Council has exhibited a consistent pattern of seeking to avoid and limit the extent of Green Belt release, and an especially strong desire not to release the high harm sites. The Appeal site is not a high harm site.

Recent Events

34. Yet in December the Council undertook an apparent volte face. It decided that it would progress the plan. And in so doing took the extraordinary decision to accept the high harm sites. Extraordinary because of what had been stated in the letter to the Prime Minister just 2 months earlier.
35. The language adopted in the letter to the Prime Minister is unequivocal. And as a consequence, either the letter stating they would not reverse their decision is a lie, or the suggestion they will adopt the plan is lie. It is one or the other. – but either way they are lying. That is why it is so important to have planning inquiries.
36. This of course coincided with the fact that this appeal was progressing to the stage where the proofs of evidence for this appeal were being prepared. The first CMC occurred on 5 December. Shortly after, the Council were made aware of what they were facing, including a detailed attack on their 5YS and an expose on their disastrous record on the delivery of affordable homes.
37. Facing such extensive criticism, the Council had to do something. So they did – they enacted a volte face of breath-taking proportions.
38. They held a meeting to add back into the eLP the three high harm sites with a yield of nearly 600 homes.

⁹ CD 6.116.

39. The nature of the meeting is highly relevant. It was called at very short notice. It was also held just three working days before Christmas.
40. The clear inference of including these high harm sites was to give the impression, that after years of battling against the inspector, the Council would now be looking to adopt the plan. We say inference because of course, officers and councillors have never themselves ever said they intend to adopt the plan. They have been very careful not to say that.
41. Indeed, what was said in the meeting was itself very telling. Despite seemingly progressing the plan, the officers and councillors repeatedly went out of their way to say that the proceeding to consultation on the modifications did not mean in any way that the plan would be adopted.
42. One has to ask, why on earth would they go to such extraordinary lengths to keep making this statement if there was a real intention to adopt the plan.
43. The answer is, of course, there is no such intention. As the notes from the meeting make clear, the desire to thwart forthcoming appeals was very clearly a key reason for what the councillors were doing. Indeed, this very appeal – the Brookman’s Park appeal – is singled out as being something which the councillors were aware of and focussed on in making their decision in that December meeting.
44. The timing here is critical. The appeal evidence was heard in February. The Main Modifications consultation has taken place, concluded during the appeal. The appeal has been delayed for two weeks to accommodate Mr Cannon’s desire to have time to prepare his closing submission. We understand the consultation responses have been sent, or are about to be sent to the Inspector. The appeal decision will be made in the next month or so. That takes us to the end of March or into April. That is before the local elections, when there is likely to be a change in the composition of this Council – and the plan abandoned by a new controlling body. But in any event, even if there is no change to the control of the Council – the Conservatives would be free to abandon the plan in the months after April. Nothing is capable of stopping them from doing that.
45. Would that be unusual. Well not at the moment as, nearly 50 authorities have already done that over the last 12 months, and that number rises by the week. All this council needs to do it get through this appeal to the determination stage – and then it can do the same – stopping both this appeal and the wider Green Belt releases in the eLP.
46. If the plan is not adopted, then of course the Council probably face speculative applications and its five year supply would worsen. That might have been seen as a problem. Until this happened....

The Proposed Changes to the NPPF

47. On 23 December, the Government proposed radical changes to the NPPF. These radical changes are only being proposed to address the 59 Rebel Tory MPs who have threatened to vote against the Government's Levelling-Up Bill unless the NPPF is amended to remove housing targets by expressly making the Standard Method housing figure for each authority area "*advisory*" only in all but the 20 largest cities.
48. The Government was very clear about what the changes will look like – it actually published them as track changes of precisely the changes it wishes to make.
49. This move to advisory housing targets had been widely anticipated prior to them actually being made.
50. The proposed changes to the NPPF are most pertinent for Green Belt authorities: they also make clear that no authority in England will be required to carry out a Green Belt Review; and also make clear no authority in England will need to meet any of its housing need on land within the Green Belt. These changes are radical and were not widely anticipated.
51. Those changes if adopted, would provide WHBC with the opportunity to prepare a plan that does not release land from the GB, or one that reduces the amount of GB release considerably. And the proposed changes also mean that it only needs to show a 4 year supply in the interim before a Green Belt release free plan can be adopted, with what will be no doubt a painfully low annual requirement. But the housing need wont go away.
52. As demonstrated by RG, a considerable number of LPAs have either paused or abandoned their plan-making processes since. It was therefore highly surprising that WHBC arranged a 'special meeting' of its CPPP, Cabinet and Full Council at very short notice, just prior to Christmas to approve the MMs, when at that point (5th December 2022) the SoS for Levelling Up Housing & Communities had already published a WMS advising of the change in approach in the then forthcoming NPPF prospectus. This strategy reinforces the point that the MMs consultation is an exercise in giving the **impression** of progress to assist in the Council's case in this and other appeals.
53. The Council are keen to point out RG gives the proposed changes to the NPPF little weight at this stage. And rightly so, as the consultation only finishes tomorrow. But it is the effect those changes are already having on LPAs keen to abandon their plans, especially in Green Belt locations, which makes it very legitimate to point out the relevance of proposed changes and its impact on local plan making in England, and which makes the prospect of this local plan being adopted look fanciful.
54. The Council are keen to give the impress the adoption of the eLP is only round the corner. But in fact it has a long way yet to travel if it ever gets adopted.

The Main Modification Procedure

55. Since the examination hearings closed in March 2021, there has been no opportunity for participants to comment on matters that have subsequently transpired, with all discussions having taken place solely between WHBC and the Inspector. That includes those that have a fundamental bearing on what the plan looks like, such as the reduced Plan period. The MMs consultation is also the first open public consultation since the Regulation 19 consultation in 2016. MW acknowledged in XX that there had already been objections to the MMs consultation at that point and that further objections were likely. These mean the examination ought to be re-opened and the plan may be challenged if that does not take place – the challenge of course would only occur once the plan is adopted because of Section 113 of the PCPA 2004. The examination would be an ideal opportunity for the authority to then abandon the eLP as the NPPF changes will then be in force – the Government has said the immediate tracked changes to the NPPF will be done quickly.
56. The to the eLP objections would also give WHBC’s Members the rationale for abandoning the plan at this late stage. MW accepted in XX that the context of the NPPF changes is relevant.

The 2023 Local Council Elections

57. MW also accepted in XX that planning is a political process. He agreed that there could be a change in control of this Council, with local elections in May 2023, before any decision to adopt the Plan, assuming a sound report from the Inspector. That in itself could lead to a decision not to adopt the Plan, which has been prepared by a different administration. Ms Molinaro in XX agreed that the loss of open agricultural fields around Brookmans Park would be unpopular with a large number of residents and would be a relevant matter at the forthcoming local elections.

Officers and Members Go Out of Their Way to Distance the MM from Adoption

58. As noted above, it was made expressly clear to Members of the Council at the Full Council meeting on 20th December 2022, and Members themselves made the point during the subsequent debate, that they were *only* voting to proceed to Main Modifications consultation. It was stated, time after time, that this in no way prejudices a future decision to adopt the Plan. In response to a question from a Member of the public, Councillor S. Boulton, who is Deputy Leader of the Council, stated:

“The papers published for the Cabinet Planning and Parking Panel set out the reasons why a decision is required now in relation to whether to proceed with the main modifications consultation. The Borough-wide statutory consultation would allow a six-week period for all residents and stakeholders to submit their views based on the Inspector’s main modifications. This does not prejudice any future decision of the

Council in relation to whether or not to adopt the plan, and I do not consider there to be any benefit in delaying the main modifications consultation; doing so would have significant implications, as set out in the report.”

59. There is a litany of other examples of this in the same meeting which similarly show that there is little to no commitment to the emerging plan. From the Full Council meeting on 20 December 2022:
- a. There were references to the fact that the ‘*Council can withdraw the Plan at a later date depending on the outcome of the consultation any further assistance from legislation – it also gives the Council a certain amount of time to consider any new legislation and consider the results of consultation*’¹⁰
 - b. MW himself said that the progression to main modifications in January and February would ensure the continued progression of the local plan examination ‘to keep the plate spinning.’ MW highlighted in the Full Council meeting that ‘*[it] allows the plan to be material in the determination of planning applications and at appeals.*’
 - c. MW says in terms that it would not prejudice a future decision on adoption, and that emerging reforms of the planning system may inform a decision on adoption.¹¹
 - d. Cllr Stephen Boulton said that it would ‘*of course be perfectly proper to withdraw a plan at a later date, depending on the outcome of the consultation and any further assistance on legislation.*’. He emphasises that the recommendation is ‘*not binding on members or the Council to adopt the Plan – and that will be for the Council to adopt at a later date*’.
60. MW was right to agree in XX that no certainty can be placed on the eLP being adopted.

Conclusion on the Weight to Give the eLP

61. The evidence overwhelmingly suggest the eLP will not be adopted by this Council, even if found sound by the examining Inspector. RG is therefore correct to give the eLP only limited weight as a material consideration in the determination of this appeal. The surrounding circumstances here, which AW accepted where a relevant material consideration make that abundantly clear, with factors which are not mentioned in the NPPF but are plainly highly relevant in this case.
62. Indeed, MW was candid enough to agreed in XX that it assists the Council’s case in this appeal to assume the Plan will be adopted. His presentation to WHBC’s Full Council meeting of 20th December 2022, at which the MMs were approved for consultation,

¹⁰ Fifth Paragraph (RG Rebuttal PoE Appendix RGR1, draft minute of 20 December 2022 37.2, fifth paragraph)

¹¹ Minute 13.19 of the transcript of the Full Council meeting of 20 December 2022.

specifically advised that “..... progressing to main modifications will strengthen the position of the Council at appeals. It won’t eliminate risks but will strengthen our position” (See minute 13.10 of the meeting transcript at Appendix 2 of Mr Gray’s rebuttal proof). He also referred specifically and solely to this appeal in that presentation (See minute 13.11).

63. The truth is, as RG’s written and oral evidence, which, notably, was not contested in his XX, demonstrates, there is *no* prospect of this Plan being adopted.

What if the emerging plan is adopted?

64. But even if it were adopted it will not overcome the fundamental problems around housing need in the Borough: firstly it does not seek to meet the objectively assessed housing need for the Borough; secondly, it will not result in a 5 year supply of housing any time soon; thirdly, it won’t address the housing waiting list; and, fourthly it won’t address the shortfall of nearly 5,000 affordable homes which should have been delivered by now. That is because the plan if it ever is adopted is spectacularly late. It should have been adopted before the last plan became time expired in 2011. It should in fact have been replaced by a NPPF (2012) compliant version after 2012; and a NPPF (2018) compliant version after 2018. But none of this has happened. So the plan is over a decade late. And that is why the problems with the 5YS and the delivery of affordable housing are now so severe.
65. Moreover, the adoption of the plan will not result in homes to address these problems. The allocation of land does not result in completions. The allocated sites have years to go before they deliver houses because that will require planning applications, outline planning permission and agreed section 106 agreements, which are in all probability years away. The Council cannot sensibly claim they will expedite these matters, as it seems blissfully unaware of paragraph 78 of the NPPF, which encourages LPAs to reduce the period of time allowed for the submission of RM.
66. This inordinate delay in progressing an up-to-date local plan is also the primary reason for the Council’s abysmal housing supply position. DE was right to admit in XX that the shortfall is “acute”. He also accepted that it is similar to when the evidence was heard in the Land off Bullens Green Lane, Colney Heath appeal, where Inspector Masters allowed the appeal on the basis very special circumstances exist. Unmet housing need and affordable housing need in WHBC was the fundamental reason for finding very special circumstances in that case.
67. So the adoption of the plan will not resolve the Council’s current problems. And that is why the appeal should be allowed even if the Inspector were willing to accept, despite all of the above, that the plan will be adopted.
68. Moreover, the new 10 year time horizon for the adoption **and delivery** of all 13,000 homes in the plan is absurd. The Council will not be able to delivery anything like that

number of houses over that period of time. Large sites take years to come forward with endless debates about affordable housing provision, financial viability, section 106 contributions, then there are the Reserved Matters applications. Some of the sites will not even get started in a 10 year time horizon. That is why guidance advised that plans should have a minimum 15 year time horizon.

HARM

Green Belt

69. The site is a greenfield site in the Green Belt. There is harm by reason of inappropriateness (definitional harm) and any other harm. The Council try to multiple the Green Belt harm into lots of different categories – definitional harm, harm to openness in terms of both visual and spatial harm, harm to the purpose of including land in the Green Belt. This is in addition to visual and landscape harm and harm to character.
70. There is a real risk here that these multiple harms are simply duplication of the same harms. That would be inappropriate. There is definitional harm, which is also spatial harm to openness; and there is visual and landscape harm which is also visual harm to openness. But the harm in both cases is limited because the site is accepted by the Council to only harm one purpose of including land in the Green Belt and is very well contained.
71. This proposal harms openness. That is accepted. The lack of visual and landscape harm does not overcome that: see Sales LJ in Turner v SSCLG [2016] EWCA Civ 466 (at paragraph 23) cited with approval by Lindblom LJ in Samuel Smith v North Yorks CC [2018] EWCA Civ 489 at paragraph 22.
72. Substantial weight must be given to any Green Belt harm. So that is what a decision letter should say. But we can pray in aid no better example of how to assess Green Belt and any other harm properly than the decision of Inspector Christa Master at Colney Heath. Other Green Belt appeal decisions in the CD also demonstrate very well how to approach the harm. We do however attempt to address all the alleged harms that the Council raise.
73. The harm arising from developing this greenfield site in the Green Belt needs to be seen in the context of the Borough and its unmet housing needs. In order to make up the enormous housing shortfalls that exist (as evidenced by Messrs Pycroft, Stacey, Newton Taylor and Gray) due to the failures in plan-making in Welwyn Hatfield, and also to meet future needs for housing of different types, it is inevitable that land which is currently Green Belt, and lots of it, will need to be released. Indeed, as both Mr Wilson and Mr Elmore agreed in XX, the eLP proposes to do so and to allocate sites to provide in excess of 6,000 dwellings.
74. Yet even that extent of release, involving several hundred hectares of land, will not meet the FOAHN in this Borough. Not even for a reduced period of 10 years, as Inspector Middleton has pragmatically and generously acquiesced in a last ditched attempt to try

and help this reluctant Council achieve a “sound” plan. So, even in the unlikeliest of scenarios whereby the plan does stumble its way to adoption, and we have already covered why Mr Gray is absolutely right to conclude that the emerging Local Plan is simply not going to reach that point, such are the politics here, it will not achieve the FOAHN. That is despite both Officers of the Council having recommending sites to meet the FOAHN and Inspector Middleton trying his hardest to persuade the Council to submit sufficient sites.

75. For there to be any chance of the acute housing needs being met in this Borough, which still does not have an effective plan-led solution to manage the release of Green Belt land some 12 years after the adopted Local Plan time expired, it is inevitable that positive decisions are going to have to be made through the development management process, like in the decision on Roundhouse Farm, Bullens Green Lane, Colney Heath¹² There is no alternative.
76. Where it is inevitable that Green Belt land is required, such as in this Borough, sensibly, it should be sites that do not impact on the wider integrity of the Green Belt that get developed. In the words of Inspector Middleton¹³ “..... *those sites that cause least harm to the green belt’s openness and purposes whilst at the same time favouring those score best from a sustainability perspective should be chosen*”.
77. We know what Inspector Middleton thinks of the appeal site in that context, but before coming onto that it is first worth reviewing what the Council’s own evidence base for the eLP tells us about the impact its development would have on the Green Belt and its suitability for development in the context of meeting needs in this Borough.
78. Firstly, the SKM Stage 1 Green Belt Review¹⁴ which included composite scoring against Green Belt purposes, assessed parcel 45, a much larger area of land including the appeal site, as being of least harm anywhere in the Borough.¹⁵
79. Turning now to the LUC Stage 3 Assessment,¹⁶ carried out at the request of Inspector Middleton. The much larger parcel p66 within which the appeal site lies was found to be of “*Moderate High Harm*”. However, it is worth highlighting the comments that go with this, which acknowledge: “..... *The parcel is well contained by urban development and protected woodlands and the impact of its release on the integrity of the wider Green Belt would be limited.* (Emphasis added)
80. It is worth remembering that those comments relate to release of a much larger parcel of land than the appeal site itself, with the appeal site also more related to and influenced by the built area of Brookmans Park it immediately adjoins.

¹² CD9.28

¹³ Para. 7 of EX271; CD6.69.

¹⁴ CDs 6.16 & 6.17

¹⁵ See Map included at Figure 6.1 on p54 of Mr Gray’s main PoE

¹⁶ CD6.38; pages 299 - 302

81. A smaller parcel of land, p66a, also containing the appeal site, but still about twice its size and with the remaining land more removed from the settlement of Brookmans Park, was also considered. Again it was found to be Moderate High Harm, but with the comments acknowledging: “.....*However, as the site is contained to the north and east [sic, west] by protected woodland and by the settlement of Brookmans Park to the south, and because the golf course adjoining the southeast of the parcels is more strongly associated with the settlement of Brookmans Park, the Green Belt harm that could result from release of the site is more limited.....*” (Emphasis added).
82. So, the Council’s own evidence base to the eLP tells us that this is a site that, if developed, would have a low level of impact on the Green Belt and would cause limited harm to the wider integrity of the Green Belt. It is little surprise then that the appeal site and the larger parcel referred to as “BrP12” have been found suitable for allocation in a plethora of other documents prepared as part of the eLP process.
83. This includes:
- a. the *Housing Site Selection Background Paper June 2016*,¹⁷ which, bringing together key conclusions from a number of other technical documents, provided an assessment of sites to meet the then OAN range of 12,616 – 13,433 dwellings. Table 33 in Section 17 of this document identified 4 sites in Brookmans Park currently in the Green Belt as suitable for allocation, including BrP12, containing the appeal site.
 - b. The *HEELA 2019*¹⁸ set out the results of the Council’s further assessment of the suitability of sites following an additional call for sites, with Table 26 at Appendix 2 of this document noting that the appeal site (BrP12a) and the larger BrP12 site passed, with both identified as having a capacity for 125 dwellings. Page 314 contains the proforma for the two sites. It confirms that “*both sites are found suitable*”.
 - c. The *Housing and Employment Site Selection Report Background Paper 2019*¹⁹ provided a comprehensive summary of all sites considered for inclusion in an updated Plan (See para. 1.11). Paragraph 18.13 of this document discusses both BrP12 and the smaller appeal site (BrP12a), stating:

“Site BrP12 has been considered as two potential development options (BrP12 and BrP12a); BrP12a consisting of a smaller development area that more closely aligns with the existing north western edge of Brookmans Park. This smaller area (BrP12a) is considered suitable for allocation. The smaller area helps to reduce the scale of any impact on the Green Belt and ensures a more logical Green Belt boundary can be created and has the potential to deliver

¹⁷ CD6.112,

¹⁸ CD6.12

¹⁹ CD 6.10

the same dwelling capacity as the larger BrP12 site (at a slightly higher although still moderate density). The north eastern corner of this site is rounded off to ensure the proposed Green Belt boundary is coherent and reflective of the northern edge of the settlement.” (Underlining added)

84. The overall conclusion on the site template for BrP12a states:

“Development of BrP12 would extend the settlement of Brookmans Park to the north and result in moderate-high harm to the Green Belt. The site is however, contained on three sides which limits the wider Green Belt harm. There is opportunity to form clearly defined and defensible boundaries using existing physical features, which would be similar in strength to the existing Green Belt boundary. BrP12a would not extend as far into the countryside to the east, in comparison with the larger BrP12 site, thus reducing any potential impacts, and in particular, reducing the extent the Golf Course could otherwise become more contained. Brookmans Park is a sustainable location for development benefiting from good public transport connectivity, services and facilities. On balance, the benefits of the site are considered to outweigh any potential harm on the Green Belt. The site is considered suitable for allocation” (Underlining added)

85. Returning to the guidance of Inspector Middleton on the sites that should be focused upon, the appeal site, on the Council’s own evidence, is both sustainable and would have limited impact on the wider Green Belt. It is therefore little wonder that the site, as MW eventually agreed, was recommended for inclusion in the eLP by Officers as one of a list of additional sites to address the shortfall identified by Inspector Middleton that was presented to the Council’s Cabinet Planning and Parking Panel meetings of 23 and 29 January 2020 in the Officer’s Report.²⁰
86. The fact that Members of the Council chose not to follow their Officer’s recommendation is not a blight on the site, it was a blanket decision not follow the recommendation and no commentary on the site itself was provided in the Minutes of the CPPP meetings.²¹ The resolution is further evidence of this Council’s reluctance to face up to its desperate housing needs. Both MW and DE try unsuccessfully in their written evidence to downplay the importance of these findings to this appeal and hide behind the fact it has not, formally at least, been found sound. That would of course have required the Council to submit it for examination. It would, however, be disingenuous in the extreme, to read these comments and conclude anything other than Inspector Middleton considers it a suitable site in the Green Belt to assist in meeting the significant housing needs of this Council.

²⁰ See CD 6.96

²¹ CD 6.87.

87. So, what of the evidence before this inquiry about the level of harm that would result from the scheme the subject of this appeal?

Definitional harm

88. It is common ground that it is inappropriate development in the Green Belt and there would be definitional harm. No surprise there. It is also common ground that there would be an impact on openness, both spatially and visually. Again, that is unsurprising given the development would result in housing, a care home and a scout hut on what is currently a grass field, and as we already know, this Council is going to need many of those if it is to meet its acute housing needs. But, all of what is said above must be taken into account.

Visual aspects of Green Belt harm

89. It is agreed between WHBC and the Appellant that there are no views to the north or west of the site.²² The only views BB has highlighted in his evidence were the 3 views very close to the Appeal Site from within the urban area, where openness is already altered, plus one location directly on the golf course boundary right next to the Site. BB identified no views of the Appeal Site from the wider open countryside and it is plain that there would be no harm to the wider countryside. As MF's evidence has demonstrated, the visual effect from loss of openness is limited due to the site's level of containment.
90. When asked about impact on the integrity of the wider GB, BB acknowledged that the effects were localised but claimed it was "not unaffected" and that there was "some effect" to the wider GB – when pressed he claimed this was the golf course and land to the north which was not publicly accessible. DE relies on BB and it is evident from this that the Council's assessment of Green Belt harm is exaggerated.

Spatial aspects of Green Belt harm

91. As Mr Gray has explained, the spatial impact of loss of openness is also mitigated by the level of containment at the site.
92. The Council and the Appellant also agree that there would be no impact on four out of five Green Belt purposes. It is only purpose c) preventing encroachment, that Mr Elmore suggests significant impact upon. Yet the Council provides no rational argument to support this beyond noting that there will be houses on a field.
93. Mr Flatman's ("MF") evidence demonstrates that wherever you are on the site you have the appreciation of being at the edge of the settlement, and the harsh boundary created by housing along Bradmore Way and Peplins Way, the majority of which have 3 floors, imparts a strong influence over it. The topography of the site, which slopes downwards towards the village to the south adds a further sense of enclosure and the boundary

²² Landscape SoCG paras. 5.3 and 5.4.

features, including ancient woodland and boundary planting along the golf course, give it the sense of being very well contained. BB agreed they were all relevant factors.

94. BB accepted in XX it is “reasonably” well contained and would go no further for plainly tactical reasons. That puts him at odds with LUC and the Stage 3 GB Study, Inspector Middleton, MF and RG. Although the Council may not like to admit it, one can use a number of different adjectives to describe how this site is plainly very well contained, *even* in winter months.
95. However, despite the Council’s swathe of ‘oven ready’ Local Plan evidence (LUC or Inspector Middleton, to which BB agreed were also plainly relevant), that BB accepted he hadn’t considered properly, he claimed he “*didn’t like the term well contained*”, and struggled to accept the Appeal Site was contained, preferring to settle on the adjective “*reasonably*”.
96. When pressed if it [the Appeal Site] was a spectacularly well contained site, BB suggested containment should not be dramatized. That is, until he was faced with the clear and unequivocal assessment made by the Council’s own consultants LUC, in their B Assessment²³ which stated for the larger Parcel P66 “*...the parcel is well contained by urban development and protected woodlands, so the impact of its release on the integrity of the Green Belt would be limited*”, findings to which he had to acknowledge applied to this Site and finally confirming “yes” when pressed - it is indeed well contained.
97. MF approach was clear and uncontroversial on this matter, acknowledging that in his over 25 years of experience this was one of the most contained sites he had been involved with (aside from infill development) and that there was no question the Appeal Site was well contained, indeed he referred to it as remarkably contained.
98. Mr Gray rightly concludes no harm to this purpose for these reasons. It is notable that Inspector Masters reached that view when assessing the same issues in Roundhouse Farm, Bullens Green Lane, Colney Heath appeal (DL26)²⁴. DE points out that each site is different. He is right, as you will have seen for yourself from your site visits, Madam, and as RG notes in his written evidence, this appeal site is even more contained.
99. The COG also suggest harm to purposes a) and b). In respect of the former, it is the sprawl of London that was suggested to be the concern, yet London is on the opposite side of Brookmans Park to the appeal site, so this is a baseless point and not one that even the Council takes. MF’s evidence addresses robustly the matter of coalescence or narrowing of gaps and his conclusions are supported by the findings of Inspector Middleton. This is also a flawed argument and not one taken up by the Council.

²³ para 2.1.17 LUC Stage 3 GB Ass’t

100. RG is, then, right to conclude that the overall harm to the Green Belt from this scheme is of a very low level. That view is supported by the Council's own evidence in support of the eLP and the findings of Inspector Middleton.

Other harm

Landscape harm

101. The Council's Landscape Officer (Mr Waring) had confirmed there were no landscape or visual grounds on which to refuse the proposed scheme²⁵ and BB claimed in XX he was not fully aware of the context in which the landscape officer had made his judgement, so had "*gone back to the start*".
102. The LVIA submitted as part of the planning application acknowledged that the main landscape effects of the proposed development would be associated with the Site itself and both (main) parties concurred agreed prior to the Inquiry that this would equate to a Slight Adverse Effect on the character area LCA54: Potters Bar Parkland (however, that is at completion in year 1 without mitigation/prior to establishment).
103. BB had also previously agreed that there are no effects from any other Landscape Character Areas (LCAs)²⁶ and therefore the slight degree of landscape harm on a small part of the LCA was not a matter challenged by the Council in XX of MF or vice versa, as both parties agree. It is quite remarkable that the Reason for Refusal on landscape was not withdrawn at the point BB too realised there were only Slight Adverse Effects on the LCA having gone through *his* process from 'the start'.
104. As has been shown, it was only Mr Elmore (as case officer) who inexplicably introduced a landscape and visual reason in the Committee Report. The evidence presented to the Inquiry by BB and MF along with that of the Council's own landscape officer, Mr Waring, show DE's position on the landscape and visual credentials of the case to be untenable and entirely without foundation, and indeed it is entirely the wrong approach for Mr Elmore to continue to diverge from the clear expert opinions of all 3 qualified and experienced landscape professionals. The Council has unquestionably failed to justify its reason for refusal on landscape and visual matters.
105. BB agreed that this location is developed countryside, and that is was not remote or deep countryside. Furthermore, he agreed that there was significant development along the southern boundary and woodland beyond the site, leading to it's containment. Both parties agree there will be a loss of grassland²⁷ Indeed this is the *only* key characteristic of the character area to be altered/lost by the development, as Mr Flatman recognises.²⁸

²⁵ landscape SoCG 3.1-3.2

²⁶ Landscape SoCG 4.3

²⁷ Landscape SoCG 4.2

²⁸ MF PoE 2.4.9

106. BB further agreed the scheme has beneficial features²⁹; in his 5.2.4 of his proof he further acknowledges the strengthening of tree and hedgerow along the boundaries, plus the wildflower meadow, features that all represent “*a beneficial landscape effect*” (yet Mr Browne does not acknowledge/ take into account these in his year 15 assessments for woodland, site or LCA at all, following establishment).

107. Mr Browne made a meal of the ancient woodland, but did not acknowledge the clear benefits afforded by the proposal as set out in MFs evidence or by the ecologists.

- (a) he has not assessed the woodland (condition, value etc.,) or acknowledged the scheme proposals for woodland buffer and wider offset;
- (b) none of the woodland would be lost or removed;
- (c) none of the woodland would be fragmented from other woodland/hedges;
- (d) none of the woodland would become more isolated from or break/ damage or fragment a connecting feature(s);
- (e) Views will change, but will remain; there will be more views of woodland due to new public access along edges (rather than from the very end of Bradmore Way) and the function of the woodland will remain as backdrop – none of this recognised by BB.
- (f) Setting aside NE Standing Advice. The masterplan has a significant offset than that required by NE (up to 70m or more in places) to offset and provide a generous transition (normally we are dealing with sites where the applicant is trying to place roads or paths, SUDs in the 15m buffer, we certainly don't have that here);
- (g) There is a new buffer of native planting comprising semi natural scrub/woodland to extend the woodland itself, protect it and form a natural transition from open landscape to woodland (this was stated in opening to be 15-28m wide, and in excess of 10,000m²);
- (h) There are new features to further connect the woodland back to the golf course woodland edge along 2 edges – the fact is the woodland will become more connected than it is at present.
- (i) The Landscape Officer in his consultation seems to have carefully considered effects on the woodland, he certainly did not allege significant impact.
- (j) Mr Browne fails to acknowledge that the wider character will remain unchanged, development will not be seen in the wider area (as agreed, north and west - landscape SoCG 5.3, 5.4), the woodland will still be the strongest visible feature in all directions regardless of where it is experienced from.

²⁹ Landscape SoCG 4.4

108. Although there is agreement as to the overall landscape effects, there are few notable differences in judgement (which is normal) and it is Mr Browne that stands out in terms of his exaggerated claims on other aspects of the landscape and visual issues, and isolates him in trying to maintain the Council's RfR.
109. The outcome of the Council's landscape case when drawing everything together in terms of landscape is that Mr Browne (like Mr Flatman's LVIA) *also* essentially concludes **harm to the site itself and only Slight Adverse Effects on the character of the area LCA54: Potters Bar Parkland** (northern parcel only) (also prior to establishment). It is hard to fathom how this led to a landscape reason for refusal (and the alleged disagreement as to the extent and level of landscape effects.³⁰ It seems all Landscape experts agree the harm on the LCA is limited, that is Mr Waring (Council's Landscape Officer), Mr Flatman and now Mr Browne concur.

Visual harm

110. The LVIA identified a range of visual receptors near and further afield (highway, footpaths, golf course), which were identified appropriately. BB's approach in evidence was to focus on in his words 'new views' that he wrongly claims were 'additional' to the LVIA. Despite mixing up 2 of his 4 photographs BB continued to overstate both the urban locations as a receptor and the golfing receptor and the degree of harm.
111. BB maintained his entirely irrational position regarding the susceptibility of golf course users on the 5th hole of the golf course in XX; in contrast to MF's balanced approach which clearly demonstrated that a sliding scale (in accordance with GLVIA3) must exist between the more attractive open views across the landscape from the elevated former mansion terrace on the east part of the golf course compared with BB's very enclosed, perpendicular view of the screening hedgerow boundary on the lowest part of the course with no appreciation of the wider landscape (since it is heavily filter, even in winter).
112. BB's evidence appeared to scale the visual assessment down to only 4 locations in winter, which serves to emphasise the lack of visibility, he presented what he described as 'new' locations; however, these were all extremely close to the Appeal Site boundary, in fact it is plain that there is no clear open view of the Appeal Site at all from 3 of his 4 locations, even in winter and MF had already covered the receptors clearly in both the LVIA and in his evidence.
113. Indeed regarding his 4th 'view' (from Bradmore Way), it would be rather surprising if any development site across the country didn't experience *some* change at the main access point right on the site boundary edge, as MF explained rationally. In fact, the more holistic and pragmatic approach taken by MF is preferred, since it represents a more

³⁰ Landscape SocCG 7.5

rounded and considered appraisal of the visual sphere and the visual effects overall, rather than just 4 boundary locations selected by BB.

114. Overall, BB's assessment was clearly overstated in terms of the visual effects and the receptors identified already formed part of the LVIA; however, the attempts to exaggerate the visual case (and distance himself from the LVIA which was appropriate and proportionate) was quite simply a failure to acknowledge the limited extent of visibility of the Appeal Site as a tool to wrongly allege effects on visual openness (see below) which simply don't exist, until pressed. BB eventually accepted in XX that there were "no wider elevated views of any kind" and he further agreed that "the visual effect is localised".

115. As noted in the Landscape SoCG, the visual effects are agreed to be limited.

THE VERY SPECIAL CIRCUMSTANCES TEST

116. The main parties to this inquiry all agree that the relevant test in the determination of this appeal is that at NPPF 148 ("VSCs"). Therefore, if the other considerations (including the scheme's benefits) clearly outweigh the harm by reason of inappropriateness and any other harms, you should allow the appeal and grant planning permission.

117. These benefits do not reduce the harm. That is made clear by Mr Gray in his rebuttal in paragraph 5.1 – which refers to benefits as being "the other side of the planning balance". It is accepted that 5.2 is not as clear as it could be. But it is a non-point as the content of paragraph 5.1 make clear RG's approach where he sees the harm and benefits as being separate. And to the substance of the point plainly ED says there is more harm arising from this proposal compared to an extension. That is a truism. But as RG makes clear the extension delivers very little benefit at all for society. The planning system operates in the public benefit. Or at least it should do. An extension benefits only the homeowner. But nothing more. The Green Belt harm is therefore greater with a proposal such as the appeal scheme. But the benefits for the public are almost immeasurably greater than an extension.

118. The visual harm here is very limited because of the exceptional containment of the site and that means less harm and therefore less is need by way of VSC. That is because VSC is a test met by balancing harm v the benefits of the proposal.

119. It is uncontroversial following the XX of Mr Wilson that the factors which go into making are all the benefits. These benefits do not reduce the harm. That is made clear by Mr Gray in his rebuttal in paragraph 5.1 – which refers to benefits as being "the other side of the planning balance". It is accepted that 5.2 is not as clear as it could be. But it is a non-point as the content of paragraph 5.1 make clear RG's approach where he sees the harm and benefits as being separate. And to the substance of the point plainly ED says there is

more harm arising from this proposal compared to an extension. That is a truism. But as RG makes clear the extension delivers very little benefit at all for society. The planning system operates in the public benefit. Or at least it should do. An extension benefits only the homeowner. But nothing more. The Green Belt harm is therefore greater with a proposal such as the appeal scheme. But the benefits for the public are almost immeasurably greater than y.

120. VSC do not have to be rare or uncommon to be special. But for the record this was confirmed in Wychavon DC v SSCLG and Butler [2008] EWCA Civ 692 and there is no restriction on what might be considered as an “other consideration” as confirmed in: Brentwood BC v SSE [1996] 72 P&CR 61 para 31, page 7
121. In Compton Parish Council v Guildford BC [2019] EWHC 3242 (Admin) Ouseley J made clear that ***“There is however a danger of the simple question of whether there are ‘exceptional circumstances’ being judicially over-analysed. This phrase does not require at least more than one individual ‘exceptional circumstance’.”*** (para 71)
122. The VSC test is a higher hurdle than the exceptional circumstances test for releasing sites from the Green Belt. This was confirmed by the Court of Appeal in Luton BC v Central Bedfordshire Council and others [2015] EWCA Civ 537 para 56
123. The Ministerial statements from Greg Clark and Brandon Lewis make clear that housing need will not normally or usually be sufficient to demonstrate VSC.
124. But in Compton Parish Council v Guildford BC [2019] EWHC 3242 (Admin), the High Court made clear that ordinary unmet housing need could amount of exceptional circumstances of itself, although not necessarily so. It need not be a special kind of need or an acute need: see paragraph 72. It follows that unmet housing need can amount to exceptional circumstances, and although VSC is a higher hurdle housing need can represent a major part of the VSC case – albeit it would not normally be sufficient of itself.
125. As noted above, it is a highly relevant consideration in the very special circumstances balance in this appeal that there is no up-to-date LP in WHBC and no framework for addressing housing need, contrary to the requirements of the NPPF (paragraphs 15 and 33). It is also relevant that the GB boundaries were drawn up to meet a long out-of-date housing target from a previous planning era and do not reflect current needs.
126. The lived experience of those in this borough is that 3 – 4-bedroom housing is needed – *desperately* needed³¹. Bradmore Way, Ms Taylor says, is an eminently sensible location

³¹ Ms Taylor of the WGC Society.

for this kind of housing. It is adjacent to excellent transport links. It is well contained. We agree.

127. The harms are outlined above. The benefits set out below provide the VSC required to clearly outweigh the harm by reason of inappropriateness and other harm.

128. The range of factors which support the Appellant's case on VSC to clearly outweigh the harm are numerous. But in line with numerous inspectors decisions allowing appeals on Green Belt sites, the main focus is the delivery of housing or care facilities, the location of the site and the state of the development plan. Other factors also relevant if considered necessary but it is accepted attract less weight.

The Housing Land Supply position

129. As we explained in opening, the extent of housing supply in WHBC is abysmal. There is much that is agreed between Mr Pycroft and the Council as set out in the SoCG on HLS³²:

- a. The base date is 1st April 2022 and the five year period is to 31st March 2027;
- b. The 5YHLS should be measured against the Local Housing Need calculated using the standard method set out in the PPG. This is 888 dwellings per annum;
- c. A 20% buffer applies because the Council has failed the latest Housing Delivery Test (the result was just 66%), meaning that the 5YHLS to be demonstrated is 5,328 dwellings (1,066 dwellings per annum); and
- d. The Council cannot demonstrate a deliverable 5YHLS by a significant margin and the shortfall is significant and serious.

130. The difference between the two parties relates to the extent of the supply (2.63 years on the Council's case, 1.65 years on the Appellant's case). The reason for the difference was due to 3 disputed sites.

131. Two of the sites³³ fall within category b) of the definition of deliverable as set out in the Annex to the Framework. As BP explains in section 3 of his PoE and as summarised in the Appellant's comments on pages 2 and 3 of the Scott Schedule³⁴, the definition of deliverable was changed in 2018 compared to the previous definition in the 2012 Framework and therefore for these two sites, the onus is on the Council to provide clear evidence that housing completions will begin in the 5YHLS period. As BP explained at the RTS, he refers to several appeal decisions by the SoS and other Inspectors where the

³² Inquiry document XXXX

³³ North East of Welwyn Garden City, Panshanger (462 dwellings disputed) and YMCA, Peartree Lane (29 dwellings disputed)

³⁴ Inquiry document ID7

revised definition of deliverable and what is meant by “clear evidence” have been considered. In the cases BP refers to, Councils had provided much more evidence than that provided by WHBC for these two sites. For these two sites, WHBC has not provided any of the examples of clear evidence as set out in the PPG³⁵. In particular, no clear evidence of firm progress being made towards the submission of a reserved matters application or a written agreement with the developer has been provided in respect of either site.

132. At the Panshanger Site³⁶, the fact that Homes England is the promoter does not automatically mean that the site is deliverable. Homes England will deliver the spine road as phase 1 but this does not even have planning permission. Homes England will also sell the site and therefore the timescales and build out rates by the eventual developer are not known and have not been evidenced. Further, no clear evidence of firm progress with site assessment work has been provided. Due to the absence of clear evidence, the site fails to meet the definition of deliverable and should be removed from the 5YHLS.
133. At the YMCA site³⁷, the part of the site which has outline planning permission is for open market residential development and the remainder of the site will provide a replacement YMCA hostel. There is no known developer on the part of the site with outline planning permission and the Council has not provided any clear evidence that housing completions will begin on that part of the site in the 5YHLS period. This site should also be removed from the 5YHLS.
134. The third site is known as “the wheat quarter”. This site falls within category a) of the definition of deliverable and it is agreed that 208 dwellings will be delivered in the 5YHLS period. The dispute is on the balance of the site. Whilst it has planning permission, there is clear evidence that it will not be implemented with reference to the fact that it is unviable³⁸. Indeed, the Council’s own evidence is that it only expects 208 dwellings to come forward on that permission³⁹. New applications have been made but these are subject to a significant level of objection due to density and housing mix. Moreover, the developer now involved “the Wheat Quarter Ltd” is now in Receivership. The Council’s claims at the RTS that this fact now meant the site is more deliverable is illogical. There is clear evidence that the remainder of the extant permission will not be delivered due to viability and there is no clear evidence that a new developer will deliver .a further 552 dwellings on this site in the 5YHLS period and these units should be removed.

³⁵ Paragraph 68-007: “What constitutes a ‘deliverable’ housing site in the context of plan-making and decision-taking”?

³⁶ Scott Schedule – pages 6-8

³⁷ Scott Schedule – pages 8-9

³⁸ Please see the quote from paragraph 1.3 of the planning statement for the revised scheme as set out on page 5 of the Scott Schedule

³⁹ CD7.01 – paragraph 6.3 (as quoted on page 4 of the Scott Schedule).

135. In summary, the Inspector is invited to conclude that the Council's 5YHLS equates to 1.65 years and there is a shortfall of 3,566 dwellings against the local housing need and a 20% buffer. This is a highly material consideration and an important one for the VSCs balance
136. To be clear the delivery of this site should not be in issue. It does not feature in the 5YS so its delivery is not the subject of the 5YS analysis. But there is no reason to doubt the delivery of this site. It is a ideal size for a house builder with not need for extensive road improvements. It was the same with the Colney Heath site which as RG made clear is being delivered already by a major house builder. But as Inspector Masters in the Colney heath appeal made clear the delivery of the site within 5 years is largely irrelevant even when it is not doubted.
137. The residents attempt to block the road or claim a ransom will not delay the delivery of this site. It is a desperate attempt to try and stop the development at the 11th hour and the false claims made by Mr Hall. The note from Town Legal addresses the point.
138. The claim the Care Home delays the prospect of delivery of homes makes no sense. It only limits some of the houses not all of them. And the need for the Care Home is very clear as well, as evidence by NNT so the building of it will not delay the delivery of all the homes. It is also a perverse argument when one considers the Council required the restriction in the Section 106. That constraint is actually in place because the Council are so keen to see the care home delivered.

The need for affordable housing

139. The Appellant wishes to make clear that the ability to deliver AH on this site is an important part of this proposal, the benefits are clear and obvious and comprise part of the VSC's in support of the scheme. This proposal is not made in a vacuum. There is a housing crisis in this country. Not our words, but the words of the former Planning Minister in 2013⁴⁰. He also made clear that this state of affairs is causing misery to millions of our fellow citizens.
140. The extent of the crisis is revealed in the speeches and reports on the housing crisis summarized in Mr Stacey's (JS) chapters 3 and 4 appendices JS4 and JS5.⁴¹ The content of

⁴⁰ CD 8.31

⁴¹ Laying the Foundations – A housing Strategy for England (November 2011); House of Commons Debate (October 2013)⁴¹ Building the Homes We Need - KPMG/shelter (April 2014)

Fixing our Broken Housing Market (February 2017)⁴¹ Former Secretary of State for Housing, Communities and Local Government Speech to Local Government Association Conference (July 2017); Former Prime Minister, Theresa May speech (November 2017); Former Secretary of State Sajid Javid (Speech to Local Government Association) (November 2017); Conservative Party Manifesto (December 2019); BBC Housing Briefing (February 2020); Affordable Housing Commission Report (March 2020); White Paper: Planning for the Future (August 2020)⁴¹ NHF – People in Housing Need (September 2020) Speech by the Minister for Housing to the District Councils' Network (October 2020) Former Secretary of State for Communities, Housing and Local Government's speech to the National Housing Federation (25 March 2021) The Centre for Social Justice: Exposing the Hidden Housing Crisis (November 2021) House of Lords: Built Environment Committee (1st Report of Session 2021- 2022):

these were unopposed. Yet, each one warrants careful consideration.⁴²

141. There are a number of national regional reports on these issues as set out by JS in Chapters 4 and 5 of his PoE and Appendix JS5⁴³

142. Plainly there has been no XX on these documents. Their contents are uncontested and uncontroversial. But they remain critically important. All of this is fueling a further crisis in respect of affordable housing.

143. The Council do not contest the evidence of JS. He provides comprehensive evidence about the housing crisis in both Welwyn Hatfield and the wider context. He explains that current state of affordable housing need in Welwyn Hatfield is an authority, *“in the midst of an affordable housing crisis, and one through which urgent action must be taken to deliver more affordable homes”*⁴⁴.

144. In addition, there is, as you would expect with the uncontested evidence, common ground that:

A national housing crisis and an acute need for market and affordable housing in England⁴⁵, and

45% affordable housing is a material consideration weighing in favour of the appeal⁴⁶.

145. Furthermore, the SOCG also reveals that:

The parties agree there is an acute need for more affordable homes in the Borough⁴⁷, and

Very substantial weight should be afforded to the provision of affordable housing⁴⁸

146. It would be easy at this point to say that is all we need to know about the acute affordable housing situation in Welwyn Hatfield, it's all agreed, all uncontested and that maybe so, but that would be doing a disservice to the many thousands of households in need⁴⁹. Households who are rarely heard at inquiries such as this. As Inspector Stephens asserted at the Pulley Lane, Droitwich Spa appeal⁵⁰.

Meeting housing demand (10 January 2022)

⁴² Bleak Houses: Tackling the Crisis of Family Homelessness in England (August 2019)⁴² Denied the Right to a Safe Home – Exposing the Housing Emergency, Shelter (May 2021)⁴² The Barker Review of Housing Supply (March 2004) The Barker Review: A Decade on (March 2014) House of Lords Select Committee on Economic Affairs: Building more Homes (15 July 2016) MHCLG Single Departmental Plan (27 June 2019)

Welwyn Hatfield Corporate Plan 2021-2024

⁴³ CD 8.37 Housing, Homelessness and Rough Sleeping Strategy 2019-2024

⁴⁴ JS PoE, Paragraph 9.62

⁴⁵ SOCG, Paragraph 8.10

⁴⁶ SOCG, Paragraph 8.13

⁴⁷ SOCG, Paragraph 8.16

⁴⁸ SOCG, Paragraph 8.21

⁴⁹ 3,119 households on 31st March 2022 – JS PoE, Paragraph 9.2

⁵⁰ CD 10.06 Paragraph 8.123

“Needless to say these socially disadvantaged people were unrepresented at the Inquiry.”

147. It is rare we see such emphasis in decision letters and Inspectors reports. Which is a failing of system, because the planning system gives far too much of a voice to the objectors of development, and far too little to the beneficiaries. Calling JS as a witness to inquiries, is one way to balance that.
148. Of course, the agreement in the Statement of Common Ground, is welcomed. However, as JS explained in EiC there is no real comprehension of how the council also arrived at very substantial weight, to the benefit of affordable housing.
149. National planning policy on boosting the supply of housing in this country is not being done just for the sake of the helping the development and construction industry. It is being done to address a really serious problem. Added to which, the country is in the grip of a longstanding housing crisis.⁵¹
150. As is evident from JS’s evidence, the need for accelerated affordable housing provision pervades, national and local policy. The estimated affordable housing needs are considerable, with the 2017 SHMA update setting out a requirement of some 602 affordable dwellings per annum from 2021 (the identified need was 802 homes per annum between 2015 and 2020), which as JS explains, has not and is not being close to being met with JS Figure 7.4 showing a shortfall of 4,994 affordable homes in just 7 years or an annual shortfall of 714 homes. The context is the perilous average net delivery of just 43 homes per annum over the 7-year period.
151. The scale of this shortfall is enormous and eye-watering. The impact is equally enormous. There was no tangible evidence, certainly nothing of the scope, breadth and scale of JS’s evidence to assist in quantifying the enormity of the problem and correctly, from the outset, ascribing **very substantial weight** to the benefit of delivering affordable homes. The Appellant contends that an appropriate description of the needs in Welwyn Hatfield is acute.
152. As Mr Boles set out in 2013⁵²
- Housing need is intense. I accept that my hon. Friend the member for Tewkesbury (Mr Robertson) does not share my view, but many hon. Members do and there are a lot of statistics to prove it*
153. Those statistics provide a stark reality and are illustrated by JS in his PoE. A summary is set out below:

Statistical evidence demonstrating an acute need	Source:
Net annual need of 603 dwellings per annum to 2032	2017 SHMA update
Gross AH delivery between 2015/16 and 2021/22 of 406	Figure 7.1
Average annual gross delivery of 58 per annum	Figure 7.1
Net AH delivery between 2015/16 and 2021/22 of 300	Figure 7.2

⁵¹ All accepted by the LPA witness

⁵² (CD 8.31 page 20)

Average annual net delivery of 43 per annum	Figure 7.2
A shortfall of 4,994 over the last 7 years	Figure 7.4
Zero AH delivery in North Mymms Parish since 2000/01	Figure 7.3
3,119 households on the housing register on 31 March 2022	JS PoE paragraph 9.2
8% increase in a single year from 2,876 households on 31 March 2021.	JS PoE paragraph 9.2
Average waiting times ranging from 9 to 22 months	JS Figure 9.2
128 (1 bed), 29 (2 bed) and 104 (3 beds) average number of bids per advertised property	JS Figure 9.3
693 households on the Help to Buy Register	JS PoE paragraph 9.26
602 households in need of homelessness prevention	JS PoE paragraph 9.29
93 households in need of relief duty from the council	JS PoE paragraph 9.29
Median Private rents (£1,100 pcm) 27% higher in WH compared to East of England (£865 pcm)	Figure 9.4
Lower Quartile private rents (£895 pcm) 28% higher in WH compared to East of England (£700 pcm)	Figure 9.5
Median house price in ward of £835,000	Figure 9.7
Median house price 101% higher in ward compared to WH	Figure 9.7
Lower quartile house price in ward of £585,000	Figure 9.9
Lower quartile house price 83% higher in ward compared to WH	Figure 9.9
Average house price to average income ratio of 12.37 in 2021	JS PoE, Paragraph 9.38
Lower quartile house prices to lower quartile incomes ratio of 12.77 in 2021	JS PoE, Paragraph 9.46
Brookman's Park affordability ratio in 2013 of 19.7	Figure 9.10
Estimated Brookman's Park affordability ratio in 2021 of 28.64	JS PoE, Footnote 38

154. From these alarming facts, it is obvious that more, much more needs to be done to abate this on-going housing crisis in Welwyn Hatfield. There can be no doubt that there is an **acute** need for affordable housing in Welwyn Hatfield. Nor can there be any doubt that the proposals will deliver a substantial number of affordable homes in a sustainable location, for which there is a significant demonstrable need, in the face of such significant under-delivery with JS ascribing **very substantial weight** to the delivery of much needed AH. And much needed is precisely what it is.

The need for a care home

155. The general proportion of persons over the age of 85 in this locality is 31% higher than the national profile. The population in this highest age band is forecast to increase by 28% by 2035.
156. NNT identifies the proposed development as a 'care home' rather than any other offering akin to housing with care which might fall within the same Use Class C2.

157. He explains how financial pressures within the sector have necessitated current care homes to be of a size to ensure economy of scale. The proposed care home (up to 60 bedrooms) reflects the need for economy of scale.
158. NNT provided a potted history of the care sector in order for the Inquiry to understand the wide variation in accommodation available nationally with homes converted from alternative use continuing to comprise a significant proportion of provision despite failing to offer accommodation meeting client aspirations or, in the face of increasing care needs, facilitating the necessary care provision.
159. NNT then identified the nature of accommodation that might be seen as a ‘*reasonable personal aspiration*’ for clients. Referencing the National Minimum Standards for Care Homes for Older People (2003) which sought to ensure appropriate accommodation and care levels, NNT noted that a significant number of homes continue to rely upon shared bedrooms and the use of communal bathing facilities. In the words of NNT ‘*The older generation are not second-class citizens*’.
160. NNT went onto explain that the need for single occupancy bedrooms and the need for private bathing facilities is not merely a personal aspiration but, based upon the experience during Covid, an appropriate way of minimising the risk of virus transmission. NNT attention to the Care Act 2014 – specifically Section 5 of the Act which places a responsibility on each Local Authority to ensure that any person in its area wishing to access services in the market ‘has a variety of high quality services to choose from’. NNT, stressing the words variety and high quality, explained that need for care home provision should be approached from both a qualitative and quantitative perspective, underlining in his evidence that ‘*the quality of environment is key*’.
161. The focus of NNT’s analysis had been upon the Brookmans Park locality: The assessment area had been selected due to the emphasis placed upon the provision of care homes in local neighbourhoods by both the Welwyn Hatfield District Plan 2005 and the Draft Local Plan proposed submission 2016.
162. DE evidence agrees that a need exists in the Brookmans Park locality – an unsurprising stance given this to be identified in Paragraph 21.2 of the Emerging Local Plan as a planning objective for Brookmans Park.
163. NNT further turned his attention to the boroughwide commentary from Mr Elmore in his Proof in which he identified the development of 151 additional care home bed spaces over recent years. This level of increase fails to represent the ‘net’ increase with care home closures having been ignored – a factor agreed previously during the Inquiry by DE. NNT advised that, over the past decade, the net increase in care home beds equated to just 41 – an average increase of 4.1 per annum in a borough of a population of circa 120,000.

164. NNT then highlighted the erroneous forecast in terms of development pipeline contained within DE's Proof. With Mr Elmore's Proof identifying 265 care home beds in the development pipeline, it is now agreed by all parties that this figure misleadingly includes 114 extra care apartments – a nature of provision very different to that of a care home and subject to a separate set of need targets.
165. The Proof of DE (Paragraph 6.78) confirms 'considering all of the above factors, I attach significant weight to this benefit'. NNT made it clear that, given that 2 of the 'above factors' considered were significantly overstated (relating to care home bed provision) then the associated benefit weight of '*significant*' must therefore be understated once the correct development figures were considered.
166. NNT confirmed that, in his opinion, the weight that should be attached to the benefit should be '**substantial**'. Such is the shortfall of appropriate accommodation for the elderly in the locality that the proposed development would not even offset half of the undersupply.
167. The picture is an unfortunate one – as NNT confirmed that he was unsurprised at this shortfall which, to a degree is reflected in the wider picture. National planning guidance identifies the fact that 'the need to provide housing for older people is critical' with the same adjective (critical) being used by Hertfordshire County Council (Adult Care Services) within their current Market Position Statement when describing the shortage of high frailty/nursing care across areas of the county. The most recent figures published by the NHS identifying the level of Delayed Transfer of Care (bed blocking) on account of lack of care home availability further points towards Hertfordshire having somewhat more substantial issues than those seen across the country as a whole.

The need for self-build and custom build housing

168. Central Government has been consistent in seeking to boost the supply of Self-Build and Custom Housebuilding for the past decade, starting with the 2011 Housing Strategy for England, and it is clear that there is national demand for this type of housing.
169. The Government attaches weight to achieving the objective of significantly boosting the supply of homes. The NPPF 2021 is clear at paragraph 60 that in order to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward and that the needs of groups with specific housing requirements are addressed.
170. Paragraph 61 sets out that in order to determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment. It goes on at paragraph 62 to detail that the type of housing needed for different groups in the community should be assessed and reflected in planning policy, including for people who wish to commission or build their own homes.

171. The saved policies of the LP are the development plan document relative to the appeal site. Unsurprisingly, perhaps, there are no policies relating to Self-Build and Custom Housebuilding given the age of the Plan.
172. The 2015 Self-Build and Custom Housebuilding Act (as amended by the Housing and Planning Act 2016) places a statutory duty on the council to have met demand arising from each Base Period of its Register within 3 years of the end of each Base Period.
173. In Welwyn Hatfield, a shortfall of at least 318 plots has already accrued across Base Periods 1, 2, 3 and 4 which the Council still has no adopted Plan strategy for addressing. And that is before consideration is also given to secondary data sources in line with the provisions of the Self-Build and Custom Housebuilding section and the Housing Needs of Different Groups section of the PPG, the importance of which was highlighted in Inspector Masters decision⁵³ in this very authority area.
174. On the matter of secondary data sources, Information received from Buildstore⁵⁴ indicates that within Welwyn Hatfield administrative area there are currently 1,091 individuals seeking a serviced plot to build or commission their own home within the Borough. In North Mymms Parish alone the Buildstore data illustrates demand for 383 plots, some 35% of overall Borough-wide demand.
175. Other secondary data sources indicate that as many as 2,009 people may be interested in building their own home in the foreseeable future when Ipsos Mori and NaCSBA polling data is applied on a local level, or between 1,181 and 1,691 over the Plan period when AMA market Research data is applied locally.
176. It is within this context that the parties agree that nothing less than substantial weight should be attributed to the provision of five serviced plots for self-build and custom housebuilding, secured by legal agreement, through the appeal proposals.
177. There has been no material change in circumstances since Inspector Master's Bullen's Green Lane, Colney Heath decision⁵⁵ sufficient to render any different conclusion being reached here to the conclusion that Inspector Masters reached there. Namely that the provision of self-build and custom housebuilding attracts substantial weight in the planning balance and - in the context of the level of unmet needs, failure of any realistic strategy to remedy this and the persistent statutory duty failure in Welwyn Hatfield - represents one of the factors that demonstrates that Very Special Circumstances do exist.

The Site is a Highly Sustainable Location

⁵³ CD-9.28.

⁵⁴ Who hold the largest database of prospective self and custom builders in the country, operate the market leading plot search platform, are the largest broker of specialist self and custom build mortgage products on the market and have their own development enabling arm, Custom Build Homes.

⁵⁵ CD-9.28

178. As RG's evidence written demonstrates, Brookmans Park and the appeal site are a highly sustainable location, with accessibility by walking to an excellent range of shops and services in the village centre, a primary school (which will be walkable) a mainline railway station, bus services and a secondary school. The fact that the DE made such of point about only being willing to say it is a sustainable location speaks volumes for the Council's case, or lack of one, against this site. It is well located to major road networks (M25), A1M, M1, and international airports are within an hour or less.
179. The more important point is that in XX DE agree that the sustainability of a site is material consideration. RG is right to include it as part of his written assessment of the VSCs. Indeed, the Officer's Report⁵⁶ on the application for *Land to the North East of King George V Playing Fields, Northaw Road East, Cuffley*, which this Council granted permission under VSCs, at paragraph 11.189, specifically ascribes moderate weight to the sites benefit of being in close proximity to a bus service, which is acknowledges is a limited one and within reasonable walking and cycling distance of Cuffley Railway Station. DE specifically omits to give weight to this appeal sites sustainable location in his written evidence, contrary to the approach of his fellow officer and RG. This is a further flaw in his written VSCs balance.

The Complete Lack of an Up-to-Date Plan

180. This issue has been covered above, but should be a factor in this assessment and as stated above it should form part of the VSC in this case.

The Identification of the Site as Suitable for Release from the Green Belt for Housing by both the LPA and the eLP Inspector

181. The identification of the site as suitable for release from the Green belt for housing by both the council and the eLP inspector is plainly a relevant factor. That is highly unusual if not unique.

Biodiversity Net Gain

182. With no legislation provision yet in place and no up to date LP setting out a %, the BNG requirement for this site is based on the NPPF requirement for simply a gain in the BNG. That can be achieved by as little as 1%. But in this case the BNG proposal are 15% which is a key positive factor weighing in favour of the proposal.
183. Through developing a proactive and positive working relationship with both Hertfordshire Ecology and the Hertfordshire and Middlesex Wildlife Trust over recent years, it has now been possible to agree a combined scheme incorporating both Onsite Compensation and Biodiversity Offsetting, that will achieve an overall 15% Biodiversity

⁵⁶ CD 12.05

Net Gain. This is now ratified within the S106 Agreement and will ensure that the development will contribute positively to biodiversity (ie it will be 'nature positive), in excess of the 10% stipulated in the Environment Act. Good progress has now been made to secure a suitable offsetting receptor site, acceptable to WHBC with several alternatives being considered alongside them one which the Hertfordshire Ecology has promoted. There is absolutely no basis for doubting its delivery.

184. Overall there is a very clear case that VSC exist in this case.

RESIDENTS CONCERNS

185. We have heard from the Combined Objectors Group of Brookman's Park in respect of the appeal proposal.

186. **First**, it was alleged that the landscape and character harm would be detrimental to the existing character of the village and would be one of the core reasons that the appeal should be dismissed. This is despite neither the COG nor NMPC providing expert landscape evidence to substantiate such claims with. Rather, this aspect of their case rests on the findings of their own personal judgement and is not informed by technical expertise

187. It is not the Appellant's suggestion that the landscape harms incurred by the appeal proposal do not exist – rather, the level of harm arising as is set out by the local residents, and to an extent that alleged by the Local Planning Authority, is exaggerated as has been demonstrated by MF.

188. **Second**, no new points on flooding or drainage were canvassed - there is no need to address flooding and drainage concerns beyond what was contained in our written submission.

189. **Third**, concerns about GB coalescence were adequately addressed by the local plan inspector: there is no such issue in this district. As was plainly demonstrated by Mr. Gray, the appeal site forms and extension to the northwestern extents of Brookmans Park – away from the area of the village which faces London which this specific area of Green belt seeks to restrict the sprawl of. On this issue, MF has already set out that the separation gap between Brookmans would not diminish as a result of the appeal proposal. Even were this to be the case, the integrity of Peplins Wood to the northwest of the site prevents any meaningful eradication of the settlement gap at this location and thereby dismisses concerns that the appeal proposal would genuinely encourage or result in coalescence.

190. **Fourth**, issues about the location's sustainability were raised. The Appellant has discussed in detail the merits of the site's locational sustainability. One simply needs to look no further than the recent inclusion of BrP4 within the emerging Plan to conclude that Brookmans Park itself is a highly sustainable location which aligns with the findings

of Inspector Middleton⁵⁷ in his assessment of the appeal site and its own suitability for inclusion within the Plan. The appeal site is not located any substantially farther from the village centre than BrP4 and thus would benefit from the same facilities and services as the allocation site.

191. We address the other points raised below.

Highways Matters

192. The R6 parties have raised points around the highways concerns, but the Highways Authority are of the view that all highways' reasons for refusing permission have been overcome. Notwithstanding, we take each of their concerns in turn.

The road access is unsuitable / the Council's Design Guide requires a wider road

193. The highway authority agrees that Bradmore Way is a suitable route to support the proposals, having regard to the scale of development, the width of the carriageway and the total volumes of traffic predicted at peak times. The highway authority's position followed consultation with the fire service early in the consideration of planning at the site, with the highway authority subsequently acknowledging that a "less numbers driven approach" is adopted now and confirming that a 4.8m wide carriageway is sufficient to enable two-way vehicle flow, including larger vehicles. This matter is addressed in detail at paragraphs 2.5-2.12 of Mr Davies' Rebuttal Evidence.

The highway works have little value

194. The scheme of off-site highway works has been developed in consultation with the highway authority to provide improved accessibility for pedestrian movements along Bradmore Way to connect with the amenities of the village centre and local bus stops, with additional dropped kerbs and tactile paving along the route and new crossing opportunities at the remodelled junction with Bradmore Green and Blue Bridge Road and also across Station Road⁵⁸ The highway authority considers this scheme of improvements to be of [significant] value.

The traffic survey data cannot be relied upon

195. Traffic flow information was collected in February 2022, as described at paragraphs 2.26 – 2.31 of the Transport Assessment,⁵⁹ allowing an understanding of peak period traffic conditions and a comparison of Bradmore Way traffic flows during term-time and the half-term holiday. With allowances for future traffic growth and an adjustment for Covid, the assessment of impact for development traffic at the two main junctions in the village

⁵⁷ CD6.71

⁵⁸ CD13.03, Appendix SCG4.

⁵⁹ CD 1.34.

was found to be negligible during all periods of analysis (7am-8am, 8am-9am, 3pm-4pm and 5pm-6pm) with no identified need for any capacity-related highway works. During the determination period of the application it became known that the survey data was collected during the primary school's mental health / walk to school week and as a consequence the neutrality of the traffic surveys was questioned.

196. Following discussion with the highway authority, the turning movement counts at the junctions were repeated in late September 2022 and these form the basis of an updated assessment, as presented in the Highways Statement of Common Ground⁶⁰The differences across the surveyed road network between the February and September traffic flows are negligible, the assessment methodology is sound and the conclusions of the Transport Assessment remain valid.

What about Peplins Way?

197. As a relatively minor junction there was no requirement to include the junction of Peplins Way and Bradmore Way in the junction capacity/highway impact assessments. It was not surveyed in February but was included in the September data collection⁶¹The junction experiences relatively low traffic flows, other than for a short period immediately following the school drop-off and pick-up periods. As evidenced by the video clip⁶² the flow of vehicles able to exit Peplins Way during this time period is smooth with drivers giving way at the Bradmore Way junction (out of shot), and presents as a slow but continually moving line of vehicles, as opposed to a stationary queue showing congested conditions. The highways consultant for the Combined Objectors Group visited the area for a 2-hour period in the afternoon and would have observed road conditions at the end of the school day⁶³ and yet no evidence relating to queue lengths, journey times, delays, opposing traffic flows or the numbers of parked vehicles has been presented. It is our assessment that the conditions experienced at Peplins Way and Bradmore Way are simply characteristic of what is evident at the closest junctions to the majority of schools. That is not to undermine the importance of maintaining suitable conditions for pedestrians during these time periods, which was the subject of the detailed analysis of vehicles on Bradmore Way.

What about conditions on Bradmore Way?

198. It is acknowledged that Bradmore Way experiences higher levels of on-street parking activity at the start and end of the school day and for this reason a survey methodology using multiple high mast video cameras was agreed with the highway authority in order to understand the ease of movement and the extent to which friction of vehicles was evident. The Highways Statement of Common Ground presents a thorough analysis of conditions on the carriageway during the 7.00am-9.15am and 1.45pm-4.00pm time

⁶⁰ CD 13.03, Appendix SCG1.

⁶¹ see CD13.03, Appendix SCG1, Working Paper 1, Appendix B.

⁶² ID 14

⁶³ CD13.12, para 5.1

periods⁶⁴ noting all parked vehicles, when and where vehicles arrived to park/wait and when vehicles departed. All video footage was shared with the highway authority. During busy periods free flowing traffic is generally interrupted in “moments”, such as with drivers waiting to let another driver reverse from a driveway or in to an on-street parking space, and opposing vehicles are seen to use the natural gaps retained between parked vehicles which are created by the dropped-kerb crossovers which offer access to private driveways. The surveys did not show school-related vehicles mounting the footway or parking on grass verges and it is agreed with the highway authority that there are no significant highway concerns in terms of blocking the carriageway or footway.

199. The highway authority had the opportunity to seek additional measures such as double yellow lines etc – but did not consider them necessary.
200. Conditions are evidently assisted by school-related drivers following a circulatory route for their arrival, drop-off/pick-up and departure and it is agreed with the highway authority that making new residents aware of this arrangement via the Travel Plan is an appropriate means of mitigation and reducing the potential for friction to occur.
201. The video clip of a lorry progressing southbound on Bradmore Way⁶⁵ is as important for what it doesn't show as what it does show. No commentary can be offered on the exact positions, and therefore the reasonableness, of the parked vehicles as the footage does not show the kerbside conditions in front or behind. The footage, which included audio, does not record any signs of panic from passing pedestrians, any raised voices from drivers, revving of engines or pressing of horns. It shows an uncharacteristically large goods vehicle making steady and careful progress with oncoming drivers waiting patiently. The body of the lorry is seen to brush past the branches of some overhanging street trees - it is not seen to “crash” in to a tree as has been suggested. In short, this is a rare event and not representative of day to day conditions

Construction Traffic

202. The size, timing and route of construction related vehicles will be the subject of a management plan to be secured by planning conditions. The condition of the highway network will be recorded before and after construction, with reinstatement to take place as appropriate.

The Travel Plan will not be effective

203. Separate Travel Plan documents for the respective residential and care home development are secured within the Section 106. These Plans will promote initiatives such as car sharing for care home staff, and be the subject of monitoring and review with appropriate targets set following the first travel surveys which can take place after occupation. They will assist in mitigating against a reliance on car travel, particularly for short journeys

⁶⁴ CD13.03, Appendix SCG2, Working Paper

⁶⁵ ID 15

and offer a valuable means of educating an increased awareness of travel impacts and changes in behaviour.

The traffic generation isn't representative

204. The Transport Assessment⁶⁶ accounts for the peak period traffic flow characteristics of both the residential development and the proposed care home facility, with trip rates and a resulting traffic generation figure that is agreed with the highway authority. The impact of development traffic is therefore robust and is representative of both resident travel characteristics and those of staff travelling to and from the care facility.

Summary

205. Reason for Refusal 3, on matters of highway impact and pedestrian movement, has been withdrawn following the highway authority's consideration of additional traffic survey work and an audit of local walking route infrastructure which has resulted in an agreed scheme of off-site improvements.

206. It is a matter of agreement with the highway authority that the supplemental September traffic counts show few differences to those collected in February. It is also agreed that the video surveys undertaken on Bradmore Way during the periods of drop off and pick up activity do not raise significant highway concerns in terms of the blocking of the carriageway or footway. Traffic conditions at these times are not remarkable, with driver behaviour being typical of roads in the vicinity of schools.

207. Consequently, having regard to the expected traffic movements arising from the development, the highway authority is satisfied that it has been demonstrated that there would not be an unacceptable impact on highway safety, and that the impact on the road network would not be severe.

208. The appeal scheme is very well located for journeys on foot in respect of its ease of access to the amenities of the village centre and to public transport, in particular at the railway station. Opportunities to support pedestrians and those with reduced mobility will be enhanced with the implementation of improved connections and step-free crossings.

209. The suitability of the appeal scheme in terms of highways and transportation matters has been appropriately assessed. Its location provides residents, visitors and staff with a choice of travel modes and the impact on the highway network is acceptable.

Ecology

210. Ecological issues have been conspicuous by their absence at the Appeal Inquiry and all ecological Reasons for Refusal have now fallen away. It has been agreed by all interested

⁶⁶ CD 1.34, Section 5

parties that the proposed development site is low risk in terms of ecological harm. Appropriate Conditions have been agreed with WHBC and the environmental consultees, to ensure that the appropriate species mitigation and compensation, on-site habitat creation and other ecological enhancement measures, set out in the Ecological Assessment documents, will be secured in the long term. The proposed development will exert no material impact on protected species including bats, nesting birds, reptiles, great crested newts or any other UK or European protected species. Specific habitat enhancement measures will be implemented to increase opportunities for use by these species and other wildlife.

211. The necessity of protecting the ecological integrity of the adjacent Peplin's Wood ancient woodland was recognised from the outset and to ensure more than adequate protection, a buffer of width 15-38m is to be provided along the length of Peplin's Wood. This buffer complies with or exceeds the current Natural England and Forestry Commission Standing Advice (January 2022) for ancient woodland buffer width (15m minimum); it will be fenced to ensure optimal woodland protection and subject to an appropriate woodland edge habitat creation scheme to optimise its nature conservation value. An additional landscape offset of maximum width 69m will also be provided in strategic areas, containing a mosaic of habitats including wetland, biodiverse meadow grassland and native tree planting of benefit to a wide range of characteristic wildlife. The proposed buffer habitat will provide more reliable long-term protection to the ancient woodland than the existing agricultural land use, which could, in the future, become subject to grassland intensification, or arable conversion, to the detriment of the sensitive woodland edge habitats.

212. Natural England expressed initial concerns regarding the potential for drainage effects to adversely impact on Water End Swallow Holes SSSI, located downstream of the development. Mitigation measures to ensure full protection of the SSSI have now been approved by Natural England, and these will be secured through Condition, removing one of the original Reasons for Refusal. All new compensatory habitats both on and off-site will be subject to an approved regime of conservation management to optimise their long-term biodiversity interests. Targets will be set to ensure the successful development of a mosaic of habitats suitable for protected and other notable species of wildlife, including nesting birds, reptiles, great crested newts and bats to flourish. This will be delivered through the delivery of a rigorous, ecologically sympathetic landscape and conservation management plan, secured through Condition. It will incorporate a comprehensive monitoring programme to ensure that ecological objectives are met and that the scheme does indeed substantially contribute to biodiversity in the local area.

Flooding and drainage

213. As mentioned in opening, with regard to flooding (RfR5), a SoCG has been agreed with the Lead Local Flood Authority ("LLFA"), and the initial objection has been withdrawn. 96% of the Site is in Flood Zone 1 (the lowest risk of flooding) and higher flood risk areas

on the edges of the Site relate to surface water flooding from minor ditches.⁶⁷ This point was not pursued further by those objecting.

The concerns about access to the adopted highway

214. Concerns were raised at a very late stage by Mr Hall, a local resident, about the access from the Appeal Site to the adopted highway. We will only discuss this matter briefly, noting that this is not the appropriate forum for matters of private law to be resolved.

215. To summarise, Mr Hall alleged that there is a strip of land, owned by a third party, between the end of the adopted highway on Bradmore Way and the boundary of the title to the appeal site. As a result of this strip, it has been further alleged that the Appellant does not have the necessary rights of access into the appeal site from Bradmore Way and that therefore the proposed development is somehow undeliverable. Quite remarkably, a fence has now been erected on the land belonging to the owners of the Appeal Site, physically blocking access to the site.

216. These allegations have been summarily dismissed in two notes produced by the Appellant's solicitors, Town Legal. The notes are at ID18 and ID22 and together demonstrate beyond any doubt that Mr Hall was labouring under a misapprehension. To be clear: there are no site access issues; the appeal site's registered title abuts the adopted highway on Bradmore Way; and the fence that has been erected on the appeal site has been done so unlawfully. The owners of the site will be taking the appropriate legal action to ensure the fence is removed from their land.

217. The Inspector, having reviewed the Town Legal notes, should be satisfied that this is a non-issue raised at the eleventh hour in a last-ditch attempt to prevent development.

SECTION 106 AGREEMENT

218. A section 106 agreement has been agreed between the County Council, the Borough Council, the Appellant (as developer) and the owners of the appeal site.

219. The agreement has been signed by the developer and the owners, and will be sealed by both the County Council and the Borough Council in the coming days, allowing for completion to take place before the Inspector-agreed deadline of Friday 10th March.

220. The section 106 agreement will ensure that the stated benefits of the development are achieved. To recap, these are:

- i. the provision of up to 56 affordable housing units (being 45% of the total number of dwellings);

⁶⁷ the proposed access road will include a culvert to allow surface water to pass underneath it and it has been shown through analysis that this leads to a slight improvement in existing flood risk.

- ii. the provision of up to 10 self-build and custom housebuilding plots (being 8% of the total number of dwellings);
- iii. the championing of sustainable travel measures through the use of approved travel plans;
- iv. the creation and maintenance of publicly accessible open space at the development;
- v. the development of a high-quality scout hut, fit for the future needs of the local scout group, and which will replace the existing, dilapidated hut;
- vi. a biodiversity net gain of 15% achieved through an offsetting scheme approved by the Council and funded by a contribution of £302,000; and
- vii. the development and operation of a Care Quality Commission registered care facility for up to 60 bedrooms.

221. On top of the aforementioned community benefits, secured through agreed legal mechanisms, the developer will also be providing around £3,500,000 worth of financial contributions to the County Council, £280,000 pounds to the Borough Council and £240,000 to the NHS.

222. Breaking these down, the financial contributions to the *County* Council will go towards the following local provisions:

- i. the increased provision of Brookmans Park Library;
- ii. increased local primary and secondary school capacity in Brookmans Park;
- iii. new severe learning difficulty special school places for pupils aged two to 19;
- iv. improved accessibility in the immediate vicinity of the development;
- v. increased capacity at the local recycling centre; and
- vi. a new youth centre in Hatfield or its future re-provision.

223. The financial contributions to the *Borough* Council will go towards:

- i. the maintenance of the facility and equipment at Hatfield Bowls Club;
- ii. either a new sports facility in Hatfield or maintenance works to the current Birchwood facility sports hall;
- iii. either a new swimming facility within Welwyn Hatfield or improvement works to the existing Hatfield swim centre;
- iv. improvements to the astroturf of either Chancellors School or the University of Hertfordshire;

- v. a new 3G facility at either Chancellors School, the Ridgeway Academy or Birchwood Leisure;
- vi. improvements to the pitch quality at Chancellors School or towards a new youth pitch at Welham Green recreational ground;
- vii. improvements to the pitch quality for mini soccer at either Welham Green or Chancellors School;
- viii. rugby union pitch maintenance at either Chancellors School or Roe Hill; and
- ix. cricket pitch improvements including, potentially, additional wickets or squares at either Newgate Street, Hatfield, Crusaders Cricket Club or North Mymms Cricket Club.

224. And finally, the contributions to the NHS will go towards:

- i. the digitalisation of patient records, expansion, and reconfiguration of Potterells Medical Centre;
- ii. the expansion and re-configuration of Queensway Health Centre; and
- iii. expansion and reconfiguration of Roseanne House, a specialist mental health clinic.

225. If this appeal is not allowed, the numerous local and community benefits secured by the section 106 agreement that I have just listed, would simply not come to pass.

CONCLUSION

226. There are very special circumstances in this case. There is demonstrable unmet housing need. There is a chronic shortfall in the five-year supply which adoption of the eLP will not solve. There is a disastrous historic delivery of AH and a shortfall in the supply. There is plainly unmet need for a care home in an area which is rapidly aging. Added to this, the site is exceptionally well contained. There is no up to date development plan and the policies that are relevant to the GB are plainly inconsistent with the NPPF.

227. For all of these reasons, and the reasons contained in these Closing submissions, the Inspector is respectfully invited to allow the appeal.

2 March 2023

CHRISTOPHER YOUNG KC
SIONED DAVIES
No5 CHAMBERS
LONDON - BIRMINGHAM – BRISTOL