



Department for  
Communities and  
Local Government

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Our Ref: APP/B1930/W/15/3028110

30 June 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY ERLP1 Sarl c/o St Congar Land  
AT SMUG OAK LANE, BRICKET WOOD, ST ALBANS, HERTFORDSHIRE**

1. I am directed by the Secretary of State for Communities and Local Government to say that consideration has been given to the report of the Inspector, Harold Stephens BA MPhil DipTP MRTPI FRSA, who held a public local inquiry on 9-12 February 2016 into your client's appeal against the refusal of St Albans City and District Council (“the Council”) to grant outline planning permission for the redevelopment of the site to provide up to a total of 129 dwellings and garaging with access via Smug Oak Lane following demolition of the existing buildings; refurbishment and extension of Old Lodge to provide a single dwelling and refurbishment and extension of Hanstead House to provide 8 dwellings and garaging with access via Smug Oak Lane (Total number of dwellings – 138) on land at Smug Oak Lane, Bricket Wood, St Albans, Hertfordshire AL2 3UE, in accordance with application reference 5/2014/3250, dated 21 November 2014.
2. On 17 July 2015, the Secretary of State recovered the appeal for his own decision because it involves a proposal for significant development in the Green Belt.

**Inspector’s recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector’s conclusions and recommendation, allows the appeal and grants planning permission. A copy of the Inspector’s report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

## **Policy and Statutory Considerations**

4. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the saved policies of the St Albans District Local Plan Review 1994 (LP).
5. The emerging St Albans Strategic Local Plan (IR1.23-1.25) is in the process of preparation and, as it has not yet been submitted to the Secretary of State for examination, he gives it only limited weight. The Secretary of State agrees with the Inspector (IR7.5) that the LP housing policies are out of date and he further agrees that the development plan policies of most relevance to this appeal are those identified by the Inspector at IR1.21.
6. Other material considerations which the Secretary of State has taken into account include the *National Planning Policy Framework* March 2012 (the Framework) and the planning practice guidance first published in March 2014 (the guidance); as well as the Council's Supplementary Planning Guidance on Affordable Housing, adopted in March 2004.

## **Main Issues**

7. The Secretary of State agrees that the main issues in this case are those identified by the Inspector at IR7.1.

### *Whether the scheme would be inappropriate development in the Green Belt*

8. For the reasons given at IR7.2-7.11, the Secretary of State agrees with the Inspector that, although the appeal site clearly lies within the Metropolitan Green Belt (IR7.2), Policy 1 of the LP is out of date in respect of the key applicable Green Belt policy in the Framework as it does not include the exception in paragraph 89 bullet point 6 which exempts previously developed land from being regarded as inappropriate development in the circumstances referred to at IR7.6. The Secretary of State therefore agrees with the Inspector's reasoning at IR7.10 that the entire appeal site falls within the definition of Previously Developed Land.

### *The effect on the openness of the Green Belt*

9. For the reasons given at IR7.12-7.42, the Secretary of State agrees with the Inspector that the proposed development would amount to a reduction in the built development on the site and would have no greater impact on the openness of the Green Belt than the existing development on the site. In coming to this conclusion, the Secretary of State has taken account of the quantitative reductions identified at IR7.15 and, like the Inspector, he affords substantial weight to this marked reduction. He also agrees with the Inspector (IR7.16) that, although the appeal proposal would reduce the area covered by hard standings, that would have a limited role in the determination of the issue in paragraph 89(6) of the Framework, and so he gives it limited weight.
10. Furthermore, for the reasons given at IR7.17-7.32, the Secretary of State agrees with the Inspector's conclusion at IR7.27 that, over most of the site, the net effect of the appeal scheme would either be neutral or result in an improvement in both the quantitative and qualitative effect on openness. The Secretary of State agrees with the Inspector (IR7.29) that the tennis courts and the eastern car park development would give rise to negative local impacts but he does not consider that these outweigh the benefits of the scheme and agrees with the Inspector (IR7.31) that, although the proposal would be more clearly residential, an observer would not form the impression that the site was more heavily or densely developed than it is now. Overall, therefore, having regard to the Inspector's observations at IR7.32-

7.33, the Secretary of State agrees with the Inspector at IR7.35 that the appeal scheme would reduce the effects on openness.

11. Like the Inspector, the Secretary of State has gone on to consider whether the proposed development would offend the purpose of safeguarding the countryside from encroachment and, for the reasons given at IR7.37-7.40, the Secretary of State agrees with the Inspector's conclusion at IR7.40 that there would be no such encroachment. Overall, therefore, the Secretary of State agrees with the Inspector's conclusion at IR7.42 that the appeal proposal would not have a greater impact on openness of the Green Belt than the existing development on the site and would have no material effect in terms of the purpose of safeguarding the countryside from development. Furthermore, the Secretary of State agrees with the Inspector that, as it would not constitute inappropriate development (see paragraph 8 above), there is no need to consider whether there are very special circumstances to justify it.

#### *Character and Appearance*

12. The Secretary of State has given careful consideration to the Inspector's analysis of the scheme's impact on the character and appearance of the area (IR7.43-7.49). He agrees that the site and the adjacent land do not contain any statutory landscape or conservation designations and he shares the Inspector's view that, whilst the redevelopment of this site would result in a change of character of the area, the proposed development would enhance the landscape character of the site and have a positive impact on its character and appearance.

#### *Affordable Housing*

13. The Secretary of State agrees with the Inspector (IR7.50-7.53) that adequate provision has been made for affordable housing.

#### *Paragraph 14 of the Framework*

14. Having carefully considered the Inspector's reasoning at IR7.55-7.62, the Secretary of State agrees that the development should be assessed on the basis of the presumption in favour of sustainable development as set out in paragraph 14 of the Framework. He also agrees (IR7.59) that the development of 138 dwellings where the Council cannot demonstrate a 5 year supply of deliverable housing sites should receive substantial weight and that the proposal is generally consistent with the development plan as a whole with no adverse impacts that would significantly or demonstrably outweigh the benefits when weighed against the Framework as a whole.

#### **Conditions and planning obligation**

15. The Secretary of State has considered the Inspector's assessment of the conditions at IR6.1-6.3 and the suggested conditions at the Annex to the IR. He is satisfied that the proposed conditions are reasonable and necessary and would meet the tests of paragraph 206 of the Framework. He has therefore incorporated them in his decision as set out at Annex A to this letter.
16. The Secretary of State has considered the Inspector's comments at IR6.4-6.11 on the Unilateral Undertaking signed on 15 March 2016, and agrees that the provisions meet the statutory tests in Regulation 122 of the CIL Regulations as amended.

#### **Planning balance and conclusion**

17. Although the proposed development does not accord with the development plan in terms of its location in the Green Belt, it does accord with the Framework as it falls within the definition

of Previously Developed Land and, overall, the Secretary of State concludes that the proposal represents a sustainable form of development which is otherwise in general accordance with the development plan. The Secretary of State has then gone on to consider whether there are any adverse effects of the proposal that would outweigh the benefits it provides. He acknowledges that the redevelopment of this site would result in a change of character of the area, but he gives substantial weight to the fact that the proposed development would amount to a reduction in the built development on the site which would neither have a greater impact on the openness of the Green Belt nor represent greater encroachment into the countryside than the development it would replace. He concludes that the net effect of the development would either be neutral or result in an improvement in both the quantitative and qualitative effect on openness, and that any adverse effects would be outweighed by the benefits of the scheme, including the fact that it would make a useful contribution to the provision of much needed affordable housing.

### **Public Sector Equality Duty**

18. In making this decision, the Secretary of State has had due regard to the requirements of Section 149 of the Public Sector Equality Act 2010, which introduced a public sector equality duty that public bodies must, in the exercise of their functions, have due regard to the need to (a) eliminate discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. In this regard, and in coming to his decision, the Secretary of State considers that there would be some positive impact on protected persons arising from the affordable housing.

### **Formal Decision**

19. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for the redevelopment of the site to provide up to a total of 129 dwellings and garaging with access via Smug Oak Lane following demolition of the existing buildings; refurbishment and extension of Old Lodge to provide a single dwelling and refurbishment and extension of Hanstead House to provide 8 dwellings and garaging with access via Smug Oak Lane (total number of dwellings – 138) on land at Smug Oak Lane, Bricket Wood, St Albans, Hertfordshire AL2 3UE, in accordance with application reference 5/2014/3250 (dated 21 November 2014), subject to conditions at Annex A to this letter.
20. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
21. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

### **Right to challenge the decision**

22. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

23. A copy of this letter has been sent to St Albans City and District Council, with notifications sent to all other parties who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

Authorised by Secretary of State to sign in that behalf

## Conditions

### APPROVAL OF DETAILS AND TIMING

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development is commenced.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 3) The development hereby approved shall be for no more than 138 dwellings.
- 4) The development shall be carried out in general accordance with the details shown on the Masterplan (Plan 1 Revision B), and in accordance with Areas of Proposed Buildings (Plan 3 Revision C), Maximum Floor Areas (Plan 5 Revision B) and Maximum Storey Heights (Plan 6 Revision B).
- 5) The development hereby permitted shall be carried out in accordance with the following approved plans and information: Location Plan REV B, PLAN 1 REV. B, PLAN 2 REV. C, PLAN 4 REV. C, PLAN 7 REV. B, SOL/HH/L01, SOL/HH/14/L10B, SOL/HH/14/L11A, SOL/HH/14/L12, SOL/HH/14/L13, SOL/HH/14/L14A, SOL/HH/14/L15A, SOL/HH/14/L20A, SOL/HH/14/L21 , SOL/HH/14/L22, SOL/HH/14/L23, SOL/OL/14/L01, SOL/OL/14/L10, SOL/OL/14/L11, SOL/OL/14/L15, SOL/OL/14/L16, SOL/OL/14/L17, SOL/OL/14/L18, SOL/OL/14/L20, SOL/OL/14/L21, SOL/OL/14/L22, SOL/OL/14/L24, SOL/OL/14/L25, SOL/OL/14/L26, SOL/OL/14/L27, SOL/OL/14/L28, Air Quality Assessment, Arboricultural Impact Assessment and accompanying drawings, Cultural Heritage Desk Based Assessment, Heritage Statement, Foul Drainage and Utilities Assessment and accompanying drawings, Ecological Assessment Report, Updated Bat Report, Updated Badger, Otter and Water Vole Report, Flood Risk and Drainage Assessment, Landscape Design Statement, A111-LA01a, Landscape and Visual Impact Appraisal, Design and Access Statement and Appendices, Transport Assessment Addendum and accompanying drawings (43759/P/01 Revision B, 43759/P/02 Revision B, 43759/P/03 Revision B, 43759/C/009 Revision A and 43759-C-12 Revision A), Residential Travel Plan, Utilities Report and Preliminary Risk Assessment received 24/11/2014.
- 6) Notwithstanding the provisions of Schedule 2, Part 1, Classes A, B, C, D and E and Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), there shall be no enlargement or extension of the dwellings hereby permitted, including any additions or alterations to the roof, and no building, enclosure or means of enclosure shall be constructed within the application site without the prior written permission of the Local Planning Authority.
- 7) Details of the finished floor levels of all of the buildings within the site in relation to existing ground levels shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development and the development shall be carried out in accordance with the agreed details.
- 8) Prior to the commencement of development, details of the provision to be made for the storage of refuse shall be submitted to and approved in writing by the Local Planning Authority. Such provision shall be made prior to the occupation of the dwellings and shall thereafter be made permanently available for the occupiers of the dwellings.
- 9) A scheme for external lighting shall be submitted to and approved in writing by the Local Planning Authority, before the development hereby approved is commenced. The development shall be implemented in accordance with the approved details.

## **LANDSCAPING**

10) No development shall take place until details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include (a) proposed finished levels and contours; (b) means of enclosure; (c) car parking layouts; (d) other vehicles and pedestrian access and circulation areas; (e) hard surfacing materials; (f) minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc); (g) proposed and existing functional services above and below ground (e.g. drainage, power, communications cables, pipelines etc, indicating lines manholes, supports etc.); (h) retained historic landscape features and proposals for restoration where relevant; (i) existing trees to be retained; (j) existing hedgerows to be retained. Details to be submitted shall include planting plans; written specifications (including cultivation and other operations associated with the plant and grass establishments); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; an implementation programme should be submitted.

11) A landscape management plan indicating long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small privately owned domestic gardens shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development or any phase of the development whichever is the sooner for its permitted use. The landscape management plan shall be carried out as approved.

12) If within a period of five years from the date of the planting of any tree or plant, that tree or plant, or any tree or plant planted in replacement for it is removed, uprooted or destroyed or dies or becomes seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless otherwise the Local Planning Authority gives its written consent to any variation. The tree or plant shall be planted within 3 months of felling/dying or if this period does not fall within the planting season by 31 January next.

13) An Arboricultural Method Statement in accordance with BS5837:2012 should be submitted to and approved in writing by the Local Planning Authority. Tree protection measures should be undertaken in accordance with the approved Arboricultural Method Statement.

## **ARCHAEOLOGY AND HERITAGE**

14) No development shall take place within the application site until a written scheme of archaeological investigation, including the methodology of further investigation works and a programme for the works to be undertaken (the 'Archaeological Scheme') has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be implemented in accordance with the agreed Archaeological Scheme.

15) No development shall take place within the application site until an Archaeological Management Plan, including measures for the ongoing protection of any archaeological features identified under the Archaeological Scheme and a programme for their implementation has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be implemented in accordance with the agreed Archaeological Management Plan.

16) No development shall take place until the applicant, or their agent or successors in title, has secured the implementation of a programme of building recording and analysis with a watching brief to be maintained during the course of the works affecting the below ground deposits and historic fabric of the buildings concerned. This must be carried out by a professional archaeological/building recording consultant or organisation in accordance with a written scheme of investigation which shall first have been submitted to and agreed in writing by the Local Planning Authority.

## **CONSTRUCTION METHOD STATEMENT**

17) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved statement shall be adhered to throughout the construction period. The statement shall provide for:

- (a) the hours of work;
- (b) the parking of vehicles of site operatives and visitors;

- (c) loading and unloading of plant and materials;
- (d) storage of plant and materials used in constructing the development;
- (e) construction vehicle numbers, type, routing;
- (f) Wheel washing facilities;
- (g) traffic management requirements;
- (h) a scheme for recycling/disposing of waste resulting from construction works;
- (i) cleaning of site entrances, site tracks and the adjacent public highway;
- (j) means of protection of trees and hedgerows during site preparation/demolition and construction;
- (k) access arrangements for emergency vehicles during the construction phase.

18) Demolition or construction works and deliveries shall not take place outside 0730 hours to 1800 hours Mondays to Fridays and 0730 hours and 1300 hours on Saturdays nor any time on Sundays or Bank Holidays.

## **HIGHWAYS AND TRANSPORTATION**

19) Prior to commencement of development, detailed drawings of all highway works including details of the internal road layout and all materials to be used for hard surfaces areas including roads, cycleway, footpaths and car parking shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority.

20) All works associated with Rights of Way works shall be designed in accordance with Hertfordshire County Council's Rights of Way improvement plan approved and completed prior to any occupation of the development.

21) The development hereby permitted shall not be occupied until the road works as shown in principle in drawing no 43759/P/01 Rev B (Smug Oak Lane/Station Road), drawing no 43759/P/02 Rev B (Smug Oak Lane/Radlett Road) and drawing no 43759/P/03 (Mt. Pleasant Lane/A405) have been constructed and completed as agreed with the Local Planning Authority.

22) Construction of the development hereby permitted shall not be occupied until the following pedestrian works have been constructed and completed as agreed in writing by the Local Planning Authority:

- Provision of uncontrolled pedestrian tactile paving crossing on Station Road/Smug Oak Lane junction.
- Provision of uncontrolled pedestrian tactile paving crossing on Smug Oak Lane near terrace cottages. Reference: 43759-C-12 Rev A
- Provision of uncontrolled pedestrian tactile paving crossing on Radlett Road. Reference number 43759/C/009 Rev A

23) Two months prior to the first occupation of the development the Applicant shall implement the approved 'Green Travel Plan'.

## **DRAINAGE**

24) No development shall take place until a detailed surface water drainage scheme for the site, based on the agreed Flood Risk Assessment (RSK, Ref: 131843 – R1(2) – FRA, dated November 2014) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details. The scheme shall include a restriction in run-off and surface water storage on site as outlined.

25) No development shall take place until a drainage strategy detailing any on and/or off site drainage works has been submitted to and approved by the Local Planning. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works in the approved strategy have been completed.

26) No development approved by this permission shall take place until a scheme for the improvement of the existing foul sewerage system has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved. No occupation of dwellings



approved by this permission shall occur until the scheme for improvement of the existing foul sewage system has been completed.

### **GROUND CONTAMINATION**

27) No part of the development shall be commenced on site unless and until:

- 1) A site investigation scheme, based on the initial desk study to provide information for a detailed assessment of the risk to all receptors that may be affected including those off site, has been submitted to and approved in writing by the Local Planning Authority prior to the investigation being carried out;
- 2) The site investigation and associated risk assessment have been undertaken in accordance with the details submitted to and approved in writing by the Local Planning Authority;
- 3) A method statement and remediation strategy based on the information obtained from (2) above including a programme of works have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved remediation strategy.

28) No dwelling shall be occupied until such time as a verification investigation has been undertaken in line with the agreed verification plan for any works outlined in the remedial scheme relevant to either the whole development or that part of the development and the report showing the findings of the verification investigation has been submitted to and agreed in writing by the Local Planning Authority.

### **NOISE**

29) The development hereby permitted shall not commence until a noise assessment has been carried out which assesses the impact of noise from traffic on the M25 to the North and the railway line to the North East/East of the site. Sound insulation measures will then need to be incorporated into the proposed development so the standard within BS8233:2014 is achieved within all habitable rooms. LA<sub>max,f</sub> should not normally exceed 45dBA in bedrooms at night (2300 hours to 0700 hours).

### **ECOLOGY**

30) Prior to the commencement of development, an Ecological Management Plan, including long term objectives, management responsibilities and maintenance schedules, for the habitats within the site boundary (but beyond the immediate development footprint) should be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved Ecological Management Plan.

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# **Report to the Secretary of State for Communities and Local Government**

**by Harold Stephens BA MPhil DipTP MRTPI FRSA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Date: 29 March 2016**

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**Town and Country Planning Act 1990**

**Appeal by ERLP1 Sarl c/o St Congar Land**

**St Albans City and District Council**

Inquiry held on 9 -12 February 2016

Smug Oak Lane, Bricket Wood, St Albans, Hertfordshire AL2 3UE

File Ref: APP/B1930/W/15/3028110

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## Inspector's Report

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**File Ref: APP/B1930/W/15/3028110**

**Smug Oak Lane, Bricket Wood, St Albans, Hertfordshire AL2 3UE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by ERLP1 Sarl c/o St Congar Land against the decision of St Albans City and District Council.
- The application Ref 5/2014/3250, dated 21 November 2014, was refused by notice dated 31 March 2015
- The development proposed is an outline planning application for the redevelopment of the site to provide up to a total of 129 new build dwellings and garaging (Class C3) with access via Smug Oak Lane following demolition of existing buildings. Refurbishment and extension of Old Lodge to provide a single dwelling and refurbishment and extension of Hanstead House to provide 8 dwellings and garaging (Class C3) with access via Smug Oak Lane (Total number of dwellings -138). All matters reserved except for access.

**Summary of Recommendation: That the appeal be allowed and planning permission be granted subject to conditions**

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**BACKGROUND AND PROCEDURAL MATTERS**

- 1.1 The Inquiry was held at the Council Offices, Civic Centre, St Albans into this appeal on 9-12 February 2016. I made an accompanied site visit to the appeal site on 11 February 2016 and I also visited other sites on an unaccompanied basis on 16 February 2016. The Inquiry was adjourned on 12 February 2016 to enable further work on a Planning Obligation and was closed in writing on 17 March 2016.
- 1.2 The appeal was recovered by the Secretary of State (SoS) by a direction, made under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, on 17 July 2015. The reason for this direction is that the appeal involves proposals for significant development in the Green Belt.
- 1.3 There are two Statements of Common Ground (SoCG); one of these records the agreed position between the Appellant and the St Albans City & District Council (SACDC) on general planning matters<sup>1</sup> and the other sets out the agreed position between the Appellant and SACDC on affordable housing.<sup>2</sup> There is a Section 106 Planning Obligation in the form of a Unilateral Undertaking<sup>3</sup> and a List of Suggested Conditions for the appeal.<sup>4</sup> The Appellant, SACDC and other parties have also provided a separate list of documents which each submitted to the Inquiry. Copies of all the proofs of evidence, appendices and summaries have been supplied to the SoS. The document lists are at the end of this Report.

**The Site and Surroundings**

- 1.4 The appeal site is located to the east of Bricket Wood within the Metropolitan Green Belt. It forms part of the former HSBC Management and Training Centre which falls within Use Class C2 - Residential Institutions - of the Town and

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<sup>1</sup> CD23

<sup>2</sup> LPA4

<sup>3</sup> INQ3

<sup>4</sup> LPA2

Country Planning (Use Classes) Order 1987, as amended. In 2011, following a review of its training needs, HSBC declared the facilities surplus to its requirements.

- 1.5 The appeal site area (red line) comprises about 20.35 ha of land associated with the former Training Centre. This sits within a wider landholding of some 46ha which, in addition to the site, includes agricultural fields and pasture. The appeal site includes a complex of buildings, associated with the former residential and training uses and a network of roads and car parks set within a mature parkland setting including three artificial lakes. Certain trees within the site are protected by a Tree Preservation Order which was confirmed in November 2012. A disused running track and tennis courts lie to the west of the site. A non-statutory community wood, Hanstead Wood, is located to the north-west. All the buildings on the site are now vacant. Access to the site is principally from Smug Oak Lane but there are two accesses onto Drop Lane.
- 1.6 The appeal site contains many buildings. These include Hanstead House, a substantial detached former manor house in the south western part of the site. The house dates from 1925 and has gardens to the east, south and west. The appeal site contains a designated heritage asset. Sir David Yule and other family members are buried in the Yule Mausoleum (a Grade II Listed Building) to the east of Hanstead House. Immediately outside the appeal site boundary, to the west and south are two Listed Buildings and a Scheduled Ancient Monument (the site of a Roman Villa).
- 1.7 To the west of Hanstead House is "New Lodge", a detached dwelling adjacent to the southern Drop Lane entrance. This building is not within the appeal site. Further to the north-west is another lodge "Old Lodge" adjacent to the northern entrance on Drop Lane. This building is within the appeal site.
- 1.8 Bricket Wood Common lies to the west of the site. This is an extensive area subject to various ecological designations. Parts of Bricket Wood Common are designated as a Site of Special Scientific Interest (SSSI) but these are not adjacent to the appeal site.

## Planning History

- 1.9 The full planning history of the site is set out in Committee Report dated 30 March 2015.<sup>5</sup> It is noteworthy that a planning application was submitted in August 2013 by the Appellant for demolition and construction to provide up to 175 dwellings. All matters were reserved with the exception of access.<sup>6</sup> This application was refused planning permission in August 2014.
- 1.10 The decision notice on that application cites 5 Reasons for Refusal.<sup>7</sup> These include:

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<sup>5</sup> CD7

<sup>6</sup> Ref No: 5/2013/2119

<sup>7</sup> CD18

- Inappropriate development in the Green Belt detrimental to openness, character and visual amenity of the Green Belt;
- Scale, extent of development, layout, design and siting concerns;
- Inadequate provision for affordable housing;
- Absence of a completed and signed s106 Agreement;
- Absence of an acceptable preliminary risk assessment to demonstrate the risk of pollution to controlled waters is acceptable.

## The Proposal

- 1.11 The appeal proposal seeks outline planning permission for the redevelopment of the site to provide up to a total of 129 new build dwellings and garaging (Class C3) with access via Smug Oak Lane following demolition of existing buildings. Refurbishment and extension of the Old Lodge to provide a single dwelling and refurbishment and extension of Hanstead House to provide 8 dwellings and garaging (Class C3) with access via Smug Oak Lane. The total number of dwellings would be 138. All matters are reserved except for access.
- 1.12 The proposal involves the demolition of the majority of the existing buildings on site except for Hanstead House and New Lodge and the construction of up to 129 new dwellings. These new build dwellings would access the site from Smug Oak Lane. It is also proposed to refurbish and extend Old Lodge to provide a single dwelling. The extensions would include: an infill extension to the rear (north) side; a 5m wide extension to the east side, set back from the front (south elevation) and a new, 0.7m taller roof structure.
- 1.13 Alterations and an extension 8m wide at first floor and 11m wide at ground floor level would be undertaken to Hanstead House to enable its conversion to 8 dwellings.
- 1.14 The proposal is in outline form and seeks approval for access only. Scale, appearance, landscaping and layout are matters reserved for future determination. However, an illustrative Master Plan (Plan1 Revision B) has been submitted with the proposal. This shows that many of the proposed buildings would be broadly in the locations of existing buildings. However, buildings would be introduced along the length of the central spine road there would be some spread towards Drop Lane and the substantial water feature within the site. A layout plan suggests that the development would have a series of "character areas" comprising different types of development. The buildings would be predominantly arranged adjacent to existing roads within the site.
- 1.15 The Appellant seeks to establish a series of parameters to enable the Council and future developers to be guided on the expectations for the site. Three parameter plans have been submitted: these show (i) details about Areas of Proposed Buildings (Plan3 Revision C), (ii) Maximum Floor Areas (Plan 5 Revision B) and (iii) Maximum Storey Heights (Plan 6 Revision B).
- 1.16 Indicative storey heights range from 1 to 3.5 storeys (presumed to be three storeys with further accommodation in a roof space). The buildings would predominantly be 2 to 2.5 storeys. The indicative plans suggest a mixture of terraced, semi-detached and detached houses. It is also noteworthy that four

blocks of flats are shown, predominantly in the location of the larger existing building on the site.

- 1.17 The proposal includes parking areas, open spaces adjacent to the lake and Drop Lane; children's play area and would maintain public access to Hanstead Wood and other parts of the site.
- 1.18 The proposal was supported by a number of technical documents including a comprehensive Design and Access Statement (DAS) and Appendices.<sup>8</sup> In the accompanying Transport Statement the Appellant proposes: improving the footway link at the Gate Public House; junction improvements works at Smug Oak Lane/Radlett Road and Mount Pleasant Lane /A405 slip road and funding to allow the existing bus service to be extended to serve the site for a period of 5 years.
- 1.19 The Appellant originally proposed an affordable housing offer of 10% comprising 8 social rented units and 6 intermediate/shared ownership units. At the planning application stage, the Appellant argued that the scheme was unviable at this level of provision. However, during the Inquiry the offer was revised to 16% affordable housing i.e. a total of 22 units. This is dealt with in more detail in the SoCG on affordable housing<sup>9</sup> and in the Inspector's Conclusions section of this report.

### **Environmental Impact Assessment (EIA)**

- 1.20 The overall development falls within the description at paragraph 10(b) of Schedule 2 of the 2011 Regulations,<sup>10</sup> being an urban development project on a site exceeding 0.5ha. A Screening Opinion was issued by the SACDC to the effect the development would be unlikely to have significant impacts on the environment and therefore did not require an Environmental Statement. The SoS considered the matter and having taken into account the criteria in Schedule 3 to the above Regulations came to the same view that the proposed development would not be likely to have a significant effect on the environment by virtue of factors such as its nature, size or location. I agree that the proposed development is not EIA development and therefore it does not require the submission of an Environmental Statement.

### **Planning Policy**

- 1.21 The development plan for the area includes the saved policies of the **St Albans District Local Plan Review 1994** (LP). The East of England Plan 2008 was formally revoked on 3 January 2013 and consequently is no longer a development plan document. The following LP saved policies are considered relevant to this appeal:

- **Policy 1-** this identifies the extent of the Green Belt in the District and sets out the approach to managing development within it.

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<sup>8</sup> See CD7 paragraph 4.14

<sup>9</sup> LPA4

<sup>10</sup> The Town and Country Planning (Environmental Impact Assessment) Regulations 2011

- **Policy 2** - sets out the LP settlement strategy. It identifies the settlements which are excluded from the Green Belt<sup>11</sup> and also villages which are within it. The policy seeks to protect the character of settlements.
  - **Policy 7A** - identifies the Council's target for affordable housing delivery in the plan period. Affordable housing will be sought as part of housing schemes on sites of over 0.4ha in size or where in excess of 15 units are proposed.
  - **Policy 8** – indicates that planning permission for affordable housing for local needs in the Green Belt will be granted only where the criteria set out in the policy are met.
  - **Policy 35** – indicates that the Council will seek highway improvements or contributions to highway improvements and/or improvements to the public transport system from developers whose proposals would otherwise result in detrimental highway conditions.
  - **Policy 69** – provides guidance on the design of new development and requires all proposals to have a high standard of design.
  - **Policy 70** – relates specifically to the design and layout of new housing identifying various factors which must be considered in the design of any new residential scheme.
  - **Policy 143B** – requires the provision of appropriate infrastructure and facilities in order to mitigate the impacts of development and meet the needs of residents
- 1.22 Copies of all of these policies are set out in Appendix 1 to Mr Ozier's proof of evidence and there is no need for me to repeat them here.
- 1.23 The Council is in the process of preparing the **St Albans Strategic Local Plan** (SLP) for the District. This document seeks to set the overall levels of growth considered appropriate to meet the future needs of the area. The SLP is at an early stage of preparation with the Pre-Submission Version due to be published for consultation in early 2016. Therefore, at this time, the SLP carries limited weight.
- 1.24 The Council engaged consultants to undertake a Green Belt Review of the District in order to inform the SLP and directions of growth it must determine. The results of the Green Belt Review were published at the end of 2013 and this work will enable the SLP process to continue to conclusion.
- 1.25 The first and second stage reports were prepared by SKM Consultants.<sup>12</sup> The documents provide a strategic examination of the Green Belt in St Albans as well as the neighbouring authorities of Dacorum and Welwyn Hatfield. The

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<sup>11</sup> Including Bricket Wood (a specified settlement as identified in LP Policy 2)

<sup>12</sup> CD6



documents will form part of the evidence base for the SLP and give a strategic examination of the Green Belt and how elements perform against the key objectives of the Green Belt as set out in the NPPF.

- 1.26 The **National Planning Policy Framework** (NPPF) (2012) is also relevant. This has the presumption in favour of sustainable development at its heart and this has three dimensions: economic, social and environmental. It is confirmed that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is one such material consideration. Paragraph 215 makes it quite clear that the NPPF can override development plan policy that is not consistent with its provisions. Paragraph 49 of the NPPF indicates that relevant policies for the supply of housing will not be considered up-to-date if the Council is unable to demonstrate a five-year supply of deliverable housing sites. Paragraph 14 of the NPPF indicates that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF as a whole or unless specific NPPF policies indicate development should be restricted. Section 7 of the NPPF confirms the Government's commitment to achieving high quality design in new developments and Section 9 addresses development in the Green Belt.

### **Supplementary Planning Documents**

- 1.27 The Council's SPG on Affordable Housing was adopted in March 2004.<sup>13</sup> Paragraph 7.13 of the SPG states that the Council will seek by negotiation, a target level of 35%. Paragraph 7.15 of the SPG states that where the viability of housing is threatened by the 35% target, an appropriate percentage will be negotiated on a site by site basis and that the developer will be required to produce viability evidence accordingly.
- 1.28 SACDC does not have SPG relating to Planning Obligations. Requirements are negotiated on a site by site basis. The Council relies on Hertfordshire County Council's '*Planning Obligation Guidance – Toolkit for Hertfordshire*' which was adopted in January 2008.

### **Matters not in Dispute<sup>14</sup>**

- 1.29 In relation to the planning considerations, the Council and the Appellant are in agreement that:
- A Transcript taken from the web cast recording of the Planning Referrals Committee held on Monday 30 March 2015 is at CD7. It is agreed that this is an accurate record of the Committee discussion;
  - There are no local policies that require the retention of the residential college use and therefore there is no objection to the loss of the facility;

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<sup>13</sup> CD13

<sup>14</sup> Source: SoCG CD23

- The NPPF paragraph 89 lists exceptions to 'inappropriate' development in the Green Belt i.e. development that would constitute appropriate development. The list at paragraph 89 (last bullet point) includes the *'limited infilling or partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing'*;
- The Council's RFR3 excludes the reference 'the proposed development is inappropriate development in the Metropolitan Green Belt' which appeared in the previous scheme RFR. The Transcript of the Planning Referrals Committee meeting sets out the discussions held at the meeting as to whether this appeal proposal did not represent 'inappropriate development in the Green Belt' and thus complied with paragraph 89 of the NPPF. The Committee did not accept that the development proposed complied with paragraph 89 of the NPPF.
- In relation to the impact on openness in the Green Belt the Council agrees the comparative assessment of the footprint and volumes of the existing buildings against that proposed is correctly set out at paragraph 9.5.16 of the Committee Report.<sup>15</sup>
- A Landscape and Visual Impact Assessment was undertaken by the Appellant in accordance with best practice guidance (GLVIA3) and the planning officer considered the assessment and methodology, as noted in paragraph 9.6.4 of the Committee report, to be 'thorough and comprehensive'. The Officer's report also records at paragraph 9.6.24 that the Landscape and Visual Impact Assessment had been carried out in a 'detailed and methodical manner' but identified a number of impacts associated with the development;
- The assessment considered the potential effects of the development on landscape character and on visual amenity; this assessment considered effects during construction, at Year 1 following completion and the residual effects at Year 15 when planting is deemed to have established;
- The Landscape Character Assessment considered the effects on the Bricket Wood Character Area as described in the published Hertfordshire Character Assessment;
- The Appellant's assessment went on to consider the effects on 8 Local Character Areas (LCA) which covered the site and its immediate surroundings. The Council's Officer agreed that from Year 1 there would be no negative effects (harm) on LCA 1, 2, 3, 4 and 8 and whilst she noted that the Year 1 effect resulting from the development would be negative in LCA 5, 6 and 7, she concluded that by Year 15, albeit contrary to the Appellant's assessment which found the effects to be

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<sup>15</sup> CD7

positive, the only residual negative effect would be on LCA 7 - Hanstead House, Lodge and Parkland;

- The visual impact assessment considered the visual amenity and the potential effects resulting from the proposed development for 22 public view points including roads, public rights of way and residential properties. The Council's Landscape Officer agreed with the findings for 17 of the 22 viewpoints (paragraph 9.6.16) and whilst the assessment at Year 1 for viewpoints E, H, J, K and L was found to be negative, only 2 of the 22 viewpoints (J and K) were considered by the Council to have residual negative effects at Year 15. The Council's Landscape Officer also considered that there would be adverse effects on the landscape and views from the proposed publicly accessible parkland by the lakes but that this should be slightly reduced to neutral at Year 15.
- The Council has no defined housing target in its Local Plan. Policy 3 – 'housing land supply' has been deleted;
- It is agreed that the Council cannot demonstrate a 5 year supply of housing. This is confirmed at paragraph 9.4.6 of the Committee report;
- The appeal site was included in the Council's Housing trajectory to contribute towards its 5 year supply. The Annual Monitoring Report April 2012 to March 2013. This confirmed that the Council expected the site to deliver 180 dwellings from 2015 at 45 dwellings per annum to 2018;
- The Council's AMR (2013-2014) omitted the appeal site from the 5 year supply. This error is acknowledged by the Council's Head of Spatial Planning in an email dated 22.4.15 who confirmed as such and further confirmed that the appeal site was included in the Council's 5 year land supply figures (with a capacity of 150 dwellings) for the Sewell Park Planning Inquiry held in July 2014 (LPA ref 5/2014/0093);
- The Council's evidence based SHLAA 2009 identified the appeal site as a potential housing site (reference GB-BW 329). At that time the site had not been declared surplus to requirement by the previous owner and consequently there was uncertainty over its deliverability. Nonetheless, it was shortlisted as a potentially suitable housing site. There has been no update in the Council's SHLAA since 2009;<sup>16</sup>
- It is agreed that Ecology and Habitat concerns can be dealt with by means of a planning condition;
- The impact of the appeal proposal on the local highway network has been assessed by Hertfordshire County Council (as the highway authority) who raised no objections to the proposal subject to suitable mitigation to be secured via planning condition/s278 and s106 contributions;

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<sup>16</sup> APP2

- It is agreed that no Flood Risk objections have been raised to the proposal by the Environmental Agency or the Council subject to suitable planning conditions being imposed;
- It is agreed that no Air Quality objections have been raised by the Council's Environmental Compliance Officer to the proposal subject to the imposition of suitable planning conditions;
- It is agreed that no Archaeology objections have been raised by the Council's officer subject to suitable planning conditions being imposed;
- In terms of Heritage the officer's Addendum Report<sup>17</sup> sets out the further consultation response from English Heritage which confirms that it is satisfied that no harm would be caused to the setting of the Grade II Listed Mausoleum or the garden of Hanstead House from the proposal. The Council agreed that there are no heritage or archaeological matters of significance which are adversely affected by the proposal;
- It is agreed that the Arboricultural Impact of the proposal is acceptable to the Council subject to the imposition of suitable planning conditions;
- In terms of Design and Layout the Council does not object to the proposal on the grounds of conflict or non-compliance with saved LP Policies 69 and 70;
- A Preliminary Risk Assessment was submitted as part of the supporting information and considered by the Environment Agency who suggested the imposition of suitable planning conditions;
- The Council agrees that RFR2 can be overcome by way of an acceptable s. 106 Agreement or Unilateral Undertaking.

## 2. THE CASE FOR ST ALBANS CITY & DISTRICT COUNCIL

2.1 The relevant issues set out in this case are addressed in turn. The additional question which arises in this case, namely, whether permission should be granted if it is found that the development is not inappropriate is also addressed.

***Issue 1: Whether the proposal constitutes inappropriate development in the Green Belt having regard to the NPPF and Development Plan policies***

2.2 Ordinarily, the construction of 138 dwellings with associated infrastructure in the Green Belt would amount to inappropriate development. The Appellant relies upon only one aspect of the NPPF when seeking to argue that the

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<sup>17</sup> CD8

development is not inappropriate, paragraph 89 (6) of the NPPF. The Council accepts that the absence of a reference to this exception in the LP does not affect this case – Policy 1 of the LP is inconsistent with the NPPF to that extent, although it remains relevant and it is consistent with the NPPF in other respects.

- 2.3 With regard to paragraph 89(6) of the NPPF there are a number of submissions on the approach to be taken. First, as a generality, the Green Belt is a heavily restricted area in policy terms and new building within it is sought to be prevented. The list of exceptions in paragraph 89 is one of a limited number to the general position that all built form is inappropriate and only capable of being justified by very special circumstances. Paragraph 89 comprises exceptions that are not to be treated as lightly as a result.
- 2.4 Secondly, the exceptions are precise and notably descend to the level of a single building. Paragraph 89 (4), for example, provides that the replacement of a building will be not inappropriate if it is “not materially larger than the one it replaces”. It follows that, even where a single building is being considered, should there be a material increase in size, it would not be capable of falling under the definition.
- 2.5 Paragraph 89(6) is capable of applying to large and small PDL<sup>18</sup> sites. If the redevelopment proposal of a small site, (for example, a residential development) has a greater impact on openness than the existing buildings on site, it would not satisfy the definition – this indicates that even limited levels of material reductions in openness would prevent paragraph 89 (6) from being satisfied.
- 2.6 As to the particular requirement in paragraph 89 (6) that the development should have no greater impact on the openness of the Green Belt than the existing development, the following submissions can be made:
- (a) The extent of the impact should be considered in the light of the very strictly defined nature of the exceptions as a whole that I have referred to above i.e. compare the replacement buildings and extensions of buildings. The conclusion on openness should be consistent with the essential purpose of protecting openness.
  - (b) Openness is capable of being judged by way of the development’s physical characteristics, including volume, footprint and spread of development, but also the degree to which a reduction in openness would be perceived.
  - (c) The perception of built development in any case may lead to the conclusion that there has been a reduction in openness even though volume and footprint remain the same or are reduced as agreed by Ms Ross.

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<sup>18</sup> Previously Developed Land

- (d) The perception of an impact on openness is to be judged equally from private and public locations; no greater importance is to be placed on the degree of enclosure of a site from public locations.
- (e) The issue to be considered under paragraph 89 (6) is whether there is a material impact on openness as opposed to whether the impact is *de minimis*.
- (f) Certain types of development would have a greater impact on openness than others. Hard standings, it is agreed would have less of an effect than built form in general. This was agreed by Ms Ross and Mr Patel.

2.7 As to the additional criterion that the development should not have a greater impact on the purpose of including land within the Green Belt and in particular on the purpose of preventing encroachment on the countryside, the following points can be made:

- (a) There is no definition of "countryside" within the NPPF. However, it is used broadly as a concept within the NPPF, namely - the isolated dwellings in the countryside policy which suggests anywhere outside a development.<sup>19</sup>
- (b) The Appellant has relied upon the definition of "countryside" contained in the SKM Green Belt Review Purposes Assessment<sup>20</sup> which indicates on page 44, that the countryside is a functional definition based on use and can include "parks" and "large open sports facilities"; it also acknowledges that urban fringe areas are part of that countryside definition at paragraphs 7.4.2 - 7.4.5.
- (c) It is accepted that placing buildings within the countryside would amount to an encroachment onto it.
- (d) "Encroachment" is a broad phrase and should be read consistently with the other limitation in paragraph 89 (6) of creating no greater impact on openness. Since it is common ground that openness can be affected indirectly by the perception of development, it would be inconsistent to adopt a more generous definition of "encroachment" when the dictionary definition relied upon by Mr Patel is "intrusion/infringement or invasion"<sup>21</sup> – development can obviously be "intrusive" on a particular location or "infringe" it without being sited there.
- (e) The debate in this case as to what constitutes "countryside" is a limited one. The Appellant accepts that the areas surrounding the appeal site are part of the countryside; the only issue is as to whether any part of the appeal site should be regarded as "countryside".

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<sup>19</sup> Paragraph 55 of the NPPF

<sup>20</sup> CD6

<sup>21</sup> Mr Patel's Proof of Evidence page 43

- 2.8. In the light of the above submissions, there are two fundamental issues which inform whether the proposal is inappropriate.

*Impact on Openness*

- 2.9 Mr Huskisson gave clear evidence that the proposal would have a material impact on openness whether the site is considered as a whole or in parts of the site in this case.
- 2.10 It is noteworthy that the idea of splitting the site up into compartmentalised areas -the Landscape Character Areas - (LCAs) and assessing the impacts on openness by reference to those areas was Ms Ross' and the Appellant's; they favoured that approach as against a whole site approach. They took the approach of asking whether in respect of each of the LCAs the perception would be that openness would be reduced.
- 2.11 In fact that separate, area-based approach, as Mr Huskisson indicated, was a reasonable one since, given the size of the site, a material perception of a reduction in openness in one part of the site may be unaffected by the reduction of development in another part.
- 2.12 Thus, there may be a decline in openness in one parcel or area of the site but that decline in openness in that area should not be capable of being diminished in significance because there is a maintenance or even reduction of openness in another location.
- 2.13 In short, the whole site approach should not be used as a means of watering down the impact on openness that would exist from one perspective since that would simply place very large development sites in a more advantageous position than small locations (with which the extent of perceived impacts on openness are more likely to be readily apparent from a greater number of locations) – there is no logic behind that approach.
- 2.14 Consequently, if, in relation to the perception of openness, there is a meaningful or material impact on openness from a particular part of a site (here an LCA), this should generally lead to the conclusion that the openness of the Green Belt is subject to a greater impact than the existing development.
- 2.15 Indeed, such a result reflects the need to protect the Green Belt as a matter of principle, irrespective of its location and irrespective of the quality of the Green Belt that is being considered.
- 2.16 The Keele University decision<sup>22</sup> needs to be looked at in this light. The conclusions reached in Keele<sup>23</sup> are fact sensitive. Moreover, it would be wrong to interpret the observations in Keele that it is necessary to view a site as a whole when considering openness<sup>24</sup> as meaning that a material impact on openness may be regarded as less significant as a result of the fact that other

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<sup>22</sup> CD22

<sup>23</sup> CD22 paragraphs 189-191

<sup>24</sup> CD22 paragraph 191

parts of the site do not affect openness. The Inspector and the SoS were right, however, to consider that the question is whether openness is “materially diminished”<sup>25</sup> – that is significant given Ms Ross’ conclusions in evidence.

- 2.17 Ms Ross’s concessions in this case lead inevitably to the conclusion that there would be an overall impact on openness when considering the site, whether as a whole or in parts. Ms Ross accepted that there would be a material reduction in the perception of openness within LCA5, within LCA4 from the representative viewpoint and within LCA6 from the representative viewpoint. In short, out of 3 of the 4 significant LCAs, the development would lead to a perception of reduced openness – it is difficult to see how it could be sensibly suggested as a result that there would be “no greater impact on openness” by this scheme even at a whole site level; the whole is the sum of its parts.
- 2.18 While there would be a reduction in footprint and volume of the buildings (excluding, it is to be noted, the hard standings) compared to the existing site, this reduction is very limited - 6.23% and 0.62% for footprint and volume respectively. The Appellant sought to rely upon the fact that the volume 595 m<sup>3</sup> would be significant, yet, in the context of an existing 80,595 m<sup>3</sup>, this has very limited effect. Equally, the footprint reduction of 732 m<sup>2</sup>, given an existing footprint of 11,752 m<sup>2</sup>, is insignificant, as Mr Huskisson observed. Given the limited changes in these two physical dimensions, these matters cannot properly be regarded as overcoming the effects on the perception of openness.
- 2.19 The Appellant’s reliance on the reduction in hard standings - from 35,820 to 25,651 m<sup>2</sup> - has a very limited role in the determination of the NPPF paragraph 89 (6) issue. The Appellant did not consider it appropriate to rely upon this factor when justifying its case on openness at the application stage and that was because of its relative insignificance; indeed reliance on this point in the Appellant’s proofs now shows how much the openness issue is of concern. Mr Patel acknowledged that hard standings have a limited effect on openness, unless there are particular attributes that might increase openness like car parking; that is made clear by the decision of the Inspector in the St Albans decision.<sup>26</sup>
- 2.20 The Appellant has sought to rely upon the decision of SACDC to grant permission for the redevelopment of the Harperbury Hospital site to suggest that it is acting inconsistently. Each case must be considered on its own merits and the Harperbury decision was plainly distinguishable from the present – in that case, there was a significant reduction in building heights; Harperbury had buildings of up to 11 metres high which were being replaced with a limited number of 6 metre buildings and, mainly, 5.4 metre high houses. Moreover, as Mr Patel accepted, in the north-east and south-east of that site, development was being pulled back from the boundary.
- 2.21 Turning to the specific LCAs it is important to note the degree to which there would be an impact on openness within each area.

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<sup>25</sup> CD22 paragraph 191

<sup>26</sup> See Mr Ozier’s Appendix 5



- 2.22 The perception of LCA 5's openness would be substantially reduced by the proposed scheme. Ms Ross accepted that this was the case, for two reasons. First, it would result in the introduction of houses in the south-east corner. As to this, Ms Ross also accepted that taking a cautious view these were expected to be seen at year 15 from Drop Lane even though views from within LCA5 were just as important. Second, when considering the spine road as part of the fringe of LCA5, the sense of openness would be substantially reduced by the introduction of housing on both sides of the road.
- 2.23 In addition, it is notable that the running track has been largely assimilated into the landscape through non-use. There would be a play area which would introduce structures into the north of the site, additional car-parking and the Recreation building would be replaced by buildings between 9–12 metres in comparison to the existing height of 9.7 metres and 4.2 metres. While in this area, the Appellant relies upon the fact that these are individual buildings replacing a single building, as Mr Huskisson pointed out, the gaps between the buildings would largely not be perceived from many different angles and the current building has articulation.
- 2.24 In relation to the impact on LCA4, Ms Ross accepted there would be a material reduction in the perception of openness in respect of the artist's impression of the view from the representative viewpoint relied upon by the Appellant. While Ms Ross contended that there would be a benefit with the scheme because the Lakeside Conference Centre would be replaced by buildings sited further to the south and east, she accepted that this was not apparent in the depicted viewpoint since other blocks of flats replaced that building in the view. In addition, there would be an actual physical reduction of openness by virtue of the replacement of parkland with houses (Nos. 123-127). Ms Ross also accepted this. There would be a reduction in the gap between buildings as a result of these houses. Ms Ross also accepted that the buildings which are proposed to be sited in this location to the north of the existing Way Foong building would be both higher than it and placed further forward of it.
- 2.25 As to the effect of the proposals in LCA6, these fall to be considered from views along Bridleway 7 to the east and south.
- 2.26 From the south, Ms Ross accepted that the artist's impression which considers the view from representative viewpoint K does display a material reduction in openness given the heights of the proposed flats to the east and the heights of the houses in the centre of the viewpoint. An attempt was made to diminish this concession by relying on the fact that this was a kinetic view. However, Mr Huskisson's view was that this would be appreciated along Bridleway 7 as someone is walking the route.
- 2.27 As a result of her acknowledgement of the effect from the south, it is surprising that Ms Ross took the view that, from viewpoints along Bridleway 7 to the east of the site, there would not be a perception of reduced openness. There plainly would be, for the following reasons:
- (a) The car parking area to the south would have parking barns constructed on it at 5.4 metres high. These would be viewed without buildings behind them from certain views.

- (b) Blocks E, F and G would be on average higher than the Main Training building they would replace. The Training block steps down to the south to its lowest point of 7.4 metres; the proposal would lead to a higher block in this location.
- (c) The Lakeside Conference Centre would be replaced with four blocks which together occupy a greater proportion of the eastern boundary than it presently does, which blocks would be located substantially closer to the boundary and of nearly the same height.

2.28 These sorts of effects are representative of the fact that the extent of the development has spread beyond the confines of the existing building locations.

2.29 Consequently, at least 3 of the LCAs would, it is accepted, result in a material reduction in openness from a perceptual perspective at key viewpoints. This change is significant and, given the very limited proportionate reductions in volume and footprint and the countervailing increase in the spread of the development on the site, the conclusion would necessarily have to be reached that the development does not meet the NPP paragraph 89 (6) test.

*Whether there is Encroachment on the Countryside*

2.30 There would also be encroachment on the countryside.

2.31 First, there would, as a result of the matters indicated above, be direct encroachment on part of the countryside within the site.

2.32 The countryside as a result of what the Appellant has relied upon in the SKM Report<sup>27</sup> includes fringe areas that comprise parks and large open sports facilities; that document makes clear that "countryside" for the purposes of the definition was a functional one. The site has a large open sports facility, it has parkland and there are buildings standing adjacent to them. Indeed, the site is more capable of fitting the definition than an urban fringe location since the site sits in the countryside whereas an urban fringe would generally abut an urban area. As a result, there is no reason why LCA5 and LCA6 should not be regarded as including countryside.

2.33 That is a conclusion which accords with a common sense interpretation of NPPF paragraph 89 (6). If the Appellant's interpretation was right it would mean that a redevelopment of any PDL site with existing buildings in the Green Belt could never contravene the purpose of preventing encroachment of the countryside since such sites would never be countryside; that would be a surprising result.

2.34 Since the proposal would site buildings on greenfield parts of the recreation ground and the parkland, it would be directly encroaching on the countryside.

2.35 Second, since, properly interpreted, the NPPF envisages that an encroachment may occur visually, so there is an encroachment for the reasons identified

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<sup>27</sup> CD6

above in relation to the impact on openness. That is clear from areas that are part of the countryside, namely, from views on Bridleway 7.

*Other Matters*

- 2.36 The Appellant has sought to offset the very significant problems which exist with the development by suggesting that inappropriateness is not part of the Council's case. That is hopeless and in any case irrelevant. The Appellant has made heavy weather of the Transcript of the Committee meeting and sought to show that the determining Committee had deliberately decided that the issue of inappropriateness is not part of its issue with the proposal. The fundamental misconception behind that argument is that the Council's case is dictated not by the Transcript but by its RFR. There are several principles why the RFR are to be regarded as the basis for an authority's objection to a scheme:
- (a) First, a decision of a Committee is one made up of a number of members and what one or more members say does not mean that this is a view shared by all.
  - (b) Second, and relatedly, the assessment of the Transcript requires a conclusion to be reached that whatever may be said by one member of a Committee is understood in the same way by other members. That is particularly pertinent here – the Appellant relies upon the debate in the Transcript about the meaning of “inappropriateness” and whether it was used in a technical sense, but there is no evidence that this was how all members understood it – several members did not speak on this issue.
  - (c) Third, Parliament has determined that the scope of a Council's determination is to be set out in its RFR. It is trite law that the Town and Country Planning legislation is a complete code and the jurisdiction of the authority's determination is delineated by its formal RFR. The Town and Country Planning Development Management Procedure Order 2012 sets out specific requirements for RFR (Article 24 already requires that authorities state clearly and precisely the full RFR) - there is no statutory provision for the use of transcripts in that process.
  - (d) Fourth, such an approach, if accepted, opens up the need to scrutinise transcripts of proceedings (and obtain evidence from each member as to what they thought) to understand the stated RFR; that is patently contrary to Parliament's intention as to how determinations are to be made. RFR are public documents and should be held to amount to a complete statement of the Council's case.
- 2.37 Turning to the specifics of this case, the Appellant's point fails on the facts:
- (a) First, as Mr Patel accepted, the RFR is clear that the authority considered that the proposal would have a detrimental impact on the openness of the area. As a result, the development proposal could not, as a matter of definition, be appropriate i.e. not inappropriate since it is axiomatic that NPPF paragraph 89 (6) requires no greater impact on openness. That the authority's ostensible objection to the case was

based on inappropriateness is conclusively established by the fact that the RFR stated that “no very special circumstances” were apparent in the case – very special circumstances can of course only ever be relevant if a development is inappropriate for the purposes of the NPPF.

- (b) Second, as a result of the above, the essence of the Appellant’s case has to be that what was said in Committee overrides what the RFR has specifically set out - there is no statutory basis for such an approach and no statutory power by which what is said in Committee may validly be treated as overriding the scope of a decision set out in the RFR.
- (c) Third, the written evidence presented by Mr Ozier and Mr Huskisson has been specifically reviewed by the Chair of the Committee who has verified that this reflects the Committee’s decision.
- (d) Fourth, the Transcript does not establish that there was a specific understanding on the part of each of the members of the Committee that the decision to remove the word “inappropriate” meant that the Council had either: (a) accepted that NPPF paragraph 89(6) would be satisfied; or (b) that very special circumstances would not need to be satisfied.
- (e) Fifth, as Mr Patel accepted, there was a patent logic behind dropping the phrase since the authority had accepted that housing was in principle acceptable in this location – i.e. the debate in Committee was simply an acknowledgement that there was nothing inappropriate or untoward in housing development of itself being proposed on site.

2.38 As a result, this point should be rejected. Councillor Yates has confirmed in his evidence that the development was to be regarded as inappropriate development.

2.39 To return to the question at issue: the proposal cannot meet two of the criteria of paragraph NPPF paragraph 89 (6) so the development is necessarily inappropriate.

### ***Issue 2 - Effect of the Proposal on Openness***

2.40 There would be a material impact on openness as a result of this scheme for the reasons set out above.

### ***Issue 3 - Effect of the Proposal on the Character and Appearance of the Area***

2.41 The objections on landscape character and visual amenity are, as both Ms Ross and Mr Huskisson agreed, largely similar to the issues that have been considered in the context of openness. Nevertheless, the following brief observations are made.

2.42 As Mr Huskisson indicated, the approach that has been adopted in the evidence of Ms Ross both within her LVIA and her evidence is to place undue reliance on the particular benefits associated with the housing that is

proposed. This has been significantly over-estimated given that the perception of greater amounts of housing is the actual feature which is harmful.

- 2.43 In respect of all of the principal LCAs of concern and from all relevant views towards those areas, Ms Ross found beneficial effects in the development scheme – there was not one harmful effect. As Mr Huskisson pointed out, however, the additional uniformity, lack of variation, reduction in gaps and increased height would have a damaging effect on the character of locality.
- 2.44 In spite of Ms Ross arguing that there were benefits in visual impact and landscape character effects, she had in fact not quantified those at all in her assessment, in spite of the fact that this appeared to be the case both from her LVIA methodology and the presentation of her evidence. All locations attracted a uniform identification of benefit. Not only does that assessment become largely meaningless but nor does it allow scrutiny of the assessment so as to understand why at any particular location the scheme should be regarded as ultimately beneficial in circumstances where, as Ms Ross pointed out, she had counterbalanced a negative effect with a positive one – it was simply not possible to understand how ultimately that balancing has led to the blanket conclusion of “beneficial”.
- 2.45 Mr Huskisson’s evidence was clear; for example:
- (a) The development would result in significant changes in the disposition of built form (for example along the spine road to Hanstead House and in the parkland area south of the lake).
  - (b) The introduction of larger buildings in the south east corner of the site near the Mausoleum and at the eastern end of the sunken garden facing Hanstead House – these effects are compounded by the garages which would be erected along the boundary; necessarily this would change lighting patterns.
  - (c) The layout is regimented and overpowering in particular locations, for example, the spine road to Hanstead House.
- 2.46 While it is right that certain attributes – residential paraphernalia and lighting – would be associated with any redevelopment of this site that does not justify the level of effect which this development would have; no baseline comparison has been undertaken to show, for example, that parking in the south-eastern corner would be the same.
- 2.47 The conclusions of Mr Huskisson should, consequently, be accepted.

***Issue 4 - Whether adequate provision is made for affordable housing***

- 2.48 It is now agreed between the parties that the maximum reasonable amount of affordable housing has been provided in this case.
- 2.49 As a result, as Mr Ozier stated, the contribution of the proposal towards market and affordable housing need should be given significant weight.

***Issue 5 - Whether very special circumstances exist if the development is inappropriate***

2.50 It is common ground between the parties that, should it be found that the development is inappropriate, no very special circumstances exist in this case. As Mr Patel accepted in cross examination, the decision-maker has a simple task in this case if the development is found to be inappropriate – planning permission must be refused.

***Issue 6 - Whether permission should be granted if the development is found to be not inappropriate***

2.51 As Mr Ozier stated in evidence, the landscape and visual impacts in this case are such that the proposal should be refused in spite of the countervailing features of this proposal.

2.52 One issue which arises under this heading is the extent to which the presumption would apply in these circumstances. It is common ground that the presumption cannot apply if the development is inappropriate. Indeed, if the development is inappropriate, the presumption is irrelevant since the Appellant accepts that very special circumstances do not exist.

2.53 In circumstances where the development is regarded as not inappropriate, as Mr Ozier has stated, since the authority maintains its objection in landscape and visual terms, the presumption would not apply. The proposals would be contrary to the objective set out in NPPF paragraph 81 that planning authorities should plan to “retain” landscapes and amenity; even though this part of the NPPF refers to authorities “planning” to achieve this objective, patently, if a proposal would have cause harm to landscape and amenity the objective should apply. The contravention of that objective would indicate that the development should be restricted for the purposes of paragraph 14 and footnote 9 and thus disapply the presumption.

2.54 The BRE decision does not support the Appellant’s case on this point since<sup>28</sup> it was found that there the development would be capable of being designed in a way which would not harm landscape character or have a visual impact; it did not deal with the application of the presumption where there was landscape or visual harm.

2.55 If it is found that landscape and visual impacts would not as a matter of principle prevent the application of the presumption under paragraph 14 and footnote 9, the presumption would nevertheless not apply in this case for two reasons:

- (a) First, the development would stand contrary to Policy 1’s requirement that new development should integrate with the existing landscape and through the incorporation of the requirements of the LP’s design policies. As Mr Ozier has stated in his evidence, these are not policies for the supply of housing (no issue was taken on this by Mr Patel). As a result,

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<sup>28</sup> See CD10 paragraph 117 of the Inspector’s Report

taken as a whole, the development would stand contrary to the plan and the presumption could not apply.

- (b) Second, the development is not sustainable in any event. In order to be sustainable a proposal should meet each of the limbs of sustainability<sup>29</sup> and the environmental limb cannot be satisfied by virtue of the landscape and visual harm.

2.56 Given that the landscape and visual policies are not out of date (and not alleged to be so), their contravention in this case is significant and are not outweighed by other material considerations. In particular:

- (a) First, a series of economic and social benefits has been relied upon by Mr Patel, but these would be capable of being delivered by a housing development on the site which did not have the landscape and visual effects identified by the authority.
- (b) Second, while the Council accepts (through the evidence of Mr Ozier) that significant weight should be given to the delivery of market and affordable housing, these kinds of benefits are capable of being provided through a development which is less harmful.

2.57 As a result, the Council maintains an objection to the scheme should it be found that the development is not inappropriate.

### **Conclusions**

2.58 Given the above matters, it is respectfully requested that the appeal is dismissed. It is harmful to the Green Belt, damaging to openness, encroaches on the countryside and causes landscape and visual harm. There are no very special circumstances that would justify the scheme.

### **3. THE CASE FOR THE APPELLANT**

3.1 The Appellant considers there are three main issues which remain to be resolved in this appeal. These are: (i) whether the appeal proposals satisfy the terms of paragraph 89 of the NPPF; (ii) whether in any event paragraph 14 of the NPPF applies to the decision; and (iii) whether any adverse consequence of granting permission would significantly and demonstrably outweigh the benefits of doing so.

3.2 Other matters are not in dispute, as set out in the main SoCG,<sup>30</sup> and the supplementary SoCG in relation to affordable housing.<sup>31</sup> In summary, it is now agreed, subject to an average unit size, that 22 units (16% ) of affordable housing would be provided as follows:

- 10 x 3 bed houses to be provided as Affordable Rented Units

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<sup>29</sup> NPPF paragraph 8

<sup>30</sup> INQ3

<sup>31</sup> LPA4, dated 10 February 2016

- 2 x 1 bed flats and 2 x 2 bed flats to be provided as Intermediate Units
- 8 x Starter Homes to be disposed of at 80% of market value, subject to an upper limit of £250,000.

3.3 The original RFR relating to affordable housing and s.106 contributions are now satisfied and the Council does not pursue them.

### **Policies**

3.4 Apart from the Green Belt policies (Policy 1 and Policy 2) the Inspector and SoS will note that the development plan - the Local Plan Review 1994- is either out of date or said by the Council not now to be breached. Mr Ozier acknowledged that its housing policies are out of date, and Policies 7A, 8, 35, and 143B (the other policies save Green Belt policies referred to in the decision notice)<sup>32</sup> would not be breached by the appeal proposals.

3.5 Mr Ozier also accepted that Policy 1 is out of date in respect of the key applicable Green Belt policy in the NPPF. Since 2012, national policy, in the form of NPPF paragraph 89, exempts from the ambit of 'inappropriate development', redevelopment of previously developed land where there would be no greater effect on Green Belt openness than existing and the purposes of the Green Belt would not be affected. Policy 1 does not contain this key policy and as such it is out of date with respect to previously developed sites.<sup>33</sup>

3.6 The weight that should be given to Policy 1 is therefore limited in this case. Such an approach has been taken very recently by the Council itself in its officers' report on the Harperbury application,<sup>34</sup> where it is suggested that the Policy be "discounted" in such a case as this.

3.7 The Council argues that Policy 1<sup>35</sup> contains general Green Belt policy which still accords with the thrust of the NPPF. It only does so in the most general sense, in relation to the cases of inappropriate development needing to demonstrate very special circumstances, as Mr Patel accepted. However, as he observed, the policy requirement for development to "integrate with the existing landscape" does not reflect NPPF policy.

3.8 Policy 1 applies the very special circumstances test to inappropriate development outside the Green Belt settlements in Policy 2. Policy 2 itself is of no relevance to this appeal except to identify that the site is not within a Green Belt settlement.

3.9 It is agreed that the emerging Strategic Local Plan attracts limited weight.

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<sup>32</sup> CD9.

<sup>33</sup> Proof, 6.15 page 21-22; and in XX

<sup>34</sup> CD11 paragraph 8.2.21

<sup>35</sup> See Mr Ozier's Appendix 1, page 12



## **The Green Belt issue**

### ***Approach***

3.10 Hanstead Park lies in the Green Belt. The appeal scheme ought to be appraised in this way: Is the appeal site previously developed land? Would the scheme have a greater effect on the openness of the Green Belt than the existing development on the site? Would the appeal scheme affect any of the purposes of including land in the Green Belt? In this respect only 'safeguarding the countryside from encroachment' is suggested by the Council as being relevant.

### ***Previously Developed Land (PDL)***

3.11 Notwithstanding his written evidence Mr Ozier accepted that the entire appeal site falls within the definition of PDL in the glossary to the NPPF.<sup>36</sup> That is plainly the case because the site comprises a very large institution in a parkland setting, with incorporated gardens, parking, sports facilities and hard standings of various kinds. The curtilage extends beyond the boundary of the red line. It is all in single ownership.

### ***Greater effect on openness of the Green Belt***

3.12 The approach to be taken to the exercise is largely agreed. Both quantitative and qualitative factors are relevant. An overall judgment must be made in the context of the particular site – what might be a materially greater effect on openness in the case of a very small site might not be judged such in relation to a larger site, for instance.

3.13 The Council's case has been rather confused by the failure of its witness to consider the full extent of built development on the site and by the need to defend its position despite the very clear outcome of the quantitative side of the argument.

3.14 Mr Huskisson did not carry out an assessment which thoroughly examined the effect of the proposed development on the extensive hard standings on the site, despite accepting that (a) openness means 'a lack of development'<sup>37</sup> and (b) hard standing was a form of built development.

3.15 In re-examination, the three or four disparate references<sup>38</sup> to access roads in Mr Huskisson's evidence were put to him as if to show that he had taken the issue into account; but they merely underlined what he had already accepted in cross-examination, namely that he had not assessed the 'net' or 'before and after' position in relation to hard standings.

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<sup>36</sup> XX

<sup>37</sup> Mr Huskisson's paragraph 8.1 page 26: "it is helpful to bear in mind that the concept of openness does not relate directly to visibility of visual or landscape harm but to a lack of development"

<sup>38</sup> To Mr Huskisson's paragraphs 8.30; 8.33; 8.4 and 8.28. Mr Huskisson's comment that he had "taken hard standings fully into account" was inconsistent with his earlier evidence in XX and with the partial reference to access roads in the paragraphs to which his attention was drawn in RX

- 3.16 Both Ms Ross and Mr Patel were charged with not having relied on hard standings in their application documents, which is factually correct, because the quantitative work was already compelling and had been accepted by the Council's officers. Mr Huskisson's evidence is sufficient to establish an agreed evidential position that the Inspector and SoS should look at hard standings too.
- 3.17 The Council sought to argue that buildings have a greater effect on openness in general terms than hard standings. This was accepted by both Ms Ross and Mr Patel. However, that does not render the issue of hard standings, roads and the like of less importance, especially in a case where the hard standings are so very extensive (35,820 sq. m).<sup>39</sup> An application for a hectare of concrete and asphalt hard standing across undeveloped Green Belt would self-evidently represent a very major impact on the unbuilt nature of the area.
- 3.18 The other rather uncomfortable contortion in approach to which the Council adhered was the suggestion by Mr Huskisson that the "perceptual" aspects of openness were the main or most important aspects of the exercise. That is obviously not the case: (a) it is contrary to his own written evidence;<sup>40</sup> and (b) contrary to the way that the question of openness is dealt with in recent SoS decisions.<sup>41</sup> Mr Huskisson could not think of and has not produced any decision by the SoS which views perception as *more important* in assessing openness than the actual amount of built development.
- 3.19 The other general matter of approach is that an overall judgement needs to be formed, in context. The fact that buildings may 'spread' beyond where they currently exist does not of itself mean that the development proposal falls outside paragraph 89. That is almost always the case with residential re-developments of institutional sites. That is one of the reasons why Mr Huskisson's judgment on openness should be treated with caution: he does not purport to carry out any on-balance assessment, carefully identifying the areas where openness is increased as well as where it might be diminished.
- 3.20 Some weight should also be given to the fact that the Council's planning officers considered that the proposal would not, on balance, give rise to a greater impact on openness.<sup>42</sup> Some weight should also be given to the fact that the members did not dispute the conclusion and advice of officers that the development would not be 'inappropriate'.<sup>43</sup> Having made that allegation expressly in the Green Belt RFR on the previous application for the site,<sup>44</sup> the members debated the removal of the allegation that the scheme was 'inappropriate' and agreed to remove that point. To suggest otherwise, or that the members in this case who debated the exact expressions in paragraph 89 of the NPPF with officers were somehow using the expression in a naive, non-technical sense was untenable, indeed it did little justice to members like Councillor Yates, who was actually concerned to refuse permission but on the

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<sup>39</sup> Figure 17, Ms Ross Appendix C

<sup>40</sup> See e.g. paragraphs 8.1 and 8.58

<sup>41</sup> See e.g. BRE (CD 10, DL8, IR 106-107, and 24-29); and Keele University (CD22, IR 189-191)

<sup>42</sup> See CD 7, paragraph 9.5.39

<sup>43</sup> CD 12, page 14, and 25

<sup>44</sup> See CD17

issue of Green Belt purposes,<sup>45</sup> rather than openness. The trouble in this case has all stemmed from the fact that he suggested, and the Committee adopted, a RFR which took the 2014 reason and simply cut out the allegation of inappropriateness.<sup>46</sup> It is clear what happened by reading the Transcript of the meeting.

3.21 Turning to the judgement itself, the SoS is invited to begin with the quantitative aspects<sup>47</sup> and to accord them substantial weight:

- the proposal would reduce the built footprint of buildings in the Green Belt by 700 square metres;
- the proposal would reduce the volume of built form on the site by 500 cubic metres;
- the proposal would lead to net reduction of over a hectare of hard standings to soft landscaping: 10,159 square metres<sup>48</sup>

3.22 Much time at the Inquiry was spent dealing with the allegations of indirect or perceptual effects, but fairness requires that due weight is given to the bald fact that the appeal scheme would result in a marked reduction in the amount of built development on the site; that is clearly the opposite of having a *greater* effect in paragraph 89 terms. The Council suggested that the percentage reductions are small; but that was not fair and not realistic. Small percentages of very big amounts are of course large in absolute terms – it is the actual absolute effect on the extent of built development in the Green Belt that is of more importance.

3.23 Turning to the issue of perception, it is noteworthy that the nature of the site is a large, institutional site, with 11,752 square metres of development on it.<sup>49</sup> Mr Huskisson acknowledged it is relatively contained in landscape and visual terms.<sup>50</sup> Its landscape character is one of ornamental parkland and institutional open space; the buildings themselves, with the odd exception, are of very large primary scale and of utilitarian architectural expression. They overlap one with the other in many views across the site, often forming solid walls of development - see, for example, Ms Ross' photograph looking south from near the lake.<sup>51</sup> These factors are relevant when considering the overall change to openness that the scheme would bring.

### ***On site***

3.24 Looking at the issue in terms of on-site perception first, the approach taken by Mr Huskisson and in cross-examination of Ms Ross was to look area-by-area and identify where there were likely to be differences. However, Mr Huskisson's exercise based on the DAS character areas was of little assistance,

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<sup>45</sup> See CD 12, page 23

<sup>46</sup> Mr Ozier, whose evidence advances the argument that the reason for refusal alleges a breach of paragraph 89, says that the Chair of the Committee had been sent his evidence

<sup>47</sup> Mr Patel's page 24

<sup>48</sup> Ms Ross Appendix C Figure 17

<sup>49</sup> Mr Patel's page 24

<sup>50</sup> Mr Huskisson's paragraph 11.15, page 70

<sup>51</sup> Appendix C, Figure 19

since they were tightly defined around new clusters of buildings in the scheme itself, and leave out of account large tracts of the site.

- 3.25 Mr Huskisson's LCA-based exercise was also too rigidly focused.<sup>52</sup> A consensus seemed to emerge through the Inquiry that a slightly broader approach should be taken to the change in perception across the site; and also, that an assessment should be based on the overall set of kinetic views rather than a series of fixed viewpoints.
- 3.26 The Inspector has already visited the site but the following submissions are made as reminder. The northern part of the site<sup>53</sup> would be unaffected in perceptual terms. Although there would be changes in LCA 2 - the car parking area would be reduced and the Lodge would be slightly extended<sup>54</sup> - there is no suggestion that this should be viewed as having a greater overall effect on openness – Mr Huskisson was “content to ignore” those effects.<sup>55</sup>
- 3.27 The border of LCA 2 and LCA 5 is dominated by the very substantial Recreation building, which forms an unbroken mass of built form rising to 9.7m in height with a section over 9m in height and a short mid-section at 4.3m. Its function dictates an appearance unrelieved by significant fenestration and its overall appearance is utilitarian and run-down. That would be replaced by 3 buildings, clearly separated from each other due to the need for adequate light and residential amenity. They would rise to 9.1m in one case, occupying the same location as the 9.1m element now, and 12m in the other two cases. So they would be higher in two instances; Mr Huskisson alleges that they would be read as a single block of development and in some views certainly they would be likely to visually elide. However, there would be plenty of views through the gaps, since they would sit on the main access road that many residents and visitors would pass daily. They also occupy a considerably smaller footprint than the Recreation building, something which would also give the perception of less intensive and dominant development.<sup>56</sup>
- 3.28 The Council's case at the Inquiry itself rather over-extended itself where this area of the site is concerned. Mr Huskisson did not in fact identify this area as one of those which thought represented the “*main areas of proposed layout that would reduce perception of openness.*”<sup>57</sup> This part of the development would in fact represent a clear gain in terms of breaking up built form and shrinking its site coverage.
- 3.29 Similarly, the proposed development of the southern corporate parkland (LCA 4 with a bit of LCA 6) would not – even seen as a unit of assessment itself – represent an area of greater impact on openness. At the moment, the building referred to as Lakeside Conference occupies a prominent position in a number of views in that area, jutting out towards the lake. It is proposed that it be

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<sup>52</sup> Landscape Character Areas, as illustrated in Ms Ross' Appendix C Figure 5

<sup>53</sup> LCA 1, 2 and 3

<sup>54</sup> See Mr Ross Appendix C Figures 16 and 17

<sup>55</sup> His paragraph 11.39; he elsewhere describes the change as “very minor”

<sup>56</sup> See Mr Ross Appendix C, Figure 16

<sup>57</sup> DH4, Key

removed and the vast majority of its footprint be returned to soft landscaping;<sup>58</sup> that building is very large, and has a ridge height of 9.4m.<sup>59</sup>

- 3.30 Nothing would be put in its place, save for a very small element of one maximum 9m high building. There would be a large gain in openness as a result. Set against that, development is proposed to the west on currently soft land (Master plan units 123-126). They would reduce the openness in their vicinity. However, the net effect, though different, would be very much the same across this general area of the site. Yes, the maximum 9m high units would be closer in some views than existing development, but the gap between them and the easterly 4 buildings would be considerable, as a result of the removal of Lakeside Conference building and in some views where that current building looms, the area would appear markedly more, rather than less, open.
- 3.31 The core of the site, for example most of LCA 6, except the most south easterly group of buildings, is very heavily developed at the moment, with large, utilitarian buildings which overlap in views allowing very few glimpses through and are surrounded almost entirely with hard standings. That coarse grain would be replaced with an area of housing which would contain much greater greenery, and afford many more views through as one progressed through the area, than the current inward-looking arrangement.
- 3.32 The Council's response is that some of the proposed buildings, at a maximum height to the ridge of 9.1m, are taller than some of the built form there now. That is correct, although the overall difference is very small indeed as most of the buildings there now have ridges of over 8.5 m.<sup>60</sup> Similarly, the Council's case is that by moving built form to the west from the location of the current buildings 1 and 12, the openness of the area would be diminished, but that fails to bear in mind the open views created to the rear, i.e. east, of those units – currently a visually harsh and impermeable area.
- 3.33 The Council's case is about perception: this central core would be more open, softer and more visually permeable, which is a considerable benefit overall in an area where in a sense it would have been easier to replicate existing large-scale buildings and high built density.
- 3.34 The south easterly area – the cluster of buildings 7, 8, 9 and 15, collectively make up a fairly tightly knit and enclosed set of buildings. They are physically connected by corridors. The main building steps from 7.4m to 11.4 m to 12.9 m in height. Building 8, the Hexagon Bar, has been built rather too close to the gardens, and the copse containing the Listed Mausoleum. On the fringe of the area to the east, there is a very large area of former car parking with lighting columns.

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<sup>58</sup> The revised Parameter Plan covering Areas of Proposed Buildings makes that clear.

<sup>59</sup> Ms Ross Appendix C, Figure 14

<sup>60</sup> See Ms Ross Appendix C Figure 14: Building 3 has a ridge of 8.5m at one end; building 4 a ridge of 9.8m, building 12 a ridge of 9.1m and building 14 a ridge of 9.5m

- 3.35 The proposed scheme would again break up the bunched effect of the built form, as Ms Ross said,<sup>61</sup> introducing markedly more space between buildings; the monolithic character of the buildings and the sense of development in that area having simply piled up over the years according to operational needs would be dispelled. The appeal proposals would remove the Hexagon Bar and return its footprint to soft landscaping, which from many views on site would give a much more open feel to the south eastern developed edge, as well as steering well clear of the Listed Building setting. On the other hand, it is true that the three apartment blocks to the east would be both taller and lower than the existing building 9 in places. However, due to the separate footprints and gaps between them there would be no additional impact on openness.
- 3.36 In all of those areas, the net effect would either be neutral or would result in an improvement in both the quantitative and qualitative effect on openness. There are two areas where the effect on site would be greater: the eastern car park, where built form would be introduced onto the hard standing in the form of single storey garages; and the tennis court area.
- 3.37 The extent of greater effect is a matter of judgment but the following points emerged in the evidence:
- The eastern car park is not simply flat hard standing at the moment. From on site, it is punctuated by tall, ugly, floodlighting pylons.
  - The tennis court area is similarly not a featureless level surface; in fact it contains the remains of substantial sporting infrastructure and paraphernalia associated with the former tennis courts, including lighting. The sense of that area as a developed one, part of sports centre is palpable.
  - Buildings on the tennis court area would reduce openness in that localised zone. However, the net localised effect has to be judged: the new parkland area to the west would be much softer and greener - grubbing up the hard surface of the running track, and a large area of the tennis court area to the west of the proposed buildings.<sup>62</sup>
- 3.38 Overall, the development would be perceived as a looser grain of development, with buildings of smaller mass and scale, with many more opportunities for permeability than currently exist, particularly in the middle of the site. Even on the fringes, where the largest buildings currently stand - Recreation and Main Training - the proposed scheme would break up the agglomeration. To set aside the only indisputable local negative impacts on openness - the tennis court and the eastern car park- is the removal of the Hexagon Bar and Lakeside Conference building and the much finer grain overall: that is the 3-dimensional expression of the quantitative reduction in footprint, volume and hard standings.

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<sup>61</sup> Well illustrated on Appendix C Figure 16

<sup>62</sup> See especially Ms Ross Appendix C Figures 16 and 17

### **Off site**

- 3.39 As perceived from off site, there is no allegation of harm made in respect of views from the north or west on Drop Lane – the latter would be largely if not wholly screened by the 15m deep buffer planting along the western boundary, which Mr Huskisson confirmed would screen out views, where currently, and especially in winter, there are some views of development from there – so that would be beneficial.
- 3.40 From the south, on the bridleway, there would be views of new buildings replacing existing ones, though further back than currently due to the removal of the Hexagon Bar. The Council says that the built form would be greater at the far south eastern corner where a maximum 9.1m high building replaces the end of the monolithic Main Training building at that point rising to 7.4 m, but a site visit would reveal the role of the wooded area in that location. The overall impression now is of a solidly-developed site, with an eclectic assembly of building types in an institutional layout; the scheme would be more clearly residential, but overall, the viewer would not form the impression that the site was more heavily or densely developed than it is now. The ornamental and agricultural foreground and set-off of those views is and would remain extensive.
- 3.41 From the east, Mr Huskisson harbours concerns about the visibility of the proposed garages and buildings from the bridleway. However, as he acknowledged, the highest building element of the Main Training building occupies a central and dominant position in the view, which would be replaced by a gap and a view through into the site. The garages would have visible roofs, but they can be pitched and landscaping provided inside the site in line with the Revised Areas of Proposed Buildings Parameters Plan.<sup>63</sup> The Council queried whether less impactful lighting could be provided, but there was no evidence to that effect and the columns which stand out so much now would be removed.
- 3.42 The layout and landscaping plans are only partial; regard should also be had to the photographs as aide-memoires, in particular Ms Ross' Appendix C Figure 13; that shows how the eastern side of the site when seen from outside would have built form re-disposed on it, with some areas becoming more heavily developed and others less so. There is a very clear view of the Lakeside Conference building through the boundary planting at the moment which would almost all disappear to be replaced by open space; new development would extend to the south of that, where there is significant evergreen planting on the site already; the unrelieved mass of the Main Training building would be broken up and greater articulation introduced, including a gap which would remain directly ahead as one approached along the almost straight Bridleway 7.
- 3.43 Overall, the effect would be the same in terms of a large site with substantial development. No further off-site landscaping is required, as far as Ms Ross and the Appellant are concerned; but should a different view be taken, then

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<sup>63</sup> APP13

additional off-site planting could be undertaken, as all the land to the east of the red line is in the ownership and control of the Appellant. A condition such as this could be imposed, and the Appellant would request that consideration is given to it in the event that the SoS or his Inspector considers it necessary to do so:

*The development hereby permitted shall not be commenced until a scheme for the planting of a fifteen metre wide landscape buffer zone outside the eastern boundary of the site, is submitted in writing to, and approved by, the local planning authority. The landscape buffer shall run from the east of the current position of the Lakeside Conference building to the southern extent of the eastern car park where it joins the copse containing the Listed Mausoleum, and shall comprise a variety of native species trees and bushes. The buffer planting shall be implemented as approved.*

- 3.44 It is therefore submitted, on the central judgmental issue remaining in the appeal, that the proposed scheme would overall reduce the effects on openness, something which should not come as a surprise given the quantitative data.

***Purpose – encroachment into the countryside***

- 3.45 Put shortly, the proposed development would not offend this purpose of the Green Belt. There would be no direct physical effect on land outside the site.
- 3.46 The site itself is not to be treated as ‘countryside’ into which development should not be allowed to ‘encroach’ for the purposes of paragraph 80 of the NPPF for the following reasons: (a) it is a heavily developed, self-contained institutional site, with ornamental parkland and institutional buildings and facilities; (b) as such it finds no place in a functional or indeed perceptual definition of ‘countryside’, as the Green Belt appraisal work produced by the Council’s consultants makes clear;<sup>64</sup> and (c) just because some of it has parkland or recreational characteristics which on their own might be referred to as urban fringe countryside land uses, says nothing about the character of the Hanstead Park site as a whole, which clearly falls outside any such open/soft use, again as the Council’s consultants’ work indicates.<sup>65</sup>
- 3.47 The land outside the site is countryside, but the lack of physical extension into it means that there is no “encroachment” defined by reference to actual physical incursion into the countryside rather than views from the countryside<sup>66</sup> (and assessed as a matter of common sense).
- 3.48 For these reasons, the Appellant would respectfully ask the Inspector and the SoS to find that the proposals would not have a greater impact on the openness of the Green Belt than the existing development on the site, and would have no material effect in terms of the purpose of safeguarding the

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<sup>64</sup> CD6, Page 25 of the later Purposes document

<sup>65</sup> Ibid, paragraph 7.4.5

<sup>66</sup> Ibid, page 25, definition of ‘encroachment’



countryside from encroachment. Paragraph 89 is engaged, and as the officers advised, the proposal is not inappropriate development.

### **Paragraph 14 of the NPPF**

- 3.49 Paragraph 14 applies in this case because of paragraph 49: it is common ground that the Council cannot demonstrate a 5 year supply of deliverable housing sites.
- 3.50 The Council argues that paragraph 14 is dis-applied by footnote 9, either (a) simply because the site is in the Green Belt (Mr Ozier's argument), or (b) because the proposed development would fall outside paragraph 89, or (c) in any event because there is a 'residual' Green Belt objection in the form of landscape and visual impact objections. None of these alternatives is maintainable.
- 3.51 First, the SoS has made it crystal clear, for instance in the BRE case, in which Mr Ozier himself was the Council's planning witness, that footnote 9 does not dis-apply paragraph 14 simply because the site is in the Green Belt,<sup>67</sup> as Mr Ozier accepted. Mr Ozier could not, in addition, think of any reason why the SoS would operate the NPPF so as to cancel the chief new development management policy in Green Belt cases where there was no harm or objection.
- 3.52 Second, the development would fall within paragraph 89.
- 3.53 Third, it is a bogus suggestion that the protection of landscape and visual amenity is a Green Belt policy requirement binding on developers of land. The Council relies for this argument on paragraph 81 of the NPPF, which sets out some goals for Local Planning Authorities to achieve, such as enhancing biodiversity and increasing public access. In relation to the landscape and visual aspects of the Green Belt, it must always be remembered that the main function of the Green Belt is to prevent development, not protect or enhance the landscape character or appearance. Whilst of course, as Mr Patel accepted, landscape harm might be a material consideration in a Green Belt case it is not itself a Green Belt point.
- 3.54 Fourth, in any event, there would be no material harm to the landscape or visual qualities of the area. If one extends the exercise to look on-site, the change from run-down, utilitarian buildings of large scale and mass to a more fine-grained residential scheme with landscape enhancement and management would not change the overall ornamental parkland character – indeed it would enhance it, especially in the western area with buffer planting and new parkland replacing hard sports facilities.
- 3.55 Outside the site, there would be no direct landscape impact. The visual impact would be minimal and mitigated by additional planting as proposed by Ms Ross.

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<sup>67</sup> See CD 10, DL17

- 3.56 It follows that there is no “residual” landscape harm point. That aspect of the Council’s case and Mr Huskisson’s evidence bore no relation to the resolved position of the Council, which did not refuse permission on the grounds of landscape or visual impact. That much is evident from the decision notice, and the contrast between it and the previous (2014) refusal notice, which did contain a freestanding landscape/visual amenity RFR. Mr Huskisson accepted that if the members had thought there was a landscape objection, it is likely that they would have attached one.
- 3.57 It is not surprising that they didn’t refuse on that basis – there was no recommendation to refuse by the landscape officer Ms Johnson.<sup>68</sup> There was no discussion at the meeting of any landscape character harm; the RFR suggested contrary to officer recommendation was a Green Belt refusal, not a landscape character one, as Mr Huskisson accepted at the outset of cross-examination.
- 3.58 Plainly, the landscape and visual case advanced by the Council is (a) without formal warrant in the form of a resolution; (b) contrary to the officer advice; and (c) nothing to do with the words ‘character and visual amenity of the Green Belt’ in the RFR – those words come from the previous decision notice where they explained why the Council thought the development then proposed was ‘inappropriate development’. That is not what they thought on this occasion.
- 3.59 For these reasons, there is no so-called ‘residual’ Green Belt landscape character/visual objection – and certainly not one which ought to be upheld. There is no question therefore of footnote 9 to the NPPF being brought into play. The development must be assessed using the presumption in favour of sustainable development in paragraph 14.
- 3.60 That is underlined by the absence of any other suggested reason why the development would not be sustainable development. The housing and affordable housing aspect of it is now agreed to be sustainable; there is agreement about transportation and all other relevant matters. The SoS is therefore also requested to find that the proposal represents sustainable development.

### **The planning balance using paragraph 14**

- 3.61 The benefits of the proposal are fully acknowledged by the Council: 139 units of housing in an area with a substantial shortfall against its 5 year requirement and 22 units (16%) affordable housing in the context of a very serious shortfall of provision<sup>69</sup> - Mr Ozier agreed that both should receive substantial weight. This is a District with a chronic undersupply problem which has caused it to prepare its new Strategic Local Plan partly in reliance on substantial *Greenfield Green Belt* releases. This site is a highly sustainable one which really should make its contribution as soon as possible.

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<sup>68</sup> See Ms Ross Appendix A

<sup>69</sup> See the affordable housing figures in the October 2015 SHMA update and in Mr Patel’s proof of evidence at paragraph 4.63, page 52

- 3.62 There would be economic benefits, as Mr Patel said. The scheme would also bring back into use a previously developed site which was earmarked since 2009 in the SHLAA<sup>70</sup> for housing, and now relied on in the Council's AMR for 150 units;<sup>71</sup> both of these factors should be given due weight.
- 3.63 The site would be restored in landscape terms and its future maintenance guaranteed, something which is also of real value, especially as for the first time there would be extensive public access to the parkland.
- 3.64 Are there adverse impacts such that they would significantly and demonstrably outweigh the benefits? The answer is no – indeed, even if one were to agree with everything Mr Huskisson says about the impact on landscape character and visual amenity, his overall judgement<sup>72</sup> on landscape character - 'slight/moderate adverse impact'- would clearly not outweigh the benefits in the way required by paragraph 14.

### Overall conclusions

- 3.65 Little time has been spent on the planning history of this case, but the SoS is directed to it, and the way in which the Appellant took the Green Belt openness issue very seriously from the very beginning, and made major changes to the scheme rather than appealing the 2014 refusal. The officers recommended refusal on affordable housing grounds which has now been settled and the s.106 which has also been settled in terms of agreed figures. The members objected to the proposal on Green Belt grounds, but as the evidence has shown, they accepted that paragraph 89 was passed in terms of openness, and therefore the scheme was not inappropriate development, but they wanted to refuse it on Green Belt grounds. The whole approach lacked clarity and rigour and it would have been better for all concerned, given the awful problems with housing in St Albans, for permission to have been granted in March 2015.
- 3.66 As it is, the Inspector and the SoS are respectfully asked to recognise that the proposal would represent a highly beneficial reuse of the site without material negative effects on openness or countryside encroachment. The scheme does not achieve the 150 unit figure in the Council's AMR, but even 138 would represent a hefty benefit in housing supply. These are precisely the sites that St Albans should be developing, rather than straining – beyond the ostensible bounds even of the RFR – to stymie their use. The Parameters Plans and conditions would provide control over the reserved matters stage, ensuring that the scheme enhances rather than harms the Green Belt in this location.
- 3.67 For these reasons, and subject to the conditions and s.106 obligations, the SoS is asked to allow the appeal and grant planning permission.

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<sup>70</sup> APP2

<sup>71</sup> Appendix 7 to Mr Patel's evidence, and his proof paragraph 4.41 to 4.42

<sup>72</sup> See bottom row of Table at his page 58

#### 4. INTERESTED PERSONS WHO APPEARED AT THE INQUIRY

- 4.1 **Councillor David Yates** is a resident of Park Street Ward, in which the appeal site lies. He has represented the area on the District Council for the past 11 years. He was a member of the Planning Referrals Committee at the time the application was determined and he is currently vice chair of the Council's Planning Policy Committee. Councillor Yates made clear he was speaking in a personal capacity. His representations are at document IP1.
- 4.2 Councillor Yates appreciates the huge amount of effort that has gone into the progression of this scheme, both by the Appellant and by Council Officers. He considers that the amount of housing that is proposed is about right and that concerns about issues such as traffic and groundwater are capable of resolution either by condition or at the reserved matters stage. He also considers that the proposal's impact on the openness of the Green Belt means that very special circumstances need to be demonstrated for the proposal to succeed. In his view, those very special circumstances would not be adequately achieved without the provision of a type, mix and tenure of housing that would match local needs.
- 4.3 There is little doubt that the demand for housing in St Albans is very high. Residents' demands that the Green Belt that surrounds it is protected are equally high. To tackle that the Council commissioned an independent study that identified the 8 parcels of land that contributed least to the Green Belt. The appeal site was not amongst them. An internal scoring process and meetings with those promoting each of the 8 areas followed and 4 areas for potential release from the Green Belt are identified in the Local Plan that is subject to a Regulation 19 consultation. Associated with each of these areas is the requirement for them to produce a minimum of 40% affordable housing. The percentage of affordable housing in this proposal does not respond in the same way.
- 4.4 Councillor Yates was the Councillor who proposed that RFR1 of the previous application was still appropriate and should be added to the officer's recommended RFR. He believed then that he was right to do so and that doing so was consistent with the Council's refusal of another application in the area<sup>73</sup> despite the fact that that refusal was being appealed at the time of the Committee meeting. He was pleased that a Planning Inspector subsequently dismissed that appeal.<sup>74</sup> Councillor Yates referred to paragraphs 88 and 89 of the NPPF. He agreed that the wording related to appropriateness should be removed because he considered this would not remove the need for very special circumstances to be demonstrated. Councillor Yates is concerned about the cumulative impact of redevelopment of sites in the area such as the BRE and former Harperbury Hospital, although he noted that both include 35% affordable housing.
- 4.5 **Henry Tuck** is a local resident. Along with his neighbours he is extremely concerned about the potential effect that any proposed development would

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<sup>73</sup> 5/2014/1999

<sup>74</sup> APP/B1930/W/15/3003840

have on the area. He accepts that it is inevitable that some redevelopment of the site would have to take place but he wishes to ensure that the effect on the Green Belt character of the area and existing residents is minimised. His representations are at document IP2.

- 4.6 Mr Tuck refers to recent flooding in the Drop Lane area and the fact that the water table under the site and surrounding area is extremely high. He is concerned that any development work should not cause any additional run-off or other impacts on the groundwater as it has the potential to cause further damage to properties surrounding the site. All the conditions laid out by the Environment Agency in their letter dated 30 December 2014 should be fully enforced before any development takes place.
- 4.7 Mr Tuck emphasised the nature of Drop Lane. He said it was a beautiful, narrow, single track, country road, which has been traditionally used by walkers, cyclists and horse-riders. It should be a permanent condition of any development of the site that the entrances from Drop Lane are never allowed to be created even for emergency or construction traffic access. This would ensure that Drop Lane retains its Green Belt character and more importantly ensure the safety of traditional users of this road.
- 4.8 Mr Tuck and other local residents are concerned about the current level of traffic on Smug Oak Lane. He considers that the current and expected traffic figures should be looked at again to ensure that the level of local site development matches the ability of the local roads to handle the additional level of traffic.
- 4.9 Mr Tuck referred to the openness of the site in the context of the 'before and after' views. He noted that most of the trees in the area are deciduous and therefore lose their foliage for a significant proportion of the year. Inevitably much of the new building work shown on the plans which is supposed to be hidden would be exposed to external view, particularly the taller buildings. He considers that any development that is carried out must be done on the basis of Green Belt standards. The appeal should be rejected.

## **5. WRITTEN REPRESENTATIONS**

- 5.1 There were objections by local residents at both the application and appeal stages.<sup>75</sup> The main points made in these representations include:
- The proposed development is not in accordance with the development plan because it is within an area allocated Metropolitan Green Belt.
  - The proposal is not in accord with the NPPF because the footprint of the proposed buildings is greater than the footprint of the current buildings so the proposal would have a greater and detrimental impact on openness of the Green Belt and the purpose of including land within it.
  - There is a clear presumption against inappropriate development in the Green Belt.
  - There are no very special circumstances in this case.

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<sup>75</sup> See INQ2 and CD7

- Objections relate to increased traffic generation and impact on local roads and junctions, need for traffic calming, insufficient car parking, issues relating to the proposed bus service, safety issues on Drop Lane, disagreement with the Transport Assessment, impact of new and existing rights of way and existing safety issues on Smug Oak Lane.
- Objections relate to the proposed dwellings being built too close together, lack of and poorly located green space, inappropriate types of housing, negative impact on Hanstead House/the gardens /Listed Buildings (Mausoleum), heights of building, impact on Listed Buildings outside the site, loss of trees, impact on landscaped parkland and layout and inclusion of social housing with private housing could lead to conflict and anti-social behaviour.
- Local schools, doctors, and dentists are oversubscribed, need to secure future of Hanstead Wood and there is a lack of leisure facilities locally.
- Objections relate to pollution/air quality. A full EIA should have been carried out. The impact on ecology, flood risk, sewage disposal, water supply, and groundwater should be assessed.
- Objections relate to the development not according with sustainable development, need to include consideration of the Strategic Rail Freight Interchange & BRE sites and assess cumulative impact.

5.2 The written statement on behalf of Hertfordshire County Council (HCC) was in support of planning obligations. This is considered in Section 6.

## **6. PLANNING CONDITIONS AND OBLIGATIONS**

6.1 A suggested List of Planning Conditions was discussed and agreed at the Inquiry between the Council and the Appellant.<sup>76</sup> I have considered the suggested conditions in the light of the advice in paragraphs 203 and 206 of the NPPF, the model conditions retained at Appendix A of the cancelled Circular 11/95 and the Government's PPG on the use of planning conditions.

6.2 As this is an outline application, Condition 1 is necessary to secure reserved matters and Condition 2 is necessary to comply with statutory timescales. Conditions 3-5 are necessary to determine the scope of the application and for the avoidance of doubt. The development is not to exceed 138 dwellings. It is to be carried out in general accordance with the Master plan, the Areas of Proposed Buildings, the Maximum Floor Areas and Maximum Storey Heights Plans and other submitted plans and information. Condition 6 regarding the restriction of permitted development rights is necessary to control the character and appearance of the development, visual and residential amenity, trees of amenity value, landscaping and to ensure the provision of adequate amenity space. Condition 7 in relation to finished floor levels is necessary to ensure the satisfactory appearance of the development. Condition 8 regarding the storage of refuse is necessary to preserve the amenity of the area and to comply with Policy 70 of the LP. Condition 9 requires the submission of an external lighting scheme in the interests of amenity, character and appearance and highway safety.

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<sup>76</sup> LPA2

- 6.3 Conditions 10-14 relate to the landscape treatment of the site. I consider these conditions are necessary in the interests of visual amenity except for Condition 14 which refers to the submission of a scheme for the planting of a 15m wide landscape buffer zone outside the eastern boundary of the site. Conditions 15-17 are necessary to safeguard any archaeological finds that might be revealed in accordance with Policy 111 of the LP and to comply with the NPPF. Conditions 18-19 relate to demolition or construction works and deliveries and these conditions are necessary given the size of the site, the proximity of nearby dwellings and the duration of construction works. Conditions 20-24 are required in the interests of highway and pedestrian safety. The Green Travel Plan, with the measures for monitoring and regular review, reflects the national policy aim of achieving the fullest possible use of public transport, walking and cycling. Conditions 25-27 are necessary to ensure satisfactory disposal of surface and foul drainage and to minimise the risk of surface water flooding arising from the development. Conditions 28 and 29 relate to a site investigation scheme and a verification investigation. These conditions are necessary to ensure that adequate protection of human health is maintained and the quality of groundwater is protected. Condition 30 in relation to noise is necessary in the interests of residential amenity. Condition 31 is required to safeguard the biodiversity interest within the site.
- 6.4 The S106 Planning Obligation is in the form of a Unilateral Undertaking (UU) which was signed on 15 March 2016.<sup>77</sup> It is made by the Appellant to SACDC and HCC. The SoS can be satisfied that the document is legally correct and fit purpose. I consider whether the obligations are in accordance with the statutory provisions of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations and the policy tests in paragraph 204 of the NPPF in my Conclusions. Both SACDC and HCC submitted CIL Regulations Compliance Submissions in support of the contributions sought.<sup>78</sup> There is a “blue pencil clause” in the UU which enables the SoS to strike out contributions that do not meet the tests for planning obligations set out in Regulation 122 or that SACDC has not entered into five or more separate planning obligations that relate to planning permissions within their administrative area and which provide for the funding or provision of that infrastructure project or type of infrastructure in accordance with Regulation 123(3).
- 6.5 The Appellant has produced a UU, which addresses all of the requested infrastructure contributions and the Council accepts that it addresses RFR2.
- 6.6 The affordable housing obligations respond to identified needs and are supported by Policy 7A of the LP, the SPG on Affordable Housing 2004 and paragraph 173 of the NPPF. The issue of affordable housing and the percentage of affordable housing that the scheme could support was the subject of considerable discussion and negotiation during the course of the Inquiry and in the context of the previously refused application. The Appellant and the Council have reached agreement as to the maximum reasonable amount of on-site affordable housing that could be provided in the event that planning permission is granted.

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<sup>77</sup> INQ3

<sup>78</sup> INQ4

- 6.7 Paragraph 143B of the LP indicates that SACDC will expect planning applications for the development of sites to include within them, provision for the infrastructure consequences. The preamble to the policy, at paragraph 21.3 makes specific reference to 'recreational facilities'. Reliance is also placed on strategy documents such as the Council's Sport and Recreation Facilities Strategy (2005) and the Playing Pitch Strategy (2005). The financial contributions would be spent on improved play area provision at the Woodberry Field Play Area (£39,081); landscaping improvements and a suitable wood-clad cabin at Blackgreen Wood (£62,383) and new facilities at the existing Abbey View Track Facility (£98,688). The need for the contributions arises out of the increase in population as a result of the proposed development.
- 6.8 HCC's *Planning obligations guidance–toolkit for Hertfordshire* document (2008) [the Toolkit] sets out in detail the rationale and methodology for securing contributions. The Toolkit explains that charges are based on a formulaic approach and are summarised in Table 2 of the document. Table 2 relates the amount of contribution to the number of bedrooms that would be created by a housing development.
- 6.9 Education services are assessed on the basis of education planning areas. Looking ahead the forecasts show a deficit of places at primary level in the "St Stephens" area in most years. There is one primary school (the Mount Pleasant Lane JMI school) in that educational planning area. There is also an anticipated deficit of places at secondary level in the "St Albans" area from 2019/2020 onwards. Using the Toolkit a financial contribution is sought towards primary education to be used towards expanding the number of primary school places at the Mount Pleasant Lane JMI school and towards expanding the number of secondary education places at the Verulam School. The education contributions would therefore support the provision of additional school places within the general education planning area of the appeal site. Financial contributions are also sought towards the cost of additional equipment at the proposed replacement youth facility at Ariston, St Albans and towards improving and increasing IT access at the St Albans Library including increasing Wi-Fi benching. The provision of fire hydrants for the development is sought as part of a Water Scheme.
- 6.10 A financial contribution of £446,880 is sought for sustainable transport based on an annual payment for a period of five years at £89,376 to provide a bus service into the site. This contribution has been calculated by HCC by reference to the capital cost of provision of the proposed bus service. The UU requires the submission and approval of a Green Travel Plan (GTP), to secure the GTP measures and for payment of a GTP Monitoring cost. In summary, the GTP measures involve the provision of a cycle voucher worth £100 per household; provision of a 6 month bus pass or equivalent train ticket value for each eligible resident of the development worth about £500 per dwelling and provision of a welcome pack worth about £30 per dwelling.
- 6.11 A highways contribution of £175,000 is sought to be used towards junction improvements at Smug Oak Lane/Radlett Road. Finally, the UU requires the submission and approval of a Management Scheme for the provision and management of the open space comprising part of the development.



## 7. CONCLUSIONS

*In this section the numbers in superscript refer to the earlier paragraph numbers of relevance to my conclusions.]*

- 7.1 On the information available at the time of making the direction, the statements of case and the evidence submitted to the Inquiry, the following are the Main Considerations on which the SoS needs to be informed for the purposes of this appeal:
- **Consideration One:** Whether the proposal would be inappropriate development in the Green Belt having regard to the NPPF and any relevant development plan policies.
  - **Consideration Two:** The effect on the openness of the Green Belt.
  - **Consideration Three:** The effect of the proposal on the character and appearance of the area.
  - **Consideration Four:** Whether adequate provision has been made for Affordable Housing.
  - **Consideration Five:** Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal in the Green Belt.
  - **Consideration Six:** Other Matters.
  - **Consideration Seven:** Whether any conditions and obligations are necessary to make the development acceptable.
- Consideration One: Whether the proposal would be inappropriate development in the Green Belt having regard to the NPPF and any relevant development plan policies.***
- 7.2 There is no dispute that the appeal site lies within the Metropolitan Green Belt, where strict policies of restraint apply. The NPPF confirms at paragraph 79 the longstanding principle that Green Belts are of great importance and that their essential characteristics are their openness and permanence. Paragraph 80 sets out the 5 purposes of Green Belt and paragraphs 87-88 of the NPPF state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt and “very special circumstances” will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. <sup>[1.26]</sup>
- 7.3 Paragraphs 89-90 of the NPPF identify which forms of development are not inappropriate in the Green Belt and this includes the re-use of buildings provided that the buildings are of permanent and substantial construction and

provided the re-use preserves the openness of the Green Belt and does not conflict with the purposes of including land in the Green Belt. Where such a proposal accords with paragraph 81 of the NPPF (beneficial use of land in the Green Belt), that is a factor that should be weighed, on its own or in conjunction with other factors, in considering whether, under paragraph 88, very special circumstances exist to justify approval.<sup>[1.26]</sup>

- 7.4 The statutory development plan for the area includes the saved policies of the St Albans District Local Plan Review 1994 (LP). The parties agree that the relevant policies are those referred to in the SoCG and at paragraph 1.21 above.<sup>[1.22]</sup>
- 7.5 Apart from the Green Belt policies (Policy 1 and Policy 2) the SoS should note that the LP is either out of date or said by the Council not to be breached. The housing policies are clearly out of date and Policy 7A, 8, 35 and 143B would not be breached by the appeal proposal.<sup>[3.4]</sup>
- 7.6 Policy 1 is out of date in respect of the key applicable Green Belt policy in the NPPF. Policy 1 does not include the exception in paragraph 89 bullet point 6 of the NPPF which exempts from the ambit of 'inappropriate development'
- *limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.*

Policy 1 does not contain this key policy and as such it is out of date with respect to previously developed sites.<sup>[2.2, 3.5]</sup>

- 7.7 Taking account of paragraph 215 of the NPPF the weight that should be given to Policy 1 is therefore limited in this case. Although the Council argues that Policy 1 contains general Green Belt policy which accords with the thrust of the NPPF, it only does so in the most general sense, in relation to the cases of inappropriate development needing to demonstrate very special circumstances. Furthermore, the Policy 1 requirement for development to "integrate with the existing landscape" does not reflect the NPPF.<sup>[2.2, 3.6]</sup>
- 7.8 The SoS should note that Policy 1 applies the very special circumstances test to inappropriate development outside the Green Belt settlements in Policy 2. Policy 2 itself is of no relevance to this appeal except to identify that the site is not within a Green Belt settlement.<sup>[3.8]</sup>
- 7.9 The parties agree that the emerging Strategic Local Plan attracts limited weight.<sup>[1.23]</sup>
- 7.10 Notwithstanding the Council's written evidence I accept that the entire appeal site falls within the definition of PDL in the glossary to the NPPF. That is plainly the case because the site comprises a very large institution in a parkland setting, with incorporated gardens, parking, sports facilities and hard standings of various kinds. The curtilage extends beyond the boundary of the red line. It is all in single ownership.<sup>[3.11]</sup>

7.11 Given the previously developed nature of the land proposed for development in this appeal, it is clear that the proposals have the potential to be considered as an exception under paragraph 89(6) and not therefore deemed to be inappropriate development subject to the impact of the development on the openness of the Green Belt and the purpose of including land within it. In this case the impact of the proposals on openness and whether it would offend the purpose of including the land in the Green Belt are explicit parts of the assessment so I need to consider these aspects before concluding whether or not the development is inappropriate. I shall therefore return to consider whether or not the development is inappropriate later in my conclusions. [2.3, 2.5-2.7, 3.11]

***Consideration Two: The effect on the openness of the Green Belt***

7.12 The approach to be taken to the assessment of the impact of the proposals on openness is largely agreed. Both quantitative and qualitative factors are relevant. An overall judgment must be made in the context of the particular site – what might be a materially greater effect on openness in the case of a very small site might not be judged such in relation to a larger site, for instance. [2.9-2.10, 3.12]

7.13 The Council considers that the proposals would have a material impact on openness whether the site is considered as a whole or in parts of the site in this case. Reference is made to the eight LCAs found within the Appellant's LVIA. It is argued that there may be a decline in openness in one parcel or area of the site but that decline in openness in that area should not be capable of being diminished in significance because there is a maintenance or even reduction of openness in another location. Consequently, if, in relation to the perception of openness, there is a meaningful or material impact on openness from a particular part of a site (here an LCA), this should generally lead to the conclusion that the openness of the Green Belt is subject to a greater impact than the existing development. [2.11-2.15]

7.14 The Appellant highlighted various matters of approach in this case. Firstly, although it is accepted that buildings have a greater effect on openness in general that does not render the issue of hard standings of lesser importance especially in this case where hard standings are so very extensive at 35,820m<sup>2</sup>. Secondly, although the Council focuses on the 'perceptual' aspects of openness that is contrary to the way in that the question of openness is dealt with in recent SoS decisions notably the BRE decision in Watford and the Keele University decision. Thirdly, it is argued that an overall judgement needs to be formed in context. The fact that buildings may 'spread' beyond where they currently exist does not of itself mean that the development proposal falls outside paragraph 89 of the NPPF. That is almost always the case with residential re-developments of institutional sites. Furthermore, it is claimed that members did not dispute the conclusion and advice of officers that the development would not be inappropriate. [3.17-3.20]

7.15 In terms of the quantitative aspects, the appeal proposal would reduce the built footprint of buildings in the Green Belt by 700 square metres; the proposal would reduce the volume of built form on the site by 500 cubic metres and the proposal would lead to a net reduction of over a hectare of hard standings to soft landscaping - 10,159 square metres. On this evidence

there would be a marked reduction in the amount of built development on the site which should be afforded substantial weight. The Council suggested that the percentage reductions are small - 6.23% and 0.62% for footprint and volume respectively; but that is not realistic. Small percentages of very big amounts are large in absolute terms – it is the actual absolute effect on the extent of built development in the Green Belt that is of more importance.<sup>[3.21]</sup>

- 7.16 The appeal proposal would reduce the area covered by hard standings - from 35,820 to 25,651 m<sup>2</sup>. However, this would have a limited role in the determination of the NPPF paragraph 89 (6) issue. It is acknowledged by both parties that hard standings have a limited effect on openness, unless there are particular attributes that might increase openness like car parking; that is made clear by the decision of the Inspector in the St Albans decision. Moreover, the Harperbury decision was plainly distinguishable from the present – in that case, there was a significant reduction in building heights and in the north-east and south-east of that site, development was being pulled back from the boundary.<sup>[2.19-2.20]</sup>
- 7.17 Turning to the issue of perception, it is noteworthy that the nature of the site is a large, institutional site, with 11,752 square metres of development on it. The Council accepted that it is relatively contained in landscape and visual terms. Its landscape character is one of ornamental parkland and institutional open space; the buildings themselves, with the odd exception, are of very large primary scale and of utilitarian architectural expression. They overlap one with the other in many views across the site, often forming solid walls of development. Plainly these factors are relevant when considering the overall change to openness that the scheme would bring. Furthermore, it is necessary to take a broader approach to the change in perception across the site based on kinetic views rather than a series of fixed viewpoints.<sup>[3.23, 3.25]</sup>
- 7.18 In terms of the on-site impact on openness it is clear to me that the northern part of the site (LCA1, LCA2 and LCA3) would be unaffected in perceptual terms. Although there would be changes in LCA 2 - the car parking area would be reduced and the Lodge would be slightly extended - there is no suggestion that this should be viewed as having a greater overall effect on openness.<sup>[3.26]</sup>
- 7.19 There would be some new housing in the south east corner of LCA5 in the area currently occupied by the tennis courts and hard standings. However LCA5 is dominated by the very substantial Recreation/Sports Hall, which forms an unbroken mass of built form rising to 9.7m in height with a section at 8.5m in height and a short mid-section at 4.3m. Its overall appearance is utilitarian and run-down. That would be replaced by 3 buildings, clearly separated from each other, which would rise to 9.1m in one case, occupying the same location as the 9.1m element now, and 12m in the other two cases. So they would be higher in two instances.<sup>[2.22, 3.27]</sup>
- 7.20 The Council argues that these new buildings would be read as a single block of development and in some views certainly they would be likely to merge. However, there would be plenty of views through the gaps, since they would sit on the main access road that many residents and visitors would pass daily. They would also occupy a considerably smaller footprint than the Recreation/Sports Hall, something which would also give the perception of less

intensive and dominant development. This part of the development would represent a clear gain in terms of breaking up the built form and shrinking its site coverage. <sup>[2.23, 3.27-3.28]</sup>

- 7.21 Similarly, the proposed development of the southern corporate parkland (LCA 4 and part of LCA 6) would not – even seen as a unit of assessment itself – represent an area of greater impact on openness. At present, the building referred to as Lakeside Conference Centre occupies a prominent position in a number of views in that area, jutting out towards the lake. It is proposed that it be removed and the vast majority of its footprint be returned to soft landscaping; that building is very large and has a ridge height of 9.4m. <sup>[2.24, 3.29]</sup>
- 7.22 Nothing would be put in its place, save for a very small element of one maximum 9m high building. There would be a large gain in openness as a result. Set against that, development is proposed to the west on currently undeveloped land (units 123-126). Those units would reduce openness in that area. However, the net effect would be very much the same across this general area of the site. The maximum 9m high new units would be closer in some views than existing development, but the gap between them and the easterly 4 buildings would be considerable, as a result of the removal of Lakeside Conference Centre and in some views where that current building looms, the area would appear markedly more, rather than less, open. <sup>[2.24, 3.30]</sup>
- 7.23 The core of the site, most of LCA 6, except the most south easterly group of buildings, is very heavily developed at present, with large, utilitarian buildings which overlap in views allowing very few glimpses through and are surrounded almost entirely with hard standings. That coarse grain would be replaced with an area of housing which would contain much greater greenery, and afford many more views through as one progressed through the area, than the current inward-looking arrangement. <sup>[2.25-2.29, 3.31]</sup>
- 7.24 The Council maintains that some of the proposed buildings, at a maximum height to the ridge of 9.1m, would be taller than some of the built form there now. That is correct, although the overall difference is very small indeed as most of the buildings there now have ridge heights of over 8.5 m. Similarly, the Council's case is that by moving built form to the west from the location of the current buildings 1 and 12, the openness of the area would be diminished, but that fails to bear in mind the open views created to the rear, i.e. east, of those units – currently a visually harsh and impermeable area. Overall this central core would be more open, softer and more visually permeable. <sup>[2.25-2.29, 3.32]</sup>
- 7.25 The south easterly area – the cluster of buildings 7, 8, 9 and 15 - was subject to some disagreement between the parties in terms of the perception of openness. Collectively these buildings make up a fairly tightly knit and enclosed set of buildings. They are physically connected by corridors. The main building steps from 7.4m to 11.4m to 12.9m in height. Building 8, the Hexagon Bar, has been built rather too close to the gardens, and the copse containing the Listed Mausoleum. On the fringe of the area to the east, there is a very large area of former car parking with lighting columns. <sup>[2.25-2.29, 3.34]</sup>
- 7.26 The proposed scheme would again break up the crowded effect of the built form in this area introducing markedly more space between buildings. The

monolithic character of the buildings and the sense of development in that area having simply piled up over the years according to operational needs would be dispelled. The appeal proposals would remove the Hexagon Bar and return its footprint to soft landscaping, which from many views on site would give a much more open feel to the south eastern developed edge, as well as causing no harm to the significance and setting of the heritage asset – the Grade II Mausoleum. On the other hand, it is true that the three apartment blocks to the east (E, F and G) would be both taller and lower than the existing Main Training Building (9) in places. However, due to the separate footprints and gaps between them there would be no additional impact on openness. [2.25-2.29, 3.35]

- 7.27 In all of those areas, the net effect would either be neutral or would result in an improvement in both the quantitative and qualitative effect on openness. There are two areas where the effect on site would be greater: the eastern car park, where built form would be introduced onto the hard standing in the form of single storey garages about 5.4m high; and the tennis court area. [2.25-2.29, 3.36]
- 7.28 The extent of greater effect is a matter of judgment but the SoS may wish to consider the following points which emerged in the evidence at the Inquiry. Firstly, the eastern car park is not simply a flat hard standing at the moment. It contains tall, ugly, floodlighting pylons. Secondly, the tennis court area is similarly not a featureless level surface; it contains the remains of substantial sporting infrastructure and paraphernalia associated with the former tennis courts, including lighting and fencing. The sense of that area as a developed one, part of a sports centre, is palpable. Thirdly, buildings on the tennis court area would reduce openness in that localised zone. However, the net localised effect has to be judged: the new parkland area to the west would be much softer and greener -grubbing up the hard surface of the running track, and a large area of the tennis court area to the west of the proposed buildings. [2.25-2.29, 3.37]
- 7.29 The only indisputable local negative impacts on openness are the tennis courts and the eastern car park development. However, setting those aspects aside, the proposed scheme would break up the overall scale and massing of the existing development on the site. The proposal would be perceived as a looser and finer grain development with a quantitative reduction in footprint, volume of built form and hard standings. The proposal would also provide many more opportunities for permeability than currently exist, particularly in the middle of the site and even on the fringes, where the largest buildings currently stand with the removal of the Hexagon Bar and Lakeside Conference Centre. [2.25-2.29, 3.38]
- 7.30 As perceived from off site, there is no allegation of harm made in respect of views from the north or west on Drop Lane – the latter would be largely if not wholly screened by the 15m deep buffer planting along the western boundary, which the Council confirmed would screen out views, where currently, and especially in winter, there are some views of development from there. [2.25-2.29, 3.39]
- 7.31 From the south, on Bridleway 7, there would be views of new buildings replacing existing ones, though further back than currently due to the removal of the Hexagon Bar. The Council says that the built form would be greater at the far south eastern corner where a maximum 9.1m high building replaces the end of the monolithic Main Training Building at that point rising to 7.4 m. However, at my site visit I saw the role of the wooded area in that location.

The overall impression is that of a solidly-developed site, with a diverse mix of building types in an institutional layout. The proposal would be more clearly residential but an observer would not form the impression that the site was more heavily or densely developed than it is now. The ornamental and agricultural foreground of those views is and would remain extensive. [2.25-2.29, 3.40]

- 7.32 From the east, the Council is concerned about the visibility of the proposed garages and buildings when viewed from Bridleway 7. However, the SoS should note that the highest building element of the Main Training Building occupies a central and dominant position in the view, which would be replaced by a gap and a view through into the site. The garages would have visible roofs, but they can be pitched and landscaping provided inside the site in line with the Revised Areas of Proposed Buildings Parameters Plan. The Council queried the impact of lighting but this is a matter than could be covered by condition and the columns which stand out so much now would be removed. [2.25-2.29, 3.41]
- 7.33 The scale, appearance, landscaping and layout are matters reserved for future determination. The information submitted in relation to layout and landscaping is submitted for illustrative purposes. Ms Ross's Appendix C Figure 13 shows the eastern side of the site from Bridleway 7. The SoS should be aware that there is a very clear view of the Lakeside Conference Building through the boundary planting at the moment which would almost all disappear to be replaced by open space; new development would extend to the south of that, where there is significant evergreen planting on the site already; the unrelieved mass of the Main Training Building would be broken up and greater articulation introduced, including a gap which would remain directly ahead as one approached along the almost straight Bridleway 7. [3.42]
- 7.34 Overall, the effect would be the same in terms of a large site with substantial development. In my view, no further off-site landscaping is required. However, should the SoS take a different view, then additional off-site planting could be undertaken, as all the land to the east of the red line is in the ownership and control of the Appellant. A condition is suggested at paragraph 3.43 above if the SoS considers this to be necessary. [3.43]
- 7.35 In short, the proposed scheme would overall reduce the effects on openness, particularly bearing in mind the quantitative data submitted. [2.29,3.44]
- 7.36 It is also necessary to assess whether the proposed development would offend the purpose of including land within the Green Belt. In this case it is agreed that the most relevant purpose is 'to assist in safeguarding the countryside from encroachment'. [2.30, 3.45]
- 7.37 It is contended by the Council that there would be encroachment into the countryside. Since the proposal would involve the erection of buildings on greenfield parts of the recreation ground and the parkland, it is claimed that there would be direct encroachment into the countryside. Further, it is argued that there would be visual encroachment from views on Bridleway 7. [2.30-2.35]
- 7.38 There would be no direct physical effect on land outside the appeal site. [3.45]

- 7.39 The appeal site itself should not be treated as ‘countryside’ into which development should not be allowed to ‘encroach’ for the purposes of paragraph 80 of the NPPF. Firstly, it is a heavily developed, self-contained institutional site, with ornamental parkland and institutional buildings and facilities. Secondly, as such it finds no place in a functional or indeed perceptual definition of ‘countryside’. This is clear from the Green Belt appraisal work done by the Council’s consultants (the SKM Report). Thirdly, just because some of it has parkland or recreational characteristics which on their own might be referred to as urban fringe countryside land uses, says nothing about the character of the Hanstead Park site as a whole, which clearly falls outside any such open/soft use, again as the Council’s consultants’ work indicates. [2.32, 3.46]
- 7.40 The land outside the appeal site is countryside, but the lack of physical advance or extension into it means that there is no “encroachment” defined by reference to actual physical incursion into the countryside rather than views from the countryside and assessed as a matter of common sense. For these reasons, the proposal would not offend this purpose of Green Belt. [2.32-2.35, 3.47]
- 7.41 In addition to the points discussed above, the Council made other points in support of its case that the proposal was inappropriate development in the Green Belt. It cited several principles and facts why the RFR should be regarded as the basis for the Council’s objection to the scheme rather than the Transcript of the Committee meeting on which the Appellant places weight. Having read both the Transcript and the RFR it seems to me that there is no statutory basis to support the view that what was said in Committee overrides what the RFR has specifically set out. Plainly the Council’s objection to the case was based on inappropriateness. This was established by the fact that the RFR stated that “no very special circumstances” were apparent. Very special circumstances can only ever be relevant if a development is inappropriate for the purposes of the NPPF. Councillor Yates confirmed in his evidence that the development was to be regarded as inappropriate development. [2.36, 3.20, 4.2, 4.4]
- 7.42 I conclude on Consideration Two that the appeal proposal would not have a greater impact on the openness of the Green Belt than the existing development on the site and would have no material effect in terms of the purpose of safeguarding the countryside from encroachment. I also conclude on Consideration One that paragraph 89 of the NPPF is engaged and that the proposal would comply with the exception set out in bullet point 6. On this basis the proposal would constitute not inappropriate development. There is therefore no need to consider the matter of very special circumstances. However, if the SoS disagrees with my conclusion I address the matter further under Consideration Five. [3.48]

***Consideration Three: The effect of the proposal on the character and appearance of the area***

- 7.43 RFR3 indicates that the proposed development would be detrimental to the character and visual amenity of the Green Belt. The Council’s evidence pointed to the following concerns: (i) that the proposal would result in significant changes in the disposition of built form along the spine road to Hanstead House and in the parkland area south of the lake; (ii) the negative effects of



introducing larger buildings in the south east corner of the site near the Mausoleum and at the eastern end of the sunken garden facing Hanstead House. It is said that these effects would be compounded by the proposed garages which would be erected along the boundary; necessarily this would change lighting patterns and (iii) the layout would be regimented and overpowering in particular locations e.g. the spine road to Hanstead House. [2.45]

- 7.44 The proposed development was supported by a detailed GLVIA which both parties agree to be thorough and comprehensive. In terms of landscape assessment the document refers to the National and Local Hertfordshire Character Area assessments, recording that the Bricket Wood LCA, which covers most of the site, is of good condition and strong character. The appeal site and adjacent land are not covered by any landscape designation and whilst this therefore means it is not afforded any particular quality or value, landscape character in this location is clearly an important local asset. [1.29]
- 7.45 The redevelopment of this previously developed site for housing would inevitably result in a change of character of the area. The proposal would change the function and use as well as the architectural style of the area. However, the change from run-down, utilitarian buildings of large scale and mass to a more fine-grained residential scheme with landscape enhancement and management would not change the overall ornamental parkland character – indeed it would enhance it, especially in the western area with buffer planting and new parkland replacing hard sports facilities. [2.45, 3.54]
- 7.46 In terms of the Bricket Wood LCA, the new development would be well integrated within the existing landscape structure and generally within the previously developed area resulting in a positive benefit in most areas of the site. The new planting, the creation of new publicly accessible open spaces and a commitment to the long term landscape management would all contribute to the wider ‘green infrastructure’ approach advocated by the Council. In short, the appeal proposal would enhance the landscape character of the site and the surrounding Green Belt. [1.29, 2.43-2.44, 3.56-3.60]
- 7.47 With regard to visual amenity the proposals seek to meet national and local policy with regard to good design, particularly in respect of sensitively locating buildings within the existing context, in this case the parkland landscape set within the wider rural context. The visibility of the site is limited to a few publicly accessible locations and there would be no harm caused to visual amenity in views towards the development. Buildings are an established feature within the view from several locations and whilst these would be replaced by residential buildings, in all instances they would continue to be seen in the context of the existing mature trees and hedges. [2.45, 3.56-3.60]
- 7.48 The proposal, by virtue of the layout, high quality design and choice of materials, such as those illustrated within the DAS, would enhance the visual amenity in many of these views and accordingly no harm would occur to the visual amenity of the Green Belt as a result of the development. [1.18, 2.46, 3.56-3.60]
- 7.49 I conclude on Consideration Three that the proposal would have a positive impact on the character and appearance of the area.

***Consideration Four: Whether adequate provision has been made for affordable housing***

- 7.50 At the outset of the Inquiry the parties disagreed over the level of affordable housing that could be delivered on the appeal site taking into account the Council's SPG 2004 on Affordable Housing and paragraph 173 of the NPPF. RFR1 indicated that the proposal would be in conflict with Policy 7A and Policy 8 of the LP, the NPPF and would cause harm by further exacerbating the shortfall in affordable housing opportunities within the District. <sup>[2.48, 3.2]</sup>
- 7.51 Following detailed discussions during the Inquiry between the Appellant and the Council, agreement was reached as to the maximum reasonable amount of affordable housing that could be provided in the event that planning permission is granted. Details of the agreement are set out in the supplementary SoCG. <sup>[2.48, 3.2]</sup>
- 7.52 In summary, and taking into account the detailed evidence presented by parties, it is now agreed, subject to an average unit size, 22 units -a total of 16% affordable housing would be provided as follows:
- 10 x 3 bed houses to be provided as Affordable Rented Units
  - 2 x 1 bed flats and 2 x 2 bed flats to be provided as Intermediate Units
  - 8 x Starter Homes to be disposed of at 80% of market value, subject to an upper limit of £250,000. <sup>[2.48, 3.2]</sup>
- 7.53 RFR1 is no longer pursued by the Council and there is now accord with aforementioned LP and NPPF policies. I conclude on Consideration Four that adequate provision has been made for affordable housing. <sup>[3.3]</sup>

***Consideration Five: Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal in the Green Belt***

- 7.54 It is common ground between the parties that, should it be found that the development is inappropriate, no very special circumstances exist in this case. The Appellant accepted in cross examination that if the development is found to be inappropriate then planning permission must be refused. <sup>[2.50]</sup>

***Consideration Six: Other Matters***

*Paragraph 14 of the NPPF*

- 7.55 The Council made submissions if the development was found to be 'not inappropriate.' It is argued that since its objection in landscape and visual terms was maintained, the presumption in favour of sustainable development set out in paragraph 14 of the NPPF, would not apply. Moreover, it was claimed that the proposal would be contrary to the objective in paragraph 81 of the NPPF that '...local planning authorities should plan to retain and enhance landscapes, visual amenity and biodiversity...' The Council said that

the contravention of that objective would indicate that the development should be restricted for the purposes of paragraph 14 and footnote 9 and thus disapply the presumption. The Council also asserted that BRE decision does not support the Appellant's case on this point since there was no landscape or visual harm in that case; that the appeal proposal was contrary to Policy 1 and that the development was not sustainable. [2.52-2.55]

- 7.56 However, it is clear to me that paragraph 14 of the NPPF does apply in this case for several reasons. Firstly, it is common ground that the Council cannot demonstrate a 5 year supply of deliverable housing sites; paragraph 14 applies because paragraph 49 of the NPPF is engaged. Secondly, the SoS has made it clear, for instance in the BRE case, that footnote 9 does not dis-apply paragraph 14 simply because the site is in the Green Belt as the Council accepted. In my view the NPPF does not cancel this key development management policy in Green Belt cases where there is no harm or objection. Thirdly, the proposal falls within paragraph 89 of the NPPF. Fourthly, in terms of paragraph 81 of the NPPF I have already concluded under Consideration Three that there would be no material harm to the landscape or the visual qualities of the area. On the contrary, the proposal would enhance the landscape and visual amenity of the appeal site. Outside the appeal site there would be no direct landscape impact. The visual impact would be minimal and mitigated by additional planting. [3.49-3.54]
- 7.57 For these reasons, I consider there is no 'residual' Green Belt landscape character or visual objection and plainly not one which ought to be upheld. In my view there is no question therefore of footnote 9 to the NPPF being brought into play. The development must be assessed using the presumption in favour of sustainable development in paragraph 14. That is underlined by the absence of any other suggested reason why the development would not be sustainable development. The housing and affordable housing aspect of it is now agreed to be sustainable; there is agreement about transportation and all other relevant matters. [2.56, 3.59]

*The planning balance using paragraph 14 of the NPPF*

- 7.58 The NPPF has a presumption in favour of sustainable development at its heart and this has three dimensions: economic, social and environmental. It is confirmed that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. [1.26]
- 7.59 With regard to the economic role, the construction of 139 units of housing in an area with a substantial shortfall against its 5 year requirement and 22 units (16%) affordable housing in the context of a very serious shortfall of provision should receive substantial weight. This is a District with a chronic undersupply problem which has caused it to prepare its new SLP partly in reliance on substantial *Greenfield Green Belt* releases. This site is a highly sustainable one which really should make its contribution as soon as possible. The subsequent occupation would be likely to add spending in numerous local shops and businesses. [2.56, 3.61]
- 7.60 The contribution towards the delivery of market and affordable housing together with public access to the site and enhanced provision of open space

are important social benefits. The scheme would also bring back into use a previously developed site which was earmarked since 2009 in the SHLAA for housing, and now relied on in the latest AMR for 150 units; both of these factors should be given due weight.<sup>[2.56, 3.62]</sup>

- 7.61 With regard to the environmental role there would be no environmental impacts or conflicts with development plan policies or the NPPF. Indeed the site would be restored in landscape terms and its future maintenance guaranteed, something which is also of real value, especially as for the first time there would be extensive public access to the parkland. Each of the three limbs of sustainability would therefore be satisfied.<sup>[2.55-2.56, 3.63]</sup>
- 7.62 The proposal is generally consistent with the development plan as a whole and in the context of paragraph 14 of the NPPF there are no adverse impacts that 'would significantly and demonstrably' outweigh the benefits, when assessed against the NPPF taken as a whole.<sup>[1.26]</sup>

### **Consideration Seven: Whether any conditions and obligations are necessary to make the development acceptable**

- 7.63 Planning conditions and obligations have already been dealt with at paragraphs 6.1-6.11 above. The recommended planning conditions are set out in the Annex to this report. Justification for the planning conditions has been provided. It is considered that the conditions are reasonable, necessary and otherwise comply with the provisions of paragraph 206 of the NPPF and the PPG for the reasons given. I recommend that they are imposed if the SoS decides to allow this appeal.<sup>[6.1-6.11]</sup>
- 7.64 SACDC and HCC have provide detailed evidence of the need for the various facilities and services which would arise from this development within the locality of the appeal site including how the contributions would be spent. The level of contributions in this case accords with SACDC strategies and the requirements of the HCC Toolkit. Less than five obligations identifying these specific projects have been entered into since April 2010 thereby meeting the requirements of Regulation 123(3) of the CIL Regulations.<sup>[6.4-6.11]</sup>
- 7.65 Indeed all of the obligations in the UU are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore they all meet the tests with CIL Regulations 122 and 123 and should be taken into account in the decision. The proposal makes adequate provision for mitigating any adverse impact it would have upon local services and infrastructure.<sup>[6.4-6.11]</sup>

### **Overall conclusions**

- 7.66 The proposal would represent a highly beneficial reuse of a previously developed site. It would provide some 138 dwellings which would represent a significant benefit in terms of housing supply where the Council accepts that it cannot demonstrate a 5 year supply of housing. Returning to the Main Considerations it is considered that the appeal proposal would not have a greater impact on the openness of the Green Belt and would have no material effect in terms of the purpose of safeguarding the countryside from

encroachment. In terms of paragraph 89 of the NPPF the proposal would comply with the exception set out in bullet point 6 and it would constitute not inappropriate development. There is therefore no need to consider the matter of very special circumstances. The proposal would have a positive impact on the character and appearance of the area and adequate provision has been made for affordable housing. The proposal can be considered sustainable and there is no impact on any local services or infrastructure which cannot be addressed by a lawful contribution via the UU. The proposal is generally consistent with the development plan when read as a whole. In terms of paragraph 14 of the NPPF there are no adverse impacts of the development such that they would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

## **8. RECOMMENDATION**

- 8.1 For all the reasons given above I recommend that the Appeal be allowed and planning permission be granted subject to the conditions set out in the Annex.

*Harold Stephens*

Inspector

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr Matthew Reed of Counsel	Instructed and assisted by St Albans City and District Council
He called	David Huskisson Dip LA CMLI, Principal of David Huskisson Associates
	Nigel Ozier BA (Hons) MRTPI Managing Director of Aitchison Rafferty, Chartered Town Planning Consultants

### **FOR APPELLANT:**

Mr Rupert Warren QC	Instructed by Stuart Andrews of Eversheds
He called	Vanessa Ross BA (Hons) PGBLA MA CMLI, Chartered Landscape Architect, Arc Landscape Design and Planning Ltd
	Pravin Patel BA MRTPI MRICS, Director PPML Consulting Ltd

### **INTERESTED PERSONS:**

David Yates	District Councillor and Vice Chair of the Council's Planning Policy Committee
Henry Tuck	Local Resident

### **INQUIRY DOCUMENTS**

INQ1	Notification Letter
INQ2	Written representations submitted following the issue of the SoS's Direction to recover the application
INQ3	Unilateral Planning Obligation
INQ4	CIL Regulations Compliance Submissions

### **CORE DOCUMENTS LIST**

CD1	Planning application submission plans and documents, Hanstead Park, Smug Oak Lane, St Albans (5/2014/3250)
CD2	National Planning Policy Framework
CD3	National Planning Practice Guidelines
CD4	Consultation Draft of Proposed Changes to National Planning Policy dated December 2015
CD5	Extracts from St Albans District Council Local Plan 1994

- CD6 Green Belt Review Purposes Assessment – Final Report dated November 2013 and Annex 1
- CD7 Committee Report dated 30 March 2015, Hanstead Park, Smug Oak Lane, St Albans (05/2014/3250)
- CD8 Addendum Report dated 30 March 2015, Hanstead Park, Smug Oak Lane, St Albans (05/2014/3250)
- CD9 Decision Notice dated 31 March 2015, Hanstead Park, Smug Oak Lane, St Albans (05/2014/3250)
- CD10 Appeal Decision, BRE, Bucknalls Lane (APP/B1930/A/13/2007696)
- CD11 Committee Report, Land at Harperbury Hospital, Harper Lane, Shenley (5/2015/0990)
- CD12 Transcript of St Albans Planning Referrals Committee Meeting on 30 March 2015
- CD13 Supplementary Planning Guidance, Affordable Housing dated March 2004
- CD14 Appeal Decision, Hunston Properties Limited, Sewell Park, Land to rear of Nos 112-156B Harpenden Road, St Albans (05/11/2857 and 5/12/2713)
- CD15 St Albans Strategic Local Plan Publication Draft (2016)
- CD16 Hertfordshire County Council Planning Obligations Guidance Toolkit, January 2008
- CD17 Committee Report, Hanstead Park, Smug Oak Lane, St Albans ('Application 1') (05/2013/2119)
- CD18 Decision Notice dated 11 August 2014, Hanstead Park, Smug Oak Lane, St Albans ('Application 1') (05/2013/2119)
- CD19 KIFT Validation Report dated 22 February 2015
- CD20 St Albans District Council Annual Monitoring Report (April 2014 to March 2015) dated December 2015
- CD21 Proof of Evidence of Geoffrey Briggs, Hunston Properties Limited, Sewell Park, Land to rear of Nos 112-156B Harpenden Road, St Albans (APP/B/1930/A/12/2180486)
- CD22 Decision Notice dated 20 July 2015, Keele Seddon Limited, The Hawthorns and Keele University Campus, Keele, Newcastle-Under-Lyme (APP/P3420/A/14/2219380 and APP/P3420/E/14/2219712)
- CD23 Statement of Common Ground dated 9 November 2015

#### **ADDITIONAL DOCUMENTS SUBMITTED ON BEHALF OF ST ALBANS CITY & DISTRICT COUNCIL**

- LPA1 Opening Statement – Matthew Reed
- LPA2 Final List of Suggested Planning Conditions
- LPA3 List of Plans and other information upon which the application was determined
- LPA4 Statement of Common Ground on Affordable Housing
- LPA5 Green Belt comparison
- LPA6 Planning Practice Guidance 034 Reference ID: 3-034-20141006
- LPA7 Closing Submissions – Matthew Reed

#### **ADDITIONAL DOCUMENTS SUBMITTED ON BEHALF OF THE APPELLANT**

- APP1 Opening Statement - Rupert Warren
- APP2 Extracts from St Albans Strategic Housing Land Availability Assessment 2009
- APP3 Original Site Plan
- APP4 Extracts from St Albans Housing Market Assessment (update 2015)

- APP5 Preliminary Scheme Plan (SOL/15/PRE01A)
- APP6 CIL Compliance Statement dated 5 February 2016
- APP7 Amended CIL Compliance Statement dated 10 February 2016
- APP8 Old Lodge Existing Site Plan (17134)
- APP9 Old Lodge Existing Floor Plan and Roof Plan (20273)
- APP10 Old Lodge Elevations and Sections (20273)
- APP11 Correspondence with County Council
- APP12 Correspondence with City and District Council
- APP13 Revised Parameters Plan
- APP14 Closing Submissions – Rupert Warren

#### **INTERESTED PERSONS' DOCUMENTS**

- IP1 Statement by Mr David Yates
- IP2 Statement by Mr Henry Tuck



## **ANNEX - RECOMMENDED CONDITIONS**

### **APPROVAL OF DETAILS AND TIMING**

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development is commenced.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 3) The development hereby approved shall be for no more than 138 dwellings.
- 4) The development shall be carried out in general accordance with the details shown on the Masterplan (Plan 1 Revision B), and in accordance with Areas of Proposed Buildings (Plan 3 Revision C), Maximum Floor Areas (Plan 5 Revision B) and Maximum Storey Heights (Plan 6 Revision B).
- 5) The development hereby permitted shall be carried out in accordance with the following approved plans and information: Location Plan REV B, PLAN 1 REV. B, PLAN 2 REV. C, PLAN 4 REV. C, PLAN 7 REV. B, SOL/HH/L01, SOL/HH/14/L10B, SOL/HH/14/L11A, SOL/HH/14/L12, SOL/HH/14/L13, SOL/HH/14/L14A, SOL/HH/14/L15A, SOL/HH/14/L20A, SOL/HH/14/L21 , SOL/HH/14/L22, SOL/HH/14/L23, SOL/OL/14/L01, SOL/OL/14/L10, SOL/OL/14/L11, SOL/OL/14/L15, SOL/OL/14/L16, SOL/OL/14/L17, SOL/OL/14/L18, SOL/OL/14/L20, SOL/OL/14/L21, SOL/OL/14/L22, SOL/OL/14/L24, SOL/OL/14/L25, SOL/OL/14/L26, SOL/OL/14/L27, SOL/OL/14/L28, Air Quality Assessment, Arboricultural Impact Assessment and accompanying drawings, Cultural Heritage Desk Based Assessment, Heritage Statement, Foul Drainage and Utilities Assessment and accompanying drawings, Ecological Assessment Report, Updated Bat Report, Updated Badger, Otter and Water Vole Report, Flood Risk and Drainage Assessment, Landscape Design Statement, A111-LA01a, Landscape and Visual Impact Appraisal, Design and Access Statement and Appendices, Transport Assessment Addendum and accompanying drawings (43759/P/01 Revision B, 43759/P/02 Revision B, 43759/P/03 Revision B, 43759/C/009 Revision A and 43759-C-12 Revision A), Residential Travel Plan, Utilities Report and Preliminary Risk Assessment received 24/11/2014.
- 6) Notwithstanding the provisions of Schedule 2, Part 1, Classes A, B, C, D and E and Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), there shall be no enlargement or extension of the dwellings hereby permitted, including any additions or alterations to the roof, and no building, enclosure or means of enclosure shall be constructed within the application site without the prior written permission of the Local Planning Authority.

- 7) Details of the finished floor levels of all of the buildings within the site in relation to existing ground levels shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development and the development shall be carried out in accordance with the agreed details.
- 8) Prior to the commencement of development, details of the provision to be made for the storage of refuse shall be submitted to and approved in writing by the Local Planning Authority. Such provision shall be made prior to the occupation of the dwellings and shall thereafter be made permanently available for the occupiers of the dwellings.
- 9) A scheme for external lighting shall be submitted to and approved in writing by the Local Planning Authority, before the development hereby approved is commenced. The development shall be implemented in accordance with the approved details.

## **LANDSCAPING**

- 10) No development shall take place until details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include (a) proposed finished levels and contours; (b) means of enclosure; (c) car parking layouts; (d) other vehicles and pedestrian access and circulation areas; (e) hard surfacing materials; (f) minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc); (g) proposed and existing functional services above and below ground (e.g. drainage, power, communications cables, pipelines etc, indicating lines manholes, supports etc.); (h) retained historic landscape features and proposals for restoration where relevant; (i) existing trees to be retained; (j) existing hedgerows to be retained. Details to be submitted shall include planting plans; written specifications (including cultivation and other operations associated with the plant and grass establishments); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; an implementation programme should be submitted.
- 11) A landscape management plan indicating long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small privately owned domestic gardens shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development or any phase of the development whichever is the sooner for its permitted use. The landscape management plan shall be carried out as approved.
- 12) If within a period of five years from the date of the planting of any tree or plant, that tree or plant, or any tree or plant planted in replacement for it is removed, uprooted or destroyed or dies or becomes seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless otherwise the Local Planning Authority gives its written consent to any variation. The tree or plant shall be planted within 3 months of felling/dying or if this period does not fall within the planting season by 31 January next.

- 13) An Arboricultural Method Statement in accordance with BS5837:2012 should be submitted to and approved in writing by the Local Planning Authority. Tree protection measures should be undertaken in accordance with the approved Arboricultural Method Statement.

#### **ARCHAEOLOGY AND HERITAGE**

- 14) No development shall take place within the application site until a written scheme of archaeological investigation, including the methodology of further investigation works and a programme for the works to be undertaken (the 'Archaeological Scheme') has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be implemented in accordance with the agreed Archaeological Scheme.
- 15) No development shall take place within the application site until an Archaeological Management Plan, including measures for the ongoing protection of any archaeological features identified under the Archaeological Scheme and a programme for their implementation has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be implemented in accordance with the agreed Archaeological Management Plan.
- 16) No development shall take place until the applicant, or their agent or successors in title, has secured the implementation of a programme of building recording and analysis with a watching brief to be maintained during the course of the works affecting the below ground deposits and historic fabric of the buildings concerned. This must be carried out by a professional archaeological/building recording consultant or organisation in accordance with a written scheme of investigation which shall first have been submitted to and agreed in writing by the Local Planning Authority.

#### **CONSTRUCTION METHOD STATEMENT**

- 17) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved statement shall be adhered to throughout the construction period. The statement shall provide for:
- (a) the hours of work;
  - (b) the parking of vehicles of site operatives and visitors;
  - (c) loading and unloading of plant and materials;
  - (d) storage of plant and materials used in constructing the development;
  - (e) construction vehicle numbers, type, routing;
  - (f) Wheel washing facilities;
  - (g) traffic management requirements;

- (h) a scheme for recycling/disposing of waste resulting from construction works;
  - (i) cleaning of site entrances, site tracks and the adjacent public highway;
  - (j) means of protection of trees and hedgerows during site preparation/demolition and construction; and
  - (k) access arrangements for emergency vehicles during the construction phase.
- 18) Demolition or construction works and deliveries shall not take place outside 0730 hours to 1800 hours Mondays to Fridays and 0730 hours and 1300 hours on Saturdays nor any time on Sundays or Bank Holidays.

## **HIGHWAYS AND TRANSPORTATION**

- 19) Prior to commencement of development, detailed drawings of all highway works including details of the internal road layout and all materials to be used for hard surfaces areas including roads, cycleway, footpaths and car parking shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority.
- 20) All works associated with Rights of Way works shall be designed in accordance with Hertfordshire County Council's Rights of Way improvement plan approved and completed prior to any occupation of the development.
- 21) The development hereby permitted shall not be occupied until the road works as shown in principle in drawing no 43759/P/01 Rev B (Smug Oak Lane/Station Road), drawing no 43759/P/02 Rev B (Smug Oak Lane/Radlett Road) and drawing no 43759/P/03 (Mt. Pleasant Lane/A405) have been constructed and completed as agreed with the Local Planning Authority.
- 22) Construction of the development hereby permitted shall not be occupied until the following pedestrian works have been constructed and completed as agreed in writing by the Local Planning Authority:
- Provision of uncontrolled pedestrian tactile paving crossing on Station Road/Smug Oak Lane junction.
  - Provision of uncontrolled pedestrian tactile paving crossing on Smug Oak Lane near terrace cottages. Reference: 43759-C-12 Rev A
  - Provision of uncontrolled pedestrian tactile paving crossing on Radlett Road. Reference number 43759/C/009 Rev A
- 23) Two months prior to the first occupation of the development the Applicant shall implement the approved 'Green Travel Plan'.

## **DRAINAGE**

- 24) No development shall take place until a detailed surface water drainage scheme for the site, based on the agreed Flood Risk Assessment (RSK, Ref: 131843 – R1(2) – FRA, dated November 2014) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details. The scheme shall include a restriction in run-off and surface water storage on site as outlined.
- 25) No development shall take place until a drainage strategy detailing any on and/or off site drainage works has been submitted to and approved by the Local Planning. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works in the approved strategy have been completed.
- 26) No development approved by this permission shall take place until a scheme for the improvement of the existing foul sewerage system has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved. No occupation of dwellings approved by this permission shall occur until the scheme for improvement of the existing foul sewerage system has been completed.

## **GROUND CONTAMINATION**

- 27) No part of the development shall be commenced on site unless and until:
- 1) A site investigation scheme, based on the initial desk study to provide information for a detailed assessment of the risk to all receptors that may be affected including those off site, has been submitted to and approved in writing by the Local Planning Authority prior to the investigation being carried out;
  - 2) The site investigation and associated risk assessment have been undertaken in accordance with the details submitted to and approved in writing by the Local Planning Authority;
  - 3) A method statement and remediation strategy based on the information obtained from (2) above including a programme of works have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved remediation strategy.
- 28) No dwelling shall be occupied until such time as a verification investigation has been undertaken in line with the agreed verification plan for any works outlined in the remedial scheme relevant to either the whole development or that part of the development and the report showing the findings of the verification investigation has been submitted to and agreed in writing by the Local Planning Authority.

## **NOISE**

- 29) The development hereby permitted shall not commence until a noise assessment has been carried out which assesses the impact of noise from traffic on the M25 to the North and the railway line to the North East/East of the site. Sound insulation measures will then need to be incorporated into the proposed development so the standard within BS8233:2014 is achieved within all habitable rooms.

L<sub>Amax,f</sub> should not normally exceed 45dBA in bedrooms at night (2300 hours to 0700 hours).

## **ECOLOGY**

- 30) Prior to the commencement of development, an Ecological Management Plan, including long term objectives, management responsibilities and maintenance schedules, for the habitats within the site boundary (but beyond the immediate development footprint) should be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved Ecological Management Plan.



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.